

**MONTANA WETLAND COUNCIL
MEETING SUMMARY
October 1, 2014**

The Montana Wetland Council held its fall meeting on October 1, 2014 in the DEQ's Director's Conference Room in Helena with about 65 people in attendance. Round-robin introductions included announcements by those present and a special welcome to Karen Hamilton, Jim Berkley, and Cynthia Gonzales from EPA Region 8 in Denver. Please see the sign-in sheet at the end of this summary. Lynda Saul, DEQ Wetland Program Manager and Wetland Council Chair introduced the meeting as having three major components. First, a report out on implementing the State Wetland/Riparian Strategy including both ongoing projects and new projects funded by EPA Region 8 Wetland Program Development Grants. Second, information and a panel discussion including Q&A's on the proposed rule on Waters of the U.S. Finally, an update on the State Water Plan which is open for comments until October 24 and wetland, riparian, and grassland provisions of the new Farm Bill relevant to Montana.

Implementing the State Wetland/Riparian Strategy

Saul introduced this session as reporting out on implementation to date of the state wetland plan titled "[Priceless Resources: A Strategic Framework for Wetland and Riparian Area Conservation and Restoration in Montana 2013-2017](#)". She indicated that the previous 5-year plan was reviewed and assessed for accomplishments. Key accomplishments were reported beginning on page 25 of the current plan. Saul introduced the newly formed [Wetland Council Steering Committee](#) whose main role is to provide guidance and assistance in implementing the plan. Each Steering Committee member will be championing an objective or Strategic Direction in the plan and engaging their colleagues in assisting with wetland and riparian conservation and restoration. Presentations on current work to implement Montana's Wetland and Riparian Strategy include the following, Please click on the link to the PowerPoint presentations and contact the presenters if you would like additional information. [Lynda Saul](#), DEQ Wetland Program – [Wetland Council, Channel Migration, other projects](#)
[Steve Carpenedo](#), DEQ Wetland Program – Restorable Aquatics Database, Storymill, Musselshell
[Catherine Wightman](#), FWP – [Wetlands Legacy Partnership, Prioritization](#)
[Karen Newlon](#), MNHP – [Mapping, Monitoring and Assessment](#)
[Amy Chadwick](#), Great West Engineering – [Wetlands on State Lands, Beaver Management](#)

EPA Region 8 awarded new 2-year Wetland Program Development Grants to both the Montana Natural Heritage Program and the DEQ Wetland Program for the next two years. Heritage will start their work on October 1, 2014, while DEQ will begin work on their projects on January 1, 2015. The presentations described those upcoming projects including why this work matters and how to get involved.

[Linda Vance](#), [Montana Natural Heritage Program](#)
[Steve Carpenedo](#), DEQ Wetland Program
[Lynda Saul](#), [DEQ Wetland Program](#)

**Proposed Rule on Waters of the U.S. and
Interpretive Rule Clarifying CWA Exemptions**

Saul introduced the topic and explained that the purpose of this meeting is informational and factual including comparing existing rules, regulations, and guidance to the proposed rule. Currently, much confusion, complexity, and lack of consistency exists about which waters are included as Waters of the United States in light of 2001 and 2006 Supreme Court decisions. Confusion, complexity, and lack of consistency create areas ripe for litigation, unproductive time, and added expense.

To determine the state of the science regarding the technical and scientific understanding, the EPA's Office of Research and Development (ORD) developed a draft report synthesizing the peer-reviewed scientific literature involving more than 1000 journal articles pertaining to biological, chemical, and hydrologic connectivity of waters and the effects that small streams, wetlands, and open waters have on larger downstream waters such as rivers, lakes, estuaries, and oceans. The report is titled: "[Connectivity of Streams and Wetlands to Downstream Waters: A Review and Synthesis of the Scientific Evidence](#)". ORD asked the Science Advisory Board to conduct a peer review of the agency's draft report. Findings from this draft Report will help inform the EPA and the U.S. Army Corps of Engineers in their continuing policy work and efforts to clarify what waters are covered by the Clean Water Act. The national Science Advisory Board review panel included 27 members including three professors from Montana Universities; Dr. Duncan Patten, Dr. Maurice Valett, and Dr. Jack Stanford. The Science Advisory Board (SAB) concluded its review of the use of science in the proposed rule Consideration of the Adequacy of the Scientific and Technical Basis of the EPA's Proposed Rule titled "Definition of Waters of the United States under the Clean Water Act". [Attached](#) is a copy of the letter that SAB sent the EPA Administrator on Sept 30, 2014. The overall conclusion is very supportive of the rule: "Although water bodies differ in degree of connectivity that affects the extent of influence they exert on downstream waters (i.e., they exist on a "connectivity gradient"), the available science supports the conclusion that the types of water bodies identified as waters of the United States in the proposed rule exert strong influence on the physical, chemical, and biological integrity of downstream waters." Please refer to the [SAB website](#) for more information:

Karen Hamilton, EPA Region 8 Wetlands Program Unit Chief explained that EPA and the Corps of Engineers jointly released a proposed rule on Waters of the United States. The propose rule is intended to reduce confusion about Clean Water Act protection and clarify the types of waters covered under the CWA. EPA explained what the rule does and does not do, exemptions and exclusions, why do a rulemaking, and other aspects of the proposed rule. She provided the following links:

33 CFR Part 328 - current Waters of the United States definition

<http://www.nap.usace.army.mil/Portals/39/docs/regulatory/regs/33cfr328.pdf>

Proposed "Definition of 'Waters of the United States' Under the Clean Water Act" at 40 CFR

230.3 <http://www.nap.usace.army.mil/Portals/39/docs/regulatory/regs/33cfr328.pdf>

She noted that more than 100 organizations, including the US Supreme Court, requested both the US Army Corps of Engineers (Corps) and EPA clarify the Clean Water Act. Hamilton mentioned that two documents are worth noting. First is the Economic Analysis and second is the Science Report that Saul mentioned. There have been four opportunities to comment on the Science Advisory document. There is also a legal analysis that takes up 88 pages in the Federal Register. She emphasized that there is nothing in the proposed rule that affects state water management or water rights. She explained that the comments period is open (*which has subsequently been extended to November 14*). She clarified a few other misconceptions: that only the water in a floodplain would be considered a Water of the US, not the entire floodplain, streams need to have a bed, bank, and ordinary high water mark, and that groundwater is not considered a Water of the US. She explained that there are two parts to determine jurisdiction, the activity itself may be exempt from jurisdiction and the water may be exempt because it's not connected. Again, the comment period has been extended and she encouraged comments to refine and improve the draft rule.

Janet Ellis, Montana Audubon Program Director, reviewed jurisdictional determinations (JDs) for oxbows, ditches, intermittent streams and other vulnerable aquatic resources in Montana made by the USACE in the years following the 2001 and 2006 Supreme Court decisions which limited the scope of federally protected aquatic resources under the Clean Water Act. Her presentation showcased some of those JDs and discussed how the EPA/Corps proposed rule to clarify protection under the CWA may change protection for those types of aquatic resources.

Panel Discussion: Proposed Rule on “Waters of the United States” and Interpretive Rule Clarifying Exemption to the Clean Water Act Section 404.

Saul introduced the panel and added that an additional rule, the Interpretive Rule was issued at the same time as the proposed rule on Waters of the US. The proposed rule preserves current agriculture exemptions for CWA permitting. The Interpretative Rule clarified 56 exemptions of established NRCS conservation agricultural practices from the Clean Water Act. This panel session was also intended to be informative and included time for questions and answers. Panelist were provided several questions prior to the Council meeting to respond to, discussed the proposed and new rule in regard to how they administer their respective responsibilities, and provided other comments as appropriate to their organization.

The Proposed Rule on Waters of the U.S. is open for public comment until November 14, 2014.

<http://www2.epa.gov/uswaters>.

The Interpretative Rule clarifying exemptions from CWA Section 404 went into effect March 25, 2014.

http://www2.epa.gov/sites/production/files/2014-03/documents/interagency_mou_404f_ir_signed.pdf.

Panelist included:

Todd Tillinger, USACE Program Manager Montana Regulatory Office

Karen Hamilton, EPA Region 8 Wetlands Program Unit Chief

Steve Becker, NRCS State Conservation Engineer in Montana

George Mathieus, DEQ Planning Prevention and Assistance Division Administrator

Tim Davis, DNRC Water Resources Division Administrator

Jeff Tiberi, MACD Policy Director

Janet Ellis, Montana Audubon Program Director

State Water Plan and Farm Bill

Saul introduced this final session and two additional planning and policy programs that have a direct influence on wetland and riparian resources in Montana. Again, the presentations were informational.

Ann Schwend, Water Planner, Department of Natural Resources and Conservation focused on restoring natural water storage and promoting ecological health in the Draft State Water Plan.

The draft State Water Plan is open for public comment (Sept 22 - Oct 24) www.dnrc.mt.gov/mwsi and will ultimately go before the 2015 State Legislature. This 20-year-plus update includes recommendations about natural storage and intact ecological systems (riparian areas, floodplains, and wetlands) to benefit water supplies and ecosystems. Natural storage plays a planning role both for floods and drought. Other recommendations address invasive species, endangered species, and improvements to the Montana State Library's Water Information System.

Abby Dresser, Biologist, NRCS/Ducks Unlimited focused her presentation on wetlands, riparian areas, and working lands programs in the new Farm Bill. The USDA Natural Resources Conservation Service (NRCS) is the federal agency responsible for implementing conservation programs under the Agriculture Act, otherwise known as the Farm Bill. The new 2014 Farm Bill changed multiple conservation provisions for private landowners regarding wetlands, riparian areas, and grasslands. This presentation reviewed these changes and summarized the key restoration and conservation programs for wetlands and working lands.

Next Montana Wetland Council Meetings:

January 29, 2015 in Helena. Focus to be determined – contact Lynda Saul with suggestions.

May 28, 2015 Wetland/Watershed Stewardship Award Ceremony – Montana State Capitol

The Montana Wetland Council meets three times a year and is an active network of diverse interests who work cooperatively to conserve and restore Montana's wetland and riparian ecosystems by implementing Montana's Wetland Strategy. Everyone is welcome to attend. For additional information contact Lynda Saul, Montana DEQ (406) 444-6652 or lsaul@mt.gov. Website: [Montana Wetland Clearinghouse](#)

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