

## NUTRIENT WORK GROUP MEETING SUMMARY

### December 14, 2022

9:00 a.m. – 11:00 a.m.  
Hybrid Meeting: Zoom and DEQ Room 111

#### ATTENDANCE: NUTRIENT WORK GROUP MEMBERS

Representative & Affiliation	Representing
Louis Engels City of Billings	Point Source Discharger: Large Municipal Systems (>1 MGD)
Alan Olson Montana Petroleum Association	Point Source Discharger: Non-POTW
Kelly Lynch Montana League of Cities and Towns	Municipalities
Tammy Johnson Montana Mining Association	Mining
Kristin Gardner Gallatin River Task Force	Conservation Organization: Local
Sarah Zuzulock Zuzulock Environmental Services	Conservation Organization: Regional
David Brooks Montana Trout Unlimited	Conservation Organization: Statewide
Guy Alsentzer Upper Missouri Waterkeeper	Environmental Advocacy Organization
Jeff Schmalenberg MT Dept. of Natural Resources and Conservation	State Land Management Agencies
Andy Efta U.S. Forest Service, Northern Region	Federal Land Management Agencies
Dan Rostad Yellowstone Conservation District Council	Soil and Water Conservation Districts – East of the Continental Divide
Julia Altemus Montana Wood Products Association	Timber Industry
Scott Buecker AE2S	Wastewater Engineering Firms
Nick Banish Gallatin Local Water Quality District	County Water Quality Districts or Planning Departments
Tina Laidlaw U.S. Environmental Protection Agency	Federal Regulatory Agencies
Samantha Tappenbeck Flathead Conservation District	Soil and Water Conservation Districts – West of the Continental Divide

**NOT IN ATTENDANCE: NUTRIENT WORK GROUP MEMBERS**

<b>Representative &amp; Affiliation</b>	<b>Representing</b>
Shannon Holmes City of Livingston	Point Source Discharger: Middle-Sized Mechanical Systems (<1 MGD)
Rika Lashley Morrison-Maeirle	Point Source Discharger: Small Municipal Systems with Lagoons
Rachel Cone Montana Farm Bureau	Farming-Oriented Agriculture
Raylee Honeycutt Montana Stockgrowers Association	Livestock-Oriented Agriculture
Pete Cardinal Pete Cardinal Outfitters	Water or Fishing-Based Recreation

**ATTENDANCE: OTHER PARTICIPANTS**

Aaron Losing, City of Kalispell  
 Amanda Eggert  
 Amelia Flanery, DEQ, Surface Water Discharge Permitting  
 Amy Steinmetz, DEQ, Water Quality Division Administrator  
 Andrew Gorder, Clark Fork Coalition  
 Andy Ulven, DEQ, TMDL Section Supervisor  
 Bill Andrene, City of Butte  
 Bill Hayward  
 Brian Heaston, City of Bozeman  
 Brian Sugden  
 Carissa McNamara  
 Casey Lewis  
 Christina Staten, DEQ, Watershed Management Section  
 Christine Weaver, DEQ MPDES Permitting  
 Coralynn Revis, HDR  
 Darrin Kron, DEQ, Monitoring and Assessment Section Supervisor  
 David Clark, HDR  
 Ed Coleman, City of Helena  
 Eric Trum, DEQ, Watershed Protection Section Supervisor  
 Hannah New, DEQ, Surface Water Discharge Permitting  
 Jeff Brown  
 Jeff Dunn, WGM Group  
 Jeff May, DEQ, Surface Water Discharge Permitting  
 Jeremy Perlinski  
 Joanna McLaughlin, DEQ, MPDES Permitting  
 Joe Griffin  
 Joe Lierow, ExxonMobil Billings Refinery  
 John Esp, Montana State Senator  
 Jon Kenning, DEQ, Water Protection Bureau Chief  
 Josh Viall, DEQ, Compliance and Technical Assistance Section  
 Katie Hendrickson, City of Billings

Katie Makarowski, DEQ, Standards and Modeling Section Supervisor  
Kayla, Yellowstone Public Radio  
Kristi Kline, Montana Rural Water Systems  
Kurt Moser, DEQ, Legal Counsel  
Kyle Milke, DEQ, Adaptive Management Program Scientist  
Leea Anderson, City of Helena  
Lisa Anderson, DEQ Watershed Protection Section  
Mark Ockey, DEQ, Watershed Protection Section  
Matte Wolfe, Sibanye Stillwater  
Michael Kasch, HDR  
Michael Suplee, DEQ, Water Quality Standards and Modeling  
Moirra Davin, DEQ, Public Information Officer  
Nicholas Danielson, DEQ, New Media Specialist  
Peggy Trenk, Treasure State Resources Association  
Vicki Watson, University of Montana Watershed Clinic  
Rickey Schultz, HDR  
Ryan Sudbury, City of Missoula  
Ryan Urbanec  
Susie Turner  
Theresa Froehlich, DEQ, Program Support Specialist  
Torie Haraldson  
Trevor Selch, Montana Fish, Wildlife and Parks  
Vicki Marquis, Holland and Hart

## **MEETING PURPOSE / OBJECTIVES**

- Open discussion of NWG Member concerns with Draft 3 of the rule package sent out on December 5<sup>th</sup>, 2022.
- Discussion of future meeting topics.
- Review of 2023 NWG meeting schedule.

## **MEETING HIGHLIGHTS / DECISIONS MADE**

- Discussion was had on Figure 1-1 of Circular DEQ-15. Many questions and concerns regarded when/where the AMP starts in the diagram.
- Reasonable potential was another topic of concern among many of the NWG Members. It was proposed that DEQ revisits the Reasonable Potential Analysis Guidance for Implementation of Montana's Narrative Nutrient Criteria in Montana Pollutant Discharge Elimination System Permits. Concerns particularly centered around the phosphorous stage at which phosphorous limits are established.
- Enforceable written agreements was discussed along with how they are going to be used.
- The accountability and enforceability of the AMP in its entirety was discussed at length. Protectiveness of the narrative criteria was added to future meeting topics.

## **MEETING INITIATION**

Moirra Davin, DEQ public information officer and meeting facilitator, welcomed everyone to the meeting at 0903. Moirra went over meeting logistics (slide 2 of **Attachment A**), the meeting agenda (slide 3 of

**Attachment A**), and took a roll call of Nutrient Work Group members present either via Zoom or in Room 111 of the DEQ Metcalf Building in Helena (slide 4 of **Attachment A**). Moira then presented slide 6 of **Attachment A** and facilitated a discussion on any comments or concerns of the recently released draft rule package.

## GENERAL DISCUSSION

Moira Davin went down the Nutrient Work Group Member list and asked each individual to share their thoughts on the draft rule package.

Louis Engels, City of Billings, wanted to review Figure 1-1 of Circular DEQ-15 (slide 15 of **Attachment A**). Many Nutrient Work Group Members stated confusion with the figure, particularly when/where the AMP starts. Louis also expressed concerns that the reasonable potential memo from October was not included in Circular DEQ-15, and was unclear on how reasonable potential is going to work. This was added as a 2023 meeting agenda item. Lastly, Louis expressed concerns with how long the point source discharger will be responsible for monitoring if they do not have reasonable potential.

Jon Kenning, DEQ Water Protection Bureau Chief, responded to Louis Engels' question about the reasonable potential memo not being included. Jon stated that it would not be included in the draft rule package. He also said that even if the point source discharger does not have reasonable potential, they are still a major source of nitrogen and phosphorous, so monitoring will still need to be conducted. Discussion for who would be responsible for response variable monitoring was tabled as a 2023 meeting agenda item.

Tammy Johnson, Montana Mining Association, said that the way the rule is written, DEQ may include limitations and conditions consistent with the AMP and must contain limitations and conditions to achieve nutrient standards. She then asked why anyone would even undertake an AMP if we are going to get limits based on ecoregional ranges regardless?

Moira Davin responded to Tammy Johnson stating that the AMP helps you reach those limits, it is a plan to reach those limits.

Tammy Johnson said that is not the intent, we should look at watersheds, what conditions should be improved, and how we improve those conditions, then the information obtained in the AMP would result in limits on the discharger, the current process doesn't make sense. She does not think anybody will be going the AMP route (a sentiment that many of the Nutrient Work Group Members support).

Jon Kenning added some clarity to Tammy's point. He stated that the AMP lays out the work that must be done, whether that be nutrient trading or nonpoint sources work, ultimately the AMP is working towards some end goal or target limit. This could look like an ecoregional range or something like the highest attainable condition. You do not get the limit on day one. The AMP is there to reach a target, we just need to know what that target is. Andy Ulven, DEQ TMDL Section Supervisor, echoed Jon's statement. It was determined that Figure 1-1 of Circular DEQ-15 will need to be revised.

Tammy Johnson also expressed concern with the enforceable written agreements in Section 8.4 of Circular DEQ-15. She was curious what DEQ does with the copy of the contract. She asked if DEQ enforces the contract or if it is the permittees responsibility?

Kurt Moser, DEQ Legal Counsel, stated that it would not be DEQ enforcing the contract, it is the dischargers responsibility. This is more of a compliance tool to say “yeah they have that”. Jon Kenning concurred.

Guy Alsentzer, Upper Missouri Water Keeper, agreed with Tammy Johnson’s point. He stated that he was concerned about the ideas of accountability and enforceability, especially for nonpoint sources. He thinks the AMP is a massive liability for point sources. Guy also stated that DEQ is trying to say this is narrative criteria approach, but the way the proposed implementation is, it is not protective of the narrative criteria itself.

Moira Davin in response to Guy Alsentzer’s comment said we will add protectiveness of narrative criteria to the agenda for a 2023 Nutrient Work Group meeting.

Moira Davin then reviewed slide 7 of **Attachment A** as a reminder of the remaining topics to discuss in future Nutrient Work Group meetings.

Tammy Johnson expressed concern with MEANSS Model and nutrient trading. She asked if Circular DEQ-13 needed to be revised to allow for nutrient trading that would work.

Michael Suplee, DEQ Water Quality Standards and Modeling, responded to Tammy by stating that the trade ratios the way they currently are, are not very favorable. As it is written it allows for all nutrient trading. The main complaint on it was that the trade ratios are discouraging.

Moira Davin then asked the Nutrient Work Group Members how they are feeling about the overall process.

## **OVERALL PROCESS DISCUSSION**

Overall, Nutrient Work Group members were evenly split three ways on how the AMP process is going overall. One-third of the group is feeling optimistic, but still thinks some work needs to be done. Another group feels that this process has been time consuming and frustrating. The last group felt that this process is moving in the right direction, but they have frustration with how some of the meetings are going.

## **PUBLIC COMMENT**

Time was taken at the end of the meeting for public comment. Vicki Marquis, Holland and Hart, stated that she wanted the Nutrient Work Group to revisit the fundamental laws. She also stated that some of the standards would not be attainable.

Peggy Trenk, Treasure State Resources Association, stated that the 358’ers saw a robust AMP process and an opportunity to do good things. However, they are not clearly seeing this in the rules.

Moira Davin noted that there was no one else with their hand raised. She then covered upcoming 2023 meetings (slide 12 of **Attachment A**). She stated that we will be moving meetings to the second Monday of each month during session.

The meeting was ended at 1030.

**ATTACHMENT A: DECEMBER 14, 2022 NUTRIENT WORK GROUP  
MEETING PRESENTATION SLIDES**



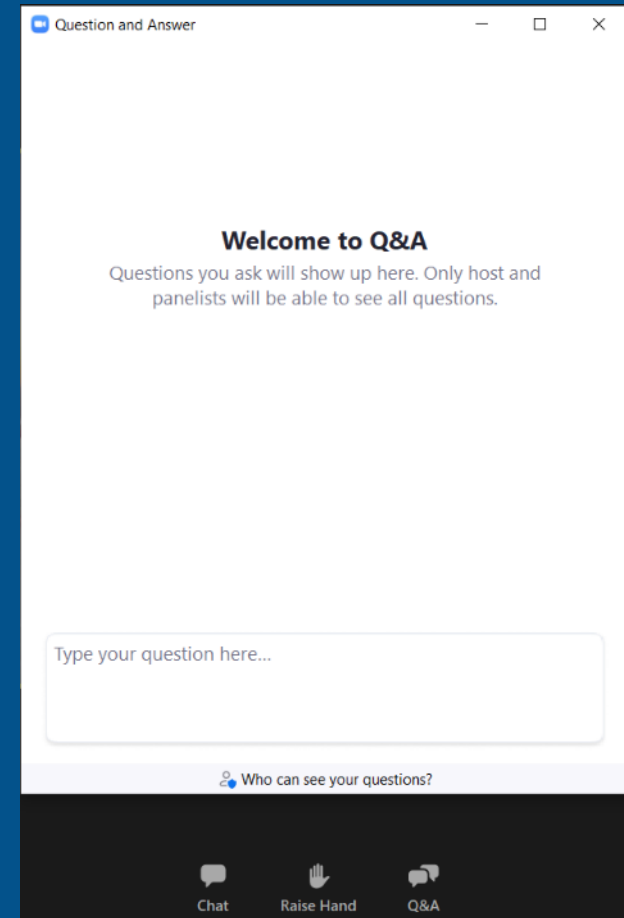
# Nutrient Work Group

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December 14, 2022

# Welcome!

- This meeting is a webinar
- NWG members will be panelists
- Members of the public can raise their hand or use the Q&A feature to ask questions during the public comment portion of the meeting
- \*9 raises your hand if you're on the phone
- State your name and affiliation before providing your comment



Unmute

Chat

Raise Hand

Q&A

Leave



# Agenda

Meeting Goal: Discuss the revised rule package for implementing narrative nutrient standards and have a social

## **Preliminaries**

- Nutrient Work Group Roll Call

## **Revised Rule Package**

- Open Discussion of NWG Member Concerns
- Future Discussion Topics

## **Public Comment & Close of Meeting**

- Public Comment
- Schedule of Upcoming Meetings

## **In-Person Social with Refreshments**

# Roll Call

## Nutrient Work Group Members

Interest Group	Representative	Substitute
Point Source Discharger: Large Municipal Systems (>1 MGD)	Louis Engels	
Point Source Discharger: Middle-Sized Mechanical Systems (<1 MGD)	Shannon Holmes	
Point Source Discharger: Small Municipal Systems with Lagoons	Rika Lashley	
Point Source Discharger: Non-POTW	Alan Olson	
Municipalities	Kelly Lynch	
Mining	Tammy Johnson	
Farming-Oriented Agriculture	Rachel Cone	
Livestock-Oriented Agriculture	Raylee Honeycutt	
Conservation Organization - Local	Kristin Gardner	
Conservation Organization – Regional	Sarah Zuzulock	
Conservation Organization – Statewide	David Brooks	
Environmental Advocacy Organization	Guy Alsentzer	
Water or Fishing-Based Recreation	Pete Cardinal	None
Federal Land Management Agencies	Andy Efta	
Federal Regulatory Agencies	Tina Laidlaw	
State Land Management Agencies	Jeff Schmalenberg	
Water Quality Districts / County Planning Departments	Nick Banish	
Soil & Water Conservation Districts – West of the Continental Divide	Samantha Tappenbeck	
Soil & Water Conservation Districts – East of the Continental Divide	Dan Rostad	
Wastewater Engineering Firms	Scott Buecker	
Timber Industry	Julia Altemus	



# Revised Draft Rule Package

# Remaining Topics to Discuss

- AMP process
- TMDL – AMP interaction
- Addressing EPA's technical comments in August 2021 letter on response variables and thresholds
- Translation of the narrative for all CWA programs
- AMP – MPDES permit interaction
- Reasonable potential analysis
- Nutrient assessment method process
- Protection of downstream uses
- Revised guidance document
- Revised rule language
- Case study

# Topics to Discuss in 2023

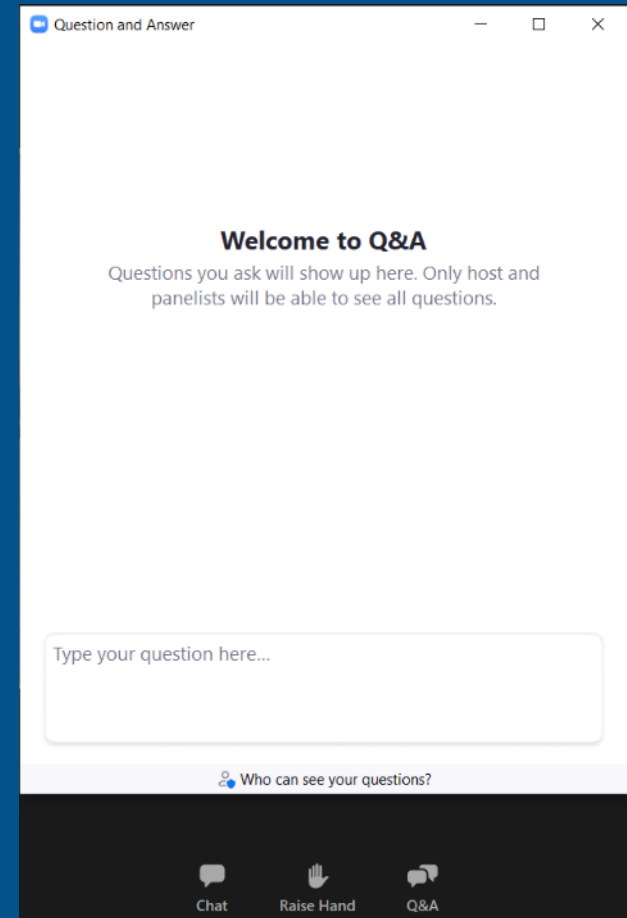
- MEANSS Model and Nutrient Trading
- How to select approvable nonpoint source projects / BMPs
- The transition period: interim permit limits and staged TMDL wasteload allocations
- Funding, resources, and costs



# PUBLIC COMMENT

# Questions/ Comments

- Raise hand (\*9 if on the phone) or type questions into the Q&A
- DEQ will unmute you if you wish to provide your comment orally
- If calling by phone, press\*6 to unmute
- State your name and affiliation before providing your comment



Unmute

Chat

Raise Hand

Q&A

Leave



# Upcoming Meetings



# Upcoming Meeting Schedule

- Monday, January 9, 2023, 9 – 11 a.m.
- Monday, February 13, 2023, 9 – 11 a.m.
- Monday, March 13, 2023, 9 – 11 a.m.
- Monday, April 10, 2023, 9 – 11 a.m.

# Meeting Summary

An updated, draft rule package is currently available for review that protects water quality through a watershed approach and meets Senate Bill 358 requirements

# Thanks for Joining Us

Contact:  
Christina Staten  
[CStaten@mt.gov](mailto:CStaten@mt.gov)

To submit comments or questions



<https://deq.mt.gov/water/Councils>

