

# NUTRIENT WORK GROUP MEETING SUMMARY

## FEBRUARY 9, 2022

9:00 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)
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
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
Jay Bodner Montana Stockgrowers Association	Livestock-Oriented Agriculture
Kristin Gardner Gallatin River Task Force	Conservation Organization: Local
Sarah Zuzulock Zuzulock Environmental Services	Conservation Organization: Regional
Guy Alsentzer Upper Missouri Waterkeeper	Environmental Advocacy Organization
Guy Alsentzer (sub. for Wade Fellin) Upper Missouri Waterkeeper	Water or Fishing-Based Recreation
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
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
Dan Rostad Yellowstone Conservation District Council	Soil and Water Conservation Districts – East of the Continental Divide

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

<b>Representative &amp; Affiliation</b>	<b>Representing</b>
Pete Schade Lewis and Clark County Water Quality Protection District	County Water Quality Districts or Planning Departments
John Youngberg Montana Farm Bureau	Farming-Oriented Agriculture
David Brooks Montana Trout Unlimited	Conservation Organization: Statewide
Julia Altemus Montana Wood Products Association	Timber Industry
Scott Buecker AE2S	Wastewater Engineering Firms

**ATTENDANCE: OTHER PARTICIPANTS**

Aaron Losing, City of Kalispell  
 Abbie Ebert, DEQ, Monitoring and Assessment Section  
 Abigail St. Lawrence, Montana Building Industry Association  
 Amanda McInnis, Jacobs  
 Amelia Flanery, DEQ, Surface Water Discharge Permitting  
 Amy Steinmetz, DEQ, Water Quality Division Administrator  
 Bill Andrene, City of Butte  
 Brian Balmer, U.S. Fish and Wildlife Service  
 Christina Staten, DEQ, Watershed Management Section  
 Christy Meredith, DEQ, Watershed Management Section  
 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  
 Erik Makus, EPA, Region 8  
 Galen Steffens, DEQ, Water Quality Planning Bureau Chief  
 Griffin Nielsen, City of Bozeman  
 Haley Sir, DEQ, Surface Water Discharge Permitting  
 Hannah New, DEQ, Surface Water Discharge Permitting  
 Heather Henry, DEQ, Surface Water Discharge Permitting  
 Jane Madison, DEQ, Water Quality Standards and Modeling Section  
 Jason Fladland, City of Great Falls  
 Jason Mohr, Legislative Environmental Policy Office  
 Jeff Dunn, WGM Group  
 Jeremy Perlinski  
 Joanna McLaughlin, DEQ, Surface Water Discharge Permitting  
 Joe Lierow, ExxonMobil Billings Refinery  
 Jon Kenning, DEQ, Water Protection Bureau Chief  
 Karen Sanchez, Cadmus Group  
 Katie Hendrickson, City of Billings

Katie Makarowski, DEQ, QA Officer  
Kayla Glossner, DEQ, Surface Water Discharge Permitting  
Kurt Moser, DEQ, Legal Counsel  
Laura Alvey, DEQ, Superfund Program  
Lee Bruner  
Logan McInnis, City of Missoula  
Mark Ockey, DEQ, Watershed Protection Section  
Matt Wolfe, Sibanye Stillwater  
Maya Rao, DEQ, Surface Water Discharge Permitting  
Melinda Horne, DEQ, Surface Water Discharge Permitting  
Michael Kasch, HDR  
Michael Suplee, DEQ, Water Quality Standards and Modeling Section  
Moirra Davin, DEQ, Public Information Officer  
Myla Kelly, DEQ, Water Quality Standards and Modeling Section Supervisor  
Paul Skubinna, City of Great Falls  
Peggy Trenk, Treasure State Resources Association  
Rainie DeVaney, DEQ, Surface Water Discharge Permitting Section Supervisor  
Rickey Schultz, HDR  
Robert Ray, Helena citizen  
Ryan Leland, City of Helena  
Ryan Sudbury, City of Missoula  
Scott Mason, Hydrometrics  
Susie Turner, City of Kalispell  
Tara Rice, Parsons, Behle, & Latimer  
Tim Burton, Montana League of Cities and Towns  
Tom Osborne, HydroSolutions  
Trevor Selch, Montana Fish, Wildlife & Parks  
Vicki Marquis, Holland and Hart  
Vicki Watson, University of Montana Watershed Clinic

## **MEETING PURPOSE / OBJECTIVES**

- Discussion of items 2a through 3 of discussion proposal document

## **MEETING HIGHLIGHTS / DECISIONS MADE**

- The February 23 meeting will be three hours
- Discussion was only had through items 2c of the discussion document

## **MEETING INITIATION**

Moirra Davin, DEQ public information officer and meeting facilitator, welcomed everyone to the meeting just after 9 a.m. and announced that the meeting had been changed to a Zoom webinar due to security issues. Nutrient Work Group members, including technical representatives, were then promoted to panelists. 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**). Moirra also reviewed slide 5 of **Attachment A** as a reminder from the prior meeting on group discussion.

## **FOLLOW-UPS FROM LAST MEETING**

Moira Davin noted there was a question at the last meeting regarding the photographs in DEQ's presentation. She stated that the pictures are all from Montana; however, DEQ recognizes that algae is not the only indicator of water quality and that a clear river could have water quality issues as well.

Moira also stated that DEQ has held a number of check-in meetings with Nutrient Work Group members since the last meeting and noted that these are still an option for those members who have not yet scheduled a check-in meeting. Moira stated that DEQ will share themes of the check-in meetings once all of them are complete, and noted that the meetings so far have been helpful to the DEQ team.

## **DISCUSSION OF TIMELINE**

Moira Davin explained that the group does not have until May to get through the full discussion document. She stated that DEQ wants to hear Nutrient Work Group member's feedback in the first few meetings and then DEQ will come back to the group with a new proposal. DEQ wants to allow time for the group to digest the proposal and have discussions on it; therefore, DEQ would prefer to get through most of the discussion document by the end of February and hopes to get through items 4 through 7 at the next meeting.

Tammy Johnson, mining representative, stated she wants to understand the timing on the process and asked if DEQ is wanting to get through all sections of the outline by the end of February. Moira Davin responded that we probably won't get through items 8 and 9; however, DEQ will be putting together an updated proposal at the end of the month. She also stated that Nutrient Work Group members can still submit written comments by the end of February as well. Tammy Johnson responded that she thinks this is an enormous list for the point source dischargers to be able to put together their thoughts in the next few weeks.

Kelly Lynch, municipalities representative, stated that this is super frustrating. Kelly further stated that we've spent eight months not having any substantive conversations, and we're finally having some great conversations because we're putting pen to paper. Now she hears DEQ saying they're going to cut that process off. Kelly thinks we should continue with how we've been approaching this, but if DEQ wants to finish by February, they won't be able to provide any more written comments.

Amy Steinmetz, DEQ Water Quality Division Administrator, stated that DEQ doesn't want to get to May and hand out a rule package with only a few days for Nutrient Work Group members to respond to it. We need to find a way to balance this. Amy then asked the group if they have suggestions.

Amanda McInnis, technical representative for municipalities, stated that the whole reason they're putting this together is to go section by section. She suggests that DEQ provide the rule package section by section as well. Amanda wants to keep going like we have been, and stated that May is a push even with that. The next few sections are big and meaty and have the guts of the program in them; she doesn't understand why we have to have them all put together in the next two weeks.

Amy Steinmetz responded by stating that if DEQ doesn't initiate rulemaking by May, we won't be able to adopt by October 1. If we don't adopt by October, we won't be able to adopt rules until after the next legislative session. May is a hard deadline, but we can have discussions on how to get through the

crosswalk/discussion document. Getting through it by the end of February will give our team time to give you something to react to. Moira Davin added that the intention is not to stifle discussion, and we would still have a dialog like this through the proposal.

Kelly Lynch stated that the logical way to move forward is for DEQ to move through Section 1 and come back to the group with what they think that piece of the framework would like, as we continue to work on the new sections. That way, by May, we would have a full package to go through, with everyone having seen and discussed everything in detail. We're just going to end up fighting for the remaining meetings because DEQ won't have gotten buy-in from everyone.

Rainie DeVaney, supervisor of DEQ's surface water discharge permitting program, stated that she understands the logic behind what is being asked of DEQ. The hard part is without seeing the whole picture, it's hard to see how it's going to come together. Rainie isn't sure she could give helpful comments on section 1 if she hasn't seen section 5, and is unsure if that process will work.

Sarah Zuzulock, regional conservation organizations representative, stated she appreciates the difficulty in this and likes the approach that DEQ puts the materials out in advance. Sarah hears what Kelly and Amanda are saying about wanting it section by section, and asked DEQ if they have a sense of when they could realistically issue a final draft package.

Rainie DeVaney responded that May is our hard deadline for rule initiation, so we're backing that out looking at how many meetings we have and trying to calculate the major milestone. Rainie asked if the group has a suggestion on that?

Michael Suplee, DEQ water quality scientist, stated that we have the month of May as well to work as a group. We have to go to the Water Pollution Control Advisory Council (WPCAC) in June.

Moira Davin added that the time constraint is the largest challenge we have with this process. She asked the group when is a good time for them to have enough time to review, and based on that, we want to get through the discussion ahead of that.

Tammy Johnson stated that this would have been nice to know a couple of meetings ago. She was under the impression that the work they were doing by section is beneficial and they should continue doing that. They are investing hundreds of hours per week working on this and investing tens of thousands of dollars working through this. Had they known this at the beginning, they could've adopted a different process. She stated that the point source dischargers will reconvene and see if they can provide solutions, but they're disappointed.

Moira Davin stated this process hasn't been in vain, and DEQ appreciates all of the feedback. She further stated that DEQ has been working backwards on timing and is recognizing that we're behind schedule.

Alan Olson, Non-POTW representative, stated that he agrees with Tammy. This process is turning into a major disappointment and we're going to lose participation. We need to sit back and take another look at this.

Moira Davin stated that this is not our intention. DEQ likes the dialog and wants that to continue. If you have solutions on the timeline, DEQ is open to that and we can talk through it with the group.

Rika Lashley, small point source dischargers representative, asked what are the implications of going past this date and not being able to have this ready until next year? She stated that it may be worth taking that as a trade-off over putting something together really quickly now that we later find out isn't working.

Amy Steinmetz responded that the biggest implication is for the permitting program. Rainie DeVaney added that the largest impact is to our implementation programs. The longer the implementation strategy remains in limbo, the harder it is for us to get you what you need: updated and renewed permits, for example.

Rika Lashley stated that if the updated permit isn't right, then what's the use? Let's extend permits and use AOCs or whatever to get this right. We're not doing anyone a favor by pushing this through too fast and not being able to do it right.

Shannon Holmes, middle-sized point source dischargers representative, stated he aligns with Rika. We need to look at a calendar and see what type of schedule is realistic to keep this an open and transparent process as it has been for the last few months. If this group has a majority consensus that we need more time, can we provide that recommendation to WPCAC in June? Can we get WPCAC's approval – is that an opportunity to extend the process?

Michael Suplee responded that for procedural clarity, we don't need to get permission from WPCAC to go to rulemaking – that would be a decision at the department level.

Shannon Holmes stated we've been meeting since May and there's been a lot of one-directional dialog. He's disappointed because he's engaged and committed to this process and would like to see it done correctly.

Moira Davin stated that DEQ apologizes for the fire alarm.

Tammy Johnson stated she's wondering if we can look at this in reverse. How soon could DEQ give us what would look like their rule package?

Moira Davin asked a question of the group: for those that are putting in time and effort to provide comments, how quickly could you get through section 7? DEQ wants to hear your comments so we can put together a proposal.

Andy Efta, federal land management agencies representative, stated that one potential solution would be to meet for a longer duration of time – even day-long. Some of these concerns could be dispelled if we have the conversation over a longer timeframe, and could maybe get caught back up. A downside is that it may not meet everyone's needs and doesn't give you the opportunity to let things gel and sink-in.

Amy Steinmetz asked a question of Michael and Rainie: what if you were to come to the group with an outline of an idea at this point to get some feedback on that to know how we can move forward? Instead of having a hard stop for comments and dialog, if we could combine those two a little bit – would that be a potential path forward?

Rainie DeVaney stated there are some positives to doing things parallel. Her struggle is wanting to make sure that we have enough time to hear and digest everything from the group first to know what it is we

can take and incorporate. Michael Suplee stated that it would be good to get through what we're working on now to the degree possible and then taking all of that and providing an initial proposal back that reflects some of this. He personally likes the idea of having a longer meeting to get through some of this. In one or two meetings, we could get through the bulk of this. Rainie then thanked Andy for the suggestion and asked if the question was worth doing a poll?

Amanda McInnis stated that we can't sit down for a day-long meeting with nothing substantive to review. The package put together in October is not nearly enough and there is much more that we need to do.

Amy Steinmetz asked the group when they could have their comments complete.

Amanda McInnis responded that they are going section by section. We did not do a good enough job of this last time, and don't want to be here doing this again. Let's take the time we need to do this right in a truly collaborative way.

Moira Davin noted that we weren't doing one section per meeting; that we're doing multiple sections per meeting, and this was known from the beginning of the process. She stated she understands this timeline is frustrating, but we are trying to work within our current timeline.

Sarah Zuzulock stated that she wanted to respond to Amanda, as she has participated in the process with a different understanding. This is not a consensus-based process. We're not all going to be happy with what comes out in the rule. She supports the approach of going back to DEQ's October document to provide comment and then letting DEQ provide a final document for the group to hash through. Sarah also likes the suggestion that Andy Efta made for a longer meeting. Sarah stated that DEQ had a hearing yesterday on New Rule I and DEQ has to go through those public comments and provide feedback. She expects some of the comments will have an impact on how DEQ moves forward with the second framework. Sarah then asked how does this potentially change what is put out as a final package in May?

Rainie DeVaney responded that as far as New Rule I, we do need to have that rule adopted by March 1, and we're on a tight turnaround for that. Simultaneously, we're working on reviewing and responding to comments so we can meet the March 1 deadline.

Louis Engels, large point source dischargers representative, stated he is confused on the why of the timeline and why we can't have more time. He heard from Rainie that we have to get permits going; however, his question is why can't we hold the line with permits until we get this process right? He hates to see us rush through this. This feels super rushed, and he doesn't want to end up with something that isn't workable and isn't what Montana needs.

Rainie DeVaney responded that the driver for the May deadline is from this past legislative session when a new rule was passed that says departments can't initiate rulemaking during a legislative session. The change in law is the driver.

Louis Engels then asked why not wait until the next session?

Rainie DeVaney responded that DEQ hears his concern and hears the suggestion and will take it into advisement and will consider it.

Louis Engels stated that he understands why you want to move forward with permits, but restated his question of: why not wait till the next session? Why not have people stay where they're at with their current permits?

Guy Alsenzter, environmental advocacy organization representative, stated that from a conservation perspective, DEQ is without authority to sit on permits. They subject themselves to liability for not complying with the Clean Water Act with issuing permits within five years. This creates another potential for a lawsuit.

Moira Davin stated that when we reach May, we will have reached a full year of going through this process. She then asked Kelly if she was able to answer the question about timeline of when they could provide comments.

Kelly Lynch stated this was not an item we were going to discuss and DEQ just dropped this on us. She further stated that no one is prepared to have this discussion. We can answer all of those questions, but we can't do it right now. This is feedback on your communication style: you don't let people know what you're doing and what your plan is.

Amy Steinmetz stated that through the member check-in meetings we've recently had, we've been hearing that most groups want to hear more from DEQ. It wasn't our intent to spring anything on you, and we decided we needed to say something now instead of waiting. Amy further stated that we appreciate hearing all of the feedback today. We need to move forward with the crosswalk discussion document today. However, we want to hear more from the group on how many of you would be willing to do a day-long meeting, but can talk about timing of that later. DEQ is going to have to weigh decisions very carefully. Amy also stated that she wants to know how many people are interested in delaying this process out past this year.

A Zoom poll was initiated to determine how many Nutrient Work Group members were interested in a day-long meeting; however, it was discovered that panelists could not participate in polls. Moira Davin therefore asked for a show of hands, and four hands were raised.

Alan Olson stated we're rushing into a process that we may not be able to come to any kind of agreement. He is in agreement with Louis that we need to carry this forward. The discussion needs to continue, and you need input on this. A lot of us have other things on our plates as well, and this isn't the only issue he's working on. We've put a lot of time and money into this to give educated, reasonable responses to the ask of the department and he feels like DEQ is throwing that all away. This has been an ongoing issue for 10-15 years. Let's sit back and do it right.

Moira Davin stated that DEQ does value the time everyone spends in these meetings. DEQ appreciates the time you put into solutions and comments. We still want to continue to have the dialog. Please think about when you can get us comments and when you need to see a revised package from DEQ. Please talk to your constituents about this.

## **DISCUSSION DOCUMENT: ITEMS 2A – 2C**

Slide 8 of **Attachment A** was brought up showing items 2a through 3 of the discussion document. Moira Davin noted that 2a and 2b were discussed at the last meeting.



**2a: Identify permittee and stakeholder partners**

Michael Suplee provided a recap of the comments received on this item, which were only received from the bill proponents: the localized watershed AMP stakeholder group shall be designated by DEQ; group comprises county conservation districts (CDs), nonpoint sources, CAFOs, and urban nonpoint. POTWs in watershed are recommended to cooperate with CDs, NRCS, and DEQ to develop plans.

Rika Lashley stated that she knows it's been brought up to have the stakeholder group open to just about anybody, but she doesn't agree with this. She believes the stakeholder group should just be open to folks in the watershed. The actual process of working out the adaptive management plan should be left to folks in the watershed. The process could be open to public comment, but the stakeholder group should be open to those in the watershed and those directly affected and the people who will be footing the bill for this.

Guy Alsentzer stated he's wondering about the priority list relative to the AMP. We need to consider prioritization of waters, such as those with impairments, those with or without baseline data, etc. Subsection 1 talks about three weeks consecutive notice; however, AMPs should have the same public comment periods as MPDES permits.

Kelly Lynch stated that she's not sure that they're really stuck on any particular amount of time for notice. They just want to make sure the process is clear about what the notice would be. They want to be clear that the AMP will identify the actions that will be taken and work to prioritize those actions among stakeholder in terms of cost, effectiveness, using conceptual models, willingness, etc., and then those ones that will be enforceable would be put in the permit. It's not the AMP that would be enforceable. We see the AMP as a data gathering process, discussion process, and a modeling process.

Guy Alsentzer stated that in terms of enforceability, he has a hard time with the idea that the AMP exists as a pure guidance document. We have to operate within a lawful manner within the Clean Water Act. Actions that would offset a point source discharge described in an AMP would have to be an enforceable aspect included in a permit. He's still participating in this process because he thinks there's a slim possibility that we could come up with a program that meets these needs, but it must be enforceable.

Kelly Lynch stated that they are not intending in section 2 to address enforceability and how this gets translated in the permit; that will come in later sections.

Guy Alsentzer stated he understands that. He then stated that it is inappropriate to consider nonpoint source offsets for relaxed point source discharge limits without first developing a policy for offsets and trading that is compliant with the Clean Water Act (what types of BMPs are appropriate to offset certain types of pollutants). Thinking about the Chesapeake Bay effort, there is a suite of verifying BMPs that are applicable. This is far too open-ended. He also objects to the concentrated animal feeding operations (CAFO) discussion because it is regulated by the Montana general permit, and he presumes that nonpoint dischargers from poor manure management under wet weather conditions should be enforceable. DEQ has authority to issue pollution offsets to correct a CAFO. He has a lot of questions on the language here from the bill proponents.

Kelly Lynch stated that she's hoping Guy will provide his comments in writing on section 2. It helps them to identify where the issues are and to make sure we're understanding each other. Kelly stated that Guy

mentioned “relaxed” and asked if he meant the numeric standards that no discharger has in their permits or if he meant from current permit requirements?

Guy Alsentzer responded that dischargers can do significantly more if held to numeric limits. He assumes the AMP would allow a point source to not do more if offset upstream and thereby having relaxed efforts at the facility.

## **2b: Notification that an AMP is being developed**

Michael Suplee gave a summary of the comments received on this topic from the bill proponents: DEQ may schedule first AMP stakeholder meeting after providing notice. Michael noted that the current framework rule and draft comprehensive rule package don't address this.

No comments were made on this topic.

## **2c: Define who will lead the AMP process**

Michael Suplee stated that this was covered by quite a few aspects of the earlier October 18 rule package. The bill proponents' main comment was each AMP stakeholder group will develop a charter which is non-regulatory and non-binding. The purpose of the charter is to identify key partners in developing and implementing the AMP plan.

Guy Alsentzer stated that a workplan outlining AMP requirements has to be enforceable. Those represent fundamental permit limits. Any contracts or agreements to perform BMPs that would satisfy relaxed permit limits would need to be approvable by DEQ and enforceable.

Kelly Lynch stated that she does not see the AMP as being an enforceable document. Anything that's enforceable would have to come from the AMP and be enforceable in the permit. We don't want to require some level of regulation of all entities involved in the stakeholder discussion under the AMP. We can find on a watershed level what will provide the best protection of water quality and the beneficial uses in that watershed, and we can work together as stakeholders to figure out who can do what. It is not our proposal that you require that of a nonpoint discharger. We see the AMP as a data gathering process as a way to move forward to clean and protect the watershed that accomplishes more in a faster time period than spending money to move a plant to reverse osmosis and not fix the watershed.

Guy stated he fundamentally disagrees. It has to be a transparent accountability framework that is enforceable. There has to be a compliance mechanism. This is rife with litigation from the get go. A Montana solution doesn't mean good intentions without backstops for enforcement. To comply with federal law, it needs to be incorporated.

Sarah Zuzulock stated she wanted to pivot from the legal perspective and said she's curious if they have an example of what they envision the adaptive management plan for a watershed to look like. Sarah further stated that Kelly made the point that they're not speaking the same language and she agrees with that. She thinks there are some fundamental disagreements because they're not using terminology the same way. She envisions that the adaptive management program is a larger plan to address the overall watershed health and that can include site-specific adaptive management plans from a point source that's tied to that dischargers permit. We need to step back and make sure we're talking about the same big picture roles and responsibilities.

Kelly Lynch stated she thinks we're further away than we think. There are no legal requirements that make this enforceable. All we're saying is we're setting up a very different approach for adaptive management. DEQ has the oversight to determine what enforceable actions go into the permit. She thinks the problem here is when we get to those areas of the outline/framework where we talk about how the translation happens from the AMP to the permit some of this will help us work on that language so we can get closer together. We are not talking about using an AMP like Wisconsin is using it. Maybe a full day meeting would work if we have time to write the rest of the sections and then sit down in a full day meeting to go over it in its entirety if people think that would help.

Moira Davin then asked if the group wanted to extend the next meeting to three or four hours.

Guy Alsenzter stated that a potentially useful framework to consider is the actual elements of what the BMPs for nonpoint source reduction are that are proven effective and create a universe of them. There has to be a verification upfront and conceptual work done to understand the toolbox and an AMP would allow selection of different pieces from that toolbox. However, he can't get behind the idea of local stakeholders making subjective choices. He can't get behind the idea that some watersheds will decide which BMPs will work. Guy doesn't think these are decisions that stakeholders are informed enough to make; you need scientific experts. The Chesapeake Bay watershed model has an excellent example of this.

Kelly Lynch stated that nothing is based on subjective decisions; decisions will be made by DEQ – that's the proposal. To the extent that DEQ has the capacity to be involved on the ground. We're just trying to come up with a process that gets us to the data DEQ can use to make decisions. We're not trying to do something outside in some secret way. We're trying to figure out the best way for the least amount of money to clean Montana's waters. Taxpayers can't pay for reverse osmosis treatment and not see improvement in water quality. We cannot do this under numeric standards without a variance, which is why we're here today. What's another option to clean the watershed without having to commit hundreds of millions of dollars? No one is saying not to use credible science.

## **VOTE ON MEETING TIME EXTENSION**

Moira Davin asked Nutrient Work Group members to raise their hands to vote on the following:

- Would you consider a full day meeting?
- Would you consider a half day meeting?
- Do you want to extend the next meeting by 1 hour?

A show of hands indicated that people are more willing to extend meetings by an hour versus having a half day or full day meeting. Moira Davin stated that the next meeting will be extended by one hour.

## **PUBLIC COMMENT**

Time was taken at the end of the meeting for public comment. Ed Coleman with the City of Helena asked where we ended up with the discussion on having a new rule package out by the end of February. Amy Steinmetz responded that the intent was not to have the whole rule package out, but we're hoping to get through the full crosswalk document and have the constructive solutions proposed by then. We will get back to you and will talk more at the next meeting on the timeline.

## **CLOSE OF MEETING**

The next meeting is scheduled for February 23 at 9 a.m. and will be three hours long. The meeting was ended at 10:56 a.m.

**ATTACHMENT A: FEBRUARY 9, 2022 NUTRIENT WORK GROUP MEETING  
PRESENTATION SLIDES**



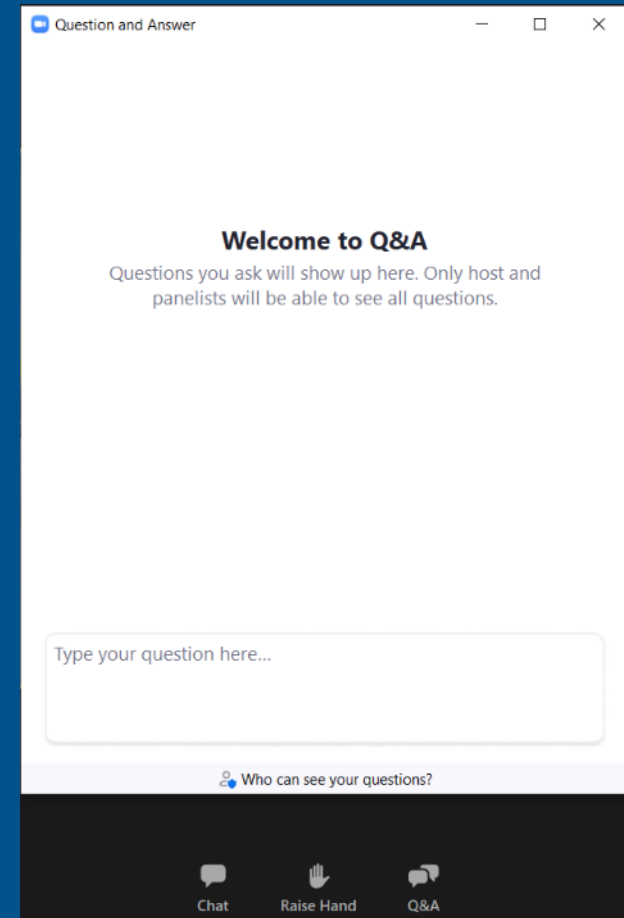
# Nutrient Work Group

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February 9, 2022

# Welcome!

- This meeting has been converted to 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: Discussion of items 2a through 3 of discussion proposal document

## **Preliminaries**

- Nutrient Work Group Roll Call

## **Discussion Document**

- Items 2a-3 of discussion document
  - Proposed Solutions
  - Nutrient Work Group Dealbreakers
- Additional topics as time allows

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

- Public Comment



# Introductions

## 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	John Youngberg	
Livestock-Oriented Agriculture	Jay Bodner	
Conservation Organization - Local	Kristin Gardner	
Conservation Organization – Regional	Sarah Zuzulock	
Conservation Organization – Statewide	David Brooks	None
Environmental Advocacy Organization	Guy Alsentzer	
Water or Fishing-Based Recreation	Wade Fellin	
Federal Land Management Agencies	Andy Efta	
Federal Regulatory Agencies	Tina Laidlaw	Joining late
State Land Management Agencies	Jeff Schmalenberg	
Water Quality Districts / County Planning Departments	Pete Schade	None
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	

# Group Discussion

- We want to hear from all of you, this is your opportunity to speak into the process
- You are welcome to send us solution-oriented suggestions and we will share them with the team
- We will listen and review all input
- DEQ will take all of the information and make a decision based on science and law.
- DEQ will communicate the decision and reasoning to the group and we will move forward to the next decision point.





# DISCUSSION DOCUMENT 2a-3

# Recap

- Presentation photographs
- Check-ins still an option
- Discussed 2a – 2b



# 2A-3

## Crosswalk Between League's Proposed Discussion Outline and (1) the Framework Rule and (2) the 10/18/2021 Department Documents (Rule, Circular DEQ-15, Guidance).

Subjects in blue were added to the League's proposal and are subjects that DEQ needs to include and address.

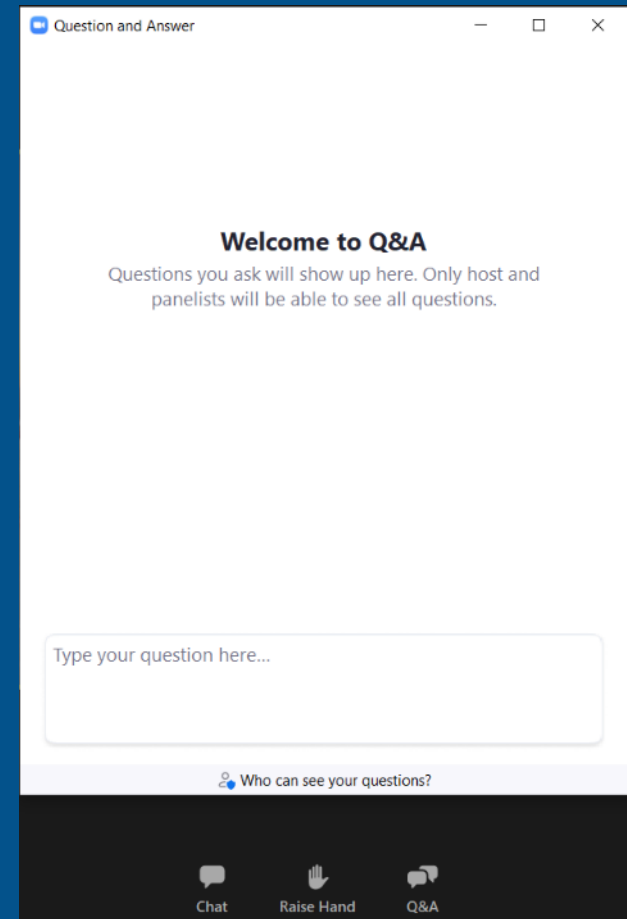
League Topic	Short Description	Associated Section of Existing Documents				Associated Comment(s) on 10-18-2021 Drafts
		Framework Rule	10/18 Rule	Circular DEQ-15	Guidance	
2) <i>Development of an Adaptive Management Plan for an Individual Watershed</i>						
2a	Identify permittee and stakeholder partners	not addressed	New Rule X (3)(a)(v) and (4)(a)(ii)	Section 8.2	Section 8.2	Section (3)(a)(v) "stakeholder engagement plan" should only be required if the permittee has to develop an AMP implementation plan. (LPD)
2b	Notification that an AMP is being developed	not addressed	New Rule X (3)(a)(v)	not addressed	not addressed	Section (3)(a)(v) "stakeholder engagement plan" should only be required if the permittee has to develop an AMP implementation plan. (LPD)
2c	Define who will lead the AMP process	not addressed	New Rule X (2)(a) and (b) and (4)(a)	Multiple Sections (permittee leads)	Multiple Sections (permittee leads)	The rule should be re-written to acknowledge voluntary permittee participation and to clarify that if AMP monitoring will become part of the MPDES permit, how and by what authority that will occur. (Industry)
2d	Review and prioritize beneficial uses of waterbody	Permittees may pursue a Use Attainability Analysis (UAA), if appropriate, per 75-5-302, MCA and ARM 17.30.602(39).				Assessment and beneficial uses should be confirmed before doing anything else as part of the AMP process. (Industry, League)
2e	Create a process to define relevant credible current data; compile data and assess it for currency and relevance	not addressed	not addressed	Not addressed directly; 8.1 touches on the subject.	not addressed	A process for assessing and/or validating previous assessments should be a starting point in the rule. (Industry, League)
2f	Establish a workplan including sampling locations, frequency, etc.	New Rule I (1)(a)(ii)	New Rule X (2) and (3) and (4)	Sections 4.0 and 8.0 (provides details)	Sections 3.6.1, 4.0, 8.0 (details)	The drafts provide no guidance for the development of an Adaptive Management Plan (League). AMPs developed on a watershed basis in Montana should serve as Category 5 Alternative Restoration Plan or TMDL for those watersheds (League). Most permittees are not, and should not be forced to become technical experts at the watershed level. Further, many permittees are not equipped scientifically and/or financially to take on such a task. (Industry).
<i>DEQ: Watersheds including a lake or reservoir, and downstream effects</i>	Establish a watershed-scale workplan which includes consideration of a lake/reservoir being present; and downstream effects	not addressed	New Rule X (3)(a)(viii)	Section 4.4; Section 8.5	Section 4.4	Please explain the Department's proposed method and evaluation criteria for approving or denying a watershed monitoring plan, a request for an extension, and the schedule for this process. (LPD)
2g	Carry out sampling, analyze data in watershed, quantify each source's load	New Rule I (1)(a)(ii)(A) and (B)	New Rule X (2)(f), (3)(c)	Section 3.0; Section 4.0; Section 5.0, Section 6.0	Sections 3.6.3 through 3.6.8; Section 4.0; Section 5.0; Section 6.0	Most permittees are not, and should not be forced to become technical experts at the watershed level. Further, many permittees are not equipped scientifically and/or financially to take on such a task (Industry).
3) <i>Create Conceptual Watershed Model</i>	Conceptual watershed model which must be created using current relevant credible data	not addressed	not addressed	Section 3.3	Section 3.7	The document does not explain how permits would be developed, does not discuss watershed level modeling in any way, does not give any detail on conceptual water quality models... (League).
<i>DEQ: Develop a Mechanistic Water Quality Model</i>	Mechanistic models for large complex watersheds with multiple dischargers	not addressed	not addressed	Section 3.0	Section 3.0	A model should not be required for all permittees on all large rivers (Industry). Please indicate what models can simulate algae as Department threshold parameters to sufficient accuracy to be accepted by the Department as a predictor of threshold compliance values (LPD).



# 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

# Next Meeting

- Next Meeting:  
February 23, 2022 at 9 a.m.
- Discussion topics: 4 - 7





# Thanks for Joining Us

Contact:  
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To submit comments or questions



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

