WashU Law

November 3, 2025

Robert Voss
Monitoring and Assessment Unit Chief
Missouri Department of Natural Resources
Water Protection Program
P.O. Box 176
Jefferson City, MO 65102
Via email: impairedwaters@dnr.mo.gov

RE: Proposed 2024-2026 Section 303(d) Impaired Waters List

Dear Mr. Voss:

On behalf of the Moniteau County Neighbors Alliance ("MCNA"), the Interdisciplinary Environmental Clinic (IEC) at Washington University School of Law submits these comments on the Missouri Department of Natural Resources' ("MDNR") proposed 2024-2026 Section 303(d) Impaired Waters List, proposed TMDL prioritization, and proposed delisting.

MCNA is a non-profit organization formed to advocate for clean air, clean water, environmental and public health in Moniteau County and the surrounding region. Members of MCNA live in rural Missouri, depend on Missouri's water resources, and advocate for the protection of Missouri's natural resources and public health. MCNA works through education, outreach, and advocacy to safeguard Moniteau County's environment and residents. MCNA members depend directly on local groundwater, streams, and lakes for drinking water, recreation, and agriculture.

2024-2026 Changes to MO DNR Section 303(d) Impaired Waters List: Methodology Shifts

The proposed 2024-2026 303(d) Listing Methodology Document ("LMD") imposes methodology shifts that make it more difficult to place impaired waters on Missouri's 303(d) impaired waters list. While the proposed changes are a reasonable attempt to hold Missouri's water classification practices to a high scientific standard, this unnecessarily burdensome methodology shift will weaken the practical protections for Missouri's waters. When the evidentiary bar is set too high, known water impairments may be excluded from oversight simply due to lack of agency-verified data. The following sections specify MCNA's concerns.

1. As Category 5 listing becomes more difficult, Category 1 is easier to get into. The category system used follows EPA's Integrated Reporting framework under Sections 303(d) and 305(b) of the Clean Water Act. Category 5 waters are candidates for the state's Section 303(d) impaired waters list.[1] Categories 2 and 3 are basically holding zones for impaired

[1] Methodology for the Development of the 2024-2026 Section 303(d) List in Missouri at 5.

waters that have inadequate data. The 2024-2026 LMD establishes unnecessarily burdensome requirements for waters to be listed in Category 5. Consequently, impaired waters that should be in Category 5 will end up in Categories 2 and 3 where they will escape proper oversight for an indeterminate amount of time. In addition, waters with intermittent problems or lacking non-agency datasets may not meet the heightened verification rules under the new LMD; these waters would be considered to have inadequate data and placed in Categories 2 and 3. For example, a stream with recurring nutrient violations but sparse sampling could remain in Category 3 for years without a TMDL. **MCNA is concerned that the new LMD's combination of heightened evidentiary standards – which we discuss below – will lead to improper placement of waters outside of Category 5 and delays in TMDL development.**

Non-Agency Evidence: The 2024-2026 Section 303(d) LMD retains the screens put in place by the 2020 LMD including multi-season, multi-year, QA/QC, and representative locations. The EPA's Integrated Reporting Guidelines (2026) says that "states…must assemble and evaluate **all existing and readily available water quality-related data and information** and use such data and information when determining which water bodies belong on their CWA 303(d) lists" (emphasis added). However, the new LMD narrows the set of allowable data and information to exclude credible third-party information. For example, the new LMD adds that "only fish kills that have been verified by agency staff will be used as evidence of impairment."[2] Explicitly excluding non-agency evidence narrows the amount of data available for the state list. Requiring all fish kills to be verified by agency staff is unrealistic since MDNR cannot tend to every incident across the state in a timely manner. This exclusion risks discounting valid community-collected data, especially in rural areas where MDNR staff presence is limited. Consequently, **MDNR is likely to ignore credible non-agency evidence.**

Broadens Category 1 minimum data: The 2024-2026 Section 303(d) LMD expands the minimum dataset parameters, especially for lakes. First, the new LMD explicitly cites Chlorophyll-a and algal toxins as characteristics indicating attainment of Water Quality Standards (WQS) for lakes.[3] Second, the new LMD frames fish-tissue attainment more broadly by allowing "other contaminants" and mercury as indications of WQS attainment.[4] These two alterations to the LMD broaden the data that qualifies as "full use attainment" for waters.[5] **MCNA is concerned the Category 1 listing and reporting guidance in the new LMD may more readily allow waters to be considered fully compliant with water quality standards even though such waters possess qualities that indicate future impairment.**

Heightens overall evidentiary standards: In 2020, the EPA partially disapproved of MDNR's Section 303(d) list. The EPA added waters based on nutrient and Chlorophyll-a concerns because the state's thresholds and application had been too narrow. The 2024-2026 LMD responds to the EPA's concern by explicitly citing more lake indicators including Chlorophyll-a and algal toxins.[6] This aligns with harmful algae blooms' (HABs) visibility in

[2] Methodology for the Development of the 2024-2026 Section 303(d) List in Missouri at 12, 77.
[3] *Id*.
[4] *Id*.
[5] Methodology for the Development of the 2024-2026 Section 303(d) List in Missouri at 3.
[6] Methodology for the Development of the 2024-2026 Section 303(d) List in Missouri at 79-80.

state communications.[7] Although this change in the new LMD appears positive on paper, in practice it may have the opposite outcome. For instance, if a lake is reported for fish kills but that data is not agency-verified, and the lake contains Chlorophyll-a and algal toxins, the **water may be placed in Category 1 rather than being listed as impaired.**

2. Category 2B/3B. The new methodology encourages borderline cases to be channeled into Categories 2B and 3B when the data "suggests noncompliance," and is "insufficient to support a statistical test or to qualify as representative."[8] Therefore, even when indicators suggest a water is impaired it can be held in Categories 2B or 3B "pending more data."[9]

When it comes to protecting the state's waters, we should be proactive rather than reactive. Rather than waiting to find out a water is impaired – at which point the cost of remediation may be higher – the focus should be on getting ahead of the problem. If additional data indicates that the water is not actually impaired, then the TMDL can be removed. Further, when waters are placed in Categories 2B or 3B, those waters actually need to be given priority for additional testing. Although Categories 2 and 3 specifically say those waters are given "high priority for additional water quality monitoring," we are not convinced this is occurring.[10] **MCNA asks that the waters put into Categories 2B and 3B be given high priority for additional water quality monitoring, and that MDNR sets specific timelines and thresholds for monitoring that ensure these waters are properly categorized**.

3. Category 4B/5-alt. Lastly, MCNA is concerned that the 2024-2026 LMD encourages use of Categories 4B and 5-alt, which may frustrate the proper listing of impaired waters in Category 5 and delay TMDL development.

Relies on voluntary follow-through: The 2024-2026 Section 303(d) LMD continues to use Category 4B for permit-based or plan-based demonstrations. Category 4B allows non-attaining waters to evade a TMDL if other water pollution controls "are expected to correct the impairment in a reasonable period of time."[11] The new LMD explicitly cites voluntary watershed plans as acceptable control programs "expected to adequately address" the pollutants. This means that impaired waters can avoid TMDLs when there is a plan on paper. **MCNA is concerned that this lets impaired waters avoid TMDLs and relies too heavily on voluntary follow-through for the protection of waters rather than enforceable TMDL allocations.**

Institutionalizes delay: The 2024-2026 Section 303(d) LMD continues using the EPA's 5-category system including Category 5-alt. The new LMD shifts to emphasize alternative restoration, allowing impaired waters without a completed TMDL to be placed in Category 5-alt and "assigned a low priority for TMDL development" if the state is pursuing an "alternative restoration approach" for that water.[12] The new LMD spells out alternative

[7] *Id*.
[8] Methodology for the Development of the 2024-2026 Section 303(d) List in Missouri at 4.
[9] Methodology for the Development of the 2024-2026 Section 303(d) List in Missouri at 4.
[10] *Id*.
[11] Methodology for the Development of the 2024-2026 Section 303(d) List in Missouri at 5.
[12] Methodology for the Development of the 2024-2026 Section 303(d) List in Missouri at 5-6.

restoration as a tracking and public transparency tool.[13] This means that impaired waters can remain outside the TMDL development pipeline for extended periods. **MCNA is concerned that this essentially institutionalizes delay by maintaining a formal pathway for impaired waters to avoid timely TMDLs.**

Overall, we find that the methodology shifts in the 2024-2026 proposed Section 303(d) impaired waters list may cause fewer waters to be placed and kept in Category 5 with a timely TMDL and more waters to be improperly placed in other categories with fewer protections. Ultimately, we fear practical protections for Missouri's waters will be weakened.

2024-2026 Proposed Delisting

MCNA is concerned with the waters delisted in the announcement this past July, covering the 2024-2026 period. There is a total of 48 delistings, 24 of which are labeled as "WQS attained; recovery reason unknown." Another seven instances are classified under the same rationale with a slight variation, labeled as "WQS attained; recovery reason unknown (fish tissue related)." 11 instances are listed as 4A, with the TMDL set by the state attained. Two more listings are classified respectively as, "4C - Not caused by a pollutant", and "Status unknown; original listing incorrect." The remaining four are classified as "WQS attained; due to restorative action," **and of the 48 total waters delisted, these are the only four which have successfully attained their WQS *with* a known reason to support their claim.** Without clear evidence for delisting, the public and policymakers cannot replicate successful restoration or verify ongoing compliance. As outlined in 10 CSR 20-7.031, Missouri's water-quality standards require documentation of data and rationale for each delisting.

There must be expanded rationales behind the decision to delist. The information listed above does not stand up to scrutiny, and omits vital information necessary for careful, informed, and deliberate decision-making. Half of the listings offer no rationale as to why improvements in the water quality happened – more if accounting for seven instances that only vaguely allude to fish tissue as a justification for delisting. **The state must explain how improvements to water quality occurred.** This is in the interest of residents living adjacent to the bodies of water, those who may use the delisted waters for recreational or sanitation-related activity, and the health of the flora and fauna inhabiting the water sources. Understanding the reasons for improvement is in the state's interest, because successes in one sector of the environment can be replicated elsewhere, thus helping us to attain a better scientific understanding of the causes for improvement.

Additionally, expanded rationales would prevent instances of incorrect listings, as exemplified by Jo Shelby Lake and Fountain Groves Lake. This error occurred because data from Jo Shelby Lake was mistakenly applied to the broader Fountain Grove wetland complex. The initial listing was based solely on data from Jo Shelby Lake, while Fountain Grove Lakes' are classified as 42 distinct areas, mainly wetlands. Wetlands are not included in the nutrient criteria for lakes, meaning that this oversight allowed the wetlands to go unnoticed. Ensuring

[13] *Id.*

accountability must be a priority of MDNR and the state, because in order to assure public confidence in water safety, **MDNR must show how it arrived at the decision to delist waters.**

Conclusion

On behalf of MCNA, the Washington University IEC thanks MDNR for considering our comments about the proposed Section 303(d) impaired waters list and accompanying LMD. We believe that these changes are necessary to safeguard our environment, natural resources, and public health in Missouri. We submit these comments in the hope that action will be taken to protect Missourians. **We respectfully request that MDNR publish monitoring timelines for Categories 2B and 3B waters and provide detailed rationales for all future listings.** Thank you.

Sincerely,

/s/ Elizabeth Hubertz

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