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APR 1 2014

Ref: EPR-EP

Montana Board of Environmental Review
Robin Shropshire, Chairman
Montana Department of Environmental Quality
1520 E. Sixth Avenue
P.O. Box 200901
Helena, MT 59620-0901

Subject: EPA Comments on Montana's Nutrient Standards (Subchapters 2, 5, 6 and 7; Circular DEQ-12A)

Dear Ms. Shropshire:

This letter provides the comments of the Environmental Protection Agency (EPA) Region 8 on Montana Department of Environmental Quality's (MDEQ) draft nutrient rules contained in: 1) Circular DEQ-12A; and 2) Subchapters 2, 5, 6 and 7, ARM 17.30. The EPA received the public notice, published on February 14, 2014. The notice includes information about the proposed water quality standards changes, public hearing information, and invites public comment. The EPA has reviewed the proposed standards and recommends adoption to the Board of Environmental Review (Board).

MDEQ has spent the last decade developing the scientific rationale behind the proposed numeric nutrient criteria for wadeable streams to ensure they are protective of designated uses. The criteria proposed in Circular DEQ-12A and the associated technical documentation[1,2] reflect the MDEQ's commitment to develop scientifically defensible criteria through many years of research and data collection; incorporation of stakeholder and peer review comments; and review of the scientific literature.

The EPA has worked collaboratively with the State to ensure that not only are MDEQ's criteria protective of applicable designated uses and based on sound scientific rationale but also that the State's general and individual variance approaches are consistent with the Clean Water Act and the EPA's implementing regulations. As a general matter, the EPA supports the use of variances,

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[1] Suplee, M.W, V.Watson, A.Varghese and J. Cleland. 2008. Scientific and Technical Basis of the Numeric Nutrient Criteria for Montana's Wadeable Streams and Rivers. Helena, MT: Montana Dept. of Environmental Quality.
[2] Suplee, M.W., and V. Watson, 2013. Scientific and Technical Basis of the Numeric Nutrient Criteria for Montana's Wadeable Streams and Rivers—Update 1. Helena, MT: Montana Dept. of Environmental Quality.

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as appropriate and consistent with 40 CFR §131.10, to provide time to meet designated uses in certain situations. MDEQ's variance approaches will allow the State and its stakeholders time to implement a phased approach to improve water quality, while retaining the currently applicable designated uses as the long-term goal for the State's rivers and streams. The EPA would like to note that we have also submitted comments to MDEQ on the proposed variance rules and implementing guidance.

We have reviewed the following new water quality standards and support their adoption:

- Proposed numeric total nitrogen and total phosphorus criteria for wadeable streams;
- Proposed numeric total nitrogen and total phosphorus criteria for the Yellowstone River (Bighorn River confluence to the stateline); and
- Proposed reach specific criteria for Flint Creek, Bozeman Creek, Hyalite Creek and the East Gallatin River.

We support MDEQ's recommendation to delay rulemaking for proposed Flathead Lake criteria. The additional time will allow MDEQ to: 1) obtain and analyze the available data for the lake; 2) develop a robust rationale documenting the linkage between the proposed criteria and the designated uses for the lake; and 3) continue collaboration and outreach to local stakeholders and tribal partners. We look forward to working with MDEQ on future rulemaking efforts for Flathead Lake criteria.

Please note that the positions described in our comments, regarding both existing and proposed water quality standards, are preliminary in nature and should not be interpreted as final EPA decisions under Section 303(c) of the Clean Water Act (CWA). If there are questions concerning our comments, please contact Tina Laidlaw (406-457-5016).

Sincerely,

Sandra Spence, Chief
Water Quality Unit