From: Gordon, Lisa Perras
To: Wetherington, Michele; Baschon, Carol
Subject: FW: SC Triennial Review
Date: Tuesday, April 16, 2013 1:43:28 PM
Attachments: TriReview2013_03252013_final GJ.pdf

Carol,
As follow-up from this morning – can you let me know how this example below fits in?
SC passed a law – not in WQS, but under their water resources program - effective 1/1/11, setting new minimum instream flows for permitting surface water withdrawals (see hyperlink below). It is more protective than the existing WQS, which is a default 7Q10. This new provision, includes a definition of minimum instream flow which is:
(14) "Minimum instream flow" means the flow that provides an adequate supply of water at the surface water withdrawal point **to maintain the biological, chemical, and physical integrity of the stream taking into account the needs of downstream users, recreation, and navigation and that flow is set at forty percent of the mean annual daily flow for the months of January, February, March, and April; thirty percent of the mean annual daily flow for the months of May, June, and December; and twenty percent of the mean annual daily flow for the months of July through November for surface water withdrawers as described in Section 49-4-150(A)(1)**. For surface water withdrawal points located on a surface water segment downstream of and influenced by a licensed or otherwise flow controlled impoundment, "minimum instream flow" means the flow that provides an adequate supply of water at the surface water withdrawal point to maintain the biological, chemical, and physical integrity of the stream taking into account the needs of downstream users, recreation, and navigation and that flow is set in Section 49-4-150(A)(3).
So, as you'll see from the email from American Rivers below, there is concern that the two rules are inconsistent and it's not clear which is in use for WQS. Does this meet the four part test? Does it matter if the provision is more stringent than the standards, i.e. sets a higher level of protection? (I don't think it does…but to clarify.)
Don't you love that we never need 'hypothetical' examples since we have so many actual examples???
Lisa

From: Gerrit Jobsis [mailto:gjobsis@americanrivers.org]
Sent: Wednesday, April 10, 2013 3:50 PM
To: Gordon, Lisa Perras
Subject: SC Triennial Review
Lisa,
Joel Hansen mentioned that EPA's kickoff letter would not be sent until you had reviewed, next week at the earliest. To that end, DHEC stated at today's stakeholder meeting that they did not see the need to revise r61-68 because the new SC surface water law http://www.scstatehouse.gov/code/t49c004.php and regs addresses flow requirements. DHEC stated that even though r61-68 is inconsistent with the law it doesn't matter because agency staff knows the difference. They won't use the 7Q10 aquatic life criteria for setting flows, only for discharge permits. This is a concern for us. We believe both the law and standards should be consistent and not up to staff interpretation. The surface water law also treats FERC dams differently than other withdrawals at definition 14 and Section 49-4-150(A)(3). The law also exempt existing

users and only requires reporting by agricultural users.
Gerrit

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Keep the Bucket Moving! Help remove a dangerous dam at
www.AmericanRivers.org/Dam-olition

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