



June 30, 2020

To: Representative Zach Brown, Chair, Water Policy Interim Committee

From: Tim Davis, Administrator, Water Quality Division, DEQ

RE: Nutrient and Total Daily Maximum Load reports

Nutrient Standards and Variance report:

The Nutrient Standards Variance Statute under 75-5-313, MCA, requires that DEQ provide an update to the Water Policy Interim Committee on nutrient standards and variances.

For more than a decade, DEQ has worked with a wide variety of stakeholders and the Nutrient Work Group to develop and adopt both Numeric Nutrient Criteria under Circular DEQ-12A and Nutrient Variances under Circular DEQ-12B. When the Board of Environmental Review adopted the Numeric Nutrient Criteria in 2014, they included non-severability language that tied the Numeric Nutrient Criteria to the availability and approval of a general nutrient variance. DEQ first adopted Nutrient Variances in 2014. Water quality standards variances must be approved by EPA and are required to have periodic reviews. EPA has approved Montana's nutrient variance rules three times since 2014. EPA's approvals of Montana's nutrient variance rules were challenged in Federal District Court. As a result of the challenge, in 2019, Federal District Court Judge Brian Morris directed DEQ to adopt new nutrient variance rules which DEQ completed in November 2019 and submitted to EPA for approval. In February 2020, EPA disapproved DEQ's general nutrient variance rules. EPA's decision included the following information:

- 1) EPA admitted that they were disapproving DEQ's rules, at least, partially based upon a decision by Judge Morris that was not issued until after DEQ was required to adopt the new nutrient variance rules based on a prior Court decision;
- 2) EPA approved the non-severability provisions; and,
- 3) EPA's remedy for Montana, based on the Court's decision, was to effectively turn the variance into a compliance schedule that requires compliance with the Numeric Nutrient Criteria at the end of the variance.

**As a result of EPA's action disapproving DEQ's general variance rules, DEQ concluded that the non-severability provisions have been activated. These provisions are self-executing. This means that DEQ-12A (Numeric Nutrient Criteria) has been eliminated based upon the language previously adopted by the BER. As a result, DEQ has gone back to using narrative nutrient standards.**

It is important to note that all existing nutrient variances that are part of current discharge permits stay in place until those permits are renewed. Permits are renewed every five years.

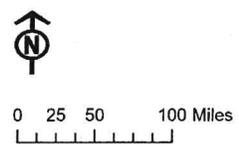
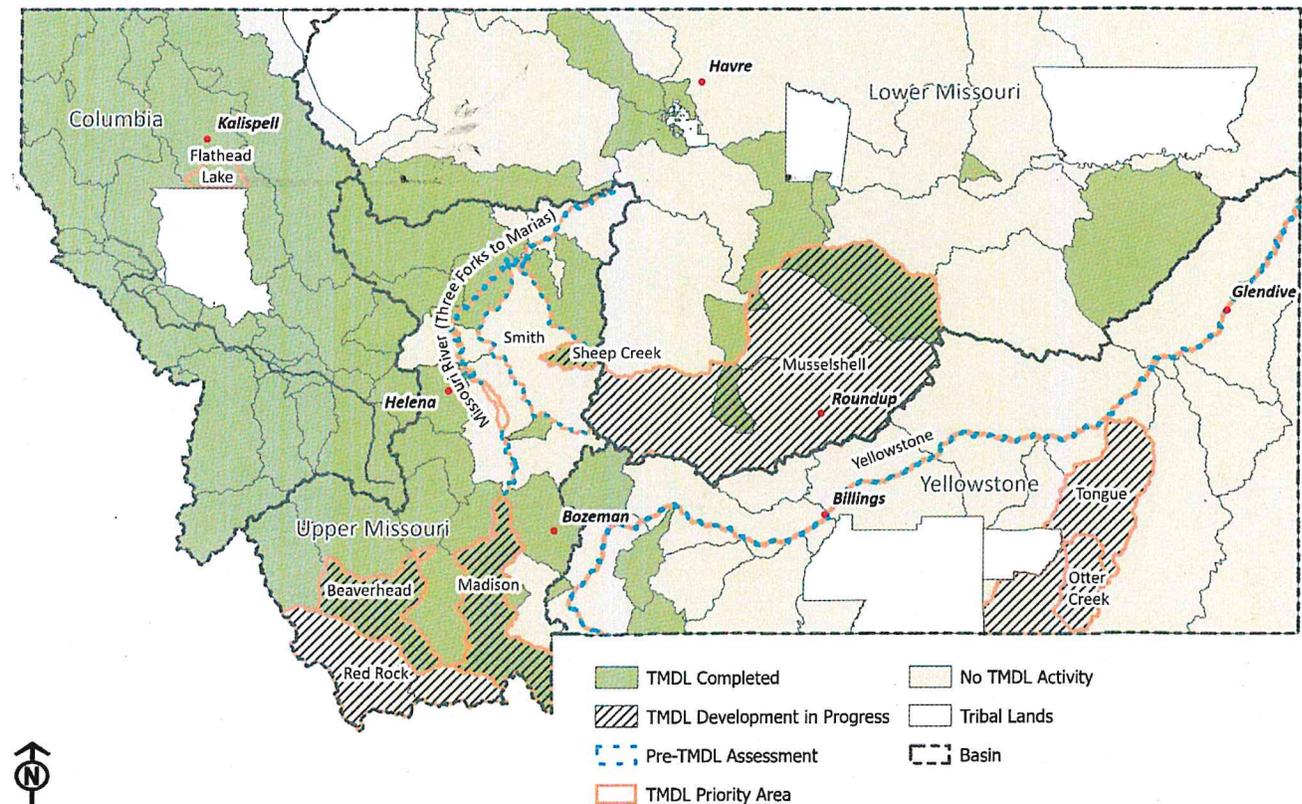
DEQ is working with stakeholders including the Nutrient Work Group to develop a plan to address nutrients going forward. The Nutrient Work Group met on May 21<sup>st</sup> to begin discussions about these steps and to answer questions about EPA's decision and the non-severability provisions of DEQ-12A. DEQ plans to set up a series of meetings with the Nutrient Work Group in the future.

Total Daily Maximum Load Report:

Total Maximum Daily Load (TMDL) studies have been developed in more than 50 different project areas. However, there are many remaining areas that contain impaired waterbody - pollutant combinations that still require TMDL development, all of which are identified on the state's 303(d) list. To address the remaining development requirements, DEQ identifies TMDL development priority areas.

In prioritizing watersheds for TMDL development, DEQ, in consultation with the statewide TMDL advisory group, applies a process that identifies priority factors consistent with state law. The factors with most influence include those linked to the likelihood that local stakeholders will pursue TMDL implementation; the ability to improve coordination among water quality programs; and the recreational, economic and aesthetic importance of the waterbodies in a watershed. The resulting priority watersheds are where DEQ focuses resources toward monitoring and assessing water quality, and subsequently developing TMDLs.

### TMDL Development Status



**TMDL Priority Areas:**

- Madison Watershed (sediment and temperature)
- Sheep Creek (Aluminum)
- Beaverhead Watershed (metals and nutrients)
- Musselshell Watershed (nutrients and E. coli)
- Red Rock Watershed (sediment, metals, and nutrients)
- Tongue River (salinity)
- Yellowstone River (nutrients and metals)
- Otter Creek (Iron)
- Flathead Lake Phase II (pollutants TBD)
- Smith River (pollutants TBD)
- Missouri River - Three Forks to Marias (pollutants TBD)

**TMDL Status:****Scheduled for completion 2020**

- Madison Watershed (sediment and temperature)– stakeholder review scheduled end of June
- Sheep Creek (Aluminum) – through stakeholder review, ready for public comment
- Beaverhead Watershed (metals) - stakeholder review scheduled end of June

**Scheduled for completion 2021**

- Musselshell Watershed (nutrients and E. coli) – monitoring and assessment complete, document drafting in progress
- Red Rock Watershed (sediment, metals, and nutrients) – monitoring and assessment complete

**Scheduled for completion 2022**

- Tongue River (salinity) – modeling in progress – (recently received modeling contractor support through EPA headquarters for modeling completion)
- Yellowstone River (nutrients and metals) – monitoring in progress

**Scheduled for completion post 2022**

- Otter Creek (Iron) - on hold
- Flathead Lake Phase II (pollutants TBD) – standards work in progress
- Smith River (pollutants TBD) – monitoring in progress
- Missouri River - Three Forks to Marias (pollutants TBD) – monitoring in progress

**\*NOTES**

TMDL development begins with monitoring and assessment. After monitoring and assessment is complete, document drafting begins with input from stakeholders throughout development. Once a draft is complete, it goes through stakeholder review. Once stakeholder comments are incorporated, then the document goes out to public comment. After public comment, the document is submitted to EPA. TMDL development may take two to five years to complete.

TMDL projects normally address multiple types of pollutant impairment causes, organized into pollutant groups. The most common pollutant groups in Montana are: sediment, nutrients, metals, temperature, pathogens, and salinity.