Nutrients/Montana Water Quality Standards: Upper Missouri Waterkeeper Judicial Action Challenging U.S. Environmental Protection Agency Approval

Walter Wright, Jr.
wwright@mwlaw.com
(501) 688.8839

02/09/2026

The Upper Missouri Waterkeeper and two other organizations filed a January 26th Complaint in the United States District Court of Montana challenging the U.S. Environmental Protection Agency's ("EPA") decision approving revisions to the State of Montana's numeric nutrient water quality standards ("WQS"). See CV-26-7-GF-JTJ.

The other parties to the Complaint include:

- Flathead Lakers.
- Confederated Salish & Kootenai Tribes.

(Collectively, "UMW").

UMW argues that EPA's October 3, 2025, decision approving revisions to the State of Montana's numeric WQS which were substituted for narrative criteria is unlawful because:

- Inconsistent with the Clean Water Act.
- Arbitrary, capricious, and an abuse of discretion under the Administrative Procedure Act.
- Undertaken without the requisite consultations under Section 7 of the Endangered Species Act.

Section 303 of the Clean Water Act requires that each state develop WQS for jurisdictional Waters of the United States within their borders.

WQS serve a dual purpose. They establish the water quality goals for a specific waterbody and also serve as a regulatory basis for the development of water quality-based effluent limits and strategies for individual point source dischargers.

WQS consist of three parts:

1. Designated use of the waterbody;
2. The water quality criteria ("WQC") that are necessary to protect existing uses and to attain the beneficial uses designated by the states; and,
3. An antidegradation statement or policy to protect existing uses in high-quality water.

WQC are ambient water quality conditions deemed protective for the uses of a waterbody. States are required by the Clean Water Act to adopt WQC protective of the designated uses. They represent a judgment as to what levels, concentrations, or conditions can support a designated use.

A key WQS/WQC issue that has been a focus for a number of years are nutrients. Excess nitrogen and phosphorus can stimulate excess growth of algae. They can impair recreational uses and also increase organic matter which (when decomposed) can depress dissolved oxygen concentrations harming aquatic life. Further, excessive nutrients can stimulate nuisance algae with can produce cyanotoxins.

The State of Montana had originally promulgated a numeric WQS for nutrients. Numeric standards require that dischargers meet specific numeric limits related to nutrients such as phosphorus or nitrogen. Montana's legislature subsequently addressed the state's numeric nutrient criteria and ordered that narrative standards instead be utilized.

UMW argues that EPA's approval of Montana's narrative-related WQS means science-based numeric nutrient WQC are no longer applicable WQS in Montana for Clean Water Act purposes. It argues that Montana does not possess any promulgated and EPA-approved narrative nutrient translator WQC or similar implementing rules. Further, the Complaint argues that the Montana Department of Environmental Quality submission to EPA seeking approval of the elimination of numeric nutrient criteria did not include any scientific materials supporting their elimination, or any data supporting how implementation of the state's general narrative criteria could protect designated uses from the harmful effects of nutrient pollutants.

The Endangered Species Act count of the Complaint argues that EPA's approval of the provisions finalizes a reversion to narrative criteria for all Clean Water Act purposes in Montana. Therefore, it argues that the revision "may affect" or is "likely to adversely affect" threatened and endangered species and their designated critical habitat. EPA is argued to have failed to consult, as required by the Endangered Species Act, with the U.S. Fish and Wildlife Service (noting that EPA has initiated but not completed such consultation).

A copy of the Complaint can be found here.