

Water Use Advisory Council (WUAC) Meeting

Hosted by the Department of Environment, Great Lakes, and Energy (EGLE)

Monday, December 5, 2022

1:00 p.m.- 4:00 p.m.

Con Con Conference Rooms A and B, South Atrium, Constitution Hall
525 West Allegan, Lansing, MI 48933

Remote Option Available Via Teams

[Click here to join the meeting](#)

Or call in (audio only)

[+1 248-509-0316,,923336889#](#) United States, Pontiac

Phone Conference ID: 923 336 889#

MINUTES

1. Welcome

Laura Campbell, Co-Chair, Farm Bureau, welcomed members and guests and shared the logistics for participation in the meeting. She noted she would be sharing the Chair role with fellow Co-Chairs Burroughs and Eggers.

2. Roll Call

WUAC Members/Alternates Present at Constitution Hall:

Ben Tirrell, Michigan Farm Bureau

Brian Eggers, AKT Peerless

Bryan Burroughs, Michigan Trout Unlimited

Christine Alexander, EGLE

Dave Hamilton, The Nature Conservancy Retired

Doug Needham, Michigan Aggregates Association

James Clift, Deputy Director, EGLE

Jay Wesley, Michigan Department of Natural Resources

Kelly Turner, Michigan Agricultural Irrigators

Laura Campbell, Michigan Farm Bureau

Megan Tinsley, Michigan Environmental Council

Pat Staskiewicz, Michigan Section American Water Works Association

Tom Frazier, Michigan Townships Association

An in-person quorum was present.

WUAC Members/Alternates Present via Teams:

Abby Eaton, Michigan Department of Agriculture and Rural Development

Jim Nicholas, Nicholas-H2O

Frank Ettawageshik, United Tribes of Michigan

Rachel Proctor, Jackson Consumers Energy

John Yellich, Michigan Geological Survey

Margaret Bettenhausen, Michigan Attorney General

Steve Kohler, Kalamazoo River Watershed Council

David Maturen, Michigan Lakes and Streams Association

WUAC Members/Alternates Absent:

Buddy Sebastian, Michigan Ground Water Association

Charlie Scott, Michigan Golf Course Owners Association

Grenetta Thomassey, Tip of the Mitt Watershed Council

Jason Geer, Michigan Chamber of Commerce
Jason Walther, Michigan Agricultural Irrigators
Jim Johnson, Michigan Department of Agriculture and Rural Development
Kyle Rorah, Ducks Unlimited
Rich Bowman, The Nature Conservancy
Sue Hanf, Michigan Aggregates Association

Non-members present:

Andres Grandlinard
Andy LeBaron, EGLE
Arlene Anderson-Vincent
Austen York, EGLE
Betsy Tappenden
Brain Nudemaker
Brian A. Moody
Brian Gunderman, MDNR
Brianna O'Connor
Caleb Smith
Chad Geoit
Chase Feenstra
Chris Zichm
Christine Spitzley, OHM Advisors
Clayton Joupperi, EGLE
Clyde Rowlee
Dave High
Dave Lusch
David Maturen
Dennis Iott
Douglas Bloom
Emily Finnell, EGLE
Eric Woolane
Glenn Lovejoy
Hannah Arnett, EGLE
Izzy Burrell
James Milne, EGLE
Jeff Storm
Jegar Johansen
Jennifer Gottschalk
Jennifer Wirt
Jerimiah Asher, MSU
Jerry Goshert
Jerry Neyer
Jim Bakkel

Jim Van Vorst
Joe Janosky
Joel Henry, Fishbeck
John Esch
John Hettinga
John Sackrider
Joshua Markos
Kenneth Norton
Kevin Storm
Kurt Koella
Larry Walton
Lena Pappas, EGLE
Luke Lindsey
Lydon Kelly
Matt Ridenour
Michael Frederick, MGWA
Nathaniel Shuff
Ralph Haefner, USGS
Richard Haviland
Rod Bogert
Ross Helmer, EGLE
Sara Pearson, EGLE
Seth Miller
Sherry Thelen EGLE
Shon Deal
Simon Belisle
Steve Rutz
Teresa Siedel
Tim Carls
Tim Shubert
Todd Feenstra, Tritium
Tony Des Chenes
Trace Moyer
Troy Jenkins
Younsuk Dong, Michigan State University

3. Approval of Agenda-Roll Call Vote

The agenda was approved as presented.

4. Approval of Minutes-Roll Call Vote

The minutes were approved as presented.

5. Public Comment on WUAC Report (3 Minute Limit)

There were no comments.

6. 2022 WUAC Report Final Edits

Campbell noted most comments since the November 10 meeting have been wordsmithing and not substantive changes to content. Campbell shared changes to the report draft that was shared via email on November 25, 2022. Changes for consideration were noted in larger font in blue. Discussion took place and final decisions were made on additional wordsmithing, content, and the order of the Report. Campbell will make these changes and OHM Advisors will

Campbell noted the tri-chairs will send the 2022 WUAC Report to the legislature to meet the WUAC's obligation to provide the report in 2022. Knowing many of these legislators will change in 2023, it will be sent again in late January or early February. The WUAC mail list will be cc'd on these emails. A separate email and instructions will be sent to members to move forward with the reappointment process. It was decided the 2022 WUAC Report would be sent out one more time with the changes discussed today with a deadline for comments.

Alexander announced OHM Advisors contract ends at the end of the month and the contract will be rebid.

It was suggested that letters of support for the 2022 WUAC Report be provided. Burroughs and others thanked Campbell for her hard work on this effort.

At this time Burroughs took over the role of Chair

7. Information: Prairie River Stream Reclassification

Burroughs noted this is a new topic for this group and is the first scenarios that addresses a reclassification since the system was established in 2009. The WUAC recommended in the 2014 WUAC Report that a protocol be developed in the event changes are needed. The DNR has worked on the protocol over the past few years and today they will present a specific stie under review for reclassification. Burroughs reminded the group for context the WUAC only makes recommendations and approval of a reclassification is not their jurisdiction. At the time the statute was created the authority was put under Natural Resource Commission. This was chosen for transparency and opportunity for public comment. It was determined the decision is under the Director's authority and that is how it is proceeding. Burroughs noted Wesley will be sharing the best way to participate in the process with the Natural Resource Commission next week.

a. Presentation by Jay Wesley, MDNR

Wesley began by stating this decision is not being taken lightly. It is the first one and they are open to suggestions to make the process better and more transparent.

Wesley shared that the Authority under Part 327, Section 32706 states: "If a person disagrees with the designation of a particular stream or river as a cold river system, a cold-transitional river system, a cool river system, or a warm river system for use in the assessment tool or otherwise under this part, the person may petition for a redesignation of that stream or river. The petition shall be submitted to the commission for its review and determination." Section 32706 allows anyone to petition for a stream Redesignation. "Commission" at the time referred to the Natural Resource Commission. However, Executive Orders transferred the decision to the Department or Director.

Pursuant to Executive Orders 45 and 54 of 2009 and Executive Orders 1 and 2 of 2011, the authority for administering this section of law has been transferred from the Natural

Resources Commission to the Department of Natural Resources (Department). This is the first Redesignation since Part 327 has been in place. Because of that, we will spend some time reviewing authority, technical underpinnings, DNR policy, DNR Public Review Process, and then go over the Prairie River information and recommendation.

Wesley shared:

- TU 4.2 - The DNR should write up the procedures and criteria used to modify stream classification. The procedures and criteria should be reviewed by the Council, or similar stakeholder group, before adoption by the Department.
 - Completed and resulted in the Fisheries Division's Stream Classification and Redesignation Policy and Procedure (02.02.024).

The Water Use Advisory Council reviewed the Part 327 statute and offered several procedural recommendations that they call Technical Underpinnings. Fisheries Division approved the Stream Classification and Redesignation Policy and Procedure in 2021.

Regarding Stream Classification and Redesignation Policy and Procedure (02.02.024) The DNR Fisheries Division and EGLE Water Resources Division representatives will:

- Collect and gather relevant data
- Enter fisheries community and stream temperature data into StreamCheck
- Independently interpret the outcome of the StreamCheck analysis along with relevant data
- Make one of the following determinations:
 - Evidence does not merit a change in the stream classification;
 - Evidence does not merit a change in the stream classification, although additional information should be collected and analyzed in the future; or
 - Evidence does merit a change in stream classification
- Develop documentation for the recommended stream classification category

StreamCheck tool is a spreadsheet-driven program maintained by Fisheries Division that informs the reclassification process by evaluating temperature and fish community data. The tool has been thoroughly evaluated by DNR and EGLE staff as well as reviewed by the Water Use Advisory Council back in 2019. Tammy Newcomb and Elle Gulloty previously brought the tool to the WUAC for review.

Wesley then outlined the DNR and Public Review Process:

- Memo of recommendation provided to the DNR Director
- Natural Resource Commission receives memo for information
 - WUAC provided memo
- Recommendation provided at NRC meeting as part of the Director's Report
- 30-day public comment period begins
- Director makes decision at next NRC meeting
- WUAC notified of decision
- If change is approved, info provided on EGLE website
- Water Withdrawal Tool updated

Prairie River Water Management Area 20781 is in Branch County near the Michigan and Indiana State Line. Wesley outlined the evaluation and assessment of this site.

- Random survey conducted in 2011
- Classification – warm
- Temperature loggers at 13 locations from 2012-2016
- Annual fish surveys at Orland and Bowers roads 2012-2015
- StreamCheck Tool in 2021
- Fishery – Cold
- Temperature – Cold-Transitional

In 2011, fisheries staff surveyed at Orland Road (as part of a random status and trends survey) and found 228 brown trout with a size range between 2 and 22 inches. So, the stream appeared to be a good cold-water stream based on fish community. However, the stream was listed as a warm stream in the water withdrawal tool. This prompted local staff to plan more fish and temperature survey in the watershed.

Wesley then referenced Slide 17 which identified sites where data had been collected and noted the dotted line is the line between St. Joseph and Branch Counties. The red dots show sites where temperature has been collected.

Wesley then explained their recommendation and the timeline:

- Change water management area 20781 from warm to cold-transitional
- EGLE confirmed the recommendation on June 1, 2022, via letter
- Water Use Advisory Council presentation December 5, 2022
- Director memo presented to NRC for information December 8, 2022
- Decision by Director January 12, 2023

Wesley share information on how to make a comment:

- Email comments to DNR-Director@michigan.gov
- Attend December or January NRC meetings
- Mail comments to:
Daniel Eichinger
DNR Director
Department of Natural Resources
Executive Division
P.O. Box 30028
Lansing, MI 48909

b. Questions and Answers -WUAC Members

Hamilton asked to clarify how cold, cold transitional and cool are differentiated. It was noted Brian Gunderman report specifies those temperature breakdowns. Gunderman provided additional details on the specific temperature and fish metrics for each classification. Campbell indicated that it is the temperature habitat of the stream, so the fish do not need to be in the stream for that classification.

Needham asked what the life of the authority is given in the Executive Order from 2009, what is the life of the Executive Order? Cliff said it is ongoing unless legislature or future governor overturns it.

Turner shared Jason Walther's comments on his behalf. She highlighted his belief that many people in the room share common ground and values. The value of

environmental groups, the importance of sustainability and the balanced use of resources that do not negatively impact those resources. She shared the importance of agriculture to the economy, support, and employment of rural communities. The proposed changes will impact about 25,000 acres of farmland. The reduce ability to irrigate will have a significant impact on these communities. The potential impacts were likened to the auto crisis of 2008. Walther encourages the balance of the use of resource with economic use of resources. He asked WUAC represent all stakeholders with full economic and environmental impact study. Turner noted she reviewed the draft 2022 WUAC Report in advance and that it contains a lot of information. Turner asked Feenstra as a technical advisor to the WUAC to review report. Burroughs asked that his review be held until item 7. c.

Ettawageshik asked has there been an analysis of how this affects existing permits and classifications. Needham if they are withdrawing from the cold transitional stream now, why would this change impact any existing withdrawals. Burroughs noted the reasons can vary. Turner noted this data only goes to 2015. The snapshot of information is limited and rather old. Milne shared slides to further explain these issues and answer the questions and comments. Burroughs asked if EGLE knew how many total registrants are in this headwater. Milne indicated he does not, but there are pending SSRs in the area. Lusch asked how often temperature changes like this occur. Wesley indicated that the wetlands area of the head waters is usually given a warm designation, especially in the southern Michigan area. Campbell indicated she read in the report that the lower section of Prairie River was not being reclassified at this time, due to a lack of data. Gunderman indicated that is correct; however, that is lower priority than a drain in the area. Fredrick asked how the model and data come into play here. Wesley indicated that the initial survey was a random survey of the area, after trout was found, that prompted the future years of data collect and now there is a policy update the stream classification. (Note: Milne's slides are posted on the WUAC website.)

Staskiewicz asked if the fish were in decline and what is the relationship. Gunderman discusses the survey in 2011 compared to more recent surveys. Due to drought the fish population crashed from over 200 to 3 in 2012 and slowly rebuilt in years following that. Staskiewicz asked if it considered thriving now. It has not been stocked since 1992 does not have any reason to believe they are not reproducing now especially since there has not been a year as hot and dry as 2012. The last survey was 2015-16.

Turner questioned if the water temperature is getting cooler is there any chance that irrigation is causing that temperature change. Wesley said they do not have any correlations to suggest that. More mature tree cover now may have led to cooling temperatures. It was noted the number of dams remain the same.

c. Questions and Answers -Public

Brian Nudemaker asked if like in 2012, the fish population to go down, was that due to the drought or due to heavy irrigation. Wesley answered that yes, it is typical of a drought year, the more stable the stream the more stable the fish population

Jenkins asked if there were any studies that would suggest the change in trout population could be cyclical due to drought conditions. Wesley said they can cycle for various reasons, but most are very stable but changes to watershed can impact populations. Gunderman said the Prairie River drop was one of the most dramatic he has seen in his career, and they do cycle.

Eric Woolane questioned using information from 2015-2016 information to make a recommendation in 2022. Clearly there had been a severe drought. He asked why the

long wait until the recommendation using data from a short segment of time for such a big decision. Why wait so long if it's such a severe issue. Wesley said the delayed response was due to a lack of policy at that time to make decision. The policy was approved in 2021. This decision is based on fish and temperature with the purpose of protecting the fish community. Woolane asked what the fish population is now. Gunderman said a fish collection has not been done on this segment since 2016. Gunderman noted with 4,300 miles of stream for six staff, a lot of time has been spent on this one river system. Survey gaps of several years, even in stocked streams, is typical.

Joe Jonsky with Michigan Valley Irrigation asked about the impact of drain tile regarding the temperature of the water. Wesley said it was not studied as part of project.

Ralph Goman asked how many other streams are being looked at for reclassification. He noted the long-term economic impact on growers is horrendous. Economics force water conservation. There is an effect from pumping water, but have we studied enough to be sure and following the science well enough. He has had a SSR ongoing for about a year and has been treated very professionally. He thinks the State and the growers should work together and not against each other. Wesley said this is the first request for reclassification and only one brought to DNR for consideration that he knows of. He believes it was misclassified in the model. Burroughs noted that his organization has been looking at a stream for reclassification as well, they were waiting for the standards to be developed before pursuing Milne said there is a rebuttable presumption in the statute that if a property owner's withdrawal was registered through the online WWAT or an EGLE Site Specific Review that the withdrawal will not cause an adverse resource impact that shifts the burden of proof of adverse impact back to EGLE. Thirteen years into the program, the State has not done that yet illustrating how likely that is. It is a big burden of proof.

Wirt, Branch County, noted it was said the first analysis done in 2011 and in 2015 and the water temperature was tested. She asked if it was done at the same time of year and were environmental conditions for each year taken into consideration. Gunderman replied the NOAA weather station data is used to account for climate in a particular year. Wirt asked what the State's objective is in making this recommendation and what will reclassification change mean in agriculture community. Clift said the objective is to protect stream health and implementing the statute. Once that EGLE found a stream was in significant deficit a number of provisions such as water users' groups can be brought together to figure out what mechanisms can be used to reduce the effect. For example, could irrigation be scheduled to reduce the potential for impacts. The goal is trying to protect stream in the worst drought years because that is when you will see the impacts to aquatic health.

Rob Bogert it was said the 2012 decline was due to temperature and water levels. Per his recollection just about every 24 years there is a major drought. He asked how fast the recovery was from 2012. Gunderman there was a sizeable increase and in the following years the fish were able to reproduce and make up for lost populations.

d. Discussion WUAC Members

Feenstra, per Walther and Turner's request, did a technical review of three reports from MDNR, the Streamcheck tool and the EPA protocols for stream temperature collections. He cited several concerns including location of sites for temperature collections especially due to the tight window variations, locations of loggers and QA/QC concerns. He said the data needs to be accurate and defensible in court and reiterated the tight

range for temperature and potential irrigation changes to 25,000 acres will impact a lot of people.

Campbell said several stakeholders have additional information that could be useful to the Director's decision and asked what the best way is to share this information. Wesley said to share the information with him and Director but noted that information is not part of the policy for evaluation.

Hamilton asked why was there this miss of the model/tool. Feenstra said there is a tremendous amount of wetlands at the headwaters, there is a lot of standing water, which would make sense for a warm classification. Wesley indicated it is difficult for staff to guarantee data was correct in the model with large amount of stream mileage.

e. Note: Future NRC meetings will discuss this topic

- December 8 –NRC presentation for information
- For 2023 NRC meetings and agendas:
www.Michigan.gov/dnr/about/boards/nrc

At this time Eggers took over the role of Chair

8. Public Comment Any Topic (3 Minute Limit)

Eric Woolane asked for confirmation that DNR does not receive funding through WUAC. It was confirmed they do not.

Ken Norton noted he has embedded questions but did not expect answers. His family has farmed this area since the 1880's and the property includes 1.6 miles of the Prairie River. They pull from the river in five places and have two wells irrigating nearly 600 acres. The irrigation is the difference between crop success and failure in these soils. He questions how changing classification impacts fish populations. He believes the reclassification is a solution for a problem that does not exist. Keeping it as a warm water stream protects ag from huge economic impacts. Despite the withdrawals taking place, anecdotal evidence sees healthy trout populations. He urged the rejection of this proposal.

Tim Carls noted the DNR put fish in Prairie River to restock it in the 1980's. With four years old considered to be "old" for a brown trout it is safe to assume these are not the same fish that were stocked and the River is producing brown trout naturally while at the temperature classified as warm. It was clarified that the WUAC only makes recommendation to DNR which is paid by the State of Michigan not the Federal government. Discussion took place regarding the power of the DNR Director in approving this recommendation, the taxes paid by ag producers, the cycles of trout populations, cyclical climate variations and the rights to fish from the River.

Larry Walton from St. Joseph County ask the WUAC consider that approximately 70 withdrawals have been approved. Looking at the number grandfathered in that number could easily double. Per State of Michigan statute if we go through reclassification process and everything becomes zone D, now we have a water user's group that must be dealt with somehow with 140 withdrawals just in that 20 mile stretch of river. He asked that it be considered.

Chad Lee said the WUAC needs to consider unintended consequences similar to the Dust Bowl consequences in the 1930's. We are using a short amount of research for decisions that will have long term consequences not only on trout but also economic and environmental for ourselves and our grandchildren.

Jennifer Wirt said based on what Feenstra said and the points from local drain commissioner this recommendation seems to be based on faulty data. She noted Wesley stated there are only 6 people to assess 4,300 miles of river. She thinks they need to go back and reassess to gain real local data and collaborate with community before making a recommendation that will affect 25,000 acres. This is huge and you are making decisions in Lansing will have detrimental effects on our community without seeing whole picture.

Frazier noted he is formerly with the Michigan Township Association and will not seek reappointment to WUAC. He will stay on until his replacement has been named.

9. Future

Eggers noted the future meeting dates and with the completion of the 2022 WUAC Report the return to a less frequent meeting schedule. Members interested in hosting a future WUAC meeting are encouraged to reach out to the Chairs.

a. 2023 Meetings Dates

- February 14 –Lee Walker Room, Constitution Hall
- April 11, 2023
- June 13, 2023
- August 8, 2023
- October 10, 2023
- December 12, 2023

b. 2023 Call for Special Topics

10. Open Comments (3 Minute Limit)

Campbell thanked everyone for their help and work on the development of the 2022 WUAC Report and for being responsible stewards of this resource. She looks forward to working with everyone in the coming two years.

11. Motion to Adjourn

It was moved by Ettawageshik to adjourn. Motion Carried.