

The State's Perspective

Montana Wetland Council, 3/13/2024
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Montana DEQ & Wetlands

How does DEQ regulate water quality?

1. Montana has primacy for numerous CWA programs, *e.g.*:
 - §402 – NPDES/MPDES point source discharge permits
 - §303, §305 – standards, assessment, TMDLs, reporting
2. Assumed programs apply to WOTUS and state waters.
3. Montana has not assumed the §404 program.
4. Montana reviews USACE 404 permits under §401.
5. Montana has some state water specific duties under the MWQA: 318, 310, Floodplain Management.

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How does DEQ regulate wetlands?

1. DEQ's 401 program reviews USACE 404 permits.
2. DEQ issues 318 permits for construction in state waters.
3. Wetlands are specifically regulated only in the mixing zone rules.

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Has the Sackett decision affected how we do our work, or will it?

Sackett has no impact on state waters.

1. There is no MT dredge-and-fill permit equivalent to 404
2. USACE jurisdictional determinations drive our 401 work
3. To date, no decrease in 404 individual permits and 401 certs.

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Post-Sackett, is there a 'gap' between WOTUS and state water?



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Nineties nostalgia is big right now:



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Montana State Waters

75-5-103(32)(a) MCA: "State waters" means a body of water, irrigation system, or drainage system, either surface or underground.

(b) The term does not apply to:

(i) ponds or lagoons used solely for treating, transporting, or impounding pollutants; or

(ii) irrigation waters or land application disposal waters when the waters are used up within the irrigation or land application disposal system and the waters are not returned to state waters.

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Are wetlands waters of the state?

 No → Maybe → Yes

1. MWQA does not mention wetlands in state waters definition
2. Montana does not have wetland WQS.
3. Water present in wetlands is state water, regardless of WOTUS.*
4. Montana's E-3 and E-4 waterbody classifications*

DEQ's Wetland Regulation

Are there opportunities to fill a 'gap'?

1. Revise definition of state waters (via legislation).
2. Employ E-3 and E-4 waterbody classification*.
3. Develop wetland-specific WQS and beneficial uses.

None of these are especially viable.

First step: assess any regulatory gap.

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Does the stringency provision in MT WQA have impact on DEQ's ability to fill a gap?

1. WQA stringency provisions apply to 75-5-301, 301, 303, and 310:
 - 301: water quality standards & classification
 - 302: reclassification
 - 303: nondegradation
 - 310: site specific standards
2. It does not apply to the definition of state waters.
3. It would apply to WQS and classifications for wetlands.

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How do subdivisions fit in?

1. DEQ regulation of subdivisions is limited to Sanitation Act review.
2. Land use planning is reserved for local government.
3. Floodplain Management: Special Flood Hazard Areas (SFHA).
4. Septic system siting requirements exclude areas of shallow GW.

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Are there any future steps for DEQ?

1. Wetland mapping to understand jurisdictional changes in MT
2. Nutrient AMP: incentives for more NPS projects
3. NPS projects incorporated into climate grant



Questions?

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