

# Nutrient lawsuit could have impacts in Whitefish

Wednesday, August 3, 2016 |

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A lawsuit against the U.S. Environmental Protection Agency over nutrient discharge limits for state waterways could have implications reaching to Whitefish.

The lawsuit filed by a Bozeman-based nonprofit in U.S. District Court in Great Falls this spring challenges the EPA's approval of the state's phased implementation strategy for addressing nitrogen and phosphorus discharged into rivers and streams. The Montana Department of Environmental Quality last month announced it would petition to intervene on the EPA's behalf in the lawsuit.

Whitefish Public Works Director Craig Workman said the outcome of the lawsuit could impact two city projects, namely a planned \$15 to \$20 million upgrade to the wastewater plant and a corresponding nutrient reduction plan. Workman said the lawsuit could force DEQ to implement more stringent nutrient limits in a shorter time period than is planned for as part of a 20-year variance.

"However, given the many possible outcomes of this lawsuit, I believe it is prudent for the city to move ahead on both projects and maintain compliance," he said, making note that a state's administrative order requires the city's new wastewater plant to be operational in May 2021.

The lawsuit filed by Upper Missouri River Waterkeeper is asking the court to nullify the phased implementation strategy. DEQ developed its criteria with the intention of limiting nitrogen and phosphorus discharge because the nutrients can

encourage algae growth and low oxygen levels, which can kill fish and other aquatic organisms. The purpose of the phasing is to reduce economic hardship by giving cities time to develop economically and technologically feasible ways of complying with the standards, according to DEQ.

Attorneys for the Upper Missouri River Waterkeeper say in the court filing that measurement standards put in place by the state are "up to 40 times" less stringent than those recommended by the EPA. They also claim the methods used to set the state's water pollution criteria fall short of standards established under the federal Clean Water Act.

"Montana based its replacement standard on a truncated analysis of wastewater treatment plants and private industry in the state," the lawsuit states. "Montana did not scientifically evaluate the replacement standards on a case-by-case or waterbody-by-waterbody basis, instead vaguely asserting that for all publicly-owned wastewater treatment plants, meeting the scientific and record-based numeric nutrient water quality standards would be too expensive."

DEQ in 2012 issued the city of Whitefish an administrative order on consent as the result of several violations of the city's wastewater discharge permit. Last year the order was updated to incorporate a compliance plan detailing the completion dates that must be met in order to bring the treatment plant up to the new standards by November 2021.

As part of this effort, the city is in the midst of planning to build a new wastewater treat-

ment plant. A preliminary engineering report on the facility is set to be completed this fall. Plans are to be submitted to the state by 2018 and construction of a new facility is estimated to be complete in 2021.

To fund the upgrades, the city is applying for grants and loans from the Department of Natural Resources and Conservation Renewable Resources Grant and Loan program, the Montana Department of Commerce Treasure State Endowment Program and the USDA Rural Development grant program. The rural development grant could provide up to 30 percent of the total cost of the project. The city may also have to increase wastewater rates to help pay for the new plant.

The city also is creating a nutrient reduction plan that will examine other options for reducing nutrients, including nutrient trading and land application of cleaned wastewater.

Workman said if the lawsuit is successful the city may be required to meet more stringent nutrient limits before the new wastewater facility is completed.

"The Montana state Legislature approved the adoption of the numeric nutrient standards based on the premise that the variance process would be a component of the new standard, allowing communities relief from extremely restrictive standards and associated adverse economic impacts," he said.

The lawsuit could also require the DEQ to retract the new standards and start the process for setting those standards over.

"If this were to hap-

pen, Whitefish may actually obtain some temporary relief from the nutrient standards for the Whitefish River," he said.

However, in that scenario the Flathead Lake Total Maximum Daily Limit — the maximum amount of pollutants that may be present in the water and still meet water quality standards — could apply and have even more restrictive standards, Workman said.

An alternative, he says, is that the variance process could be eliminated, but restrictive standards retained.

"These standards are extremely low and cannot be reached with the performance capability of reasonable and affordable wastewater treatment technology," he said.

A draft engineering report for the wastewater treatment plant upgrades is recommending a sequencing batch reactor that uses a mechanical process. The process is very good at nutrient removal, Workman said. But if DEQ lowers the city's nutrient limits, the city would have to look at other options, including adding additional treatment to increase nutrient removal and nutrient trading.

In addition to impacting the wastewater treatment plan, the lawsuit could also have an impact on the city's nutrient reduction plan.

Workman said currently the plan recommends using nutrient trading to fill the gap between the standards and what the city's wastewater treatment plant would be capable of meeting.

"So what could change would be the time frame for implementing nutrient trading," he said. "It may be needed sooner rather than later."

Montana was one of the first states to develop scientifically-based water

quality standards for nutrients with an implementation strategy.

DEQ Deputy Director George Mathieu, in a prepared release, said the creation of the standards was a collaborative effort involving cities and towns, industry, public interest groups and the DEQ.

"Developing water quality standards for nutrients was one of the most robust public involvement processes ever undertaken by DEQ," he said.