

**Ohio EPA Response to Comments**  
**Draft Biological and Water Quality Report – Lower Scioto River Watershed (2011 Survey)**  
**March 2019**

The Draft Lower Scioto River Watershed Biological and Water Quality Report was made available for stakeholder review and comment from July 12, 2018, to August 12, 2018. The Agency received comments from the Midwest Biodiversity Institute.

The comments are summarized and grouped into categories.

**Comments on the BWQR Fact Sheet**

**Comment 1:** The Fact Sheet provided along with the draft report is especially useful for communicating the key principles and objectives of the program of river and watershed biological and water quality surveys. It appropriately states the three principal objectives of this type of assessment:

- 1. Establish the attainable aquatic life use as codified in the Ohio WQS;**
- 2. Determine the status of individual river and stream sampling locations in terms of attainment and non-attainment of the Ohio WQS; and,**
- 3. Document any changes through time including a time series of changes in study area with multiple years of assessment.**

Doing this shows that the agency is properly executing the provisions of the Ohio WQS and communicating the effectiveness of their CWA programs that have positively affected the status of aquatic life uses through time. It also includes an assessment of the other pertinent uses, recreation, fish consumption, and water supply where it applies.

Response 1: The Agency acknowledges the comment.

**Comment 2:** One criticism we have is that what was eventually defined as a natural factor, low flow in the lower parts of direct tributaries where they entered the Scioto River floodplain, is defined as an impairment. While we appreciate and understand the phenomenon behind these observations we are concerned that this could be confusing to local stakeholders that may not seek to further understand the nuances of 303[d] listings. Further, this was co-mingled with causes that were due to activities that could be subject to a TMDL for resolving an impairment. However, while we see this as a very minor issue against the backdrop of an otherwise well done report, some may choose to take advantage of this and inject hyperbole into the eventual listing process.

Response 2: The Agency felt these determinations best reflected conditions as observed. Many if not all lower Scioto River tributaries lose considerable surface water to the hyporheic upon entering the floodplain of the mainstem, some more than others. Regarding the streams referenced, desiccation of the wetted channel was the principal variable controlling performance of the ambient biology and resulting attainment status. As for comingled causes and sources, if through the Agency's analysis the Agency concluded other

stressors were consequential, they were included as contributory. The next step in the Total Maximum Daily Load process, the Loading Analysis Plan, should help clarify remedies for various causes of impairment.

**Comment 3:** Lastly we note that 8 streams are being recommend for the Coldwater Habitat aquatic life use designation. While we support this action we will add a comment that this has not been consistently applied to Ohio streams at the rulemaking stage, especially when many more of these recommendations were not followed through in the Central Ohio River tributaries in 2017. The agency must be consistent in carrying forward use designation recommendations in any rulemaking lest the process be seen as being subject to undue influence from selected stakeholders. We also recognize that the agency is attempting to address the CWH use via an expert panel approach, but this will not resolve the uneven application of an eventual rulemaking.

Response 3: The Agency agrees with the premise of the comment that a consistent application in use designation recommendations is important, and for the most part, we believe that the Agency has done so for the past several decades. A consistent approach provides predictability and transparency to the public and objectivity in the data and its use. With respect to the coldwater habitat use designation, there have been a few situations in recent years where various interpretations of the definition have been made. As alluded to in the comment, the Agency has been working on updating the definition to resolve this.

#### **Comments on the Draft Biological and Water Quality Report**

**Comment 4:** Page 1: We strongly support the reporting of results in aggregate stream/river miles as this best reflects how pollution actually affects those waterbodies and is made credible only by the survey design employed in this assessment. This is critical for linking monitoring results to management actions at the same scale at which those actions are being taken.

Response 4: The Agency acknowledges the comment.

**Comment 5:** Page 4: The explanation of the “unknown” impairment in Scippo and Kinnickinnick Creeks seems to offer some seemingly contradictory explanations ranging from “it’s probably natural variation” to an “unknown source and/or event”. The impairments are quite marginal and in Scippo Creek is due to a failing MIwb score. That in itself can be a signature of excessive sedimentation. Kinnickinnick fails the IBI score, but by only 3 points. These are exceptionally high quality streams and are important sources of refuge for several fish species that have been previously listed as declining and which recently have shown a recent resurgence in parts of Ohio including the central and lower Scioto River. Our suggestion is to accept the results more as an unknown cause and also placing more emphasis on finding out what might be responsible in such an important set of tributaries. Admitting that this is somehow natural seems to undermine the decades of using the biocriteria endpoints and ranges of non-significant departure as legally defined endpoints. Unexplained exceedances of any parameter are going to happen, but not all need to be explained with incomplete facts. The default has to be towards assuming that it represents a potential problem

**which in high quality streams like these needs to be pursued further. This would not be the first case where an unknown or unexplainable biocriteria impairment has later been explained by an actual stressor.**

Response 5: All available lines of evidence were examined regarding the impairments identified on lower Kinnikinnick and Scippo Creek, but nothing conclusive could be found. Regarding sedimentation on Scippo Creek at RM 1.6, although not optimal, substrates were of adequate quality (substrate submetric score, 16 or 20, and QHEI of 76.5). As for the reference to natural variation or sampling error, these sentences have been deleted from the final report.

**Comment 6: Page 14: The excessive sedimentation and violations in Carrs Run have been going on for well over 30 years now and from the appearances in the photos nothing has changed over that time frame. No other comments are needed – the results speak for themselves.**

Response 6: Ohio EPA has recently performed an inspection of the Ohio Basic Mineral's Carrs Run site and completed an administrative review of the discharge monitoring reports that are required to be submitted. A Notice of Violation has been sent to the facility requiring that they submit a plan detailing how they will return to compliance as well as a copy of their storm water pollution prevention plan.

**Comment 7: Page 15: The observation that “. . . many sites in 2011 supported exceptional or near exceptional fish and macroinvertebrate communities” in the Scioto River mainstem begs the question why parts or all are not being recommended for the EWH designation. The draft report readily recommends EWH for small tributaries that demonstrate the same results, which show that EWH is now the appropriate and attainable use. This is a phenomenon that is happening along many of Ohio's large rivers. These need to be treated consistently with how small streams are redesignated and with the precedent established in the 1980s and 1990s when many rivers were redesignated exceptional when they were documented to attain the biocriteria for that use and under the long standing policy that both assemblages are needed to demonstrate it. Left unaddressed, this will become an increasingly serious question about the consistency of the WQS program itself.**

Response 7: The Agency has re-evaluated the biological data on the Scioto River mainstem from the 2009 Middle Scioto River watershed and 2011 Lower Scioto River watershed surveys. These surveys support a re-designation of the Scioto River mainstem from WWH to EWH between Big Walnut Creek (RM 117.15) and Salt Creek (RM 51.18). All 17 sites surveyed in this section fully attain the EWH bicriteria. Both sites sampled by Ohio EPA in 2016 as part of the large river nutrient work within this section fully attained the EWH bicriteria. The biological and water quality report has been revised to reflect the EWH use designation recommendation.

**Comment 8: Page 55: The Acknowledgements illustrate that this is a comprehensive effort by many Ohio EPA professionals. However, this used to appear at the beginning of each report so given that most readers will not get past the summary, this exposure is now reduced. The agency needs to provide better recognition of their dedicated**

**professional staff the skills of which are on full display in the details of this assessment.**

Response 8: The Agency acknowledges the comment. A workgroup of Agency staff charged with developing a revised template for biological and water quality reports made the recommendation to move the Acknowledgements section to the end of the report.

### **Overall Comments**

**Comment 9: Overall, this report reflects the execution of a comprehensive monitoring and assessment program that brings the information to the program level and is only possible because of the intensive pollution survey design and strength of indicators that are employed. We only hope this continues to be the standard followed by the program once the backlog of TMDLs is addressed. Anything less will reflect a serious decline in the commitment of Ohio EPA to fairly assessing rivers and streams and ensuring that the gains made over the past 40 years are maintained in to the future.**

**The time lag between the collection of the data and the publication of a draft report is seven years. We believe the agency needs to ask why it is now taking that long to produce a report after data collection. When the five-year rotating basin process was initiated in 1990, the goal was to have the data assessed enough to support WQS use designation changes in time to support the reissuance of NPDES permits and other agency actions needed to address impairments. When the TMDL program was formulated in 1999, this monitoring design sequenced easily into that framework such that the same baseline outputs of WQS use designations and impaired waters delineations were done in time to support TMDL development and eventual implementation. While the production of BWQRs was not always accomplished in two years in each and every case, most were produced in that time frame and no more that 3-4 years hence. This is why outside stakeholders are asking why the process is lagging even more than it was before.**

**This concern extends herein to the previous comment made about why more serious consideration is not being given to upgrading the Scioto River mainstem to EWH. This condition was observed in several places in 2011 and we believe that by the time the report is eventually published in 2018 the river will have improved enough to solidly attain EWH as other several rivers have shown evidence of doing in the past 2-3 years. Unfortunately, the agency is missing the opportunity to document such an important occurrence by choosing to curtail the monitoring program to the point where it will no longer be able to detect such changes, good or bad. This is but one of many reasons why breaking the 39 year long sequence of consistent river and stream monitoring is so serious and detrimental to the management and protection of Ohio's stream and river resources. Realistically, even if the program is resumed in 2019 or 2020 it may not be able to catch up to such a phenomenon for another 5-10 years. A more creative approach to the TMDL backlog dilemma is needed because it is already exacting a set of potentially unacceptable consequences.**

Response 9: The Agency acknowledges the comment and is taking steps to prepare reports in a timelier manner.

**End of Response to Comments**