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Manchin orders DEP to cut back stream list

By Ken Ward Jr.
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Gov. Joe Manchin has ordered state regulators to cut in half the number of streams that would receive special protections under a federally required water quality rule.

Late last week, the state Department of Environmental Protection proposed to put 156 streams on the "Tier 2.5" list under West Virginia's stream anti-degradation policy.

A public hearing is scheduled for mid-July, and the DEP hopes to submit the new list for legislative consideration during the 2008 session.

Originally, the DEP had proposed more than 300 streams for the list. Streams on the list are clean, and the anti-degradation policy is supposed to keep them that way.

Earlier this year, the Legislature declined to either approve or reject the DEP's original list after it was vigorously opposed by the timber industry, farmers and other business interests.

DEP Secretary Stephanie Timmermeyer had been pushing her agency's original list.

But in May, DEP backed off Timmermeyer's original plan to finalize its list despite the lack of legislative approval.

House Judiciary Chairwoman Carrie Webster, D-Kanawha, said that she would work to get more streams added to the new DEP list of 156.

"It does not reflect the number of streams that should get this protection," Webster said Monday. "It's going to be a huge issue."

The federal Clean Water Act requires states to adopt and enforce anti-degradation policies to keep streams from being made dirtier. West Virginia officials have been working on their policy for years. Final implementation has been delayed numerous times, in large part because of industry complaints.

The Tier 2.5 category of protections actually exists only because of one of a series of compromises with regulated industries.

Under the state's policy, streams in this category could not be degraded more than 10 percent. The Tier 2.5 category was created to keep many state streams from ending up classified as Tier 3, a category that allows no degradation at all.

Another compromise gave nonpoint-source polluters, such as farming, timber and oil and gas operations, a general waiver from the anti-degradation policy.

Still, the strongest opposition to DEP's 300-stream list came from the West Virginia Forestry Association and the state Farm Bureau.

On Tuesday, Forestry Association lobbyist Dick Waybright said that he had not yet seen the new DEP list and could not immediately comment on it.

But Waybright said his group's members are concerned, despite the timbering exemption, that the stream list will block future, non-logging use of their land.

"I might have a piece of property that all I want to do is cut timber, but when my kids inherit it, they might decide that they really want to do something completely different," Waybright said. "It would be very costly or prohibitive for them to do anything except trees. That's the concern."

Lara Ramsburg, Manchin's communications director, said that the governor told DEP to start its new list with 156 streams. That was the number that negotiators had reached when talks between industry lobbyists and lawmakers broke down during this year's session, Ramsburg said.

"We supported that number at that time, and felt that in filing this new rule, it would be prudent to go with that number," Ramsburg said. "Now, as it goes through the rulemaking process, it can go up or it can go down."

Don Garvin, lead lobbyist for the West Virginia Environmental Council, said that Manchin and DEP are wrong to go along with industry efforts to whittle down the list.

"This list is based on neither law nor science," Garvin said. "It's based on politics."

The DEP public hearing is scheduled for 6 p.m. July 16 in the Coopers Rock Training Room at the agency's headquarters in Kanawha City. Information about the stream list and DEP's other proposed legislative rules is available online at www.wvdep.org/2008rules.

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