

## Fw: the MMSD amendment to the area wide water quality plan and Badger Mill Creek

Tanya Sime <tanyas@capitalarearpc.org>

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To: Nick Bower <nickb@capitalarearpc.org>

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**From:** Topf Wells <topfwells@gmail.com>

**Sent:** Monday, July 8, 2024 6:49 PM

**To:** Tanya Sime <tanyas@capitalarearpc.org>

**Subject:** the MMSD amendment to the area wide water quality plan and Badger Mill Creek

Dear CARPC Commissioners,

Please recommend disapproval of the proposed Madison Metropolitan Sewerage District (MMSD) amendment to the area wide water quality plan which would allow MMSD to stop the discharge of its effluent to Badger Mill Creek (BMC).

This issue has a long, complex history. My assumption is that you have heard from residents, organizations, and local governments urging you to recommend disapproval. They probably include descriptions of the values of the creek, many of which are supported by the effluent, and the damage inflicted by stopping the water.

MMSD's request seems largely to rely on changes to state law. They argue that those laws mean that all of the information you might receive and consider about MMSD's process, alternatives for phosphorus compliance, and the health and value of the creek are irrelevant. In the DNR's classification system for water quality as it applies to wastewater, BMC is a warm water forage fish system. MMSD only needs to meet the low water quality standards for such a system with regard to its actions affecting BMC.

That argument is fundamentally flawed.

In applying the law or administrative codes to a particular situation, two factors are in play: the law and the facts of that situation. In this case, BMC is objectively and indisputably not a warm water forage fish system. It is a cold or cool water community of fish. The DNR water quality biologist and the DNR fish biologist who have extensive experience with BMC have stated that clearly and publicly. CARPC must consider this basic biological and objective fact about BMC when it considers the MMSD request.

CARPC has two responsible options. It can recommend disapproval of the amendment because of the fundamental, factual mistake about BMC. Alternatively, it can find that the amendment is not properly before CARPC now and will be considered when the DNR had accurately classified BMC.

In taking either action, CARPC will protect Badger Mill Creek, an extremely important natural resource. You, the Commissioners, will also act as CARPC was created to act. As County Executive Kathleen Falk's Chief of Staff, I was attended the key meetings with the stakeholders who agreed to replace the Dane County Regional Planning Commission with CARPC (among those were the Mayor of Madison, the

President of the Cities and Villages Association, and the President of the Dane County Towns Association, their staff and attorneys). All hoped that CARPC would reach fair decisions without some of the acrimony and delays of the past. However, another key and critical point was clearly stated and unanimously agreed on. CARPC had to be willing to deny proposals that would hurt natural resources even if they were controversial and supported by powerful interests.

The MMSD request is such a case. Stopping that water will damage the creek substantially and has aroused concern, anger, and dread among many folks who cherish the creek. MMSD's legal argument is a relatively new and obscure addition to the process which MMSD has foisted on the folks who care about the creek. I think many Dane County residents will be aghast if CARPC accepts that argument and the characterization of the creek on which it relies.

Thank you for your consideration of this request.

Sincerely,

Topf Wells