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McGarity: Texas water will suffer under plan to lower standards

Thomas O. McGarity, LOCAL CONTRIBUTOR

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Published: 5:17 p.m. Thursday, March 18, 2010

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The recent proposal by the Texas Commission on Environmental Quality to downgrade the state's water quality standards for most of the surface water in the state should trouble all who believe they have a right to swim, fish or simply wade in a cool Texas stream without the risk of contracting a gruesome waterborne disease.

As recently reported in the American-Statesman, TCEQ plans to change the standards for the vast majority of Texas rivers and streams from the current "contract recreation" designation, which allows only 126 colonies of E. coli bacteria, to new designations that would allow 206 colonies in some "swimmable" waters and up to 630 colonies in waters used primarily for fishing and boating.

The move is supported by the Texas dairy industry and by some cities that are having difficulties controlling their sewage discharges. The Texas Association of Dairymen argues that without the changes dairy farmers might have to build fences to keep their cattle away from rivers, thereby losing valuable acreage. The cities warn that they might have to charge higher rates for sewage treatment.

We all have E. coli in our bodies, but none of us is keen on recreating in some upstream city's poorly treated sewage. Milk cows also have E. coli in their guts, but some cattle are infected with a recently evolved strain called E. coli O157:H7 that can cause a vicious disease in humans called hemolytic uremic syndrome. The bacteria produce a toxin that destroys cells, including the white blood cells that ordinarily protect the body from infectious agents. And the shredded cells in the bloodstream can cause kidney failure and a cascade of other afflictions that cause body organs to swell to life-threatening sizes.

In September 2006, investigators traced an outbreak of E. coli O157:H7 that sickened more than 200 people in 26 states to fresh bagged spinach that had probably become contaminated by cattle grazing upstream from spinach farms in California's Salinas Valley.

In fact, TCEQ's proposal is not just a bad idea — it is probably unlawful.

Under the federal Clean Water Act, a state may not downgrade its water quality standards except in compliance with the Environmental Protection Agency's "nondegradation" regulations, which provide six acceptable reasons for such downgrades, only two of which could be applicable to the TCEQ downgrade.

First, TCEQ may downgrade a stream when "human caused" sources of pollutants "cannot be remedied or would cause more environmental damage to correct than to leave in place." But pollution from both dairy farms and small towns can easily be remedied with existing technology. They just do not want to incur the added expense of protecting downstream swimmers.

Second, a downgrade is possible when more stringent controls "would result in substantial and widespread economic and social impact." It is hard to see how forcing dairy farms to fence their cattle or bumping up city utility rates a few dollars a year will cause widespread economic and social impact.

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The TCEQ may believe that its predecessor agencies made a mistake years ago when they concluded that the bulk of Texas rivers and streams should support contact recreation. Perhaps TCEQ should have put the Colorado River upstream from Austin in the same "industrial use" category as the Houston Ship Channel. But most Texans want their rivers and streams to be clean enough to swim in.

If TCEQ is unwilling to protect Texas waters, then the Environmental Protection Agency will have to step in and disapprove this unjustifiable downgrade.

McGarity teaches environmental law at the University of Texas School of Law and is a member scholar of the Center for Progressive Reform.

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"The Texas Association of Dairymen argues that without the changes dairy farmers might have to build fences to keep their cattle away from rivers, thereby losing valuable acreage."

Waaaaa! We may have to actually make a sacrifice for the greater good! Waaaa! Texas owes its entire existance to its water resources and this is how we want to approach protecting this precious resource? Quality is just as important as quantity.

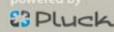


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