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Ken Koch  
Water Quality Program  
Washington Department of Ecology  
P.O. Box 47600  
Olympia, WA 98504-47600

Subject: Comments on Draft 2008 Water Quality Assessment

Dear Mr. Koch:

The Weyerhaeuser Company comments on the draft 2008 303(d) List are presented below.

**Comment 1**

Waterbody Name	Listing ID Number	Impaired Parameter	Proposed Category
Willapa River	48939	Dissolved Oxygen	5
Willapa River	48940	Dissolved Oxygen	5

These two listings should be moved from Category 5 to Category 4a or Category 2.

In early 2006 the Department of Ecology completed a TMDL for the lower Willapa River to address seasonal low dissolved oxygen values.<sup>1</sup> This TMDL was subsequently approved by the Environmental Protection Agency.

The TMDL responded to seven waterbody/pollutant listings presented in the 2004 303(d) List.<sup>2</sup> Note that listings ID #48939 and 48940 were not identified in the TMDL, but the listings are based on water quality data from 1998 and are physically bracketed by the seven waterbody/pollutant listings in the 2004 303(d) List.

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<sup>1</sup> "Willapa River Dissolved Oxygen Total Maximum Daily Load – Water Quality Improvement Report and Implementation Plan," Washington Department of Ecology Publication No. 06-10-017, February 2006

<sup>2</sup> Ibid, page 5

The TMDL outcome can be considered to also address listings #48939 and 48940. Under Ecology's *Water Quality Program Policy 1-11*<sup>3</sup>, the existence of an approved TMDL should cause the listings ID#48939 and 48940 to move to Category 4a – *Has a TMDL*.

If for some reason the approved TMDL is deemed to not encompass these waterbody/pollutant listings, be aware the basic findings of the TMDL established that the low dissolved oxygen values represented natural background conditions in the lower Willapa River. Plainly stated, there were, in fact, no regulatory violations of the water quality criteria to support an initial 2004 Category 5 listing. The TMDL work evolved to create discharge allowances to protect the “human-caused” <0.2 mg/l dissolved oxygen deficit allowed by WAC 173-201A-200(1)(d).

The physical location of listings ID #48939 and 48940 would indicate the <6.0 mg/l dissolved oxygen values also represent natural background conditions. Acceptance of this reasoning would provide a justification to move the listings to Category 2.

## Comment 2

The following waterbody/pollutant combinations are listed in the draft 2008 Section 303(d) Category 5 list due to non-point sources of water pollution from forest practices on non-federal, non-tribal lands.

Waterbody Name	Listing ID Number	Impaired Parameter	Proposed Category
Deschutes River	7588	Temperature	5
Schultz Creek	7803	Temperature	5
Hoffstadt Creek	7800	Temperature	5
Herrington Creek	7799	Temperature	5
Mulholland Creek	7802	Temperature	5
Baird Creek	7790	Temperature	5
Joe Creek	6906	Temperature	5
East Fork North River	6905	Temperature	5
Little North River	6909	Temperature	5
Elkhorn Creek	6912	Temperature	5
Smith Creek	3779	Temperature	5

Consistent with applicable agency regulation and guidance, these waterbodies are subject to a Pollution Control Project which fully matches the sufficiency criteria presented in Department of Ecology *Water Quality Program Policy 1-11*. These draft Category 5 listings should be moved to Category 4b in the 2008 Section 303(d) list.

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<sup>3</sup> *Assessment of Water Quality for the Clean Water Act Sections 303(d) and 305(b) Integrated Report*, Washington Department of Ecology WQP Policy 1-11, September 2006.

## Discussion

- EPA and Washington environmental regulations and applicable guidance specify that “other pollution control requirements” may be sufficient to avoid listing an impaired waterbody/pollutant on the Section 303(d) Category 5 list. (Note: Ecology has taken to referring to an “other pollution control requirement” as a “Pollution Control Project”.)
- Both EPA guidance<sup>4</sup> and the Department of Ecology’s *Water Quality Policy 1-11*, identify the qualities of an other pollution control requirement or Pollution Control Project to be counted as sufficient for returning the waterbody impairment to water quality standards attainment.
- Washington Forest Practices Act (76.09 RCW) and rules (title 222 WAC) were designed and adopted, in part, to “achieve compliance with all applicable requirements for federal and state law with respect to non-point sources of water pollution from forest practices” (RCW 76.09.010(2)(g)). The Forest Practices Act and rule is the exclusive regulatory mechanism, or Pollution Control Project, to “achieve compliance with all applicable requirements of federal and state law with respect to nonpoint sources of water pollution from forest products.” (RCW 76.09.010(2)(g))
- The Washington State Forest Practices Habitat Conservation Plan (FPHCP) was approved by the US Fish and Wildlife Service and NOAA Fisheries in early 2006. The Plan included a demonstration, accepted by both the EPA and Department of Ecology, that forest practices will achieve steady progress in improving water quality in the short term and help to meet water quality standards in the longer term. Two excerpts from the FPHCP address the intentions and assurances of plan implementation.

“The forest practices rules, consistent with the Forest and Fish Report, contain an array of best management practices believed to be most effective in protecting and improving water and habitat...As such, they provide a pathway to achieve compliance with the state water quality standards and the CWA. Because the forest practices rules are so detailed and complete, they essentially accomplish “early implementation” of the same best management practices likely to be used if a TMDL had been produced.”<sup>5</sup>

“The Forest Practices Act, the Forest and Fish Report, and the forest practices rules will be included in the various procedures, policies, guidance, plans and reports that Ecology, as the State Water Pollution Control Agency, conducts and develops as part of its efforts to comply with the CWA. The strategy also recognizes the importance of an effective monitoring, adaptive management and

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<sup>4</sup> *The Guidance for 2006 Assessment, Listing, and Reporting Requirements Pursuant to Sections 303(d), 305(b), and 314 of the Clean Water Act*, Diane Regas, Environmental Protection Agency, June 29, 2005.

<sup>5</sup> State of Washington Forest Practices Habitat Conservation Plan, Final, page 69, December 2005, Washington Department of Natural Resources.

enforcement program necessary to maintaining assurances (FPHCP Section 2.3.6).”<sup>6</sup>

- Ecology and EPA are committed to determine in July 2009 if implementation of the Forest Practices Program is effective in achieving Clean Water Act requirements. As a condition of the Forest Practices Habitat Conservation Plan, forest landowners participate in adaptive management studies providing both effectiveness and trend monitoring. These studies are designed to inform a rigorous and reliable adaptive management process, implemented via the Forest Practices Boards cooperative monitoring, evaluation and research committee (CMER). The adaptive management program and the set of specific water quality CMER-sponsored studies provide the data driven mechanism by which Ecology can now move forested waterbodies to water quality standards attainment.

An objective consideration of its own *Water Quality Program Policy 1-11* criteria would support a conclusion that the matrix of regulatory requirements pertaining to non-point sources of water pollution from forest practices on non-federal and non-tribal timberlands constitutes a Pollution Control Project. As such, the waterbodies presented above should be listed in Category 4b. The Water Quality Programs' continued insistence to maintain this class of forested waterbodies in a Category 5 placeholder status is premature, inappropriate and discredits this regulatory process. In doing so Ecology places these waterbodies and commercial forestry at a higher risk of regulatory meddling.

Thank you for this opportunity to offer comments.

Sincerely,

Ken Johnson  
Regulatory Affairs Manager

cc Kevin Godbout

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<sup>6</sup> Ibid, page 13