

Koch, Ken

0279

From: Rawls, Bruce [BRawls@spokanecounty.org]
Sent: Thursday, December 16, 2004 4:49 PM
To: 303d
Subject: 0279-FW: Comments to 303(d) List - DUE FRIDAY

To Ken Koch:

Attached are the comments by Spokane County on the draft 303(d) list.

We will also mail this document by US Mail.

Thanks,

Bruce Rawls
Spokane County Utilities Director
(509) 477-3604

DEC 20 2004



S P O K A N E C O U N T Y

UTILITIES DIVISION
N. Bruce Rawls, P.E., Utilities Director

A DIVISION OF THE PUBLIC WORKS DEPARTMENT

December 16, 2004

Sent by US Mail to:
Mr. Ken Koch
Water Quality Program
P.O. Box 47600
Olympia, WA 98504

Sent by email to: 303(d)@ecy.wa.gov

Subject: Comments on Ecology's proposed Section 303(d) listing for impaired waters

Spokane County submits the following comments to Ecology's proposed 2002/2004 Section 303(d) list of impaired waters for the State of Washington. We understand that this is the first 303(d) list that Ecology has proposed to submit to EPA Region 10 since the 1998 list was submitted and approved. This new list, if approved by EPA, will supercede and replace the 1998 list, which is in effect now.

Since 1998, Ecology has developed WQP Policy 1-11 (Revised September 2002) regarding assessment of water quality for the Section 303(d) list. The policy details how Ecology reviews valid, quality assured data, for purposes of the 303(d) list process. The data quality assurance requirements must be met in order to support a listing decision. The policy also contains a detailed discussion of public participation requirements associated with the 303(d) and TMDL processes. The 2002/2004 list proposes five major categories within the list of impaired water bodies. Impaired segments proposed for Category 5 are the only impaired water body segments that require preparation of a TMDL.

Ecology is in the process of finalizing the Spokane River dissolved oxygen Total Maximum Daily Load ("TMDL"). The County will submit comments to that proposed TMDL under separate cover. The County has discovered that Ecology's 1998 303(d) list does not list as impaired for dissolved oxygen the portions of the Spokane River that are the subject of the proposed TMDL. Moreover, Ecology never proposed to prioritize a Spokane River dissolved oxygen TMDL in its prioritization process. In 2003, Ecology, for the first time, proposed to fund a TMDL for the Spokane River for total dissolved gases, temperature and PCBs, but not for dissolved oxygen. Now, Ecology proposes to prioritize dissolved oxygen TMDL for the Little Spokane River in the draft 2004 FY priority list; after Ecology has virtually completed the TMDL and before listing the waterways as "impaired." In an apparent attempt to "fix" these problems, Ecology **now** proposes to list two portions of the river on its 2002/2004 list and prioritize them as a category 5, based on unpublished data that was collected for the TMDL.

This approach entirely circumvents the regulatory process, which requires Ecology to **first list** a water body on the 303(d) list, propose a priority ranking, provide an opportunity for public notice and comment, and then finalize the 303(d) list (40 CFR § 130.7; Ecology WQP Policy 1-11, page 6). Only after the 303(d) listing process and priority ranking is complete, can Ecology start the TMDL process. Here, Ecology failed to follow this sequence and cannot correct that

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deficiency by now listing water body segments on its 2002/2004 list *after* unilaterally deciding to develop a TMDL.

The County specifically objects to Ecology's proposed listing of two segments (one in the Spokane River and one in Long Lake Reservoir) as impaired for dissolved oxygen with a category 5 ranking based on data collected for the proposed TMDL. The data Ecology proposes to use to support the listing for dissolved oxygen for these two segments (ID numbers 40939 and 15188) were collected in 2001 and 2003. This data was collected after the adoption of the 1998 list. We find only one listing for dissolved oxygen excursions in the Spokane River or Long Lake in the 1998 list. That listing was for water body segment 8452 (the previous listing numbering system) and was based on only two excursions of DO downstream from the segment based on 1992 samples, which does not support listing under Ecology's WQP Policy 1-11. Some areas of the Spokane River were included in the 1996 303(d) list, but were removed from the 1998 list, presumably because they were not impaired.

Ecology's approach of trying to "after the fact" justify a TMDL without first listing the waterway as "impaired" and without prioritizing that waterway for a TMDL violates the applicable regulations and Ecology's own guidance. We note that on page 31 of WQP Policy 1-11, Ecology lists a number of criteria to consider when prioritizing TMDLs, including FERC hydroelectric relicensing schedules, other planning processes, technical feasibility, likelihood of success, and timing of grant and loans. None of these criteria were evaluated for the proposed Spokane River dissolved oxygen TMDL.

Finally, the Memorandum of Agreement between EPA and Ecology (October 29, 1997) does not provide any rationale for circumventing 303(d) and TMDL regulations. That MOA does not provide any specific reference to the Spokane River dissolved oxygen TMDL and, in any event, as mentioned above, Ecology's 1998 303(d) list did not list the area of the proposed TMDL as impaired for dissolved oxygen. The MOA governs water body segments on the 1996 303(d) list that remain on the 1998 list and, in any event, only require TMDL *studies* to be complete by 2014 (see WQP Policy 1-11). Moreover, the scheduling is to be prioritized using the criteria set forth in WQP Policy 1-11 (which was not followed for the Spokane River proposed dissolved oxygen TMDL).

For all of these reasons, the County objects to the proposed 2002/2004 303(d) list for the Spokane River and Long Lake Reservoir. If you have questions, please give me a call.

Sincerely,



N. Bruce Rawls, P.E.,
Spokane County Utilities Director

Cc: Linda Hoffman, Acting Department Director
David Peeler, Water Quality Program Manager
Bob Cusimano
Jim Bellatty, ERO Water Quality Section Manager
Board of County Commissioners of Spokane County