DEPARTMENT OF ECOLOGY TRIENNIAL REVIEW OF

WASHINGTON'S SURFACE WATER QUALITY STANDARDS

VERBATIM TRANSCRIPTION OF PUBLIC MEETING HELD BEFORE

JOCELYN WINZ, HEARING OFFICER,

IN VANCOUVER, WASHINGTON

COPY

NOVEMBER 15, 2010

Taken Before:

Janette Curley, CCR #2030

Of

Capitol Pacific Reporting, Inc.

901 I Street, Suite 201

Tacoma, Washington 98405

Tel (253) 564-8494 Fax (253) 564-8483

Olympia, WA (360) 352-2054

Seattle, WA (206) 622-9919

Aberdeen, WA (360) 532-7445

Chehalis, WA (360) 330-0262

Bremerton, WA (360) 373-9032

www.capitolpacificreporting.com

admin@capitolpacificreporting.com

DEPARTMENT OF ECOLOGY STAFF PANEL:

1 MELISSA GILDERSLEEVE

2 SUSAN BRALEY

3 CHERYL NIEMI

4 CHAD BROWN

5 BECCA CONKLIN

6

7 PUBLIC COMMENTS SUBMITTED BY:

8 THOMAS McCONATHY

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 HEARING OFFICER: The recorder has started.
2 Let the record show that it is three o'clock straight
3 up on Thursday, November -- help me with the date --
4 15th -- my goodness. November 15, 2010. And this
5 hearing is being held in Vancouver, Washington - I do
6 know where I am - at the Washington School For The
7 Blind.
8 Notice of the hearing was electronically
9 distributed to about 1,200 interested people and
10 delivered through the postal system to about 250
11 people. Many of you may have received that notice.
12 Additionally, a press release was issued on October
13 10th.
14 Okay. So one at a time. But since we only have
15 one, we'll just have one. Come on up. We'll do about
16 five minutes. I'm not going to time you. I'll trust
17 you to keep it kind of -- kind of brief. So Thom is
18 going to come up first. Please make sure you state
19 your name and address for the record. And you can go
20 ahead and get started. Thanks, Thom.
21 THOMAS McCONATHY: Thank you. My name is
22 Thomas McConathy, 1017 Northeast 107th Street,
23 Vancouver, Washington 98685.
24 Water quality standards are supposed to be one
25 part of an equation or, as we have been having stools

1 described here, it is supposed to be one leg of a
2 semi-legged stool. And part of that, there is a need
3 that it is assumed that if one of those legs is not
4 there that the stool is supposed to fall over, or if it
5 were part of an equation, that it would be modified in
6 order to settle what would be the final outcome.
7 The final outcome here is supposed to be usable
8 high-quality water which enjoys many uses. And there
9 needs to be some modification where we take the permit
10 standards, monitoring, and that they are more reactive.
11 Visiting this as little as we are, and not looking at
12 it collectively how it is working, we are artificially
13 dividing this in such a way as it is not effective, as
14 is demonstrated by steady degradation of water uses, as
15 indicated by the expansion of the 303(d) list.
16 TMDLs are supposed to be reactive to this to help
17 corrections within this. I am very frustrated with the
18 TMDL process. I -- I'm happy with the quality of the
19 process, but I am interested in water quality as it
20 applies to Vancouver Lake. And the TMDL department of
21 the Department of Ecology, it's not doing TMDLs on
22 lakes because it has been said that it would cost more
23 to do a single lake, shallow water lake, than to do all
24 the TMDLs for a year that are being done within the
25 state of Washington.

1 This is a real problem in that we are seeing no
2 lakes that are being looked at this way. So the
3 remediation of which is imagined by this collective
4 process that is supposed to be addressed by applied
5 water plans for improvements, we are uniquely
6 frustrated, and we are held back from those plans.
7 As I was looking at the standards, as was given to
8 me, on Page 24 -- 23 and 24, it describes the unique
9 lake nutrient criteria. And we have -- this would be
10 very important to establishing this on Vancouver Lake.
11 But if you look through this, the entities of which are
12 supposed to be responsible for the implementing and
13 identification of this both programatically and in
14 monitoring do not exist.
15 This is an impossible process. It has set us up
16 for failure in such a way. It's a circular logic that
17 makes it so that we cannot increase the standards with
18 regard to the lake. We have no process to TMDLs, and
19 we will have no process to increasing the NPDES
20 standards. We can't increase these standards either.
21 So I guess it's a shot all the way across. It's
22 impossible under these standards to do anything to
23 improve Vancouver Lake.
24 The State claims to have anti-degradation
25 programs. But as you see, with the refusal of the DOE

1 to have a watershed approach with TMDLs, there are
2 standards that support downstream uses such as is not
3 occurring on Vancouver Lake. The system may fulfill
4 the letter of the law but accomplishes nothing. As
5 best -- at best, it sanctions the further degradation
6 of Vancouver Lake, and it supports -- I would support
7 an anti-degradation program which is an equation one,
8 and that when degradation occurs that the whole system
9 becomes more reactive. And this present system isn't
10 that.
11 Lakes in particular are subject to both green and
12 blue-green algae blooms, and neither of those is
13 addressed in these standards. They need the -- the
14 elements of which drive the blue-green algae, both
15 temperature and nutrients, need to be addressed and are
16 not addressed within the present standards. And under
17 the present system of TMDLs only being enacted on
18 artificial watersheds, rather than fuller watersheds,
19 we're not looking at the downstream effects.
20 We may have TMDLs on both Salmon Creek and Burnt
21 Ridge Creek that go into Vancouver Lake, and they will
22 meet state standards, but they will not meet the
23 standards necessary to support improvements to
24 Vancouver Lake.
25 We have, in Vancouver Lake, spent a lot of money

1 in the past and have established under 208 plans
2 programs of which are supposed to decrease the amount
3 of nutrients going into the lake. And we did a lot to
4 remove the sediments from the lake of which were
5 causing supersaturation and phosphorus that result in
6 algae blooms. But DOE has not taken this into
7 consideration either in their NPDES stormwater rules.
8 In their NPDES stormwater rules in Volume V of the
9 Western Manual Chapters 2 through 5 describe how these
10 higher standards for best management -- management
11 practices are supposed to be enacted on watersheds
12 which contribute to lakes that have phosphorus-related
13 problems. And we are 303(d) listed for it, and we have
14 208 -- you know, we have proof of 208 plans for this,
15 we have other programs for this, but still the State
16 will not require the City of Vancouver and Clark County
17 to enact these higher standards. This is very
18 frustrating, this circular logic. This is making it
19 impossible for a community to improve these water --
20 these water bodies.
21 Page 20 of -- on -- excuse me -- 19 on tools in
22 the standards sends a rather mixed message. All of the
23 described tools are negative, in that they are allowing
24 degradation sanctions now by DOE. And in Page 20 on
25 the additional tools, the identification of warm water

1 fisheries shows the failure of DOE to prevent this
2 degradation. I'm really afraid that DOE may
3 arbitrarily decide that Vancouver Lake is a warm water
4 fishery. It really scares me. You know, you can now
5 adopt lower standards and water bodies will never be
6 cleaned up. And -- and communities will have -- that
7 want to clean up their water will have no recourse.
8 Under Page 22 of proposed changes, DOE appears to
9 be dragging its feet with regard to phosphorus and
10 nitrogen and nutrient requirements. I went to the EPA
11 website, and I -- they have available grants. Florida,
12 as you described, was one of the communities that is
13 enacting higher standards for phosphorus. They're
14 doing it within -- with regards to TMDLs having to do
15 with the Everglades, but other states are too.
16 Washington could apply for those. Washington has
17 not. And if you read this Page 22, it actually says
18 that they're not. They have no intention of applying.
19 I think they really should. We need them to apply.
20 The EPA has a nutrient criteria policy that was
21 approved in 2009. It urges states to develop these
22 higher criteria. I do not know why our state has
23 chosen not to. We need to. As I have described the
24 circular situations that are occurring, the impossible
25 trap of which DOE has placed us in, this needs to be

1 addressed.

2 Accordingly, EPA state -- this is a quote from
3 their own website. They remain committed to supporting
4 states and authorized tribes efforts to adopt numeric
5 water quality standards. And I have here, I will
6 submit in written form, the websites and so forth that
7 they could apply, and I hope that they might.

8 Washington has many lakes and streams impaired by
9 blue-green algae blooms in which phosphorus in
10 particular is considered critical according to both
11 USGS and the EPA. For DOE not to develop numeric
12 criteria for nutrients means that they are sanctioning
13 that in most of our lakes will at best be future warm
14 water fisheries.

15 Also in Section 5 of the program they describe the
16 entity that is supposed to -- there's no way to get
17 into the DOE system where we can evaluate lakes to have
18 them have more stringent rules for phosphorus, and at
19 the very least there should be a way. It -- you could
20 possibly stretch it to construe that in Section 5 of
21 this states that at the time of which rulemaking occurs
22 that it will be possible to upgrade this.

23 But it doesn't say that it's being upgraded by DOE
24 or the nomination of it by -- by individuals. I would
25 like to read this broadly and hope that DOE might

1 consider looking at Vancouver Lake in particular and
2 considering it for inclusion in a possible program that
3 has never been applied anywhere and can't be at this
4 time.
5 Under "Mixing Zones," under "Tools," I have some
6 real problems with the mixing zones on the Columbia.
7 Clark County wastewater treatment in 1980 had dye
8 studies done, and it indicated that the acute zone was
9 actually in contact with the shore extensively.
10 Because of reversals in tidal actions on the Columbia
11 River, I believe that all mixing zones need to be
12 re-evaluated in light of summertime and tidal
13 conditions. Thank you.
14 HEARING OFFICER: Thank you, Thom. All
15 right. Do we have anyone else who has changed their
16 mind and would like to testify? Going once. No?
17 Okay. I'll stop.
18 Okay. So if you would like to submit Ecology
19 written comments, you can do that up until 5 p.m. on
20 December 17, 2010. You can send all comments to the
21 lovely Becca Conklin over there, Water Quality Program
22 Washington State Department of Ecology, P.O. Box 47600,
23 Olympia, Washington 98503-7600. Or electronically you
24 can go to swqs@ecy.wa.gov.
25 So all testimony at this hearing, as well as at

1 the other hearings held or being held in Vancouver,
2 Mount Vernon, Yakima, Spokane, and Lacey, along with
3 the written comments received by 5 p.m. on December
4 17th, will be part of the official hearing for this
5 proposal. And all comments will be treated equally
6 whether they're received here, in writing, or in
7 e-mail, so you don't have to worry if you didn't do
8 them here. You can send them on in.
9 So in the spring of 2011, Ecology anticipates
10 posting the transcript from this -- oops. Sorry --
11 posting the transcript from this and other hearings on
12 our website. If you'd like to be notified of when
13 those are posted on the website, or other changes,
14 things coming up, make sure that you sign up for the
15 LISTSERV. There's a sign-up sheet outside. If we can
16 be of further help, don't hesitate to ask. We'll be
17 breaking down and cleaning up, so feel free to ask a
18 couple more questions. And on behalf of the Department
19 of Ecology, thank you so much for coming. Let the
20 record show that it is 3:16 and this hearing is now
21 closed. Thank you.
22
23
24
25

CERTIFICATE

I, Janette Curley, a Certified Court Reporter in and for the State of Washington, residing at Kingston, authorized to administer oaths and affirmations pursuant to RCW 5.28.010, do hereby certify;

That the foregoing proceedings were taken stenographically before me and thereafter reduced to a typed format under my direction; that the transcript is a full, true and complete transcript of said proceedings;

That I am not a relative, employee, attorney or counsel of any party to this action, or relative or employee of any such attorney or counsel, and I am not financially interested in the said action or the outcome thereof;

That upon completion of signature, if required, the original transcript will be securely sealed and the same served upon the appropriate party.

IN WITNESS WHEREOF, I have hereunto set my hand this 23rd day of November, 2010.

Janette Curley

Janette Curley, CCR No. 2030