

Pierce County Statement on Department of Ecology's and US EPA's

Draft Clarks Creek Dissolved Oxygen and Sediment Total Maximum Daily Load

For Ecology's Public Meeting, June 10, 2014 at 6:00 p.m.

Puyallup Public Library
S Meridian Puyallup, WA 98371

Introduction.

Since 2008, Pierce County has been monitoring water quality and biological health in the Clarks Creek watershed and reporting that result in our annual Watershed Health Report Card. Overall, we are seeing a trend towards improvement in these indices. For example, Rody Creek is up to C+ in 2013 from a C in 2009 and it is improving in both Water Quality Index (WQI) and Benthic Index of Biological Integrity (BIBI). Diru Creek is a C+ in 2013, as it was in 2009, and is showing improvement in BIBI. Clarks Creek is also a C+, which it has been since 2011, although there are concerns with WQI and BIBI. We are proud that our efforts and those of our partners in the watershed through the Clarks Creek Initiative, begun by Pierce County in 2005, are resulting in improved conditions. Pierce County's goal is to see Clarks Creek watershed health improve, but we have significant concerns and questions about whether the TMDL will help us make progress towards that goal.

While Pierce County is still reviewing the draft Clarks Creek DO and Sediment TMDL, based on our review thus far, the County has significant concerns with the draft for the following reasons. First, for the past three years, Pierce County has worked in good faith with EPA, Ecology and the Puyallup Tribe on an alternate approach that would result in adaptive management actions better suited and more quickly implemented than the approach outlined in the TMDL. Nationally, EPA has specifically recognized the value of these alternate approaches¹ and it is disappointing that Ecology is apparently unwilling to use that approach here. Second, the data and modeling that form the basis of the TMDL and corresponding Implementation Plan are fundamentally flawed. Third, the surrogate approach employed in this TMDL is scientifically flawed, as well as arbitrary and unreasonable. While over 50,000 TMDLs have been developed nationwide, a mere handful of them have attempted to use the methodology employed by Ecology and, when challenged in court, they have been either abandoned or held unlawful. Finally, the development of the TMDL has actually slowed down Clarks Creek restoration. The single-focused capital facilities solutions proposed in the TMDL will be costly with no guaranteed improvement. Because the draft TMDL and its companion documents are exceedingly long and complex (there are over 800 pages to review), the County will be submitting additional comments before the close of the public comment period, extended by Ecology to July 21, 2014. We think that commenters should have until the end of August to submit comments and make that request tonight. In the interim, the County would appreciate receiving responses from Ecology to the following questions:

¹ *A Long-Term Vision for Assessment, Restoration, and Protection under the Clean Water Act Section 303(d) Program*, December 2013:
http://water.epa.gov/lawsregs/lawsguidance/cwa/tmdl/upload/vision_303d_program_dec_2013.pdf

Pierce County Questions:

- **Why aren't wasteload allocations based on accurate, site-specific data?** The requirements of the TMDL are not derived with sufficient credible, scientific, site-specific data and information. Instead, the TMDL's requirements are based on assumptions and hypothetical scenarios. For example, the DO reduction targets are based on a flow event 11 years ago, which EPA's modelers and consultants characterize as "an extreme event," and which the model overstates by almost 3 times the observed flows. The sediment budget is not explicit in the size range of each particle size category by reach. What's more, the sediment reduction targets are based on a review of the percentage of fines in other Puget Sound streams, not on Clarks Creek natural baseline.
- **Why isn't low dissolved oxygen in groundwater considered "background"?** Much of the flow of Clarks Creek comes from groundwater discharging into the creek. Groundwater typically is low in dissolved oxygen and is suspected to be a significant factor in the DO levels of the creek. Under the TMDL, this should be counted as background. Pierce County should not be held responsible for "fixing" DO deficiencies that are naturally caused. Why doesn't the TMDL quantify and account for naturally-occurring DO demand?
- **Does Ecology believe that only construction projects can "fix" Clarks Creek?** The draft TMDL contains none of the programmatic actions that are typically important in addressing water quality issues, such as public participation on watershed councils, education and outreach.
- **Why does the draft TMDL require the County to develop two new plans, especially in light of the fact it already has an adopted, Clear-Clarks Creek Basin Plan?** The draft TMDL requires Pierce County to develop two plans (one to address dissolved oxygen, one to address sediment) to build drainage facilities in the watershed. No other entity has this same requirement. Why? Pierce County has a current, adopted basin plan in effect for the watershed, which should be implemented instead of requiring Pierce County to develop two additional plans.
- **What are Department of Ecology's criteria to approve the plans from Pierce County?** According to the draft TMDL the two plans must be approved by Ecology, but it contains no standards or criteria by which Ecology will evaluate the plans and approve them.
- **Why aren't all "point sources" identified and given "wasteload allocations"?** TMDLs are supposed to assign responsibilities to all "point sources" in the watershed. However, the draft Clarks Creek TMDL singles out only three, including Pierce County. In reality, the watershed contains portions of another Phase I Municipal Stormwater Permittee; two potential secondary permittees, ten potential industrial stormwater general permittees, two potential additional hatchery permittees; and two existing sand and gravel permittees. All of these other sources are point source dischargers, but not one is assigned a wasteload allocation. Additionally, nonpoint sources that Ecology has responsibility for are only given cursory consideration. The result of these omissions is a flawed TMDL that shifts all of these other point and non-point source pollution to the County and other permittees.

- **How do we know we have achieved the goal?** The TMDL does not provide a pathway to success: even if ALL of the projects it includes are implemented, the County still would not meet the TMDL goals.
- **What is the basis for the stormwater flow reduction requirement?** The draft TMDL proposes that 50% of surface water flows be treated or eliminated, envisioning that Pierce County and others will construct capital drainage facilities within the watershed. Ecology's website for this TMDL states that a "TMDL is a calculation of the maximum amount of a *pollutant* that a waterbody can receive and still meet water quality standards." Does Ecology consider stormwater flow to be a pollutant even though a federal court has held otherwise? If so, why?
- **What is the basis for the sediment reduction requirement?** How can a "64% sediment reduction" and/or "66% reduction" be required when Washington State has no "sediment water quality standards"?
- Some other questions we have include:
 - What projects afford both DO and sediment benefit?
 - How does the 50% flow reduction relate to 64% sediment reduction?
 - Why does the TMDL call for both a 64% reduction and a 66% reduction of sediments?
 - How much of the 50% flow reduction and the 64/66% sediment reduction has been achieved since 2003?

Finally, it's important to note that the Clarks Creek Watershed is actually currently improving without the TMDL in place. That is what we have been working on and that is what we want to see continue.

