



CITY OF COEUR D'ALENE
WASTEWATER UTILITY DEPARTMENT

CITY HALL, 710 E. MULLAN
COEUR D'ALENE, IDAHO 83814-3958
208/769-2277 – FAX 208/769-2338
E-mail: sidf@cdaid.org

June 25, 2008

Via E-mail: dmoo461@ecy.wa.gov

Mr. David Moore
Water Quality Program
Eastern Regional Office
Washington State Department of Ecology
4601 North Monroe Street
Spokane, WA 99205

Re: Spokane River and Lake Spokane Dissolved Oxygen TMDL Water
Quality Improvement Plan - May 2008

Dear Mr. Moore

These comments on the Spokane River/Lake Spokane draft DO TMDL are submitted on behalf of the City of Coeur d'Alene Idaho. The City submitted extensive comments on the 2007 draft that preceded this revised draft. Those comments are part of the record and continue to represent the many concerns of the City with the approach chosen by Ecology to address low DO in the Spokane River and Lake Spokane.

The City's comments on the revised draft TMDL will focus on two areas of concern: Ecology's response to comments made by the City and others on the 2007 draft TMDL and Ecology's approach to addressing contributions to the low DO in Lake Spokane from the Avista dam on the Lake. The City provided separate comments on Ecology's draft 401 certification for the Avista Spokane River dams and we request that those comments be incorporated into the record for the draft TMDL.

1. Ecology Response to Comments on 2007 Draft TMDL

The City provided extensive comments on the 2007 draft TMDL regarding Ecology's role in abandoning the earlier commitment to include Idaho sources in the TMDL. Ecology's response to these comments, provided in Appendix G of the response to comments, are incomplete and inadequate. Ecology's blanket response to these comments was as follows:

Washington's TMDL and the EPA-issued NPDES permits in Idaho are independent actions. Comments on the EPA-issued

NPDES permits are beyond the scope and authority of the TMDL that has been proposed by Ecology.

The state of Washington can neither regulate discharges of pollution to nor set quality standards for waters of the state of Idaho.”

Appendix G, at page 169

This response suggests that Ecology could not have any role in developing a watershed based TMDL for the Spokane River that would include sources from Idaho and Washington. This response ignores Ecology’s earlier and long held position that a watershed based approach to addressing DO problems in the River was the preferred approach. (see City’s comments on 2007 draft TMDL citing the history of the process.)

In our comments on the 2007 draft TMDL the City asked Ecology to explain why it abandoned this collaborative approach. Ecology does not deny that it could have continued to work with the state of Idaho and EPA Region 10 to develop a watershed based TMDL. One of the City’s major concerns with Ecology’s decision to exclude the Idaho sources from the TMDL is the long term implications for Idaho dischargers. In its Response to Comments Ecology states that more stringent limits might be required of the Idaho discharges at the end of the nine year compliance schedules contained in the current draft permits issued by EPA:

The EPA-issued NPDES permits for Idaho will have nine year compliance schedules compared to ten-year compliance schedules for the Washington dischargers (See Ecology Summary Response for Part D for more information on Washington compliance schedules). Modeling assumptions and permit limits for phosphorus can be revisited for the Idaho dischargers at that time and would very likely be more stringent should they be causing or contributing to violations of water quality standards in Lake Spokane.”

Appendix G, at 169.

Ecology’s own description of the 1 year compliance schedule difference between the draft Idaho permits and the Ecology draft permits demonstrates the unequal burden placed on the Idaho dischargers. Ecology will reassess whether the limits contained in Washington permits are adequate to achieve the WLA assigned in the TMDL in year 10. This reassessment could result in a decision that the dischargers and other Washington sources are not able to achieve the DO standard and that a UAA as provided for in Washington statute would be adopted and the current DO standards for the Spokane River and Lake Spokane would be revised to be less stringent than the current standard.

The result at the end of 10 years could be that the Washington dischargers would be allowed to meet a less stringent DO standard than the Idaho dischargers. Ecology's response to comments does not address this likely scenario. Ecology asserts that it cannot regulate discharges from the state of Idaho while at the same time stating that the Idaho permittees might be subject to more stringent DO limits if "modeling assumptions" demonstrate that Idaho dischargers are causing or contributing to violations of Washington water quality standards. In its response to comments Ecology should explain whether it believes that Idaho dischargers should be allowed to have less stringent limits should Washington revise the DO standard one year later (than the 10 year Washington compliance schedule) or sooner. This scenario is likely in light of the conditions in the June 10, 2008 401 water quality certification issued by Ecology for the Avista hydroelectric project.

2. Avista 401 Certification

The City submitted comments to Ecology on the draft 401 certification. The final certification was issued in June. The City comments on the draft certification addressed the likelihood that the DO standard for Lake Spokane would be made less stringent as a result of the 401 certification conditions and Washington's rule for compliance with water quality standards for dams. The final 401 certification allows Avista 10 years from the issuance of the final license to assess whether it is able to meet water quality standards in the Lake.

If at the end of the ten year compliance period, the Licensee is unable to meet water quality standards, after evaluating and implementing all reasonable and feasible alternatives under WAC 173-201A-510(5)(g), then the Licensee will propose an alternative action to achieve compliance with the standards, such as new reasonable and feasible technologies or other options to achieve compliance with the standards, a new compliance schedule, or other alternatives as allowed by WAC173-201A-510.

Avista 410 Certification, at page 46.

Ecology also states that the 401 certification and the TMDL are "parallel processes" and that "...the end of the 401 Certification ten-year compliance schedule coincides with the TMDL's ten-year assessment." Although this may have been Ecology's original intention, the final certification "compliance schedule" will not begin until the final license is issued. The draft certification stated that the schedule would begin when the draft certification was issued. This seems to no longer be Ecology's position. The final 401 certification now requires that Avista assess its contributions to the DO problem in the Lake within 2 years of the final license issuance.

Mr. David Moore, Department of Ecology

June 25, 2008

Page 4

The City asks that Ecology require Avista to begin that assessment immediately. As noted in the City's comments on the draft 401 certification, this assessment should have been conducted as part of the TMDL so that an appropriate load allocation could have been made for Avista's contribution.

These comments are also being sent to EPA Region 10 to ensure that the Agency is aware of our concerns regarding how the 401 certification conditions may impact the Idaho permits.

Sincerely

A handwritten signature in black ink, appearing to read "H. Sid Frederickson". The signature is fluid and cursive, with a long horizontal stroke at the end.

H. Sid Frederickson
Wastewater Superintendent

Cc: Brian Nickel – EPA Region 10