

— Red — 10/3/07
7:25 pm RDP

**Comments of Rick Eichstaedt
Center for Justice
On behalf of the Upper Columbia River Group of the Sierra Club
On the Draft Spokane River Dissolved Oxygen TMDL
October 3, 2007**

- Thank you for the opportunity to comment tonight on this important issue.
- My name is Rick Eichstaedt. I am an attorney with the Center for Justice. We represent the Sierra Club on issues involving the cleanup of the Spokane River.
- The Sierra Club and its attorneys have been involved in all aspects of the development of this TMDL, including a substantial investment of time and resources in the TMDL “Collaborative.”
- We will be submitting detailed comments on this TMDL and the NPDES permits.
- I would like to take this time to discuss two issues.
- First, this TMDL relies upon an erroneous assumption that the phosphorus coming from three wastewater treatment plants that crosses the border with Idaho is “natural.”
- Washington’s water quality standards clearly state that all human caused sources of pollution cannot cumulative degrade dissolved oxygen more than 0.2 milligrams per liter (mg/l).
- The draft TMDL allows nearly double that degradation in water quality by affording the Idaho dischargers a 0.2 mg/l reduction and then resets the counter at the stateline affording Washington sources another 0.2 mg/l reduction. The impact is a nearly 0.4 mg/l reduction – far more than is allowed under state law.
- The Clean Water Act clearly requires that the polluters in Idaho demonstrate that they will not cause or contribute to a water quality violation downstream in Washington. The failure to take a cumulative look at all sources flies squarely in the face of this requirement.
- The shortcoming of this approach has been recognized by both Ecology and EPA officials.
- For example, in a September 1, 2005 email, Ecology’s Senior Water Quality Analyst Mark Hicks stated, “EPA appears poised to grant a 0.2 mg/l depression from naturally low dissolved oxygen levels to the point source dischargers in Idaho, and then grant another 0.2 mg/l depression for the Washington dischargers. However, our standards only allow a cumulative 0.2 mg/l depression below

naturally low oxygen levels for all human sources combined (point and nonpoint), not 0.4 mg/l.”

- Mark’s email raised some important questions that have yet to be answered:
 - How can EPA interpret our standards as permitting the 0.2 mg/l human allowance to go to Idaho's dischargers?
 - Shouldn't EPA be accounting for the nonpoint source contributions?
 - How can EPA ignore that our standards set a cumulative 0.2 depression by granting a cumulative 0.4 mg/l?
 - Why did EPA, who has told us they believe 0.1 is measurable and more appropriate, not divide the 0.2 mg/l allowance between the two state's dischargers?
- Mark wisely concluded, “The current EPA dialogue on dissolved oxygen does not appear either defensible or logical. The current approach of treating each issue ... independently and inconsistently is almost certainly going to lead to greater problems for the state in the long run.”
- I would like to submit a copy of this email for the record.
- Similarly, on June 7, 2007, Drea Traeumer, the former TMDL writer for Ecology, stated in an email:
 - I realize it's a recent policy decision to include the Idaho point source dischargers in our estimate of natural conditions, and that this will result in lower nonpoint source load allocations for the tributaries (resulting in increased potential for pollutant trading). However, continuing with this approach can only be problematic to Ecology because: it is inconsistent with our water quality criteria and our definition of natural conditions per our WAC; is not likely to be scientifically defensible; it will not change the reality of the amount of nonpoint source reduction that is necessary to meet the target in the lake; and it will damage Ecology's credibility.
- I would like to submit a copy of this email for the record.
- Moreover, even some of the dischargers have expressed concern regarding the legality of this approach. In a May 17, 2007 letter to EPA, the City of Spokane raised its concern regarding EPA’s action and noting the unfairness of this approach stating, “It seems unfair that proposed Permits [in Idaho] have less stringent permits limits because the City of Spokane and other dischargers in Washington will pay for nonpoint source controls, water conservation and water reuse.”
- I would like to submit a copy of this email for the record.

- The impact of this decision is significant. By assuming that pollution that crosses the stateline is natural, Ecology has significantly decreased the amount of nonpoint source reductions that need to occur from 60-80% to 16% in the draft TMDL.
- Obviously, a plan with an incorrect target is destined to fail. It is critical that we get the numbers right before our communities invest millions of dollars in treatment technology.
- So far, Ecology has not taken any action to ensure that its water quality standards will be protected. **The final TMDL must address this issue.**
- The second issue I would like to briefly address is the contribution of Avista's Long Lake Dam to the problem.
- Avista's own studies indicate that the operations of Long Lake dam "contribute to not satisfying the [water quality standard] between 3 to 5 months per year." However, the TMDL is silent as to the impact of the dam or any contribution Avista must dedicate this problem.
- Other TMDLs addressing very similar problems have addressed dam impacts to dissolved oxygen by specifically identifying the dam operator's contribution to the problem and specifying actions that must be taken to address the problem.
- The best example is the TMDL completed for Hells Canyon by the States of Oregon and Idaho.
- By ignoring Avista's contribution to the problem, we are placing the entire responsibility on the remaining dischargers, including sewer ratepayers, as well as missing potential opportunities to solve this problem, such as aeration and oxygenation.
- Thank you for the opportunity to comment.

Rick Eichstaedt

Categories: Spokane
Attachments: Hicks, Mark.vcf

-----Original Message-----

From: Cusimano, Bob
Sent: Sunday, September 04, 2005 9:32 AM
To: Kendra, Will; Erickson, Karol (ECY)
Subject: FW: EPA decisions on dissolved oxygen

FYI

-----Original Message-----

From: Gildersleeve, Melissa
Sent: Thursday, September 01, 2005 3:51 PM
To: Cusimano, Bob
Subject: FW: EPA decisions on dissolved oxygen

Thought you might like this-

-----Original Message-----

From: Hicks, Mark
Sent: Thursday, September 01, 2005 10:14 AM
To: Peeler, Dave; Gildersleeve, Melissa
Cc: 'palmer.john@epa.gov'; 'collins.kathleen@epa.gov'; 'Jennings.Jannine@epamail.epa.gov'; Lavigne, Ronald (ATG)
Subject: EPA decisions on dissolved oxygen

I am a little bewildered about how EPA is dealing with dissolved oxygen issues right now.

For the Spokane River, EPA appears poised to grant a 0.2 mg/l depression from naturally low dissolved oxygen levels to the point source dischargers in Idaho, and then grant another 0.2 mg/l depression for the Washington dischargers. However, our standards only allow a cumulative 0.2 mg/l depression below naturally low oxygen levels for all human sources combined (point and nonpoint), not 0.4 mg/l. Further, the 0.2 is for our state's dischargers, not Idaho's.

- How can EPA interpret our standards as permitting the 0.2 mg/l human allowance to go to Idaho's dischargers?
- Shouldn't EPA be accounting for the nonpoint source contributions?
- How can EPA ignore that our standards set a cumulative 0.2 depression by granting a cumulative 0.4 mg/l?
- What is the mechanism for overriding our state standards when they are writing permits?
- EPA standard's staff involved in the ongoing review of our standards have formally questioned whether or not we should even be giving 0.2 mg/l ?
- Why did EPA, who has told us they believe 0.1 is measurable and more appropriate, not divide the 0.2 mg/l allowance between the two state's dischargers?
- Won't this result in other dischargers in our state questioning why they are being held to 0.2 since EPA finds 0.4 sufficient to meet our standards and the CWA?
- EPA has told us that the existing oxygen criteria are probably not protective enough to pass ESA, yet they appear ok with allowing a 0.4 further depression from natural levels that are below those questionable criteria. How can they be knowingly allowing an even greater depression from levels below what they question as protective?

The current EPA dialogue on dissolved oxygen does not appear either defensible or logical. The current approach of treating each issue (CWA review, ESA review, NPDES permitting, TMDL) independently and inconsistently is almost certainly going to lead to greater problems for the state in the long run.

We should be encouraging EPA Region 10 to develop a more coherent policy surrounding the review and application of our state's dissolved oxygen criteria.

Mark Hicks, Senior Analyst
Surface Water Quality Standards

Rick Eichstaedt

-----Original Message-----

From: Traeumer, Drea (ECY)

Sent: Thursday, June 07, 2007 4:38 PM

To: Erickson, Karol (ECY); Bramble, Lenox (ECY); Knight, David T. (ERO) (ECY); Bellatty, James (ECY); Cusimano, Bob (ECY)

Subject: RE: FW: Request for EPA model runs

Hello,

I'm working to get answers to Dave's questions re: funding, timing, implications, etc.

Considering we are at a critical point and recommendations are being asked of me on how to proceed, I suggest we revert back to using natural conditions as stated in our water quality criteria and defined per our WAC. I realize it's a recent policy decision to include the Idaho point source dischargers in our estimate of natural conditions, and that this will result in lower nonpoint source load allocations for the tributaries (resulting in increased potential for pollutant trading). However, continuing with this approach can only be problematic to Ecology because: it is inconsistent with our water quality criteria and our definition of natural conditions per our WAC; is not likely to be scientifically defensible; it will not change the reality of the amount of nonpoint source reduction that is necessary to meet the target in the lake; and it will damage Ecology's credibility.

Drea Traeumer, Hydrologist
Spokane River TMDL Lead
Water Quality Program
Washington Department of Ecology
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509-329-3570 (fax)

10/3/2007



City of Spokane

May 17, 2007

VIA U.S. MAIL AND VIA E-MAIL TO: Nickel.Brian@epa.gov

Mr. Michael Gearheard
Director
Office of Water and Watersheds
EPA region 10
1200 Sixth Avenue, OWW-135
Seattle, WA 98101-1128

Re: Proposed NPDES Permits for Idaho Dischargers

Dear Mr. Gearheard:

Thank you for giving the City of Spokane the opportunity to review the proposed NPDES Permits for the City of Coeur d'Alene, City of Post Falls, and Hayden Area Regional Sewer Board. As you know, these permits will authorize discharges of municipal wastewater into the Spokane River, which flows into the State of Washington and through downtown Spokane. The City of Spokane also discharges municipal wastewater into the Spokane River at a location of about twenty miles due east, as the crow flies, downstream from the Idaho-Washington State Line.

The Spokane River is a vital and irreplaceable natural asset and a symbol for our community (note the Spokane Falls logo on our letterhead). It needs to be protected by all of us; by the EPA, by the states of Idaho and Washington, by local governments in Idaho and Washington, and by the citizens of both states. We all share the Spokane River and its benefits, and we need to share the responsibility to meet the standards that the EPA, Spokane Indian Tribe, and the States have developed and adopted to protect it.

On March 7, the City of Spokane, the State of Washington, other local governments, and private industry signed a Memorandum of Agreement approving the "Foundational Concepts" related to oxygen dissolved into the Spokane River. The Foundational Concepts set goals and a schedule for reducing phosphorous and other nutrients and improving dissolved oxygen in the Spokane River consistent with the State of

"Spokane - Near Nature, Near Perfect"

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Mr. Michael Gearheard
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Washington's Draft TMDL for dissolved oxygen dated October 2004. The EPA, through Tom Eaton and members of your staff, actively participated in a 2-year collaborative process which culminated in the Foundational Concepts. While the State of Idaho, City of Coeur d'Alene, City of Post Falls, and Hayden Area Regional Sewer Board are not parties to the Memorandum of Agreement, they were invited to participate, and in many cases did participate, in the collaborative sessions that produced the Foundational Concepts. Many of the City of Spokane's comments herein are focused on areas where it appears that the proposed Permits are not consistent with the Foundational Concepts.

First, the interim and final effluent limits for phosphorous and other nutrients in the proposed permits appear to be very generous. If all three Idaho entities discharge at the proposed limits, then it may not be possible for the City of Spokane or others to meet the goals and targets for phosphorous in the Foundational Concepts. For example, until at least 2016, the nonpoint source loadings and the three Idaho dischargers together would exceed the loading in the Draft TMDL at p. 21 -22 (8.5 lbs/day June – Oct. and 32.4 lbs/day April and May). Once nonpoint sources are reduced, as anticipated in the Draft TMDL and Foundational Concepts, and the Idaho dischargers meet the final effluent limits in the proposed Permits (beginning in 2016) during the months of April, May, June and October, the nonpoint source loading and the Idaho dischargers will exceed the entire phosphorous loading in the Draft TMDL during April, May and June. During July, August and September, all Washington dischargers combined will be allowed a loading of only a few pounds per day. Put another way, the proposed Permits allocate to Idaho 80% of the phosphorus loading for all point sources in April and May, 40% in June through September, and almost 95% in October. Given the relative size of the communities and the money being invested to improve dissolved oxygen, this allocation is neither fair nor reasonable.

Second, the compliance schedules in the proposed Permits also appear to be very generous. There will apparently be no improvement in the effluent from Idaho dischargers until at least mid-2016. The Foundational Concepts anticipate that Washington dischargers will monitor the Spokane River in 2007 - 2010, upgrade point source facilities in 2011 and 2012, and then continue monitoring for 5 more years (the ten-year "check-in" in 2017). In 2017, the State of Washington, the EPA, the environmental community, and the Washington dischargers are supposed to be able to use this data to assess how successful the technology upgrades and nonpoint source reductions have been at improving dissolved oxygen and reducing phosphorous in the Spokane River. The data will be of little use unless Idaho dischargers also implement technology upgrades in 2011 and 2012. It would also, of course, be helpful if they controlled nonpoint sources.

Third, the EPA and the State of Washington should coordinate very closely on interpretation of Washington's water quality standards, such as WAC 173-201-200(1)(d). It is critical that both the EPA and the State interpret and apply the State of Washington standards for dissolved oxygen consistently. For example, the EPA appears to have concluded that the Washington standards permit each Idaho

Mr. Michael Gearheard
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discharger to reduce dissolved oxygen by up to 0.2 mg/L in Long Lake, while the State of Washington appears to look at all human-caused sources combined when determining compliance with this standard. Compare Coeur d'Alene Permit Fact Sheet, p. C-10, with Draft TMDL, pp. 5 and 21. As another example, Washington used 0.005 to 0.006 mg/L for "natural background" for phosphorous whereas the EPA appears to have used 0.14 mg/L. Compare Draft TMDL, pp. 14 and 22, with Hayden Fact Sheet pp. C-6 and C-7.

Finally, in calculating whether the proposed Permits would contribute to a violation of Washington's water quality standards, the EPA assumes that Washington dischargers will control nonpoint sources. In approving the Foundational Concepts, the City of Spokane and other dischargers located in Washington State have made commitments to help control nonpoint sources, and to conserve water and reuse wastewater, as part of an overall strategy for improving dissolved oxygen in the Spokane River. It is not clear from the proposed Permits what commitments the Idaho dischargers have made in this regard, or that the EPA is expecting any nonpoint source reductions in Idaho. It seems unfair that proposed Permits have less stringent permit limits because the City of Spokane and other dischargers in Washington will pay for nonpoint source controls, water conservation and water reuse. If the State of Idaho and Idaho dischargers are making commitments to reduce nonpoint sources of pollution, then the Draft TMDL needs to be modified to take this into account.

The City of Spokane is strongly committed to the betterment and prosperity of this region and to the preservation and protection of our most precious assets. Our promises and the dedication of our financial resources substantiate this commitment.

Thank you for the opportunity to review the proposed Permits and to offer these comments. I also want to thank you and your staff for participating in the development of the Foundational Concepts. We look forward to working together to implement that document and to protecting water quality in the Spokane River.

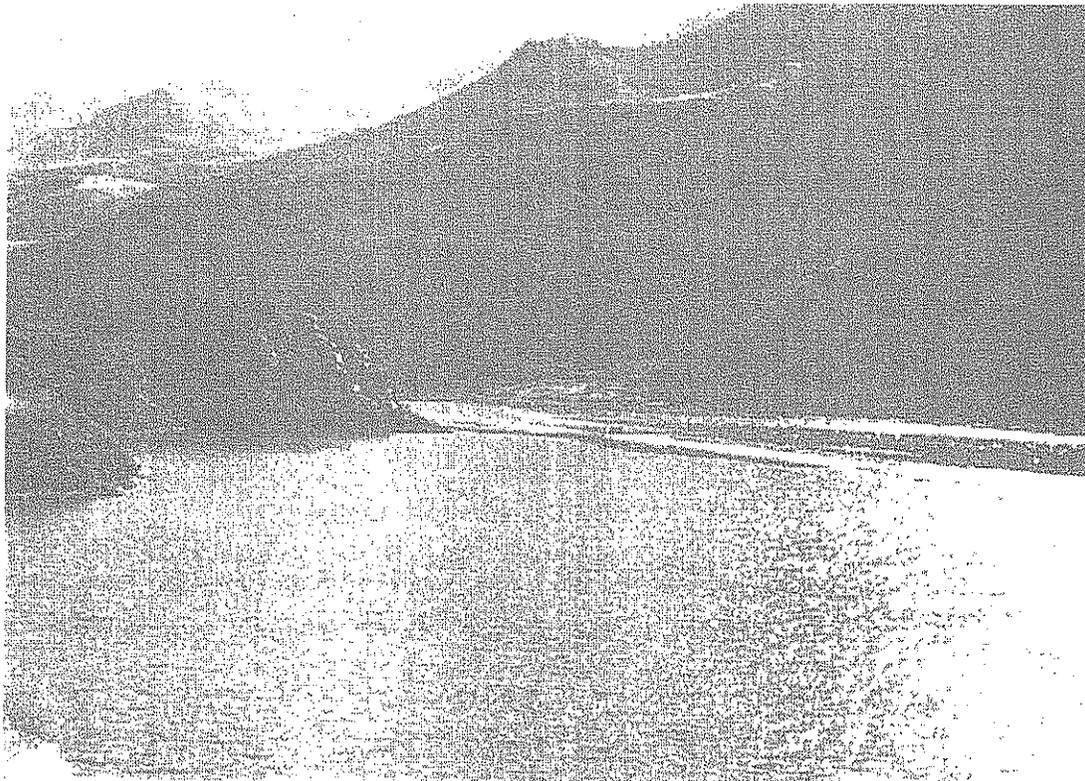
Sincerely,



Dennis P. Hession
Mayor

Cc: Governor Christine Gregoire
Chairman Mark Richard
Members of the Spokane County Board of Commissioners

**Snake River - Hells Canyon
Total Maximum Daily Load (TMDL)**



**Submitted - July 2003
Revised - June 2004**

Prepared by:

**Idaho Department of Environmental Quality
Boise Regional Office
1445 North Orchard
Boise, Idaho 83706**

**Oregon Department of Environmental Quality
Pendleton Office
700 SE Emigrant, Suite 330
Pendleton, Oregon 97801**

from data analysis that the distribution of chlorophyll *a* and total phosphorus concentrations observed in the Upstream Snake River segment (RM 409 to 335) of the SR-HC TMDL reach are elevated when compared to those observed in the Snake River system as a whole. This elevation cannot be wholly attributable to natural sources.

A comparison of conditions in the Upstream Snake River segment (RM 409 to 335) to conditions observed in the Snake River as a whole was used to identify site-specific chlorophyll *a* and total phosphorus targets (less than 14 ug/L and less than or equal to 0.07 mg/L respectively) for the SR-HC TMDL reach. These targets are seasonal in nature and apply from May through September. The 0.07 mg/L total phosphorus target represents a substantial reduction in the current average total phosphorus concentration in the SR-HC TMDL reach. A total phosphorus concentration of 0.07 mg/L correlates to an average chlorophyll *a* concentration of approximately 14 ug/L, which is within the range defined as appropriate for protection of designated aquatic life, domestic water supply and aesthetic/recreational beneficial uses. The reduction in total phosphorus observed in meeting the target concentration also represents a reduction of roughly 50 % in algal biomass (as measured by chlorophyll *a*). The calculated reduction in organic loading is projected to result in an improvement in dissolved oxygen levels in both the Upstream Snake River and Brownlee Reservoir segments.

The 14 ug/L chlorophyll *a* and 0.07 mg/L total phosphorus targets were developed to meet water quality criteria in the Upstream Snake River segment (RM 409 to 335). To identify the change in conditions in Brownlee Reservoir resulting from attainment of these targets in the Upstream Snake River segment, water quality in the reservoir was modeled using all inflowing waters at 0.07 mg/L of total phosphorus. The model output showed dissolved oxygen improvements in the epilimnion sufficient to meet the 6.5 mg/L criteria during the summer months. Dissolved oxygen levels concentrations in the metalimnion also showed improvement, although the projected improvements did not meet water quality targets. Modeling of long-term effects of attaining the targets project that substantial improvements in the hypolimnion will be realized over time.

Load allocations assigned to the inflowing tributaries are based on inflow concentrations meeting the 0.07 mg/L total phosphorus target. Direct point source dischargers to the Snake River operating mechanical treatment plants will be required to reduce discharge concentrations by 80%. Lagoon discharges will assess the feasibility of changing to land application or biological nutrient removal and implementation objectives will be assessed on a case by case basis.

Nonpoint source discharges will be required to reduce to the 0.07 mg/L level. As modeling showed that the presence of Brownlee Reservoir acts to reduce the assimilative capacity of the river, additional dissolved oxygen required to offset this reduction in assimilative capacity will be the responsibility of Idaho Power Company and has been identified as a load allocation of 1,125 tons of dissolved oxygen per season.

PESTICIDES

The SR-HC TMDL reach is listed for pesticides from RM 285 to 272.5 (Oxbow Reservoir). Pesticides of concern to this TMDL are DDT and dieldrin, both of which are banned and no longer in use in the United States. Available pesticide data identified total DDT (t-DDT) and dieldrin concentrations in fish tissues throughout the Snake River and several major tributaries in Idaho.

After completing an implementation plan, site-specific analyses must be performed to determine the most appropriate and effective control strategies for particular locations and land use activities. The time required for ground-level planning and project approval process varies widely depending upon the nature of the land and related hydrology, the land use, the parties involved, the type of treatment selected, and other factors.

Construction and implementation of management practices follows project approval. As with the planning and approval process, the time required to complete a project and realize water quality improvements varies from more the more immediate, as with introduction of rotational grazing as a management practice, to longer term, as with streambank re-vegetation and created wetlands (6 to 7 years may be necessary to establish vegetation that will produce adequate results).

In addition to the time required to achieve effective reductions, the time required for the river and reservoirs to fully respond to the improvement in inflowing water quality and process the existing pollutant loads already in place within the system must also be recognized. The occurrence of low water years or drought cycles can extend the instream response time by affecting the processing and transport of preexisting loads, just as high flows, which increase transport, and streambank erosion can affect instream response time.

In identifying what effect such an extended time frame for implementation would have on aquatic species that are currently at risk due to water quality concerns, it should be noted that generally the initial phases of implementation result in the most substantial reductions. Starting implementation as soon as possible, in a manner that will address the areas of greatest concern first and then work toward the areas of lower priority will allow substantial improvements in the water quality to occur in a shorter period of time than that described by the total implementation timeframe. While these initial improvements will most likely not result in meeting water quality targets all the time, everywhere, all at once, they will undoubtedly result in substantial, consistent improvement in water quality conditions throughout the reach.

As time and implementation progresses, the level of improvement will also increase until water quality targets are met. If dissolved oxygen concentrations in the areas of sturgeon habitat can be increased from near lethal levels to concentrations that are much closer to the target, then the support status will improve as well. This offers the potential for a positive outlook in the case of at-risk aquatic life such as the white sturgeon in the Upstream Snake River segment (RM 409 to 335). They will benefit from these initial improvements in habitat in many places, and from the improvement in water quality conditions overall.

4.0.2.8 DISSOLVED OXYGEN LOAD ALLOCATION

In addition to the total phosphorus load allocations for the Upstream Snake River segment (RM 409 to 335) and the tributaries, a dissolved oxygen load allocation has been established for Brownlee Reservoir (RM 335 to 285) (IPCo) to offset the calculated reduction in assimilative capacity due to the Hells Canyon Complex reservoirs.

The dissolved oxygen allocation requires the addition of 1,125 tons of oxygen (1.02×10^6 kg) into the metalimnion and transition zone of Brownlee Reservoir (approximately 17.3 tons/day (15,727 kg/day)). The total dissolved oxygen mass required to address the loss of assimilative capacity in the metalimnion over this time frame is 1,053 tons (957,272 kg). This is equivalent to an even distribution of 16.2 tons/day (14,727 kg/day) over 65 days. The total dissolved oxygen mass required to address the loss of assimilative capacity in the transition zone over this time frame is 72 tons (65,454 kg). This is equivalent to an even distribution of 3.0 tons/day (2,727 kg/day) over 24 days.

The calculated time period when exceedences occurred in the metalimnion of Brownlee Reservoir is between Julian days 182 and 247 (the first of July through the first week of September) when dissolved oxygen sags are observed to occur to a greater degree than those identified as the result of poor water quality inflowing from the upstream sources. However, this time frame should not be interpreted as an absolute requirement. This approach recognizes that the actual mass of dissolved oxygen necessary per day is not static. It is variable depending on system dynamics and may vary from a few tons to as many as 30 tons per day. Timing of oxygen addition or other equivalent implementation measures should be such that it coincides with those periods where dissolved oxygen sags occur and where it will be the most effective in improving aquatic life habitat and support of designated beneficial uses. Water column dissolved oxygen monitoring is expected to be undertaken as part of this scheduling effort.

This load allocation does not require direct oxygenation of the metalimnetic and transition zone waters. It can be accomplished through equivalent reductions in total phosphorus or organic matter upstream, or other appropriate mechanism that can be shown to result in the required improvement of dissolved oxygen in the metalimnion and transition zones to the extent required. A reduction of 1.7 million kg of organic matter/algal biomass would equate to the identified dissolved oxygen mass. This translates to approximately 11,000 kg/day over the critical period (May through September) or 26,000 kg/day over the 65-day load period identified in the calculations for reduced assimilative capacity. Direct oxygenation can be used, but should not be interpreted as the only mechanism available. Cost effectiveness of both reservoir and upstream BMP implementation should be considered in all implementation projects.

Because there are both total phosphorus and dissolved oxygen load allocations assigned within different segments of the SR-HC TMDL reach, it must be clearly understood that Upstream Snake River segment (RM 409 to 335) pollutant sources are responsible for those water quality problems occurring in the Upstream Snake River segment. They are not responsible for those water quality problems that would occur if the waters flowing into Brownlee Reservoir met water quality standards and are exclusive to the reservoir. Similarly, IPCo (as operator of the Hells Canyon Complex) is responsible for those water quality problems related exclusively to impoundment effects that would occur if inflowing water met water quality standards.

Load allocations for the Upstream Snake River (RM 409 to 335) pollutant sources were identified to meet water quality standards in the Upstream Snake River segment and load allocations for Brownlee Reservoir (RM 335 to 285) were identified to address those water quality violations that would occur if the waters flowing into the Hells Canyon Complex met water quality standards.

Recd 10/3/07
7:50 pm [Signature]

COMMENTS
Center for Justice
Bonne Beavers
On behalf of the Upper Columbia River Group of the Sierra Club
On the Draft Spokane River Dissolved Oxygen TMDL
October 3, 2007

My name is Bonne Beavers. I too am an attorney with the Center for Justice working with Rich Eichstaedt and the Sierra Club on these river issues. I'll focus my comments on the likelihood of success under this plan.

By law, this TMDL or clean up plan, must be good enough to provide reasonable assurance that it will result in attainment of the water quality standards for dissolved oxygen in Lake Spokane. As designed, this plan doesn't do that for at least nine reasons.

First, as you have previously heard, the bottom line for this TMDL is that we are using illusory numbers. The loading of pollutants coming over the stateline from the three Idaho wastewater treatment plants violate our water quality standards for dissolved oxygen in Lake Spokane by a factor of five.

EPA has just issued permits to the Idaho dischargers) that require them to reduce loading in ten years, but only enough so that they all by themselves will contribute almost all of the allowable loading to Lake Spokane. So, the minute Washington adds more loading, we'll violate the standards.

Second – by pretending that the Idaho loading doesn't exist, the TMDL allows Washington to double the amount of loading to the lake and pretty much assures we won't restore the lake.

Third – The TMDL requires the Washington dischargers to reduce phosphorus loadings to concentrations of around 10 ug/l – almost background. The dischargers do not believe they can reach 10 ug/l thru technology alone, so they hope to get lots of credit for removing phosphorus from nonpoint sources as well.

The problem with that, is it's really, really hard. Success stories generally run no higher than maybe a 6 to 20% reduction. Under the 2004 TMDL, when we admitted that Idaho was contributing phosphorus loading to Washington, we needed to reduce nonpoint source loading by around 80%. Now, we've only got to reduce it by maybe 16 to 20%.

Why is this a problem? Because the dischargers get credit for any NPS reductions below that 20%. This credit will be illusory because we know we have to take out more to restore the lake.

Four – there are no enforceable limits under the TMDL or in the dischargers' permits for 20 years!!!! The dischargers have all been given waste load allocations – numbers of pounds of phosphorus they may discharge under the TMDL – but these are not enforceable for 20 years!!!!

Five – There are no hard interim limits either. The dischargers have to provide engineering plans for upgrades – with goals of reaching 50 ug/l in 10 years - but there is nothing in their permits that require meeting 50 ug/l. By contrast, the Idaho dischargers have to reach 50 in ten years. And EPA considers 50 ug/l economically and technically achievable and so even Idaho has to reach this by 10 years. Ecology's science shows dramatic changes at 50 ug. And, there are plants achieving this and better around the nation. Some even to 10 ug/l. Since 2003. But we won't even hold the dischargers to 50.

Six– let's go back to the credits for NPS reductions. Who gets to decide whether these are valid? It's the TMDL oversight committee. Who's on this committee? The dischargers and ecology – but Ecology doesn't have a vote.

Seven – The 10 year assessment. The TMDL calls for a ten year check in. At that time, we'll be checking to see if we've made sufficient improvements in the river to justify continuing on thru the next 10 years. And if we haven't, the dischargers have insisted,

and Ecology agreed, to consider lowering the standards. What are the chances that we will have gotten very far by 10 years. The dischargers don't have to have new technology in place for 10 to 12 years. And even then, it doesn't have to meet any particular limit. The NPS program will barely have begun. The Idaho dischargers will just be getting around to putting in their new technology. And, it's a good bet the dischargers will have been getting credit for illusory NPS gains.

The TMDL does say that if we don't have enough data to make a good assessment, we'll delay the assessment. Who decides if there is enough data – the TMDL Oversight Committee.

Eight - By law, the NPDES permits must be consistent with the TMDL. The TMDL limits the dischargers to current flows. They aren't allowed to expand their discharge unless the expansion meets the final TMDL limit of 10 ug/l. That's good – but the draft permits allow the City and Liberty Lake to expand without the requisite reductions in phosphorus, ammonia and CBOD. The Idaho permits are allowed to do this as well. Not only does that not make sense, it's against the law.

Nine – The TMDL states that, although Ecology has enforcement authority, the intent is for voluntary compliance and Ecology will only enforce identifiable waste load allocation violations. As we have seen – these aren't enforceable for 20 years. Hmmmmm.

This plan does not provide reasonable assurance that we will restore Lake Spokane. But it wouldn't be that hard to make it better. Ecology could do four things:

1. Stand up to EPA and demand a basin-wide plan that allocates loading equitably among the states.
2. Put hard targets in the permits.
3. Require a reassessment only after appropriate upgrades have been made and other actions in place long enough to see changes.
4. Prohibit increased loading except where it meets the 10 ug/l limit.

Other problems with the TMDL

- Upgrading our water quality treatment plants is expensive. We need to make the best choices with that money. Dissolved oxygen is not the only problem we have. We have a PCB TMDL underway right now and no doubt will have one for dioxin-furans soon. It makes no sense not to require technology that does a good job of removing these pollutants as well.