

From: Dan Steenson [<mailto:dan@sawtoothlaw.com>]
Sent: Thursday, March 26, 2015 12:32 PM
To: Lance Holloway
Cc: Andy Waldera; Daren Coon; Dupuis, Tom
Subject: Draft TP TMDL Addendum

Lance,

This email documents comments I made during the March 19, 2015 Technical Advisory Committee meeting regarding the draft TP TMDL Addendum.

DEQ's responses to the comments submitted by myself and Andy Waldera on February 18, 2015 are inadequate and unsatisfactory.

DEQ provided no response to our first comment regarding the vague and confusing characterization of the purpose of the draft TP TMDL as an addendum.

Thank you for your comment. The "mother document" for the Lower Boise HUC is the original TMDL for sediment and E. coli. As is customary at DEQ, any new documents for the same HUC are called addendums. Because the Lower Boise contains its own 303(d) listings that have not previously received TMDLs, in this case in particular, for nutrients, the TP and chlorophyll-a targets and load reductions are documented in an addendum. It meets both the target allocation from SR-HC and for the listed Lower Boise reaches, and as such, we call it an addendum to the Lower Boise TMDLs. This has been our practice for a decade.

More importantly, DEQ has failed to address the substance of our second comment regarding the lack of evidence of phosphorus-caused impairment of Mason Creek and Sand Hollow Creek, and our third and fourth comments regarding the lack of evidence of TP-caused impairment of cold water aquatic life in the lower Boise River as a basis for a TP TMDL for the Lower Boise River. DEQ's responses simply reassert the assertions of the draft TP TMDL with which we take issue, adding only that TP-caused impairment of uses in Mason Creek and Sand Hollow Creek could potentially occur if substrate and water column conditions are substantially changed over time, and relying to a few oblique literature references (which we have disputed) to suggest that aquatic life uses could potentially be impaired by certain concentrations benthic chlorophyll-a.

As explained in our comments, these assertions do not "demonstrate that [TP] is causing or contributing to a violation of a water quality standard" as required by Idaho Code section 36-3911(6) in order to set an instream target for a TMDL.

Thank you for your comment. DEQ appreciates your concerns. Sand Hollow Creek and Mason Creek have been removed from this TMDL addendum. However, Mason Creek, along with all tributaries to the Lower Boise River (LBR), will maintain an allocation at the mouth of 0.07 mg/L year-around. Sand Hollow Creek, because it is a tributary to the Snake River and not the LBR, will have an allocation of 0.07 mg/L May-Sept.

It is DEQ's position that the biological impairment we see in the Lower Boise River can be attributed, in part, to elevated nutrients. We believe the water quality data, including data regarding the level of nutrients and algae in the river, the support status of aquatic life and literature and studies cited in the

TMDL and in the material presented to the TAC and WAG and put in DEQ's website (<http://www.deq.idaho.gov/regional-offices-issues/boise/basin-watershed-advisory-groups/lower-boise-river-wag.aspx>), establish the link between excess nutrients, impairment of aquatic life and the use of the Chl-a target in the TMDL. As such, a TMDL is needed to reduce nutrients and other contributing pollutants and the target selected and allocations in the TMDL are appropriate to achieve full support of aquatic life. A Separate addendum to the LBR TMDL will be completed to address the tributaries to the LBR that are impaired for cause unknown—nutrients suspected. Additionally, a separate TMDL will be completed to address the cause unknown—nutrients suspected impairment in Sand Hollow Creek.

Additionally, while I appreciate the modifications that were made to the reasonable assurance section of the draft TP TMDL, it should also be made clear that there has been no determination that it is economically feasible to reduce TP concentrations in drain/tributary flows into the Boise River to .07 mg/l, and that there has been no discussion of potentially adverse, unintended hydrologic and ecological consequences of attempting to do so.

A large and as yet undefined percentage of drain flows to the Boise River are ground water. There has been no analysis of the methods, cost or responsibility for reducing ground water phosphorus concentrations to the levels that are proposed by the draft TP TMDL. Prior analysis indicates that implementing BMPs to reduce phosphorus in surface discharges to the levels proposed is often cost-prohibitive and will take a long time to fully implement, even if water quality trading becomes a reality in the future. Additionally, Dave Shaw's analysis (attached) indicates that substantially reducing phosphorus inputs by substantially reducing surface and ground water return flows may reduce drain/tributary flows to the point that water supply, recreation, aquatic and aesthetic uses may be adversely impacted.

Thank you for your comment. In the development of this TMDL every effort was made to obtain the best available information pertinent to the loading analysis, while still considering the time constraints and limited resources for collecting additional data. DEQ recognizes that additional monitoring and data gathering will be required to better characterize the tributary/groundwater loading to the lower Boise River. Additional data gathering will be an integral part of the implementation of this TMDL and will be used for future refinements of loads and implementation schedules.

The load allocations defined in the TMDL are merely the amounts of pollutants that can be discharged from each source or category of user and still ensure that the total pollutant load does not exceed the loading capacity. The TMDL includes Implementation Strategies that generally outline an approach to TMDL implementation. DEQ also recognizes the 2008 Lower Boise Implementation Plan, but believes this work needs to be expanded and revised. A more detailed implementation plan will be developed, working with the designated agencies. Economic and social impacts will be analyzed on a case by case basis during the implementation planning phase as more information becomes available.

Although DEQ recognizes that groundwater needs better characterization and that implementation could take years, DEQ also recognizes that without groundwater load reductions, the point source load allocations would endure the majority of the reductions needed to meet the set targets, thus making the technological upgrades for point sources economically infeasible.

Dan

Daniel V. Steenson

Attorney at Law

SAWTOOTH LAW OFFICES, PLLC

1101 W. River St., Ste. 110

P.O. Box 7985

Boise, ID 83707

Direct: (208) 629-7435

Office: (208) 629-7447

Fax: (208) 629-7559

dan@sawtoothlaw.com

