



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 10**

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OFFICE OF  
WATER AND WATERSHEDS

January 10, 2017

Mr. Barry N. Burnell  
Administrator, Water Quality Division  
Idaho Department of Environmental Quality  
1410 North Hilton  
Boise, Idaho 83706-1255

Re: Mid-Snake (Upper Snake Rock Phosphorus TMDL)

Dear Mr. Burnell:

I am writing with regard to the Mid-Snake (Upper Snake Rock) Total Maximum Daily Load (TMDL) for phosphorus. As you know, we have had numerous discussions about the TMDL over the past few years and recently, at Idaho Department of Environmental Quality's (IDEQ's) invitation, the EPA was scheduled to attend the Mid-Snake Watershed Advisory Group (WAG) meeting in Twin Falls on January 5<sup>th</sup> to present the concerns that EPA has identified with the TMDL. Unfortunately, due to severe winter storms, that meeting was cancelled. As you know, this was the third attempt to meet with the WAG membership to present our concerns and discuss this important water quality challenge with the stake holders. The EPA remains available and interested in talking with the WAG. Please let us know when you would like to reschedule.

In the meantime, I want to take this opportunity to summarize the EPA's concerns with the TMDL and why we believe it needs to be revised. While it is true that a lot of good work has been done in the watershed to reduce phosphorus discharges into the Snake River by both nonpoint sources and point source dischargers, the data shows that the phosphorus target of 0.075 mg/L is not being met and the macrophyte problem in the river persists. Unfortunately, the data shows that the phosphorus TMDL is flawed in that the flow assumption used to set the allowable loadings for point and nonpoint sources is much higher than the current flows in the river.

As you know, the purpose of a TMDL is to establish the allowable loadings of a pollutant at a level that ensures water quality standards are met. TMDLs are written to achieve water quality standards which is synonymous with protecting water quality. In this instance, because of the fundamental flaw in the flow assumption used, the allocations for phosphorus in the TMDL significantly exceed the actual capacity of the river to absorb them and we cannot rely on the existing TMDL to meet water quality standards.

This is problematic. The EPA believes that the TMDL needs to be revised and the flaw in the flow assumption corrected.

There are a number of expired and administratively extended permits in the Mid-Snake River that the EPA has been working to reissue. As a general matter, when there is a TMDL, the EPA is guided by that TMDL when it reissues permits or issues new permits. In this instance due to the flaws in the existing TMDL, we are not able to reissue permits based on the TMDL wasteload allocations (WLAs) because

we cannot assure that water quality standards will be met. This leaves us with the need to base the permits on end of pipe water quality based effluent limits which for this waterbody would be a total phosphorus concentration of 0.075 mg/l. Permits based on end of pipe limits will have far less flexibility and will likely be more stringent than permits based on a corrected TMDL.

IDEQ has expressed an interest to revise the TMDL and you have provided us with a draft schedule for doing so. We hope that you can begin the revision as soon as possible. You have also mentioned that you may want to consider withdrawing the existing TMDL. If IDEQ requests a withdrawal of EPA's approval of the TMDL and a re-listing of the Mid-Snake as impaired and in need of a TMDL, we will certainly consider it. However, we believe you can proceed to revise the TMDL whether it is withdrawn or not.

In the meantime, while we would prefer to base permits on a corrected TMDL, we will continue to work on the expired and administratively extended permits. The permits we are working on are challenging. A revised TMDL could reduce the challenges by providing more tailored limits and greater flexibility for the permittees, including consideration of seasonal variation and an allowance for water quality trading. If a TMDL is undertaken, the EPA will assess progress towards its completion as we continue to work on the expired and administratively extended permits in 2017/2018. Whether we would issue the permits in final form will largely depend on the progress that is being made on a revised TMDL, its technical/scientific soundness, as well as facility-specific factors.

In the event permits are issued before a new TMDL is revised and in place, we want to emphasize that the permitting authority can modify the permits to conform with a new TMDL once it is approved. Additionally, we expect that the water quality based permits we are currently working on will include compliance schedules. While compliance schedules cannot solely be structured to wait for the completion of a TMDL, the reality is that a longer compliance schedule, for example 10 years, would enable IDEQ to revise the TMDL and allow the permitting authority to modify permits far in advance of when the final permit effluent limits will go into effect.

In closing and in summary, the EPA strongly urges the initiation of a new TMDL that corrects the errors identified in the existing TMDL; the EPA plans to continue to work on the permits in 2017 and 2018; the EPA will assess progress being made in completing a new TMDL before it issues permits; and any permits issued before the completion of the new TMDL can be modified to conform with the new TMDL before final effluent limits go into effect.

Please let me know if you have any questions, I can be reached at (206) 553-1906. We are happy to come to present this information to the Mid-Snake WAG as soon as the meeting can be rescheduled. We are also available for further discussion about plans for a revised TMDL.

Sincerely,



Christine Psyk  
Deputy Office Director  
Office of Water and Watersheds

cc: Mr. Mike Trabert, Chairman Mid-Snake Watershed Advisory Group