From: "Havard, James" <Havard.James@epa.gov>
To: "Wall, Tom" <Wall.Tom@epa.gov>
Date: 5/17/2018 3:55:58 PM
Subject: FW: Deschutes Update

Confidential

Tom – FYI, John reported to me an updated decision about the RA briefing after talking to Dan: I will sit in for OW (Chris L can come to my office). Senior OW folks will not attend the RA briefing next week. Thanks! Jim

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From: Goodin, John
Sent: Thursday, May 17, 2018 6:42 PM
To: Ross, David P ; Forsgren, Lee
Cc: Campbell, Ann ; Wall, Tom ; Havard, James ; Connors, Sandra
Subject: Deschutes Update

DELIBERATIVE DRAFT

Dave et al.— the following is some updated info on the Deschutes TMDLs and a recommendation on how to engage you for input prior to Region 10 action on the TMDLs by our June 29 deadline.

The court denied our recent motion to stay the case until June 29. OGC is considering options while the Region continues to work on the TMDLs. You previously indicated that you supported our general direction in the case, however, you were interested in the RA's position on potential TMDL disapprovals well before the actual decision is made. Chris H. will be briefed Monday and we'll get this feedback to you immediately thereafter. I also spoke to the R10 Water Division Director and indicated that you'd likely also be interested in the rationale of what TMDLs were candidates for approval, for approval with minor rework, and for disapproval. We'll work with the Region to provide this information in an efficient format. With the RA's views and background info in hand next week, we would be available to brief you or provide the info to you for your review. Recommend that you could then have a call with Chris before the end of May.

FOIA exemption (b)(5)
[redacted]

Let me know if we can do anything further.
Thanks,
John

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Background
The Deschutes River, Percival Creek, and Budd Inlet Tributaries (Phase 1) TMDL study area is located in south Puget in Thurston and Lewis Counties, Washington. The Washington Department of Ecology submitted the final Phase 1 Deschutes TMDL to EPA for approval on December 17, 2015. That document addresses a total of 73 waterbody-pollutant combinations, involving temperature, dissolved oxygen [DO], pH, fecal coliform, and fine sediment impairments.

Litigation
On September 6, 2017, Northwest Environmental Advocates (NWEA) filed a complaint against EPA alleging violation of section 303(d)(2) of the Clean Water Act (CWA) for failure to act on the Deschutes River TMDL submission. Section 303(d)(2) requires EPA to either approve or disapprove a state's TMDL submission within 30 days of submittal.

As part of the ongoing litigation, EPA has stated in briefs that we will act on the Deschutes TMDL by June 29, 2018. The judge has denied EPA's motion to stay the case until June 29, but has not yet ruled on the plaintiff's motion for

summary judgment, and recommended a consent decree or stipulated entry of judgment to ensure EPA action on the TMDL. OGC is reviewing options while the Region continues work on the TMDL decision.

Current Status

The CWA requires EPA to either approve or disapprove state-submitted TMDLs, and if we disapprove, we are required to develop a replacement TMDL within 30 days. FOIA exemption (b)(5)