From: "Curtin, James" <curtin.james@epa.gov>
To: "Neugeboren, Steven" <Neugeboren.Steven@epa.gov>
"Havard, James" <Havard.James@epa.gov>
"Schroer, Lee" <schroer.lee@epa.gov>
"Brown, Leah" <Brown.Leah@epa.gov>
Date: 6/27/2018 9:19:05 AM
Subject: RE: Deschutes Bullets for David F

Here is a clean, revised draft of the two-page issues paper OGC is developing for David F. I have done my best to address all comments, which do make this a far better document. I've left in the significant marginal comments for your reference.

If folks can give this one last look – and add any last bits - I'll then put it in final and send down to David.

Thanks again.

Jim

Jim Curtin

USEPA Office of General Counsel

Water Law Office

202-564-5482

William Jefferson Clinton North Rm. 7451

From: Neugeboren, Steven
Sent: Wednesday, June 27, 2018 11:32 AM
To: Havard, James <Havard.James@epa.gov>; Schroer, Lee <schroer.lee@epa.gov>; Brown, Leah <Brown.Leah@epa.gov>; Curtin, James <curtin.james@epa.gov>
Cc: Stern, Allyn <Stern.Allyn@epa.gov>; Steiner-Riley, Cara <Steiner-Riley.Cara@epa.gov>; Hodgkiss, Miranda <Hodgkiss.Miranda@epa.gov>; Croxton, David <Croxton.David@epa.gov>; Goodin, John <Goodin.John@epa.gov>
Subject: RE: Deschutes Bullets for David F

My comments attached. I highlighted in yellow to make it easy. John et al (b) (5) ACP

(b) (5) - ACP

Steve Neugeboren

Associate General Counsel for Water

U.S. EPA

1200 Pennsylvania Ave., NW

Washington, DC 20460

202 (564-5488)

From: Havard, James
Sent: Wednesday, June 27, 2018 10:49 AM
To: Schroer, Lee <schroer.lee@epa.gov <mailto:schroer.lee@epa.gov> >; Brown, Leah <Brown.Leah@epa.gov <mailto:Brown.Leah@epa.gov> >; Curtin, James <curtin.james@epa.gov <mailto:curtin.james@epa.gov> >; Neugeboren, Steven <Neugeboren.Steven@epa.gov <mailto:Neugeboren.Steven@epa.gov> >
Cc: Stern, Allyn <Stern.Allyn@epa.gov <mailto:Stern.Allyn@epa.gov> >; Steiner-Riley, Cara <Steiner-Riley.Cara@epa.gov <mailto:Steiner-Riley.Cara@epa.gov> >; Hodgkiss, Miranda <Hodgkiss.Miranda@epa.gov <mailto:Hodgkiss.Miranda@epa.gov> >; Croxton, David <Croxton.David@epa.gov <mailto:Croxton.David@epa.gov> >; Goodin, John <Goodin.John@epa.gov <mailto:Goodin.John@epa.gov> >
Subject: RE: Deschutes Bullets for David F
Importance: High

Here are comments from the WB. Looping in John Goodin as well in case he will review as well.

Thanks

Jim

From: Schroer, Lee
Sent: Wednesday, June 27, 2018 8:49 AM
To: Brown, Leah <Brown.Leah@epa.gov <mailto:Brown.Leah@epa.gov> >; Curtin, James <curtin.james@epa.gov <mailto:curtin.james@epa.gov> >; Neugeboren, Steven <Neugeboren.Steven@epa.gov <mailto:Neugeboren.Steven@epa.gov> >; Havard, James <Havard.James@epa.gov <mailto:Havard.James@epa.gov> >
Cc: Stern, Allyn <Stern.Allyn@epa.gov <mailto:Stern.Allyn@epa.gov> >; Steiner-Riley, Cara <Steiner-Riley.Cara@epa.gov <mailto:Steiner-Riley.Cara@epa.gov> >; Hodgkiss, Miranda <Hodgkiss.Miranda@epa.gov <mailto:Hodgkiss.Miranda@epa.gov> >; Croxton, David <Croxton.David@epa.gov

<mailto:Croxton.David@epa.gov> >
Subject: RE: Deschutes Bullets for David F

Jim,

I added some comments on Leah's version.

Lee C. Schroer

Office of General Counsel (Mail Code 2355A)

Room 7518C William Jefferson Clinton Bldg North

Environmental Protection Agency

1200 Pennsylvania Avenue, N.W.

Washington, D.C. 20460

Tel: 202-564-5476

From: Brown, Leah
Sent: Tuesday, June 26, 2018 8:41 PM
To: Curtin, James <curtin.james@epa.gov <mailto:curtin.james@epa.gov> >; Neugeboren, Steven <Neugeboren.Steven@epa.gov <mailto:Neugeboren.Steven@epa.gov> >; Schroer, Lee <schroer.lee@epa.gov <mailto:schroer.lee@epa.gov> >; Havard, James <Havard.James@epa.gov <mailto:Havard.James@epa.gov> >
Cc: Stern, Allyn <Stern.Allyn@epa.gov <mailto:Stern.Allyn@epa.gov> >; Steiner-Riley, Cara <Steiner-Riley.Cara@epa.gov <mailto:Steiner-Riley.Cara@epa.gov> >; Hodgkiss, Miranda <Hodgkiss.Miranda@epa.gov <mailto:Hodgkiss.Miranda@epa.gov> >; Croxton, David <Croxton.David@epa.gov <mailto:Croxton.David@epa.gov> >
Subject: RE: Deschutes Bullets for David F

Thanks, Jim. My comments are attached. (b) (5) ACP

Leah Brown

Assistant Regional Counsel

(206) 553-8694

brown.leah@epa.gov <mailto:brown.leah@epa.gov>

From: Curtin, James
Sent: Tuesday, June 26, 2018 2:50 PM
To: Neugeboren, Steven <Neugeboren.Steven@epa.gov <mailto:Neugeboren.Steven@epa.gov> >; Schroer, Lee <schroer.lee@epa.gov <mailto:schroer.lee@epa.gov> >; Havard, James <Havard.James@epa.gov <mailto:Havard.James@epa.gov> >; Brown, Leah <Brown.Leah@epa.gov <mailto:Brown.Leah@epa.gov> >
Subject: Deschutes Bullets for David F

David F has asked me to prepare some bullets discussing (b)(5) attorney-client the proposed Deschutes decision. Here's a draft. If you get comments back to me by 10am Wednesday morning, I can get this to David by noon.

Thanks.

Jim

Jim Curtin

USEPA Office of General Counsel

Water Law Office

202-564-5482

William Jefferson Clinton North Rm. 7451

Deschutes TMDL Decision Document: Legal and Programmatic Issues

This paper identifies and discusses two legal and programmatic issues presented by Region 10's proposed Deschutes Watershed TMDL decision. EPA is under court order to "complete its action" by June 29, 2018, on the State of Washington's 73 TMDLs, submitted in 2015 and amended in 2017, for bacteria, temperature, DO, pH and fine sediment.

Region 10 and ORC have coordinated closely with OWOW and staff in OGC during the Deschutes TMDL decision process and the drafting of all supporting documents. Additionally, Region 10 has been closely coordinating with Washington Department of Ecology ("Ecology"). Ecology is aware of EPA's proposed decision, and Region 10 staff met with Ecology staff last week to discuss the potential replacement TMDLs. R10's proposed decision is as follows:

(b) (5) - ACP

- **Approve 26 TMDLs** for temperature.
- **Disapprove 14 TMDLs** for bacteria because Washington revised their TMDL calculations after submittal w/o providing additional public notice as required by 40 CFR 130.7(c)(1)(ii). R10 found that these TMDLs were otherwise approvable as a technical matter. Ecology is preparing to re-notice these TMDLs soon after EPA's action.
- **Disapprove 23 TMDLs** for temperature, bacteria, DO, pH and fine sediment on a variety of grounds (some in combination). These include (1) TMDL submission lacks required elements, e.g., loading capacity calculations, wasteload allocations and load allocations (130.2; 130.7); (2) TMDL fails to implement Washington's applicable narrative WQS requiring protection of downstream criteria; and (3) the TMDL lacks a clear demonstration showing that the TMDL target is set at a level to implement applicable WQS.
- **Take no action on 10 TMDLs** for bacteria because the waters have been removed from Washington's 303(d) list as no longer impaired.

(b) (5) ACP

(b) (5) - ACP

(b) (5) - ACP