**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**
**REGION 10**
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OFFICE OF
WATER AND WATERSHEDS

JUN 29 2018

Ms. Heather Bartlett
Water Quality Program Manager
Washington Department of Ecology
PO Box 47600
Olympia, Washington 98504-7600

Re: Final EPA Action on the *Deschutes River, Percival Creek, and Budd Inlet Tributaries Multi-parameter Total Maximum Daily Load*

Dear Ms. Bartlett:

The U.S. Environmental Protection Agency has completed its Clean Water Act ("CWA") review of the *Deschutes River, Percival Creek, and Budd Inlet Tributaries Multi-parameter Total Maximum Daily Load* ("Deschutes TMDL") that the Washington Department of Ecology ("Ecology") submitted on December 17, 2015. The Deschutes TMDL addresses impairments for temperature, dissolved oxygen ("DO"), pH, fecal coliform bacteria, and fine sediment in segments of several waterbodies, including the Deschutes River and its tributaries, and tributaries to Budd Inlet. The number of impairments and waterbody segments totals 73 unique waterbody-pollutant pairs (i.e., 73 individual TMDLs). The EPA's review also includes Ecology's July 17, 2017, letter to the EPA ("2017 submittal"), which supplemented the 2015 TMDL submittal by providing new calculations for bacteria and clarifications for temperature. The EPA's final action on the TMDL is described in this letter. A summary table of each waterbody-pollutant pair, as well as the EPA's final action on each one, is included in the enclosure.

The EPA is approving 26 of the submitted TMDLs for temperature. These TMDLs meet the statutory and regulatory requirements found in section 303(d) of the CWA and the EPA's implementing regulations at 40 C.F.R. Part 130. The EPA's review indicates that these allocations have been established at levels that, when fully implemented, will lead to the attainment of applicable water quality standards. Therefore, Ecology does not need to include these waters on the next 303(d) list of impaired waters for the applicable parameter.

The EPA finds that 14 of the bacteria TMDLs are established at levels that will attain applicable water quality standards. However, these TMDLs are based in part on new calculations provided in the 2017 submittal, which have not yet undergone public review as required by 40 C.F.R. § 130.7(c)(1)(ii). The EPA is therefore disapproving these bacteria TMDLs because they require additional public review.

The EPA is disapproving 23 additional TMDLs. These include TMDLs developed for temperature, DO, pH, fine sediment, and bacteria. According to our review, these TMDLs fail to meet the statutory and regulatory requirements found in section 303(d) of the CWA and the EPA's implementing regulations. The primary deficiencies are summarized as follows:

- <u>Incomplete TMDL submittals</u>: Some waterbody-pollutant pairs lack critical TMDL components (e.g., loading capacity, wasteload allocations, and load allocations), as required by 40 C.F.R. §§ 130.2 and 130.7.

- Downstream uses not protected: Washington's water quality standards at WAC 173-201A-260(3)(b-d) require that downstream uses be protected. Some waterbody-pollutant pair TMDL calculations allow pollutant loadings that are not protective of downstream waters. Thus, they are not consistent with requirements at 40 C.F.R. § 130.7(c)(1) that TMDLs be established at levels necessary to attain and maintain the applicable water quality standards.
- TMDL target not protective of water quality standards: Some waterbody-pollutant pair TMDL calculations do not provide a clear linkage analysis to demonstrate that the water quality target chosen to develop the loading capacity is protective of state water quality standards. Thus, the EPA is not able to determine whether the TMDLs are consistent with requirements at 40 C.F.R. § 130.7(c)(1) that TMDLs be established at levels necessary to attain and maintain the applicable water quality standards.

Finally, the EPA is not taking action on ten TMDLs submitted for bacteria because they were prepared for ten segments that no longer require bacteria TMDLs. These segments, previously identified as impaired for bacteria on the EPA-approved 2010 303(d) list, were included in the 2015 TMDL submittal. Following Ecology's submission of the Deschutes TMDL in 2015, the EPA approved the delisting of these ten segments based on Ecology's revised Integrated Report. These delistings were included in the EPA's approval of the 2012 303(d) list on July 22, 2016. Placement of the ten segments in Categories 1 and 2 of the Integrated Report indicates they are no longer impaired for bacteria and, thus, no longer require a TMDL. Therefore, the EPA has determined it is not required to approve or disapprove these bacteria TMDLs.

In summary, the EPA is taking the following actions on the Deschutes TMDL:

- Approval of 26 TMDLs for temperature.
- Disapproval of 14 TMDLs for bacteria (approvable upon completion of public participation process).
- Disapproval of 23 TMDLs for temperature, DO, pH, fine sediment, and bacteria.

The EPA values our working relationship with Ecology, and we appreciate the continued cooperation offered by the State as we work towards the common goal of addressing impaired waters in the State of Washington. By the EPA's final action, the approved TMDLs are now incorporated into the State's Water Quality Management Plan under section 303(e) of the CWA.

The EPA is committed to completing the work necessary to replace the remaining TMDLs for temperature, DO, pH, fine sediment, and bacteria, which the Agency is disapproving through this action. The replacement TMDLs will require technically complex modeling, and the TMDL development process will involve stakeholder review and input. The EPA intends to complete the revised TMDLs as expeditiously as possible. Additionally, the EPA is aware of a concurrent, high-priority effort to establish a fish hatchery which would likely discharge to the Deschutes River. We plan to work with Ecology to ensure the replacement TMDLs consider the needs of the hatchery, including allocations and timing.



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If you have any comments or questions on this Agency action, please feel free to call me at (206) 553-1855, or you have your staff call Miranda Hodgkiss of my staff at (206) 553-0692.

Sincerely,

for

Daniel D. Opalski, Director
Office of Water and Watersheds

Enclosure

cc: Mr. Andrew Kolosseus, Ecology (via email)
Mr. Rich Doenges, Ecology (via email)



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Enclosure: Summary of Final EPA Action on Deschutes TMDL

**Temperature Waterbody-pollutant Pairs**

| Waterbody | 1996 Listing ID | 2010 Listing ID[1] | Final Action |
|---|---|---|---|
| Deschutes River | WA-13-1010 | 6576 | Approve |
| | | 7590 | Approve |
| | | 48710 | Approve |
| | | 48711 | Approve |
| | | 48712 | Approve |
| | | 48713 | Approve |
| | | 48714 | Approve |
| | | 48715 | Approve |
| | | 48717 | Approve |
| | | 48718 | Approve |
| | | 9439 | Approve |
| | WA-13-1020 | 7588 | Approve |
| | | 7592 | Approve |
| | | 7593 | Approve |
| | | 7595 | Approve |
| | | 48720 | Approve |
| | | 48721 | Approve |
| | | 48724 | Approve |
| | | 48726 | Approve |
| Huckleberry Creek | WA-13-1024 | 3757 | Disapprove |
| Reichel Creek | WA-13-1022 | 48666 | Disapprove |
| Tempo Lake Outlet | --- | 48696 | Disapprove |
| Ayer (Elwanger) Creek | WA-13-1015 | (73229) | Disapprove |
| Unnamed Spring to Deschutes River | --- | 48923 | Disapprove |
| Black Lake Ditch | --- | 48733 | Approve |
| | | 48734 | Approve |
| | | 48735 | Approve |
| Percival Creek | WA-13-1012 | 42321 | Approve |
| | | 48249 | Approve |
| | | 48727 | Approve |
| | | 48729 | Approve |

**pH Waterbody-pollutant Pairs**

| Waterbody | 1996 Listing ID | 2010 Listing ID[1] | Decision |
|---|---|---|---|
| Adams Creek | --- | 50965 | Disapprove |
| Ayer (Elwanger) Creek | WA-13-1015 | 5850 | Disapprove |
| Black Lake Ditch | --- | 50990 | Disapprove |

**Fine Sediment Waterbody-pollutant Pair**

| Waterbody | 1996 Listing ID | 2010 Listing ID[1] | Decision |
|---|---|---|---|
| Deschutes River | WA-13-1020 | 6232 | Disapprove |

[1] Listing IDs correspond to the 2010 303(d) list, except those in parentheses, which are from the 2012 303(d) list.



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**DO Waterbody-pollutant Pairs**

| Waterbody | 1996 Listing ID | 2010 Listing ID[1] | Decision |
|---|---|---|---|
| Ayer (Elwanger) Creek | WA-13-1015 | 5851 | Disapprove |
| Deschutes River | WA-13-1010 | 10894 | Disapprove |
| | | 47753 | Disapprove |
| | | 47754 | Disapprove |
| | WA-13-1020 | 47756 | Disapprove |
| Lake Lawrence Creek | --- | 47696 | Disapprove |
| Reichel Creek | WA-13-1022 | 47714 | Disapprove |
| Black Lake Ditch | --- | 47761 | Disapprove |
| | | 47762 | Disapprove |
| Percival Creek | WA-13-1012 | 48085 | Disapprove |
| | | 48086 | Disapprove |

**Bacteria Waterbody-pollutant Pairs**

| Waterbody | 1996 Listing ID | 2010 Listing ID[1] | Decision |
|---|---|---|---|
| Adams Creek | --- | 45462 | Disapprove |
| | | 45695 | Disapprove |
| Butler Creek | --- | 45471 | No action |
| Butler Creek, SW F | --- | 45342 | No action |
| Ellis Creek | WA-13-0020 | 45480 | Disapprove |
| Indian Creek | WA-13-1300 | 3758 | Disapprove |
| | | 45213 | Disapprove |
| | | 46410 | Disapprove |
| | | (74218) | Disapprove |
| Mission Creek | WA-13-1380 | 45212 | Disapprove |
| | | 46102 | Disapprove |
| Moxlie Creek | WA-13-1350 | 3759 | Disapprove |
| | | 3761 | Disapprove |
| | | 45252 | Disapprove |
| | | 46432 | Disapprove |
| Schneider Creek | --- | 45559 | Disapprove |
| Ayer (Elwanger) Creek | WA-13-1015 | 5849 | No action |
| Chambers Creek | WA-13-1014 | 45560 | No action |
| Deschutes River | WA-13-1010 | 46499 | No action |
| | | 46500 | No action |
| | | 9881 | No action |
| | WA-13-1020 | 46210 | No action |
| Reichel Creek | WA-13-1022 | 3763 | Disapprove |
| | | 45566 | Disapprove |
| Spurgeon Creek | WA-13-1016 | 46061 | Disapprove |
| Percival Creek | WA-13-1012 | 46103 | No action |
| | | 46108 | No action |