

Appendices

- Appendix A - An Endorsement of Shared Principals and Common Goals for the Rathdrum Prairie” (Kootenai County Resolution No. 2008-34, April 2008)
- Appendix B - September 26, 2008 - Stakeholder’s Meeting Public Announcement - EPA’s Region 10 Office of Water and Watersheds

Appendix A

**An Endorsement of Shared Principals and
Common Goals for the Rathdrum Prairie”
(Kootenai County Resolution No. 2008-34,
April 2008)**

RESOLUTION NO. 2008-34

**SHARED PRINCIPLES AND COMMON GOALS
FOR THE RATHDRUM PRAIRIE**

WHEREAS, Kootenai County and the cities of Coeur d'Alene, Dalton Gardens, Hauser, Hayden, Post Falls and Rathdrum are mutually facing the pressures and benefits of shared growth on the Rathdrum Prairie; and

WHEREAS, these jurisdictions share governmental responsibility for management and development of public services and facilities on the Rathdrum Prairie; and

WHEREAS, the jurisdictions recognize the need to collaboratively and cooperatively plan for future land use and infrastructure in support of that future land use on the Prairie; and

WHEREAS, a coordinated Prairie planning effort can be attained by cooperation between affected agencies and service providers, including but not limited to county agencies, city governments, fire districts, highway districts, and neighboring counties; and

WHEREAS, development of private lands on the Rathdrum Prairie will be subject to the regulatory jurisdiction of one or more of the public agencies referenced above; and

WHEREAS, the jurisdictions recognize that need to protect the common water resource and to integrate means of transportation and provisions of other public services in developing areas on the Prairie;

NOW THEREFORE, BE IT HEREBY RESOLVED that the Kootenai County Board of Commissioners hereby adopts the attached agreement, entitled "An Endorsement of Shared Principles and Common Goals."

BE IT FURTHER RESOLVED that the Chairman of the Kootenai County Board of Commissioners is hereby authorized to sign the aforesaid agreement.

Upon a motion made by Commissioner Piazza, seconded by Commissioner Tondee, that the foregoing be enacted as a Resolution of Kootenai County, the following roll call was recorded:

Commissioner Tondee: Aye
Commissioner Piazza: Aye
Chairman Currie: Aye

**RESOLUTION RE: SHARED PRINCIPLES AND COMMON GOALS
FOR THE RATHDRUM PRAIRIE - 1**

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Upon said roll call, the text of the foregoing was duly enacted as a Resolution of the Board of Commissioners of Kootenai County, Idaho, on the _____ day of April, 2008.

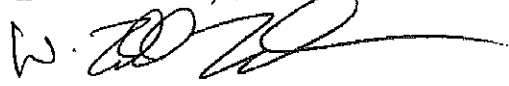
**KOOTENAI COUNTY
BOARD OF COMMISSIONERS**




Elmer R. Currie, Chairman

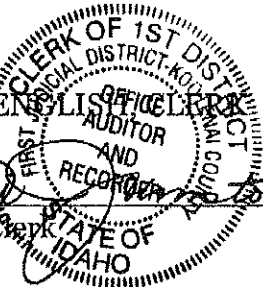


Richard A. Piazza, Commissioner



W. Todd Tondee, Commissioner

ATTEST:
DANIEL J. ENGLISH
By: 
Deputy Clerk



C: Building and Planning, Administrative Services, City of Coeur d'Alene, City of Post Falls, City of Hayden, City of Rathdrum, City of Dalton Gardens, City of Hauser

4-29-08
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AN ENDORSEMENT OF SHARED PRINCIPLES AND COMMON GOALS

Whereas, Kootenai County and the cities of Coeur d'Alene, Dalton Gardens, Hauser, Hayden, Post Falls and Rathdrum are mutually facing the pressures and benefits of shared growth on the Rathdrum Prairie; and

Whereas, the jurisdictions share governmental responsibility for management and development of public services and facilities on the Rathdrum Prairie; and

Whereas, the jurisdictions recognize the need to collaboratively and cooperatively plan for future land use and infrastructure in support of that future land use on the Prairie; and

Whereas, a coordinated prairie planning effort can be attained by cooperation between affected agencies and service providers, including but not limited to county agencies, city governments, fire districts, highway districts, and neighboring counties; and

Whereas, development of private lands on the Rathdrum Prairie will be subject to the regulatory jurisdiction of one or more of the public agencies referenced above; and

Whereas, the jurisdictions recognize that need to protect the common water resource and to integrate means of transportation and provisions of other public services in developing areas on the prairie; and

Now, therefore, be it known that as the executives elected to guide our respective local units of government, we endorse a common effort to chart a meaningful intergovernmental plan and implementation strategy for the Rathdrum Prairie.


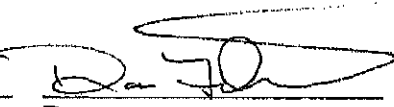
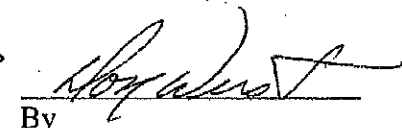
Further, we collectively embrace the above stated principles, and endorse the following common goals to serve as guidance in future land use planning efforts on the Rathdrum Prairie:


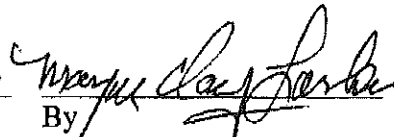
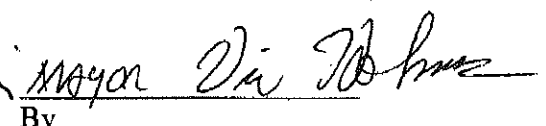
- To collaboratively and cooperatively plan for infrastructure in support of future land use on the Prairie, encourage coordinated planning efforts between affected agencies and service providers, and provide adequate levels of public services in an integrated, efficient and effective manner;
- To establish common principles for land use on the Prairie;
- To protect our shared water resource, consider wildlife habitat in planning, and ensure open space is provided in balance with development; and
- To preserve the unique identity of each city as future development expands existing boundaries.


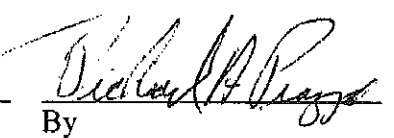

Additionally, we hereby direct staff to undertake the collaborative development of a framework for implementation, incorporating the shared principles and common goals to focus on definite issues and identify specific strategies, to be addressed through subsequent agreements with and between the respective jurisdictions. We request a progress report from our collective staff within one hundred twenty (120) days of the date of this concurrence.

Lastly, we intend to adopt an amended Coordinated Impact Agreements and any associated Memorandums of Understanding prior to January 1, 2009.

Endorsed this 25th day of April, 2008.

 By City of Coeur d'Alene Mayor Pro Tem	 By City of Dalton Gardens	 By City of Hauser
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 By City of Hayden	 By City of Post Falls	 By City of Rathdrum
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 By Kootenai County	 By Kootenai County	 By Kootenai County
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Appendix B

**September 26, 2008 - Stakeholder's Meeting
Public Announcement – EPA's Region 10
Office of Water and Watersheds**

Lake Spokane / Spokane River Water-quality improvement— What's next?

U.S. Environmental Protection Agency
Washington Department of Ecology
Idaho Department of Environmental Quality
September 26, 2008

AGENDA

10 a.m. Introduction—Facilitator Mark Masarik, EPA, will describe the purpose of the meeting and explain ground rules and agenda.

10:15

Christine Psyk, EPA

The basics of what has occurred, how the state's water-quality improvement plan (TMDL) is affected, and what the next steps are for setting new course.

Associate Director, Region 10, Prepared Statement

"immeasurable" impacts of Idaho permits estimated at 0.15 mg/l by PSU made WDOE "immeasurable" impact of 0.2 mg/l combined > 0.2 mg/l must get to 0.2 mg/l

(see copy)

10:35

Question and Answer Session

11:00

Dave Peeler, Ecology; John Tindall, Idaho DEQ; Christine Psyk, EPA

Next Steps—Working together to examine available options.

11:30

Question and Answer Session

12:00

Adjourn main meeting

Key speakers and media gather in Conference Room "A" for media only (check session).

Contacts



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Washington Department of Ecology

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**Statement made by Christine Psyk, Associate Director, EPA Region 10,
Office of Water and Watersheds
Spokane River Water Quality—Stakeholder Meeting
September 26, 2008**

Greetings, Thank you for coming

We have a prepared statement for you today, and we will offer copies to anyone who would like one.

Today we are meeting to talk about the current status of work by the states of Washington and Idaho, and EPA, on actions to improve water quality in the Spokane River. Before I do that however, I want to acknowledge the dedicated people at Ecology who have done such a great job of developing the Spokane River TMDL. Even though we are here to talk about a course change, the solid work they accomplished in producing the TMDL is to be commended. I also want to apologize to all those dedicated stakeholders who were poised to take action to clean up the phosphorus entering the river. I regret that EPA's decision to change course will result in Ecology and others having to once again revise the TMDL. I also regret that the course change will mean delay of implementing actions to reduce phosphorus.

Now to the task at hand. Many of you know that EPA has been heavily involved in the effort to improve water quality in the Spokane River, and, as you all know, we recently announced a significant change in course on the Idaho permits which then also affects the Washington TMDL. I will talk about why we decided to change course. But the purpose of this meeting is not only to talk about why EPA changed course but, more importantly, set the stage for moving forward. In fact, that is the primary goal of this meeting. To accomplish that goal, I believe it is necessary to tell you how and why EPA took the path it did originally and why we need to change course now.

First, it is safe to say that the Lake Spokane dissolved oxygen problem is serious and complex. I think it is also appropriate to state that we have a collective goal which is to come up with a set of actions that protects the recreational fishery in Lake Spokane from harm due to diminished oxygen levels. From a regulatory standpoint, the problem facing Lake Spokane is one of the most complex issues many of us have ever worked on. Before I outline what we tried to do to address the problem and remedy the dissolved oxygen sags in Lake Spokane, I want to first note that we know what causes the problem: the growing communities in the Spokane River watershed are discharging too much phosphorus and other oxygen demanding pollution into the river, and it is depleting the oxygen level in Lake Spokane and results in nuisance algae growth. This, coupled with the fact that the river becomes a lake, results in a system that has very little capacity to absorb oxygen depleting pollutants. This problem is going to get worse over time unless wastewater treatment plants dramatically improve treatment of wastewater and discharge a cleaner effluent into the river that has a lot less phosphorus in it than it does today. Likewise, the public and other entities in the area that collectively contribute the nonpoint

load of oxygen depleting pollutants need to use conservation practices that result in less phosphorus and higher oxygen levels in Lake Spokane.

The goals for water quality in Lake Spokane are set by the Washington state water quality standards, which were approved by EPA. The standard for dissolved oxygen in Lake Spokane and other lakes and reservoirs in Washington is very stringent. It requires oxygen levels almost indistinguishable from the natural condition. Nobody would argue against a goal that brings us almost to zero pollution. But to achieve an almost zero impact in a populated watershed like the Spokane is exceedingly difficult. You've all heard the question: "How clean is clean enough?" I am sure many people here today have that question on their minds.

Before I go any further, I want to note that not all the news about the effort to clean up the Spokane River is bad news, despite what you may have read in the newspaper. First, while there are many legal and policy debates concerning these efforts, the extensive scientific work has been generally accepted by all involved, agencies and stakeholders alike. The model developed by Portland State University and used in decision-making has undergone extensive, external peer review by water quality experts. There is no debate about the science behind the agency decisions on this project.

Another piece of good news is what we have learned about new phosphorus control technologies. We now know that the latest technologies can drastically reduce phosphorus to levels below what was previously believed to be technologically and economically feasible. The local communities have stepped up, studied the new treatment technologies, and are running pilot studies at their plants. The permits we were proposing in Idaho would have been among the toughest in the nation for phosphorus, six times lower than levels allowed in Chesapeake Bay. The Idaho communities had agreed to accept the challenge of those limits, and they should be commended for that. While agreement from dischargers on effluent limits is not a pre-condition for moving forward with permits, it is good when it happens because it reduces the risk of lawsuits which result in delays.

So what happened? Why the change? The newspaper headlines said that "EPA made a mistake." What was the mistake that they are referring to? I want to outline the reason for our original position on this project and the reason for the change to that position.

Four years ago, this process began with an effort by the state of Washington to develop a TMDL for Lake Spokane. We recognized immediately, on first reading the 2004 draft TMDL, that the standard for Lake Spokane was extremely stringent. Many questioned whether it was possible to meet.

The cities along the river reacted to the stringency of the TMDL by requesting that Ecology consider a change to the standard. Ecology was opposed to a standards change prior to a comprehensive attempt to meet the standard. Nevertheless, Ecology held extensive discussions with the stakeholder community about all aspects of the TMDL, including efforts to devise a pollution trading mechanism, the delta management concept,

to provide some flexibility for Washington sources over an implementation period of 20 years. At the time, the path forward for that draft TMDL was highly uncertain.

Meanwhile, our job at EPA was to re-issue three permits on the Idaho side of the border. Regulations require that NPDES permits for point sources that can affect water quality in a downstream state have effluent limits that comply with the downstream state's water quality standards. So, for the Idaho permits, this means that EPA has to write the permits to ensure that the effluent limits in the permits comply with both Idaho water quality standards and Washington water quality standards

In attempting to comply with those regulations, we had a critical decision to make about the Idaho permits. Do we delay their issuance an unknown length of time until the Washington TMDL is complete, or do we find a way to set limits independent of the TMDL? We chose to detach the Idaho permits from the TMDL and develop a set of permit limits that we believed would be protective of water quality in both Idaho and Washington. Lake Spokane was chosen as the point of compliance for both the Idaho permits and the Washington TMDL because it is the location in the watershed that is most sensitive to nutrients. So, while on different paths, both the Idaho permits and the Washington TMDL would be protecting the same most sensitive resource, Lake Spokane.

Why did we do this? Several reasons: First, we had a job to do, and it was and is to issue permits to the cities in Idaho. Second, our permits program was very unsure about the schedule of the TMDL, given the legitimate questions about whether it was possible to achieve the standard. Third, we came up with a set of limits that required installation of state-of-the-art technology. Fourth, they would be the lowest phosphorus limits in the country. Fifth, they would result in Idaho having no measureable effect on Lake Spokane dissolved oxygen; specifically, modeling showed the effect was approximately 0.15 mg/L. And sixth, remarkably, the three cities agreed to these limits.

EPA set effluent limits for the Idaho permits that are so low that the effect on dissolved oxygen in Lake Spokane would be too small to measure. Concurrently, this enabled Washington in their draft TMDL to allow pollution sources in the State of Washington to decrease dissolved oxygen concentrations by the amount allowed under Washington's water quality standard, which is 0.2 mg/L.

When EPA issued the Idaho permits for public comment, we received numerous comments that took issue with the approach we used to interpret Washington's water quality standard and the way we then set the effluents limits for the three point sources in Idaho. It was pointed out that we failed to fully take into account the cumulative contribution of both the Washington sources and the Idaho sources, as required by the revised Washington water quality standard. Taken together, the allocations for point sources and nonpoint sources in both states exceeded the .20 mg/L allowed by the standard.

While the impact was predicted by the model to be too small to measure, the limits we proposed for the Idaho permits did have a mathematical impact on the DO of the lake

based on the modeling. Again, that impact was around 0.15 mg/l (0.2 mg/l is considered immeasurable). We viewed that impact as being so small that Washington could consider it as virtually identical to natural background, which then allowed Ecology to develop its TMDL to reduce pollution in Washington and to give the 0.2 mg/l to the sources in Washington.

While we thought this was acceptable on policy grounds, our approach left the door open to criticism that Idaho's immeasurable impact of 0.15 mg/l, combined with an immeasurable impact from Washington sources of 0.20 mg/l, would result in a combined impact that would be measurable. Simple addition would estimate the impact at 0.35 mg/l, but I would note here that we have never run the model with all the limits for point and nonpoint sources to estimate that precise, combined impact. So we don't know the precise impact of the proposed Idaho permits and Washington TMDL, but clearly the number would be higher than 0.2 mg/l, and 0.2 mg/l is the allowable impact in Washington's standard.

We felt that our low phosphorus limits would satisfy the intent of the standard. For us, it met the test of "clean enough". For others, it did not meet that test and they mounted strong opposition on legal grounds during the public comment period.

Many people may think that comments they make to the government are not heard. This is not true. Public comments can really make a difference in what happens and does not happen in our environment. After a thorough review of public comment and extensive internal deliberation, we concluded that, from a legal perspective, we had erred in our interpretation of the Washington water quality standards by not considering the Idaho and Washington sources cumulatively in determining the effluent limits for the Idaho dischargers. Therefore, under the current standards, both the TMDL and the Idaho NPDES permits need to be revised so that, taken together, all sources in Washington and Idaho are accounted for and appropriate limits set that do not exceed the .20 mg/l decrease in dissolved oxygen allowed under the Washington dissolved oxygen standard. At EPA, responding to public comments is an important job. In this case, the legal concerns about the cross-border pollution have led us to change course.

What is the path forward? Frankly, we do not know what the final option will look like, but we still have three boxes to check off in our decision-making: the legal basis, the science, and the policy. Clearly, we need to change course on the legal basis for the Idaho permits and Washington TMDL. This part is straightforward: we must re-connect the Idaho and Washington sources in a single analysis that results in a combined impact less than 0.2 mg/l in Lake Spokane.

The science is also straightforward: We have a good, peer-reviewed model of the system. Instead of splitting the analysis into Idaho and Washington impacts, we need to start running the model all the way from Lake Coeur d'Alene to Lake Spokane, and include all sources in those simulations. The main issue on the science side is the workload of running the model, and we will need to be efficient in going about this work.

So, the legal and science aspects are fairly straightforward. The policy aspect, on the other hand, remains a complicated one. It is the same challenge we have all been dealing with for several years now. I would characterize that challenge as requiring us to grapple with tough questions on 6 topics:

- 1) Limits of technology: The standard pushes us beyond the capabilities of municipal treatment systems built to date.
- 2) Water quality trading: How can it be used to bridge the gap between what's technologically achievable and what the standard requires?
- 3) Regulatory flexibility: The difficulties in making water quality standards revisions.
- 4) The role of FERC licensing in TMDL development.
- 5) Principles and considerations for allocating loads between Idaho and Washington.
- 6) Agency resources for modeling.

I listed the questions about the limits of technology first for a reason. At this point, the available data indicate that if all the cities along the river installed state-of-the-art treatment, the river would still exceed the 0.2 mg/l of oxygen depletion in Lake Spokane. This situation looms large over this project, and we need to find a path forward that addresses this challenge and enables us to move forward with the TMDL and the permits so that cleanup can commence and phosphorus inputs reduced.

We are open to any ideas that move us forward and bring improvements on the ground as soon as possible.

Thank you for your attention, and thank you for your efforts to bring cleaner water to Lake Spokane.

JTX



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
 1200 Sixth Avenue, Suite 900
 Seattle, Washington 98101-3140

SEP 30 2008

Reply To: OWW-130

Dan Redline, Regional Administrator
 Idaho Department of Environmental Quality
 2110 Ironwood Parkway
 Coeur d'Alene, ID 83814

RE: Withdrawal of Request for Clean Water Act Section 401 Certification for NPDES Permit Numbers ID0025852 (City of Post Falls) and ID0022853 (City of Coeur d'Alene)

Dear Mr. Redline:

On April 4, 2008, the U.S. Environmental Protection Agency (EPA) sent proposed final permits for the above-listed facilities to the Idaho Department of Environmental Quality (Department), and requested that the Department certify the proposed final permits under Section 401 of the Clean Water Act. As you know, EPA received a number of comments on the draft permits for the above-listed facilities, as well as the Hayden Area Regional Sewer Board (HARSB). Many of these comments concerned EPA's interpretation of Washington's water quality standard for dissolved oxygen (DO). Specifically, the comments stated that the water quality standard required EPA to consider all discharges into the Spokane River that could impact DO in Lake Spokane. After extensive internal deliberation, EPA decided it was necessary to revise all three Idaho permits so that human actions, considered cumulatively, do not decrease the DO concentration in Lake Spokane more than 0.2 mg/L below natural conditions, as required by the current Washington standards (WAC 173-201A-200(1)(d)(ii) and 40 CFR 122.4(d).

Therefore, EPA is withdrawing its request for certification of the above-listed permits, and will defer requesting a final Clean Water Act Section 401 certification for HARSB. Once EPA revises the permits, EPA will reinstate the Clean Water Act 401 certification process. The 1999 permits for all three Spokane River dischargers in Idaho remain administratively extended pursuant to 40 CFR 122.6, and are fully effective and enforceable until they are reissued.

EPA regrets that this necessary change in our permitting approach will delay water quality improvements, and has created uncertainty for the regulated community. EPA is committed to working collaboratively with DEQ, Ecology, and other stakeholders to resolve the dissolved oxygen impairment in Lake Spokane in a timely, reasonable, and defensible manner.

Sincerely,

Michael J. Lidgard

Michael J. Lidgard, Manager
 NPDES Permits Unit

- cc: Terry Werner, City of Post Falls
 H. Sid Fredrickson, City of Coeur d'Alene
 Ken Windram, Hayden Area Regional Sewer Board
 Jim Bellatty, Washington Department of Ecology, Spokane
 Douglas Conde, Idaho Office of the Attorney General
 Rick Eichstaedt, Center for Justice, Spokane

OPTIONAL FORM 99 (7-90)

FAX TRANSMITTAL

of pages **1**

To	<i>JOHN TINDALL</i>	From	<i>Brian Nicker</i>
Dept./Agency	<i>IDEQ</i>	Phone #	<i>206-553-6251</i>
Fax #	<i>208-769-1404</i>	Fax #	<i>206-553-0165</i>