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Sierra Club and the Center for Environmental Law and Policy (CELP) appreciate the opportunity to comment on the draft Coeur d'Alene Lake Management Plan (LMP). We recognize the effort by Idaho Department of Environmental Quality and the Coeur d'Alene Tribe in jointly developing the draft LMP, and recognize the challenges and opportunities that attach to a watershed with severe pollution problems and multiple jurisdictions.

Sierra Club has a long history of involvement in the Lake Coeur d'Alene – Spokane River watershed. Over the past 25 years we have focused on the problem of the movement of mine wastes resulting from overcutting watershed forests, further polluting Superfund-remediated sites, Lake Coeur d'Alene, and the Spokane River. For an example, see “Toxic Floods of the Coeur d'Alene”, a poster developed for the National Academy of Sciences. ([www.waterplanet.ws/pdf/wpsr20050601.pdf](http://www.waterplanet.ws/pdf/wpsr20050601.pdf)). As the Kootenai Environmental Alliance correctly noted in its comments dated August, 20, 2008 (hereby incorporated by reference), rampant development within the watershed further threatens Lake water quality.

### **Impact on Washington State**

Decisions upstream impact water quality downstream. Lake Coeur d'Alene is the source for the Spokane River, flowing through Washington State. Large quantities of mine wastes on the Lake's bottom, and located upstream from the Lake are a major concern to both Idaho and Washington. Eutrophication of the Lake that would resuspend mine wastes into the lake water column would be disastrous for waters in both states.

Our comments incorporate by reference those of the Washington Department of Ecology dated August 19, 2008. Washington State points out that the draft LMP is deficient for its failure to:

- describe methods and procedures to ensure accountability and enforcement to address nutrient sources,
- provide a process and timeline for securing commitments from responsible government partners,
- assure compliance with the action items in the Management Action Tables (MAT), without which change will not occur,
- ensure compliance with local, state, and federal laws by providing specifics on implementation and timelines,
- provide firm commitments for funding initial stages of LMP implementation,
- set forth a deliberate, transparent implementation schedule,
- measure and report substantive gains showing compliance,
- provide for more “robust” interventions should voluntary compliance fail,
- provide a process to enact corrective measures for monitored violations of action items in the MAT,
- include a task and schedule for responding to water quality triggers if prevention measures are inadequate, and
- identify staffing positions responsible for field inspections/audits of regulatory activities and assuring compliance.

Washington encourages Idaho to adopt both a metals TMDL and a nutrient TMDL in conjunction with the LMP. The state also provides eighteen specific comments on the Management Action Tables. Sierra Club agrees with and endorses the comments provided by the Washington Department of Ecology.

### **Relationship to Superfund**

At the time the U.S. Environmental Protection Agency designated the Coeur d'Alene-Spokane watershed as a Superfund site, it listed the Lake as part of the Superfund site, but then failed to adopt a remedy to address the pollution lying at the bottom of the Lake .

In order to address the Lake's pollution problems, and to protect the Lake and the Spokane River into the future, Sierra Club supported the Lake's inclusion as part of the remedy for the Superfund cleanup of the Coeur d'Alene Basin. Sierra Club opposed the decision to remove the Lake from the 2002 Interim Record of Decision (ROD).

On the day that the MOA was announced Sierra Club, along with other conservation organizations and individuals, met with EPA Administrator Christine Todd Whitman, then-Governor Kempthorne, and others to voice our concerns about the decision to remove Lake Coeur d'Alene from the remedy in the 2002 Interim ROD, and the failure to address metal-movement problems aggravated by damage to watershed forests. Subsequently, Sierra Club has met on multiple occasions with EPA Region X Administrators to convey these same concerns.

Sierra Club anticipates that Idaho is unlikely to provide the firm commitment of funding for the initial implementation of a final LMP, regardless whether the plan is sufficiently protective of Lake Coeur d'Alene. Without funding, the LMP will be shelved, and the Lake and Spokane River will continue to be at risk. More viable and reliable funding is with Superfund.

### **General Comments**

- The Draft LMP fails to address sediment and metal loading from the CDA River Basin, including addressing the toxic flooding problem associated with the dual problems of mine wastes and damage to watershed forests.
- Success of the LMP will be heavily contingent on a significant amount of funding. While the Coeur d'Alene Tribe has made commitments to funding activities in the Basin, the State of Idaho has been unwilling to dedicate significant funds for lake cleanup efforts. The LMP should clarify what happens if the State fails to fully fund implementation of cleanup activities. This should include the option of moving the Lake toward formal Superfund listing and the development of a ROD that contains cleanup activities for the Lake.
- The Draft LMP lacks any real regulatory mechanisms to address the significant problem of metals in Lake Coeur d'Alene. No requirements for land management, buffer strips, dredging, septic tank management, or NPDES permitting exist in the plan. The entire basis of the Draft LMP appears to hinge on monitoring and education (requiring a significant budget). Given the significance of the problem of metals in the Lake, the Parties should adopt stringent requirements for land management, land use planning, and septic tanks that will actually and measurably reduce nutrient inputs into the Lake.
- There is no discussion of NPDES permitted sources of nutrients into the Basin and how those sources might be reviewed. This seems like a key regulatory area to address to reduce nutrient sources. The Final LMP should contain measures to review these sources and should contain an appendix listing all permitted sources that contribute nutrients to the Basin.
- The Final LMP should contain a listing of actions resulting from the Avista relicensing that may (or will) assist in addressing metals in the Lake.

### **Specific Comments**

- Page 26-28: The Draft LMP does not appear to commit to complete the "overruled" metals TMDL. The Final LMP must contain a commitment by the parties to complete this TMDL. Idaho and EPA have an independent legal obligation not to unreasonably delay the completion of this TMDL and that obligation should be reflected in the Final LMP, including a specific timeframe toward its finalization and completion. In the alternative, if Idaho cannot complete this TMDL because of state regulatory hurdles, Idaho should petition EPA to complete the TMDL.
- Page 28: Given that the Lake is not meeting tribal nutrient standards, the Final LMP should contain a commitment by the parties to complete a nutrient TMDL.
- Page 29: Given the scope of the problem and the limited funds, the Final LMP should reallocate funds and effort that otherwise would be directed to the Lake Stewardship Center toward tangible activities designed toward actually reducing the problem. While this may be a "high profile" and "feel good" action designed to increase awareness of problems associated with the Lake, it is unclear how effective such an effort might be in resolving the actual problems. In the alternative, the Final LMP should point toward other examples of "Lake Stewardship Centers" and quantify their effectiveness in dealing with problems as significant as the metals pollution in Lake Coeur d'Alene. Moreover, it appears that resources devoted toward the Center might be better spent on enforcement of NPDES permit requirements, stormwater permitting, and other regulatory enforcement that has gone largely unaddressed in the Basin.
- Page 35-35: The description of the EPA Water Quality Program should clarify that EPA retains authority for issuing and enforcing NPDES permits, including stormwater permits, with both tribal and state areas in the Basin.
- Appendix D: This Appendix should identify TMDLs that will be completed as part of this effort, including listing the estimated cost for completing these TMDLs and the scheduled completion date.
- Appendix E: This Appendix should identify FERC and IDEQ as responsible agencies for enforcement of Avista-related measures benefiting the Lake. FERC's authority stems from the Federal Power Act and IDEQ's authority stems from Section 401 of the Clean Water Act.

#### **Model for Lake Coeur d'Alene: Tahoe Regional Planning Agency (TRPA)**

Idaho State and the Coeur d'Alene Tribe may wish to adopt a regulatory framework similar to that used to protect Lake Tahoe. In the late 1960's, governors and lawmakers of California and Nevada developed The Lake Tahoe Compact to create a regional planning agency to oversee development at Lake Tahoe. In 1969, the United States Congress ratified the agreement and created the Tahoe Regional Planning Agency (TRPA). In 1987 the TRPA Governing Board adopted the 1987 Regional Plan giving TRPA the authority to adopt environmental quality standards, termed thresholds, and enforce ordinances designed to achieve the thresholds. As its mission, TRPA "leads the cooperative effort to preserve, restore, and enhance the unique natural and human environment of the Lake Tahoe Region." Lake Coeur d'Alene's pollution challenges and continued development, combined with multiple jurisdictions, would justify a regulatory authority empowered to protect and restore the Lake.

In conclusion, the protection of Lake Coeur d'Alene is important to residents in both Idaho and Washington because of the relationship between the Lake and Spokane River. Sierra Club looks forward to the completion and implementation of a plan that will protect these important waters.