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Misha Vakoc
U.S. EPA Region 10
Attn: Director, Office of Water and Watersheds
1200 Sixth Avenue (OWW-191)
Seattle, WA 98101

Submitted via email to: vakoc.misha@epa.gov

December 10, 2018

RE: Proposed Stormwater Permit for Lakes, Post Falls, and East Side Highway Districts in Idaho

Dear Ms. Vakoc:

Since 1973, the Idaho Conservation League (“ICL”) has been Idaho’s leading voice for clean water, clean air, and wilderness – values that are the foundation for Idaho’s extraordinary quality of life. As a 501(c)(3) nonprofit organization, ICL works to protect these values through public education, outreach, advocacy, and policy development. ICL is Idaho’s largest state-based conservation organization and represents over 35,000 supporters, many of whom have a deep personal interest in protecting Idaho’s human health and environment.

Attached, please find my comments on behalf of the Idaho Conservation League.

Please do not hesitate to contact me at (208) 265-9565 or mnykiel@idahoconservation.org if you have any questions regarding our comments or if we can provide you with any additional information on this matter.

Thank you for your time and consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read "M. Nykiel", is written over a light blue circular stamp.

Matthew Nykiel
Conservation Associate

ICL Comments

Requirements for Discharges to Water Quality-Impaired Receiving Water:

Fernan Lake and Hayden Lake

We request EPA explain in detail its basis for determining that no additional requirements are necessary for East Side Highway District (“ESHD”), as a MS4 discharger to a water quality-impaired receiving water, and that the proposed control measures in Permit Part 3 are sufficient to ensure compliance with the assigned load reduction target/WLA for regulated MS4 discharges.

Fernan Lake experiences harmful blue-green algae outbreaks for more than 100 days a year, and EPA’s health advisory concentrations for cyanotoxins are often exceeded by an order of magnitude in Fernan Lake. Despite the serious health risks in Fernan Lake, EPA failed to provide any analysis explaining how EPA determined that the proposed control measures in Permit Part 3 will reduce sediment and total phosphorus to the maximum extent practicable, as compared to alternative control measures. Moreover, EPA includes no explanation or analysis confirming how the proposed control measures in Permit Part 3 will achieve the ESHD’s obligations under the Fernan Lake TMDL of a total phosphorus target of 20 micrograms per liter and a 35% load reduction from the baseline conditions established in the TMDL.

We are particularly unclear as to how EPA reached its conclusions given that the Permittees do not have ordinance or enforcement authority. Kootenai County possesses ordinance and regulatory authority to implement and enforce the proposed permit terms, but Kootenai County is not subject to the permit terms and conditions in this proposed MS4 permit.

Hayden Lake similarly suffers from high levels of phosphorus, and we request EPA also explain how it determined that the proposed control measures for the Lakes Highway District (“LHD”) will sufficiently reduce total phosphorus to the maximum extent practicable and how it determined that the proposed control measures will ensure LHD achieves the total phosphorus target and load reduction target established in the Hayden Lake TMDL. Again, we request EPA specifically address how it reached these conclusions given that the Permittees do not have ordinance or enforcement authority to implement or enforce the permit terms and conditions proposed in this MS4 permit.

Requirements for Discharges to Water Quality-Impaired Receiving Water:

Coeur d’Alene Lake and Spokane River in Idaho

We request EPA delay re-issuing this stormwater permit until ESHD and the Post Falls Highway District (“PFHD”) have proposed a monitoring/assessment activity and at least two pollutant reduction activities to target and control discharges of cadmium, lead, zinc, and total phosphorus. According to proposed Permit Section 4, PFHD and ESHD have 180 days from the Permit effective date to submit a monitoring/assessment plan and written description of at least two pollutant reduction activities to be conducted during the remainder of the Permit term. Until the monitoring/assessment plan and pollutant reduction activities have been proposed, this MS4

permit is premature and unripe for public review and comment. According to the implementing regulations of the Clean Water Act:

“For any permit issued to a regulated small MS4, the NPDES permitting authority must include permit terms and conditions to reduce the discharge of pollutants from the MS4 to the maximum extent practicable (MEP), to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act. *Terms and conditions that satisfy the requirements of this section must be expressed in clear, specific, and measurable terms.*”

40 C.F.R. § 122.34(a).

EPA cannot issue this MS4 permit until the terms and conditions have been expressed in clear, specific, and measurable terms. To do otherwise would not only violate the Clean Water Act and federal regulation, it would obfuscate the public's right to a full and fair review of the adequacy of the monitoring/assessment plan and pollutant reduction activities proposed by each Permittee.

Maximum Extent Practicable Standard

We request EPA clarify the Permittees' obligations in choosing pollutant reduction activities. At page 31 of EPA's Factsheet, EPA states that the Permittees are “free to choose new activities, or to continue implementation of ongoing efforts designed to reduce the discharge of the pollutants of concern into the Spokane River and Coeur d'Alene Lake.” We request EPA clarify that despite this flexibility the Permittees must choose the pollutant reduction activities that reduce the discharge of pollutants from the MS4 to the maximum extent practicable. In other words, the Permittees must weigh the efficacy of new activities and ongoing efforts, and, from among these options, choose and implement the activity that with reduce pollutants from the MS4 to the maximum extent practicable.

Bull Trout

We are concerned by the water quality trends in Lake Coeur d'Alene, which indicate increasing levels of phosphorus and chlorophyll-a and declining oxygen levels. See Coeur d'Alene Lake Management Plan: Coeur d'Alene Lake Status Update, 2015. Stormwater discharges from maintained roads and construction within the highway districts subject to the proposed MS4 permit are likely contributors to the deteriorating conditions in Lake Coeur d'Alene, as suggested by the 2009 Coeur d'Alene Lake Management Plan. If Lake Coeur d'Alene becomes anoxic, causing metals contaminated sediment to mobilize throughout the water column, it would very likely result in harm or mortality to bull trout. As such, we request EPA explain in detail its determination that stormwater discharges from ESHD and PFHD will not adversely affect bull trout. We request EPA specifically explain why EPA believes stormwater discharges that increase phosphorus levels in Lake Coeur d'Alene are unlikely to

cause incidental takes, as this term is understood in the Endangered Species Act, of bull trout as a result of anoxic lake conditions.

In addition, we also request EPA explain in detail why bioaccumulation of toxins, including Polychlorinated Biphenyls ("PCBs"), is unlikely to adversely affect bull trout, as a result of stormwater discharges from ESHD and PFHD. Bull trout are a highly predatory species, which makes them vulnerable to bioaccumulation of toxins. We are concerned that because Lake Coeur d'Alene and the Spokane River both currently exceed Idaho Water Quality Criteria for cadmium, lead, and zinc that the addition of metals and other toxics via stormwater discharges from the Permittees will cumulatively harm or lead to mortality in bull trout.

Post-Construction Stormwater Management

At page 26 of EPA's Factsheet, EPA equivocates, stating that "[i]n general" EPA believes the Permittees have adequately implemented permit controls through cooperative agreements that "largely meet" the intention of the permit's post-construction runoff control measures. We request EPA provide the basis for this equivocation. Please provide any and all examples, data, or analysis that led EPA not to state with certainty that the Permittees have adequately implemented the permit controls and the intention of the permit's post-construction runoff control measures described at page 26 of the Factsheet.