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GAUGING THE SUCCESS OF THE COEUR D'ALENE LAKE MANAGEMENT PLAN: AN EXAMPLE OF TRIBAL-STATE COOPERATION

Dylan R. Hedden-Nicely

In 2009, the Coeur d'Alene Tribe, through its Lake Management Department, and the State of Idaho, through the Department of Environmental Quality (DEQ), jointly developed a management plan for Lake Coeur d'Alene. That plan was developed to better manage nutrients flowing into the lake in order to minimize the probability that heavy metals located at the bottom of the lake are released into the water column. The purpose of this article is to outline the stated goals of this unprecedented and unique management plan and to assess whether this structured cooperative effort has been a success.

Background

Since the days of North Idaho's earliest European settlers, Coeur d'Alene Lake (Lake) has been recognized as "a magnificent sheet of water,"¹ valuable to both people and wildlife for its aesthetic beauty as well as the sustenance it provides. The region surrounding the Lake is home to the Coeur d'Alene Tribe (Tribe), whose members have relied on the Lake since time immemorial for, among other things, "food, fiber, recreation, transportation, and cultural activities."² Due to its beauty and unique recreation opportunities, the Lake has more recently become one of the most popular tourism destinations in the state and the region around it has seen a rapid increase in population.³ This rapid growth, coupled with extensive metals contamination in the Coeur d'Alene River from upstream mining activities in Idaho's Silver Valley, has caused many to be concerned about water quality within the Lake. Specifically, it has been estimated

A primary component of the in-place management of metals is the management of nutrient loading into the Lake.



that "75 million metric tonnes of trace-element rich sediments from mining-related activities have been deposited into the Lake [from the Coeur d'Alene River] since the late 19th century."⁴

To address metals contamination in the Silver Valley, the United States Environmental Protection Agency (EPA) listed a small portion of it on the National Priorities List under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)⁵ in 1983.⁶ While the extent and location of cleanup under CERCLA in the Silver Valley has greatly expanded since 1983, it has never directly addressed cleanup of metal contamination in the Lake. Instead, EPA determined that "an effective [lake management plan] created outside of the CERCLA defined process, using separate regulatory authorities, would reduce riverine inputs of nutrients and metals that continue to contribute to contamination of the lake . . ."⁷

Pursuant to this policy, the current strategy is to manage these deposits in place.⁸ The metals of concern, primarily lead, are bound to sediment that eventually settles to the bottom of the Lake, removing much of the contamination from the water column.⁹ However, nutrient loading, partially the result of ad-

jacent land use practices, could create an environment that causes those metals bound to lake sediment to become soluble and release into the water column. Therefore, a primary component of the in-place management of metals is the management of nutrient loading into the Lake.

Regulation of water quality in the Lake is split between the State of Idaho, through DEQ, and the Tribe, through its Lake Management Department. In 2001, the United States Supreme Court affirmed that the United States holds title to the submerged lands of the southern third of the Lake in trust for the benefit of the Tribe.¹¹ The Supreme Court also affirmed the holding of the district court that "[t]he State of Idaho is permanently enjoined from asserting any right, title or otherwise interest in or to the bed and banks of the [] Lake and St. Joe River lying within the current boundaries of the Coeur d'Alene Indian Reservation."¹² As a result, the State of Idaho currently manages water quality in the northern two-thirds of the Lake while the Tribe is responsible for the management of the southern one-third.

After disagreement that led to attempts by both the Tribe and DEQ to address water quality concerns separately, it became obvious that a joint management plan is neces-

sary to manage a unitary water body such as Lake Coeur d'Alene. As a result, DEQ and the Tribe entered into mediation in 2006 and jointly developed and published the Coeur d'Alene Lake Management Plan (LMP) in March of 2009. The LMP "reflects the Tribe and DEQ's long-held view that collaborative, adaptive, and data-driven approach is needed to manage water quality in Coeur d'Alene Lake."¹³ The 2009 LMP "reflects agreement between the Tribe and DEQ, about the state of lake water quality and lake management goals, objectives, and strategies."¹⁴

The Lake Management Plan goal and scope

The stated goal of the LMP is "to protect and improve lake water quality by limiting basin-wide nutrient inputs . . . which in turn influence the solubility of mining-related metals contamination contained in lake sediments."¹⁵ DEQ and the Tribe jointly implement the LMP through five management objectives that operate in conjunction with current state, federal, and tribal regulation. Those objectives are:

1. Improve scientific understanding of lake conditions through monitoring, modeling, and special studies
2. Establish and strengthen partnerships to maximize benefits of actions under existing regulatory frameworks
3. Develop and implement a nutrient reduction plan
4. Increase public awareness of lake conditions and influences on water quality
5. Establish funding mechanisms to support the LMP goal, objectives, and strategies.¹⁶

The scope of the LMP is basin-wide because "[a]ctivities throughout the basin influence contribu-

In lieu of sufficient data to gauge the success of the LMP in more quantifiable terms, a good proxy is the degree to which DEQ and the Tribe have worked together to implement these strategies.



tions of metals, sediments, and nutrients."¹⁷ The Tribe and DEQ agree that an "overly narrow focus on lakeside activities would limit the potential for dealing effectively with the key influences on water quality."¹⁸

Gauging the success of LMP strategy implementation

The consensus among coordinators is that "[i]t is too early to judge the success of the LMP in terms of its stated goal of managing the nutrients in the Lake in order to manage the metals."¹⁹ However, a second metric for gauging the success of the LMP, one that is directly linked to the LMP's ultimate goal, is the degree to which the Tribe and DEQ coordinate and cooperate with one another as they jointly implement the LMP. As part of the 2009 LMP, DEQ and the Tribe set out strategies for achieving each of the five LMP objectives. In lieu of sufficient data to gauge the success of the LMP in more quantifiable terms, a good proxy is the degree to which DEQ and the Tribe have worked together to implement these strategies.

Objective One: Improve scientific understanding of lake conditions through monitoring, modeling, and special studies. The initial strategy for implementing Objective One called on DEQ and the Tribe to develop a number of water quality

"triggers." These triggers were defined through the LMP process. If data trends indicate that one of these "triggers"²⁰ is imminent, the LMP calls for "comprehensive review to identify the causes of the trend and to guide development of a corrective management response."²¹ Additionally, the LMP contained a strategy for performing core routine monitoring in the Lake and rivers, which calls on DEQ and the Tribe to coordinate their data collection efforts.²² Rebecca Stevens, the Tribe's Hazardous Waste Management Program Manager and former LMP Coordinator, states that "coordination of water quality sampling events is key to the success of the monitoring program."²³ While coordination often creates logistical issues, Ms. Stevens has found that monitoring coordination has improved each year since 2009.²⁴

Objective Two: Establish and strengthen partnerships to maximize benefits of actions under existing regulatory frameworks.

Strategies for Objective Two include a call for DEQ and the Tribe to "engage with land managers to identify opportunities in annual work plans."²⁵ DEQ and the Tribe coordinate in this area by attending watershed advisory groups to identify projects that are consistent with LMP goals.²⁶ A related strategy is for DEQ and the Tribe to support projects developed by other

stakeholders that are consistent with LMP goals.²⁷ Jamie Brunner, LMP Coordinator for DEQ has said “coordination here is invaluable, as it allows prioritization of projects looking at the watershed boundary, as opposed to political boundaries,” which has allowed for more efficient use of resources.²⁸ These outreach efforts have helped to improve public opinion of the joint LMP effort by DEQ and the Tribe: “[with] time and [as] local government authorities have changed, the Coordinators are garnering more support [where there was once] past opposition.”²⁹

Objective Three: Develop and implement a nutrient reduction plan. The first strategy for implementing Objective Three is to develop a basin-wide nutrient source inventory.³⁰ Based on that inventory, the Tribe and DEQ are to work together to prioritize projects based upon “the nutrient inventory, routine monitoring, cost effectiveness, landowner participation, funding sources, and coordination with existing programs”³¹ The LMP also calls for cooperation between the Tribe and DEQ in the incorporation of both metals and nutrient total maximum daily loads (TMDLs) into the nutrient reduction plan.³² The Tribe and DEQ are required under the Clean Water Act to identify streams within their respective jurisdictions that do not meet water quality standards and then set TMDLs for those streams that represent the maximum quantity of a particular pollutant that may be added to the non-attaining stream before that stream will meet or exceed water quality standards.³³

Unfortunately, the science programs developed to implement these strategies have “not been as closely linked as has been anticipated in the 2009 LMP.”³⁴ Instead, “the science

One step in the right direction has been the coordinated effort by DEQ and the Tribe to quantify nutrient inputs from the St. Maries and St. Joe Rivers.⁴⁰



program has morphed into [two] more independent programs.”³⁵ However, Jamie Brunner believes that the greatest opportunity for future cooperation between DEQ and the Tribe is in a more coordinated science program.³⁶ Becki Witherow, former DEQ limnologist,³⁷ agrees: “DEQ and the Tribe have had a great deal of discussions on the drivers of water quality trends”³⁸ and “are striving to become more coordinated in terms of the science program”³⁹ One step in the right direction has been the coordinated effort by DEQ and the Tribe to quantify nutrient inputs from the St. Maries and St. Joe Rivers.⁴⁰ As a result, there has been success in responding to nutrient fluxes during times of flooding and in the coordination of sampling during these important and informative events.⁴¹ “Future goals for the nutrient inventory will involve coordination between DEQ, the Tribe, Watershed Advisory Groups, and property owners to implement nutrient reduction measures as a result of the findings of the joint science team.”⁴²

Objective Four: Increase public awareness of lake conditions and influences on water quality. The fourth objective calls for the Tribe and DEQ to coordinate in developing local education and outreach programs. Coordination in education and outreach is “essential for the success of the LMP and the overall health

of the lake,”⁴³ because it is “crucial in delivering a consistent message from a consistent source.”⁴⁴ Fortunately, this strategy has also been described as “the area where [DEQ and the Tribe] work together most closely.”⁴⁵ Initially, DEQ and the Tribe conducted an education needs assessment to determine whether current information available is “tailored to the wants and needs of the basin community.”⁴⁶ This assessment was subsequently used to develop an education and outreach plan.⁴⁷ DEQ and the Tribe regularly conduct joint presentations to civic organizations, homeowners’ associations, schools, colleges, etc.⁴⁸ Additionally, the Tribe and DEQ worked together to co-produce an educational manual called “Coeur d’Alene Basin Lake*a*Syst” (short for “Lake-shore Assessment System”), which is used to collaboratively develop educational programming for local stakeholders.⁴⁹

Objective Five: Establish funding mechanisms to support the LMP goal, objectives, and strategies. The final objective, to continue to secure funding, is one that both the Tribe and DEQ thought “cannot be over-emphasized.”⁵⁰ While funding continues to be a challenge, DEQ and the Tribe have been creative in seeking out alternative funding sources.⁵¹ The LMP lists a number of core needs, and DEQ and

the Tribe work together to prioritize different projects “based on different criteria, such as cost effectiveness, community acceptance, willingness of landowner participation, availability of funding, partnerships, and applicable regulatory requirements.”⁵² Coordination of priority programs eases funding concerns to some degree by “prevent[ing] duplication of efforts and increase[ing] the efficient use of available funding.”⁵³ Both DEQ and the Tribe continue to be committed to securing funding to ensure those projects prioritized can stay online.⁵⁴

A successful state/tribe partnership

Perhaps even more critical to the success of the LMP than the implementation of any one objective strategy is the underlying relationship that has developed as DEQ and the Tribe jointly manage the Lake. While it is still too early to determine whether there has been a quantifiable reduction in the rate at which nutrients flow into the Lake, “coordination between the State and the Tribe has been a success.”⁵⁵ Laura Laumatia, Environmental Specialist for the Coeur d’Alene Tribe, sees the commitment to cooperation each day: “[a]t the local level, we are in nearly daily communication, and regularly engage in joint planning for our science and education programs. Given that the State and Tribe once needed a mediator to even develop a plan, this seems like a leap forward.”⁵⁶ Laura’s counterpart with DEQ, Jamie Brunner, agrees: “given the economic constraints and political complexities . . . I would gauge the success [of the LMP] as very high.”⁵⁷

Successful implementation of the LMP has not been without its challenges. The primary issue, as always, is funding. Finding sources of revenue is a constant battle⁵⁸ and has resulted in a “critical gap primarily

For DEQ, the relationships established with tribal staff and leadership have created a mutual respect and level of trust with the Tribe that was not present before the 2009 LMP.⁶⁸



in education and outreach.”⁵⁹ Challenges also arise as a result of trying to coordinate two staffs on a day-to-day basis. “[S]ometimes it’s hard to get everyone together, especially in the summer when monitoring and management activities are in full tilt.”⁶⁰ Finally, DEQ and the Tribe have different stakeholders and constituents, which creates different external pressures that sometimes interfere with coordination of the implementation of the LMP.⁶¹

Differences regarding LMP implementation do sometimes arise between DEQ and tribal staff and “at times there are still differing views from the two governments on how to utilize funding for lake related work . . .”⁶² However, these disputes best highlight the level of success DEQ and the Tribe have achieved in coordinating implementation of the LMP. As Laura Laumatia put it, “[w]hen our teams have differences, we simply schedule a meeting to discuss them . . . [t]he trust and relationship that have been established have allowed us to speak candidly with each other when issues arise . . . [w]e work as partners, not as opponents.”⁶³

The success in coordination of the LMP between DEQ and the Tribe can be attributed to “[s]trong leadership, support from both Tribal and State governments, and increasing acceptance from the public.”⁶⁴ Phillip Cerna, Director of the Tribe’s Lake Management Department,

attributes the LMP’s success to “individual personalities among staff;” which he believes “ha[s] fostered a strong sense of coordination.”⁶⁵ Thus, the success of the LMP can be linked to everyone involved, “the relationships established amongst staff and leadership [and the] ability to be able to trust each other,”⁶⁶ that has allowed for effective communication when issues arise. The bottom line for the Tribe is that “the State is our partner and as such we have far more transparency between the DEQ and Tribal Lake Management Department.”⁶⁷ For DEQ, the relationships established with tribal staff and leadership have created a mutual respect and level of trust with the Tribe that was not present before the 2009 LMP.⁶⁸ The LMP has fostered “face-to-face time, working through tough issues, building trust, [and] speaking with one voice to the public about our common goal.”⁶⁹

Conclusion

The 2009 Joint Lake Management Plan was born out of the unique joint sovereignty situation at Lake Coeur d’Alene. This has created an opportunity for the Tribe and the State to come together to structure cooperation to jointly manage a critical resource that is important to both. It is still too early to determine whether the ultimate goal of the LMP, to reduce nutrient loading in the Lake in order to manage met-

als contamination in place, will be a success. However, the Tribe and DEQ have developed a coordinated approach to implement many of the LMP strategies in furtherance of the ultimate LMP goal. Perhaps more importantly, the Tribe and DEQ have been successful in creating the positive relationship necessary to accomplish that ultimate goal. There will be bumps in the road as the Tribe and DEQ continue to work together on a complex range of issues involving an important resource; it is the relationship between these two sovereigns that will determine whether they achieve the LMP's ultimate goals.

Endnotes

1. H.R.Rep No. 1109, 51st Cong., 1st sess., 4 (1890).
2. *Idaho v. United States*, 533 U.S. 262, 265 (2001).
3. MAUPIN AND WEAKLAND, WATER BUDGET FOR COEUR D'ALENE LAKE, IDAHO, WATER YEARS 2000-2005: U.S. GEOLOGICAL SURVEY SCIENTIFIC INVESTIGATIONS REPORT 2009-5184 1 (2009).
4. DEPT. OF ENVTL. QUALITY AND COEUR D'ALENE TRIBE, COEUR D'ALENE LAKE MANAGEMENT PLAN 5 (2009) [hereinafter LMP] (quoting HOROWITZ, ET. AL., EFFECT OF MINING RELATED ACTIVITIES ON THE SEDIMENT TRACE ELEMENT GEOCHEMISTRY OF LAKE COEUR D'ALENE, IDAHO. PART II -- SUBSURFACE SEDIMENTS: HYDROLOGICAL PROCESS 35-54 (1995)).
5. 42 U.S.C. § 9601 (1980).
6. LMP at 8.
7. *Id.*
8. LMP at 5.
9. Interview with Becki Witherow, Former DEQ Limnologist for the Coeur d'Alene Lake Management Plan, in Coeur d'Alene, ID (June 10, 2013) [hereinafter B. Witherow]. Unlike other contaminants, zinc is found throughout the water column. While zinc has been found to be harmful to plants, fish, and wildlife, the concentrations found in the Lake are not hazardous to human health.
10. LMP at 16. Nutrients encourage the growth of plant material, and the introduction of too much decomposed plant material at the Lake's bottom has the potential to create anoxic conditions. Anoxic conditions could cause a reaction where those metals bound to sediment to become soluble, re-

leasing them into the water column. *Id.*

11. *Idaho v. United States*, 533 U.S. 262 (2001).
12. *United States v. Idaho*, 95 F.Supp.2d 1094, 1117 (D. Idaho 1998), *aff'd*, *Idaho v. United States*, 533 U.S. 262 (2001).
13. LMP at 11.
14. *Id.* at 3.
15. *Id.* at 12.
16. *Id.*
17. *Id.* at 13.
18. *Id.*
19. Interview with Laura Laumatia, Environmental Specialist, Coeur d'Alene Lake Management, Coeur d'Alene Tribe, in Coeur d'Alene, ID (May 30, 2013) [hereinafter L. Laumatia].
20. *See*, LMP at 43.
21. *Id.* at 18.
22. *Id.*
23. Interview with Rebecca Stevens, Hazardous Waste Management Program Manager, Coeur d'Alene Tribe, in Coeur d'Alene, ID (May 31, 2013) [hereinafter R. Stevens].
24. *Id.*
25. LMP at 21.
26. L. Laumatia, note 19.
27. LMP at 21.
28. Interview with Jamie Brunner, Lake Management Plan Coordinator, Department of Environmental Quality, in Coeur d'Alene, ID (June 12, 2013) [hereinafter J. Brunner].
29. R. Stevens, note 23.
30. LMP at 22.
31. *Id.*
32. *Id.*
33. 33 U.S.C. § 1313(d).
34. B. Witherow, note 9.
35. *Id.*
36. J. Brunner, note 28.
37. The study of limnology has been defined broadly as "covering the biology, physics, and chemistry of all inland waters, including rivers and wetlands as well as lakes." NATIONAL RESEARCH COUNCIL, FRESHWATER ECOSYSTEMS: REVITALIZING EDUCATIONAL PROGRAMS IN LIMNOLOGY 2 (1996).
38. B. Witherow, note 9.
39. *Id.*
40. *Id.*
41. *Id.*
42. *Id.*
43. *Id.*
44. J. Brunner, note 28.
45. L. Laumatia, note 19.
46. LMP at 26.
47. *Id.* at 27.
48. L. Laumatia, note 19.

The Tribe and DEQ have developed a coordinated approach to implement many of the LMP strategies in furtherance of the ultimate LMP goal.



49. *Id.*
50. LMP at 28.
51. R. Stevens, note 23.
52. LMP at 28.
53. J. Brunner, note 28.
54. LMP at 28.
55. L. Laumatia, note 19.
56. *Id.*
57. J. Brunner, note 28.
58. Interview with Phillip Cerna, Director, Coeur d'Alene Lake Management Department, Coeur d'Alene Tribe, in Coeur d'Alene, ID (May 31, 2013) [hereinafter P. Cerna].
59. B. Witherow, note 9.
60. J. Brunner, note 28.
61. B. Witherow, note 9.
62. R. Stevens, note 23.
63. L. Laumatia, note 19.
64. R. Stevens, note 23.
65. P. Cerna, note 57.
66. J. Brunner, note 28.
67. P. Cerna, note 57.
68. J. Brunner, note 28.
69. L. Laumatia, note 19.

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