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*Via E-Mail*

[DNRImpairedWaters@wisconsin.gov](mailto:DNRImpairedWaters@wisconsin.gov)

Ms. Ashley Beranek  
DNR, Water Evaluation Section (WY/3)  
Box 7921  
Madison, Wisconsin 53707

Dear Ms. Beranek:

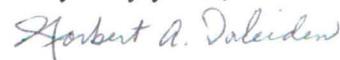
The Wisconsin Department of Natural Resources ("WDNR") recently issued a document entitled "Lac Courte Oreilles, Sawyer County, Phosphorus Site-Specific Criteria Analysis, WDNR Technical Support Document. At Page 65, the WDNR states that it will submit to the U.S. EPA its draft list of impaired waters indicating that the main basins of Lac Courte Oreilles ("LCO") are impaired because of insufficient dissolved oxygen ("DO").

On January 8, 2018, we wrote to you and stated our agreement with Edmond C. Packee, Ph.D. (1) questioning the sampling underpinning the draft list and (2) suggesting that LCO is not impaired based on DO levels. We considered Dr. Packee's investigation and analysis and a NASA/National Science Foundation study and concluded that, if in fact LCO has low DO, it would be attributable to climatic change or, simply, weather. Weather, of course, cannot be controlled and it would be pointless to base any impairment listing on weather.

Furthermore, there is no legal basis for listing the main basins of LCO as impaired. The Wisconsin Administrative Code, at s. NR 102.04(a), sets forth criteria for fish and aquatic life and **sets the standard for surface waters to be 5mg/L, but additionally states that this criterion is not applicable for naturally caused conditions.** "Natural conditions" are defined at s. NR 102.03(3) as "normal daily and seasonal variations in climate and atmospheric conditions, and the existing physical and chemical characteristics of a water or the course in which it flows." As pointed out above, if low DO exists in LCO, the reason would be climatic conditions, which are natural conditions within the meaning of the Administrative Code. Thus, it appears that neither the 5mg./L standard, nor any other standard, is contained in the Administrative Code that would be applicable to the main basins of LCO. The proposed submission of the draft listing showing the main basins of LCO as impaired, therefore, is not sustainable as a matter of fact or law.

We would be please to further discuss this matter with the WDNR.

Very truly yours,



Norbert A. Daleiden