

*Courte Oreilles Lakes Association, Inc.*

**P.O. Box 702  
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Kris Sivertson  
President

Telephone  
715-210-0818

**Respond To: 3690 South Elco Road  
Fall Creek, WI 54742**

March 22, 2016

Susan L. Sylvester  
Director – Water Quality Bureau/Water Division  
Wisconsin Department of Natural Resources  
101 S. Webster Street  
P.O. Box 7921  
Madison, WI 53707 - 7921

Re: Courte Oreilles Lakes Association (COLA)-Site Specific Criteria (SSC) Proposal

Dear Ms. Sylvester:

As you know from the April 23, 2015, joint letter to you from me and Dan Tyrolt of the Conservation Department of the Lac Courte Oreilles Band of the Lake Superior Chippewa Indians (the “Tribe”), both COLA and the Tribe have been working to address the WDNR/EPA comments in a revised SSC proposal for total phosphorus for Lac Courte Oreilles (LCO). LCO is an outstanding resource water (ORW). Wis. Admin. Code § NR 102.10(1m)(a)17. The lake is also a stratified two-story cold water fishery lake. Wis. Admin. Code § NR 102.06(2)(i). As a stratified two-story fishery lake, the current total phosphorus criterion for LCO is 15 ug/L. Wis. Admin. Code § NR 102.06(4)(b)1. COLA and the Tribe have compiled site-specific data and analysis using state-of-the-art scientifically defensible methods and sound scientific rationale to demonstrate that a lake-wide average total phosphorus criterion of 10 ug/L is necessary to protect LCO’s designated uses, the designation as an outstanding resource water, and the stratified two-story cold water fishery. This change in the total phosphorus criterion is authorized by Wis. Admin. Code § NR 102.06(7) and is encouraged by WDNR as part of the administrative record for adoption of Wis. Admin. Code § NR 102.06(4)(b)1.

The “Phosphorus Site-Specific Criteria Proposal for Lac Courte Oreilles” (“Proposal”) is now complete. I have enclosed the Proposal with this letter. The salient points of the Proposal are as follows:

- The water quality required for full attainment of the designated and existing uses is not supported by the existing 15 µg/L total phosphorus criterion for cold water two-story fishery lakes such as LCO, nor are the uses supported by the 40 µg/L total phosphorus criterion applied by WDNR to Musky Bay.
- LCO is one of only five lakes in Wisconsin that has historically supported both cisco and whitefish. However, cisco and whitefish populations are threatened in LCO. Population estimates are low, data demonstrate suitable habitat is severely impacted, and documented LCO whitefish mortality was observed in 2015.
- Recreational uses in Musky Bay are impaired as a result of excessive algal mats and aquatic vegetation, preventing or negatively impacting boating, swimming and fishing.
- Musky Bay has experienced recent winterkills of fish, with the most frequent observations of any Sawyer County lake.
- The muskellunge population in LCO, once self-sustaining, is now limited by poor levels of reproductive success. Data demonstrate that spawning areas in Musky Bay experience depressed dissolved oxygen levels. Current LCO muskellunge populations are estimated to be only 20%-30% of the targeted goal for the lake.
- WDNR's current assessment approach (WisCALM) is not consistent with the intent of protecting ORWs. The approach would allow total phosphorus to average greater than 22.5 µg/L in LCO before listing it as impaired based on phosphorus data.
- Because LCO is of exceptional spiritual, cultural and subsistence importance to the Lac Courte Oreille Band of Lake Superior Chippewa Indians, the destruction of LCO, as documented by this science, is of particular concern to the Tribe.
- The impact of a changing climate threatens to further exacerbate algal productivity and reduce habitat.

To initiate the WDNR's rule making process, I have enclosed the "Joint Petition Of The Courte Oreilles Lakes Association, Inc. And The Lac Courte Oreilles Band Of The Lake Superior Chippewa Indians To Promulgate A Rule Establishing A Total Phosphorus Lake-Wide Average Criterion Of 10UG/L For Lac Courte Oreilles," along with COLA's resolution approving the Proposal and submitting it to the WDNR for rule making.

Unfortunately, LCO is on the verge of an irreversible decline in water quality. On behalf of COLA and the Tribe, I therefore respectfully request that the WDNR initiate its rule making process to advance the Proposal within sixty (60) days of the date of this letter. COLA and the

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Tribe, along with their consultants and legal advisors are prepared to support the WDNR in the rule making process. Should you have any questions in the meantime, please do not hesitate to contact me.

Sincerely,

Kris Sivertson  
President, COLA

cc: Russell Rasmussen, Water Division Administrator  
Robin Nyffeler, WDNR Attorney  
Brian Weigel, Section Chief Water Evaluation Section  
Kristi Minahan, Water Evaluation Section  
Andrew Craig, Nonpoint Source Planning Coordinator  
Dr. John Lyons, WDNR Fisheries Research  
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