

Downstream Considerations for TMDLs & Cross-Program Principles

Draft

March 2012

Downstream Protection Issues in TMDLs

- ❑ **Neighboring jurisdictions may have significantly different WQS**
 - Downstream or adjacent waters may have more sensitive uses and/or more stringent criteria
- ❑ **303(d) listing and pollutant sources may vary across jurisdictions**
 - Water may be impaired in the downstream jurisdiction but not upstream
- ❑ **Upstream and downstream considerations have implications for TMDLs**
 - Upstream jurisdictions may use all of the assimilative capacity available to the downstream state/jurisdiction
 - Downstream states lacks authority to set binding allocations for an upstream state
 - States may have difficulty establishing equitable and achievable allocations
- ❑ **Several high-profile TMDLs highlight downstream protection challenges, e.g., Spokane River**
 - Critical impairment is in a reservoir 62 miles downstream of WA-ID border
 - Tribal waters below reservoir have more stringent WQS
 - Key questions: What boundary load should be assumed for upstream state? At what point downstream should contributions from the upstream state be considered? How should more stringent tribal standards be considered?

Draft Cross-Program Principles for Downstream Protection - Overview

- ❑ **States, tribes and EPA share responsibility for protecting shared water resources**
 - Abide by regulations and guidance on protection of downstream & adjacent waters
 - Strive for consistent water quality standards
 - Protect the most sensitive use(s)
 - Encourage downstream protection provisions in water quality standards packages
 - Ensure downstream impacts are evaluated by EPA, and that EPA provides guidance to states and tribes

- ❑ **Taking a watershed-wide approach will best reflect collective goals across jurisdictions**
 - Provide for efficiencies in permitting, TMDLs, and water quality standards using a holistic approach
 - Facilitate development of equitable allocations and permit limits
 - Consider downstream impacts as far downstream as impacts are observed or expected

Draft Cross-Program Draft Principles for Downstream Protection - Overview

- ❑ **Communication and coordination among jurisdictions and agencies regarding shared waterbodies is critical**
 - Communicate early and across programs when developing standards, 303(d) lists, TMDLs and permits
 - Coordinate development of 303(d) lists and TMDLs schedules between jurisdictions
 - Share up-to-date information on water quality standards and pending changes
 - Provide that EPA facilitates communication and helps to resolve conflicts
 - Ensure adequate communication with external stakeholders in affected jurisdictions
 - Be aware of environmental justice considerations

- ❑ **Seek appropriate pollutant reductions from both point and nonpoint sources throughout a shared water resource**
 - Include reasonable assurance in TMDLs that nonpoint source control measures will achieve expected reductions
 - Provide adequate documentation of reasonable assurance, and evaluate reasonable assurance in EPA review of TMDLs
 - Consider water quality trading between sources to achieve water quality goals, including point-nonpoint source trading