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Lake Association and Tribe Proceed with Legal Action to Protect Lac Courte Oreilles

COLA Files for Judicial Review at State Level

HAYWARD, WI (June 16, 2016) – The Wisconsin DNR (WDNR) formally rejected a request for emergency rulemaking that would provide timely help for Lac Courte Oreilles, the fifth largest lake in Wisconsin and an [Outstanding Resource Water](#), eligible for protection by both the state of Wisconsin and the Federal Clean Water Act. The request was submitted by COLA, the Courte Oreilles Lakes Association, jointly with the Lac Courte Oreilles Band of the Lake Superior Chippewa Indians, on March 30 in conjunction with a [proposal for setting a more protective phosphorus standard for the lake](#). In response to the [WDNR's rejection letter](#) on May 11, 2016, COLA and the LCO Tribe have [proceeded with legal action](#) by filing for judicial review on June 10 with the Dane County Circuit Court in Madison, WI.

The legal petition that COLA and the LCO Tribe filed [consists of these five claims](#).

“Our goal in taking legal action in the form of filing for judicial review is twofold,” says Kris Sivertson, COLA board president and homeowner on the lake: (1) For the courts to take control of the timeframe for rulemaking, and (2) to have the cranberry bogs declared as point sources of phosphorus on the lake.”

In her rejection letter on May 11, Susan Sylvester, Director of the WDNR Water Quality Bureau, officially denied COLA's request for emergency rulemaking, saying, “The rulemaking changes you are seeking will not address your water quality concerns. Non-point sources are the primary source of phosphorus loads to the lake.” Regarding timing, she confirms more of the same waiting game, that next steps “will likely take two more years.” This additional wait comes after COLA and the LCO Tribe have already worked for more than eight years to officially get help for the lake.

How the WDNR's Rejection Fails the Law

First, the Natural Resources Board, which oversees the WDNR, has sole authority to either accept or reject a rulemaking request. The WDNR acted without this authority in sending the rejection letter. Furthermore, the request for emergency rulemaking did not involve approval or rejection of the proposed protective phosphorus standard. It simply requested that the WDNR follow its own protocol and start the rulemaking process on the merits of the proposal according to Wisconsin law.

“Non-Point” is the Whole Point

The easiest way to explain Sylvester's comment about non-point sources is that phosphorus from “non-point sources” refers to run-off into a lake, from everything from yards to nearby farms. A “point source,” on the other hand, is a localized and stationary pollution source.

[Wisconsin statute, Section 283.01\(12\)](#) defines a point source “a discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit ...”

On Lac Courte Oreilles, significant phosphorus directly entering the lake from the permanent pipes, ditches, and canals constructed and used by cranberry growing operations on the lake clearly fits this definition of point source.

Cranberry bogs require millions of gallons of water be taken from the lake throughout the year—that waist-high “marsh” you see in so many ads and TV commercials for cranberry juice. Flooding bogs with lake water is done for a number of industrial purposes including harvesting, preventing frost from damaging crops, and for pest control.

Each time the “used” lake water, which has sat in the bog and become full of the phosphorus fertilizer used on the plants, is then poured back into the lake. Ordinarily, return of “waste water” to a lake would require a permit. The problem is that this waste water is considered a “non-point source” so its discharge back into the lake does not require a permit of any kind. It is allowable as long as it is considered a non-point source. But, this is not in keeping with the Wisconsin law that the WDNR is charged with enforcing on behalf of its lakes, rivers, and other affected waters.

Over the years, phosphorus pollution has already caused excessive aquatic plant and algae growth that is inhibiting recreational use of Lac Courte Oreilles, threatening the cold-water fish of this extremely rare two-story lake, and reducing spawning grounds for what has historically been its world-record musky population.

There is a solution. Best practices in the cranberry industry like installing “closed system” water management storage systems are readily available to fix this problem and have been required in other cranberry-growing states. Meanwhile, COLA and the LCO Tribe are addressing the bigger picture and an end to the pollution of Lac Courte Oreilles by filing for judicial review. In doing so, COLA and the Tribe are also addressing a large concern in Wisconsin, the lack of WDNR’s oversight of the Federal Clean Water Act and Wisconsin’s own water protection laws.

Getting a standard in place for how much phosphorus is allowable in Lac Courte Oreilles is a sustainable way to protect the lake and the interests of all parties, now and into the future.

Learn more about COLA’s efforts to protect the water quality of Lac Courte Oreilles—the fifth-largest natural lake in Wisconsin, an Outstanding Resource Water, and a rare, two-story cold-water fishery. As part of this goal, COLA is committed to helping provide the science and lead the way in reducing pollution, to serve not only Lac Courte Oreilles and its watershed, but also other Wisconsin lakes and the organizations that support them. Visit www.colawi.org. For questions and interviews, contact Jim Coors at colacommunications@gmail.com or call 608-628-0694.