

MOA Edits (October 2020 Update)

Background

The Task Force asked the MOA ad hoc group, organized under the Funding Work Group, to work with White Bluffs Consulting to review and make suggested edits to the Task Force MOA and associated Operational and Organizational Concepts (OOC), and bring these suggested revisions back to the Task Force for further consideration.

Edits identified by the MOA ad hoc group centered around the following; a more detailed list of proposed edits is included in the following pages of this document:

- Updating Task Force purpose and responsibility to include coordinating implementation of the 2016 Comprehensive Plan for Reducing PCBs in the Spokane River
- Identifying both WA and ID discharger responsibilities to participate in the Task Force based on discharge permits, and combine/edit language related to these responsibilities in appropriate areas (the 2012 MOA describes adding ID dischargers as a future action)
- Eliminated language that confined Task Force roles and responsibilities to the 2012 to 2016 period, where appropriate
- Included more general terminology relating to discharge permits to acknowledge the different names in WA (NPDES) and ID (IDPES)
- Updated Membership discussion and clarified voting membership and process for how a new stakeholder member may be added to the Task Force
- Updated Roles and Responsibilities Table to better reflect the distribution of responsibilities; this update affected some organizations more than others; acknowledgement that IDEQ now administers discharge permits instead of EPA; and removed Spokane Tribe
- Identified role, function and membership of ACE
- Revised discussion of “committees” to “work groups”, consistent with Task Force current terminology, and provided clarity on WG function.
- Revised discussion of the Work Plan to provide flexibility of the work plan to incorporate adaptive management and be used as a tool to pursue legislative funding and track progress in achieving Task Force goals and priorities.
- Added a Table 2 Membership Summary to Attachment A
- Added “Revised” and date to document titles and header
- Minor edits to grammar, punctuation, formatting, etc. have been made throughout, including spelling out first uses of acronyms, but are not highlighted in document or described below

The draft MOA changes were discussed with the Task Force at their August 27, 2019 meeting. Then the MOA was sent out for Task Force members to review and provide comments by the end of September 2019. Comments were provided by City of Spokane, City of Post Falls (provided in coordination with other Idaho dischargers), Washington Department of Ecology, EPA, Lisa Dally-Wilson (on behalf of SRSP), and Mike Zagar (on behalf of Kootenai Environmental Alliance [KEA]). Edits were made based on comments received and the ad hoc WG reconvened on February 10, 2020 to discuss the Final DRAFT

Revised MOA. Additional edits were made in preparation of presenting the Revised MOA for full SRRTTF consideration at the February SRRTTF meeting. Ad hoc WG reconvened virtually on April 10 to discuss edits and suggestions received prior to, during, and following the February and March SRRTTF meetings. Ad hoc WG continued to exchange edits until consensus was reached by all members of the WG on May 8 on the current document put forth for full SRRTTF consideration.

Review Comments Summary

MOA

- Recital 1: Added “(Attachment A)” after Operational and Organizational Concepts, consistent with other references in the Recitals
- Recital 3: Additional language brought forth from OOC to clarify how new members to the Task Force may be added. Also added language identifying the creation of a Membership Summary (Table 2 in Attachment A) and that the Table will be maintained with the addition/loss of members.
- Recital 4: Replaced outdated language to clarify duration of MOA (as long as dischargers are required in permits to participate on Task Force).
- Recital 8: Added “and attachments” to first sentence reflecting that the MOA *and attachments* contain the entire understanding of the parties.

Operational and Organizational Concepts (OOC)

- Introduction (pgs 5-6 of 20):
 - 1st Paragraph: Removed outdated language; updated to acknowledge completion of the comprehensive plan; added ID discharger permit requirements; described and replaced ‘NPDES’ with ‘discharge’ permittees (change carried throughout document); added “implementation” of Comp Plan (addition of implementation carried throughout document).
 - 2nd Paragraph: Revised goals to include ‘implementation’ of Comp Plan; acknowledged completion of Comp Plan
 - 6th/7th Paragraph: Added ‘2011 Washington’ to clarify whose permit requirements
 - 8th Paragraph: New language to clarify ID permit requirements and regulatory authority; included “2012” in front of MOA.
- Vision Statement (pgs 6-7 of 20): Removed past dates; added new bullet to include efforts focused on implementation of Comp Plan and updated priorities and reduction strategies identified through adaptive management.
- Goals (pg 7 of 20): Removed outdated language; updated to acknowledge that some goals have been accomplished while others remain applicable; changed “work plan” to “Comprehensive Plan”.
- Operating Guidelines (pg 8 of 20): Removed outdated language; changed “assumed” to “anticipated” and moved “wastewater” in front of “discharger permits”.

- Membership (pgs 8-9 of 20): Replaced 'NPDES Permittee' with 'Discharge Permittee' (carried throughout) and added language defining voting members versus non-voting participants; added "see Decision-Making Process below" to provide guidance on "unanimity minus one".
 - Discharge Permittee: 1st sentence changed 'and' to 'or' to accommodate WDFW as Discharge Permittee since requirement to participate in permit (through Agreed Order), but discharging to Little Spokane, not mainstem; added "without limitation" and "or permit condition" to last sentence of paragraph.
 - Agency and Sovereign Government: Removed Spokane Tribe per May 2012 letter.
 - Additional Government Agency: Clarified 'stormwater' permit holders refers to MS4
 - Stakeholder: Removed outdated language; clarified path for new membership; removed 'consensus', since decision-making is later defined in the MOA as "Unanimity Minus One"
- Membership Governance (pg 9 of 20):
 - Removal: Changed "will be automatically removed" to "may be removed"; added language clarifying that some types of members can withdraw by written notice; added language to end of paragraph that "membership is reserved for these entities, even during extended periods of non-participation."
 - Non-Voting Participants: Removed heading here as text was revised and moved to opening paragraphs under 'Membership' (pg 8 of 20)
- Roles and Responsibilities Table (pgs 10-12 of 20):
 - Added Voting Status ('Voting' or 'Advisory') to Membership Type Column for each membership group
 - Added Row for 'ALL' and included list of four items under Roles and Responsibilities common to all organizations; deleted those items from subsequent rows to eliminate redundancy
 - Added WDFW to Washington NPDES dischargers
 - Idaho dischargers: Created separate and distinct row
 - EPA: Revised oversight responsibility now that IDEQ has delegated authority of NPDES; revised grant funding language per EPA request; replaced 'consultation' with 'coordination' due to the formal nature of 'consultation' with respect to tribal communication
 - IDEQ: Revised to include regulatory oversight of Idaho permittees; added 'grant funding' bullet, consistent with other regulatory members
 - Deleted row for Spokane Tribe
 - Stormwater Agencies: Moved footnote to Voting status, since footnote has to do with sharing a vote if/when an entity has more than one representative
 - Notes: Replaced SRRTTF with Task Force; updated 'Stormwater (MS4)' list and added that participation is voluntary, unless required by permit; added new footnote #2 to clarify that unless specified otherwise, voting membership requires signature of MOA
- Organizational Structure (pg 13 of 20): Added language introducing ACE and clarifying ACE membership and relationship with SRRTTF

- Decision Making (pg 13 of 20): Removed outdated language from the 2nd paragraph under Consensus
- Funding (pg 14 of 20): Removed outdated language, including entire 2nd paragraph; added role of ACE; added language clarifying that ‘funding will be required for..., as prioritized and approved by the Task Force’
- Meeting and Notices (pgs 15-16 of 20):
 - 1st Paragraph: Removed outdated language
 - 2nd Paragraph: Added language for remote participation
 - 3rd Paragraph: Added language defining Facilitator/Administrator selection and note-taking responsibilities; in the event a facilitator is not retained, removed “ex-officio” from member that facilitates meetings.
 - Task Force strive to meet following: **removed** bullet that Task Force can’t require registration
 - Contents of Meeting Notice: Added bullet regarding ‘remote participation’
 - Timing of notice: Removed outdated/unnecessary language
- Committees/Work Groups (pgs 17 of 20): Updated to reflect work group structure
 - Actions of the Task Force are increasingly handled at the Work Group level. Revisions clarify work group participation, organization, and function.
- Task Force Work Plan (pg 18 of 20): Removed outdated language and updated to reflect that a biennial work plan should be used to prioritize Task Force activities and link to the Comp Plan while allowing for adaptive management. Identified that the work plan should also be used as a tool to pursue legislative funding. Removed language related to work plan submittal, as this has not been occurring in practice.
- Added a Participation Summary (Table 2; pg 20 of 20); needs to be an Amendment to the MOA, even if the Revised MOA does not move forward in order to memorialize new members (City of CDA, KEA, WDFW, and possibly others).

Other

- Washington State AG’s office needs to review once Task Force has agreed upon changes

Recommended Next Steps

The sub-WG to present the Revised MOA to the full SRRTTF membership at the June Task Force meeting for member/entity legal review. Request that when members submit for legal review, they ask legal counsel to limit comments to ONLY those items that would prevent them from signing the Revised MOA.