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January 22, 2004

Jim Bellatty  
Water Quality Supervisor  
Eastern Regional Office  
Department of Ecology  
4601 N. Monroe Street  
Spokane, WA 99205

Re: Spokane River Dissolved Oxygen

Dear Mr. Bellatty:

This letter is submitted on behalf of the Upper Columbia River Group of the Sierra Club. We are writing to express concern about water pollution contributing to violation of the dissolved oxygen standard for the Spokane River, and related activities undertaken by the Department of Ecology with respect to cleaning up the River.

As you know, the Spokane River is listed on the Washington State 303(d) list because of inadequate concentrations of dissolved oxygen (DO). Low DO levels adversely affect the ability of salmonid fish, including rainbow trout and mountain whitefish, to survive and thrive in the Spokane River.

Low DO levels are caused by the presence of oxygen-consuming pollutants (biological oxygen demand, or BOD), phosphorous, and ammonia. These pollutants are discharged by various facilities along the river, including the City of Liberty Lake's wastewater treatment plant (WWTP), Inland Empire Paper, Kaiser Steel, and the City of Spokane's WWTP, as well as the cities of Coeur d'Alene, Hayden and Post Falls. In addition, Spokane County intends to build a new wastewater treatment plant and wishes to obtain a new permit to discharge DO-consuming pollutants into the river.

The Spokane River was listed as impaired for DO several years ago. In response to this listing and a federal court order, your offices began to develop the requisite clean-up plan, known as a TMDL, to assess the sources of pollution and allocate pollution loading among the various dischargers. The goal is, ostensibly, to clean up the river and to bring it into compliance with the requirements of the Clean Water Act.

As an initial step, Ecology developed a computer model of the factors that affect dissolved oxygen in the Spokane River. This model reveals that the Spokane River has no additional capacity for the pollutants that cause DO violations and is, in fact, exceeding capacity for those pollutants. As a result, in order to clean up the river, current pollution discharges must be reduced.

Although the DO TMDL was initiated several years ago, the process of finalizing and implementing the clean-up plan has been repeatedly delayed. This delay has occurred at the behest of the various pollution dischargers, who raised questions about the quality of the DO science. Although the science utilized in the model is considered state-of-the-art, Ecology delayed the TMDL for nearly two years to consider these matters.

Having failed in their challenge to the science, the dischargers last year formed a committee to sponsor a “use attainability analysis” (UAA) in an effort to weaken the DO water quality standard. Generally speaking, the purpose of a UAA is to show that a water body has been categorized too stringently for water quality standards – that whatever uses the river is supposed to support are simply not possible. In this instance, the Spokane River UAA is geared toward showing that salmonid fish do not use the river during all life stages and thus, the dissolved oxygen standard can be lowered.

The Sierra Club is particularly concerned with Ecology’s decision to delay the TMDL given (1) that the U.S. Environmental Protection Agency has indicated that the UAA scope of work does not satisfy federal requirements and (2) the UAA is intended to eliminate existing biological uses of the Spokane River by salmonid fish, a goal that clearly contravenes both state and federal law. Given the extremely low likelihood of success, we fail to understand what rationale would support Ecology’s decision to continue to delay TMDL completion and implementation.

The real issue, we fear, is more insidious. Once completed, the TMDL is likely to lead to a conclusion that the Spokane River dischargers must cut back on their pollution effluent. However, two existing dischargers -- Liberty Lake and Inland Empire Paper Co. – seek to expand their operations, increase or maintain the same level of pollution discharges, and obtain a lengthy schedule to come into compliance with future TMDL-mandated cutbacks. In addition, Spokane County seeks assurances that it will receive a new pollution discharge permit. In Idaho, the Cities of Coeur d’Alene, Hayden and Post Falls are all scheduled to receive new discharge permits this year from US EPA.

In each of these instances, the existence of a TMDL may change the outcome of the proceeding. While holding off the TMDL with questions and proposals of dubious merit, the dischargers simultaneously seek to obtain permits that will effectively subvert the goal of the TMDL – to reduce oxygen-consuming pollutants in the Spokane River.

The Sierra Club is particularly concerned about Ecology's assurances to Spokane County, set forth in a letter dated November 7, 2003, that a discharge permit will be forthcoming for its new sewage treatment plant. Issuance of a discharge permit for a new source of pollution would violate federal water quality laws, given that the Spokane River is not meeting water quality standards and has no TMDL.

Similar questions are raised with respect to the Liberty Lake WWTP and Inland Empire Paper discharge permits. Any increase in discharge capacity by these entities would be inconsistent with state and federal water quality laws. Even maintaining the status quo would mean that the dischargers will not meet the TMDL requirements for many years, if ever. Such an outcome is unacceptable.

Sierra Club requests that the Department of Ecology take the following steps:

- First, promptly complete the TMDL for dissolved oxygen in the Spokane River.
- In the interim, Ecology should cease processing new or amended discharge permits that would contribute to violation of the DO water quality standard.
- Ecology should strongly advocate for protection of Spokane River water quality in the Idaho permitting processes now pending before US EPA.
- Finally, upon completion of the TMDL, Ecology should take immediate steps to implement the clean-up plan and restore water quality in the Spokane River.

Alternatives to the discharge of oxygen-consuming pollutants are available. It is clear that the capacity of the Spokane River to absorb such pollutants has been exceeded and it is now time to look to alternatives to clean up our river. This can only occur with Ecology's leadership and commitment to follow the requirements of state and federal water quality laws. As citizens and residents of the region who enjoy the recreational and aesthetic amenities of the Spokane River, we request that you fulfill your duties to protect and restore the River.

Thank you for your consideration. Please feel free to give me a call at 328-1087. Representatives of the Sierra Club would like to meet with you and your staff to discuss these issues and your response.

Yours very truly,

Rachael Paschal Osborn  
Aquifer & Rivers Committee

cc: Senator Lisa Brown  
Rep. Alex Wood  
Rep. Timm Ormsby  
Spokane County Commissioners  
Dave Ragsdale, US EPA  
Ken Merrill, Dep't of Ecology