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## Upper Columbia River Group

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September 20, 2004

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Water Quality Program  
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Jim Bellatty, Dave Knight & Ken Merrill  
Water Quality Program, Eastern Regional Office  
Washington Dep't of Ecology  
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Re: Spokane River Dissolved Oxygen TMDL

Dear Dave, Melissa, Jim, Dave & Ken:

Sierra Club has been an active participant in the development of the dissolved oxygen water quality cleanup plan (TMDL) for the Spokane River, as well as other water quality issues. We appreciate Ecology's extensive efforts in preparing a scientifically credible and water quality-protective approach to the River's dissolved oxygen problem. Recently, we have reviewed letters submitted by Spokane River dischargers and statements contained in the draft "Spokane River Use Attainability Analysis" in which the dischargers have asked you to delay the dissolved oxygen TMDL until the UAA is complete. Sierra Club is opposed to delay of the TMDL. This letter contains information about why delay of the TMDL is not appropriate and any such request must be rejected.

The foremost reason for going forward with the TMDL is a matter of legal timing. Ecology is under court order to prepare TMDLs, including the Spokane River plan. Delay is inconsistent with both the TMDL "consent decree" and Ecology's open, public process for establishing TMDL schedules.

In contrast, the UAA is a completely voluntary third-party effort with no set timeline. Indeed, the Spokane River UAA has dragged on for nearly two years, with no final proposal in sight. After being told for more than 15 months that its scope of work is inadequate, the UAA sponsors have finally decided to conduct an economic analysis as part of the UAA. This effort is likely to delay the UAA process for several months or longer. Once the complete UAA is submitted, it will take at least two years for Ecology to approve the petition and engage in rulemaking to amend water quality standards. EPA then must approve the UAA, a speculative outcome for which there is no deadline.

Thus, to achieve final approval, the UAA is likely to take at least four more years. This timing assumes no litigation. It is inconceivable that Ecology would administratively extend

multiple Spokane River discharge permits and fail to adopt a cleanup plan for yet another four years. This is simply not an acceptable outcome for management of our community's most visible and important natural resource.

Moreover, Ecology's consent decree obligations create a basis for distinguishing between Ecology's policy on UAA/TMDL timing and EPA's guidance on that subject. In contrast to EPA's statement that UAAs logically precede TMDL's, Washington state's legal situation is unique. Imagine the chaos that will be created in the TMDL program if Ecology adopts a policy to delay TMDLs whenever a UAA is proposed.

Beyond the timing issue, delay of the TMDL is inappropriate because the UAA is in fact likely to fail. Ecology and EPA have submitted multiple comments and responses to the dischargers both responding to concerns about dissolved oxygen modeling and pointing out the deficiencies of various UAA drafts. The UAA sponsors have not been responsive to the issues raised by the agencies.

The current UAA proposal, to chop the Spokane River into discreet little pieces and set different standards for each is, frankly, antithetical to the goals and requirements of the Clean Water Act and the state Water Pollution Control Act. Water quality standards are intended to protect multiple uses and habitat as whole. Thus far, despite considerable effort, the UAA has not come up with a concept that is supportable. In addition, the UAA completely neglects to address the impact of the proposal on the Spokane Tribe's water quality standards for the Spokane River. These problems will be fatal to the UAA.

A third reason to not delay the TMDL is that the dischargers have acknowledged that current AKART technology is sufficient to meet the interim 50 microgram/liter phosphorous loading requirement set forth in the draft TMDL. Beyond that, they have informally acknowledged that non-technological efforts may be required to further achieve the 10 microgram/liter standard, and that such efforts, such as non-point source pollution controls, can and will be undertaken by the dischargers. If the regulated parties acknowledge that they can meet the requirements of the TMDL – why should the TMDL be delayed?

Finally, the public simply cannot wait any longer for the development and implementation of a clean-up plan for the Spokane River. (We would note that this delay could also carry over to the Little Spokane River and Latah Creek TMDLs.) There is widespread, profound public concern about the condition of the Spokane River and ongoing abuse by polluters. We look to your agency to resolve these problems within a meaningful timeframe. Continuing delay is simply not an acceptable approach.

Thank you for your consideration of our concerns. If Ecology is actually considering delay of the dissolved oxygen TMDL, we ask that you address this possibility in through a public process that solicits and respects input from the community. We would be happy to meet with you to discuss these matters.

Yours very truly,

Rachael Paschal Osborn

Cc: Ecology: Linda Hoffman  
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