



SIERRA
CLUB
FOUNDED 1892

Upper Columbia River Group

Box 413
Spokane, Washington
99210
509 456-3376
www.idaho.sierraclub.org/uppercol/

February 14, 2005

Honorable Christine Gregoire
c/o Laurie Dolan, Policy Office Director
and c/o Keith Phillips, Water Policy Assistant
Executive Policy Office
Office of the Governor
P.O. Box 40002
Olympia, WA 98504-0002

Via U.S. Mail and Facsimile: 360-753-4110

Re: Spokane River dissolved oxygen

Dear Governor Gregoire, Ms. Dolan and Mr. Phillips,

This letter is provided on behalf of the Upper Columbia River Group of the Sierra Club, the largest environmental organization in the Spokane region. Our members fish, paddle, hike and bike on and near the Spokane River and generally use and enjoy the river's many amenities. The Sierra Club has, for the last two years, been engaged in a "Spokane River Project." This project is designed to educate the public about the value of the Spokane River along with its water quality and quantity problems, and to actively engage in the many different permitting and planning processes now ongoing that will affect the health of the Spokane River for the coming 30-50 years.

A series of events relating to the dissolved oxygen Total Maximum Daily Load (TMDL) and Use Attainability Analysis (UAA) have put Spokane River water quality matters into immediate focus. The TMDL, delayed for a number of years, was finally released for a public comment period that ended on December 31, 2004. Spokane River dischargers simultaneously filed the UAA request, along with a petition for rulemaking that forced a quick decision by the state. Based upon the imminent denial of the UAA by the Department of Ecology (Ecology), there is a sudden push to resolve dissolved oxygen issues. We disagree with this "panic" approach to resource management. Nonetheless, because we understand Ecology must address the UAA rule petition in the next two weeks, we write to offer suggestions about setting up an effective collaborative process to work out solutions to this important resource management issue. We also describe our concerns with the Spokane Chamber of Commerce's "9 point plan."

Sierra Club has devoted substantial time and resources to participation in the public processes designed to address Spokane River cleanup. Sierra Club participates on the advisory committees for both Ecology's DO TMDL and the Spokane River dischargers' DO UAA. Last year we submitted three significant comment letters on the TMDL to Ecology, including a proposed implementation strategy that contemplates a comprehensive strategy for river cleanup. See Attachments 1, 2, 3. That submittal was utilized to

develop the Summary Implementation Strategy (SIS) contained in the draft TMDL. Sierra Club has also commented extensively on Ecology's draft guidance for processing UAAs, and has endorsed strong public inclusion in the UAA review process. Those comments are reflected in our concerns, offered to Ecology in January, that the Spokane River UAA rule petition not be used to as a mechanism to obviate public review of the document. See Attachments 4, 5.

Proposal for a Collaborative Process

Sierra Club endorses the concept of establishing a collaborative process for resolving dissolved oxygen water quality problems in the Spokane River. However, we cannot help but observe that numerous efforts to bring interested parties together to discuss these issues have already been undertaken, none of them particularly successful. We also note that the DO TMDL has been delayed for several years, at the request of the dischargers, to review the scientific modeling that underpins the TMDL and address other issues. See Attachment 6 (chronology). More extensive delay is simply unreasonable.

We therefore feel very strongly that any new process must be designed to obtain legally enforceable results in a reasonable time frame. If the parties cannot agree to a resolution that is protective of Spokane River water quality, then Ecology must move forward to implement the terms of its TMDL. We also believe that an understanding that failure to achieve results will result in Ecology action will motivate the parties to come to resolution. Regardless of the outcome, Ecology must retain and exercise its responsibility to make final decisions regarding the nature and extent of any cleanup plan.

Sierra Club offers the following concepts for a collaborative resolution of dissolved oxygen issues:

- (A) The process will operate within the framework of the draft DO TMDL and will be focused on mechanisms to achieve the existing dissolved oxygen standard as well as meeting the downstream DO standards promulgated by the Spokane Indian Tribe.
- (B) The process will focus on developing adaptive management approaches, using the multi-phase implementation strategy contemplated in the TMDL. Only if it is learned, after implementation, that achieving existing standards is not possible, will the option of changing water quality standards be explored.
- (C) The process will address the following sources of DO problems:
 - a. Avista's dams, especially Long Lake Dam,
 - b. the contribution of nonpoint source pollution, and
 - c. the impacts of water allocation and related depletion of instream flows.
- (D) The process will explore means by which Spokane County may obtain a permit for a new wastewater treatment facility.
- (E) The process will include a meaningful discussion of waste treatment technologies, conservation measures, and other structural/operational measures that will meet cleanup measures and Washington water quality requirements.
- (F) The process will be structured to require active, good-faith participation intended to obtain results. If the process is non-productive, it will come to an end and Ecology will move to finalize the DO TMDL.
- (G) The process will take no longer than six months. This time frame is appropriate because, once approved by EPA, the TMDL contains a year-long period to create a detailed implementation plan.

- (H) Participation is voluntary and no party relinquishes jurisdictional authority.
- (I) The outcome of the process will have legal consequences, i.e., it will be implemented into the final TMDL and new NPDES permits for all Spokane River dischargers upon its completion. If the process is not successful, Ecology will move forward with the TMDL and NPDES permits as required by law.
- (J) The process will be inclusive of all interests within the community. The State of Washington will see to appropriate government-to-government communications with the Spokane and Coeur d'Alene Indian Tribes, as well as coordination with EPA.

While the above agenda is ambitious, we believe it is necessary to a comprehensive resolution of the Spokane River's dissolved oxygen problems. Again, however, we reiterate that this process may not be used as basis for significant delay of the cleanup plan.

Nine Point Plan

We would also like to share with you our concerns about the so-called "9 Point Plan" recently transmitted by the Spokane Regional Chamber of Commerce. We oppose this plan because it does not offer a framework for resolving issues. Instead, it appears to be an endpoint document representing the Chamber's preferred outcome of a negotiated process. This focus is obvious if one inserts the word "if" before Point 1, and the word "then" before Points 2-9.

We have three principal concerns with the Chamber's proposal. First, and most important, Point 1 proposes that the state conduct a UAA to lower the Spokane River DO standard. While cleverly worded, this point represents nothing more than an effort to shift the burden of the UAA to state taxpayers.

It is entirely inappropriate to predicate cleanup discussions on agreement to lower the DO water quality standard. Moreover, the proposal to lower standards based on a "biological justification" is doomed to failure. The existing water quality standards are in fact biologically justified. Ecology has provided detailed comments on drafts of the UAA explaining the futility of this approach (these comments were largely ignored in the final UAA document). See Attachments 7, 8, 9.

The proposal to shift the UAA burden to the state is simply unacceptable.

Second, we are concerned that several of the items offered up in the 9 Point Plan are already required by law and therefore not negotiable. Chief among these is the proposal to adopt AKART, to identify and implement re-use projects and water conservation programs (points 2, 4 and 8).

Finally, we would urge you to exercise great caution with respect to the proposal to establish a non-profit corporation to "manage and coordinate" a water quality program (point 9). It is unlawful for the Department of Ecology to cede any of its management authority to an NGO (as it would be for any government agency). Agreements for bi-state resource management must be conducted on a government-to-government basis that is equitable, and includes the Tribes. We already have experience with failed or ineffectual resource management committees in this watershed, including the Coeur d'Alene Basin Commission, the Washington Citizens Advisory Committee, and the SVRP Bi-State Aquifer

Study (the latter is conducting good technical work, but is incapable of addressing pressing management issues). We urge the state to approach the concept of a new committee very carefully. More process and meetings will not lead to solutions.

In sum, the Spokane-Coeur d'Alene watershed is heavily polluted and numerous processes are now underway to clean up and restore the basin. See Attachment 10. The DO TMDL effort is one among many related projects. Citizens and government agencies are devoting an extraordinary amount of time right now to find solutions that will benefit the resource. We are delighted to see your offices taking an interest in the Spokane River, and urge your staff to thoroughly ground itself in the history and details as you work with the Departments of Ecology, Fish & Wildlife, Health, and other agencies to craft community solutions for the Spokane River.

Thank you very much for your consideration.

Yours very truly,

Rachael P. Osborn

Rachael Paschal Osborn
Attorney at Law
Coordinator, Spokane River Project

cc: Jay Manning, Dave Peeler, Rene-Marc Mangin, Jim Bellatty, Dave Knight, Ken Merrill, Jani Gilbert
Senator Lisa Brown
Representatives Timm Ormsby and Alex Wood

Attachments:

1. Sierra Club, proposed Summary Implementation Strategy for DO TMDL, 7/27/04
2. Sierra Club, comments on DO TMDL, 12/28/04
3. Sierra Club, comments on DO TMDL, 12/31/04
4. Sierra Club, request for public hearing on UAA rule petition, 1/10/05
5. Sierra Club, comments in opposition to UAA, 1/23/05
6. Chronology of dissolved oxygen cleanup activities
7. Dep't of Ecology, comments on draft UAA, 5/13/04
8. Dep't of Ecology, comments on draft UAA, 10/1/04
9. U.S. Env'tal Protection Agency, comments on draft UAA, August 2004
10. Spokane-Coeur d'Alene Watershed Regional Water Issue Matrix, rev. 1/10/05