



April 26, 2007

Jay Manning, Director
Washington Department of Ecology
PO Box 47600
Olympia, WA 98504-7600

RE: Request for Action to Protect Washington Interests

Dear Mr. Manning:

This letter is submitted on behalf of my client, Sierra Club Upper Columbia River Group. As you know, Sierra Club has been an active participant in the development of the dissolved oxygen TMDL and NPDES permits for the Spokane River, including the NPDES permits for the three dischargers in Idaho. The Environmental Protection Agency is currently taking comments on the draft NPDES permit for the Idaho facilities.

If issued as drafted, these permits will violate Washington's water quality standards, as well as applicable federal regulations. Because Long Lake Reservoir on the Spokane River does not meet standards for dissolved oxygen, human caused activities cannot cause a measurable decrease in dissolved oxygen levels (which EPA has interpreted as a 0.2 milligrams/liter reduction). *See* WAC 173-201A-200(1)(d)(ii).

EPA's draft permits allocate the entire available reduction to the three sources in Idaho, ignoring the impacts of sources in Washington to dissolved oxygen levels. This approach essentially provides no lawful level of loading to any source on the Washington side of the river. Moreover, this approach violates federal regulations that prohibit EPA from issuing permits that will cause or contribute to a violation of Washington's water quality standards. 40 C.F.R. § 122.44(d); CWA § 401(a)(2). EPA's analysis focuses exclusively on whether the Idaho dischargers will cause a violation of standards in Washington, but fails to cumulatively assess impacts thereby ignoring the prohibition on contributing to a standards violation. Further, EPA completely fails to assess the cumulative effect of the discharges on compliance with water quality standards within the Spokane Reservation.

Despite these violations of Washington standards and federal regulations, representatives from Ecology have yet to speak up to protect Washington's interests. By providing the entire allocation to the Idaho dischargers, EPA leaves no allocation to any Washington sources leaving Ecology with the choice of either providing no loads to point or nonpoint sources or issuing a similarly flawed TMDL and NPDES permits. Moreover, EPA's approach establishes a precedent that could be repeated on multiple water bodies involving multiple pollutants.

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Ecology must take action to stop EPA from moving forward with this flawed and unlawful NPDES permitting scheme. Failure to act threatens to derail the months of efforts dedicated by many parties (on both side of the border) in the TMDL Collaborative Process. Section 401(a)(2) of the Clean Water Act provides specific authority for the State of Washington to object to EPA's permitting approach, as well as Idaho's 401 certification of the permits. Accordingly, Sierra Club requests that Ecology: (1) submit comments opposing EPA's unlawful approach and (2) take other appropriate action under CWA § 401 to resolve the clear inconsistency of EPA's permitting approach with Washington's water quality standards and federal regulations.

Sierra Club appreciates your action and leadership on this issue.

Sincerely,

A handwritten signature in black ink, appearing to read 'RIS', with a long horizontal flourish extending to the right.

Rick Eichstaedt
Attorney for Sierra Club

cc: Ron Lavigne, Washington Attorney General's Office
Dave Peeler, Ecology
Jim Bellatty, Ecology
Drea Traeumer, Ecology
Brian Crossley, Spokane Tribe