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SPOKANE RIVER PUBLIC HEARING

WASHINGTON STATE DEPARTMENT OF ECOLOGY

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COPY

Wednesday, October 10, 2007, 7:00 P.M.

Spokane Falls Community College, Student Union Building

3410 West Fort George Wright Drive

Spokane, Washington 99224

OCT 30 2007

DEPARTMENT OF ECOLOGY
EASTERN REGIONAL OFFICE

Hearing Officer: Terri Costello

* * * * *

THE HEARING OFFICER: My name is Terri Costello. I'm your hearings officer for this evening's hearing. We have Ecology staff with us tonight; Eastern Regional Director, Grant Pfeifer; and staff from the Water Quality Program, Jeannie Daryl, back table, Pat Hallanan, this back table, Richard Coke, white shirt, and Lucy Peterschmidt, the back corner.

On behalf of the Department of Ecology welcome, and thank you for coming. Please silence your cell phones and pagers at this time.

The purpose of tonight's hearing is to gather public comment on the Draft Water Quality Permits, or National

1 Pollutant Discharge Elimination System Permits for the City
2 of Spokane, Riverside Park Water Reclamation Facility and
3 Combined Sewer Overflows, Liberty Lake Sewer and Water
4 District, Kaiser Aluminum Fabricated Products, and Inland
5 Empire Paper Company.

6 This hearing is part of the public comment period on
7 the permits, which ends November 13th, 2007. Ecology will
8 respond to testimony received tonight in the Response of the
9 Summary, which will be in the Appendix to the Facts Sheet
10 with the final permits.

11 Tonight's meeting has two main parts. First an open
12 house was held with Water Quality Program staff available to
13 answer questions regarding all four draft permits, the
14 Spokane River and Lake Spokane TMDLs. In a few moments
15 we'll begin the more formal segment with, when we record
16 your comments for the public record.

17 As tonight's hearing officer, my job is to conduct the
18 hearing. I have two main responsibilities. First, I need
19 to make sure everyone who wants to has the opportunity to
20 come up and comment. Second, I need to make sure that the
21 Department obtains a clear record of the hearing, so your
22 comments will be recorded. We also have a court reporter
23 who will transcribe testimony as it is given. Her name is
24 Rita Ketz.

25 To do my job, I need your cooperation. I have a few

1 ground rules designed to support common courtesy and keep
2 order. I've also listed them on the wall. I will call your
3 name in the order in which I receive your registration card.
4 If you wish to speak or have either, and had either not
5 completed a card or have not given it to me yet, please
6 complete one and give it to Jenny in the back. And she'll
7 bring it up to me. When everyone who's requested to make
8 public comment has had an opportunity, I'll open the floor
9 for anyone else who's decided to speak.

10 I will ask speakers to come to the microphone up front
11 so we can hear you and record your comments. One person
12 speaks at a time, and that speaker has the floor at that
13 time. Please state your name, address, and affiliation for
14 the record before you begin.

15 The second ground rule is about length of comments.
16 We don't have that many speakers tonight. So I'm gonna set
17 my timer for about 10 minutes, just to kind of give you a
18 heads-up of how long you've been running. But we're really
19 not gonna stick you to that if you, if you need more time.

20 The third rule addresses questions asked during the
21 formal hearing. Once the formal public hearing segment
22 begins, it's your turn. You can ask questions for the
23 record when you speak, but at this point we can't enter into
24 any discussions. After the hearing is adjourned, some of
25 the staff has volunteered to stay around, and if you still

1 have questions, you may ask them at that time.

2 After the written comment period is over on November
3 13th, staff will prepare the Responses in Summary which
4 identifies questions and comments.

5 My fourth and final ground rule addresses noise from
6 the audience. Extra noise isn't appropriate at this time.
7 We're trying to get a good recording. So please, I ask that
8 you bench any sidebar conversations, so that I can get a
9 clear recording of each speakers' comments.

10 Do these sound reasonable, and can we all agree to
11 these?

12 AUDIENCE MEMBERS: Yes.

13 MS. COSTELLO: All right, thank you.

14 Okay. Like I said before, I'll be starting with
15 people in the order I received your cards. Then I'll open
16 it for others at the end. Remember, one person speaks at a
17 time. Questions are for the record and will be addressed in
18 the Response in the Summary. We're gonna set the timer for
19 10 minutes, and no extra noise, please.

20 So when I call your name, please step to the
21 microphone and repeat for the record your name, address and
22 affiliation. Then give your testimony. I'm gonna do my
23 best to pronounce names right, but I'm gonna also apologize
24 in advance if I mispronounce your name.

25 Let the record show it is 7:07 on Wednesday,

1 October 10th, 2007. And this hearing is to hear the
2 testimony for the Draft Water Quality Permits or National
3 Pollutant Discharge Elimination System Permits for the City
4 of Spokane, Riverside Park Water Reclamation Facility and
5 Combined Sewer Overflows, Liberty Lake Sewer and Water
6 District, Kaiser Aluminum Fabricated Products, and Inland
7 Empire Paper Company. It's being held at the Spokane Falls
8 Community College in the Student Union Building, Rooms A
9 and B, in Spokane, Washington.

10 Announcements of this hearing were published in the
11 Coeur d'Alene Press on September 30th, 2007; the Spokesman
12 Review Voices, October 4th, 2007; and the Liberty Lake
13 splash on October 4th, 2007.

14 When I call your name, please step to the microphone,
15 state your name, address and affiliation for the record.

16 We will begin with Rick Eichstaedt.

17 MR. EICHSTAEDT: Thank you for -- is this on? Thank
18 you for pronouncing my name correctly. My name's Rick
19 Eichstaedt. I'm an attorney with the Center for Justice.
20 Our address is 35 West Main here in Spokane. And I
21 represent the Sierra Club. I appreciate the opportunity to
22 provide comment tonight.

23 A majority of our comments will be submitted in
24 writing, but I'd like to quickly address three points.
25 First, the permits, all four of these permits do not contain

1 limits for PCBs. As Ecology knows, these permits are not
2 strictly dissolved oxygen permits, and accordingly, must
3 address all pollutants of concern.

4 In 2006 the Department of Ecology issued a Draft Water
5 Quality Report, a TMDL, indicating that all four of these
6 dischargers are sources of PCBs into the river.

7 Unfortunately, the permits do not have any strict limits for
8 PCBs other than requiring a once-a-month sample of PCBs.

9 These four dischargers are poised to spend millions of
10 dollars to upgrade their facilities. They need to consider
11 whether this new technology will also address PCBs.

12 Second, the permits will allow new increases in
13 pollution discharges. The draft permit allows Liberty Lake
14 to double its discharge in 2008, and Spokane to increase its
15 discharge by 15 million gallons-a-day where, before there
16 are any decreases in pollution levels. This will,
17 obviously, allow for increases in oxygen depleting
18 pollutants, including BOD, ammonia, and phosphorous, rather
19 than the decreases necessary to meet water quality
20 standards.

21 The Clean Water Act allows new and increased
22 discharges only if they will not cause or contribute to the
23 problem. In fact, last week the Ninth Circuit Court of
24 Appeals in a case called Carlotta Copper made it clear that
25 new discharges such as these are allowed only if a TMDL can

1 demonstrate that there are, quote, "sufficient remaining
2 load allocations."

3 The TMDL does not do that. The TMDL does show that
4 the river is over allocated, not that there is remaining
5 capacity. Accordingly, any new discharges must be at the
6 final limits.

7 Obviously, any new increase in pollution will only
8 make the problem worse. Moreover, these increases are
9 inconsistent with the TMDL, itself, and with the
10 foundational concepts principle. It does not call for
11 increases until 2017 or 2027, after pollution reduction
12 activities occur. In fact, the Liberty Lake permit, which
13 in 2008 allows a discharge of 2 million gallons-a-day is a
14 half a million gallons more than Liberty Lake projects
15 they'll need in the foundational concepts in 2027.

16 Lastly, the City of Spokane permit does not reflect
17 current requirements for its combined sewer overflows. In
18 September of 2006, Ecology issued an order requiring the
19 City to improve its management of its sewer overflows, and
20 to increase its public outreach and education requirements.
21 The draft permit should include these requirements.

22 I've included a copy of the Carlotta case I've cited,
23 as well as the draft order to my written comments.

24 Thanks.

25 MS. COSTELLO: Next we have Bonne Beavers.

1 MS. BEAVERS: Good evening. My name is Bonne Beavers.
2 I, too, am an attorney with the Center for Justice working
3 with the Sierra Club on these river issues. And I have only
4 one point to make tonight, that Ecology, by law, must put
5 enforceable, final water quality based effluent limitations
6 in these permits.

7 Lake Spokane is critically impaired for dissolved
8 oxygen. That means we need to reduce the loading to the
9 lake of oxygen depleting pollutants. These include
10 phosphorous, BOD, and ammonia. We have to reduce them to a
11 level that won't cause or contribute to further water
12 quality violations in Lake Spokane.

13 As a result of years of study, Ecology has determined
14 how much of the oxygen depleting pollutants the dischargers
15 can discharge to the river and not cause or contribute to
16 water quality violations. The TMDL translates that into
17 pounds of at least one of these pollutants, phosphorous.
18 And each discharger is given a number of pounds. That's
19 called the discharger's waste load allocation. State and
20 federal law required these final waste load allocations be
21 included in the dischargers' permits.

22 To Ecology's credit and Inland Empire Paper, the
23 Inland Empire permit includes a compliance schedule with an
24 objective to make the final waste load allocation in 10
25 years. An objective, however, isn't quite the same thing as

1 requirement, but we're getting close.

2 Kaiser's permit almost meets that final allocation
3 now. But neither the City's nor Liberty Lake's permits
4 contain a compliance schedule requiring them to meet the
5 final waste load allocation. Under the TMDL, moreover,
6 these waste load allocations are not enforceable for 20
7 years.

8 This TMDL has undergone numerous iterations since
9 2004. The original 2004 draft required the dischargers to
10 meet that final waste load allocation in 10 years. That
11 draft was withdrawn under pressure by the dischargers.

12 During the ensuing years, Ecology worked with the
13 dischargers and others to draft a new TMDL. There were many
14 iterations, some still requiring a 10-year compliance
15 schedule. Which is the law in Washington, by the way. At
16 the end of the day, and with many changes demanded by the
17 dischargers, the final TMDL defers enforcement for 20 years.

18 This not the first time the dischargers have convinced
19 the regulatory agencies to defer the imposition of waste
20 load allocations in their permits. In 1989 the dischargers
21 signed an agreement with Ecology and EPA titled A Memorandum
22 of Agreement for the Spokane River Phosphorus Management
23 Plan.

24 Similar to the plan today, Ecology had capped
25 individual waste load allocations for all the dischargers.

1 But the dischargers put together a plan that included
2 phosphorus removing strategies and convinced Ecology not to
3 impose individual waste load allocations.

4 Let me read to you a little bit from that plan.

5 Quote, "Following years of study, it is now recognized
6 that the strict control of phosphorus discharges to the
7 Spokane River from all point source dischargers is necessary
8 to protect the water quality of the river and Long Lake.
9 The water quality regulatory agencies have the ultimate
10 responsibility for issuing and enforcing wastewater
11 discharge permits to accomplish this protection."

12 Still quoting, "In December 1987, these agencies
13 proposed the establishment of an individual phosphorus
14 discharge allocation for each discharger. However, the
15 dischargers were allowed one year in which to establish an
16 alternative to the agency's proposal. The attached plan is
17 the dischargers' alternatives to the immediate allocation of
18 the maximum daily phosphorus loading previously proposed,"
19 unquote.

20 In other words, they had a plan that wouldn't include
21 individual waste load allocations. The plan also lists six
22 goals. The sixth goal is this, "Postpone the need for
23 allocation of maximum allowable daily phosphorus loadings to
24 individual dischargers until a management plan approach is
25 unable to meet the Long Lake TMDL," unquote.

1 Now, it's my understanding that some waste load
2 allocations were eventually required, but they were very
3 generous. Nevertheless, that management plan did not work.
4 Now we have even more studies, and we know what we have to
5 do. Yet once again, we're adopting the dischargers' plan
6 that identifies a series of phosphorus removal measures,
7 these are good things, but it also delays enforcement of
8 individual waste load allocations.

9 Under this plan, the dischargers will have succeeded
10 in delaying the imposition of stringent loading limits from
11 1989 to 2028. That's almost 40 years. 40 years..

12 It's time to get down to business. We ask Ecology to
13 put hard final waste load allocations in these permits, as
14 required by law, and to require compliance as soon as
15 possible in conformity with Washington law.

16 Thank you.

17 MS. COSTELLO: Next we have John Osborn.

18 MR. OSBORN: My name is John Osborn. And I live at
19 2421 West Mission Avenue in Spokane. I'm a senior physician
20 at Veteran's Hospital in Spokane and chair of the Sierra
21 Club's Upper Columbia River Group.

22 I'd like to make the following eight points..

23 No. 1: Ecology cannot issue these permits until the
24 water quality plan or TMDL is approved by the Environmental
25 Protection Agency. The Clean Water Act requires that

1 wastewater permits be based upon the EPA approved Water
2 Quality Plan completed for the river.

3 The Department of Ecology is currently taking comment
4 on the Spokane River TMDL. There are many problems with the
5 TMDL that could impact these draft permits. The Department
6 of Ecology should commit to provide another public review
7 opportunity if these permits change as a result of changes
8 to the TMDL. Indeed, if the TMDL were to actually comport
9 with the law, then we would expect to see significant
10 changes in the TMDL between the draft and final, and thus
11 require significant changes in these draft permits.

12 No. 2: The permits fail to address PCBs. In 2006 the
13 Department of Ecology issued a Draft Water Quality Report
14 indicating that all four dischargers are sources of PCBs in
15 the river. The draft permits do not require the
16 polluters to address PCBs other than a requirement to take
17 one sample a month. The draft permits fail to acknowledge
18 that they are incomplete without PCB limits and cleanup
19 conditions.

20 Decisions made today to address phosphorus should
21 impact, or could impact decisions necessary to reduce PCBs.
22 The four polluters will spend millions of dollars to upgrade
23 their facilities. They need to consider whether the new
24 technology will also abate PCBs. The -- we could ultimately
25 be talking about many millions of dollars in private and

1 public investments. And indeed, foolhardy to make those
2 investments if we can't meet the legal standards.

3 Point No. 3: Failure to consider all sources of
4 pollutants. The City of Spokane owns and operates a storm
5 water system that contributes PCBs and phosphorus to the
6 Spokane River. The draft permit fails to address any
7 cleanup requirements in the City's storm water system.

8 Point No. 4: Failure of the permits to provide a
9 meaningful implementation schedule. The draft permits for
10 Liberty Lake and Spokane allow 20 years to meet pollution
11 reduction targets. 20 years. Washington law allows only 10
12 years for compliance and immediate compliance for new
13 dischargers, such as Spokane County, and increased
14 discharges.

15 Point No. 5: Permits allow for new increases in
16 pollution discharges. As Rich Eichstaedt, representing the
17 Sierra Club, noted, the draft permits allow the following:
18 Liberty Lake to double its discharge, Spokane to increase
19 its discharge by 15 million gallons-a-day. This in turn
20 allows for increases in oxygen depleting pollutants, such as
21 ammonia, and phosphorus, and BOD, rather than the decreases
22 necessary to clean up the river.

23 The Clean Water Act allows new increased discharges
24 only if these will not cause or contribute to the problem.
25 Any new increase in pollution will only make the problem

1 worse for the river. These increases are inconsistent with
2 Ecology's own Water Quality Plan. They're also inconsistent
3 with the law.

4 Point No. 6: The draft City of Spokane permit does
5 not reflect current requirements for sewer overflows. Each
6 year the city releases millions of gallons of untreated
7 sewage into the river from its combined sewage overflow
8 system.

9 In September of 2006, Ecology issued an order
10 requiring the City to improve its management of these
11 overflows and to increase its public outreach and education
12 requirements. The draft permit does not reflect these
13 requirements.

14 Point No. 7: The draft permits contain vague
15 requirements. The permits allow a significant amount of
16 wiggle room, because they include phase compliance schedules
17 that do not match the Department of Ecology's Water Quality
18 Plans that are requirements; require the polluters to
19 develop a plan to reduce phosphorus from nonpoint sources
20 and by other means that are not well-defined; depend on a
21 pollution trading program without specifying how polluters
22 are to engage in such a program and how trades might or
23 might not impact ability to clean up; and finally, do not
24 require public review and Ecology approval of key phosphorus
25 elimination documents, such as the delta elimination plan.

1 And finally, Point No. 8: Federal law requires the
2 permits to include interim and final water quality base
3 limits for discharge into critically impaired waters. There
4 are none in the City of Spokane and Liberty Lake permits.

5 I like to think of these permits as the
6 cart-before-the-horse permits. They are clearly premature.
7 Ecology needs to go back, overhaul the TMDL before it issues
8 the draft. And then in the end we'll have to reissue the
9 draft permits.

10 Thank you.

11 MS. COSTELLO: Next we have Bart Hoggin.

12 MR. HAGGIN: Haggin.

13 MS. COSTELLO: Haggin. I apologize.

14 MR. HAGGIN: My name is Bart Haggin. I live at 15418
15 Little Spokane Drive.

16 Well, I think we all know what the right thing to do
17 here is. And we've known the right thing to do for decades.
18 So the question is, why haven't we done it. Because, of
19 course, we're talking about money here. And, as a matter of
20 fact, even at the current time we're talking about what is
21 now called the cost benefit ratio. That's what the UAA was
22 all about. It's a matter of trying to do as much as we can
23 as cheaply as we can. And that's the motivation for the
24 Department of Ecology. That's the motivation for the
25 private corporations.

1 And why is that. Well, the private corporations have
2 saved millions of dollars over the years by what is called
3 externalizing the costs. That means putting the costs off
4 the back of the shareholders and on the back of the
5 taxpayers in the community and the environment. So all of
6 those millions of dollars make them not sound quite so
7 generous today, when they decide that they're going to try
8 to do some things to mitigate the problems of the river.

9 So why does this happen. It happens because in the
10 case of the regulators, they want to look good to the
11 politicians. They want to say that we are saving as much
12 money as we possibly can, and yet, we're doing as much as we
13 can with the budget that we think that is reasonable to do,
14 to do the job. And in the case of the politicians, they
15 want to look good to the constituents. And they want to
16 look good, of course, to the corporations and the wealthy
17 people who fund their campaigns and get them reelected.
18 Because that's the major motivation here.

19 We're talking here, basically, about people who lack
20 the courage. And in the case of particularly the
21 politicians, they lack the courage of doing the right thing.
22 And they are doing the thing that they think will get them
23 reelected.

24 So I think we've got to face the facts here, that this
25 is all about money. This is all about spending as much as

1 we need to, to do the job right. And that that money is not
2 forthcoming at this time. We know what has to be done in
3 order to clean up the river. We've known it for decades
4 now. And yet, nothing has been done.

5 We're skeptical that it's going to get done today. We
6 are skeptical because we think that the kinds of programs
7 that are put forth will not meet the, even the minimum
8 standards of the law, to say nothing of what would be the
9 ideal situation for the, for the river.

10 The question that would have to be put to dischargers,
11 both the politicians that support the City of Spokane and
12 the other municipalities, and the question that should be
13 put to the private corporations is what would you do if you
14 had an unlimited budget and felt like you could exceed it?
15 That's what you should be looking at, the ideal kind of
16 situation after all these years to make sure that you're
17 doing the right thing.

18 Thank you.

19 MS. COSTELLO: I only have four cards. Is there
20 anyone else who would like to speak at this time? Come on.

21 MS. SOSSO: I'm Clare Sosso. And I live at 15115
22 North Pheasant Road, Nine Mile Falls, Washington. And at
23 the risk of being redundant from last week, I represent
24 Riverside State Park Foundation and the Advisory Committee
25 for Riverside State Park. And I will speak for them first.

1 And then I will also speak for Spokane Lake Park Homeowners
2 Association.

3 Riverside State Park Foundation and Advisory
4 Committees are committees of citizens. They represent
5 different interest groups in our area that enjoy the use of
6 Riverside State Park. They advise the park management on
7 behalf of these groups and also provide volunteer services
8 and funding for improvement projects throughout the park.

9 Riverside State Park is a primary recreational
10 environmental resource for the Spokane area. The park makes
11 the Spokane area a unique place in which to live. And the
12 Spokane River, the Little Spokane, and Lake Spokane are
13 vital resources and core attractions of one of Washington's
14 largest state parks. The park offers canoeing, kayaking,
15 lots of water sports. These precious water resources
16 provide life-giving habitat to the local wildlife and
17 recreational opportunities for our local citizens.

18 We at the Riverside State Park Foundation and Advisory
19 Committees want to reiterate and reaffirm our statement from
20 the 2004 periods. We want to express our expectations to
21 the Environmental Protection Agency and the Department of
22 Ecology for providing the maximum level of protection to
23 these irreplaceable water resources against industrial and
24 manmade polluters. We will stand behind every effort to a
25 timely and optimal restoration and preservation of these

1 precious life-giving resources of Riverside State Park and
2 its surrounding natural areas. And we reserve the right to
3 provide further written comment.

4 My second statement is from the Spokane Lake Park
5 Homeowners Association. On behalf of the members of the
6 Spokane Lake Park Homeowners Association, I would like to
7 express our concern and frustration over the quality of
8 water and conditions at Lake Spokane.

9 We at Lake Spokane get everything that the greater
10 Spokane area, Post Falls, and Lake Coeur d'Alene send down
11 the river. In recent years we are experiencing more and
12 more algae blooms that last longer and cover larger areas.
13 We have less and less water in parts of our lake during the
14 summer months. Our families worry about swimming and
15 recreating in water that is downstream from unpredictable
16 sewage overflows, heavy metals and other unknown
17 contaminants. The conditions in recent years has diminished
18 or greatly restricted recreational use in certain areas.

19 I met with some board members and members at large
20 Sunday evening. And they described to me dying fishing,
21 being told not to eat the fish, stench and debris, and dying
22 vegetation in our water at Lake Spokane.

23 We have a vested interest in the healthy state of the
24 Spokane River, the Little Spokane, and Lake Spokane. We are
25 counting on the Environmental Protection Agency and

1 Department of Ecology as homeowners and taxpayers to restore
2 and protect the recreational environmental safety of our
3 lake. We expect vigilant, continuous and accurate
4 monitoring of the dischargers.

5 It would benefit the entire greater Spokane area of
6 residents who also come to our local area to recreate. We
7 also reserve the right to provide further comment, written
8 comment.

9 Thank you.

10 MS. COSTELLO: Is there anyone else that would like to
11 comment at this time?

12 Okay. On the wall right there, Send comments to...
13 I hope you can read. If not, please, after we've closed,
14 take time to read that. That's where you can send written
15 comments. We also have a box lid right up here at the
16 front, if you'd like to submit written comments at this
17 time, please place them in there.

18 They are due by, the written comments are due by
19 November 13th, 2007. The address is 4601 North Monroe
20 Street, Spokane, Washington, 99205. Direct them to the
21 Permit Coordinator, Washington State, Department of Ecology.

22 And I see that we have another staff member that I
23 thought had to leave. And I don't think I mentioned your
24 name. Dave Knight is also with us tonight. He's also part
25 of water quality staff. Sorry, Dave, for leaving you out.

1 You can also submit written comments by fax to
2 (509) 329-3529 or by e-mail to stra461@ecy.wa.gov. That's
3 also written on the bottom of that address.

4 All testimony received at this meeting along with all
5 written or video comments received will be part of the
6 official record for this proposal. The next step is for
7 Ecology staff to review all written and oral comments and
8 the completion of the Response of the Summary thereafter.

9 On behalf of the Department of Ecology, thank you for
10 coming tonight. I appreciate your cooperation and your
11 courtesy. Let the record show that it is now 7:33. And
12 this hearing is officially closed. Thank you for coming.

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1 STATE OF WASHINGTON)
2 COUNTY OF SPOKANE) : ss: REPORTER'S CERTIFICATE

3
4 I, Rita A. Ketzka, a notary public
5 in and for the State of Washington, do hereby certify:

6 That the foregoing Public Hearing
7 was taken on the date and at the time and place as shown on
8 Page 1 hereto;

9 That the foregoing is a true and
10 correct transcription of my shorthand notes of the requested
11 Public Hearing transcribed by me or under my direction;

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WITNESS my hand and seal this
24th day of October 2007.



Rita Ketzka
RITA KETZA
CCR No. 2136,
Notary Public in and for the
State of Washington, residing
at Spokane.

WORD LIST

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