



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue
Seattle, WA 98101

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Reply To
Attn Of: OW-134

FEB 22 2002

Herman Dillion, Sr., Chairman
Puyallup Tribe of Indians
2002 E 28th Street
Tacoma, WA 98404

Dear Mr. Dillion:

In 1998, The Washington Department of Ecology included portions of the Lower White River on its list of water-quality impaired waters (303(d) List). As a result of this listing, Ecology is required under the Clean Water Act to develop a Total Maximum Daily Load (TMDL), or quantitative waterbody pollution clean-up plan, to reduce elevated pH levels in the White River. In order to provide for a comprehensive assessment of the entire stretch of the Lower White River, including those portions of the Lower White and its tributaries that are waters of the Muckleshoot Indian Reservation, the EPA, Muckleshoot Indian Tribe and Ecology have agreed to work together. Our intention is that Ecology's TMDL will apply to those waters outside the Reservation, and EPA, in consultation with the Muckleshoot Indian Tribe, will issue the TMDL for waters within the exterior boundaries of the Reservation. A Memorandum of Agreement among the three governments to outline the way in which we will work together to develop the TMDL was finalized in October, 2001 and is attached for your information.

We understand that the Lower White River, a tributary of the Puyallup River, is an important resource of the Tribe, and we have invited Char Naylor to attend our meetings to discuss the TMDL issues. As part of EPA's commitment to government-to-government consultation, we invite your Tribe to share its perspectives and concerns with the Muckleshoot Indian Tribe, Ecology and EPA as we work together to develop the TMDL. Please let me know how you would like to participate in this TMDL development process. If you have questions, please feel free to call me at (206) 553-1261 or Laurie Mann of my staff at (206) 553-1583.

Sincerely,

Randall F. Smith
Director
Office of Water

cc: Bill Sullivan, Puyallup Tribe of Indians
Char Naylor, Puyallup Tribe of Indians
Jeanette Barreca, Washington Department of Ecology
Nancy Rapin, Muckleshoot Indian Tribe

**MEMORANDUM OF AGREEMENT AMONG
THE MUCKLESHOOT INDIAN TRIBE,
THE WASHINGTON STATE DEPARTMENT OF ECOLOGY,
AND THE U.S. ENVIRONMENTAL PROTECTION AGENCY RELATING TO THE
DEVELOPMENT OF A TMDL FOR THE LOWER WHITE RIVER**

The U.S. Environmental Protection Agency (EPA), Muckleshoot Indian Tribe (MIT), and the Washington State Department of Ecology (Ecology) (collectively "the Parties") each desire to develop a government-to-government agreement for the development of a pH Total Maximum Daily Load (TMDL) for the lower White River. The lower White River flows through lands of both the State of Washington and the Muckleshoot Reservation, and it is on the list of impaired and threatened water bodies under section 303(d) of the federal Clean Water Act. The lower White River study area is the twenty-two mile portion of the White River extending from just upstream of Rainier School's outfall in the White River to Puget Sound Energy's tail race at Dieringer.

The parties enter into this Memorandum of Agreement (the MOA), and agree as follows:

1. The Parties will each provide staff to a Drafting Committee, who will draft the TMDL, seek and consider public comments on the draft TMDL, and recommend approval of the TMDL to the decision makers of the Parties.

2. The TMDL produced by the Drafting Committee will, as agreed to by the decision makers of the Parties, be jointly presented to EPA under the Clean Water Act for final action. This TMDL agreement does not constitute EPA approval of any TMDL.

3. For purposes of developing the TMDL, the Parties agree that the water quality standards EPA has approved for the State of Washington are an appropriate measure for calculating the greatest amount of a pollutant that the Lower White River can receive daily. If EPA promulgates federal standards or approves standards of the MIT under the CWA, this TMDL agreement may be revisited.

4. This TMDL for pH is a first step for improving water quality that identifies phosphorous as an appropriate target. The MIT believes that nitrogen, in addition to phosphorous, may also be an appropriate target for allocation, and the MIT has not changed its position by entering into this MOA. The Parties recognize that future activities, as informed by adaptive management and monitoring, may include the need for nitrogen controls.

5. The Parties will jointly establish and coordinate with a Lower White River Advisory Group (Advisory Group) which may include members of affected local governments, dischargers and community members to provide public consultation and input concerning the development of the TMDL.

6. The Parties will designate a primary contact for receiving communications and participating for that Party, and inform each other if the following primary contacts change:

Nancy Rapin for MIT (address: 39015 172nd Avenue SE, Auburn, WA 98092;
phone: 253-939-3311; fax: 253-931-0752)

Jeannette Barreca for Ecology (address: PO Box 47775, Olympia, WA 98504;
phone: 360-407-6556; fax: 360-407-6305)

Laurie Mann for EPA (address: 1200 Sixth Avenue, OW-134, Seattle, WA 98101; phone: 206-553-1583; fax: 206-553-0165)

7. The Parties will notify each other when responding to a written request for information about the Lower White River TMDL project. The Parties will provide each other an opportunity to review and comment on external communications directly related to the drafting of the TMDL, and will work together in developing public outreach and media strategies.

8. Communications between the Parties while implementing this MOA generally will be at the staff level, and the goal of the Parties is to reach consensus. If a dispute arises, the issue will be presented in writing to immediate supervisors, and the staffs will present the matter to progressively higher levels of management in an effort at reaching consensus.

9. The Parties recognize that each Party reserves all rights, powers, and remedies now or hereafter existing in law or in equity, by statute, treaty, or otherwise. Nothing in this MOA is or shall be construed to be a waiver of the sovereignty of the Muckleshoot Indian Tribe, the State of Washington, or the United States. This MOA is intended solely for the purposes of facilitating inter-governmental cooperation between the Parties, and creates no rights in third parties or the right to judicial review.

10. This MOA shall be effective upon the date of signature by all of the Parties. Any Party may voluntarily withdraw from this MOA by providing thirty (30) days written notice to the other Parties.

MUCKLESHOOT INDIAN TRIBE

BY: John Daniels Jr. 10-2-01
John Daniels Jr., Chair Date
Muckleshoot Indian Tribe

WASHINGTON STATE DEPARTMENT OF ECOLOGY

BY: Tom Fitzsimmons 10-6-01
Tom Fitzsimmons, Director Date
Washington State Department of Ecology

U.S. ENVIRONMENTAL PROTECTION AGENCY

BY: Charles E. Findley 9-27-01
Charles E. Findley, Acting Regional Administrator Date
U.S. Environmental Protection Agency, Region 10