

# Spokane Tribal Natural Resources

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March 26, 2010

Dustin Bilhimer  
Spokane TMDL Dispute Resolution Coordinator  
Department of Ecology  
PO Box 47600  
Olympia, WA 98504-7600

Dear Mr. Bilhimer:

On behalf of the Spokane Tribe of Indians ("Tribe"), I am writing to provide brief comments to the Spokane River TMDL Dispute Resolution Panel pursuant to WQP 1-25 § 1(C)(1). The Tribe has been closely involved with the development of this TMDL and all of its permutations over the past 7 years. Tribal natural resource and legal staff have closely monitored and participated in discussions with the State and EPA throughout the development of the current version of the TMDL and provided substantial written comments on it. (Attachment 1).

In this comment letter, the Tribe wishes to provide the panel with information on two issues. One, the Tribe wants to express its opposition to any increase in the Waste Load Allocations ("WLA") for any of the current dischargers within the River. Two, the Tribe wishes to express support for the Sierra Club's two points of contention that involve the potential new NPDES permit for the future Spokane County waste water treatment plant. The Tribe previously supplied Ecology with comments on this particular issue and would ask that the panel review those comments in its decision making process. (Attachment 1, pg. 2-5).

## **Background**

The Tribe is treated in the same manner as a state for the purposes of the Clean Water Act ("CWA"), and has adopted and administers its own Water Quality Standards ("WQS"). Additionally, federal regulations require that when NPDES permits are issued they must ensure that the WLA contained in those permits meet downstream WQS (in this case, the Tribe's). The Tribe currently suffers very low dissolved oxygen levels within the lower arm of the Spokane River, during the same critical period as Long Lake, and is optimistic that the current version of the DO TMDL will lay a path to improving the situation.

## **Waste Load Allocations**

During the DO TMDL development, the Tribe with assistance from EPA contracted with Portland State University to develop a CE-QUAL-W2 model of the lower arm of the Spokane River to simulate the TMDL and its effect on water quality downstream of Long Lake. A Draft version of the modeling report was completed at the same time the TMDL was published for public comment in October 2009, and the report was finalized on December 24, 2009. (Attachment 2). The modeling revealed three things. First, that even if the TMDL reaches full implementation the Tribe's dissolved oxygen standard of no less than 8mg/l will not be met

in certain segments of Tribal waters. Second, just as it is in Long Lake, Sediment Oxygen Demand (SOD) is a major contributor to the violation of the Tribe's WQS. Third, during the modeling process the Tribe realized that it needed to evaluate how portions of the lower arm of the Spokane River are classified, i.e. lake vs. river.

The Tribe is in the process of interpreting its WQS as applied to portions of the lower arm of the Spokane River and hopes to perform several more model runs to understand how SOD and the proposed WLA within this TMDL will affect it. However, one thing is clear from the modeling; there is no room for growth in the discharge of oxygen demanding pollutants as outlined in this TMDL. (Attachment 2, pg. 130-133). All discharges have the potential to increase or thwart any decrease in SOD the Tribe hopes to see and although this TMDL calls for significant decreases in dischargers, in the end it still might not be enough to satisfy the legal requirements of 40 C.F.R. § 122.4(d). The Tribe hopes to complete the necessary work to further evaluate the TMDL and the future NPDES permits that are based on it in the coming months. Due to its preliminary groundwork the Tribe is convinced that any increase in WLAs will continue to cause violations of the Tribe's WQS. For this reason, the Tribe respectfully asks that this Panel recommend that no change to the WLAs take place for the current dischargers as outlined in the TMDL.

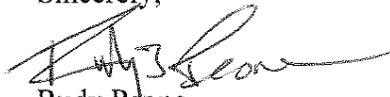
### **New Discharger**

The Tribe supports the Sierra Club's decision to dispute the language in the TMDL that describes the method by which Spokane County can obtain an NPDES permit for its proposed sewage treatment facility. As outlined in detail in the Tribe's previously submitted comments, Ecology's plan for the new discharger may violate 40 C.F.R. § 122.4(i) and WAC 173-201A-450. (See Attachment 1, p.2-5) The Tribe concurs in Sierra Club's recommendation to this panel that the language regarding the County's WLA and the proposed offsets be stricken from the TMDL.

### **Conclusion**

Although the Tribe does not fully support the current design of the TMDL, it understands the balancing that must occur. However, it expects the State of Washington to comply with all applicable laws when finalizing this TMDL. In addition, the Tribe firmly believes that any increase in the WLAs for the dischargers would violate federal law. The River's health will only improve with significant reductions in the discharge of pollutants and unfortunately, some of those reductions may be painful for the discharging entities.

Sincerely,



Rudy Peone  
Director

Cc. Ted Sturdevant, Ecology, Director