SPOKANE RIVER PUBLIC HEARING

WASHINGTON STATE DEPARTMENT OF ECOLOGY

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Wednesday, October 3, 2007, 7:00 P.M.

Spokane Falls Community College, Student Union Building

3410 West Fort George Wright Drive,

Spokane, Washington 99224

Hearing Officer: Victoria Leuba

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THE HEARING OFFICER: I'm Victoria Leuba, and I'm the hearing officer for tonight's hearing. We have Ecology's Eastern Regional Director, Grant Pfeifer, here and staff from the Water Quality Program, who've been running our workshop for us. On behalf of the Department of Ecology, I want to welcome you and thank you for coming.

We do have a couple of unusual things for tonight's hearing. There is a table set up over here in case you want to take notes and your lap is not sufficient to that chore. Mine never is.

On this registration table there was a little pamphlet you could pick up that's how to comment effectively. And

there's also on that table a comment form. This form has the name and address of the person who will be receiving written comments on this document. So even if you don't want to fill out that form tonight, you might want to pick it up so you have that address.

The purpose of tonight's hearing is to gather public comment on the Spokane River and Lake Spokane Dissolved Oxygen Water Quality Improvement Report, or the TMDL report. This hearing is part of the public comment period on the TMDL, which ends on November 13th, 2007. Ecology will respond to testimony received tonight in their Response to Comments Appendix of the final TMDL.

Ecology will be holding a public hearing for the four draft permits associated with the TMDL next Wednesday, October 10th, here in the Spokane Falls Community College Student Union Building, same room, same time.

Testimony about the Draft Water Quality Permits should be given at that time. Tonight we are interested only in comments on the Spokane River and Lake Spokane Dissolved Oxygen Water Quality Improvement Report

Tonight's meeting will consist of two main parts. The first one has just ended with the open house and Water Quality Program staff available to answer your questions regarding the Spokane River and Lake Spokane TMDL, water quality standards, and what is a TMDL, TMDLs for the Little

Spokane River and Hangman Creek, and the water quality permits associated with the TMDL.

We'll begin the more formal segment, which we have done, when we record your comments for the public record. Once the formal public hearing segment begins, it's all your turn. You can ask questions for the record when you speak, but at this point staff will not answer questions or enter into any discussions.

Written or video comments can be given, will be given the same consideration as verbal comments, so please summarize lengthier comments or repetitive ones. You may also submit additional written comment.

After the public hearing, staff will prepare a summary which identifies questions and comments. As stated previously, Ecology will respond to testimony received tonight in the Response to Comments Appendix of the final TMDL. If you put your name and address on a signup list at the door, or if you are already on the mailing list, you will receive notice when the TMDL and Response to Comments are complete.

As tonight's hearing officer, my job is to conduct the hearing. I have two responsibilities. First, I need to make sure everyone who wants to has the opportunity to come up and comment. Second, I need to make sure that Ecology obtains a clear record of the hearing. That's what the

recording is for. And tonight we are assisted in getting a clear record by having a court reporter - and I've forgotten Rita's last name - Rita Ketza, who will be transcribing testimony as it is given.

To do our jobs we need your corporation. I have a few ground rules designed to support common courtesy and to keep order. I would like to go over these rules now. The first ground rule is about speaking in order. I'll call your name in the order in which you signed in. Then we'll open the floor when those folks are done for anyone else who has decided to speak.

Speakers will come down to the podium, where we can all hear them, and I can record them. Please state your name and address for the record. One person speaks at a time. You have the floor.

Second ground rule is about the length of comments. I want to make sure that you and your neighbors get to speak. We know you took the time and trouble to come tonight and may want to leave at a reasonable hour. So I'd like to ask you to limit your speaking time to about four minutes. We actually have a little bit more than that. I will let you know when four minutes has elapsed, and I will cut you off at five. That lets us get through everyone's testimony. Does that sound fair?

My third and final ground rule involves noise from the

audience. Extra noise isn't appropriate. And we need to get a clear recording of what's being said. And in that effort, I'll ask everyone to silence their cell phones., Put them on vibrate, turn them off, do whatever it takes to not have them interrupt this meeting. And if you have a side conversation that you need to carry on, please carry it on in the atrium outside not in this room.

Okay, now it is your turn. Before we start, has everyone who wants to signed up on the registration sheet and had a card made out? Okay. If you would like another opportunity, we still have cards at the back, and we can still get them filled out. I'll be starting with people in the order that you signed in. And then at the end we'll open it up for the remainder.

One at a time. Questions are for the record. Limit comments to about four minutes. And no extra noise. Is everybody okay with all that?

Okay. When you are nearing the end of your time allowance, I will hold up a card to let you know that you have about 30 seconds left in which to finish up testimony, oral testimony. When I call your name, please step down. State your name and address for the record.

Let the record show that it's 7:09 p.m., on October 3rd, 2007, and this hearing on the Draft Spokane River and Lake Spokane Dissolved Oxygen Water Quality

Improvement Plan, or TMDL, is being held in the Student Union Building at Spokane Falls Community College located at 3410 West Fort George Wright Drive.

Legal notice of this hearing was published in the Spokesman Review Voices, the Inlander, and the Liberty Lake Splash on Thursday, September 27th, and the Coeur d'Alene Press on Sunday, September 30th, 2007.

Any testimony received at this hearing along with the written comments received will be part of the hearing record for this proposal.

We'll begin with John Osborn, who will be followed by Rick Eichstaedt.

MR. OSBORN: My name is John Osborn. I'm a senior physician at the VA Hospital here in Spokane. And I chair the Upper Columbia River Group of the Sierra Club. I reside at 2421 West Mission Avenue here in Spokane.

Every day as I go to work, I drive or ride my bicycle along the Spokane River. And I'm impressed at the beauty of the river. I also know from nearly a quarter century of work and trying to protect and restore the river, that it is a river that's dying. It's got significant water quality and quantity problems.

Tonight I'm honored to, to read a statement that was submitted to the Spokesman Review, although published in a truncated form, by Drea Traeumer. It was the lead for the

Spokane River TMDL. I think about Drea's work and her courage and her integrity in stepping down from her role prior to the release of the TMDL, I think it was truly an act of courage. And I think it is a message that resonated through the region

She writes, Recently there have been, there has been much discussion about my decision to resign from Department of Ecology and about the new water quality plan for the Spokane River. Given the investment Spokane is about to make in cleaning up the river, I think it important that I clarify a few details. My decision to leave was not the result of a scientific disagreement over details of the computer simulation modeling. It was a disagreement over a policy decision that, in my opinion, does not comport with the requirements of the Federal Clean Water Act and thus renders the Spokane River dissolved oxygen cleanup plan, also known as a TMDL, which was developed from this policy decision, indefensible. To better understand the significance of the policy decision, some background follows.

A TMDL is required under the Clean Water Act for water bodies that do not meet water quality standards. The objective of a TMDL is to attain a water quality standard. For the Spokane River TMDL, the point of compliance is Lake Spokane, where the water quality standard for dissolved

oxygen is no measurable decrease from natural conditions. Natural conditions are defined by Washington law as, quote, "surface water quality that was present before any human-caused pollution," end quote. Ecology considers up to a .2 milligram per liter decrease in dissolved oxygen from the natural condition as permissible.

The original 2004 TMDL used measured water quality at the outlet of Coeur d'Alene Lake to represent the natural condition of the Spokane River. This set the water quality standard of the TMDL, or the bar, high, because the water quality of Coeur d'Alene Lake, as relates to phosphorus and dissolved oxygen, is good. As a result, nonpoint sources of phosphorus needed to be reduced by up to 76 percent to attain the standard, and there was no capacity left in the river for permitted discharges of phosphorous greater than 10 micrograms per liter. This was not good news for the dischargers, and thus began the two-year collaboration effort.

As part of the collaboration, a policy decision was made which effectively lowered the bar of the TMDL. Instead of using the water quality at the outlet of Coeur d'Alene Lake to represent the natural condition of the river, a policy decision was made to substitute the water quality of the river where it crosses the stateline as a natural condition of the river. This policy decision is significant

for several reasons

First, the water quality at stateline includes the Idaho dischargers at their proposed permit limits; therefore, it is not representative of the natural condition and is of poorer quality than the outlet of Coeur d'Alene Lake. Thus, the bar for the water quality standard has been lowered as a result of this policy decision.

Second, by lowering the bar for the water quality standard, nonpoint sources of phosphorous now need to be reduced by only 39 percent, as opposed to the original 76 percent, to attain the standard. Or, about half as much clean up of nonpoint sources is now needed as a result of lowering the bar.

Third, the proposed Idaho permits were developed to just meet the downstream water quality standard in Lake Spokane, that is, cause just up to the permissible 0.2 milligrams per liter dissolved oxygen decrease in Lake Spokane.

MS. LEUBA: Mr. Osborn, I hate to interrupt you, but you are running into your time limit. And we will finish collecting testimony when everyone has had, had an opportunity, provided we have time.

MR. OSBORN: How much time have I used?

MS. LEUBA: You've used about four and a half minutes.

MR. OSBORN: Okay. I would like to have the

opportunity to finish this statement. The Department has had 10 years to complete the study.

MS. LEUBA: I understand that. And we will give you the opportunity when everyone else in the room who desires to speak has had that opportunity.

MR. OSBORN: Well, allow me to conclude --

MS. LEUBA: That's fine.

MR. OSBORN: -- with her remarks.

MS. LEUBA: Thank you.

MR. OSBORN: Time will tell if the policy decision and ensuing TMDL are defensible; however, it is my opinion that the water quality standard should remain the natural condition. Given that, this TMDL cannot meet its objective to attain the water quality standard, because the water quality standard was not used.

MS. LEUBA: Thanks. And we will come back and pick up the testimony that was left out, if we have the time.

Rick, and I'm gonna let you pronounce the last one this time, followed by Rachael Osborn. Thank you.

MR. EICHSTAEDT : Okay. Thank you for the opportunity to speak tonight on this very important issue. My name's Rick Eichstaedt. I'm an attorney with the Center for Justice. We represent the Sierra Club in the TMDL process in other Spokane River cleanup processes. We are located at 35 West Main here in Spokane. I'm also a resident of

Spokane, personally.

The Sierra Club and its attorneys have been involved in all aspects of this TMDL process, including the nearly three-year TMDL collaboration process. We attended many meetings. We devoted many personal, personal hours and financial resources to consultants and other analysis to further that process. We will be submitting detailed written comments on the TMDL, as well as the NPDES permits.

But I'd like to take my time to focus quickly on two issues. First, the TMDL, as Mr. Osborn stated, relies upon an erroneous assumption that the phosphorous that comes across the stateline from Idaho from three relatively small dischargers is natural.

Washington's water quality standards clearly state that all cumulative, all human-caused sources cannot cumulatively cause a .2 milligram per liter reduction in dissolved oxygen in Long Lake. This TMDL allows nearly double that by assuming that the phosphorous that crosses the stateline from Idaho is natural, and that allocating another .2 milligram per liter reduction to the sources in Washington. This results in a nearly .4 milligram per liter reduction in dissolved oxygen, according to staff from Ecology.

The Clean Water Act clearly requires that EPA ensure that those sources in Idaho do not cause or contribute to a

water quality violation in Idaho. And that has simply not occurred here. This shortcoming has been acknowledged by staff in both Ecology and EPA. We were to receive it from the former TMDL writer, as Mr. Osborn read into the record.

There's other statements. For example, the, in September of 2005 in an e-mail from Ecology senior water quality policy analyst, Mark Hicks, he stated, EPA appears poised to grant a .2 milligram per liter depression from naturally low dissolved oxygen levels to the point source dischargers in Idaho and then grant another .2 milligram per liter reduction for the Washington dischargers. However, our standards only allow a .2 reduction below naturally low dissolved oxygen levels from all sources combined, point and nonpoint, not .4.

Mark's e-mail raised some very important policy questions that have yet to be answered by either EPA or Ecology. How can EPA interpret our standards as permitting the .2 milligram allowance to go to the Idaho dischargers? Shouldn't EPA be accountable for nonpoint source? How can EPA ignore that our standards set a cumulative .2 depression by granting a .4 milligram depression? Why did EPA, who has told us that they believe that .1 is measurable and more appropriate, not divide the .2 allowance between the two states' dischargers?

Mark very wisely concluded the current EPA dialogue on

dissolved oxygen does not appear either defensible or logical. The current approach of treating each issue independently and inconsistently is almost certainly going to lead to greater problems to the state in the future.

This, these comments were reflected by the former TMDL writer. In June of, June 7th of 2007, she wrote to her colleagues at EPA an e-mail. In part, I realize it's a policy decision to include the Idaho point source dischargers in our estimate of natural conditions. And that this is not likely to be scientifically defensible, and it will damage Ecology's credibility.

Moreover, some of the dischargers have shared these concerns. In a letter from Mayor Hession of the City of Spokane from May of this year, he wrote similar concerns about this approach and stated that it is not fair for the downstream dischargers to bear a disproportionate share of the problem.

This decision has significant impacts. By assuming that all the pollution that crosses the river, crosses the stateline is natural, we are significantly underestimating the amount of nonpoint source reduction we need to have.

Obviously, to have a defensible plan, we have to have the right numbers. And that requires Ecology to stand up to EPA and demand that they recognize and, and incorporate Washington's standards. So far this has not happened. And

the TMDL, final TMDL must do this.

I just want to really quickly address the second point. The second issue I want to address is Avista. The Avista dams, Long Lake in particular, have an impact on water quality on the Spokane River. In fact, Avista's own studies recognize that the operations of Long Lake contribute to not meeting the dissolved oxygen standard for three to five months of the year. However, the TMDL's absolutely silent as to this impact.

There are opportunities here to incorporate Avista, its impacts into the TMDL. There's examples of where this has occurred. Hell's Canyon, which was -- the TMDL for Hell's Canyon, which was developed by Oregon. Washington has done this. By not incorporating this, we fail to recognize a significant source of the problem, as well as a significant opportunity to solve the problem --

MS. LEUBA: Mr. Eichstaedt --

MR. EICHSTAEDT: -- by creative measures, such as aeration or oxygenation.

MS. LEUBA: -- your time has --

MR. EICHSTAEDT: I'd like to submit a copy, written copy of my comments, as well as some of the letters that I've referred to. How do I do that?

MS. LEUBA: We, we can have -- Karin, can you collect written comments? Or Grant, can you reach over? I'll trip

myself on the tape.

MR. EICHSTAEDT: Thank you, Grant.

MS. LEUBA: And if there's additional testimony when we're done, we will come back and pick it up.

Rachael Osborn?

MS. OSBORN: I'm gonna defer till the end of the session.

MS. LEUBA: All right. Following Rachael is Bonne Beavers. And following Bonne will be Rico Reed.

MS. BEAVERS: Good evening. My name is Bonne Beavers. I, too, am an attorney with the Center for Justice working with Rick Eichstaedt and the Upper Columbia Group of the Sierra Club on these river issues. And tonight I will focus my comments on the likelihood of success under this plan.

By law this TMDL or cleanup plan must be good enough to provide reasonable assurance that it will result in attainment of the water quality standards for dissolved oxygen in Lake Spokane. As designed, this plan doesn't do that for at least nine reasons.

First: As you've previously heard, the bottom line for this TMDL is that we're using illusory numbers. The loading of pollutants coming over the stateline from the three Idaho wastewater treatment plants violate our water quality standards for dissolved oxygen in Lake Spokane by a factor of five.

EPA just issued permits to these three Idaho dischargers that require them to reduce loading in 10 years, but only enough so that all by themselves they will contribute almost all of the allowable loading to Lake Spokane. So the minute Washington adds more, we'll violate the standards.

Second: By pretending that Idaho loading doesn't exist, the TMDL allows Washington the double amount of loading to the lake and pretty much assures we won't restore the lake.

Third: The TMDL requires the Washington dischargers to reduce phosphorous loadings to concentrations of around 10 micrograms per liter. It's all in this background. The dischargers do not believe that they can reach this through technology alone, so they hope to get lots of credits for removing phosphorous from other sources, particularly nonpoint sources.

The problem with that is it's really, really hard. Success stories generally run no higher than 6 to 20 percent reduction. Under the 2004 TMDL, when we admitted that Idaho was contributing phosphorous loading to Washington, we needed to reduce nonpoint source loading by around 80 percent to meet our goals. Now under this new TMDL, those goals have been reduced to between 60 and 20 percent.

Why is this a problem? Because the dischargers get

credits for any nonpoint source reductions that they have contributed to below that amount. This credit will be illusory, because we know we have to take more out to restore the lake.

Four: There are no enforceable waste load allocations under this TMDL or in the dischargers' permits for 20 years. The dischargers have all been given waste load allocations, numbers of pounds of phosphorous they may discharge under the TMDL, but they don't have to do that for 20 years.

Five: There are no hard interim limits, either. The dischargers have to provide engineering plans for upgrades with goals of reaching at least 50 micrograms per liter in 10 or so years. But there is nothing in their permits or the TMDL that requires meeting 50 micrograms per liter.

By contrast, the Idaho dischargers have to reach 50 in 10 years. And EPA considers 50 micrograms per liter economically and technically achievable. And they, Ecology's science shows we'd get dramatic results, even at that. But we don't have to go there.

Six: Let's go back to the credits for the nonpoint source reductions. Who gets to decide whether these are valid? Under the foundational context that guide the TMDL, the TMDL oversight committee. Who's on this committee, the dischargers and Ecology. But Ecology doesn't have a vote.

Seven: The 10-year assessment. The TMDL calls for a

10-year check-in. At that time we'll be checking to see if we've made sufficient strides to justify continuing on. If we haven't, the dischargers have insisted, and Ecology agreed to consider lowering the standards. What are the chances that we will have gotten very far in 10 years?

Dischargers don't have to have new technology in place for 10 to 12 years. Even then, it doesn't have to meet any particular limit. NPS, the nonpoint source program, will barely have begun. Idaho dischargers will just be getting around to putting in their new, new technology. And it's a good bet we'll be getting, getting some illusory nonpoint source credits by that time.

The TMDL does say, however, that if we have enough data to make a good assessment, we'll delay the assessment. But it doesn't say who gets to decide whether there's enough data. It'll probably be the oversight committee.

Eight: By law the NPDES permits must be consistent with the TMDL. The TMDL limits the discharges to current flows. They aren't allowed to expand discharge unless their expansion meets the final limits of the TMDL. That's 10 micrograms. That's good.

But the draft permit allows the City of Liberty Lake to expand but without the requisite reductions in phosphorous, ammonia, and BOD. The Idaho permits are allowed to expand, as well. Not only does that not make

sense, it's against the law.

Nine: The TMDL states that although Ecology has enforcement authority, the intent is for voluntary compliance. And Ecology will only enforce identifiable waste load allocation violations. As we have seen, these aren't enforceable for 20 years.

This plan does not provide reasonable assurance that we will restore Lake Spokane. But it wouldn't be that hard to make it better. Ecology could do at least four things. Stand up to EPA and demand that they have a plan that allocates loading equitably among the states. Two, put hard targets in the permits. Three, require a reassessment only after appropriate upgrades have been made and other actions in place long enough to see real changes. And four, prohibit increased loading except where it meets the 10 micrograms per liter limit.

MS. LEUBA: Thirty seconds to spare.

MS. BEAVERS: Thank you.

MS. LEUBA: Thank you.

MR. REED: Rico Reed. I'm a resident of the Chattaroy area. I live on the Little Spokane River. And I'm trying to do my bit to reinforce the edge of the river and protect it from runoff. We are very skeptical, I think with good reason, of 20-year plans that have no teeth for, for that long.

And we can cite examples of the 20-year plan that the city has had to, to separate its storm sewers from the sanitary sewers. They have just barely been meeting each step along the way, not making any effort to get the job done. You'd think the city near nature, near perfect would not allow the dumping of raw sewage in the river, but that's gone on and on and on even in non-stormy events, as we've seen 27 of them in the years 2005, 2006.

I think that at least at the 10-year time you can find some way to make some enforceable goals. And I certainly hope you'll work toward that end, or we'll be fighting these same battles for our children's lives into the future.

MS. LEUBA: Thank you.

Clare Sosso. And Clare Sasso.

MS. SOSSO: Hi. I'm representing two organizations tonight. I'm Clare Sosso. I live in Nine Mile Falls, 1515 North Pheasant Road. The first organization is the Riverside State Park Foundation and Advisory Committee, Committees. We are a committee of citizens that represent different interest groups in our area that enjoy the use of the Riverside State Park. We advise the park management on behalf of these groups and also provide volunteer services and funding for improvement projects throughout the park.

Riverside State Park is a primary recreational and environmental resource for the Spokane area. The park makes

the Spokane area a unique place in which to live. The Spokane River, the Little Spokane River, and Lake Spokane are vital resources and core attractions of one of Washington State's largest state parks. These precious water resources provide life-giving habitat to the local wildlife, and recreational opportunities for our local citizens.

We at the Riverside State Park Foundation and Advisory Committees want to reiterate and reaffirm our statement from 2004. We want to express our expectations to the Environmental Protection Agency and the Department of Ecology for providing the maximum level of protection and monitoring to protect these irreplaceable water resources against industrial and manmade polluters.

We will stand behind every effort to a timely and optimal restoration and preservation of these precious life-giving resources of Riverside State Park and its surrounding natural areas. We also reserve the right to provide further comment.

My second statement is on behalf --

MS. LEUBA: Can I, can I interrupt you for just a second before we go on, because I need to turn the tape over.

MS. SOSSO: Okay.

Again, Clare Sosso, and I'm representing the Lake

Spokane Homeowners Association. On behalf of the members of the Lake Spokane Homeowners Association I would like to express our concern and frustration over the quality of water conditions at the Lake Spokane. We at Lake Spokane get everything that the greater Spokane area, Post Falls, and Lake Coeur d'Alene send down the river.

In recent years we are experiencing more and more algae blooms that last longer and cover larger areas. We have less and less water in parts of our lake during the summer months. We worry about our families swimming and recreating in water that is downstream from unpredictable sewage overflows, heavy metals and other unknown contaminants. The conditions in recent years has diminished or greatly restricted recreational use in certain areas.

We have a vested interest in the healthy state of the Spokane River, the Little Spokane, and Lake Spokane. We are counting on the Environmental Protection Agency and Department of Ecology to develop, enforce, and carefully monitor a timely plan to improve the recreation and environmental safety of our lake as quickly as possible.

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

Thank you.

MS. LEUBA: Julie Dalsaso followed by Kirsten Angell.

MS. DALSASO: Thanks for the comment, opportunity to comment tonight. I live in Coeur d'Alene, Idaho, at the confluence of the Spokane River as it pours out from Lake Coeur d'Alene. I call Lake Coeur d'Alene the regulatory void.

It's a culturally significant area at the confluence. The Spokane River decision-making must include representation from the tribes. Indigenous people who fished the confluence before the 1922 Avista dam was built have a real colorful history, as well as doing rendezvous there and gaming.

I'm troubled with the unchecked development in, along, in Lake Coeur d'Alene and along the Spokane River up to the Washington border. This is part of the Superfund site. The outflow of Lake Coeur d'Alene has major flooding and pours toxins down. And that flooding needs to be considered with this plan.

Also, there is a proposed dredging project, 220,000 cubic yards in the original proposal, at Blackwell Island, which will disrupt the lake bottom to create an artificial yacht basin.

And the tribal people in Coeur d'Alene have suggested a moratorium on dredging. We need Washington to address tough decision making and this degradation that comes from unchecked development in Idaho.

Another example is Powderhorn Bay on Lake Coeur d'Alene. There's 1,300 homes proposed on a steep hillside with erosion and runoff issues, phosphate loading from the proposed three 18-hole golf courses. The Harrison sewer system is at capacity now.

As this TMDL relates to bi-state wastewater discharge sources, the EPA has allowed three Idaho municipal wastewater dischargers to effectively pretend no pollution comes across the Washington stateline. The Department of Ecology must address this mistake, as the NPDES permit doubles the amount of pollution entering the Spokane River from Idaho. The permit 10-year check-in must be coordinated with on the ground cleanup in a practical way.

Lastly, the draft must be improved by including storm water impacts. Fertilizers, boating fuels, milfoil from boats that are being sprayed off at, on the docks, destruction of riparian areas add to degradation. The nonpoint sources will also relate to the known flooding incidents and the flush of toxic metals down the Spokane River.

Thank you.

MS. LEUBA: Thank you. Kirsten Angell.

MS. ANGELL: Thank you.

MS. LEUBA: Name and address.

MS. ANGELL: 3020 West Dalton, 99205, Spokane. I'm a

mother of three. And I live right by the Spokane River and enjoy it on a daily basis. We don't swim in it, however, because it's not clean enough. And I was extremely hopeful when I heard that a cleanup plan was, was gonna be put out and got very excited. I heard it was a collaborative plan, and that it was a multi-hundred million dollar plan that took nine years to create. So I assumed that it was something that would actually do the job.

But then I read an article about Traeumer and her, the third scientist to quit the planning process saying that it's not scientifically defensible, and it's too weak. And then I got -- those are some pretty big red flags, so I got a little concerned. And I looked a little further. And unfortunately, it's unfortunate that it takes people quitting their jobs to get people's attention, but it got my attention. And I went and tried to find more information out. And luckily, the Center for Justice was, was educating people. Because nobody else is really putting this information out there in an easy to access way.

And so I took my evening away from my three kids. I hired a babysitter and went to learn. And here's what I found out, I found out that this plan is, basically, inadequate. Clearly, the Spokane River needs a different plan, a plan that is legal and will actually clean up our Spokane River. I'm asking Department of Ecology to stop

moving this plan forward in its current form and revisit the plan's weaknesses.

Now, I personally would see as the most significant weaknesses, No. 1, not addressing EPA's proposal to issue permits to the Idaho treatment plants, effectively pretending that no pollution is coming across the stateline. Department of Ecology needs to stand up to the EPA and demand a basin-wide plan that advocates the pollution equitably among polluters in both states. The 2004 plan did this, and it's being done across the nation.

No. 2, the draft plan gives polluters 20 years to achieve the final cleanup limits without any enforcement until that time, not even benchmarks to show intent to comply. Washington law gives only 10 years for polluters to upgrade their treatment plants. At the very lease, Ecology needs to comply with Washington law and require enforceable benchmarks within the next 10 years.

This plan permits a new wastewater treatment plant in the Spokane Valley. It allows, is allowing Liberty Lake and City of Spokane to increase the level of pollution into the river before any improvements have been made in their treatment technologies. This is illegal under the Clean Water Act. So at least begin to clean up the river before adding more pollution. That is the law.

And 4, Avista's Long Lake damn creates a hot

slow-moving reservoir that adds to growth of algae and increases dissolved oxygen. Require Avista to address this problem at their own cost, not a cost to taxpayers.

In closing, I ask that Department of Ecology hold back the plan until it addresses these issues. We can't afford, we can't afford to push ahead a plan that won't do the job. That would be a sad waste of our money and our special river.

Thank you.

MS. LEUBA: Bob Stokes then followed by Bart Haggin.

MR. STOKES: My name is Bob Stokes. I live out in the, what is now called the City of Spokane Valley. Have for about a decade now. I don't have any affiliation here. I, I used to teach natural resource economics at University of Washington. That's why I kind of continue to be interested in things of this sort.

By the way, I do swim in the Spokane River. And I love it. Anywhere after the 4th of July it gets warm enough, thanks to the sun warming the water up in Coeur d'Alene Lake. But wait, watch out sometime late August, because they close the damn. And then nothing comes out except what filters through the aquifer and turns ice cold. It's wonderful swimming.

Anyway, I endorse, I come here in support of the, the document, collaborative agreement, whatever it is we're

calling it now. And in particular the process that led to the creation of that document, in which I include the so-called UAA procedure that preceded the collaboration and probably is what really led to its, its occurrence.

I won't claim to know all the numbers and formulas and this kind of thing that have been, been discussed here. I did do my best to read into it a little bit. It certainly appears that, that what really needed, needs to be done was, had been in place for some time. It was part of the UAA proposal. Certainly is firmly implanted in this proposal that brings the river, river quality up to a standard that will sustain reasonably human use for foreseeable future.

What particularly impressed me about what has happened is that by usual beat-'em-over-the-head and ugly process of American politics, we have actually gotten to something like real equal facing, equal bargaining over a major, well, water quality issue. That's what drew me in to watch the UAA process and the beginning of the collaboration.

I was disturbed for awhile that, that the regional leaders had, in fact, caved in and simply gone back to getting down on their knees and obeying whatever they're told to be, told to do by the people from over in Olympia or by the people from the Sierra Club and their threats of litigation and so on.

But indeed, the last few days, the last few weeks have

brought my spirits back up. We really have a real bargaining process between equals, some representing the cost of cleanup, some representing environmental values, reaching something like middle ground.

I don't give a damn whether this program complies with the rules of the state, of the Washington, State of Washington, the state of Ecology. I think those rules are unreasonable. And I wish they didn't exist, but they're there. We can't, we can't get rid of them in this part of the state. But we can -- apparently, we're in the process of coming to some sort of a reasonable accommodation within that process. And I certainly commend those involved, in particular the regional people who dug in and fought hard and fought smart at the right times and moved to restore that process.

That's all I have to say.

MS. LEUBA: Thank you. Bart Haggin followed by Harvey Morrison.

MR. HAGGIN: My name is Bart Haggin. I live at 15418 Little Spokane Drive on the Little Spokane River. Lived there for pretty much all my life, 71 years. And I'm here to express some real reservations about the, the TMDL plan as it's stated.

We know what the right thing to do is. And what we're talking about here today is regulation and cost. And my

impression from the beginning was that I had very little faith in the EPA or the DOE, because I know what regulation's all about. That's what we're talking about here today.

Talking about the regulators who are always afraid of the politicians, the legislature or whatever, they're gonna cut their budget. The politicians are afraid of the rich and the powerful. They won't give them the campaign contributions to be successful. And the rich and the powerful aren't afraid of anybody. They've got the power. And that's the way it is. And that's why I think that it's very difficult to have much faith in what, what has transpired here today. Because we know what the power is all about and how this works.

I was really surprised to learn just recently about what has happened with the Little Spokane from years and years ago. 1974 there was a statute in the state legislature that enforced the idea of minimum low flows for all of the, for all of the rivers in the state of Washington. And immediately the Department of Ecology started to do that.

There got to be a little flap from the people that had vested interests in, in their financial interests. And for 17 years now it hasn't had any enforcement. It's very difficult for me to have any confidence in the integrity of

these organizations, because I know what kind of fears are part of the process.

So we know what the right thing to do is. It may be more expensive than is palatable to the politicians and the rich and the powerful. But indeed, we know what the right thing to do is, the question is, are we gonna do it.

MS. LEUBA: Thank you. Harvey Morrison followed by Shannon Work.

MR. MORRISON: Thank you for the opportunity to speak. My name's Harvey Morrison. I'm the local president of the Spokane chapter of Trout Unlimited. And I live at 3805 South Lamonte in Spokane.

I'm not an attorney, and I'm not a scientist. But I do agree with Dr. Osborn when he says the Spokane is a sick and dying river. I mean, all you need is a nose and eyes to tell in late summer that the river is not well.

The 10-year check-in and the 20-year implementation of whatever plan develops is, I'm afraid I'm not gonna be around long enough to see this happen. It seems like an unreasonable length of time to put this off. In my reading of the, of the report, it's flawed in too many ways and should not proceed without major corrections.

I think amongst those is the failure to recognize the pollution coming from across the stateline. I mean, that's just so un-commonsensical it just, it's almost, it's

ludicrous, in my opinion. I think that this plan needs to, to incorporate and connect with the other cleanup activities that need to be made, as far as heavy metals, PCBs, and other pollutants that we have, we know exist in the river. And I think we definitely need to include the impact of the Avista dam on Long Lake and the, basically, stagnant water that they have to deal with every summer.

I think we need to stop the process and deal with a comprehensive solution now rather than before we proceed any further.

Thank you.

MS. LEUBA: Thank you. Is this Bruce Rawls? Who will follow Shannon Work?

MR. WORK: This is Shannon Work. I thought, I thought I was next.

MS. LEUBA: You're next.

MR. WORK: Okay. Shannon Work, W-O-R-K. My mailing address is P.O. Box 3409, Coeur d'Alene, Idaho, 83816. I'm an attorney. I represent a group of people who from time immemorial lived their lives up and down the length of the river, from the top end near Lake Coeur d'Alene down to the confluence of Columbia River. The Spokane people, Spokane Tribe were able to live their lives there, to fish, to hunt, to gather their medicines, to use the waters, to appreciate the waters spiritually and religiously.

Today they are left with their permanent home, a homeland reserved by the United States government by the Tribe to provide for all future generations. That permanent homeland exists now at the confluence of the, the Spokane/Columbia Rivers.

And that's where the people, the Spokane people still do practice their subsistence ways, their spiritual ways. They appreciate the water. The Spokane River was known to them as the path of life in their language. It did bring life to them, and it continues to.

But Indian tribes are not just historical relics, they're governments. And the Spokane Tribe of Indians a number of years ago realized that what they needed to do in order to protect their people and to protect their place and protect their resources was to start establishing environmental regulations. They've done so in the, in the water quality standards under the Clean Water Act. They've obtained approval by EPA. And they have standards downstream of the State of Washington, Department of Ecology's jurisdiction.

Those standards are not being met today. And under the, the current proposed plan, they won't be met for at least 20 years, and then who knows what happens beyond that.

Unfortunately, there's a whole, not a whole lot of discussion in the document about what happens on the Spokane

Indian Reservation, that lowermost reach of the Spokane River that we're supposed to be paying attention to in this. And it's a little bit troubling to me as an attorney for the Spokane Tribe to understand that by adhering to the, the law of the United States and establishing standards that are gonna be protective of the Tribe Reservation, Tribe's resources, their people, those standards are being ignored. They're not being paid attention to.

I see an awful lot of discussion in the document about collaboration, about government-to-government relationship. In fact, you know, a, a couple years ago I was involved in a meeting with the Department of Ecology's director, Jay Manning, and I was talking with him about the fact that states and tribes historically had come to loggerheads, historically had been blood enemies. Jay's response to me was, well, it's a new day. Under myself, my own leadership, and under Governor Greg, Gregoire, we want to see a new day. We want to see Indian Tribe welcomed into the fold and to be dealing with the state of government on a, on a good stead in a fashion that's gonna lead to some good positive results for our mutual concerns and interests.

And today looking at the document, I, I find a real lack of attention being paid to the Spokane Indian Reservation, the water quality on that reservation. And I challenge Ecology to adhere to, to honor Jay Manning's

words.

This should be a new day, a day where the State of Washington and the Spokane Tribe can truly collaborate. If you're to look up the word collaborate in the dictionary, I'm certain you would find things like working together and cooperation. That's what I need to see in this document. That's what the Spokane Tribe desires to see.

Thank you, very much.

MS. LEUBA: It is Bruce Rawls followed by Chuck Tingstad.

MR. RAWLS: My name is Bruce Rawls. I'm here on behalf of Spokane County Public Works. My address at work is 1026 West Broadway, 99260.

Spokane County supports the collaboration that went on over the last two years. We support the TMDL proposal that's on the table. We encourage the Department of Ecology to complete it and advance it to EPA, so that we can get on with this river cleanup program.

We think that the collaboration and the resulting TMDL are unprecedented in terms of the depth and breadth of measures that have been proposed and committed to by our regional agencies. And we think it's time to get on with this program.

I wasn't gonna speak tonight, but I got an e-mail from the Sierra Club today that really inspired me to address

some of the talking points that they've got here. Talking point No. 5 is the failure of the plan to provide a meaningful implementation schedule. It doesn't make wastewater allocations enforceable for 20 years.

Well, the fact of the matter is, the dischargers in the collaboration committed to implementing technology that'll remove 90 percent of the current point source pollution in the first 10 years and implement delta elimination on nonpoint sources and other sources of phosphorous pollution in 10 years. And then have a 10-year tune-up and a 10-year monitoring of exactly how much progress we've made, a mid-course correction, and another 10 years, if necessary, in order to clean this river up adequately.

They also assert that the Washington law allows only 10 years for compliance. That's wrong. The law says if there's a compliance schedule in an NPDES permit, it's 10 years. TMDLs often times are 20 to 30 years long, typical of the one that we have in front of us.

Point No. 6, the plan allows for new increases in pollution discharges. That's wrong. It does allow for more water to go in the river. But water doesn't necessarily have more pollution in it. In fact, the plan provides for more than a 90 percent reduction in point sources from wastewater plants.

No. 7, the plan allows for Spokane County to add pollution to the river. That's wrong. The County's proposal is to build a new 8 million gallon-a-day wastewater treatment plant with state-of-the-art technology. And if we had built this plant in 2003, when we wanted to start it, it would be on line now. We'd be treating what goes into the City of Spokane treatment plant at a much higher level and would actually be removing more than 25 pounds of phosphorous from the river that's going in today.

The fact of the matter is, this plan is going to allow us to eliminate septic tanks, which are putting phosphorous into the aquifer and the Spokane River. And it's gonna lower the loading to the Spokane River over the next 10 years.

Point No. 8, the plan relies on unrealistic, unrealistically on nonpoint sources. The fact of the matter is over 50 percent of the pollution is from point sources, but the remainder is from nonpoint. If we eliminate every bit of either one of those, the river is not gonna meet the water quality standards.

This plan that's on the table includes a 90 percent reduction from treatment plants and a significant reduction of nonpoint sources. And the dischargers have stepped up and committed to doing a study and funding that to a certain level. Also, we've committed to reclaimed water and water

conservation. This plan has multiple aspects in it that are unprecedented for a TMDL.

The talking point also encourages that we use all the tools in the tool box. I think we have, and we're going forward on that basis.

The last thing is stop and deal with the problem. Well, if we stop, all we're gonna do is delay fixing the water quality of the Spokane River.

Thank you.

MS. LEUBA: Thank you. Chuck Tingstad then Tom Brady.

MR. TINGSTAD: Thank you. My name is Chuck Tingstad. My address is 963 East 10th, Spokane, Washington. I'm a consultant in the renewable and green building business.

We need a holistic path here to, to solving this problem. And I don't see that happening. I know there are other TMDLs and other processes that need to occur, but I don't see where this particular process has been integrated with or even takes into account any of those other processes that are, that are going to come through.

There are some, such glaring, you know, mistakes here about, you know, ignoring the Idaho discharges, dischargers, especially knowing what is happening in Idaho with the growth over there. And also knowing that, you know, that EPA will do anything for Idaho, will sign off on anything under current administration. So, I mean, that's just so

obvious.

Well, we have to clean something up. Well, what are you getting first. That's, that's -- you've got to figure that out first. What's coming across the, the border. Those numbers are just not realistic.

Another thing that just strikes me is in 20 years, 20 years we're looking at, and I've heard other people say, like I heard Bruce say 10 years ago, too, they were gonna fix it in two years. You know, we all well know the dischargers, they're really gonna do it in 10 years, they really are. Yeah, the county told us that, too.

We need, you know, we need rigorous, continuing measurement of pollution in the river not just at the sources, at the typical point sources but in all -- I mean, I would envision there should be 60, 70 monitoring devices all along river. And we should know what's happening. I would also -- if there is some accidental discharge that will, that will be red-flagged right away, so it can be dealt with.

Another big red flag I heard mentioned were the, you know, same old thing, Bart and I know this, dischargers were in control. You know, we couldn't do enough to, to deal from a regulatory basis. They're complaining about the, the money they were going to have to spend, so that we don't have a, a dead sea in Lake Spokane. And that's what we're

looking at.

I've been here for 15 years. And I enjoy recreating down there. And I've seen it get worse year after year after year. And we know that flow levels are going to go down. Avista, everybody knows that the basin is not going to be receiving as much moisture in the future going forward, not to mention the usage. So, I mean, major things that are being overlooked here.

I think that, obviously, there has been some good work put into the plan. But, but there's so much, you know, there's so much of that in error, that we're practically at a do-over basis. And it needs to be done in a holistic manner that, that the Avista dams, not just Long Lake dam, all of the dams have to be included in this.

I mean, sure, I know, that's a big, you know, big bugaboo to deal with, with Avista. But, you know, water that's flowing through is not just how they're managing the dam on, on Long Lake, it's the dams all along. So, I mean, they, they have to be a part of that. That has significant impact on, on them and on the electricity rates, and, obviously, has an impact on, on the water quality. That has to be addressed in this.

And, you know, for those who say, well, you're just delaying it, no more delaying tactics, you know, if we stopped it now, you know, well, it's doomsday. You know, we

had our plant in three years ago except for all this delaying.

Well, you know, this is not a threat. I'm certainly no lawyer or anything. But you will be in court if you don't put together a plan that is built on basic science that's, that, that's gonna be proven and shown to be logical. Otherwise, yeah, shoot, you know, a backyard lawyer like me could take you to court and say, you know, your own scientists there can't stand behind this, are saying that they were, that it was policy decisions that made the plan come out like this not scientific, not the best science, which is required by the Clean Air Act.

So -- and if we don't use the best science available, then, then everybody loses. The dischargers don't know what's going on. They don't know that, that what they are committing to spend money on is really going to fix the problem. Because, you know, nobody's gonna want to go back to them in 5 or 10 years and say, you know, yeah, you spent 90 million dollars, but, damn it, it wasn't good enough. Now we're -- now you need to spend more.

I mean, we need to do this thing right. The river needs to be cleaned up so it can be a fishery. The fishery, again, people can swim in it without feeling bad about it. And you can eat more than one fish a year out of it without getting sick. So I urge much more work to be done on this

plan.

Thank you.

MS. LEUBA: Thank you.

MR. BRADY: My name is Tom Brady. I live at 5714 West Houston Avenue. That's about two blocks from the Spokane River down in Northwest Terrace. I'm here representing myself.

I was here a couple weeks ago when they presented the draft plan. And I was the guy that asked the question why did you wait 10 years to find out your last plan didn't work. And they said they needed more data. Well, they're doing that again. And 10 years is too long to return to the same situation you have right now.

I work as a geoscientist, and we collect all kinds of information on a daily basis in deep underground mines. And if we waited for 10 years to collect data like you guys are planning on doing, the mine would be closed down. There'd be no way you could do this. And when you deal with geoscience, you have to do it on a timely basis in order to present that data as giving you meaningful results, and so you know if it works or not, and 10 years is way too long.

You need to go to some kind of plan that looks at it at least at every three-year point. You need to look at it, and then you need to evaluate that plan. And then, then you can have a six-year plan, and then a nine-year plan to see

if that trend continues. But 10 years is way too long. And then to have to go to 20 years before you make changes is absolutely incredulous in the geosciences.

Finally, it's been pointed out that this study is being done in isolation. A number of people have slightly mentioned that the aquifer feeds into the river and the river feeds into the aquifer. What I'm afraid is if you don't do this right, you're gonna end up impacting the public health of the people of the whole Inland Empire, including the Spokane and Colville Tribe. Because they rely on that water downstream.

And finally, I'd like to say that it appears to me that, that this plan was flawed from the beginning by using a policy decision rather than real science. And for anybody that deals in geosciences or any kind of things that deal with the earth, science has to be the basis for doing something right. And it doesn't matter if, if - and what the man previously pointed out - if you don't do it right, somebody could spend 90 million dollars to build a plant that doesn't work. Because you haven't monitored closely enough. And you haven't actually designed for the, for the data that you're actually not collecting. So I would say this plan is flawed. And it needs to be revisited and re-presented to the people of Spokane.

Thank you.

MS. LEUBA: Mike Peterson. And Mike, before you begin, Tom Agnew had thought, perhaps, he would speak. Is Tom still here? Tom has left. Okay. Sorry. Thank you. Go ahead.

MR. PETERSON: My name is Mike Peterson. I'm the director of the Lands Council. And we're located at 25 West Main. And I appreciate the opportunity to give my thoughts tonight.

We were here a few years ago, and it was a very contentious meeting. I think it was at this same college. And, and after that meeting some things happened. A collaboration started. People, dischargers, agency people, elected officials, environmentalists all got together and worked pretty hard to craft a plan that was really designed to do something different. It was designed to try and meet everyone's interest, address the issues of cleaning up our river, and then move forward.

And I'd like to think of this draft as a, as a little bit of a detour off of what we came up in that plan. And it's a detour I hope we can get back on track. Because that's what drafts are for, is to put some documents in front of the public and then allow the public to, hopefully, improve these documents.

It's very troubling to me and the Lands Council that the Department of Ecology has not stood up to the EPA when

the EPA took a very wrong turn and decided to go move away from a watershed approach but do their own thing in Idaho. And part of their own thing was to give different limits to the Idaho dischargers. Even though some of the Idaho dischargers didn't, they wanted to play with the rest of Washington people and do the right thing.

And so the EPA made their mistake. But it was compounded by the fact that Ecology instead of saying no, the water coming across the stateline already has pollution in it, that has been to accounted for. Ecology said no, we'll consider that as background pollution. And that's wrong. It, it sets a precedent that frightens me. What about when PCBs start getting measured. What about if Canada catches wind of this and says, hey, everything we're dumping in the Columbia River is just background, don't worry about it.

So a very bad precedent. That needs to get fixed. I hope it can get fixed. That's that policy thing that we didn't talk about that in the fundamental concepts, we would not have agreed with that. We agreed on something very different. So I hope that gets fixed.

There's some other errors in there. And to me, I do believe, you know, the county and city have made commitments, and I think they'll follow through on those. But on the other hand, we've seen things happen, and we'd

like to see that tightened up a bit. You know, have that check-in tightened up. I think we can all agree on what that might mean. That doesn't seem too onerous to make sure we measure things, and that we're making progress.

There's some technical errors in the document that appear to give some extra wastewater discharge to Liberty Lake and some other dischargers. I think those can be fixed.

But really, what we have here is a little bit of a detour of the spirit of the collaboration that really did come up with some very innovated things. We were all looking at the possibility that Spokane County couldn't put new pollutants into the river. And I think the entire collaboration found a very creative way to put some investment in nonpoint discharges. And I think that's innovative and commendable.

And I think that if Ecology can fix this document up, get together with some of the people who are having problems with it, I think maybe we can salvage this thing. So I appreciate the opportunity to speak.

MS. LEUBA: Mr. Peterson was the last person on my list. I know that Ms. Osborn would like to speak last. And we do have a couple of speakers I had to cut off, which we can go back and pick up. Is there anyone else in the audience who would like to offer public testimony tonight

for the record?

Yes, sir. Please come forward. State your name, your address. And we'll ask you to fill out a card, so we have a written record of your testimony.

MR. MIELKE: Thank you. For the record, my name is Tom Mielke. I'm a Spokane County commissioner. My work address is 1116 West Broadway, 99260. Thank you for the opportunity to speak. I didn't, obviously, plan on doing that this evening and was interested in listening to the comments made.

I, I do want to comment with regard to some of those comments that have been made with regard to this process. And let me start off by saying, you know, I'm not here to speak on behalf of EPA. I think they get to do that on their own opportunity when that time's appropriate.

But I do want to remind people that as we entered this process, and it has been going on for a number of years, and very intensely for the last three years, is that we had two processes before us that are allowed under the Federal Clean Water act. We had the TMDL process that stands before us this evening. And we had the UAA process, as well. Both justifiable under the Federal Clean Water Act. And we chose to do our very best to proceed under the more stringent proposal, which is that of the TMDL.

Speaking on behalf of Spokane County, I have said this

often times before, and that is that we would engage any technology that would beat, that would, excuse me, meet or beat the most stringent standard anywhere in the United States. That has been our commitment to this process. That continues to be our commitment to this process.

We also recognize that we use tax dollars as responsibly as we can. We take that commitment very seriously and recognize that it would be, I think, bad financial judgment for us to invest in technologies that have not proved, been proven on a scaleable level. In our case, Spokane County, we're looking at approximately that size of 8 mgds. That, again, continues to be our commitment, as well as investing in nonpoint sources.

The issue of collaboration was brought up. And I do want to say this has been an extremely collaborative process where everyone was allowed around the table. And everyone, not only around the table, but in the audience was allowed to speak and provide comments at any time. And so for those that say the process lacked collaboration, I don't think they sat through two years of meetings. And, and I do find fault in that argument.

With regard to the 10-year process, we believe that the 10-year process does have very specific standards. And the issue is, is when we have permits and financing in place, we know that it takes four to five years to construct

a facility or to do a major renovation. Our goal is to be able to operate for two to three years and have some data about how we're doing.

And so that 10-year, that 10-year limit, or that 10-year review was intended to be able to complete that construction and be able to see how we were doing. So it is very strict to have our construction done, to have it operating for that period of time, so we can collect the data. And to also do the nonpoint source projects that we've identified in those early years, as well. So that's where the 10 years came from. And at that point at 10 years, we could make any further adjustments to further refine and improve the water quality that we were getting.

The last comment that I want to address is I have been a lifelong resident of this community. I used to swim in Long Lake as a child. And I remember sitting on the dock and, frankly, not being able to see my feet when the water only came to my knees. I look at where we are today. And by no means am I implying that we're done or that, that we have hit our goal. We have a long way to go. But for those that believe that we're going backwards, it's just not the case. We have gone substantially forward since the early '70s. There's a long ways to go. And we'll only get there by moving forward in this process.

Thank you for your time.

MS. LEUBA: Thank you. Ms. Osborn?

MS. OSBORN: Thank you.

MS. LEUBA: And Mr. Osborn and Mr. Eichstaedt, do you want to continue your testimony?

MR. OSBORN: Yeah.

MS. OSBORN: Thank you, Your Honor. My name is Rachael Osborn. And I volunteer as the Spokane River Project Coordinator for the Sierra Club. In which capacity I've spent hundreds of hours working on the dissolved oxygen TMDL plan, cleanup plan.

I think from the testimony tonight and review of the document, it's clear that there are problems at both the top and the bottom of the watershed. At the top with Idaho consuming the total pollutant level and the plan failing to deal with it. If the plan is -- and the State of Washington is not going to address the decision to allocate all load to Idaho, then the load for Washington should be zero.

Problems at the bottom of the watershed with the Spokane Indian Tribe's water quality standards not being met, the plan fails to deal with it. Basically, the plan needs to be revised to address the fact that those water quality standards are not being met and must be met as a matter of law.

Avista is a major part of the problem with the Long Lake dam. Plan doesn't deal with it. Plan needs to go back

and address Avista's role and contribution.

I think more fundamentally, the plan is relying upon the collaborative process and agreement that is a result -- basically, it's a political solution that occurred when the dischargers rather than accept the 2004 plan, which did include hard targets, reasonable implementation dates and specific activities, threatened to sue the state with the use attainability analysis, which is a proposal to weaken the standards. And which was not supportable by federal or state law. Which was disagreed with by the Department of Ecology scientists who analyzed it, and involved a, really, an unaccountable waste of more than a million dollars by the city and the county through their water quantity funding that they get, for which there is very little accountability. The plan, basically, says that at year 10, we will look again at doing a use attainability analysis.

Through that political solution that was created by the collaboration, it was learned that the numbers in the 2004 plan didn't satisfy the polluters, so we manipulated model. Plan needs to go back and use credible science as the basis for the model

Polluters wanted more time. So the plan gives them a 20-year guarantee on their technology. I actually don't disagree with Commissioner Mielke that time for the county to get, bring plan on line is, it will take a few years.

But that is not the case with any of the existing polluters who we ought to know within a fairly short time frame who ought to have the technology in place and know what the results are going to be.

No more room for pollution in the river. That's the consequence of both not dealing with Idaho and the fact that we are water quality impaired at this point. And so the plan contemplates that we're gonna play a game, let the county play a game that I call aquifer hostage. In which, basically, the county cleans up the septic tanks but turns around and puts that pollution in the river.

I guess I would just conclude by saying that political solutions are not in conformity with the requirements of the Clean Water Act or the State Water Pollution Control Act, which are laws that really ought to be best friends of the Spokane River and not something to be tossed out when the local dischargers degree. We need a plan that is legal and enforceable. We need a plan that is supported by science, supported by law, and supported by the water quality staff who participate in the process. And we need a plan that is supported by the public. To date we don't have that plan. And I would urge the Department of Ecology to go back to the drawing board and reconsider the TMDL that it has offered.

Thank you.

MS. LEUBA: Thank you. Would you like to continue

your testimony at this time?

MR. OSBORN: I think it's entirely appropriate to conclude or nearly conclude with Drea Traeumer's words. Again, she was the, the TMDL lead for the Department of Ecology for the Spokane River.

Simply put, the policy decision to alter the water quality standard from natural condition to the quality of the water that flows across the stateline lower the bar of this TMDL and resulted in a win-win situation for Washington, Idaho, and Idaho dischargers. Idaho dischargers will be allowed to cause the permissible 0.2 milligram per liter dissolved oxygen decrease in Lake Spokane. Washington dischargers will also be allowed to cause the permissible 0.2 milligram per liter dissolved oxygen decrease in Lake Spokane. And the amount of nonpoint sources of phosphorous that must be reduced is about half of what it originally was.

Time will tell if the policy decision and ensuing TMDL are defensible; however, it is my opinion that the water quality standard should remain the natural condition. Given that, this TMDL cannot meet its objective to attain the water quality standard, because the water quality standard was not used.

Thank you.

MS. LEUBA: Is there anyone remaining who would like

to offer testimony to the record this evening?

Written comments will be received until November 13th. Instructions for submitting those are on the registration table. Before we close tonight, I want to thank you all for coming and remind you all that all testimony received at this hearing along with all written or video comments received will be part of the official hearing record for this proposal. Ecology staff will review all the written and verbal comments received and include them as part of the appendix in the TMDL.

On behalf of the Department of Ecology, thank you for coming tonight and spending your evening with them. I appreciate your cooperation and your courtesy. And this hearing is formally adjourned at 8:22.

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

I, Rita A. Ketza, a notary public in and for the State of Washington, do hereby certify:

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

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

WITNESS my hand and seal this 19th day of October 2007.

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

WORD LIST