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Dear Ms. Boornazian,

I am writing on behalf of the Sierra Club, Upper Columbia Group, to express concern regarding EPA Region 10's abandonment of a watershed-based approach to bi-state water quality issues on the Spokane River.

The Spokane River flows 111 miles from Lake Coeur d'Alene in Idaho, past the Washington border, through Lake Spokane, a thirty-mile dam-created reservoir, through the Spokane Tribe Reservation and on to the Columbia River. The river is the defining feature of this region and of great economic and aesthetic value to the citizens of Spokane and the Spokane Tribe. Unfortunately, during the low-flow summer months, the river, including segments in the Spokane Reservation and Lake Spokane, are afflicted with low dissolved oxygen (DO) caused by excess amounts of nutrients.

EPA, as the permitting authority in Idaho, currently proposes to reissue NPDES permits to the three Idaho wastewater treatment plants which discharge into the Spokane River not far from the border with Washington. These discharges in Idaho combined with effluent from the four existing wastewater treatment plants in Washington contribute up to 75 million gallons of treated wastewater a day in the summer to the river. During the critical summer period, these point source discharges are the source of practically all of the nutrient loading to the Spokane River. These excess nutrients are well documented as impairing water quality and causing violations of Washington State's water quality standards for dissolved oxygen in several segments of the Spokane River and Lake Spokane. As a result, these segments are listed on Washington's § 303(d) list for Dissolved Oxygen (DO) and a Draft DO TMDL is currently out for public comment.

Scientific studies, including extensive modeling by EPA Region 10 and the Washington Department of Ecology, show that non-point sources and point sources of oxygen-depleting pollutants must be reduced to near background levels to meet the existing water quality standard for DO in Lake Spokane. Washington's standard requires that human sources cumulatively may not cause more than a 0.2 mg/L decrease below natural conditions in Lake Spokane. These studies also confirm that, although the three Idaho plants contribute only 5% of the loading to Lake Spokane, their discharge alone uses up all the allowable loading in the Lake. Rather than apportioning the load equitably between the Idaho and Washington sources, Region 10 considered the Idaho loading in isolation and conditioned the permits such that the Idaho discharges alone will cause just a shade under the allowed 0.2 mg/L decrease. Clearly, once these discharges cross the state line and mix with just a fraction of Washington loading, the standards will be violated.

In adopting this strategy, Region 10 not only violated federal regulations which require EPA to condition the permits such that they will not cause or contribute to water quality violations downstream, but it also abandoned the watershed approach it had advocated for years as a leading participant with other stakeholders involved with TMDL development. This action has the potential to negatively impact local clean-up efforts as well as set a dangerous precedent for other watersheds nationwide.

On a local level, rather than objecting to Region 10's strategy, Ecology revised its DO TMDL in conformity therewith. Under a prior draft of the DO TMDL, the boundary conditions at the state line did not include the Idaho point discharges. Consistent with the law, these discharges, in addition to Washington sources, were considered in determining how much more loading could be added beyond background to avoid causing more than a 0.2 mg/L decrease below natural conditions in Lake Spokane. Now, Region 10 has directed Ecology to include the Idaho dischargers as "background" from which Washington may cause another 0.2 mg/L decline. The cumulative loadings provided for under this approach will cause a 0.4 mg/L decrease below background, twice the allowable decline. Using this type of math will never result in restoration of Lake Spokane.

The effect of this approach nationally may be even worse as it makes a mockery of EPA's national watershed approach and virtually guarantees failure in addressing multi-state water quality issues. For example, the growing hypoxic dead zones in the Gulf of Mexico are directly related to the failure of comprehensive watershed management. EPA's Science Advisory Board recently issued a 333-page update on hypoxia in the Northern Gulf of Mexico.¹ The SAB confirmed that contemporary changes in the hypoxic area in the northern Gulf of Mexico are primarily related to nutrient loads from the Mississippi Atchafalaya River basin, an area that includes 31 States and Tribes. To reduce hypoxia in the Gulf, the SAB found that a systems view was required, one that addresses all sources and effects. Similarly,

¹ SAB Report on Hypoxia in the Northern Gulf of Mexico (Jan. 7, 2008) at <http://enewsusa.blogspot.com/2008/01/sab-report-on-hypoxia-in-northern-gulf.html>.

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NOAA, which is also studying hypoxia in the Gulf, found that “[m]itigation of the Gulf hypoxia problem requires a coordinated ecosystem approach to management that includes the entire watershed from its beginning all the way to the coast.”² Unfortunately, to date, the SAB found little movement towards implementation of policies, programs and strategies to reduce these nutrients.

Given the gravity of the environmental problem and the immense economic benefits derived from the Gulf, it is imperative that nutrient clean-up plans be developed and implemented in the Mississippi River watershed. However, success in restoring the quality of Gulf waters will be impossible if the Region 10 approach for permitting the Idaho dischargers were applied to each state in the Mississippi watershed. If each downstream state considers upstream loading coming across its border as natural background, the increase in allowable loading will be exponential before reaching the Gulf. This is bad science, bad law, and bad policy.

As stated by the United States Supreme Court, “The Clean Water Act anticipates a partnership between the States and the Federal Government animated by a shared objective: ‘to restore and maintain the chemical, physical, and biological integrity of the nation’s waters.’” *Arkansas v. Oklahoma*, 503 U.S. 91, 101 (1992). We would urge U.S. EPA to reconsider the approach being taken by Region 10 and to instead implement a regional watershed model in all its permitting and TMDL decisions, including those at issue here. Under such an approach, the loading capacity of the Spokane River would be divided between the states, not doubled as Region 10 proposes. Assigning cross-border loading allocations should be based not only on science, but on principles of fairness and justice, as is being done in the Chesapeake Bay Program.³ Anything less sets a precedent that may be used to justify unsound and unfair loading allocations and which will not accomplish the restoration mandated by the Clean Water Act.

Sincerely,



Bonne W. Beavers, Attorney

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On behalf of the Sierra Club, Upper Columbia River Group

² Underwatertimes.com News Service (Dec. 11, 2006) at http://www.underwatertimes.com/news.php?article_id=26894710510.

³ There, basin wide nutrient cap loads were allocated to nine major tributary basins and further divided between six watershed states and the District of Columbia. These allocations were based on the jurisdiction’s 1) impact on bay tidal water quality; 2) progress to date, and 3) the benefit derived from a restored Chesapeake Bay and tidal tributaries. See *Mississippi River Water Quality and the Clean Water Act: Progress, Challenges, and Opportunities*, National Academies Press at http://www.nap.edu/openbook.php?record_id_1205_l&page=125.