

**Testimony of
Rick Eichstaedt, J.D., Staff Attorney
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before the Senate Environment, Water, and Energy Committee
on Senate Bill 6036**

My name is Rick Eichstaedt and I am a staff attorney for the Center for Justice's Spokane River Project. The Center for Justice is not-for-profit law firm located in Spokane that represents individuals, neighborhood groups, and other not-for-profit groups on legal matters involving civil rights, government accountability, and environmental protection. For the last six years, the Center has participated in efforts to protect and restore the Spokane River, including the relicensing of Avista Corporation's dams and the process to develop a water quality clean-up plan for dissolved oxygen, also known as a Total Maximum Daily Load or (TMDL).

The Center for Justice opposes SB 6036 as written for several reasons.

First, by extending the time to come into compliance with our State's water quality standards, this legislation appears to be inconsistent with the Federal Clean Water Act's requirements that requires compliance with water quality standards "as soon as possible." Moreover, schedules of compliance can only be issued when "appropriate," which includes consideration of: (1) how much time a discharger has already had; (2) the degree to which the discharger has made good faith efforts to comply; (3) whether modifications are needed to treatment works and how long that would take; and (4) whether the discharger would plan on using the same treatment works as it has in prior permits.

The proposed legislation would allow a discharger to obtain a compliance schedule based on whether it had made "significant investments in advanced treatment technology and has

substantially reduced pollutant loading.” This approach is inconsistent with federal compliance schedule requirements that requires with effluent limitations be “as soon as possible” and only when “appropriate.” Under the federal requirements, the determination of whether to grant a compliance schedule is guided by how much time is needed to meet the final limits and not what actions the permit holder has accomplished in the past.

Any effort to extend compliance schedules through legislation or otherwise will be subject to EPA review and approval, including consideration of the consistency of such an effort with Endangered Species Act protection. EPA's decision in turn could be challenged in federal district court. Efforts to provide a broad and ambiguous compliance schedule have faced challenges in other states, including California and Oregon.

Second, this legislation was initiated, at least in part, to address the concern of pollution dischargers on the Spokane River. These concerns surround potential limits that will be addressed in the clean-up process for the Spokane River, known as a TMDL. Unfortunately, the TMDL is not yet completed and no one, including the Department of Ecology, permittees, or the conservation community, knows, at this time, whether this legislation will in fact be needed. Ecology and EPA, along with a number of community stakeholders, are spending a considerable amount of time and resources developing this TMDL document. This includes vigorous water quality modeling and an examination of various scenarios that will fairly and equitably address pollution reduction not only within Washington, but on the Idaho side of the Spokane River as well. Until the TMDL is completed, it is premature to know whether the changes that are addressed by this bill are actually needed. This seems to be putting the cart before the horse in that we are arguing that we can't achieve a target before we know what the target actually is. As discussed below, we believe that

the TMDL process should be completed prior to examining whether this legislation is actually needed.

Third, the Clean Water Act already contains a mechanism to extend on a case-by-case and pollutant-by-pollutant basis permit compliance requirements – variances. A variance from a water quality standard provides a pollution discharger with a period of relief when the discharger cannot immediately comply with a water quality-based effluent limit. A water quality standard variance is a short-term exemption from meeting the otherwise applicable water quality standards. We believe that a variance is a better tool to achieve the desired outcome because a variance is: (1) a short-term and temporary change to standard; (2) allows the basic water quality standards remain in place; (3) is pollutant and discharger specific; and (4) is a tool already available under the Clean Water Act. It is unclear to us why the existing tools available under the Clean Water Act are unsatisfactory.

Lastly, the bill was introduced late in the session without the ability of the conservation community and other stakeholders to discuss their concerns and alternatives to the legislation with the Department of Ecology and other proponents of the bill. While we oppose this legislation, we are committed to working with Ecology, conservation groups, and other stakeholders before the next legislative session to discuss the need for this bill and to attempt to craft legislation that is both consistent with the Clean Water Act and ensures that achievement of our State's water quality standards occurs in a practical manner.

For example, we would be interested in working with Ecology and other stakeholders to develop legislation that clearly addresses how nonpoint source pollution is addressed in a ~~achievable, enforceable, and cost-effective manner, and appropriate schedules of compliance that~~

to address such efforts. While it appears, that this bill may attempt to address these issues, as currently drafted, it does not clearly and narrowly achieve such objectives.

We understand the perceived urgency in addressing this bill, but the reality is that passage of this bill will require a significant amount of additional steps, including rulemaking by Ecology, review by EPA, consideration of impacts to endangered species by NOAA Fisheries and the U.S. Fish and Wildlife Service, and consultation with Tribal governments. That process undoubtedly will take a significant amount of time. Issues that may result from those consultation processes could be discussed prior to the next legislative session in redrafted legislation. Moreover, Ecology has existing authority to initiate rulemaking to address compliance schedules without the need for this legislation.

For these reasons, we oppose the passage of SB 6036 as currently drafted.

watershed, defines how point source offsets are credited, and appropriate schedules of compliance