SPOKANE
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It's Your River ♦ We Protect It

ATT: Curtis Johnson
Washington Department of Ecology
4601 North Monroe Street
Spokane, WA 99205-1295

November 12, 2020

RE: Little Spokane River Dissolved Oxygen, pH, and Total Phosphorus Total Maximum Daily Load Water Quality Improvement Report and Implementation Plan - Publication Number 20-10-033

Dear Curtis,

I am providing the following comments on the draft TMDL on behalf of the Spokane Riverkeeper (SRK). The Spokane Riverkeeper is a member of the international Waterkeeper Alliance and is an advocate for the Spokane River Watershed. Our organization works for a fishable and swimmable Spokane River. We use education, outreach, collaboration, and litigation to further policy goals that are a benefit to the ecology of the Spokane River Watershed, the public, and their uses of the Spokane River.

These comments on the draft TMDL are meant to express our perspectives and suggest recommendations.

General Comments:

1) The Spokane Riverkeeper appreciates the time, effort, and expertise of the Washington Department of Ecology (WDOE) in preparing and writing the draft Little Spokane River (LSR) Dissolved oxygen, pH, and Total Phosphorus Total Maximum Daily Load Water Quality Improvement Report and Implementation Plan (draft TMDL) for public comment and implementation. We do feel this is a positive step towards stewarding our waters into the next generation and improving water quality for the public enjoyment and the health of the ecosystem.

2) The SRK feels that WDOE should consider the nexus between the LITTLE SPOKANE (WRIA 55) WATERSHED PLAN ADDENDUM prepared for WRIA 55 Planning Unit (Lead Agency-Spokane County), Project number 180249, and this draft TMDL. The SRK believes that this draft TMDL could refer to the WRIA 55 Watershed addendum insofar as they both refer to and/or contain habitat

improvement actions affecting the riparian quality of the Little Spokane Drainage. The TMDL could begin to leverage this WRIA plan to produce immediate success in the watershed. It could also access the WRIA 55 stakeholders to convene an outreach and/or implementation orientation and build synergies for getting work done in the LSR Basin.

3) SRK believes that Climate Change will affect the flows in the Little Spokane River as will continued human development and growth and that these factors will affect the assessments of pollution loading and attainment of loading goals. Climate change and human development will also affect the effectiveness of solutions and riparian recovery through time. This plan should discuss the implications and impacts of both on water quality attainment. WRIA 55 Watershed Mgmnt addendum may inform such a discussion.

4) As a follow on to that, this draft TMDL should have a complete analysis of flow regimes and a workup of how those flow regimes affect nitrogen and Total Phosphorus (TP) pollution and how changes in those flows will affect pollution loading and concentrations now and in the future.

5) SRK feels that if executed correctly and with commitment from WDOE administration, the Watershed Evaluation Process will be a very positive development for the LSR Basin and the Spokane River Watershed in general.

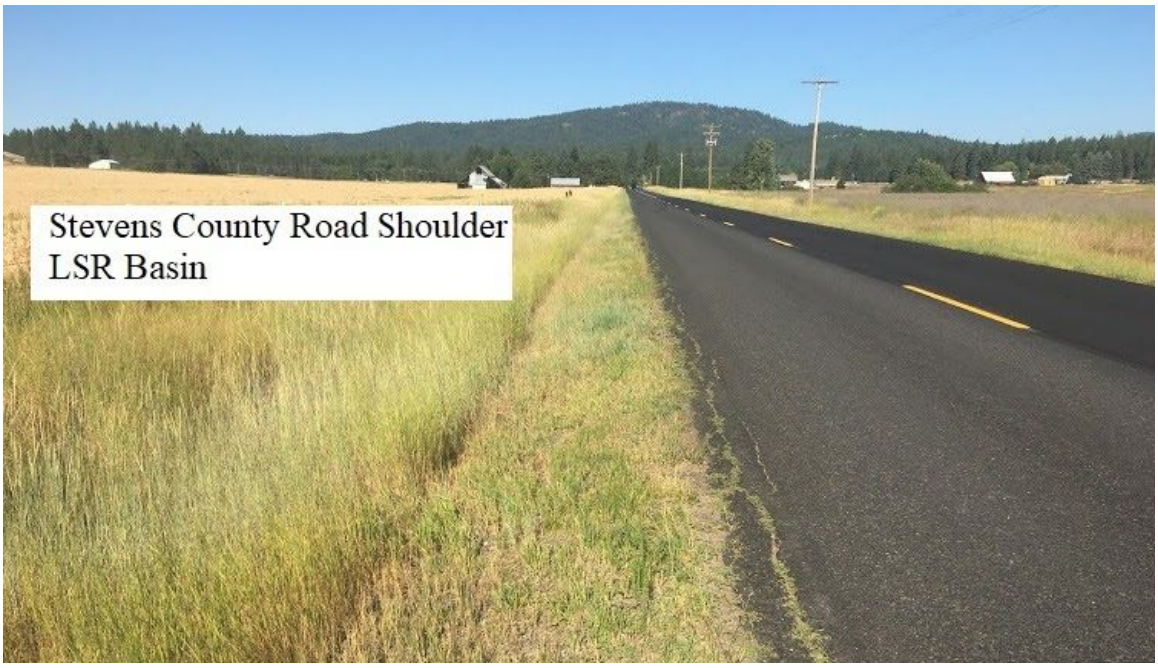
6) Finally, while we appreciate the designated uses of native Redband trout, whitefish, and rainbow trout habitat (and *one or more salmonids; or foraging by adult and subadult native char*) as a stated goal. SRK recommends including a full paragraph on the Tribal efforts to recover salmon and the Upper Columbia United Tribes Phased studies that identify the basin as future salmon and steelhead habitat. (https://ucut.org/fish/restoring-salmon-upper-columbia-river-basin/)

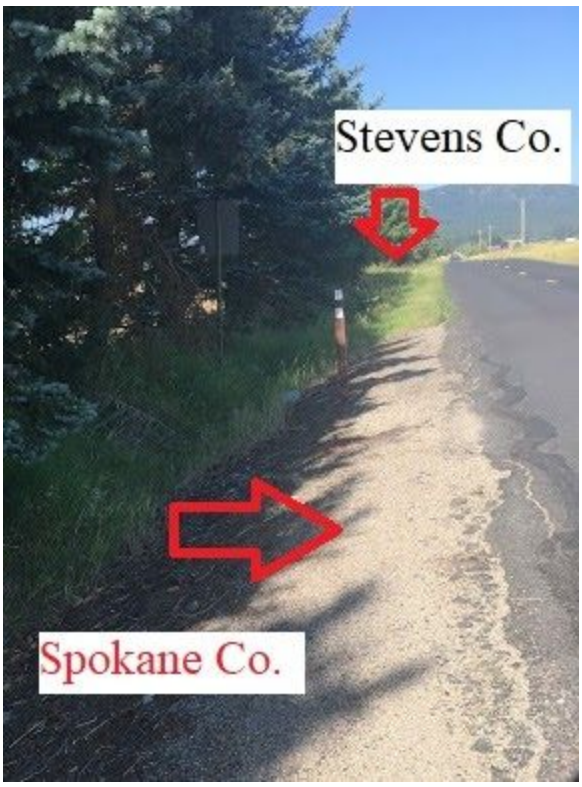
Comments on the Draft Little Spokane River Dissolved oxygen, pH, and Total Phosphorus Total Maximum Daily Load Water Quality Improvement Report and Implementation Plan by Page. What follows will simply be our comments by page number to connect the WDOE and others to the feedback and the content in the document.

Pages 32, 33, 34: We agree and appreciate that WDOE recognizes and clearly states that to achieve the pollution loading goals, the primary (implementation) work in the basin will be addressing non-point source (NPS) pollution. Tillage practices in this region with its friable soil, steep slopes, and high precipitation levels make this basin very vulnerable to NPS pollution. We recommend explicitly stating that older tillage styles are particularly hard on water quality and aquatic life. Finally, freeze-thaw and rain on

snow events are common in this basin and they readily mobilize soil movement and exacerbate soil and nutrient runoff to surface waters.

Page 35 under subheading “Drainage”:
SRK agrees and supports this section. Further, it should be noted in implementation stages that Spokane County continues to spray pre-emergent herbicides on its roadside ditches making water and pollution highly prone to run off roads and ditches and into surface water. Conversely, Stevens County lets the grass grow on the shoulders of their roads and this provides a high degree of interception and pollution prevention. See photos below:





Page 37: *"Persons engaged in agricultural operations who implement and maintain the recommended BMPs below will be presumed to be in compliance with the Little Spokane River DO and pH TMDL and the State Water Pollution Control Act (90.48 RCW)."*
We agree that in most cases implementation of effective BMPs can protect water quality. However, we find the statement of presumption problematic. It should be readily stated that BMPs are outcome-oriented and not process-oriented. That is to say that the correct suite of BMPs will have to be worked out until water quality standards - as outcomes - and/or site conditions - as outcomes - are attained that are fully protective of Washington Water Quality Standards (WQS) and surface water.

Page 58: SRK recommends WSDOT/Spokane County Action steps in the TMDL. The draft TMDL has lots of prescriptive BMPs for private agriculture but is missing strong, concrete, prescriptive actions and BMPs to intercept stormwater from the vast network of public roads that are under the jurisdiction of Spokane County and WSDOT. Again we urge to see the condition of county roads in the Little Spokane River Basin and understand the urgent need to deal with this persistent and pernicious source of pollution.

Roadside shoulder in the LSR Basin - **Spokane County**

SRK recommends mandating the aggressive phase-out of stormwater conveyances, and outfalls to the tributaries and the LSR. Specifically, bullet #5 on this page should have concrete and specific, prescriptive actions and BMPs - such as Low Impact Development - that are listed out and described. These should include benchmarks and timetables that are agreed to between WDOE, WSDOT, and Spokane County to bring the MS4 outfalls and simple roadside ditches into compliance with TMDL planning and water quality attainment.

Page 36 - SRK recommends that WDOE heavily qualify that Natural Resource Conservation Service (NRCS) codes in the Field Office Technical Guide (FOTG) were not designed to meet Washington State Water Quality Standards. Further, please include a section referring to the impending Agricultural BMP Clean Water Guidance that

is under development and is designed to meet Washington WQS under the Washington State Non-Point Pollution Plan approved by the EPA. This pending guidance will have a place as implementation tools suitable for TMDL implementation plans like this one.

Page 38: Table 13 - SRK recommends again to make it clear - perhaps with a subheading or footnote - that NRCS guidance (FOTG)s is not designed to achieve Water Quality Standards in Washington State and the newer pending, agricultural BMP Guidance is designed to meet WQS in TMDL implementation.

Page 45: Tillage recommendations - the draft TMDL is silent on residue height recommendations. The LSR Basin receives a great deal of snow in the winter and this exacerbates soil runoff when snowmelt and rain-on-snow events are occurring. Crop stubble heights of 15" or higher should be recommended to prevent sheet erosion into surface waters.

Page 64 - The SRK recommends that the TMDL team consider Site Potential Tree Height as a prescription for certain sections of the Little Spokane River riparian habitat recovery and pollution prevention plan. This is defined and explained by WDFW.

7.5. Conclusions the goal for riparian areas of the Columbia Plateau Ecoregion is the same as the goal for forested ecoregions—maintain or restore key ecological functions. However, management to achieve that goal is more complicated in dryland riparian areas for three reasons. First, there is a greater diversity of plant communities within riparian ecosystems of the Columbia Plateau than in the surrounding forested ecoregions—the vegetation heights of dryland riparian ecosystems range from sedges to tall trees. Several key ecological functions of riparian areas—namely, shade, wood, and detrital nutrients for aquatic habitats—are dependent on vegetation height. The other three functions—bank stability, pollutant removal, and alluvial water storage—are largely dependent on processes occurring at or below the soil surface. In forested ecoregions, the total capacity of a riparian area to provide five of the key functions typically occurs within a site-potential tree height (FEMAT 1993). In other words, with respect to aquatic habitats, ***full function for five of the key riparian ecological functions is typically provided by an area that is one site-potential tree height wide.***
(https://wdfw.wa.gov/sites/default/files/publications/01987/wdfw01987.pdf)

Page 66: Again, SRK Appreciates that WDOE Watershed Evaluations will be implemented in this LSR basin and become the norm.

Page 67: On this page, WDOE states: *"Despite the best efforts of Ecology and partners in the watershed, some landowners may be unwilling to perform the steps needed to protect water quality at their property. It then becomes Ecology's responsibility to evaluate whether their activities are causing or have the potential to cause pollution in violation of the state's Water Pollution Control Act (RCW 90.48).* ***In these situations, Ecology can pursue enforcement steps needed to gain compliance***."

For the record, this has been, to date, a persistent and fundamental failure of WDOE in other basins across the state. The low rate of enforcement and the use of regulations under RCW 98.48 has left the surface waters across Washington vulnerable to the notion that the WDOE is not serious about protecting the public nor its treasured clean water. SRK suggests that this language be changed to "*WDOE WILL pursue enforcement*, when and where necessary to uphold RCW 90.48 and protect the public values of clean water". Without this statement, and without commitment to utilizing these regulatory tools, the endeavor to protect the public's waters and the attainment of TMDL goals in this watershed plan will fail. **While SRK understands that WDOE has discretionary power in this area, communicating with the WDOE leadership team (and the public) that the transparent, clear, prudent use of regulatory tools is necessary, and will play an essential role in the success or failure of this TMDL plan**.

Cattle with direct access to the Little Spokane River
Persistant violator - Photo taken by public June of 2019

Page 71: Please include a summary of the Forest Practices Act (FPA) buffer widths referred to in the table.

Page 74: SRK believes that the "Costs" section can be misleading. WDOE makes the statement: *"It is important to understand the financial burden associated with the implementation of the TMDL"* . Traditionally the protection of the State's surface waters is presented as a "cost", but SRK submits this as a simple matter of framing. SRK asks that you please qualify (or follow up) this statement by stating that these are costs borne by landowners who are not protecting water quality and public values. In the larger Columbia Basin frame, the implementation of BMPs may save society economic burdens. For example, The City of Spokane alone has spent over 350 million dollars upgrading its WWTP to incorporate Next Level Treatment to address nutrient pollution in

their wastewater effluent. In that sense, the ratepayers of Spokane are absorbing costs to prevent algae blooms in Lake Spokane that landowners in the LSR Basin are continuIng to externalize to the River. Implementing BMPs can save communities and ratepayers in other jurisdictions when the costs of operating in the LSR are not passed on to the public sector. Therefore the implementation of these BMPs may not be a cost to society as a whole, rather they may provide a net economic benefit when framed through a larger Spokane River or Columbia River Watershed framework. Therefore, we recommend a qualifier that clearly states the act of cleaning up our River systems and keeping them healthy is a net economic benefit with near term costs simply preventing others downstream form bearing the burden and costs of filthy water.

Page 76: Tracking Nonpoint BMP Implementation. SRK appreciates the rigorous list of metrics that will be tracked in association with implementing BMPs. This data could also be folded into a simple spreadsheet and/or doc that is presented to and/or shared with the Spokane River DO TMDL Implementation workgroup as well as the public (posted to the WDOE Website).

Page 77: Following the section on Water Quality Monitoring, SRK recommends a section on Water Quantity. Perhaps working with the Water Resources section at WDOE and discussing the monitoring of flow data from several points in the watershed would be positive given the association between river flow and water quality.

Page 78: The SRK agrees with the statement: “Project success and accomplishments should be publicized and reported to continue project implementation and increase public support." However, we also feel there is also a place for judicious publication of the challenges and setbacks as well. That is to say, if the goal is to increase awareness and begin to shape public opinion in favor of water protection, the publication of lawbreaking and intransigence - for example - should also be identified and put out in public view so that all people understand the barriers to progress.

Page 79: Under the Reasonable Assurance Section: the tool of regulation is explicitly said to assure that WDOE and watershed partners will achieve TMDL goals. Please underscore the importance of this tool given WDOE’s history of persistent avoidance in using regulatory backstops in the LSR Basin before this TMDL.

Page 80: “*The purpose of the Little Spokane River TMDL for dissolved oxygen and pH is to set WLAs and LAs to help the waters of the basin meet the state’s water quality standards. Ecology believes the work described in this plan provides reasonable assurance that the Little Spokane River TMDL goals for dissolved oxygen and pH will be met in 20 years. The ability to meet specific interim targets and milestones will depend on the funds available, the personnel and resources available, and the landowners in the watershed. Some pollutants will take longer to reach water quality standards than others.”*

In this statement, WDOE is, on one hand, claiming to provide "reasonable assurance" that the plan will meet goals, but on the other, it qualifies the success with the conditions of adequate personnel, funding, and landowner buy-in. This conditioning seems to undercut any sense of assurance to the public that goals will be met. At the top of Page 79, the statement is made, "I*t is ultimately Ecology's responsibility to ensure that implementation is being actively pursued and water standards are achieved"*. We believe that we can expect success if the strategies outlined are followed, the tools of regulation are balanced with the voluntary actions, and the direction of resources and outreach are prioritized and focused correctly. It seems that the public should be able to expect improvement.

Page 174 Again this WDOE makes the statement, "*The most important finding from the QUAL2Kw and RMA modeling exercise is that the vast majority of DO and pH improvement that would occur under system potential conditions results from shade improvements.*"
This statement leads us to wonder if the WDFW Riparian Guidance and the use of Site Potential Tree Height as a guideline could find utility in parts of this basin where possible. On page 185 WDOE states, "*there is considerable opportunity to improve DO and pH in the Little Spokane River and its tributaries through the restoration of shade. There are many locations in the Little Spokane River watershed where riparian vegetation has been removed or degraded, and the current amount of stream shade is less than system potential shade (Joy and Jones, 2012). Restoring system potential shade will improve DO and pH by reducing water temperatures and limiting light availability*." We believe that the draft TMDL should mention that where and when possible in forested and non-forested landscapes, the WDFW riparian guidance could be used rather than the less protective FPA or NRCS buffer guidelines.

We appreciate the opportunity to comment on the draft TMDL for the Little Spokane River. Please do not hesitate to call or email me for clarification or questions.

Respectfully,

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