Spokane Tribal Natural Resources
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MEMORANDUM

May 21, 2012

Mr. Jim Bellatty
Water Quality Section Manager
Washington Department of Ecology
4601 North Monroe Street
Spokane, Washington 99203

RE: Spokane River Regional Toxics Task Force

Dear Mr. Bellatty:

I am writing to inform you of an important decision of the Spokane Tribe's Business Council ("Council"). The Council has decided that the Spokane Tribe of Indians ("Tribe") will no longer participate, and support the Spokane River Regional Toxics Task Force ("Task Force"). My staff has informed me that the Washington Department of Ecology ("WDOE") throughout the formation of this Task Force has been an open and honest partner. Accordingly, I want to acknowledge that the Tribe appreciates WDOE's efforts to work with the Tribe at the sovereign to sovereign level during this process, and hope that in the future we can work together on issues that affect our shared resources. Unfortunately, for the reasons described below, the Tribe will no longer participate in and support the Task Force.

Almost a year ago to the day, the Tribe, the Environmental Protection Agency ("EPA"), and WDOE began discussing the formation of a Task Force as a mechanism for addressing PCBs and other toxics within the Spokane River. At the time, point source dischargers within the region were placing significant pressure on WDOE to forgo the preparation of a final PCB Total Maximum Daily Load ("TMDL"). The desire of the dischargers to avoid the potentially significant costs associated with being assigned waste load allocations ("WLA") for PCBs within a final PCB TMDL led them to apply this pressure to WDOE. By all indications, the PCB WLAs will be significantly lower than their current PCB discharges as described in the Draft PCB TMDL prepared by WDOE. The hope of the Task Force concept was that if as a region PCB source control could be addressed, the applicable water quality standards could be met without a PCB TMDL. The phrase the Tribe heard repeated multiple times was "straight to implementation," which meant to the Tribe, that the region was going to begin working on projects immediately to reduce PCBs, and if the Task Force failed at its mission, the WDOE would prepare a PCB TMDL.

Not long after completion of the Task Force operating documents, the Tribe began to have doubts about the Task Force. First, during the discussions that began in May 2011 through November 2011, the Tribe was led to believe that the dischargers, EPA, and WDOE would commit the funding necessary to carry out the "straight to implementation" work of the Task Force. Instead, EPA committed absolutely no funding and denied the Task Force's request for an Urban Waters grant, the State committed $25,000, the dischargers combined committed roughly $34,000, and the Tribe committed $7000. This amount of money is barely enough to fund the facilitation of the Task Force for a year, and is nowhere near enough to carry out any of the planning and work necessary to remove any amount of PCBs from the Spokane River. One of the goals of the Task Force is to make measurable progress towards meeting the applicable water quality standards for the River, and it is difficult to see how this is possible in the face of such financial uncertainty.

Second, in early December 2011, the Tribe became aware of the important decision EPA was about to make regarding the proposed Fish Consumption Rates ("FCRs") in Idaho. These rates will greatly affect the water quality throughout the entire Spokane River. This EPA decision was finally made just last week after years of deliberation, and the EPA came to the legally correct decision that Idaho could not adopt a 17.5 grams per day FCR. However, the situation illustrated to the Tribe that the very difficult decisions surrounding toxic pollution, even in the face of overwhelming support in the law and science that clearly require a certain outcome, become uncertain when political pressures assert themselves. This convinces the Tribe that it will be virtually impossible to prepare a workable collaborative toxics reduction plan, if it is not clearly supported and enforceable under the Clean Water Act ("CWA").

The third and final event that led to the Tribe's decision is the letter EPA sent to the Idaho dischargers' representative on March 29, 2012. In that letter, the EPA stated unequivocally that EPA did not have the authority to require that Idaho dischargers participate in the Task Force (roughly 30% of all PCB loading in the Spokane River originates in Idaho). This third and final action led to the Tribe's decision to withdraw support for the Task Force. It is now clear to the Tribe that the Task Force can never create a plan that is equivalent to a legally adopted TMDL because it will always be susceptible to legal challenges by the affected dischargers.

For these reasons, the Tribe urges the WDOE and EPA to turn course, and begin the process of developing a legally defensible PCB TMDL for the entirety of the Spokane River. The current Task Force could be used as mechanism to help prepare that TMDL, but the current Task Force mission is legally unenforceable on <u>all</u> of the dischargers, and will always be susceptible to legal challenges which will no doubt lead to further delay. In short, the River is sick with toxics, the Washington Department of Health has significant fish advisories for the River, and there is simply no more time to attempt a collaborative unenforceable means to toxic pollution reduction. Many of the concerns and excuses put forth by the dischargers for wanting to avoid a PCB TMDL were addressed by the Washington State Legislature in a bill lobbied for by those same dischargers, Substitute Senate Bill 6036 ("SSB 6036") which was passed in 2009. There are numerous examples of legal PCB TMDLs throughout the country, and there is absolutely no reason one cannot be prepared for the Spokane River, particularly with the

leniency that SSB 6036 created. The Spokane River will only meet applicable water quality standards in the future if the solution is supported and enforceable under the CWA, and appropriately funded.

If you have any questions, feel free to contact me at (509) 626-4427.

Sincerely,

BJ Kieffer

B.J. Kieffer
Director
Spokane Tribal Natural Resources Department

cc: Greg Abrahamson, Chairman, Spokane Tribe Business Council
Dennis McClerran, Administrator, EPA Region 10
Ted Sturdevant, Director, WDOE
Ted Knight, Attorney, Spokane Tribe of Indians