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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

SIERRA CLUB; and CENTER FOR  
ENVIRONMENTAL LAW AND POLICY,

Plaintiffs,

and

THE SPOKANE TRIBE OF INDIANS,

Plaintiff-Intervenor,

v.

DENNIS MCLERRAN; GINA MCCARTHY;  
and UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY,

Defendants,

and

SPOKANE COUNTY; KAISER ALUMINUM  
OF WASHINGTON LLC; and STATE OF  
WASHINGTON DEPARTMENT OF  
ECOLOGY,

Defendant-Intervenors.

Case No. 11-CV-1759-BJR

MEMORANDUM ORDER GRANTING  
MOTION TO FILE SUPPLEMENTAL  
COMPLAINT

1 Plaintiffs Sierra Club and Center for Environmental Law and Policy (hereinafter  
2 “Plaintiffs”) seek leave to file a second supplemental complaint. Defendants oppose the motion.  
3 Having reviewed the parties’ briefs together with all relevant materials, the Court grants Plaintiffs’  
4 motion to file a second supplemental complaint. The Court’s reasoning follows:

5  
6 BACKGROUND

7 On October 21, 2011, Plaintiffs filed the present action against the EPA. According to  
8 Plaintiffs, the State of Washington clearly and unambiguously indicated that it will not produce a  
9 TMDL for a Spokane River, thereby triggering EPA’s non-discretionary obligations under the  
10 Clean Water Act. *See* 33 U.S.C. § 1251. Both parties moved for summary judgment on this issue.

11 On March 16, 2015, the Court granted Defendants’ motion for summary judgment in part,  
12 holding that the State of Washington’s inaction had not triggered any non-discretionary duties.  
13 Doc. No. 120. However, the Court held that the EPA’s approval of the Task Force as an alternative  
14 to the TMDL development process required under the CWA was arbitrary and capricious. The  
15 Court remanded the matter to the EPA, directing it to do the following:  
16

17 create a definite schedule with concrete goals, including: clear statements on  
18 how the Task Force will assist in creating a PCB TMDL in the Spokane River  
19 by reducing scientific uncertainty; quantifiable metrics to measure progress  
20 toward that goal; regular checkpoints at which Ecology and the EPA will  
21 evaluate progress; a reasonable end date, at which time Ecology will finalize and  
22 submit the TMDL for the EPA’s approval or disapproval; and firm commitments  
23 to reducing PCB production from known sources in the interim.

24 Doc. No. 120.

25 On remand, the EPA established a schedule governing the Task Force. The schedule sets  
26 out certain benchmarks, goals, and a final endpoint. Plaintiffs now seek leave to file a second  
supplemental complaint, challenging this purported plan. According to Plaintiffs, the EPA’s new  
action violates the CWA because it unnecessarily delays the production a TMDL.

DISCUSSION

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2 Plaintiffs seek to file a supplemental complaint pursuant to Federal Rule of Civil  
3 Procedure 15(d). Rule 15(d) provides, in relevant part, that:

4       Upon motion of a party the court may, upon reasonable notice and upon such  
5 terms as are just, permit the party to serve a supplemental pleading setting  
6 forth transactions or occurrences or events which have happened since the  
date of the pleading sought to be supplemented.

7 The Ninth Circuit has made clear that leave to permit supplemental pleading is generally favored  
8 as it promotes the efficient resolution of disputes and avoids the cost and delay of filing a new  
9 action. *Keith v. Volpe*, 858 F.2d 467, 473 (9th 1988). However, a court should not allow leave to  
10 file if the proposed complaint introduces a “separate, distinct and new cause of action.” *Planned*  
11 *Parenthood of S. Arizona v. Neely*, 130 F.3d 400, 402 (9th Cir. 1997); *Berssenbrugge v. Luce Mfg.*  
12 *Co.*, 30 F.Supp. 101, 102 (D.Mo.1939).

14       There can be no doubt that granting leave to file comports with the aims Rule 15(d) as the  
15 supplemental complaint will spare both parties the unnecessary cost and delay associated with  
16 initiating a second action. Nor can there be any doubt that the supplemental complaint is closely  
17 related to the original complaint. The thrust of Plaintiffs’ new allegations is that the EPA’s  
18 response “frustrates” the purpose of this Court’s remand order; therefore, the adjudication of that  
19 these new allegations will present many of the same issues involved in the original action.  
20 Moreover, the Court finds that Defendants will not be prejudiced by the filing of the supplemental  
21 complaint. Each of Defendants’ arguments regarding prejudice were premised on the fact that this  
22 matter was on appeal. Since the Court of Appeals has dismissed the appeal, these arguments are  
23 now moot.  
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ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. Plaintiffs' Motion to File a Supplemental Complaint is GRANTED; and
2. Plaintiffs shall file the Complaint no later than June 17, 2016.



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BARBARA J. ROTHSTEIN  
UNITED STATES DISTRICT JUDGE

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