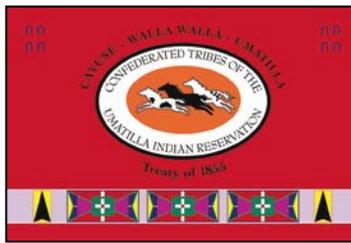


**Confederated Tribes** *of the*  
**Umatilla Indian Reservation**

Department of Natural Resources  
Administration



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August 21, 2015

Paula Wilson  
Idaho Department of Environmental Quality State Office  
1410 N. Hilton Street  
Boise, ID 83706  
[paula.wilson@deq.idaho.gov](mailto:paula.wilson@deq.idaho.gov)

Re: Docket No. 58-0102-1201; CTUIR Comments on Preliminary Draft Rule, Idaho Water Quality Standards Human Health Criteria

Dear Ms. Wilson:

The Confederated Tribes of the Umatilla Indian Reservation (CTUIR) Department of Natural Resources (DNR) appreciates the opportunity to submit the following comments on the proposed Preliminary Draft Rule revising Idaho's Water Quality Standards Human Health Criteria.

While the Draft Rule does reflect *some* worthwhile efforts and appropriate policy choices (see below), ultimately it is undermined by other, more serious and damaging decisions that the State is contemplating. The CTUIR DNR opposes the Rule in its current form.

#### *Fish Consumption Rate*

The proposed Fish Consumption Rate (FCR), 16.1 grams/day, is a slight, completely inconsequential increase above the existing, woefully-inadequate 6.5 grams/day, and is also less than the similarly-inadequate 17.5 grams/day that was submitted previously to EPA and rejected by the agency. The 16.1 grams/day figure was obtained after employing multiple suspect approaches and questionable choices,<sup>1</sup> eventually resulting in a number that is inaccurate and insupportable overall. Using this FCR in determining criteria will result in standards that are insufficient to protect Idaho's citizens (including tribal members *and others* who consume more fish than "average") and water quality that will be unjustifiably impaired. Idaho's people and its environment will suffer harm. They deserve better.

#### *Cancer Risk Level/Extent of Protection*

The CTUIR DNR supports IDEQ's decision to maintain for regulatory purposes the cancer risk level of  $10^{-6}$  (one-in-one-million). The  $10^{-6}$  benchmark, however, should also be coupled with protection of the 95th percentile of consumers at that level. The Draft Rule proposes only protection at the "mean" level, which would leave a substantial portion (up to and possibly even

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<sup>1</sup> See Upper Snake River Tribes Foundation letter to IDEQ, August 21, 2015, for a description of the flawed derivation of the 16.1 grams/day FCR.

more than half) of tribal and other high consumers of fish subject to risks greater than one-in-one-million.<sup>2</sup> We oppose this choice.

It is unacceptable to consciously regulate toxic discharges based on the principle that tribal members with rights to uncontaminated fish can be subjected to greater cancer and other risks than members of the broader, state-wide “general public.” The CTUIR DNR recommends that the human health criteria should embrace protection of the high-fish-consuming public at the 95th percentile level, and not merely the mean or average.

#### *Exclusion of Anadromous and Market Fish*

The CTUIR DNR does not support the choice to exclude either anadromous or market fish from surveys or the determination of revised standards in general, for the reasons stated in our earlier comments to you. Anadromous and market fish make up a significant share of fish consumption, and discharges to Idaho waters affect not only waters in Idaho but waters downstream, and they affect anadromous fish and potentially market fish found in Idaho and beyond its boundaries. Waters and the fish that inhabit them are interconnected and inseparable, notwithstanding the Rule’s apparent aim of disregarding this fact.

#### *Suppression*

The CTUIR DNR believes that suppression effects should be considered in revised water quality standards. It is likely that current fish consumption, possibly among both Indian and non-Indian citizens, is artificially low because of diminished fish populations caused by multiple factors outside of consumers’ control. Failing to account for suppression effects yields a biased FCR that in turn biases standards based on it, effectively providing an additional reward to those who have already reaped the benefits from activities that have harmed fish populations.

#### *Downstream Waters*

The Draft Rule would not assure protection of downstream waters or compliance with downstream criteria. The proposal does not explain or justify (beyond its vague and simplistic narrative “template” language) how water quality would be maintained, or, more fundamentally, why downstream jurisdictions and their citizens should be subjected to incoming waters from Idaho that are allowed to contain more toxic contaminants than downstream receiving waters.

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<sup>2</sup> Oregon has adopted standards based on 175 grams/day reflecting the 95th percentile of consumption and a risk level of 10-6. Using 175 was a compromise, accepting a situation where 5% of the consuming population would possibly have less-than-adequate protection.

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*Conclusion*

The CTUIR DNR appreciates your decision to, at a minimum, maintain criteria at existing levels (no “backsliding”). However since many of those criteria are old, outdated, and insufficiently protective, we believe that the people of the State and the region would benefit from a stronger approach. We would also encourage you to revisit and revise if appropriate all water quality standards and not just those disapproved by EPA in 2012. We also welcome your decision to use EPA’s default relative source contribution (RSC) value of 20 percent.

In revising its water quality standards, we hope that Idaho will recognize and respect the vital links and relationships between the valuable resources we all share, upstream and downstream. Thank you for your consideration of our comments. If you have any questions or wish to discuss any of these matters further, please contact Carl Merkle, DNR Policy Analyst, at (541) 429-7235.

Sincerely,



 Eric Quaempts  
Director, Department of Natural Resources

EQ: cfm