



Nez Perce

TRIBAL EXECUTIVE COMMITTEE

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January 16, 2015

Paula Wilson
Idaho Department of Environmental Quality State Office
1410 N. Hilton
Boise, Idaho 83706

Cc: Environmental Protection Agency

By Electronic Mail (paula.wilson@deq.idaho.gov)

Re: Docket No. 58-0102-1201 – Fish Consumption Rate and Human Health Water Quality Criteria -Discussion Paper 7: Risk Management and Protection of Human Health

Dear Ms. Wilson:

The Nez Perce Tribe (Tribe) appreciates the Idaho Department of Environmental Quality's (IDEQ) invitation to comment on Idaho's December 2014 discussion paper entitled "Risk Management and Protection of Human Health," which appears to propose that the current "acceptable" cancer risk level of 10^{-6} (1 in 1 million) be increased to 10^{-4} (1 in 10,000) for high fish consuming subpopulations like tribes. The Tribe urges the IDEQ to protect the health of tribal members and all Idaho citizens by not weakening the current cancer risk level criteria or modifying the default relative source contribution value.

Since time immemorial fishing has been central to Nez Perce Tribal identity. In fact, the Tribe's entire economy and culture evolved around Northwest fish runs, and to this day the Tribe depends upon salmon and other aquatic species to meet the dietary, spiritual, and basic subsistence needs of its people. In the Tribe's 1855 Treaty with the United States, 12 Stat. 957 (Treaty of June 11, 1855), the Tribe reserved to itself, and the United States secured, among other guarantees "the right to fish at all usual and accustomed places in common with citizens of the Territory..." The Tribe's explicit treaty-reserved right to take fish at all usual and accustomed places includes, but is not limited to, a legally protected property interest in accessing all of its usual and accustomed places; and a legally protectable property interest in taking 50% of the fish that are destined to reach all of the Tribe's usual and accustomed places.

Idaho's water quality standards affect the rights, interests and resources of the Nez Perce Tribe. When the waters that support fish are allowed to be contaminated, the Tribe's interests are affected and Tribal people are disproportionately exposed. Given the Tribe's treaty-reserved right to take up to half of the fish that are destined to reach the Tribe's usual and accustomed fishing places, including those places in Idaho, the Tribe would be very concerned if Idaho adopts a weak cancer risk level that may effectively undermine or interfere with the Tribe's

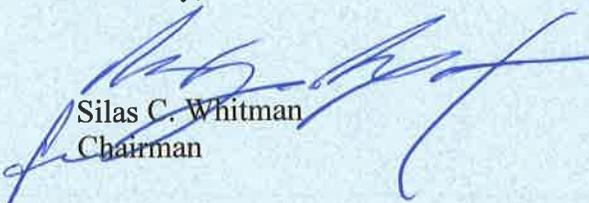
treaty-reserved fishing rights. The long-term solution to this problem is not adopting a position that keeps Tribal members and other from eating contaminated fish (i.e. avoiding risky behavior), it is keeping fish from being contaminated in the first place.

The Tribe is very troubled with the State's interpretation of the consumption of fish as a "voluntary risk." On page 7 of the Discussion Paper, the State maintains that "given the availability of other healthy food choices, consuming large amounts of fish must be considered a voluntary risk." While the State acknowledges in its discussion paper that "Native American cultural identity with fish harvest and consumption...casts the voluntary nature of the risk in a somewhat different light," this statement fails to acknowledge the depth to which the Tribe's relationship with fish defines their very identity, and totally ignores the Tribe's treaty-reserved, legally-protected fishing rights. Tribal members could no more choose to not consume fish than they could choose to not be Nez Perce.

In Idaho's discussion paper, several arguments are made for conservatism in setting criteria and favoring lower risk levels, including the cumulative risk associated with exposure to multiple carcinogens at their criteria concentrations and the addition of chemicals to waterways "by means of nonpoint sources (e.g., agricultural run-off) rather than through permitted discharges" (p.7). The Tribe agrees with the State's acknowledgment that humans are often exposed to multiple contaminants at a time or in succession, often through multiple avenues of exposure. Studies conducted in the Columbia River Basin have shown dozens of different contaminants in fish tissue (U.S. Environmental Protection Agency), and while some of the cumulative effects and their interactions are known, most of them are not well understood. Weakening the current cancer risk level criteria in light of this uncertainty will likely jeopardize the health of Tribal members and all Idahoans.

In conclusion, lowering the cancer risk level will place a disproportionate burden on the health and welfare of Tribal communities and likely interfere with the Tribe's treaty-reserved fishing rights. We urge you to retain the protective cancer risk rate of 10^{-6} and turn your attention to establishing an accurate fish consumption rate to accompany it.

Sincerely,



Silas C. Whitman
Chairman

References

U.S. Environmental Protection Agency. (1996-1998). *Columbia River Basin Fish Contaminant Survey*. Seattle, WA: U.S. EPA.