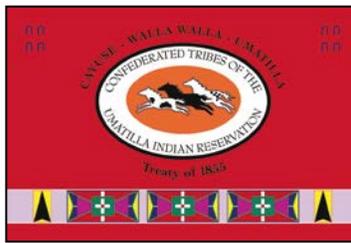


Confederated Tribes *of the*
Umatilla Indian Reservation

Department of Natural Resources
Administration



46411 Timine Way
Pendleton, OR 97801

www.ctuir.org
Phone: 541-276-3165

ericquaempts@ctuir.org
Fax: 541-276-3095

Via E-Mail

November 6, 2015

Paula Wilson
Idaho Department of Environmental Quality State Office
1410 N. Hilton
Boise, ID 83706
paula.wilson@deq.idaho.gov

RE: Docket No. 58-0102-1201, Idaho's Proposed Water Quality Standards

Dear Ms. Wilson:

The Confederated Tribes of the Umatilla Indian Reservation (CTUIR) Department of Natural Resources (DNR) appreciates the opportunity to comment on Idaho's proposed Final Draft Rule for revising its Water Quality Standards to protect human health. Our comments incorporate by reference those of the Columbia River Inter-Tribal Fish Commission (CRITFC).

The Rule represents a substantial investment of time and effort by the Idaho Department of Environmental Quality (IDEQ) and others, and reflects some worthwhile approaches to revising standards. Nevertheless, there are a number of aspects to the Rule that we believe are inappropriate and counter-productive and thus we oppose the Rule in its current form. The CTUIR encourages you to reconsider these aspects, and that you not finalize the draft version. We ask that you modify the Draft to address the concerns raised herein and by CRITFC.

The CTUIR has rights and interests in waters and fish that originate in Idaho, as we have described in earlier comments and communications. The Final Draft Rule does not adequately protect those rights and interests. It would undermine our ability to exercise our rights, and safeguard our interests, in a manner that does not subject our members to disproportionate and undue health risks.

Unfortunately, IDEQ has chosen to embrace revised standards based on significantly reduced levels of protection for tribal people as compared to those for the general population. Adopting such standards would result in greater amounts of toxic discharges to Idaho waters than those allowed by other regional states and tribes, and those Idaho waters would eventually *become* the waters of those adjacent or downstream states and tribes. It is unacceptable that such neighboring jurisdictions should have to bear the burden of Idaho's unenthusiastic approach to safeguarding water quality.

Artificially Narrowed Scope of Consumed Fish

The CTUIR DNR disagrees with your decision to exclude market fish and anadromous fish (except for steelhead) from your analysis of general and tribal fish consumption. This fails to accurately reflect the reality of fish consumption patterns and will substantially decrease the degree of protection afforded by the state's water quality standards.

Unequal Protection of Tribal Populations

In calculating water quality criteria, Idaho has chosen to set the cancer and non-cancer protection levels for the general population at the 95th percentile, but for tribal populations the levels would only be for the mean. This is discriminatory, would result in disproportionate and disparate risk to tribal members, and would provide *unequal* protection as a direct product of state action. Idaho's standards must eventually be submitted to and accepted by the U.S. Environmental Protection Agency (EPA), but it is highly questionable (to say the least) whether standards based on this obvious differential treatment will obtain the necessary approval. The CTUIR DNR would encourage EPA to reject such standards.

Treaty Rights and Designated Uses

Fishing is an appropriate and commonly-accepted designated use for Clean Water Act (CWA) regulatory purposes. In the Pacific Northwest, fishing by tribal members, based on various treaties with the federal government, and in a manner and to a degree contemplated by those treaties, is a "designated use" long recognized and acknowledged by numerous court decisions, above and beyond the CWA-specific definition. State water quality standards must be developed that protect the *tribal* fishing use. The Final Draft Rule does not.

Idaho-Specific Tribal Bioaccumulation Factors

The CTUIR DNR does not agree with Idaho's choice to use less protective parameters for tribal populations as compared to the general population in developing its Idaho-specific Bioaccumulation Factors (BAFs). IDEQ used a value of fish intake for the general population that represents the 95th percentile of the general population to determine an Idaho general population BAF, while using a value of fish intake for tribal populations reflecting the mean consumption of tribal members—again, 95th percentile vs. mean; patently unfair on its face. In addition, market and anadromous fish (except for steelhead) were excluded from the evaluation of fish intake.

Probabilistic Risk Assessment; Additive Toxicity

For the reasons discussed in the CRITFC comments, Idaho should not rely solely or exclusively on a Probabilistic Risk Assessment approach, but should consider and address the overlapping and synergistic health effects of exposure to multiple toxic chemicals.

Backsliding

The CTUIR DNR is disappointed that you reversed your earlier decision, and have chosen to allow "backsliding," or a weakening of standards, when your calculations using the PRA methodology yielded a less stringent result. Weakened standards will do nothing to remedy our many waterways that already have well-documented pollution issues. We urge Idaho to work collaboratively with other states and tribes in the region to help solve the pervasive water quality problems that plague so many of our rivers and streams that are our shared natural heritage. *Not* weakening existing standards would be a start.

CTUIR DNR Letter to Idaho Department of Environmental Quality
Subject: Final Draft Rule, Revised Water Quality Standards
November 6, 2015
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Thank you for your attention to our comments. Again, the CTUIR DNR encourages you to reconsider certain choices you have made in the Final Draft Rule, and develop standards that better protect all Idaho citizens and all those downstream. If you have any questions or wish to discuss any of these matters further, please contact Carl Merkle, Policy Analyst, at (541) 429-7235.

Respectfully,

A handwritten signature in black ink, appearing to read "Eric J. Quaempts", is written over a circular stamp or seal.

Eric J. Quaempts
Director, Department of Natural Resources

Cc: Dennis McLerran, Administrator, EPA Region 10