



Nez Perce

TRIBAL EXECUTIVE COMMITTEE

P.O. BOX 305 • LAPWAI, IDAHO 83540 • (208) 843-2253

June 30, 2020

Sent via email only to: michelle.dale@deq.idaho.gov

Ms. Michelle Dale, Senior Water Quality Standards Scientist
Idaho Department of Environmental Quality
1410 N. Hilton
Boise, ID 83706

Re: Nez Perce Tribe's Request for Issue Paper During the State of Idaho's 2020 Triennial Review

Dear Ms. Dale:

I write on behalf of the Nez Perce Tribal Executive Committee, the governing body of the Nez Perce Tribe ("Tribe"), requesting that the Idaho Department of Environmental Quality ("IDEQ") complete an issue paper during the upcoming Triennial Review committed to designating "sustenance fishing" as a beneficial use to support Nez Perce treaty fishing co-extensive with the Tribe's treaty-reserved fishing right in waters within Idaho.

Since time immemorial fishing has been fundamental to Nez Perce, or Nimiipuu, identity. The Tribe's entire economy and culture evolved around Northwest fish runs, and to this day the Tribe depends upon salmon, steelhead, lamprey, and other aquatic species to meet the dietary, spiritual, and basic sustenance needs of its people. In the Tribe's 1855 Treaty with the United States, 12 Stat. 957 ("1855 Treaty"), the Tribe reserved to itself, and the United States secured, "the right of taking 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 a legally-protected property interest to access all of its usual and accustomed places and to take 50 percent of the harvestable fish runs that are destined to reach all of the Tribe's usual and accustomed places. Under Article VI of the United States Constitution, treaties are the "supreme of the land."

Section 303 of the Clean Water Act ("CWA") requires states and tribes to modify and improve water quality standards at least once every three years. The CWA further requires states to designate "those uses specified in the water quality standards regulations for each water body or segment whether or not they are being attained." 40 C.F.R. 131.3(f).

Ms. Michelle Dale

June 30, 2020

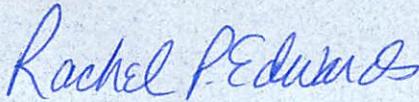
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In 2016, the Tribe and the Environmental Protection Agency completed a ground-breaking survey to determine current Nez Perce Tribal fish consumption. That survey demonstrates that Nez Perce citizens currently consume up to 233.9 grams per day of anadromous and freshwater fish at the 95th percentile.

Nez Perce fishing pursuant to the Tribe's 1855 Treaty in waters within the state of Idaho is not a recreational use. While not officially designated at this time, Nez Perce treaty fishing includes sustenance use which is an existing beneficial use. Under IDAPA 58.01.02.102.01.a.i., the Tribe requests that IDEQ complete, during the upcoming Triennial Review, an issue paper committed to designating "sustenance fishing" as a beneficial use for waters co-extensive with the Tribe's treaty-reserved fishing rights in the state of Idaho.

Thank you, and please contact Joseph Oatman, Deputy Program Manager, Nez Perce Tribe Department of Fisheries Resource Management, at (208) 843-7320; or Michael Lopez, Senior Staff Attorney, Nez Perce Tribe Office of Legal Counsel, at (208) 843-7355 with questions.

Sincerely,



for
Shannon F. Wheeler
Chairman

cc: Mr. Christopher Hladick, EPA Region 10 Administrator (hladick.christopher@epa.gov)