



Nez Perce

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

April 9, 2013

Barry Burnell
Water Quality Division Administrator
Idaho Department of Environmental Quality
1410 N. Hilton
Boise, Idaho 83706

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

Re: Nez Perce Tribe's comments on the materials presented at the February 6, 2013 negotiated rulemaking meeting

Dear Mr. Burnell:

The Nez Perce Tribe appreciates the opportunity to comment on the presentations and timeline provided at the February 6, 2013 negotiated rulemaking session in Boise. The Tribe supports IDEQ's commitment to evaluate regional fish consumption surveys and to ensure that the state survey is designed and implemented in a manner that will provide useful information that supports water quality standards which safeguard Idaho's high fish-consuming populations. Please accept the following Nez Perce Tribal observations on the survey design and implementation.

First, the Tribe believes it is critical for Idaho to decide what the acceptable level of risk is and the population percentile that will be protected under this level of risk is *before* the state's survey is begun. Deciding these questions up front will ensure the integrity of the survey evaluation by allaying any potential public concerns associated with inappropriately modifying evaluation criteria or methodologies to achieve a desired outcome.

Second, the Tribe requests that Idaho's survey design take into account artificial suppression. According to EPA's Human Health Ambient Water Quality Criteria and Fish Consumption Rates Frequently Asked Questions, "It is important to avoid any suppression effect that may occur when a fish consumption rate for a given subpopulation reflects an artificially diminished level of consumption from an appropriate baseline level of consumption for that subpopulation." Fish abundance in areas where Nez Perce Tribal members traditionally fish is significantly lower than historic numbers. The Tribe's goal is to continue to rebuild fish runs in Idaho to abundant levels that support the Tribe's treaty-reserved needs for subsistence, cultural, religious, and economic purposes. Idaho's survey design should include methodologies to capture information to determine whether fish consumers are artificially suppressing their fish consumption as a result

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of the current diminished fish numbers, and whether and how fish consumption may be influenced if fish numbers (and therefore the number of fish available for harvest) increase in the future.

Third, the Tribe suggests that Idaho remove non- consumers of fish from the calculation of fish consumption values. Including data from non consumers of fish may, in the Tribe's view, "dilute" the actual consumption rate of high-fish consumers and result in under-protective fish consumption rates for the fish consuming population.

Finally, the Tribe requests that Idaho coordinate with the Tribes and EPA to ensure that Idaho's rulemaking timeline affords sufficient time for the Tribe to complete and submit a peer-reviewed statewide Tribal fish consumption survey and report to Idaho for consideration..

Thank you for considering the Tribe's comments. If you have any questions please contact James Holt, Director, Nez Perce Tribe Water Resources Division, at (208) 843-7368, or Michael Lopez, Staff Attorney, Nez Perce Tribe Office of Legal Counsel, at (208) 843-7355.

Sincerely,



Silas C. Whitman
Chairman