



# COLUMBIA RIVER INTER-TRIBAL FISH COMMISSION

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**By Electronic mail ([paula.wilson@deq.idaho.gov](mailto:paula.wilson@deq.idaho.gov))**

RE: Docket no. 58-0102-1201 DEQ Preliminary Draft Negotiated Rule – Human Health Water Quality Standards

Dear Ms. Wilson:

The Columbia River Inter-Tribal Fish Commission (CRITFC) and its member tribes – the Confederated Tribes of the Umatilla Indian Reservation, the Confederated Tribes of the Warm Springs Reservation of Oregon, the Confederated Tribes and Bands of the Yakama Nation, and the Nez Perce Tribe, thank you for the opportunity to provide comments on the Idaho Department of Environmental Quality's (DEQ) preliminary draft rule for human health based water quality standards. CRITFC and its member tribes also fully support the comments submitted by the Nez Perce Tribe on this rule and incorporates them herein by reference.

DEQ's policy recommendations do not remedy the key findings in EPA's May 2012 disapproval of the state's July 2006 water quality standards. In that disapproval, EPA requested that Idaho give priority to identifying and adequately protecting the most highly exposed target populations. A fish consumption rate of 16.1 grams per day simply does not adequately protect tribal people that live in Idaho.

Protection of the health of tribal populations can only be achieved by utilizing the 95-99<sup>th</sup> percentile fish consumption rate in setting human health criteria. Anything less than this is not considered by tribal governments as adequate protection for their people. EPA's 2014-15 year-long study of fish consumption survey of tribal members that live in Idaho indicates that the 95 percentile of tribal members consume fish at levels of up to 600 grams per day.

DEQ's proposed rule is based on a policy decision that excludes anadromous fish from their analysis of tribal consumption. Excluding anadromous fish from the tribal fish consumption rate has had the effect of significantly decreasing the protectiveness of the state's environmental water quality standards. This exclusion ignores the fact that treaties with the federal government have guaranteed the right of tribal members "to take fish" and does not limit in any way the

particular mix or species of fish. Tribal people are free to determine what species they wish to harvest and consume and the state has no right to undermine this treaty-protected right.

It has been more than a century since the Confederated Tribes of the Umatilla Indian Reservation, the Confederated Tribes of the Warm Springs Reservation of Oregon, the Confederated Tribes and Bands of the Yakama Nation, and the Nez Perce Tribe signed the treaties with the United States that created their reservations and reserved their rights to fish at all usual and accustomed fishing places. A century's worth of federal court decisions has established beyond dispute that these treaty fishing rights are permanent in nature, and that they secure for the tribes the right to take all species of fish found throughout their reserved fishing areas for subsistence, ceremonial and commercial purposes. Tribal treaties are the supreme law of the land, and federal agencies including EPA must interpret the state's designated uses to include subsistence fishing. Idaho must make appropriate policy choices that will result in a level of water quality that is adequate to allow the tribes to safely consume fish taken pursuant to their treaty-reserved rights.

The proposed rule also fails to describe precisely how the state will interact with tribes and other states where water quality standards differ across jurisdictional boundaries. EPA requested that the state address downstream impacts in their May 2012 disapproval action. The state has the authority and must take responsibility to limit the impact of pollutants released from Idaho into shared waters.

Tribal people that consume fish from the Columbia River watershed are the target population that will be most affected if anadromous fish are omitted from the fish consumption criteria. State governments, in common with tribal governments, share a responsibility to future generations to improve the quality of shared waters as best they can. Policy choices must protect their citizens from the adverse health impacts of pollution. CRITFC believes in a future where the Columbia River fishery is once again free of harmful contaminants and is willing to work with states in the region to achieve this goal.

Thank you for considering our comments during this rulemaking. If you have any further questions please contact me or Dianne Barton, Water Quality Coordinator at 503-238-0667.

Sincerely,



Babtist Paul Lumley  
Executive Director

Cc: Dennis McLerran, Administrator, EPA Region 10