

The SHOSHONE-BANNOCK TRIBES

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August 20, 2015

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Attorney General's Office
1410 N. Hilton Street
Boise, ID 83706

RE: Docket No. 58-0102-1201 – Shoshone-Bannock Tribes' Comments Regarding Fish Consumption Rates in Idaho Water Quality Criteria for Human Health Negotiated Rulemaking Meeting: Preliminary Draft Rule

The Shoshone-Bannock Tribes (Tribes), a federally recognized Idaho tribe located in Southeast Idaho on the Fort Hall Reservation, have reserved off-reservation Treaty rights and approved Treatment as State (TAS) status under the Clean Water Act (CWA). The Tribes appreciates the opportunity to comment on the preliminary draft rule for a fish consumption rate (FCR) in Idaho water quality criteria for human health that was presented and discussed by the Idaho Department of Environmental Quality (IDEQ) at the August 6, 2015, rulemaking meeting. As an Idaho tribe we have a vested interest in protecting our Treaty reserved rights and the following comments are intended to convey our unique perspective on the proposed IDEQ preliminary draft rule for determining appropriate water quality standards for Idaho waters and generally comment on our position on the rulemaking process. This letter is not intended to resolve any outstanding issues that are likely to arise from the approval of Tribal water quality standards in shared Reservation boundary waters or waters received on the Reservation.

The Tribes have enjoyed a subsistence lifestyle since time immemorial with a special bond to the sacred waters of our homeland. Fish were a primary subsistence resource and the Shoshone and Bannock peoples documented our reliance and presence by leaving behind numerous cultural sites, petroglyphs, and pictographs along Idaho's waterways. The historic record reflects an extensive reliance on fish documenting place, time, numbers of people and fish caught, which provided numerous historians the ability to calculate a heritage rate for the Tribes. The Tribes continue to live a subsistence lifestyle and to protect our rights and interest we have engaged in development and implementation of our own Idaho Tribes Fish Consumption Survey of actual fish consumption among our members; setting aspirational targets for continued consumption; presenting suppression issues; and, identifying heritage fish consumption rates for anadromous and resident fish from Idaho waters.

We appreciate IDEQ's statement that water quality criteria will not become less protective in the future, but we encourage IDEQ to update all of their Water Quality Standards (WQS) not just the 88 standards that EPA disapproved in 2012. Because we are a high end fish consumer, we remain

concerned about several IDEQ policy choices that are now reflected in the preliminary draft and will not provide the protection necessary for our Tribal members, Treaty resources and ultimately Idaho's water quality. The Tribes remain concerned that our highest end consumers will have risks associated with their consumption, which will in turn affect the continuance of our traditional cultural practices.

The Tribes appreciate the opportunity to comment, but as an Idaho tribe with reserved Treaty rights and shared Reservation boundary waters or waters received on the Reservation we have significant concerns regarding the preliminary draft rule and how it will affect Reservation natural resources that sustain our culture. Our review of IDEQ's preliminary draft leaves us concerned and amazed that IDEQ would ever propose a Fish Consumption Rate (FCR) of 16.1 grams per day. The Tribes will not support or accept a FCR that would only amount to a single bite of fish per day. IDEQ's preliminary draft FCR will not be protective of our high end consumers; reserved treaty rights; nor, would it be able to meet those downstream WQS already approved by EPA as is the case in the State of Oregon where FCR is at 175 grams per day.

In determining an FCR, IDEQ undertook a fish consumption survey of anglers and the general population in Idaho. Simultaneously, the Nez Perce Tribe (NPT) and Shoshone-Bannock Tribes conducted their own tribal fish consumption surveys. Upon conclusion of their respective surveys, the tribes and Idaho calculated FCRs based on the survey findings. The NPT and SBT, as did Oregon, included the consumption of anadromous and market fish into their FCR calculations. Idaho, however, excluded anadromous (except steelhead) and market fish from their proposed FCR. The Tribes disagrees with the exclusion of anadromous and market fish from Idaho's FCR, which has had the effect of IDEQ proposing an FCR of 16.1 grams/day. Not only will such a minimal FCR cause WQS in Idaho to be less protective than they should be, but if adopted, would be 5.9 grams/day less than the EPA national default FCR, 125.9 grams/day less than the EPA's subsistence default FCR, and 158.9 grams per day less than Oregon's FCR.

IDEQ agreed early in the process to incorporate tribal FCRs into the Idaho FCR, which the tribes supported. However, when Idaho decided to exclude anadromous and market fish from their calculation the tribes did not foresee that IDEQ would take the tribal FCRs and remove all consumption of anadromous and market fish by tribal members. This back of the envelope exercise by IDEQ cannot be supported by the Tribes and is inconsistent with the agreement reached between the EPA, NPT, and SBT on how tribal data should be treated and reported. The consumption of market, and particularly anadromous fish, is incredibly important to the tribes of Idaho not only for subsistence purposes, but also for cultural and traditional cultural practices.

The Tribes is very concerned with IDEQ's proposal to protect high fish-consuming populations (e.g. tribal members) at the mean consumption rate and not at the 95th percentile as is being done for the general population. Oregon protects high fish-consuming populations at the 95th percentile and we believe that this should also be the case in Idaho. By not doing so, IDEQ is neglecting to protect the most vulnerable populations in Idaho, which is not acceptable. In an effort to build a cohesive and consistent strategy to managing discharge and protecting high end consumers, the Tribes strongly recommend Idaho join with its neighbors in implementing a high standard for all who live in this state. A regionally consistent standard would provide protection for consumers groups by utilizing 175 grams of fish per person per day.

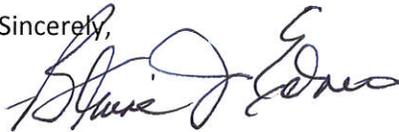
Article IV of the Fort Bridger Treaty of July 3, 1868 (15 Stat., 673) secured our subsistence lifestyle and traditional cultural practices by reserving off-reservation rights. Our intentions are to ensure that our

membership has the opportunity to exercise those rights in a meaningful way. We expect IDEQ to propose rule that will prevent the downward spiral of water quality adding to the suppression of Idaho's fisheries. As a baseline measure, IDEQ's proposed rule must provide for unsuppressed, robust fisheries based upon Idaho tribes' heritage rates. Idaho tribes' heritage rates are well documented with estimates that members of the Shoshone-Bannock Tribes ate as much as 800 pounds of fish per year; the equivalent of 1,000 grams of fish per day.¹ The Tribes' goal is to promote a sustainable fishery in Idaho waters to ensure our future generations have the opportunity to enjoy reserved subsistence rights; without the perception that they may be consuming contaminated fish.

As a member of the Upper Snake River Tribes (USRT) Foundation, a tribal consortium composed of four Indian tribes of the Upper Snake River region in Idaho, Nevada, and Oregon: the Burns Paiute Tribe, Fort McDermitt Paiute-Shoshone Tribe, Shoshone-Bannock Tribes of the Fort Hall Reservation, and Shoshone-Paiute Tribes of the Duck Valley Reservation, the Tribes were supported in our efforts to complete a review by USRT, who is also preparing comments on IDEQ's Policy Choices to formulate ambient water quality standards for the protection of human health. To the extent USRT's comments do not conflict with anything herein they are incorporated by reference and should be accepted by IDEQ as an expanded and detailed version of the Tribes comments.

For technical questions on this submission, please contact Chad Colter, Fish and Wildlife Director at ccolter@sbtribes.com or (208) 239-4551. For policy level questions, or to establish a consultation meeting here in Fort Hall with Tribal leadership please contact Claude Broncho, Fish and Wildlife Policy Representative at cbroncho@sbtribes.com or (208) 239-4563. Thank you for your consideration of this submittal and we look forward to continuing a dialogue on this important issue.

Sincerely,



Blaine Edmo, Chairman
Fort Hall Business Council, Shoshone-Bannock Tribes

¹ Scholz, A., K. O'Laughlin, D. Geist, D. Peone, J. Uehara, L. Fields, T. Kleist, I. Zozaya, T. Peone, and K. Teesatuskie. 1985. *Compilation of Information on Salmon and Steelhead Total Run Size, Catch and Hydropower*