



Kalispel Tribe of Indians
P.O. Box 39
Usk, WA 99180

(509) 445-1147
(509) 445-1705 fax
www.kalispeltribe.com

October 11, 2012

Mr. Barry Burnell
Water Quality Program's Administrator
Idaho Department of Environmental Quality
1410 North Hilton Street
Boise, Idaho 83706-1255

RE: Preliminary Negotiated Rulemaking Comments of the Kalispel Tribe

Dear Mr. Burnell:

The Kalispel Tribe of Indians has four initial comments regarding IDEQ's negotiated rulemaking process to evaluate whether regional fish consumption information is sufficient to develop a fish consumption rate that will be protective of people who consume fish in Idaho as well as Idaho's designated uses:

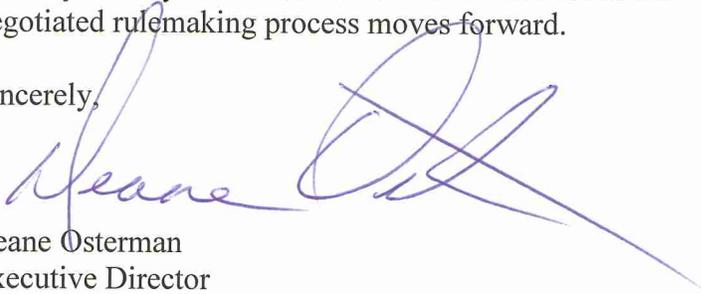
1. IDEQ cannot use the negotiated rulemaking process to determine that all regional fish consumption surveys are irrelevant. In the remedy section of EPA's disapproval letter to Idaho, EPA plainly stated that some of the regional surveys are relevant. The goal of the negotiated rulemaking process should be to figure out how to incorporate the most relevant information into the development of a fish consumption rate ("FCR") that is protective of all people who eat fish from Idaho, including highly exposed populations. A determination that all surveys are irrelevant would run afoul of EPA's proposed remedy and lead to another EPA disapproval.
2. If IDEQ determines that it needs to conduct a new fish consumption survey, it should adopt water quality standards based on a more protective, interim FCR before developing the survey. Highly exposed populations are suffering an ongoing health risk due to Idaho's continued use of an outdated FCR of 6.5 g/day. There is no telling how many years it will take IDEQ to fund, design, conduct, analyze, and incorporate data from a new FCR survey, and it is unacceptable to make highly exposed populations wait any longer for adequate protection. New information can be incorporated during the next triennial review.
3. The interim fish consumption rate should be at least 175 g/day. Although the Tribe expects that a new survey will establish that an FCR of 175 g/day is not protective of

highly exposed populations, adopting an interim FCR of 175 g/day would at least be a step in the right direction. It would offer highly exposed populations (and other fish consumers in Idaho) the same level of protection as those in Oregon and ensure that discharges in Idaho comply with the downstream standards of Oregon as required by the Clean Water Act. In any event, the interim rate should be greater than or equal to EPA's default FCR for subsistence populations (142.4 g/day) given the number of tribal and other subsistence fishermen throughout the state.

4. IDEQ should solicit comments on the relevance of all available regional fish consumption surveys, not just the six it has determined are most relevant. EPA instructed IDEQ to evaluate all relevant regional information, and interested parties should have the opportunity to weigh in on the relevance of all existing surveys. There may be compelling reasons to include information from other surveys that IDEQ has not considered.

Thank you for your consideration. The Tribe looks forward to working with IDEQ as the negotiated rulemaking process moves forward.

Sincerely,



Deane Osterman
Executive Director
Kalispel Natural Resources Department