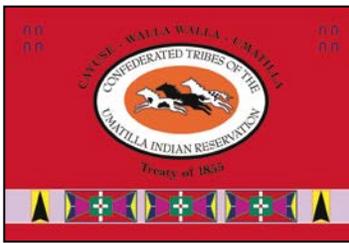


**Confederated Tribes** *of the*  
**Umatilla Indian Reservation**

Department of Natural Resources  
Administration



46411 Timine Way  
Pendleton, OR 97801

www.ctuir.org      [ericquaempts@ctuir.org](mailto:ericquaempts@ctuir.org)  
Phone: 541-276-3165      Fax: 541-276-3095

May 22, 2015

Paula Wilson  
Idaho Department of Environmental Quality State Office  
1410 N. Hilton  
Boise, ID 83706  
[paula.wilson@deq.idaho.gov](mailto:paula.wilson@deq.idaho.gov)

Re: Idaho Water Quality Standards Human Health Criteria (Docket No. 58-0102-1201)

Dear Ms. Wilson:

The Confederated Tribes of the Umatilla Indian Reservation (CTUIR) Department of Natural Resources (DNR) appreciates the opportunity to submit the following comments to the rulemaking process to revise human health water quality criteria for the State of Idaho. Specifically, these comments address some of the issues identified and described in the April 21, 2015, presentation on “Human Health Criteria—Fish Consumption Rates[:] DEQ Recommendations on Criteria Calculation” (Presentation) by the Idaho Department of Environmental Quality (IDEQ). The CTUIR DNR comments incorporate by reference those of the Columbia River Inter-Tribal Fish Commission (CRITFC).

Some of the recommendations in the Presentation reflect appropriate choices that may provide some minimal, incremental gains in protection for fish consumers in the state, and others in the region who are affected by discharges to Idaho waters. Nevertheless, there are other recommendations that will negate needed improvements in water quality. The CTUIR DNR is concerned that the cumulative result of the choices made will be the development of overall criteria that will be insufficient to adequately safeguard water, fish, beneficial uses, and, ultimately, the people who rely on the health and integrity of these natural resources and activities tied to them. We encourage you to reconsider some of these recommendations as you finalize the proposed rule.

#### *Fish Consumption Rate*

The CTUIR DNR supports IDEQ’s efforts to use more accurate, up-to-date, and representative local fish consumption data for populations in the State, and improve on the earlier proposed Fish Consumption Rate (FCR) that was disapproved by the U.S. Environmental Protection Agency (EPA). Best available existing data from various locations around the region (including portions of Idaho) indicate that FCRs can be significantly higher than the grossly-antiquated 6.5 grams per day amount, and well above the rejected 17.5 grams-per-day figure, particularly among certain fish consumers (including tribal members with treaty-protected rights). Both the rulemaking process and the eventual rule itself may benefit even further from the most-current survey of high-consuming anglers in Idaho by the State, tribes and the EPA.

After careful scrutiny and evaluation, Oregon eventually adopted an FCR of 175 grams per day. This number represented the 95<sup>th</sup> percentile of consumption—not the mean (see below)—and was derived from the 1994 CRITFC Fish Consumption Survey.<sup>1</sup> This number was a substantial compromise. Using 175 reluctantly accepts the prospect that 5% of the consuming population would have less-than-adequate protection. The CTUIR, in adopting on-reservation water quality standards pursuant to its Treatment-as-a-State (TAS) status, used 389 grams per day, representing the 99<sup>th</sup> percentile level.

#### *Mean v. 95<sup>th</sup> Percentile*

The CTUIR DNR recommends that the human health criteria should embrace protection of the high-fish-consuming public at the 95<sup>th</sup> percentile level, and not merely the mean or average. Setting standards based on just the mean level of consumption will result in far too many citizens and residents of the State, and those downstream affected by Idaho's decisions, to inordinate risks and inadequate protection.

#### *Cancer Risk Level*

The CTUIR DNR supports IDEQ's decision to maintain for regulatory purposes the cancer risk level of 10<sup>-6</sup> (one-in-one-million). Anything less (weaker, or less stringent) would not advance the protection of public health—it would only undermine it. The 10<sup>-6</sup> benchmark should also be coupled with protecting the 95<sup>th</sup> percentile of consumers at that level.

#### *Suppression*

The 175 grams per day/95<sup>th</sup> percentile figure was based on consumption surveys that occurred during a period of greatly-reduced salmon populations and curtailed tribal harvest, so it very likely reflects suppression impacts to what would have otherwise been a more “natural” or normal rate. Since then many salmon populations have increased, as has tribal harvest and consumption of them. IDEQ has indicated that it will not incorporate suppression effects in its derivation of an FCR, offering the somewhat-vague justification that possible increased future consumption could be addressed in some further revision of the FCR and associated water quality standards. Given the many years that have already been spent on the current revision process (not to mention the litigation and other time- and resource-consuming detours and digressions), this justification is not reassuring. Triennial review of water quality standards, like the name implies, are supposed to occur on a three-years basis, but time and again this has proven this to be an empty promise, with standards review and revision occurring much less frequently. Revising standards simply does not happen in a very timely fashion, and is not very responsive to changing or updated information. The CTUIR DNR asks that you reconsider your recommendation to disregard the suppression issue in developing the FCR.

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<sup>1</sup> CRITFC, *A Fish Consumption Survey of the Umatilla, Nez Perce, Yakama, and Warm Springs of the Columbia River Basin*, Technical Report 94-3 (1994); <http://www.critfc.org/tech/94-3report.pdf>.

### *Anadromous Fish*

Similarly, the CTUIR DNR does not believe it is appropriate to exclude anadromous fish from calculating the FCR. Salmon and other anadromous species are, and have been, the mainstay of fish harvest by CTUIR members and by many other tribes, including those in Idaho. Furthermore, efforts are underway to restore anadromous fish to areas (including Idaho) where they are currently absent but were once a significant portion of tribal harvest. While salmon and steelhead spend part of their lives in the ocean, other parts are spent in freshwater, including the very sensitive incubation and juvenile rearing and migration stages. During these stages—and indeed throughout their life cycle—salmonids are found in waters in Idaho, and in waters that originate in and then leave Idaho, so the quality of those waters remains very important to the health and well-being of those fish. Excluding salmon would be inconsistent with EPA direction to identify and protect the most highly-exposed target populations in determining whether criteria protect designated uses, and with the need to use local information on fish consumption by tribal populations.

### *Additional Issues*

The CTUIR DNR is concerned that Idaho may employ certain approaches that are so new, novel, and/or untested that they may prove unduly difficult, problematic or otherwise unworkable, and result in criteria that are essentially ineffective and inadequate to protect water and fish resources and human consumers. These include a “hybrid” deterministic/ probabilistic risk assessment approach, and a Relative Source Contribution (RSC) approach different from that used elsewhere and that may not properly account for all routes of toxic exposures to tribal members. Finally, in its body weight recommendation, it would be helpful for IDEQ to elaborate on how this assumed figure (for adults) will be appropriate or adequate to provide the necessary degree of protection for children with much lower body weights.

### *Conclusion*

The CTUIR DNR supports the policy choice that no criterion will be allowed to become less protective in the future than it is now. This is an obvious choice—the barest-minimum that should be done. Given that current criteria are based on the woefully-inadequate 6.5 grams per day FCR, this is not a lofty goal, to say the least. We believe that Idaho can and should aim higher, and is in fact obligated to do so.

Most CTUIR members live “downstream” from Idaho. They have the “right of taking fish” at all usual and accustomed places, downstream from Idaho. This right is guaranteed by the Treaty of 1855 with the United States.<sup>2</sup> Inherent in the “right of taking fish” is that not only are there fish to take, but that those fish are safe to eat. The CTUIR’s ancestral predecessors did not sign treaties securing the right to harvest and consume contaminated fish, from polluted waters.

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<sup>2</sup> Treaty of 1855, 12 Stat. 945, June 9, 1855 (Ratified March 8, 1959).

CTUIR DNR Letter to IDEQ

Subject: April 21, 2015 DEQ Recommendations on Criteria Calculation

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The quality of Idaho waters impacts the fish that reside in and travel through the State and the region, and the people who consume those fish, including the CTUIR. In revising its water quality standards, Idaho should recognize and respect the vital links and relationships between the valuable resources we all share, upstream and downstream.

Thank you for your consideration of our comments. If you have any questions or wish to discuss any of these matters further, please contact Carl Merkle, DNR Policy Analyst, at (541) 429-7235.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric J. Quaempts", with a large, sweeping flourish extending to the right. The signature is written over a faint, circular stamp or watermark.

Eric J. Quaempts,  
Director, Department of Natural Resources

EQ: cfm