



Burns Paiute Tribe

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August 24, 2015

Paula Wilson
IDEQ State Office
Attorney General's Office
1410 N. Hilton Street
Boise, ID 83706

Re: Docket No. 58-0102-1201 – Burn Paiute Tribal Comments Regarding Fish Consumption Rates in Idaho Water Quality Criteria for Human Health Negotiated Rulemaking Meeting: Preliminary Draft Rule

Dear Ms. Wilson:

The Burns Paiute Reservation is located north of Burns, Oregon, in Harney County. The Burns Paiute Tribe (BPT) descended from the Wadatika band, named after the wada seeds they collected near the shores of Malheur Lake to use as food. Bands were usually named after an important food source in their area. The Wadatika's territory included approximately 52,500 square miles between the Cascade Mountain Range in central Oregon and the Payette Valley north of Boise, Idaho, and from southern parts of the Blue Mountains near the headwaters of the Powder River north of John Day, to the desert south of Steens Mountain.

The BPT 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 a downstream tribe residing in Oregon, the BPT has significant concerns regarding the draft rule and how it will affect our natural resources that sustain our cultural and spiritual practices.

Before describing our concerns, the BPT would like to commend the IDEQ for moving away from using bioconcentration factors (BCFs) and instead using bioaccumulation factors (BAFs). Moving to the use of BAFs will reflect the uptake of contaminants from all sources by fish and shellfish, not just the water column as is the case when using BCFs. The BPT also supports IDEQ decision to use the Environmental Protection Agency (EPA) default relative source contribution value of 20 percent for establishing the state's water quality standards (WQS). Finally, the BPT appreciates that IDEQ stayed true to their word that moving forward none of the WQS criteria would be less protective. However, we would encourage IDEQ to update all of their WQS during this process and not just those 88 standards that EPA disapproved in May of 2012.

As IDEQ is aware, the State of Oregon adopted EPA-approved WQS and commensurate FCR in 2011. While the BPT believes that Oregon's WQS could be more stringent and the FCR higher, which would be reflective of tribal heritage FCR's that we again strive to achieve, we are generally supportive of Oregon's FCR of 175 grams/day and WQS. However, what IDEQ is proposing is neither acceptable to BPT nor would it be protective of downstream waters in Oregon or Idaho tribal members, of which some we share an ancestral history.

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 (SBT) of the Fort Hall Reservation 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 BPT 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 BPT 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 spiritual practices.

Finally, the BPT 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.

Not only is the BPT troubled with IDEQ's proposed FCR and WQS and how it will affect downstream waters and tribal members in Oregon, but also the negative effect it will have on Idaho tribes. As a member of the Upper Snake River Tribes Foundation, we fully support the SBT and Shoshone-Paiute Tribes and believe that IDEQ's draft rule will bring harm to their health and impact their ability to practice cultural and spiritual activities.

Again, the BPT appreciates the opportunity to provide comments to the IDEQ on their FCR and WQS draft rule. Should questions or comments arise following review of this letter, please do not hesitate to contact me at (541) 573-1910.

Sincerely,

A handwritten signature in cursive script that reads "Charlotte Rodrique".

Charlotte Rodrique
Burns Paiute Tribal Chairwoman