



LUMMI INDIAN BUSINESS COUNCIL

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DEPARTMENT _____ DIRECT NO. _____

March 23, 2015

Ms. Maia Bellon, Director
Washington Department of Ecology
PO Box 47600
Olympia, WA 98504-7600

SUBJECT: Lummi Nation Comments on Ecology's Draft Proposed Amendments to Water Quality Standards for Surface Waters of the State of Washington

Dear Director Bellon,

As we discussed during our April 18, 2013 meeting, we are in agreement that the current fish consumption rate that is used by Ecology to determine the acute and chronic toxics water quality criteria is not protective of the public health and safety of ordinary citizens of Washington State and is definitely not protective of Indians or others that consume large amounts of seafood.

As we discussed nearly two years ago, during the most recent triennial review the Lummi Nation had urged Ecology to address the very low fish consumption rate utilized in Ecology's water quality standards. However, at the request of the Ecology Director at that time (Jay Manning) and with the promise that Ecology would address the fish consumption rate during this current triennial review, we did not push for the revamping of the fish consumption value so that Ecology could focus on the change from a class-based system to a use-based system. In retrospect this appears to have been a mistake due to the longer than expected delay for a protective fish consumption rate to be adopted.

As you may recall, during our April 2013 meeting we shared a graphic depiction of the amount of salmon represented by the current 6.5 grams per day (g/day) fish consumption rate in Washington, the 175 g/day consumption rate adopted by Oregon, and a 383 g portion determined in a Lummi study to be the average daily fish consumption of Lummi tribal members during 1985. This graphic is shown below in Figure 1. You have shared numerous salmon meals with the various Indian governments and Indian people in Washington State and must know from personal experience that a typical salmon serving is closer to 383 grams than 175 grams. As you also must know, many tribal members and their families may eat a variety of seafood multiple times during a day.



Figure 1. Comparison of Salmon Serving Sizes

Although we think it is still too low both because we have documented a much higher fish consumption rate for the Lummi people and the 175 g/day represents less than a single seafood meal per day in most Indian households, since it would be a substantial and long overdue improvement over the current standard we acknowledge that the proposed fish consumption rate of 175 g/day is a step in the right direction. However, this step forward to protecting public health and environment would be largely negated by the proposed 10-fold increase in the cancer risk rate from 1 additional cancer death per 1,000,000 people to 1 additional cancer death per 100,000 people. Increasing the cancer risk rate that has been used by the state for 20 years appears out-of-step and we urge you to adopt both the 175 g/day consumption rate and to maintain the existing cancer risk level.

In addition to agreeing that the current fish consumption rate in Washington is too low, we also agree that adopting a more protective fish consumption rate for water quality standards is not a panacea and that much more is needed to address the discharges of nonpoint pollutant sources in Washington State. We appreciate the fact that the Governor's Office and Ecology are attempting to pass meaningful new laws that will reduce nonpoint sources of pollution. However, with the composition of the Washington Legislature and its recent inability to pass laws that will directly and indirectly benefit commercial interests in the state (e.g., transportation, education), we are concerned that the path you have chosen will result in both further delays in adopting standards that improve water quality and little, if any, reductions in the contributions of nonpoint source pollutants to our already degraded water quality.

As noted in both an April 3, 2014 and a July 25, 2014 letter from Lummi Chairman Timothy Ballew II to Governor Inslee, we are sensitive to the fact that many businesses in Washington have made substantial financial contributions to the state economy in particular but also indirectly to the tribal economies. However, we feel that it is morally wrong for businesses to profit at the expense of the environment and the associated health of the members of our collective communities. Environmental laws and rules like the Washington Water Quality

Standards are intended to protect the health and welfare of all of our people, not just the bottom line of corporations.

As we have stated repeatedly in the past, and as court decisions have repeatedly maintained, the Lummi Nation and its members have a treaty right to harvest salmon and shellfish in a manner sufficient to support our *Schelangen* ("way of life"). Our ability to exercise this treaty right is impaired by the actions of others that have financially benefited while they have degraded our water quality, endangered our health, precluded access to our traditional fishing areas, and limited our harvestable surplus by severely degrading the habitat that our collective salmon and shellfish resources need to survive and thrive. In addition to impinging on our treaty rights, because the fish consumption rate and associated human health criteria have a "disproportionately high and adverse human health and environmental effects on minority and low-income populations", we also view the fish consumption and cancer risk rate as an environmental justice issue.

If the State of Washington continues down its current path, we will be forced to ask the EPA to disapprove the proposed draft water quality standards both to fulfill their trust responsibility and to achieve environmental justice.

Sincerely,

A handwritten signature in blue ink that reads "Merle Jefferson". The signature is fluid and cursive, with a long horizontal line extending to the right.

Merle Jefferson, Executive Director
Lummi Natural Resources Department

cc: Dennis McLerran, Regional Administrator, EPA Region 10
Jim Woods, EPA Region 10
Angela Chung, EPA Region 10
Matt Szelag, EPA Region 10
Heather Bartlett, Ecology
Cheryl Niemi, Ecology

