



Confederated Tribes and Bands
of the Yakama Nation

Established by the
Treaty of June 9, 1855

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

March 23, 2015

RE: Washington State's Human Health Water Quality Criteria

Dear Director Bellon,

Thank you for the opportunity to comment on Washington State's proposed update to Human Health Water Quality Criteria. The Confederated Tribes and Bands of the Yakama Nation (Yakama Nation) has been involved in this process since 2011 and our position has never wavered; we will only support water quality standards that are protective of all Yakama People, not just a percentage of them. Unfortunately, the state has heard our concerns and ignored them by proposing standards that prioritize the health of industrial polluters over the health of my people. The current proposal is unacceptable.

The State's proposal to improve water quality standards has been conditioned and compromised because of concerns raised by industry. Raising the fish consumption rate is a step in the right direction but it still does not reflect a dietary intake representative of all Yakama people. Increasing the allowable cancer risk by 10-fold, providing a narrative protection of downstream waters, and not improving standards for polychlorinated biphenyls (PCBs), mercury, and arsenic does little to address some of the worst water quality issues in the Columbia River. As nearly 70 percent of the Columbia River within the Ceded Lands of the Yakama Nation is now under a fish consumption advisory, it is clear that the time for compromises and half-measures has passed.

The Yakama Nation also shares concerns about many additional aspects of the proposed draft rule including the choice of relative source contribution, drinking water intake, body weight, updated toxicity factors, and full consideration of bioaccumulation in fish tissue. Thus we support the comments on the draft rule submitted by the Northwest Indian Fisheries Commission in March, 2015.

Implementation of the Clean Water Act in State waters has been delegated by the United States to Washington State. I want to make it clear that this delegation in no way changes any of the reserved rights in the Yakama Treaty of 1855 or the U.S. government's obligation to protect these rights, including the right to harvest fish at all usual and accustomed places. Because the Treaty predates the Clean Water Act the designated use the waters of the Columbia Basin and most of Washington State is for Yakama fishing and subsistence use. Clean water and fish that are free of toxic substances are required for Yakama people to sustain the traditional ways our ancestors so carefully and insistently preserved for us in the Treaty. Washington State has not adequately protected these resources to date and seems unlikely to do so in the future.

Dennis McLerran, Environmental Protection Agency (EPA) Region 10 Administrator, informed you by letter dated December 18, 2014 that it has begun a federal rule making process to update Washington's human health water quality criteria. Mr. McLerran's letter outlines specific concerns that EPA will consider in its review of the State's water quality proposal, such as the allowable cancer risk, best available science, environmental justice, downstream waters protection, federal trust responsibility, and tribal treaty rights. It is our understanding that, if Washington does not redraft its proposal to fully consider EPA's concerns, action will be taken by EPA to ensure new state standards will be protective of these elements. The Yakama Nation is supportive of EPA's efforts to execute its trust responsibility in this manner.

Yakama Nation supports all efforts to improve water quality, but we cannot endorse an effort that will continue to compromise the health of my people on behalf of industrial interests. I recommend that you reconsider the terms of the state's water quality proposal in order to be more protective of human health and to meet the expectations of EPA. If you have any questions please contact Phil Rigdon, DNR Deputy Director at 509-865-5121 ext. 4655.

Sincerely,

JoDe Goudy, Chairman
Yakama Nation Tribal Council

cc: Dennis McLerran, EPA
Lorraine Loomis, NWIFC
Brian Cladoosby, Swinomish
Paul Lumley, CRITFC