



October 24, 2014

Ms. Heather Bartlett, Water Quality Program Manager
Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600

SUBJECT: Lummi Nation Comments on the Scope of an Environmental Impact Statement for Washington's Human Health Criteria and Implementation Tools Rulemaking

Dear Ms. Bartlett,

The purpose of this letter is to provide comments by the Lummi Natural Resources Department on the scope of the Environmental Impact Statement (EIS) that the Washington Department of Ecology intends to develop in order to evaluate the impacts associated with Ecology's proposal to adopt human health criteria and new implementation tools under Washington's Water Quality Standards Rule (173-201A WAC). The Lummi Cultural Resources Protection Department may be submitting scoping comments on this EIS under a separate cover.

Please ensure that the following issues are addressed when developing the EIS:

- **Environmental Baseline:** As you know, the environment has been considerably degraded over the last 150 years due to in-migration, associated population growth, industrialization, and urbanization that has converted what were largely forested lands into a mix of impervious and pervious surfaces that are interspersed with pollution and non-pollution generating activities. These developments have enriched the lives of many state residents for generations while other residents of the state, particularly tribal members, have seen their livelihoods and cultures diminished as the natural resources that they relied on since time immemorial have been taken. Although no one realistically expects that the historic land cover will be fully restored, in the description of the affected environment please ensure that the environmental baseline that is considered is the historic environment rather than the current degraded environment.
- **Environmental Justice:** The EIS that Ecology will develop pursuant to the State Environmental Policy Act (SEPA) will likely also be used by the U.S. Environmental Protection Agency (EPA) to inform their decision on whether or not to approve Washington's water quality standards. Section 1506.2 of the Council on Environmental Quality (CEQ) regulations directs federal agencies to eliminate duplication in their

National Environmental Policy Act (NEPA) documents by coordinating with state and local agencies. Consequently, please ensure that you reach out to your federal partners to ensure that the EIS developed pursuant to SEPA also meets the needs of NEPA. This coordination should ensure that the EPA will be able to conduct an expedited review of Ecology's proposed water quality standards and associated human health criteria and implementation tools. Although not required by the SEPA, Executive Order 12898 (February 11, 1994) requires federal agencies to achieve environmental justice by addressing "disproportionately high and adverse human health and environmental effects on minority and low-income populations." To meet the needs of NEPA and to ensure an expedited review of the Ecology proposals at the federal level, the EIS should also address environmental justice. The impacts of the proposed human health criteria and implementation tools, both negative and positive, on minority and low-income populations should be analyzed in the EIS. Environmental justice issues include potential impacts on the physical and natural environment as well as social, cultural, and economic effects of the proposed action.

- **Cumulative Effects:** Please ensure that the cumulative effects of the various exposure pathways (e.g., drinking water intake, exposure to contaminated sediments, consumption of seafood or other foods) on human health are addressed in the EIS. This cumulative effects analysis should include an evaluation of bioconcentration and bioaccumulation factors. In addition, since water quality standards govern regulation for both point and nonpoint sources of pollution, the impacts analysis should consider the cumulative, direct, and indirect impacts from all types of permitted and non permitted sources.
- **Alternatives Analysis:** In addition to the no action alternative, please ensure that the alternative analysis includes an analysis of:
 - Other seafood consumption rates including seafood consumption rates that are protective of members of affected Indian tribal governments;
 - Other cancer risk levels including the 10^{-6} risk level currently used in the development of fresh and marine water criteria;
 - Implementation rules that limit the duration of variances and compliance schedules to the typical 5 year NPDES permit cycle;
 - Effects of calculating the Mercury criteria using different methodologies.

Please do not hesitate to contact me if you need any additional information on this matter.

Sincerely,



Merle Jefferson, Sr., Director
Lummi Natural Resources Department

Cc Elden Hillaire, Lummi Fisheries and Natural Resources Commission Chair