Northwest Indian Fisheries Commission

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September 5, 2014

Governor Jay Inslee
Office of the Governor
PO Box 40002
Olympia, WA 98504-0002

Re: Response to Washington's proposal for human health criteria and revised water quality standards

Dear Governor Inslee:

On behalf of the 20 member tribes comprising the Northwest Indian Fisheries Commission, we would like to express our dissatisfaction with the proposal advanced on July 9, 2014 related to the revisions to the state water quality standards. After 20 years of studies documenting the need for higher fish consumption rates and improved standards, we still do not know when this known problem will finally be addressed. The tribes will therefore request that the Environmental Protection Agency move forward with rule promulgation to ensure the protection of water quality, fish consumption, and human health.

The tribes' principal objective for revised water quality standards is to protect the health of future generations, and we have determined that your proposal does not meet this goal. It is incomprehensible that the state would consider changing the cancer risk rate in state standards to a rate that is ten times less protective. Essentially, the proposal modifies the fish consumption rate to reflect higher levels of consumption in our state, but trades this improvement for a less protective cancer risk rate.

The proposed standards will not decrease allowable concentrations of chemical pollutants that are the basis for fish consumption health advisories and toxic cleanup efforts throughout the state. The standards for most cancer-causing chemicals remain at status quo, and a major increase in arsenic concentrations is proposed. This approach poses an unacceptable risk to tribal health and the exercise of tribal treaty-reserved rights. The proposal also sends the wrong message to seafood markets about the state's intent to maintain and improve clean water. Fishing closures directly impact tribal economies and the seafood industry in Washington.

Throughout the years of work on this issue, tribes requested that the human health criteria incorporate a fish consumption rate of no less than 175 grams per day, with the stated assumption that the state

would not weaken other human health criteria—in particular the existing state standard on cancer risk level of 10^{-6}. The request for at least 175 gpd represented a clear compromise, because tribal consumption studies and historical information indicate much higher fish consumption. The tribes consider the increase in the cancer risk rate to be unacceptable, and many tribes are no longer willing to accept a compromise on the fish consumption rate.

In addition, the disappointing substance of the proposal is accompanied by yet another delay in a long history of breached commitments to the tribes for timely completion of more protective water quality standards. The rule is now linked to a vague proposal and uncertain timetable to be presented to the Washington State Legislature and is dependent on their action. These delays and entanglements will subject tribal citizens to elevated risk and harm from continued toxic discharges based on the inadequate standards that have been in place for over 20 years.

Throughout the discussions in the past year, the United States Environmental Protection Agency (EPA) has clearly advised the state not to increase the existing cancer risk rate previously adopted by the state of Washington and utilized in the calculation of carcinogenic criteria. Both EPA and tribes have cited environmental justice concerns with such a change due to the disproportionate impact to Washington tribes. The EPA has also repeatedly expressed their concern over the delay in revising human health criteria in the face of substantive data on fish consumption

Tribes have been steadfast in working to resolve this issue by offering a compromise on the fish consumption rate and a commitment to realistic implementation requirements. A meaningful rule for the human health criteria is an essential part of the strategy to reduce toxic chemicals in Washington. The tribes must ensure that Washington's water quality standards ultimately protect the health of tribal members, protect treaty-reserved resources, and comply with state and federal obligations to the fullest extent. Should you have any questions regarding this letter, please do not hesitate to contact me or my staff at (360) 438-1180.

Sincerely,

Lorraine Loomis

Lorraine Loomis,
Acting Chairperson

cc: Dennis McLerran, Regional Administrator, EPA Region 10
Gina McCarthy, Administrator, EPA Headquarters
NWIFC Commissioners
Maia Bellon, Wa. Department of Ecology
Washington State Legislature