



Spokane Tribe of Indians

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October 15, 2012

Ted Sturdevant
Director
Washington State Department of Ecology
PO Box 47600
Olympia, WA 98504-7600

RE: Water Quality Standards Policy Forum Invitation

Dear Mr. Sturdevant:

Thank you for your August 15, 2012 letter inviting me or my designee to participate in a Policy Forum being organized by the State of Washington that will address the State's water quality standard revisions. Your letter described a Policy Forum that includes many types of "stakeholders" that have an interest in the State's water quality standards. As a sovereign regulator, the Tribe will not participate in Policy Forum that includes multiple non-sovereign entities and "stakeholders." The Tribe fully expects Ecology to discuss these important changes on a government-to-government level.

Additionally, the Policy Forum appears to be designed to address Ecology's complete change of course from adopting an appropriate and legal fish consumption rate (FCR) as part of its water quality standard changes in the near term to a delayed path of further regulatory uncertainty. This regulatory uncertainty will cause further degradation of the Tribe's waters. Simply put, the Tribe is not a "stakeholder," it is a sovereign regulator and has no interest in discussing these matters in an forum that appears to be designed to perpetuate Ecology's further delay on this important topic as discussed below.

The health and well-being of the waters that flow through the Spokane Tribe's reservation are a paramount interest of the Tribe. The Tribe is concerned not only with the health of the portion of the rivers and creeks within its Reservation, but also with the entirety of these waters as they flow through the Tribe's ancestral lands. The Reservation's southern boundary is set to the south bank of the Spokane River, the Western Boundary is set by the West Bank of the Columbia River and the Eastern Boundary is set to the East Bank of Tshimikain Creek, the borders were set in this manner to protect the Tribe's subsistence and cultural uses of these waters, and the Tribe will do whatever is necessary to protect its fundamental rights in these waters.

For many decades the Tribe's subsistence use of its rivers and creeks have been thwarted by upstream pollution, raised water temperatures, and during certain times of the year portions of its waters are uninhabitable for aquatic life due to depressed oxygen levels and high levels of total dissolved gas ("TDG"). Additionally, PCBs and other toxins make fish consumption potentially dangerous to human health and negatively affect the Tribe's use of its resources. In response to this infringement on the Tribe's fishing, cultural, and agricultural rights in its water bodies, the Tribe applied for and received treatment in the same manner as a state status ("TAS") under the Clean Water Act ("CWA"), 33 U.S.C. § 1377, on July 23, 2002. The Tribe's first water quality standards were approved on April 22, 2003. These first standards included a FCR of 86.3 grams per day, and recently, the Tribe updated its standards to include a more protective FCR which is currently pending EPA review. This new standard recognizes the Tribe's historical and rightful FCR which it is entitled to within its waters. Additionally, this higher FCR will help prepare the Tribe's waters for the return of anadromous fish when passage is achieved at Grand Coulee Dam.

Unfortunately, projects to improve water quality and control water pollution within the Reservation have not been successful in bringing the Tribe's waters back to health due to upstream pollution and hydropower facilities. The Tribe's current approved FCR of 86.3 grams per day is significantly above Washington's 6.5 grams per day and this difference is causing significant trouble in the Tribe's attainment of its WQS. Currently, the Tribe's waters are affected by multiple upstream point sources and stormwater pollution that operate under permits written pursuant to Washington's current FCR. This is done even though EPA regulations require that the permits be written in a manner that ensures downstream standards are met. Unfortunately, these regulations are ignored by Ecology and EPA which indicates to the Tribe that short of litigation what is really needed is for Ecology to quickly adopt an appropriate FCR that protects downstream water quality standards of Tribes and the State of Oregon.

In conclusion, there are multiple valid fish consumption studies for the waters of the State, and federal regulations that require the State to adopt standards that do not degrade downstream waters. Accordingly, the State should stop delaying and adopt a legal FCR as soon as possible. Should you have any questions or wish to arrange a government-to-government meeting, please contact B.J. Kieffer, Director of the Spokane Tribe Natural Resources Department at 509-626-4427.

Sincerely,



Rudy Peone
Chairman

Spokane Tribal Business Council

Cc: Dennis McLerran, EPA Region 10 Administrator