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Susan Braley
Water Quality Program
Washington State Department of Ecology
P.O. Box 47600, Olympia, WA 98504-7600

December 17, 2010

Dear Ms. Braley,

A healthy fishery in the Pend Oreille River watershed is essential to the Kalispel Tribe. Restoring the river and its tributaries so they once again provide harvestable native fish populations is one of the highest priorities of the Kalispel Natural Resources Department. It is imperative that water quality throughout the watershed support the recovery of native westslope cutthroat and ESA listed bull trout populations.

The Tribe will be revising its water quality standards in the upcoming year to further these goals. To complement this effort, the Tribe urges the Department of Ecology to make the following revisions to state water quality standards during its triennial review.

1. **REVISE THE PEND OREILLE RIVER SPECIAL TEMPERATURE CRITERIA.** In light of information gained from water quality studies over the last five years and in support of listed bull trout recovery efforts, the Pend Oreille River Special Temperature Condition should be revised to incorporate two critical changes: (1) a 7-DADMax criteria of 18°C to better protect trout migration and non-core rearing uses, and (2) a narrative provision requiring the protection, and where feasible, the restoration of the natural thermal regime including thermal refugia allowing native trout to utilize the river to the fullest extent possible.

The 7-DADMax criteria are appropriate because it is consistent with use-based criteria similar to those present in the Pend Oreille River and EPA guidance for temperature standards. The narrative provision is necessary to protect temperatures outside the peak summer season and restore essential cold-water refugia that have been severely degraded by hydropower impoundments. These refugia are particularly important to native trout during the late summer season when they need to expand their forage base into the river for larger prey items and begin migration to Lake Pend Oreille. Utilizing a narrative provision is consistent with the *EPA Region 10 Guidance for Pacific Northwest State and Tribal Temperature Water Quality Standards*, which suggests protecting thermal regime and cold-water refugia when applying criteria above the optimal range.

Critical aspects of the natural thermal regime that should be protected and restored include: the spatial extent of cold water refugia (generally defined as waters that are 2°C colder than the surrounding water), the diurnal temperature variation, the seasonal temperature variation (i.e., number of days at or near the maximum temperature), and shifts in the annual temperature

pattern. The narrative provision should call for the protection, and where feasible, the restoration of these aspects of the natural temperature regime. EPA notes that the protection of existing cold water refugia should already be provided by the State's or Tribe's antidegradation provisions or by the cold water protection provisions discussed in Section V.2 below. Thus, the new concept introduced by the narrative provision EPA recommends here is the restoration of the natural thermal regime, where feasible.

Including the thermal regime and cold-water refugia considerations during the critical migratory seasons might also allow for implementation of mitigation projects that result in measurable restoration gains and at least partial attainment of the standard.

2. **CHANGE THE DESIGNATED USE OF CERTAIN TRIBUTARIES TO CHAR SPAWNING/REARING.** Tributaries to the Pend Oreille River identified by the USFWS as bull trout critical habitat, or excluded essential habitat, should have the designated use of char spawning/rearing unless it is demonstrated that natural stream conditions permanently prevent this use from ever being attainable. Specifically, use designations should be revised to include char spawning/rearing in all of Mill Creek, Ruby Creek, Cedar Creek, and LeClerc Creek in the Pend Oreille Valley. Also, use designations for char spawning/rearing need to be assigned to the streams in Washington flowing into Idaho tributaries of Priest River, Upper Priest Lake, and Priest Lake.
3. **ADOPT A MORE PROTECTIVE FISH CONSUMPTION RATE.** The fish consumption rate and derived water quality criteria for toxics should be revised to be protective of the most vulnerable individuals and populations. The consumption rate should be at a minimum protective of the 99th percentile for tribal members relying on fish throughout the Columbia River Basin. Based on the survey conducted for Columbia River Tribes, that would be a consumption rate of 389 grams/day—which some consider still being much too low based on historical tribal subsistence consumption rates. This recommended consumption rate is also very close to the EPA 2002 estimate of the 95th percentile of the fish and shellfish consumption rate for the general US population (334 grams/day).

If you have any questions about our comments or would like clarification, please don't hesitate to contact me at 509-447-7276.

Sincerely,



Kenneth R. Merrill
Water Resources Manager
Kalispel Natural Resources Department

cc via email: Becca Conklin, Ecology
Don Martin, EPA