



Quinault Indian Nation

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December 17, 2010

Becca Conklin
Washington Dept. of Ecology
Surface Water Quality Standards
P.O. Box 47600
Olympia, WA 98504-7600

Dear Ms. Conklin:

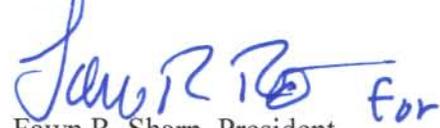
This letter is in regard to the upcoming triennial review of the Washington State water quality standards. The Quinault Indian Nation (Nation) has reserved federally-guaranteed treaty fishing rights to take fish at its usual and accustomed fishing grounds, which includes Water Resource Inventory Areas 21, 22, and 23 (*United States v. Washington*, 384 F. Supp. 312, 374 (W.D. Wash. 1974, *aff'd*, 520 F.2d 676 (9th Cir. 1975), *cert. denied*, 423 U.S. 1086, 96 S. Ct. 877, 47 L.Ed.2d 97 (1976)). Additionally, the court in this case (commonly known as the Boldt decision) confirmed that Indian tribes and the state of Washington are co-managers of fisheries resources. Treaties are the highest law of the land and create a special fiduciary duty upon all agencies of the United States to protect treaty rights, including fishing rights (*Parravano v. Babbitt*, 70 F.3d 539, 546 (1995); *Seminole Nation v. United States*, 316 U.S. 286, 297 (1942)). In sum, the Quinault Indian Nation has defined legal rights and interests related to water quality as it relates to human use and the continued production of salmonid fishes and the safety of these fishes for human consumption. It is from this perspective that the Nation offers the following for your consideration.

The Nation offers these proposals for the Department of Ecology to consider as part of the upcoming triennial review:

1. Upgrade the fish consumption value to more accurately reflect the actual fish and shellfish consumption of Indian people. With the current values, the amount of toxins allowed to be discharged into Washington waters are likely to be harmful to those who consume large amounts of fish and shellfish. Indian people, including members of the Nation, consume a regular diet of fish that far exceeds current fish consumption values the U.S. Environmental Protection Agency/State of Washington use to establish water quality standards. At a minimum, we believe State of Washington should adopt a minimum fish consumption of 175 g/day (0.39 pounds) based on the fish consumption studies conducted to date by the State of Oregon and Confederated Tribes of the Umatilla Indian Reservation.
2. Protect instream flows. Water quality is dependent upon adequate instream flow, thus water rights that reduce instream flow can detrimentally affect water quality. One example would be to conduct synoptic flow studies to determine gaining and losing reaches and use this information to deny water withdrawals that will reduce instream flows.
3. Add spiritual, cultural, and ceremonial uses to the list of designated uses.
4. Improve wetland protection, restoration, and retention. Wetlands provide many important functions related to water quality, but current wetland protection measures do not adequately identify, protect and restore wetlands. Current standards are not protective of processes that sustain, maintain, and create wetlands over time (fluvial processes). Further, existing standards are not protective of degraded wetlands (buried by fill, diked off, behind levees and/or tide gates) that may be crucial to sustaining a minimum habitat baseline protective of tribal treaty rights. Thus, wetlands continue to be degraded and destroyed over time as they are not appropriately considered or protected by current standards.
5. Develop physical criteria for channels based on reach morphology type (slope, valley confinement). The morphology of a channel can affect water quality (e.g. turbidity, temperature), thus we encourage the Department of Ecology to explore the development of physical criteria for channels to protect the water quality for the designated uses.

Thank you for your consideration of the Nation's comments. Please contact Mark Mobbs (360-276-8211, mmobbs@quinault.org) if you have any questions.

Sincerely,



Fawn R. Sharp, President
Quinault Indian Nation

cc: David Bingaman
Mark Mobbs
Tom Gibbons