UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue, Suite 900
Seattle, WA 98101-3140

OFFICE OF
WATER AND
WATERSHEDS

The Honorable Chairman Glen Nenema
Kalispel Tribe of Indians
P.O. Box 39
Usk, Washington 99180-0039

Re: Notification of Consultation and Coordination on U.S. Environmental Protection Agency Action on Idaho Water Quality Standards

Dear Chairman Nenema:

I am writing to offer to consult with the Kalispel Tribe of Indians on an important Clean Water Act decision regarding water quality standards in the state of Idaho. In early 2012, the U.S. Environmental Protection Agency (EPA) will be approving or disapproving water quality criteria for toxic pollutants adopted by Idaho in 2006. EPA's action will focus on the establishment of toxic criteria in Idaho at levels to protect human health.

EPA recognizes its unique legal relationship with Tribal governments as set forth in the United States Constitution, treaties, statutes, executive orders, and court decisions. Government wide and EPA specific policies call for regular and meaningful consultation with Indian Tribal governments when developing policies and regulatory decisions on matters affecting their communities and resources. EPA's decision will apply to waters in the State of Idaho but will not apply to waters in Indian Country. We recognize the important role and interest of the Tribes' in water quality and human health protection within their reservation and in treaty-protected usual and accustomed fishing areas. Because of the potential effect of our upcoming decision on tribal resources, we would like to ensure that we consider input from Tribal governments in our Clean Water Act decision.

Background and Description of EPA's Water Quality Standards Action

In 2005, Idaho Department of Environmental Quality (IDEQ) initiated rulemaking to update their toxic human health criteria to reflect EPA's recommended updates to numeric human health criteria for toxics. On July 7, 2006, IDEQ submitted revised human health criteria for EPA review and action. This submittal included 88 updated toxic human health criteria based on EPA's default fish consumption rate of 17.5 grams per day.

EPA postponed acting on Idaho's 2006 toxic human health criteria until the EPA evaluated its regional approach to toxics. In July 2008, Idaho Conservation League filed a notice of intent to sue because EPA failed to exercise its mandatory duty to act on Idaho's 2006 water quality standards submission. In April 2009, EPA and Idaho Conservation League agreed to a settlement agreement where EPA is required to act on Idaho's 2006 toxic human health criteria no later than early 2012. In the meantime, Oregon adopted new toxics criteria based on a fish consumption rate of 175 grams per day on June 16, 2011. EPA approved Oregon's revised human health criteria on October 17, 2011.

IDEQ's criteria do not and will not apply to waters on Indian Reservations. EPA is working with the Coeur d'Alene, Shoshone-Bannock and Nez Perce tribes to address water quality standards and development of toxic criteria for their reservation waters.

This consultation and coordination process will be conducted in accordance with the EPA Policy on Consultation and Coordination with Indian Tribes (www.epa.gov/tribal/consultation/consult-policy.htm). EPA invites you and your designated consultation representative(s) to participate in this process.

Throughout the Oregon human health criteria revision process, EPA heard a significant amount of input from Northwest Tribal leaders and staff. Among the key messages we heard are:

- Fish and the consumption of fish are central to tribal culture.
- Many tribes in the Northwest retain rights to gather fish beyond reservation boundaries. Fish gathered in those waters should be adequately protected from toxic pollutants.
- The Columbia River Inter-Tribal Fish Commission Fish Consumption (CRITFC) Survey is sound science and must be considered.
- The CRITFC Survey showed that Tribal members who were surveyed consume fish at a level greater than 17.5 grams per day.
- State human health criteria should provide protection for tribal consumers.
- EPA needs to take into consideration its Trust responsibility to the Tribes when making water quality standards decisions and addressing this issue.

Prior to our Clean Water Act action for Idaho, EPA is offering to provide further information to tribal governments and appropriate tribal staff in several forums. EPA will:

- Convene a conference call for interested tribal governments to share information on EPA's action to be held on December 7, 2011, at 2:30 pm Pacific Time. More details will be provided to tribal contacts on that conference call.
- Convene individual conference calls with Tribal governments on request.

We request that you inform us as soon as possible but no later than November 30, 2011, if you would like to initiate consultation with us on this action. Since EPA is required to take action by early 2012, consultation must be completed by December 15, 2011. If you desire further discussion or consultation prior to EPA's action, please contact Mary Lou Soscia at 503-326-5873 or soscia.marylou@epa.gov.

We will continue to keep you and your staff informed as the Idaho Water Quality Standards process proceeds and as EPA takes additional action on revision of toxic criteria to further protect human health for Northwest waters.

Sincerely,

Michael A. Bussell, Director
Office of Water and Watersheds

Enclosure

cc: Ms. Deane Osterman, Natural Resource Director
Kalispel Tribe of Indians

Mr. D. R. Michel, Executive Director
Upper Columbia United Tribes

Mr. Barry Burnell, Water Quality Administrator
Idaho Department of Environmental Quality

Consultation & Coordination Plan and Timeline

Background and Description of the EPA's Water Quality Standards Action

In 2005, Idaho Department of Environmental Quality (IDEQ) initiated rulemaking to update their toxic human health criteria to reflect the EPA's recommended updates to numeric human health criteria for toxics. On July 7, 2006, IDEQ submitted revised human health criteria for EPA review and action. This submission included: cadmium aquatic life criteria, arsenic human health criteria, and 88 updated toxic human health criteria. IDEQ's previous human health criteria were based on a fish consumption rate of 6.5 grams per day. The 2006 submission included revised criteria based on the EPA's revised default fish consumption rate of 17.5 grams per day. The EPA has approved arsenic based on the Maximum Contaminant Level (MCL) established under the Safe Drinking Water Act. Methyl mercury was submitted in August 2005 and was approved by the EPA September 2005, based on a fish consumption rate of 17.5 grams per day. IDEQ's criteria do not apply to waters on Indian Reservations. The EPA is working with the Coeur d'Alene, Shoshone-Bannock and Nez Perce tribes to address water quality standards and development of toxic criteria for their reservation waters.

The EPA postponed acting on Idaho's 2006 toxic human health criteria until the agency evaluated its regional approach to toxics. Oregon adopted new toxics criteria based on a fish consumption rate of 175 grams per day on June 16, 2011. The EPA approved Oregon's revised human health criteria on October 17, 2011.

In July 2008, Idaho Conservation League filed a notice of intent to sue because the EPA failed to exercise its mandatory duty to act on Idaho's 2006 water quality standards submission. In April 2009, the EPA and Idaho Conservation League agreed to a settlement agreement where the EPA is required to act on Idaho's 2006 toxic human health criteria no later than early 2012.

Tribal Considerations are Key in this Work Effort

Throughout the Oregon human health criteria revision process, the EPA heard a significant amount of input from Northwest Tribal leaders and staff. Among the key messages we heard are:

- Fish and the consumption of fish are central to tribal culture.
- Many tribes in the Northwest retain rights to gather fish beyond reservation boundaries. Fish gathered in those waters should be adequately protected from toxic pollutants.
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- The EPA needs to take into consideration its Trust responsibility to the Tribes when making water quality standards decisions and addressing this issue.

Process and Timeline for Government-to-Government Consultation and Coordination

The table below outlines the process and timeline for government-to-government consultation and coordination throughout the consultation process from the date of this letter to early 2012.

The EPA will post information for tribes regarding this action on the Tribal Portal (www.epa.gov/tribal) under Tribal Consultation Opportunities.

Tribal Consultation and Coordination Process and Timeline

Date	Event	Contact Information
November 30, 2011	Response by Tribal Government	EPA Contact: Mary Lou Soscia, (503) 326-5873
December 7, 2011	EPA Hosted Conference Call	Teleconference time: 2:30 pm – 3:45pm PST, Teleconference Call-in number: (866) 299-3188, conference code 5033265873# EPA Contact: Mary Lou Soscia, (503) 326-5873
December 7, 2011	As requested, Tribal Government Conference Calls	EPA Contact: Mary Lou Soscia, 503-326-5873
December 15, 2011	End of Tribal Consultation	
Early 2012	EPA Action on Idaho's Water Quality Criteria for Toxic Pollutants	