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

OFFICE OF
WATER AND
WATERSHEDS

NOV 22 2011

The Honorable Chairperson Charisse Soucie
Burns Paiute Tribe
100 Pasigo Street
Burns, Oregon 97720

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

Dear Chairperson Soucie:

I am writing to offer to provide information to the Burns Paiute Tribe 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.

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 2:30pm Pacific Time. More details will be provided to tribal contacts on that conference call.
- Convene individual conference calls with Tribal governments on request.

If you desire further discussion 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

cc: Mr. Jason Fenton, Environmental Program Manager
Burns Paiute Tribe

Ms. Heather Ray, Executive Director
Upper Snake River Tribes Foundation

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