Northwest Indian Fisheries Commission

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September 17, 2014

Gina McCarthy, Administrator
Environmental Protection Agency
1200 Pennsylvania Ave. NW, Mail Code 1101A
Washington, DC 20460

Re: Request to Promulgate Water Quality Standards for the State of Washington

Dear Administrator McCarthy:

The Northwest Indian Fisheries Commission (NWIFC) respectfully requests your assistance in expediting human health criteria rulemaking in Washington State. The NWIFC is comprised of the twenty treaty tribes of Western Washington who have federally adjudicated, constitutionally protected treaty-reserved rights to harvest and manage natural resources. The tribes consume many types of seafood from their usual and accustomed waters in the course of exercising these rights, and the consumption of seafood is an important cultural and spiritual practice, which is integral to the tribes' way of life. Unfortunately, Washington's human health-based water quality standards do not utilize fish consumption rates that reflect current or historical consumption patterns, and therefore place tribal members at a greater health risk. The NWIFC would therefore like to request that the United States Environmental Protection Agency commence promulgation of water quality standards in Washington State, without further delay, that will address the protection of human health, safeguard treaty rights to the harvest of clean and consumable fish, and uphold the EPA's commitment to environmental justice for tribal communities.

On July 9, 2014, Governor Inslee outlined his proposal for revising human health criteria water quality standards in Washington State. The Governor's proposal yet again delayed water quality standard rulemaking and makes eventual promulgation dependent on numerous legislative actions that are highly uncertain, and likely to result in additional delay or abandonment. This approach attempts to use the water quality standards as leverage to promote a legislative agenda, and in doing so holds the standard setting responsibility under the CWA hostage to state political process. Fundamentally, this strategy diminishes the importance of the water quality standards as a function of the CWA and introduces poor precedent for the revision or development of future standards.

The tribes of the Pacific Northwest have been working for several years with Regional Administrator Dennis McLerran and his staff to address the deficiencies in the state's current water quality standards. The state's newest proposal represents the third consecutive delay in the past 3 years for adopting revised standards, beginning with a broken promise to begin to address the issue via sediment cleanup regulations. Regional Administrator McLerran reflected the tribes' frustration with the continued delays in his letter to the Director of the Washington Department of Ecology on June 21, 2013 and again on April 8, 2014. We greatly appreciate his attention to the tribes' concerns, and strongly agree that federal promulgation of human health criteria for Washington is necessary, in light of the state's continued failure to meet their own self-imposed deadlines or those provided by the EPA in their April 8, 2014 correspondence. As a result, we respectfully request that EPA deny the state's request for additional time, and proceed with federal promulgation without further delay.

Fish consumption is an essential cultural, nutritional, and economic lifeway for our tribes. We have consistently sought timely remediation of the state's current fish consumption rate and the adoption of a rate that is more reflective of the daily consumption of fish in tribal communities, on the expressed condition that the state would not weaken other portions of the water quality standards. Unfortunately, the state proposal has failed to develop revised water quality standards that improve most carcinogens and the chemicals that have contributed the most to fishing closures and contaminated sediments. Neither the delay nor the substance is acceptable to our member tribes.

The tribes recognize that you share our commitment to preserving human health and a high quality of life for future generations. We would like to thank you and Regional Administrator McLerran for your time and close attention to this matter, and we look forward to working with you to improve human health protection in the future.

Sincerely,

Lorraine Loomis

Lorraine Loomis
Chairperson

cc: Lisa Feldt, Acting Deputy Administrator, EPA
Ken Kopocis, Deputy Assistant Administrator of the Office of Water, EPA
Dennis McLerran, Regional Administrator, EPA Region 10
Tribal Chairs and NWIFC Commissioners