UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue, Suite 155
Seattle, WA 98101-3123

OFFICE OF
WATER AND
WATERSHEDS

SEP 12 2018

The Honorable Nathan Small
Chairman, Shoshone-Bannock Tribes
PO Box 306
Ft. Hall, Idaho 83203

Re: Invitation for an Additional Phase of Tribal Consultation and Coordination on the EPA's Clean Water Act Action regarding Idaho's Revised Site-Specific Temperature Water Quality Criterion for the Snake River Below the Hells Canyon Complex

Dear Chairman Small:

I am writing to offer you government-to-government consultation and coordination on an upcoming U.S. Environmental Protection Agency Clean Water Act action on the State of Idaho's revised water quality standards. The State of Idaho submitted revised water quality standards to the EPA Region 10 for review and action on June 8, 2012.[1] The submission changed the state's water quality criterion to protect fall Chinook spawning and egg incubation from 13°C to 14.5°C as a 7-day average of the daily maxima (7-DADM) during late October and early November in the Hells Canyon Reach of the Snake River. Additional background information on Idaho's submission is included in Attachment 1.

The EPA must take action to either approve or disapprove revised water quality standards. If approved, the revised site-specific criterion for temperature for the waters of the Snake River from the Hells Canyon Dam to the confluence with the Salmon River would serve as the temperature water quality target for a number of CWA regulatory processes, including National Pollutant Discharge Elimination System permits, 401 Certifications, and development of Total Maximum Daily Loads.

We will hold two informational conference calls about the impending action for interested tribal governments on **Wednesday, October 3, 2018 from 10-11:30AM Pacific Time (11-12:30 Mountain Time)** and **Monday, October 15, 2018 from 10-11:30AM Pacific Time (11-12:30 Mountain Time)**. The conference call number and code are the same for both informational calls: (202) 991-0477; code 8014105#. We will share the same information during each call and will answer any questions you or your staff may have. The informational calls do not substitute for government-to-government consultation.

The EPA recognizes its unique relationship with tribal governments as set forth in the United States Constitution, treaties, statutes, executive orders, and court decisions. We would like to offer you the opportunity to engage in an additional phase of consultation with us regarding the upcoming agency action. We understand that you may have shared your concerns during the EPA's previous engagement activities on this topic, please be assured that input will continue to be considered in this decision. However, given some years have passed, we want to offer an additional phase of coordination and consultation to continue to hear your thoughts as we move forward to complete the action.

[1] Idaho docket number 58-0102-1102 available at http://www.deq.idaho.gov/laws-rules-etc/deq-rulemakings/docket-no-58-0102-1102-final-rule/

If you would like to initiate government-to-government consultation with the EPA, please have your tribal staff lead contact Rochelle Labiosa of my staff at (206) 553-1172 or labiosa.rochelle@epa.gov **by October 19, 2018**.

Thank you for your interest in this CWA action. If you would like more information, or have questions or concerns, please contact me at (206) 553-1855 or opalski.dan@epa.gov; or have your staff contact Rochelle Labiosa.

Sincerely,

Daniel D. Opalski, Director

Electronic cc: Candon Tanaka, Water Quality Specialist
Scott Hauser, Executive Director, Upper Snake River Tribes

Enclosure

Attachment 1 – Background

The State of Idaho undertook rulemaking in 2011 to revise its water temperature criteria to protect fall spawning of Chinook salmon in the portion of the Snake River from the Hells Canyon Dam to the Salmon River. The state determined a site-specific temperature criterion of 14.5°C (as a 7-DADM) is protective of Snake River fall-run Chinook spawning during the two-week period from October 23 to November 6; and retained a 13°C criterion for the remainder of the spawning and incubation period, from November 7 through April 15. The site-specific temperature criterion was adopted under state law on March 29, 2012 and submitted to the EPA on June 8, 2012.

On November 22, 2013, the EPA contacted tribal governments[2] by mail, offering the opportunity to initiate government-to-government consultation regarding the EPA's action on the state's 2011 submission. Two initial coordination conference calls were held, on December 12, 2013 and January 15, 2014, during which EPA staff explained the submission, the EPA's role, and provided time for questions. The EPA consulted with multiple tribal governments on the EPA's pending action, however the EPA did not complete its action at that time. Due to the amount of time that has passed since those conversations, the EPA is offering another opportunity for consultation and coordination to ensure that we consider the latest views of the affected tribal governments before taking a final action.

On June 6, 2018, the Idaho Power Company filed a complaint in the District of Idaho alleging the EPA is in violation of the CWA and the Administrative Procedures Act for failure to take timely action on the state's application for the 2012 site-specific criterion for temperature.

In order to fulfill its duties under the Clean Water Act, the EPA plans to take action on the proposed site-specific criterion and, if necessary, initiate consultation under the Endangered Species Act.

[2] Shoshone-Bannock Tribes, Shoshone-Paiute Tribe, Nez Perce Tribe, Kootenai Tribe, Confederated Tribes of the Umatilla Indian Reservation, Burns Paiute Tribe, Coeur d'Alene Tribe, CRITFC, USRT, and UCUT (individual member tribes).