



January 18, 2016

Senate Environment and Resources Committee
Meeting regarding Water Quality Standards
Docket No. 58-0102-1201 (Pending Rule)

Re: Testimony of the Shoshone-Bannock Tribes regarding the final submission of the 'Fish Consumption' rule for Idaho waters.

Tsaangu Beachiku, Good Morning members of Idaho's Senate Environment and Resources Committee. As a member of the Fort Hall Business Council I have been asked to deliver our testimony regarding IDEQ's submission of the final draft rule that will set fish consumption rates in Idaho waters and impact water decisions for human health. The Fort Hall Business Council, which is the governing body of the Shoshone-Bannock Tribes, is here today to speak on behalf of our Tribal membership and our Tribal lands located on the Fort Hall Reservation in southeast Idaho. The Tribes would like to express our appreciation for allowing time to hear this testimony on behalf of our most sacred resource, our water; the one thing tying us all together here today. Our people believe strongly that water is life, everything living owes its very existence to the presence of water, and Idaho has a problem today with the water flowing through our lands, across our mother earth. I am here on behalf of my people to say clearly that we will never stop fighting to protect our water, those who swim in it, and our membership who continue living on those gifts as our ancestors did for thousands of years.

The Tribes are very concerned with the final rule presented here today for your approval, we are concerned that it doesn't protect water resources in Idaho and it doesn't protect our membership. The Tribes entered into the Fort Bridger Treaty, a solemn agreement with the United States in 1868, long before Idaho was even a State that our people would be able to 'hunt on the unoccupied lands of the United States' so long as game was found there. Your decision here today represents an opportunity for each of you to honor that obligation to Idaho citizens, members of the Shoshone-Bannock Tribes.

Before I go into the specifics, I want to point out that two major decisions were made by Idaho behind closed doors after the rulemaking process was over. During numerous meetings with the Tribes we were presented two guiding principles for this process, first that we would not increase our cancer risks and second that this new rule would not allow for water quality standards to slip backward. Somewhere along the way, a choice was made to reduce the acceptable cancer risk rate from one in a million to one in one-hundred thousand, you increased the risk by an entire order of magnitude in spite of these earlier promises, not to mention that the rule here in front of you today did not keep strong protections against contaminants in place. The most valued people

in our community are our elders and our children; they are the ones responsible for passing our traditional cultural practices from generation to generation. These are the most vulnerable people in our community to the health risks related to fish consumption and they will be impacted the most by the choice you make here today. Based on acceptable cancer risk rate in front of you, this proposed rule amounts to a fish consumption rate for carcinogens of only 6.65 grams per day; less than what you can fit on a cracker. You've proposed a set of standards that imperils the existence of our people.

This rule is clearly less stringent than what you've proposed for water quality criteria in the previous drafts for carcinogens. There is a disproportionate impact on the members of the Shoshone-Bannock Tribes, a protected class; and, as the highest fish consuming population in Idaho we are outraged to see our membership protected at a lower rate than the general population. As Idaho's original citizens, we deserve the same protections afforded to the general population and it speaks volumes that we would be considered as less worthy of consideration than anyone else. In fact, if you would just set consumption rates that would be protective of our current rates, then the entire population of Idaho would be better off; the water would be cleaner, the fish would be safer, and we could rest easy knowing that each of our children are living in a better world. But the rule in front of you puts us at an unacceptable high risk.

To ensure our rights and interests were addressed by IDEQ, the Tribes participated throughout the rule making process...providing comments on policy choices, the draft rule, and even making a formal presentation at a rule making meeting on current issues that suppress our consumption of fish. Our efforts then went a step further by providing IDEQ with a peer-reviewed study titled the "Idaho Tribes' Fish Consumption Study" and then produced a defined "Tribal Heritage Rate" based on our past consumption. We submitted these studies for your consideration, along with all of the scientific methodologies used to develop these reports and consumption rates. We didn't go through all this effort because we thought our work would be disregarded in the end, we didn't go through all of this process because we wanted to see a rule that didn't protect our membership... We went through all of this work because we wanted to demonstrate, in a manner that you would understand, the challenges that we are facing in today's world. You can imagine how discouraging it was to read this final rule and learn that once again Tribal comments were dismissed out of hand. What we see now is a drastically different proposal from the original rule and doesn't consider our current or historic consumption rates. We request the Committee to send this proposal back to your staff based on the unacceptable health risks it carries to Tribal members and its direct impact on our subsistence lifestyle and Treaty reserved rights.

I'm going to shift gears here a bit and talk about something you may not have considered in this rule, even though we've raised this issue numerous times. The Fort Hall Reservation, located in Southeast Idaho, is the permanent homeland of the Tribes and we have Treatment as a State for the purposes of implementing the Clean Water Act. The Fort Hall Reservation is surrounded by impaired waters from the Portneuf, Blackfoot, and Snake River basins. According to your own reports, 27.9% of the IDEQ sampled stream miles were classified as in poor condition, not fully supporting cold water aquatic life, with some of the worst water conditions found in the Pocatello Region. Along with being listed on the 303(d) list, the Portneuf River is constant reminder to our Tribal membership of the real health risks that come with the consumption of

fish from our own reservation. The Portneuf River leaves the Reservation without any known environmental contaminants, then it meanders through private lands, past industrial sites and municipalities until it finally returns back onto the Reservation. After its journey through Southeast Idaho, the water quality is so bad that we have to put out signage advising our own members that there is a risk to their family if they eat fish caught from our own reservation. The Tribes are now in the process of drafting and approving water quality standards that will be more stringent than the criteria found in this final draft rule, thereby increasing the likelihood that we will find our respective entities unnecessarily in an adversarial relationship over water.

We also implore you to have a broader focus upon other forms of aquatic life. As the proposed rulemaking now reads, it focuses upon Water & Fish. It does not provide any water quality criteria for other forms of aquatic life. For example, aquatic plants are gathered by Tribal members for subsistence and cultural use. Plants gathered for cultural uses are likely bioaccumulating environmental pollution via water sources. Another example could occur with aquatic insects, as biomagnification could occur through predator-prey associations and dietary accumulation ultimately impacting Tribal members who make subsistence upon natural foods. This situation is especially likely to occur along the Snake River as it travels through the Fort Hall Bottoms of the Reservation where there is a high number of Tribal members making subsistence upon a diversity of natural foods. Combined the effects of environmental pollution puts the Tribes at-risks of exposure from not only fish, but other forms of aquatic life.

The Tribes also wanted comment on the assumptions of the Ambient Water Quality Criterion equation and lack of transparency of metrics used. For example, the TSD reference the “NWRG 2015” for body weight (BW) assumptions, but this reference is not listed in the References nor could we find this document anywhere. The BW calculation is an important metric and we feel it should be based upon the BW of children, a demographic that is highly sensitive to environmental pollution. The revisions to the proposed rule also do not clearly identify the Bioaccumulation Factor (BAF), or if the value of 66.5 g/day was used for the Fish Intake in the Idaho’s Technical Support Document for Human Health Criteria Calculations – 2015 (TSD). It is of utmost importance to clearly identify assumptions used in the calculations, and this has not been provided by the IDEQ. A lack of transparency on assumptions and values used in the calculations is likely a reflection hasty planning, and it is critically important to the Tribes that this rule making process be transparent on assumptions.

In addition to being at risks through fish consumption, we are now concerned with drinking water from streams after our sacred ceremonies. We drink our sacred water after recovering from arduous ceremonial events that require our abstinence of food and water for four days during the hottest time of the year. Our spiritual leaders are worried now that ingesting polluted waters after these types of ceremonies could have life threatening consequences. I know that most of us in this room can still remember the time when any of us could drink cold, clean water right out of the stream on a hot day; but the rule in front of you doesn’t bring us back to those days, it makes it a distant memory we won’t be able to pass on to our children and grandchildren. Because here is the truth ladies and gentlemen, the Snake River and most other rivers in Idaho have set new records over the past few years for low flows and high temperatures. This rule isn’t taking into consideration the impacts climate change will have on water quality and quantity, or how that will affect aquatic life in our State. The science is clear, increasing air temperatures

and water diversions will result in high instream temperatures in Idaho; water quality will be far worse in the years to come due to climate change and unsustainable resource management. Both of these effects will have major consequences for the aquatic ecosystem that we have made our subsistence upon since time immemorial. We need a rule that provides innovative direction for water allocation, protects water quality, preserves our cold water ecosystem, and implements a framework to improve our water resources; sadly, the rule in front of you today doesn't do any of those things.

Esteemed members of the Committee, you may disagree with me about the reasons we need firm regulations in Idaho; you may be thinking about financial impacts to industry or the hard choice to weigh the external costs of pollution to promote clean water. You may disagree with me about the Tribes perspective on this rule, but you cannot disagree with the facts. Water quality and the aquatic ecosystem are in peril throughout our State, my people who consume high amounts of fish from these waters are at a higher risk than ever before, and we have high hopes that you will be making the hard choices to set it right.

You have a choice before you right now. You can choose to send this rule back to your agency, have them bring back a new document that places a higher value not only upon human life, but the function and health of our freshwater ecosystems or you can rubber stamp what is in front of you today. The Tribes would like a rule that protects our waters and the aquatic systems that rely upon cold, clean water; now and forever, *esto perpetua* like your motto reads. Ladies and gentlemen, you have a choice in this moment to protect our waters, preserve our traditions, and promote a restoration of an aquatic ecosystem we've degraded over time. The Shoshone-Bannock Tribes encourages you to take this opportunity to send this rule back to the drawing board and bring back one that protects us all. Thank you for your time today.

Sincerely,



Marcus Coby, Fort Hall Business Council
Shoshone-Bannock Tribes