



April 6, 2018

Heather Bartlett
Water Quality Program Manager
Washington Dept of Ecology
PO Box 47600
Olympia, WA 98504-7600

Dear Ms. Bartlett,

RE: Kalispel comments on WA Ecology water quality assessment - 303(d) listing policy 1-11

The Kalispel Tribe's reservation is small with most of the water found here having flowed in from outside its borders. It is critical for us to work with upstream jurisdictions such as Washington State to fully implement the Clean Water Act for healthy water assuring that all designated beneficial uses are protected or restored where they have been allowed to be excessively degraded.

We were encouraged by the establishment of the State's new water quality standards to better protect fish and people since it is moving closer to what the Tribe feels is essential to the well-being of its community. However, the changes being proposed within the draft Water Quality Assessment Policy 1-11 apparently was written with the primary intent to better protect pollution instead of the people by undermining implementation of the State's new water quality standards essential to fully achieving the "fishable" beneficial use of our waters.

The following comments below are the most important, but not necessarily all of the items in the draft policy that need to be addressed.

- 1) Protecting people from eating contaminated fish is fundamental to the "fishable" beneficial use provision of the Clean Water Act. The critical target concentrations of toxins in fish tissue are a major driving factor in the equation for calculating the subsequent water concentration for the human health criteria. If the critical target fish tissue concentration is exceeded in a waterbody, there is no need to have other lines of evidence to show that the beneficial use is impaired. If there was evidence of impairment due to fish contamination in the past, new fish tissue analyses must be included to determine that beneficial uses have been fully restored.
- 2) The draft policy places an excessive amount of emphasis on making sure there is no chance of an erroneous listing of a waterbody where some uncertainty exists. Where there is uncertainty and a chance for error in deciding if an impairment of a waterbody exists, the listing decisions should be conservatively based on protecting the natural resource and people's health, not protecting the pollution.

- 3) Applying any form of deemphasizing multiplication factor in the decision making process for using fish tissue concentrations as a listing criterion is inappropriate. This is especially the case when applying the current water human health criteria for PCB and Dioxin which were derived without considering that biomagnification is occurring in the waterbody and excludes the cancer risk of consuming Dioxin.
 - a. The calculation for water concentration criteria for PCB and Dioxin already ignores the important biomagnification mechanism for accumulating PCB, Dioxin, and similar toxicants in fish by excluding the bioaccumulation factor (BAF) and only uses the bioconcentration factor (BCF). The EPA Water Quality Standards Handbook specifically describes methods and models to use for estimating the BAF for inclusion in the calculation of water concentration criteria where none exists.
 - b. The Dioxin water criterion is already magnitudes less protective than it should be since it pretends that there is no cancer risk associated with consumption of fish contaminated by Dioxin.
 - c. Compositing five fish of a species from a waterbody for sample analysis in itself provides integration of the effects of the pollutant's presence over space and time minimizing the risk of obtaining a non-representative characterization of the level of contamination and use impairment. If uncertainty exists after the listing, follow-up fish sampling can resolve the uncertainties and any needs for alternative actions.
- 4) An impaired listing should only be downgraded from a Category 5 if there is a clean-up plan that contains a path to the full restoration of beneficial uses with clear, measurable, and enforceable interim performance milestones.

The Kalispel Natural Resources Department will continue to work on these concepts with Ecology as we move forward in implementing the provisions of Section 303(d) within the interjurisdictional waters of the Pend Oreille River. Please don't hesitate to contact me if you any questions or would like to discuss our comments further at 509-447-7276.

Sincerely,



Kenneth R. Merrill
Water Resources Program Manager
Kalispel Natural Resource Department

Cc via email: Susan Braley, WA Ecology
Deane Osterman, Kalispel Natural Resources