

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460



OFFICE OF WATER

The Honorable Frances G. Charles
Chairwoman
Lower Elwha Tribal Community
2851 Lower Elwha Road
Port Angeles, Washington 98363

Dear Chairwoman Charles:

On behalf of myself and other members of the EPA team, I would like to express our gratitude to you, members of the Tribal Council, and tribal staff for taking the time to consult with EPA on the proposed federal rule to restore protective human health criteria for Washington. EPA appreciates the ongoing engagement by you and the Lower Elwha Tribal Community (Tribe) to protect the waters in the state. Below is a summary of what we heard during the May 31, 2022, consultation meeting.

During our meeting, we discussed EPA's proposed rulemaking and emphasized that its leadership and staff, both in the region and headquarters at the highest levels, are in alignment on this rule and are committed to working toward a durable result. We also discussed the expedited timeline consistent with the 18-month abeyance granted by the Court for the two legal cases related to EPA's 2019 and 2020 actions on Washington's human health criteria.

EPA appreciates the opportunity to learn more about the Tribe's current commercial and local practices of fish harvesting and consumption. The Tribe expressed that they felt the environmental justice discussion in the federal register notice for the proposed rule was very good and much appreciated, and that in general, unlike the EPA actions in 2019 and 2020, the proposed rule is based on sound science. EPA understands that the 175 grams per day fish consumption rate (FCR) used in the rulemaking is a negotiated rate and not something the tribes are bound to, as well as an under-representation of the actual consumption rate by tribal members. The Tribe noted that the supporting documents for the proposed rule seemed to make this point clear except for a reference in footnote 49 of the draft rule. EPA committed to reviewing footnote 49 to eliminate any inference that 175 grams per day is a conservative input. The Tribe emphasized that even though the rule is not "perfect," you encourage EPA to finalize the rule expeditiously and asked EPA to apprise the Tribe in the coming months if the rule could be finalized sooner.

The Tribe also inquired about EPA's plan to ensure the durability of the federal rule. We discussed

EPA's parallel rulemaking to revise the federal water quality standards regulations to protect tribal reserved rights and its potential intersection with the efforts to restore the human health criteria. The Tribe also raised concerns regarding water quality standards variances and site-specific criteria that may be adopted by the State and approved by EPA after the rule goes into effect. EPA confirmed the comments and articles the Tribe submitted in October of 2019 are included in the rule docket and do not need to be resubmitted.

The Tribe expressed interest in EPA's plans to develop revised nationally recommended 304(a) criteria for dioxin, thallium and polycyclic aromatic hydrocarbons (PAHs), so they are available for consideration in Washington's next triennial review. In addition to expressing concerns about water quality, the Tribe asked about how the Toxic Substances Control Act (TSCA) streamlining reviews affect this rulemaking and EPA stated that the two agency actions are entirely separate. Finally, the Tribal Council discussed the removal of two dams on the Elwha River to aid the return of salmon to the upper watershed, and the concerns with fish traveling through polluted waters to get there.

EPA understands and appreciates the Tribe's remarks that when tribal treaties are protected, all citizens are protected. We look forward to continuing our engagement with the Tribe on future agency activities and decision making, particularly where there is potential intersection with treaty reserved rights.

Thank you again for the opportunity to meet with us on these important topics. Please contact me at Hisel-McCoy.Sara@epa.gov or (202) 564-1185 if you have additional questions or concerns, or your staff may contact Lindsay Guzzo at Guzzo.Lindsay@epa.gov or (206) 553-0268.

Sincerely,

Sara Hisel-McCoy, Director
Standards and Health Protection Division

Electronic cc: Matt Beirne, Natural Resources Director
Steve Suagee, Tribal Attorney