MEMORANDUM OF UNDERSTANDING FOR WATER QUALITY STANDARDS
BETWEEN
THE SHOSHONE-BANNOCK TRIBES
AND
THE IDAHO DEPARTMENT OF ENVIRONMENTAL QUALITY
AND
THE U.S. ENVIRONMENTAL PROTECTION AGENCY REGION 10

This Memorandum of Understanding ("MOU" or "Agreement") is entered into by and between the Shoshone-Bannock Tribes (or "Tribes"), the State of Idaho Department of Environmental Quality (or "IDEQ"), and the United States Environmental Protection Agency Region 10 (or "EPA")(collectively "the Parties").

Article 1. Preamble

WHEREAS, the Tribal Water Resources Department, is an agency of the Shoshone-Bannock Tribes with primary responsibility for protecting the quality and quantity of all water resources on the Fort Hall Reservation (the Reservation), which was established by the Fort Bridger Treaty of 1868, and Executive Orders of June 14, 1867 and July 30 1869, and administering the Shoshone-Bannock Tribes Water Code of 2007 and establishing water quality standards under Section 303(c) of the federal Clean Water Act, 33 U.S.C. §13139(c). The Fort Hall Business Council, the governing body of the Shoshone-Bannock Tribes, is the designated authority under the Tribes' Constitution to execute this Agreement.

WHEREAS, the State of Idaho Department of Environmental Quality is an agency of the State of Idaho empowered and with authority for protecting the environment of the State of Idaho and to administer and implement statutes and rules for the protection of the environment, including the Idaho Clean Water Act, Idaho Code § 39-3601 et. seq., and to implement and enforce federal environmental statutes where delegated or authorized pursuant to federal law, including the administration of water quality standards pursuant to Section 303(c) of the federal Clean Water Act, 33 U.S.C. § 1313(c) for waters of the State of Idaho; and

WHEREAS, the United States Environmental Protection Agency Region 10 is the federal agency with primary responsibility for administering federal environmental statutes in the State of Idaho, including oversight of the federal Clean Water Act provisions delegated to or administered by the State of Idaho, and the federal Clean Water Act provisions delegated to or administered by the Shoshone-Bannock Tribes; and

WHEREAS, the EPA has approved the Tribes as eligible for treatment in the same manner as a state or "TAS" pursuant to Section 518(e) of the Clean Water Act ("CWA"), 33 U.S.C. § 1377(e), for the purpose of administering water quality standards under Section 303(c) of the CWA and issuing water quality certifications under Section 401 of the CWA for waters of the Fort Hall Reservation;

WHEREAS, IDEQ recognizes the legal status of the Tribes as a federally recognized Indian Tribe and recognizes the importance of direct Tribal participation in undertakings which affect the environment and natural resources of the Tribes protected by Treaty and which affect the residents of the Fort Hall Reservation; and

WHEREAS, the Tribes and IDEQ seek to collaboratively develop, for approval by EPA, consistent and compatible water quality standards for waters within, entering, or adjoining the Reservation.

NOW THEREFORE, the Parties hereby mutually agree as follows:

Article 2. Purposes of this Agreement

The purposes of this Agreement are:

A. To strengthen and improve the relationships among the Parties to promote intergovernmental cooperation as the Tribes and IDEQ develop and revise water quality standards for EPA approval. The Parties recognize that a coordinated water quality consultation and development effort will improve their ability to restore, improve, and protect the water quality in surface water bodies within, entering or adjoining the Reservation to protect the health, safety, and welfare of all residents of southeastern Idaho.

B. To establish a process by which the Tribes and IDEQ will work together cooperatively to plan and administer independently adopted water quality standards and certification programs for surface waters that are within, enter or adjoin the Reservation.

Article 3. Water Quality Standards and Implementation Plans

A. The Tribes and IDEQ will each establish water quality standards which will be submitted to and reviewed by EPA pursuant to Section 303 of the CWA, and in accordance with the Shoshone-Bannock Tribes Administrative Procedures Act (the Tribes only), Idaho Administrative Procedures Act (IDEQ only), and EPA regulations at 40 CFR Part 25 Public Participation and Part 131 Water Quality Standards.

B. When the Tribes and IDEQ are considering revisions to the EPA-approved water quality standards, the Parties agree to the following:

i. The Revising Party shall notify the other Parties of the subject under consideration as early as possible prior to starting the public participation process. If requested by the other Parties after receiving the notice, the Revising Party will share relevant information regarding the revision, including, if available, any drafts of the revisions.
ii. The Revising Party shall provide the public notice of rulemaking to the other Parties. IDEQ will include a notice of intent to promulgate rules or notice of proposed rulemaking as required for IDEQ rulemaking.

iii. Before or during the rulemaking, the other Parties may provide technical assistance and feedback to the Revising Party. Written comments may be provided during the rulemaking comment period. If needed, the Revising Party will ensure follow-up and discussions on the comments provided by the other Parties.

Article 4. Information Sharing

A. Unless prohibited by law, or unless the Tribes exercise their right as set forth in subparagraph B, the Parties agree to provide and cooperate in the full, open, and prompt exchange of relevant scientific, technological information related to the water quality decision at issue to enable each other to responsibly carry out the provisions of this MOU.

B. The Tribes may exercise their right to keep confidential information concerning their culture, traditions, language and beliefs, and other Tribal information designated as confidential.

C. It is recognized and understood by the Parties that the ability of the Tribes, IDEQ and EPA to share documents, and to keep shared documents confidential, is subject to and limited by the Shoshone-Bannock Tribes Privacy Act, Ordinance S5-76, Idaho Public Records law, Idaho Code §§ 9-337 through 9-350, and the Federal Freedom of Information Act, 5 USC § 501 et. seq. To the extent possible, the Tribes, IDEQ and/or EPA will work cooperatively to secure full disclosure of all necessary information to all Parties by reaching agreement with the private entities submitting the information.

C. The Parties will establish staff level relationships to complement contacts. The staff will openly communicate with each other on a regular basis and hold meetings, as needed, for information sharing, deliberations on documents, and clarification and observation of the information provided. The Parties will strive to address matters informally at the staff level. In the event that staff is unable to resolve an issue, the staff will present the matter to progressively higher levels of management for resolution.

D. Notices and communications between the Parties will be addressed to the following contacts:

For the Shoshone-Bannock Tribes

Candon Tanaka
Tribal Water Resources
Shoshone-Bannock Tribes
P.O. Box 306
Fort Hall, ID 83203
(208) 238-9375
Fax: (208) 238-7742
ctanaka@shoshone-bannock.com

For Idaho Department of Environmental Quality

Lynn Van Every
Idaho Dept. of Environmental Quality
444 Hospital Way, #300
Pocatello, Idaho 83201
(208) 236-6160
Fax: (208) 236-6168
lynn.vanevery@deq.idaho.gov

For the Environmental Protection Agency

Sally Brough
Water Quality Coordinator
U.S. EPA Region 10
1200 Sixth Avenue, OW-134
Seattle, WA 98101
(206)
Fax: (206)
Brough.sally@epa.gov

The Parties will notify each other when the contact named herein is replaced.

Article 5. Duration, Termination, and Modification

A. This Agreement is effective upon the date of signature by all Parties.

B. This Agreement will remain in effect until and unless terminated by Parties. Any Party to this Agreement may withdraw from this Agreement by providing thirty (30) days written notice to the other Parties.

C. This Agreement may be modified only in writing, signed by the signatories or their duly authorized representatives. The Parties recognize that the coordination process is an evolving one and the Parties will endeavor to negotiate modifications to this Agreement where it appears appropriate to do so. The Parties will discuss the terms of this Agreement on an annual basis to determine if any modification should be made.

Article 6. Reservation of Rights

A. Nothing in this MOU is or shall be construed to be a waiver of the sovereignty, jurisdiction, ownership or any claim of the Tribes or the State of Idaho. Each party reserves, and nothing in the MOU affects, any rights, powers, and remedies of any Party now or hereafter existing in law or equity by statute, treaty, executive order, regulation, court decision or

otherwise. The MOU creates no rights in third parties or any right to judicial review. The Shoshone-Bannock Tribes hereby specifically retain their sovereign immunity and any and all rights appurtenant thereto.

B. Nothing in this Agreement shall be deemed to alter or modify any other agreements or memorandum previously entered by any of the Parties hereto, and does not alter arrangements for consultation, meetings, discussions or other coordination between EPA and the Tribes or between EPA and IDEQ.

C. This Agreement is intended solely for the purpose of facilitating coordination between the Parties. This Agreement is not and shall not be used as precedent for other relationships of the Parties, or resolution for any other disputes between the Parties.

Article 7. Signatories:

The undersigned official representatives of the Parties hereby enter into this Agreement on behalf of the respective Parties.

9/18/08

Alonzo Coby, Chairman
Fort Hall Business Council
Shoshone-Bannock Tribes
Fort Hall, Idaho

Date

9/25/08

Toni Hardesty, Director
IDEQ
Boise, Idaho

Date

9/5/08

Elin D. Miller
Regional Administrator
US EPA Region 10
Seattle, WA

Date