MEMORANDUM

SUBJECT: Western Washington Tribal Treaty Rights

FROM: Bob Perciasepe

TO: Assistant Administrators
    Dennis McLerran, Region 10 Administrator

As you know, the Council on Environmental Quality charged the U.S. Environmental Protection Agency, the National Oceanic and Atmospheric Administration and the Department of Agriculture with leading an effort to respond to the western Washington Treaty Tribes' Treaty Rights at Risk white paper. Under this joint leadership, the federal agencies that make up the Puget Sound Federal Caucus developed an initial response plan on May 4, 2012, that outlines steps toward restoring and protecting treaty-covered resources. By all accounts, the federal response plan is a good first step. However, following your October 16, 2012, status report to agency deputy directors, I am concerned that it will not significantly advance the restoration and protection of salmon and shellfish habitat vital to the resources protected by treaties between the western Washington tribes and the United States.

I ask that you and the other regional Puget Sound Federal Caucus leaders step up your efforts to develop a more effective response plan. This should take the form of additional programmatic and, where appropriate, funding requests to undertake actions that will more effectively address restoring and protecting salmon and shellfish habitat in western Washington. It is my understanding that many of the actions necessary to lead to salmon recovery have been identified and could be addressed if they were made a higher funding priority by federal agencies.

The deputies also heard at the status report meeting that the Department of Justice met with Pacific Northwest federal regional executives on September 25, 2012, regarding treaty rights and federal responsibilities. The DOJ emphasized that treaties are law, equal in status to federal laws under the U.S. Constitution, and that the United States has a responsibility to honor the rights and resources protected by the treaties. While treaties do not expand the authorities granted by the EPA’s underlying statutes, our programs should be implemented to protect treaty-covered resources where we have the discretion to do so.

I also ask the EPA’s assistant administrators to fully consider the importance of protecting and restoring treaty-covered resources within their program responsibilities. I expect Region 10 to submit budget proposals for consideration, if additional funding will significantly advance our efforts to protect and restore salmon and shellfish habitat in western Washington. Based on the direction I am providing in this memo and the direction the three lead federal agencies have requested from other deputies, I am asking that you revise your initial federal response plan, and I expect it to be significantly improved.
The issues raised by the Pacific Northwest treaty tribes are real and substantial, and I want to ensure that the EPA exercises its authorities and implements its programs to protect treaty-covered resources where it is able.