



Nez Perce

TRIBAL EXECUTIVE COMMITTEE

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September 24, 2019

Submitted at: <http://ws.ecology.commentinput.com>

Susan Braley
WA State Dept. of Ecology
Water Quality Program
P.O. Box 47600
Olympia, WA 98504-7600

Re: *Nez Perce Tribe's Comments on Chapter 173-201A WAC Water Quality Standards Rulemaking on Numeric Criteria for Total Dissolved Gas in the Snake and Columbia Rivers*

Dear Ms. Braley:

The Nez Perce Tribe (Tribe) appreciated the opportunity to consult with the Washington State Department of Ecology (Ecology) on July 23, 2019, on Ecology's rulemaking of Chapter 173-201A WAC, Water Quality Standards relative to Total Dissolved Gas (TDG) criteria in the Snake and Columbia rivers, and appreciates the opportunity to submit comments on Ecology's proposed rule. The Tribe is among those who have requested a modification to Ecology's water quality criteria to provide for voluntary spill of up to 125% TDG. The Tribe is supportive of the proposed rule, so long as the following refinements are incorporated.

Three refinements are necessary to increase precision and avoid confusion. First, the Tribe requests Ecology to revise WAC 173-201A-200 (1)(f)(ii)(B)(I) as shown:

In addition to complying with the requirements of this chapter, the tailrace maximum TDG criteria applied at dams operated by the U.S. Army Corps of Engineers must be in accordance with legally ~~valid~~ **operative** Endangered Species Act consultation documents on Columbia River system operations, including operations for fish passage.

This revision accurately describes the interface of Ecology's water quality authority and criteria to the distinct federal ESA consultation process. This revision also ensures consistency with a valuable element of the consideration in the 2019-2021 Spill Operation Agreement that provides that "No Party"—including Washington, Oregon, and the Nez Perce Tribe —“makes any

concessions regarding . . . the legal validity . . . of any biological opinion NOAA issues on the Columbia River System.” In its entirety, this provision of the 2019-2021 Spill Operation Agreement, X.B states:

Nothing in this Agreement alters or modifies the Parties’ rights (including any claims or defenses) in *NWF et al v. NMFS* or any other forum, and no Party makes any concessions regarding the legal validity, scientific validity, or economic cost/benefit of the spill operations contemplated in this Agreement, the Columbia River System Operations Environmental Impact Statement, or any biological opinion NOAA Fisheries issues on the Columbia River System.

Second, condition WAC 173-201A-200 (1)(f)(ii)(B)(III) should be qualified in a way that exempts Gas Bubble Trauma (GBT) incidence levels resulting from uncontrolled (involuntary) spill conditions, including recovery time after voluntary spill conditions are restored. The following language should be added as a third sub-bullet “* *Gas bubble trauma levels occurring during and seven (7) days post uncontrolled spill conditions (>125% TDG) excluded.*” This language is also used in the Draft Rule Implementation Plan (Document 19-10-024) page 8, and Preliminary Regulatory Analyses (Document 19-10-031) page 8, fourth bullet, and should be revised accordingly.

Third, TDG criterion should target average TDG that meet but not exceed the standard based on the average of the 12 highest hourly TDG measures in a calendar day. The proposed new “2 hour” method for calculating TDG criteria is overly restrictive for implementation of the 2019-2021 Spill Operation Agreement (it would diminish the predicted benefits of 125% flex spill operation); is inconsistent with historical methods; and further diverges from Oregon’s criterion.

In addition to the specific modifications above, the Tribe suggests the following be considered:

- Add definition for the clause “*relative to atmospheric pressure*” associated with calculation of TDG values on page 6 of the Amendatory Section document and in the Draft EIS CR102 pages 6, 17, and 18. As written, several interpretations are possible relative to site specific elevation and/or standardization for barometric pressure.
- Clarify statements describing potential increases of salmon (146,000) and steelhead (117,000), resulting from a 125% TDG mainstem Snake and Columbia river operation, within the Preliminary Regulatory Analysis (19-10-031) pages xi, 16, and 23.
 - Consider describing fish response as a range of possible percent change/improvements. Application of the 2018 CSS report data would indicate Snake Basin population abundance may improve by 86 % to 108%, under a

125% TDG operation. Alternatively, use the same language used in the Draft EIS (Document 19-10-022) on pages 7, 22, 26, and 50 (*"The CSS model predicts [up to] a two to 2.5-fold increase in Snake River spring Chinook salmon (Oncorhynchus tshawytscha) abundance above 2014 FCRPS BiOp spill levels when spill is increased to 125% TDG 24 hours per day/seven days a week in the spring, and smaller projected increase at 120% TDG 24 hours per day."*)

- If actual Chinook abundance, described as an 146,000 fish increase, and steelhead abundance, described as 117,000 fish returning (lacks "increase" language) are retained then it would be helpful to describe baseline assumptions for both Chinook and steelhead abundance and add "increase" to steelhead language on pages xi and 23.
- The content of footnotes 3 and 4 in the Preliminary Regulatory Analysis (Document 19-10-031) should be switched.
- Change "120" to "125" in the Preliminary Regulatory Analysis (Document 19-10-031) page 9, first bullet: *"Allow USACE dams to operate spills based on the Flexible Spill Agreement and any future operating agreements that may require spill up to 120 percent."*
- The Preliminary Regulatory Analysis (Document 19-10-031) Cost Analysis (Section 3.2), pages 13 and 14, should be expanded to include full 24 hour 125% TDG operation and not constrained to the Flexible Spill Agreement operation.
- Change description of fall Chinook salmon spawning on page 27 of the Draft EIS (Document (19-10-022) from *"Chinook salmon are not known to spawn in the area encompassing the lower eight federal dams on the Snake and Columbia rivers but are known to spawn in the Hanford reach of the Columbia River, above the mouth of the Snake River."* to *"Fall Chinook salmon predominately spawn in the Columbia River, above the mouth of the Snake River, and in the Snake and Clearwater rivers above the Lower Granite reservoir. A few redds have been observed in tailrace areas of the Snake River projects."*

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The Tribe looks forward to the incorporation of these refinements in the rule. Please contact Jay Hesse in the Tribe's Department of Fisheries Resources Management at 208-621-3552 if you have any questions.

Sincerely,



for Mr. Shannon F. Wheeler
Chairman