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**From:** Chad McCrea <[chadm@SpokaneTribe.com](mailto:chadm@SpokaneTribe.com)>  
**Sent:** Monday, February 14, 2022 2:55 PM  
**To:** Watson, Laura (ECY) <[lawa461@ECY.WA.GOV](mailto:lawa461@ECY.WA.GOV)>  
**Cc:** Bartlett, Heather (ECY) <[heba461@ECY.WA.GOV](mailto:heba461@ECY.WA.GOV)>; [millie.piazz@ecy.wa.gov](mailto:millie.piazz@ecy.wa.gov); Keltz, Colleen (ECY) <[ckel461@ECY.WA.GOV](mailto:ckel461@ECY.WA.GOV)>; Ted Knight <[ted@tcklaw.com](mailto:ted@tcklaw.com)>  
**Subject:** STOI DNR Letter on 401 Cert

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Dear Director Watson,

It is our understanding that the Department of Ecology will be finalizing their 401 Certification for the Chief Joseph Dam and Grand Coulee Dam NPDES permits in the coming weeks. Attached are a letter and document the Tribe submitted in 2019 regarding these facilities and their impact on the water quality of the Upper Columbia River caused by the federal government's failure to manage these facilities with anadromous fish passage infrastructure.

The Tribe encourages you to utilize the broad authority the 401 Certification process gives the State to require the federal government to commit to timely implementation of salmon, steelhead and lamprey passage at these facilities. This is not only incredibly important to the Tribal nations that live and reside behind these dams, but also to the non-Indian populations that suffer the negative impacts of these facilities and have been burdened with living without these iconic species returning their communities for 80 plus years while the rest of the Northwest benefits from the inexpensive hydropower these facilities produce. This is an environmental justice issue that must be addressed.

If you have any questions, please feel free to contact me at 509-626-4420. Additionally, within the State government, I recommend reaching out to Guy Norman, Chair, Northwest Power and Conservation Council and/or Michael Garrity, WDFW to learn more about this issue and Washington State's involvement with it thus far.

*Chad M. McCrea  
Natural Resources Director  
Spokane Tribe of Indians  
509.626.4420 (Office)  
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# Spokane Tribal Natural Resources

P.O. Box 480 • Wellpinit, WA 99040 • (509) 626 - 4400 • fax 258 - 9600

January 24, 2019

Maia Bellon, Director  
WA State Department of Ecology  
P.O. Box 47600  
Olympia, WA 98504-47600

## **RE: State 401 Certification for Grand Coulee Dam NPDES Permit No. WA0026867**

Dear Director Bellon,

It is my understanding that the State of Washington is currently conducting its 401-certification review on NPDES permits for several federal dams on the Columbia River, including Grand Coulee Dam. Given the Spokane Tribe of Indians ("Tribe") substantial interests in the Region the Tribe's Department of Natural Resources ("Department") provides you with the following comments and suggestions for Ecology to consider. These comments are specific to the Grand Coulee Dam 401 certification.

The Spokane Tribe along with other Tribes, WDFW and several federal agencies have conducted habitat studies and other necessary literature reviews and work to consider the feasibility of salmon and steelhead reestablishment above Grand Coulee Dam. This effort includes considering the reestablishment of salmon and steelhead to all of the waters that fall within the jurisdiction of the Spokane Tribe, including portions of the Spokane and Columbia Rivers that historically supported anadromous fish species. In the fall of this year, the Tribe's governing body concluded that after review of all of the relevant information developed and gathered on reestablishment, it is in the Tribe's best interest to authorize the Tribe's Department of Natural Resources to conduct salmon and steelhead reintroduction into the Tribe's waters.<sup>1</sup>

Accordingly, the Department encourages the State to require conditions in the Bureau of Reclamation's ("BOR") 401 Certification for Grand Coulee Dam's NPDES permit that ensure BOR is required to support this effort and abstain from any activities that can undermine or hinder the regionally supported goal of reestablishing salmon and steelhead into the habitats above Grand Coulee Dam.

Although, the metes and bounds of the State's 401 Certification authority may not be 100% clear, what is clear is that it goes far beyond simple limitations and requirements related to the discharge associated with the proposed NPDES Permit. The Supreme Court stated, "Section 401(d) is most reasonably read as authorizing additional conditions and limitations on the **activity as a whole** once the threshold condition, existence of a discharge, is satisfied." *PUD No. 1 of Jefferson County v. Wash. Dept. of Ecy*, 511 U.S. 700, 712 (1994) ("emphasis added"). The Court further clarified that a state may include other requirements of state law pursuant to "Section 401 of the Clean Water Act insofar as necessary to enforce a designated use contained in a state water quality standard." *See id* at 723.

Here, the State should utilize its designated uses for the lower Spokane River in WRIA 54 as justification for additional requirements. One of the State's designated uses includes "spawning and rearing." Additionally, the States could use the requirements of RCW 77.57.030 to ensure that State's interests in ensuring the designated uses for the Lower Spokane remain achievable.

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<sup>1</sup> Spokane Tribal Business Council Resolution 2018-422 (**Attached**).



Additionally, pursuant to the Tribe's treatment as a state status under the Clean Water Act, the Tribe's water quality standards designated uses for the Tribe's portion of the Spokane and Columbia Rivers to include "salmonid migration, rearing, spawning and harvesting." The State in the spirit of the Centennial Accord can look to the Tribe's Resolution and the Tribe's designated uses for the water bodies that the State has not adopted designated uses for that are impacted by this federal activity to support additional requirements on this federal activity through its Section 401 authority.

The Department recommends the following conditions be included in the State's 401 certification for Grand Coulee Dam's NPDES permit:

**During the term of this NPDES Permit the Bureau of Reclamation shall participate in and support the Northwest Power Conservation Council's Fish and Wildlife Program's approach to mitigating for the impacts of Grand Coulee Dam, including but not limited to the reintroduction of salmon and steelhead into the Upper Columbia River and its tributaries.**

**During the term of this NPDES Permit the Bureau of Reclamation shall consider the Northwest Power Conservation Council's Fish and Wildlife Program's approach to mitigating for the impacts of Grand Coulee Dam during any and all of its planning processes including but not limited to processes conducted pursuant to NEPA.**

I thank you in advance for considering these comments and suggestions. Please let me know if you have any questions or concerns. You can contact me directly at (509) 626-4427

Sincerely,



B.J. Kieffer - Director  
Spokane Tribal Natural Resources Department

**Cc: Heather Bartlett, Water Quality Program Director, Department of Ecology**



RESOLUTION  
Spokane Tribal Resolution 2018-422

**RESOLUTION DIRECTING THE SPOKANE TRIBAL NATURAL RESOURCES DEPARTMENT TO IMPLEMENT SALMON AND STEELHEAD REINTRODUCTION TO THE SPOKANE TRIBE'S WATERS**

**WHEREAS**, the Spokane Tribal Business Council is the duly constituted governing body of the Spokane Tribe of Indians by the authority of the Constitution of the Spokane Tribe; and

**WHEREAS**, under the Constitution of the Tribe, the Spokane Tribal Business Council is charged with the duty of protecting the health, security and general welfare of the Spokane Tribe and all Reservation residents; and

**WHEREAS**, the Spokane Tribe desires to protect and enhance the Tribe's resources, including its water and fish resources for the Tribe's future use and benefit; and

**WHEREAS**, construction of Grand Coulee Dam not only flooded portions of the Tribe's land, it blocked the Tribe's primary food source, the once abundant salmon, steelhead, and lamprey that thrived and fed the Tribe and Tribes throughout the Upper Columbia River Basin; and

**WHEREAS**, construction of Grand Coulee Dam temporarily blocked over 40% of the available habitat in the Columbia River Basin for a variety of anadromous fish species; and

**WHEREAS**, the temporary loss of anadromous fish returning to this habitat has been felt most acutely in the areas above Grand Coulee Dam, this temporary loss has impacted the entire Region; and

**WHEREAS**, the wider impacts include the reduction of prey availability for the Southern Resident Killer Whales, loss of fishing opportunities for tribal and commercial fisherman throughout the Columbia River terminal fishery and losses to the ocean fishery; and

**WHEREAS**, even Tribal elders on Vancouver Island have discussed the noticeable loss of large Chinook passing through their ocean fishing areas several years after the construction of Grand Coulee Dam; and

**WHEREAS**, in an effort to enhance the Spokane Tribe's resources, the Tribe actively participates in the development of the Northwest Power and Conservation Council's ("NPCC") Fish and Wildlife Program; and

**WHEREAS**, pursuant to Northwest Power Act, the NPCC has a duty to develop a Fish and Wildlife Program ("Program") that protects, mitigates and enhances fish and wildlife that are impacted by the Federal Columbia River Power System ("FCRPS"); and

**WHEREAS**, Grand Coulee Dam is recognized by the Region as the lynchpin of the FCRPS; and

**WHEREAS**, among other mitigation efforts the Tribe consistently sought to ensure that the NPCC included provisions in the Program that require the Region to study and if feasible implement anadromous reintroduction upstream of Grand Coulee Dam; and

**WHEREAS**, in addition to salmon reintroduction and passage, the Tribe focused on including provisions that could lead to greater mitigation efforts upstream of Grand Coulee Dam, and a recognition of the substantial unmitigated fish and wildlife impacts that have occurred and continue to occur upstream of Grand Coulee Dam; and

**WHEREAS**, the Tribe and others in the Region successfully included within the Intermountain Subbasin Plan, which is statutorily part of the Program, an overall goal of reintroducing anadromous fish into blocked areas where feasible, and the specific development of reintroduction feasibility studies for Chief Joseph Dam by 2006 and Grand Coulee Dam by 2015; and

**WHEREAS**, the Bonneville Power Administration ("BPA") the entity that is statutorily required to finance the mitigation measures included in the Fish and Wildlife Program with electricity ratepayer funds has consistently failed to provide such funding for the anadromous reintroduction measures outlined in the Intermountain Subbasin Plan; and

**WHEREAS**, the Bureau of Reclamation (BOR), the entity that owns and operates Grand Coulee Dam, has directed the vast majority of mitigation funding to regions downstream of the dam, with very few funds being distributed to the area directly impacted by their dam; and

**WHEREAS**, on January 26, 2012 the Spokane Tribal Business Council met with the Tribe's Department of Natural Resources Director and staff along with the Tribe's attorneys and directed them to pursue anadromous fish reintroduction back to the Tribe's waters by advocating for that objective in all current and future processes in the Region that could further the objective; and

**WHEREAS**, the Tribe along with the other Columbia Basin Tribes successfully advocated for the inclusion of anadromous fish passage provisions in the December 2013 Regional Recommendation on the future of the Columbia River Treaty; and

**WHEREAS**, during the development of the 2014 Fish and Wildlife Program the Tribe along with others advocated for amendments to the Program that would highlight and prioritize anadromous reintroduction above Chief Joseph and Grand Coulee Dams; and

**WHEREAS**, the Northwest Power and Conservation Council adopted the 2014 Fish and Wildlife Program that included measures that outlined a phased approach to the reintroduction of anadromous fish above Chief Joseph and Grand Coulee Dams; and

**WHEREAS**, when compared to prior Fish and Wildlife Programs, the 2014 Fish and Wildlife Program contains provisions that could lead to the full implementation of the Northwest Power Acts mitigation, protection and enhancement mandates that thus far were missing or not fully appreciated in any previous Programs; and

**WHEREAS**, due to these changes in the Program the Tribe was compelled to come to the Northwest Power and Conservation Council's defense and intervened in case brought by NRIC in 2014 challenging the Program (*NRIC v. NPCC, et al.*, Ninth Circuit Court of Appeals, 15-71482).

**WHEREAS**, NRIC's challenge to the 2014 Fish and Wildlife Program failed and the Court's 2017 opinion called out the inclusion of the anadromous fish reintroduction measures above Grand Coulee Dam as one indicator that the NPCC had met its statutory requirements in developing the 2014 Fish and Wildlife Program; and

**WHEREAS**, Phase 1 of the Program's measure for reintroduction was to be completed by the end of 2016; and

**WHEREAS**, due to BPA's failure to appropriately or timely fund the initial components of Phase 1 led to the delay of significant portions of that work; and

**WHEREAS**, after the unnecessary delays caused by BPA, significant components of Phase 1 are now complete; and

**WHEREAS**, the Tribe has regulatory jurisdiction over the waters within its Reservation which include portions of Chamokane Creek and the Spokane and Columbia Rivers, along with numerous smaller tributaries; and

**WHEREAS**, the Tribe retains ownership of the beds and banks of the Tribe's water bodies including the original beds and banks of the Spokane and Columbia Rivers where they serve as boundaries of the Tribe's Reservation; and

**WHEREAS**, the Tribe has the responsibility to ensure that it exercises its sovereign authority over its land and waters in a manner that protects and enhances these resources for the current and future generations of the Tribe and the Region; and

**WHEREAS**, the Tribe has reviewed and considered the studies and information gathered during Phase 1 of the Program's measure and information developed in other forums and processes;<sup>1</sup> and

**WHEREAS**, based on the review and advice of the Tribe's Department of Natural Resources staff, reintroduction of anadromous fish will pose little to no significant risk to our current resources; and

**WHEREAS**, in review of the information developed the Tribe has determined that anadromous reintroduction above Chief Joseph Dam and Grand Coulee Dam is feasible and may require no changes to the those facilities; and

**WHEREAS**, even though operators of those facilities may currently choose to operate and manage them without proper mitigation or anadromous passage facilities, the Tribe recognizes that it can begin reintroducing anadromous fish to its waters now and develop additional plans to expand these activities immediately; and

**WHEREAS**, beyond the overarching goal of returning anadromous fish to the Tribe to begin to heal the injuries to the Tribe, its culture and its resources wrought by the construction and operation of Grand Coulee Dam, the Tribe determines that managing its resources to include anadromous reintroduction will provide needed habitat for anadromous fish which can assist alleviating current density dependence issues throughout the Columbia River watershed and can provide consistent cold water habitat into the foreseeable future for anadromous fish facing the pressures of global warming; and

**NOW, THEREFORE, BE IT HEREBY RESOLVED**, that the Tribe’s Department of Natural Resources is granted permission to reintroduce anadromous fish to the Tribe’s waters and manage the Tribe’s resources to facilitate the successful reintroduction of anadromous fish to the Tribe’s waters;

**AND BE IT FURTHER RESOLVED**, that this Resolution grants permission to allow the release of juvenile anadromous fish in the Tribe’s waters for scientific, educational, and ceremonial purposes, the release of adult anadromous fish into the Tribe’s waters for scientific, educational, and ceremonial purposes, and specifically allows for the use of redband trout, that currently exhibit smoltification, for scientific and educational purposes to support the reestablishment of steelhead above Grand Coulee Dam, this is by no means a complete list of actions and serves only to provide examples of the activities permitted pursuant to this Resolution;

**AND BE IT FINALLY RESOVLED**, that Tribe’s Department of Natural Resources with the support of the Tribe’s attorneys is directed to continue to actively participate in all regional processes that may further support the Tribe’s objective of anadromous fish reintroduction back to the Tribe’s waters.

**Certification**

The foregoing was duly enacted by the Spokane Tribal Business Council on the 12<sup>th</sup> day of September, 2018, by the vote of 5 for, 0 against, 0 abstain, and 0 absent under authority contained in Article VIII of the Constitution of the Spokane Indians ratified by the Spokane Tribe on November 22, 1980.

**Carol Evans, Chairwoman  
Spokane Tribal Business Council**

	YES	NO	Abstain	Absent
CE	X			
GA	X			
TP	X			
DK	X			
GF	X			

**Habitat Assessments:**

Bussanich, R, L. Bellingham, and G. Kehm. 2017. Tributary Assessment of Potential Sockeye, Chinook, and Steelhead Spawning Habitat in the Upper Columbia River, Canada, for Prioritizing Salmon Reintroduction. Prepared by Okanagan Nation Alliance Fisheries Department, Westbank, BC. 63pp; plus Appendices.

Giorgi, C. and A. Kain. 2018. Lake Roosevelt Sockeye Salmon Rearing Capacity. Spokane Tribal Fisheries, Wellpinit, WA. March 2018.

Giorgi, C. 2018. Identification of Potential Habitats for Blocked Area Reintroduction. Prepared for: Bureau of Reclamation, Agreement No. R16AP00169. June 2018.

Golder Associates. 2016. Chinook Salmon Spawning Habitat Availability in the Lower Columbia River. Report No. 1538622-001-R-Rev0. Prepared for Canadian Columbia River Inter-Tribal Fisheries Commission, Cranbrook, BC. April 2016.

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- Golder Associates. 2017. Chinook Salmon Spawning Habitat Availability in the Lower Columbia River, Year 2. Report No. 1659612-001-R-Rev0. Prepared for Canadian Columbia River Inter-Tribal Fisheries Commission, Cranbrook, BC. March 2017.
- Hanrahan, T. P., Dauble, D. D., and D. R. Geist. 2004. An estimate of chinook salmon (*Oncorhynchus tshawytscha*) spawning habitat and redd capacity upstream of a migration barrier in the upper Columbia River. Canadian Journal of Fisheries and Aquatic Science. 61: 23-33.
- ICF. 2017. Anadromous Reintroduction Potential for the Sanpoil River and Select Upper Columbia Tributaries on the Colville Reservation using the Ecosystem Diagnosis and Treatment model. September. ICF 00392.17 Seattle, WA. Prepared for Confederated Tribes of the Colville Reservation, Spokane, WA.
- ICF. 2018. Anadromous Reintroduction Potential for the Spokane River and Select Lake Roosevelt Tributaries Using the Ecosystem Diagnosis and Treatment Model. Final version. April. ICF 00281.17 Seattle, WA. Prepared for Spokane Tribe of Indians, Wellpinit, WA.
- Welsh, S. 2016. Untitled. Internal analysis and presentation on salmon habitat upstream of Chief Joseph Dam. Bonneville Power Administration, Portland, OR. April 2016.

**Risk and Donor Stock Assessments:**

- Hardiman, J.M., Breyta, R.B., Haskell, C.A., Ostberg, C.O., Hatten, J.R., and Connolly, P.J., 2017, Risk assessment for the reintroduction of anadromous salmonids upstream of Chief Joseph and Grand Coulee Dams, northeastern Washington: U.S. Geological Survey Open-File Report 2017-1113, 87 p., <https://doi.org/10.3133/ofr20171113>.
- Warnock, W.G., Stroud, D.H.P, and J.E. Merz. 2016. Donor stock selection of Chinook Salmon for reintroduction to the Transboundary Reach of the Columbia River. Report prepared for the Canadian Columbia River Inter-Tribal Fisheries Commission. 153 pp.

**Fish Passage:**

- NPCC (Northwest Power and Conservation Council). 2016. Staff Paper: Review of Fish Passage Technologies at High-Head Dams. Document No. 2016-14. Northwest Power and Conservation Council, Portland, OR. December 2016.
- USACE (U.S. Army Corps of Engineers). 2002. Chief Joseph Dam Preliminary Investigation of Fish Passage Alternatives. U.S. Army Corps of Engineers, Seattle District, Hydraulic Engineering Section. September 2002.

**Miscellaneous:**

- Flores, L., Mojica, J., Fletcher, A., Casey, P., Christin, Z., Armistead, C., Batker, D. 2017. The Value of Natural Capital in the Columbia River Basin: A Comprehensive Analysis. Earth Economics, Tacoma, WA. Prepared for Upper Columbia United Tribes (UCUT), Columbia River Inter-Tribal Fish Commission (CRITFC), Pacific Rivers, WaterWatch of Oregon, Save our Wild Salmon.