



Quinault Indian Nation

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September 20, 2022

Colonel Alexander L. Bullock
Seattle District Commander
U.S. Army Corps of Engineers
4735 East Marginal Way South
Seattle WA 98124

By email and U.S. mail

RE: Quinault Indian Nation's Treaty Rights Objection to Permit Issuance Related to the Proposed Chehalis River Basin Flood Damage Reduction Project, Application for Department of the Army Permit, NWS-2014-1118

Dear Colonel Bullock:

On behalf of the Quinault Indian Nation (Quinault), I write in follow-up to our government-to-government consultation on August 24, 2022. As we explained during our consultation, Quinault objects to issuance of any permits by the U.S. Army Corps of Engineers for the proposed Chehalis River dam due to unmitigatable impacts to our Treaty-reserved fishing, hunting and gathering rights.

Thank you for confirming the Corps' commitment to ensuring it will not violate Quinault's Treaty rights by issuing a permit for the proposed Chehalis dam, regardless of what location may ultimately be selected by the project proponent. I take this opportunity to elaborate on our position that issuance of any Corps permit will unequivocally violate our federally-guaranteed Treaty rights.

As a reminder, Quinault ancestors signed the Treaty of Olympia (1856), by which we reserved the right to fish in our usual and accustomed fishing areas (U&A), and to hunt and gather on all open and unclaimed lands. Our U&A includes the entire Chehalis Basin, which encompasses the proposed location of the Chehalis River dam and both of the potential realignment sites. *United States v. Washington*, 384 F. Supp. 312 (W.D. Wash. 1974), *aff'd* 520 F.2d 676 (9th Cir. 1975), *cert. denied*, 423 U.S. 1086 (1976).

As Judge Boldt confirmed in this seminal Treaty fishing rights case, Quinault people have fished, hunted and gathered throughout the Chehalis Basin since time immemorial, including at the site of the proposed dam locations. Further, each and every enrolled Quinault member and all future generations of enrolled Quinault members have the right to fish, hunt and gather in this location now and in perpetuity.

Impacts to our Treaty-reserved rights from the proposed Chehalis dam are three-fold. First, Treaty fishers, hunters and gatherers will lose precious access to the area proposed for the dam and will be prohibited from exercising their federally-guaranteed Treaty rights in the area of the dam if it is built. Second, the dam will eliminate and impair substantial habitat and ecosystem functions for many species of fish and wildlife upon which we rely to exercise our Treaty rights. Third, as acknowledged in the Draft Environmental Impact Statement (DEIS) prepared for the Corps under the National Environmental Policy Act (NEPA), spring Chinook fish runs will extirpated if the dam is built, resulting in a taking of our Treaty-reserved property right in those fish.

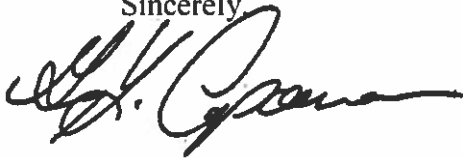
Through the Quinault comment letter dated November, 16, 2020 regarding the DEIS for the proposed Chehalis dam, our comments to the State of Washington for the DEIS under the State Environmental Policy Act (incorporated by reference into the NEPA DEIS comments), and all supporting documentation, we demonstrated the gross underestimates of impacts to fish and wildlife and the habitat and ecosystems supporting them that will result from the proposed dam. We also demonstrated the pervasive and significant cascade of effects to ecosystem processes that support habitat-forming processes integral to the availability of fish that Quinault relies on to exercise its treaty-protect fishing rights. The fish and wildlife, and the habitat and ecosystems in the Chehalis River system that support them, are Treaty-protected resources. As we demonstrated in our DEIS comment letters, the proposed Chehalis dam would have substantial direct, indirect and cumulative impacts to Treaty fish and wildlife species, and habitats, that cannot be mitigated.

We appreciate your understanding and acknowledgement that our Treaty rights are the Supreme Law of the Land. We expect you and your staff to apply this heightened legal standard as you consider the Treaty right impacts from the proposed dam.

We request and expect ongoing, meaningful consultation to occur about impacts to our Treaty-reserved rights as your analysis continues under the many federal laws applicable to the proposed Chehalis dam project. In particular, we look forward to your articulation of the legal standard by which the Corps will assess impacts to habitat and species loss, issues we raised through our comments on the NEPA DEIS for the proposed Chehalis dam and reiterate here. We anticipate submitting declarations from Quinault members to elaborate on impacts to the exercise of Treaty rights for your further consideration. In order to be responsive to the Corps' request that we provide "substantial evidence" of Treaty effects from the proposed dam, it is imperative that we clearly understand the lens through which the Corps will be considering impacts on access, habitat and fish and wildlife species as soon as possible. We expect to receive a written response from the Corps outlining the standards and process to be used.

Thank you for your ongoing commitment to protecting Quinault's Treaty-reserved fishing, hunting and gathering rights.

Sincerely,

A handwritten signature in black ink, appearing to read 'Guy Capoeman', written in a cursive style.

Guy Capoeman, President
Quinault Indian Nation

cc: Lori Morris, Seattle District Tribal Liaison
Craig Juckniess, Counsel, Seattle District
Stacy Kassover, Counsel, Seattle District
Sue Leong, Counsel, Seattle District
Chiara McGowan, Counsel, Seattle District
Evan Carnes, Section Chief, Seattle District
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