



L.I.G.H.T. FOUNDATION

Elmer City, WA 99124

joaquin@pnwlf.org

contact: (509) 429-3117

Leadership  Indigenous  Guardian  Honor  Teach 

Attn: Angela Zeigenfuse
WA State Department of Ecology (Ecology)
P.O. Box 47600
Olympia, WA 98504

Attn: Douglas Marconi, Jr.
Confederated Tribes of the Colville Reservation (CTCR)
Environmental Trust Department
P.O. Box 150
Nespelem, WA 99155

Sent via email to azei461@ecy.wa.gov & douglas.marconi@colvilletribes.com

RE: Comments on 401 Certifications for Chief Joseph Dam and Grand Coulee Dam

Dear Ecology and CTCR Clean Water Action Section 401 Certifying Entities:

The L.I.G.H.T. Foundation is an independent, Indigenous-led, conservation 501(c)(3) nonprofit organization established on the Colville Indian Reservation in the traditional territory of the Nespelem Tribe. We support the restoration and cultivation of native plant species of Pacific Northwest Tribes and the culturally respectful conservation of habitats and ecosystems which are climate resilient and adaptive.

Indigenous peoples and the ecosystems we have stewarded for time immemorial have been adversely impacted by the construction and operations of Grand Coulee Dam (GCD) by the U.S. Bureau of Reclamation (USBR) and the Chief Joseph Dam (CJD) by the U.S. Army Corps of Engineers (ACOE). The National Pollutant Discharge Elimination System (NPDES) permits for CJD (Permit #WA0026891) and GCD (Permit #WA0026867), and subsequent certification under Section 401 of the Clean Water Act (CWA) provide us with an opportunity via public comment to address the negative impacts these structures have had on the water quality, habitat, species, socio-economic and cultural heritage of Pacific Northwest Tribes and First Nations within the Columbia River watershed.

We recognize that 401 certification processes may address all the impacts of both CJD and GCD on applicable water quality standards and fisheries resources.¹ Keeping this position in mind, we respectfully ask that you consider these comments and recommendations.

¹ *U.S. Army Corps of Engineers v. Dept. of Ecology*, Summary Judgement Order, PCHB No. 20-043c, pp. 17-19 (Nov. 3, 2021) (holding that the scope of Ecology's 401 certification authority applied to all water quality impacts of federal dams on the Columbia and Lower Snake Rivers, not just impacts stemming from the discharges authorized by NPDES permits). See also *S.D. Warren & Co. v. Maine Bd. Of Env'tl Protection*, 547 U.S. 370, 375 (2006)

The CJD and GCD structures are specifically responsible for prohibiting salmon runs into the Upper Columbia River (UCR) and starving upstream Tribal and First Nations communities of our inherent sovereign and human right to access salmon. Furthermore, these structures contribute to the consistent deterioration of riverine and tributary habitat which imbalances the nutrient cycle and food web of species throughout the Pacific Northwest. Lastly, the lack of fish passage at CJD and GCD on the Columbia River is in direct opposition to the designated use of fish migration by the State and the classification of these waters by the CTCR.² We recommend that the CTCR and Ecology exercise their CWA Section 401 authority to address the grave ecological impacts these structures continue to have on the access to and availability of traditional foods and medicines of Indigenous Peoples, including native plant and pollinator habitats, salmon, steelhead, Pacific lamprey, sturgeon, and Southern Resident orcas. There exist several measures which CTCR and Ecology can take to address these issues:

1. **Gathering and Pollinator Habitat:** The cultural and environmental services loss of ancestral gathering and cultivation grounds for native plant traditional foods and medicines and associated pollinator habitats as a result of the construction of CJD and GCD has never been adequately addressed by the USBR or ACOE.³ We recommend that a condition of 401 certification be the development of a collaborative strategy and implementation plan to specifically restore pollinator and traditional foods and medicine plants into the aquatic and riparian waterways, facility landscaping, and disturbance areas of structural components (transmission lines, irrigation pumps, canals, ditches, and all connecting transportation roads) into all CJD and GCD infrastructure, in a manner consistent with good faith and Tribal sovereignty. This strategy and plan will need to be time-sensitive and time-bound with the goal of identifying all possible structural and operation improvements to ensure that 1) non-genetically modified and neonic-free pollinator and traditional foods and medicine plant species be prioritized for restoration and planting; and, 2) Tribal and First Nations of the “Columbia Plateau” culture region have unrestricted and protected access to gathering grounds throughout the Columbia Basin Project Area (CBPA) (including GCD and CJD facilities) and along the aquatic and riparian waterways of the UCR to reinvigorate and perpetuate subsistence, ceremonial, and cultural heritage practices adversely impacted by the CJD and GCD.
2. **Fish Passage:** A condition of 401 certification be the development of a collaborative strategy and implementation plan to reintroduce migratory passage of resident and native fish species, (including salmonids, lamprey, and sturgeon), beyond CJD and GCD, into the UCR in a manner consistent with good faith and Tribal sovereignty. The strategy and plan will need to be time-sensitive and time-bound with the goal of identifying all possible structural and operational improvements to meet reintroduction and migration standards. Between 1989-2015, Ecology completed at least seven other 401 certifications for hydroelectric dams conditioning/requiring fish passage operations and/or improvements.⁴ Those certifications should provide guidance

(upholding a 401 certification for a hydroelectric dam that included a condition requiring “passage for various migratory fish and eels”).

² [WAC 173-201 A-600](#); [WAC 173-201 A-602](#); [CTC 4-8-6\(a\)](#); [CTC 4-8-6\(b\)](#).

³ Ortolano, L. (Ed) and Cushing, K.K. [Grand Coulee Dam and Columbia Basin Project USA, Final Report](#) (2020). World Commission on Dams Case Studies. Cape Town, South Africa. See also: Appendix O “Environmental Justice” and Appendix P “Tribal Perspectives” in [Columbia River Systems Operation, Final Environmental Impact Statement](#) (2020).

⁴ Additional 401 certifications for hydroelectric dams: [Calligan Creek](#) requiring “SNOPUD install volitional passage for resident fish” (2015); [Henry M. Jackson](#) requiring volitional fish passage for salmon and steelhead (2010);

and insight to both Ecology and CTCR in navigating and developing this process for CJD and GCD moving forward.

3. TMDL: We recommend that the certifications for CJD and GCD include a condition that these structures be required to meet the Temperature Total Maximum Daily Load (TMDL) load allocations in the Columbia and Lower Snake Rivers and comply with a TMDL implementation plan mutually developed between Ecology and CTCR. Additionally, CJD and GCD should be required to meet future TMDL implementation plans and that the Environmental Protection Agency provide a clause in the final NPDES permit to incorporate the TMDL implementation plan.
4. TMDL: We recommend that the certifications require the development and implementation of a water quality attainment plan (WQAP) pursuant to CTCR's applicable laws under [Title 4 Natural Resources and the Environment](#)⁵ and Ecology's WAC 173-201 A-510(5) Compliance Schedule for Dams detailing how: a) management and operations will be climate adaptive as environmental conditions become more extreme and, b) identifying all potential ways in which temperature standards may be met now and into the future. The WQAP scope should be provided to CTCR and Ecology for review one year after the certification's effective date and the final WQAP should be provided to Ecology for approval within two years of the certification's effective date. In the event the WQAP is not implemented within five years of approval, then the certification should be revoked.
5. TDG: We recommend that operations at GCD and CJD not cause or contribute to exceedances of the applicable total dissolved gas (TDG) water quality criteria or any short-term modification under Tribal or State law. Possible exceptions may be during involuntary spill events and spill events to enhance fish passage. During those event exceptions, GCD and/or CJD must sample a statistically meaningful number of juvenile salmonid migrants for gas bubble trauma and report to CTCR and Ecology on the TDG levels and any observed associated trauma or fish mortalities resulting within one week.
6. TDG: We recommend that the certifications require CJD and GCD to maintain compliance with Tribal and State TDG water quality criteria during voluntary (spring and summer) fish-spill seasons.
7. Flow: The CTCR submitted a petition to Ecology in 2019 seeking to initiate a general stream adjudication to determine the Tribes' reserved and aboriginal water rights to protect over allocation of flows to other water users.⁶ The State has planned for Ecology to conduct pre-adjudication work between 2021-2022 and to file a court action commencing part of the Tribes' adjudication request in 2023.⁷ As climate change continues to shift precipitation regimes in the Columbia River watershed, the presence and volume of surface flows will continue to be exacerbated by the consecutive and substantial system of hydroelectric structures on the River, including CJD and GCD. We recommend that CTCR and Ecology require USBR and ACOE to further incorporate into the WQAP (see #3 above) the investigation of strategies to: a) improve

[Youngs Creek](#) requiring provisions for "downstream passage of resident fish" (2009); [McNary Northshore Fishway](#) conditions and restrictions on the construction of a fishway at McNary Dam (1989); and [Wells](#) (2012), [Rocky Reach](#) (2006), and [Priest Rapids/Wanapum dams](#) (2007) requiring dams to operate and, where necessary, improve fish passage facilities.

⁵ Including, but not limited to: CTC 4-3 Land Use and Development; CTC 4-9 Hydraulics Project Permitting; CTC 4-10 Water Resources Use and Permitting; CTC 4-13 Solid Waste; CTC 4-15 Shoreline Management; and CTC 4-16 Hazardous Substance Control.

⁶ See [Water Rights — Colville Tribes](#).

⁷ See [Focus on: Potential Adjudication in Lake Roosevelt and Middle Tributaries \(wa.gov\)](#).

flow conditions for beneficial salmonid migration, spawning, and rearing success; b) better protect Tribal and First Nation's ceremonial and religious water use and access; and, c) better patrol and protect cultural resource and environmental heritage sites that are exposed to degradation and exploitation during the drawdown of the Rufus Woods and Lake Roosevelt Reservoirs. Beginning around 1996, Ecology began routinely incorporating flow conditions into hydroelectric dam 401 certifications.⁸ Those certifications should provide guidance and insight to both Ecology and CTCR in navigating and developing this process for CJD and GCD moving forward.

8. Monitoring: We recommend that CTCR and Ecology include conditions that require USBR and ACOE to provide funding to the State and Tribal governments to complete routine monitoring and evaluation of water quality parameters impacted by the presence and operation of the federal dams. Standard monitoring should include, at the very least, a sufficient documentation of baseline environmental conditions, compliance with the conditions of the 401 certifications, and progress towards meeting water quality standards in both Rufus Woods and Lake Roosevelt Reservoirs.
9. Monitoring: We recommend that USBR and ACOE conduct quarterly monitoring of polychlorinated biphenyls (PCBs) and PFAS presence/discharges from the dams on a quarterly basis. This information is critical to understanding the PCB and PFAS loading that is caused by CJD and GCD, for identifying numerical criteria for these structures at their significant geographic locations on the Columbia River's mainstem, and for identifying pollutant impacts to ceremonial and religious use of the Columbia.⁹ If so determined, a PCB and/or PFAS Management Plan may be required to submit to CTCR and Ecology.
10. Existing and Designated Use Studies: We recommend that within one year of certification issuance, GCD and CJD shall submit to CTCR and Ecology a final study report describing: a) existing and designated beneficial uses impacted by the dams; b) historic impacts of the project on the existing and designated beneficial uses; and c) anticipated future impacts (in particular climate change) on the existing and designated beneficial uses. The report should examine uses that do not currently exist and uses that would be available without the project impacts, i.e. an environmental justice and food system analysis specifically identifying the cultural and ecosystem losses of native plant gathering and cultivation grounds throughout the CBPA, GCD, and CJD structure and operations.
11. General Conditions: We recommend that CTCR and Ecology include certification conditions which state that: a) conditions are subject to change based upon new Tribal, State, or Federal laws that reflect better understanding of how to protect designated beneficial uses; and, b) a reopener provision to provide flexibility in the event the permitting entity needs to review the certifications based on new information to meet water quality standards, TMDLs, and other applicable requirements of Tribal or State law.
12. Other Discharges: We recommend that CTCR and Ecology include certification conditions to ensure that heat, oil, grease, ammonia, suspended solids, cooling water, and other discharges comply with Tribal and State water quality standards, protect designated uses, and comply with the CTCR and Ecology's antidegradation policies. Ecology's 401 certification for the federal dams on the Lower Snake and Lower Columbia Rivers were recently upheld by the Washington


⁸ Additional 401 certifications for hydroelectric dams requiring flow protections/improvements: [Trinity](#) (2003), [Sullivan Creek](#) (1998), [Snoqualmie Falls](#) (2003), and [Newhalem Creek](#) (1996).

⁹ See also [WAC 173-201 A-510\(5\)](#); [Method 1668C](#) (2010); and [EPA PFAS Testing Strategy](#) (2021).

State Pollution Control Hearings Board and should provide guidance and insight to both Ecology and CTCR in navigating and developing this process for CJD and GCD moving forward.¹⁰

Thank you for this opportunity to review and provide comment on this important certification process under your respective CWA Section 401 authorities. The L.I.G.H.T. Foundation is committed to working with all our partners and allies to ensure that the Pacific Northwest remains resilient and strong in the face of climate change.

Sincerely,



Joaquin J. Marchand
Executive Director

¹⁰ See [POLLUTION CONTROL HEARINGS BOARD \(columbiariverkeeper.org\)](http://columbiariverkeeper.org).