



**Region 10 Tribal Consortium
P.O. Box 689
Spokane, WA 99210**

July 6, 2020

Kathy Hurd
Oceans, Wetlands, and Communities Division, Office of Water
(4504-T)
Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

SUBMITTED VIA REGULATIONS.GOV

RE: EPA-HQ-OW-2020-0008; FRL-10008-96-OW

Dear Ms. Hurd:

This letter is submitted on behalf of Tribal Caucus of the EPA Region 10 Tribal Operation Committee (“RTOC”) on EPA-HQ-OW-2020-0008 (“Request for Comment on Whether EPA’s Approval of a Clean Water Act Section 404 Program Is Non-Discretionary for Purposes of Endangered Species Act Section 7 Consultation”). This letter is not sent on behalf of EPA or any EPA official.

The RTOC does not offer any substances comment in support or against EPA’s proposal. However, the RTOC would reiterate a request made at our in-person meeting that EPA conduct government-to-government consultation with Tribes regarding this proposal. EPA policies mandate consultation with Tribes on these types of proposals.

EPA’s 2011 Policy on Consultation and Coordination with Indian Tribes states:

Consultation should occur early enough to allow tribes the opportunity to provide meaningful input that can be considered prior to EPA deciding whether, how, or when to act on the matter under consideration. As proposals and options are developed, consultation and coordination should be continued, to ensure that the overall range of options and decisions is shared and deliberated by all concerned parties, including additions or amendments that occur later in the process.

Consultation did not occur to ensure that there are no significant concerns. Given the intersection of ESA-listed salmon and steelhead and treaty rights in Region 10, consultation is essential. This is reflected in the EPA Policy on Consultation and Coordination with Indian Tribes: Guidance for Discussing Tribal Treaty Rights, which states, “Certain types of EPA actions, namely those that are focused on a specific geographic area, are more likely than others to have potential implications for treaty-protected natural resources. ... If a

treaty reserves to tribes a right to fish in the water body, then EPA should consult with tribes on treaty rights, since protecting fish may involve protection of water quality in the watershed.”

We urge EPA to be sensitive to the needs of Tribes by delaying any action on this proposal to allow time for consultation.

We appreciate your consideration of this comment.

Sincerely,

A handwritten signature in black ink that reads "Raymond Paddock III". The signature is written in a cursive, slightly slanted style.

Raymond Paddock
RTOC Co-Chair