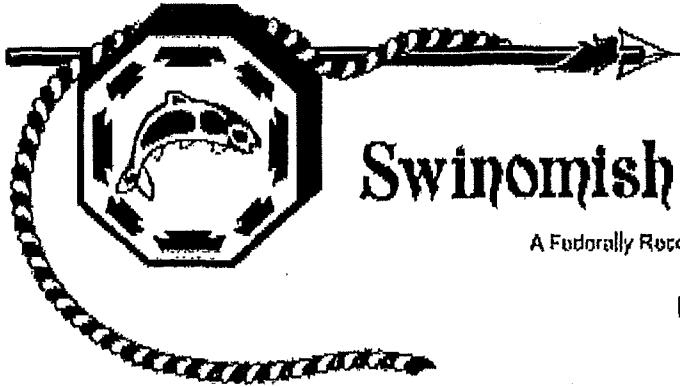


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Swinomish Indian Tribal Community

A Federally Recognized Indian Tribe Organized Pursuant to 25 U.S.C. § 476

11404 Moorage Way

LaConner, Washington 9825

May 9, 2012

Colonel Bruce Estok
P.O. Box 3755
4735 East Marginal Way South
Seattle, Washington 98124-2255

Dear Colonel Estok: *Bruce,*

The purpose of this letter is to provide tribal input in response to the briefing meeting that was held on April 25, 2012, regarding the Skagit General Investigation Study. Thank you very much for having your staff present the relevant information to my staff. I know this has been a long and difficult process, and recognize the challenges in developing an alternative that serves to meet both flood reduction needs while preventing damage to tribal resources. Your staff requested that we identify any "fatal flaws" in the alternatives developed to date or in the analyses to be conducted. At this time, we have insufficient information to make an informed decision regarding a preferred alternative and as we have stated in the past, we are very concerned that there is neither the time nor the funding necessary to conduct the studies we believe are required pursuant to the National Environmental Policy Act ("NEPA"). We are concerned that although we have been involved in this process since 1993, it is only now, after an expenditure of millions of dollars, that the necessary environmental studies are being identified. It is unclear to us how studies associated with impacts to fish, fish habitat and consequences of climate change, can be accomplished in the next few years and with the limited budget that your staff has identified. In the past, when inadequate resources were available to undertake studies, assumptions mutually agreeable to the Tribe, federal agencies and the Corps of Engineers ("Corps") were identified to expedite environmental review. It is unclear to us how the Corps intends to fill in these gaps at this point in time.

Having stated this overarching concern, the Swinomish Indian Tribal Community (the "Tribe") would like to identify the following concerns that may constitute "fatal flaws":

1. Changing Hydrology associated with Climate Change: If you will recall when we met in December, Alan Hamlet from the University of Washington's Climate Impact

Group provided hydrological information generated for the Skagit River basin that showed a significant increase in the frequency and magnitude of flood events. Comments made at last week's meeting indicated a significant amount of uncertainty as to how, or if, the Corps would address this issue. It appears to us that benefit/cost calculations and implications to salmon resources will be greatly affected if these predictions are realized. We believe that the project conditions must include, and NEPA requires, an analysis of changing hydrology and that evaluations of alternatives must incorporate these predictions. **September 2011 Response to HQUSACE Comments to the 2009 FSM Document** states "Hydrology and hydraulics are not expected to significantly change for the Skagit River under future conditions. It was assumed that the existing and future flood plains would be the same." This is completely inconsistent with current Skagit River data compiled by the University of Washington.

HQUSACE Review Comments on Skagit River Flood Risk Management General Investigation Study, September 2011 Submittal From Seattle District for the Feasibility Scoping Meeting (FSM) Read Ahead Packet , 23 November 2011 states:

- a. Without Project Conditions Report (Comment 1.c.). The H&H setting in the Future Without Project (FWOP) condition and the Environmental FWOP need to be reconciled. HQ anticipates this will occur when the updated H&H FWOP report is completed. The August 2009 version of the H&H FWOP states that climate change has not been modeled or incorporated, whereas the Environmental FWOP (Attachment 2a, Section IV) identifies the potential for changes in precipitation patterns and streamflow regimes. Currently this has two differing statements about the future H&H setting in the basin. The team should ensure that the H&H setting for this project is coordinated and consistent through the documentation and during the study and plan formulation. HQ requests that the team be prepared to qualitatively summarize projected impacts of regional climate change on the climatological and H&H setting of the project.

It is unclear to us how these studies will be scoped and whether the existing budget is adequate to address this issue. Could you please let us know how you intend to reconcile these two opposing Corps opinions, and how and when the appropriate studies will be scoped.

2. Baker River Dam Operations: Minimum and maximum flow releases from the Baker Project in section 106 are hard license constraints which will require reopening the license if the Corps chooses to pursue alternatives beyond those detailed in Section 106. The Federal Energy Regulatory Commission ("FERC") confirmed that in PSE Aquatic Resource Group ("ARG") discussions of 107c, imminent flood events. Based on statements made at the meeting it appears the Corps may analyze flood control measures that would violate the hard constraints in Section 106. We were therefore quite concerned to learn that the Corps intends to do analyses that would evaluate measures beyond those identified in the license. First, given the limited remaining resources to do the environmental studies necessary to evaluate alternatives not in conflict with existing legally binding agreements, we believe this expenditure of resources will only exacerbate funding and timing constraints. Second, by undertaking these studies that might be outside the scope of the license, even if the Corps chooses not to go forward within the GI, this information can be used by local governments to advocate for implementation of these measures outside of the GI process. This seems like an inappropriate and perhaps unauthorized use of limited funds provided by Congress. The flow regime in 106 was a complex analysis that took more than a year to complete and is integral to the Settlement Agreement, ESA analysis, and 401 Water Quality Certification.
3. Discussions during the Baker River relicensing process established that existing flood control would be carried forward to the new license and any changes to flood control would be analyzed as part of the GI study. It appears GI study personnel have incorrectly assumed that early drawdown levels in 106 Table 2 were studied and agreed to in the relicense process as future flood control. Table 2 is a proposal that requires analysis in the GI, not an agreed to measure. Chuck Ebel, the Corps' biologist during the Baker relicense, confirmed during the April 25, 2012, meeting that was his understanding of the relicense process. We are not opposed to studies evaluating early drawdown, and if there are no consequences to fisheries resources, we will not be opposed. However, we are concerned that if there are impacts, the Corps may choose to ignore license provisions and move forward with early drawdown. This drawdown could have significant consequences on the productive capacity of Baker Lake for sockeye salmon. The same concern with productive capacity also applies to Lake Shannon for 107b. It is also uncertain that the early drawdowns, as hard constraints along with operational buffers, can be achieved under the flow release constraints in Article 106. That analysis will need to be completed as part of the GI. Please let me know if we are not understanding this part of the process correctly.
4. The Federal Emergency Management Agency ("FEMA") biological opinion developed by the National Oceanic and Atmospheric Administration ("NOAA") - Fisheries places significant restrictions on development activities in floodplains.

- To our knowledge, there has not been any analysis regarding how these alternatives will alter growth patterns along the Skagit River and how the project will be consistent with the reasonable and prudent alternatives developed in the Biop.
5. There are two bypass alternatives. Since the Avon bypass was first identified in 1997, we have raised the issue regarding whether new water rights would be necessary to divert water through the bypass, particularly on a year round basis. In 2001, an instream flow rule has been established in the Skagit. Have there been any discussions with the Washington Department of Ecology ("DOE") regarding whether water rights would need to be secured? We are not aware of any scoping documents that address habitat consequences associated with the reduction of instream flows associated with the bypas, and there have been some hard constraints incorporated in the Skagit Rule.
 6. For a number of years, a Fir Island bypass has been identified not only as a significant opportunity to reduce flooding, but also as a way to provide major habitat benefits to listed salmon species. Yet we see only one alternative that incorporates the cross island connector. It was our expectation that the preferred alternatives would include a suite of measures that would be cumulative. For example, the widening of the three bridge corridor in conjunction with the cross island connector may result in significant flood reduction benefits. Changes in dam operations consistent with the Federal Energy Regulatory Commission ("FERC") license coupled with the cross island connector may also have major benefits. However, these "mixing and matching" of elements does not seem to be part of the approach that the Corps will take. Having a cross island connector coupled only with extensive levee setbacks seems to us to set up a situation where this cross island connector has little likelihood of being built. We believe that this element should be coupled with other flood reduction elements. Having only one alternative evaluated at the 35% design level insures that a full evaluation of environmental benefits and costs of alternatives will not be possible.
 7. The Corps has been unable to categorically state that levee setback will include removal of existing levee structures. The statement was made at the meeting that it may be cost effective to remove the portion of the levee above water, but not the toe of existing levees. We believe that this approach is misguided. Most of the environmental benefits of levee setback comes from reducing constraints within the river. If portions of existing levees remain in place, for as long as these portions remain, there will be little increased habitat gains. We believe the Corps should state unequivocally that if levee setback is chosen as an alternative, all existing portions of levees will be removed. Levee setbacks are included as only one alternative with the only option being a setback of the entire levee system.

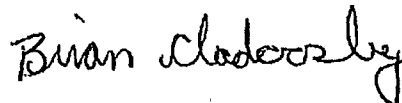
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We are surprised that strategic setbacks of portions of the levee system coupled with other measures is not part of the analysis.

As we have stated to you and your predecessor, Colonel Wright, we are very concerned that the Corps' ambitious schedule to complete this project and the limited allocation of funding over the years dedicated to evaluate environmental consequences will result in shortcuts being taken with regard to the analysis of Treaty-reserved fisheries resources. Now that we are at what appears to be the final stages of the study, we are continuing to request that the time and expense necessary to insure the protection of fisheries resources be expended. While we hope this will not be the case, there is no doubt that some in the Skagit community will blame us for delaying a final decision by insisting that the appropriate studies be conducted despite the fact that we have been making these requests since 1963 (see attached letter) and more frequently in 1993 with little effect. We have consistently stated that we will not endorse nor oppose any alternative until adequate environmental review is completed.

We hope this letter will point out some of the concerns we have with the alternatives that were presented to us. I look forward to your response.

Sincerely,



Brian Cladoosby, Chairman

Enclosure

cc: Commissioner Ken Dahlstedt
Congressman Rick Larsen
Senator Patty Murray
Senator Maria Cantwell

