



Confederated Tribes and Bands  
of the Yakama Nation

Established by the  
Treaty of June 9, 1855

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Washington Department of Fish and Wildlife  
Regulatory Services Section  
C/O Bob Zeigler, SEPA/NEPA Coordinator  
600 Capitol Way North,  
Olympia, WA 98501-1091

August 29, 2011

RE: SEPA Log Number: 11 -070

The Confederated Tribes and Bands of the Yakama Nation is a federally recognized Indian tribe under the Treaty of June 9, 1855 (12 Stat. 951). Under Article III of the Treaty, the Yakama Nation reserved rights to fish at all usual and accustomed places, together with the privilege of hunting and gathering roots and berries, both within and outside of its reservation,.

Please find attached correspondence to me from my staff. I concur with the findings of the report for fish and wildlife protection. As you may know, substantial funding is being invested in the Yakima River Basin, to allow it to once again support a viable salmonid and resident fish population.

The attached staff correspondence has brought attention to an on-going issue of inadequate consultation with regards to treaty reserved rights. While regulatory authority rests with the State of Washington, the State, as a co-manager with the Yakama Nation has a responsibility to adequately consult with the Yakama Nation and its staff to insure treaty reserved resources are adequately protected, and that all protection provisions are acceptable to the Yakama Nation.

Please contact my staff regarding your response to any of the mitigation measures noted in the attached memo. John Marvin can be reached at 509-966-7406.

Sincerely,

Phil Rigdon  
Deputy Director of Natural Resources  
Yakama Nation

CC Yakama Nation Office of Legal Council  
File

Post Office Box 151, Fort Road, Toppenish, WA 98948 (509) 865-5121

## MEMORANDUM

TO: Phil Rigdon, Deputy Director, DNR  
THROUGH: Scott Nicolai, Yakima Subbasin Habitat Coordinator, YKFP  
FROM: John Marvin, Habitat Biologist, YKFP  
DATE: Monday, August 29, 2011  
RE: Nichols Teanaway River streambank stabilization  
(SEPA Log Number: 11 -070)

The Washington Department of Fish and Wildlife (WDFW) is accepting comments on State Environmental Policy Act (SEPA) review for a proposed project on the Teanaway River to abate severe bank erosion by constructing a new channel, including a floodplain “bench” and re-vegetation. The applicant proposes to stabilize the shoreline on the subject property by removing unpermitted shoreline work and stabilizing the existing shoreline with a combination of hard and soft stabilization measures. The proposal is located at 1291 Quail Drive, Cle Elum, WA 98922 Washington, Kittitas County; Sections 13 and 24, Township 0 North, Range 16 East WM.

### **Staff Involvement**

Yakama Nation Fisheries staff were present at a meeting on July 8<sup>th</sup>, 2010 with the landowner, Natural Resources Conservation Service (NRCS), US Fish and Wildlife Service (USFWS), Washington Department of Ecology (WDOE) and Washington Department of Fish and Wildlife (WDFW). At the meeting, draft plans were reviewed and verbal comments submitted. The initial proposal was over-engineered, lacked sufficient habitat elements and deemed unacceptable by tribal staff. Tribal staff requested that a reach-wide geomorphic analysis be conducted to insure that the appropriate “fix” could be determined. The geomorphic analysis was submitted to NRCS in May of 2011. At the meeting, tribal staff were assured they would be included in project development. Yakama Nation staff did not receive any updates or draft proposals until the WDFW Area Habitat Biologist forwarded the final application materials on August 8<sup>th</sup>, 2011. Over the past year, the project has evolved substantially through pre-permit consultation with WDFW and Endangered Species Act consultation with USFWS and NMFS. While the current proposal initially appears to be the best option to date to improve aquatic habitat, it is very disappointing that Yakama Nation Fisheries staff were excluded from project development considering co-management status with WDFW and federal consultation requirements to insure treaty reserved resources are adequately protected, and that all protection provisions are acceptable to the Yakama Nation.

### **Project Description**

On January 5-6, 2009, the area north of the Teanaway River received a rain-on-snow event, causing the river to rise rapidly, with a 10-year flood event occurring on January 6-8, 2009 that caused significant erosion on the subject property. The flood eroded away approximately 200 feet of bank width for approximately 750 feet in length. The existing shoreline is currently steeply sloped and susceptible to continued erosion even during

minor high flows. The NRCS is working with the applicant to provide technical assistance, engineering design and funding through NRCS's Environmental Quality Incentive Program (EQIP).

The lower Teanaway is heavily manipulated for agricultural and residential uses, and often lacks sufficient riparian vegetation to protect against erosion, such as on the subject property. A review of aerial and topographic data indicates that the channel is unnaturally pinned against the western valley wall, and naturally wants to utilize its entire floodplain, but is constantly pushed back to its manipulated state. The on-site agricultural operations occurred almost to the bank, so the significance of the erosion event should be no surprise. During the January 2009 event, the landowner attempted to abate the situation by depositing an unknown, but significant amount of rock in the channel, building channel control structures and dredging an "emergency" channel that resulted in a significant pile of material in the middle of the floodway. It is doubtful that any of the "emergency" in-channel work ever received a permit, in violation of numerous state and federal laws, until now.

### **Recommendations**

Considering the short time frame to review the project materials, the following recommendations are:

1. Engage the State of Washington and the US Government to insure that any future permitting that has the potential to affect treaty reserved rights are adequately consulted with the Yakama Nation, and its staff.
2. No additional fill should be brought on-site, and all excess material should be taken off-site, including the pile of channel material within the floodway. The "spreading" of excess material across the floodplain is unacceptable considering the ongoing aggradation issue in this reach.
3. The minimum amount of fill should be used in creating the new channel and the overflow bench.
4. The maximum amount of bio-engineering should be incorporated into the final design.
5. As mitigation for the current proposal, and past violations, a minimum one-site-potential-tree-height (100 feet) of riparian restoration for the entire length of the project site should be required

c: Office of Legal Counsel  
file