Centennial Accord Environment & Natural Resources

Work Session

Lucky Eagle Event Center

October 30, 2023 (10:15AM-12:15PM)

## Opening Remarks

**Tribal Lead:** HonorableDustin Klatush, Chair**,** Chehalis Tribes

**State Lead:** Rob Duff, Executive Director of Policy and Outreach, Governor’s Office

## Progress Report on 2022: Centennial Accord Environment & Natural Resources and Other Emerging Issues

**Tribal Lead:** Justin Parker, Executive Director, Northwest Indian Fisheries Commission

## Recreational Impacts to Tribal Natural and Cultural Resources

**Issue:**

After years of advocacy and reiterating the need for urgent action from the State to address tribal concerns related to recreational impacts on tribal treaty rights, we are encouraged to say these conversations have begun. This past legislative session Governor Inslee included funding in the budget for State Public Lands Commissioner for DNR, WDFW and State Parks, to meet with tribes regarding their recreational concerns. As part of those discussions, it has been requested by tribes that the Recreation & Conservation Office join those meetings as they play a key role in overseeing the development and funding of recreation in the State. Meetings began this summer, and meetings are now occurring biweekly and are being facilitated by the Whitener Group.

While state agencies have been provided with the funds necessary for them to participate in these conversations, tribes need capacity building resources as well. To that end, there will be a legislative request this year for tribes that wish to participate in these discussions to have funding to build capacity. Getting these meetings started was an achievement, but there is a lot of work ahead to make sure that these conversations are productive and meaningful, resulting in improved recreation management of state lands and measurable improvements on the landscape and natural and cultural resources and sites.

**Requests:**

The tribes appreciate that WDFW and DNR have begun processes to better plan for recreation and are beginning to develop a more coordinated approach to its various statewide recreational strategies. We further respectfully request the following:

* **Funding Request:** tribes have identified a capacity issue that at times limits their engagement in this process, especially long term. The state agencies, with tribal support, submitted a proposal to federal government for America the Beautiful initiative. We are requesting that this tribal-interagency workgroup seek a legislative request this year for funding to be made available to federally recognized tribes that intend to participate in these discussions. This funding would directly support tribal capacity and tribal engagement in the Governor’s process.
* **A pause on any “new recreation planning and development”:** tribes, again, reiterate a pause on creation of additional areas of recreation, and a pause on new planning and development plans related to recreation in order to allow for integration of results from the GOIA tribal/interagency process.
* **Enforcement capacity:** increase funding for additional FTEs for greater enforcement presences on state managed lands, including state managed aquatic lands.
* **Commitment and investment into a coordinated approach:** tribes request that no other agency develop recreation/outdoor recreation plan(s) outside of the GOIA-led interagency workgroup.
  + It is the tribes’ understanding that this workgroup’s purpose is to develop principles and tools – both policy and technical – that will guide all state agencies regarding managing and addressing recreation and recreational impacts.
  + Further, if other agencies are pursuing their own plans simultaneously to also engage in the GOIA-led process. Otherwise, the GOIA process then becomes questionable and at risk of not achieving its intended purpose and goals which have been identified as:

Tribes and state agencies working together to co-develop recreation management tools and an adaptive management framework that effectively coordinates cooperative stewardship of natural and cultural resources and preserves protected tribal rights on state lands.

**Tribal Leads:** Honorable Rosemary LaClair, Chair, Nooksack Tribe and Honorable Lisa Wilson, Council Member, Lummi Nation

**State Leads:** Jon Snyder, Senior Policy Advisor for Outdoor Recreation & Economic Development, Governor’s Office and JT Austin, Deputy Director, GOIA

## Recreational Shellfish Management and Enforcement

**Issue:**

Tribal and State natural resource agencies have on-going and growing conflicts over the protection, management and catch reporting of shellfish resources. Funding levels for the management activities associated with this resource have not kept pace with the State of Washington’s population growth and its associated impacts on species or their habitats. For example, the nominal increase WDFW requested for shellfish monitoring in the 21-23 State Budget was not addressed until the 23-25 Omnibus Operating Budget. This funding lag for natural resource management is not new but detrimental to the adequate protection and the sustainable management of these shared resources.

The tribes welcome the additional WDFW funding for the purpose of increasing harvest monitoring, addressing emerging environmental issues, maintain management structure, and developing a disease and pest management program. However, the challenges presented by each of these identified components surpass the capacity of the additional 1.3 FTEs that were ultimately funded. The tribes believe additional funding is warranted and respectively request that future funding focus on increasing on-the-water enforcement presence for the all-citizens recreational fisheries, as well as updating the catch reporting and shellfish assessment methods.

**Request:**

We ask that the Governor evaluate the use of his executive powers and other actions to advance a funding initiative to improve the resource assessment, harvest management and enforcement programs associated with the shellfish resources. The action taken in the 23-25 Omnibus Operating Budget recognizes the need, but additional funding support is required to adequately address the issue. For example, increased shellfish management funding is needed for additional FTEs for greater on-the-water enforcement presence and increased program investment to improve methodologies for catch accounting and resource assessment. Consideration could also be given for further tribal state co-manager collaboration on legislation and other actions regarding this issue.

**Tribal Lead:** Andrew Gobin, Interim Natural Resources Director, Tulalip Tribes

**State Leads:** Ruth Musgrave, Senior Policy Advisor for Natural Resources, Governor’s Office and Nate Pamplin, Director of External Affairs, Washington Department of Fish & Wildlife

## Stormwater and 6PPD

**Issue:**

Toxic stormwater runoff is a serious and ongoing threat to treaty-reserved resources and the practice of treaty rights, endangering salmon and its habitat and human health. Managing both the amount and quality of stormwater runoff is a key component to ensuring healthy streams, lakes, rivers and Puget Sound. Without proper treatment, any pollution on roads and paved surfaces, from pesticides, to tire wear, to toxic metals, washes right into local water whenever it rains.

The Department of Ecology has a stormwater permitting program that covers the state’s most populated areas, industrial and construction sites. The work required by Ecology’s permit program, along with the research and infrastructure that state, local governments, and tribes help fund, means that cleaner water is now running off our streets into local rivers and streams.

Washington began a stormwater permitting program for highly urbanized areas in the mid-1990s and only in 2007 were most urban areas first covered. That means much of the state’s development happened before the permits and best practices were put in place. As Ecology updates the municipal stormwater permits, the State is requiring local governments to do more to retrofit areas without stormwater treatment and respond to new threats.

One of the most dangerous chemicals in stormwater runoff is 6PPD-quinone (6PPD-Q). 6PPD-Q continues to be an urgent threat to our salmon. 6PPD-Q is produced when ground-level ozone reacts with 6PPD, a chemical commonly used in tires to prevent damage to tire rubber. 6PPD is used in the manufacture of tires and enters the environment as tires break down. 6PPD is transformed into 6PPD-Q through exposure to ozone. 6PPD-Q is the second most toxic chemical to aquatic species ever evaluated by the Environmental Protection Agency. It is acutely toxic to coho, rainbow trout, steelhead and other aquatic organisms.  6PPD-Q has been shown to be lethal to adult coho salmon within hours of exposure.

Current research shows that existing best management practices, such as bioretention, are effective at removing 6PPD and other toxic chemicals from runoff. The State is currently supporting research to further refine these measures. Ecology is also collaborating with tribal governments, federal and local agencies, and others to identify vulnerable streams receiving untreated stormwater runoff, which will help local governments and the Washington State Department of Transportation know where to invest. In the 23-25 biennial budget, the State invested nearly $12 million for research and analysis of the impacts of 6PPD-Q and other priority chemicals on orca and salmon, a safer alternatives assessment for 6PPD-Q, and research into best practices for filtering 6PPD-Q out of contaminated stormwater.

At the same time, the chemical companies are looking for less harmful alternatives to 6PPD in tires. The State is building partnerships with research organizations; federal, state, local and tribal governments; tire manufacturers; and other interested parties to identify, research and test possible substitutes for 6PPD. The State has also begun the regulatory process to remove 6PPD from products once a safer alternative is identified.

**Requests:**

Governor Inslee is committed to taking a proactive approach on the difficult issue of tire dust and has begun the regulatory process to remove 6PPD from products once a safer alternative is identified. Until a replacement is found, stormwater management is the most effective measure for preventing 6PPD-Q from entering the aquatic environment. Tribes are identifying locations where 6PPD-Q enters the environment to collect and analyze stormwater samples and for the eventual installation of BMP's to prevent 6PPD-Q from entering the aquatic environment.

The tribes respectfully request the Governor:

* Use his bully pulpit to raise state and national awareness of the seriousness of the 6PPD problem, urge chemical and tire manufactures to find an alternative to 6PPD, and call on EPA to ban the use of 6PPD as soon as possible.
* Direct state agencies to accelerate the installation of BMP's to prevent 6PPD from entering the aquatic environment and to work with the tribes to identify locations for BMP installation, until an alternative is found.

**Tribal Lead:** Honorable Willie Frank III, Chair, Nisqually Tribe

**State Leads:** Laura Watson, Director, Department of Ecology and Carrie Sessions, Senior Policy Advisor for Environment & Water, Governor’s Office

## Wetland Protection under the Clean Water Act (May 2023 US Supreme Court ruling in Sackett v. Environmental Protection Agency)

**Issue:**

Wetlands cover about 2% of Washington’s total land area. They help absorb the impacts of floods, provide erosion control, filter and clean stormwater runoff, and recharge underground sources of drinking water. Until May 2023, most of these waters were considered “waters of the United States” and received federal protection under the federal Clean Water Act. However, the recent U.S. Supreme Court ruling in Sackett v. Environmental Protection Agency significantly weakened federal protections for many of these areas. It’s estimated that 50% of Washington wetlands and 14% of streams no longer have federal oversight due to the decision. The good news is state law still protects wetlands and streams in Washington.

Before the federal decision, developers typically used the U.S. Army Corps of Engineers streamlined Nationwide Permit program to authorize small impacts to state waters and specific activities such as residential development and road maintenance. To protect state water quality since the federal Supreme Court decision, Ecology is using administrative orders to review and authorize proposals that impact state waters without federal protection. While this system provides needed environmental protections, issuing individual state administrative orders is less efficient and transparent than a traditional permitting program. However, it is currently the only mechanism allowing some development projects to legally move forward.

To fill the gap left by the Sackett decision and build an efficient and streamlined permit pathway to review and authorize projects in waters of the state not federally protected, Ecology has proposed agency request legislation to establish a new permit program to better protect wetlands. A dredge and fill permit program for state waters would provide greater transparency and predictability for the regulated community. It can also provide a streamlined pathway for authorizing specific types of actions or projects under certain thresholds. Ecology’s proposed agency request legislation is currently pending review and approval from the Governor’s Office and Office of Financial Management.

**Request:**

We respectfully request the Governor’s office work with the tribes to support state legislation that will resolve the problems created by the Sackett v. Environmental Protection Agency decision that will improve wetland regulations that will eventually lead to measurable improvements in water quality for our salmon and our environment.

**Tribal Lead:** Honorable Kathryn Brigham, Chair, Confederated Tribes of the Umatilla Indian Reservation

**State Leads:** Laura Watson, Director of Department of Ecology and Carrie Sessions, Senior Policy Advisor for Environment and Water, Governor’s Office

## Tribal Natural Resource Round Table

**Issue:**

To the extent time allows, this agenda itemwill be used by tribes to discuss additional natural resources issues that are not covered by the agenda.

**Tribal Moderator:** HonorableKris Peters, Chair, Squaxin Island Tribe

## Closing Remarks

**Tribal Lead:** HonorableW. Ron Allen, Chair, Jamestown S’Klallam Tribe

**State Lead:** Rob Duff, Executive Director of Policy and Outreach, Governor’s Office