

Klickitat Hatchery Transfer – (Briefing)

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Fish and Wildlife Commission Presentation Summary Sheet

Meeting date:

3/17/2023

Agenda item:

Transfer of Klickitat Hatchery Property to Yakama Nation – Initial briefing and discussion of next steps

Presenter(s):

Mike Livingston, WDFW Reg 3 Director & Trevor Hutton, WDFW Region 3 Fish Program Manager

Phil Rigdon, Yakama Nation Natural Resources Superintendent & Bill Sharp, Yakima-Klickitat Fisheries Project (YKFP) Klickitat River Coordinator

Background summary:

In the early 2000's, the Yakama Nation requested WDFW transfer the hatchery facility and parcel to the Yakama Nation, resulting in a June 2003 transfer MOU. In 2005, WDFW began leasing the facility to the Yakama Nation and entered into a Memorandum of Agreement (MOA) relating to the joint operation of the facility. Mitchell Act funding related to Klickitat River production was also transferred to the Yakama Nation. Since that time, approximately \$3.2 million in important upgrades to the facility have been completed by the Yakama Nation. The Yakama Nation is currently seeking to upgrade the facility and has obtained funding commitments from BPA on the order of ~\$25M to develop new infrastructure for the hatchery and water source.

On October 18, 2022, Superintendent of Yakama Nation Department of Natural Resources Philip Rigdon wrote a letter to WDFW stating the tribe's desire to complete the transfer as contemplated in the 2003 transfer MOU.

See attached briefing memo for further details on the proposal.

Staff recommendation:

Subsequent to this briefing, staff recommend proceeding with SEPA review and an opportunity for public comment on the proposal at a subsequent Commission meeting.

Policy issue(s) and expected outcome:

WDFW and Yakama Nation co-manage resources in the Klickitat River through the existing Yakima-Klickitat Fisheries Project agreement. Staff believe the transfer will facilitate more efficient

management of the facility by tribal co-managers, including the tribe's ability to better utilize federal funding for improvements to the facility and fishery management in the Klickitat River Basin.

Fiscal impacts of agency implementation:

WDFW will no longer have an ownership interest in the facility, reducing associated asset management tasks and contracting tasks.

Public involvement process used and what you learned:

Public involvement is forthcoming, as discussed in the proposed next steps, below.

Action requested and/or proposed next steps:

Staff will initiate SEPA review and provide an opportunity for public comment. At the conclusion of those processes, staff will update the Commission on feedback received, invite additional public comment, and request a formal decision on the transfer at a subsequent meeting, if warranted.

Draft motion language:

None proposed at this time.

Post decision communications plan:

No decision sought at this time.

Form revised 1-20-21

**STATE OF WASHINGTON
DEPARTMENT OF FISH AND WILDLIFE
WILDLIFE PROGRAM – LANDS DIVISION
FISH PROGRAM – HATCHERY DIVISION**

MEMORANDUM

RE: Klickitat Hatchery – Property and Facility - Proposed Transfer to Yakama Nation

Introduction/summary

At its March 17 Fish and Wildlife Commission meeting, Washington Department of Fish and Wildlife and Yakama Nation staff will brief the Commission on the proposed transfer of the Klickitat Hatchery property and facility to the Yakama Nation, as formally requested by the Yakama Nation by letter dated October 22, 2022 (enclosed). Following an opportunity for public comment at a subsequent Commission meeting, staff will make a recommendation regarding the transfer at a future Commission meeting.

Setting and Property Information

The Klickitat Hatchery is located approximately seven miles east of Glenwood, Washington, near river mile 42 of the Klickitat River. The facility is located adjacent to the river at the base of a steep gorge with several nearby springs used to supply the primary water source for the facility.

The property is located within the area described as “Tract D,” which federal courts recently confirmed as within the Yakama Nation reservation.

The hatchery is situated on a 166.99-acre parcel, roughly a quarter of which is covered by hatchery facilities and infrastructure. Originally constructed in the early 1950s, the facility complex includes a main hatchery building, several residences, sheds and other outbuildings, as well as 22 hatchery raceways and several associated rearing/holding ponds, circular tanks, and a pollution abatement pond.

Water is supplied to the main hatchery primarily from Indian Ford Springs located to the north of the facility. Other water sources include Wonder Springs to the east and a water source from the Klickitat River mainstem. Indian Ford Springs provides water for domestic uses and it is discharged to onsite septic.

The state of Washington acquired the 166.99 acre property on April 14, 1948, by warranty deed from J. Neils Lumber Company for the sum of approximately \$300. The state also holds an easement and right-of-way from J. Neils Lumber Company for road and utility access. Both the warranty deed and easement are transferrable.

Background of Hatchery Development and Operations

The Klickitat Hatchery was constructed and operated by WDFW using federal funds as part of the Klickitat River Salmon Rehabilitation Program, which was a program of the Columbia River Fishery Development Program, established by Congress through the Mitchell Act (16 U.S.C. § 755-57).

Beginning in the early 1950s, Klickitat Hatchery was operated to produce native stocks of spring Chinook along with introduced stocks of fall Chinook, coho, and steelhead to meet the Mitchell Act purpose of

Columbia River fishery resources conservation. In recent years, operations at Klickitat Hatchery also contribute to *US v Oregon* production commitments for spring and fall Chinook, steelhead, and coho.

As early as 1982, the Northwest Power and Conservation Council encouraged BPA to fund a hatchery facility in the Klickitat Basin for the Yakama Nation and recommended the creation of a master plan to guide the Yakima/Klickitat Fisheries Project (YKFP) and construct necessary infrastructure at the existing Klickitat Hatchery. In 1994, WDFW and the Yakama Nation entered into the Yakima/Klickitat Fisheries Project Memorandum of Understanding (MOU), which describes co-management and shared goals of WDFW and the Yakama Nation related to the Yakima and Klickitat River basins. The MOU established Yakama Nation as the lead agency responsible for managing Yakima/Klickitat Fisheries Project operations and pursuing project funding.

In the early 2000's, the Yakama Nation requested WDFW transfer the hatchery facility and parcel to the Yakama Nation, resulting in a June 2003 transfer MOU. Owing to other YKFP successes, WDFW was receptive to this idea, as management of the remote facility posed practical and budgetary challenges related to the need for significant upgrades and the Yakama Nation could bring additional federal funding through the BPA to the facility.

In 2005, WDFW began leasing the facility to the Yakama Nation and entered into a Memorandum of Agreement (MOA) relating to the joint operation of the facility. Mitchell Act funding related to Klickitat River production was also transferred to the Yakama Nation. Since that time, approximately \$3.2 million in important upgrades to the facility have been completed by the Yakama Nation.

On October 18, 2022, Superintendent of Yakama Nation Department of Natural Resources Philip Rigdon wrote a letter to WDFW stating the tribe's desire to complete the transfer as contemplated in the 2003 transfer MOU.

Current management / lease agreements

Currently, the Yakama Nation and WDFW have finalized the third iteration of the above-referenced MOA as well as a fourth property lease agreement. Yakama Nation continues to be the primary hatchery operator, and receives Mitchell Act funds to do so. The Yakama Nation is currently seeking to upgrade the facility and has obtained funding commitments from BPA through the Fish Accord Agreement on the order of ~\$25 million to develop new infrastructure for the main hatchery and water source. This project is moving forward, with NEPA review expected to be complete in early 2023 and construction to follow in the summer. The hatchery will be managed consistent with the Klickitat Master Plan/Environmental Impact Statement developed by the Yakama Nation. The hatchery and its operations are part of the Yakima/Klickitat Fisheries Project policy group oversight, which will continue under the 1994 MOU whether the property is held by WDFW or the Yakama Nation. Yakama Nation is also a party to *US v Oregon* and, like each of the parties, is subject to *US v Oregon* production targets.

The property is primarily used for fish propagation and rearing, but is also commonly used as a river access site for fishing, rafting, and other recreational uses of the Klickitat River. Upland uses such as hunting, hiking, etc. are infrequent or not known to occur on the property. In addition to operating the facility since 2003, the Yakama Nation has taken active measures to increase public access to the Klickitat River, including developing a safer raft put-in below the weir, replacing an aging foot bridge that provides better public access to the river, enlarging a visitor parking area, and enhancing the rafting launch area.

The primary goal is to transfer the hatchery facility and property to the Yakama Nation for upgrades and permanent operation, while allowing the Yakama Nation to steward the uplands for riparian values. The proposed transfer from WDFW to the Yakama Nation will not change the use of the property in the future.

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
CONFEDERATED TRIBES AND BANDS
OF THE
YAKAMA NATION
AND THE
WASHINGTON DEPARTMENT OF FISH AND WILDLIFE

This MEMORANDUM OF UNDERSTANDING ("MOU or agreement") sets forth the responsibilities of the Confederated Tribes and Bands of the Yakama Nation ("Yakama Nation" or "party") and the Washington Department of Fish and Wildlife ("WDFW" or "party") with regard to the transfer of the Klickitat Hatchery, the Lyle Falls Fishway #5, and the Castile Falls Fishway and their operations from the State of Washington to the Yakama Nation.

RECITALS

WHEREAS, the Yakama Nation and State of Washington manage the fisheries and the fisheries resources in the Klickitat River Basin; and

WHEREAS, in 1994, the Yakama Nation and the State of Washington entered into an Memorandum of Understanding, which established their respective duties and obligations with respect to the planning, construction, and operation of the Yakima/Klickitat Fisheries Project ("YKFP") in the Yakima and Klickitat River Basins; and

WHEREAS, the 1994 Memorandum of Understanding between the parties established the Yakama Nation as the Lead Agency for the YKFP. As Lead Agency, the Yakama Nation is primarily responsible for the planning, construction, and operation of the YKFP; and

WHEREAS, the parties believe that supplementation strategies and methods developed by the YKFP for spring chinook production in the Yakima River Basin can be modified and adapted for use in the Klickitat River Basin for spring chinook and steelhead production; and

WHEREAS, the Klickitat Hatchery is located within the area commonly known as "Tract D" of Yakama Reservation; and

WHEREAS, the parties believe that the Klickitat Hatchery can be modified to support YKFP supplementation strategies and methods; and

WHEREAS, the parties believe that the Lyle Falls Facility can be improved to facilitate fish passage and to permit broodstock capture and evaluation consistent with genetic guidelines to be established for the basin; and

WHEREAS, the Castile Falls Facility can be improved to facilitate fish passage, which will open considerable areas of habitat to spring chinook and steelhead populations; and

WHEREAS, the parties desire that the Klickitat Hatchery will be managed by the YKFP for the purpose of restoring and increasing natural production and harvest opportunities of anadromous fish resources in the Klickitat River basin; and

WHEREAS, the parties desire that operations at the Klickitat Hatchery be structured in a manner that supports the development and acquisition of scientific information regarding supplementation; and

WHEREAS, the parties have worked cooperatively and productively in the Yakima and Klickitat River Basins to protect and restore fish populations and habitat; and

WHEREAS, the parties are developing Klickitat Subbasin Plans, which include natural and artificial fish production objectives and strategies; and

WHEREAS, Klickitat Basin resource management and hatchery production planning under the YKFP are directly related to larger-scale, multiple-agency efforts to continue mitigation of dam construction fisheries impacts, as well as to promote restoration and recovery of endangered, threatened and depressed salmonid fish stocks; and

WHEREAS, artificial production facility improvements funded by the Bonneville Power Administration in the Klickitat River Basin are subject to subbasin plan development, as well as master planning and NEPA compliance requirements established by the Northwest Power Planning Council; and

WHEREAS, watershed planning is also being conducted in the Klickitat River Basin under the auspices of the state of Washington through various watershed planning and salmon recovery financing laws; and

WHEREAS, fish production in the Klickitat River Basin is also governed by federal court-approved allocation and production plans developed pursuant to US v. Oregon planning; and

WHEREAS, in light of the aforementioned planning activities, the principal matters to be addressed between the Yakama Nation and WDFW in the transition of operation and management of the Klickitat Hatchery and the Lyle Falls No. 5 and Castile Falls fishways regard the extent and method of the transfer of the hatchery and fishways, and the development of plans for personnel transition for Klickitat Hatchery Employees, and initial funding of operation, maintenance and facility improvements; and

WHEREAS, the parties understand and believe that memorializing their mutual agreement as to the extent and methods for the transition of management and ownership of the hatchery and fishways will ensure cost-effective and prudent management of the Klickitat River Basin anadromous fisheries research and production through the YKFP; and,

WHEREAS, the parties commit to working cooperatively to achieve identified fish production and resource management goals in the Klickitat Basin;

NOW, THEREFORE, the Yakama Nation and the Washington Department of Fish and Wildlife understand and agree upon the following terms and conditions.

AGREEMENT OF THE PARTIES

1. PARTIES

The parties to this agreement shall be the Yakama Nation, a sovereign tribal government, and the State of Washington Department of Fish and Wildlife, an agency that the Washington State Legislature has created within the executive branch of the government of the State of Washington.

2. SCOPE AND PURPOSE

This MOU establishes the duties and obligations of the parties with regard to the extent and methods of transfer of the Klickitat Hatchery, the Lyle Falls Fishway #5, and the Castile Falls Fishway and their operation and management from the State of Washington to the Yakama Nation.

3. DURATION

The parties' duties and obligations set forth in this agreement shall commence on the last date of execution by the parties and shall continue to remain in force until all such duties and obligations have been duly discharged or this agreement has been terminated by mutual agreement.

4. KLICKITAT HATCHERY TRANSFER TO THE YAKAMA NATION

The parties understand and agree that operation and management of the Klickitat Hatchery, the Lyle Falls Fishway #5, and the Castile Falls Fishway will be transferred from the State of Washington to the Yakama Nation, and the facilities will be managed as part of the YKFP for that project's duration, upon (1) agreement of the parties as to a Personnel Transition Plan for Klickitat Hatchery Employees, and An Initial Funding Plan; and (2) implementation of a mutually agreed Real Estate Transfer Strategy. The parties intend that the transfers and implementation of the plans will be implemented on October 1, 2004.

Further, the parties understand and agree that real estate transfers contemplated in this agreement will be subject to approvals by the Washington Fish and Wildlife Commission, the Washington Attorney General, the Governor of the State of Washington, and the Chairman of the Yakama Nation Tribal Council.

5. INTENT TO NEGOTIATE A PERSONNEL TRANSITION PLAN FOR KLICKITAT HATCHERY EMPLOYEES.

The parties agree to negotiate a Personnel Transition Plan ("Personnel Plan") that addresses all WDFW employees that are employed at the Klickitat Hatchery as of the date this agreement is executed. . The Personnel Plan will identify such employees whom, upon the transfer of the facility to the Yakama Nation, will be assigned (1) in accordance with interagency personnel agreements, to positions established by the Yakama Nation at the Klickitat Hatchery, or (2) to positions established by WDFW at other WDFW job locations. The Personnel Plan will also identify, as appropriate, a timeframe for the assignment of employees to other WDFW locations. The parties agree that, unless otherwise specifically provided in the Personnel Plan, WDFW employees will be transferred from the facility within the agreed timeframe. The Personnel Plan will be an independent binding agreement duly executed by Yakama Nation and WDFW executive authorities. The parties will jointly produce the

Personnel Plan. The parties agree to use best efforts to produce the Personnel Plan by June 30, 2003.

6. INTENT TO NEGOTIATE AN INITIAL FUNDING PLAN.

The parties agree to negotiate, in good faith, an Initial Funding Plan ("Funding Plan"), which will address funding for operations at the Klickitat Hatchery, the Lyle Falls Fishway #5, and the Castile Falls Fishway for the two (2) year period immediately following execution of this agreement. The Funding Plan will be based on the expected availability of Mitchell Act (16 U.S.C. 755 to 757) and Bonneville Power Administration funds for said operations. The Funding Plan will establish a base amount of Mitchell Act funds to be allocated to said operations for the above-described period. The parties will jointly produce the Funding Plan. The parties agree to use best efforts to produce the Funding Plan by June 30, 2003.

7. INTENT TO DEVELOP A REAL ESTATE AND PERSONAL PROPERTY TRANSFER STRATEGY.

The parties agree to develop a Real Estate and Personal Property Transfer Strategy ("Transfer Strategy"), which will address the nature, extent, legal requirements and schedule for the transfer of real and personal property at Klickitat Hatchery, the Lyle Falls Fishway #5, and the Castile Falls Fishway to the Yakama Nation. The Transfer Strategy will also address the Yakama Nation's intent to transfer title to said facilities to the United States government, to be held in trust for the Yakama Nation. WDFW will take the lead in producing a Transfer Strategy, which shall be subject to Yakama Nation review and approval. The parties agree to use best efforts to produce the Transfer Strategy by June 30, 2003.

8. REPLACEMENT OF EXISTING KLICKITAT HATCHERY EMPLOYEES.

The parties agree that no WDFW employees will be hired or transferred to the Klickitat Hatchery by WDFW following the execution of this agreement. Should the Klickitat Hatchery require additional or replacement employees, the parties will cooperate in an effort to place a Yakama Nation employee in all positions to be filled.

9. TRANSFER OF LYLE FALLS AND CASTILE FALLS FISH PASSAGE FACILITIES OPERATION AND MAINTENANCE OBLIGATIONS TO THE YAKAMA NATION.

Article 4 of this agreement notwithstanding, the Yakama Nation and WDFW will cooperate in the operation, maintenance, and refurbishment of the existing Lyle Falls Fishway #5 and Castile Falls Fishways pending the complete implementation of the plans enumerated in this agreement. Cooperation may include, as appropriate, the use of Mitchell Act monies to fund Yakama Nation operation, maintenance and refurbishment activities at the fishway facilities.

10. DISPUTE RESOLUTION.

In the event that a dispute between the parties should arise during the term of this agreement, which is not resolvable by the YKFP Policy Group, either party may elect to submit the dispute to the Yakama Nation's Deputy Director of Natural Resources ("Deputy Director") and WDFW's Director, or their designees, for resolution.

In the event that the dispute is not resolved by the Deputy Director and WDFW's Director, either party may request that the dispute be submitted to mediation. The mediation shall be conducted by a mediator jointly selected by the YKFP Policy Group at such time and place as is jointly agreed. The costs of the mediation shall be shared equally. Within such time as is agreed upon by the parties, the mediator shall submit a written recommendation to the Chair of the Yakama Nation Tribal Council and the Chair of the State of Washington Fish and Wildlife Commission regarding the resolution of the dispute. Upon acceptance by the Council and Commission Chairs of the mediator's recommendation, with or without amendment, the Deputy Director and WDFW's Director shall direct the implementation of the accepted resolution.

11. MODIFICATION OF AGREEMENT

This agreement may be modified upon written agreement of the parties. Any such modification shall become effective upon the date the second party signs the modification agreement.

12. SOVEREIGN IMMUNITY AND TREATY RIGHTS

The parties understand and agree that neither the Yakama Nation nor the WDFW waives, alters, or otherwise diminishes their "sovereign immunity" whether express or implied by virtue of entering into this MOU, nor does the Yakama Nation waive alter or otherwise diminish their rights, privileges,

remedies or services guaranteed by the Treaty of 1855. The parties further understand that neither party otherwise diminishes any of its governmental powers by entering into this MOU.

13. NON-ALLOCATION OF FUNDS

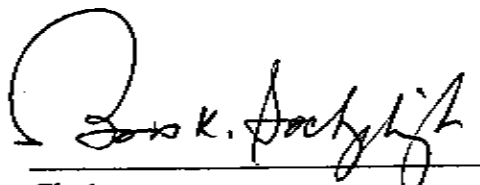
Any obligations that may arise under this MOU are contingent upon continued project funding. If necessary funds are not appropriated to this project, the parties shall not be obligated to any future performance under the terms of this agreement. The Yakama Nation agrees to notify WDFW of fund non-allocation at the earliest possible time.

14. DISCLAIMERS AND OTHER LIMITATIONS

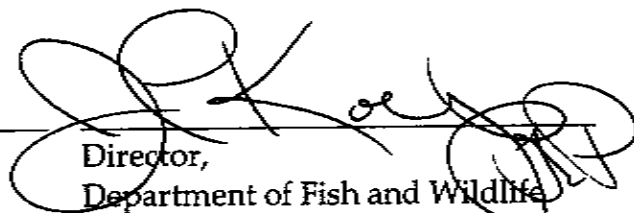
The parties expressly agree and stipulate that this agreement shall not:

- (a) Amend, modify, alter or otherwise affect orders of the U.S. District Court in U.S. v. Oregon (or any other court of competent jurisdiction affecting the anadromous fishery in the Columbia River Basin);
- (b) Amend, modify, alter or otherwise affect the terms and provisions of any successor to the Columbia River Fish Management Plan, which terminated in 1998; and
- (c) Be construed or interpreted to act as a substitute for annual anadromous fish harvest allocation negotiations between the parties undertaken pursuant to any other authority or agreement.

DATED this 3 day of June, 2003.



Chairman,
Confederated Tribes and Bands
of the Yakama Nation



Director,
Department of Fish and Wildlife
State of Washington



Confederated Tribes and Bands
of the Yakama Nation

Established by the
Treaty of June 9, 1855

October 18, 2022

Director Kelly Susewind
Washington Dept. of Fish & Wildlife
600 Capitol Way North
Olympia, WA. 98581

RE: Notice of Intent to WDFW on YN's KH Transition Plan.

Dear Director Susewind,

With this letter the Confederated Tribes and Bands of the Yakama Nation (Yakama Nation) wishes to initiate the final steps to complete the transition of ownership of the Klickitat Salmon Hatchery (KSM) located on 166.99 acres within the Yakama Reservation (Klickitat County parcel 06130400000100) from the State of Washington to the Yakama Nation as contemplated in the June 2, 2003 Transition Memorandum of Understanding (Transition MOU) between the Washington Department of Fish and Wildlife (WDFW) and the Yakama Nation.

Prior to the Transition MOU, the Yakama Nation and WDFW established the Yakima/Klickitat Fisheries Project through a separate YKFP MOU in 1994. The YKFP MOU has served as a foundational co-management agreement that continues to provide direct benefits to the tribal and non-tribal communities of south-central Washington State. For nearly three decades the YKFP has advanced fish culture science, fisheries research, monitoring techniques, and habitat restoration projects in the Klickitat Basin that have restored fisheries and aided in natural production of those stocks.

Under the purview of the YKFP, responsibility for operation and maintenance of the hatchery, as well as for the Lyle Falls No.5 Fishway and the Castile Falls Fishway has been transferred from WDFW to the Yakama Nation through previous memorandum and lease agreements. As Governor Christine Gregoire noted at the time, the agreement to transfer operation from WDFW to the YN "was the first of its kind" and that "tribal efforts to reform hatchery practices and restore fish runs in the upper basin of the Klickitat will benefit us all". Since the transfer of operations, US V OR production has continued, hatchery reform measures have been implemented, and several key infrastructure upgrades have taken place. The personnel management and operation and maintenance goals of the Transition MOU have been realized.

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

From a capital development perspective, the YKFP has sought to improve the Klickitat Hatchery facilities protect and restore spring Chinook and steelhead populations while maintaining harvest augmentation production of fall Chinook and coho for recreational and tribal fisheries. Through the 2008 Fish Accord agreement between Yakama Nation and the Bonneville Power Administration, significant capital resources are now available to complete the infrastructure upgrades to support the transition to an integrated spring Chinook program as described in the Klickitat River Spring Chinook Master Plan. In August 2022, engineering design plans were completed and an Environmental Assessment (EA) is well underway. Both YN and WDFW are cooperating agencies in the formation of the EA which is anticipated to be completed in March 2023. The project is on track for a Record of Decision (ROD) by BPA in early spring 2023, with and the procurement of construction services to soon follow. The management of the capital improvement project at the hatchery facility will be greatly facilitated if the transition of ownership to the Yakama Nation is completed. Given that the hatchery property is within the Yakama Reservation and the goals of the Transition MOU have been otherwise realized, it appears timely to initiate the actual transfer of fee title to the land and hatchery facility to the Yakama Nation.

The Transition MOU provided for the development of real estate transfer strategy for the hatchery property that recognized legal requirements for review of the transfer by the Washington Fish and Wildlife Commission, the Washington Attorney General, and the Governor. We look forward to working with WDFW staff and the WDFW Commission to complete the necessary State Environmental Policy Act (SEPA) requirements and other steps to complete the transfer.

Sincerely



Philip Rigdon, Superintendent
Yakama Nation Department of Natural Resources