



The Confederated Tribes of the Colville Reservation

Colville Business Council
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September 22, 2021

Pamela Williams, Director
Secretary's Indian Water Rights Office
U.S. Department of the Interior
1849 C Street NW, MS-3041
Washington, D.C. 20240

Re: Request by the Confederated Tribes of the Colville Reservation for Appointment
of a Federal Negotiating Team to Assist with Resolving its Water Rights

Dear Ms. Williams:

Pursuant to the Department of the Interior's ("Department") Criteria and Procedures for the Participation of the Federal Government in Negotiations for the Settlement of Indian Water Rights Claims,¹ the Confederated Tribes of the Colville Reservation ("Colville Tribes" or "Tribes") requests your office to appoint a federal negotiation team to assist with resolving its water right claims in the Columbia River Basin (sometimes "Basin") within the State of Washington.

As discussed below, the Colville Tribes has significant claims to aboriginal and federal reserved water rights for both instream and out-of-stream uses in the middle and upper Basin it needs to fulfill the purpose of the Colville Indian Reservation ("Colville Reservation") as a permanent home for the Tribes and its members. Although these unresolved claims cast a large cloud of uncertainty over existing water uses in the Basin, the Washington Department of Ecology ("Ecology") estimates it will make a significant amount of additional water available for non-tribal, out-of-stream uses when currently planned water development projects are completed. Ecology is allowing more development despite changes in climate, population, and water demands in the coming years that will increase pressures on surface and ground waters in the Basin, particularly in eastern Washington in the area of the Colville Reservation.² Resolving the Colville Tribes' claims is critical to easing these pressures and facilitating wise water development in the future.

Because Ecology recognizes that unresolved tribal claims with senior priorities cause profound uncertainties and vulnerabilities in the Basin, it recently designated Lake Roosevelt and the middle tributaries of the Columbia River, including portions of the Colville Reservation and Spokane Indian Reservation, as an urgent watershed recommended for immediate adjudication.

¹ 55 Fed. Reg. 9,223 (Mar. 12, 1990) ("Criteria and Procedures").

² See *infra* Section I(C).

Moreover, the Washington state legislature appropriated funds to prepare and file the suit as early as 2022. This looming adjudication creates an impetus for the primary water users in the Basin to discuss settlement.³

Thus, consistent with the Department's tribal trust responsibilities, the Colville Tribes requests the appointment of a federal negotiating team to assist with resolving its outstanding water right claims. In support of this request, the Colville Tribes discusses each of the ten factors that the Secretary's Indian Water Rights Office ("SIWRO") must consider when deciding whether to appoint a federal negotiating team.

I. FACTORS SUPPORTING A FEDERAL NEGOTIATING TEAM

In 2010, the SIWRO developed ten factors that it must consider in deciding whether to appoint a new federal negotiating team.⁴ All ten factors are important, but "[n]o single factor should be considered determinative in the decision making process and the Department will maintain maximum flexibility in team appointment decisions."⁵ As shown below, the SIWRO should appoint a federal negotiating team to assist the Colville Tribes with resolving its outstanding water right claims.

A. PENDING GENERAL STREAM ADJUDICATION OR OTHER LITIGATION.

The first factor that the SIWRO must consider is whether there is a "pending general stream adjudication or other litigation?"⁶ While "[o]n-going litigation does not have to be a prerequisite to the settlement of Indian water rights claims," it "provides a level of risk and uncertainty to the parties that can create an impetus to discuss settlement."⁷

Currently, there is no pending general stream adjudication involving the Colville Tribes' outstanding water right claims, but in September 2020 Ecology designated Lake Roosevelt and the middle tributaries of the Columbia River as an urgent watershed recommended for immediate adjudication.⁸ This area, known in Washington as Water Resource Inventory Area ("WRIA") 58, includes portions of both the Colville Reservation and Spokane Reservation. In recommending immediate adjudication of water rights in this area to the Washington legislature, Ecology stated that "due to the senior claims of the tribes to Columbia River Project water, this area is the most profoundly uncertain and vulnerable of any in the state."⁹ As a result, "[a]djudication of the Upper Columbia is one of the highest priorities of Ecology's Water

³ See *infra* Section I(A).

⁴ Letter from Pamela Williams, Dir., SIWRO, to All Team Members (Feb. 3, 2010) ("Factors").

⁵ *Id.* at 1.

⁶ *Id.*

⁷ *Id.*

⁸ Ecology, *Water Resources Adjudication Assessment Legislative Report* at 6-7, 24-32, Pub. No. 20-11-084 (Sept. 2020) ("Ecology Legislative Report").

⁹ *Id.* at 32.

Resources Program and supported by the Office of Columbia River, and should be commenced as soon as possible.”¹⁰

In May 2021, the state legislature agreed with Ecology's recommendation to adjudicate water rights in Lake Roosevelt and WRIA 58 and appropriated funds to prepare and file the suit as early as 2022.¹¹ With the commencement of a general stream adjudication on the horizon, the primary water users in the Basin are incentivized to discuss settlement.¹²

B. MECHANISM TO BIND THE NECESSARY PARTIES.

The second factor that the SIWRO must consider is whether there is “an identified mechanism to bind necessary parties to the settlement, such as a court decree in [a] general stream adjudication?”¹³

Here, if the stream adjudication recommended by Ecology and funded by the state legislature (or a similar suit involving the Colville Tribes' water rights claims that is sufficiently comprehensive to waive the immunity of the United States and join it as a necessary party) is filed as planned,¹⁴ then any settlement agreement among the parties will be made binding by entry of a final decree that approves the settlement, and by federal legislation to ratify any settlement. The Colville Tribes is willing to commit to this type of binding settlement agreement.¹⁵

C. SCOPE OF DETRIMENT SUFFERED BY THE TRIBE AND IMMEDIACY OF HARM TO TRUST RESOURCES.

The third factor that the SIWRO must consider is “[t]he scope of the detriment being suffered by the Tribe[s] and immediacy of harm to trust resources.”¹⁶ “In the absence of fully adjudicated rights, tribal water rights and trust resources dependent upon those water rights often suffer because of the over-appropriation of water by other water users,¹⁷ so this factor “should be carefully considered” by the SIWRO.¹⁸

¹⁰ *Id.*

¹¹ S.B. 5092 § 302(11)(a), 67th Leg., Reg. Sess. (Wash. 2021).

¹² Consistent with recent conversations between the SIWRO and tribal staff, the Colville Tribes will work with Ecology to ensure it commences a comprehensive stream adjudication that waives the United States' immunity pursuant to the McCarran Amendment. *See* 43 U.S.C. § 666(a).

¹³ Factors at 1.

¹⁴ *See supra* Section I(A).

¹⁵ *See infra* Section I(D).

¹⁶ Factors at 1.

¹⁷ *Id.*

¹⁸ *Id.* at 2.

The Colville Tribes faces threats to its unresolved water right claims on several fronts, including climate change, population growth, and currently planned water development projects within the Columbia River Basin.¹⁹ Indeed, Ecology recently released a draft report on long-term water supplies and demands in the Basin predicting future climatic extremes and increases in population resulting in new agricultural demands,²⁰ particularly in the area of the Colville Reservation, Lake Roosevelt, and the Okanogan Groundwater Subarea.²¹ And even though “this area is the most profoundly uncertain and vulnerable of any in the state,”²² Ecology seeks to make approximately 250,000 acre-feet of water available by 2040 for out-of-stream uses supplied by currently planned water projects.²³

As shown, in the absence of adjudicated water rights, the Colville Tribes' claims face imminent harm and suffer detriment due to current out-of-stream appropriations by non-tribal water users and future appropriations planned by 2040. Given that a general stream adjudication on the Columbia River and related settlement negotiations are likely to last a decade or more,²⁴ the SIWRO should not delay in appointing a federal negotiating team.

D. COMMITMENT OF THE PARTIES TO THE SETTLEMENT PROCESS.

The fourth factor that the SIWRO must consider is whether the “necessary parties [are] committed to the settlement process?”²⁵ In order to work, “the primary water users in the basin must be interested in joining a settlement process and willing to compromise and seek consensus.”²⁶

Although the Colville Tribes petitioned Ecology to initiate a general stream adjudication to resolve its water right claims, it is firmly committed to engaging in settlement negotiations with the primary interested parties, including the United States (in its capacity as tribal trustee and owner and operator of the Columbia River Project and other federal reclamation projects), irrigation districts, Indian tribes, and municipalities, among other water users. The Colville Tribes also agrees and understands that all settlements require compromise to achieve a

¹⁹ Ecology recently released a draft report on the long-term water supply and demand forecast for the Columbia River Basin, as it does every five years. The Colville Tribes assumes that Ecology's final forecasts later this year will be substantially the same.

²⁰ Ecology, *DRAFT Columbia River Basin 2021 Long-Term Water Supply & Demand Forecast* at 61-62, Pub. No. 21-12-006 (2021) (“Draft 2021 Forecast”), available at <https://fortress.wa.gov/ecy/ezshare/ocr/SupplyDemandForecast.pdf>.

²¹ *Id.* at 166-83, 201-17, 238 (summaries of Okanogan Subarea and forecasts of surface water supplies, agricultural and residential demands, curtailment frequency, and groundwater levels in WRIAs 49-53 and 58-61).

²² Ecology Legislative Report at 32.

²³ Draft 2021 Forecast at 34.

²⁴ See *infra* Section I(H).

²⁵ Factors at 2.

²⁶ *Id.*

consensus.

Ecology's goal in filing a general stream adjudication is to achieve certainty, which is also obtainable through settlement. And because multi-year litigation is extraordinarily expensive, time consuming, and inherently risky, most if not all the primary parties to the litigation likely will prefer settlement over litigation.²⁷ Presumably, then, all the primary water users will be committed to the settlement process.

E. LEVEL OF FACTUAL AND LEGAL DEVELOPMENT OF THE TRIBAL WATER RIGHT CLAIMS.

The fifth factor that the SIWRO must consider "is the level of factual and legal development of the tribal water claim" and "the extent of the trust resources."²⁸ "Such information is generally available in the context of on-going litigation."²⁹

Prior to petitioning Ecology to initiate a general stream adjudication to address its water right claims, the Colville Tribes put together a team of in-house and outside water experts and lawyers to develop its claims. This team spent years establishing the factual and legal bases for the Colville Tribes' water rights that are largely contained in its August 2019 petition to Ecology³⁰ and briefly summarized below.

1. Factual Basis for the Colville Tribes' Water Right Claims.

The Colville Tribes consists of twelve confederated member tribes: Colville, Nespelem, Sanpoil, Lakes, Palus, Wenatchi, Chelan, Entiat, Methow, Okanogan, Moses Columbia, and Chief Joseph's Band of Nez Perce. These member tribes have always lived within or near the territory encompassed by the present-day Colville Reservation³¹ and have hunted and fished, gathered native plants, and cultivated the soil in this area since time immemorial.³²

²⁷ See *supra* Section I(A).

²⁸ Factors at 2.

²⁹ *Id.*

³⁰ See *Petition to Washington Department of Ecology by Confederated Tribes of the Colville Reservation to Commence a General Stream Adjudication of the Water Rights of the Confederated Tribes of the Colville Reservation Including All Surface and Groundwater Rights* (Aug. 30, 2019) ("Colville Petition") (**Attachment 1**). The Colville Tribes' internal staff and outside consultants spent years studying the available water resources, historic uses, and long-term water needs on the Colville Reservation, and they will conduct additional studies and further develop the factual basis for the Colville Tribes' claims as needed in the context of the impending general stream adjudication and settlement negotiations.

³¹ *Opinion of the Commission, Confederated Tribes of Colville Reservation v. United States*, 4 Indian Cl. Comm'n 187, 189 (1956).

³² See Colville Petition at 5.

President Ulysses S. Grant established the Colville Reservation pursuant to the Executive Order of July 2, 1872. As originally established, the Colville Reservation encompassed approximately three million acres, twice as large as it is today, and was bounded on the south and east by the Columbia River, on the west by the Okanogan River, and on the north by the Canadian border.

By agreement dated May 9, 1891, however, the Colville Tribes ceded 1.5 million acres of its northern lands in exchange for the United States' promise to protect the remaining Colville Reservation as the Tribes' permanent home. Although the ceded portion of the Colville Reservation, now known as the North Half, was restored to the public domain in 1892³³ and opened to entry and settlement by presidential proclamation in 1900,³⁴ the Colville Tribes reserved the right to hunt and fish within the North Half.³⁵

Today, the Colville Reservation covers approximately 1.4 million acres in North Central Washington, primarily in Okanogan and Ferry Counties, and due to allotment and non-Indian settlement in the first two decades of the 20th century it consists of both tribal trust lands and fee lands.³⁶ About 5,000 residents live within the Colville Reservation, including tribal members and non-tribal individuals living in either small communities or rural settings. About half of the Colville Tribes' membership resides on or near the Colville Reservation.

The Colville Reservation possesses abundant natural resources, including forests, rivers, lakes, groundwater, fish and wildlife, native plants, minerals, and irrigable acreage at varied elevations. In addition to groundwater, the primary water resources within the Colville Reservation include the Columbia River, Okanogan River, Nespelem River, Sanpoil River, No Name Creek, Omak Creek, and all tributaries thereto, as well as the lakes and streams within the Timentwa-Omak Lake Basin, Upper Inchelium Basin, Lower Inchelium Basin, and Buffalo-McGinnis Lake Basin.

2. Legal Basis for the Colville Tribes' Water Right Claims.

The Colville Tribes claims aboriginal and federal reserved water rights for both instream and out-of-stream uses within the Colville Reservation, the North Half, both on- and off-reservation allotments, and in traditional hunting and fishing areas.³⁷ Such rights are necessary for the Colville Tribes to continue its historic practices and to fulfill the promise of the Colville Reservation as a permanent home for tribal members.

³³ Act of July 1, 1892, ch. 140, 27 Stat. 62.

³⁴ 31 Stat. 1963.

³⁵ *Antoine v. Washington*, 420 U.S. 194, 205-07 (1975).

³⁶ *See Colville Confederated Tribes v. Walton* ("Walton I"), 647 F.2d 42, 45 (9th Cir. 1981).

³⁷ *See generally* Colville Petition; *see also* COHEN'S HANDBOOK OF FEDERAL INDIAN LAW § 19.03[3] at 1216 (2012 ed.) (tribes "may hold both time immemorial and [reservation] creation-date priorities for different water rights").

The Colville Tribes “traditionally fished for both salmon and trout. Like other Pacific Northwest Indians, fishing was of economic and religious importance to them.”³⁸ Further, its uninterrupted use and occupation of land and water created in the Colville Tribes aboriginal title to all its vast holdings, including aboriginal hunting and fishing rights and aboriginal water rights to support the Tribes’ traditional hunting and fishing practices.³⁹ Because “preservation of the [Colville Tribes’] access to fishing grounds was one purpose for the creation of the Colville Reservation,”⁴⁰ and because the Colville Tribes retains hunting and fishing rights within the North Half,⁴¹ the Colville Tribes is entitled to aboriginal water rights within the Colville Reservation, the North Half, at the Icicle Fishery, on all trust lands located outside the Colville Reservation, and other aboriginal areas where the Colville Tribes has continued its traditional practices from time immemorial to the present.⁴²

In addition, the Colville Tribes has large federal reserved water right claims that are likely to pose more of a concern to the State of Washington and non-tribal water users than the Tribes’ aboriginal water right claims. The 1872 Executive Order creating the Colville Reservation implicitly reserved sufficient water with a creation-date priority to provide the Colville Tribes with a permanent home and abiding place,⁴³ so “water was reserved when the Colville Reservation was created”⁴⁴ for present and future irrigation, domestic, commercial, municipal, industrial, livestock, timber, fishery, mining, cultural, and general homeland purposes.⁴⁵ The Colville Tribes claims a total of not less than 993,479.07 acre-feet of reserved water rights per year for all these purposes, including 946,722.40 acre-feet of water per year for irrigation alone.⁴⁶ The Colville Tribes’ reserved water right claims also apply to all on- and off-reservation trust allotments,⁴⁷ and include rights to groundwater.⁴⁸

³⁸ *Walton I*, 647 F.2d at 48.

³⁹ *See United States v. Adair*, 723 F.2d 1394, 1413 (9th Cir. 1984).

⁴⁰ *Walton I*, 647 F.2d at 48.

⁴¹ *See supra* Section I(E)(1).

⁴² *See Colville Petition* at 23-24.

⁴³ *See Arizona v. California*, 373 U.S. 546, 599 (1963); *United States v. Winters*, 207 U.S. 564, 576 (1908); *see also Walton I*, 647 F.2d at 48 (“An implied reservation of water for an Indian reservation will be found where it is necessary to fulfill the purposes of the reservation.”).

⁴⁴ *Walton I*, 647 F.2d at 48.

⁴⁵ *See In re Gen. Adjudication of All Rights to Use Water in Gila River Sys. & Source (“Gila V”)*, 35 P.3d 68, 71-81 (Ariz. 2001); *Colville Petition* at 24-29.

⁴⁶ *See Colville Petition* at 24.

⁴⁷ *See Walton I*, 647 F.2d at 50-51; *United States v. Anderson*, 736 F.2d 1358, 1362 (9th Cir. 1984); *United States v. Preston*, 352 F.2d 352, 357 (9th Cir. 1965); *Colville Petition* at 22.

⁴⁸ *See Agua Caliente Band of Cahuilla Indians v. Coachella Valley Water Dist.*, 849 F.3d 1262, 1270-72 (9th Cir. 2017); *Colville Petition* at 29-30.

F. WILLINGNESS OF THE PARTIES TO SHARE IN SETTLEMENT COSTS.

The sixth factor that the SIWRO must consider is whether “the parties [are] willing and able to commit to settlement cost sharing?”⁴⁹

Although this factor generally comes into play once the parties have outlined basic settlement terms, the Colville Tribes certainly is willing and able to commit to some degree of cost sharing when the time comes to do so, as appropriate and depending on the terms of any settlement agreement. If, for example, the Colville Tribes agrees to compromise or reduce its claims in order to reach a consensus and enable settlement, then depending on the value of the compromised or relinquished claims, the Tribes’ may not be required to contribute financial resources to implement the settlement.⁵⁰ In any event, while it cannot promise any cost sharing in the abstract, the Colville Tribes has already shown a firm commitment to developing and resolving its outstanding water right claims and to dedicating significant personnel and financial resources to that end.⁵¹

Also, the Colville Tribes cannot speak for others on their willingness to share in settlement costs, but the appropriation of the initial funds needed to begin a general stream adjudication on the Columbia River shows that the State of Washington is also committed to resolving outstanding tribal claims.⁵² Indeed, adjudication of the Upper Columbia River is one of Ecology’s “highest priorities,”⁵³ And given the extraordinary costs and risks associated with litigation,⁵⁴ the parties likely will be willing to share in settlement costs, as appropriate.

Regardless, the SIWRO must not allow cost considerations to trump its solemn trust obligations to the Colville Tribes, particularly not at this early stage of the process when there are no settlement costs. “Indian water rights are vested property rights for which the United States has a trust responsibility, with the United States holding legal title to such water in trust for the benefit of the Indians,”⁵⁵ and this trust responsibility must be the SIWRO’s foremost consideration in deciding whether to appoint a federal negotiating team.⁵⁶

⁴⁹ Factors at 2.

⁵⁰ See Criteria and Procedures, 55 Fed. Reg. at 9,223 (settlement should provide Indian tribes “equivalent benefits for rights which they, and the United States as trustee, may release as part of a settlement”); Ryan A. Smith, *Indian Water Settlements*, 90 THE WATER REPORT 10, 15 (Aug. 2011) (“the value of the water-related claims the tribe gives up as part of its settlement is an essential factor” to consider).

⁵¹ See *supra* Section I(E).

⁵² See *supra* Section I(A).

⁵³ Ecology Legislative Report at 32.

⁵⁴ See *infra* Section I(I).

⁵⁵ Criteria and Procedures, 55 Fed. Reg. at 9,223.

⁵⁶ See *id.* (purpose is to enable United States “to participate in water settlements consistent with the Federal Government’s responsibilities as trustee to Indians”); see also Western Water Policy Review Act of 1992, Pub. L. No. 102-575, § 3002(9), 106 Stat. 4600, 4695 (recognizing federal

G. LEVEL OF PUBLIC INTEREST IN SETTLEMENT.

The seventh factor that the SIWRO must consider is “the level of public interest in settlement (State, local, congressional)?”⁵⁷ This factor is “[c]losely related to the commitment of the settlement parties,”⁵⁸ discussed above.⁵⁹

The State of Washington clearly desires to resolve the Colville Tribes’ outstanding water right claims, whether by litigation or settlement. Because the Colville Tribes’ claims cause substantial uncertainty, Ecology not only recommended the immediate adjudication of water rights in Lake Roosevelt and WRIA 58, including portions of the Colville Reservation and Spokane Reservation, but the state legislature appropriated the initial funding to file the suit as early as 2022.⁶⁰

Similarly, because this uncertainty will hang over all existing water uses within the Basin so long as the Colville Tribes’ claims remain unresolved, particularly near the Colville Reservation and including water rights held by the Columbia Basin Project, there is also a strong local interest in a settlement to protect existing water uses and property rights.

H. ANTICIPATED LENGTH OF NEGOTIATIONS.

The eighth factor that the SIWRO must consider is whether it is “likely that the dispute can promptly be resolved or is it anticipated that lengthy negotiation will result?”⁶¹

Accurately predicting the amount of time required to resolve the Colville Tribes’ outstanding water right claims is impossible, whether by settlement or litigation, but the scope of the claims, affected geographic area, and likely number of interested water users within the Basin suggests it will be a complex process lasting a decade or more. This is relatively common with general stream adjudications,⁶² and the contemporaneous process of negotiating a settlement will take a similar amount of time.

government’s “trust responsibilities to protect Indian water rights and assist Tribes in the wise use of those resources”); *infra* Section I(I).

⁵⁷ Factors at 2.

⁵⁸ *Id.*

⁵⁹ *See supra* Sections I(D), (F).

⁶⁰ *See supra* Section I(A).

⁶¹ Factors at 2.

⁶² The *Acquavella* litigation that adjudicated surface water rights in the Yakima River Basin spanned over forty years, from 1977 to 2019. However, the four separate Washington Supreme Court opinions resulting from the litigation, the pretrial procedures developed by the Yakima Superior Court during the case, and the modernized general stream adjudication statutes enacted by the state legislature in 2009 establish important precedent and requirements to help streamline future stream adjudications in the State of Washington.

The Colville Tribes nonetheless urges the SIWRO to appoint a federal negotiating team as soon as possible rather than wait until a stream adjudication commences or settlement talks begin. Currently, federal negotiating teams tend to become involved near the end of the settlement process, or even after an agreement is reached, to offer the opinions of the Administration and Office of Policy, Management and Budget. And sometimes other federal agencies weigh in late in the process with different opinions. This lack of coordination among federal agencies unnecessarily lengthens the settlement process and results in avoidable surprises. Also, the Colville Tribes already invested substantial time and resources in developing the factual and legal basis for its water right claims,⁶³ so there is no reason to delay the commencement of preliminary settlement discussions.

I. OTHER DEPARTMENTAL INTERESTS THAT MIGHT BE RESOLVED.

The ninth factor that the SIWRO must consider is whether there are "other Departmental interests or disputes that might be resolved?"⁶⁴

The negotiated settlement of the Colville Tribes' water right claims will resolve several other Departmental interests. First and foremost, the Department's participation in settlement discussions on behalf of the Colville Tribes is consistent with its tribal trust responsibilities. Because "Indian water rights are vested property rights for which the United States has a trust responsibility, with the United States holding legal title to such water in trust for the benefit of the Indians," the Department promulgated the Criteria and Procedures for the express purpose of enabling it "to participate in water settlements consistent with the Federal Government's responsibilities as trustee to Indians."⁶⁵

The Department, through the Bureau of Reclamation, operates and maintains the Columbia Basin Project and either operates or has interests in numerous other multi-purpose water projects within the Basin collectively known as the Federal Columbia River Power System. A negotiated settlement will provide certainty to the Department and protect its interests in these important projects.

A negotiated settlement will serve the public interest by avoiding the high costs and risks associated with a complex general stream adjudication. Protracted litigation is extraordinarily expensive, time consuming, inefficient, and disruptive because the parties are compelled to act as full adversaries and aggressively assert rights to maximum amounts of limited water supplies. Also, to satisfy the Colville Tribes' claims, the likely result of litigation will be to curtail non-tribal water uses that are junior to senior tribal rights. Such a result would undoubtedly divide the Colville Tribes and its non-tribal neighbors. The Colville Tribes will also face risks in any stream adjudication on issues such as quantification or limitations on use, and the SIWRO, as

⁶³ See *supra* Section I(E).

⁶⁴ Factors at 2.

⁶⁵ 55 Fed. Reg. at 9,223.

tribal trustee, must consider these risks when deciding whether to appoint a federal negotiating team to help settle the Colville Tribes' claims.

A negotiated settlement will serve the public interest by allowing the Colville Tribes and its non-tribal neighbors to find a common ground and build a mutual trust. The flexibility of a negotiated settlement allows compromises to enable both the continuation of existing non-tribal uses and the delivery of "wet" water to parts of the Colville Reservation where it is needed. Negotiation requires collaboration rather than the imposition of a top-down judicial or governmental decision that ignores local knowledge and values, and all stakeholders would have a seat at the table to voice their opinions and make personalized decisions about their respective futures.

J. DEPARTMENTAL RESOURCES AVAILABLE TO SUPPORT THE NEGOTIATIONS.

The tenth factor that the SIWRO must consider is whether "Departmental resources, both personnel and financial, [are] available to support the negotiation?"⁶⁶

The SIWRO has a better understanding than the Colville Tribes about the Department's available resources, including its staffing and financial resources. However, the Colville Tribes again emphasizes that cost considerations must not outweigh the Department's trust and statutory duties with respect to tribal water right claims and critical water needs on Indian reservations.⁶⁷

Also, since Ecology plans to file the general stream adjudication, it alone is responsible for serving the summons on the parties and for completing other resource-intensive tasks associated with the litigation.⁶⁸ So when considering available resources, the SIWRO should keep in mind that the Department will not need to dedicate staff or funding to many aspects of the litigation that Ecology will be responsible for under Washington's general stream adjudication statutes.⁶⁹

⁶⁶ Factors at 3.

⁶⁷ See *supra* Section I(F).

⁶⁸ See R.C.W. § 90.03.130 (requiring Ecology to serve all parties with summons).

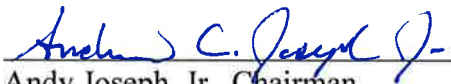
⁶⁹ See *generally id.* §§ 90.03.110 to -.245, 90.44.220.

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II. CONCLUSION

For the foregoing reasons, the Colville Tribes urges the SIWRO to appoint a federal negotiating team to assist with resolving its outstanding water right claims. The Colville Tribes looks forward to working with the SIWRO on this matter of critical importance to the future of the Tribes and its members living on the Colville Reservation.

Sincerely,

A handwritten signature in blue ink, appearing to read "Andy C. Joseph Jr.", is written over a horizontal line.

Andy Joseph, Jr., Chairman
Confederated Tribes of the Colville Reservation