



STATE OF IDAHO
DEPARTMENT OF
ENVIRONMENTAL QUALITY

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Governor Brad Little
Director John H. Tippetts

August 19, 2019

Certified Mail No.: 7007 3020 0001 4049 8757

Mr. Kurt Tardy
Fish and Wildlife Department
Shoshone-Bannock Tribes
P.O. Box 306
Fort Hall, Idaho 83203

Subject: Fully Executed Voluntary Consent Order

Dear Mr. Tardy:

Enclosed for your file is a copy of the Fully Executed Consent Order (CO) between the Shoshone-Bannock Tribes and the Idaho Department of Environmental Quality (Department).

Please bear in mind that this is a legal document between the Department of Environmental Quality (Department) and the Tribes. If difficulties arise such that an item in the CO cannot be met, please contact the Department as soon as possible. Thank you for your continued cooperation in this matter. If you have any questions, please contact Troy Saffle at 208.528.2650 or troy.saffle@deq.idaho.gov.

Sincerely,

A handwritten signature in blue ink that reads "Mary Anne Nelson". The signature is fluid and cursive.

Mary Anne Nelson, PhD

Water Quality Division Administrator

MAN:lf

Enclosure

c: Troy Saffle, DEQ Idaho Falls Regional Office

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DEPARTMENT OF ENVIRONMENTAL QUALITY
STATE WATER QUALITY PROGRAMS

IDAHO DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

**Shoshone-Bannock Tribes
Redfish, Alturas, and Pettit Lake
Fertilization Project**

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Consent Order
Idaho Code §39-108

1. Pursuant to the Idaho Environmental Protection and Health Act, Idaho Code §§ 39-101 through 39-130, and the Water Quality Standards, IDAPA 58.01.02, the Idaho Department of Environmental Quality (Department) enters into this Consent Order with the Shoshone-Bannock Tribes.

2. Redfish, Alturas, and Pettit Lakes are located in the Sawtooth Mountains near Stanley, Idaho. Historically, Redfish, Alturas, and Pettit Lakes have provided Snake River sockeye salmon spawning and rearing habitat. However, the number of sockeye returning to Redfish, Alturas, and Pettit Lakes has greatly decreased in recent years. As the sockeye returns have decreased, so has their contribution of nutrients to Redfish, Alturas, and Pettit Lakes. The Idaho Department of Fish and Game, in conjunction with the Shoshone-Bannock Tribes, is conducting a captive brood stock program that will release sockeye salmon into Redfish, Alturas, and Pettit Lakes. The present trophic character of Redfish, Alturas, and Pettit Lakes may not allow forage production at levels high enough to support optimal growth of additional sockeye salmon outplanted in Redfish, Alturas, and Pettit Lakes from the captive brood stock program nor support viable populations of naturally spawned sockeye salmon. Experiences reported from British Columbia indicate that controlled fertilization of oligotrophic lakes can significantly increase their carrying capacity of juvenile salmonids. Modeling predicts a significant increase in the carrying capacity of Redfish, Alturas, and Pettit Lakes for rearing juvenile salmon through fertilization. Although fertilization of the lakes may contribute to increased juvenile production and outmigration, the ultimate success of this project will be determined by adult returns.

3. To aid the recovery of Snake River sockeye salmon, the Shoshone-Bannock Tribes intend to conduct activities to enhance the nutrients in Redfish, Alturas, and Pettit Lakes (hereinafter referred to as "nutrient enhancement activities"). The nutrient enhancement activities will include the discharge to Redfish, Alturas, and Pettit lakes of phosphorous and nitrogen that may result in a violation of the Water Quality Standards, including without limitation, IDAPA 58.01.02.080.01.

4. The Department has determined the nutrient enhancement activities are likely to promote public interest and are unlikely to result in any permanent or long-term injury to beneficial uses of Redfish, Alturas, and Pettit Lakes. Therefore, the Department hereby authorizes the nutrient enhancement activities to be conducted in 2019 as a short term activity exemption pursuant to IDAPA 58.01.02.080.02. This authorization is made on the condition that the nutrient enhancement activities are conducted according to the

terms and conditions set forth below. The Shoshone-Bannock Tribes hereby agree to comply with the terms and conditions set forth below.

5. The nutrient enhancement activities shall not result in water quality values in Redfish, Alturas, and Petit Lakes exceeding the following limits, unless determined otherwise by the Department:

- a. Visibility less than six (6) meters Secchi depth
- b. Four (4) micrograms per liter water (ug/L) of chlorophyll-a in the epilimnion;
- c. Six (6) ug/L chlorophyll-a in the metalimnion; and
- d. Total phosphorous in the epilimnion and/or metalimnion of 15 ug/L.

6. The Shoshone-Bannock Tribes shall conduct water quality monitoring in Redfish, Alturas, and Pettit Lakes during the nutrient enhancement activities as follows:

a. Collect and report Secchi depth transparency weekly. (Check Secchi depth prior to nutrient enhancement activities and apply only if within limits set forth in paragraph 5a).

b. Water quality samples shall be collected bi-weekly during the nutrient enhancement activities as follows:

1. Secchi depth transparency; and
2. Chlorophyll-a in epilimnetic and metalimnetic regions..

c. Collect water quality samples monthly as follows:

1. Nitrate and total phosphorous from epilimnetic, metalimnetic and hypolimnetic regions..

7. By January 31, 2020, or three (3) months after the conclusion of the nutrient enhancement activities, whichever is later, the Shoshone-Bannock Tribes shall submit to the Department two (2) copies of a Nutrient Enhancement Activity Report that shall report the methods and results of the nutrient enhancement activities and any observed shifts in the limnology of Redfish, Alturas, and Pettit Lakes.

8. Within thirty (30) days of receipt of the Nutrient Enhancement Activity Report, the Department will respond with any questions, comments or requests for further information. If further information is required by the Department, the Shoshone-Bannock Tribes shall submit such information to the Department within thirty (30) days of the Department's request.

9. If at any time during the period of nutrient enhancement activities, the water quality limits described above in paragraph 5 are exceeded, the Shoshone-Bannock Tribes shall notify the Department and the nutrient enhancement activities on the affected lake(s), Redfish, Alturas, or Pettit Lakes, shall cease immediately until such time as the water quality limits are no longer exceeded. The Shoshone-Bannock Tribes shall notify the Department's Idaho Falls Regional Office within 24 hours of receiving results that indicate the water quality limits have been exceeded.

10. If water quality limits are exceeded but the water quality returns to acceptable limits, nutrient enhancement activities may only resume upon approval by the Department.

11. Applications of fertilizer to Redfish, Alturas, and Pettit Lakes is to be done using methods that will minimize the risk of spills and accidental drift. Storage and mixing or other preparation of the fertilizers are to be done away from Redfish, Alturas, and Pettit Lakes' shores to the greatest extent practical.

12. Together with other organizations involved in sockeye salmon recovery efforts in the Stanley Basin (e.g. the Idaho Department of Fish and Game; U.S. Forest Service; Bonneville Power Administration; National Oceanic and Atmospheric Administration Fisheries Service), the Shoshone-Bannock Tribes are encouraged to consider placing signs or other interpretive materials to explain the Redfish, Alturas, and Pettit Lakes nutrient enhancement activities to visitors to the area.

13. The Shoshone-Bannock Tribes shall be responsible for obtaining all required permits or agreements necessary to implement the nutrient enhancement activities.

14. All communications required by this Consent Order shall be addressed to:

Troy Saffle, Regional Water Quality Manager
Idaho Department of Environmental Quality
900 N. Skyline, Suite B
Idaho Falls, Idaho 83402.

15. The Shoshone-Bannock Tribes recognize that failure to comply with the terms of this Consent Order may result in an administrative action or a district court action for specific performance of this Consent Order; civil penalties in the amount of Ten Thousand Dollars (\$10,000) per violation or One Thousand Dollars (\$1,000) per day for a continuing violation, whichever is greater; assessment of costs and expenses; attorney fees; restraining orders; injunctions; and other relief as the court considers to be just and reasonable under the circumstances.

16. This Consent Order shall not in any way relieve the Shoshone-Bannock Tribes from any obligation to comply with any other provision of the Water Quality Standards or any other applicable local, state or federal laws.

17. This Consent Order and the Department's short-term activity authorization is provided pursuant to IDAPA 58.01.02.080.02, and shall be terminated on June 30, 2020, unless otherwise extended or renewed by the Department and the Shoshone-Bannock Tribes.

18. This Consent Order shall bind the Shoshone-Bannock Tribes and its successors and assigns until terminated by the Department.

19. A waiver by the Department of any provision, term, condition, or requirement of this Consent Order shall not constitute a waiver of any other provision, term, condition, or requirement.

20. In case any provision or authority of this Consent Order or the application of this Consent Order to any party or circumstances is held by any judicial or administrative authority to be invalid, the application of such provisions to other parties or circumstances and the remainder of the Consent Order shall remain in force and shall not be affected thereby.

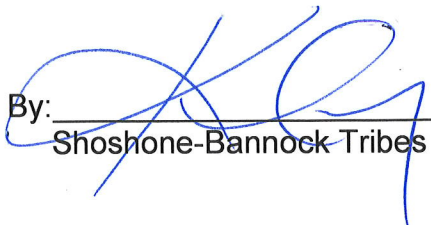
21. The Department and the Shoshone-Bannock Tribes each represent and warrant, through the undersigned, that each has the authority to execute and legally bind such Party to this Consent Order.

22. The effective date of this Consent Order shall be the date of signature by the Director of the Idaho Department of Environmental Quality.

DATED this 15th day of August, 2019.

By: 
John H. Tippetts, Director
Idaho Department of Environmental Quality

DATED this 5 day of August, 2019.

By: 
Shoshone-Bannock Tribes

Mr. Kurt Tardy