



**DEPARTMENT OF  
NATURAL RESOURCES**

**AQUATIC RESOURCES DIVISION**

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October 4, 2022

Hugh Morrison  
Acting Regional Director, Pacific Region  
United States Fish and Wildlife Service  
911 NE 11<sup>th</sup> Ave  
Portland, OR 97232

Subject: Access to DNR Lease 20-B13012 within Dungeness National Wildlife Refuge

Dear Mr. Morrison:

The Washington State Department of Natural Resources (DNR) has been informed by the Jamestown S’Kallam Tribe (Tribe) that the United States Fish and Wildlife Service (USFWS) may restrict access to the Tribe’s DNR leasehold located within the Dungeness National Wildlife Refuge.

From correspondence with the Tribe, DNR understands that the USFWS is specifically considering issuing a compatibility determination under Chapter 603 of the USFWS Service Manual that would deny the Tribe access to the DNR leasehold for the period from October 15 to May 15, annually.

While we appreciate USFWS’ desire to manage the refuge, DNR does not believe the USFWS has the jurisdiction to deny the Tribe access to its leasehold.

The portion of the Dungeness Wildlife Refuge that includes the DNR leasehold, as well as the access thereto, is part of an easement over State-owned aquatic lands (SOAL) granted from the State of Washington to the ‘*United States of America Fish and Wild Life Service, its successors*’ [sic] pursuant to Deed No. 18251, dated May 29, 1943. This easement was authorized by the Washington State Legislature pursuant to Section 152, Chapter 255, Session Laws of 1927, and notably did not convey fee title ownership to the USFWS, but instead conveyed only an easement for “any public purpose” (copies of the Deed and Session Law are enclosed herein). This means that the USFWS does not hold a property right broad enough to prohibit general access across SOAL or navigational access by the Tribe to the leasehold.

We note that your Service Manual contemplates this very circumstance. Section 2.10B(1), Chapter 603 of the Manual outlines circumstances where compatibility requirements may not apply, including where the necessary property rights are not vested in the Federal government. The Manual includes examples of when this occurs, such as areas of navigable waters and cases where primary jurisdiction of refuge lands fall to an agency other than the USFWS.

We also note that under Washington's public trust doctrine, the public generally maintains the right to go where the navigable waters go. *See Chelan Basin Conservancy v. GBI Holding Co.*, 190 Wn.2d 249, 259-262, 413 P.3d 549 (2018). The public trust doctrine is another reason we do not believe USFWS has the authority to prevent the Tribe from accessing the DNR leasehold.

Given this, DNR's position is that the Tribe rightfully may access the leasehold throughout the year without restriction. We appreciate your attention to this matter and hope that can be quickly and amicably resolved.

Sincerely,

A handwritten signature in black ink, appearing to read 'Thomas Gorman', with a stylized flourish at the end.

Thomas Gorman  
Aquatic Resources Division Manager

Enclosures: Deed and Session Law

cc: Charles Stenvall, USFWS  
Jamestown S'Klallam Tribe  
File 20-B13012