



Spokane Tribe of Indians

P.O. Box 100 • Wellpinit, WA 99040 • (509) 458-6500 • Fax: (509) 458-6575

September 26, 2018

Elliot E. Mainzer
Administrator
Bonnevill Power Administration
P.O. Box 3621
Portland, Oregon 97232

Brigadier General D. Peter Helmlinger
Division Commander, Northwestern Division
1201 NE Lloyd Blvd., Suite 400
Portland, Oregon 97232

Lorri J. Gray
Regional Director, Pacific Northwest Region
Bureau of Reclamation
1150 North Curtis Road
Boise, Idaho 83706

Bonneville Power Administration
P.O. Box 14428
Portland, OR 97293-4428

Via First Class Mail and Electronic Mail

RE: Comments on Columbia Basin Fish Accords Extensions

Dear Administrator Mainzer, Brigadier General Helmlinger, and Regional Director Gray:

On behalf of the Spokane Tribe of Indians (“Tribe”) please accept these comments prepared by the Tribe’s staff and legal counsel on the Columbia Basin Accords Extensions (“Drafts”). At the outset, the Tribe wishes to acknowledge the important work carried out by the Tribes and States (“sovereigns”) with the funding made available through the Accords and other Agreements entered in 2008. In general, the Tribe strongly supports the use of the Bonneville Power Administration’s (“BPA”) fund to provide long-term and steady funding streams for projects that are included in the Northwest Power and Conservation Council’s Fish and Wildlife Program (“Program”). Where these draft accord extensions provide such funding streams, the Tribe supports the drafts in that regard.

With that said, these comments are directed solely at the Action Agencies and not the sovereigns considering these Drafts. The Tribe does not fault the sovereigns for seeking long-term funding through these Drafts given the current arbitrary and opaque process by which funding for fish and wildlife mitigation is allocated in the Columbia Basin. This letter is organized by first a list of comments the Tribe requests the Action Agencies to address. It is then followed by the Tribe's analysis of the issues contained in that list along with recommendations for the Action Agencies.

Comments

(1) The Drafts retain and incorporate by reference sections of the 2008 Accords. They incorporate the authority sections of the previous Accords. Please explain the statutory authority that permits the Action Agencies to enter into the Drafts.

(a) Please explain how utilizing the Bonneville Power Administration fund ("Fund") to secure the requirements contained in the "Columbia Basin Fish and Wildlife Program" and the "Affirmative Support, Affirmation of Adequacy" sections requirement of the Drafts is in compliance with 16 U.S.C. Section 838i.

(b) Please explain how the timeframes of these Drafts, if executed, can comply with the Northwest Power Act given that they commit significant funds under the guise of a Fish and Wildlife Program that is currently in the amendment process?

(2) Please explain why the Action Agencies specifically address the Council's "Phased Approach" to the reintroduction of anadromous fish above Chief Joseph and Grand Coulee Dams in the Drafts.

(3) Please explain how the exclusion of the Chief Joseph Hatchery for use in the Phased Approach is in compliance with the Northwest Power Act.

(a) Please explain the statutory authority BPA and the Action Agencies use for justifying this requirement.

(b) Please explain how this restriction meets the purposes of the Northwest Power Act, in particular the potential for this restriction to cause unnecessary cost on the Region in its implementation of the measures adopted by Council.

(c) Please explain the statutory authority for the BPA's unilateral attempt to undermine "measures" adopted in the 2014 Fish and Wildlife Program as outlined in the Colville Tribes' Draft Accord Extension at Footnote 11. Please explain how this meets the "consistency requirement" of the Northwest Power Act.

(4) Please explain how the "Affirmation of Adequacy" does not undermine the court ordered CRSO EIS development.

(5) Please explain how these Accords comply with the Action Agencies' trust responsibility.

Discussion

Below is a brief summary of the statutory and regulatory framework the Tribe will utilize to address its concerns with the Drafts in light of the requirements of the Northwest Power Act and Federal Indian legal principles.

First, BPA can only use the Fund “for duties imposed upon the Administrator pursuant to the law. . .” 16 U.S.C. Section 838i(b). Although the Administrator has broad authority in using the Fund, BPA’s use of the Fund must be consistent with and not undermine the Pacific Northwest Electric Power and Planning and Conservation Act of 1980, 16 U.S.C. Sections 839-839h (*hereinafter* “Northwest Power Act” or “Act”). *See generally Portland General Elec. Co. v. Bonneville Power Admin.*, 501 F.3d 1009 (9th Cir. 2007). Specifically, BPA:

Shall use the Bonneville Power Administration fund and the authorities available to the Administrator under this chapter and other laws administered by the Administrator to protect, mitigate, and enhance fish and wildlife to the extent affected by the development and operation of any hydroelectric project of the Columbia River and its tributaries in a **manner consistent with the plan, if in existence, the program adopted by the Council under this subsection, and the purposes of this chapter.**

16 U.S.C. Section 839b(h)(10)(A).

Second, the Northwest Power Act places the following unambiguous duty upon the Action Agencies:

(11)(A) The Administrator and other Federal agencies responsible for managing, operating, or regulating Federal or non-Federal hydroelectric facilities located on the Columbia River or its tributaries **shall--**

(i) exercise such responsibilities **consistent with the purposes** of this chapter and other applicable laws, to adequately protect, mitigate, and enhance fish and wildlife, including related spawning grounds and habitat, affected by such projects or facilities in a manner that provides equitable treatment for such fish and wildlife with the other purposes for which such system and facilities are managed and operated;

(ii) **exercise such responsibilities, taking into account at each relevant stage of decision making processes to the fullest extent practicable, the program adopted by the Council** under this subsection. If, and to the extent that, such other Federal agencies as a result of such consideration impose upon any non-Federal electric power project measures to protect, mitigate, and enhance fish and wildlife which are not attributable to the development and operation of such project, then the resulting monetary costs and power losses (if any) shall be borne by the Administrator in accordance with this subsection.

(B) The Administrator and such Federal agencies shall consult with the Secretary of the Interior, the Administrator of the National Marine Fisheries Service, and the State fish and wildlife agencies of the region, appropriate Indian tribes, and affected project operators in carrying out the provisions of this paragraph and shall, **to the greatest extent practicable, coordinate their actions.**

16 U.S.C. Section 839b(h)(11)(A)-(B)(emphasis added). In general, BPA's actions and use of the Fund must be consistent with the Plan, the purposes of the Northwest Power Act, and other applicable laws (which include the federal trust responsibility). Keeping in mind that "at the same time, regardless of how serious the problem an administrative agency seeks to address, . . . it may not exercise its authority in a manner inconsistent with the administrative structure that Congress enacted into law." *General Elec. Co. v. Bonneville Power Admin.*, 501 F.3d at 1026.

Third, the Act requires that the Northwest Power and Conservation Council ("Council" or "NPCC") develop the Fish and Wildlife program from the recommendations of the federal and the region's state fish and wildlife agencies and the Tribes. 16 U.S.C. Section 839b(H)(2). The Ninth Circuit described this requirement in the following fashion:

Congress recognized, in particular, that fish and wildlife issues, were and should be, outside the expertise of the Council and the hydropower regulating agencies. Nonetheless, the need for experience and expertise with respect to fish and wildlife was plain. Looking to those having responsibility for managing such resources Congress found the experience and expertise on which the Council should rely to frame a fish and wildlife program. Accordingly, Congress required in Section 839b that fishery managers be given a high degree of deference in the development of a fish and wildlife program of the Basin.... We find it inherently reasonable to give agencies and tribes, those charged with the responsibility for managing our fish and wildlife, **a high degree of deference in the creation of a program and the interpretation of the Act's fish and wildlife provisions.**

Nw. Res. Info. Ctr. et al v. Nw. Power & Conservation Council. et al., 35 F.3d 1371, 1388 (9th Cir. 1994)(emphasis added).

Fourth, in regards to interpretations of any ambiguous provisions of the Northwest Power Act that are designed to benefit the Tribes' resources, those must be interpreted pursuant to the Indian law canon of statutory construction, derived from the trust relationship, which requires that "statutes are to be construed liberally in favor of the Indians, with ambiguous provisions interpreted to their benefit." *Montana v. Blackfeet Tribe*, 471 U.S. 759, 766 (1985). "The trust relationship and its application to all federal agencies that may deal with Indians necessarily requires the application of a similar canon of construction to the interpretation of federal regulations." *HRI, Inc. v. EPA*, 198 F.3d 1224, 1245 (10th Cir. 2000). One commentator stated this principal succinctly with this

statement; “the agency is bound by the trust responsibility to use its discretion within the statutory regime to protect tribal interests unless doing so conflicts with the actual statutory language.”¹

Finally, the Action Agencies are the trustee of the Indian Tribes’ rights, including their fishing rights whether they are based in treaty or executive order. *See Parravano v. Babbitt*, 70 F.3d 539, 546 (9th Cir. 1995); *see also NW Sea Farms, Inc. v. United States Army Corps of Eng’rs*, 931 F. Supp. 1515, 1519-20(W.D. Wash. 1996). This trust responsibility extends “to the federal government as a whole.” *See id.* Additionally, any agency action that can impact tribal rights and interests is subject to the “United States’ fiduciary responsibilities toward the Indian tribes.” *Nance v. Environmental Protection Agency*, 645 F.2d 701, 711 (9th Cir. 1981); *id.*

In short, the Action Agencies are to act consistent with the fish and wildlife program and the Northwest Power Act’s purposes. Additionally, they must act in accordance with their trust responsibility owed to the Tribes.

Use of the BPA Fund to require specific recommendations by the recipients of BPA funds pursuant to the draft accords undermines the structure of the Northwest Power Act.

As stated above the use of the Fund must be consistent with the purposes of the Act and the Program. It is not consistent with the Act for the Action Agencies to utilize the BPA Fund to obtain specific recommendations for the Program from specific parties or to obtain substantial influence on the content of the recommendations submitted to the Council. For example, all of the Drafts require the Parties to “Recommend that the Council largely retain the 2015 Program except as needed to incorporate this Agreement, including: Project Administration and Efficiencies and Habitat Monitoring and Evaluation Efficiencies.” (Page 16 of the Draft Idaho Accord, similar in the other Accords). Another example of the influence on recommendations can be found in the Colville Tribes’ Draft.

During the term of the Extension, any comments or recommendations for Council’s Program Amendments that the Colville Tribes or Action Agencies submit to the Council shall be consistent with this Extension and the 2008 Agreement. The Colville Tribes and Action Agencies will coordinate in advance on any such recommendations, which will not include comments or recommendations that seek to require any of the Action Agencies to fund specific projects or funding amounts as a Program requirement.

¹ The Indian Trust Responsibility: Protecting Tribal Lands and Resources Through Claims of Injunctive Relief Against Federal Agencies, Mary Christina Wood, 39 TULSA L. REV 355, 362 (Winter 2003)(*citing Nw. Sea Farms v. U.S. Army Corps of Eng’rs*, 931 F. Supp. 1515 (W.D. Wash. 1996) (upholding the Corps’ refusal of a permit for a fish farm because it could interfere with treaty fisheries. The Court stated, “[it] this fiduciary duty, rather than any express regulatory provision, which mandates that the Corps take treaty rights into consideration.” *Id.* at 1520).

-Each party shall share with the other Parties all drafts of any recommendations for the amendments, comments on recommendations, and comments on the draft amendments in a timely manner that upholds the commitments under the 2008 Agreement and this Extension to coordinate and avoid surprises.

The above examples of the influence the Action Agencies seek to obtain with the use of the BPA fund is by no means a complete list, but these examples clearly illustrate the following problem.

The structure of the Northwest Power Act requires that the BPA Fund be used consistently with the purposes of the Act and the Program. Here, the Fund is (1) being used to obtain specific recommendations from entities granted special status under the Act. In development of the Program, the Act requires that the Council give the recommendations of the Region's Tribes and States a high degree of deference in the creation of the Program. If the Action Agencies, specifically BPA, are allowed to be the gatekeeper of which recommendations go from these special status entities, it undermines the statutory scheme. BPA is not charged with the duty of providing recommendations on the fish and wildlife program under the Act. It is charged with using its Fund to implement the Program. However, in this situation it is using its Fund to gain the ability to control what types of recommendations the Council receives from the entities in the region with special status under the Act's provisions.

This influence on the recommendations undermines the Act in two critical ways. One, the state and tribal fish and wildlife managers identified under the Act to provide the Council with the material for the Program development are being told what to say by a federal agency that is not afforded special deference in the Program's development under the Act. This allows BPA to influence the Program development in a way that Congress did not intend. Two, this creates a significant problem for the Council on how to properly assess the recommendations it receives from the Accord parties. The Act requires them to provide significant deference to such parties, however, if the Council knows that such parties are only providing such recommendations at the insistence of BPA how does it provide those recommendations the deference under the Act. If Congress had wanted BPA and the other Action Agencies to develop the Fish and Wildlife Program and then implement it with the use of the BPA Fund, it clearly could have drafted the Northwest Power Act to reflect that desire, but that was not Congress' intent.

The Ninth Circuit succinctly stated the balance Congress struck in the Act:

Hence, Congress realized that furtherance of the purpose of the Act, that fish and wildlife be on par with energy, required that the Council defer to the recommendations of agencies and tribes. Of course, the reason for this deference to fishery managers is their unique experience and expertise in

fish and wildlife. Congress intended that the Council not simply tap this resource of information and advice, but that it “heavily rely” upon it.

Nw. Res. Info. Ctr. et al v. Nw. Power & Conservation Council. et al, 35 F.3d at 1388.

The use of the BPA Fund to require that the States and Tribes give up their ability to provide the Council and the Region with recommendations based on professional opinion and experience in exchange for consistent funding for their Projects goes against the purposes of the Act. BPA is free to give its opinion of the Fish and Wildlife Program to the Council, but it does not have the authority to influence the opinions of those entitled to deference under the Act to further its goals and objectives particularly when those objectives can be in direct conflict with the Region’s Fish and Wildlife Program.

Recommendation: Any specific requirements on the content and/or recommendations that are submitted by the sovereigns entering into the Accords must be removed from the Draft. The use of the BPA Fund to purchase the support for the Action Agencies’ opinions and actions on some subject matter and silence on others undermines the clear purposes of the Northwest Power Act.

The commitment of the BPA Fund to fund projects through the next Fish and Wildlife Program’s timeframe violates the “consistency requirement” of the Northwest Power Act and upends the Agencies and Sovereigns roles under the Act.

These Drafts, if approved, will commit a significant portion of the BPA Fund used for the purposes of the Northwest Power Act without the guidance of the applicable Fish and Wildlife Program. “The Act requires that BPA’s fish and wildlife protection, mitigation, and enhancement actions to be consistent with (1) the Council’s Power Plan; (2) the Council’s Fish and Wildlife Program; and (3) the purposes of the Act.” *Nw. Env’tl. Def. Fund, et al. v. BPA et al.*, 477 F.3d 668, 674 (9th Cir. 2007).

As the Action Agencies are well aware the Council is required to review and update the Fish and Wildlife Program at least every five years. The last program was adopted in 2014 and the review and amendment process for the next Program began in May of this year. Given that the new Program will not be final until mid to late 2019, the commitment of the BPA Fund to “measures” that may not be carried over to the 2019 Fish and Wildlife Program will not meet the “consistency requirement” of the Northwest Power Act. For example, if the 2019 Program prioritizes new measures not covered by the Accords how then do the Action Agencies propose to fund these new measures? In short, the timing of the renewal of the Accords must be changed to be consistent with the Fish and Wildlife Program’s development. Currently, if the termination dates are left as is and these Accords continue with additional renewals in the future they will never coincide with a newly adopted Program.

Furthermore, and most concerning is language in the draft Accords that appears to blatantly acknowledge BPA's lack of concern for the Northwest Power Act's "consistency requirement" and roles the Council's Program is to play in the allocation of the BPA Fund. As an example on page 8 of the Draft Idaho Accord Extension it states:

Bonneville and the [sic] Idaho in particular – are agreeing to use a biological investment portfolio model as a sound business approach to managing the costs of protecting, mitigation, and enhancing fish and wildlife, and providing them equitable treatment with the other purposes for which the Action Agencies operate the Columbia River system, while simultaneously ensuring the Pacific Northwest an adequate, efficient, economical, and reliable power supply.

This again highlights the problem with funding agreements that do not properly take into account the Fish and Wildlife Program, and the roles the various parties are to play. As outlined in the Act:

The Council shall develop a program on the basis of such recommendations, supporting documents, and views and information obtained through public comment and participation, and consultation with the agencies, tribes, and customers referred to in subparagraph (A) of paragraph (4). The program shall consist of measures to protect, mitigate, and enhance fish and wildlife affected by the development, operation, and management of such facilities while assuring the Pacific Northwest an adequate, efficient, economical, and reliable power supply. Enhancement measures shall be included in the program to the extent such measures are designed to achieve improved protection and mitigation.

The Council, not BPA and Idaho, are to develop the Program and then BPA is to act in a manner that is consistent with the Program. In the above draft Accord language, it indicates that BPA intends to use the Fund in a manner that is consistent with how it and Idaho see fit, not in a manner consistent with the Program. This along with the timing of these drafts indicates a need to have the renewals of the funding agreements take place at times when the parties can consider the most recent Fish and Wildlife Program to avoid the usurping of the Council's authority and the Program by BPA and the Accord sovereigns. It is clear that without oversight by the Council and the Region, the Action Agencies and accord sovereigns will be in a position to decide the Region's fish and wildlife priorities without oversight by the Council or the Region. This does not serve the purposes of the Northwest Power Act.

Recommendation: These extensions should be extended through 6 months after the Council adopts the new Program. The Action Agencies could then renegotiate the Accords and have their expiration dates sync with the amendment and adoption of future Fish and Wildlife Programs. This would allow the important work of the accord parties to continue with a stable funding source, and the renegotiation of each new Accord could be consistent with the relevant Fish and Wildlife Program.

The inclusion of language in the Draft Accord Extensions addressing the Council's phased approach to the reintroduction of anadromous fish above Chief Joseph and Grand Coulee Dams undermines the Council's Program and Council's overall authority to set the priorities of the Region through development of the Program.

In most of the Drafts language is included that calls out the need for special consideration and communication amongst the parties on "all aspects and stages of" the Councils' 2014 Fish and Wildlife Program's phased approach to anadromous fish reintroduction above Chief Joseph and Grand Coulee dams. (Colville Draft at 19, Idaho Draft at 16, Shoshone-Bannock Tribes Draft at 17, and Lower River Tribes Draft at 18).

As an example, the following or similar language is included in all of the Drafts: "The Action Agencies have legal, economic, and policy concerns with specific proposals for passage and reintroduction above Chief Joseph and Grand Coulee dams." (Lower River Tribes Draft at 18). This concerns the Tribe for several reasons. First, on September 8, 2017 the Tribe sent a letter to the Action Agencies requesting information on the CRSO EIS development process, specifically, the need to include alternatives that considered anadromous fish reintroduction above Chief Joseph and Grand Coulee dams in the EIS's alternatives. (**Attachment 1**). The Action Agencies finally responded on March 20, 2018 and at one point stated: "The Council is still in phase one, reviewing preliminary information. We think that process will provide valuable information for future consideration of reintroduction..." (**Attachment 2**). It seems as though the Action Agencies are not consistent in their view of the Council's Program, in one instance it is viewed as providing valuable information and in another it is causing concern.

With that stated, the Tribe would like a clear and specific explanation as to what the "legal, economic, and policy concerns" are and to be blunt why those concerns matter. The Council adopted valid measures to approach anadromous fish reintroduction above Grand Coulee and Chief Joseph Dams. The measures were developed in a public and transparent fashion as required under the Northwest Power Act. Both federal and state fish and wildlife managers, along with many Tribes, and citizens and organizations in the Region, support this phased approach. It is unclear where the Action Agencies derive the statutory authority to interject their opinions into this process in an attempt to undermine it. Clearly, the Northwest Power Act envisioned a program that is developed by the Region, not the Action Agencies.²

Having the Action Agencies attempt to undermine the Region's Program and attempt to influence the process further through these Drafts undermines the purposes of the Northwest Power Act, and it casts doubt on the Agencies ability to fully and fairly carryout the CRSO EIS and their other statutory duties as they relate to the Northwest Power Act. The Drafts requirements will impact the ability of the Council and the Region

² The Council's response BPA's and others concerns and a discussion of the Phased Approach can be found at pages 295-301 in Appendix S of the 2014 Fish and Wildlife Program <https://www.nwcouncil.org/reports/2014-columbia-river-basin-fish-and-wildlife-program/appendix-s-responses-recommendations-and-comments-including-findings-recommendations-not> (last visited September 19, 2018)

to utilize the experience and knowledge of the States and Tribes that enter into the Accords to provide their expertise in this effort. It will give the Action Agencies far too much influence over the information shared and utilized by the Council and the Region on the phased approach outlined in the Program.

Additionally, the validity of BPA's concerns appear to be disingenuous given their participation and arguments as a party in *Northwest Resources Information Center, Inc. v. Northwest Power and Planning Council, et al.*, 15-71482, unpublished opinion, (9th Cir. 2017). In that case the validity of the Program was called into question by Northwest Resources Information Center. Bonneville in its brief in that case took the following position: "Bonneville concurs with and supports the Council's Answering Brief on all of the issues enumerated above." (BPA Brief at 8-9). Two of those enumerated issues were: "(1) the Council unlawfully equated the ESA and the Northwest Power Act; (2) the Council's decision to adopt the 2014 Program is arbitrary and capricious." *Id.* The Council in defense of the 2014 Program in the Ninth Circuit used the "measures" the Council adopted addressing anadromous fish reintroduction above Grand Coulee Dam in several places to defend against this claim by Northwest Resources Information Center. For example,

And finally, note that the Council included in the program significant new measures recommended and supported by agencies and tribes that were *not* in the Accords and biological opinions, and that Bonneville and the Bonneville utility customers opposed or had serious qualms about. This includes, for example, new measures for investigating the reintroduction of anadromous fish above Grand Coulee Dam and measures to address toxic contaminants in the mainstem. These were the key issues in the development of the 2014 Fish and Wildlife Program.

(NPCC Brief at 61). BPA concurred with this line of argument. (BPA Brief at 8-9). Furthermore, the Court in finding that the Council had lawfully adopted the Program, also used this example:

First, the Program included numerous environmental measures distinct from those included in the Federal Columbia River Power System biological opinions (BiOps) issued pursuant to the ESA. For example, the reintroduction of anadromous fish above the Grand Coulee Dam, as recommended by the Spokane Tribe, was included in the Program but not in the BiOps.

Northwest Resources Information Center, Inc. v. Northwest Power and Planning Council, et al., 15-71482 at 2. BPA as outlined in their brief had apprehension with the possibility of having the Program remanded or found deficient in some way by the Ninth Circuit. (BPA Brief at 8). Accordingly it took action and intervened in the case and clearly benefited from this line of the Council's argument. It is difficult for the Tribe to understand why now BPA has "legal, economic, and policy concerns" with the Program's "measures" that it supported as an example of the Program's validity.

Recommendation: Remove any reference that requires the sovereigns that enter into the Drafts to carry out any special communication protocols in relation to the Council's phased approach to anadromous reintroduction above Chief Joseph and Grand Coulee Dams. Please clearly explain what are the Action Agencies' "legal, economic, and policy concerns with specific proposals." Specifically focus on the "specific proposals." Given the Tribe's close involvement with other sovereigns and federal agencies in carrying out parts of Phase One of the Council's Program, the Tribe is unaware of any "specific proposals" that should cause concern. The next logical step in the Tribe's view is low cost "selective releases" as outlined as an option in Phase One of the Council's Program.

The Action Agencies requirement that use of fish from the Chief Joseph Hatchery be categorically barred from use in the Council's Phased approach to anadromous fish reintroduction above Chief Joseph and Grand Coulee Dams violates the "consistency requirements," is arbitrary and capricious, and is not in accordance with the Northwest Power Act.

The Colville Tribes' Draft Accord Extension states the following:

The Action Agencies understand the Colville Tribes intend to pursue cultural and educational fisheries activities involving anadromous fish above Chief Joseph and Grand Coulee dams using the Tribes' own authorities and funding unrelated to this Extension or Northwest Power Act mitigation mandates. As an accommodation to legal and policy concerns raised by the Action Agencies, during this Extension, the Colville Tribes agree not to use fish produced at or originating from Chief Joseph Hatchery for any purpose above Chief Joseph Dam, except that carcasses from such fish may be used for any biological purpose consistent with applicable regulatory requirements. In addition, the Colville Tribes in their sole discretion may use data and research from these cultural and educational fisheries activities in any forum for any purpose.

Colville Tribes Draft at 19.

As the Action Agencies are aware they must act consistent with the purposes of the Northwest Power Act, they must take into account the Program when carrying out their responsibilities within the Columbia River, and they must coordinate their actions with Tribes and others in the Region. *See* 16 U.S.C. Section 839b(h)(11)(A)-(B). It is unclear how the above meddling and direct confrontation with the Program and the Tribes' reintroduction plans and goals meet this standard.

The Fish and Wildlife Program states the following under Phase One of the anadromous fish reintroduction measures above Grand Coulee Dam:

Investigate habitat availability, suitability and salmon survival potential in habitats above Grand Coulee. **This might include selective releases of salmon and steelhead.** Investigate the scientific feasibility and possible cost of upstream and downstream passage options for salmon and steelhead. Before funding new investigations, provide the Council with a report for consideration of subsequent work to advance the fish passage planning process.³

As the Action Agencies are aware, the Tribe along with its Regional partners, as part of pursuing more information on how best to carry out selective releases, worked with USGS to develop the "Risk Assessment for the Reintroduction of Anadromous Salmonids Upstream of Chief Joseph and Grand Coulee Dams, Northeastern Washington."⁴ This assessment identified Chief Joseph Hatchery fish as an excellent option for selective releases. Accordingly, it is unclear to the Tribe why the above requirement would be included in the Colville Tribe's Draft for several reasons.

First, the Action Agencies are required to act consistently with Act's purpose. One of those purposes is to implement the Program. Here, implementing the Program's phased approach could include in the near future the use of the Chief Joseph Hatchery fish for selective releases. However, if the above restriction is entered, the Draft will prevent the use of these fish.

The second reason is the cost to the Program in time and money. The desire to ensure that the Program operates efficiently is important to the Region and a theme of the Northwest Power Act and is an almost continuous talking point for BPA. Here, Chief Joseph Hatchery origin fish are an optimal choice for selective releases and happen to be the economical choice because of their proximity to the areas of interest in the Council's phased approach. Their use will reduce transportation and administrative process costs, but are being blocked from use by this Draft. Furthermore, these fish pose little disease risk and depending on the year will be readily available to ensure the Program's and future programs implementation of these measures pursuant to Phase One are timely.

Finally, the Region's ratepayers paid for the hatchery and categorically barring the use of the hatchery for these selective releases robs the Region of the full use of its investment. Washington utilities pay 67 percent of BPA's fish and wildlife costs; it is unclear why the ratepayers in Washington, including the Tribal members that make up a portion of those ratepayers, cannot fully utilize an asset that they paid a significant portion of. Particularly when that asset has been identified as the obvious choice for these purposes.

³ Available at: <https://www.nwcouncil.org/reports/2014-columbia-river-basin-fish-and-wildlife-program> at 85. (Last visited September 24, 2018).

⁴ Available at: <https://pubs.er.usgs.gov/publication/ofr20171113> (Last visited September 24, 2018). "For spring Chinook Salmon reintroduction, Chief Joseph Hatchery (CJH; non-ESA listed, lower Columbia River spring Chinook Salmon) ranked highest..." at page 2.

Recommendation: Remove any restrictions on the Chief Joseph Hatchery fish from the Drafts. Additionally, as requested elsewhere in this comment letter please explain the Action Agencies “legal, economic, and policy concerns with specific proposals” for implementing the Phased Approach outlined in the Council’s Program.

Footnote 11 in the Draft Colville Accord Extension must either be fully explained or removed in light of BPA’s argument in *Northwest Resources Information Center, Inc. v. Northwest Power and Planning Council, et al.*, the Indian law canon of construction, and the deference requirements contained in the Northwest Power Act.

The Tribe is very frustrated by Footnote 11 in the Draft Colville Accord. It states the following:

Bonneville takes the position that the three-phase approach to considering passage and reintroduction as outlined in the Columbia River Basin Fish & Wildlife Program is not a “measure” as defined by the Northwest Power Act because it has not satisfied the statutory requirements that a proposal must meet to become a program measure. 16 U.S.C. §§ 839(b)(h)(5)-(7). The Ninth Circuit considers the criteria in section 839(b)(h)(6) substantive and has said program measures must adhere to each of the criterion. *NRIC v. NW Power and Conservation Council*, 35 F.3d 1371, 1389 (9th Cir. 1994). The Colville Tribes acknowledge Bonneville’s position but do not agree with it.

For the following reasons, BPA must either delete this Footnote or thoroughly explain its decision to ignore and fail to act upon the legally adopted Fish and Wildlife Program’s “measures.”

First and foremost it is alarming that BPA is willing to take the opposite legal position it took in *Northwest Resources Information Center, Inc. v. Northwest Power and Planning Council, et al.*, as explained above. BPA now appears to be taking an entirely different legal position than the one successfully argued before the Ninth Circuit. In short, if BPA did not believe that the 2014 Program was in fact in compliance with the Northwest Power Act it should have argued that position instead of concurring with Council’s line of argument.

Second, BPA’s position in Footnote 11 is directly in conflict with the Indian law canon of construction. The provisions of the Northwest Power Act cited by BPA in the Footnote directly impact the Tribes’ resources, and, if ambiguous as applied here they must be interpreted pursuant to the Indian law canon of statutory construction which requires that “statutes are to be construed liberally in favor of the Indians, with ambiguous provisions interpreted to their benefit.” See *Montana v. Blackfeet Tribe*, 471 U.S. 759, 766 (1985). Additionally, “the trust relationship and its application to all federal agencies that may deal with Indians necessarily requires the application of a

similar canon of construction to the interpretation of federal regulations.” *HRI, Inc. v. EPA*, 198 F.3d 1224, 1245 (10th Cir. 2000).

Here, it is unclear to the Tribe what issue BPA takes with the “measures” related to reintroduction above Grand Coulee Dam that were adopted by the Council. In the Tribe’s view there is no ambiguity and the phased approach outlined in the 2014 Program is clearly a valid “measure.” Additionally, if there is some ambiguity BPA must interpret the ambiguity to the Tribes’ benefit, and not blindly take a new position that the phased approach is somehow not a “measure.” BPA’s new position does not comply with the Indian law cannon of construction, if in fact there is any ambiguity.

Finally, BPA’s interpretation of the measures requirement of the Act and how it applies to the Program is due no deference. The Ninth Circuit made clear: “In light of the NPA’s legislative history and text, it follows that fishery managers, as well as the Council, be given deference in interpreting the fish and wildlife provisions of the of the Act,” and that BPA is given deference in interpreting the power plan provisions of the Act. *See Nw. Res. Info. Ctr. et al v. Nw. Power & Conservation Council. et al.*, 35 F.3d 1388. Here, BPA’s new position that it did not take during the development of the 2014 Program⁵, nor the litigation involving the 2014 Program’s development and adoption, is entitled to no deference. The purpose of BPA stating this new position in Footnote 11 appears to only be to fuel more delay in the implementation of the Program’s valid measures.

Recommendation: Footnote 11 should be removed and BPA’s position must be clearly explained regarding its new position on the requirements of a “measure.”

The “Affirmation of Adequacy” section will undermine the requirements of the May 4, 2016 Order in *National Wildlife Federation, et al v. National Marine Fisheries Service, et al.*

In the Drafts, the Action Agencies require the Accord parties to support their approach in the development of the CRSO EIS that was ordered by Judge Simon in May of 2016.⁶

Despite billions of dollars spent on these efforts, the listed species continue to be in a perilous state. One of the benefits of a NEPA analysis, which requires that all reasonable alternatives be analyzed, is that it allows innovative solutions to be considered and may finally be able to break through any bureaucratic logjam that maintains the status quo. The agencies, public, and public officials will be able evaluate the costs and

⁵ The Council’s response BPA’s and others concerns and a discussion of the Phased Approach can be found at pages 295-301 in Appendix S of the 2014 Fish and Wildlife Program <https://www.nwcouncil.org/reports/2014-columbia-river-basin-fish-and-wildlife-program/appendix-s-responses-recommendations-and-comments-including-findings-recommendations-not> (last visited September 19, 2018)

⁶ The language on this subject varies in each Draft. For example the Montana Draft states “With respect to the CRSO EIS, Montana supports the Action Agencies procedural approach to complying with the Court’s orders regarding NEPA”; Idaho Draft “Idaho supports the Action Agencies approach to complying with the Court’s orders regarding NEPA.” (Same as Shoshone Bannock and Lower River Tribes).

benefits of various alternatives. The FCRPS remains a system that “cries out” for a new approach. A NEPA process may elucidate an approach that will finally move the listed species out of peril.

National Wildlife Federation, et al v. National Marine Fisheries Service, et al., No. 3:01-cv-00640-SI, Order and Opinion, at 144-45, (May 4, 2016). By requiring that the parties either support the Action Agencies in the development of the EIS or have their critical funding streams threatened, the Action Agencies will be able to undermine the parties ability to provide no more than a rubber stamp on what the Action Agencies intend to do during the CRSO EIS process. The requirement that the sovereigns stay silent and/or support the CRSO EIS developed by the Action Agencies will rob the Region of the Tribes and States opinions that may differ from the Action Agencies, and will undermine the development of the “new approach” that is needed and intended by the Court Order.

Recommendation: Remove any requirements that the parties to the Accords must take any specific position in the CRSO EIS development.

These Drafts fail to comply with the Action Agencies’ trust responsibility.

Any action by the Action Agencies that can impact tribal rights and interests is subject to the “United States’ fiduciary responsibilities toward the Indian tribes.” *See Nance v. Environmental Protection Agency*, 645 F.2d 701, 711 (9th Cir. 1981). The Tribe for brevity’s sake will only point to the glaring example of the Action Agencies ignoring their trust responsibility owed to the Spokane Tribe of Indians.

Here, by the very language of these drafts, the Action Agencies are directly opposing or attempting to further slow the implementation of the Fish and Wildlife Program’s phased approach to anadromous fish reintroduction above Chief Joseph and Grand Coulee Dams. As the Action Agencies are well aware, this measure of the Program is of the highest importance to the Tribe. In the Tribe’s opinion it simply cannot square the Action Agencies trust responsibility duties with their insistence on attempting to impede the phased approach measures on every front with every possible argument. These actions are simply not compatible with the their trust duties given the purposes of the Northwest Power Act and the measures in the 2014 Fish and Wildlife Program. By attacking the valid and legal measures of the Program that are of great importance to the Spokane Tribe and many in the Region, the Agencies are failing to uphold their trust responsibility.

Recommendation: Remove any language in the drafts that impacts the implementation of the Fish and Wildlife Program’s phased approach to anadromous fish reintroduction above Chief Joseph and Grand Coulee Dams. Please include an explanation of how the Drafts given that they require Tribes to give up their rights under the Northwest Power Act to have their opinions and recommendations freely and openly shared with the Council and the Region comports with the trust responsibility.

Conclusion

As stated above, the Spokane Tribe of Indians strongly supports the use of the BPA Fund to provide long-term and consistent funding to further the legal purposes of the Northwest Power Act. However, allowing the Action Agencies to arbitrarily pick the winners and losers of the Fish and Wildlife Program goes far beyond any statutory authority granted by Congress. Accordingly, the Tribe urges the Action Agencies to adopt and follow the recommendations provided above to ensure that the purposes Congress contained in the Northwest Power Act and the permitted uses of the BPA Fund are followed.

Sincerely,



Carol Evans
Chairwoman
Spokane Tribe of Indians

Cc: B.J. Kieffer, Director, Spokane Tribal Natural Resources Department
Ted Knight, Special Legal Counsel, Spokane Tribe of Indians



Spokane Tribe of Indians

P.O. Box 100 • Wellpinit, WA 99040 • (509) 458-6500

September 8, 2017

Major General Scott A. Spellman
Commander
Army Corps of Engineers
Northwest Division

Mr. Elliot Mainzer
Administrator
Bonneville Power Administration

Ms. Lori Gray
Pacific Northwest Regional Director
Bureau of Reclamation

**RE: Spokane Tribe's Comments on Material and Information Shared at the
August 30, 2017 Co-Lead Agency Executive/Tribal Leaders Meeting**

Dear Co-Lead Agency Executives:

On behalf of the Spokane Tribe of Indians ("Tribe") I wanted to thank you for meeting with members of the Spokane Tribal Council and the Tribe's staff on August 30th in Spokane to discuss the development of the court ordered environmental impact statement ("EIS") for the Columbia River System Operations ("CRSO"). At that meeting the Agencies informed the Tribes present that comments and input on the draft documents and process thus far were welcome anytime. Accordingly, please accept these comments for consideration in formulating the alternatives and related documents.

First and foremost, the Tribe is frustrated by the agencies expressed desire at the meeting to avoid addressing the Tribe's and others request to include salmon reintroduction into the habitats above Chief Joseph and Grand Coulee Dams within the alternatives. The Tribe's position on this issue is that the consideration and inclusion of salmon reintroduction above Chief Joseph and Grand Coulee Dams within the alternatives is a requirement to meet the mandates of the Endangered Species Act ("ESA"), National Environmental Policy Act ("NEPA") and the Northwest Power Act ("NPA"). The Tribe extensively commented and provided information on this request in its February 2017 scoping comments. (Attached as Exhibit 1).

Attachment 1

Unfortunately, what we heard at the August 30th meeting, particularly from the BOR representatives, was the agencies' desire to avoid addressing this critical topic at all. A variety of excuses were offered such as: reintroduction should be addressed in another unnamed process, reintroduction is too complex to address in this process, and reintroduction should be dealt with solely in the Northwest Power and Conservation Council's ("NPCC") Fish and Wildlife Program. All of these excuses are untenable and likely to lead to further litigation.

Additionally, the Tribe reviewed the documents presented at the meeting and wishes to offer comment on those. The following are the Tribe's specific comments on these topics.

Reintroduction

At the meeting BOR representatives seemed confused on what species should be looked at in the alternatives within the CRSO EIS given its scope. As outlined in the Tribe's February 2017 comments, establishing access to the habitats above Chief Joseph and Grand Coulee Dams could be central to the recovery and delisting of Upper Columbia Spring Chinook and Upper Columbia Steelhead. (Exhibit 1 at 5-8). These two species are a starting point for the required ESA analysis. The initial intrinsic potential work has already been done by NOAA and BPA which can help assist in moving this forward in the EIS process. (Exhibit 1 at Attachment 1 and 3).

Additionally, the NPA requires that the agencies consider the NPCC's Fish and Wildlife Program in this process. Which is only logical given the Congressional mandates of the NPA. The NPA requires the following:

The Administrator and other Federal agencies responsible for managing, operating, or regulating Federal or non-Federal hydroelectric facilities located on the Columbia River or its tributaries shall--

...

(ii) exercise such responsibilities, taking into account at each relevant stage of decision making processes to the fullest extent practicable, the program adopted by the Council under this subsection...

16 U.S.C. § 839b(h)(11)(A). BOR and the other agencies cannot ignore the 2001 Intermountain Subbasin Plan and 2014 Fish and Wildlife Program ("Program") while developing this EIS. The NPA requires the agencies to consider "to the fullest extent practicable" the Region's 2014 Program, which was adopted through an 18-month public process and affirmed by the Ninth Circuit Court of Appeals. The Program as Congress intended outlines the Region's vision of how the Columbia River should be operated and managed. Importantly, both the 2014 Fish and Wildlife Program and its subbasin plans all call for the study of and possible reintroduction of anadromous fish into the habitats above Chief Joseph and Grand Coulee Dams, and the other blocked areas.

Attachment 1

Finally, this NEPA process, as described by Judge Simon, calls for nothing short of a hard look at the system and what alternatives should be considered to mitigate the FCRPS's significant impacts. He stated:

For more than 20 years, NOAA Fisheries, the Corps, and BOR have ignored the admonishments of Judge Marsh and Judge Redden to consider more aggressive changes to the FCRPS to save the imperiled listed species. The agencies instead continued to focus on essentially the same approach to saving the listed species—minimizing hydro mitigation efforts and maximizing habitat restoration. Despite billions of dollars spent on these efforts, the listed species continue to be in a perilous state. One of the benefits of a NEPA analysis, which requires that all reasonable alternatives be analyzed, is that it allows innovative solutions to be considered and may finally be able to break through any bureaucratic logjam that maintains the status quo. The agencies, public, and public officials will be able evaluate the costs and benefits of various alternatives. The FCRPS remains a system that “cries out” for a new approach. A NEPA process may elucidate an approach that will finally move the listed species out of peril.

Unfortunately, based on what we heard at the August 30th meeting was an indication that the agencies, particularly BOR, were more interested in attempting to avoid any new approach.

BOR's desire to point in every direction except its own facility and sow excuses as to why reintroduction should not be addressed in this EIS was highlighted by the ridiculous statement by the BOR representative that a fish ladder at Grand Coulee Dam was beyond the scope of the EIS. First, absolutely no one who is taken seriously in the modern fish passage age would even bring up a conventional fish ladder as a solution for a facility the size of Grand Coulee Dam. Second, and to highlight further the absurdity of this comment is the fact that BOR is already developing a salmon reintroduction project at Shasta Dam which is greater in height than Grand Coulee Dam.¹ In short, taking the required “hard look” at salmon reintroduction above Grand Coulee Dam clearly addresses Judge Simon's order. It is a new approach. It is not another habitat restoration effort. Finally, it could result in the doubling of some ESA listed species available habitat and those habitats are cooler in temperature addressing another of the Judge's concerns, climate change.

For the above reasons and those stated in the Tribe's February 2017 scoping comments, the agencies must include salmon and steelhead reintroduction above Grand Coulee Dam as part of the alternatives considered in the CRSO EIS.

Purpose and Need

¹ <https://www.usbr.gov/mp/BayDeltaOffice/shasta-dam-fish-pass.html> (last visited September 6, 2017).

Attachment 1

In reviewing the "Purpose and Need Statement" ("Purpose Document") and "Draft Objective Development" ("Objectives Document") the Tribe found some troubling omissions by the agencies. In the Objectives Document the agencies listed one purpose of the Northwest Power Act as a primary objective. It was paraphrased as to provide "an adequate, efficient, economical power supply that supports the integrated CR power System." Conveniently, the other overarching purpose of the NPA was left out. The action agencies cannot avoid the NPA's other purpose:

to protect, mitigate and enhance the fish and wildlife, including related spawning grounds and habitat, of the Columbia River and its tributaries, particularly anadromous fish which are of significant importance to the social and economic well-being of the Pacific Northwest and the Nation and which are dependent on suitable environmental conditions substantially obtainable from the management and operation of the Federal Columbia River Power System and other power generating facilities on the Columbia River and its tributaries.

16 U.S.C. Section 839(6). The Tribe requests that Section 839(6) be added to the primary objectives list.

Additionally, in the Purpose Document the agencies paraphrased language of the NPA that diminishes its impact. The current draft states the following: "Provide for the conservation of fish and wildlife resources, including threatened, endangered, and sensitive species." This must be changed to acknowledge the actual language of the NPA, which is to "protect, mitigate and enhance."

Draft Preliminary Alternatives Framework

During the conversation at the August 30th meeting the agencies repeatedly stated that the volume of material submitted during the scoping comment period was overwhelming, and making it difficult to develop the alternatives. Further, they stated that the draft alternatives reflected what was contained in the comments. However, the Tribe's repeated requests contained in its scoping comments regarding the inclusion of anadromous reintroduction were ignored even though the inclusion of anadromous reintroduction into blocked areas is included in the 2014 Fish and Wildlife Program, the Program's 2001 Intermountain Subbasin Plan, and analyzed in intrinsic potential work done by NOAA in 2007, and BPA in 2014 and 2017 with NOAA's assistance. Regardless, the agencies seem to believe that reintroduction is somehow a fringe concept not worthy of inclusion in the alternatives.

Yet the agencies have included an Alternative with a stated goal of imagining the system in a pre-Northwest Power Act world. The Tribe posits here that the Region has already conducted that alternative in the real world and there is absolutely no need to waste resources to inform the Region of what happens when the system is operated solely for hydropower. We know what it does and it has resulted in the passage of the Northwest

Attachment 1

Power Act and extensive ESA litigation. BPA already estimates its forgone power revenue what more is necessary?

The Tribe requests that this alternative be replaced with an alternative that fully implements both the 2014 Fish and Wildlife Program and the Power Plan. An alternative of this scope would clearly be within the agencies authorities, unlike the proposal to imagine a world where Congress did not adopt the Northwest Power Act.

Conclusion

The Tribe expects that the above comments will assist the agencies in meeting their statutory obligations and their broader trust obligations to the Tribes. We look forward to working with you in the development of the CRSO EIS to ensure that it meets the needs of the Tribes and the Region. If you have any questions, please contact B.J. Kieffer, Director, Spokane Tribal Natural Resources Department at 509-626-4427.

Sincerely,



Carol Evans, Chairwoman
Spokane Tribe of Indians

Cc: B.J. Kieffer, Director, Spokane Tribal Natural Resources Department
David Mabe, Deputy Regional Director, Bureau of Reclamation
David Ponganis, U.S. Army Corps of Engineers
Lorraine Bodi, Bonneville Power Administration

Attachment 2

United States Department of the Interior



BUREAU OF RECLAMATION
Pacific Northwest Regional Office
1150 North Curtis Road, Suite 100
Boise, ID 83706-1234

IN REPLY REFER TO:
PN-6542
2.1.4.17

MAR 20 2018

Ms. Carol Evans
Chairwoman
Spokane Tribe of Indians
P.O. Box 100
Willpinit, WA 99040

**Subject: Columbia River System Operations (CRSO) Environmental Impact Statement (EIS)
Reintroduction and Purpose and Need**

Dear Chairwoman Evans:

I am writing to you on behalf of all three co-lead agencies, the U.S. Bureau of Reclamation, the U.S. Army Corps of Engineers, and the Bonneville Power Administration, regarding the CRSO EIS. In your letter of September 8, 2017, the Spokane Tribe (Tribe) expressed concerns regarding fish passage above Chief Joseph and Grand Coulee Dams, use of the Intermountain Subbasin Plan and the Northwest Power and Conservation Council's (Council) 2014 Fish and Wildlife Program to inform the CRSO EIS and comments on the draft purpose and need statement for the EIS. Additionally, the letter states the agencies should not consider a "pre-Northwest Act" alternative and should replace this alternative with one that fully implements the Council's 2014 Fish and Wildlife Program and 2016 Power Plan.

Your letter stated that the Tribe is frustrated by a perception that Reclamation is avoiding addressing salmon reintroduction in the CRSO EIS. We are disappointed that our past discussions have proven unsatisfactory to the Tribe, and we want to clarify that Reclamation is not trying to avoid addressing reintroduction.

As we discussed at the government-to-government meeting in Spokane on August 30, 2017, the Council's Fish and Wildlife Program is investigating reintroduction. The Council is still in phase one, reviewing preliminary information. We think that process will provide valuable information for future consideration of reintroduction; however, as we have noted, the CRSO EIS process is constrained by court-ordered time frames that will not accommodate the analysis necessary for assessing the feasibility of reintroduction of anadromous fish above Grand Coulee Dam. In the timeframe we have to complete the CRSO EIS process, the co-lead agencies must ensure we accomplish the evaluation necessary to support both the coordinated System operations, maintenance and configuration, and for complying with the Endangered Species Act.

You also stated that "consideration and inclusion of salmon reintroduction above Chief Joseph and Grand Coulee Dams within the alternatives is a requirement to meet the mandates of the [ESA]..." While reintroduction is a topic we are committed to discussing, we do not agree that the Endangered

Species Act (ESA) [or the Northwest Power Act, or National Environmental Protection Act (NEPA)] requires reintroduction above these dams. The extinct populations in the affected distinct population segments are not required to be recovered for delisting purposes under the ESA and reintroduction is not a basis for a jeopardy determination. Similarly, NEPA does not require a particular substantive result such as reintroduction. And concerning the Northwest Power Act, while not legally required to do so, we intend to continue to exercise our discretion and participate in the Council's Phase 1 investigations into issues that may inform the development of program measures related to passage and reintroduction.

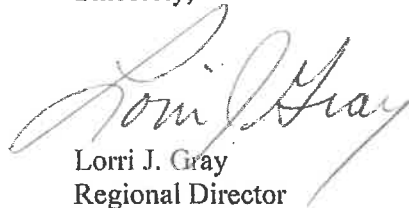
We agree that the co-lead agencies need to use all relevant information from existing plans, studies, and programs as we develop the CRSO EIS and analyze alternatives. The Tribe has made recommendations for the Purpose and Need statement (enclosed). The co-lead agencies have updated the statement to include "reserved rights" to the third bullet in the Legal and Institutional Purposes regarding the protection of tribal rights and obligations. The agencies believe that they have addressed the Tribe's concern regarding the fifth bullet under Resource Purposes regarding the conservation of fish and wildlife by quoting the Northwest Power Act in the second bullet under Legal and Institutional Purposes. Therefore, no changes will be made to the fifth bullet.

Finally, you also expressed concern with the "pre-Northwest Act" draft preliminary focus alternative. As we discussed at the government-to-government meeting in Spokane, the draft preliminary focus alternatives are meant to focus on a specific objective (here, hydropower generation) to help understand the tradeoffs between hydropower and other operations and to show the impacts of various operations on affected resources. While this is not an operation that would be expected to be implemented in the future, the information will inform the analysis the co-lead agencies participating in the EIS. While the co-lead agencies intend to run this alternative through initial power and fish modeling in order to better understand these tradeoffs, this alternative may not be fully analyzed as an alternative in the Draft EIS.

In summary, the co-lead agencies appreciate your engagement in the CRSO EIS process to date, and we look forward to continued interaction and discussions with the Spokane Tribe as we move towards development of the draft EIS.

If you have any questions, please contact Ms. Sonja Kokos, Program Manager, Ecosystems Analysis, at 208-378-5035 or skokos@usbr.gov.

Sincerely,



Lorri J. Gray
Regional Director

cc: See next page.

Attachment 2

3

cc: Major General Scott Spellmon
Commander
Northwest Division
U.S. Army Corps of Engineers
P.O. Box 2970
Portland, OR 97208-2870

Mr. Elliot Mainzer
Administrator
Bonneville Power Administration
P.O. Box 3621
Portland, OR 97208-3621