

Columbia Basin Tribes Coalition
on the
Columbia River Treaty 2014/2024 Review

TRIBES

- Burns Paiute Tribe
- Coeur d'Alene Tribe
- Confederated Salish and Kootenai Tribes of the Flathead Nation
- Confederated Tribes of the Colville Reservation
- Confederated Tribes of the Umatilla Indian Reservation
- Confederated Tribes and Bands of the Yakama Nation
- Confederated Tribes of the Warm Springs Reservation of Oregon
- Cowlitz Indian Tribe
- Fort McDermitt Paiute Shoshone Tribes
- Kalispel Tribe of Indians
- Kootenai Tribe of Idaho
- Nez Perce Tribe
- Shoshone-Bannock Tribes of the Fort Hall Reservation
- Shoshone Paiute Tribe of the Duck Valley Indian Reservation
- Spokane Tribe of Indians

INTERTRIBAL

ORGANIZATIONS

- **Columbia River Inter-Tribal Fish Commission**
700 NE Multnomah St
Suite 1200
Portland, Oregon 97232
- **Upper Columbia United Tribes**
25 W. Main, Suite 434
Spokane, WA 99201
- **Upper Snake River Tribes**
950 W. Bannock Street
Suite 1100
Boise, ID 83702

STATEMENT OF
N. KATHRYN "KAT" BRIGHAM, TREASURER
COLUMBIA RIVER INTER-TRIBAL FISH COMMISSION

ON THE
DRAFT REGIONAL RECOMMENDATION

REGARDING THE
COLUMBIA RIVER TREATY

BEFORE THE
NATURAL RESOURCES COMMITTEE
UNITED STATES HOUSE OF REPRESENTATIVES

DECEMBER 9, 2013

Good morning Mr. Chairman. I am Kat Brigham, an enrolled member of the Confederated Tribes of the Umatilla Indian Reservation and Secretary of the Board of Trustees, the Tribes' governing body. I am testifying before you today in my capacity as the Treasurer of the Columbia River Inter-Tribal Fish Commission and on behalf of the 15 tribes in the Coalition of Columbia Basin Tribes. These 15 Columbia Basin Tribes have legally recognized natural resource management authorities and responsibilities reserved under treaties or executive orders or as federally recognized tribes that are affected by the implementation of the Columbia River Treaty. There are five other tribes that may assert interests in the basin that may be affected by the Columbia River Treaty; the U.S. Entity is consulting with them individually.

High Level Consensus-based Policy Recommendation

At the outset, I want to highlight the fact that the Columbia Basin Tribes worked with the U.S. Entity, other regional sovereigns, and Columbia River stakeholders, including the public utility districts, to try and craft a consensus-based high level policy recommendation on the future of the Columbia River Treaty. We understand that this high level policy recommendation will be formally submitted to the U.S. Department of State on or about December 13, 2013; a near final draft has been released to Congress, regional sovereigns and stakeholders. There is no technical analysis or recommendation to accompany this high level policy recommendation.

Need to Continue Collaboration of Regional Sovereigns

Over the last three years, the Columbia Basin Tribes have collaborated with the U.S. Entity and the other regional sovereigns, and more recently the stakeholders, to complete three iterations of modeling and analysis of a wide range of river and reservoir operations. This expansive modeling and analysis was conducted so that the region would have a common understanding of the potential impacts from modified Treaty operations. While the goal had been to fully integrate this wealth of technical information into a document that would support the regional recommendation, that final step was not taken at the request of the State Department. Therefore, the region's work is not complete – the regional sovereigns will need to continue their technical and policy collaboration in order to support the next phase of the Treaty review process – the State Department's consideration of the high level policy recommendation developed by the region.

Key Elements of the Draft High Level Recommendation

I believe the region was successful in crafting much of the recommendation. That is to say, the Columbia Basin Tribes support the major elements of the recommendation, but

some elements require additional background and clarification. Critical elements of the draft regional recommendation for the Columbia Basin Tribes include:

- modernizing the Columbia River Treaty by integrating ecosystem-based function as a third primary purpose of the Treaty, equal to the Treaty's current obligations for the United States and Canada to coordinate hydropower generation and flood risk management;
- enhancing spring and summer flows while stabilizing reservoir operations;
- pursuing a bilateral international effort between the United States and Canada with the shared goal of returning salmon and steelhead to spawning and rearing habitat into the Upper Columbia River above Grand Coulee dam;
- ensuring that future treaty operations do not impact fish passage efforts throughout the basin;
- pursuing potential alternatives for post-2024 operations to meet flood risk management objectives, including the possibility of using planned or assured Canadian Storage, consistent with ecosystem function, and completing an infrastructure assessment and updating reservoir management through a domestic process as necessary to accomplish this objective;
- securing a dry water year strategy; and,
- reducing U.S. energy costs through rebalancing the Canadian Entitlement.

It is also important to build sufficient flexibility into a modernized Treaty so that operations can adapt to the impacts of climate change and other factors. We believe that the regional sovereigns and stakeholders have coalesced around most of these broad policy goals, and we look forward to working with the U.S. Department of State to advance these goals through discussions with Canada, the province of British Columbia and the First Nations.

Background on the Treaty

As you know, the Columbia River Treaty was signed and ratified by the United States in 1961 and, after the adoption of a protocol, was ratified by Canada and implemented by the two countries in 1964. Under the Treaty, Canada agreed to build three storage dams and coordinate the operation of these new storage facilities with the U.S. hydroelectric power supply system in order to optimize hydroelectric power production and to provide

coordinated flood control benefits. The U.S. was allowed to build Libby Dam in Montana, creating Lake Koocanusa, which backs 40 miles into Canada.

The U.S. Entity will tell you that the Treaty is a model of international cooperation for the management of a transboundary river system. But that international cooperation is limited in the purposes it serves, optimizing hydropower generation and coordinated flood risk management. The Treaty is not currently designed to provide for ecosystem-based functions. Under the current Treaty, we can only modify operations in very limited ways to benefit ecosystem-based function, and only when both countries agree there are mutual benefits that flow from those modified operations. I do want to point out that the Treaty increased the impacts of hydropower to communities by moving the flood upriver, these impacts began before the Treaty with the earlier construction of dams on the mainstem in the United States that affected the cultural and natural resources of the Columbia Basin Tribes, First Nations and other communities all the way up to the Basin headwaters in Montana, Idaho and British Columbia.

No Prior and Informed Consent of Tribes and First Nations

In negotiating the Treaty and developing the Treaty’s coordinated system operation, the U.S. did not consult with the Columbia Basin Tribes nor consider the effect of the Treaty on our cultural and natural resources, yet the Treaty has had far reaching impacts on our cultural and natural resources that continue to this day. Not only were the Columbia Basin Tribes not consulted during the Treaty’s negotiation, the tribes were excluded from its governance and implementation, as well as sharing in the benefits of the Treaty. The Treaty does not include considerations of critical tribal cultural resources. The coordinated power and flood control system created under the Treaty degraded rivers, First Foods, natural resources, and tribal customs and identities. The coordinated flood risk management plan, while providing substantial protections for Portland and Vancouver, permanently moved the floods upriver through the creation and maintenance of large storage reservoirs. The Treaty currently limits the ability of Treaty and non-Treaty water agreements to address these issues and meet tribal resource priorities.

Columbia River Treaty 2014/2024 Review and the Sovereign Participation Process

When the U.S. Entity initiated the Columbia River Treaty 2014/2024 Review, the 15 tribes recognized the opportunity to work with the U.S. Entity to correct past mistakes and improve upon the Treaty. The Columbia Basin Tribes began meeting in January 2008 to identify their common issues and concerns with the Treaty and its implementation, while also meeting on a government-to-government basis with the U.S. Entity to develop a better understanding of the Treaty’s implementation. By February 2010, the tribes’ several meetings and workshops on the Treaty led to the development of the “Columbia Basin Tribes’ Common Views on the Future of the Columbia River Treaty” – known as

the tribes’ Common Views document. I have included a copy of this document with my testimony. I have also provided you with a map of the Basin that shows you the location of the fifteen tribes, as well as that of the First Nations in Canada that have asserted interests affected by the Treaty’s implementation in Canada.

Developing the Sovereign Participation Process for the Treaty Review

The Columbia Basin Tribes met with the U.S. Entity in July 2010 to discuss their issues and concerns with the Treaty and how best they could collaborate with the U.S. Entity to address these issues through the Treaty Review. At that meeting, the U.S. Entity agreed to work with the Columbia Basin Tribes, other federal agencies and the states to establish the Sovereign Participation Process for the Treaty Review. The Sovereign Participation Process was three-tiered: the first tier was government-to-government, where decisions were made regarding policy issues; the second tier was the Sovereign Review Team, where the regional sovereigns coordinated, discussed policy issues and provided guidance to the Sovereign Technical Team; and finally, the Sovereign Technical Team, which conducted the technical modeling and analysis.

The Sovereign Participation Process also provided for expert policy and technical input from stakeholders, including presentations from expert panels on power, water supply and irrigation. Building upon the bilateral Phase I Report released by the U.S. and Canadian Entities in August 2009, the sovereigns completed three more iterations of modeling and analysis. As each of the three iterations of modeling and analysis was, the U.S. Entity, with the support of the other regional sovereigns, took the lead on reporting out the results to stakeholders through a series of public meetings or “listening sessions” held across the basin. These listening sessions provided cities, counties and other public representatives and stakeholders to ask questions and provide feedback.

Additional detail on Ecosystem Function

One of the most significant, and appropriate, features of the high level recommendation is the addition of ecosystem function as a third primary purpose of the Treaty, along with flood control and hydroelectric generation. During the course of the discussions at government-to-government and Sovereign Review Team meetings, tribal representatives and staff were often asked to describe “ecosystem-based function.” Tribal leaders explained that since time immemorial, the rivers of the Columbia Basin have been, and continue to be, the life blood of the Columbia Basin Tribes. The ecosystem function of the Columbia Basin watershed is measured as the Basin’s ability to provide, protect and nurture cultural resources, traditions, values and landscapes throughout its length and breadth. The Columbia Basin Tribes hold that clean and abundant water that is sufficient to sustain healthy populations of fish, wildlife, and plants is vital to holistic concept of ecosystem-based function and life itself.

Closing

The Columbia Basin Tribes would be happy to answer any additional questions you might have about the tribes' views on the high level regional recommendation, or the integration of ecosystem-based function into a modernized Treaty, whether now or in the future. We look forward to working with the Department of State, our elected representatives in Washington, D.C., regional sovereigns and stakeholders and the U.S. Entity in 2014 as the State Department considers the regional recommendation.

Columbia Basin tribes¹
Common Views on the Future of the Columbia River Treaty
February 25, 2010

The present Columbia River power and flood control system operations are negatively affecting tribal rights and cultural interests throughout the Columbia Basin. The Columbia River Treaty is foundational to these operations.

The Columbia River Treaty –

- Was negotiated and continues to be implemented without regard to the tribes' unique legal and political relationship with the federal government.
- Is narrowly designed for the benefit of power and flood control.
- Does not include ecological considerations for critical tribal natural resources.
- Does not include considerations of critical tribal cultural resources.
- Created a power and flood control system that degraded rivers, First Foods, natural resources, and tribal customs and identities.
- Significantly affects tribal economies.
- Excludes tribal participation in its governance and implementation.
- Limits what can be accomplished with non-Treaty agreements to meet tribal resource priorities.

The Columbia River Treaty is under review by the U.S. and Canadian governments for reconsideration in 2014. Reconsideration of the Treaty provides an opportunity for the tribes to seek benefits not realized in 50 years of Treaty implementation.

The Columbia Basin tribes' interests must be represented in the implementation and reconsideration of the Columbia River Treaty. The Columbia River must be managed for multiple purposes, including -

- Respect for the sovereignty of each tribal government - each tribe has a voice in governance and implementation of the Columbia River Treaty.
- Tribal cultural and natural resources must be included in river management to protect and promote ecological processes – healthy and useable fish, wildlife, and plant communities.
- Integrate the tribes' expertise of cultural and natural resources in river management.
- Equitable benefits to each Tribe in priority to other sovereign parties in Columbia River management.
- Respecting and preserving the benefits of settlement agreements with tribes.
- Recognize tribal flood control benefits.
- Protecting tribal reserved rights to current and future beneficial uses, in a manner consistent with ecosystem-based management.

¹ The Burns Paiute Tribe, the Coeur d'Alene Tribe, the Confederated Salish and Kootenai Tribes of the Flathead Nation, the Confederated Tribes of the Colville Reservation, the Confederated Tribes of the Umatilla Indian Reservation, the Confederated Tribes and Bands of the Yakama Nation, the Confederated Tribes of the Warm Springs Reservation of Oregon, the Cowlitz Indian Tribe, the Kalispel Tribe of Indians, the Kootenai Tribe of Idaho, the Nez Perce Tribe, the Fort McDermitt Paiute Shoshone Tribe, the Shoshone-Bannock Tribes of the Fort Hall Reservation, the Shoshone Paiute Tribes of the Duck Valley Indian Reservation, and the Spokane Tribe of Indians, with support from the Columbia River Inter-Tribal Fish Commission, Upper Columbia United Tribes, and the Upper Snake River Tribes tribal organizations have been working together to consider the effects and alternatives related to the Columbia River Treaty.

In order to realize these principles, the tribes' collective voices must be included in the implementation and reconsideration of the Columbia River Treaty.