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Testimony
Before the Water and Power Subcommittee
Of the Committee on Resources
United States House of Representatives

Oversight Hearing on “Stabilizing Rural Electricity Service Through Common Sense Application of
the Endangered Species Act”
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1324 Longworth House Office Building

Good morning Mr. Chairman, members of the subcommittee. My name is Olney Patt, Jr.; I am the Executive Director of the Columbia River Inter-Tribal Fish Commission. I want to thank you for providing me with the opportunity to testify before you today. I think it is important for you and the members of the subcommittee to hear how the tribes feel about the interplay between the federal obligation to restore salmon to healthy sustainable runs under treaties between the tribes and the United States, as well as under the Endangered Species Act and the Northwest Power Act, and the desirable goal of maintaining access to cheap electricity generated by hydropower.

The Columbia River Inter-Tribal Fish Commission was formed by resolution of the Nez Perce Tribe, the Confederated Tribes of the Umatilla Indian Reservation, the Confederated Tribes of the Warm Springs Reservation of Oregon and the Confederated Tribes and Bands of the Yakama Nation for the purpose of coordinating fishery management policy and providing technical expertise essential for the protection of the tribes' treaty-protected fish resources. Since 1979, the CRITFC has contracted with the BIA under the Indian Self-Determination Act (P.L. 93-638) to provide this technical support. Since 1985, the Commission, together with the Northwest Indian Fisheries Commission, has also contracted with the BIA under the Indian Self-Determination Act (P.L. 93-638) to implement the tribal co-management responsibilities and obligations under the U.S.-Canada Pacific Salmon Treaty of 1985. The Commission's primary mission is to provide coordination and technical assistance to the member tribes to ensure that outstanding treaty fishing rights issues are resolved in a way that guarantees the continuation and restoration of our tribal fisheries into perpetuity.

I also serve as one of two tribal representatives on the U.S. Section of the Pacific Salmon Commission. The Pacific Salmon Commission is responsible for implementing the U.S.-Canada Pacific Salmon Treaty, which is designed to ensure the conservation of salmon stocks while fairly allocating harvests between the two countries. I previously served as the elected Chairman of the Confederated Tribes of the Warm Springs Reservation of Oregon.

My testimony today is provided on behalf of the four treaty fishing tribes from the Columbia River basin.

Treaties of 1855 Under treaties negotiated with the United States in 1855, the tribes reserved to themselves several rights, each as a sovereign; among these reserved rights is the right to take fish at all usual and accustomed fishing places. On the Columbia River and its many tributaries, our peoples have exercised this right since time immemorial. Our peoples fished during times of drought and during times of floods, during times of great runs of salmon and during times of low runs of salmon. As they do now, our chiefs and elders watched over the harvest to ensure that the people cherished and protected the gift of salmon from the Creator. It was the expectation of our treaty negotiators then that the tribes would always have access to abundant runs of salmon; it is our expectation now that the United States will honor that commitment and take the steps necessary to protect our trust resource. This reserved right has not been diminished by time and its full exercise has been upheld and affirmed in several U.S. Supreme Court decisions.

Spirit of the Salmon I want to take this opportunity to note that the tribes, working through the Commission, have developed a framework restoration plan, Wy-Kan-Ush-Mi Wa-Kish-Wit or Spirit of the Salmon. This plan documents the threats to our fisheries, identifies hypotheses based upon adaptive management principles for addressing these threats, and provides specific recommendations and practices that must be adopted by natural resource managers to guarantee their trust responsibilities and meet their treaty obligations. In this plan, the tribes have identified the need to insure that the burden

of conserving these salmon stocks is allocated fairly across those land and water uses responsible for their decline. Consistent with this need, we have identified changes that hatchery programs, forestry, hydroelectric development, irrigation, mining and other development activities must make in their operations to ensure the recovery of salmon stocks and fisheries. The tribes' ultimate goal is to restore a sustainable resource for the benefit of all peoples in the Pacific Northwest. Consistent with meeting this goal, each and every beneficiary of the river must make sacrifices in times of shortage, much as the tribes have voluntarily sacrificed fully exercising their right to fish over the last several decades. The tribes now call upon those who would generate electricity and those who would withdraw water from the rivers to now make that sacrifice, or to provide equivalent mitigation when it is demonstrated that such sacrifice is impossible.

Hydropower development Our ability to fully exercise our reserved right to take fish at all usual and accustomed fishing places has been compromised by a combination of state and federal decisions and management actions that were focused not on the salmon, but rather on other developments and uses of the Columbia River. Predominant among these developments is what we know as the Federal Columbia River Power Supply System, a series of eight hydroelectric power generating dams built by the Army Corps of Engineers (four dams on the main stem of the Columbia River, four dams on the lower Snake River), two large hydroelectric dams built by the Bureau of Reclamation on the upper reaches of the Columbia, cutting off access to about a third of the historic salmon spawning habitat, and several more hydropower dams built within the basin under license from the federal government. While there are other developments that have impacted the salmon, such as irrigation, dredging, mining, forestry, etc., NOAA Fisheries has acknowledged that the majority of the salmon losses due to development activities are a result of dams, with up to 90% of the juvenile salmon lost to dam mortality during their downstream migration.

Current hydropower operations It now appears that in the Pacific Northwest we will, as was the case in 2001, find ourselves once again in an extremely low water year. So, once again, the tribes fear that the salmon will be set up to lose in favor of preventing an energy or water crisis. The potential for an energy or water crisis does not lower the standard by which the United States must strive to meet to honor its obligations to the tribes and to the salmon; in fact, a drought increases the burden of the U. S. and its agencies to ensure that the salmon resource is protected from further injury and loss. This obligation is reinforced by the ESA, and is consistent with the obligation to treat salmon equitably with power generation under the Northwest Power Act.

To honor its commitment now means that the U. S. must ensure that there is water in sufficient quantity and quality in the Columbia River to ensure the safe passage of out-migrating juveniles as well as for adult salmon returning upriver to spawn. It is not the current water conditions standing alone that are affecting tribal resources in the Columbia River basin. The real problems are management decisions made and actions taken by the federal and state agencies that have over subscribed the capacity of the system. It is these decisions and actions that put the long-term viability of the salmon resource in jeopardy. It is those decisions that set up a conflict between consumers of cheap hydropower and those that are dependent upon a healthy salmon resource.

In the tribes' view, an energy crisis or water crisis are very real problems but they are short-term in nature. The true crisis, with long-term implications, has already been declared in the Columbia River where numerous salmon populations are in danger of being lost to this and future generations. The region - as sovereigns - and with Congress' support and aid, must distinguish between managing for short-term inconveniences and preventing the realization of the true potential for long-term losses. Due to state and federal reactions to current water conditions, a heightened state of emergency has been created for our shared salmon resource.

Common Sense Hydropower Management With regard to the hydroelectric power system, the tribes continue to believe that the four dams in the lower Snake River must be breached to ensure the restoration of salmon in that basin. It is clear from the scientific data collected over years of study that breaching is the only sure course to salmon restoration. We are spending hundreds of millions of dollars on techno fixes each year to keep these dams in place. Most recently, the Corps of Engineers has begun to place removable spillway weirs at these dams - in essence, a giant water slide for outmigrating juvenile salmon. The tribes are concerned that this techno fix, like others before it, will not improve the long term survival of salmon.

By removing these dams sooner, rather than later, we provide certainty to the system as to the amount of available power. These dams are run of the river and provide less than five percent of the power marketed by the BPA. By removing these dams, we speed the recovery of salmon runs returning to the Snake River, reducing the long term costs by eliminating both

the costs of techno fixes and over time, the annual costs of mitigation for the operation of these four dams.

We continue to believe that in lieu of dam breaching, a very aggressive program of increased flows through the reservoirs and spills at the dams must be pursued by the federal agencies to increase the survival of outmigrating juvenile salmon. Based on the overwhelming amount of information available from research conducted over the last 30 years, the tribes do not believe that transporting fish in barges provides benefits anywhere near the equivalent of adequate flows and spill.

In the interim, we advocate for adequate flow levels and for spilling water – and juvenile salmon – over the dams, not because we believe they are the answer to salmon recovery, but because they are the only two management actions at our disposal. They will lessen what promise to be unusually lethal impacts of the hydropower system at a time when salmon stocks in the Snake and upper Columbia River are at dangerously low levels. This cannot be considered enhancement but, at best, damage control.

We know that during years with favorable river conditions (high flow and spill rates), smolt-to adult returns (SARs) for upriver stocks that must navigate the several dams on the river compare most favorably with SARs for downriver control stocks, those that have no dams blocking their path to the ocean. We know that flow augmentation lessens the impacts of reservoirs and that spill lessens the impacts of dams.

We now know that we would need many millions of acre-feet to approach flow levels even close to the historic hydrograph. Yet, getting back to the historic hydrograph isn't enough. Because the reservoirs behind the dams act to slow water velocity several fold, for flow, we would need to increase average precipitation several fold to compensate for the presence of reservoirs. Even in normal years, this would be impossible.

The tribes, and many others, believe that the flow augmentation targets proposed by the federal agencies in the Biological Opinion are inadequate. Yet, the safest avenue for fish, providing for spill over the dams, is now subjected to drastic curtailment or complete elimination in order to provide water for power generation.

Water is an extremely limited resource and the rivers throughout the region are already over-allocated under current management. While these waters serve other important uses and users, they are fundamental habitat for salmon. Salmon need these waters for instream flows. Our treaties, and the Federal and State trust responsibility to the tribes under our treaties, as well statutory obligations under the Endangered Species Act and the Clean Water Act, are there to protect these resources.

In the Pacific Northwest, we live among a diversity of communities, industries and cultures. Each one has a stake in the fate of the salmon and shoulders the responsibility for salmon survival. The Endangered Species Act often becomes the focal point of frustration but we cannot overlook other contributing factors that impact salmon survival while also limiting the river's capacity to generate hydropower. If we try to analyze how the implementation of the ESA affects the costs of rural electricity, we will ignore other river uses and users that also affect the cost of rural electricity.

For example, in the current draft of the Northwest Power and Conservation Council's 4th Annual Report to the Governors on the Fish and Wildlife Program, they state that irrigation is the largest non-power user: irrigation accounts for net water withdrawals from the Columbia and Snake River system of about 14.4 million acre-feet of water annually. According to the Council's analysis, this volume of water, were it left in the river and used to generate hydropower instead of being withdrawn for irrigation, would yield about 625 average megawatts of electricity (that is, averaged across all 12 months) with a value of about \$145 million per year. Therefore, rural, agriculturally based communities that divert water to nurture and sustain their livelihood also tap into the water supply that could otherwise be funneled through the hydropower system. Should we ignore this cost to the system? That doesn't seem fair when, at the same time, water that is needed to ensure the safe passage of salmon to the ocean is being charged as a cost against the ESA.

The ESA did not create the salmon's need for water, it is there to remind us all of the salmon's need for adequate water quantity and quality. A sufficient level of water is simply not available for all the uses being proposed by the various user groups, especially during low water years. States should consider providing, and the federal government should consider supporting, funding incentives for setting or amending instream flows to levels higher than the current flows where necessary to ensure that these flows are adequate to meet the needs of fish. My point is that we are all in this together: while we enjoy the benefits, we must also recognize the consequences and find equitable solutions.

The tribes are concerned that in low water years the states takes actions that favor irrigation needs exclusively over the needs of fish, thereby not honoring obligations to rebuild naturally spawning stocks of anadromous fish as required under US v. Oregon, the Chinook rebuilding program of the U.S.-Canada Pacific Salmon Treaty, and the Northwest Power Act. Obviously, a state's action in reducing instream flow levels will not benefit salmon. Every cubic second foot of water available for instream purposes is more valuable in a drought year than in a year of normal runoff.

In addition, a decision to allow has a cumulative impact: further reducing instream flows reduces the volume of water available for hydroelectric production and for spill for salmon and will adversely affect the region's interest in both these instream uses.

What we need for salmon, and what rural economies need in terms of energy costs, is certainty. To achieve that certainty, we need to honestly assess the actual costs of hydropower energy development long deferred by energy users but borne by the salmon and the communities and cultures dependent upon healthy sustainable salmon runs. The Columbia Basin Fish and Wildlife Authority, a consortium of 13 tribes, 4 states, and the federal fish and wildlife agencies, has developed a cost estimate for the implementation of subbasin plans developed under the auspices of the Northwest Power and Conservation Council.

We believe that the Bonneville Power Administration should build these costs into their next rate case. Under the current rate case, costs were assumed to be an average of \$186 million. For the next rate case, covering the years of 2007 through 2009, the costs should ramp up to an average of \$240 million per year. The effect of including these costs on the hydroelectric power rates is minimal: for the average household that gets all of its power from BPA, building these costs in the power rate would mean an increase of about one dollar per month. BPA only provides about forty percent of the power in the Pacific Northwest, so most homes would see smaller monthly increases in power costs.

Again, we must also look at the full suite of benefits of implementing the Council's fish and wildlife restoration programs through an increase in BPA rates: fiscal obligations of the federal government to carry out these activities on behalf of the tribes, and under the ESA, would be borne by those benefiting from power rates that are about 67% of the national average, fully funding these efforts would immediately create thousands of jobs in rural and tribal communities, the end result of restoration actions would be sustainable fish and wildlife populations that annually generate several hundred million dollars for regional economies. Almost all of the work would be in eastern Washington and Oregon, Idaho and Montana.

Conclusion The salmon resource, and with it, tribal rights reserved under treaties with the United States must not be the last priority of the list of considerations reviewed by the Congress in determining the appropriate costs to be borne by the federal and federally-licensed hydropower dams. To alleviate this burden, the tribes ask that Congress ensure that other river users are bearing their fair share of the conservation burden. To achieve regional and national salmon restoration goals, we believe that Congress should encourage the BPA to charge rates adequate to cover necessary costs of the implementation of subbasin plans, or else ensure that adequate funding is available through federal appropriations. In considering the effect that salmon restoration costs may have on rural electricity users, we note that the average power cost regionally will still be substantially below the national average. We believe that certainty in available funding, and certainty in associated costs, allows for good regional planning.

We would also ask for your support of a National Tribal Energy Bill, which will foster expedited energy resource development on tribal lands and provide the Northwest tribes the opportunity to help alleviate the burden of energy reliance on the Columbia and Snake rivers by the rapid development of new cost effective power supplies to serve Northwest loads.

Supplemental Sheet

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