IDAHO WATER RESOURCE BOARD

C.L. "Butch" Otter
Governor

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Albert Barker
Boise
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Rupert
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Bonneville Power Administration
PO Box 3621
Portland OR 97208-3621

Re: Columbia River Treaty

The Idaho Water Resource Board was established by the Idaho Constitution and the Idaho legislature to formulate, adopt and implement a comprehensive state water plan for conservation, development, management and optimum us of all unappropriated water resources and water ways in the state of Idaho to support the public interest. Article XV, section 7, IDAHO CONSTITUTION, and Idaho Code section 42-1734A. The Idaho Water Resource Board is charged with protecting existing water rights and the relative priorities of water use in the state as described by the Idaho constitution.

The Idaho Water Resource Board is very concerned by the direction that certain parties are taking with respect to the draft recommendations that are being suggested for potential modifications to the Columbia River Treaty post-2014. The Board's concerns are amplified as a result of the "Draft Regional Recommendation" and the comments of various entities at the Legislative Council on River Governance, held October 3rd and 4th in Boardman, Oregon on that Draft.

It appears that there is a significant effort to fundamentally change the Columbia River Treaty from a pact dealing with the impacts of flood control and power generation to a document that will or potentially could be used as a mechanism to govern all water use in the Pacific Northwest, or at least in the Columbia River drainage. The scope of the expansion being advocated is potentially broad enough to reach into the day to day decisions on how water is allocated throughout the region. As the Snake River and its tributaries are potentially subject to this expansion of the Columbia River Treaty, the Idaho Water Resource Board is very concerned about impact of this expansion of authority might have on the water resources of the State of Idaho.

First and foremost, the Columbia River Treaty is a flood control and power treaty. Previous discussions about the modification of the treaty were focused on those topics. Recently the discussion has changed. Certain entities have advocated that the Treaty be fundamentally modified to take on the role of ecosystem-based function. Exactly what that function is and how it will be implemented are left vague, seemingly intentionally, in discussions of modifications of the treaty. How this new function will be paid and who will pay for it is not addressed. At present there are water laws, water resource management laws, and environmental laws in both the United States and Canada governing how water is used and how the ecosystem is to be protected

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and maintained. The recommendations about modernizing the treaty to incorporate these ecosystem functions are not spelled out. BPA's current recommendations seem to acknowledge that the Treaty modifications will be subject to all existing environmental laws in the United States. But, the recommendations do not acknowledge the obligation to defer to existing state water law as required by current federal law. There is no explanation for why it is necessary to provide for a new layer of ecosystem restoration functions and obligations or how the new ecosystem restoration Treaty obligations will be created without potentially contradictory directives on the Region. In the view of the Idaho Water Resource Board, elevating ecosystem restoration to the status of a third "primary purpose" of the Treaty has the potential to infringe on the sovereignty of the countries and the states and provinces. As currently proposed the Water Resource Board does not support the fundamental reconstitution of this treaty that would result from elevating "ecosystem restoration" to stand on equal footing with flood control and power.

Comments on the modification of the Treaty have suggested that the Treaty is a mechanism to reintroduce anadromous fish into the Snake River above Hells Canyon dam and into Canada. The BPA recommendation is limited on its face to Canada, "to investigate and, if warranted, implement restored fish passage and reintroduction of anadromous fish on the main stem Columbia to Canadian spawning grounds". But it goes on to suggest that the Treaty could be used for other reintroduction opportunities. Indeed, certain parties have specifically called on the Treaty to provide for reintroduction in the Snake River above Hells Canyon dam. Reintroduction of anadromous species is and should remain beyond the scope of this Treaty. Idaho has laws and the Board has policies in place dealing with reintroduction of species that could conflict with the objectives of other interest groups. The Treaty should not be seen as a mechanism to over-ride or place at risk Idaho's sovereignty over its water recourses including its authority over reintroduction and management of aquatic species within the State.

The recommendations from BPA suggest that a modernized Treaty should find ways to increase flow augmentation as part of the ecosystem restoration function. The recommendations do not specify a source of this increased flow augmentation, but suggest it be from Canada. The Nez Perce Tribe, the State of Idaho and the water users in the State of Idaho have resolved the need for additional flow augmentation from the Snake River in Idaho. The Idaho Water Resource Board does not support any effort to reopen that agreement, and particularly not by way of a modified Columbia River Treaty.

The Treaty was intended to provide the Region certainty as to how and for what flows would be shaped. Adding a third purpose will insert uncertainty into the Region as regional, state and local entities have for years been addressing ecosystem issues on a local basis as required by law. More conflict will result and as a consequence more litigation.

Some entities have advocated another fundamental shift in how the Columbia River and its tributaries are managed. Specifically, some interests have advocated that every dam on every tributary to the Columbia be used in the first instance for system-wide flood control. As a matter of Congressional authorization, the projects in the Snake River and North Idaho tributaries were neither authorized for or designed for system-wide flood control. Rather they variously serve storage, flood control, wildlife and recreational purposes. Changing how all these facilities operate to make them take on that new burden of system-wide flood control is bad policy. Changing the very purpose of the operations undoubtedly will harm existing uses, including local flood control, water supply and local ecosystems which rely on those projects. There will also be indirect consequences to local economies based upon water supply and local ecosystems.

Some entities have advocated using the Treaty modification to create a "natural hydrograph" on the Columbia. A natural hydrograph necessarily means more spring flooding by restoring a "spring

freshet" and less flood control. Using a flood control Treaty to create greater spring flooding is inconsistent with using the reservoirs for flood control. Yet the recommendations suggest that the current level of flood control must be maintained. This tension in approaches cannot be left unresolved in moving to modify the Treaty.

The recommendations proceed to discuss domestic matters to be addressed post 2013. Here the agencies suggest in item no 2 that the federal and tribal interests will take on the task of water re-allocation. Specifically, the recommendation states:

> *Pacific Northwest States, Tribes, and appropriate Federal agencies will design and initiate a process to allocate and manage any additional spring or summer flows for in-stream and out-of-stream purposes derived through post-2024 Treaty operations.*

Idaho initiated a process in 1984 to define and adjudicate all water rights in the State. Idaho is progressing through basin adjudications and is about to complete the process for the Snake River. In the main stem Snake River and tributaries upstream from Hells Canyon dam, water availability is extremely limited and intermittent. It is a matter of state law and state process to allocate flows. This process is already in place and cannot be overridden by an ad hoc federal/tribal/multi-state process to allocate flows in Idaho, as suggested in this recommendation.

The Idaho Water Resource Board appreciates the opportunity to provide its comments and to express its concerns about the proposal to modify the Columbia River Treaty.

Sincerely,

Roger Chase

Roger Chase, Chairman

cc: Governor Otter
Jim Yost
Idaho Congressional delegation
Idaho representatives to Legislative Council on River Governance
Idaho Water Resource Board members

Gayle L. Batt
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COMMITTEES

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House of Representatives
State of Idaho

November 12, 2013

Governor C.L. "Butch" Otter
Office of the Governor
State Capitol
P.O. Box 83720
Boise, ID 83720

Dear Governor Otter:

On October 3rd and 4th, I was one of Idaho's representatives at the Legislative Council on River Governance in Boardman, Oregon. Our Committee was briefed on the Columbia River Treaty (CRT). Perspectives were given by Steve Oliver and Matt Rae representing the U.S. Entity, Kathy Eichenberger from the Government of British Columbia (B.C.), Paul Lumley with Columbia River Inter-Tribal Fish Commission (CRITFC) and Brandon Hignite from Central Lincoln PUD. Prior to the meeting I received briefings from Idaho stakeholders including Jim Yost the State of Idaho Representative on the Sovereign Review Team (SRT), John Anderson from Idaho Power Company, Norm Semanko with Idaho Water Users Association, Will Hart representing Idaho Consumer Owned Utilities and Al Barker with the Idaho Water Resource Board.

I wanted to bring to your attention one very important matter that came to light during the meeting. The sixty year old CRT was created to address two issues, power and flood control. The proposed recommendation for a modernized treaty is now including a third and very controversial issue, ecosystem based function. Ms. Eichenberger, from B.C., told the committee that B.C. "does **not** see why ecosystem based functions should be a 3rd pillar," of the Treaty. Eichenberger explained that members of the treaty are not precluded from taking up environmental issues under the current treaty, and went on further to say that each country has its own set of laws to deal with the environment. I re-confirmed B.C's position via a telephone conversation on October 17th with Ms. Eichenberger. She confirmed the stance of B.C. is to maintain the Treaty's focus on power and flood control. Eichenberger went on to say the following:

1) So much money has been invested to meet environmental requirements. B.C. does not understand the need to elevate the issue of ecosystem based functions in the treaty when work is already occurring. The environmental work also has to be scientifically based and measurable.
2) Salmon passage in not a treaty issue. Each Country is responsible for its own infrastructure. B.C. does not know if fish passage is biologically beneficial at Grand Coulee Dam.

3) There is a lot of flexibility in the current Treaty and entities are not precluded from addressing environmental issues. Changes have already occurred under the current Treaty regarding flows for salmon.
4) B.C. does not agree with mimicking the natural hydrograph. There is no science to prove flows that mimic the natural hydrograph will help anything, all the while losing power and flood control.

Idaho stakeholders have consistently provided comments stating the addition of an environmental component is unacceptable, and if the treaty goes forward it should remain focused on power and flood control. The question the State of Idaho should be asking the U.S. Entity is "Why include ecosystem based function in the CRT recommendation to the State Department?" If Canada does not want a third pillar to be ecosystem based function, then is it the 9 U.S. Federal agencies on the SRT pushing the issue? Is it CRITFC who referenced the Treaty as the "best opportunity in our lifetime to affect the way the Columbia River is managed," pushing the issue? Simply said, U.S. stakeholders are fighting among ourselves to include a controversial environmental component to the Treaty. My plea to you is to make the U.S. Entity answer this simple question, "Why are ecosystem based functions being included in the recommendation to the State Department, if B.C. does not want it included?"

Hopefully the U.S. Entity will learn that legitimate stakeholder participation is critical in getting collaboration. Please know that I am glad to answer any questions or provide greater detail of the meeting. I appreciate you defending the interests of Idaho's water right holders, power producers, landowners and rate payers who have been left out of these important discussions.

Respectfully submitted,

Gayle L. Batt
Representative, District 11A

cc:
Jim Yost, SRT Idaho Representative
John Anderson, Idaho Power Company
Will Hart, Idaho Consumer Owned Utilities
Norm Semanko, Idaho Water Users Association
Al Barker, Idaho Water Resource Board
John Chatburn, Idaho Office of Energy Resources
Speaker Scott Bedke, Idaho House of Representatives
Representative Lawrence Denney, Chairman House Natural Resources Committee
Senator Monte Pearce, Chairman Senate Resources Committee
Representative Dell Raybould, Chairman Natural Resources Interim Committee

October 25, 2013

Via online submittal at: www.bpa.gov/comment
United States Entity
Columbia River Treaty
P.O. Box 14428
Portland, OR 97293

Re: Comments on Columbia River Treaty Review Draft Regional Recommendation

To Whom it May Concern:

These comments are provided on behalf of the Idaho Water Users Association ("IWUA") and the Committee of Nine (collectively, "Idaho Water Users"), regarding the U.S. Entity's Draft Regional Recommendation on the future of the Columbia River Treaty ("Draft Regional Recommendation"). Idaho Water Users previously submitted comments on the U.S. Entity's Working Draft on August 16, 2013. We appreciate the opportunity to provide these comments on the September 20, 2013 Draft Regional Recommendation.

IWUA is a non-profit corporation representing irrigation districts, canal companies, ground water districts, water districts, public water suppliers, municipalities, hydroelectric companies, aquaculture interests, agri-businesses, professional firms and individuals, dedicated to the wise and efficient use of our water resources. IWUA members provide water to approximately 2.5 million acres of irrigated farmland in Idaho. They own the right to use water from private irrigation reservoirs and those that were built by the U.S. Bureau of Reclamation, as well as natural flow water rights diverted from Idaho's rivers and streams, within the Columbia River Basin. IWUA has followed the Columbia River Treaty Review process with great interest and has participated in several of the public hearings and open houses that have been held across the region.

The Committee of Nine is the official advisory committee for Water District 1, the largest water district in the State of Idaho. Water District 1 is responsible for the distribution of water among appropriators within the water district from the natural flow of the Snake River and storage from U.S. Bureau of Reclamation reservoirs on the Snake River above Milner Dam. The Committee of Nine is also a designated rental pool committee that has facilitated the rental of stored water to the Bureau of Reclamation to provide water for flow augmentation pursuant to various biological opinions issued for salmon and steelhead species listed under the Endangered Species Act. The Committee of Nine has also been engaged in the Treaty Review process.

Idaho Water Users limited their comments on the Working Draft largely to general issues. In these comments, we provide more specific comments on the particular language in the Draft Regional Recommendation.

Idaho Water Users urge the U.S. Entity to make the following changes to the Draft Regional Recommendation, for inclusion in the final recommendation to the U.S. Department of State. For ease of reference, we have included our comments under the applicable titles included in the Draft Regional Recommendation. We have also attached a marked-up copy of the Draft Regional Recommendation, which includes our specific language changes in a strike-and-add, red-lined format.

Regional Goals for the Columbia River Treaty

The purpose of the Columbia River Treaty is to reduce impacts from flooding and to increase power production. The U.S. has proposed "modernizing" the Treaty to include ecosystem-based function as a third primary purpose of the Treaty, while recognizing other additional elements such as future water supply, recreation and navigation needs. Irrigation is another important, authorized purpose, which should be expressly recognized in the final Regional Recommendation to the U.S. Department of State. This includes recognition of the Reclamation Act of 1902, amendments thereto, and deference and adherence to State water law in the allocation and management of water, as required by Section 8 of the Reclamation Act and U.S. Supreme Court precedent.

The obvious lack of any regional consensus regarding the inclusion of ecosystem-based function as a third primary purpose of the Treaty suggests strongly that flood control and power production should remain the primary purposes of the Treaty. At the same time, it is appropriate to recognize ecosystem-based function as one of the "important elements of a modernized Treaty", or additional purposes authorized in the Columbia River Basin, as evidenced by the ongoing implementation of the Endangered Species Act and other environmental laws. However, ecosystem-based function should not receive greater recognition or stature under the Treaty than, or adversely impact, the other long-authorized purposes in the basin, including irrigation, water supply, recreation and navigation.

As noted in the Draft Regional Recommendation, the United States has been able to cooperate with Canada to provide ecosystem-based function benefits under the current Treaty without formally elevating this purpose above the other authorized purposes in the basin. Idaho Water Users see no need to make the dramatic change proposed in the Draft Regional Recommendation and elevate ecosystem-based function above all of the other authorized purposes in the basin. There is certainly no regional consensus on that point.

General Principles

The key principles underlying the recommendation should be revised to reflect the comments above. Specifically, irrigation should be added as a recognized authorized purpose and ecosystem-based function should be recognized as an authorized (rather than primary) purpose. These specific language changes are included in the attached mark-up of the Draft Regional Recommendation.

Recommendation Details
Ecosystem-based Function

While ecosystem-based function is a recognized purpose in the Columbia River Basin, pursuant to implementation of the Endangered Species Act and other environmental laws, the Treaty should not be used as an independent mechanism to provide for additional environmental regulations or requirements. Flow augmentation and other forms of ecosystem-based function are currently provided for pursuant to very specific and rigorous adherence to environmental and conservation laws, including extensive federal court litigation. The Treaty should not frustrate or contradict those efforts, but it also should not be used to expand current requirements. Such an "end-run" would be inappropriate and unfair to those in the basin who are impacted by and pay the costs of those efforts.

The Treaty should not place any additional burdens on U.S. water and storage projects. U.S. environmental laws, including the Endangered Species Act, have been implemented extensively in the Columbia River Basin as the result of numerous listing of salmon and other species. Various biological opinions issued by the National Marine Fisheries Service have placed considerable constraints on federal water project operations, including spill and flow augmentation. Agreements have been entered into

between various parties in the region, including States, Tribes and those who operate or benefits directly from the federal water projects. The Treaty should not be used as a vehicle to place additional restrictions or limitations on these U.S. projects.

In particular, Idaho Water Users, the Nez Perce Tribe, the State of Idaho and the federal government are all parties to the historic Nez Perce Water Rights Agreement of 2004, also referred to as the Snake River Water Rights Settlement Agreement. The Agreement was approved by Congress in 2004, as well as the State of Idaho and the Nez Perce Tribe during 2005. The Agreement, which has since been the basis for the proposed actions of the federal agencies in the Upper Snake River Basin above Brownlee Reservoir, provides the amount and method for obtaining water for flow augmentation from federal water storage projects in the area.

The Agreement has specifically been approved by Congress and must be adhered to by the United States. There is no basis for adding to, changing or adversely impacting the Agreement as part of the Treaty or the review process. Any modification of Upper Snake River operations may jeopardize the delicate balance struck between the parties in 2004, as part of a 30-year agreement, which includes an option to renew for an additional 30 years. This is of utmost importance to Idaho Water Users and we urge the U.S. Entity to affirmatively recognize the Agreement and its provisions in the final Regional Recommendation to the U.S. Department of State.

Idaho Water Users believe that specific changes to the recommendation details for ecosystem-based function must be included in the final Regional Recommendation in order to ensure that there are no adverse impacts to the Nez Perce Agreement, irrigation or any of the other authorized purposes in the basin. These specific language changes are included in the attached mark-up to the Draft Regional Recommendation.

Flood Risk Management

Idaho Water Users continue to support the U.S. Entity position regarding flood control and suggest only one small clarifying change to the recommendation for Flood Risk Management.

The Canadian Entity has taken the position that, beginning in 2024, all U.S. storage projects in the Columbia River Basin must be utilized for system-wide flood control to demonstrate "effective use", before Canadian reservoirs can be "called upon" to provide any flood control space.

The U.S. Entity previously prepared a white paper, identifying storage that would be available for system-wide flood control in the event of a "called upon" scenario post-2024. As part of this analysis, appropriate consideration was given to the Congressionally authorized purposes of the respective storage projects.

In particular, storage projects in the Upper Snake River Basin above Brownlee Reservoir are not authorized for system-wide flood control. They are authorized almost exclusively for irrigation, with some hydroelectric, local flood control and other considerations included in the various Congressional authorizations, as documented in the U.S. Entity's white paper.

The U.S. Entity is correct to limit system-wide flood control activities to those eight identified projects within the Columbia River Basin that are specifically authorized for such purposes. On this point, we believe there is a strong regional consensus. This limitation should be expressly recognized and included in the U.S. Entity's final recommendation to the U.S. Department of State. The attached mark-up of the Draft Regional Recommendation includes one small clarifying change to the Flood Risk Management recommendation.

Water Supply

While Idaho Water Users certainly believe it is appropriate to recognize Water Supply as an authorized purpose in the basin, irrigation should be specifically included, as well. Irrigation for crop production and other purposes has a long history throughout the basin, supported by federal laws and water storage projects. Idaho Water Users have included specific language to recognize "Irrigation" in the attached mark-up to the Draft Regional Recommendation.

Domestic Matters to be Addressed Post-2013

On the matter of water supply allocation, the final recommendation should include additional detail to make clear that water allocation is a matter of state, not federal or international, law. The federal government has a long and purposeful history of deferring to the states on water allocation and management. This should be specifically recognized and adhered to in the final recommendation. Idaho Water Users have provided suggested language on this point in the attached mark-up to the Draft Regional Recommendation.

Idaho Water Users appreciate the opportunity to provide these comments, and the attached language changes, for the U.S. Entity's consideration in drafting its final recommendation to the U.S. Department of State.

Respectfully submitted by,

Norm Semanko, Executive Director & General Counsel
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John K. Simpson
Barker, Rosholt & Simpson
P.O. Box 2139
Boise, ID 83701-2139
On behalf of the Committee of Nine

Attachment

cc: Governor C. L. "Butch" Otter
Idaho Congressional Delegation
Attorney General Lawrence Wasden
Bill Booth and Jim Yost, Idaho Northwest Power and Conservation Council Members
Lori Lee, Northwest Regional Director, U.S. Bureau of Reclamation
Dustin Miller, Administrator, Idaho Office of Species Conservation
Idaho Water Resource Board
House Resources & Conservation Committee, Idaho State Legislature
Senate Resources & Environment Committee, Idaho State Legislature
Idaho Members of CSG-West Legislative Committee on River Governance

Columbia River Treaty Review
Draft Regional Recommendation

September 20, 2013

IDAHO WATER USERS' MARKED UP DRAFT – OCTOBER 25, 2013

Introduction

The Pacific Northwest depends on a healthy Columbia River system to provide environmental sustainability, national energy independence, protection of public safety and infrastructure, and economic well-being. The Columbia River Treaty has provisions that could be improved to address this region's long-term ability to meet these objectives. Consequently, the region's Sovereigns and stakeholders believe that modernization of the Treaty is in the best interest of the United States.

This draft recommendation identifies potential modifications to the Columbia River Treaty (Treaty) post-2024. It begins by identifying regional goals for the future of the Treaty post-2024. It includes a set of general principles underlying this recommendation, followed by more specific recommendations related to a number of Treaty elements. Finally, it identifies a number of matters related to possible post-2024 Treaty implementation for consideration by domestic interests.

This draft recommendation was developed by the United States Entity with input from sovereigns and stakeholders through an extensive, multi-year process known as the Columbia River Treaty Review. Key to that process has been collaboration with the Sovereign Review Team (SRT), comprised of designated representatives of the states of Washington, Oregon, Idaho and Montana, 10 federal agencies, and 15 Native American Tribes. This group, supported by the Sovereign Technical Team, has met at least monthly to provide recommendations on every aspect of Treaty Review. In addition, the Entity has had government-to-government meetings with the 15 Tribes represented on the SRT, as well as with the Grand Ronde Tribe.

Equally critical to the Treaty Review and development of the draft recommendation has been the extensive involvement and input of the region's stakeholders. Stakeholders have provided perspectives and comments in individual meetings, workshop sessions, panel discussions, and presentations, as well as through the public comment period held on the working draft recommendation in July and August 2013.

Regional Goals for the Columbia River Treaty

The Pacific Northwest recognizes the value of the Columbia River Treaty in facilitating shared water resource management in the Basin to maximize benefits to both countries. When the Treaty was originally drafted in the 1960s, it was designed to optimize hydropower production and coordinate flood risk management as its two primary benefits. In terms of those purposes, the Treaty has served the people of the region well. The assured streamflows under the Treaty support the region's hydropower system, which serves as a crucial backbone of the Pacific Northwest economy. The Treaty also has assisted in effectively managing flood risk to ensure public safety and facilitate regional development. These should remain the primary purposes of the Treaty.

Since the original Treaty was negotiated in the 1960s, the region has come to increasingly recognize and value the importance of the Basin's ecosystem. Significant efforts to address ecosystem concerns began in

the 1980s, and the region, principally through its electric utility ratepayers, has invested hundreds of millions of dollars annually to achieve ecosystem improvements throughout the Basin over the intervening decades. In addition, in 1993 the United States and Canadian entities began using the flexibilities in the Treaty to assist in meeting Endangered Species Act (ESA) requirements and to address ecosystem considerations on an annual basis through actions such as flow augmentation agreements. ~~While i~~It is recognized that significant ecological improvements are being implemented and realized in a number of critical areas and are anticipated to continue over time.,[1] ~~there is an opportunity for inclusion of certain additional ecosystem operations to expand, enhance, and complement these existing ecosystem investments as part of the post-2024 Treaty.~~ Therefore, ecosystem-based function should be recognized as one of the important elements of a modernized Treaty, along with irrigation, water supply, recreation and navigation needs.

There is also increasing awareness in the region that an imbalance has developed in the equitable sharing of the downstream power benefits resulting from the Treaty. When the Treaty was ratified, the United States and Canada structured Canada's share of these benefits as one-half of the downstream power benefits with the Canadian Treaty projects as compared to without those projects. An equitable sharing of these benefits should instead be based on the more realistic measure of the power value of coordinated operations as compared to non-coordinated operations. Based on the present formula developed in the 1960s, the estimated value of the Canadian share of the downstream benefits in 2024 is significantly greater than anticipated, and far exceeds the value of coordinated power operations under the Treaty.

Flood risk management continues to be a vitally important aspect of coordinated operations with Canada, with recent high water events in 1996/1997 in the Portland/Vancouver area and in the Kootenai River Basin in 2012. After the first 60 years of assured flood risk management operations in Canadian reservoirs, the Treaty shifts to "called upon" procedures for post-2024 flood risk management operations. As the nation and region develop a better understanding of the potential implications of climate change, future flood risk management procedures need to be resilient to provide for public safety.

~~Other important elements of a modernized Treaty are current and future water supply, recreation and navigation needs.~~ In addition, the Treaty should include both short- and long-term mechanisms that allow for adapting the Treaty to build in flexibility of operations as conditions change, e.g., climate change, ESA listings or de-listings, or as new information and technology become available~~.~~, without adversely impacting the other important elements of a modernized Treaty, as identified above.

Accordingly, the region's goal is for the United States and Canada to develop a modernized framework for the Treaty that ~~ensures a more resilient and healthy ecosystem-based function throughout the Columbia River Basin while~~ maintain~~sing~~ an acceptable level of flood risk [2] and assure~~sing~~ reliable and economic hydropower benefits~~. Therefore, it is important to achieve a modernized framework for the Treaty that balances power production, flood risk management, and ecosystem-based function~~ as the primary purposes, while also recognizing the additional authorized purposes of ecosystem-based function, irrigation, water supply, recreation and navigation.[3]

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[1] There are a number of domestic actions that have contributed, and will contribute, to ecological improvements in the Basin. These include the Federal Columbia River Power System Biological Opinion requirements under the Endangered Species Act, the Nez Perce Water Rights Agreements of 2004, actions under the Northwest Power and Conservation Council's Columbia River Basin Fish and Wildlife Program, actions under the Clean Water Act to improve water quality, and implementation of the Columbia Basin Fish Accords. In addition, there are numerous

habitat and conservation programs and FERC license requirements associated with non-federal dams on the Columbia.

[2] Throughout this document, "acceptable" flood risk is defined as "similar to the current level" of flood risk; however, as noted in item one listed in the ***Domestic Matters to be Addressed Post-2013*** Section, the "acceptable" level of flood risk may change pending the outcome of the recommended regional flood risk review process post-2013.

[3] In this document, the "primary purposes" refers to the "benefits" to be achieved through the Treaty. Where noted, "authorized purposes" is used to connote those purposes that have been authorized in the Basin through the United States Congress.

~~It is essential to note in the reading of this recommendation that, while the inclusion of ecosystem-based function as a third primary purpose of this Treaty is being recommended, a~~ A very important combination of water management uses has been established in the Basin and its tributaries over the past 50 years. This recommendation respects the importance, complexity, and trade-offs of each of these many uses and the benefits that the region has strived to achieve.

In summary, this recommendation seeks to formalize, provide certainty, and build on the many ecosystem actions already undertaken through annual or seasonal mutual agreements between the countries and recognize the other authorized purposes in the basin, while also providing a net increase in United States power benefits based on the actual value of coordinated operations with Canada, and preserving an acceptable level of flood risk to the people of the Basin.

In this document the term "modernization" of the Treaty refers to the construct of a post-2024 arrangement. These constructs could include amendments or revisions to the existing Treaty, diplomatic notes or protocols, or other means resulting in a modernized Treaty.

General Principles

Eight key principles underlie this recommendation and a modern approach to the Columbia River Treaty:

1. Treaty provisions should enable the greatest possible shared benefits in the United States and Canada from the coordinated operation of Treaty reservoirs for ~~ecosystem,~~ hydropower, and flood risk management, as well as ecosystem, irrigation, water supply, recreation, navigation and other pertinent benefits and uses, as compared to no longer coordinating Treaty storage operations.

2. The health of the Columbia River ecosystem should be a shared benefit of the United States and Canada.

3. The minimum duration of the Treaty post-2024 should be long enough to allow each country to rely on the Treaty's planned operations and benefits for purposes of managing their long-range budgets, resource plans and investments, but adaptable enough to allow integration of best available science and social knowledge, with rebalancing of the purposes and benefits if necessary.

4. United States Federal reservoirs/projects will continue to meet authorized uses consistent with applicable legislation and other United States laws such as Treaty and Trust Responsibilities to the Columbia Basin Tribes, the Clean Water Act, ~~and~~ the Endangered Species Act, the Reclamation Act, the Snake River Water Rights Act (Nez Perce Water Rights Agreement) and State water law. Non-federal United States projects will continue to meet their responsibilities pursuant to their Federal Energy Regulatory Commission license plans.

5. The United States and Canada should integrate both Treaty and Canadian non-Treaty storage into the Treaty to increase the flexibility to, and benefits of, meeting ecosystem-based function, power, flood risk management and other authorized water management purposes in both countries.

6. The region anticipates impacts from climate change to all of the elements described in this document. The strategy for adapting the Treaty to future changes in climate should be resilient, adaptable, flexible, and timely as conditions warrant.

7. It is recognized that modifications to the Treaty could result in new benefits, and/or costs, to both Canada and the United States. United States' interests should ensure that costs associated with any Treaty operation are aligned with the appropriate party. As an example, any payments for Columbia River flood risk management should be consistent with the national flood risk funding policy of federal funding with applicable local beneficiaries sharing those costs as appropriate.

8. ~~Inclusion~~ Recognition of ecosystem-based functions as one of the important elements of a modernized Treaty, along with irrigation, water supply, recreation and navigation, ~~in the Treaty,~~ and the implementation of these functions, should not prevent the region from achieving its objective of reducing U.S. power costs. In order to accomplish this, funding for additional ecosystem-based function operations should come from a rebalancing of the power benefits between the two countries or from other sources.

Recommendation Details

Consistent with the intent of the general goals and principles, the following sections provide more specific recommendations for a modernized Treaty.

Ecosystem-based Function

In order to achieve the goal of modernizing the Treaty to further ensure a more comprehensive ecosystem-based function approach throughout the Columbia Basin watershed, the region recommends the following:

1. A modernized Treaty should provide streamflows from Canada with appropriate timing, quantity and water quality to promote productive populations of anadromous and resident fish, and provide reservoir conditions to promote productive populations of native fish and wildlife, within the limits of existing or future biological opinions and without adversely impacting the other important elements of a modernized Treaty.

2. A modernized Treaty should recognize and minimize adverse effects to Tribal, First Nations and other cultural resources in Canada and the United States. To the extent there are adverse effects to United States cultural resource interests, such changes should be addressed under the Federal Columbia River Power System (FCRPS) Cultural Resources Program. This Program has the ability to be amended and expanded as needed if there are effects on cultural resources resulting from changes due to future operations in a modernized Treaty.

3. A modernized Treaty should seek to ~~expand on~~ firm up present Treaty agreements to: a) ~~further~~ augment flows from Canada for spring and summer, with the recognition that these increased flows come from less fall and winter drafts in Canadian reservoirs; b) incorporate a dry-year strategy for Canadian reservoirs; c) gain long-term assurance of ecosystem-based functions from Canada rather than negotiating for these functions on an annual basis.

4. A modernized Treaty should be designed to be adaptable to meeting ecosystem-based function requirements as new information becomes available or conditions change (e.g., climate change) based on the management priorities of both countries, without adversely impacting the other important elements of a modernized Treaty (irrigation, water supply, recreation and navigation).

5. The United States should pursue a joint program with Canada, with shared costs, to investigate and, if warranted and consistent with U.S. federal law, implement restored fish passage and reintroduction of anadromous fish on the main stem Columbia to Canadian spawning grounds. This joint program would proceed on an incremental basis, beginning with a reconnaissance-level investigation. Modernized Treaty operations should not ~~interfere with~~ include consideration of other opportunities to restore fish passage and reintroduction of anadromous fish in other blocked areas of the Columbia River Basin.

6. The United States should continue to coordinate United States' operation of Libby Dam with Canada, with the goal of achieving mutually desirable ecosystem benefits on both sides of the border. VarQ at Libby and Hungry Horse Dams, including any modifications to VarQ, balances the multiple uses of the dams and incorporates ecosystem-based function.

Hydropower

In order to maintain coordinated hydropower operations, and a reliable, economically sustainable hydropower system in a modernized Treaty, the region recommends the following:

1. The United States should pursue rebalancing the power benefits between the two countries to reflect the actual value of coordinated operations. This rebalancing is necessary because the present Treaty power benefits are not equitably shared and Canada is deriving substantially greater value from coordinated power operations than the United States. Accordingly, for the Treaty to be sustainable after 2024, the United States should only provide benefits to Canada equivalent to one-half of the actual United States downstream power benefits received from coordinated operations as compared to a non-coordinated operation.

2. The United States should renegotiate for the replacement of the present "Aspects of Delivery Agreement" to create the least-cost transmission strategy for both countries to return the Canadian Entitlement to Canada. This includes reconsidering the flexibility of the return.

3. A modernized Treaty should retain the ability for both the United States and Canada to maintain an economical and reliable power supply post-2024. This requires consideration of the implications of any reductions in generation capability for either country, including lost revenue, system reliability, substantial increases in loss-of- load probability, carbon emissions, renewable resource integration, energy efficiency and conservation, and shifts in streamflow quantity and timing due to climate change.

4. A modernized Treaty should avoid substantial changes in power generation during peak load periods that results in lower system reliability.

Flood Risk Management

In order to maintain coordinated flood risk management, and to protect public safety and the region's economy, the region recommends the following:

1. The United States should pursue post-2024 Treaty flood risk management through a coordinated operation plan that provides for an acceptable level of flood risk. Unless modified based upon future review of flood risk management policy for the Columbia River, the level of risk will be similar to the level of risk existing prior to 2024. (see *Domestic Matters to be Addressed Post-2013* section)

2. The United States should pursue an assessment with Canada of potential alternatives for post-2024 operations to meet flood risk management objectives, including the possibility of using planned or assured Canadian Storage.

3. The United States and Canada should establish a common understanding of the methods and procedures for post-2024 "called upon," which should reflect the following principles based on the United States Entity White Paper: *Columbia River Post-2024 Flood Risk Management Procedure,* September 2011.

    A. Called upon should be considered only if coordinated Canadian power, flood control and other operations do not provide sufficient storage in conjunction with the use of United States system flood storage or when needed during refill season to modify planned Canadian releases.

    B. Draft the eight authorized United States projects according to their storage reservation diagrams (SRDs). Future flood risk management studies may evaluate alternative SRDs to include incorporation of ecosystem-based function.

    C. Define "effective use" as applying to the eight United States reservoirs authorized for system flood control.

4. The United States and Canada should identify reasonable compensation to Canada for economic losses and operating costs associated with called upon.

5. A modernized Treaty should enable the necessary flexibility to adapt to changing flood risk management objectives in the United States and Canada and to climate change (such as the potential for more frequent and intense winter flood events) to avoid additional risks to authorized purposes.

Irrigation

The Treaty Review process has revealed the importance and long history of irrigation in the Columbia River Basin, including United States reservoirs, for crop production and other purposes. The need for irrigation will only increase as the region continues to grow and as food supply and security increase in importance. Modernized Treaty operations should recognize and protect irrigation as one of the important elements and authorized purposes in the basin.

Water Supply

Treaty Review studies indicate a potential for a modernized Treaty to allow for additional storage of water in Canada during the fall and winter, and release in the spring and summer. The Treaty should allow the storage and release of water from Canada in the spring and summer for additional in-stream and out-of-stream uses. Such allocations should be subject to the requirement that they not adversely affect

the operation of upstream reservoirs, such as VarQ. Any such allocation decisions should be made through a future domestic process and be consistent with water rights, including tribal reserved water rights and ecosystem-based function. (see *Domestic Matters to be Addressed Post-2013* section).

Navigation

A modernized Treaty should provide for minimum and maximum flows/water levels to support navigation system operations on the Columbia River and its tributaries, and where appropriate, United States reservoirs. This will facilitate the economic value of port and transportation facilities, including commercial import and export of agricultural, bulk and manufactured goods.

Recreation

The region recognizes and supports the recreational and cultural opportunities that are a significant outcome of the Columbia River watershed management processes. Modernized Treaty operations should strive toward the protection of these resources.

Climate Change

A modernized Treaty should consider impacts from climate change to all elements described above, and create new terms in the post-2024 Treaty to allow the adaptive management of coordinated Treaty operations to better mitigate any impacts associated with climate change. The United States and Canadian Entities' Hydro-meteorological Team should continue to collaborate and share the best available climate change data and information.

Recommendation Timeframe

The region recommends that the United States government make a decision by mid-2014 to proceed with a renegotiation of the Treaty with Canada in order to modernize the Treaty by incorporating the objectives in this regional recommendation. Further, the region recommends the United States government seek to complete that effort by no later than 2015.

Domestic Matters to be Addressed Post-2013

The following identifies domestic matters related to possible post-2024 modernized Treaty implementation for consideration by domestic interests. Some of these are appropriate for consideration once the United States Entity makes its recommendation to the Department of State in 2013 and others are more appropriate for consideration once the United States government has a better understanding of post-2024 circumstances.

1. **United States Columbia River Basin Flood Risk Policy Review**: Pacific Northwest States and Tribes support the pursuit of Congressional authorization and appropriations for a region-wide public process to assess potential changes to the current level of flood risk protection in the Columbia River Basin to enhance spring and summer flows. Any such process should occur between 2014 and 2024. Post-2024 Treaty provisions, including called upon, will be designed to adapt to any such changes that may be authorized. If a process is initiated, it will be a comprehensive approach, subject to public input, that addresses all opportunities to manage high flow events, including floodplain management, Columbia Basin reservoir operations, and strategic improvements to existing levees and the need for additional levees.
2. **Water Supply Allocation**: Pacific Northwest States, Tribes, and appropriate Federal agencies will design and initiate a process to allocate and manage any additional spring or summer flows for in-stream and out-of-stream purposes derived through post-2024 Treaty operations. The

United States Entity will incorporate decisions from this process into their post-2024 Treaty planning and operations. It is recognized that the states have authority to allocate and manage water pursuant to State law.

3. **Assessment of Canadian Entitlement**: BPA will host a public process in which States, Tribes, Federal agencies and stakeholders can participate. This process will take place between 2014 and 2024 to assess the expected potential changes to its annual revenue requirements and rates due to any redesign of the Treaty post-2024, and discuss with the region how to manage those costs and benefits consistent with BPA's statutory authorities.

4. **Plan for Post-2024 Treaty Implementation**: Following the conclusion of the United States and Canadian negotiations of the terms of the post-2024 Treaty, and subject to funding, the United States Entity will lead an effort in consultation with regional Sovereigns and stakeholders to develop a plan identifying the steps necessary to implement the modern Treaty post-2024. This plan will define the appropriate work needed to incorporate and implement any new ecosystem-based function, flood risk management, hydropower and any other expected new operational objectives under the Treaty.

5. **United States Flood Plain Reconnection**: Tribal, Federal and State Sovereigns will work with the Northwest Power & Conservation Council Fish and Wildlife Program and National Oceanic and Atmospheric Administration/National Marine Fisheries Recovery Planning process (particularly estuary actions) or any other identified process throughout the Basin to advance selective flood plain reconnection for the purpose of achieving additional benefits from a modernized Treaty.

6. **United States domestic advisory mechanism**: The Department of State should establish and resource a structured domestic advisory mechanism to assist, inform, and advise the Department of State in the negotiations phase of this process. The Department of State should seek to involve a broad cross-section of regional parties in this mechanism. This mechanism may also be used to provide advice regarding additional work needed to address ecosystem-based function, hydropower, flood risk management, and other beneficial water uses.

7. **Composition of United States Entity**: At an appropriate time, membership of the United States Entity should be reviewed by the Administration, with consideration given to assuring a composition and membership that is best suited to effectively and efficiently implement the Treaty post-2024.