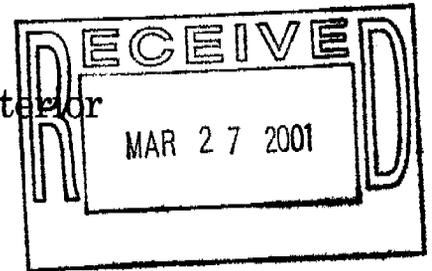




United States Department of the Interior



OFFICE OF THE SECRETARY
Office of Environmental Policy and Compliance
500 NE Multnomah Street, Suite 356
Portland, Oregon 97232-2036

IN REPLY REFER TO:

March 26, 2001

ER 01/82

Mr. Bob Dach
National Marine Fisheries Service
525 NE Oregon Street, Suite 420
Portland, Oregon 97232-2737

Dear Mr Dach

The Department is currently reviewing the Draft Environmental Impact Statement (DEIS) for the Anadromous Fish Agreement and Habitat Conservation Plans for the Wells, Rocky Reach and Rock Island Hydroelectric Projects, Washington. We note in the letter accompanying DEIS that comments are due March 29, 2001.

I am currently working with the Fish and Wildlife Service and the Bureau of Indian Affairs to develop the Department's comments. Because of the magnitude of these issues the Department will need additional time to discuss and coordinate our concerns prior to submitting comments on the DEIS.

We therefore respectfully request a time extension until May 1, 2001 to provide comments. I appreciate your cooperation in this matter. If you have any questions or require any additional information you can contact me at (503) 231-6157 and preston_sleeper@ios.doi.gov.

Sincerely,

Preston A. Sleeper
Regional Environmental Officer

cc:

Terry Martin, OEPC
Estyn Mead, FWS
Bernie Burnham, BIA



United States Department of the Interior

OFFICE OF THE SECRETARY
Office of Environmental Policy and Compliance
500 NE Multnomah Street, Suite 356
Portland, Oregon 97232-2036

IN REPLY REFER TO:

May 11, 2001

ER 01/0082

Mr. Bob Dach
National Marine Fisheries Service
525 NE Oregon Street, Suite 420
Portland, Oregon 97232-2737

Dear Mr. Dach:

The U.S. Department of the Interior (Department), through its bureaus the Fish and Wildlife Service (Service) and the Bureau of Indian Affairs (BIA), has reviewed the Draft Environmental Impact Statement (DEIS) for the Anadromous Fish Agreements and Habitat Conservation Plans for the Wells, Rocky Reach, and Rock Island Hydroelectric Projects, Washington. In the DEIS, the National Marine Fisheries Service (NMFS) considers whether to authorize incidental take permits pursuant to the Endangered Species Act Section 10(a)(1)(B) for 50-year anadromous fish agreements and habitat conservation plans (HCPs) with two Washington State public utility districts (PUDs) operating three Federal Energy Regulatory Commission (FERC) licensed hydroelectric projects on the mid-Columbia River. The Department offers the following comments for your consideration in the development of a final environmental impact statement (FEIS). These comments were prepared under the authority of and in accordance with provisions of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*; 83 Stat. 852), as amended, the Fish and Wildlife Coordination Act (16 U.S.C. 661 *et seq.*; 48 Stat. 401), as amended, the Endangered Species Act (16 U.S.C. 1531 *et seq.*; 87 Stat. 884), as amended, and the Federal Power Act (16 U.S.C. 791-828c *et seq.*; 41 Stat. 1063), as amended, and other authorities mandating our concern for environmental values.

GENERAL COMMENTS

We appreciate the document's candor in highlighting each alternative and noting those areas in which the alternative is or may be inconsistent with the requirements of Section 10 of the Endangered Species Act or current science and technology. Obviously, these inconsistencies are problematic for the NMFS and will require resolution before a final decision regarding permit issuance can be made. The Department fully supports the document's strategy of encouraging reviewers to comment on these inconsistencies and suggest potential solutions. Accordingly, these comments focus on those areas of the DEIS that do not adequately address or analyze the potential consequences of permit issuance on areas of special interest to the Department. These areas include the effect of the proposed action on Indian reserved rights and resources that are

subject to the Federal trust responsibility, and Columbia River bull trout, a listed threatened species for which consultation with the U.S. Fish and Wildlife Service may ultimately be required. We also provide comments regarding the need to modify certain terms of the HCPs to reflect current science and technology and align those plans with the requirements of the Endangered Species Act.

In the DEIS, NMFS discusses three alternatives including the proposed action. Alternative 1 is the "no action" alternative and describes baseline conditions and existing regulation of mid-Columbia operations. Alternatives 2 and 3 utilize different sections of the ESA to protect and recover fish species under the Act. Under Alternative 2, NMFS would enter into Section 7 consultations with the Federal Energy Regulatory Commission (FERC) and could require modifications of the projects' federally-licensed operations to protect and recover the listed stocks. Under the proposed action, Alternative 3, NMFS would issue 50-year incidental take permits for the affected species pursuant to conservation plans developed by the project operators and implemented under Section 10 of the ESA.

Tribal Resources and Federal Trust Responsibility

Overview of the Proposed Action's Trust Deficiencies

The projects at issue in this DEIS are located on the mid-Columbia River near lands that were aboriginally occupied by the Tribes of the Columbia River Basin, and the existence and operation of these projects impact and restrict the treaty-confirmed property rights of these and other Indian Tribes. In 1855 treaties with the United States, four Columbia Basin Tribes ceded millions of acres of land while specifically reserving the Basin's fisheries for cultural, ceremonial, subsistence and economic purposes. As the primary Federal agency responsible for protecting the trust property of Indian tribes, the Department has a strong interest in ensuring that these projects are operated in a way that protects tribal trust resources, and specifically, the anadromous fish of the Columbia River Basin.

The Department is primarily concerned that many of the elements of the DEIS's proposed action, Alternative 3, would impair the ability of the Federal government to fulfill its trust responsibilities to the Columbia Basin Indian Tribes. To protect the Tribes' rights to their treaty reserved property and to avoid liability for a breach of the Federal government's trust obligations, it is essential that NMFS's management role in the basin ensures the maintenance and utilization of the reserved fisheries.

However, pursuant to Alternative 3, the Federal government's responsibility to manage mid-Columbia trust resources would be impermissibly transferred to non-federal entities who are not accountable for breaches of Federal trust and treaty obligations. The decision-making process described in Alternative 3 for implementing recovery measures severely constrains Federal authority. Under Alternative 3, the species' recovery and the management authority of the United States is relegated to Coordinating Committees which yield ultimate decision-making authority to

the non-federal commercial operators. Consequently, NMFS's role in the management of the mid-Columbia fisheries, including treaty trust fisheries, would be reduced to recommending mitigation measures that the Coordinating Committees may reject. Despite the fact that its management authority would be severely constrained, the United States would still be liable for a breach of its trust responsibility should measures under Alternative 3 fail to recover the endangered fisheries.

Given the potential liability, NMFS should require actions that are able, on a sound scientific basis, to protect the endangered fisheries in exchange for the proposed incidental take permits that would be issued under Alternative 3. However, a recent quantitative analysis performed by NMFS to assess the conservation measures included in the proposed action concluded that "[e]ven under the most optimistic scenarios modeled regrading future survival rates and the effectiveness of supplementation, additional survival improvements beyond those projected for the draft HCP action [discussed in this DEIS] would be necessary to achieve extinction risk/recovery criteria." See NMFS, *Upper Columbia River Steelhead and Spring Chinook Salmon Quantitative Analysis Report*, Final Technical Review Draft, page ii (December 20, 2000) (*QAR Report*). Moreover, in the context of operations and planned conservation for the entire Columbia River system, the *QAR Report* determined that, "[t]he combined effect of meeting the HCP objectives at the mid-Columbia PUD projects and meeting the off-site mitigation targets [for the rest of the Columbia River] would be substantial but would fall short of meeting survival and recovery criteria under the assumption that 1980-present conditions will continue." *QAR Report* at iii. Thus, according to NMFS's own best science, whether the DEIS's proposed action does enough to protect trust resources is questionable.

In contrast, the provisions of Alternative 2 maintain the Federal government's and NMFS's trust responsibility role while providing NMFS with the authority to ensure a full range of measures to protect and ensure the continued existence of endangered mid-Columbia trust resources. In light of the constraints that Alternative 3 would impose on the United States' ability to manage resources subject to its trust responsibility to the Columbia Basin Tribes, and given the scientific uncertainties identified in the DEIS regarding the implementation of Alternative 3, the Department is gravely concerned about the merits of issuing 50-year incidental take permits under the terms described in the DEIS's proposed action. We offer the following comments in support of these concerns.

The Proposed Action Impermissibly "Transfers" NMFS's Federal Trust Responsibility to Non-Federal Entities

The DEIS's proposed action, Alternative 3, impermissibly transfers the Federal government's authority to ensure the maintenance and utilization of Indian trust resources to two non-federal entities, the PUDs, operating projects on the mid-Columbia. Under Alternative 3, NMFS would be subject to an implementation process that gives ultimate management authority to project operators for the 50-year term of the incidental take permits. Pursuant to the three phase decision-making process described in Alternative 3, NMFS would be unable to initiate recovery measures and would be subject to the ultimate decision-making authority of the project operators.

Moreover, should NMFS disagree with a project operator about recovery measures, NMFS would be required to carry the burden of proof in a dispute resolution process with time and evidentiary limitations. By constraining and transferring NMFS's authority to manage threatened trust resources, Alternative 3's implementation process is contrary to common trust principles and may expose the Federal government to liability for failing to sufficiently manage and protect the Tribes' treaty-reserved resources.

As described in the DEIS, Phase I of this three-phase process requires NMFS to transfer its authority to manage the plan species to the project operators themselves. During this time, the PUDs will attempt to modify project operations to attain 91 percent overall project survival and 95 percent juvenile passage survival at each project. According to Alternative 3, a Coordinating Committee will be formed to ensure that the project operators are making "steady progress" toward survival goals.¹ This Coordinating Committee can recommend "parallel actions" to the project operators. *See* DEIS at 2-35. However, if a Coordinating Committee is unable to reach consensus as to mitigation procedures, or even whether a project is meeting survival standards, the project operators themselves are provided the "ultimate authority" for final decision-making under the Coordinating Committees. *See* DEIS at S-19 and 2-53.

If after five years the project operators are unable to attain the survival goals set forth in Alternative 3, the implementation process moves to Phase II. During this phase, the Coordinating Committee will evaluate the mitigation measures that were utilized by the project operators and may recommend additional measures to ensure that survival goals are achieved. NMFS, as a member of the Coordinating Committee, will be able to participate at this stage in the process and may recommend more stringent mitigation tools. However, if the Coordinating Committee is unable to reach consensus as to these additional measures, the project operators will retain the ultimate authority to determine the necessary mitigation measures unless a dissatisfied member of the Coordinating Committee is willing to submit itself to the dispute resolution process. *See* DEIS at 2-53.

Pursuant to Alternative 3's dispute resolution process, if NMFS desires to oppose a decision of the Coordinating Committee or to oppose the continued use of the project operators' mitigation tools, NMFS will be required to prove by a preponderance of the evidence that the operators' mitigation measures are insufficient. If NMFS purports that the mitigation provisions violate the ESA, NMFS must also overcome a presumption that favors the existing mitigation measures.² The expertise of NMFS will receive no deference in the dispute resolution process, and NMFS

¹ This Coordinating Committee will be comprised of representatives of each signatory party. DEIS at 2-36. Because the Tribes have been unable to agree to the terms of the existing HCPs, and are not expected to be signatory parties, the Tribes will not be represented on this Committee.

² This is a presumption expressly built into the dispute resolution process and, more generally, the DEIS asserts that because Alternative 3's measures are consistent with "HCP agreements and protocols" by definition they cannot violate the ESA. *See* DEIS at S-17.

will have only five months to prove that the PUDs' mitigation tools are insufficient. Under such a dispute resolution process, NMFS's ability to ensure that trust resources are protected is severely constrained.³

Finally, if any of the project operators are able to demonstrate that they are meeting survival standards, the implementation process enters Phase III. Pursuant to Phase III, the three hydroelectric projects will be subject only to periodic review to assess whether they are meeting Alternative 3's survival standards. During this phase, NMFS will not be able to require any additional mitigation actions. Even if, years later, the plan species require additional protective measures, Alternative 3 precludes NMFS from imposing such measures. Consequently, for the 50-year term of the HCPs NMFS's Federal responsibility and ability to ensure the survival and utilization of endangered trust resources is effectively and impermissibly transferred to non-federal parties.

The Tribes of the Columbia Basin will be depending on NMFS to ensure adequate protection of the river's tribal trust resources. If NMFS, pursuant to Alternative 3, is required to transfer its management authority to project operators, which are private commercial entities, NMFS would be violating its trust responsibility to the Tribes and perhaps exposing the Federal government to liability for failing to properly manage treaty-reserved resources.

Moreover, the DEIS fails to discuss the implications that Alternative 3 has on NMFS's obligation to manage the mid-Columbia's resources in the best interests of the Columbia Basin Tribes. While Alternative 3 would displace NMFS's role as trustee for the Tribes' reserved fisheries, the DEIS provides no general or specific discussion regarding the potential consequences or impacts that may result from this "transfer" of management authority of treaty reserved resources to non-Federal parties, or indeed, whether such a "transfer" is legally permissible.

In contrast, the provisions of Alternative 2 would allow NMFS, BIA, FWS, the Tribes, and all other interested stakeholders to consult with and/or appear before FERC to ensure that the federally-licensed project operations account for the United States' trust responsibilities. Under the provisions of Alternative 2, NMFS would engage in Section 7 consultations with FERC and would retain the authority and responsibility to ensure that the projects' federally-licensed operations are consistent with the biological needs of the endangered trust resources. For example, Alternative 2 includes a range of specific recovery actions that NMFS has determined are necessary to improve biological conditions for the affected species, but not all of these actions

³ The Department is concerned that the dispute resolution process has already proven to be an unsuccessful mechanism to protect trust property or to carry out the Federal government's trust responsibility. Specifically, the BIA notes that the project operators have been operating under the terms of the HCPs since 1998 and have been utilizing the dispute resolution process since then as well. Several disputes have arisen over the last three years, specifically disputes regarding timing and quantity of migration spill. The PUDs, Chelan in particular, have basically ignored the dispute resolution process and have made unilateral decisions on how to proceed on these issues despite repeated requests from NMFS and the Tribes. Such a track record does not bode well for future cooperation on implementing discretionary measures under Alternative 3.

are included in the measures proposed under Alternative 3. See DEIS at 1-14 to 1-16. Of the alternatives presented, only Alternative 2 ensures that NMFS is able to completely and responsibly fulfill its role as trustee for the treaty-reserved resources of the Columbia Basin Tribes. Accordingly, the Department maintains that NMFS should utilize the procedures described in Alternative 2.

The DEIS and the Proposed Action do not Adequately Consider Impacts on the Tribe's Treaty Reserved Fishing Economies

The DEIS's analysis of the proposed action's likely impacts on the Tribes' reserved harvests is inadequate and in key respects, absent. In place of such an analysis, the *QAR Report*, which assesses the survival and recovery requirements of listed upper-Columbia steelhead and spring chinook salmon, supposedly considers treaty harvests. However, harvest was modeled in the *QAR Report* under the assumption that recent harvest rates would continue into the future. The effect of assuming that treaty harvest rates for spring chinook would remain at the extremely low levels of the past two or more decades is that the adequacy of Alternative 3's project passage and survival goals are overstated. While the DEIS, through the *QAR Report*, recognizes that additional survival gains will be needed, Alternative 3 does not examine the relationship between these additional survival needs and the needs of treaty harvest. The unfolding experiences of the 2001 drought indicate that it may not be prudent to assume that non-project survival would be stable, let alone improve for Upper Columbia listed stocks.

Had the DEIS accounted for the protection and recovery of the Tribes' trust property, the reasonableness and necessity for additional tribal conservation of the listed species would have been carefully analyzed, not assumed. In these circumstances, NMFS's analysis should demonstrate that such conservation could not be achieved by reasonable regulation of non-Indian activities. It is not clear that the alternatives in the DEIS were ranked in their ability to achieve the required conservation purpose. Absent this ranking, an alternative may be selected that discriminates against future Indian harvest necessitating conservation measures the Tribes are not voluntarily willing to accept. Joint Secretarial Order 3206 states that when ESA listed species affect the exercise of tribal rights, the Department and NMFS will cooperate with affected tribes to develop and implement recovery plans in a manner that minimizes the social, cultural and economic impacts on tribal communities, consistent with the timely recovery of listed species. The DEIS acknowledges that Alternative 3's proposed conservation measures were completed without the benefit of such tribal cooperation. Secretarial Order 3206 pledges the Services to working cooperatively with tribes to identify and implement the most effective measures to speed the recovery process. Alternative 3 neither identifies the actions needed to assure a speedy recovery, nor guarantees that such actions would be implemented.

Consequently, Alternative 3 is problematic due to its potential impact on the Tribes' treaty reserved harvests of mid-Columbia fisheries. The listing of ESA salmon populations which spawn upstream from the subject projects currently restricts harvest in treaty fisheries at treaty reserved usual and accustomed fishing sites. This restrictive effect is detailed in the NMFS's 2001

Biological Opinion for spring and summer treaty harvest. *See* NMFS, *Biological Opinion, Impacts of the Interim Management Agreement for Upriver Spring Chinook, Summer Chinook and Sockeye on Salmon and Steelhead Listed Under the ESA 2001*. The DEIS does not quantitatively describe Alternative 3's future effects on harvest. This is especially important in light of the ramifications of underestimating ESA-permitted mortality of listed salmon. The cumulative effects of such underestimation have two predictable consequences – dangerously low numbers of returning adult salmon and the continued curtailment of tribal fisheries. The hatchery mitigation component of Alternative 3 does not address this situation if present hatchery policies yield an incomplete replacement of wild fish killed by the PUD projects.

Furthermore, the DEIS generally does not consider the range of issues related to NMFS's trust responsibility to ensure the utilization of fishery resources reserved by the Tribes. For example, in Section 3.7 of the DEIS, "Socioeconomics - Population, Employment, and Income," NMFS mentions the tribal population of the region, but fails to account for the impact of mid-Columbia of projects on the Columbia Basin Tribes' fishing economies. While the DEIS notes that in at least one county impacted by the projects "Native Americans constitute an important part of the County economy," there is no general or specific discussion of the projects' economic impacts on the Tribes' commercial and subsistence fishing economies. *See* DEIS at 3-132. Rather, the DEIS merely discusses project benefits to industry, tourism, and agriculture without contrasting these perceived benefits in light of the substantial detrimental impacts on the Tribes' fishing economy for which NMFS is a trustee.

A recent study assessing the economic impacts of the mid-Columbia projects found that tribal harvests on the mid-Columbia have dropped to less than 10 percent of traditional harvests. *See* CH2MHILL, *Human Effects Analysis of the Multi-Species Framework Alternatives 3-6* (1999) (prepared for the Northwest Power Planning Council). In addition, specifically assessing the broad social impacts on the Tribes, the study notes that such an economic and cultural loss powerfully impacts the material well-being and self-sufficiency of tribal members and negatively affects physical and psychological health. *Id.* at 3-7. Given NMFS's role as a Federal trustee, and considering that Native Americans constitute 11 percent of the population for one of the counties under discussion, it is incumbent on NMFS to weigh the impacts of the proposed action on the tribal fishing economies. Moreover, as the DEIS notes the region's depressed economy, NMFS should also include in its economic discussion the ways in which a profitable and self-sustaining salmon harvest could increase tribal self-sufficiency, alleviate unemployment and poverty, and improve the region's depressed economy. *See* DEIS at 3-130.

In passing, we note that the economic impacts that are not fully discussed in the DEIS have far-reaching consequences not only on the Tribes, but on non-Indians as well. The CH2MHILL study also reported that the non-Indian catch has fallen to less than 1 percent of commercial catches in 1900. *See* CH2MHILL, *Human Effects Analysis of the Multi-Species Framework Alternatives 3-6* (1999) (prepared for the Northwest Power Planning Council). The economic benefit of the power projects, as well as their economic detriments, need to be fully displayed in the DEIS.

The 50-Year Term of the Proposed Action is Inappropriate for the Management of Riverine Ecosystems Supporting Trust Resources

In light of the Federal government's trust responsibility and the dynamic ecological conditions of the Columbia River, the Department believes it is inappropriate and risky to constrain the Federal government's authority to manage endangered riverine species for the 50-year term of the proposed action. We strongly believe that the proposed action would be greatly improved by matching the term of the HCP with the licensing authority of FERC. Therefore, we recommend that if NMFS decides to issue incidental take permits for these projects, the permits should be for no longer than the term of the existing FERC licenses. Subsequent licenses could include identical provisions of the HCPs, if the HCPs are operating to protect and ensure the continued existence of endangered mid-Columbia trust resources.

Under Alternative 3, NMFS would issue incidental take permits that establish the measures through which the species' losses can be mitigated. As proposed, the HCPs would contain the only mitigation measures that NMFS would recommend to be employed for the next 50 years. The practical effect of a NMFS decision to select Alternative 3 is to predetermine the extent of the recovery measures at relicensing and to impose conditions on subsequent licenses many years before the relicensing process. This would seriously undermine the relicensing process and is beyond the scope of FERC's authority to implement.

The purpose of relicensing is to evaluate the hydropower project under the environmental conditions occurring at the time of licensing and to determine what changes are necessary to ensure the protection of important public resources into the future. As such, FERC regulations require the licensee to undertake a complete reevaluation of their project and the impact on natural resources, water quality, recreation, flood control, navigation, power production, and many other factors. This would occur regardless of whether NMFS issues an HCP. Therefore, at the time of relicensing, there will be a complete reevaluation of the project and a considerable amount of information in the administrative record outlining the continuing impact of the project on important fish and wildlife resources, including listed species. It is possible that the information may indicate unacceptable levels of impacts to listed species, or that the mitigation measures are ineffective. If NMFS issues an HCP for 50 years, they may find themselves in the difficult position of recommending mitigation measures that have been shown to be ineffective, counter-productive, or wasteful. The Department strongly believes that perpetuating such mitigation is not in the public interest, particularly when the relicensing process is intended to correct such problems.

The proposed action's 50-year time frame is especially problematic in light of the "no surprises" policy set forth in regulations implementing Section 10 of the ESA. The "no surprises" regulations were adopted to provide long-term assurances to landowners by allowing them to avoid additional mitigation measures during the term of an incidental take permit. However, constraining the Federal government's ability to protect listed species in the mid-Columbia River

for the next 50 years is inappropriate for the management of a fragile river habitat, particularly since it exceeds FERC's authority, and the action directly affects habitat that supports important Federal trust resources and treaty reserved fishing rights. Unlike private lands, the Columbia River is a public waterway and its biological health is essential to many stakeholders, including the Tribes of the Columbia River Basin.

The proposed action is especially troubling in light of FERC's responsibilities under section 7 of the ESA. When a listed species is affected by project operations, FERC is required to consult with NMFS (or FWS) pursuant to section 7 before issuing a new license. Such consultation usually results in a biological opinion that specifies the ways in which a project can be operated to avoid jeopardizing listed species. However, if NMFS selects Alternative 3 of the DEIS, NMFS may be unable to require FERC to include mitigation measures that go beyond those provided in Alternative 3. This would occur despite the possibility that substantial information may be in the record indicating significant impacts to listed species are occurring and may continue to occur with any new license issued. Consequently, by committing to the terms of Alternative 3 prior to section 7 consultation with FERC, NMFS effectively precludes the inclusion of additional mitigation measures in a subsequent FERC license, even though there may be substantial information indicating such measures are needed.

This is particularly problematic because the Wells' license will not expire until 2012 and Rock Island's current license will not expire until 2028. Thus, even if salmon and steelhead populations dramatically decline over the next several years, because of the projects' incidental take coverage under Alternative 3, NMFS may not be able to recommend additional mitigation measures for unavoidable mortality in any subsequent licenses. The effect of limiting additional mitigation measures is that under poor environmental conditions, there becomes an "over appropriation" of mortality with impacts on trust resources via otherwise avoidable fishery restrictions. Consequently, in contrast to the requirements of Secretarial Order 3206, the proposed action's use of the "no surprises" policy and its effect on FERC licensing may subject tribal use of treaty trust fisheries to long term diminishment depending on climatic conditions or improvements elsewhere in the Columbia Basin.

Instead, we suggest that NMFS limit the length of the incidental take permits to the term of each project's existing FERC license. By matching the length of the incidental take permits with limits of the FERC license, NMFS aligns their actions with FERC's authority plus they maintain the ability to revisit the HCPs' at relicensing. As such, NMFS would be able to ensure that, in the unlikely event that these mitigation measures are unsuccessful at protecting listed species as NMFS and the licensees expect, each new license could contain provisions that adequately protect endangered trust resources. Conversely, if the HCP is operating as NMFS and the licensees expect, we would not expect NMFS to recommend any further changes at relicensing. Under these circumstances, the provisions of the HCP could continue through the next licensing period. We believe this would be consistent with the "no surprises" policy.

In addition, we suggest that NMFS incorporate some of the provisions of Alternative 2 into its proposed action. Under Alternative 2, the project operators would seek new FERC licenses pursuant to the Federal Power Act and FERC would consult with NMFS pursuant to section 7 of the ESA. It is current FERC policy to routinely insert re-opener clauses into new licenses which allow FERC to reconsider fish and other natural resource issues, if warranted. Thus, under Alternative 2, FERC and NMFS would be able to ensure that the projects would be operated in a way that is responsive to trust fishery needs. This is particularly important in a ecosystem as dynamic as a river basin, where aquatic species populations constantly fluctuate in response to the quality and quantity of water and habitat conditions.

Fish and Wildlife Resources

HCP Performance Standards

As the DEIS notes, both the NMFS and the U.S. Fish and Wildlife Service recommend that biological goals and objectives be incorporated into HCPs. The 95 percent juvenile dam passage survival standard and the 91 percent total project survival standard incorporated into Alternative 3 (the proposed action) are examples of biologically-based standards. The 95 percent standard limits the direct mortality of dam passage while the 91 percent total project standard is intended to limit losses in the total project area, including the dam and reservoirs. We note, however, that actual total project mortality is a combination of direct and delayed adult and juvenile mortality attributable to project effects. Delayed mortality can and does occur outside the project area. Many fish are injured as they pass through the pool above each dam and the tailrace below each dam, but do not die until they are past the project boundary. Subsequently, by limiting the application of the 91 percent total project survival standard to the immediate vicinity of the dams, Alternative 3 fails to account for a potentially significant amount of incidental take. The issue of delayed mortality (project-related mortality occurring outside of the project area) needs to be addressed in greater detail. If necessary, the components of the total project survival standard should be reevaluated to be certain that all forms of project take are fully considered.

The *QAR Report* indicates an improved potential for in reach survival for spring chinook salmon and some increase in the probability of meeting recovery criteria if Alternative 3's survival standards are combined with expected survival improvements at lower Columbia River Federal dams contingent upon environmental conditions observed since 1960. However, the ability of steelhead to meet recovery criteria is more problematic and is dependent on assumptions concerning the effectiveness of hatchery supplementation and whether environmental conditions would be similar to those seen since 1960. Although no one can predict exactly what future conditions might be, using a long term database should more accurately reflect a full range of environmental possibilities.

The QAR modeled a range of different survival (including the survival standards proposed in the HCPs), passage, and environmental conditions that could reasonably be expected to occur in the future. If met, the standards identified in Alternative 3 should offer improvements in long term survival for all plan species as compared to the current situation. Although the *QAR Report* did not model potential survival for species other than steelhead and spring chinook salmon, we expect that survival benefits would also accrue for sockeye, summer/fall chinook and coho as a result of the survival standards and mitigation.

An example of the improvement expected with Alternative 3 compared to Alternatives 1 or 2 would be the benefits accrued for non-listed sub-yearling summer/fall chinook by application of the survival standards during the summer juvenile migration at Rock Island Dam. Spill is the primary juvenile summer passage measure at this project, but the amount and duration of spill is based on the dollar value of the Conservation Account which is a component of Alternatives 1 and 2. As energy prices and demand rise, the spill program provides less fish protection over the summer period. Since summer migrants are not ESA listed species (with the possible exception of bull trout), the Conservation Account is the only passage measure providing assured protection for these fish. The limited protection inherent in the Conservation Account does not apply to Alternative 3. The HCP standards must be met regardless of the yearly cost of energy and are not limited by a predetermined dollar amount. In addition, Alternative 3 provides an increased level of juvenile fish protection because the 95 percent juvenile dam passage survival standard applies over 95 percent of the run. This likely provides more protection than juveniles currently receive via Alternative 1 spill and bypass programs at Rock Island Dam and Rocky Reach Dam for all plan species. It also provides improved passage benefits for summer migrants, not necessarily assured by Alternative 2. The current spill/bypass program at Wells Dam appears to be providing protection over 95 percent of the run for all species.

The Department interprets Alternative 3 as indicating that for all plan species, the HCP standards must be met regardless of the yearly cost of energy or drought. In addition, the projected improvements at the lower Columbia projects must not be impacted by cost or drought. If that is not the case, then the QAR analysis may be inadequate in modeling the future effects of this alternative. The FEIS should clarify this aspect of Alternative 3 and the QAR analysis. In addition, the DEIS should include data on the level of improvements needed to sustain tribal harvests well above recent severely restricted levels. Alternative 3 does not examine the relationship between additional survival needs and the needs of treaty harvests.

Verification of Standards

Verifying the biological standards of Alternative 3 would be of critical importance in determining whether this alternative actually meets its stated goal of no net impact (NNI) and contributes to the recovery of anadromous salmonids. Achieving and maintaining these survival standards is the element necessary to allow NNI attainment through hatchery compensation (7%) and tributary habitat improvements (2%).

Unfortunately, direct measurement of total project survival (91% standard) is not technologically feasible at this time. This is acknowledged in the DEIS. Key problems are estimating survival for subyearling summer/fall chinook (the primary fish migrating during the summer period), measuring juvenile sockeye spring migration survival, identifying project related adult survival independent of other non-project related impacts, and measuring cumulative indirect impacts for adults and juveniles. Moreover, Alternative 3 does not even attempt to measure adult mortality. Finally, the effect of delayed mortality on the ability of Alternative 3 to protect trust resources also remains to be clarified. These measurement problems exist for all alternatives, but under Alternative 3, compensation programs may be adjusted up or down based on these survival studies.

The DEIS recognizes these problems but offers only the use of some indirect methods ("representative survival studies") to assess survival and indirect losses. Such representative studies are an unacceptable way to measure the survival of all the species affected by the projects, species that contribute to treaty fisheries. Additionally, these "representative studies" are less likely to assure the broad protections that the DEIS claims because they do not measure all of the affected species at a variety of life stages and flows. Given these uncertainties, Alternative 3 cannot be considered to be protective of treaty trust fisheries unless it includes an established scientific methodology for measuring fish survival.

If the survival standards cannot be fully verified, the size of compensation programs necessary to reach NNI cannot be fully identified. Until the uncertainty surrounding measurement of total project survival is resolved, it may be appropriate to develop an interim measurable standard such as 93 percent juvenile total project survival before moving to Phase 3 and triggering adjustments in hatchery/tributary compensation levels down from the 7 percent and 2 percent levels. Allowing a reduction in compensation without appropriate verification or an approved alternative would not be consistent with the intended goals of Alternative 3.

Adjusting Compensation

The DEIS notes that dam and project juvenile survival has been measured for the Douglas PUD project for steelhead, spring chinook, and fall chinook yearling migrants. These evaluations have occurred over the spring migration season in one or several years, but have not occurred over the range of conditions that are expected to occur from year to year. According to the DEIS, Douglas PUD hopes to adjust its hatchery compensation levels and tributary habitat fund proposed in its HCP utilizing the survival studies that have been done to date. We surmise that Douglas PUD would adjust the hatchery component for steelhead and spring chinook salmon below the 7 percent compensation level based on these spring migration survival studies coupled with other indirect survival measurements. Given that under Alternative 3, total project survival is not based just on juvenile survival, we find it difficult to support reducing hatchery compensation levels below the 7 percent level for a species without a process to address at least some of the other uncertainties. As noted previously, this leaves Alternative 3's goal of NNI without any verifiable method of validation. In addition, we have concerns about reducing the tributary fund

component (2%) without a more systematic approach to defining what actual survival is occurring. Such a reduction of compensation without an agreed upon way of verification is inconsistent with the government's trust obligations to the Columbia Basin Indian Tribes and the goals and objectives of Alternative 3.

One means of correcting this inconsistency would be to revise Alternative 3 to preclude a reduction in hatchery compensation and tributary habitat improvement below the 7 percent and 2 percent levels without agreement on the appropriate measurement criteria for these critical uncertainties by the mid-Columbia Coordinating Committee or some similar technical group. It would be essential for tribal issues regarding the proposed action to be overcome and for the Tribes to be active participants in plan implementation. Alternatively, the total project survival standard could be revised to an interim juvenile total project survival standard of 93 percent. Measuring juvenile project survival is something that can be accomplished with current methods and technology. Once a method of measuring adult survival and indirect juvenile mortality is available, the total project survival standard could return to the 91 percent level and compensation levels adjusted as described in Alternative 3. Lastly, we note that Alternative 3 does not clearly indicate that achieving and maintaining the survival standards for one plan species does not mean that the survival standards have been reached for all plan species. Use of yearling chinook and/or steelhead as surrogates for doing survival studies of sockeye and subyearling chinook is not appropriate for these fish which demonstrate different behaviors and life histories. No reductions in compensation levels should occur for any plan species where components of the total project survival standard are unknown. It is hoped that full consideration of these suggested modifications will lead to an acceptance of the HCPs by all parties.

Maintaining 7 Percent Hatchery Compensation

ESA issues related to the potential impacts of hatchery supplementation on wild productions have the potential to limit attainment of the 7 percent hatchery compensation level, the goals for the recovery of listed species, and NNI. This is identified in the DEIS as a significant unresolved issue with respect to Alternative 3. This impact also has a direct bearing on the results of the QAR analysis and selection of the most appropriate alternative. For example, if hatchery steelhead are just as effective reproductively as wild fish, then Alternative 3 would not meet conservation criteria under any scenario. Additionally, the constraints imposed by the ESA also limit the potential expansion of hatchery programs to meet compensation requirements and NNI needs. These constraints include the potential short and long term negative genetic, behavioral interaction, and spawning fitness impacts of hatcheries and supplementation on the viability of naturally spawning populations of listed fish. These issues relate to all three alternatives, but most severely effect the potential expansion of hatchery production in Alternative 3 to reach NNI.

The DEIS states that NMFS can not commit to the 7 percent hatchery compensation goal. Because of NMFS concerns that hatchery fish may adversely affect wild fish populations, all fish produced from the hatchery program must come from local stocks. See DEIS at 2-43. The DEIS acknowledges that it will be difficult to produce the number of fish needed to ensure 7 percent

compensation from local stocks alone. *Id.* Lastly, the DEIS states that "if the 7 percent hatchery compensation level is not met due to NMFS's ESA concerns, neither the dam passage survival standard, the total project survival standard, nor the habitat compensation standard would be adjusted." DEIS at 2-43. Consequently, reliance on Alternative 3's hatchery programs to compensate for the incidental take of listed species is problematic.

While we recognize that NMFS's concern with hatchery supplementation programs applies to all the alternatives considered in the DEIS, hatchery compensation is a significant factor for Alternative 3 because it is wedded to the attainment of NNI. Erosion of the hatchery compensation provisions of Alternative 3 would prevent NNI from being achieved. More so, given the absence of provisions in Alternative 3 to compensate for take through other means if the hatchery programs fail to produce the number of fish necessary to meet the 7 percent hatchery compensation standard. Furthermore, hatchery compensation is significant in light of the fact that the Columbia Basin Tribes have reserved the right to harvest the affected species. These Tribes have already faced significant restrictions in tribal harvest caused by the status of listed stocks, and a disconnection of the hatchery compensation program from continued losses of wild fish to the projects can only result in additional harvest restrictions.

Columbia River salmon and steelhead constitute important tribal trust property, and the right to fish at usual and accustomed fishing sites on the Columbia River, and to have a meaningful fishery there, is a property right that is protected through treaties with the Federal government. The mid-Columbia's stocks of salmon and steelhead are being depleted at alarming rates, and the ESA has forced the Federal government to seek severe restrictions on the number of fish available for tribal harvest. If the river's stocks continue to decline, the Tribes may face even tighter restrictions. Hatchery production is critical to the on-going harvesting needs of Tribes of the Columbia River Basin. Consequently, it is imperative that the hatchery compensation provisions of the selected alternative assure that there would be mitigation to fully compensate for the treaty fish lost through incidental take.

The effectiveness of hatchery compensation as a tool for achieving NNI might be strengthened by including in the HCPs studies to evaluate the effects of hatchery supplementation on the viability and restoration of self-sustaining, natural populations of salmon and steelhead. This should be done at a selected site or two in the upper Columbia River with an existing or new supplementation effort. We also recommend the Bonneville Power Administration (BPA) as a potential funding source because this issue is common to all supplementation programs, and BPA is funding offsite mitigation measures associated with operation of the Federal Columbia River Power System (FCRPS). Such a study would start answering uncertainties related to genetic interaction and reproductive fitness issues that are a major source of contention. These recommended studies are critical to recovery efforts, full mitigation compensation, and in satisfying the harvest needs of the Tribes.

Tributary Conservation Plan

Under Alternative 3, 2 percent of the fish lost through incidental take at each project would be compensated for through tributary habitat restoration. Tributary habitat restoration is a significant component of Alternative 3 because it is wedded to the attainment of NNI. The proposed action, however, does not provide for the monitoring of tributary contributions to ensure that this percentage is met. In addition, it is acknowledged that the 2 percent tributary compensation standard is a negotiated figure. This figure is not based on scientific analysis which predicts that tributary restoration would result in increased tributary compensation. Instead, this figure is based upon the level of funding that the project operators are willing to set aside for tributary habitat restoration. The DEIS assumes that attainment of the 2 percent compensation level is reasonable because the selection of restoration projects would be controlled by a technical committee. If this assumption proves optimistic, there are no provisions in Alternative 3 that allow for this contribution to be increased or for other restoration measures to be implemented. Hence, the reliance on tributary habitat restoration to compensate for the incidental take of listed species and achieve NNI is problematic.

The DEIS acknowledges that there are "difficulties and uncertainties associated with monitoring and quantifying the effects of tributary habitat improvements." DEIS at S-18. The DEIS does not propose a way to overcome these "difficulties and uncertainties" and construct a standard by which the percentage of tributary compensation would be accurately measured. The risk that NNI may not be met if the assumed benefits of habitat restoration are not realized must be fully disclosed. Still, disclosure of this risk is not a substitute for the mitigation of potential impacts on trust resources. At the very least, the FEIS should explain how Alternative 3 meets the criteria for issuance of an incidental take permit in the absence of a viable method for confirming tributary contributions to NNI or, lacking a measurable standard, a clearly specified alternative strategy for achieving this 2 percent compensation level.

We also note that Alternative 3 apparently limits the compensation that may be achieved through habitat restoration by shifting the focus of habitat restoration activities to the tributaries and away from the mainstem river. The DEIS makes numerous references to locations where active mainstem spawning is occurring. While the mid-Columbia projects ultimately limit mainstem habitat productivity, these pockets of mainstem spawning habitat within the project boundaries provide models for increasing spawning and rearing habitat within the mainstem river. Therefore, mainstem habitat restoration should be considered to be within the scope of the this alternative's tributary habitat improvement program. Taking steps to conserve and protect existing mainstem spawning habitat should not be overlooked as a potential means of minimizing the impact of incidental take.

Water Quality and Water Temperature

Alternative 3 acknowledges that the Wells, Rocky Reach, and Rock Island Projects negatively impact water quality, and, most particularly, dissolved gas levels. The proposed action fails to

address mitigation of these negative impacts other than to indicate that the PUD's would meet state standards for water quality. Because spill appears to be a needed component for fish bypass at each of these projects, avoiding spill does not appear to be a long-term solution to resolving dissolved gas problems. Consequently, the discussion of alternatives in the DEIS should be expanded to include measures to address meeting water quality standards through the installation of gas abatement structures.

Water temperature is also a matter of concern. Water temperatures can be high in the surface waters of reservoirs in the Columbia River and in fish passage facilities. Under Alternatives 1 and 2, measures to improve thermal conditions at each project could be pursued through avenues such as FERC relicensing, Clean Water Act compliance, or ESA section 7 consultation. Alternative 3 proposes a specific set of measures to meet the NNI standard of the HCPs. However, the implementation of structural and operational modifications to improve the water temperatures at these dams does not appear to be specifically included. If an incidental take permit is issued incorporating the proposed terms of Alternative 3, the adoption of other measures to improve thermal conditions may be precluded. The FEIS's discussion of Alternative 3 should be expanded to include plans to monitor water temperature and, if problems are observed, implement structural and operational modifications to improve thermal conditions at these projects.

Bull Trout

The DEIS correctly acknowledges that bull trout occur in the mid-Columbia reach where the PUD projects operate and presents information from most available sources. Information on the distribution of bull trout in the mid-Columbia River area is limited. However, additional information may be available to augment the information presented in the DEIS. PUD ladder counts have noted the presence of adult bull trout for many years. The recent listing of bull trout has prompted additional vigilance at these counting stations during in the last two years. The PUDs have also recently initiated a research effort aimed at tracking the movements of bull trout in the Columbia River. Hence, additional recently developed information may be available. Other sources of information include the Washington State Salmonid Stock Inventory for bull trout/dolly varden.⁴ With this information in hand, a more complete analysis by NMFS of the effects of permit issuance and HCP implementation on bull trout can and should be incorporated in the FEIS.

The effects of hydropower operations on bull trout in the mid-Columbia River are not specifically known, as indicated in the DEIS, but inferences may be suggested by comparing what is known about bull trout behavior and distribution with the effects that have been described for bull trout and other salmonids at other Snake and Columbia River hydropower projects and associated reservoirs (see the December 2000 NMFS and Fish and Wildlife Service biological opinions on the FCRPS operations). These effects include entrainment, turbine-associated mortality and

⁴ Washington Department of Fish and Wildlife. 1996. Washington state salmonid stock inventory: bull trout/dolly varden. Draft Report.

injury, passage delays, habitat alteration, stranding, reduced prey base, and associated adverse effects on individuals and discrete populations. The effects of hydropower project operations on adult steelhead may be especially analogous to those affecting adult bull trout, as both species have the potential to migrate downstream as well as upstream (although fluvial bull trout generally survive spawning and return to the mainstem river as a rule, while this may be the exception for steelhead).

Except for a brief discussion of the potential effects of project operations and HCP implementation on adult migratory bull trout, no inferences are made in the DEIS regarding potential adverse effects on juvenile bull trout. Nor does the DEIS consider conservation measures to minimize the incidental take of bull trout that could be included in the proposed HCPs or stipulated as conditions in NMFS's section 10(a)(1)(B) incidental take permits. As the lead Federal action agency responsible for the development of the DEIS and the proper implementation of the proposed HCPs, NMFS has the primary responsibility to describe the effects of its proposed actions and to avoid or reduce adverse effects on bull trout.⁵ Such information should be included in the FEIS.

Pending the development of any new information, bull trout conservation measures that should be incorporated in the HCPs and reflected in the FEIS to reduce potential adverse effects include, at a minimum, those identified in the December 2000 NMFS and Fish and Wildlife Service biological opinions on the FCRPS operations. In the NMFS biological opinion, those measures identified for steelhead are particularly germane to the conservation of bull trout. Implementation of these measures would partially fulfill section 7(a)(1) requirements of the respective Federal agencies, and enhance timely section 7(a)(2) consultation in the future. They are as follows:

- The PUDs should determine the extent of bull trout use of the middle Columbia River affected by the subject hydropower projects. This would include the river reach from the Chief Joseph Dam downstream to Wanapum Dam reservoir. This effort would include recording the occurrence of bull trout in the smolt monitoring facilities at the middle Columbia River dams and their use of adult ladders.
- The PUDs should include bull trout as a species of concern in their research efforts to determine the upstream and downstream passage requirements of salmonids at middle Columbia River dams. These investigations should address entrainment, both upstream and downstream adult passage, and juvenile passage. Consideration of spill, flow attraction, temperature and other issues affecting passage should be included.
- The PUDs should include observations of bull trout captured in field activities under their funding (e.g., research studies and northern pikeminnow reward program fisheries) and

⁵ On page 4-48 and elsewhere, NMFS appears to suggest that consultation under section 7 of the ESA regarding the effects of permit issuance and HCP implementation on bull trout is a matter to be resolved between the Fish and Wildlife Service and the FERC.

report that information annually to the Fish and Wildlife Service.

- The PUDs should cooperate in studies to determine the movements of bull trout from tributaries into middle Columbia River reservoirs. Include the Service, Washington Department of Fish and Wildlife, Forest Service, and Native American Tribes, whenever appropriate, in development of research/study plans.
- The PUDs should initiate studies to determine the effect of flow fluctuations on river or reservoir water surface elevations and on stranding or entrapment of bull trout and other aquatic life related to the prey base of bull trout.
- Depending on the results of monitoring described above, the PUDs should, in consultation with the Fish and Wildlife Service, consider expanding the fish counting periods to include time periods outside the normal upstream migration periods for adult salmon and steelhead. It is important to note that if bull trout are seldom observed, it may mean they seldom use the fish passage facilities or migrate at different times than salmon and steelhead, and does not necessarily mean they seldom use the mainstem river and reservoirs.
- The PUDs should implement an adaptive management approach for designing and implementing actions, including performance standards, relative to bull trout that are similar to those being developed in the HCP for Permit species (salmon and steelhead).
- The PUDs should include consideration of bull trout in any studies addressing downstream movement of steelhead kelts and any subsequent operational or structural modifications aimed at improving the survival of adult salmonids migrating downstream through the dams.
- The Fish and Wildlife Service recommends that the PUDs participate in implementation (when completed) of the bull trout recovery plan.

Section 7 consultation requirements regarding the effects of implementing the proposed HCPs on listed species may be addressed by NMFS through several pathways: 1) internal ESA section 7 consultation analyzing the effects of issuing section 10(a)(1)(b) incidental take permits on listed salmon and steelhead; 2) external consultation with the Fish and Wildlife Service analyzing the effects of NMFS issuing section 10(a)(1)(b) incidental take permits on listed bull trout and other species not under NMFS's authority; and/or 3) concurrent section 7 consultation by both NMFS and the Fish and Wildlife Service with FERC analyzing the effects of amending existing licenses to implement the provisions of the proposed HCPs. The latter would be technically feasible if implementation of the HCP coincides with issuance of the required license amendments. Of these three pathways, the Fish and Wildlife Service views concurrent section 7 consultation with FERC as the approach most likely to assure the development of new information and expedite the consultation process. Consideration of all affected species in the planning process (e.g.,

finalization of the HCPs, FEIS, and FERC license applications) would effectively streamline the various potential elements of future consultation processes. The Fish and Wildlife Service will work with NMFS, the PUDs, and FERC to further identify bull trout biological information, potential effects related to hydroelectric project operations, and mechanisms to reduce or eliminate any potential adverse effects for inclusion in the FEIS and HCPs.

SPECIFIC COMMENTS

S.5.3.8, page S-22. Tributary Conservation Plan. It is our understanding that the Douglas PUD Tributary Program contribution could be reduced if total project survival is greater than 95 percent, not 95 percent dam passage survival as listed.

1.6.3, page 1-15. Alternative 3. Another unresolved matter in the HCP is the status of parties such as an agency or Tribe not signing the HCP. How would FERC deal with their Federal Power Act and other authorities concerning these projects if they remain outside of the agreement?

2.6.3.3, p.2-53. Alternative 3. According to this section, each of the signatories to the HCP agreement agrees not to institute any action under ESA, the Federal Power Act, the Fish and Wildlife Coordination Act, or the Pacific Northwest Electric Power Planning Conservation Act. This statement should be altered to state that these restrictions pertain to plan species at these projects only.

3.2.8.1, p.3-50. Bull Trout. This section indicates that bull trout are only occasionally observed in adult and juvenile passage facilities of the mid-Columbia River Dams. More recent information provided by Douglas PUD and Chelan PUD indicates yearly observations of adult bull trout seen passing through fish ladders at Wells Dam and Rocky Reach Dam. This information should be included.

3.2.9.3, p. 3-63. Steelhead. This section should utilize more recent information generated by radio telemetry studies to describe migration patterns in the mainstem and tributaries. This information is available in the draft report, Assessment of Adult Steelhead Migration through the Mid-Columbia River using Radio-Telemetry Techniques, 1999-2000 by Karl English, Cezary Slinwinski, Bryan Nass and John R. Stevenson.

4.2.1.3, p. 4-10. Action Analysis. It is not clear in this discussion how having or not having the Grant PUD projects under the HCP standards or under situations similar to Alternatives 1 and 2 effect the outcome of the QAR analysis and the potential success of HCP measures in meeting recovery for the listed plan species. This needs to be clearly addressed.

4.2.1.10, p 4-15. Methow River Steelhead. If the assumptions (p.4-11) concerning low hatchery fish contribution to natural production are not valid, then steelhead would not likely meet recovery criteria under the HCP. Studies to evaluate the success of hatchery fish in natural

production are absolutely critical to determining if the HCP measures for this species would lead to recovery. These studies must be done as part of this HCP to determine the appropriate level of hatchery compensation for long term recovery.

Additional Data Needs

The 2001 water year is proving to be an extraordinary year. The Department believes that the FEIS should fully consider emerging scientific information and data that will result from the analysis of the 2001 juvenile outmigration season. The importance of fully utilizing the most recent data cannot be overemphasized, and is particularly significant when tribal trust property is at stake. See Seminole Nation v. United States, 316 U.S. 286, 296-97 (1942) (describes the exacting standards that must be followed by the United States in its trustee capacity). Pursuant to the ESA, an incidental take permit applicant is required to establish that the incidental take will not "appreciably reduce the likelihood of the survival and recovery of" the plan species. 16 U.S.C. § 1539(a)(2)(B)(iv). The results of this year's outmigration may alter some of the basic assumptions underlying the HCPs. Consideration of this year's extraordinary circumstances is consistent with NMFS's obligation to base its decisions on the best available scientific information. This information includes the effects of natural climatic variations such as drought, and the resultant increased juvenile mortality that is acknowledged to be an outcome of the current FCRPS emergency operations plan.

The presence and operation of the projects create many difficulties for adult salmon and steelhead that return upstream to spawn. For example, adult telemetry studies indicate that adult fish experience significant delays in the tailraces of the dams and in the trifurcation pool areas of the fishways. See Stuehrenberg, et al., *Migrational Characteristics of Adult Spring, Summer and Fall Chinook Salmon Passing Through Reservoirs and Dams of the Mid-Columbia River* (1994). These delays can cause adult fish to deplete their energy reserves and may lead to increased adult mortality. In addition, the process of traveling through the reservoirs and the fishways may cause increased stress to adult fish. Given these kinds of impacts and the uncertainties related to the measurement of delayed adult mortality and total project survival, the Department believes the HCPs should be modified to include specific actions to minimize delay and adult mortality at the dams and fishways. This could increase the likelihood of achieving the 91 percent total project survival standard. Improving passage conditions for adults is consistent with incidental take permit criteria that require applicant's to minimize and mitigate the impacts of incidental take to the maximum extent practicable. This issue should be addressed in the FEIS.

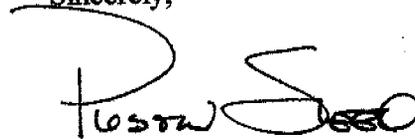
SUMMARY COMMENTS

The Department concurs with the DEIS's findings that certain portions of some of the alternatives considered are or may be inconsistent with the requirements of section 10 of the Endangered Species Act or current science and technology. Clearly, these inconsistencies require clarification and include issues related to HCP performance standards, verification of standards, adjusting and

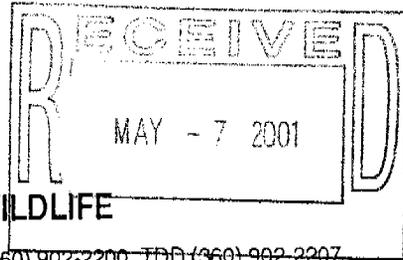
maintaining hatchery compensation levels, and future consultation with the U.S. Fish and Wildlife Service regarding the effects of permit issuance and HCP implementation on bull trout. In addition, the Department is concerned that the DEIS does not adequately address the effects of the proposed action on Indian reserved rights and resources that are subject to the Federal trust responsibility. We are especially concerned that by implementing HCPs as presently proposed, the NMFS would transfer the Federal government's obligation as trustee for the Tribes fisheries to non-federal, commercial entities. We recommend that NMFS renew its efforts with the PUDs to address these issues and attain the support of the Tribes regarding implementation of the HCPs.

We appreciate the opportunity to comment on this draft environmental impact statement for the Anadromous Fish Agreements and Habitat Conservation Plans for the Wells, Rocky Reach, and Rock Island Hydroelectric Projects, Washington. If you have questions or require clarification regarding any of the fish and wildlife comments contained herein, please contact Mark Miller, Project Leader, U.S. Fish and Wildlife Service, Eastern Washington Ecological Services Office, 32 C Street NW, P.O. Box 848, Ephrata, Washington 98823 (509-754-8580). Questions or clarifications for the Bureau of Indian Affairs should be directed to Stan Speaks, Regional Director, U.S. Bureau of Indian Affairs, Northwest Regional Office, 911 NE 11th Avenue, Portland, Oregon 97232-4169 (503-231-6702). If you have any other questions please contact me at (503) 231-6157.

Sincerely,

A handwritten signature in black ink, appearing to read "Preston Sleeper". The signature is written in a cursive style with a large initial "P" and "S".

Preston A. Sleeper
Regional Environmental Officer



State of Washington
DEPARTMENT OF FISH AND WILDLIFE

Mailing Address: 600 Capitol Way N • Olympia, WA 98501-1091 • (360) 902-2200, TDD (360) 902-2207
Main Office Location: Natural Resources Building • 1111 Washington Street SE • Olympia, WA

May 2, 2001

Susan Fruchter
NEPA Coordinator
Director, Office of Policy and Strategic Planning
Room 6117, Herbert C. Hoover Building
U.S. Department of Commerce
Washington, DC 20230

RE: Draft Environmental Impact Statement for Anadromaous Fish Agreements and Habitat Conservation Plans for the Wells, Rocky Reach, and Rock Island Hydroelectric Projects

Dear Ms. Fruchter:

The Washington Department of Fish and Wildlife (WDFW) has reviewed the subject document and participated in the development of the proposed Habitat Conservation Plans (HCP) and associated appendices. The WDFW appreciates the efforts of the National Marine Fisheries Service (NMFS) and associated preparers to produce a comprehensive and concisely written Draft Environmental Impact Statement (DEIS).

Through our participation in the lengthy process which developed the proposed draft HCPs, we generally accept that the goals and framework of the proposed HCPs should be sufficient to meet our standard of No Net Impact (NNI) regarding the operational impacts of the Wells, Rocky Reach, and Rock Island hydroelectric projects to the anadromous salmonids of the Mid-Columbia River. However, there are specific issues which either were not resolved at the time the draft HCPs were submitted for environmental review or have been brought to light in the course of scoping meetings conducted during the preparation of the draft EIS for the HCPs.

The WDFW has the greatest concern regarding the following issues, and views the satisfactory resolution of these issues as essential for acceptance of the HCPs. These are issues that are germane to the implementation of the HCPs, and are not an attempt to re-negotiate the draft HCPs.

Achievement of Survival Standards

Modification of project operations and/or structures to achieve specific juvenile and adult survival standards associated with passage of the projects during migration is the major objective of the proposed actions. The proposed HCPs are specific regarding the standards of 95% survival at the project for juveniles and 91% total project survival for both juveniles and adults, but there is lack of specificity regarding how to measure the achievement of the standards. In part this was intentional in order to allow for accommodation of new technologies as they might become available. However, to the extent that survival evaluation of specific species or life stages is not practicable in the time frames required under the proposed HCPs a specific methodology needs to be established for using surrogate data to estimate achievement of survival standards. This methodology needs to be developed by the parties to the proposed HCPs and incorporated prior to finalization of the proposed HCPs. Clarification is also necessary to specify that survival standard confirmation is required for each migrant life stage of each plan species. This confirmation must be provided through either direct evaluation or estimates based upon methods and data agreed to by the parties. In addition, the survival standards must be presumed to **not be met** until the specific confirmation as discussed above has been documented and certified by the coordination committee.

Hatchery Compensation Plan

Since the implementation of juvenile survival improvement measures at the dams is essentially capped at 95% juvenile passage survival, it is imperative that the 7% hatchery based compensation be provided to achieve the overarching goal of No Net Impact for each plan species. WDFW recognizes that there may be situations in specific years where abundance of broodstock and/or logistical constraints associated with broodstock collection preclude the full execution of programs for which the PUD's have provided the facilities and other resources to meet the production goals. However, discussions with NMFS during the course of this NEPA review process have made it clear that NMFS may limit hatchery based production to something less than the 7% levels specified in the Mid-Columbia River Hatchery Program, to avoid conflicts with the recovery of listed species. If such production limitations do occur and are of substantial duration, we need to provide a mechanism for an alternate form of meeting the hatchery based compensation obligation.

Dispute Resolution Process

Our concern regarding the dispute resolution process relates to the issue of the burden of proof when disputes are brought forward through the Alternative Dispute Resolution Process. We are concerned that there may be the opportunity to assert achievement of the survival goals

based upon inadequate scientific assessment. If other parties chose to dispute the assertion they would appear to have the burden of trying to provide proof without an adequate information having been developed to support the initial assertion. As discussed above, WDFW believes that survival goals should be assumed to **not be met** until confirmation is achieved via the coordination committee. This status would encourage all parties to work cooperatively to develop appropriate data and data gathering techniques to assure that the HCP measures are meeting the survival goals.

Adult Survival

Adult survival associated with passage at the dams is clearly included in the total project survival goal of 91%. However, there is no specific language requiring or specifying a mechanism for assessment of adult passage survival. Adult passage survival must be assessed either directly or indirectly to provide adequate assurance that the 91% total project survival goal is being achieved for each plan species. Assessment of adult passage survival should be added as an additional function of the Coordinating Committee.

System Survival

The Quantitative Analytical Report (QAR) as discussed on page 2-28 indicates that passage survival improvement is required at **all** Mid-Columbia projects as well as Lower Columbia federal projects to achieve an acceptable probability of achieving recovery for the listed populations. The lack of participation by Grant County Public Utility District (PUD) in the HCPs has been a concern to WDFW. We are currently working through the relicensing process for Grant County PUD's Priest Rapids Project to assure survival improvement comparable to the survival goals of the HCPs. We are also working with NMFS through the regional forums established in the 2000 Biological Opinion for operation of The Federal Columbia River Power System to achieve increased survival for plan species at McNary, John Day, The Dalles, and Bonneville Dams. If the survival improvements for these other portions of the system are not achieved, the adequacy of the survival goals of the HCPs may need to be reassessed.

Alternative Selection

Due to the substantial unresolved issues discussed above regarding the proposed HCPs and the extreme difficulty for successful implementation which these issues pose, the WDFW recommends that additional consultation and negotiation occur between the potential HCP

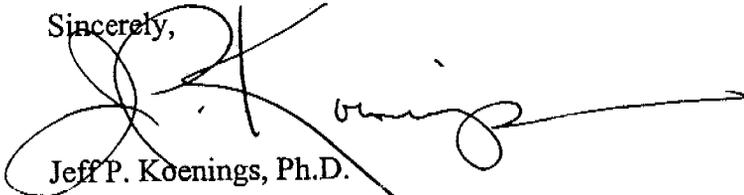
Susan Fruchter

Page 4

May 2, 2001

parties prior to NMFS selection of Alternative 3 for implementation.. If additional consultation and negotiation do not result in satisfactory resolution of these issues in a timely manner, WDFW will endorse Alternative 2.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff P. Koenings", written over a large, stylized flourish that extends across the page.

Jeff P. Koenings, Ph.D.

Director

cc: Bob Dach, NMFS, Portland
Dick Nason, Chelan PUD
Bob Clubb, Douglas PUD
Curt Smitch, Office of Financial Management
Bill Frymire, Assistant Attorney General
Mid-Columbia Coordinating Committee



CONFEDERATED TRIBES

of the

Umatilla Indian Reservation

**Department of Natural Resources
ADMINISTRATION**

P.O. Box 638

Pendleton, Oregon 97801

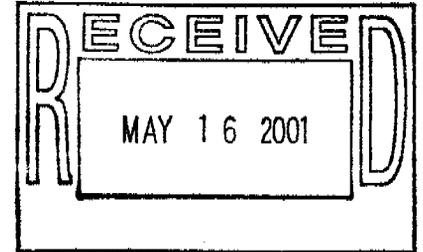
Area code 541 Phone 276-3447 FAX 276-3317



May 1, 2001

Via E-Mail, FAX and U.S. Mail

Mr. Robert Dach
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Northwest Region
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Re: Draft Environmental Impact Statement for the Mid-Columbia Anadromous Fish Agreements and Habitat Conservation Plans

The Confederated Tribes of the Umatilla Indian Reservation (CTUIR), Department of Natural Resources, offers the following comments on the Draft Environmental Impact Statement (DEIS) for the Anadromous Fish Agreements and Habitat Conservation Plans (AFAs/HCPs) for the Wells, Rocky Reach and Rock Island Hydroelectric Projects prepared by the National Marine Fisheries Service (NMFS). Our comments incorporate by reference the comments of the Columbia River Inter-Tribal Fish Commission (CRITFC), submitted on behalf of the Columbia River Treaty Tribes.¹ We also incorporate by reference all prior correspondence and comments submitted by the CTUIR and CRITFC on our behalf, such as Scoping Comments dated February 5, 1999.

¹ The Columbia River Treaty Tribes include the Confederated Tribes of the Umatilla Indian Reservation, the Nez Perce Tribe, the Confederated Tribes of the Warm Springs Reservation of Oregon, and the Confederated Tribes of the Yakama Nation. The four tribes possess rights reserved by treaties with the federal government to take a fair share of the fish destined to pass our usual and accustomed fishing places. Among these fish are the anadromous species that originate in the Columbia River and its tributaries, including the Mid- and Upper Columbia.

Introduction

The construction and continued operation of the Wells, Rocky Reach and Rock Island dams have greatly impacted the rights and resources of the CTUIR and its members. They have harmed anadromous fish populations and significantly altered their habitat. These fish and their habitat have been a critical part of tribal existence for thousands of years. Even when faced with the overwhelming power and unfair bargaining position of the United States during negotiations over the Treaty of 1855, the Cayuse, Umatilla and Walla Walla tribes were adamant in specifically securing the pre-existing right to fish at all usual and accustomed places. Retaining the right to continue their traditional fishing practices was a primary objective of our ancestors when they signed the Treaty.²

While the Draft AFAs/HCPs may have been developed pursuant to provisions of the Endangered Species Act (ESA), NMFS (and other federal agencies) should not lose sight of the fact that they are subject to additional, higher duties and obligations such as those imposed by the Treaty of 1855. In this process and all others involving salmon and steelhead in the Columbia River Basin, the federal government must adhere to the paramount goal of protecting, enhancing and restoring anadromous fish and their habitat so as to lead to sustainable, harvestable fish populations consistent with tribal Treaty Rights. The United States must honor those Rights, ensure the free exercise of those Rights by tribal members, and fulfill its Trust Responsibility toward tribal trust resources.

The DEIS And Underlying AFAs/HCPs Do Not Adequately Honor Treaty Rights Nor Fulfill Federal Trust Responsibility

Unfortunately, the Draft AFAs/HCPs and the DEIS examining them indicate that the federal government has fallen far short of above goal thus far. Merely striving to “de-list” species currently listed under the ESA is insufficient. It may serve as an initial step in the right direction, but our Treaty demands more. Other laws have separate mandates, and also require more rigorous results, such as the Federal Power Act, the Northwest Power Act and the Clean Water Act, for example.

The Proposed Action (Alternative 3) does not fulfill the federal Trust Responsibility to the CTUIR or other tribes. The Draft AFAs/HCPs lack assurances that 7% hatchery compensation will be achieved, which we believe is essential in order to eventually enjoy healthy, harvestable fish populations. The federal government seems willing to offer “No Surprises” assurances to other parties, but is unwilling to extend equivalent ones to the tribes. The United States is also reluctant to include provisions assuring the tribes that nothing within the AFAs/HCPs will be used against us in possible future litigation, should any arise. Finally, the federal agencies also may be prevented from taking additional necessary recovery and rebuilding measures in the event fish resources continue to deteriorate despite implementation of the AFAs/HCPs.

² See *Tulee v. Washington*, 315 U.S. 681, 684-85 (1942); *United States v. Washington*, 443 U.S. 658, 664-69 (1973).

The Agreements Are Not Ripe For Review

Before proceeding further, we should note that we seriously question whether it is appropriate for the AFAs/HCPs to be subject to environmental review at this time. The parties to the negotiations agreed that the documents were not to move forward in the absence of a "final package" acceptable to all the parties. At present, this is not the case—not everyone is "on board" with the draft documents, in particular the tribes. Unfortunately, the DEIS apparently presumes that the AFAs/HCPs are final, official, and suitable for implementation, when in fact there are as of yet no signed HCPs and no ESA Section 10 permits.³ Thus, the region should be proceeding under regular relicensing, for dams such as Rocky Reach, until the HCP process has reached a satisfactory conclusion.

The DEIS Contains Inaccuracies And Promotes Misperceptions About Tribal Positions and Involvement

The DEIS inaccurately portrays the CTUIR's position on a number of issues. While the CTUIR and others offered substantial concessions during negotiations in exchange for the incorporation of certain measures in the AFAs/HCPs, those measures were not included in the Draft AFAs/HCPs submitted to NMFS. Thus, no valid, binding agreements have been reached between the parties as of this date. Consequently, the DEIS cannot and should not imply or suggest that the CTUIR has agreed to the sum of contents of the AFAs/HCPs.

In the past, the CTUIR informed NMFS that it should not create the appearance that the CTUIR fully supported the AFAs/HCPs or any portion of them, specifically asking that our name be removed from certain documents.⁴ This was not done, and explanations in the DEIS relative to the CTUIR's positions do not adequately convey the fact that we have not agreed to the AFAs/HCPs in their present form.

The CTUIR also seeks additional assurances in the AFAs/HCPs addressing not just hatchery and production, as the DEIS mentions. There are other guarantees that are as important to us as those sought by the Public Utility Districts (PUDs), and are required before we can agree to the AFAs/HCPs. Finally, there are assertions that the "No Net Impact" (NNI) concept was developed with tribal biologists, implying wholesale tribal acceptance when that was not the case.⁵

³ See DEIS at p. 2-35, pp. 2-41 to 42.

⁴ See Letter from Alphonse F. Halfmoon, Vice Chairman, Board of Trustees, to Mr. William J. Stelle, Jr., Regional Director, Northwest Region, National Marine Fisheries Service, Sept. 28, 1998; Letter from Antone C. Minthorn, Chairman, Board of Trustees, and Alphonse F. Halfmoon, Vice Chairman, Board of Trustees, to Mr. William J. Stelle, Jr., Regional Director, Northwest Region, National Marine Fisheries Service, Dec. 9, 1998.

⁵ See DEIS, p. 2-35.

NMFS Has Not Complied With The Secretarial Order In Developing The AFAs/HCPs Or The DEIS

In participating in the development of the AFAs/HCPs and producing the DEIS evaluating them, NMFS has failed to comply with the 1997 Secretarial Order of the Secretaries of Commerce and Interior entitled "American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act." The Secretarial Order requires the agencies to interpret and implement the ESA in a manner that harmonizes the tribal rights and our sovereignty with the Secretaries' duties under the ESA. It also requires that the agencies ensure that tribes not bear a disproportionate share of the conservation burden for listed species. The DEIS must account for the Secretarial Order's requirements, but does not.

The DEIS And Underlying AFAs/HCPs Have Additional, Substantial Deficiencies

The DEIS and the AFAs/HCPs also suffer from numerous other serious flaws that render them inadequate and unsupportable. Some of these are summarized below:

The DEIS neglects to address several important legal issues, such as compliance with Clean Water Act requirements for water quality and quantity. The document acknowledges that the projects exceed water quality standards for temperature, yet it contains no information about how this problem could be addressed under the alternatives.⁶

The DEIS lacks meaningful analysis of survival, recovery and rebuilding. Quantitative detail is absent in both the AFAs/HCPs and the DEIS on how listed species would be impacted by implementation of the AFAs/HCPs. While the DEIS mentions the Quantitative Analytical Report (QAR) produced by NMFS, it does not incorporate its results into the alternatives analysis. This is a significant oversight in that, according to NMFS's own data in the QAR, measures in addition to those set forth in the AFAs/HCPs will be necessary for recovery:

"Even under the most optimistic scenarios . . . regarding future survival rates and the effectiveness of supplementation, additional survival improvements beyond those projected for the draft HCP actions would be necessary to achieve extinction risk/recovery criteria."⁷

The DEIS essentially ignores the QAR's finding that meeting the HCP standards and achieving off-site mitigation "would fall short of meeting survival and recovery criteria under the assumptions that 1980-present conditions will continue."⁸ Therefore, according to the QAR, additional measures are going to be required for recovery, but such measures are not required nor allowed by the AFAs/HCPs. The DEIS must more fully and completely address these issues relative to all the alternatives.

⁶ See DEIS, pp. 3-96 to 3-100.

⁷ QAR, p. ii.

⁸ QAR, p. iii.

Furthermore, the geographic scope of the DEIS is inadequate. It fails to address or analyze cumulative and synergistic effects. It lacks a reasonable range of alternatives. Its "No Action" Alternative is inadequately described and evaluated. The DEIS's comparison and contrast of Alternatives 2 and 3 is biased and inadequate. The DEIS fails to fully consider and address potential constraints on federal authorities under various statutes, and difficulties in fulfilling federal Trust Responsibility, associated with adoption of Alternative 3. The assurance of "No Surprises" for the PUDs is inappropriate for HCPs of this type, covering facilities that are inextricably interconnected with other facilities and activities *not* covered by the HCPs, *all* of which affect the anadromous fish populations at issue.

"No Net Impact" under Alternative 3 is misrepresented in the DEIS, which fails to take into account recent scientific information or uncertainties about funding. Additional NNI issues should be explored as follows:

- Assess potential impacts on species within the first five years of the HCPs, during the time in which NMFS and the U.S. Fish and Wildlife Service are limited in prescribing or preempting the plans of the PUDs;
- Analyze and explain the biological basis for the draft AFAs/HCPs' assumption that 91% survival + 7% hatchery mitigation + 2% tributary mitigation are additive so as to guarantee zero impact on the species;
- Examine the relationship between the NNI standard and long-term stock viability;
- Analyze whether or not the proposed measurement of the performance standard for 95% Juvenile Dam Passage Survival, by measuring juvenile survival over only 95% of the run, ensures a juvenile passage mortality of only 5% such that the draft AFAs/HCPs address full mitigation for take;
- Examine passage impacts to anadromous fish and lamprey and descaling injuries (particularly on sockeye) if screens are installed, and assess whether such impacts are accounted for within the NNI standard;
- Determine what impacts may occur during the time period that elapses before the PUDs actually meet the proposed survival requirements and analyze whether those impacts can or will be appropriately mitigated;
- Determine impacts on the species should the survival goals never be reached during the term of the AFAs/HCPs;
- Assess impacts on spring migrating Chinook salmon if they are exempted from the 95% Juvenile Dam Passage Survival standard as planned; and
- Provide an accurate evaluation of losses and determine whether the mitigation proposal is supported by adequate data to ensure no unmitigated take.

The DEIS also misrepresents the issue of drawdown in its comparison of the alternatives, making it appear to be a much more accessible and available option under Alternative 3 than it actually would be in reality. In truth, it would be virtually "off the table," notwithstanding the status of the fish, whether their numbers continued to decline, or whether the dams were responsible. Drawdown must therefore be given serious consideration under Alternative 2 and should also be analyzed as its own alternative.

The AFAs/HCPs lack satisfactory provisions for measuring and evaluating the results if the plans are implemented. The DEIS states, "There is currently no methodology that all parties support for determining the survival of adult fish through the projects."⁹ The DEIS improperly refers to existing conditions as the baseline in its assessment of the alternatives, precluding the meaningful examination of the ongoing, lingering effects of prior degradation. A "natural river" baseline is more suitable and appropriate.

The DEIS does not give adequate consideration to lamprey and sturgeon. It does not give adequate consideration to the issue of long-term risks associated with Alternative 3.¹⁰ It does not evaluate the alternatives in terms of the widely accepted scientific determination that re-establishment of more "normative" river conditions is essential to long-term salmonid survival. It does not adequately portray tribal economic issues and impacts. It does not adequately inform the public and decision-makers about the requirements and responsibilities of all applicable federal statutes and treaties. It lacks adequate analysis of the off-site mitigation proposals.

Conclusion

The DEIS fails to establish that the proposed AFAs/HCPs are sufficient to protect anadromous fish in the Mid-Columbia region. Standards and benchmarks are difficult to assess. Risks and uncertainties remain disproportionately balanced on the backs of the salmon and the steelhead on which we depend for the exercise and fulfillment of our rights, religion, economy, culture and spirit. This seems particularly inappropriate at the moment, given the unwillingness of the federal agencies to carry out many of the very measures that they prescribed for themselves in operating the federal hydrosystem.

Plans for configuring and operating the Rocky Reach, Rock Island, and Wells dams should have more certainty as to whether or not standards will be achieved, and whether or not those standards are in fact enough. Significant doubts as to the ability to comply with even minimal ESA requirements are raised; thus, far greater doubts as to satisfying tribal Treaty Rights and fulfilling the federal Trust Responsibility are inescapable.

⁹ DEIS, p 2-41.

¹⁰ See DEIS, p. 4-77.

The CTUIR remains hopeful that the outstanding issues in the AFAs/HCPs can one day be ultimately resolved in a manner that mutually benefits all the parties. Thank you for your consideration of our comments on the Draft Environmental Impact Statement for the Anadromous Fish Agreements and Habitat Conservation Plans for the Wells, Rocky Reach and Rock Island Hydroelectric Projects. If you have any questions or wish to discuss any of these matters further, please contact Carl Merkle with our staff at (541) 276-3449.

Sincerely,



Michael J. Farrow
Director, Department of Natural Resources

MJF: DNR EP/RP: CFM: cfm

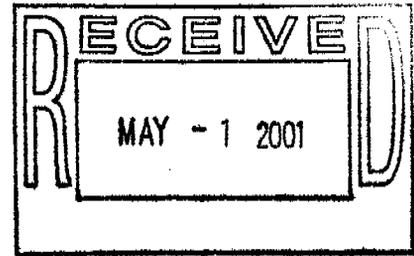
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May 1, 2001

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*Re: Comments of the Yakama Nation on the Draft Environmental Impact
Statement for the "Mid-Columbia Habitat Conservation Plans."*

Dear Mr. ^{Bob}Dach:

The Yakama Nation (hereinafter "YN" or "Tribe") hereby submits its comments on the Draft Environmental Impact Statement (DEIS) prepared by the National Marine Fisheries Service (NMFS) on the Anadromous Fish Agreements and Habitat Conservation Plans for the Wells, Rocky Reach and Rock Island Hydroelectric Projects (hereinafter "Mid-Columbia HCPs" or "HCPs"). We appreciate the opportunity to provide you with comments pursuant to the National Environmental Policy Act (NEPA), 42 U.S.C. § 4322(2)(c).

The NMFS' analysis under this DEIS and the resulting Final Environmental Impact Statement, and its decisions regarding the HCPs, directly affect the Tribe and the Tribe's treaty-reserved rights. The geographic scope of the HCPs falls within the ceded territory of the YN and the operation of the hydroelectric projects at issue in the HCPs affects the treaty fish on which the Tribe relies. In the Treaty with the Yakima Tribe, 12 Stat. 951, Art. 3 (June 9, 1855), the YN reserved the right of "taking fish at all usual and accustomed places in common with citizens of the United States." Retaining the right to continue its traditional fishing practices was a primary objective of the Tribe during treaty negotiations. Tulee v. Washington, 315 U.S. 681, 684-85 (1942); Washington v. Washington State Commercial Passenger Fishing Vessel, 443 U.S. 658, 664-69 (1973).

The treaty guarantees to the Tribe an equitable share of the fish. See United States v. Oregon, 302 F. Supp. 899 (D. Or. 1969) and United States v. Washington, 384 F. Supp. 312 (W.D. Wash. 1974). Anadromous fish and lamprey have significant cultural and religious significance to tribal members, provide members with subsistence for health and well-being, and contribute to a critical share of tribal commerce in an area of limited economic opportunity. Additionally, the YN actively co-manages the fishery resource along with federal and state authorities and is a party to the Mid-Columbia Proceeding before the Federal Energy Regulatory Commission involving the Chelan and Douglas County Public Utility Districts.

As described more fully below, the YN also participated in the negotiations of the HCPs at issue in the DEIS and thus is intimately familiar with the HCPs and issues of importance to the Tribe. The YN believes that the DEIS misrepresents the YN's participation and fails to identify for the public at large the status of the HCPs as being incomplete, the YN's lack of support for the HCPs at this time, and the real reasons for such a lack of support. We discuss this in further detail below.

Below the YN first sets forth its general comments about the DEIS and then provides specific comments related to specific sections of the DEIS. Please note that these are not necessarily set forth in the order of importance to the Tribe and thus all of the Tribe's comments should receive adequate and equal consideration.

GENERAL COMMENTS

The HCPs Are Unfinished, Incomplete, and Thus Not Yet Ready for Environmental Review

As the DEIS recognizes, the negotiation of the HCPs was the subject of much debate and controversy. The DEIS is unclear in its explanation of the negotiation process, as it does not adequately discuss either the scope of, or ground rules for, the negotiation. However, these issues surrounding the negotiation process are important to understanding that the HCPs are incomplete and unfinished at this time.

The scope of the negotiations was much broader than that which normally occurs within a usual HCP process because the Public Utility Districts, together with NMFS and the United States Fish and Wildlife Service (USFWS), agreed to negotiate not only an HCP, but also a long-term licensing agreement for the Districts' hydroelectric projects under the Federal Energy Regulatory Commission. The ultimate agreement intended to come out of the negotiation was to be not only an HCP providing long-term ESA protection, but also an agreement that would provide the Public Utility Districts an opportunity to renew their hydroelectric dam licenses without opposition from the parties to the negotiation. Those agreements regarding the licenses were no less important to Public Utility Districts than the HCPs.

As a result of this aspect of the negotiation process, the NMFS, USFWS and the Public Utility Districts invited the YN and other non-agency parties to participate. As this was a long-term and potentially contentious negotiation, the Public Utility Districts hired a professional mediator/facilitator to work with the parties. There was one hard and fast rule of the negotiation to which the parties were expected to adhere: the concept of "Conditional Closure." Under

Conditional Closure, the negotiation was to proceed in such a way as to allow the parties to reach agreement on an issue-by-issue basis with the understanding that such issues were only "conditionally closed," such that there would be no binding effect or agreement on any single issue until everyone agreed on the total package. Conceptually, this general rule allowed a party to agree "conditionally" on one issue that it did not completely accept, but the acceptance would be conditioned on receiving a later agreement on other important issues. If the later agreement could not be made, then there was no agreement on any issue.

No one involved in the negotiation was mistaken as to the basis upon which it was being conducted. The Conditional Closure ground rule was echoed time and time again by the Director of NMFS and other NMFS staff, the USFWS representative and the facilitators/mediators. Throughout the course of the negotiations, many contentious points were "conditionally closed" only because the parties expected to come to agreement on other issues as well. All parties clearly understood that if one part of the agreement failed, the entire agreement would fail.

The Tribe entered into the negotiation only because of those assurances, and has scrupulously honored its part of the bargain. Until the negotiations simply stopped, with the Public Utility Districts receiving all of their consideration and YN and other non-agency parties receiving virtually none of theirs, the Tribe relied on the assurances of the federal government and the Public Utility Districts that they would honor their part of the bargain as well. As we discuss further below, the YN has not agreed to the terms of the HCPs because the terms the YN requires to reach such an agreement have been rejected by the other parties. Accordingly, the negotiation—conducted under the Conditional Closure rule—is unfinished and incomplete. As such, the YN cannot support the HCPs as they are drafted.

It is both disheartening and somewhat shocking that the YN must file comments on the DEIS for the "completed" HCPs in light of the clear fact that there is no agreement on the terms of the HCPs and hence no document upon which the DEIS may be based. The YN participated in the HCP process only on assurances from its trustee, the United States, acting through NMFS and USFWS, that there "would be no deal unless everyone agreed to all aspects of the deal." The Tribe expected the United States to fulfill its best and highest fiduciary responsibility to it in making such promises. Unfortunately and shamefully, NMFS and USFWS have turned their backs on the Tribe in favor of the Public Utility Districts, to whom they owe absolutely no obligation.

There is no disagreement among the parties to the HCP negotiation that the YN has not received the benefits for which it bargained. Nevertheless, the representatives of United States and the parties who have received the benefit of their bargain at the expense of the Tribe, have decided in the interests of expediency to push forward regardless. This results in the DEIS being manipulated in the interests of making it appear that there is an agreement despite the fact that no such agreement exists. For instance, at the second scoping meeting on DEIS, held at the West Coast Sea-Tac hotel, a YN representative asked the NMFS representative why NMFS was going forward with environmental review of a non-existent HCP, particularly because NMFS and everyone else involved in the negotiation knew there was no agreement among the parties. The NMFS representative responded that the environmental review will never "see the light of day unless there is agreement" among all the parties. Currently, there is simply no agreement among

the parties, yet the DEIS is in place and the NMFS appears ready to move forward with choosing a preferred alternative.

An additional and related problem is that the DEIS implies that the HCPs are at least nominally in place and that the Public Utility Districts are currently operating under the HCPs. See, e.g., DEIS at 2-35, 2-41. However, there is no final agency action under which the Public Utility Districts can be allowed to operate. The DEIS is thus tremendously misleading in light of the fact that there are no agreed to HCPs in place and no awarded Section 10 permits. As a result, the Public Utility Districts are currently taking listed salmon without valid ESA protection in violation of Section 9 of the ESA. Instead of pretending that some sort of agreement exists, the NMFS and Public Utility Districts must face the circumstances as they truly exist and proceed to either finalize a valid HCP agreement or move forward with Section 7 consultations to cover the take of listed species.

Based solely on the circumstances surrounding the negotiations, the lack of closure on any agreement to the HCPs, and NMFS' promise that this document would not "see the light of day" without such agreement, the NMFS should immediately withdraw the DEIS and seek other means for supplying ESA coverage for current PUD operation. Additionally, notwithstanding the fact that there is no agreement, the comments that follow provide further reflection that the provisions of the HCPs are seriously broken and badly in need of repair prior to any finalization of such a concept. NMFS should withdraw the DEIS on that basis as well.

The DEIS Inaccurately Portrays the Tribe's Position

The DEIS portrays the YN's concern with the HCPs as being based solely on the lack of guarantee for hatchery production. As discussed below, the YN believes that the refusal to guarantee hatchery production has the potential to further depress runs in the mid-Columbia, which provides treaty fishermen with virtually no benefit from the HCPs while allowing the Public Utility Districts virtually unfettered generation at their dams. While hatchery production is an issue of extreme importance to the scientific validity of the entire agreement, particularly because the underlying principle of the HCPs' No Net Impact standard is impossible to achieve without a guaranteed and successful hatchery component, this is not the sole tribal issue to be ignored by the HCP parties and the DEIS drafters.

During the HCP negotiations, the Tribe also requested, in return for its agreement to the other provisions of the HCPs, that it would receive its own "no surprises" type assurance. Such a provision was intended to assure that if the HCPs fail to provide adequate protection and recovery of the fish, then tribal harvest or other tribal interests consistent with the YN's treaty rights would not be the first in line to bear the brunt of NMFS' and USFWS' responsibility to make up the difference. See discussion of No Surprises further below. The YN's proposal for such an assurance has been rejected by NMFS on numerous occasions, yet is nowhere mentioned in the DEIS.

Of equal importance is a tribal proposal that the HCPs would not be used by NMFS as a defense in any non-HCP related litigation between it and the Tribe. This is an issue of major importance to the YN, as the Tribe is concerned that NMFS will contend in future litigation that

the HCPs satisfy NMFS' treaty obligations to YN and that the YN is estopped from asserting otherwise. The Tribe's proposed language was only intended to make clear that any future litigation "playing field" between it and NMFS would remain level. NMFS rejected this proposal but fails to discuss it in the DEIS.

The DEIS ignores the fact that the rejection of these important issues to the YN results in there being no agreement on any of the provisions of the HCP. The YN's inability to obtain agreement on its proposals results in the Tribe withdrawing its agreement to other "conditionally closed" issues. The DEIS ignores the fact that all parties to the negotiation, including NMFS, agreed that this would be the basis on which the HCP was negotiated. The DEIS needs a fair and frank discussion of the rules and terms of the negotiation so that a reader may judge as to whether or not there is in fact any basis for claiming agreement at this juncture.

The DEIS treats the Yakama issues as somehow disjointed from the "overall agreement," implying that the other HCP parties may proceed with their part of the agreement while the YN receives nothing in return. Such a proposal has no basis in law, equity or simple justice for a party that negotiated in good faith for nearly three years but now receives nothing. Again, such an interpretation is both highly misleading and violates the understanding between the parties.

Despite the total lack of agreement, the DEIS contains several statements that misrepresent that there is tribal consent to certain terms of the HCPs. For example, the DEIS states that the No Net Impact concept was developed "with tribal biologists," DEIS at page 2-35, implying that there is tribal agreement on that concept. Of major importance is the fact that the No Net Impact concept requires that there be the guaranteed 7% hatchery production component. However, the No Net Impact concept has been effectively destroyed by NMFS' position on hatchery production. Accordingly, to imply that tribal scientists still agree with that vastly altered concept is improper.

Finally, the DEIS is devoid of any mention of the YN's efforts to resolve these issues. The DEIS should include information regarding tribal efforts to resolve outstanding issues, including numerous meetings with regional NMFS staff and, on at least three occasions, with high-level policy makers for NMFS and the Department of the Interior in Washington D.C. All of these meetings concluded without success. The DEIS should likewise note that the YN and the Confederated Tribes of the Umatilla Indian Reservation formally provided a written request that NMFS remove their names from the DEIS as parties to the HCP, and even that effort was unsuccessful.

The Proposed Action—Alternative 3—Fails to Fulfill Federal Trust Responsibilities

The NMFS and the USFWS, as federal agencies, have a fiduciary trust obligation to Indian tribes, which must be carried out according to a strict fiduciary standard. See United States v. Mason, 412 U.S. 391 (1973); Seminole Nation v. United States, 316 U.S. 286 (1942); Felix Cohen, HANDBOOK OF FEDERAL INDIAN LAW 225 (1982). These trust obligations apply to federal agency actions that affect trust resources. See, e.g., Covello Indian Community v. FERC, 895 F.2d 581, 586 (9th Cir. 1990). The agencies thus have a required duty to protect, maintain and enhance the YN's treaty fishing rights and the fish on which the Tribe rely.

The proposed alternative in the DEIS regarding the HCPs fails to meet this strict fiduciary duty for a number of reasons. For example, the HCPs lack certainty for the 7% hatchery compensation levels, which the Tribe believes is a necessary component for rebuilding the Tribe's treaty fish resources. The YN bargained for such hatchery compensation in the negotiations and is unwilling to support the HCPs absent assurances of what the Tribe believes is critical for sustainable populations to fulfill the Tribe's treaty rights to fish. For further details of the Tribe's concerns about this issue, please see our discussion below.

Other examples where the agencies would fail to uphold their trust responsibility under the proposed alternative include the No Surprises assurance (please see our specific discussion of this issue in greater detail below); the agencies' unwillingness to include provisions assuring the Tribe that nothing within the HCPs will be used against the Tribe in future litigation matters; and a general failure to guarantee the protection and enhancement of the Tribe's trust resources. Additionally, the proposed alternative requires that the agencies shift management authority to the Public Utility District within the first five (5) years and also may prevent agencies from taking necessary recovery and rebuilding measures in the event that the fishery resource continues to dwindle despite the HCPs.

Alternative 3 thus frustrates the NMFS's and USFWS' ability to uphold its strict fiduciary duty to the Tribe, yet these factors are not addressed or weighed within the DEIS. The NMFS must adequately discuss its trust responsibility and explain, in a comparison between the alternatives, the extent to which NMFS and the USFWS are able to completely fulfill their roles as trustees to the Tribe and the Tribe's treaty-reserved resources.

NMFS and USFWS Must Comply with the Secretarial Order

A related concern is that the NMFS and USFWS have to date failed to comply with the 1997 Secretarial Order of the Secretaries of Commerce and Interior titled "American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act." The Secretarial Order requires the agencies to carry out the Endangered Species Act (ESA) in such a way that harmonizes the Tribe's sovereignty and rights with the Secretaries' duties under the ESA. Section 1. The Secretarial Order also requires that the agencies ensure that the Tribe not bear a disproportionate share of the conservation burden for listed species. Section 5, Principle 3.

The DEIS must take the requirements of the Secretarial Order into account. The Tribe finds that the DEIS is deficient of a detailed discussion about how the HCPs and the other alternatives may now, and in the future, be consistent or inconsistent with the Tribe's treaty rights and tribal sovereignty. The DEIS likewise lacks a discussion of whether or not any of the particular alternatives may cause NMFS or USFWS to fail to fully uphold its trust responsibility. Furthermore, under the Secretarial Order, the Tribe has repeatedly asked for a consultation meeting that has not yet taken place. The YN therefore respectfully requests that the NMFS immediately arrange a formal consultation meeting that can take place with the YN's governmental officials and legal counsel on a government-to-government basis. To be

meaningful, such an action must take place *before* the NMFS makes a decision about which alternative to choose as the preferred alternative.

The DEIS Neglects to Address Several Important Legal Issues

Discussion and analysis contained within the DEIS are inadequate or completely lacking on several legal matters that the YN believes deserve due attention. For example, the analysis in the DEIS is cast in terms of ESA recovery, but the nature of what Alternative 3 is meant to legally satisfy is such that the analysis must go beyond mere ESA standards. As the DEIS recognizes, the HCPs would constitute long-term settlements under the Federal Power Act, the Fish and Wildlife Conservation Act, the Northwest Power Planning and Coordination Act, and Title 77 of the Revised Code of Washington. DEIS at S-15. However, the DEIS couches its review in ESA terms without analyzing whether the alternatives meet the requirement of these laws or other laws, such as the United States-Canada Pacific Salmon Treaty and tribal treaty rights.

As one example, the Public Utility Districts plan for the terms of the HCPs to be wrapped into at least one relicensing process for each of the three hydroelectric projects at issue, though this intent is based on an agreement of the parties to the HCPs that now does not exist. The DEIS contains no discussion or analysis of whether the HCPs would independently satisfy the Federal Power Act (FPA) requirements for equal consideration, protection, mitigation and enhancement, which are all standards that would be need to be addressed at relicensing pursuant to the FPA. See 16 U.S.C. §§ 803(a), 803(j). Additionally, because each of the projects would be relicensed during the term of the HCPs if put into place, and thus would presumably be incorporated into their license terms and conditions, the Public Utility Districts may believe that they will receive 50+ years of protection under the HCPs and similarly long-term licenses. The DEIS must address this with the understanding that the YN would likely insist on a traditional relicensing process and assert that the HCPs fail to satisfy FPA requirements.

The proposed HCPs also affect tribal trust resources over a long period of time, so the analysis of impacts on species must also include compliance with treaty reserved rights – including rebuilding to sustainable, harvestable populations over and above what would be required for de-listing under the ESA. As NMFS' own salmon recovery policy provides, "It is our policy that the recovery of salmonid populations must achieve two goals: (1) Restore salmonid populations to the point where they no longer require the protection of the ESA, and (2) restore salmonid populations to a level that allows meaningful exercise of tribal fishing rights. McElhany, P., M.H. Ruckelshaus, M.J. Ford, T.C. Wainwright, and E.P. Bjorkstedt. 2000. Viable salmonid populations and the recovery of evolutionarily significant units. U.S. Dept. Commer., NOAA Tech. Memo. NMFS-NWFSC-42,156 p. 34 (hereinafter "NMFS VSP"), citing (Garcia 1998). The DEIS therefore must provide analysis of the alternatives under the laws referenced above and examine recovery and rebuilding consistent with the NMFS policy.

The Public Utility Districts also plan for the HCPs to constitute a settlement of the Mid-Columbia Proceeding, which is under the continuing jurisdiction of an administrative law judge of the Federal Energy Regulatory Commission, so the DEIS should take into consideration the opportunities, function and protection provided under the Proceeding and all settlements that

have been entered into (the Wells Settlement Agreement, the Rock Island Settlement Agreement, and the past stipulations for Rocky Reach). The existing status of interaction among the parties under the Mid-Columbia Proceeding make up part of the current situation, yet are not thoroughly addressed in the DEIS under the No Action alternative, nor under the other alternatives.

The DEIS also neglects to provide sufficient consideration of Clean Water Act requirements for water quality and quantity. Though the DEIS recognizes that the hydroelectric projects at issue have negative impacts on water quality, mainly increased total dissolved gas levels, the DEIS contains minimal discussion of mitigation for such impacts. The only proposed solution that the Public Utility Districts offer is reduced spill. See DEIS at 2-46. The Tribe finds this to be an inadequate solution because spill is one of the most effective methods of safely passing juvenile fish through the projects. Other solutions should be fully explored and addressed across all of the alternatives. The DEIS also recognizes that the projects are exceeding Clean Water Act temperatures, see DEIS at 3-96—3-100, yet the DEIS contains little information about how this problem could be addressed under the alternatives. The DEIS must therefore address Clean Water Act requirements and how such requirements – for both quality and quantity – may be met under the parameters of the HCPs and under the other alternatives.

Another legal issue not mentioned in the DEIS is whether or not Section 10 of the ESA is an available option to the Public Utility Districts for Section 9 takings protection or whether Section 7 of the ESA is instead the proper vehicle. When the YN first entered into negotiations with the Public Utility Districts on the HCPs, the Tribe had questions about whether or not Section 10 was an available option, but the Tribe's concern at the time was the substance of the negotiations. The parties never addressed the procedural issue. The YN assumed that if a deal could be negotiated, the parties could find the proper vehicle to make it work. We believe, however, that this stage of environmental review is the appropriate time for such an analysis to be completed.

The YN understands that the Section 10 permit process is available to non-Federal entities but is not available to Federal landowners such as the United States Forest Service. As the NMFS' and USFWS' HCP Handbook explains at page 1-4, the HCP process is "designed to address non-Federal land or water use development activities that *do not involve a Federal action* that is subject to section 7 consultation." (emphasis added). Furthermore, it provides, "Federal activities and non-federal activities that receive Federal funding or require a Federal permit (other than a section 10 permit) typically obtain incidental take authority through the consultation process under section 7 of the ESA. Id. Hydroelectric projects, though owned by a non-Federal entity, are intertwined with extensive federal actions, including licensing, conditions, rates, and generation. The YN believes that the DEIS must address the applicability of Section 10 to the Public Utility Districts' projects in order to determine whether Alternative 3 may even be chosen as the preferred alternative.

The DEIS Lacks Meaningful Analysis of Survival, Recovery and Rebuilding

Under Section 10 of the ESA, an HCP must explain the impact that the proposed take will have on listed species. 16 U.S.C. § 1539(a)(2)(A)(i). See also 50 C.F.R. §§ 17.22(b)(1); 17.32(b)(1); 222.22. Under the National Environmental Policy Act (NEPA), agencies are

required to take a "hard look" at the consequences of their actions before acting. Robertson v. Methow Valley Citizens Council, 490 U.S. 332, 249 (1989). This requires more than broad or general statements about risk, especially when more detailed information could be provided. See Neighbors of Cuddy Mountain v. United States Forest Service, 137 F.3d 1372, 1380 (9th Cir. 1998).

The YN believes that the DEIS fails to take the required hard look at impacts on anadromous fish and other trust resources. Neither the HCPs nor the DEIS present adequate quantitative detail of how listed species would be impacted by the HCPs. Furthermore, the DEIS does not do so under the other alternatives. The DEIS mentions the Quantitative Analysis Report (QAR) conducted by the NMFS, but does not incorporate the analysis into the alternatives. The reviewer of the DEIS is left without any idea of how each of the alternatives actually compares in terms of survival and rebuilding benefits.

In the discussion of the No Action alternative, the DEIS states, "[e]xisting measures however, may not prevent the extinction of listed species." DEIS at 2-49. However, the discussion of the other alternatives fails to provide analysis of whether or not they will be an improvement and not also lead to extinction. The DEIS states that implementation of the HCPs would result in an increase in survival levels, but fails to explain what that means in terms of ESA standards or FPA requirements. DEIS at 4-39. According to NMFS's own data in the QAR, measures in addition to those set forth in the HCPs will be necessary for recovery, yet such information is not adequately addressed or analyzed in the comparison of alternatives. The QAR report at ii states, "Even under the most optimistic scenarios . . . regarding future survival rates and the effectiveness of supplementation, additional survival improvements beyond those projected for the draft HCP actions would be necessary to achieve extinction risk/recovery criteria." This information should be analyzed in the DEIS.

The DEIS also does not account for the QAR's statement that meeting the HCP standards and off-site mitigation "would fall short of meeting survival and recovery criteria under the assumptions that 1980-present conditions will continue." QAR at iii. Therefore, according to the QAR, additional measures are going to be required for recovery, but such measures are not required or allowed by the HCPs. If something more than the HCPs is required, then Alternative 2 would be the only avenue for providing it. The DEIS must address this omission and include meaningful analysis across all of the alternatives.

As NMFS provides in the "Recovery" section of the NMFS VSP, the NMFS, States, Tribes and many other stakeholders have an interest in the recovery of salmon populations to the level that the populations can support "sustainable harvest or other 'broad sense' recovery goals." NMFS VSP at 34. NMFS provides that where a certain level of harvest may have an affect on the population's sustainability, NMFS could use VSP guidelines "to help determine the population abundance, productivity, diversity, and structure that would be required." Id. The YN would accordingly like to see the NMFS take into consideration the factors that led to the initial decline of the salmon and provide analysis that examines the impact that the various alternatives would have on the sustainability of the salmon populations and the ability of such populations to meet broad (beyond mere ESA) recovery goals.

The Geographic Scope of the DEIS is Inadequate

Use of the proper geographic scope in an environmental impact statement is paramount to assuring that the consideration of effects on the environment are adequately considered and addressed. The scope of environmental review is supposed to take into consideration three types of actions: (1) actions that may be connected (includes actions that are closely related, would trigger other actions that require environmental review, or interdependent parts of a larger action); (2) cumulative actions; and (3) other similar actions (those that have reasonably foreseeable similarities, such as timing or geography). 40 C.F.R. § 1508.25. Under this requirement for determining scope, it is apparent that the scope of the DEIS is too limited.

Consistent with the concepts of aquatic systems and the operation of hydroelectric projects, the scope of the environmental review in the DEIS should at least include tributaries in the mid-Columbia Basin, upstream federal projects, the Lake Chelan Dam, downstream projects operated by Grant County Public Utility District, the Vernita Bar, and the Hanford Reach. The three hydroelectric projects at issue cannot be plucked out of the geography and their impacts on downriver systems ignored. Furthermore, power operation upstream of Wells, Rocky Reach and Rock Island affect anadromous fish survival, flow management and water quality at those projects.

In its scoping comments, the YN advocated that the scope of the review should include the entire mid-Columbia River Basin from the Yakima River to Roosevelt Lake. However, much of the benefit of salmon recovery in the Columbia Basin will accrue to the Columbia River tribes in terms of expanded harvest opportunities at usual and accustomed fishing places in Zone 6 (Bonneville Dam to McNary Dam). Accordingly, the geographic scope of the DEIS should be expanded to account for the relative effects on the proposed alternatives on treaty fisheries in this area. See also discussion of Baseline below.

The DEIS Does Not Adequately Address or Analyze Cumulative Effects

Under NEPA, an environmental impact statement must contain consideration and analysis of cumulative effects. Cumulative impacts are effects from "the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time." 40 C.F.R. § 1508.7.

The YN, in its Scoping Comments on the HCPs, asked for such consideration and analysis, but the DEIS does not adequately accomplish this. See DEIS at 4-6—4-47. The Tribe believes that the NMFS should have considered factors for decline throughout the entire life histories of each species, including effects that fall outside of the geographic scope of Alternative 3. Furthermore, the analysis should have included cumulative and synergistic impacts from the Federal Columbia River Power Systems operations and all five of the mid-Columbia Public Utility District Dams (Wells, Rocky Reach, Rock Island, Priest Rapids, and Wanapum).

Additionally, the results presented in the DEIS reinforce the YN's concerns that an inability to enforce operations at federal dams or to impose environmental conditions are assumed in the QAR model. Therefore, we fear that the effectiveness of the HCP measures cannot be assured. In order to effectively give consideration to cumulative effects as required by NEPA, the Tribe believes that the NMFS must provide a review and analysis of no less than what we requested in our Scoping Comments.

The DEIS Lacks a "Reasonable Range of Alternatives."

The NEPA requires that environmental review contain a reasonable range of alternatives. See 40 C.F.R. §§ 1502.14. Agencies are required to "[s]tudy, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources." 42 U.S.C. § 4322(2)(E). The discussion of the alternatives is the "heart" of the NEPA process. 40 C.F.R. § 1502.14.

The DEIS offers as its only alternatives a general Section 7 process and the HCPs (along with the No Action alternative, which we address below). The YN does not find this to be a reasonable range of alternatives to meet NEPA requirements. The YN asked for additional alternatives in the Tribe's Scoping Comments, specifically that the NMFS include as alternatives three options that cannot realistically be pursued under the HCPs: drawdown, dam removal and non-power operations. The DEIS states that these alternatives do not merit further consideration, but offers no satisfactory explanation for why these alternatives were not given analysis. DEIS at 2-45—2-48. This deficiency must be remedied and proper analysis be included in the environmental review, particularly in light of the NMFS' findings, as reported above, that the HCPs fall short of what would be required for ESA survival and recovery, let alone what is required under the United States' trust obligation to the Tribe.

The No Action Alternative Is Inadequate

The NEPA requires that a No Action alternative be included in an Environmental Impact Statement. See 40 C.F.R. § 1502.14(d). However, the way in which the No Action alternative is presented in the DEIS misrepresents the existing situation and sets it up so that it cannot be given serious consideration. For example, the discussion of the No Action alternative completely omits statutory authorities at relicensing. This is particularly key relative to the Rocky Reach project, which is currently going through the relicensing process. In addition, Section 1.7.3.1 of the DEIS references the settlement agreements under the Mid-Columbia Proceeding, but the analysis of the No Action alternative does not fully describe the settlements, cross-reference them throughout, or analyze the level of species protection provided through the settlement agreements and coordinating committees. NMFS should reframe the No Action alternative so that it accurately represents the actions that may be taken under the existing license, settlement agreements and statutory authorities.

By failing to take into consideration the activities of the coordinating committees under the settlement agreements, the No Action alternative and the DEIS in general also fail to adequately consider the interests of the Tribe, to which the NMFS has a trust responsibility. The

Tribe is a party to the Mid-Columbia proceeding and has a place in the coordinating committees, which allows the Tribe to exercise its involvement in co-management of the Tribe's trust resources. If the HCPs are put into place, with the idea that the HCPs will supercede these settlement agreements, the fishery-related signatories to the HCPs become a new coordinating committee. See DEIS at 1-9, 1-15. However, if the Tribe is not able to sign the HCPs due to a lack of bargained-for consideration and assurances from the federal government, then the Tribe's participation in co-managing its trust resources may be affected. This should be addressed in the No Action alternative and factored into the comparison of the other alternatives.

The Comparison of Alternatives 2 and 3 Is Inadequate

The DEIS creates the illusion that Alternatives 2 and 3 are very much alike and neglects to highlight the very real and substantive differences between them. The DEIS also unfairly downplays certain benefits of Alternative 2 in order to emphasize certain provisions of Alternative 3, making Alternative 3 seem like the better choice even though it may not be.

For example, the DEIS states that NMFS would require measures for tributary habitat improvement under Alternative 2 just as such improvement would be required under Alternative 3. See DEIS at 4-32—4-33. (Note that elsewhere in the DEIS it states that tributary enhancement is only provided by Alternative 3. See, e.g., DEIS at 4-77). However, the DEIS provides no analysis of whether the tributary habitat improvements provided through Alternative 3 are even adequate, or whether the funding proposed is adequate to accomplish what is necessary for ESA requirements. The DEIS also does not discuss whether greater protection could be provided under Alternative 2, as it most likely could were it needed to provide a measurable benefit to the fish.

The DEIS downplays Alternative 2 and underscores Alternative 3 by asserting that Alternative 2 would only protect ESA-listed fish while Alternative 3 would provide additional protection for non-listed species. However, measurements under Alternative 3 are likely to use target species to represent the level of protection being provided to the other species. See DEIS at 2-41 (discussing the PUDs proposed use of "representative survival studies" on yearling Chinook and steelhead). Given the complications with measuring survival of listed as well as non-listed species, the level of protection provided under either alternative is likely to be gauged off of target species. See discussion of measurement and evaluation below. Furthermore, non-listed species such as lamprey and sturgeon, which are not included in the HCPs, would need to be considered at relicensing under the Federal Power Act and are currently taken into account by members of the Mid-Columbia coordinating committees. Listed species, such as bull trout, are also not covered by the HCPs, but would have to be addressed under Alternative 2, and Alternative 3 would most certainly affect USFWS' ability to meet its federal responsibilities for that and other listed species not covered by the HCPs. Therefore, it is not accurate to assume that Alternative 3 will provide a broader range of protection than the other alternatives.

Another concern that the Tribe has with the DEIS is that it repeatedly asserts that Alternative 2 would be thwarted by indefinite delays. See, e.g., DEIS at 1-15. Because the DEIS uses "the speed at which each alternative could be implemented" as criteria for comparing

Alternatives 2 and 3, DEIS at 2-49, it appears that the "indefinite delays" are used to weigh against Alternative 2 in favor of Alternative 3. However, the YN believes that "indefinite delays" under Alternative 2 are theoretical and impracticable, and as such, should not be used to justify a decision in favor of Alternative 3. The absence of protection from the Section 9 takings prohibitions could be a significant motivator for the Public Utility Districts to seek Section 7 protection in the absence of a Section 10 permit. Furthermore, Alternative 3 may likewise suffer theoretical delays if the tools used by the Public Utility Districts in the HCP toolbox fail to provide improvement in survival and recovery or if the Public Utility Districts believe they have met a standard or wish to use a specific tool even though all others disagree,¹ yet such delays are not factored into the analysis of Alternative 3.

Finally, the Tribe believes that the DEIS improperly includes drawdown as an option under Alternative 3, which further attempts to blur the distinction between Alternatives 2 and 3, though drawdown is really only an option under Alternative 2. We discuss this further below.

Under Alternative 3, the DEIS Should Address Limits on Statutory Authorities and the Trust Responsibility.

The HCPs that make up Alternative 3 may place significant limits on the statutory authorities of federal agencies and on the ability of such agencies to comply with their trust responsibility to the Tribe, yet the DEIS fails to consider or assess these limitations. For example, under the dispute resolution provision of the HCPs, the NMFS's decision-making authority on scientific information is forfeited to a neutral third party. Furthermore, the No Surprises assurance prohibits NMFS and other agencies from exercising authorities and responsibilities by pre-determining what measures are required and prohibiting the imposition of additional mitigation.

If NMFS chose Alternative 3 as its preferred alternative, NMFS would predetermine the operations of the hydroelectric projects before the FERC could determine whether the amended or new license it issues complies with the Federal Power Act and FERC's trust responsibility. At relicensing, all of the participating state and federal agencies, such as the Washington Department of Ecology, FERC, USFWS, and the Bureau of Indian Affairs, would be constrained from exercising their statutory authorities to require what they believe is necessary for protection, mitigation and enhancement under the Federal Power Act or for meeting their trust obligation to tribes. These limitations on the authorities and responsibilities of other agencies should be addressed in the DEIS.

¹ As a case in point, the Tribe's representatives (and others as well) on the Mid-Columbia Coordinating Committee (MCCC) are currently experiencing difficulty with Chelan Public Utility District, who asserted at an April 2001 MCCC meeting that it can meet a 95% survival rate by operating its bypass system, providing a \$5 million habitat mitigation fund, and generating electricity with water that would otherwise be used for spill. The Tribe's representatives have been given very little to no input on the decision-making and have asserted that there is no scientific information being presented to demonstrate that Chelan has reached a reasonable conclusion. Thus, if history is any indication, Alternative 3 is likely to be thwarted by even greater delays than those imagined under Alternative 2.

The No Surprises Assurance Is Inappropriate for These HCPs

The No Surprises rule was adopted in order to provide certainty for landowners that additional land or other mitigation (financial resources) would not be required of them for the protection of listed species except in "extraordinary circumstances." Instead, the obligation for providing the necessary, additional mitigation would rest with the federal government or other non-federal landowners who lack their own similar assurances under the ESA. For example, if non-federal landowner "A" has an HCP that fails to provide adequate habitat for spotted owls, Landowner A's neighbors, the United States Forest Service and non-federal landowner "B," would have to keep their lands available for the habitat needed by the owls.

In the aquatic situation such as the Mid-Columbia HCPs, however, there are no "neighboring landowners" to be responsible for habitat or other protective needs. For example, even if the federal projects upstream and the non-federal and federal projects downstream of the Chelan and Douglas were required to provide 100% survival in order to make up for declines allowed by the HCPs, the fish and the water nevertheless must pass through the Chelan and Douglas projects. To roughly translate this to the land-based HCP as outlined above, it would be as if Landowner A's HCP allowed him not only to destroy owl habitat, but to shoot at all owls that flew over his property on their way to the habitat being preserved by the United States Forest Service and Landowner B.

The river and the hydroelectric system are so interconnected that there are not adequate "neighbors" to make up the difference if needed by the anadromous fish. The Tribe is concerned that the application of the No Surprises assurance to a river-based HCP may result in the NMFS seeking to restrict the Tribe's fisheries. However, the Tribe would view this as a breach of fiduciary duty and a violation of federal case law. Therefore, the DEIS should provide an analysis of the feasibility of the No Surprises assurance to the HCPs and the extent to which shortcomings in protective measures could be met, keeping in mind the federally recognized and protected resource rights of the Tribe and the United States' trust responsibility.

No Net Impact Under Alternative 3 is Misrepresented in the DEIS

The YN believes that the "100% No Net Impact" (NNI) standard of the HCPs in Alternative 3 is misrepresented in the DEIS, which fails to take into account recent scientific information. NNI represents 91% dam passage survival (which includes a 95% juvenile dam passage survival component) and 9% mitigation (7% via hatchery compensation and 2% via tributary improvements). The 100% NNI concept was created with the idea of making the dams "invisible" to the fish. The concern that the Tribe expressed in its Scoping Comments is that the components of NNI do not add up to 100% because the gains in survival may be exponentially additive but not linearly additive, and the components consist of different "currency" by mixing juveniles with adults.

The 9% mitigation requirement fails to assure the benefits that it is presumed to provide. The parties to the HCPs are not even thinking about measuring the 2% habitat component, but instead plan to just assume that the funds will provide a 2% benefit. There has been no analysis

of whether the proposed funding levels will be capable of providing the presumed benefit. The 2% number is in fact pure fiction. The YN is very concerned that the funding levels are inadequate. The bulk of the funding for the tributary plan was to come from Grant County Public Utility District when it was involved in the HCP negotiations. Once Grant pulled out of the process, the total amount of the tributary fund was greatly reduced, even though it started out much lower than many of the fishery parties thought necessary to confer a 2% benefit. Subsequently, Douglas County Public Utility District's share of the funds may be reduced in half of what it originally proposed to provide. In the YN's opinion, the tributary fund is thus left much under-funded. In its Scoping Comments, the Tribe requested a watershed analysis to further explore this concern. The DEIS should provide such an analysis in order to determine whether the funding will provide the needed benefit.

There also exists a lack of certainty regarding the 7% hatchery compensation level. If the Public Utility Districts are not allowed to meet the 7% component through hatcheries, then there will be a deficit in the required mitigation. NNI would not be achieved, but the HCPs would allow the hydroelectric projects to continue taking fish. The DEIS takes this in account in some places, but fails to address it in others, and the lack of obtaining the 7% is not factored into any analyses of Alternative 3 that we could locate. The DEIS also fails to provide evaluation of the adequacy of the proposed mitigation plan as the Tribe requested in its Scoping Comments.

Further, there is reason to believe that adult losses are much greater than the 2% estimated, yet the HCPs require mitigation for only 2% through either habitat or hatchery, neither of which are guaranteed. The DEIS should provide analysis of actual adult losses, examine the adequacy of the adult passage plans, and address mitigation for adult losses under the various alternatives.

Despite the lack of analysis and the problems with the concept of 100% NNI, the DEIS frequently states that the HCPs "*guarantee* 100 percent no net impact for each of the Plan species." See, e.g., DEIS at 2-54 (emphasis added). The DEIS also lacks any analysis as to whether 95%, 91% and 100% NNI will meet ESA requirements and the requirements for protection, mitigation and enhancement under the Federal Power Act. These and other concerns about the NNI standard were set forth in the Tribe's Scoping Comments, but were not considered or analyzed in the DEIS as requested. The Tribe hereby reiterates its request that these NNI issues be addressed in the DEIS, as well as the following:

- Assess potential impacts on species within the first five years of the HCPs, during which time the NMFS and USFWS cannot prescribe or preempt the plans of the Public Utility Districts;
- Analyze and explain the biological basis for the draft HCPs' assumption that 91% survival + 7% hatchery mitigation + 2% tributary mitigation are additive to guarantee zero impact on the species;
- Examine the relationship between the NNI standard and long-term stock viability;

- Analyze whether or not the proposed measurement of the performance standard for 95% Juvenile Dam Passage Survival, by measuring juvenile survival over only 95% of the run, ensures a juvenile passage mortality of only 5% such that the draft HCPs address full mitigation for take;
- Examine passage impacts to anadromous fish and lamprey and descaling injuries (particularly on sockeye) if screens are installed and assess whether such impacts are accounted for within the NNI standard;
- Determine what impacts may occur during the time period that elapses before the Public Utility Districts actually meet the proposed survival requirements and analyze whether those impacts can or will be appropriately mitigated;
- Determine impacts on the species should the survival goals never be reached during the term of the HCPs;
- Assess impacts on spring migrating Chinook salmon if exempted from 95% Juvenile Dam Passage Survival as planned (See Wells Agreement at Sec. IV(1)(b)); and
- Provide an accurate evaluation of losses and determine whether the mitigation proposal is supported by adequate data to ensure no unmitigated take.

SPECIFIC COMMENTS

Drawdown

The YN is very concerned about the misrepresentative nature of the DEIS' references to drawdown in the comparison of the alternatives. The DEIS states that the Public Utility Districts, the NMFS and the USFWS can mutually agree to drawdown (or dam removal or non-power operations). See, e.g., DEIS at 2-33. This is true under the HCPs *only if* NNI has not been achieved and maintained after 20 years has elapsed but the Public Utility District is otherwise in compliance with the Section 10 permit. See, e.g., Wells Agreement at Sec. II(2)(a)(ii). Furthermore, the topic of agreement among the Public Utility District, the NMFS and USFWS is not to *implement* drawdown, but to allow the NMFS to pursue such a measure. See id. There is *no* ability to use drawdown even if, though NNI has been achieved, the anadromous fish resource is not rebuilding and the Public Utility Districts' hydroelectric projects are a significant factor in the failure to rebuild. See id. at Sec. II(2)(a)(i).

Instead, the HCPs provide, under the Assurances sections, that drawdown is precluded from consideration: "[E]ach Party during the term of this Agreement *will not advocate for or support* additional or different fish protection measures or changes in Project structures or operations other than those set forth in this Agreement. This Agreement *does not include* as Measures: partial or complete *drawdowns*, partial or complete dam removal, and partial or complete non-power operations." See, e.g., id. at Sec. IX(10) (emphasis added). Furthermore, the Public Utility Districts party to the HCP negotiations were adamant that none of the other parties to the HCP negotiations even breathe a word about drawdown, to the extent that the parties joked that they could not say the word "drawdown" at a cocktail party. Thus, based on the intent of the Utility Districts and the language of the HCPs, drawdown is not at all an option under Alternative 3.

By lumping drawdown into Alternative 3, even though the HCPs basically forbid its use, and pretending that Alternative 3 is no different on this issue than Alternatives 1 or 2, blurs one of the more substantive distinctions among the alternatives. The YN opposes the NMFS's approach on this issue.

Furthermore, the DEIS states that drawdown could not be required under Alternative 2 except at the time of relicensing. DEIS at 4-29. If the NMFS requires drawdown as a reasonable and prudent alternative under the Section 7 process, but the license is not amended to include the drawdown requirement, then the Public Utility Districts would be in violation of the ESA. Perhaps there is a reason why drawdown can be required only at relicensing, but the Tribe is not currently aware of such. The YN thus requests a detailed explanation. Even if the DEIS is correct, the possibility of drawdown exists for each of the three projects under Alternative 2 because all of them will be relicensed at some point during the next 50 years (which would be the term of the HCPs).

Drawdown must therefore be given serious consideration under Alternative 2 and should also be analyzed as its own alternative as the Tribe requested in its Scoping Comments. The YN understands that the DEIS finds drawdown to be an unrealistic alternative, DEIS at 2-48, yet such a blanket statement without any discussion or analysis is inadequate. Additionally, the emphasis that the DEIS places on the ability to use drawdown as a tool under Alternative 3 (though false) indicates that it is not as valueless as it is made to seem under the other alternatives. These problems with the approach to drawdown must be accurately resolved in the revisions to the DEIS.

Measurement and Evaluation of the HCP Permit Obligations

The YN believes that the measurement and evaluation provisions of the HCPs are key to determining whether the Public Utility Districts are meeting the permit obligations and what impacts the dams are having on the anadromous fish resource. However, there are no methods to which the parties agreed for measuring the standards or for what species and life histories to study. The DEIS states, "There is currently no methodology that all parties support for determining the survival of adult fish through the projects." DEIS at 2-41.

If measurement and evaluation cannot at least initially be decided, it could result in years of delay where the Public Utility Districts fail to actually meet the standard but are allowed to take species nonetheless. Similarly, there is no standard or method for measuring the "steady process" required within the first five years of the HCPs. Due to the uncertainties in measuring the standards, and the assumption of certain components of NNI (see above), it could be next to impossible to determine whether or not the Public Utility Districts are achieving the proposed NNI standard on which the permit would be based. The DEIS should squarely address this issue.

Baseline

The YN believes that the DEIS must discuss the impacts that Alternative 3 would have on the Tribe's treaty resources. In order to do so, it is imperative that the baseline from which the improvements or impacts are measured is proper. However, the DEIS uses Alternative 1 as the

baseline condition, DEIS at 2-22, which fails to account for whether existing mitigation or compensation levels are adequate and presupposes that existing degraded conditions do not need to be considered.

The DEIS states,

Mitigation measures for these impacts have already been implemented as part of the existing licenses. Prior activities are not considered an action subject to additional mitigation beyond license requirements unless they are considered to cause a continuing "take" of a listed species as defined under the [ESA]. Existing hatchery production levels are initially assumed to provide adequate compensation for original inundation by the projects. Therefore, the baseline is considered to be the existing conditions. These baseline conditions also form the basis for determining what effect continuation of the existing conditions would have on listed species. The baseline conditions that existed as of January, 1997, would be used to determine if progress were being made to increase the survival of the Plan species through the implementation of the HCPs.

DEIS at 2-23.

The YN disagrees with the DEIS's assumptions. Use of the currently degraded environment as the measuring stick for determining what harms and benefits the alternatives will have on treaty resources fails to take into consideration the fact that the development of the hydroelectric projects set in motion a decline in fish populations that is still being felt in the Basin and that is still negatively impacting tribal trust resources. Instead, the Tribe requested in its Scoping Comments that the DEIS use a natural river baseline. The 1995-1998 Biological Opinion on the Federal Columbia River Power System, drafted by NMFS, was of the opinion that an accurate baseline relative to considerations about hydroelectric dams examines continuing effects of previous degradations. It defines the environmental baseline as the effects of the proposed action as added to past and present impacts of all Federal, State, and private activities in the action area, which is itself defined as all areas directly or indirectly affected by the federal action and not merely the immediate area involved in the action. See Biological Opinion at 12. As NMFS has done in the past, it should recognize in the DEIS that the nature and extent of ongoing impacts must be analyzed in a systematic way.

Lamprey and Sturgeon

The YN believes that lamprey and sturgeon should be given greater consideration in the DEIS. Comments about lamprey and sturgeon are sprinkled throughout the DEIS, but the analysis of the impacts or benefits to these species is inadequate.

For example, the DEIS states in general terms that lamprey and other species (trout) are "expected to benefit" from the tributary improvements that would take place under the HCPs, but the DEIS contains no data or analysis to support such an assertion. Though not a species listed under the ESA, Alternative 2 may have benefits or impacts on lamprey, which are not mentioned

in the Environmental Consequences discussion about Alternative 2. Because lamprey are an important part of tribal culture and a subject of the federal government's trust responsibility, the Tribe is very concerned that such a species receives so little attention in the analysis.

Sturgeon is likewise given very little attention in the DEIS. Though listed as a resident fish resource, DEIS at 3-47, it is not discussed under the life histories section, DEIS at 3-47—3-52, and is not even cross-referenced in the Environmental Consequences Sections that address fishery resources under Alternatives 2 or 3. Though little may be known about lamprey and sturgeon, as the DEIS suggests, DEIS at 4-27—4-28, consideration of the impacts and benefits to these species, based on analysis, should be included under all of the alternatives.

Long-Term Risks

The YN is concerned that not enough deliberation has been given to the long-term risks of Alternative 3. See DEIS at 4-77. We believe that NMFS should place greater weight on the risk of uncertainty over the 50-year period of the proposed Section 10 permit, especially because the NMFS recognizes the "limits of existing information." *Id.* NMFS should also assess the lack of ability to apply greater protective measures relative to long-term risks given the No Surprises assurance. Even though the HCPs contain adaptive management provisions, the framework of the HCPs is locked in for 50 years and the federal resource agencies will be prohibited from requiring higher survival levels if needed and if technology allows.

The DEIS also fails to assess the consistency of the alternatives under the concept of a normative river and multi-species restoration, determine risks posed through a probability of assumptions being mistaken over long periods of time, address how the alternatives may select against certain species and life histories, and examine opportunities for and feasibility of reintroducing Coho. The Tribe requested in its Scoping Comments that these risk issues be addressed in the DEIS and reiterates its request here.

Measures for Adult Fish

The HCPs fail to adequately address adult passage and survival standards and measures, which are in turn inadequately addressed in the DEIS. The adult anadromous fish issue was a significant sticking point during the HCP negotiations, with the result being inadequate provisions for adult in the HCPs. Though the HCPs take into account some adult losses (an assumed 2% that figures into the 9% mitigation component of No Net Impact), the actual amount of adult losses has not been quantitatively measured. Such a lack of measurement is likely to allow the Public Utility Districts to ignore operational and structural fixes under Alternative 3 that could be made at their projects to benefit adults. This factor should be taken into account in the DEIS analysis and comparison of the alternatives, particularly because returning adults that make it to the spawning grounds contribute significantly to the next generation of juveniles. Adults must not be forgotten or ignored in the environmental review. Furthermore, under each of the alternatives, the DEIS should provide a discussion and analysis of measures and standards that could increase adult passage survival, such as improved passage time, reduction of adult fallback rates, and limits on power peaking operations.

Summer/Fall Chinook

The Tribe believes that the DEIS should not lump the summer and fall Chinook together as one species. Under the HCPs, at the request of the tribes participating in the negotiations, the parties made a conscious decision to list the species separately. For example, the Wells Agreement defines "Plan Species" as "spring, summer and fall Chinook salmon." Wells Agreement at Sec. XIII(11). The Tribe has previously provided extensive comments to the NMFS on the proposed listing of summer Chinook demonstrating clear distinctions between summer and fall Chinook in run timing, spawning locations and flesh quality. Yakama Nation. 1993. Comments on the Proposed Listing of Mid-Columbia Summer Chinook Salmon Under the Endangered Species Act. Yakama Nation Fisheries Resource Management Program. p. 19. The YN thinks that the analysis contained in the DEIS regarding effects on the species should thus treat each race as independent of the other.

Evolutionarily Significant Units (ESU)

The DEIS fails to clearly identify the standard by which the status of the ESU is measured. We understand that NMFS has established by rule that the Upper Columbia River (UCR) spring Chinook ESU is comprised of naturally-spawning spring Chinook returning to tributaries above Rock Island Dam, and UCR steelhead as those above Priest Rapids Dam. The DEIS appears to establish separate measures and standards for the recovery of three tributary populations in the Wenatchee, Entiat, and Methow rivers. The geographic place and biological terms that will be used to measure progress toward recovery of these ESUs should be clearly described, along with any applicable law or policy. The YN also requests that the NMFS provide an explanation of its authority to manage units smaller than the ESUs.

Economic Impacts on Tribes

Section 3.7 of the DEIS addresses socioeconomic impacts on populations, employment and income. However, the Tribe believes that consideration should be given to the impacts on Tribes for loss of fishing due to reductions in the Tribe's treaty resource. The wealth of salmon that the Tribe used to enjoy has been redistributed to non-tribal persons or entities in the form of irrigation, navigation, and flood control, to name a few. This redistribution has resulted in significantly high poverty rates and death rates for tribal members above those of the non-Indian population or non-tribal communities. See CH 2 M Hill. 1999. Human Effects Analysis of the Multi-Species Framework Alternatives (prepared for the Northwest Power Planning Council).

Specific to the mid-Columbia hydroelectric projects, the dams have been recognized as taking away sustainable wealth from the tribal people. Id. The YN's tribal members now take less than 10% of the fish that they used to take in traditional salmon harvests, which significantly contributes to the YN's low per capita income (43% of that of the State of Washington) and high poverty levels (42.8% compared to 10.9% in Washington). Id. Every juvenile salmon that survives the hydroelectric system and returns as an adult brings back to the Tribe some of the river's wealth for tribal economy and culture. The DEIS alternatives must therefore be evaluated

as to their effects on tribal culture and economics, and their ability to redistribute the river wealth back to tribal peoples.

Scoping Comments

The YN wishes to incorporate by this reference anything not specifically addressed in these comments, but addressed in the Tribe's Scoping Comments filed in conjunction with the Columbia River Inter-Tribal Fish Commission and the Confederated Tribes of the Umatilla Indian Reservation. The comments were filed on February 5, 1999 and are part of the Scoping record. We also point out that the Tribe has not yet received a response from the NMFS on its Scoping Comments, which were never specifically addressed in the scoping meetings.

CONCLUSION

Based on the above comments, the YN believes that the NMFS should immediately withdraw the DEIS. The HCPs need finalization before environmental review should take place. At the least, the DEIS is in need of significant revisions and additions as described above. In the meantime, the YN believes that the only option available is to immediately begin Section 7 consultation in order for the Public Utility Districts to receive protection under the ESA. Furthermore, the stakeholders in the region should be allowed to participate in the relicensing of the Rocky Reach project without the constraint of the HCP, since there is a complete lack of closure and absence of an agreement.

We again thank you for the opportunity to present the comments of the Yakama Nation on the DEIS. If you have any questions, please contact Tim Weaver at 509/575-1500, Starla Roels at 503/242-1745, or Steve Parker or Bob Rose at 509/865-6262.

Sincerely,

Handwritten signature of Jim Weaver in cursive, with the initials "by SKR" written below it.

Tim Weaver, Esq.
Attorney for the Yakama Nation

Handwritten signature of Starla Kay Roels in cursive.

Starla Kay Roels, Esq.
Hobbs, Straus, Dean & Walker, LLP

cc: Randy Settler, YN Executive Committee
Steve Parker, YN Hatcheries Manager
Bob Rose, YN Env'tl. Biologist
Bob Heinith, CRITFC
Susan Fruchter, NEPA Coordinator



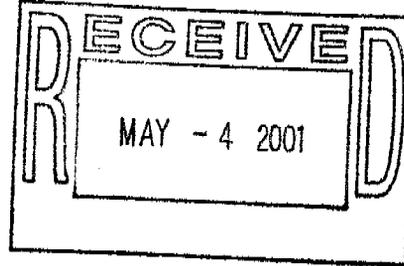
Confederated Tribes of the Colville Reservation

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Bob Dach
NMFS, NWR, Hydro Program
525 NE Oregon Street, Suite 420
Portland Oregon 97232 - 2737



May 1, 2001

RE: Comments on the Draft Environmental Impact Statement (DEIS) regarding the proposed Anadromous Fish Agreements and Habitat Conservation Plans (HCPs) for the Wells, Rocky Reach and Rock Island Hydroelectric Projects.

Dear Mr. Dach:

The Confederated Tribes of the Colville Indian Reservation (Colville Tribes) has reviewed the DEIS regarding the *Proposed Anadromous Fish Agreements and Habitat Conservation Plans (HCPs)* for the Wells, Rocky Reach and Rock Island Hydroelectric Projects. We appreciate the opportunity to review the document and provide the following comments. The Colville Tribes has been a participant in the process of this HCP development since it's initiation more than six years ago. We have in good faith attempted to support and move the process forward towards meeting the recovery, protection and conservation of Mid-Columbia anadromous fish resources which are so important to the Colville Tribe's subsistence, religious, ceremonial and cultural way of life. However, since last year it has become evident to the Colville Tribes that several unresolved issues exist with respect to the HCPs which place in question whether they fall short of providing the necessary protection, conservation and recovery for Mid-Columbia River anadromous fish resources. We will discuss these issues and the uncertainties they create for the HCP alternative in our comments below.

General Comments

- The most important element of the HCP alternative from the Colville Tribes perspective is the overall performance standard of 100% which is known as the No Net Impact standard. This standard in our view is the foundation of the HCPs and is intended to achieve no net impact for all plan species at each project. It includes both a project survival requirement of 91%, which includes a 95% juvenile dam passage survival, and a 9% compensation requirement for unavoidable project mortality, which is provided through 7% hatchery and 2% habitat compensation programs. During the late stages of HCP development, the National Marine Fisheries Service (NMFS) determined that they could no longer support the 7% hatchery compensation requirement as had been identified during the prior 4 years of HCP development. They were concerned

with the potential impacts to ESA recovery from hatchery programs and therefore could not guarantee the 7% compensation level. We question this decision by NMFS, especially since their assessment (QAR) of implementing only the HCP survival and tributary improvements (no hatchery compensation measures), indicate that these HCP actions would not meet interim recovery levels for either spring chinook or steelhead. The reluctance on the part of NMFS to guarantee the 7% hatchery compensation level creates a major concern for the Colville Tribes and as long as the No Net Impact standard remains unresolved, the Colville Tribes will not support the HCP alternative.

- A major objective of the HCP alternative is to protect and conserve both listed and non-listed anadromous fish plan species which include: spring run chinook salmon, summer/fall chinook salmon, sockeye salmon, coho salmon and steelhead inhabiting the Mid-Columbia River basin. The hatchery compensation plan for one of these plan species, Okanogan River sockeye salmon, is inconsistent with this objective. This plan species, and only this species, is subject to a substitution measure, which allows sockeye smolt production to be eliminated and substituted by summer/fall chinook. The Colville Tribes oppose this action and voiced concern on many occasions during the HCP development process that they would not support an action, which substituted one plan species for another. However, one of the HCP proponents, Douglas County PUD continues to pursue this action and just recently reminded the Colville Tribes of their ability to continue this action within the HCP process. Okanogan River sockeye are an important anadromous fish species to the Colville Tribes and we are concerned about the well being of this species in light of the unavoidable losses caused by the Wells Hydroelectric Project. We will not agree to an HCP that contains measures that allow unavoidable mortality of Okanogan River sockeye to be compensated by substituting hatchery production of sockeye for that of another species.
- The verification of survival standards also concerns the Colville Tribes. Currently, technology is not available to sufficiently conduct all of the survival evaluations required in the HCPs for all plan species. The HCPs propose to conduct representative survival studies for yearling chinook and steelhead and then develop indirect methods to measure compliance of other plan species during Phase I. Efforts would continue to determine more direct compliance during later phases but no mandatory survival studies to verify survival standards of all plan species is required. This strategy tends to suggest to the Colville Tribes that there is a lack of commitment on the part of the proponents to conduct survival studies on any plan species except the listed species. They want a 50-year agreement that supposedly will conserve, protect and recover all anadromous plan species, both listed and unlisted, but in reality the survival studies only deal with listed species. Why would the Colville Tribes commit to a 50-year agreement that would affect the Tribe's ability to raise other anadromous fish issues that may become important to the

Tribe during the next 50 years, when only listed species will be the focus of this HCP. We can almost certainly obtain those same assurances with the Section 7 Consultation Alternative without having to commit to a 50-year agreement. This issue is discussed in more detail in specific comments, 2, 3, and 4 below.

Specific Comments

* We note that survival estimates and monitoring efforts appear to be heavily reliant upon marking programs (PIT tags, balloon tags, radio tags). We feel that although theoretically this may be sound, in practice, large scale marking programs as needed to assess both juvenile and adult passage rates and survival may not be possible due to the scarcity of test animals. We offer no solution to this situation but question, given the stress and mortality associated with fish handling and marking, the practicality of marking large numbers of Plan or Permit species for either phase I or II evaluation or phase III monitoring efforts.

We also note that survival studies utilizing PIT tags require downstream recovery locations equipped with passive interrogation systems. At present, the primary recovery locations for PIT tagged fish used in survival studies at Wells, Rocky Reach, and Rock Island Dams would be at McNary and John Day Dams. Due to the great distance between the release and the recovery locations and associated in-river mortality, precise survival estimates would require the release of large numbers of PIT tagged fish. For example, approximately 70,000 yearling chinook were required to evaluate survival rates at Rocky Reach and Rock Island Dams in 1998 and even with these large numbers of marked fish the precision of survival estimates were lower than anticipated due to lower than expected recovery rates. Recovery rates for sockeye and zero age chinook would likely be lower than that of yearling chinook, requiring excessive, possibly unrealistic, numbers of PIT tagged fish to conduct the survival studies.

It is our understanding that turbine mortality studies with balloon tags are normally conducted by releasing individual marked fish through turbine intakes. Although we agree that this type of assessment does provide some level of insight into the effects of turbine passage on juvenile salmonids, we do not believe that this assessment technique adequately represents the simultaneous passage of thousands of juveniles through turbine intakes as occurs during peak outmigration periods. We therefore suggest that other evaluation techniques be used in conjunction with balloon tag studies to adequately assess juvenile turbine passage mortality.

* We have noted that the HCPs rely heavily on marking programs to verify compliance with survival standards and have questioned that adequate numbers of test fish will be available to conduct these evaluations. We also note that under "Phase I Measurement and Evaluation, section d" in each HCP it states:

"If the differences between the study results and the District's performance standard being measured are not statistically significant, then the District's performance standard has been met."

We object specifically to this clause as non-significant differences, which would be interpreted as meaning that the District's have met their performance standards, can easily result from a combination of inadequate numbers of marked fish or lower than anticipated recovery rates.

* We acknowledge the use of surrogate species (i.e., yearling fall chinook for spring chinook) in marking studies as an alternative to marking endangered species. However, we question that yearling chinook and juvenile steelhead adequately represent the FPE or mortality rates of juvenile sockeye or zero age chinook summer migrants. We note that Fish Guidance Efficiency research at COE projects has consistently shown both sockeye and zero age chinook to have considerably lower Fish Guidance Efficiencies (FGE) compared to those of yearling chinook and steelhead. In addition, descaling and mortality rates for juvenile sockeye are typically higher than those of yearling chinook and steelhead at Columbia River COE projects. We also note that both turbine passage mortality and predator susceptibility for juvenile sockeye and zero age chinook are likely different from those of yearling chinook and juvenile steelhead. We suggest that FPE and survival estimates derived through the use of tagging studies with yearling chinook and steelhead likely will overestimate FPE and survival for the other Plan species (sockeye, zero age chinook, and possibly coho) under Alternative 3. In addition, because adult passage studies have not been completed for each of the three hydroelectric projects and juvenile studies have not been completed for each of the Plan species, the only standard to which project survival can be measured under Alternative 3 are survival studies of juvenile steelhead and yearling chinook. We further note that the yearling chinook used in such studies were yearling fall chinook as a surrogate for yearling spring chinook. We suggest that both juvenile and adult passage and survival evaluations need to be completed for all Plan species and used to evaluate and monitor compliance standards for all three HCPs. However, we also question the practicality of completing such work and repeating such work on a timely basis as necessary for either evaluation or monitoring activities.

* Under Alternative 3, the HCPs indicate that the evaluation portion of Phase I will occur over a three year period. We question that all five Plan species could be evaluated during such a short period of time.

* We applaud the consideration given to adult fallbacks in both Alternatives 2 and 3. We are aware of 1999 radio tracking work conducted with adult steelhead in the Mid-Columbia which, when the data analysis is complete, will provide some reference on adult steelhead migration behavior including fallback at mainstem projects. We are not aware of work specifically designed to address: 1) kelt passage in terms of guidance efficiency, direct and delayed mortality (note that kelts are downstream migrants and not true fallbacks) or 2) fallback guidance efficiency, direct and delayed mortality. We believe this to be an outstanding unresolved issue, which has not been adequately addressed in either the action areas of the Wells, Rocky Reach, or Rock Island Projects or elsewhere in the Columbia Basin.

* We agree that Pacific lamprey, although currently not listed as a Plan species, may benefit from tributary improvements as part of Alternative 3. Pacific lamprey currently are the focus of dam passage research elsewhere in the Columbia Basin due to declining populations. Currently, little is known of juvenile lamprey FPE or turbine passage mortality and we therefore consider this to be an outstanding unresolved issue. We further request that due to the cultural importance of lamprey to the Colville Tribes, that Pacific Lamprey be included as a Plan species under Alternative 3.

We also note that restoration of lamprey populations is consistent with the objectives for basin level biological performance as indicated under the "Anadromous Fish Losses" section of the Northwest Power Planning Council's 2000 Columbia River Basin Fish and Wildlife Program.

"Halt declining trends in salmon and steelhead populations above Bonneville Dam by 2005. Obtain the information necessary to begin restoring the characteristics of healthy lamprey populations." (Page 18)

* Similar to Pacific lamprey, white sturgeon are another anadromous species, which have been affected by the development of the hydrosystem but are not listed as a Plan species. The DEIS mentions little about white sturgeon other than that little is known about their population status. Sturgeon are an important species to the Colville Tribes and we believe the most likely impacts to sturgeon populations have been loss of spawning habitat due to inundation and blocked migration due to dam construction. We consider the effect of hydroelectric development on white sturgeon populations in the Mid-

Columbia to be an outstanding unresolved issue, and request that white sturgeon be included as a Plan species under Alternative 3.

* We note that natural river drawdown and dam removal, although not considered to be viable alternatives in and of themselves, would appear to remain as possible actions available to be evaluated through the FERC relicensing process under Alternative 2 but, except as where specifically noted, not under Alternative 3.

Alternative 2

"Although natural river drawdown is not an option under the existing FERC licenses, it could be evaluated during relicensing procedures. The current FERC licenses expire in 2006, 2012, and 2028 for Rocky Reach, Wells, and Rock Island dams, respectively." (Page S-11)

"In addition to the required research and monitoring efforts, the following measures, or combination of measures, could potentially be required as a result of the Section 7 consultations: ...

... Other non-power actions (i.e., drawdown) if the combination of project and habitat related measures have not adequately addressed the decline of listed species." (pages 1-14 through 1-15)

Dam removal is extremely controversial, and can only be legally mandated at project relicensing." (page 2-45)

Alternative 3

Under Alternative 3, it would appear that drawdown or dam removal are actions that could be ordered by FERC as part of the relicensing process,

"HCP's also have termination provisions if the performance standards are not achieved. An HCP could be less than 50 years under the following circumstances: ...

...FERC orders removal or drawdown of the project." (page 2-33)

But, given ...

"It is the intention of the PUDs that mitigation measures agreed upon as part of the HCP be consistent with, and where possible form the basis of subsequent FERC license articles developed to address impacts on Anadromous salmonids." (page 2-33)

it would appear that such an order from FERC would be unlikely.

A special provision has been made to allow for drawdown or dam removal without termination of the HCP but requires mutual agreement between the services and the PUDs.

“Any party to the HCP (except the PUDs) may elect to withdraw from the agreement, based on the non-compliance provisions of the HCP agreements. However, NMFS and USFWS will not exercise their right to withdraw from the HCP if the PUDs have complied with all aspects of the agreement but have not met the survival standards. If mutual agreement is reached between PUDs and the two Federal agencies, the services (NMFS and USFWS) can seek natural river drawdown, dam removal, and/or non-power operations without withdrawing from the agreement or suspending or revoking the Incidental Take Permit.” (page 2-33)

We further understand that, based upon the conditions as stated in the “Assurances” sections of the HCPs, signatories to the HCP cannot advocate drawdown or dam removal except as noted above. However, we assume that non-signatory parties could request an evaluation of drawdown or dam removal as part of the FERC relicensing process for each project.

We request verification that our understanding is correct.

* We note that significant differences related to hatchery production exist between Alternatives 2 and 3. Changes in hatchery production are not specifically identified under Alternative 2 although hatchery production may be refined (increased or decreased) based upon effects on listed species.

Under Alternative 3, the HCPs provide 7% hatchery compensation for unavoidable project mortality. We understand from the statement below that the 7% hatchery compensation for unavoidable project mortality is above and beyond that provided for original project inundation (i.e., baseline conditions).

“HCP Baseline Conditions. The HCP’s do not address impacts resulting from original project construction or mitigation from past damages. Mitigation measures for these impacts have already been implemented as part of the existing licenses. Prior activities are not considered an action subject to additional mitigation beyond license requirements unless they are considered to cause a continuing “take” of listed species as defined under the Endangered Species Act.”

Existing hatchery production levels are initially assumed to provide adequate compensation for original inundation by the projects. Therefore, the baseline is considered to be the existing conditions.” (page S-16)

We interpret these statements as meaning that hatchery production would be increased under Alternative 3 to provide an additional 7 percent compensation above baseline conditions (conditions present as of January 1997) unless NMFS determines that such production results in jeopardy to listed species.

However, current PUD funded hatchery production includes compensation for both inundation losses (baseline) and for some level of unavoidable project mortality. For example, Rock Island and Wells Settlement Agreements also provide for passage loss through Eastbank and Methow Hatchery Programs. So at least some of the 7% is already being provided under the existing settlement agreements and the PUD's may be providing additional compensation above what is currently required. Because of this, it is difficult to discern from the DEIS how hatchery production levels for each of the Plan species will change under each HCP. Will the Douglas PUD funding for 14% hatchery compensation be reduced with the adoption of the Wells HCP?

In addition, the DEIS states,

“During the development of the HCPs, NMFS determined that the 7 percent hatchery compensation levels might adversely affect wild salmon populations under certain conditions. For example, it may be necessary to use adult salmon and steelhead that are not adapted to the local habitat conditions in order to produce enough juvenile fish to meet the 7 percent compensation level. In order to ensure that these compensation levels do not effect the long-term health of the wild populations, all fish produced under this program must be from local stocks. Therefore, until the specific details of the compensation programs are developed, including identification of appropriate broodstock, maximum percentages of the wild population that can be trapped for broodstock, and the total number of fish that can be produced through artificial means, NMFS can not guarantee that the 7 percent compensation level will satisfy Endangered Species Act requirements and no net impact would not be achieved.” (page S-26)

It would appear that under Alternative 3, current hatchery production levels could be reduced if they:

- currently exceed the 7% unavoidable project mortality compensation level, or
- are determined to jeopardize the recovery of ESA listed stocks, or
- must rely on insufficient numbers of local broodstock.

We request clarification as to specifically how hatchery production for each Plan species will change from current production levels under each of the HCPs.

We note that under "Initial Production Capacities" in the HCPs for the Wells, Rocky Reach, and Rock Island Projects, production of coho is not mentioned. As a Plan species, coho need to be included in the 7% hatchery compensation. As native coho salmon are considered to be extirpated from the Mid-Columbia River region, how will hatchery production levels be established for this species under the HCPs?

* We understand that under Alternative 2 a biological opinion will be created and will be a "living document" that will be updated at any time that new information becomes available.

"Specific measures required in the initial biological opinion may be modified or new measures may be required as a result of this process. In addition, if other species were listed under the Endangered Species Act, additional consultation practices would occur." (page 2-27)

We note that under Alternative 3,

"The requirements of Section 10 of the Endangered Species Act provide the guidelines for HCP preparation. The information within each of the HCP's includes the following:.. Proposed mitigation and enhancement measures to address unresolved and unknown future issues (note: an adaptive management plan to address changing circumstances and unknown future events addresses this issue in the proposed HCPs)." (page 2-32)

However, under Alternative 2,

"National Marine Fisheries Service has the legal authority to determine the actions necessary to ensure the survival and recovery of listed species. This includes determining the most appropriate measures to be taken at each project, the necessary level of survival at each project, determining the most appropriate data to be considered when evaluating survival; and modifying the measures as needed if species continue to decline.... Under Section 7, NMFS has a legal responsibility to provide the benefit of the doubt to listed species with respect to gaps in the information base.

If FERC or the PUDs disagree with the NMFS's decisions under this process, lengthy legal proceedings may ensue." (page 2-53)

Under Alternative 3,

"According to provisions in the HCP's, the authority to determine the appropriate protection measures for all of the Plan species, including Endangered Species Act species, fundamentally shifts away from NMFS under Alternative 3 (HCPs) once the incidental take permit has been issued. During Phase I of the HCPs, the PUDs

would have the ultimate authority to determine the measures necessary to achieve the survival standards. During Phase II, a Coordinating Committee (comprised of the PUD responsible for the HCP, NMFS, and each of the signatories to the agreement), jointly decides on the appropriate measures. If the Coordinating Committee cannot reach consensus, the PUDs may continue to determine the appropriate measures unless the matter is addressed through the dispute resolution process."

"The party bringing an issue to dispute resolution must prove its case by a preponderance of the evidence. There is no requirement to provide the benefit of the doubt to the species of concern with respect to gaps in the information base and NMFS has no authority to determine what constitutes the best available information to be utilized in support of any decisions. The dispute resolution process is limited to under 5 months, ensuring that lengthy legal disputes would not occur, and decisions reached through the dispute resolution process are binding." (page 2-53)

We note that both alternatives provide for some level of adaptive management and that adaptive management under Alternative 2 would only apply to listed species whereas under Alternative 3 adaptive management would apply to all Plan species.

We further note that although Alternative 3 appears to provide an expedited mechanism for settling disagreements, the emphasis shifts away from providing the benefit of the doubt to the species of concern. We recognize that the species of concern would include all Plan species under Alternative 3 as opposed to just ESA listed species under Alternative 2. However, given that substantial data gaps pertaining to fish passage and survival do exist and are likely to continue to exist in the future, we doubt that a "preponderance of evidence" can be readily assembled to support a resolution in favor of the species of concern. We consider this potentially to be a fatal flaw in Alternative 3, as non-compliance to HCP standards must be proven under the dispute resolution process, presumably through some mark recapture study about which we have already expressed concerns (see Comments 2-4). If such proof is not available, then actions detrimental to the species of concern will be allowed to continue.

We believe that lack of direct evidence should not constitute assumed compliance with survival standards.

* It would appear that tributary habitat enhancement is possible under both Alternatives 2 and 3. Under Alternative 2, such actions are not expected but could be required if other on-site actions do not lead to the recovery of the two listed species.

"In addition to the required research and monitoring efforts, the following measures, or combination of measures, could potentially be required as a result of the Section 7 consultations: ...

7. *Improvements in tributary habitat if the project specific measures have not adequately addressed the effects of project operations.*" (pages 1-14 through 1-15)

Under Alternative 3, a Tributary Conservation Plan and Plan Species Account would be created to compensate for 2 percent of the unavoidable project mortality. Contributions to this account would be made by the PUDs on behalf of each project. We note that for the Wells Project:

"For the Wells Project, the Douglas County PUD would make an initial contribution to the account of \$991,000 (1998 dollars adjusted for inflation). If juvenile dam passage survival after three years of evaluations remains greater than or equal to 95 percent, the district would make annual payments of \$88,089 (1998 dollars) throughout the HCP term or would pay \$1,321,333 (equivalent to 15 years of annual payments), deducting the actual costs of bond issuance and interest. If juvenile dam passage survival is less than 95 percent, the Douglas County PUD shall contribute an additional \$991,000 and increase the annual funding to \$176,178, or make an up front contribution of \$2,642,667 (equivalent to 15 years of annual payments in 1998 dollars), deducting the actual costs of bond issuance and interest." (pages 2-38 through 2-39)

We have several concerns related to this clause.

Per our previous comments related to the heavy reliance of the HCPs on the results of marking programs, to ensure that the 95% juvenile passage survival standard is accurately measured, evaluations must be conducted using each of the Plan species and not through the use of surrogates (Comment 3). As indicated in Comment 4, we once again question that survival studies for each of the five plan species can be completed in a three-year period. As indicated in Comment 2 we object to the clause *"If the differences between the study results and the District's performance standard being measured are not statistically significant, then the District's performance standard has been met."* In this case non-significant differences would result in a reduction in Douglas PUD contributions to the Plan Species Account.

In addition, during Phase III of the HCP, juvenile survival is to be periodically re-assessed. If the 95% survival standard were to be met under Phase I, no provision appears to exist to allow additional monetary compensation if juvenile survival is determined to drop below the 95% standard as measured during Phase III monitoring efforts.

We suggest that a statement such as the following should be added:

"In the event that the 95% survival standard is met for each of the Plan species during the phase I three year evaluation period, but subsequently determined to decline to a survival level less than 95% for any of the Plan species during Phase III monitoring activities, Douglas County PUD will

provide an additional \$991,000 and will increase annual contributions from \$88,089 to \$176,178. The \$991,000 (1998 dollars) will be a one time additional payment required for non-compliance with the 95% juvenile survival standard. The increase in annual contributions from \$88,089 to \$176,178 will continue until further monitoring assessments determine that the 95% juvenile survival standard is met for each of the Plan species. Douglas County PUD may provide an additional \$1,321,333 one-time payment in lieu of the additional annual \$88,089. "

We further note that the annual payments would begin "...after three years of evaluations..." In addition "The HCPs set an initial 5-year period for the PUDs to meet the 95 percent juvenile dam passage survival standard, followed by up to three years of evolutions." From this, we conclude that the annual payments to the Plan Species Account may not begin until eight years after the start of Phase I. We suggest that the initial payment of \$991,000 be increased to \$1,695,712 (1998 dollars) to account for the eight years of annual payments of \$88,089 that will be missed during Phase I.

* We question and seek clarification as to what happens if an affected party does not sign the HCPs under Alternative 3. Our understanding is that because the HCPs are voluntary ESA compliance efforts on the part of the PUDs, that technically they need only include the services (NMFS, USFWS), FERC and the PUDs themselves. It would appear that non-signatories couldn't participate as members (either voting or non-voting) on either of the Coordinating Committees or the Hatchery Committee. The same is generally true for the Tributary Committee, however, a non-signatory party could potentially be selected to serve as an expert non-voting member by the Tributary Committee.

* Within the mid-Columbia River, total dissolved gas (TDG) supersaturation is the foremost water quality concern. It causes migration delays and mortality from "gas bubble disease". Most of the TDG is a result of spilling done to aid downstream fish passage or to manage excessive flows. The high TDG levels persist well downstream of the project area where they originate. Currently, spill deflectors are a voluntary mitigation measure, and WDOE grants waivers to the dams for exceeding TDG levels.

We note that spill remains the primary juvenile passage strategy at Rock Island Dam under Alternatives 2 and 3. Spill is also the primary juvenile passage strategy at Wanapum and Priest Rapids dams. We are concerned that increased volumes of spill at Rock Island Dam, as potentially advocated under both Alternatives 2 and 3, may result in increased Total Dissolved Gas levels, which may cripple or preclude spill operations for juvenile passage at the Wanapum and/or Priest Rapids projects.

Given the larger water volumes stored and/or spilled at Chief Joseph and Grand Coulee dams, TDG and other water quality problems originate upstream of the area the DEIS considers. Just as tributaries to the Mid-Columbia are included in habitat and water quality considerations, the effects of the upstream dams should be part of any HCP.

More specifically, the DEIS does not mention any specifics with respect to gas abatement structures at Chief Joseph or Grand Coulee dams. In addition, the large storage behind Grand Coulee Dam (in terms of both areal extent and temporal duration) allows a thermocline to develop during warmer months. The increased temperatures exacerbate the effects of total dissolved gas supersaturation. High water temperatures have other adverse effects on salmonids; these are discussed in a separate section.

Wells: A controlled spill with modified spill bays is currently used for juvenile fish passage, and is relatively successful, having an overall survival rate of 98 percent. The spill form is not clear in the DEIS – is it a step-pool cascade structure? If so, it might result in relatively lower TDG levels resulting from spills (because of decreased vertical drop). The DEIS states that TDG levels “sometimes” exceed state standards; in fact, the Mid-Columbia is 303(d) listed for this parameter because of high TDG levels below Wells Dam. Could the goal of improved fish passage and WDOE’s water quality responsibility to reduce TDG justify a more elaborate structure to accommodate spills (and fish passage)? There is no mention in the DEIS of spill deflectors at Wells Dam, and there have been no new structural modifications there since 1990.

Rocky Reach and Rock Island are part of the same reach for WDOE water quality designations, and are currently listed for TDG, as well as temperature and bioassay levels. Rocky Reach has a spill program to aid juvenile fish passage (and perhaps adult fall-backs and kelts); the program provides for spill levels equal to 15% of daily flows during spring and 10% during summer. In addition, a turbine bypass system (for fish passage) was installed in 1994 and is still being modified. There is no mention in the DEIS of spill deflectors at Rocky Reach Dam.

Rock Island: As mentioned above, TDG, temperature, and bioassay levels are 303(d) listed in the reach that includes Rock Island. Currently, there is a primitive orifice bypass used for spill purposes, and spill is purchased with a conservation account. Thus, timing and magnitude of spill may be dependent on available funds. Given the effect of spill on TDG, this might also restrict options for resolving water quality problems.

A bypass system has never been adequately developed at Rock Island. The DEIS states that several modifications for fish passage are being considered: a forebay guidance curtain, testing spill configurations, turbine bypass systems, and other options for juvenile bypass. Consideration of water quality effects

(especially TDG), including opportunities for improvement, should be part of all bypass development plans.

There is no mention in the DEIS of spill deflectors at Rock Island Dam. Both Rock Island and Rocky Reach dams have TDG and gas bubble disease monitoring mentioned as part of Alternative 2, yet there is no planned response to those problems.

* The Washington Department of Ecology is in the process of revising the Water Quality Standards for Surface Waters of the State of Washington (Chapter 173-201A WAC). The revised standards, if adopted, will be more stringent with regards to water temperature and dissolved oxygen concentrations. Water body classifications will be "use-based" with specific attention paid to use by salmonids. There do not seem to be provisions within the DEIS or the HCPs to account for or integrate these more stringent water quality standards.

For example, the DEIS acknowledges violations of current state temperature standards with maximums as high as 23.8°C and three-month averages ranging from 10.0 to 18.8°C. Temperatures in Tables 3-5 and 3-6 are often in excess of the proposed revised WDOE standards for seasonal daily maximums and moving 7-day averages for daily maximums. For salmonid rearing and migration waters, the proposed water temperature standard is 15°C (moving 7-day average of daily maximums) with no single daily maximum to exceed 17.5°C from June 1 through September 14.

DO levels are linked to temperature; the DEIS consistently states for all three dams that "DO levels do not *typically* drop below 8.0 mg/L" but under the proposed revised standards, this only applies from June 1 through September 14, and only for rearing and migration waters. For salmonid spawning waters, average daily DO levels cannot fall below 10.5 mg/L from September 15 through May 31, with no single daily minimum falling below 9 mg/L.

We also note that the Wells project has inundated the lower 17 miles of the Okanogan River resulting in elevated water temperatures for this reach. Elevations in water temperature have delayed adult sockeye migration into the Okanogan River and possibly resulted in an elevation in pre-spawn mortality rates. This needs to be addressed in the HCP for the Wells Project.

* Fall and summer chinook in the Mid-Columbia River are generally considered to outmigrate during the first year of life as zero age summer migrants. However, it is our understanding that a high percentage (46%-78%, John Sneva, WDFW, personal communication 3/21/01) of the Wenatchee River adult summer chinook show scale growth patterns indicative of an additional year in fresh water. These fish may be relatively small in number but an important component of adult returns. In addition, these fish may over-

winter in hydroelectric reservoirs and therefore may arrive at hydroelectric projects at any time during the year such as late summer or early spring.

Summer chinook are not an ESA listed species and therefore not addressed in Alternative 2. They are plan species under Alternative 3, but the holdover component of the juvenile population does not appear to be considered, most likely because this characteristic has not been adequately assessed. We further note that the 95% dam passage survival standard for juveniles under Alternative 3 applies to 95% of the run period for each Plan species, which may not provide adequate protection for holdover summer chinook. We consider this to be an outstanding unresolved issue.

Thank you for the opportunity to comment on the HCP DEIS. If you have questions about our comments or need further clarification, please contact Joe Peone, Director of the Colville Tribal Fish and Wildlife Department at 509 634-2113.

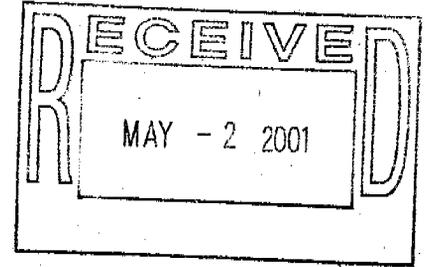
Sincerely,

for 

D. R. Michel,
Chairman, Natural Resource Committee
Colville Tribal Business Council

Cc: Tim Brewer
Joe Peone

Office Reservation Attorneys
Fish and Wildlife Dept.



May 1, 2001

Bob Dach
National Marine Fisheries Service
525 NE Oregon Street, Suite 420
Portland, Oregon 97232-2737

Re: Draft Environmental Impact Statement: Anadromous Fish Agreements and Habitat Conservation Plans for the Wells, Rocky Reach, and Rock Island Hydroelectric Projects

Dear Mr. Dach:

American Rivers appreciates the opportunity to review the draft Environmental Impact Statement (DEIS) for the proposed Anadromous Fish Agreements and Habitat Conservation Plans for the Wells, Rocky Reach, and Rock Island Hydroelectric Projects, dated November 2000. We strongly support and endorse the comments submitted on behalf of the Save Our *Wild* Salmon Coalition (SOS), and have reiterated and emphasized several specific concerns below.

As noted in the DEIS, American Rivers was involved in the development of a long-term anadromous fish protection plan for the three hydropower projects at issue. It was our goal to ensure that any alternative that allows continued project operations would (1) promote recovery of ESA-listed stocks and make certain that such operations do not jeopardize their continued existence, (2) adequately protect non-listed species and provide sufficient mitigation for the effects of the hydropower projects, and (3) comply with all relevant laws and policy. Prior to resolution of several critical issues and finalization of any plan, Public Utility District No. 1 of Chelan County and Public Utility District No. 1 of Douglas County (collectively, the PUDs) submitted the draft Habitat Conservation Plans (HCPs) to the National Marine Fisheries Service (NMFS) for environmental analysis. The limited analysis contained in the DEIS highlights the failings of the proposed HCPs to adequately protect anadromous salmonids and ensure compliance with relevant federal law and policy. Accordingly, American Rivers does not support the proposed HCPs and urges you to more fully evaluate alternatives that sufficiently protect anadromous salmon and steelhead in the Columbia River basin. The alternatives must be consistent with all relevant federal law and policy.

National Environmental Policy Act

As elaborated on in the comments submitted by SOS, the DEIS falls far short of satisfying the fundamental requirements of the National Environmental Policy Act. NEPA requires that federal agencies take a hard look at the consequences of their actions prior to undertaking them. To do

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so, agencies must carefully consider the significant environmental impacts of the action, including direct, indirect, and cumulative impacts. NEPA also requires that federal agencies evaluate a range of alternatives to the proposed action, including the alternative of taking no action at all. This alternatives analysis is at the heart of NEPA. The DEIS does not meet any of these requirements for the following reasons:

- The DEIS fails to take a “hard look” at all of the environmental information and consequences of each alternative, fundamental purposes of the Act.
- The DEIS fails to analyze the cumulative impacts of myriad other actions that affect Mid-Columbia salmon and steelhead.
- The DEIS fails to consider an adequate range of alternatives
- The DEIS fails to adequately inform the public and decision-makers of the requirements and responsibilities of all federal statutes and treaties.

NMFS may not, as it has done throughout this DEIS, ignore relevant information and rely upon conclusory statements and unsupported assertions to satisfy NEPA requirements. General and speculative statements about hoped for benefits fail to ensure informed decision making, one of the fundamental purposes of NEPA. Consideration of a range of reasonable alternatives to the proposed action is a critical component of any NEPA analysis. However, NMFS effectively evaluates only two alternatives, admitting that the no action alternative would violate the ESA. NMFS must explore and objectively evaluate an adequate range of alternatives including a true no action alternative that considers no project conditions, drawdown, and non-power operations, to name a few. Also, NMFS must consider an alternative that would provide greater protection for salmon and steelhead than the proposed action. While such alternatives may cost more, the DEIS presents no information for the decision-maker or the public to draw any conclusion about the benefits, or cost of such a measure.¹

Finally, the cumulative impacts analysis fails to consider a myriad of easily identifiable, foreseeable actions that affect Mid and Upper Columbia River salmon and steelhead. For example, NMFS must analyze the proposed Columbia River channel deepening project, the Lake Chelan Hydroelectric Project, and numerous other land management activities in the basin.

We believe that these deficiencies present an inaccurate picture of the impacts to the public, making it impossible for anyone, including NMFS, to draw any reasoned conclusions about the environmental impacts of the three alternatives presented in this DEIS.

Endangered Species Act

To echo SOS' comments, NMFS' analysis in the DEIS is wholly insufficient to comply with the underlying legal obligations of the Endangered Species Act (ESA), 16 U.S.C. §§ 1531 *et seq.*

¹ The DEIS states that the “purpose of the HCPs is to protect fish in the Mid-Columbia River while generating electricity.” DEIS at 1-3. This statement too narrowly cabins the rest of the analysis by removing, among other things, consideration of a true “no action” alternative as well as assumes that the HCPs analyzed in Alternative 3 are the proper means to comply with the ESA. We believe that the purpose and need must be expanded to emphasize protection of listed species and compliance with the requirements of the Endangered Species Act as the purpose of this DEIS. The HCPs are only a proposal to meet the requirements of the ESA, they are not an end in themselves. Indeed, to perform a valid NEPA analysis, NMFS must not assume, as it does in the current purpose and need statement, that the HCP Alternative fulfills the mandates of the ESA.

The ESA is the “most comprehensive legislation for the preservation of endangered species ever enacted by any nation.” *TVA v. Hill*, 437 U.S. 153, 180 (1978). “[T]he language, history, and structure of the legislation . . . indicate[] beyond a doubt that Congress intended endangered species to be afforded the highest of priorities.” *TVA*, 437 U.S. at 174. As a result, agencies are required to use “all methods and procedures which are necessary,” 16 U.S.C. § 1532(2), to “prevent the loss of any endangered species, regardless of the cost.” *TVA*, 437 U.S. at 188, n. 34. The DEIS does not meet that standard and in fact, if implemented would result in serious harm to listed species in the Mid-Columbia. The DEIS violates the ESA for several basic reasons:

- The DEIS violates the fundamental principle of species conservation – erring on the side of caution in the face of uncertainty.
- The DEIS misunderstands the requirements of the ESA.
- The DEIS fails to analyze inconsistencies between Section 7 consultation requirements and the proposed Section 10 Incidental Take Permit and Habitat Conservation Plan.

First and foremost, NMFS repeatedly fails to ensure that uncertainty is resolved in a manner that does not place the species further at risk. Of particular concern is the failure to provide the benefit of the doubt to species with respect to data gaps or information disputes. NMFS’ approach undertaken in the DEIS is at odds with the cautionary approach required under the ESA. Any risk must be borne by the projects, not by the listed species. The ESA does not allow for an alternative that provides substantial certainty for the project, while placing the risk of uncertainty on the species.

Second, the ESA requires NMFS to consider alternatives that are more protective of fish than the HCP. Failure to do so violates the ESA requirement that take of listed species be minimized and mitigated to the “maximum extent practicable.” One possible alternative includes drawdown, which NMFS incorrectly maintains is available only at relicensing.

Finally, the DEIS fails to analyze a critical issue raised in some of the scoping comments – that the Section 10 incidental take permit process is available only for non-federal actions. NMFS’ Habitat Conservation Planning Handbook maintains that the Section 10 process is intended to address non-federal actions that are not otherwise subject to Section 7 consultation. As such, the Section 10 ITP and HCP process may not even be an available option to the PUDs. Although hydropower projects are owned by non-federal entities, FERC clearly maintains ongoing authority and jurisdiction over the project. This ongoing authority constitutes federal agency action, requiring FERC to initiate consultation under the ESA. Although this procedural analysis was not undertaken during development of the HCPs, the DEIS must address the applicability of Section 10 to the FERC-licensed hydropower projects in question.

If such an option is available, it does not relieve FERC of its ESA Section 7 responsibilities to insure that the action is not likely to jeopardize the continued existence of any endangered or threatened species. As such, the ITP and HCP must be consistent with FERC’s Section 7 obligations. To ensure consistency, FERC must undertake consultation prior to further development of the HCPs.

Federal Power Act

The DEIS fails to adequately analyze statutory requirements of the Federal Power Act despite the intention that the HCPs supercede existing FERC license articles and satisfy NMFS’ obligations pursuant to sections 18, 10(a), and 10(j) of the FPA. The FPA requires that the commitment of a

river to power production be reevaluated anew at the time of relicensing and establishes various legal obligations that must be met prior to relicensing. The DEIS fails to analyze any of these requirements, and the fundamental nature of the HCP precludes fulfillment of some.

The DEIS fails to consider the following Federal Power Act requirements:

- The DEIS fails to analyze the requirements necessary for the HCPs to supercede the existing FERC license articles and satisfy NMFS' obligations pursuant to sections 18, 10(a), and 10(j) of the Federal Power Act.
- The DEIS and HCPs limit the requirement that a hydropower project licensee evaluate pre-project conditions as required by the Federal Power Act and NEPA.
- The DEIS provides no analysis of whether the HCPs at issue satisfy the FPA.
- The HCPs' "no surprises" assurances presuppose the term and content of the PUD FERC licenses and are inconsistent with reopener clauses intended to ensure "equitable treatment for fish and wildlife over the terms of the license agreement."

Clean Water Act

To reiterate SOS' comments, the DEIS provides no analysis of Clean Water Act requirements. The CWA requires that all federal agencies "having jurisdiction over any property or facility . . . shall be subject to and comply with" all applicable federal, state, and local water quality laws. 33 U.S.C. § 1323. As a federal court has recently held, dams are no exception to this rule. *See National Wildlife Fed'n v. U.S. Army Corps of Engineers*, 92 F. Supp.2d 1072 (D. Or. 2000) (holding that the Corps' dams on the lower Snake River must comply with state water quality standards). Further, NMFS' issuance of an incidental take permit or incidental take statement will require certification under section 401 of the CWA. In light of these requirements, the DEIS is deficient in several respects.

- The DEIS lack any analysis of whether the alternatives will comply with water quality standards.
- The DEIS fails to discuss section 401 certification requirements.

NMFS must analyze the water quality impacts of the hydropower projects at issue – Rocky Reach, Rock Island, and Wells – and ensure compliance with the relevant water quality impacts.

Inadequacy of HCP Provisions

The fundamental principle set forth in the HCP is a "no net impact" standard for salmon and steelhead protection at the hydropower projects. This standard consists of two key components – a 91 percent total project survival rate, including an independent 95 percent juvenile passage rate, and 9 percent compensation through hatchery and tributary improvement programs. The DEIS clearly highlights but overlooks the shortcomings of the proposed standards in the HCP. The serious shortcomings place unacceptable risk on the species contrary to ESA requirements, and fail to sufficiently protect salmon and steelhead.

- The DEIS analysis of adult and juvenile survival standards is insufficient. There exist no scientifically credible methodologies to evaluate survival for all covered species at all life stages.
- The DEIS lacks adequate analysis of the off site mitigation proposals – Tributary Improvement Fund or Hatchery Supplementation Program.
- Inconsistencies between the QAR and the DEIS call the DEIS analysis into question

American Rivers would like to reiterate and emphasize the inadequacy of the HCP provisions as outlined in SOS' comments. In particular, we view the inability to measure the proposed survival standards and the inadequate data to support the independent programs as some of the most significant shortcomings of the HCP. And, although acknowledged in the DEIS, NMFS utterly fails to address these issues. Recent actions undertaken by Chelan County PUD highlight the risk that immeasurable standards place on the species. Chelan County PUD based its decision to forego the minimum spill requirement at the Rocky Reach Hydroelectric Project on limited analysis of yearling spring chinook and steelhead. Although not allowed under the HCP, Chelan County PUD relied on representational studies to support its decision. Development of agreed-upon methods for assessing compliance with survival standards for all species must occur prior to implementation of the HCPs.

The DEIS acknowledges that there are limited or no methodologies for assessing juvenile and adult survival for all species and all life stages. NMFS cannot issue an ITP while at the same time expressly acknowledging an inability to determine whether the applicant is in compliance with its terms. Moreover, the ESA requires that NMFS resolve uncertainties and information disputes in favor of the species of concern, contrary to what the HCP currently provides. Until the PUDs complete accurate assessments of juvenile and adult survival, the ESA's cautionary principle prohibits NMFS from assuming that the survival rate estimates in the HCP are correct. The DEIS provides insufficient data to support the estimates.

The DEIS also fails to consider the effect of (1) maintaining a 95 percent juvenile dam passage survival standard over only 95 percent of the run, and (2) excluding spring migrating chinook smaller than 50 mm in length from the 95 percent juvenile dam passage survival for the full run of that species in the event turbine intake screens are installed certain instances.

Further, the DEIS provides insufficient evaluation of the tributary habitat improvement or hatchery supplementation program, both of which are key to attaining the no net impact standard. The DEIS acknowledges that there are no means to assess the benefits from these programs and then simply assumes that the funding and supplementation levels contained in the HCPs are adequate. There is no data to support the proposed funding levels for the tributary habitat fund, and NMFS acknowledges that there is no way to assess whether the tributary program is actually providing 2 percent compensation. While a habitat restoration program is critical to salmon recovery efforts, it must be accompanied by measurable goals and objectives. The DEIS also provides no scientific justification for reducing Douglas County PUDs contribution to the habitat fund in the event it achieves a 95 percent juvenile dam passage survival rate at Wells dam.

Similarly, the DEIS provides insufficient analysis of the proposed hatchery program, other than to assert that it must be consistent with ESA recovery goals. The DEIS fails to explain how such consistency may affect the program and its ability to provide 7 percent compensation. Although unable to guarantee 7 percent hatchery compensation, NMFS fails to analyze the effect of not meeting the 7 percent, and in turn, the no net impact standards.

Finally, the Quantitative Analytical Report (QAR) relies on several unjustified assumptions in its analysis. There is no data to support that (1) the survival improvements that the HCPs call for at the hydroprojects, and through off-site mitigation, occur instantaneously, (2) Grant County PUD's Priest Rapids Project has achieved a 95 percent juvenile survival standard, and (3) the survival improvements called for in the Federal Columbia River Power System Biological Opinion are being met. Inconsistencies between the QAR and available facts call into question NMFS' reliance on the analysis to draw any conclusions about the adequacy of the HCPs.

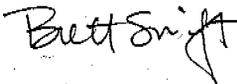
All of this adds up to insufficient protection for salmon and steelhead. The significant uncertainty associated with the HCP standards (95/91/7/2 percents), coupled with an inability to determine compliance, is inconsistent with ESA requirements and precludes NMFS from fully assessing the environmental impacts of the HCPs.

Conclusion

The DEIS fails to demonstrate that the proposed HCPs provide sufficient protection to Columbia River Basin salmon and steelhead that are negatively affected by the hydroelectric projects. Moreover, the DEIS highlights the significant shortcomings of the HCPs and their failure to comply with all relevant federal law and policy. American Rivers does not support these long-term salmon and steelhead protection plans. The limited analysis in the DEIS in no way justifies issuance of incidental take permits that will lessen NMFS' ability to undertake whatever actions are necessary to protect and recover listed species for the next 50 years.

Thank you for the opportunity to comment. Please feel free to call if you have any questions regarding these comments.

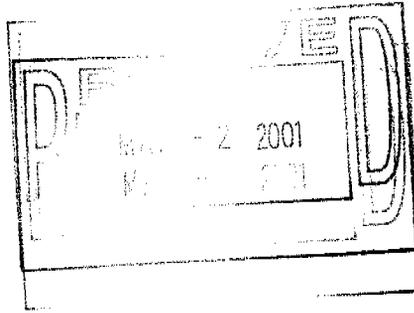
Sincerely,



Brett Swift

cc: Susan Fruchter, NEPA Coordinator
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April 30, 2001

National Marine Fisheries Service
Northwest Region, Hydro Program
525 NE Oregon Street, Suite 420
Portland, OR 97232-2737

Re: Draft Environmental Impact Statement (DEIS) for the Habitat Conservation Plans proposed for Public Utility District No. 1 of Douglas County, Washington, and the Public Utility District No. 1 of Chelan County, Washington, 65 *Federal Register* 82976 (Dec. 29, 2000), as amended by 66 *Federal Register* 2903 (Jan. 12, 2001)

Dear NMFS:

Public Utility District No. 1 of Chelan County, Washington (the "District") appreciates this opportunity to comment on the Draft Environmental Impact Statement for the Habitat Conservation Plans proposed for Public Utility District No. 1 of Douglas County, Washington, and Public Utility District No. 1 of Chelan County, Washington (the "DEIS").¹

We appreciate this first major step in the regulator review of the District's incidental take permit applications.² However, we have a number of concerns. First, we are very disappointed in the amount of time it has taken to reach this step. The District's incidental take permit applications were filed with NMFS on July 30, 1998. At NMFS instance, the District along with Public Utility District No. 1 of Douglas County have funded Parametrix, Inc. since 1998 to expedite NMFS' regulatory review of the incidental take permit applications. The District promised a two-year regulatory review

¹ 65 *Federal Register* 82976 (Dec. 29, 2000), as amended by 66 *Federal Register* 2903 (Jan. 12, 2001).

² Application for Individual Incidental Take Permit for the Rocky Reach Hydroelectric Project, FERC No. 2145 (July 30, 1998); Application for Individual Incidental Take Permit for the Rock Island Hydroelectric Project, FERC NO. 945 (July 30, 1998).

process in consideration for funding NMFS' contractor. We have not received expedited treatment.

Second, the DEIS does provide a clear explanation of the Anadromous Fish Agreements and Habitat Conservation Plans (the "Agreements") upon which the incidental take permit applications are based. As a result the Agreements cannot be fully compared with the other alternatives, and the analysis of the Agreements is not complete or accurate. To address the second problem, the District's comments start with a summary and interpretation of the Agreements. In this section the District provides, for the benefit of NMFS and the general public, a general summary of how the Agreements should be interpreted.

Third, as pointed out in the Specific Comments, there are several instances where NMFS misstates data. This provides a skewed view of how the Agreements will work, and how the Agreements compare with other alternatives. Of greatest concern is NMFS continued reliance upon the Quantitative Analytical Report (the "QAR"). The QAR is another processes the District and Public Utility District No. 1 of Douglas County, Washington were forced to fund to expedite review of the Agreements. In consideration for funding the QAR, NMFS promised that the QAR would be a fair, open and scientific process.

The QAR should not be included in the DEIS. NMFS has kept the QAR internal to NMFS. The QAR is not final or peer reviewed. The District has not had an opportunity to view the QAR, yet NMFS heavily relies upon the QAR throughout the DEIS. As a result, neither the District nor the public can evaluate the DEIS with the QAR. Furthermore, based upon the District's limited knowledge of the QAR the QAR is severely mischaracterized in the DEIS.

Fourth, again as pointed out in the Specific Comments, the District continues its objection to NMFS' choice of alternatives. NEPA requires an environmental impact statement to review the proposed action with other measures. It is not appropriate for NMFS to compare regulatory review processes as alternatives in a DEIS.

It is the District's hope that NMFS will address the concerns we raise in these comments and amend the DEIS accordingly.

Summary of the Agreements

On July 30, 1998, the District submitted incidental take permit applications to NMFS for the Rocky Reach and Rock Island Hydroelectric Projects (the "Projects"). The incidental take permit applications are based upon proposed Anadromous Fish Agreements and Habitat Conservation Plans (the "Agreements"). The Agreements are

“intended to constitute a comprehensive and long term adaptive management plan for Plan Species³ and their habitat as affected by the Projects.”⁴ They are unlike any other habitat conservation plan ever filed with the United States Fish and Wildlife Service or the National Marine Fisheries Services.

The Agreements are revolutionary due to their scope and management plan. The Agreements are titled Anadromous Fish Agreements and Habitat Conservation Plans and not just habitat conservation plans because they address more than just the Endangered Species Act. They also address Federal Power Act, the Fish and Wildlife Coordination Act, the Pacific Northwest Electric Power Planning and Conservation Act, the Clean Water Act and Title 77 of the Revised Code of Washington in one comprehensive agreement for each Project.

Because the Agreements are comprehensive settlements, they propose a standard greater than that required under the Endangered Species Act. The Agreements establish a survival standard of 100% No Net Impact (“NNI”) which means that the Projects appear invisible to the species migrating past the Projects. There are two basic components of NNI. First, to protect the species migrating past the Projects, the Agreements establish a series of performance standards based upon the actual survival of the species, not simply measures to be implemented regardless of their actual benefit to the species. Second, all unavoidable mortality is mitigated. This occurs through tributary habitat improvements and through state of the art hatchery supplementation. Central to the Agreements are the processes for making decisions and resolving disputes. All the stakeholders that sign the Agreements make the decisions, and disputes can be resolved in as little as 16 days. These Agreements actually protect the survival of the salmon and restore their habitat.

The level of protection afforded in the Agreements is provided to not just listed Upper Columbia River steelhead and Upper Columbia River spring chinook. It also protects all other species of salmon migrating past the Projects; even coho salmon which are extinct from the Upper Columbia River, but are being re-introduced by the Confederated Tribes and Bands of the Yakama Indian Nation (the “Yakama Indian Nation”).

The Agreements are the result of an extensive collaborative process dating back to 1993, and represent the collective wisdom and professional judgment of the scientists and regional policy makers of the NMFS, the United States Fish and Wildlife Service, the Washington Department of Fish and Wildlife, the Confederated Tribes and Bands of the

³ Plan Species are defined as spring, summer and fall chinook salmon (*Oncorhynchus kisutch*), sockeye salmon (*O. nerka*), coho salmon (*O. kisutch*), and steelhead (*O. mykiss*). Rocky Reach at Section XII.11; Rock Island at Section XII.11.

⁴ Rocky Reach, Introduction, Paragraph A.; Rock Island, Introduction, Paragraph A.

Colville Indian Reservation, the Yakama Indian Nation, the Confederated Tribes of the Umatilla Indian Reservation, and American Rivers, Inc. participating in the process.

The Agreements

To assist in understanding the Rocky Reach and Rock Island Anadromous Fish Agreements and Habitat Conservation Plans, the District provides the following summary and interpretation of the Agreements.

What species are protected?

The Agreements apply to anadromous salmonids, known as the "Plan Species."⁵ Plan Species are defined as spring, summer and fall chinook salmon (*Oncorhynchus kisutch*), sockeye salmon (*O. nerka*), coho salmon (*O. kisutch*), and steelhead (*O. mykiss*).⁶ However, since coho salmon are extinct in the portion of the Columbia River affected by the Projects, the District did not request that the incidental take permit apply to coho salmon. The sub-set of the plan species for which the incidental take permits are requested are referred to in the Agreement as the "Permit Species."

What is the biological plan? (the standards)

The Survival Standards. The objective of the Agreements is to achieve 100% No Net Impact for each Plan Species affected by the Projects.⁷ NNI consists of two components: (1) 91% Project Survival achieved within the geographic area of each Project by project improvement measures, including an independent standard of 95% Juvenile Dam Passage Survival; and (2) 9% compensation for Unavoidable Project Mortality provided through hatchery and tributary programs, with 7% compensation provided through hatchery programs and 2% compensation provided through tributary programs.⁸ NNI will be maintained for the duration of the Agreement for each Plan Species affected by the Project. A coordinating committee composed of each entity that signs the Agreements will ensure the NNI is achieved and maintained by: (1) overseeing monitoring and evaluation, and (2) periodically adjusting the measures being implemented to address actual project survival and compensate for all unavoidable project mortality.⁹

⁵ Anadromous Fish Agreement and Habitat Conservation Plan Rocky Reach Hydroelectric Project, FERC No. 2145 (Rocky Reach), Section XII.1; Anadromous Fish Agreement and Habitat Conservation Plan Rock Island Hydroelectric Project, FERC No. 943 (Rock Island), Section XII.1.

⁶ Rocky Reach at Section XII.11.; Rock Island at Section XII.11.

⁷ Rocky Reach, Introduction, Paragraph B; Rock Island, Introduction, Paragraph B.

⁸ Rocky Reach at Section III.1.; Rock Island at Section III.1

⁹ Rocky Reach at Section III.2.; Rock Island at Section III.2.

To achieve NNI, the District is obligated to achieve and maintain 91% Project Survival, which means that 91% of each Plan Species, juvenile and adult combined, survive Project effects, including delayed mortality wherever it may occur.¹⁰ However, recognizing that the impacts associated with hydroelectric projects are focused at the concrete (the Dam) the Agreements require the District to achieve and maintain 95% Juvenile Dam Passage Survival, which means that 95% of the juvenile Plan Species over 95% of each species' migration survive the journey through the forebay, dam, and tailrace of each Project.¹¹

There is one exception to the 95% Juvenile Dam Passage Survival standard. Provided that turbine intake screens are installed at the Dam, spring-migrating chinook salmon (*Oncorhynchus tshawytscha*) smaller than 50 mm in length will be excluded from 95% Juvenile Dam Passage Survival, but not from 91% Project Survival for the full run of that Plan Species.¹² This exception is necessary to account for the competing needs between species and choosing a way to best protect all the species.

The Project Survival standard must be achieved for juvenile and adult Plan Species. However, current technology does not exist to measure adult survival. But, during the term of the Agreements, the parties that developed the Agreements felt very comfortable that technology would be developed, sooner rather than later, to measure adult survival. Since the District was obligated to achieve and maintain the standard, all signatories to the Agreements have the incentive to develop the technology and have it implemented as soon as possible

Until adult survival can be measured, to insure that adults received the maximum protection practicable in a way that can be measured, the Agreements' Adult Passage Plan defines actions to be taken by the District to protect adults. The Agreements give high priority to adult survival in the achievement of 91% Project Survival for each Plan Species.¹³ This means that the District must provide for adult as well as juvenile survival. The District has a variety of tools it may use to achieve the targeted survival rate. These tools include, but are not limited to, a requirement that adult passage systems at the Project will be maintained and operated according to the detailed fishway operating plan identified in the Agreements or to criteria developed through the coordinating committee.¹⁴ Spill and turbine units will be operated in a manner that provides for adult passage while meeting the 95% Juvenile Dam Passage Survival rate.¹⁵ Areas within the adult fish passage system which are identified by the coordinating committee as either

¹⁰ Rocky Reach at Section IV.1.a.; Rock Island at Section IV.1.a.

¹¹ Rocky Reach at Section IV.1.a.; Rock Island at Section IV.1.a.

¹² Rocky Reach at Section IV.1.b.; Rock Island at Section IV.1.b.

¹³ Rocky Reach at Section IV.2.b.; Rock Island at Section IV.2.b.

¹⁴ Rocky Reach at Section IV.2.b.i.; Rock Island at Section IV.2.b.i.

¹⁵ Rocky Reach at Section IV.2.b.ii.; Rock Island at Section IV.2.b.ii.

consistently out of criteria or where significant delay occurs will be modified as soon as feasible by the District.¹⁶ The District will use best efforts to eliminate identified sources of adult injury and mortality during adult migration through the Dam.¹⁷ In addition, the District will identify adult fallback rates at the dam, and the coordinating committee will identify a method to protect steelhead kelts at the Dam, and a reduction in fallback rates, mortalities, and protection of kelts will be factored into juvenile bypass and adult passage development and implementation and into Project operation decisions.¹⁸

If the District is unable to achieve 91% Project Survival, including achievement of 95% Juvenile Dam Passage Survival, then the District is obligated to consult with the coordinating committee to jointly seek a solution.¹⁹ If a solution cannot be identified to achieve the standards, then any Party may take action to withdraw from the Agreements on the basis that it is impossible to achieve the standards in the Agreement, or take action under any other provision of the Agreement.²⁰

Unavoidable Project Mortality. Since hydroelectric projects obstruct the waterways the salmon use to migrate there is some mortality that just cannot be eliminated. This mortality is addressed in the Agreements as "Unavoidable Project Mortality." Unavoidable Project Mortality is initially assumed to be 9%, based on several assumptions regarding Project impacts.²¹ The word "initially" is very important. It is currently not possible to measure Unavoidable Project Mortality. The biologists and policy makers that developed the Agreements', in their best professional judgment, assumed juvenile dam passage mortality to be 5% and a net of 4% mortality for all other project effects. These include, but are not limited to, reservoir, juvenile delayed, and adult mortality with credit for natural mortality.²² Since Unavoidable Project Mortality is an assumption, it is implicit within the Agreements that once technology is developed to measure these numbers it will be accurately established.²³ Since the Agreements do not assign responsibility to any one party to take on this responsibility, the responsibility lies with the coordinating committee as a whole. Since the Agreements provide for the assumption to be verified all signatories to the Agreements have the incentive to develop the technology and have it implemented as soon as possible. In the event Unavoidable Project Mortality is proven to be something other than 9%, then the coordinating committee must decide what action should be taken.²⁴

¹⁶ Rocky Reach at Section IV.2.b.iii.; Rock Island at Section IV.2.b.iii.

¹⁷ Rocky Reach at Section IV.2.b.iv.; Rock Island at Section IV.2.b.iv.

¹⁸ Rocky Reach at Section IV.2.; Rock Island at Section IV.2.

¹⁹ Rocky Reach at Section III.3.; Rock Island at Section III.3.

²⁰ Rocky Reach at Section III.3.; Rock Island at Section III.3.

²¹ Rocky Reach at Section XII.19.; Rock Island at Section XII.19.

²² Rocky Reach at Section XII.19.; Rock Island at Section XII.19.

²³ Rocky Reach at Sections III.2. and XII.19.; Rock Island at Section III.2. and XII.19.

²⁴ Rocky Reach at Section III.; Rock Island at Section III.

Until Unavoidable Project Mortality can be established, 9% Unavoidable Project Mortality is assumed to be correct.²⁵ Unavoidable Project Mortality is addressed through hatchery and tributary compensation, with 7% compensation provided through hatchery programs and 2% compensation provided through tributary programs²⁶

Hatchery Compensation Plan. Hatchery compensation is provided by the Agreements' Hatchery Compensation Plan. The District will provide the necessary funding and capacity to meet the 7% hatchery compensation level set by the NNI, and operate the hatchery according to the terms developed by the other signatories to the Agreement (the "JFP" or "Joint Fisheries Parties"), the NMFS Section 10 incidental take permit, and in consultation with the Hatchery Committee.²⁷ The JFP are responsible for developing the plans and programs necessary to implement the Hatchery Compensation Plan.²⁸ This allocation of responsibility is significant in that NMFS's policy decisions regarding management of "wild" fish under the Endangered Species Act may not allow full utilization of the hatchery capacity provided by the District. If this occurs, then as long as the District has provided the hatchery capacity and remains able to fund hatchery operations, the District will be in full compliance with the Agreement and its incidental take permit. However, under the Agreement, hatchery production will never be reduced to zero without action by the Federal Energy Regulatory Commission because the Agreement allows for the production of hatchery fish to compensate for original Project inundation.²⁹

The fact that NMFS can reduce hatchery capacity is the reason the tribes do not currently support the Agreements. This is where it is important to recognize the fact that the Agreements are comprehensive settlement agreements. The tribes' current position is that they require a guarantee from NMFS that throughout the term of the Agreements the hatcheries will be fully utilized before they are willing to resume support of the Agreements. It is only through increased numerical abundance of the Plan Species that the tribes can fully realize the value of their fishing rights. The tribes dispute NMFS' policy decision to treat hatchery fish differently from wild fish. In addition, the tribes argue that the numbers of fish to be produced by the Projects' hatcheries is so small they will not appreciably reduce the likelihood of the survival and recovery of the Plan Species in the wild. This view is shared by the District and many other parties that developed the Agreements. Nevertheless, since NMFS and the other parties that developed the Agreements are situated differently than the tribes, they can continue to support the Agreements in light of this objection.

²⁵ Rocky Reach at Section XII.19.; Rock Island at Section XII.19.

²⁶ Rocky Reach at Sections III.1. and III.2.; Rock Island at Section III.1. and III.2.

²⁷ Rocky Reach at Section VIII.2.; Rock Island at Section VIII.2.

²⁸ Rocky Reach at Section III.4.; Rock Island at Section III.4.

²⁹ Rocky Reach at Section VIII.3.; Rock Island at Section VIII.3.

The initial estimated hatchery production capacities for Plan Species needed to provide compensation for Unavoidable Project Mortality are based on a variety of factors. Those include average adult returns of plan species for a baseline period, a 7% compensation requirement, and baseline adult/smolt survival rates for existing mid-Columbia River hatcheries. The estimated initial production capacity will be adjusted over time to help achieve and maintain NNI. As changes occur in the average adult returns of Plan Species, and in adult/smolt survival rate from the hatchery production facilities the production capacity will change. However, as described above, the original inundation mitigation will not be reduced.³⁰

Tributary Conservation Plan. The Tributary Plan will compensate for 2% of Unavoidable Project Mortality.³¹ The Tributary Conservation Plan consists of the Agreement and Exhibit B "Tributary Compensation Plan Species Account Project Selection, Implementation, and Evaluation Plan."³² Under the Tributary Plan, the District will provide a Plan Species Account to fund projects for the protection and restoration of Plan Species' habitat within the Columbia River watershed, and the Okanogan, Methow, Entiat and Wenatchee River watersheds.

The Tributary Plan will be managed by a Tributary Committee composed of one representative from each party that signs the Agreement. In order to achieve minimum costs and maximize the monies in the Plan Species Account, there will be one Tributary Committee that manages the Tributary Plans for the Wells, Rocky Reach and Rock Island Hydroelectric projects.³³ In addition, to assure that the maximum amount of money will be spent on actual projects, committee overhead costs cannot exceed \$80,000 without the unanimous vote of the Tributary Committee.³⁴ Whenever feasible, projects selected by the Tributary Committee shall "take into consideration and be coordinated with other conservation plans or programs", and "whenever feasible, the Tributary Committee shall cost-share with other programs, seek matching funds, and 'piggy-back' programs onto other habitat efforts."³⁵ The District has spoken with the staff of the Northwest Power Planning Council and the Governor's Locke's Salmon Recovery Task force, and many other entities. All are eager to coordinate their habitat programs with the Agreements' Tributary Programs.

Land Use Decisions. When the District makes land use or related permit decisions on Project lands that affect reservoir habitat, the District must consider the cumulative

³⁰ Rocky Reach at Section VIII.3.; Rock Island at Section VIII.3.

³¹ Rocky Reach at Section VII.2.; Rock Island at Section VII.2.

³² Rocky Reach at Section VII.1.; Rock Island at Section VII.1.

³³ Rocky Reach at Section VII.3.; Rock Island at Section VII.3.

³⁴ Rocky Reach at Section VII.4.a.; Rock Island at Section VII.4.a.

³⁵ Rocky Reach at Section VII.3.e.; Rock Island at Section VII.3.e.

impact effects in order to meet the conservation objectives of the Agreement, requirements of the FERC license, and other applicable laws and regulations. The District will also notify and consider comments from the Parties to the Agreement regarding land use permit application on Project owned lands.³⁶ Applicants to use or occupy Project lands or waters must be informed by the District that such use or occupation may result in an incidental take of an endangered or threatened species under the ESA, and may require advance authorization from NMFS or USFWS.³⁷

Early Termination Mitigation. Lastly, if the incidental take permit issued by NMFS is terminated early, NMFS may require the District to mitigate for any past incidental take that has not been sufficiently mitigated prior to the termination of the permit. NMFS would require the District to continue relevant mitigation measures of the Agreement for some or all of the time period covered by the permit as originally issued.³⁸

Thus, the combination of the Juvenile Dam Passage Survival and Project Survival standards coupled with the required spill for juveniles and the required measures for adults, the standards that must be satisfied for land use and permitting decisions on Project lands, and the requirement to mitigate for any past incidental take that was not sufficiently mitigated in the event the incidental take permit is terminated early provides each Plan Species with the maximum protection practicable and minimizes and mitigates the impacts of any taking as is required by Section 10 of the Endangered Species Act. Furthermore, in order to make sure that everything is being done to protect, restore and increase the abundance of the Plan Species and their habitat, the Agreements mitigate for all the unavoidable mortality associated with the Projects through the Tributary Conservation Plan and the Hatchery Compensation Plan. Therefore, the 100% No Net Impact standard of the Agreements is truly revolutionary in salmonid management on the Columbia River.

How are the standards measured?

Survival Standards. Measurement and evaluation of the 95% Juvenile Dam Passage Survival will commence by the 2003 juvenile migration unless agreed to otherwise by the coordinating committee. However, the 2003 date was established under the assumption that the regulatory review process for the Agreement would take no more than 18 months from the date the Agreements were filed with NMFS in 1998. Due to the fact that regulatory review process has taken longer than anyone ever expected, it may be necessary to revisit the 2003 date.

³⁶ Rocky Reach at Section V.1.; Rock Island at Section V.1.

³⁷ Rocky Reach at Section V.2.; Rock Island at Section V.2.

³⁸ Rocky Reach at Section X.6.; Rock Island at Section X.6.

The completion of measurement and evaluation is expected to take three years.³⁹ The 91% Project Survival measurement may also occur by 2003 juvenile migration should the coordinating committee elect.⁴⁰ The intent of the language addressing "95% Juvenile Dam Passage Survival and 91% Project Survival"⁴¹ is to expressly allow the coordinating committee to measure juvenile survival through the reservoir, forebay, dam, and tailrace as opposed to just measuring juvenile survival through the forebay, dam, and tailrace. The parties wanted to allow this option because it is easier to measure survival through the reservoir, forebay, dam and tailrace, than just through the forebay, dam, and tailrace. The parties intended to require only the measurement of 95% Juvenile Dam Passage Survival by the 2003 juvenile migration.

The parties did not intend to require the measurement of 91% Project Survival on any certain date. The reason is that technology does not currently exist to measure the adult component of 91% Project Survival. This is explained in greater detail above in the section "What is the biological plan? (the standards), *The Survival Standards.*"

The Agreements do not contain the protocol to be used to measure 95% Juvenile Dam Passage survival because in 1998, when the Agreements were developed, the parties thought that the regulatory approval process would be completed within 18 months of filing. The parties felt that this level of detail was not necessary for the Agreements and would simply slow down the implementation process. Therefore, the parties established a process to create the protocol, with general parameters for the protocol.⁴² The Agreements required the coordinating committee to develop the protocol by March 1, 2001. This provided a grace period of two years before the protocol would be needed to work out any disagreements. Since March 1, 2001 has arrived before regulatory review process for the Agreements has been completed the parties need to revise this date.

Tributary Conservation Plan. The purpose of the Tributary Plan is to create and fund projects for the restoration and protection of Plan Species habitat. This will provide 2% compensation for the Unavoidable Project Mortality. The Tributary Plan, however, does not require the Parties to actually measure whether the Tributary Plan compensates for exactly two percent Unavoidable Project Mortality.⁴³ The parties that developed the Agreements made this decision based upon the fact that it was unlikely that measurement could occur, and that if it could occur, the cost and time associated with measurement would outweigh any benefit it could possibly produce. However, the individual tributary projects and budgets that make up the Tributary Plan will be evaluated by the Tributary

³⁹ Rocky Reach at Section IV.3.b.; Rock Island at Section IV.3.b.

⁴⁰ Rocky Reach at Section IV.3.b.; Rock Island at Section IV.3.b.

⁴¹ Rocky Reach at Section IV.3.b.; Rock Island at Section IV.3.b.

⁴² Rocky Reach at Section IV.3.c.; Rock Island at Section IV.3.c.

⁴³ Rocky Reach at Section VII.2.; Rock Island at Section VII.2.

Committee.⁴⁴ The Tributary Committee will select projects that work toward furthering the purpose of the Tributary Plan for Plan Species.⁴⁵

Hatchery Compensation Plan. The Hatchery Compensation Plan will provide 7% compensation for the Unavoidable Project Mortality. Measurement and evaluation of the Hatchery Program is explained above in the section "What is the biological plan? (the standards), Hatchery Compensation Plan."

Unavoidable Project Mortality. The measurement and evaluation of Unavoidable Project Mortality is explained above in the Section "What is the biological plan? (the standards), Unavoidable Project Mortality."

What happens if juvenile survival results fall short of expectations?

Measurement and evaluation of 95% Juvenile Dam Passage Survival or the juvenile component of 91% Project Survival at the end of Phase I will begin by the 2003 juvenile migration unless this date is revised. The process is expected to take three years. Thus, there is a three year window where the parties do not know whether or not the survival standard has been achieved. In order to insure the protection of the Plan Species the Agreements contain a process which can be used to provide an interim evaluation of the Projects' survival and, as necessary, require the implementation of additional interim measures.⁴⁶

If measurement and evaluation of 95% Juvenile Dam Passage Survival or the juvenile component of 91% Project Survival at the end of Phase I of the Juvenile Passage Survival Plan has not been achieved, then the coordinating committee will decide on additional "tools"⁴⁷ to implement to achieve the survival standard. The District will implement the tools selected by the coordinating committee before the next migration period. These tools, which could include Trading⁴⁸ and additional spill, will be selected by the coordinating committee based on technical feasibility, availability, and adherence

⁴⁴ Rocky Reach at Section VII.3.a.; Rock Island at Section VII.3.a.

⁴⁵ Rocky Reach at Section VII.4.c.; Rock Island at Section VII.4.c.

⁴⁶ Rocky Reach at Section IV.3.a.iii.; Rock Island at Section IV.3.a.iii.

⁴⁷ The term "tools" is a defined term in the Agreements to mean "any action, structure, facility or program (on-site only) at the Project, except those prohibited in Section IX.10 'Drawdowns/Dam Removal/Non-Power Operations' that are intended to improve the survival of Plan Species migrating through the Project. Tools do not include fish transportation unless otherwise agreed by the Coordinating Committee. This term is a sub-set of Measures". Rocky Reach at Section XII.17; Rock Island at Section XII.17.

⁴⁸ The term "trading" is a defined term in the Agreements to mean "the allocation of the net survival benefits in excess of 95% Juvenile Dam Passage Survival and 91% Project Survival from a downstream Dam or Project to an upstream Dam or Project, or on a stock specific basis, from an upstream Dam or Project to a downstream Dam or Project in lieu of offsite compensation measures for the affected stocks." Rocky Reach at Section XII.18; Rock Island at Section XII.18.

to the total dissolved gas requirements.⁴⁹ The coordinating committee must jointly decide which additional tools will allow the District to achieve 95% Juvenile Dam Passage Survival or 91% Project Survival. The following criteria will be used: likelihood of biological success; time required to implement; and cost-effectiveness of solutions. The balancing of a tool's cost-effectiveness will only take place where two or more alternatives are comparable in their biological effectiveness.⁵⁰

A cycle of implementation of additional tools and measurement is repeated until the survival standards are achieved.⁵¹ If a solution cannot be identified to achieve the standards, then any Party may take action to withdraw from the Agreements on the basis that it is impossible to achieve the standards in the Agreements, or take action under any other provision of the Agreements.⁵²

How do disagreements get resolved?

Rule. A central feature of the Agreements is the process for resolving disputes. All disputes under the Agreements are resolved according to the Agreements' dispute resolution process. This includes those disputes involving the Passage Survival Plan, the Hatchery Plan, the Tributary Plan, and compliance with the NNI standard and its component survival standards for the Dam, Project, and Unavoidable Project Morality.⁵³

Exceptions. There are three circumstances where disputes are not required to be resolved through the Agreements' dispute resolution process. NMFS has reserved the right to use its enforcement powers and remedies of the ESA without first resorting to the Agreements' dispute resolution process.⁵⁴ While NMFS intends to utilize the Agreements' dispute resolution process and has the authority to agree to alternative dispute resolution, NMFS' reserved this right to insure that it was not delegating away its authority.

In addition, neither the Agreement nor the dispute resolution process can be used to abridge, limit, diminish, abrogate, adjudicate, or resolve any Indian right reserved or protected in a treaty, executive order, statute or court decree.⁵⁵

Lastly, any Party can require the matter to be decided at FERC or in a court of competent jurisdiction. However, disputes must proceed through Stage 1 and 2 of the

⁴⁹ Rocky Reach at Section IV.6.; Rock Island at Section IV.6.

⁵⁰ Rocky Reach at Section IV.7.a-c.; Rock Island at Section IV.7.a-c.

⁵¹ Rocky Reach at Section IV.3.10.; Rock Island at Section IV.3.10.

⁵² Rocky Reach at Section III.3.; Rock Island at Section III.3.

⁵³ Rocky Reach at Section XI.1.a.; Rock Island at Section XI.1.a.

⁵⁴ Rocky Reach at Section XI.1.b.; Rock Island at Section XI.1.b.

⁵⁵ Rocky Reach at Section XI.1.c.; Rock Island at Section XI.1.c.

dispute resolution process before a Party invokes the jurisdiction of FERC or a court.⁵⁶ The Agreement, however, is not intended to create jurisdiction in any court.⁵⁷

Dispute Resolution Process:

Stage 1: Coordinating Committee

Any matter, which involves compliance with the Agreement, is first referred to the respective committee dealing with that issue. That committee has twenty days to resolve the dispute. If there is no resolution within twenty days the matter may proceed to the next stage in the dispute resolution proceeding.⁵⁸

Stage 2: Policy Committee

Any Party may refer the dispute to the Policy Committee, who shall have thirty days to convene and consider the dispute. If there is no resolution at the end of thirty days any Party may either proceed to the next stage or invoke FERC jurisdiction.⁵⁹ If a Party decides to invoke the FERC process or proceed to a court of competent jurisdiction then the dispute resolution procedure is terminated.⁶⁰ Provided a Party wishes to continue the dispute resolution proceeding, a party may seek to have the issue mediated by the Third Stage.

Expedited Process. If an issue must be resolved within 30 days, and does not involve a total estimated cost of \$325,000 in 1998 dollars, then an expedited procedure is used. All Parties are given notice that the coordinating committee will have the matter finally resolved at an identified coordinating committee meeting.⁶¹ If the coordinating committee does not reach a consensus, then any Party may refer the matter to dispute resolution under Stage 3 by giving notice.⁶² The mediator has 15 days from the date selected to hear and resolve the dispute.⁶³ While the mediation decision is not binding, it may be admitted as evidence in any action to resolve the dispute.⁶⁴ The mediator's decision, however, must be implemented immediately.⁶⁵

⁵⁶ Rocky Reach at Section XI.3.c.; Rock Island at Section XI.3.c.

⁵⁷ Rocky Reach at Section XI.1.d.; Rock Island at Section XI.1.d.

⁵⁸ Rocky Reach at Section XI.3.a.; Rock Island at Section XI.3.a.

⁵⁹ Rocky Reach at Section XI.3.b.; Rock Island at Section XI.3.b.

⁶⁰ Rocky Reach at Section XI.3.c.; Rock Island at Section XI.3.c.

⁶¹ Rocky Reach at Section XI.7.a.; Rock Island at Section XI.7.a.

⁶² Rocky Reach at Section XI.7.b.; Rock Island at Section XI.7.b.

⁶³ Rocky Reach at Section XI.7.d.; Rock Island at Section XI.7.d.

⁶⁴ Rocky Reach at Section XI.7.d.; Rock Island at Section XI.7.d.

⁶⁵ Rocky Reach at Section XI.7.e.; Rock Island at Section XI.7.e.

Standard Mediation Timing. Under the standard mediation procedure, the Parties shall agree on a mediator within 10 days of the date mediation was first requested.⁶⁶ The mediator shall have control over the process of mediation, however, it must be completed within 30 days of the date the mediator is selected.⁶⁷ If the Parties do not come to an agreement, then the mediator may prepare, within 45 days, an opinion on how the decision should be resolved.⁶⁸

Expedited Dispute Resolution Timing. The expedited procedure can result in the issuance of a mediation decision sixteen days from a coordinating committee impasse.⁶⁹ This assumes that the Chief Judge can be contacted in one day, and the Chief Judge appoints the mediator that day. According to the expedited procedure, if the Parties are unable to agree on a single mediator within ten days of the mediation request, then the Chief Judge of the United States District Court for the Eastern District of Washington shall appoint the mediator.⁷⁰

Dispute Resolution Twists. If the Parties do not select a mediator within ten days of the date that mediation is requested, the Chief Judge of the U.S. District Court for the Eastern District of Washington appoints the mediator.⁷¹ While mediation is non-binding, the mediator will issue a decision. This decision can be introduced as evidence at FERC or Court.⁷² The purpose of the mediation decision is to create a dynamic where the parties will stop fighting. The Parties have found after working together for many years that there are times when they just want to argue the merits of their position to a neutral third party and have a decision rendered. Once the decision is rendered it will not likely be appealed. As an incentive not to appeal, and to make sure that the dispute resolution process was not a waste of time, the Parties agree that they will allow the mediation decision to be entered into evidence upon appeal. The Parties intentionally did not decide the weight that should be given to the decision. This way each side could argue for or against the opinion without knowledge of the weight FERC will give to the decision. This dynamic coupled with the fact that the Party bringing the issue to dispute resolution must prove their case by a preponderance of the evidence should prevent most appeals.⁷³

What is the term of the Agreements?

⁶⁶ Rocky Reach at Section XI.3.d.i.(1).; Rock Island at Section XI.3.d.i.(1).

⁶⁷ Rocky Reach at Section XI.3.d.i.(4).; Rock Island at Section XI.3.d.i.(4).

⁶⁸ Rocky Reach at Section XI.3.d.ii.; Rock Island at Section XI.3.d.ii.

⁶⁹ Rocky Reach at Section XI.7.d.; Rock Island at Section XI.7.d.

⁷⁰ Rocky Reach at Section XI.3.d.2.; Rock Island at Section XI.3.d.2.

⁷¹ Rocky Reach at Section XI.3.d.2.; Rock Island at Section XI.3.d.2.

⁷² Rocky Reach at Section XI.7.; Rock Island at Section XI.7.

⁷³ Rocky Reach at Section XI.1.e.; Rock Island at Section XI.1.e.

The Agreements will remain in effect 50 years from the date the Agreements are executed by all Parties and regulatory approvals are received.⁷⁴

How do people get out of the Agreements?

Triggers

There are several ways the Agreements will terminate automatically. The first way is at the end of the fifty-year term of the Agreements, as seen in Section I. The second way is if the FERC issues the District a non-power license for the Project. The third option is in the event the FERC orders removal of the Project. The fourth reason is if FERC orders drawdown of the Project. If the District's FERC license is terminated or transferred to another entity than the District's obligations under these Agreements are terminated. The Parties agree, however, that the terms of these Agreements are binding on their respective successors and assigns.⁷⁵

A party may withdraw from the Agreements when fifteen years have elapsed from March 1, 1998 provided that NNI has not been achieved and maintained, or the Project has achieved and maintained NNI but the Plan Species are not rebuilding and the Project is a significant factor in the failure to rebuild.⁷⁶ The reason for this provision is that the Juvenile Passage Plan requires a cycle of implementing and testing measures to achieve 95% Juvenile Dam Passage Survival. As long as the District implements the measures required by the coordinating committee it is not in violation of the Agreements if 95% Juvenile Dam Passage Survival is not achieved. Since this process could go on throughout the term of the Agreements, an opportunity was provided to allow a Party to withdraw; hence the section is titled "Enough Already". Since the only restrictions on the measures the coordinating committee can recommend are drawdown, non-power operations, or dam removal, theoretically the only reason to withdraw would be to advocate for the implementation of one of these measures. But, a Party will hopefully feel that the Agreements provide the best process possible for managing salmon issues at the Projects, and not choose to withdraw from the Agreements.

This "Enough Already" provision applies to NMFS and USFWS differently than any other Party to the Agreements. NMFS or USFWS may not elect to withdraw unless they intend to explicitly seek drawdown, dam removal, or non-power operations. But, under these circumstances NMFS and the District may agree to allow NMFS to pursue

⁷⁴ Rocky Reach at Section I.; Rock Island at Section I.

⁷⁵ Rocky Reach at Section II.1.; Rock Island at Section II.1.

⁷⁶ Rocky Reach at Section II.2.a.i.; Rock Island at Section II.2.a.i.

drawdown, dam removal, or non-power operations and keep NMFS in the Agreements and keep NMFS from terminating the incidental take permit.⁷⁷

A Party to the Agreements, other than the District, may withdraw at any time based on non-compliance of the District to the provisions of the Agreements. The District cannot use its own failure to comply with the Agreements as a basis for withdrawal. However, out of fairness the District may withdraw from the Agreements if another Party to the Agreements is failing to comply with the Agreements.⁷⁸

A Party may withdraw from these Agreements if a regulatory entity takes action that is detrimental to the achievement of the obligations each Party is given by these Agreements, and the regulatory entity's actions materially alter or are contrary to the terms of these Agreements.⁷⁹ For example, if NMFS revokes the incidental take permit required to implement the Agreements, then a Party may withdraw from the Agreements.⁸⁰

In the event that all Parties agree in writing that the obligations imposed by these Agreements are impossible to achieve, then a Party may withdraw from the Agreements.⁸¹

Because a Party may withdraw from the Agreements, the Parties created a process to try to resolve their issue so that they would not withdraw. In the event a Party decides to withdraw from the Agreements, it shall provide all other Parties with notice, unless it is withdrawing due to non-compliance. After receipt of a notice to withdraw, the other Parties shall have 120 days from the date of the notice to provide notice of their intention to withdraw or the right to withdraw will be deemed waived. The notices are required to be in writing and either served in person or provided by U.S. Mail with a return receipt requested.⁸² The Party seeking to withdraw must make itself available for at least one policy meeting where other Parties may attempt to persuade the Party not to withdraw. The policy meeting will take place within the sixty days after notice is given or the right is waived.⁸³

In the event a Party does withdraw from the Agreements, there are no further restraints placed upon the withdrawing Party. Thereafter the withdrawing Party is not bound by the Agreements, and all rights and remedies of a non-Party are available to the

⁷⁷ Rocky Reach at Section II.2.a.ii.; Rock Island at Section II.2.a.ii.

⁷⁸ Rocky Reach at Section II.2.b.; Rock Island at Section II.2.b.

⁷⁹ Rocky Reach at Section II.2.c.; Rock Island at Section II.2.c.

⁸⁰ Rocky Reach at Section II.2.e.; Rock Island at Section II.2.e.

⁸¹ Rocky Reach at Section II.2.d.; Rock Island at Section II.2.d.

⁸² Rocky Reach at Section II.f.; Rock Island at Section II.f.

⁸³ Rocky Reach at Section II.3.; Rock Island at Section II.3.

withdrawing Party. The rights of a withdrawing Party is modified as set forth in Section II.5, Section IX.3.a and c, and Section X.5.⁸⁴

In the event the Agreements are terminated, voided, or determined to be unenforceable then the District shall continue to implement the last measures agreed upon until FERC orders them to behave differently. The Parties, however, are not restrained from advocating to FERC measures to replace the Agreements. The exceptions to this rule are set forth in Section VII.4.f, Sections IX.3.a and c, Section X.5 and Section X.6.⁸⁵

Specific Comments

1. Page S-15, 2-32, Alternative 3 (Applicants' Proposed Action – Project HCPs), 2nd paragraph. The text states that “the EIS required for implementing measures in the HCPs ...” An EIS may not be needed in order to implement measures in the HCPs. In most cases an environmental checklist or an environmental assessment will be sufficient.
2. Page S-15, 2-32, Alternative 3 (Applicants' Proposed Action – Project HCPs), 2nd paragraph. The text states that “implementing measures in the HCP would be undertaken by FERC with a separate Section 7 consultation with NMFS”. It is the District's understanding that the HCPs will be presented to FERC with a request that they be incorporated into the project licenses. FERC's action may not require a new Section 7 consultation with NMFS and USFWS.
3. Page S-18, 2-35, last sentence before the start of Section S.5.3.6 and Section 2.3.3.6. The sentence reads “...to achieve 95 percent juvenile dam passage survival and 91 percent project survival.” Replace the “and” between “juvenile dam passage” and “project survival rates” with an “or”. While the word “and” is used in the HCPs, its use was an error. An errata sheet will be prepared for the final HCP on this issue. The intent of the parties was to require the measurement of 95% juvenile dam passage survival starting in 2003 as a default. However, the parties desired to leave the coordinating committee the discretion to forgo measurement of 95% juvenile dam passage survival and just measure the juvenile component of 91% project survival in 2003. There is not an obligation to measure 91% project survival in 2003. The coordinating committee will measure 91% project survival when a protocol can be developed.
4. Page S-23, 2.3.3.11, Project Cumulative Effects. This text attempts to summarize Section V “Reservoir As Habitat” of the HCPs. However, the summary omits an

⁸⁴ Rocky Reach at Section II.4.; Rock Island at Section II.4.

⁸⁵ Rocky Reach at Section II.5.; Rock Island at Section II.5.

important concept. The District agrees to consider cumulative impacts as part of its land use decision making.

5. Page S-24, 2-41, "Term of the HCPs", first paragraph, first sentence. The text states that "the 50-year term of the HCPs would not begin until the incidental take permits are issued." While correct, this sentence is a bit misleading. The 50 year term of the HCPs starts when the "Agreement is executed by all Parties and regulatory approvals are received..." HCP, Section I "Term of Agreement". Issuance of the requested incidental take permit from NMFS is only one of the regulatory approvals that must be received in order for the HCPs to become effective.
6. Page S-24, 2-41, "Transition Period" mischaracterize the current HCP activities. The PUDs are not conditionally implementing the HCPs. The PUDs have volunteered to perform activities that are consistent with the HCPs as a sign of good faith. The District is also implementing measures because even though the HCP is not in effect the 2003 deadline is approaching.
7. Page S-24, 2-41, "Transition Period" mischaracterize the interim protection plans. In 1997, with the full support of the NMFS and the USFWS, the PUDs voluntarily filed interim protection plans with the Federal Energy Regulatory Commission. The interim protection plans identified various portions of the HCPs that the District, NMFS and USFWS felt were worthwhile to implement in advance of completing the HCP negotiations. Measures were picked to assist the migration of newly listed Upper Columbia River steelhead. The interim protection plans proposed only a two year plan because the HCPs were expected to be in place within two years. The interim protection plans were informally expanded to include Upper Columbia spring chinook upon their listing. The PUDs requested that FERC approve the measures contained in the interim protection plans. FERC initiated consultation with NMFS over this proposed action. The consultation has yet to be completed, and FERC has yet to take action on the plans. Due to the time taken to complete this consultations, the interim protection plans have expired. <
8. Page S-26, 2-43, "Compensation for Unavoidable Project Mortality", first two sentences. The meaning of the first two sentences is not clear. The District has not modified any portion of the incidental take permit applications that were filed with NMFS.
9. Page S-26, 2-43, "Hatchery Compensation Plan Issue" and Page 1-12 Section 1.5.2.6 "Federal Trust Responsibilities to Indian Tribes" overstates the issue in dispute. The HCP requires that 7 percent of the "unavoidable project mortality" associated with each project be mitigated through hatchery supplementation. HCP Section III.1. The HCP goes on to define the initial hatchery production commitment. HCP Sections

VIII.3. and 4. NMFS is in a position to evaluate the effects of the initial hatchery production commitment. However, hatchery production will vary over time depending upon the size of the runs. NMFS has been unwilling to opine that the hatchery program will always satisfy the Endangered Species Act. Since NMFS has been unwilling to define the hatchery levels that will satisfy the Endangered Species Act it is not possible to predict how the hatcheries will be utilized during the term of the HCPs. Hatchery production is a key incentive for the tribes' participation in and support of the HCPs as a comprehensive settlement. Without knowing how the hatcheries will be utilized during the term of the HCPs the tribes cannot effectively evaluate the benefits of the HCPs. As a result of this uncertainty the tribes are not supporting the HCPs.

10. Page S-29, 2-50, "Endangered Species Act Compliance." It is unknown whether the Project's current licenses comply with the Endangered Species Act since they were issued prior to the adoption of the Endangered Species Act. Also, assuming the Project licenses do not comply with the Endangered Species Act, under Alternative 1 the District could obtain incidental take permits addressing only listed species.
11. Page S-30, 2-51, "Future Provisions for Other Aquatic Species". The table should acknowledge for all three alternatives that the District could submit incidental take permits under Section 10 of the Endangered Species Act as a means of addressing the Endangered Species Act.
12. Page S-31, 2-52, "Dispute Resolution." The table incorrectly includes "binding arbitration" as a means for resolving disputes. The text on Page S.17 paragraph 2 does a better job of explaining the HCP's dispute resolution process; but, does omit two of the exceptions to utilizing dispute resolution. See discussion above under "The Agreements" for more thorough overview of the HCP's dispute resolution process.
13. Page S-33, 2-53, Section S.7.2.3 "Alternative 3", first full paragraph, second sentence. The text reads that in part "there is no requirement to provide the benefit of the doubt to the species of concern with respect to gaps in the information base and NMFS has no authority to determine what constitutes the best available information to be utilized in support of any decisions." This sentence infers that the HCP dispute resolution process may not comply with law. Such an inference is not correct. In the HCP, NMFS has expressly reserved its authority to monitor, modify, suspend, revoke and re-instate, and enforce its incidental take permit outside the HCP dispute resolution process. HCP Section X.3-5, and Section XI.1.b. Furthermore, the dispute resolution process will not produce a result that is binding upon NMFS unless NMFS agrees. HCP Section XI.5.c. The dispute resolution process is mediation with a twist. The twist is that the mediator will issue a decision that can be entered into evidence in a later proceeding. HCP Section XI. 5.c. The reason for the decision is to facilitate

settlement. No one knows what, if any, weight will be afforded the decision. Also, the parties' intent is that once the decision is rendered parties will not feel the need to proceed further. NMFS like any other agency has the authority to enter into dispute resolution processes. 5 USC Section 572(a), and 575(a)(1). Since a party may pursue any remedy available after exhausting dispute resolution it is in full compliance with the law. HCP Section XI. 3.c.

14. Page S-35, 1-31, Section S.8 "Decision to be Made", second to last paragraph, first sentence. The text states that "NMFS will prepare a biological opinion to determine if the implementation of the HCPs is likely to jeopardize the continued existence of listed species that are likely to occur in the Plan area. ..." The text goes on to discuss issues NMFS will analyze in the biological opinion, and explains actions NMFS may take based upon the results of the biological opinion. The process NMFS describes in the DEIS for evaluating the incidental take permit applications filed by the District are not consistent with Section 10 of the Endangered Species Act. Section 10(a)(2) of the Endangered Species Act defines the process NMFS must follow to evaluate an incidental take permit application. 16 U.S.C. Section 1539(a)(2). This process does not require NMFS to consult with itself under Section 7 of the Endangered Species Act. Section 10 defines the complete process NMFS must follow to evaluate an incidental take permit application.
15. Page S-35, 1-31, Section S.8 "Decision to be Made", second to last paragraph, first sentence. The text states that "if the NMFS' biological opinion finds that the proposed actions are not likely to jeopardize the continued existence of the listed species ..., the permits can be approved." While true, NMFS must also make the findings required by Section 10 of the Endangered Species Act in order to issue the requested incidental take permits.
16. Page S-41, 2-61, "Land Use, Project Area, Alternative 3". The text does not correctly reflect the HCPs. In the HCPs the PUDs will consider cumulative effects of land use decisions, provide the signatories to the HCPs with opportunity to provide comments on permitting decisions, and notify permit applicants that their proposed use or occupancy of may result in incidental take of listed species and require authorization of NMFS or USFWS. HCP Section V "Reservoir as Habitat".
17. Page S-42, 2-63, "Economics, Project Area."; also, Page 4-61 Section 4.7 "Socioeconomic". Why is there no analysis of how spill and the other measures in each alternatives reduce the generating capacity and energy generated from the projects? This is a very significant effect of all the alternatives given the energy emergencies facing the Western United States, the Northwest, and Chelan County. Reduced generating capacity and reduced energy output have a direct effect on the ability of the projects to meet peak load demands for the District's own loads, and to

prevent or minimize energy emergencies in the Northwest and Western United States. The failure of the projects to meet peak load demands for the District's own loads exposes the District's loads to the extreme costs of energy in the Northwest and the West, and also to the risk that energy will not be available at any price. These issues vary dramatically between the three alternatives reviewed in the DEIS.

18. Page 1-1, Key Terms, "No Surprises Policy". The District understands that the term "no surprises policy" refers to the rules set forth in 50 CFR Section 222.303(g).
19. Page 1-4, Section 1.5, "Regulatory Framework", third sentence. What does "other Federal laws and regulations" mean?
20. Page 1-9, continuation of Section 1.5.2.4, "FERC Regulatory Requirements", 3rd full paragraph, second sentence. Text reads "These measures will supercede any settlement agreements pertaining to Plan." Insert "Species" after "Plan."
21. Page 1-10, Northwest Power Act, 1st paragraph, second sentence. The text reads "The Mid-Columbia utilities are subject to the Act". The term "Mid-Columbia utilities" is not defined in the DEIS. This DEIS relates to the projects operated by Chelan and Douglas PUDs. Also, Chelan and Douglas PUDs are not subject to the Northwest Power Act. FERC considers the plans developed pursuant to the Northwest Power Act when licensing the projects.
22. Page 1-11, "Title 77 Revised Code of Washington", First sentence. The sentence addresses "wildlife". This reference is not correct for the purposes of the proposed agreements being reviewed in the DEIS. Relevant for these purposes is the State's responsibility to "preserve, protect, and perpetuate wildlife, fish, and wildlife and fish habitat." RCW 77.04.055(1).
23. Page 1-13, Section 1.6.1 "Alternative 1 (No Action), 2nd paragraph, 2nd sentence. The text states "...the years to address engineering, bond, and resource related issues...". The inclusion of the term "bond" is not correct in this sentence. The project licenses have not been amended to address the issuing of bonds.
24. Page 1-16, 3rd paragraph, last sentence. Text reads "This allows the HCPs to be updated with information received during the comment period...". This sentence incorrectly explains the NEPA process. Comments received by NMFS on the DEIS will be considered by NMFS when preparing the FEIS. The HCPs are multiparty, negotiated settlement agreements. The fact that NMFS receives a comment on the DEIS does not mean that the HCPs will be modified.

25. Page 1-17, Section 1.7 "Background", 4th paragraph. The region faces economic hardship in 2001 as power shortfalls hit the region. The current January-through-July runoff forecast has the region's water supply at 55 percent of normal, assuming normal precipitation for the March-through-July period. If this year's water conditions match 1977's, the lowest on record, the council predicted 2001 shortfalls could approach 8000 MW-months, with the deficit in May reaching 3300 MW-months. If the conditions match 1944 conditions, a year with just slightly higher runoff than the current projection, the total energy deficit across the months of April through August is 5,600 MW-months, with the deficit in May reaching 2,700 MW-months. (The Northwest Power Planning Council, "Northwest Electricity Markets in 2001: Status and Proposed Actions", March 26, 2001). The report states "it is a virtual certainty that emergency operations will be necessary during spring and summer to keep the electricity system from suffering outages." (NWPPC, 2001)
26. Page 1-18, continuation of Section 1.7 "Background", 1st full paragraph, 1st sentence. Also, Page 6.5, definition of "Mid-Columbia River." On Page 1-18, the text defines the Mid-Columbia River as "the area of the river between the Chief Joseph project and the confluence of the Yakima River." On Page 6.5, the text defines the Mid-Columbia River as "portion of the Columbia River that begins at its confluence with the Snake River up to the Chief Joseph dam." These two definitions are not consistent. The term "Mid-Columbia River" is not used in the HCPs. However, the HCP's Tributary Plan's, Plan Species Account can be spent only on projects "within the Columbia River watershed (from the Chief Joseph tailrace to the Rock Island tailrace), and the Okanogan, Methow, Entiat and Wenatchee River watersheds...". HCP Section VII.2.
27. Page 1-14, Section 1.7.2.2 "National Marine Fisheries Service", 1st paragraph, 1st sentence. The text reads "Many of NMFS' past studies, listings, and rules are directly relevant to the Mid-Columbia hydroelectric projects. ...". The term "directly" is not accurate. The documents discussed in this paragraph are "indirectly" relevant to Chelan and Douglas PUD's hydroelectric projects. They are not "directly" relevant to Chelan and Douglas PUD's hydroelectric projects because they do not relate to these projects. They relate to the Federal hydroelectric projects on the Columbia River.
28. Page 1-29, Section 1.7.3.1 "Mid-Columbia PUD FERC Agreements", 3rd sentence. This sentence refers to the Rock Island Settlement Agreement. The tribes listed in the text are not the only signatories to this agreement. The parties to the Wells Settlement Agreement, while similar to those of the Rock Island Settlement Agreement, are not the same.
29. Page 1-29, Section 1.7.3.2 "Major Bond and Sales Agreements for the Projects". This text is grossly incorrect. As of March 14, 2001, the District's total estimated bonds

outstanding is \$886,076,000.⁸⁶ This indebtedness is secured by the revenue generated by the District's consolidated hydro system.

30. Page 1-33, continuation of Section 1.10 "Background Summary", 1st full paragraph, 2nd to last and last sentences. The text reads "Under the agreement, the utilities would have the ultimate authority in the decision making process, as long as the no net impact standards are being met. If all parties agree that the standards have not been achieved, the coordinating committees would have an increased role in the decision making process" These sentences do not correctly summarize the HCPs. For example: the District has the "ultimate decision on pursuit and implementation of Tools during Phase I" of the Juvenile Dam Passage Survival Plan. HCP Section IV.2.a.i. In Phase II of the Juvenile Dam Passage Survival Plan the coordinating committee has the decision making authority. HCP Section IV.a.6 – 8. In Phase III of the Juvenile Dam Passage Survival Plan the coordinating committee has the decision making authority related to continued measurement and evaluation. HCP Section VI.a.11. In the Adult Passage Plan, the agreement lays out the actions to be taken. HCP Section VI.b. With regard to the Hatchery Compensation Plan and the Tributary Compensation Plan the "JFP accepts the responsibility to develop plans and programs necessary to implement the Tributary Conservation Plan and the Hatchery Compensation Plan. HCP Section III.4.
31. Page 2-2, Section 2.1 "Development of Alternatives". Throughout the development of the DEIS the District has and still expresses concern about the choice of alternatives in the DEIS. The DEIS has not chosen as alternatives measures or mixes of measures that seek to mitigate the effects of the projects on salmon and steelhead. NMFS chose as alternatives competing legal process for establishing the measures to mitigate the effects of the projects on salmon and steelhead. This is a very unusual, and questionable method for evaluating the environmental effects of the proposed HCPs. The DEIS should be amended to provide more traditional alternatives. Alternatively, the rational and legal authority for this decision is not clearly explained in the DEIS, and should be incorporated into the FEIS.
32. Page 2-2, Section 2.1 "Development of Alternatives", 5th paragraph, 4th sentence. Text reads "to be in compliance with the take prohibitions of Section 9, FERC would implement the measures ..." FERC would be in compliance with Section 9 of the ESA by implementing the provisions contained in NMFS biological opinion and incidental take statement. However, FERC is not obligated to do so. FERC may take other action as long as it is not likely to jeopardize the continued existence of any

⁸⁶ Official Statement, Public Utility District No. 1 of Chelan County, Washington \$143,995,000 Chelan Hydro Consolidated System Revenue Bonds consisting of \$65,620,000 Series 2001A and \$78,375,000 Series 2001B, page iv (March 1, 2001)

endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is ... critical...". 16 U.S.C. Section 1536(a)(2); Aluminum Company v. BPA, 175 F.3d 1156, 4394-4395 (9th Cir. 5/10/99).

33. Page 2-7 Section 2.2.1.2 "Rocky Reach Dam", first paragraph, last three sentences. The text describing the rehabilitation work at Rocky Reach is outdated. The following edits are recommended so that the text is current:

"...Units 1 through 7 are currently vertical shaft Kaplan turbines installed during the original construction in 1962, while fixed-blade propeller units were installed in Units 8 through 11 in 1971. ~~One~~ Two of these fixed-blade propeller units ~~has~~ have been rehabilitated and replaced with a Kaplan turbine unit. A third unit is currently undergoing rehabilitation and the other three remaining units are scheduled to be ~~replaced~~ rehabilitated by June 2003 2002. In addition, all but one of the original Kaplan units have been rehabilitated and replaced with more efficient Kaplan turbines, which. This turbine work is ~~are~~ expected to increase juvenile fish passage survival."

34. Page 2-11, Table 2-4, and all text that incorporates or explains information conveyed in the table which includes but is not limited to the text in Section 3.2.6.4 and Table 3-3. The juvenile dam passage information included in the table does not take into account project specific information, and when project specific information is reviewed it is dismissed in favor of information developed from other hydroelectric projects without explanation. Set forth in Attachment A is the most project-specific survival information available for both the Rocky Reach and Rock Island Projects. This information is primarily based on information collected at these Projects through the various studies identified in the references. Copies of the studies are available upon request.

35. Page 2-12, 1st paragraph, last sentence. The text reads "the information also indicates that survival is higher through the spillway and bypass system than through the turbine units." What is the citation for this statement? The statement does not logically flow from the materials cited in the paragraph.

36. Page 2-14, Rocky Reach Dam, 3rd sentence. The text reads "Passage efficiency tests ... and 52 percent of the PIT-tagged steelhead...". "PIT-tagged" is not correct. These were "radio tagged" steelhead.

37. Page 2-14, Rocky Reach Dam, 5th sentence. The text reads "In 1999, guidance ... 32 percent of the chinook and 53 percent of the steelhead passed ...". In both cases, these were radio tagged fish.

38. Page 2-15, Rocky Reach Dam, 2nd paragraph, 1st sentence. Text reads "Studies at the dam have shown that between 8 and 18 percent ..." This text is not consistent with the text on page 4-18 which uses 19 percent and not 18 percent. Nineteen percent is the correct number.
39. Page 2-16, Rock Island Dam, 3rd paragraph, 3rd sentence. The text reads "the spill passage rates for other species were estimated at 20, 33, and 35 percent for sockeye, fall chinook and coho salmon in 1998." What is the citation for this information?
40. Page 2-16, Rock Island Dam, 4th paragraph, 1st sentence. The text reads "A subsequent study indicated that survival rates through modified bay with deeper stilling basins may be near 100 percent ..." What is the citation for this information?
41. Page 2-16, Section 2.2.3.2 "Adult Passage", 1st paragraph, 5th sentence. The text reads "The delay and stress that adults experience during passage through multiple dams may reduce their spawning success." Please explain the scientific bases for this information, and provide a citation for the studies relied upon to make this statement.
42. Page 2-17, continuation of Section 2.2.3.2 "Adult Passage", 3rd paragraph, 1st sentence. The text reads "Survival rates of adult salmon and steelhead passing through the Mid-Columbia River have not been estimated due to insufficient radio-telemetry data." This is not correct. Currently, technology does not exist to measure adult survival. Therefore a technology limitation, not an insufficiency of radio-telemetry data, is the reason for no survival information.
43. Page 2-17, Section 2.2.3.3 "Adult Reservoir Passage", 1st paragraph, 4th sentence. The text reads "However, the reservoirs can increase the potential for wandering or straying (lost orientation), that could lead to higher pre-spawning mortality or reduced spawning success (Volkman 1995)." This conclusions are not contained in Volkman 1995 and cannot be inferred from the radio telemetry data contained in Volkman 1995. No evidence exists to support these statements.
44. Page 2-27, Section 2.2.3.3 "Adult Reservoir Passage", 1st paragraph, 5th sentence. The text reads "Higher water temperatures as a result of project reservoirs may also lead to higher prespawning mortality." What is the citation for this information?
45. Page 2-27, continuation of Section 2.3.2 "Alternative 2 (Section 7 Consultation)", 6th paragraph, 2nd sentence. The text reads "Evaluations conducted as part of the Quantitative Analytical Report (QAR) (NMFS 2000b) ..." The QAR is also discussed in detail in Section 4.2.1 "Quantitative Analytical Report". The QAR has not yet produced a final, peer reviewed document. Furthermore, the document cited at NMFS 2000b is a draft internal NMFS document. NMFS has yet to produce a copy of this

document after numerous requests. The District objects to NMFS citing QAR results anywhere in this document or in any other document (yet alone devoting 10 pages to it in Section 4.2.1, pages 4-6 through 4-16) until the QAR results are made public, finalized and peer reviewed. This comment relates to all references to the QAR in the DEIS. Without a copy of the QAR the District has no way to comment on portions of the DEIS related to the QAR. The District reserves the right to submit comments on the QAR until it receives a copy of the QAR and has had sufficient opportunity to review the QAR. Nevertheless, based upon the information provided in the DEIS and the District's limited knowledge of the QAR, the District objects strongly to NMFS' use of the QAR results. Most of the conclusions relied upon the DEIS are drawn from the portion of the database that dates back to only 1980 (p. 4-7) while the entire database dates back to the 1960s. This misrepresents the long term database. Conclusions based upon long term database shows dramatically different outcomes when compared to the conclusions based upon the short term database. While NMFS acknowledges the existence of data going back to the 1960s, it is dismissed as potentially too "optimistic" without a thorough explanation. (p. 5-11) The best scientific information available is the entire database which takes into consideration ocean cycles that were known to be more productive than the ocean conditions in the 1980's and 1990's. During the 50 year term of the proposed HCPs ocean conditions are likely to cycle back to more productive periods similar to the 1960s. This rationale is supported by the current 2000 and 2001 improvement in runs that is attributed to greatly improved ocean conditions.

46. Page 2-35, continuation of Section 2.3.3.5 "HCP Performance Standards" 1st full paragraph. This paragraph was re-written from its mirror paragraph on page S-18. The text on page S-18 provides a clearer explanation.
47. Page 2-35, continuation of Section 2.3.3.5 "HCP Performance Standards" 2nd full paragraph, 2nd sentence. The text cites to the 1995 Federal Columbia River Power System biological opinion for the lower Snake and Columbia River projects (NMFS 1995). NMFS 1995 biological opinion has been superceded by its 2000 biological opinion. In 2000, USFWS also issued a biological opinion for bull trout. Therefore, this text should be updated to refer to the current biological opinions.
48. Page 2-35, continuation of Section 2.3.3.5 "HCP Performance Standards" 6th full paragraph, last sentence. The text reads "...to achieve 95 percent juvenile dam passage survival and 91 percent project survival." As explained in earlier comments, the coordinating committee will measure only 95% Juvenile Dam Passage survival. However, the coordinating committee may elect to measure the juvenile component of 91% Project Survival. If the results of the standard that was measured was not achieved, then the coordinating committee would identify the tool for the District to

implement by the next migration. It may be necessary to revise the HCP text to clarify this process.

49. Page 2-49 Section 2.6.1 "Alternative 1 (No-Action)". The text under this heading is introductory to all the alternatives, not specific to Alternative 1. See page S-28.
50. Page 3-27, Section 3.2.2.2 "Abundance". This section should be updated with 2000 fish counts and with projected fish counts for 2001. Fish counts showed a dramatic increase in 2000 and are projected to be even better in 2001. This information is very significant. Without this information the text is misleading.
51. Page 3-37, Rocky Reach, 3rd paragraph 2nd sentence. The text reads "the cumulative delay at nine dams on the Columbia River likely decreases spawning success." What is the citation for this information?
52. Page 3-39, Rocky Reach, 3rd paragraph, 1st sentence. The text reads "Based on juvenile radio-telemetry evaluations conducted in 1998, approximately 49 percent of the radio-tagged steelhead and 61% of the radio-tagged spring-run chinook salmon passed the project via the powerhouse (English et al. 1999)." This data is not correct. The correct citation should be English et al. 1998, not English et al. 1999. Also, 49 percent should be 34 percent, and 61% should be 51%.
53. Page 3-39, Rocky Reach, footnote 2. Footnote 2 reads "Radio-tagged fall chinook obtained from the East Bank Hatchery ... in 1997 and 1998 (e.g., approximately 81% powerhouse passage in ... via the powerhouse at significantly higher rates than the ...". The reference to 1997 is not correct and should be deleted. English et al. 1998 related to 1998 and 1997. Also, the use of the term "significantly" is not correct in this sentence. The term "significantly" has a meaning in statistics. The term infers that statistics were used to test a hypothesis. The statement made in the sentence is not the result of a statistical test. Therefore, use of the term "significantly" infers a level of credibility to the sentence that is not correct.
54. Page 3-40 continuation of Rocky Reach Dam, 1st paragraph, 1st sentence. The text reads "Lady et al. (2000) ... and English et al. (1999) estimated that 58 and 40 percent of the radio-tagged..." The estimates of 58 and 40 are not correct. They should be 50 and 30.
55. Page 3-40, continuation of Rocky Reach Dam, 2nd paragraph, last sentence. The text reads "Although neither evaluation was able to ... the pilot level survival evaluation conducted using radio-tagged steelhead in 1999 estimated direct and indirect survival at 89.7 percent (Lady et al. 2000), suggesting that the indirect effects associated with turbine passage are more significant than those seen at the bypass system or

spillway.” The radio tag study cited in this sentence indicates a lower than desired direct and indirect survival at the project. NMFS should clearly explain why it is appropriate to use the results of a radio-tag study in this instance when the study shows low levels of survival, and not use the results of radio tag studies in other instances when the results of radio tag studies show high levels of survival. The District continues to object to NMFS’s inconsistent use of study results, and failure to acknowledge the results of studies that show survival levels favorable to the District.

56. Page 3-43 Rocky Reach, 1st paragraph 2nd sentence. The text reads: “Passage efficiency tests conducted ... yearling chinook salmon and 51 percent of the PIT-tagged steelhead passed the project via this route (English et al. 1998a).” This sentence is not correct. 51 percent should be 52 percent, and PIT-tagged should be radio tagged.
57. Page 3-43 Rocky Reach, 1st paragraph 4th sentence. The text reads: “Passage efficiencies in 1999 ... 32 percent for chinook salmon, and 11 percent for sockeye salmon (Mosey et al. 2000).” This sentence is not correct. 11 percent should be 16 percent.
58. Page 3-43 Rocky Reach, 1st paragraph 5th sentence. The text reads “Radio telemetry evaluations in 1999 also indicated that about 57 percent of steelhead passed the project through the bypass.” What is the citation for this information? The District is not aware of any study that produced this information.
59. Page 3-43 Rocky Reach, 1st paragraph, last sentence. The text reads “The combined spillway and bypass ... and between 62 and 64 percent for steelhead (Lady et al. 2000).” This information is not correct. 62 should be 72, and 64 should be 74.
60. Page 3-43 Rocky Reach, 2nd paragraph, 1st sentence. The text reads “In both 1997 and 1998...”. This is not correct. The evaluation was done only in 1998. The evaluation was not done in 1997.
61. Page 3-43 Rocky Reach, 2nd paragraph, 2nd sentence. The text reads “In 1998, the bypass efficiency for naïve chinook salmon was substantially lower (19 percent) ... (English et al. 1998a).” This is not correct. 19 percent should be 22 percent.
62. Page 3-43, Rocky Reach, 5th paragraph, 3rd sentence. The text reads “The temporary bypass outfall site, located in front of the turbine unit four upwelling, ...” This is not correct. Unit four upwelling should be replaced with unit three upwelling.
63. Page 3-44, Section 3.2.6.4 “Total Project Survival – Juvenile Migrants”. The discussion of project survival is not correct. The obligation is that “The District shall

also achieve and maintain 91% Project Survival ... which means that 91% of each Plan Species, juvenile and adult combined, survive Project effects, including delayed mortality wherever it may occur." HCP Section IV.1.a. The first sentence in this section of the DEIS fails to account for the fact that project survival includes "delayed mortality wherever it may occur." Also, the HCP does not define a protocol for measuring project survival as inferred from the DEIS. The HCP leaves it to the Coordinating Committee to establish the measurement protocols. HCP Section IV.3.c.

64. Page 3-47 Section 3.2.7 "Overall Fish Passage Survival". 1st paragraph, 3rd sentence. The text reads "Based on the small amount of information that is available, the average survival of adult spring-run chinook salmon and steelhead is estimated at between 77.8 percent and 88.9 percent for the entire Mid-Columbia River reach...". What is the cite for this information? The District is not aware of any methodology to measure adult survival.
65. Page 3-96, continuation of Section 3.3.2 "Water Quality", 1st full paragraph, 1st sentence. The text reads "Although extensive evaluations have been conducted under controlled or laboratory conditions, the effects of specific total dissolved gas levels on fish in a river environment is relatively unknown." This statement is not correct. The effects of total dissolved gas on fish has been extensively studied in the Mid-Columbia at as part of the 2000 Federal Columbia River Hydro-System biological opinions.
66. Page 3-109, Section 3.4.4 "Rare Plants". The text states that Ute ladies' tresses (*Spiranthes diluvialis*) do not occur in or near the immediate project area of the dams. This is not correct. Recently, a Ute ladies'-tresses was determined to be present in the Rocky Reach reservoir shoreline area. This hydrophilic orchid would be affected by drawdown or other actions that would remove its water source. P. Fielder, pers. comm.
67. Page 4-18, continuation of Section 4.2.2.1 "Rocky Reach Dam", 2nd paragraph, 2nd sentence. The text reads "Survival estimates for steelhead ranged from 87.0 percent to 111.9 percent ..." This is not correct. 111.9 percent should be 101.0 percent.
68. Page 4-18, continuation of Section 4.2.2.1 "Rocky Reach Dam", 3rd paragraph, 2nd sentence. The text reads "Under Alternative 1 however, there is no requirement to implement these additional measures." This is not correct. Under alternative 1 fish protection and enhancement measures can be implemented through the pending Mid-Columbia proceeding at FERC, and during relicensing.
69. Page 4-18, continuation of Section 4.2.2.1 "Rock Island Dam", 2nd paragraph, 2nd sentence. The text reads "Between 1995 and 1998, over 26,000 predatory ..." This

should be updated by replacing 1998 with 2000, and 26,000 with 34,000. West, T. 2001. Northern Pikeminnow (*Ptychocheilus oregonensis*) Population Reduction Program Rocky Reach and Rock Island Dams.

70. Page 4-20 continuation of "Adult Migration/Survival", 2nd full paragraph, 2nd sentence. The text reads "It is reasonable to assume that some portion of the adult bull trout populations pass through the turbines and spillways, either voluntarily or involuntarily, given their presence in the project area and use of project fishways." What is the citation for this information? Why is it reasonable to assume a correlation between presence of bull trout in the fishway and bull trout passing through turbines and spillways? The District is aware of no evidence supporting this statement.
71. Page 4-26, "Rocky Reach Dam", 2nd sentence. The text reads "As with the fishways at the Wells Dam, there is evidence to suggest that sockeye and summer-run chinook salmon experience passage delays in the fishway entrance pools of the Rocky Reach fishway." What is the citation for this information? The District is not aware of this information.
72. Page 4-27, Section 4.2.2.3 "Pacific Lamprey", 3rd sentence. The text reads "The only screens that are currently in operation at the Mid-Columbia River dams are at turbine units one through three at the Rocky Reach Dam." This is not correct. Screens are used only at turbine unites one and two at the Rocky Reach Dam.
73. Page 4-27, Section 4.2.2.3 "Pacific Lamprey", 4th sentence. Delete the phrase "although additional screens are currently not planned for future installation."
74. Page 4-31, "Adult Migration/Survival", 2nd paragraph last sentence. The text reads "Although the radio-telemetry technique is problematic for addressing adult passage survival, the study results are the best available data for determining potential project related affects." This sentence is not correct. Radio-telemetry is not a technique for addressing adult passage survival. It is a technique for addressing locations of adult fish. Currently, no protocol exists to measure adult survival. There is no data available to evaluate adult survival.
75. Page 4-31, "Adult Migration/Survival", 4th paragraph, 2nd sentence. The text reads "Based on their presence at the project and their migratory behaviors, it is likely that some portion of the population passes through the turbines and spillways, either voluntarily or involuntarily." What is the citation for this information? Why is it reasonable to assume a correlation between presence of bull trout in the fishway and bull trout passing through turbines and spillways? The District is aware of no evidence supporting this statement.

76. Page 4-34, "Rock Island Dam", 1st paragraph, 1st sentence. Delete "chiwawa hatchery". Rock Island's hatchery is referred to as the Eastbank Hatchery Complex.
77. Page 4-40 "Rocky Reach Dam", 2nd paragraph, 3rd sentence, and Page 4-41 "Rock Island", 2nd paragraph 3rd sentence. The text reads "For Alternative 3, the PUD would have the ultimate authority for determining the appropriate protection measures implemented in Phase I, while the Coordinating Committee would have a greater role during Phase II." As explained above in relation to other sections, the Coordinating Committee is the decision maker in Phase II. NMFS has retained the authority to enforce the incidental take permit outside the HCPs.
78. Page 4-59, Section 4.6.3.1 "Project Area". This text is not correct. Section V of the HCP titled "Reservoir as Habitat" clarifies the manner in which land use and permitting decisions on project lands occurs.
79. Page 4-72, Section 4.10.7 "Indian Trust Assets", 3rd paragraph, 5th sentence. The text reads "This would then affect whether the 9 percent no net impact would continue over the 50 year HCP terms." Reduction in use of the hatchery facilities means that the hatcheries would not produce fish to compensate for the full 7 percent of Unavoidable Project Mortality. HCP Section III.1. Nevertheless, No Net Impact can still be achieved as long as the PUDs provide the funding and capacity for the hatcheries. HCP Sections III.3. and 4.
80. Page 4-74, Section 4.10.14.1 "Wild and Scenic River Act". This section needs to be updated. On June 9, 2000, the Hanford Reach was declared a National Monument. 65 *Federal Register* 37253 (June 13, 2000).
81. Page 5-6, Chelan County PUD 2000 reference. The District objects to reference to comments provided to the "Pre-Decisional Review Draft, Biological Opinion, Interim Protection Plans for Operation of the Mid-Columbia River Hydroelectric Projects and Related Activities." These comments were provided to assist in editing a confidential, pre-decisional review document.
82. Page 6-1 "Glossary". It is the District's understanding that the glossary contained in the DEIS is not in any way intended to modify terms that are defined in the Endangered Species Act, NMFS' regulations, or the HCPs. The District has not reviewed the glossary, and reserves the right to latter object to the manner in which terms are defined in this DEIS.
83. Page 7-2, Section 7.3. Add the following local agencies: East Wenatchee Chamber of Commerce, Mayor of the City of Wenatchee, Chelan County Commissioners, and the Douglas County Commissioners.

84. Page 7-2, Section 7.4. Replace "Confederated Tribes of the Colville Reservation" with "Confederated Tribes and Bands of the Colville Indian Reservation." In the Umatilla name add "Indian" between "Umatilla" and "Reservation." Replace "Yakama Indian Nation" with "Confederated Tribes and Bands of the Yakama Indian Nation."

Conclusion

The District appreciates the opportunity to comment on the Draft Environmental Impact Statement for the incidental take permit applications proposed for the District's Rocky Reach and Rock Island Projects. The District encourages NMFS to expedite its processing of the incidental take permit applications, and authorize the issuance of the requested permits

Sincerely,



Malcolm C. McLellan
Attorney for
Public Utility District No. 1 of Chelan County

Attachments

cc: NEPA Coordinator
U.S. Department of Commerce
Room 6117, Herbert C. Hoover Building
Washington, DC 20230

Dick Nason, CPUD
Jim Vasile, CPUD
Bob Clubb, DPUD
Gar Jeffers, DPUD
Doug Ancona, GPUD
Merrill Hathaway, FERC
Tim Welch, FERC
Keith Brooks, FERC
Jim Hastreiter, FERC

ATTACHMENT A

SURVIVAL ESTIMATES

FOR THE

ROCK ISLAND HYDROELECTRIC PROJECT

AND THE

ROCKY REACH HYDROELECTRIC PROJECT

**Rock Island
Estimate of Juvenile Dam Passage Survival**

FORMULA: The formula to estimate Juvenile Dam Passage Survival equals the route specific survival rate multiplied by the route specific passage rate for each passage route past the project.

Calculation of Juvenile Dam Passage Survival

Species	Powerhouse #1		Powerhouse 2		Spill		JDPS
	Survival Rate Of Turbines ¹	% of Fish using Turbines	Survival Rate Of turbines ¹	% of Fish using turbines	Survival Rate Of Spill	% of Fish using Spill	
Steelhead	.927	.051 (2 yr avg)	.942	.655 (2 yr avg)	.99	.295 (2 yr avg)	.956
Yearling Chinook ²	.927	.087	.942	.671	.99	.242	.952
Sub-yearling Chinook ³	.927	.091 (2 yr avg)	.942	.482 (2 yr avg)	.99	.437 (2 yr avg)	.971
Sockeye	.927	.134 (2 yr avg)	.942	.599 (2 yr avg)	.99	.269 (2 yr avg)	.955

Authority for Data

Species	Powerhouse 1		Powerhouse 2		Spill		JDPS
	Survival Rate Of turbines	% of Fish using turbines	Survival Rate Of turbines	% of Fish using turbines	Survival Rate Of Spill	% of Fish using Spill	
Steelhead	Tab 1	Tab 2	Tab 3	Tab 4	Tab 5	Tab 6	Tab 7
Yearling Chinook ²	See Tab 1	Tab 8	See Tab 3	Tab 9	See Tab 5	Tab 10	Tab 11
Sub-yearling Chinook ³	See Tab 1	Tab 12	See Tab 3	Tab 13	See Tab 5	Tab 14	Tab 15
Sockeye	See Tab 1	Tab 16	See Tab 3	Tab 17	See Tab 5	Tab 18	Tab 19

Turbine survival adjusted to include 2% indirect mortality and is based upon Muir et al as cited in the Biological Assessment submitted by FERC to NMFS as part of Sec. 7 consultation

² Yearling chinook means wild and hatchery spring chinook, and hatchery summer/fall chinook

³ Sub-yearling means wild and hatchery summer/fall chinook

Index of Authorities

Tab	Reference
Tab 1	.946*.98=.927. .946 is based upon the average of PH 1 estimates from Turbine passage survival of chinook salmon smolts (Normandeau and Skalski, 1997). .98 is based upon Muir et al as cited in the Biological Assessment submitted by FERC to NMFS as part of Sec. 7 consultation
Tab 2	A pilot study to estimate route specific survival and passage probabilities of Steelhead smolts at RR and RI, 1999. (Lady et al. 2000) A study to estimate route specific survival and passage probabilities of Chinook and Steelhead at RR and RI. (Skalski et al in prep)
Tab 3	.961*.98=.942 .961 is based upon the estimate of turbine passage survival of chinook salmon smolts at RI PH 2 (Normandeau and Skalski, 1997). .98 is based upon Muir et al as cited in the Biological Assessment submitted by FERC to NMFS as part of Sec. 7 consultation
Tab 4	A pilot study to estimate route specific survival and passage probabilities of Steelhead smolts at RR and RI, 1999. (Lady et al. 2000) A study to estimate route specific survival and passage probabilities of Chinook and Steelhead at RR and RI. (Skalski et al in prep).
Tab 5	1999 Spillway survival investigation of juvenile chinook salmon at Rock Island Dam. Normandeau et al in prep
Tab 6	A pilot study to estimate route specific survival and passage probabilities of Steelhead smolts at RR and RI, 1999. (Lady et al. 2000) A study to estimate route specific survival and passage probabilities of Chinook and Steelhead at RR and RI. (Skalski et al in prep).
Tab 7	Calculation based on information from Tab 1 through Tab 6 $((.927*.051)+(.942*.655)+(.990*.295))=.956$
Tab 8	A study to estimate route specific survival and passage probabilities of Chinook and Steelhead at RR and RI. (Skalski et al in prep.)
Tab 9	A study to estimate route specific survival and passage probabilities of Chinook and Steelhead at RR and RI. (Skalski et al in prep.)
Tab 10	A study to estimate route specific survival and passage probabilities of Chinook and Steelhead at RR and RI. (Skalski et al in prep.)
Tab 11	Calculation based on information from Tab 8 through Tab 13 $((.927*.087)+(.942*.671)+(.990*.242))=.952$
Tab 12	Hydroacoustic evaluation of notched surface flow spill gates and overall fish passage at RI, 1997. (Iverson and Keister, 1997) Hydroacoustic evaluation of spill effectiveness at Rock Island Dam spring and summer, 1998. (Iverson and Birmingham, 1998)
Tab 13	Hydroacoustic evaluation of notched surface flow spill gates and overall fish passage at RI, 1997. (Iverson and Keister, 1997) Hydroacoustic evaluation of spill effectiveness at Rock Island Dam spring and summer, 1998. (Iverson and Birmingham, 1998)
Tab 14	Hydroacoustic evaluation of notched surface flow spill gates and overall fish passage at RI, 1997. (Iverson and Keister, 1997) Hydroacoustic evaluation of spill effectiveness at Rock Island Dam spring and summer, 1998. (Iverson and Birmingham, 1998)
Tab 15	Calculation based on information from Tab 12 through Tab 14. $((.927*.091)+(.942*.482)+(.990*.437))=.971$
Tab 16	Hydroacoustic evaluation of notched surface flow spill gates and overall fish passage at RI, 1997. (Iverson and Keister, 1997) Hydroacoustic evaluation of spill effectiveness at Rock Island Dam spring and summer, 1998. (Iverson and Birmingham, 1998)
Tab 17	Hydroacoustic evaluation of notched surface flow spill gates and overall fish passage at RI, 1997. (Iverson and Keister, 1997) Hydroacoustic evaluation of spill effectiveness at Rock Island Dam spring and summer, 1998. (Iverson and Birmingham, 1998)
Tab 18	Hydroacoustic evaluation of notched surface flow spill gates and overall fish passage at RI, 1997. (Iverson and Keister, 1997) Hydroacoustic evaluation of spill effectiveness at Rock Island Dam spring and summer, 1998. (Iverson and Birmingham, 1998)
Tab 19	Calculation based on information from Tab 16 through Tab 18. $((.927*.134)+(.942*.599)+(.990*.269))=.955$

Literature Cited

- Iverson, T. K., and J. E. Keister, 1997. Hydroacoustic evaluation of notched surface flow spill gates and overall fish passage at Rock Island Dam in 1997. Report to Public Utility District No. 1 of Chelan County, Wenatchee, Washington.
- Iverson, T. K., and A. G. Birmingham, 1998. Hydroacoustic evaluation of spill effectiveness at Rock Island Dam during spring and summer, 1998. Report to Public Utility District No. 1 of Chelan County, Wenatchee, Washington.
- J. Lady, J. R. Stevenson, J. R. Skalski, and A. E. Giorgi. 2000. A pilot study to estimate route-specific survival and passage probabilities of steelhead smolts at Rocky Reach and Rock Island Dams, 1999. Report to Public Utility District No. 1 of Chelan County, Wenatchee, Washington.
- Skalski, J. R., A. E. Giorgi, J. Lady, J. R. Stevenson, R. Townsend, K. K. English. In prep. A study to estimate route-specific survival and passage probabilities of chinook salmon and steelhead smolts at Rock Island Dam, 2000. Report to Public Utility District No. 1 of Chelan County, Wenatchee, Washington.
- Muir, W. D., S. G. Smith, R. N. Iwamoto, D. J. Kamikawa, K. W. McIntyre, E. E. Hockersmith, B. P. Sanford, P. A. Ocker, T. E. Ruehle, J. W. Williams and J.R. Skalski. 1995. Survival estimates for the passage of juvenile salmonids through Snake River dams and reservoirs, 1994. Annual report to Bonneville Power Administration, Portland, Oregon and U. S. Army Corps of Engineers, Walla Walla, Washington. 187 pp.
- Normandeau Associates, Inc., and J. R. Skalski. 1998. Turbine Passage survival of chinook salmon smolts at the Rock Island Dam Powerhouse I and II, Columbia River, Washington. Report to Public Utility District No. 1 of Chelan County, Wenatchee, Washington.
- Normandeau Associates, Inc., and J. R. Skalski. In prep. 1999 spillway passage survival investigation of juvenile chinook salmon at Rock Island Dam, Washington. Report to Public Utility District No. 1 of Chelan County, Wenatchee, Washington.

**Rocky Reach
Estimate of Juvenile Dam Passage Survival**

FORMULA: The formula to estimate Juvenile Dam Passage Survival equals the route specific survival rate multiplied by the route specific passage rate for each passage route past the project.

Calculation of Juvenile Dam Passage Survival

Species	Bypass		Turbine		Spill		JDPS
	Survival Rate Of Bypass	% of Fish using Bypass	Survival Rate Of turbines ⁴	% of Fish using turbines	Survival Rate Of Spill	% of Fish using Spill	
Steelhead	0.980	0.523 (3 yr avg)	0.931	0.357 (3 yr avg)	0.990	0.120 (3 yr avg)	0.964
Yearling Chinook ⁵	0.980	0.310 (3 yr avg)	0.931	0.550 (3 yr avg)	0.990	0.140 (3 yr avg)	0.954
Sub-yearling Chinook ⁶	0.980	0.240 (2 yr avg)	0.931	0.625 (2 yr avg)	0.990	0.135 (2 yr avg)	0.951
Sockeye	0.980	0.090 (3 yr avg)	0.931	0.697 (3 yr avg)	0.990	0.213 (3 yr avg)	0.948

Authority for Data

Species	Bypass		Turbine		Spill		JDPS
	Survival Rate Of Bypass	% of Fish using Bypass	Survival Rate Of turbines	% of Fish using turbines	Survival Rate Of Spill	% of Fish using Spill	
Steelhead	Tab 1	Tab 2	Tab 3	See Tab 2	Tab 4	See Tab 2	Tab 5
Yearling Chinook ²	See Tab 1	See Tab 2	See Tab 3	See Tab 2	See Tab 4	See Tab 2	Tab 6
Sub-yearling Chinook ³	See Tab 1	Tab 7	See Tab 3	See Tab 7	See Tab 4	See Tab 7	Tab 8
Sockeye	See Tab 1	See Tab 2	See Tab 3	See Tab 2	See Tab 4	See Tab 2	Tab 9

⁴ Turbine survival adjusted to include 2% indirect mortality and is based upon Muir et al. (1995) as cited in the Biological Assessment submitted by FERC to NMFS as part of the Section 7 consultation.

⁵ Yearling chinook means wild and hatchery spring chinook, and hatchery summer/fall chinook

⁶ Sub-yearling means wild and hatchery summer/fall chinook

Index of Authorities

Tab	Reference
Tab 1	Survival estimates for the passage of yearling chinook salmon and steelhead through Snake River dams and reservoirs, 1995. (Muir et al. 1996)
Tab 2	Evaluation of juvenile spring chinook, steelhead, and sockeye migratory patterns at Rocky Reach Dam using radio-telemetry techniques, 1998-2000. (English et al. 1998; English et al. 1999; English et al. in prep)
Tab 3	0.950 * 0.980 = 0.931. 0.950 is based upon 1996 measured survivals of 0.950 and 0.958 for new (unit 6) and original (unit 5) Kaplan turbines, respectively. (Normandeau and Skalski, 1996). 0.980 is based upon Muir et al. (1995) as cited in the Biological Assessment submitted by FERC to NMFS as part of the Section 7 consultation.
Tab 4	Survival of juvenile coho salmon passing through the spillway at Rocky Reach Dam. (Heinle and Olson, 1981)
Tab 5	$(0.980 * 0.523) + (0.931 * 0.357) + (0.990 * 0.120) = 0.964$
Tab 6	$(0.980 * 0.310) + (0.931 * 0.550) + (0.990 * 0.140) = 0.954$
Tab 7	Evaluation of juvenile sub-yearling chinook migratory patterns at Rocky Reach Dam using radio telemetry techniques, 1998 – Technical memorandum to Mid-Columbia Coordinating Committee (Mosey and Murdoch, 1999). Evaluation of juvenile spring chinook, steelhead, and sockeye migratory patterns at Rocky Reach Dam using radio-telemetry techniques, 1999. (English et al. 1999)
Tab 8	$(0.980 * 0.240) + (0.931 * 0.625) + (0.990 * 0.135) = 0.951$
Tab 9	$(0.980 * 0.090) + (0.931 * 0.697) + (0.990 * 0.213) = 0.948$

References

English, K. K., T. C. Nelson, C. Sliwinski, J. R. Stevenson, and T. R. Mosey. 1998. Evaluation of Juvenile Spring Chinook, Steelhead, and Sockeye Migratory Patterns at Rocky Reach Dam Using Radio-telemetry Techniques, 1998. Report prepared by LGL Limited for Public Utility District No. 1 of Chelan County, Wenatchee, WA.

English, K. K., R. C. Bocking, C. Sliwinski, J. R. Stevenson, and T. R. Mosey. 1999. Evaluation of Juvenile Spring Chinook, Steelhead, and Sockeye Migratory Patterns at Rocky Reach Dam Using Radio-telemetry Techniques 1999. Report prepared by LGL Limited for Public Utility District No. 1 of Chelan County, Wenatchee, WA.

English, K. K., C. Sliwinski, J. J. Smith, J. R. Stevenson, and T. R. Mosey. In prep. Evaluation of Juvenile Spring Chinook, Steelhead, and Sockeye Migratory Patterns at Rocky Reach Dam Using Radio-telemetry Techniques, 2000. Report prepared by LGL Limited for Public Utility District No. 1 of Chelan County, Wenatchee, WA.

Heinle, D. R. and F. W. Olson. 1981. Survival of juvenile coho salmon passing through the spillway at Rocky Reach Dam. Prepared for Chelan County Public Utility District.

Muir, W. D., S. G. Smith, R. N. Iwamoto, D. J. Kamikawa, K. W. McIntyre, E. E. Hockersmith, B. P. Sanford, P. A. Ocker, T. E. Ruehle, J. W. Williams, and J. R. Skalski. 1995. Survival estimates for the passage of juvenile salmonids through Snake River dams and reservoirs, 1994. Annual report to Bonneville Power Administration, Portland, Oregon and U.S. Army Corps of Engineers, Walla Walla, Washington. 187 pp.

Muir, W. D., S. G. Smith, E. E. Hockersmith, S. Achord, R. F. Absolon, P. A. Ocker, B. M. Eppard, T. E. Ruehle, J. G. Williams, R. N. Iwamoto, and J. R. Skalski. 1996. Survival estimates for the passage of yearling chinook salmon and steelhead through Snake River dams and reservoirs, 1995. Annual report to Bonneville Power Administration, Portland, Oregon and U.S. Army Corps of Engineers, Walla Walla, Washington. 150 pp.

Normandeau Associates and J. R. Skalski. 1996. Relative survival of juvenile chinook salmon (*Oncorhynchus tshawytscha*) in passage through a modified Kaplan turbine at Rocky Reach Dam, Columbia River, Washington. Report prepared by Normandeau Associates for Public Utility District No. 1 of Chelan County, Wenatchee, WA.

Commissioners:
MICHAEL DONEEN
T. JAMES DAVIS
LYNN M. HEMINGER

Chief Executive Officer/Manager:
WILLIAM C. DOBBINS

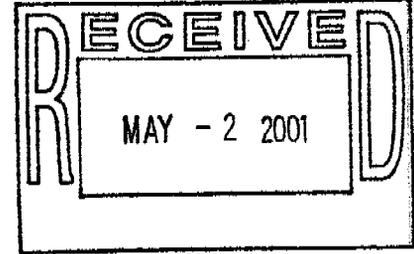


Public Utility District No.1 of Douglas County

1151 Valley Mall Parkway • East Wenatchee, Washington 98802-4497 • 509/884-7191 • FAX 509/884-0553

April 30, 2001

Mr. Bob Dach
NMFS, NWR, Hydro Program
525 NE Oregon Street, Suite 420
Portland, Oregon 97232-2737



Re: Draft Environmental Impact Statement regarding the proposed Anadromous Fish Agreements and Habitat Conservation Plans for the Wells, Rocky Reach and Rock Island Hydroelectric Projects.

Dear Mr. Dach:

Public Utility District No.1 of Douglas County, Washington (Douglas PUD) has reviewed the Draft Environmental Impact Statement regarding the proposed Anadromous Fish Agreement and Habitat Conservation Plans (HCPs) for the Wells, Rocky Reach and Rock Island Hydroelectric Projects and provides the attached comments for your consideration.

Douglas PUD appreciates the NMFS collaborative effort to accurately describe the complex set of guidelines established in the Wells Habitat Conservation Plan (HCP) Implementation Agreement. In general, the Draft Environmental Impact Statement (EIS) for the proposed Anadromous Fish Agreements and Habitat Conservation Plans, released on December 29, 2000, is a fair and adequate presentation of the negotiated Wells HCP. Due to the complex nature of this and related documents, it is no surprise that additional comments and suggested revisions are being submitted prior to the adoption of the final Environmental Impact Statement.

If you have any questions concerning Douglas PUD's comments, please feel free to contact me at (509) 884-7191.

Sincerely,

Robert W. Clubb, Ph.D.

Chief of Environmental and Regulatory Services

c. Susan Fruchter, NEPA Coordinator

**Public Utility District No.1 of Douglas County
Comments to Draft Environmental Impact Statement
April 30, 2001**

GENERAL COMMENTS

Douglas PUD appreciates the NMFS collaborative effort to accurately describe the complex set of guidelines established in the Wells Habitat Conservation Plan (HCP) Implementation Agreement. In general, the Draft Environmental Impact Statement (EIS) for the proposed Anadromous Fish Agreements and Habitat Conservation Plans, released on December 29, 2000, is a fair and adequate presentation of the negotiated Wells HCP. Due to the complex nature of this and related documents, it is no surprise that additional comments and suggested revisions are being submitted prior to the adoption of the final Environmental Impact Statement. Specific comments related to the draft EIS are included below.

SPECIFIC COMMENTS

- 1. Page S-15, S.5.3 Alternative 3 (Applicants' Proposed Action - Project HCPs), second Paragraph, last Sentence.** We request further clarification regarding the following statement, "(EIS prepared by FERC including a separate Section 7 consultation with NMFS regarding the effects of the agreements on listed species)."

This paragraph indicates that FERC needs to prepare a second EIS for implementation of the HCPs. The parties expended considerable effort prior to preparation of the Draft EIS to avoid this unnecessary duplication. There is no rationale for FERC to prepare a separate EIS to implement the HCP.

- 2. Page S-22, Para. 1, line 5 and line 11.** Please change the following two statements, "If juvenile dam passage survival ..." to "If juvenile project passage survival ..."
- 3. S-22, Para. 1, line 5.** "If juvenile dam passage survival after three years of evaluations remains..."

The Wells Implementation Agreement specifically calls for three years of survival studies within the five-year period known as Phase I. Phase I began in 1998.

4. **Page S-29, Table S-2 Alternative Comparisons (Alternative 1).** In the section labeled, "Continued Studies to Assess Survival" please clarify that continued survival studies at Wells Dam toward the goal of determining passage survival conditions at Rock Island and Rock Reach dams is not the responsibility of the Wells Project owner.
5. **Page S-35, Second Column, second to last Bullet.** "determine whether the species can be expected to survive with an adequate potential for recovery under the proposed action,..." Please define "adequate potential" in terms of interim recovery goals and standards. Would a greater than 50% probability of recovery be sufficient?

How does, "adequate potential for recovery" relate to the "not likely to jeopardize the continued existence" standard spelled out in Section 7 (a) (2) of the Endangered Species Act?

6. **Page S-38, Table S-3 Environmental Comparison of the Alternatives (Page 3 of 8).** Under *Fisheries Resources: Other Plan Species - Adult Reservoir Spawning*, Alternative 1, 2 and 3 are listed as being: "Same as discussed for threatened and endangered species above." However, under the T & E section (above) there is no discussion of Adult Reservoir Spawning.
7. **Page S-39, Table S-3 Environmental Comparison of the Alternatives (Page 4 of 8).** Under *Tributary Habitat Improvements* for Alternative 1, 2 and 3. Given that this document is intended to evaluate three possible environmental alternatives related to future operation of PUD dams, we are confused by the following statement: "Habitat improvements would occur through the implementation of non-PUD funded projects through Federal, State and local agency funding." This statement misleads the reviewer to conclude that habitat improvements will take place regardless of the selected alternative. Simply stated, under Alternative 1 and 2 the PUDs would not fund off-site habitat improvements. Under Alternative 3 the PUDs would fund tributary enhancement toward a 2% increase in survival per project for plan species covered by the HCP. Under all three alternatives the agencies may pursue habitat improvements.

8. **Page S-40, Table S-3 Environmental Comparison of the Alternatives (Page 5 of 8). Alternative 1, Water Quality, Tributary Water Quality.** We suggest removing references to agency-funded habitat work. The inclusion of agency funding of habitat projects only confuses the three environmental options being evaluated. Under Alternative 1 and 2 the PUDs would not voluntarily fund improvements in water quality in the tributaries. Under Alternative 3, the PUDs would voluntarily provide direct funding toward the improvement of tributary water quality. This clear distinction needs to be drawn between the three Alternatives.

9. **Page S-40 and S-43. Table S-3 Environmental Comparison of the Alternatives (Page 5, 6, 7 & 8).** Actions common to all three alternatives and outside the control of the decision related to the EIS should not be presented in this table. Similarly, the actions referred to under **Comment #8** should also be applied to statements contained under subsections: Vegetation (Project Area, Associated Tributaries), Wildlife (Threatened and Endangered Species), Land Use (Associated Tributaries), Economics (Tributary Habitat Improvement), Recreation (Tributary Habitat Improvements, Columbia River System) and Cultural Resources (Tributaries).

10. **Page 1-6 and 1-7. 1.5.2.1 Endangered Species Act Requirements for Non-Federal Actions. "The No Surprises Policy and Adaptive Management"** These two policies appear to be in conflict when it comes to implementation under the proposed HCP. Please describe how conflicts between the two policies will be mediated during the implementation of Alternative 3.

11. **Page 1-16. 1.6.3 Alternative 3 (Proposed Action), first Bullet on Page 1-16.** Please modify the following statement: "evaluate project specific survival rates," to "evaluate project specific juvenile survival rates."

12. **Page 1-32, 1.10 Background Summary, second Paragraph, second Sentence.** "Therefore, this EIS is being developed for the purpose...whether or not to issue incidental take permits." This statement appears to conflict with the statement made on **Page S - 15** and **Page 2-32**. The EIS purpose includes amendment of FERC licenses. For a further description of our concerns please see Comment No. 1.

- 13. Page 2-14, Wells Dam, second column of text, last Sentence of text in the first partial paragraph.** We take issue with the following statement: "Therefore, the total direct and indirect mortality is likely similar to the 2 percent found at the lower Snake River project bypass systems (NMFS 1998)." We disagree. The Wells bypass system is not similar to the Snake River screen bypass systems. The Wells system performance is superior to those found at the lower Snake River projects. Survival assigned to this passage route should be similar to the estimated survival assigned to spillway passage routes.

In contrast, the Snake River screen bypass systems utilize extensive turbine intake screens, small gatewell orifice passages, collection channel dewatering, dewatering in transport pipes, handling and delay in sampling facilities, and reintroduction back into the tailraces through low volume pipes located immediately adjacent to predator-plagued shorelines.

The Wells surface collection system does not utilize massive intake screens, orifice passageways, transportation pipes, handling facilities and low water tailrace discharges. The Wells surface collector guides fish away from the turbines and into the spillways where five high volume non-turbine passage routes are provided through the dam. Fish are introduced back into the tailrace turbine discharge where velocities are sufficiently high to prevent predator accumulation and where gull wires protect fish from avian predators.

We suggest using a combined estimate of direct and indirect mortality that ranges from 0% to 1% for the Wells surface bypass system.

- 14. Page 2-17, 2.2.3.2 Adult Passage, second full Paragraph, first Sentence.** Please modify the following statement: "Survival rates of adult salmon and steelhead passing through the Mid-Columbia River has not been estimated due to insufficient radio-telemetry data." to "Survival rates of adult salmon and steelhead passing through the Mid-Columbia River have not been estimated due to an inability to differentiate tag loss, tag failure and fish loss." It is not presently possible to estimate adult survival in a statistically defensible manner with the present radio-telemetry technology.
- 15. Page 2-23, Measures Planned, fourth Line.** Please replace "negotiations" with "agreements."

16. Page 2-23, Measures Planned. 1. Adult Passage.

c. The Wells Settlement Agreement does not contain language that obligates the District to conduct modeling in the adult fishways.

e. The Wells Settlement Agreement does not include conditions to continuously operate the juvenile surface bypass system from April through August for adult fallback and adult downstream passage.

17. Page 2-23, Measures Planned. 2. Juvenile Passage. a. The Wells Settlement Agreement does not contain requirements to operate the turbines at peak efficiency ratings.

18. Page 2-23 and 2-24, Measures Planned. 2. Juvenile Passage. b. Surface Bypass Operation - Please modify the following statement: "Operate at least one spillway bypass, 24-hours per day, throughout the juvenile downstream migration periods" to "Operate at least one spillway bypass, 24-hours per day, throughout 80% and 70% of the peak spring and peak summer juvenile downstream migration, respectively..."

19. Page 2-24, Measures Planned. 2. Juvenile Passage.

c. **Predators** and d. **Gas Abatement.** Neither of these actions are outlined in the Wells Settlement Agreement. Please remove the statements from the EIS.

20. Page 2-25, 2.3.1.2 Rocky Reach Hydroelectric Project. Analogous sections are missing under Rocky Reach and Rock Island project descriptions that are present under the Wells Project description. Please add the following Section designations to the Rocky Reach and Rock Island Project descriptions to allow a more rigorous comparison of actions proposed at different projects: Adult Fish Passage, Juvenile Fish Passage, Hatchery Based Compensation, and Monitoring and Evaluation.

21. Page 2-28, second full Paragraph, fifth Line. The QAR analysis findings that, "even the removal of the Mid-Columbia River dams would not be sufficient to recover these species, if recent total life history survival rates continue," should be expressed in the Summary on Page S-16, S.5.3.2 HCP Baseline Conditions.

22. Page 2.29, 2.3.2.1 Wells Hydroelectric Project. 3. Hatchery Program - It is important to point out that under Alternative 1, 2 and 3, Douglas PUD has

the ability to reduce hatchery production (including summer and spring chinook, steelhead, and sockeye) based upon the results of survival studies. Also, under Alternative 2 and 3, NMFS has the authority to reduce or modify hatchery production of listed and non-listed species to remain consistent with their long-term recovery strategies for listed Upper Columbia River spring-run chinook and summer-run steelhead.

23. **Page 2.35, 2.3.3.5 HCP Performance Standards, third full Paragraph, last Sentence.** "In addition, the 91 percent survival standard also includes reservoir survival and the dam passage survival of returning adults." This statement is inaccurate as presented. The HCP was set up to measure 91% juvenile project passage survival. The 91% juvenile number was derived by assuming loss of adults (2%), assuming loss through the reservoir (2%) in addition to the 5% allowed loss at the dam. Further assumptions related to the 91% determination included an assumed 2% delayed mortality from hydro passage and a 2% credit for natural river fish loss.

The agreement reached on the HCP does not include measurement of adult survival at a 95% CI +/- 5%. This is evident from the adult language in the implementation agreement, the timeline for completion of the Phase I studies (5 years) and based upon the knowledge that precise adult survival studies were not statistically or scientifically defensible at the time the Implementation Agreement was negotiated. The PUDs did not sign up to ensure adult survival from tailrace to tailrace at a rate of 98% irrespective of natural mortality.

It is important to point out that during the negotiations of the HCP, a 2% adult mortality figure was discussed. However, the final HCP Implementation Agreement was approved without referencing the measurement of the 2% adult mortality figure. The final agreement says "...and a net of 4% mortality from all other project effects (including but not limited to reservoir, juvenile delay, and adult mortality with credit for natural mortality)." Please remove all discussion that indicates the HCP has a 2% measurable adult mortality component.

24. **Page 2.41, Verification of Standards.** We agree with the statements in the first and second paragraphs of this section related to the verification of standards.

25. **Page 2-56, Table 2-8 Environmental Comparison of the Alternatives (Pages 1 of 8).** Please modify this table per similar concerns expressed in comment No. 7, 8 and 9. The DEIS is intended to compare actions related to the implementation of three environmental alternatives for fish mitigation at three FERC licensed projects (No action, S. 7 and HCP). Descriptions of actions outside those proposed by the PUDs (agency-funded habitat enhancement actions) should be removed from the document.
26. **Page 2-56, Table 2-8 Environmental Comparison of the Alternatives (Pages 1 of 8), juvenile migration/survival standards.** Please change, "project specific standards" under Alt. 1 to "Project specific fish passage standards."
27. **Page 2-59, Table 2-8 Environmental Comparison of the Alternatives (Pages 4 of 8), Drawdown, Alt. 2.** It should be mentioned that drawdown under Alternative 2 could only be considered during relicensing of the projects.
28. **Page 3-10, Figure 3-4 Geology of the Rock Island Dam Area.** There are two identical categories for Grande Ronde Basalt. What is the difference between N2 and R2 Units? In the figure, there is no discernable difference between the two geological formations.
29. **Page 3-28, Steelhead, Line 2.** Please modify the following statement: "Rock Island Dam averaged 2,600 to 3,700 fish" to "Rock Island Dam ranged from 2,600 to 3,700 fish." The same comment applies to Line 4 of this same paragraph.
30. **Page 3-28, Sockeye Salmon.** Please standardize the years being compared to 10-year intervals. As presented, the intervals appear to be contrived to show a recent decline in numbers of sockeye passing Rock Island Dam.

31. **Page 3-29, Coho Salmon, Last sentence.** This section should also note the release of millions of coho by Chelan PUD at the Turtle Rock Hatchery. This facility continued to release coho through the mid - 1980's.

Note that coho ladder counts at Rock Island totaled only 475 fish between 1933 and 1943 (Mullan, 1983; Mullan et al., 1992). That is an average of less than 48 fish per year. The statement: "After completion of Priest Rapids Dam in 1960, peak escapement estimates probably never exceeded 10,000 fish" is misleading. The statement should be modified to indicate that few coho existed prior to the completion of Grand Coulee and Rock Island dams. The statement subtly implies a cause and effect relationship between the completion of Priest Rapids Dam and the demise of the coho run. The Upper Columbia River coho run had already been wiped out prior to construction of any mainstem Columbia River dams as is evident from fishway counts immediately following the completion of Rock Island Dam.

32. **Page 3-29, Table 3-1 Spawning Distribution of Anadromous Fish Species in the Mid-Columbia River Watersheds.** Fulton (1968) appears to incompletely describe salmon and steelhead spawning in the Mid-Columbia Region. Please modify Table 3-1 to include the distribution of fish described below.

Fall Chinook - Please add the Columbia and Methow rivers to the watersheds utilized extensively by Fall Chinook.

Steelhead - Please add the Twisp and Chewuch rivers and Libby Creek as being important Methow River tributaries for spawning steelhead. It should be noted that Salmon and Omak creeks are not presently important steelhead habitats. "Simikameen" is spelled "Similkameen." Also note, steelhead do not have access to the Upper Similkameen River. Instead they only have access to the Lower Similkameen River. Enloe Falls blocks steelhead access to the Upper Similkameen River.

Sockeye - Extensive spawning ground surveys for sockeye have not resulted in documented sockeye spawning in the mainstem Okanogan River. Please remove the reference to the Mainstem Okanogan River as a tributary of the Okanogan River used by spawning sockeye. Please modify the sentence to state that the Osoyoos Lake sockeye population is almost entirely spawned in the Okanogan River, upstream of Osoyoos Lake.

33. Page 3-30, 3.2.3 Tributary and Mainstem Development, end of first Paragraph. The last statement in this paragraph is not entirely accurate. Hydroelectric facilities on the Cowlitz, Lewis and Willamette rivers do not all contain adult fish passage facilities. Some transport fish by truck upstream of the projects and others are migrational blocks to migrating adult salmon and steelhead. Please modify the statement to read: "All mainstem Columbia and Snake river dams downstream of these projects are equipped with facilities to allow ..."

34. 3.2.4 Hatchery Programs, Page 3-31, First line on page 3-31. Please modify the percent of summer-run chinook salmon that are of hatchery origin in the Mid-Columbia River. 80% hatchery composition for this stock is not accurate. The following table indicates the best estimate of hatchery contribution for the watersheds covered by this EIS (Table 1). The hatchery contribution of fall chinook is also closer to 20-30% and not 50%.

Table 1: Escapement to the Wenatchee, Methow and Okanogan rivers of hatchery origin summer chinook (Table adapted from Murdoch and Petersen, 2000).

Return Year	Wenatchee	Methow	Okanogan
1991	2.4	0.0	0.0
1992	1.5	0.0	3.5
1993	5.0	24.0	36.1
1994	12.0	45.0	48.7
1995	9.2	36.9	54.6
1996	4.9	15.8	59.3
1997	8.5	9.2	54.3
1998	10.7	22.2	29.9

Murdoch, A. and K. Petersen. 2000. Survival of sockeye, spring chinook, and summer chinook salmon released from Rock Island Fish Hatchery Complex Facilities, 1989 through 1995 broods. Prepared for Public Utility District No. 1 of Chelan County. Washington Department of Fish and Wildlife, 600 Capitol Way N., Olympia, Washington 98501-1091.

35. Page 3-31, 3.2.4.2 Hatchery Compensation for Mid-Columbia Tributary Losses. There is no plan in place to compensate for Mid-Columbia Tributary Losses. Please replace, "Tributary Losses" with "Mainstem Passage Losses."

36. Page 3-37, Rocky Reach, second Paragraph in section, last Line. There was no sockeye salmon passage study at Rocky Reach in 1993. The 1993

study was a chinook study. There was a sockeye passage study at Wells Dam in 1992. However, this study did not include any monitoring at Rocky Reach Dam. The 14% fallback estimate was derived from the 1997 sockeye monitoring effort only (English et al., 1998).

37. Page 3-38, **Rock Island Dam, second Paragraph, first Line.** There was no sockeye study at Rock Island Dam in 1993.

38. Page 3-42, **3.2.6.3 Juvenile Bypass Systems, Wells Dam, second Paragraph, last Sentence.** We disagree with the assertion that the Wells bypass system likely has indirect mortality similar to the diversion screen bypass systems located at the Snake River projects. See Comment No. 13 for the rationale for not comparing the Wells Bypass system to the Snake River bypass systems.

The Wells bypass system is a highly efficient spill bypass system. Indirect mortality resulting from passage through this system should be compared with indirect mortality estimates derived from spillway survival studies.

39. Page 3-46, **Rocky Reach, second Paragraph, last Sentence.** The yearling fall-run chinook survival studies cited in this paragraph were conducted in 1998 not 1999. Also, the results from the Eppard et al. (1999) study were not accurately cited. Eppard et al. (1999) provides two estimates of Rocky Reach survival from yearling chinook release in 1998. Table 10, Page 38 of the report states Rocky Reach project survival, depending upon the model selected, as (0.867, $SE = 0.065$) based upon the parallel SR Model and (0.859, $SE = 0.042$) based upon the PR model.

40. Page 3-65, **Icicle Creek.** The 19 miles of historical habitat is disputed by USFWS personnel stationed in Leavenworth. Radio-telemetry studies conducted in 2000 by the USFWS indicated that a natural obstruction in the river restricted fish access into the upper watershed. The obstruction is located within the first 3 miles of river upstream of the existing barrier dam.

41. Page 3-72, Summer/Fall-Run Chinook Salmon, first Paragraph, eighth Line. We suggest the following modification to the defined spawning distribution of summer chinook in the Methow River. Summer chinook have been observed spawning downstream of French Creek near the mouth of the Methow River immediately upstream of the town of Pateros. This expands the spawning distribution from 38 to 42 miles of habitat.
42. Page 3-72, Steelhead, ninth Line. Please modify the following statement, "Spawning occurs primarily in late March, but may extend into July." to "Spawning is initiated as early as late March and can extend into July." Based upon surveys conducted in 1999, peak steelhead spawning appears to be taking place in late April rather than late March.
43. Page 3-74, Top of page, first partial Paragraph, last Sentence. The abandonment of planting catchable rainbow was intended to reduce incidental harvest on steelhead smolts although it likely also protects a lesser number of chinook salmon smolts. Please add steelhead smolts to the list of species whose incidental harvest has been reduced by the cessation of planting catchable rainbow trout.
44. Page 3-74, Riparian and Stream Channel Condition, forth Paragraph, second sentence. Please modify the second sentence to state, "Ironically, the areas most susceptible to dewatering by low flow events are often the areas containing the highest..."
45. Page 3-76, Fish Resources, line seven. Observations of bull trout in the Okanogan Watershed have been limited in recent history. We suggest removing bull trout as an "important" fish resource in the Okanogan Basin. This suggested change is consistent with surveys conducted by the USFS, Okanogan National Forest and conclusions reached in *Washington State, Limiting Factors Analysis for the Okanogan River Watershed*.
46. Page 3-77, Habitat Condition, first Paragraph, last Sentence. Please change, "The Wells Dam pool inundates the lower 17 miles of the Okanogan River." to "The Wells project boundary includes the lower 17 miles of the Okanogan River."

During normal operation, the Wells Project does not inundate the entire 17 miles of the lower Okanogan River. The Wells Project boundary was drawn to encompass possible inundated lands during a worst-case scenario flood event. In effect Douglas PUD has the right to inundate the lower 17 miles of the Okanogan River only during times when the Columbia and Okanogan rivers experience a simultaneous 100-year flood event that for some reason might not be mitigated through storage at Grand Coulee and the Canadian Treaty Storage Projects.

47. **3.3.1.1 Project Area, Page 3-83, Wells Dam, Rocky Reach and Rock Island Dam.** Please standardize the months that average flows are compared between projects. We would recommend using June and September rather than using a mixture of months. Also note that average September flows referenced for Wells Dam (114,791 cfs) is much higher than the average September flows cited at Rock Island Dam (74,478 cfs). Given that Rock Island Dam is downstream of Wells Dam and that the Chelan, Entiat and Wenatchee rivers all enter the Columbia River between Wells and Rock Island Dam, these averages appear to be incorrect. Average September flows at Wells Dam should be slightly less than the average September flows at Rock Island Dam.
48. **Page 3-84, Figure 3-5, Average Monthly Flows (cfs) in the Mid-Columbia River at Wells Dam.** Average September flows at Wells Dam appear to be less than 80,000 cfs.
49. **Page 3-85 & Page 3-83, Figure 3-6, Average Monthly Flows (cfs) in the Mid-Columbia River at Rocky Reach Dam.** According to the Figure, average June flows at Rocky Reach are in excess of 150,000 cfs not 136,147 cfs as cited on page 3-83.
50. **Page 3-87, Wenatchee River, first Paragraph, line 6.** The Wenatchee River watershed drains 1,328 square miles not 1.328 square miles.
51. **Page 3-89, Entiat River, second Paragraph, line five.** The maximum and minimum average monthly flows for the Entiat River are incorrect. Both numbers presented in the report do not match with USGS information and are highly unlikely given that the reported numbers exceed those of the Wenatchee and Methow Rivers.

Please see Figure 3-9. The average monthly flows from this figure indicate that the Entiat River in June averages less than 1,800 cfs and in September averages less than 200 cfs. Please reconcile the text and Figure 3-9.

52. Page 3-87, 3-89 & 3-91. Please standardize the average monthly flows being reported for the various tributary streams.
53. Page 3-91, Okanogan River, second Paragraph, last Sentence. Please see Comment No. 46.
54. Page 3-97, Wells Dam, first and second Paragraph. The temperature excursion cited at the Columbia River at the Wells Hatchery intake is in error. The water temperatures reported here were not collected at the hatchery intake but were collected from the hatchery spawning channel after water had been held in shallow ponds immediately downstream of the intake of the facility. Also, the readings were not collected from a systematic, calibrated subsurface monitor but were instead collected with a non-calibrated, hand-held thermometer, sporadically used to collect relative water temperatures by fish culture staff stationed at the Wells Fish Hatchery.

Note that the mainstem Columbia River water quality data collected immediately downstream of Wells Dam (Chelan Falls) does not show water temperate excursions above the criteria established for state waters.

55. Page 4-1, 4.1.1.2 Associated Tributaries, first, second and third Paragraphs, (Alt. 1). This entire section should be deleted and re-written with emphasis on contrasting the three proposed environmental alternatives. Describing additional actions outside the three alternatives that may be funded regardless of the outcome of the HCP only confuses readers. This comment is similar to Comments No. 7, 8 and 9.

We suggest changing this section to describe the fact that under the No-Action alternative, no PUD tributary enhancement funds would be available. The agencies are free to spend money on habitat improvements common to all three alternatives so this entire section (4.1.1.2) provides no information related to the decision to select one of the three proposed alternatives.

This comment also applies to Page 4-3, 4.1.2.2 Associated Tributaries.

56. **Page 4-6, second full Paragraph, second Line.** It is important to point out that drawdown is not an option under the No Action Alternative (Alternative 1). It could be an option that is discussed through relicensing of the projects (Alternative 2) or by unanimous consent of the HCP signature parties under Alternative 3.
57. **Page 4-17, Wells Dam, second bullet.** Under Alternative 1, the District is not obligated in the Wells Settlement Agreement to operate the bypass system 24-hours per day during the period that encompasses 95% of the downstream migration.
58. **Off-Site Mitigation, Page 4-43, first Paragraph.** Please add that the proposed Douglas HCP has a provision that if juvenile project survival is greater than 95%, the tributary funding package would be reduced from 2% to 1%. This comment also applies to the section titled: **Tributary Habitat Improvements** found on Page 4-43.
59. **Page 4-65.** Please modify "4.9.2.1 Project Are" to "4.9.2.1 Project Area."



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May 16, 2001

Donna Darm
Acting Regional Administrator
National Marine Fisheries Service
BIN C-15700
7600 Sandpoint Way, NE, Bld. 1
Seattle, Washington 98115

**RE: Comments on the Mid-Columbia Habitat Conservation Plan
Draft Environmental Impact Statement**

Dear Ms. Darm:

The Columbia River Inter-Tribal Fish Commission (CRITFC),¹ on behalf of the Confederated Tribes and Bands of the Yakama Nation (YN), the Confederated Tribes of the Umatilla Indian Reservation (CTUIR), the Confederated Tribes of the Warm Springs Reservation of Oregon and the Nez Perce Tribe has reviewed the document entitled, "Anadromous Fish Agreements and Habitat Conservation Plans-Draft Environmental Impact Statement for the Wells, Rocky Reach and Rock Island Hydroelectric Projects" (DEIS). We have prepared the following comments. We also include by reference the comments of the Yakama Nation and the Confederated Tribes of the Umatilla Indian Reservation on the DEIS. We appreciate NMFS granting us additional time to comment on the DEIS.

Overview

The Yakama Nation and the Confederated Tribes of the Umatilla Indian Reservation aboriginally occupied lands in what is today the Mid-Columbia region in Washington State. The Columbia River and its tributaries are a part of that land. Protection of rivers and flows for anadromous fish and wildlife populations, as well as cultural resources and other matters are critically important to these tribes. The existence and operation of the Wells, Rocky Reach and Rock Island Hydroelectric Projects impacts the treaty-reserved natural resource interests of all four CRITFC member tribes. The outcome of the DEIS process could significantly affect rebuilding of fish and wildlife populations impacted by the Project. Therefore, the tribes have a unique interest and stake in this process that cannot be represented by any other entity.

¹ The CRITFC was formed in 1977 per formal resolution of the governing bodies of the four Columbia River treaty tribes: the Yakama Nation, the Confederated Tribes of the Umatilla Indian Reservation, the Confederated Tribes of the Warm Springs Reservation of Oregon and the Nez Perce Tribe. The Commission is comprised of elected and appointed tribal officials who are members of the respective tribal fish and wildlife committees. The Commission has technical and legal resources that provide assistance to the tribes in protecting and enhancing their federally reserved trust resources.



Anadromous fish stocks that originate above and within the boundaries of the Wells, Rocky Reach, and Rock Island Projects (Projects) are adversely affected by the presence and operation of the Projects. These stocks support ceremonial, subsistence and occasional commercial treaty fisheries in Lower Columbia River Zone 6 by all of the CRITFC member tribes. Thus, CRITFC has a unique interest in this process that cannot be represented by any other party.

DEIS Scoping

In general, CRITFC notes that NMFS has failed to address most of the CRITFC February 5, 1999 comments and recommendations made to the DEIS Notice of Intent to Prepare an Environmental Impact Statement (EIS) on the Habitat Conservation Plans (HCPs) for the Operation of the Projects (NOI). We incorporate by reference into the record the CRITFC February 5, 1999 comments on the NOI (Attachment 1). The purpose of scoping for a NEPA environmental impact statement is to collect a reasonable range of alternatives to be reviewed and analyzed in the statement. We note that the following critical issues included in the scoping comments are not addressed in the DEIS. This is not an exhaustive list of issues raised in the CRITFC comments on the NOI:

- The HCP hatchery plan attachment and the no-net impact standard, the foundation of the HCP Agreement, was contingent on the tribes receiving reciprocal assurances relative to treaty-secured fishing rights. The DEIS maintains NMFS position of not guaranteeing that the hatchery component will be met, thus, the no-net impact standard cannot be met.
- Other issues between the tribes and NMFS relative to reserved treaty fishing rights, such as potential prejudice against tribes posed by the "no surprises rule," also remain unresolved in the DEIS.
- The DEIS did not correct the misleading language of the NOI that states that parties to the 1998 "Commemorative Declaration" signed a declaration acknowledging "*their commitment to complete the regulatory actions necessary to issuing a permit*" (emphasis added). The Declaration did not commit the parties to this language.
- The geographic scope should not be limited to the three project area, but should be a reach-based approach consistent with the original intent of the HCP, including the federal projects, Grand Coulee and Chief Joseph, the Priest Rapids Project and the Hanford Reach. In particular, the existence and operation of federal projects above the three Mid-Columbia Projects significantly influences flow management and water quality, which in turn impacts anadromous fish survival through the Projects. This remains a major deficiency of the DEIS.
- The DEIS fails to address anadromous fish survival and recovery from a life history and ecological perspective (Williams et al. 1996; Lichatowich

and Mobrand 1995). Anadromous fish productivity cannot be addressed merely by measuring direct survival of a small sample of salmon from one point above the Projects to a point below the Projects.

- A cumulative impacts analysis is lacking in the DEIS.
- The DEIS should not have used the existing degraded state of salmon stocks and critical habitat as the environmental baseline, but should have used the natural river baseline as the measuring stick for considering harm and benefits. The DEIS should have taken into consideration the fact that the development of hydroprojects in the Mid-Columbia Reach set in motion a decline in fish populations that continues through much of the Columbia River Basin. NMFS themselves argued for use of a natural river baseline in American Rivers et al. v. Federal Energy Regulatory Commission 201 F.3d 1186 (9th Cir. 2000), but has not used this standard in the DEIS.
- The DEIS failed to include Pacific Lamprey and sturgeon in the "Plan Species". Current and permanent development of a screened bypass system, under "conditional HCP implementation"² at Rocky Reach does not consider lamprey passage, and lamprey have shown a propensity to become impaled upon screen systems at other basin dams (ISAB 98-4 1998).
- The DEIS failed to review and acknowledge water quality standards under the Clean Water Act. A recent court opinion states that dams are not above the law with respect to meeting water quality standards (see National Wildlife Federation v. Corps of Engineers, 132 F.Supp.2d 876 (D. Or. 2001)).
- The DEIS lacks an adequate quantitative analysis as to how much take of the listed species will occur under the proposed alternatives. Further, the DEIS fails to quantify the effects that each proposed alternative would have on the goal of reaching sustainable anadromous fish populations that provide harvestable surpluses for treaty and non-treaty fisheries. The DEIS lacks survival, recovery and delisting goals specific to the listed and non-listed anadromous fish populations considered under the alternatives.

² NMFS has allowed Douglas and Chelan PUD to proceed with Phase I of the HCP under a "conditional HCP implementation policy," over strong tribal objections. Given that environmental review is not completed, an HCP Agreement remains unsigned, and a Section 10 Permit has been issued the legality of this action is highly questionable. However, Chelan is proceeding to finalize installation of a major bypass system that will likely exacerbate the decline of Pacific lamprey and sensitive salmon stocks which are Plan Species but not ESA- listed species.

- The DEIS fails to describe how the various alternatives relate to other applicable treaties and laws, including tribal treaties, the Clean Water Act and the *U.S.- Canada Pacific Salmon Treaty*.
- The DEIS failed to determine whether the 7% hatchery component can actually be achieved with or without Grant PUD's involvement in the HCP. Further, it remains unresolved in the DEIS how "no net impact" (NNI) would be accomplished if NMFS deems the 7% hatchery component unfeasible because of particular genetic or policy concerns with respect to supplementation. This is a key failing of the DEIS.

General Comments

There are many incorrect statements and factually erroneous declarations in the DEIS. While the following comments will serve to highlight some of the inaccuracies, we will not address them all. As stated above, most of the scoping issues identified by CRITFC were never addressed in the DEIS. For these reasons, the DEIS is a fatally flawed document and should be completely rescoped and reanalyzed.

The document abstract states that the HCPs satisfy the PUDs' regulatory obligations under the Federal Power Act. This is not factually correct. Future relicensings, measures to protect species not addressed by the HCPs and treaty obligations under tribal treaties and the *U.S.-Canada Pacific Salmon Treaty* are all obligations that must be satisfied whether or not an HCP is consummated. Further, the HCPs will not satisfy standards under the Clean Water Act.

In the summary section it states that, "the parties have been engaged in cooperative HCP planning for over 6 years." This is not correct. Tribal parties have been in dispute with NMFS and the PUDs for much of that time, and are not in agreement with the proposed HCP documents at this time. Details of these disputes are provided below.

On page S-3 it is stated that, "the effects of Rocky Reach, Wells and Rock Island on anadromous fish *may* continue downstream through the Hanford Reach to McNary Dam." [emphasis added]. The Joint Fisheries Parties agree that the effects will continue downstream, whether they are from dissolved gas generated from the HCP projects, or injuries suffered when passing through these projects.

On page S-18 it is stated that the NNI standard of 95% survival per dam was developed in coordination with tribal biologists. However, not all tribal biologists agreed with the standard. The DEIS states that the NNI standard of 95% survival is consistent with the 1995 FCRPS Biological Opinion. While this is factually correct, it leaves out the other major criteria for passage systems required by the 1995 FCRPS, such as an 80% Fish Passage Efficiency (FPE) standard.³ Because tribal biologists desired that the NNI

³ Fish Passage Efficiency (FPE), as defined by the 1995 FCRPS Biological Opinion at VIII. 15, refers to the percentage of the juvenile migration that passes over a dam through non-turbine routes. The tribes have

standard would be consistent with the three basin restoration plans,⁴ tribal biologists strongly recommended that the NNI standard have dual and complementing components, 95% survival and 80% FPE. This recommendation was rejected by NMFS and the PUDs.

Since the signing of the Commemorative Declaration of the HCP on June 27, 1998, the NMFS, Chelan PUD, Douglas PUD, WDFW and USFWS have been under a false assumption that the HCP was established, and that it should be under "conditional implementation" until the environmental review is completed and the Section 10 Incidental Take Statement finalized. The PUDs have embarked upon survival studies to determine HCP NNI standards without agreement from the Joint Fisheries Parties as to methodologies, principles and results. Chelan PUD recently unilaterally declared that they have reached the NNI standard of 95 % at both Rock Island and Rocky Reach dams, and that reduced spill at Rock Island and complete reliance on the Rocky Reach prototype bypass system are appropriate to protect listed and unlisted anadromous fish as they pass these dams (Attachment 2). Several of the Joint Fisheries Parties strongly object to Chelan's unilateral decisions under "conditional implementation" of the HCP as a proxy to reduce critical fish protection measures (Attachments 3,4,5,6,7).

These actions indicate extreme bad faith on the part of Chelan PUD in resolving key issues that remain unaddressed in the DEIS. The acceptance of "conditional implementation" by the non-tribal parties involved in the HCP negotiations has, in effect, stymied important progress in resolving key relicensing issues for the Rocky Reach Project (Attachment 7). The DEIS has not addressed these issues, which are critical to the future of the fisheries resource, because of the very depressed status of listed and unlisted Mid-Columbia anadromous fish stocks (TAC 1997; Cooney et al. 2000). The final EIS should address these issues.

Environmental Baseline

The DEIS defines the environmental baseline as the status of the anadromous fish stocks and their critical habitat in the 1970's when they were already depressed and degraded. This is inconsistent with the NMFS' 1995-8 FCRPS Biological Opinion (at page 12) that defines the baseline as the effects of the proposed action that would be added to the past and present impacts of all Federal, State, and private activities in the

defined FPE as the percentage of the juvenile migration that passes over a dam through spill or surface bypass, and they, as NMFS, have adopted the dual criteria in their Columbia Basin salmon recovery plan, *Wy-Kan-Ush-Mi Wa-Kish-Wit* (Nez Perce et al. 1995). Adoption of the FPE standard is critical because it provides a measurable standard that covers the entire migration, rather than just a snapshot of survival provided by survival studies. An FPE standard also incorporates the available scientific literature that reviews comparative survival studies through different passage routes. This includes scientific information about delayed mortality and smolt-to-adult returns. These attributes cannot be assessed by limiting passage criteria to a simple measurement of survival for a distinct group of salmon through a dam over an extremely limited range of environmental conditions. Thus, the NNI standard lacks consistency and lacks a true assessment of the impacts of the Projects on the anadromous fish resource.

⁴ The three plans are the 1995-1998 FCRPS Biological Opinion, the CRITFC tribes' 1995 restoration plan *Wy-Kan-Ush-Mi Wa-Kish-Wit*, and the Northwest Power Planning Council's 1994 *Strategy for Salmon*.

action area. The action area is defined as, "all areas to be affected directly or indirectly by the federal action and not merely the immediate area involved in the action."

Critical Habitat

The DEIS fails to address listed species critical habitat. This is inconsistent with the 1995 FCRPS Biological Opinion (IV p. 82) which defines critical habitat as that which is critical to the survival and recovery of the species and determines whether or not the proposed operation adversely modifies or destroys the listed salmon's critical habitat.

Specific Comments

S.5 No Action Alternative

The No Action alternative, with extant baseline conditions and no action, is not an authentic alternative. Because upper Columbia spring chinook and steelhead are ESA listed, ESA Section 7 consultation and Section 10 Incidental Take permits must be conducted. In the case of the Wells Project, these have been consummated. NMFS, however, has failed to finalize these consultations for the Rocky Reach or Rock Island projects. Thus, this alternative is premature until these consultations are finalized and appropriate permits and biological opinions have been issued. It should be deleted from the final EIS unless these opinions and permits are finalized.

The DEIS fails to mention that the Rocky Reach prototype juvenile bypass system has been under dispute from tribal parties since it was first conceived. The Fourth Interim Stipulation for the Rocky Reach Project required Chelan PUD to seek consensus in developing the system. However, conditional implementation of the HCP has allowed Chelan to proceed with development of the system while it is still under dispute (Attachment 7). Thus, Alternative 3 (the HCP) has significantly impacted the other two alternatives. The final EIS must clarify these issues when defining the alternatives.

Currently Chelan PUD is refusing to honor the Fourth Interim Stipulation for Rocky Reach, which requires spill to 15% daily average flow. This situation also impacts the definition of Alternative 1, in that Alternative 1 as described is not reality. Further, the DEIS is incorrect when it states that the "main goal" of the Fourth Interim Stipulation was to build a bypass system. From the Joint Fisheries Parties' perspective, the main goal of the stipulation was to obtain immediate fish protection through spill, and advance mitigation and compensation for losses through the Rocky Reach Project.

With respect to Rock Island, the Alternative 1 in the DEIS does not accurately describe the baseline condition. A spill agreement between NMFS and Chelan, under the "conditional implementation" of the HCP, removed the spill authority from the other Joint Fishery Parties and the spill conservation account management specified under the Rock Island Settlement Agreement (Attachments 7 and 8).

S 5.2 Alternative 2 (Section 7 Consultation)

The DEIS fails to mention that the QAR report indicated a substantial risk of extinction for Mid-Columbia River spring-run salmon and steelhead if recent survival rates continue without supplementation. The final EIS must correct this oversight. Further, if the Mid-Columbia dams were removed, then recent total life-history survival rates would not continue, because survival, fish critical habitat and productivity would dramatically increase through the Mid-Columbia reach.

No rationale is offered why a screened bypass system would be included at each dam for Alternative 2. If spill is sufficient enough to meet downstream passage objectives, then it would stand alone.

If studies show that drawdown and decommissioning (dam removal) are necessary to meet recovery standards that provide harvestable surpluses, then these options would proceed under a relicensing process. No rationale is given as to why the decision would be postponed, given the high probability that upper Columbia listed species, closest to extinction in the basin, may expire in the near future without such measures.

The DEIS is inconsistent with the 1995-1998 FCRPS Biological Opinion and completely speculative as to the benefits that could be derived from minimum operating pools at the Mid-Columbia Projects. Drawdowns to minimum operating pool have been a fundamental reasonable and prudent measure under the 1995 FCRPS Biological Opinion, and haven't been studied at the Mid-Columbia projects.

A major strength of Alternative 2 is that there are many avenues to create and prescribe measures that are necessary for recovery of listed salmon by fishery experts who have the legal and management authorities to protect the resource, and the statutory authorities of the federal agencies are fully maintained. For example, actions through relicensings, actions through the Mid-Columbia Proceedings, actions under the ESA and actions under the Clean Water Act are all possible remedies to promote and achieve meaningful recovery measures. The final EIS should fully describe these attributes associated with Alternative 2, but not available under Alternative 3.

S. 5.3.1 Alternative 3 (Project HCPs)

The HCPs fail to include Pacific Lamprey, sturgeon, and ESA listed bull trout. Whether or not these would be afforded protection would be up to other processes, including the Federal Power Act and the Northwest Power Act. This is a key deficiency of the HCP.

Full mitigation has not been provided for anadromous fish losses at the HCP projects. From a tribal perspective this includes both listed and unlisted species. Currently, Rocky Reach and Rock Island are illegally taking listed salmon without a Section 7 Biological Opinion under the "conditional implementation" of the HCP as

allowed by NMFS. This demonstrates that under a consummated HCP, listed species would continue to be taken and driven to extinction.

Existing hatcheries have not provided adequate compensation for the initial construction of dam and reservoirs and the continual passage losses through the dams. NMFS' supplementation policies that restrict hatchery compensation add additional blockages to full mitigation and compensation.

The environmental baseline should consist of pre-project river conditions and population levels of anadromous salmon, or just prior to 1933 when Rock Island was constructed. No rationale is given in the DEIS to explain why the baseline conditions are moved from 1933 to 1977.

The terms of the HCP are arbitrary and not biologically based. Each PUD is given from 15-20 years to achieve NNI. Given the current status of the upper Columbia stocks presented in the QAR (Cooney et al. 2000), it is very likely that these stocks will be extinct by the time that the PUDs achieve NNI. Under the HCP alternative, if a stock is headed toward extinction, neither NMFS nor the other fishery parties have leverage to force operational or structural changes to improve passage at PUD projects.

NMFS and the USFWS would not withdraw from the HCP if the PUDs met all conditions except the performance standards, which are the heart of the HCP. Thus, the federal agencies with jurisdiction over the ESA would not have the leverage of the ESA to prevent extinctions. Further, NMFS and USFWS are restricted from recommending drawdowns and/or project removal without the consent of the PUDs- effectively removing a key restoration action that may be required to prevent extinctions.

S.5.3.4 HCP Mitigation Objectives

The HCP alternative includes measures from a biological standpoint, but not a physical and chemical standpoint. Biological measures and criteria stem from physical and chemical measures. For example, if temperature, a physical parameter, is too warm, then salmonids develop biological responses such as stress, disease and mortality. This is a significant omission in the HCP alternative.

As previously mentioned, the effects of the projects on anadromous fish go well beyond 1,000 feet below an individual project. This was an issue raised by tribal biologists but disregarded by NMFS and the PUDs. Water quality parameters such as dissolved gas, can directly and cumulatively impact stocks below a project. These impacts include stress or injury of fish as they pass the project that result in direct and delayed mortality by predators or disease well after the fish have passed an individual project. This is another concern with Alternative 3.

S.5.3.5 HCP Performance Standards

The original intent of the NNI standard was to make the dams, "transparent." However, the standards were developed without any quantitative analysis. Further, the standards remain speculative because the PUDs have not obligated themselves to fund measures that will contribute to meeting the standards (ie; spill at dams, habitat improvements and full supplementation production) and the measures themselves remain very speculative. For example, NMFS will not guarantee the 7% hatchery component, because of policy concerns related to genetic management, thus, it is impossible for the NNI standard to be achieved. It is disingenuous and factually wrong for NMFS to characterize Alternative 3 in the DEIS as consistent with the proposed HCPs that guarantee the 7% hatchery component.

The habitat component of 2% is purely speculative. It remains unknown whether or not this is obtainable. Specific measures that should be implemented to attempt to achieve this piece of the NNI standard remain unresolved.

The 95% and 91% dam and project survival standards, as noted by tribal biologists during the HCP discussions, are not sufficient to foster recovery of severely depressed salmon stocks, particularly to havestable levels. These standards must be viewed from a cumulative, exponential perspective, rather than a linear perspective. From an exponential perspective, the 95% dam survival standard results in (.95) raised to the third power or 85.7% survival through three dams. Likewise, a 91% project survival standard results in only a 75.4 % survival through three hydroprojects. These losses are much too great to sustain, much less recover upper Columbia stocks. Due to the extreme depressed status of the runs and the desire of tribes for recovery of treaty resources, some tribal biologists sought a 98 % survival standard during the HCP discussions.⁵ If achieved, this standard would have resulted in a 94.1 % survival rate through three projects or dams.

A major omission of Alternative 3 in the DEIS is the failure to include passage and survival standards for adult anadromous fish. This was a contentious issue in HCP negotiations for some tribal biologists. While some adult losses were calculated into the compensation numbers, the lack of measurable adult passage standards allows the PUDs to avoid operational or structural measures necessary to improve adult passage and survival through the projects. Given that one successfully spawning adult can contribute 3,000-5,000 eggs to the next generation, CRITFC has recommended adult passage standards requiring mainstem dam operators to decrease pre-spawning mortality due to dam passage and passage time through their projects by at least 50% (CRITFC 2000). The 2000 FCRPS Biological Opinion at least requires reduction of adult fallback as a means to increase adult passage survival. The HCP alternative fails to provide any standards. Further, power peaking, an action that has been shown to reduce adult passage success (Bjornn and Peery 1992) is not addressed in the DEIS.

⁵ During the relicensing process for the Lower Elwha and Glines Canyon dams, tribal, state and federal biologists determined that a 98% juvenile survival standard was necessary to restore five races of anadromous salmon and steelhead to the Elwha River.

S.5.3.6 HCP Phases

Because the HCP is already under “conditional implementation,” steady progress toward achieving the survival standards should be required. However, the exact meaning of “steady progress” was never defined or quantified by the parties. It is clear that Chelan PUD is failing to make steady progress at both Rock Island and Rocky Reach since juvenile fish guidance decreased in 2000 from 1999 levels (Murphy et al. 2000); in 2001 Chelan ended Rocky Reach spill which in 2000 was 15% of daily average flow and Chelan has reduced 2001 spill from 2000 spill levels at Rock Island (Attachment 8). This raises the question as to the meaning of “steady progress.”

While in theory it might be appropriate for the PUDs to move on to Phase III if performance standards were met for some species, in reality there may be other species that migrate at the same time that are not achieving the standards. These species may be subjected to passage “tools” that benefit other species but select against the species that have not met the standard. Thus, they are not protected.

The Mid-Columbia Coordinating Committee has yet to resolve issues related to the performance standards. There remains serious disagreements about the tools and methodologies to measure the standards, appropriate ranges of flow years to consider, life cycle analyses, delayed mortality and other issues. Under the existing Mid-Columbia settlement agreements and the Mid-Columbia proceedings, the coordinating committees operate under a consensus basis. This would be altered under Alternative 3. Under Alternative 3, the HCP coordinating committee would no longer be ruled by consensus. Instead, the PUDs would have the final decision on what passage tools to use, even in Phase III after NNI and/or the performance standards are not met. This represents a significant loss of authority for the tribes and other members of the Joint Fisheries Parties and is unacceptable.

Wells Dam

Section E. 2 of the existing 1990 Wells Settlement Agreement requires Douglas PUD to provide juvenile salmon with an 80% and 70% fish passage efficiency protection over the entire migration (100% of the migration). The Alternative 3 performance standard reduces juvenile protection to the middle 95% of the spring and summer migrations. The lack of protection on the beginning and end of the migration selects against important genetic and life history characteristics of the population and works against overall stock recovery.

Rocky Reach Dam

As previously stated, limiting performance standards to point estimates of survival for one group of fish for one environmental condition fails to consider the impacts of hydroproject passage for an entire stock over a number of varied environmental conditions. Further, survival study methodologies employed by the PUD

are in dispute with some of the JFP. In particular, critical assumptions that are necessary to make survival estimates robust continue to be violated.⁶

As Chelan PUD refuses to spill at Rocky Reach for the 2001 migration under the conditional implementation of the HCP, there is no assurance that spill would continue to be provided under Alternative 3 (Attachment 8).

Rock Island Dam

As Chelan PUD has significantly reduced spill at Rocky Reach for the 2001 migration under the "conditional implementation" of the HCP despite entreaties from NMFS (Attachment 6), there is no assurance that spill would be provided under Alternative 3.

Tributary Conservation Plan

In the original HCP discussions, about \$100 million was deemed necessary by the JFP to achieve a 2% habitat improvement component to NNI. The DEIS states that the PUDs would contribute less than \$ 4 million to the habitat fund. This is less than 4% of the original estimate and would fail to achieve the 2% component of the NNI goal.

Hatchery Compensation Plan

Alternative 3 would not afford coho the same standards for compensation as the other plan species. It is unclear why this is the case. In Alternative 2, coho would be afforded mitigation and compensation.

S.5.3.9 Provisions for Impacts on other Species

It is very likely that the turbine intake screen system at Rocky Reach Dam, installed under "conditional implementation" of the Alternative 3, will likely impinge juvenile lamprey as been seen at Corps' mainstem dam screen systems (NWPPC 1999). Based upon information at Corps dams, the Rocky Reach bypass system will likely injure bull trout, an ESA listed species, because the system passage will cause physical injury similar to that experienced by adult salmon and steelhead. Wagner and Hilson (1991) found 41% of the adult steelhead that fell back through the McNary Dam screen system had visible bruises.

⁶ Current survival studies implemented by the PUDs employ mark and recapture techniques that compare downstream passage detection of a group of fish above one dam to those released below the dam. If the fish from both groups fail to experience identical passage conditions downstream, then a key critical assumption necessary to validate the survival estimate is not met. The model assumes that similar arrival times of marked groups to downstream detection sites satisfies the assumption of identical passage conditions. However, Chi-Square Goodness-of-Fit analyses indicate that the groups do not necessarily arrive at the same time, thus, making suspect survival estimates.

S.3.5.14 Clarification of Issues

While Douglas PUD has conducted survival studies, whether or not the 91% project survival parameter has been met is still under dispute. Douglas has yet to conduct a study that evaluates yearling juvenile survival through the entire Wells Pool, nor have they conducted survival studies for subyearling salmon or sockeye.

Verification of Standards

No specific biological or statistical standards have been agreed to by the JFP. Representative tools are not available to measure performance standards for all of the planned species. The DEIS appears to indicate that dam passage survival would be the only measurement available to measure the performance standard. Yet the HCP requires survival measurements of the entire project. The DEIS appears to modify the intent of the draft HCP agreements, similar to the modification of the 7% hatchery component.

S.7.2.2 Alternative 2

The DEIS fails to mention that Alternative 2 would require NMFS to consult with affected tribes under the Secretarial Order. The DEIS also fails to mention that under Alternative 2, NMFS and the Department of Interior maintain their authorities under the Federal Power Act to condition the dams for fish passage and even condition the dams for project removal.

S.7.2.3 Alternative 3

Under Alternative 3, the burden of proof is on the party bringing an issue to dispute resolution. Because Alternative 3 establishes the JFP with the burden of proof, the JFP have the burden of demonstrating that their position (to protect and restore the resource) is accepted by a third party. This is a key drawback of Alternative 3 for the JFP. In Alternative 2 the burden of proof is equally placed between the PUDs and the JFP.

The "no surprises policy" guarantees that the PUDs will not have to take additional measures to assure recovery of the resource in the 50 year HCP period. The tribes have no such assurance for the health and abundance of the resource or that their harvest rate will be protected.

These aspects of Alternative 3 are unacceptable to CRITFC.

S.7.4.3 Alternative 3

As noted above, Alternative 3 as defined in this DEIS fails to guarantee 100% NNI. Neither the hatchery component nor the habitat component is assured.

Adaptive Management

Adaptive management, as defined by Hilborn (1987) means that experimental, probing actions are implemented, monitored and evaluated. Based upon the results, more actions are taken. In the true sense of adaptive management, all passage solutions would be used as probing experiments, including drawdowns. Under the HCP, drawdowns are not jointly considered. Thus, Alternative 2, which allows a range of probing actions, is more likely to achieve an adaptive management context than Alternative 3.

S.7.6.2 Alternative 2

Under Alternative 2, provisions of the Clean Water Act, the Federal Power Act, the Northwest Power Planning Act, tribal treaties and other laws and statutes are available to protect and restore Mid-Columbia anadromous fish through increased operational and structural measures and supplementation.

S.7.5.3 Alternative 3

Under the HCP, as noted above, Alternative 3 as defined in the DEIS fails to guarantee 100% NNI. Neither the hatchery component nor the habitat component are assured.

S.7.6 Other Environmental Measures (Table S-3)

The DEIS is incorrect or fails to express the following in the environmental comparisons and in general lacks analysis of alternatives from an ecosystem approach as noted by Williams et al. (1996) and Lichatowich and Moberg (1995):

Project area soils- only Alternative 2 provides drawdown or project removal options. Riparian areas would be restored increasing mainstem spawning, incubation and rearing habitats through restoration of lotic properties instead of reservoir/lentic properties (Williams et al. 1996).

Reservoir erosion and sedimentation- only Alternative 2 provides drawdown or project removal options. These would reestablish natural river sediment transport regimes in the project area contributing to increased anadromous fish production (Vannote et al. 1980). For example, increases in turbidity would provide cover for juvenile salmon from predators and increase production as noted by Junge and Oakley (1966) and NMFS (2000).

Tributary Channel and watershed conditions- only Alternative 2 provides drawdown or project removal options. This would restore vital habitat linkages between tributary and mainstem areas. In particular, summer chinook habitat at the confluence between the tributaries and the mainstem would be restored (Williams et al. 1996).

Juvenile Migration/Survival standards- only Alternative 2 has the stated goal to require standards necessary to recover listed species, while leaving flexibility to establish standards through other laws and statutes necessary to recover unlisted species.

Adult Migration/Survival standards- only Alternative 2 has the stated goal to require standards necessary to recover listed species, while leaving flexibility to establish standards through other laws and statutes necessary to recover unlisted species. Alternative 3 has no adult standards.

Drawdown- as stated above, drawdown will increase fish spawning and rearing habitat and adult and juvenile survival, for a cumulative net production benefit. Winter (1990) gives several examples of anadromous fish restoration through dam removal. These issues are not mentioned, yet they are significant.

Bull trout- Alternative 2 allows the USFWS to engage in Section 7 ESA consultations and through the Federal Power Act, condition the projects to protect and restore bull trout. Alternative 3 does not allow this conditioning since bull trout are not an HCP species.

QAR results- the DEIS fails to consider that drawdowns or project removals would increase survival and significantly increase productivity through habitat restoration. The QAR did not consider the benefits to habitat restoration. As stated in the table, the effects of supplementation have not been analyzed in the QAR. This is a key deficiency in the DEIS that should be addressed. The statement that "*habitat productivity*" would increase survival under Alternative 3 from 6-10% is completely speculative and not supported by any DEIS analysis.

Fisheries resources- this section is not consistent with other parts of the DEIS. For example, under Alternative 3, coho are not afforded immediate supplementation, but the table indicates that they are afforded supplementation. Under Alternative 3, the retention of reservoirs will continue to provide excellent habitat for fish predators on salmon as compared to restoring lotic conditions possible under Alternative 2.

Monitoring- under Alternative 2, NMFS and the JFP could condition the licenses and appeal to the Clean Water Act provisions to provide both fish and water quality monitoring. Under Alternative 3, the JFP have no authority to obtain fish and water quality monitoring at the projects.

Total Dissolved Gas (TDG)- under Alternative 2 the JFP could condition the licenses and appeal to the Clean Water Act provisions to provide for reductions in total dissolved gas by either drawdowns or project removals that would limit deep plunging and entrainment of nitrogen. These provisions could also force the PUDs to install structural modifications to the dams to reduce TDG. Under Alternative 3, the JFP have no authority to regulate the PUDs to reduce total dissolved gas. Downstream reductions of total dissolved gas would be possible under Alternative 2, which would increase fish survival at lower river dams through increased spill at these dams and decreased risk of

gas bubble trauma from reduced exposure to elevated gas. This is a cumulative benefit that the DEIS failed to fully analyze.

Temperatures- The DEIS failed to address this critical parameter. Data from Jaske and Gobel (1957) and more recent data (Corps 2001) indicates that the projects contribute to violations of temperature standards. Under Alternative 2, the JFP could condition the licenses and appeal to the Clean Water Act provisions to provide both fish and water quality monitoring. Under Alternative 3, the JFP have no authority to obtain fish and water quality monitoring at the projects.

Wildlife- the DEIS fails to mention that under Alternative 2, draw downs and project removal would restore anadromous fish and riparian wildlife habitat. These would also contribute to the restoration and enhancement of wildlife populations. Alternative 3 would not restore riparian wildlife habitat, thus, depression of wildlife populations would persist.

Economics – Alternative 2 would allow for restoration of natural resources through draw downs, project removal, or appropriate passage conditions. These would promote natural river recreational opportunities that are at least equal or greater than that provided by retaining the projects and reservoirs. Increased sport, tribal and commercial fishing activities would be available from restoration of natural resources, yet the DEIS does not address these. As note below, tribal health, welfare and socio-economics could be vastly impacted by the alternatives, yet the DEIS fails to address these issues.

Cultural resources- the DEIS fails to address the anadromous fish resource as a critical cultural resource. The projects occupy ceded lands of the Yakama Nation. Maintaining the status quo or limiting restoration under Alternatives 1 and 3 will continue to impact tribal cultural resources.

1.5.2.6 Federal Trust Responsibilities to Indian Tribes

The DEIS fails to distinguish the differences between trust responsibilities and treaty protection. The courts in United States v. Oregon have stated that all non-tribal conservation measures must be exhausted before the treaty tribes right to harvest is diminished. Alternative 3 with a “no surprises” policy allows the PUDs to limit their efforts to harvest salmon through their hydroprojects, effectively shifting the conservation burden back to the tribes. This is not consistent with the law and equitable sharing of the conservation burden.

The DEIS should state that the tribes will not endorse the HCPs if NMFS will not guarantee the 7% hatchery compensation necessary to achieve NNI.

1.6.3 Alternative 3

The footnote on page 1-16 contains contradictory statements. The proposed draft HCP agreements commit to the 7% hatchery component for NNI, yet in the DEIS, NMFS

cannot commit to the 7% hatchery component. Yet, the footnote says that NMFS is committed to the proposed draft HCPs. NMFS can't have it both ways.

Since the "conditional implementation" of the HCPs has been implemented, juvenile salmon protection has already been unilaterally diminished by Chelan PUD at Rocky Reach and Rock Island dams. In April, 2001, Chelan reduced Rock Island spring spill from 31 kcfs to 20% of daily average flows and completely ended Rocky Reach spill. This indicates clearly that Alternative 3 would not meet the requirements of the treaties, ESA, the Federal Power Act and the Northwest Power Act.

p. 1-25 The CRITFC tribes restoration plan, *Wy-Kan-Ush-Mi Wa-Kish-Wit* has specific recommendations for the hydroprojects and watershed area under consideration yet it is not mentioned in the DEIS.

p. 2-10-2-15

The DEIS fails to mention that recent estimates for turbine mortality in the DEIS occurred during high flow years with good water conditions. Estimates have yet to be established for poor water years, yet need to be. Further, the DEIS uses Snake River turbine estimates for Wells, Rocky Reach and Rock Island, when there are specific turbine mortality data for these projects. For example, steelhead mortality through turbines at Wells Dam is cited as 16% while Rock Island turbine mortality was cited as 5.7% or 13% (Whitney et al. 1997). The DEIS should have cited specific data that is available for specific projects.

Adult median passage times through fishways is a nebulous statistic. What is more important is the range of outliers in the data set. For example, according to adult passage studies, it can take days and even weeks for some salmon to pass these dams. Such delays compromise adult spawning success and distribution into more favorable spawning areas and waste precious energy reserves.

As stated previously, there are problems with the robustness of the estimates of survival using the mark and recapture pit-tag survival studies. At best, they are a snapshot of the survival of a particular group of marked fish and do not adequately represent survival of even one years' migration. Alternative 3 limits accounting of juvenile salmon protection to these snapshots while failing to incorporate passage standards for the migrations as a whole.

Juvenile mortality through screen bypass systems is much higher than indicated in the DEIS. For example, subyearling chinook direct and indirect mortality at the Bonneville Dam second powerhouse screen bypass system was documented at 20% (Gilbreath et al. 1993). Matthews 1987 (in Chapman and Witty 1994) notes that yearling chinook suffered an average of 5.8% mortality from the Lower Granite bypass system. In 1977, at low flow year, juvenile mortality in bypass systems was as high as 30% (Park et al. 1978). IDFG (1998) and Deriso et al. (1996) reported that adult returns trended negatively from juvenile pit-tagged salmon that went through multiple bypass systems.

Screen systems also negatively impact sockeye causing large rates of descaling and impinge juvenile Pacific Lamprey. The DEIS should be modified to include all relevant studies on the impact of these systems on salmon.

The DEIS speculates that the Rocky Reach bypass system can achieve a 98% survival rate, without any supporting data. Guidance for migrants in 2000 significantly decreased in 2000, which the DEIS fails to mention. Based upon pit-tag detection guidance for sockeye and subyearling chinook was only 7% and 27% respectively (Murphy et al. 2001). These extremely low guidance rates indicate that spill should be increased. Instead, Chelan PUD, under NMFS' definition of conditional implementation of the HCP, has completely shut off spill (Attachment 8).

Under controlled spill conditions, total dissolved gas has not been shown to impact salmon survival (Backman et al. in press; Backman et al 2000). The DEIS fails to examine the wealth of literature available that indicates the extreme risk to salmon populations from not spilling and sending salmon through bypass systems or turbines.

p. 2-16-2-17

The DEIS states that adult survival estimates have not been established for the Mid-Columbia. This is incorrect. NMFS and the Idaho Cooperative Fishery Unit presented adult survival data for Mid-Columbia spring chinook and sockeye (Bjornn and Keefer 1999). Survival from Rock Island to Wells Dam for spring chinook is about 91% and for sockeye is about 97%.

p. 2-18

The DEIS fails to include NMFS' conclusion in the 1998 Supplemental FCRPS Biological Opinion that there is a strong relationship between flow and reduced travel time for juvenile steelhead. This led NMFS to adopt a target flow in the Mid-Columbia of 135 kcfs for spring migrants. Other supporting literature that indicates reduced travel time for juvenile migrants is related to flow includes Cada et al. (1994) and Williams et al. (1996). Reduction of smolt travel time is positively related to increased smolt-to-adult returns as noted by Petrosky and Schaller (1998) and Schaller et al. (1999) and DeHart (1999). Alternative 3 does not include drawdowns that would decrease smolt travel time to the estuary. The DEIS should be modified to include a holistic assessment of the benefits of increased flows and reduced travel time to salmon production.

2.2.4.1 Water Quality

Due to forced spill, the projects can cause total dissolved gas levels to exceed Clean Water Act Standards. Under "conditional implementation" of the HCP, the PUDs are doing little to establish structural remedies to bring the dams into compliance with the standards. The DEIS should be modified to reflect these issues.

The loss of turbidity from the existence of the projects has also diminished salmon productivity as noted by NMFS (1999), CRITFC (1999) and Junge and Oakley (1966). The alternatives should be analyzed from this perspective.

2.2.4.2 Water Temperature

The creation of the Wells, Rocky Reach and Rock Island Dams has altered thermal regimes in the Mid-Columbia River as noted by Jaske and Gobel (1967) and has at times created thermal blocks for salmon migrations (Major and Mighell 1966). Water temperatures at these dams and passage facilities often exceed water quality standards (DART 1997-2000) for a considerable portion of the summer. Under "conditional implementation" of the HCP, the PUDs are doing little to establish structural remedies to bring the dams into compliance with the standards. Cooler water at depth could be used to regulate thermal regimes in fishways. The DEIS should be modified to reflect this issue.

2.3.3.11 Project Cumulative Effects

The DEIS fails to consider cumulative effects from a reach-based perspective. This is inconsistent with the FERC approach for the upper Snake River. In 1997, FERC initiated a cumulative effects analysis through an EIS for the entire upper Snake River reach.

The DEIS is also inconsistent with the NMFS cumulative effects approach for the federal hydrosystem. The NMFS 1995-1998 FCRPS Biological Opinion states, under Section V Cumulative Effects (p82) that, "for the purposes of this analysis, the action area encompasses the Snake and Columbia Rivers, including areas outside the range of listed Snake River salmon that affect natural runoff of water into those areas that are within the listed species' range". Thus, the HCP should include projects and areas above the Wells Project.

p. 3-156 3.9.3.3

The DEIS statement that a 1969 Supreme Court decision in *U.S. v. Oregon* established the right to fish at all usual and accustomed areas is incorrect. There was no 1969 decision. The Supreme Court established that the 1855 treaties reserved the rights of the CRITFC tribes to fish as found in *United States v. Winans*. Federal District courts in Washington and Oregon have defined the tribes' rights to fish on and off the reservations in *Sohappy v. Smith* and *U.S. v. Washington*. The DEIS sentence that reads, "the court later decided that the Columbia River Tribes were entitled to should be changed to", "The court has decided that..".

4.7 Socioeconomics

The DEIS fails to include an analysis of the socioeconomic impacts of the alternatives on tribal economies. Most of the salmon wealth has been taken away from

the tribes and redistributed to non-tribal people in the form of flood control, navigation, irrigation and municipal development. This redistribution of wealth from tribal people that originated in the Mid-Columbia region has resulted in elevated poverty and death rates within tribal populations well in excess of the general population (Ch2 M Hill 1999). In particular, the loss of salmon from construction and operation of the Mid-Columbia PUD hydroprojects has transferred the sustainable wealth created by the river away from tribal peoples and has redistributed this wealth to non-tribal peoples (CH2 M Hill 1999). For example, the Yakama Nation tribal members have access to and take less than 10% of their traditional salmon harvest.

Loss of tribal wealth and the diminishment of opportunities to exercise treaty fishing rights from the depletion of salmon stocks has resulted in disproportionate rates of poverty, disease, mental illness and death in tribal communities compared to non-tribal communities (CH2 M Hill 1999). For example, the per capital income of a Yakama Nation tribal member is only 43% of the State of Washington per capita income, and the poverty rate of a Yakama Nation tribal member is 42.8% compared to the average citizen of Washington State at 10.9 % (CH 2 M Hill 1999).

Further, salmon are the mainstay of tribal religious and cultural practices. Every juvenile salmon that survives hydrosystem passage brings back as an adult some of the river's wealth to the tribal economy and culture. The DEIS alternatives must be evaluated as to their effects on tribal culture and economies and the alternatives ability to redistribute the river wealth back to tribal peoples.

4.10.7 Indian Trust Assets

While the guarantee of the 7% hatchery component is an important issue for the tribes, there are other important issues, including the inadequacy and lack of definition for the Alternative 3 performance standards, the "no surprises" policy, and the loss of JFP authorities under various laws and statutes.

The DEIS is incorrect when it states that, "the 7% level is similar to the existing hatchery production under the FERC settlement agreements." The current Wells Settlement agreement provides for a 14% hatchery production level for unavoidable juvenile losses through the Wells Project. Further, the DEIS is incorrect in stating, "meeting the 7 percent annual goal would guarantee a hatchery production level that supports current tribal harvests and ensures the Tribes that hatchery production would not decline." Current tribal harvest objective on upper Columbia anadromous fish stocks are not being met with current hatchery production (Nez Perce et al. 1995).

The courts in *United States v. Washington* have fully supported the tribal position that hatchery fish are treaty trust resources. The final EIS should clarify this issue. Lastly, the DEIS is erroneous in stating that the settlement agreement numbers were for fish losses from original dam construction. Both the Rock Island and Wells Settlement Agreements have mitigation components that require hatchery compensation for juvenile salmon passage losses.

4.10.8 Environmental Justice

Both Alternatives 2 and 3 will impact tribal economies that rely upon the health and abundance of treaty anadromous fish in different ways. Alternative 2 will allow retention of federal authorities and protection of treaty resources from a variety of different statutes and laws. Alternative 3 will cause federal trustees to essentially dismiss their authorities for a 50 year period. The DEIS is incorrect in stating that Executive Order No. 12898 is not relevant to the DEIS alternatives. The final EIS should provide analysis of the alternatives in relationship to the Executive Order.

4.10.13 Water Rights

The implementation of each alternative will impact tribal and non-tribal water rights in different ways. For example, in a low flow year water withdrawals from the Columbia Basin can diminish mainstem flows to the point where spill is jeopardized at the PUD hydroprojects. Further, spill at dams is a water right in that it is the use of water for fish instead of for power. The final EIS needs to analyze the issue of water rights from the perspective of the alternatives.

Summary

The DEIS fails to address fundamental issues raised in CRITFC's scoping comments. In addition, the DEIS contains many erroneous statements and fails to provide analyses for critical issues such as the impact of alternatives on tribal socioeconomics and tribal trust assets. The DEIS is further flawed because it fails to reconcile the fact that NNI is dependent on the 7% hatchery component as called for by the proposed HCPs, while NMFS' position and the DEIS state that the HCPs are "whole" without the 7% hatchery component.

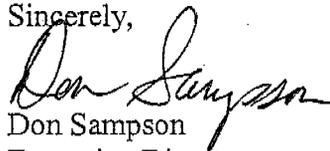
The DEIS fails to analyze the alternatives from an ecosystem perspective and a water quality perspective. The DEIS cumulative and quantitative effects analysis is lacking, and the environmental baseline begins in 1977, which is nearly 50 years after the construction of the Rock Island Project. Further, the DEIS fails to analyze the effects of the alternatives on returning adults to natal spawning areas. The DEIS should be completely rescoped and redone if parties continue to support an HCP concept.

The acceptance of "conditional implementation" by the non-tribal parties involved in the HCP negotiations has, in effect, stymied important progress in resolving key relicensing issues for the Rocky Reach Project and has apparently prevented NMFS from completing Section 7 consultations with Chelan PUD and FERC. If biological opinions were issued on the Rocky Reach and Rock Island Projects, the DEIS alternatives would be fundamentally changed.

Given the bad faith of Chelan PUD to "conditionally implement" the HCP through cooperation and consensus of the JFP, NMFS should immediately complete a Section 7 Biological Opinion and declare jeopardy on the operation and structural configuration of the Rocky Reach and Rock Island Projects. Upper Columbia stocks, both listed and unlisted, are in extremely poor status, and cannot withstand protection delays while the HCP process grinds onward at an excruciatingly slow pace.

CRITFC does not support DEIS Alternative 3 for the above reasons. CRITFC recommends that NMFS and the Department of Interior retain their authorities under various statutes and laws to prescribe, in consultation with the tribes, meaningful protection, mitigation and compensation measures for the PUD hydroprojects, as offered in Alternative 2. This is critical to immediately increase anadromous fish survival and productivity to avoid extirpation and to fully recover Upper Columbia populations to a level that provides for tribal and non-tribal harvestable surpluses.

Sincerely,



Don Sampson
Executive Director

Attachments 1-8

CC: Commissioners, tribal attorneys and program managers, Joint Fisheries Parties.

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February 5, 1999

Ms. Jane Banyard
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RE: NMFS and NOAA Notice of Intent to Prepare an EIS on the HCPs for the Operation of Chelan and Douglas PUD projects (Wells, Rock Island, Rocky Reach) on the Mid-Columbia River in Washington State.

Dear Ms. Banyard:

The Confederated Tribes and Bands of the Yakama Indian Nation (YIN), the Confederated Tribes of the Umatilla Indian Reservation (CTUIR) and the Columbia River Inter-Tribal Fish Commission (CRITFC), on behalf of its member tribes, appreciate the opportunity to comment on the National Marine Fisheries Service's (NMFS) notice of intent to prepare an Environmental Impact Statement (EIS) on the Habitat Conservation Plans (hereinafter "draft HCPs") for the operation of three hydroelectric projects on the mid-Columbia River in Washington State. The NMFS' notice of intent appeared in the Federal Register on January 6, 1999. The YIN, CTUIR and CRITFC provide the following comments and requests at this initial stage of environmental review.

Background

The YIN and CTUIR both aboriginally occupied land in what is today the mid-Columbia region in Washington State, including the Columbia River and its tributaries. Protection of streams and flows for anadromous fish and the rebuilding of the anadromous fish populations, as well as cultural and other matters, are critically important to the CTUIR and YIN and affect treaty reserved natural resource interests of both tribes.

The CRITFC was created in 1977 by the Nez Perce Tribe, YIN, CTUIR and the Confederated Tribes of the Warm Springs Reservation in part to formulate a broad general fisheries program designed to promote the conservation practices of its members. All four of these tribes possess rights reserved by treaties with the federal government to take a fair share of those fish destined to pass their usual and accustomed fishing places. Among these fish are the anadromous species listed as "Plan Species" in the proposed draft HCPs. Protection and enhancement of those

streams and flows that provide spawning and rearing habitat and migration corridors for these and other anadromous fish and terrestrial wildlife are likewise of critical importance to these tribes.

We have therefore prepared the following general and specific comments for your consideration at this time. The YIN, CTUIR and CRITFC reserve the opportunity to provide additional comments to the NMFS at such time as required consultation with the tribes takes place and as necessary throughout the environmental review process.

GENERAL COMMENTS

Draft HCP Negotiations

Both YIN and CTUIR were parties to the negotiations with the Chelan and Douglas County Public Utility Districts, primarily because the PUDs were seeking a settlement agreement that would last for 50 years and that would be incorporated into their licenses with the Federal Energy Regulatory Commission. The draft HCPs were envisioned as agreements that would reach beyond mere ESA concerns.

The YIN and CTUIR offered several concessions within the language of the draft HCPs and within the hatchery plan attachment contingent on receiving reciprocal assurances relative to treaty secured fishing rights. The production plan was intended to make up for the fish that would be killed under the agreement—a key component of achieving and maintaining No Net Impact and a crucial portion of tribal consideration for the agreement. The NMFS has refused to guarantee that the hatchery production contemplated by the HCPs will be allowed to continue for the term of the agreement. NMFS' position undermines the benefits for which the tribes offered consideration. Other issues between the tribes and NMFS relative to tribal treaty fishing rights, such as potential prejudice against the tribes posed by the No Surprises Rule, also remain unresolved.

Many of the measures for which the tribes offered their consideration were not included in the final draft HCPs, resulting in a lack of a bargained for consideration and a failure to protect treaty-secured rights and resources. This lack of bargained for consideration makes illusory and non-binding on the tribes any agreements purported to have been made by the parties. The public, NMFS and federal and state entities should therefore understand that the tribes cannot support or endorse the draft HCPs at this time, and specifically not the hatchery production plan attached to them as a Biological Assessment.

Mistakes in the Federal Register Notice

The NMFS misspelled the YIN's name, which appeared as "Yakima"—the spelling for the city of that name in Washington State—in the Federal Register Notice (hereinafter "Notice"). The Tribe's name should instead be spelled "Yakama." Likewise, the CTUIR's name is incorrect in the notice and should read "Confederated Tribes of the Umatilla Indian Reservation." Corrections to these mistakes would be greatly appreciated.

Another error in the Notice is the inaccurate portrayal of the June 1998 "Commemorative Declaration," which the YIN, CTUIR and CRITFC believe seriously misleads the public. The Notice lists the parties to the Declaration and states, "[the parties] signed a declaration acknowledging the work to date on the HCP and *their commitment to complete the regulatory actions necessary to issuing a permit*" (emphasis added). The Declaration committed the parties to no such thing.

This inaccurate portrayal of the Declaration is extremely misleading by making it appear as if all of the parties listed fully support the draft HCPs. Instead of committing the parties to complete the regulatory process, the Declaration read as follows: "[the parties] support mutual good faith efforts to reach agreement on remaining issues in the near term." (See attached Declaration). All that the tribes and the other parties agreed to in the Declaration was to continue negotiating to work toward resolving outstanding issues. The tribes never agreed to the regulatory process with an output of an incidental take permit. The tribes never signed a document committing them to the plans and proposals set forth in the draft HCPs. The Declaration is not itself an agreement to sign the draft HCPs once finalized, nor is it a signed HCP as has mistakenly been reported in various press articles. The true intent of the "Commemorative Declaration" must be clarified to the general public.

Related to this issue is the perception that the Notice gives, by misconstruing the Declaration, that the tribes fully support the draft HCPs. In fact, the tribes have sent numerous letters to William Stelle, Regional Director of NMFS, asking that the tribes' names be taken off of draft materials that go out to the public and that NMFS not make it appear to the public as if the tribes support the draft HCPs. The tribes cannot support the draft HCPs at this time. The tribes wish to avoid further public confusion about this issue, and therefore ask that NMFS address the tribes' concerns expressed in their letters to Mr. Stelle and clarify to the public that the tribes are not presently able to support the draft HCPs.

Preparation of an Environmental Impact Statement

The YIN, CTUIR and CRITFC fully support the NMFS' decision to prepare an EIS on the draft HCPs. We agree that the issuance of incidental take permits under the Endangered Species Act for the three hydroelectric projects is a major federal action that would have significant effects on the environment requiring the preparation of an EIS under the National Environmental Policy Act (NEPA). The YIN, CTUIR and CRITFC also support joining the environmental considerations of the three proposed permits into one, single EIS.

Geographic Scope and Cumulative Effects

The YIN, CTUIR and CRITFC recommend that the geographic scope not be limited to the areas defined within the draft HCPs, which address only the "Project" area as defined in each of the PUDs' licenses with the Federal Energy Regulatory Commission. Because of the nature and range of anadromous fish species, the environmental review should instead focus on a geographic scope that includes the tributaries in the mid-Columbia Basin, the upstream federal projects (Chief Joseph and Grand Coulee), the Lake Chelan Dam, the downstream public utility projects (Priest Rapids and Wanapum), the Vernita Bar area, and the Hanford Reach. In essence,

the geographic scope of environmental review should cover the entire mid-Columbia Basin from the Yakima River to Roosevelt Lake.

The YIN, CTUIR and CRITFC believe that NMFS should address cumulative effects issues within the geographic scope described above while also taking into consideration factors for decline throughout the entire life histories of the anadromous fish species, including effects that may fall outside of the geographic scope. Analysis should include consideration of cumulative and synergistic impacts from the Federal Columbia River Power System operations and the mid-Columbia PUD Dams and their relationships to stock restoration and the draft HCPs' requirements and goals.

Range of Reasonable Alternatives

In light of the situation regarding outstanding negotiation issues and the tribes' concerns about protection of treaty-secured resources in the draft HCPs, the YIN, CTUIR and CRITFC identify these alternatives for NMFS' consideration in the EIS:

- (1) Drawdown. The NMFS should examine the alternative of drawdown in order to provide benefits to ESA listed species. This alternative is especially important given that the draft HCPs remove drawdown as an option for anadromous fish restoration for the term of the HCPs, which is currently proposed as fifty years.
- (2) Non-Power Operations. The NMFS should likewise examine non-power operations. This alternative is also important for the same reason that the draft HCPs remove non-power operations as an option for anadromous fish restoration for the term of the HCPs.
- (3) Dam Removal. The NMFS should also fully examine the alternative of dam removal. Given the dire state of salmon and other anadromous fish in the Pacific Northwest, the Federal Energy Regulatory Commission's precedent in requiring dam removal in the United States as a means of restoring ESA listed fish, and the consideration of removing dams for fish benefits elsewhere in the region (i.e. Condit), dam removal is a reasonable alternative that requires NMFS' consideration. Like the other alternatives that the YIN, CTUIR and CRITFC have identified, this alternative needs consideration because dam removal is listed in the draft HCPs as an option that is off of the table during the term of the HCPs.

Baseline

When determining what impacts the issuance of the incidental take permits would have on the environment, and accordingly the impacts that the draft HCPs would have on the environment, the NMFS will need to determine what baseline will be used to measure effects on the species and resources at issue. The YIN, CTUIR and CRITFC believe that the NMFS should use a natural river baseline, meaning that NMFS should not use the currently degraded environment as the measuring stick for considering harms and benefits. NMFS should take into consideration the fact that the development of the hydroelectric projects set in motion a decline in fish populations that is still being felt in the Basin.

In its biological opinion for the Federal Columbia River Power System, the NMFS states that an accurate baseline relative to considerations about hydroelectric dams examines continuing effects of previous degradations. NATIONAL MARINE FISHERIES SERVICE, BIOLOGICAL OPINION: REINITIATION OF CONSULTATION ON 1994-1998 OPERATION OF THE FEDERAL COLUMBIA RIVER POWER SYSTEM AND JUVENILE TRANSPORTATION PROGRAM IN 1995 AND FUTURE YEARS 12 (March 1995). Additionally, the NMFS took a consistent position relative to hydro-relicensing in American Rivers, et. al. v. Federal Energy Regulatory Commission (Nos. 98-70079, 98-70084), which was argued before the United States Court of Appeals for the Ninth Circuit in January 1999. In that case, NMFS argued that the Federal Energy Regulatory Commission's use of the "ongoing level and nature of environmental harms" as the baseline meant that the Commission "never analyzed, in any systematic way, the nature and extent of those ongoing impacts." Brief for the Federal Intervenors at 39-40 (American Rivers, et. al. v. Federal Energy Regulatory Commission (Nos. 98-70079, 98-70084)). Likewise, using a natural river baseline to review the draft HCPs is the only way in which to make a determination about harms or benefits to the already decimated populations.

Resources Affected

The YIN, CTUIR and CRITFC request that the NMFS not only consider the "Permit Species," but address all species listed in the draft HCPs as "Plan Species," meaning that coho should be included in NMFS' analysis. Additionally, NMFS should include lamprey and sturgeon as affected resources. Impacts on lamprey in the draft HCPs, particularly if screens are installed as indicated, may be quite significant. The tribes are especially interested in knowing what the full range of impacts could be on the lamprey under the draft HCPs, as the eels are particularly important to tribes and tribal culture. We also advise that NMFS consider impacts on water quality and quantity, riparian habitat, terrestrial and other aquatic wildlife, and tribal cultural resources. The NMFS should examine how the mitigation in the draft HCPs relates only to "Plan Species," with some assumed incidental benefits to other wildlife, and address what mitigation might be required for harm to other affected resources, such as lamprey.

Biological Data

One major problem that has been found with Habitat Conservation Plans across the country is a lack of adequate scientific data about the species being impacted by the Plans and insufficient data available to justify granting an incidental take permit. See, e.g., "Using Science in Habitat Conservation Plans" (National Center for Ecological Analysis and Synthesis 1999). The YIN, CTUIR and CRITFC believe that the draft HCPs currently suffer from this very problem. The draft HCPs lack adequate biological data on the stocks at issue and on other species in the mid-Columbia region, particularly relative to the impacts of the proposed take. Habitat Conservation Plans must provide details on the impacts that are likely to result from the proposed take, ESA § 10(a)(2)(A); 50 C.F.R. §§ 17.22(b)(1), 17.32(b)(1), 222.22, which cannot be accomplished without quantitative data on the status of the species and details about how much take is likely to occur. Likewise, the permit cannot be issued if it would jeopardize the listed species as defined by Section 7 of the ESA, which also requires scientific data on the impact of the proposed take on the species.

The NMFS cannot and should not make a determination about impacts on the Plan Species and other resources absent scientifically sound quantitative analyses. Quantitative data is necessary for predicting the draft HCPs' impacts on the Plan Species and on other aquatic and terrestrial wildlife. The YIN, CTUIR and CRITFC are aware that the NMFS plans to conduct (or is already conducting) a quantitative analysis in the mid-Columbia known as the "QAR."

We believe that the QAR process should develop information on the status of the affected species' populations and habitat so that NMFS can accurately assess how much take will occur under the draft HCPs and determine the overall impact the draft HCPs and proposed take will have on each species. The QAR should provide scientific data that will allow NMFS to adequately assess the proposed take. Due to a lack of data otherwise, the QAR must be finalized before NMFS can make any determinations for the environmental review about the proposed take, or for a jeopardy/no jeopardy determination under the ESA. The YIN, CTUIR and CRITFC understand that NMFS' staff supports the QAR for these purposes. We hope that NMFS will continue to provide information about the status of the QAR process to the tribes, and we would appreciate being apprised of the Section 7 determination.

The YIN, CTUIR and CRITFC also believe that the environmental review should include a review and analysis of the data underlying the proposed mitigation in the draft HCPs. The mitigation should be evaluated through biological data and found likely to succeed prior to any take being allowed.

Compliance & Consistency With Applicable Law

The environmental review should include an explanation of the draft HCPs' consistency or inconsistency with other applicable laws, including the Clean Water Act. Of primary concern to the YIN, CTUIR and CRITFC is that the draft HCPs and any resulting permits must be consistent with and not infringe upon tribal treaty rights nor create a situation that compromises the NMFS ability to uphold its trust responsibility to tribes.

In 1855, separate treaties with the CTUIR, Treaty with the Umatilla Tribes, 12 Stat. 945 (June 9, 1855), the Confederated Tribes of the Warm Springs Reservation of Oregon, Treaty with the Tribes of Middle Oregon, 12 Stat. 963 (June 25, 1855), the YIN, Treaty with the Yakima Tribe, 12 Stat. 951 (June 9, 1855), and the Nez Perce Tribe, Treaty with the Nez Perce Tribe, 12 Stat. 957 (June 11, 1855), were negotiated with representatives of the United States government. Retaining the right to continue traditional fishing practices was a primary objective of the Columbia River tribes during treaty negotiations. Tulee v. Washington, 315 U.S. 681, 684-85 (1942). Each treaty contained a substantially identical provision reserving to the tribes the right of "taking fish at all usual and accustomed places in common with citizens of the United States." E.g., Treaty with the Yakima Tribe, 12 Stat. 951, Art. 3 (June 9, 1855). The fishing clause is the heart of the Columbia River tribes' treaties. United States v. Washington, 443 U.S. 658, 664-69 (1973) (discussing the importance of reserving the right to access usual and accustomed fishing sites on and off reservation to the tribes during treaty negotiations).

The treaty rights to take fish have been confirmed by numerous federal court decisions. E.g., Sohapp v. Smith, 302 F.Supp. 899 (D.Or. 1969), aff'd, United States v. Oregon, 529 F.2d 570 (9th Cir. 1976); Washington v. Washington State Commercial Passenger Fishing Vessel Ass'n, 443 U.S. 658 (1979); United States v. Winans, 198 U.S. 371 (1905); Confederated Tribes of the Umatilla Indian Reservation v. Alexander, 440 F.Supp. 553 (D.Or. 1977). Absent specific authorization by Congress, Indian treaty rights cannot be abrogated. Menominee Tribe v. United States, 391 U.S. 404, 413 (1968).

The Secretarial Order signed by the Secretaries of Commerce and Interior, titled "American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act," in 1997 recognizes that Commerce and Interior have a trust responsibility to tribes that requires them to carry out the ESA in a manner that harmonizes the tribes' sovereignty and rights with the Commerce and Interior's duties under the Act. *Section 1*. Additionally, Commerce and Interior must ensure that the tribes not bear a disproportionate share of the conservation burden for listed species. *Id.*; *Section 5, Principle 3*.

The YIN, CTUIR and CRITFC therefore ask that NMFS, in its environmental review, address any issues in the draft HCPs that may be, now or in the future, inconsistent with the tribes' treaty rights and tribal sovereignty or would cause NMFS to fail to uphold its trust responsibility. Likewise, please contact the YIN and CTUIR representatives (those persons listed at the end of these comments) regarding how and when NMFS plans to conduct formal consultation required by the Secretarial Order.

Additionally, we would appreciate an explanation of how NMFS' NEPA process will or will not be coordinated with other environmental reviews, including Washington State's Environmental Policy Act and the Federal Energy Regulatory Commission's NEPA process (necessary once the PUDs submit proposed license amendments).

SPECIFIC COMMENTS

The following comments specifically relate to the draft HCPs as some of the issues that the YIN, CTUIR and CRITFC believe should be included in the environmental review. Additional comments may also be provided during later opportunities to comment on the draft HCPs.

Long Term Risks and Related Concerns

Because the draft HCPs seek commitments from the federal government relative to salmon recovery in the Columbia River Basin and are likely to have serious biological implications for salmon recovery in the mid-Columbia for up to fifty years into the future, the YIN, CTUIR, and CRITFC recommend that the following issues be examined in the EIS in order to better understand how the draft HCPs will affect the conservation and restoration of salmon and other stocks over the long-term:

- Assess the consistency of the draft HCPs with the concept of a normative river and multi-species restoration, including the context of current, heavily degraded habitat in the mid-Columbia and meeting the needs for natural production.
- Determine the risks posed through a probability of assumptions being mistaken over long periods, such as fifteen to fifty years. Include a determination whether 50 years is an appropriate time frame for a river-based HCP with extreme probabilities for changed circumstances and a lack of available options for moving the conservation burden onto another party.
- Address how the draft HCPs may select against certain species and life histories. For example: (1) impacts on lamprey and sockeye from proposed screens; (2) impacts on the population of spring migrating chinook salmon if exempted from the Juvenile Dam Passage Survival standard should the PUDs install screens; (3) recruitment failure of white sturgeon in impoundments and reduced gene flow problems.
- Examine opportunities for and feasibility of reintroducing coho and how the draft HCPs may or may not facilitate such reintroduction.
- Analyze the probability of both survival and recovery of the affected anadromous species at 24 years and at 48 years.

Does "No Surprises" Apply?

As you are aware, the No Surprises Rule was developed to provide landowners with certainty such that additional mitigation (typically land or money) is not required of the landowner, outside of what is provided in the HCP, for species covered by the HCP except in "extraordinary circumstances." The obligation for providing additional, necessary measures for a species otherwise adequately covered by the HCP rests with the federal government, other government entities or other landowners or parties, essentially neighboring federal lands or non-federal landowners who lack their own HCPs. In the river-based draft HCPs, the No Surprises assurance is complicated by a lack of other "neighbors" to absorb the conservation needs of the species and because the No Surprises Rule cannot directly or indirectly affect the tribes' federally recognized and protected resource rights nor compromise NMFS' trust responsibility to tribes.

The YIN, CTUIR and CRITFC therefore request that NMFS provide an analysis of the feasibility of the No Surprises assurance in the draft HCPs and the extent to which shortcomings in protective measures can met, keeping in mind the federally recognized and protected resource rights of the tribes and NMFS' trust responsibility to tribes. We also request that NMFS explain how the No Surprises assurance in the draft HCPs is or is not consistent with NMFS' and FERC's responsibilities under Section 7 of the ESA and whether No Surprises in an incidental take permit applies at all given the federal nexus to the PUDs' dams.

No Net Impact and the Overall Plan

Based on the tribes' concerns about protection and enhancement of treaty secured resources relative to the current draft HCPs, the YIN, CTUIR and CRITFC request that the NMFS address the following "No Net Impact" issues:

- Assess potential impacts on species that could result from the PUDs proposals for meeting applicable survival standards within the first five years (see Matrix), during which time the NMFS and United States Fish & Wildlife Service would not be allowed to prescribe or preempt the PUDs' plans under the draft HCPs.
- Address the appropriateness of taking drawdown, dam removal and non-power operations out of the list of potential tools or measures that could be used to benefit fish during the 50 year term of the proposed agreement relative to salmon restoration, the Endangered Species Act, and treaty rights and the federal trust responsibility.
- Analyze and explain the biological basis for the draft HCPs' 91% overall survival requirement (a part of which is the 95% juvenile dam passage survival requirement) + 7% hatchery mitigation + 2% tributary mitigation and the HCPs' assumption that these are additive to equal zero impact on the species. The assumed mortality levels, as well as the proposed mitigation, are not all expressed in the same currency (some relate to juveniles while others relate to adults), and the percentages appear only exponentially additive, but not linearly additive.
- Examine the relationship between the No Net Impact Standard and long-term stock viability.
- Analyze whether or not the proposed measurement of the performance standard for 95% Juvenile Dam Passage Survival, by measuring juvenile survival over only 95% of the run, ensures a juvenile passage mortality of only 5% such that the draft HCPs address full mitigation for take.
- Because part of the draft HCPs may include installation of screens within the first five years of the proposed agreement, or at some point later in the agreement, please examine passage impacts if the PUDs install the screens as proposed. Include analysis of potential entrainment impacts (particularly on lamprey) and descaling injuries (particularly on sockeye).
- Determine what impacts may occur during the time period that elapses before the PUDs actually meet the proposed survival requirements and analyze whether those impacts can or will be appropriately mitigated. Include a consideration of the adequacy of the mitigation proposals for addressing such impacts.
- Determine impacts on the species should the PUDs never reach the survival goal during the term of the proposed agreement.
- Assess impacts on spring migrating chinook salmon if exempted from 95% Juvenile Dam Passage Survival as described in the Passage Survival Plan in the draft HCPs.
- Examine the adequacy of the adult passage plans as set forth in the draft HCPs.
- Provide an accurate evaluation of losses (the 9% assumed total unmitigated mortality), which may be higher until the PUDs reach their survival requirements, relative to the proposed mitigation (7% hatchery + 2% habitat). Examine the extent to which the production and habitat restoration as envisioned in the draft HCPs can make up the assumed mortality rates as estimated in the draft HCPs. Determine whether mitigation proposals are supported by adequate data to ensure no unmitigated take.

Measurement and Evaluation

The measurement and evaluation provisions in the draft HCPs are key to determining whether the PUDs are meeting their permit obligations, what impacts the projects may or may not be having on the Plan Species, and whether the Plan Species are rebuilding. The YIN, CTUIR and CRITFC therefore request that NMFS provide the following analyses in the EIS:

- Examine the accuracy and adequacy of the potential study proposals to arrive at survival rates.
- Examine the viability, reliability and accuracy of feasible measurement protocols for assessing compliance with survival standards set forth in the draft HCPs.
- Examine the accuracy of survival studies given year-to-year variability and how such variability relates to the determination about whether or not the PUDs are achieving the required survival rates.
- Assess the potential impacts on the species that may result from applicable measurement protocols. Analyses should include (1) impacts on the test fish populations; (2) effects of marking or tagging fish; (3) whether enough test fish will be available for conducting the studies and how to determine compliance if not; (4) possible impacts if surrogate species are used when test fish for a particular species are not available and inadequacies that may result; (5) sufficiency of the proposed measurement protocols for addressing each life history of each Plan Species; and (6) possibilities for the proposed measurement protocols to select against certain life histories of the fish.
- Analyze whether or not trading survival among the dams—as a proposed interim tool in the draft HCPs—is biologically feasible and whether traded survival benefits can be accurately assessed.

We acknowledge that the draft HCPs provide for the measurement protocols and study proposals to be developed and addressed by the Coordinating Committee, but the YIN, CTUIR and CRITFC believe that the NMFS should nevertheless address the measurement and evaluation at this time in the EIS. A thorough review of likely study protocols by NMFS is necessary in order to determine whether accurate information will exist to determine the PUDs' compliance with the permit and the HCP and to understand the impacts that the proposals may have on test species and overall species' survival and rebuilding.

Watershed Analysis

The YIN, CTUIR and CRITFC ask that the NMFS provide a detailed evaluation of the adequacy of the proposed tributary habitat plan, including applicable attachments to the draft HCPs. In particular, we ask that the following issues be reviewed and analyzed in the EIS:

- Conduct a watershed analysis to determine current habitat health and assess whether a 2% benefit to each Plan Species can be obtained from the tributary habitat plan, especially with the proposed amount of funding without financial input from Grant County PUD.

- Determine whether a 2% increase in habitat translates into a 2% increase in returning adult salmon and examine how any shortfalls (unmitigated take) will be addressed.
- Explore how the 2% mitigation benefit will be measured given the difficulty in measuring fish density and survival in response to habitat improvements.
- Provide detailed water quality and quantity descriptions and determine instream tributary flow needs. Determine whether or not the draft HCPs meet the habitat needs of the affected fish and wildlife resources.

Hatchery Mitigation

The YIN, CTUIR and CRITFC ask that the NMFS provide a detailed evaluation of the adequacy of the proposed hatchery mitigation plan, including applicable attachments to the draft HCPs. In particular, we ask that the following issues be reviewed and analyzed in the EIS:

- Explain how NMFS will measure the actual benefit (% mitigation) of the hatchery plan and determine whether or not the proposed hatchery production programs will provide the 7% mitigation required in the draft HCPs. Include an explanation of whether or not the 7% mitigation can be achieved in the hatchery proposal without Grant County PUD's participation in the draft HCPs.
- If the hatchery program cannot provide 7% of the mitigation (either by design or by the action or inaction of one of the parties to the draft HCPs during the term of the draft HCPs), address what other mitigation programs would be required to make up for the amount of unmitigated take.
- Examine the benefits and drawbacks to the proposed captive broodstock program and assess the level of risk to the species should the program fail.

Rebuilding to Sustainable Populations

In the draft HCPs, the PUDs do not merely seek ESA assurances. If NMFS issues an incidental take permit, the PUDs would submit the draft HCPs to the Federal Energy Regulatory Commission (FERC) with a request that the HCPs constitute a settlement under FERC's jurisdiction and amendments to the PUDs' hydropower licenses. FERC must review the draft HCPs for compliance with federal statutory obligations and treaty obligations. Therefore, analyses of impacts on species go beyond ESA standards to include compliance with treaty reserved rights and resource requirements at relicensing.

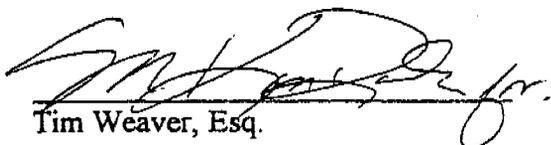
Rebuilding salmon populations is a goal of the draft HCPs and failing to meet this goal is one of the reasons for which the parties can get out of the agreements after 15 years. One of the main reasons the tribes participated in the HCP negotiations was to develop an agreement that would rebuild the fish runs to sustainable, harvestable populations in accordance with the tribes' treaty rights. Rebuilding salmon populations to harvestable levels is a major goal of the Columbia River tribes and is outlined and defined in the CRITFC member tribes' salmon restoration plan, *Wy-Kan-Ush-Mi Wa-Kish-Wit*.

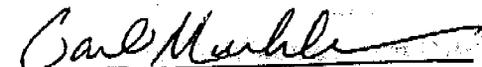
The YIN, CTUIR and CRITFC therefore request that NMFS conduct an analysis of whether the draft HCPs will rebuild the species to sustainable, harvestable populations in compliance with the tribes' treaty rights using the definition of rebuilding in *Wy-Kan-Ush-Mi Wa-Kish-Wit*. Likewise, NMFS should address the protection and enhancement requirements and other resource requirements that FERC will need to address in its environmental review.

The YIN, CTUIR and CRITFC appreciate this opportunity to provide these comments to the NMFS regarding the scope of NEPA analysis for the draft HCPs submitted by Chelan and Douglas PUDs for their hydroelectric projects on the mid-Columbia River. Should you have any questions about these comments, please call Tim Weaver, Esq., attorney for the YIN at 509/575-1500; Carl Merkle, Policy Analyst, CTUIR at 541/276-3449; or Starla Roels, Policy Analyst, CRITFC at 503/731-1258.

Sincerely,


Ted Strong, Executive Director
CRITFC


Tim Weaver, Esq.


Carl Merkle, Policy Analyst
CTUIR

Cc: Mid-Columbia Service List

COMMEMORATIVE DECLARATION



THE ANADROMOUS FISH AGREEMENTS AND HABITAT CONSERVATION PLANS FOR THE WELLS, ROCKY REACH AND ROCK ISLAND HYDROELECTRIC PROJECTS

RECOGNIZING the importance of spring, summer and fall chinook salmon (*Oncorhynchus tshawytscha*), sockeye salmon (*O. nerka*), coho salmon (*O. kisutch*) and steelhead salmon (*O. mykiss*) inhabiting the middle stretch of the Columbia River in central Washington (Mid-Columbia) and its tributaries to the Pacific Northwest's biological, cultural, religious and economic integrity; and

RECOGNIZING Public Utility District No. 1 of Chelan County and Public Utility District No. 1 of Douglas County (the PUDs) are hydroelectric dam operators on the Mid-Columbia River that desire to finalize comprehensive and long-term agreements that address dam passage survival and tributary habitat for anadromous fish species in the context of the PUD's desire to generate electricity at the projects; and

RECOGNIZING that for approximately the last five years, the National Marine Fisheries Service, the U.S. Fish and Wildlife Service, the Washington Department of Ash & Wildlife, the Confederated Tribes of the Colville Reservation, the Confederated Tribes and Bands of the Yakama Indian Nation, the Confederated Tribes of the Umatilla Indian Reservation and American Rivers have been engaged with the PUDs in developing proposed Anadromous Fish Agreements and Habitat Conservation Plans for the Wells Hydroelectric Project (FERC No. 2149), the Rocky Reach Hydroelectric Project (FERC No. 2145) and the Rock Island Hydroelectric Project (FERC No. 943), three federally licensed hydropower projects (Projects) located on the Mid-Columbia River; and

RECOGNIZING that the Anadromous Fish Agreements and Habitat Conservation Plans (Proposals) are intended to satisfy the Projects' obligations under the Federal Power Act, the Endangered Species Act, the Fish and Wildlife Coordination Act, the Pacific Northwest Electric Power Planning and Conservation Act and Title 77 RCW; and

RECOGNIZING the Proposals establish a No Net Impact standard of survival for anadromous species' migration through the Projects, which reflects a significant shift away from traditional fish management methods. No Net Impact consists of three components: (1) pursuing the objective of 91% project survival, including an independent objective of 95% juvenile dam passage survival; (2) contributing funds for tributary habitat conservation and enhancement measures; and (3) providing capacity and funding for appropriate levels of hatchery compensation, consistent with plans developed by the PUDs, agencies, tribes and American Rivers;

THEREFORE, WE, THE UNDERSIGNED HEREBY acknowledge the many entities who have dedicated their efforts and energy to the negotiation process; affirm that negotiations have produced proposed agreements on many important issues; and support mutual good faith efforts to reach agreement on remaining issues in the near term.

Dated this twenty-seventh day of June, 1998.

NATIONAL MARINE FISHERIES SERVICE

By [Signature]

CONFEDERATED TRIBES OF THE
COLVILLE INDIAN RESERVATION

By [Signature]

AMERICAN RIVERS, INC.

By [Signature]

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Kary Daniel for Du. Slide Station
Robynne Evans Bullock
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UNITED STATES FISH AND
WILDLIFE SERVICE

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OF THE YAKAMA INDIAN NATION

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WASHINGTON FISH AND
WILDLIFE COMMISSION

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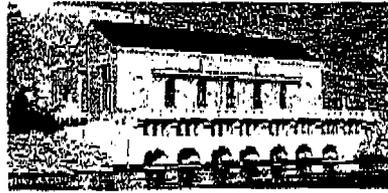
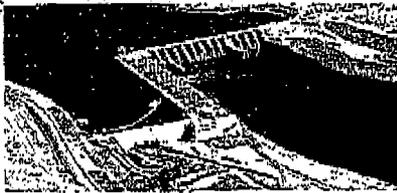
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(509) 663-8121 • Toll free 1-888-663-8121 • www.chelanpud.org

April 12, 2001

Mid-Columbia Coordinating Committee

Re: Rocky Reach, Spring 2001 Fish Spill

Dear Committee Members:

Over the last few years we have estimated juvenile survival at Rocky Reach Dam using PIT tags and radio tags. We have also estimated the **fish** passage efficiency of the prototype bypass system using PIT, radio, and acoustic tag technologies. From this varied information, we conclude that **we are** meeting the 95% juvenile dam passage survival standard of the proposed Rocky Reach Anadromous Fish **Agreement** and Habitat Conservation Plan for Upper Columbia Rivsr steelhead and Upper Columbia River spring chinook,

In 2001, we will continue operation and testing of the prototype fish bypass system with a configuration that has remained the same over the last two migration seasons. However, as you are aware it is predicted that flow will be very low this year. Consequently, we do not anticipate a majority of the generating units to be running during the spring migration. As a result, we predict that the flow patterns in the forebay at Rocky Reach will be such that fish will end up in the very end of the cul-de-sac where the entrances of the surface collector are located, **This** will increase the collection efficiency of the bypass system (and fish survival) well above that achieved in previous years. Thus, we predict that the 95% juvenile dam passage Survival standard will be achieved for listed fish without spill.

Therefore, during the spring migration the District will rely upon the bypass without spill to protect listed and non-listed fish migrating past Rocky Reach Dam. In addition, we are establishing a habitat improvement account with

five million dollars to be administered by the Mid-Columbia Coordinating Committee for habitat improvement work in the *mid- or,* lower Columbia River and in the estuary. These funds are immediately available. The habitat and estuary improvements achieved with these funds will benefit all Columbia and Snake River fish.

If you would like to discuss this further, please do not hesitate to call.

Best regards,

A handwritten signature in cursive script, appearing to read "Chuck Peven". The signature is written in black ink and is positioned above the printed name.

Chuck Peven
Fish and Wildlife Supervisor



COLUMBIA RIVER INTER-TRIBAL FISH COMMISSION

729 N.E. Oregon, Suite 200, Portland, Oregon 97232

Telephone (503) 238-0667

Fax (503) 235-4228

March 19, 2001

Mr. Roger Braden
Public Utility District No. 1 of Chelan County
P.O. Box 1231
Wenatchee, Washington 98807

Re: **Juvenile Salmon Spill at Rock Island Dam in 2001**

Dear Mr. Braden:

The Columbia River Inter-Tribal Fish Commission and its member tribes have serious concerns about Chelan PUD's proposal for Rock Island Dam spill for 2001 juvenile and adult salmon protection. We strongly disagree with Chelan's proposal to further reduce protective spill at Rock Island from 31 kcfs daily average to 20 kcfs daily average spill.¹

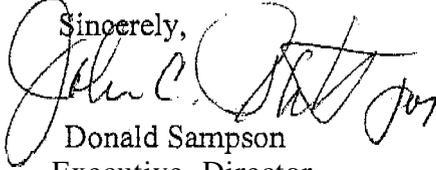
In addition, the Commission staff has made specific recommendations to Chelan's staff regarding the initiation and termination of spring and summer spill (Attachment). The Commission is troubled by Chelan's refusal to implement these recommendations. We believe that increased monitoring is essential to provide more reliable spill timing and salmon protection,

These actions by Chelan are inconsistent with Chelan's stated goal to show steady progress in improving salmon passage consistent with obligations under the Mid-Columbia Habitat Conservation Plan negotiations. How can Chelan expect the Commission's member tribes to support the Plan when Chelan continues to take unilateral actions to reduce protection for listed and unlisted juvenile and adult salmon?

We urge Chelan to reverse course and demonstrate willingness to work with the tribes and other members of the Joint Fisheries Parties and provide the full spill protection and monitoring that is vital to rebuild upper Columbia salmon stocks. Such actions will demonstrate that Chelan is committed to working collaboratively and in consensus with the Parties.

¹ The Commission did not agree to Chelan's initial proposal to reduce spring spill from 41 kcfs to 31 kcfs daily average spill. The Joint Fishery Parties do not believe that Chelan can meet the HCP goal of protecting 95% of the migration with 95% dam passage survival with only 31 kcfs spill, much less 20 kcfs spill,

Thank you for your attention to this critical issue.

Sincerely,

Donald Sampson
Executive Director

Attachment

Cc: Joint Fisheries Parties to Rock Island Settlement Agreement
Rock Island Coordinating Committee
Anne Miles, FERC
Vince Yearick, FERC

Attachment

CRITFC Recommendations for 2001 Rock Island Spill Program

Spring Spill

- Other indicators besides the Rock Island trap should be used to start spill, including smolt movements in tributaries, hydroacoustic systems at Rock Island, dam counts and Rocky Reach spill operations. When Rocky Reach spill starts, Rock Island spill should start one day later.
- To determine the end of spill, use the above indicators along with Rock Island trap counts. Rock Island spill representatives should make the decision to end spill based upon a holistic assessment of the indicators.

Summer Spill

- Use other indicators other than Rock Island trap counts such as hydroacoustic info at Rock Island, and Rocky Reach spill and counts. Start no later than June 6 (the Rock Island historical passage date for 10% of the run in Fish Passage Center annual reports) or earlier if warranted by Rocky Reach counts or the onset of Rocky Reach spill.
- The maximum amount of spill should be increased to spring levels since subyearling chinook have as great or greater turbine mortality rates as yearlings and predation rates increase for subyearlings.
- Don't attempt to chase fish with spill (i.e. Chelan's proposal to adjust spill post-facto to the previous days passage rate), Subyearling migration is extremely variable and this method can easily fail to protect a large portion of the run. Spill should be maintained at a constant rate to provide a continuous flow net over the dam.
- The end of spill should be based upon information generated by continued indicators (Rocky Reach counts, Rock Island trap counts and hydroacoustic counts), According to the Fish Passage Center, the 90% historical passage date for subyearlings at Rock Island is August 2. This additional information is necessary for spill representatives to make a decision to end spill.

I would appreciate a response to these issues as soon as possible as these listed stocks continue to be subjected to Rock Island turbine passage and unacceptable rates of mortality.

Sincerely,

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

Robert Heinith
Tribal Spill Representative

Cc: Joint Fisheries Parties, Rock Island Settlement



State of Washington
DEPARTMENT OF FISH AND WILDLIFE

Mailing Address: 600 Capitol Way N • Olympia, WA 98501-1091 • (360) 902-2200, TDD (360) 902-2207
Main Office location: Natural Resources Building • 1111 Washington Street SE • Olympia, WA

April 24, 2001

Mr. Roger Braden
Public Utility District No. 1 of Chelan County
Post Office, Box 123 1
Wenatchee, Washington 98807-123 1

RE: 2001 Spring Spill for Juvenile Fish Passage.

Dear Mr. Braden:

Spill for juvenile passage has been a major element of your programs to increase juvenile migrant survival for salmon and steelhead at Rocky Reach and Rock Island Dams since 1980. At Rock Island this is the principal alternative to turbine passage. The utilization of spill gates through specific full and notched gates has been methodically developed as an effective spillway configuration through several years of assessment. Assessments in 1999 and 2000 at Rocky Reach for spill in conjunction with the operation of the prototype juvenile bypass has demonstrated that both are required to achieve sufficient non turbine passage to approach the target survival goals of the proposed Habitat Conservation Plan (HCP) for steelhead and yearling chinook. These goals are not likely being met for sockeye and subyearling chinook based on the documented rates of turbine passage with the current spill program and operation of the prototype juvenile bypass. I recognize that you are not yet obligated to meet the juvenile dam passage survival goal of 95% per the proposed HCP. However, you have made a commitment to steady progress in attainment of this objective for all proposed plan species. Increasing the rate of turbine passage for juvenile salmon and steelhead for the 2001 migration is not consistent with progressive improvement in dam passage survival. To the contrary, an increase in turbine passage is a highly regressive action on the part of Chelan PUD.

I have been informed by my staff that Chelan PUD has been making modifications and is proposing to make additional modifications to the juvenile fish passage programs at Rock Island and Rocky Reach Dams for the 2001 spring season. I am greatly concerned that these modifications will result in reductions in salmon and steelhead smolt survival relative to the spill programs originally planned and scheduled for 2001. The changes appear to be based primarily on the desire to generate additional power in this low flow year. The assertions by your staff that the juvenile passage survival goal of 95% dam passage survival may be achieved with these modified spill programs is, in our judgment, based more on supposition and wishful thinking than sound scientific assessment.

Mr. Roger Braden

Page 2

April 24, 2001

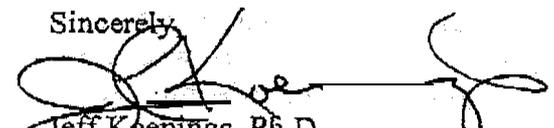
I recognize that the runoff volume and power market conditions this year make it financially unattractive to meet your prior commitments to **increase** juvenile passage survival through spill. However, this years runoff conditions are within the range of prior years for which you had full knowledge prior to committing to **the** juvenile passage spill programs. This years juvenile migrants are already facing extremely stressful **conditions** with low flows and reduced passage protection at the Federal Columbia River Power System. The 1999 brood spring chinook natural production was the second lowest on record for the Mid-Columbia tributaries above Rock Island and Rocky Reach Dams. The increase in juvenile passage mortality expected **from** your proposed actions in combination with the extremely low flows and reduced Federal System protection could result in a step closer to extinction for this broodyear.

The unilateral **character** of Chelan PUD's recent actions and proposed actions is unsettling. Your decision to not initiate the Rock Island spring spill **program** per the criteria **agreed** to by the Rock Island Coordinating Committee without even consulting with agency representatives is disturbing. This action signals an intention to focus passage mortality reduction efforts for hatchery spring chinook, **as** it delays **and** spill until large numbers of **hatchery** juveniles are present, **a** particularly vexing problem this spring due to the extremely low numbers of natural spawners in 1999. This is contrary to deliberations, and consultations with the Mid-Columbia Coordinating Committee and National Marine Fisheries **Service** regarding the need to **provide** passage protection for **Endangered** Species Act listed populations of **salmon** and steelhead. The proposed reduction of the Rock Island **spill** program **from** 3 1 kcfs spill to 20% spill is apparently going to be initiated despite **the** fact that all of the agency and tribal representatives to the **Rock** Island Coordinating Committee whom were available to **participate** in the discussion expressed the view that this would not likely meet the 95% survival goal. The proposed **elimination of** **spring** spill at Rocky Reach was presented with a supposition that the survival goal of 95% would **be** met. There was no scientific assessment presented to justify this supposition. Again, there was no support for this action from agency and tribal representatives.

I view these recent actions and proposed **actions** by **Chelan PUD** **as** major breaches of the stewardship responsibility which is imparted to you via your utilization of the waters of the Columbia River which are a major public **resource**. These actions also bring into serious doubt **your** stated intention to vigorously and cooperatively attain **fish** passage survival objectives under the terms of the proposed Habitat Conservation Plan for Rock Island and Rocky Reach Dams.

I respectfully request that you reconsider **your** proposed actions which **will** reduce juvenile passage survival for critically depressed salmon and steelhead populations.

Sincerely,



Jeff Koenings, Ph.D.

Director



COLUMBIA RIVER INTER-TRIBAL FISH COMMISSION

729 N.E. Oregon, Suite 200, Portland, Oregon 97232

Telephone (503) 238-0667

Fax (503) 235-4228

August 10, 2000

Mr. Gregg Carrington
Public Utility District No. 1 of Chelan County
P.O. Box 1231
Wenatchee, Washington 98807

Honorable David P. Boergers, Secretary
Federal Energy Regulatory Commission
825 N. Capitol Street, N.E. Room 3 110
Washington, D.C. 20426

RE: Comments on Rocky Reach Scoping Document No. 2 (FERC No. 2145)

Dear Mr. Carrington and Mr. Boergers:

The Columbia River Inter-Tribal Fish Commission (CRITFC),¹ on behalf of the Confederated Tribes and Bands of the Yakama Nation (YN), the Confederated Tribes of the Umatilla Indian Reservation (CTUIR), the Confederated Tribes of the Warm Springs Reservation of Oregon and the Nez Perce Tribe has reviewed the document entitled, "Rocky Reach Hydroelectric Project, FERC Project No. 2145 NEPA Scoping Document No. 2." We have prepared the following comments,

General Comments on Relicensing Procedure

The Yakama Nation and the Confederated Tribes of the Umatilla Indian Reservation aboriginally occupied lands in what is today the Mid-Columbia region in Washington State. The Columbia River and its tributaries are a part of that land. Protection of rivers and flows for **anadromous** fish and wildlife populations, as well as cultural resources and other matters are critically important to these tribes. The existence and operation of the Rocky Reach Hydroelectric Project (Project) impacts the treaty-reserved natural **resource** interests of these tribes and the other tribes of the CRITFC. The outcome of the relicensing process for the Project will significantly affect rebuilding of fish and wildlife populations impacted by **the Project**. Therefore, the tribes have a unique interest and stake in the relicensing proceeding which **cannot** be represented by any other entity.

¹ The CEUTFC was formed in 1977 per formal resolution of the **four** tribes' governing bodies. The Commission **is** comprised of elected and appointed tribal **officials** who **are** members of the respective tribal **fish** and wildlife committees. **The** Commission has technical and legal resources that provide assistance to the tribes in protecting and enhancing their federally reserved trust resources.

Anadromous fish stocks that originate **above** and within the boundaries of the Rocky Reach Project (Project) 'are **impacted** by the presence and operation-of the Project, These stocks support ceremonial, subsistence and sometimes commercial **treaty** fisheries in Lower Columbia **River** Zone **6** by all of the CRITFC **member** tribes including the Nez **Perce Tribe**, the Confederated Tribes of the Warm Springs Reservation, the **Yakama** Nation and the Confederated **Tribes** of the **Umatilla** Indian Reservation. Thus, CRITFC has a unique interest in this relicensing proceeding that cannot be represented by any **other** party.

In general, CRITFC notes that **Chelan** Public Utility District (applicant) has failed to adequately address most of the CRITFC comments and recommendations made to Scoping Document No. 1. Thus, little progress has been made in Scoping Document No. 2 on **critical** issues. In fact, in response to CRITFC comments to Scoping Document No. 1, the applicant has indicated that they will be addressed in their forthcoming environmental assessment, again **delaying** action on key concerns. CRITFC and its member tribes have serious **concerns** that this path will result in the applicant issuing an environmental review document that will not contain the results of studies that are fundamental to **examining** the range of alternatives necessary to insure protection, mitigation and enhancement of treaty-resewed anadromous fish resources.

Specific Relicensing Issues

On September 10, 1999, CRITFC filed comments on the alternative relicensing procedures for the Project to the FERC. We reference those comments by inclusion in these comments. CRITFC opposed the alternative relicensing **procedure** for the Project. Key concerns included: 1) the lack of tribal resources to fully engage in the relicensing process would create an undue burden on CRITFC and its member tribes whose federally-reserved treaty resources are and would continue to be, highly impacted by the Project and, 2) FERC has a trust responsibility to the tribes to insure that tribal resources are adequately protected, mitigated and enhanced. Because of the applicant's continued failure to address tribal concerns and treaty resources, CRITFC and its member tribes restate their recommendation to FERC to establish a traditional licensing process for the Project which requires a **formal**, three stage consultation process and requires FERC to conduct the environmental review instead of the applicant.

On January **14, 2000**, CRITFC filed comments to the applicant prepared "Rocky Reach Hydroelectric Project, **FERC** Project No, 2145 NEPA **Scoping** Document **No. 1**". In these comments, **CRITFC** offered many recommendations for **anadromous** fish and water quality studies **that** the applicant should **conduct** to fully examine **the** individual, cumulative and **synergistic** impacts of **the** operation and **configuration** of the Project on anadromous fish and supporting critical habitat.

Need for Critical Studies

In an April **12, 2000** **meeting** with the **fishery** parties and the applicant, and in meetings of the Mid-Columbia Coordinating Committee, CRITFC and member **tribal** **staffs** re-

stated their strong recommendations for the applicant to implement critical studies and to expand the breadth of alternatives, particularly with respect to juvenile anadromous fish passage. The FERC representative, Mr. **Vince Yearick**, attended the April 12 meeting, and clearly stated the **importance** of **moving** forward with critical studies. Unfortunately, the applicant **continues** to disregard implementing these studies, using a proposed, but highly disputed, Habitat Conservation Plan (HCP) process as a substitute for implementing critical studies. Under the proposed HCP, the applicant believes that they have the prerogative to unilaterally explore fish passage approaches that **exclusively** focus on contested survival standards for ESA-listed salmon.

There are three main areas of critical studies that should be implemented for the 2001-2002 field seasons. These include:

- Juvenile spill and fish passage efficiency studies, including **drawdown** of the Project reservoir and life history studies
- Water quality studies including increased monitoring for temperature, **toxics** and dissolved gas, and structural remedies to bring the Project into compliance with Clean Water Act Standards
- Production **studies** to mitigate for unavoidable fish losses through the project

CRITFC and its member tribes have serious concerns with the applicant's failure to move forward with these critical studies. We **understand** that the applicant **plans** on releasing and environmental assessment and draft license application in January 2003. Because the applicant has failed to implement tribal recommended studies, if the EA and draft application schedule is maintained, only two migration seasons are **left** to implement studies, particularly **important** juvenile passage studies using increases of fish spill.

Lack of Collaboration on Critical Relicensing Issues

At the April 12 meeting, the applicant's head relicensing representative, Mr. Greg **Carrington**, told tribal representatives that he had been placing all anadromous fish relicensing correspondence, including study requests for anadromous fish, in a pile to be given to another applicant representative that was engaged in the proposed HCP. Mr. **Carrington** stated that the applicant was preparing detailed responses to the tribal comments on Scoping Document No. 1, and that the applicant **planned** on establishing a separate working group to discuss anadromous fish and attendant studies.

On June 7, **the** applicant **sent** responses to **CRITFC** and other parties' comments to Scoping Document 1. The responses were extremely short, general and unsatisfactory. In particular, the applicant did not address 1) the need to examine spill and surface bypass without screens and **drawdown** as **viable** juvenile passage alternatives, 2) the need to examine structural measures to reduce dissolved gas **generated** by the Project, and, 3) the need to conduct life history and ecological studies of anadromous fish as they **migrate**

and explore the impacts of power peaking. A number of other studies, recommended in **CRITFC's** comments for Scoping Document 1, were not addressed in the applicant's matrix.

In comments to Scoping Document No. 1, **CRITFC recommended** that the applicant begin immediate consultation with the Joint Fisheries Parties. on all anadromous **fish** passage issues. The applicant responded that consultation was occurring through the HCP process and that issues. beyond the HCP would be addressed by a specific anadromous fish **subcommittee**. **As of this writing**, the applicant's proposal to convene a specific group to attend to studies **and** relicensing issues for anadromous fish has yet to be realized. Further, these issues remain unresolved in the HCP process, where a draft EIS has not been issued, and in the Mid-Columbia Coordinating Committee. The applicant's continuing actions to leave critical anadromous fish issues without a forum continues to delay critical studies that must be included in the environmental review phase of this relicensing. Unless these issues are resolved and collaboration on critical studies is expedited, the stage appears to be set for release of an **inadequate** environmental review document that will be **highly** contested. This will result in **significant** delay in the relicensing, which is contradictory to the objective of the "alternative relicensing procedure.

CRITFC and its member tribes remain at a severe disadvantage in the relicensing proceedings for the Project. **As** we did for comments on Scoping Document 1, we ask Chelan PUD and FERC to give these comments careful consideration because they represent one of the few **opportunities** to date that CRITFC and its member tribes have been afforded to provide meaningful input into a resource intensive relicensing procedure.

Comments on Scoping Document No. 2

CRITFC incorporates by reference comments on Scoping Document No. 2 filed on August 8, 2000 by the **Yakama** Nation.

Juvenile Passage

CRITFC maintains that the Project continues to have one of the poorest anadromous fish passage performances of any **mainstem dam in** the Columbia River **hydrosystem**. For example, the Project only provides **10-15%** daily average spill for a **very** limited amount of the juvenile **salmon** migration, despite the fact that **substantial** numbers of salmon pass the project before and after spill begins and ends, At federal and other PUD hydroprojects, fish spill levels range from **28-60** % daily average spill.

The applicant's recent reports on the **performance** of their prototype, hybrid screen and surface bypass system are not **encouraging**. **Using** radio **telemetry** methods, for 1999

studies the applicant estimates that prototype system guidance efficiency was 23% for yearling chinook, 49% for steelhead, 9% for sockeye and 26% for **subyearling** chinook (Mosey et al. 2000). For 1999, Using PIT-Tag methodology, the applicant **estimates** that prototype system **guidance** efficiency was **5** 1% of yearling **chinook**, 61% for steelhead, 29% for **sockeye** and 40% for **subyearling** chinook (Mosey et al. 2000). The applicant's preliminary fish passage efficiency data for the 2000 migration indicates that fish passage **efficiency** has actually decreased from 1999 (Mosey 2000 pers. **comm.**) The applicant's data indicates that the average fish passage efficiency for **all** salmon stocks from **1996**-2000 is less than 33%. This means that without spill, 66% of all juvenile salmon stocks are passed **through** turbines. Direct and delayed turbine mortality can reach 18% (Gilbreath et al. 1993).

Despite the bypass system's poor performance, the applicant continues to unilaterally plan, construct and operate this hybrid screen and powerhouse surface bypass system as the foundation for juvenile **passage**.² This action is counter to the recommendations of the Northwest Power and Planning **Council's Independent** Scientific Advisory Board (ISAB 1999), who recommended that all juvenile passage alternatives be compared against the baseline of spill and that turbine screens such as that employed by the applicant select against certain anadromous stocks and life histories. For example, the screen portion of the applicant's bypass system increases descaling of juvenile sockeye.

Two of the most critical relicensing studies that must be conducted in the next few field seasons are 1) to examine juvenile fish passage and fish passage efficiency through various spill volumes and patterns at the **Project** and 2) design and modeling of a full flow surface bypass system through the Project powerhouse..

The Applicant's Proposed Performance Standards

The **applicant's** suggested juvenile passage performance standards will not likely result in rebuilding depressed anadromous fish stocks in the upper Mid-Columbia Reach. NMFS' draft Quantitative **Analysis** Report indicates that additional *increases* in survival for ESA listed steelhead and chinook on the order of **20-50% over** the applicant's suggested passage performance standards are necessary to improve the probability of meeting ESA risk and recovery parameters (NMFS 2000). It is important to stress that the NMFS ESA standards for recovery in this relicensing proceeding are far below the tribes' recovery goals for upper Mid-Columbia stocks to provide surplus for meaningful treaty harvest (Nez Perce et al. 1995).

The applicant's suggested juvenile passage performance standard is limited to a group of fish's **direct survival** from the head of the Project to the project **tailrace** over just a few

² Despite strong tribal opposition to this exclusive **path**, the applicant is engaged in design work and preparation for construction of a **permanent system tailrace outfall**. Noting the **poor guidance performance** of the **screen/surface** bypass **system**, CRITFC and its member tribes maintain that spill and a non-screen, **full flow surface** bypass system should be fully explored before the applicant **proceeds** with further development of the screen/surface bypass system.

days. This perspective ignores the significant issue of delayed mortality to salmon that suffer more **subtle** impacts **from** Project passage and varying Project and environmental conditions over the course of an entire salmon migration. Simply measuring the direct **survival** of a tagged juvenile **salmon** through the Project fails to address delayed **mortality** that can occur far **downstream** or even in the ocean. Passage through the Project **can** impair smolt performance downstream with respect to predator avoidance or fish disease. For example, turbine passage has been shown to cause microscopic lesions in brain and muscle tissue of juvenile Atlantic salmon, causing significant delayed mortality after turbine passage.

Only through **a careful** examination of Fish Passage **Efficiency** ³ can the issue of delayed mortality be addressed **within** the Project relicensing timeframe. This is because 1) fish passage efficiency is a physical measurement that is readily obtainable for all stocks during the **entirety** of the migration, 2) it is logistically impossible to gather adult return information from specific Project survival studies in less than four **years**,⁴ and 3) considerable data has already **been** collected with respect to **delayed mortality** through different dam passage routes, including **smolt-to-adult return** data from studies at federal dams in the Columbia River. The applicant must move forward in immediate consultation with the tribes and other fishery parties to launch fish passage efficiency studies to examine delayed mortality for 2001 salmon migration.

Water Quality Studies

As noted by the **Yakama** Nation comments, the applicant should establish detailed water quality monitoring transects **through** the Project reservoir and in important segments in Project fish passage systems **as** noted in **Karr** et al. (1998). Monitoring for total dissolved gas, dissolved oxygen, temperature and **toxics** such as hydraulic oil from project facilities should take place at all monitoring sites utilizing state-of-the-art monitoring equipment.

CRITFC is concerned that the applicant has failed to get Washington Department of Ecology approval for a long-term gas abatement plan (Attachment). The applicant should, in consultation with the Joint Fishery Parties, Ecology and EPA, develop a long

³ Fish passage efficiency (FPE) **is defined** as the proportion of the salmon migration that passes the dam through non-powerhouse routes (ie: through a spillway or sluiceway). Relative survival studies using millions of juvenile **salmon** conducted at federal dams in the Columbia Basin indicate that juvenile salmon that pass through turbines and turbine screen systems suffer 4-5 times greater delayed mortality than juvenile salmon passing through spill (Gilbreath et al. 1993; Dawley et al. 1996). Using literature **route** specific FPE data with corresponding smolt-to-adult survival data with Project FPE data will give an reasonable estimate of delayed mortality for the different routes of passage through the project for **any** year **that** Project FPE is generated.

⁴ **One** generation of salmon from **smolt** outmigration to adult return is **3-4** years. It would take many millions of PIT-Tagged **fish** to evaluate the **smolt-to-adult** returns **with statistical** precision **from** different dam passage routes at **an** unacceptable cost to **the** resource in delayed mortality from handling and **tagging fish**. The Project **is not** equipped with adult Pit-Tag detection, **so** that the few adults **returning** from study **fish** will not be detected. These types of studies provide only a **snapshot** of **survival for one stock** passing through the Project for 2-3 days, and there have been serious issues raised about robustness of the survival estimates due to field violation of **critical assumptions** necessary to validate the study model.

term water quality plan to abate dissolved gas to the 110% saturation standard. **Structural configuration** modifications to the dam must be included in the plan.

Needed Production Studies

Re-establishment and restoration of anadromous fish populations in the Project lands **and** upstream of the Project should be studied. Stocks should include **coho**, summer chinook, sockeye, fall chinook, spring chinook, steelhead, and Pacific lamprey. We acknowledge the applicant's effort to examine sturgeon issues. Supplementation and habitat enhancement measures should be considered as well **as structural** and operational modifications to the project.

Chelan should fund anadromous fish supplementation work. Acclimation ponds for steelhead, **coho**, chinook and sockeye, stock assessment studies, review of current production facilities, exploration and commitment to new facilities and life history studies, and monitoring and evaluation should begin in this initial study phase. In particular, consultation with the **Yakama** Nation is critical.

Other Specific Needs

The applicant should:

- Provide separate consultation with the **Yakama** Nation and the Confederated Tribes of the **Umatilla Indian** Reservation with respect to cultural issues that include protection, mitigation and compensation for anadromous fish and wildlife, botanical and other resources under a range of **future** conditions including project de-commissioning. The applicant should fund economic analyses examining the benefits to tribal peoples under a range of future conditions including project de-commissioning.
- Examine benefits to wildlife populations from restoration and **re-establishment** of anadromous fish populations both on Project lands and above the Project.
- Examine modification of project operations to provide stable flows in the Hanford Reach for fall chinook and optimal flows for spring and summer salmon migrants through the Mid-Columbia.
- Examine the impacts of the Lake Chelan Project (**FERC** No. 637) as it **affects** operations and anadromous fish occupying and passing the Project.
- **Perform** a cumulative impact analysis of the full range of alternatives on the restoration of fish **and** wildlife resources in the Mid-Columbia.

- Analyze water withdrawals **from** the Rocky Reach pool that reduce **instream** flows and water quality.
- Examine new designs in **fishways** that concentrate on stimulating **leaping efficiency** and reducing depletion of adult energy reserves (**Orsborn** 1987).
- Fund ecological and life history studies of **anadromous** fish as they migrate and pass through the Project. Residualization of salmon migrants in pools may reduce stock productivity. Power peaking has been shown to reduce adult migration and could impact littoral food resources. This should be examined and studies to reduce peaking should be conducted.
- Fund an evaluation of avian and piscine predation of salmon in **the** Rocky Reach **forebay**. Mid-Columbia predator studies indicate that predation in the Project zone could be substantial, **Mitigation** efforts should be explored.

Communication Protocol and Consultation Guidelines and Procedures

The Applicant should at once establish a specific forum to discuss relicensing issues specific to **fish** and wildlife with the Joint Fisheries Parties. This has been standard protocol, even in traditional licensing proceedings (ie: **Cushman** FERC No. 460-001; **Condit** FERC No. 2342; **Elwha** FERC No. 2683; **Glines** Canyon FERC No. 588). The forum should contain opportunities to discuss and attempt to reach agreement for policy, legal and technical components of relicensing issues. The forum should be held at a mutually agreeable and neutral site and should be conducted in a fair and professional manner, with the ground rules approved by all parties.

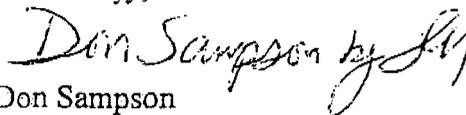
Conclusion

The relicensing procedure for Project 2 142 is a vital issue to CRITFC and in particular the Yakama Nation and Confederated Tribes of the Umatilla Indian Reservation because a new FERC license has the potential to **significantly** impact treaty reserved resources for the next forty to fifty years. To date, the alternative relicensing procedure has continued to place the **CRITFC** tribes at a serious disadvantage. Among other things, the applicant's refusal to engage in meaningful consultation with the tribes and other fisheries parties **on anadromous** fish issues is delaying implementation of critical studies necessary for adequate environmental review.

To remedy these problems and to avoid delay in the relicensing process, CRITFC recommends that FERC institute a **traditional** relicensing process for this project to allow implementation of critical studies leading to an examination of a **full** range of alternatives which incorporate the past, present and future condition of the Project. Alternatives should be cumulatively **and** synergistically examined in a NEPA process culminating with an EIS. The alternative of Project de-commissioning should be included **in** this analysis. Further, the Applicant should immediately institute a forum with the Joint Fisheries Parties specific to the relicensing of the Project, and provide the tribes with the means to fully participate in the relicensing process.

Should you have questions regarding these comments please contact Robert **Heinith** at (503) 238-0667.

Sincerely,



Don Sampson
Executive Director

Cc: Mid-Columbia JFP

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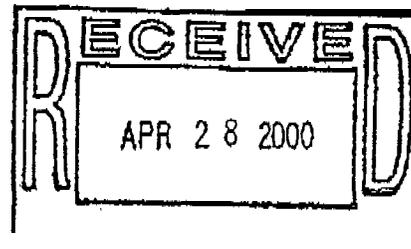


STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

P.O. Box 47600 • Olympia, Washington 98504-7600
(360) 407-6000 • TDD Only (Hearing Impaired) (360) 407-6006

CERTIFIED MAIL

April 24, 2000



Mr. Steve Hays, Manager
Natural Resources and Regulatory Affairs
Chelan County Public Utility
P.O. Box 123 1
Wenatchee, WA 98807

Dear Mr. Hays:

We are **approving** the **increase** in **gas levels** as described in Washington's water quality standards (Chapter 173-201A WAC under *General Water Use and Criteria Classes (section 030) and General Considerations (section 060)*) for the purpose of 1) passing juvenile salmonids over Wanupnm and Priest Dams until August 31, 2000; and 2) conducting fish agency-approved gas-abatement related tests until April 1, 2001. **This approval is further described and detailed as follows.**

We have received your letter and supporting documents that request approval of a gas abatement plan, and biological and physical monitoring in order to meet Washington State's water quality dissolved gas standards. **The gas abatement plans are not approved.** This document, particularly the compliance schedule portion, does not contain enough detail and commitments to meet our requirements. My staff will work with you toward developing sufficient detail and commitment in this document to ensure progress toward meeting water quality standards for dissolved gas. This will result in another letter from me by June 1, 2000 detailing gas abatement expectations toward meeting Washington State Water Quality Standards.

Please contact me at 360/407-6405 or Chris Maynard of my staff at 360/407-6484 if you have questions or comments regarding this spill approval and the work that needs to be accomplished for approval of your gas abatement plan.

Sincerely,

Megan White, P.E., Manager
Water Quality Program

cc: Mid Columbia Coordinating Committee
Columbia Regional Forum Water Quality Team
Pat Irle, Ecology





UNITED STATES DEPARTMENT OF COMMERCE
 National Oceanic and Atmospheric Administration
 NATIONAL MARINE FISHERIES SERVICE
 525 NE Oregon Street
 PORTLAND, OREGON 97232-2737

F/NWR5

April 26, 2001

Dick Nason
 Corporate Services Executive Director
 Public Utility District No. 1 of Chelan County
 PO Box 1231
 Wenatchee, WA 98807-1231

RE: 2001 Spill Operations at the Rocky Reach and Rock Island Hydroelectric Projects

Dear ^{Dick}Mr. Nason:

The purpose of this letter is to clarify the views of the National Marine Fisheries Service (NMFS) concerning spill at Rocky Reach and Rock Island dams in 2001. We are concerned by indications in a April 12, 2001, letter from Chuck Peven, discussions at the March 22, 2001, Mid-Columbia Coordinating Committee (MCCC) meeting, and a subsequent conference call held on April 3, 2001, that Chelan intends to operate in a manner inconsistent with prior agreement and understandings, and without the agreement of NMFS and the other affected fishery agencies and Tribes. To be clear, our recommendation at this time is that Chelan County PUD implement spill consistent with our agreement last year, memorialized in my April 4, 2000, letter. Specifically, those levels are as follows:

	<u>Spring Spill</u>	<u>Summer Spill</u>
Rocky Reach Dam	15% spill for 42 days	10% spill for 34 days
Rock Island Dam	3 1 kcfs for 95 % of run	1999 volumes for 95% or run

The agreement included provisions for modifying spill if necessary to address total dissolved gases and also provided a mechanism for modifying spill at the Rock Island Dam in 2001, based on the results of the 2000 survival studies that were conducted at that project. We believe these levels are appropriate given Endangered Species Act (ESA)-listed species passing your projects, commitments made under the proposed Habitat Conservation Plans, and license requirements stipulated in the 1987 Rock Island settlement agreement and the 4th revised interim stipulation for the operation of the Rocky Reach Dam.

On March 6, 2001, we met with your staff to discuss the 2000 study results and agreed that Rock Island spill should not be modified for the 2001 outmigration. At that meeting, the Chelan PUD also requested that we consider modifications to the 2000 agreement given the low total river flows expected in 2001. We agreed to consider possible alternatives that would not further reduce protection to upper Columbia River species, provided the alternatives were discussed at,

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and received the support of, the MCCC. Consistent with these discussions, a proposal was presented to the MCCC by the Chelan County PUD at the March 22, 2001, meeting and included a fixed level of spill at the Rock Island Dam equaling 20% of the total river flow. While I was originally informed that there was a consensus in support of the PUD's 20% proposal, it is clear from the notes of the March 22, 2001, meeting that this was not the case. I regret any confusion that may have been caused by the lack of a clear expression of NMFS' view prior to or during that meeting, or by subsequent misstatements by me.

We understand that your planned modification of the April 14, 2000, agreement is at least in part to address the Federal Energy Regulatory Commission's (FERC) March 14, 2001, order to remove obstacles that may be limiting potential power production at FERC-licensed projects (Order No. ELO1-47). Also, we understand that you felt this to be an action consistent with the April 10, 2001, Northwest Power Planning Council (NPPC) request to reduce, modify, or eliminate spill at FERC-licensed projects, and consistent with modifications implemented on the Federal Columbia River Power System (FCRPS). However, due to the endangered status of Upper Columbia River spring-run chinook salmon and steelhead, your modifications to the spill programs cannot be considered consistent with FERC's order to maintain environmental protections. In addition, given the lack of analysis and coordination, modifications to the spill programs **are also** inconsistent with measures implemented on the FCRPS.

Due to the combined effects of the low water and power market conditions being experienced this year, NMFS has been working intensively with the FCRPS and other Federal agencies for the last several months to consider the economic and reliability risks associated with flow and spill operations required under the 2000 FCRPS Biological Opinion. That process has also included participation by state and Tribal governments and the NPPC. We have reviewed extensive information provided by the Bonneville Power Administration (BPA), agreed on principles and decision criteria, and analyzed how various operational alternatives affect biological and non-biological risks. Consistent with these discussions, departures from the storage reservoir operations were initiated in January and have continued under one form of emergency declaration or another since that time. Commencement of spill, which might otherwise have occurred on April 3, has also been deferred under a declaration of emergency by BPA.'

At this time, we expect significant continued interruptions in Biological Opinion spill levels at Ice Harbor, John Day,, The Dalles, and Bonneville dams this spring and summer. Three of these projects, however, are equipped with turbine intake screen bypass systems and the fourth has a relatively effective sluiceway passage system that will ensure at least a minimum level of

'Not all of the spill reductions are a result of power emergencies. Elimination of spill at Lower Granite, Little Goose, and Lower Monumental dams is a result of low flow and is consistent with the requirements of Action 40 (page 9-76) in the 2000 FCRPS Biological Opinion.

protection for salmonid outmigrants. Because each of these systems has been thoroughly evaluated, we can expect a certain level of performance and can therefore calculate overall effects to various species under specific operational conditions. Unfortunately, there are no such alternatives available at the at Rock Island Dam and the Rocky Reach Dam prototype bypass system is still being evaluated for both its efficiency and its potential impacts to anadromous fish. As such, spill at the Rock Island Dam (currently being implemented as the preferred juvenile passage strategy by the Chelan County PUD) should be implemented consistent with our April 4, 2000, agreement. In addition, the relatively limited spill program at the Rocky Reach Dam, as identified in our April 4, 2000, agreement, reflects the prototype phase of that bypass system and offers needed additional protections to both ESA-listed and unlisted species.

With regard to the pending low flows, however, NMFS is prepared to consider temporary modifications to operations detailed in our agreement in very specific instances. If the Chelan County PUD finds it necessary to request a temporary modification to operations required by the agreement during the spring, when ESA-listed species are present, we would expect to be provided sufficient written analysis to show that the PUD will not otherwise be able to meet its local load commitments under the current terms of the agreement and that all other avenues for acquiring power have been exhausted (including the reduction of supply to purchasers to the extent necessary to avoid conflicts between the PUD's local load commitments and its commitments to protect listed anadromous fish species). In addition, suitable mitigation will have to be provided to offset additional adverse effects to listed species, We will review and discuss any requested temporary modification to the agreement prior to determining appropriate actions for ESA-listed species.

If reduction in summer spill is requested to meet either regional energy needs or to help address system reliability issues, then we would expect written analysis that demonstrates the level of energy relief anticipated and how the proposed operations will address reliability issues. In the case of the FCRPS, for example, eliminating spill reduces reservoir drafts and thus directly contributes to increased capacity in the fall and winter. As run of river projects, the Rocky Reach and Rock Island dams do not have similar storage capabilities. The analysis should, therefore, demonstrate that other avenues for acquiring power, including reduction of supply to purchasers in a manner consistent with any reductions in spill, as required by FERC's balancing efforts, have been exhausted. Consistent with measures taken for ESA-listed species, suitable mitigation should be provided to offset additional adverse effects to unlisted species. The MCCC should be in agreement with the proposed temporary modifications prior to implementing any alternative strategies. We will gladly review and consider other options that may further increase the supply of power to the region, your proposal to temporarily increase the Rocky Reach pool, for example, and installing turbine units on the already screened adult auxiliary water systems.

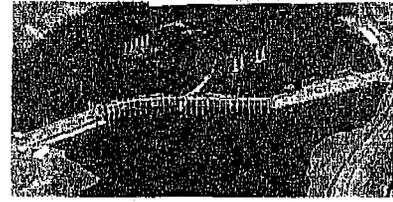
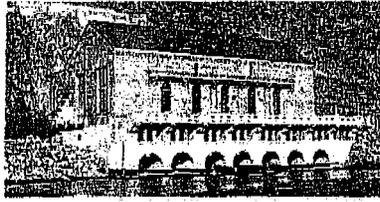
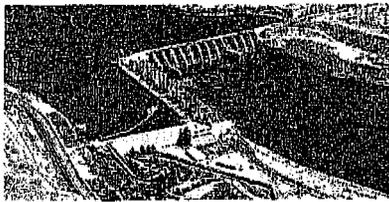
As Upper Columbia River spring-run chinook salmon and steelhead are both listed as endangered, it is critical that other avenues of additional power production be exhausted prior to increasing risks to these fish. If you have any questions regarding this letter, please contact Bob Dach of my staff at 503-736-4734. Thank you for your assistance with this issue.

Sincerely,

A handwritten signature in black ink that reads "Brian J. Brown". The signature is written in a cursive style with a long horizontal line extending to the right.

Brian J. Brown
Assistant Regional Administrator
Hydro Program

cc: MCCC
Mark Walker, NPPC
David P. Boergers, FERC
Therese Lamb, BPA
Doug **Amdt**, COE
Jim Fodrea, BOR



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May 2, 2001

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MAY - 7 2001
FISH MGMT DEPT**

Brian Brown
Assistant Regional Administrator, Hydro Program
National Marine Fisheries Service
525 NE Oregon Street
Portland, OR 97232-2737

Jeff Koenings, Director
Washington Department of Fish and Wildlife
600 Capitol Way N.
Olympia, WA 98501-1091

Re: Spring 2001 Juvenile Fish Programs
Rock Island Hydroelectric Project, FERC No. 943
Rocky Reach Hydroelectric Project, FERC No, 2 145

Dear Mr. Brown and Mr. Koenings:

Thank you for your letters of April 26, 2001 and April 24, 2001, respectively, concerning our spring 2001 juvenile fish programs for the Rocky Reach and Rock Island Projects. Regretably, the District will not be able to provide the spill requested as a result of the severe drought and the critical energy emergency faced by Washington State, the Northwest, and the Western United States.

Energy Emergency

The Northwest and the Western United States in general are a single continuous electric system. If one area of the system does not have sufficient generation, this will initiate a disastrous cascading effect that will trip lines and ultimately black out huge regions of the West.

The problem we face this year in the Northwest is twofold. First, this last winter's precipitation has been very low, coming in at the second lowest level of our region's 70 years of records. Second, little new generation has been built in the Northwest and loads

have grown with the strong economy, The real effect of this has been masked the past three years with high water, Our low water conditions show how vulnerable the Northwest is to supply shortages and blackouts

The Governors of the four Northwestern states have a plan in place to deal with these shortages. This is a five-step plan that moves from voluntary curtailments to rotating blackouts throughout the region It is not possible or feasible for one utility or area to be an island of plenty while others are energy short. If there is a region wide shortage necessitating rotating blackouts, all utilities will be required to participate, irrespective of whether any individual utility has sufficient resources to meet its own local requirements. The region is electrically integrated and every kilowatt-hour of energy that can be conserved will lessen the probability of a regional shortage and collapse. If the worst occurs, our conservation efforts will lessen the duration of the system shortages and blackouts.

Contrary to your suggestion, the District does not have the ability to curtail deliveries of energy for support of local load requirements. Reduction in generation to support fish is required to be shared pro-rata among our purchasers throughout the Northwest.

Due to the regional shortages, the District expects all thermal resources in the Northwest to be operated at maximum capacity throughout the summer, We expect no power exports **from** the Northwest, unless ordered by the Secretary of Energy, during the spring and summer. With this situation every single kilowatt-hour of energy generated in the Northwest will be serving a regional load.

Any energy made available as a result of reduced spill or additional generation of any kind will end up being stored in the hydro system of the Northwest and lessen the probability of any shortages and subsequent blackouts. The fact that the District cannot store water in its own system does not change the fact that in the current situation every bit of Northwest generation is going to serve regional load, and any surpluses will be stored in the Federal Columbia River Power System (the "FCRPS") rather than being exported. The higher the level that the FCRPS can maintain throughout the summer, the less likely any region-wide outages will result.

Spring 2001 Juvenile Fish Program

The District's spring 2001 **fish** program is consistent with current license obligations and satisfies the juvenile dam passage survival standards of the proposed Anadromous Fish Agreements and Habitat Conservation Plans pending before the National Marine Fisheries Service (the "HCPS").

At Rocky Reach, the District's license does not establish a specified level of spill for the spring migration. The proposed Rocky Reach HCP would require the Project to achieve 95 % Juvenile Dam Passage Survival by 2003 ("95% JDPS").

To attain 95% JDPS during the spring migration, the District will operate its prototype bypass system twenty-four hours a day, seven days a week. All predator control programs will be continued. The District will continue replacing all turbine runners with "fish friendly" reduced-gap turbine runners. The turbine units will be operated at optimum efficiency. We will continue to seek approval from FERC to construct and operate a permanent bypass system at the start of the 2002 spring, juvenile migration.

We cannot agree to your request that Rocky Reach spill 15 percent of the previous daily flow during the spring in addition to all the measures we plan to implement at the project. The energy foregone due to your proposed spill is estimated to be 70,810 MWh at an estimated cost of \$17,619,714. The District's fish protection measures are adequate under the circumstances and this energy is vitally needed to alleviate the regional energy emergency. In addition, as opposed to Rock Island Dam, spill at Rocky Reach Dam is a largely ineffective means of juvenile fish passage.

At Rock Island, the District is obligated by the Rock Island Settlement Agreement to fund the Fisheries Conservation Account with \$3,220,894. With these monies you and the other parties are authorized to purchase spill, and to fund juvenile bypass studies. As with Rocky Reach, the proposed Rock Island HCP would require the Project to achieve 95% JDPS.

To attain 95% JDPS during the spring migration, the District will spill approximately 20 percent of the previous hourly average flow coming from the Rocky Reach Dam. The energy foregone due to spill is estimated to be 62,780 MWh at an estimated cost of \$14,142,600. In addition, all predator control programs will be continued, powerhouse two will be favored over powerhouse one, and turbine units will be operated at optimum efficiency.

We cannot agree to your request that Rock Island spill 31 kcfs (which translates to approximately 44% of the previous daily flow) during the spring in addition to all the measures we plan to implement at the project. The energy foregone with your proposed spill is estimated to be 129,940 MWh at an estimated cost of \$32,475,600. The District's spill program exceeds the level required under the license by a factor of four,

Total Savings from Reduced Power Losses

In this time of emergency it is unreasonable to expect Rocky Reach and Rock Island to voluntarily spill at levels that are not required under the District's licenses and

are not necessary for adequate fish protection. In contrast with your proposals, our programs will provide an additional 272,290 MWh of scarce energy to meet regional needs.

If you have any questions, please do not hesitate to call.

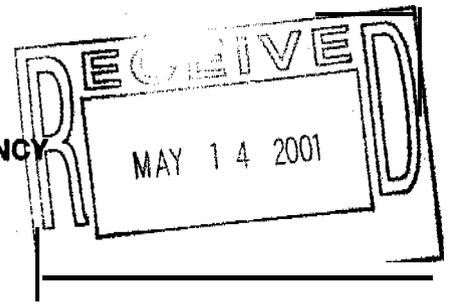
Very truly yours,



Roger A. Braden
Chief Executive Officer/General Manager



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue
Seattle, Washington 98101



Reply To
Attn Of: ECO-088

MAY 11 2001

01-001-NOA

Bob Dach
National Marine Fisheries Service
525 NE Oregon Street, Suite 420
Portland, OR 87232-2737

Dear Mr. Dach:

We have reviewed the draft Environmental Impact Statement (EIS) for the proposed *Anadromous Fish Agreements and Habitat Conservation Plans for the Wells, Rocky Reach, and Rock Island Hydroelectric Projects* (CEQ #000464) in accordance with our responsibilities under the National Environmental Policy Act (NEPA) and §309 of the Clean Air Act. The draft EIS evaluates the decision to authorize incidental take permits for 50-year anadromous fish agreements and habitat conservation plans (HCPs) with two Washington State public utility districts (PUDs) to protect five species of Columbia River steelhead and salmon, two of which are currently listed as endangered under the Endangered Species Act.

We have rated the EIS, EO-2 (Environmental Objections- Insufficient Information). We base our environmental objections to the project on the selection of Alternative 3 as the preferred alternative. Our objections are primarily based on the lack of information and the lack of proposed measures that demonstrate that fish species of concern would be protected under the framework provided by the HCPs, as described in the EIS. Specific sources of our objections are

- the failure to include listed Columbia River bull trout in the HCP;
- the lack of key biological information in the EIS that is presently slated for later development in the biological opinion;
- the lack of information on water quality impacts, namely total dissolved gas and temperature- from the existence and operation of the three PUD dams;
- yet undeveloped or agreed upon methods of measuring compliance with standards established in the HCP; and
- an explicit statement that future interpretations of information will not favor protecting fish over other interests.

This rating and a summary of our comments will be published in *the Federal Register*. A copy of the rating system used in conducting our review is enclosed for your reference. Thank you for the opportunity to review this draft EIS. If you would like to discuss these issues, please contact Chris Gebhardt at (206) 553-0253.

Sincerely,


Judith Leckrone Lee, Manager
Geographic Implementation Unit

**EPA Detailed Comments on the EIS
for the Proposed Anadromous Fish Agreements and Habitat Conservation Plans
for the Wells, Rocky Reach, and Rock Island Hydroelectric Projects**

General Comments

The Environmental Protection Agency has environmental objections to adopting the preferred alternative (Alternative 3) which uses anadromous fish agreements and-habitat conservation plans (HCPs) to address Endangered Species Act (ESA) concerns associated with the Wells, Rocky Reach, and Rock Island dams in the Mid-Columbia Rivers for the next 50 years. The primary reason for our objections is that information and proposed measures do not demonstrate that fish species of concern would be protected under the framework provided by the HCPs as described in the EIS. We are also concerned that the HCP does not include Columbia River bull trout and that the EIS lacks information on water quality impacts, namely that of total dissolved gas and temperature, caused by the operation of the dams.

HCP Framework and EIS Do Not Demonstrate Sufficient Protection of Salmon and Steelhead

Alternative 3 proposes using anadromous fish agreements and HCPs in lieu of adopting the no-action alternative and complying with ESA through Section 7(a)(2). ESA calls for the protection and restoration of listed species, however, the HCP, as it is currently written, does not provide assurances that populations of salmon and steelhead would be protected and restored in the mid-Columbia River for 50 years. The HCP is based on an adaptive management framework which accepts less front-end planning, greater gaps in understanding, and fewer commitments to do specific actions to protect and restore fish. This, in turn, exposes the listed fish species to more risk because the requirements to protect and restore fish, and to measure their status become subject to future interpretation.

- The HCP proposal found in the EIS is additionally problematic because
- key biological information on salmon and steelhead is not in the EIS (instead it is slated for inclusion in the Biological Opinion (BiOp));
 - another listed species, Columbia River bull trout, are not included in the HCP;
 - technology to monitor compliance does not presently exist; and
 - the BIS states that issues that arise (and with adaptive management, there are bound to be many) will not necessarily be resolved so that fish protection is favored over other interests.

In short, the EIS presents a HCP framework to protect listed species which we found to contain significant gaps, thus reducing assurances that fish will be protected-with HCP implementation.

Although it contains good information, the EIS is also not arranged in a manner that helps the reader understand the overall risks posed to salmon and steelhead throughout their life stages, the specific risks posed to the fish by the dams, the extent of those risks, ways to monitor those

risks, and ways to mitigate those risks, The EIS should clearly explain and illustrate the risks posed to salmon and steelhead in the mid-Columbia River. This discussion should begin broadly with a discussion of the life cycle of the different fish species, maps showing the range of their migrations, and a comprehensive list of sources of injury and mortality (ocean harvesting, natural predation, etc.). This would provide a context by which the reader could view the level of fish injury and mortality occurring in the mid-Columbia River dam complex.

The EIS should then contain photographs and diagrams of each dam facility with annotations showing migratory routes, the number of fish using each route, and sources of fish injury and mortality. Supplemental information should state the number or percentage of juvenile and adult fish that use individual migration routes, and the level of fish injury and mortality at specific locations in each dam, for each dam complex, and the overall injury and mortality rate for juveniles and adults that pass all three dams.

To better address the risks posed by the dam complex to salmon and steelhead, the HCP should include monitoring that continually assesses the level of salmon injury and mortality salmon as they are passing through the dams and mitigation measures that reduce those levels. Specifically, the EIS should:

- explicitly identify an available monitoring method that could be used to measure compliance and commit to using that method in the Record of Decision (ROD), and
- propose concrete actions that analyses demonstrates is sufficient to protect fish in lieu of basing success solely on fish protection standards.

The EIS should also contain biologic information that is planned to be issued in the **BiOp** so that the public and decisionmaker can review and comment on this key information. 40 CFR 1502.25(a) states that agencies shall prepare draft **EISs** concurrently with and integrated with environmental impact analyses required by the Endangered Species Act.

Compensating for Fish Loss

The EIS proposes to mitigate 7 percent of the 9 percent of salmon and steelhead losses due to dam existence and operation using hatchery supplementation and the remaining 2 percent by improving habitat in tributary reaches. We strongly believe that favoring habitat improvement over hatchery supplementation is a more sustainable practice that benefits other amenities (such as water quality) in addition to fish. At the same time, we understand that treaties entitle tribes to a harvest level of fish and that the only way of guaranteeing this harvest level in the short term (until habitat improvement activities result in increase numbers of fish) is through hatchery supplementation. The EIS should therefore propose to implement the majority of the habitat improvement projects soon after project adoption to maximize the benefits of habitat improvements as quickly as possible. The EIS should prioritize these reaches proposed for improvement and indicate the order by which those listed in the EIS should be restored. The EIS should predict the when and to what extent habitat improvement would result in additional fish numbers and prescribe a commensurate reduction in hatchery supplementation. Finally, the EIS should state the method used to translate 2 percent compensation into the type and level of habitat improvement,

Water Quality

The draft EIS has a good discussion of water quality in the mid-Columbia River, especially highlighting the effects of warm water and high total dissolved gas concentrations on juvenile and adult salmon. However, the EIS downplays the importance of the three dams on the water temperature regime of the river and its potential effects on salmon. The conclusions on temperature have not been substantiated and we are concerned that the EIS underestimates the effects of the three dams on temperature and current in the reservoirs and therefore, the degree to which the dams “result in the destruction or adverse modification of critical habitat” of the plan species.

The DEIS states that the thermal regime of the mid-Columbia is controlled largely by water released at Grand Coulee and the three subject dams do not significantly affect water temperature because of the short water retention times in the reservoirs of each dam. These statements are unsubstantiated. There is no information on travel time in the river without dams or in the reservoirs with dams. There is no temperature data provided that could be used to verify the statements. The EIS says the travel time through each reservoir is a few days. There are three reservoirs in the study and two more downstream, so a few days in each reservoir adds up.

In addition to increasing temperature or causing shifts in the temperature regime so that warm temperatures last longer into the late summer and fall, dams can reduce the diurnal fluctuation of temperature and dampen the cooling effects of short term weather fluctuations. Currently, temperature at all three dams exceeds 18 C at times. At temperatures over 19 C any decreases in temperature can be beneficial, so diurnal fluctuations and short term weather fluctuations might play a role in salmon migrations through these reaches. Further, by slowing down the river flow, dams can cause out-migrating juvenile salmon to be subjected to warm temperatures longer, cause them to expend more energy to migrate, and subject them to increased predation and disease. We believe that these changes in the reservoirs could represent “destruction or adverse modification of critical habitat” by the dams and should be more thoroughly evaluated in the EIS so that actions to remedy the situation or off-site mitigation can be planned.

The EIS suggests that little can be done to offset elevated temperatures because Grand Coulee is not equipped to release cooler water from deep in the reservoir. There are some possible steps that can be taken both to remedy the effects directly and to provide off site mitigation that should be investigated in the EIS. Water to run Grand Coulee’s turbines is from deep in the reservoir and is cool. Grand Coulee is rarely operated at its capacity. During the short critical period in the summer when temperatures are at critical levels, generation could be diverted to Grand Coulee to release as much cool water through its turbines as possible. This was done in 1961 to cool the Hanford Reach and resulted in temperatures up to 9 F cooler in that reach which is quite a distance downstream from the subject reach. This may require spill from the dams downstream of Grand Coulee, and if so, the trade off between cooler temperatures and increased gas would have to be evaluated.

An **offsite** measure that might mitigate the effects of the dams on critical habitat would be to augment or create cold water **refugia** primarily in tributaries (where they are already planned).

For example, creating shade at the mouths of some tributaries could augment the temperature benefits naturally obtained from cool water from ground water wells entering those tributaries.

Detailed Comments

Abstract. The EIS proposes 50 year anadromous fish agreements and habitat conservation plans. The EIS should explain the basis of the decision to select a 50 year time frame. The EIS should state whether other time frames would work equally well and whether the HCP is protective enough to ensure fish protection for the next 50 years.

Abstract and 1-3. The EIS states that the agreements would provide the PUDs with some degree of certainty for the long term operation of these projects. Please define “some degree of certainty” and explain what elements of the agreements and HCP are subject to future negotiations and which are not. Does the flexibility contained in the agreements and HCP compromise the stable operating environment that the PUDs are seeking or the long term protection of the five species of salmon and steelhead?

S-1. The EIS states that “fish protection measures of the HCPs are also intended to satisfy the PUD’s obligations under the Federal Power Act, Fish and Wildlife Coordination Act, Pacific Northwest Electric Power Planning and Conservation Act, and Title 77 Regulatory Code of Washington (RCW).” The EIS should also state that HCPs also intend to satisfy the Clean Water Act and State of Washington Water Quality Standards by operating dams in a manner that complies with total dissolved gas and temperature criteria which is also consistent with fish protection. The EIS should also state that the fish protection measures of the HCP are consistent with the Innovative Columbia River Basin Strategy (i.e., All-H Paper Strategy).

S-2. The EIS states that the purpose of the HCP is to “support a comprehensive strategy for protecting and recovering five Plan species of anadromous salmonids in the Mid-Columbia River, two of which are currently listed as endangered under the Endangered Species Act.” The EIS contains a lot of good information on the fish species of concern, however, the EIS should comprehensively discuss the life cycle of the five species and the sources of mortality and injury during their life cycles. This information should be used to determine how to best protect and recover the species. Such a strategy might include increasing restoration and habitat improvement activities in tributaries or limiting the harvest of salmon on the Columbia River or in the oceans. This information could be elaborated on page S-1 1 after the statement that, “in addition to improved survival through the middle and lower Columbia River projects, and during early life states of the fish, improved environmental/climate conditions are necessary for the listed species to survive and recover.”

S-6. The EIS states that the mid-Columbia River dams will continue to be operated to control total dissolved gas levels under total river flows up to the 7-day 1 O-year peak flow event to 120 percent saturation, The EIS should explicitly state that the 120 percent saturation criteria is a special exemption that applies only when dams are spilling water to aid in fish passage and that the criteria at all other times is 110 percent.

S-6. At several places in the document, the EIS states that turbines will be operated at peak efficiency ratings, to the extent possible to protect juveniles. We recommend that the EIS define “efficiency” as it is used in the EIS. Does this mean that the turbines will be operated to maximize power production? In addition, the EIS should explain the connection between operating turbines efficiently and protecting juveniles.

S-11, Last paragraph. “Drawdown to minimum operating pool...has not been shown to increase juvenile survival....Therefore it was not evaluated in this EIS.” Has **drawdown** been tried or evaluated through some kind of modeling exercise ? It hasn’t been shown to increase survival but has it been shown that it doesn’t increase survival? Or is the effect of **drawdown** an unknown?

S-16. The EIS states that prior activities are not considered an action subject to additional mitigation beyond license requirements unless they are considered to cause a continuing “take” of a listed species as defined under the Endangered Species Act. The EIS should clarify what is meant by this statement and use examples.

S-17, S.5.3.5. bullet 1. Does the 91% project survival include mortality of juveniles in the reservoir?

S-17. The HCP proposes to compensate the 9 percent loss of fish species by providing 7 percent compensation through fishery supplementation and 2 percent compensation through tributary habitat improvement programs. We are concerned that the proposed strategy heavily relies on the non-sustainable practice of habitat supplementation which additionally results in genetic erosion of native fish stocks (see page 2-47 of the EIS). The EIS should propose implementing the majority of habitat improvement projects soon after project implementation so that benefits to fish occur as quickly as possible. In addition, we recommend that the EIS predict when and to what extent habitat improvements result in increased fish numbers and propose a commensurate decrease in hatchery supplementation at that time. The EIS should also identify the method used to quantify the level of habitat improvement needed to provide 2 percent compensation.

S-18. The EIS states that the **PUDs** would use “best efforts” to evaluate, improve, maintain, and operate adult and juvenile fish passage systems to the meet the performance standards. We recommend that the EIS define “best efforts” to ensure that there is clear understanding about the **PUDs** commitments in the context of this HCP and to ensure that they are sufficient to effectively protect fish species.

S-18. The EIS describes HCP phases, We are concerned that the HCP relies extensively on an adaptive management strategy without having the benefit of a completed risk assessment which would evaluate the likelihood of meeting HCP performance standards.

S-21. The EIS proposes to create a **tributary** conservation plan which prescribes activities that would decrease bank erosion, sedimentation, channel scouring, and water quality problems. Restoration activities for the HCP should be matched up with water bodies identified as impaired under Section 303(d) of the Clean Water Act, and should be coordinated with TMDL development and implementation.

S-22, first paragraph second column. Will a tribal representative be asked to sit on the tributary committee?

S-23 and I-12. The EIS states that bull trout are a threatened species in the Columbia River Basin and that they also occur in the project area, however, the extent of their occurrence and the project-related impacts are unknown. We are very concerned about the HCP's ability to provide sufficient protection to bull trout when there is a lack of knowledge about the presence of bull trout in the project area and the potential impacts of the project. We strongly-recommend that NMFS invite the U.S. Fish and Wildlife Service to become a cooperating agency in the development of the EIS to facilitate adding bull trout as a fish species protected under the HCP. Protecting bull trout in the context of the HCP would likely need to begin with designating critical habitat for bull trout in the Columbia River and the development of ESA Section 4(d) recommendations. The EIS should also state whether dolly varden also occur in the project area, and whether protection would be extended to this fish species, because of the inability to tell this fish species and bull trout apart,

Table S-23. Under Water Quality, Project Area TDG, Alt 3: The PUD's agree to take measures to maintain Total Dissolved Gas levels at or below legal maximum levels. Is that referring to the 110% standard or the 120% waiver?

S-24. The EIS states that the PUDs would, to the maximum extent practicable, minimize and mitigate the impacts of takings. Please define and give examples of the "maximum extent practicable."

S-24. The EXS states that available technology is not sufficient to adequately conduct all of the evaluations proposed in the HCPs for each of the Plan species and there is currently no methodology that all parties support for determining the survival of adult fish through the projects. We object to the concept of employing an adaptive management strategy when technology is not available to evaluate whether the PUDs are successfully meeting HCP performance standards. Monitoring and evaluation are the key to ensuring that an adaptive management strategy is meeting performance standards. We recommend that the EIS characterize the importance of evaluation tools that are not currently developed in the context of this EIS. If these tools are sufficiently important, the EIS should propose using alternative methods of evaluation or, at a minimum, should demonstrate that these tools could be developed in a timely manner.

S-27. We recommend that the monitoring section include implementation monitoring, which would ensure that mitigation measures are in place and working.

S-33. The EIS states that there is no requirement to provide the benefit of the doubt to the species of concern with respect to gaps in the information base and NMFS has no authority to determine what constitutes the best available information to be utilized in support of any decisions. We believe that the framework proposed in the HCP does not provide sufficient protection to fish species of concern primarily due to an adaptive management approach coupled with methods of evaluation which have yet to be approved or developed. We believe that the loose framework of the HCP will require clarification and information in the future and that the

statement above about information precludes NMFS from providing adequate protection to fish species. We therefore, strongly recommend that the framework be tightened and the level of information in the EIS be bolstered to limit information gaps that would require clarification in the future.

S-35. We strongly recommend that all analyses planned for inclusion in the biological opinion be included in the EIS. Many of the analyses that we believe necessary to include in the EIS for adequate information disclosure and to ensure protection of fish species are listed as studies to be described in the biological opinion. The purpose and need of this proposed action is to protect and restore Columbia River salmon and steelhead species to comply with ESA and issues related to biological parameters should be discussed in the EIS. This information should have been presented in the draft EIS to be consistent with NEPA which requires that Federal agencies shall “to the fullest extent possible...prepare draft environmental impact statements concurrently and integrated with environmental impact analyses and related surveys and studies requested by Endangered Species Act (40 CFR 1502.25(a)).”

S-36. Table S-3 states that if reservoir **drawdown** occurs, erosion and reservoir turbidity would initially increase over the short term and damage aquatic habitat conditions with the greatest damage **occurring** the first 4 to 7 years. The EIS should identify ways to mitigate these impacts if any exist.

S-38. Table S-3 states that although maximizing survival at each of the PUD dams will increase the return rates of spring-run chinook salmon and steelhead, populations will continue to decline without reductions in non-hydro system related impacts, although at a slower rate than Alternative 1. We strongly agree with this statement and therefore strongly recommend that the EIS describe the life cycles of the fish species of concerns and the **sources** of mortality and injury during different stages. We believe this information is critical to determine how to best protect and restore the species.

1-3. We were pleased to read that the purpose of the HCP is to protect fish in the Mid-Columbia River and not to merely satisfy ESA requirements. We, however, recommend that the EIS contain an objective that is less prescriptive than generating electricity, such as helping to provide electricity to meet local electricity needs. This broader purpose and need statement would allow options such as conservation if additional fish protection is needed and would also give priority to power production that served the needs of local people over that for exportation. The EIS should also discuss tensions that exist when operating the dams for power production versus fish protection and existing legal and policy requirements for fish protection and electricity production.

1-17. The EIS identifies activities significantly impacting salmon including hydroelectric and irrigation projects; commercial and sport fishing; logging; mining; livestock grazing; water use by farms, cities, and towns; and municipal and industrial pollution. We recommend that the cumulative effects section in the EIS describe in quantitative terms the extent that these activities impacts the fish species of concern. This will better allow the reader and decision-maker to understand how to protect and restore salmon and steelhead in the Mid-Columbia River.

1-17 and 2-7. The EIS contains a germane discussion of the power aspects of this project. It states that the Northwest Power Planning Council projects an energy deficit of 25 million megawatts by 2003. We recommend that the EIS state whether this is a net deficit, or in other words, does the Northwest produce 25 million megawatts less than they use or is the deficit partly attributable to exporting electricity. We believe that this is an important point in the context of the scope of the project (the Mid-Columbia River dams) and a statement in the following paragraph that these dams were developed primarily to serve customers in nearby areas and the statement on page 2-7 that the three dams produce 14 billion kilowatt-hours or 6 percent of the hydropower in the U.S.

1-18 and 1-32. The EIS identifies two additional Mid-Columbia River PTJD dams, Priest Rapids and Wanapum, that are not covered in the scope of this EIS. The EIS should explain why these two facilities were not included as part of the EIS (i.e., why Grant County withdrew from the HCP development process) and should characterize how their absence from the HCP affects fish protection and restoration.

1-27. In the section describing EPA's responsibilities, the EIS should identify our Clean Air Act Section 309 responsibility to review the significant federal action described in this EIS.

1-31. The EIS correctly states that NMFS must identify critical habitat for listed species. The EIS should also state that U.S. Fish and Wildlife Service must identify critical habitat for Columbia River bull trout.

1-31. The EIS states that the biological opinion will determine whether the species can be expected to survive with an adequate potential for recovery under the proposed action. Again, we believe that this is critical information for inclusion in the EIS and that the EIS should state what the predicted potential for recovery is for all alternatives. This would better allow the public and decision-maker to understand this key issue and to allow the decision-maker to make the appropriate decision.

1-31. The EIS states that the biological opinion will identify reasonable alternatives to the proposed action if it is likely to jeopardize listed species. Because the biological opinion was not developed concurrent with the development of the draft EIS as required by NEPA (40CFR1500.2(c)), any reasonable alternatives identified would require a supplemental EIS to describe, the new alternatives and the environmental consequences of adopting them. We recommend that NMFS develop the biological opinion prior to issuing the final EIS and include information and analyses developed for the biological opinion in the EIS. Finally, NMFS should issue a supplemental or revised EIS to fulfill NEPA requirements for all newly developed alternatives.

1-32. The EIS states that the original ecosystem based management approach was abandoned as overly ambitious in favor of HCPs that focus specifically on the five Plan species. The EIS should present this in chapter 2 as an alternative considered but eliminated from detailed evaluation. The EIS should describe in more detail why the ecosystem approach was abandoned? Was it economically or technically infeasible? Were there time restraints?

2-2. The EIS states that reasonable and prudent measures or alternatives and the terms and conditions of the biological opinion would remain in effect as long as new information did not indicate that the species' continued existence was in jeopardy. We are concerned that the HCP relies on new information for ensuring the protection of fish species of concern when the EIS indicates that evaluation methods are not universally accepted or are not technically feasible. We are also concerned that this criteria ignores the ESA requirement to restore listed species. We recommend that the appropriate evaluation techniques be developed for the HCP and identified in the EIS and that the above statement be changed to read that reasonable and prudent measures or alternatives and the terms and conditions of the biological opinion would remain in effect as long as new information did not indicate that the species continued existence was in jeopardy or was failing to recover.

2-4. The generic dam diagram helps the reader identify components and understand how a dam operates. To improve the document more, however, we recommend that the EIS include a number of diagrams and photos illustrating the existing and proposed layouts for each darns including mitigation measures, monitoring stations, etc. In other words, the EIS should contain diagrams that illustrate the information listed in table 2-3 for each darn,

2-8 and other pages. The EIS does a good job identifying locations where fish could become injured or die when passing through the three dams. We recommend that the EIS include diagrams for each mid-Columbia dam that shows passages, the number of fish that use each passage, and injury and mortality rates at each obstacle. We believe that our recommendation is consistent with a statement on page 2-9 that the proportion of fish passing through spillways and bypasses is essential information for estimating the overall survival of juvenile salmon and steelhead passing a project and a statement on page 2-12 that fish bypass systems are fairly **complex** systems that can include turbine intake screens, **gatwell** orifices, etc. These features vary by project, and all of them affect the survival rate of juvenile salmon and steelhead.

2-18. The EIS states that current natural anadromous **salmonid** spawning in the **mainstem** Mid-Columbia River is limited primarily to the Hanford reach and major tributaries. The EIS should contain an estimate of how much spawning area is lost due to the dams and, if necessary, how compensatory spawning areas could be created or enhanced.

2-22. The EIS discusses salmon predators and predator control programs. The EIS should estimate injury and mortality rates caused by predators and the effectiveness of predator control programs to reduce predation.

3-28. The EIS describes lower population numbers for the species of concern during the 1990s. The EIS should explain recent population declines in the last decades despite increased attention and effort being given to saving salmon and steelhead species.

3-37. The EIS identifies information gaps here and on pages 3-58 and 3-67 among others. The **EIS** should contain a table listing research needs. The table should also include a schedule indicating when studies need to be conducted or an indication of high and low priority projects.

3-37 and 3-47. The EIS states that it is not possible to differentiate between natural and

hydrosystem caused mortality at this time. We believe that this is a key question that demands research attention. The EIS should define sources of hydrosystem and natural mortality to better formulate the parameters of the question. For example, are factors attributed to dams, such as increased predation and habitat loss, considered natural or hydrosystem sources of mortality.

3-50. The EIS states that the effect of the projects on isolating populations and on the genetic fitness of bull trout is unknown. We recommend that NMFS consult with U.S. Fish and Wildlife Service about the proposed actions and their impacts to bull trout. The consultation process should help fill information gaps about bull trout in the project area and the impacts of the dams and their operation on bull trout. The EIS should contain this information. We believe that the best way to ensure the protection and restoration of Mid-Columbia bull trout is to include them as a species of concern in the HCP.

3-52. The EIS states that reservoir releases are typically cooler in the spring and summer and warmer in the fall and winter. The EIS should also state that dams releases have fewer temperature fluctuations with cool moments for salmon and steelhead to take refuge in during hot periods.

3-55. The EIS describes sediment deposition. The EIS should state whether sediment deposition behind the Mid-Columbia dams would require dredging, and if so, the frequency of the dredging and the impacts of the dredging to fish species of concern.

3-81. We found the key terms and definitions to be a useful addition for readers who are not familiar with terms associated with water resources.

3-87. The EIS states that Washington Department of Ecology is not permitting new water rights to withdraw water from several of the Mid-Columbia River tributaries to address dewatering. The EIS should describe the effectiveness of this mitigation measure and the extent that dewatering still affects fish species of concern.

3-89. The statement that the “Entiat River flows between the Entiat River and Chelan mountains” is confusing. Please clarify or rewrite the description.

3-95, Last paragraph, first column: “Total dissolved gas supersaturation is the foremost water quality concern in the mid-Columbia River.” This statement has not been substantiated. We do not believe that the temperature impacts from these dams and from increasing the length of exposure of juveniles to these temperatures have been adequately evaluated. TDG waivers from water quality standards are granted because it is believed that the risks posed by gas at levels up to 120% are outweighed by the benefits of moving fish downstream. There are no benefits that outweigh the effects of subjecting fish to elevated temperatures with the concurrent hazards of predation for longer periods of time.

3-97, fourth paragraph, first column. “The very rapid flushing rates....Water temperatures do not appear to be significantly warmed through the mid-Columbia projects.” Neither the flushing rates nor the temperature statements are substantiated with data or analysis. These statements are very important and should be substantiated.

**U.S. Environmental Protection Agency Rating System for
Draft Environmental Impact Statements
Definitions and Follow-Up Action***

Environmental Impact of the Action

LO - - Lack of Objections

The Environmental Protection Agency (EPA) review has not identified any potential environmental impacts requiring substantive changes to the proposal. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposal.

EC - - Environmental Concerns

The EPA review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce these impacts.

EO - - Environmental Objections

The EPA review has identified significant environmental impacts that should be avoided in order to provide adequate protection for the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no-action alternative or a new alternative). EPA intends to work with the lead agency to reduce these impacts.

EU - - Environmentally Unsatisfactory

The EPA review has identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of public health or welfare or environmental quality. EPA intends to work with the lead agency to reduce these impacts. If the potential unsatisfactory impacts are not corrected at the final EIS stage, this proposal will be recommended for referral to the Council on Environmental Quality (CEQ).

Adequacy of the Impact Statement

Category 1 - - Adequate

EPA believes the draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis of data collection is necessary, but the reviewer may suggest the addition of clarifying language or information.

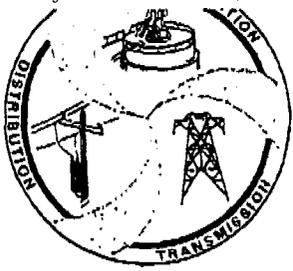
Category 2 - - Insufficient Information

The draft EIS does not contain sufficient information for EPA to fully assess environmental impacts that should be avoided in order to fully protect the environment, or the EPA reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analyzed in the draft EIS, which could reduce the environmental impacts of the action. The identified additional information, data, analyses or discussion should be included in the final EIS.

Category 3 - - Inadequate

EPA does not believe that the draft EIS adequately assesses potentially significant environmental impacts of the action, or the EPA reviewer has identified new, reasonably available alternatives that are outside of the spectrum of alternatives analyzed in the draft EIS, which should be analyzed in order to reduce the potentially significant environmental impacts. EPA believes that the identified additional information, data, analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. EPA does not believe that the draft EIS is adequate for the purposes of the National Environmental Policy Act and or Section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS. On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to the CEQ.

* From EPA Manual 1640 Policy and Procedures for the Review of Federal Actions Impacting the Environment. February, 1987.



PUBLIC UTILITY DISTRICT NO. 2 OF GRANT COUNTY

MEETING OUR CUSTOMER ENERGY NEEDS IN A COST CONSCIOUS MANNER.

P.O. BOX 878 • EPHRATA, WASHINGTON 98823 • 509/754-0500

May 1, 2001

Bob Dach

National Marine Fisheries Service
Northwest Region, **Hydro** Program
525 NE Oregon Street, Suite 420
Portland, OR 97232-2737

Ref: Draft Environmental Impact Statement for the Anadromous Fish Agreements and Habitat Conservation Plans (HCPs) for the Wells, Rocky Reach and Rock Island Hydroelectric Projects (DEIS)

Dear Mr. **Dach**:

This letter contains our observations and **comments** regarding **the** referenced document. Public Utility District No. 2 of Grant County (Grant PUD) owns and operates the Priest Rapids **Hydroelectric** Project that consists of **the** Priest Rapids and **Wanapum** dams and is geographically situated immediately downstream of the 3 projects that are the subject of this **DEIS**.

We are generally supportive of the proposed action which, as we **understand** it, is to issue incidental take permits under Section **10** of the Endangered Species Act to Douglas and Chelan **PUDs'** based on the **HCPs**. However, we have a number of concerns with the analysis provided by **NMFS** in this **DEIS** and its implications and potential impacts **on** the Priest Rapids Project. This comment letter will discuss specific concerns regarding the analysis in the **DEIS**.

1. **The DEIS Presupposes Consistency of the HCP with the New Federal BiOp and A Non-Existent Basin-Wide Salmonid Protection Programs**

The 100 percent no net impact performance standard (**NNI**) is presented as the centerpiece of the **HCPs** which are the subjects of the **DEIS** analysis. However, no scientific justification is given for this standard other **than** the **statement** that it is consistent **with** the performance standards of **NMFS'** 1995 biological opinion (**BiOp**) for the Federal Columbia River Power System. In fact, the 1995 **BiOp** was replaced in 2000. If there is any reason **to** scrutinize the **DEIS** in the context of a federal **BiOp**, the **new BiOp** should be used for comparison. **Furthermore**, there is no basis for concluding that the **HCPs** will be **consistent** with evolving basin-wide salmon protection plans that do not yet exist (See page 4-39).

Bob Dach, Northwest Region Hydro Program, NMFS
May 1, 2001

Page 2

2. The Presentation of Vastly Different Alternatives Confuses the Proposed Action

Specifically, the **DEIS** presents separate alternatives relating to Section 7 and Section 10 of the ESA. As we have pointed **out** in prior correspondence **to** you, there are substantive and procedural **differences** between the two Sections that, if glossed over, make **it difficult to** analyze the impacts of a proposed action and its implications for **the** various parties to the HCP as **well** as Grant PUD.

3. The DEIS Presents No Independent Scientific Analysis of the Validity of the NNI Standard

At page 4-39, the **DEIS** states that the **NNI** standard was developed **through** negotiations between State and Federal resource agency (sic), PUD, **and** Tribal biologists. The fact that the **NNI** standard was negotiated in concert with several parties does not **support** its scientific validity. We know of no correlation between the **NNI** standard and the biological needs of listed or non-listed **salmonids** covered by the **HCPs**. For example, the **DEIS** details that the **NNI** standard is comprised of a 91 percent project **survival** standard and a 95 percent juvenile dam passage **survival** standard. The 91 percent project survival standard is derived from an unmeasurable combination of assumptions about dam passage survival of juveniles, reservoir survival of juveniles and the **upstream** passage survival of returning adults. In addition the HCP relies on assumptions about the efficacy of hatchery supplementation and habitat enhancement projects to achieve the **NNI** standard. We **know** of no scientific basis for any of these assumptions. The **DEIS** acknowledges that many components of the **NNI** standard cannot be verified (See, page 2-41).

We encourage the use of the best available scientific information to support the **NNI** standard or, in the absence of a verifiable **standard**, a set of proposed measures **which**, when analyzed by **NMFS**, can be shown to meet the requirements of either Section 7 or 10 of the ESA and other applicable law.' A sound means to monitor compliance **with** the measures and an evaluation system to **determine** success of **the** measures are both necessary to prevent the attribution of mortality from these HCP projects to **downstream** projects.

4. The Water Quality Analysis of the DEIS Is Incomplete.

The DEIS states that the mid-Columbia river is on **the** 303(d) list for exceeding total dissolved gas, water temperature and **pH** criteria. The **DEIS** analysis of the **alternatives** concludes **that** the **preferred** alternative is likely to increase total dissolved gas (TDG) levels, with no explanation of how the **HCPs** would mitigate for these effects or **prevent** the passage of **TDG** to downstream **projects**. Additionally, there is no **analysis** of how the TDG and temperature impacts would affect fish survival (salmonid and otherwise) within **the** project areas and downstream. No supporting rationale or analysis is provided **as** support for the conclusion that the **HCPs** can be expected to benefit water quality.

. Our understanding of **the** **NNI** standard is **that** it was developed as **a** negotiated resolution to a **variety** of regulatory **matters** and policy issues and goes well beyond what is required **for** ESA purposes. As such it would not be **appropriate** or **justifiable** to apply its standards **to other projects**.

Bob **Dach**, Northwest Region **Hydro** Program, **NMFS**
May 1, 2001

Page 3

5. Water Quantity and Socio-Economic Effects Are Not Discussed

The water quantity and socio-economics sections of the **DEIS** provide no analysis or assessment of the impacts of **any** of the alternatives under drought conditions or in the event of an energy emergency. As you are aware, **the** Pacific Northwest is currently experiencing one of the worst water shortages in history. Current projections are that if Columbia Basin runoff declines to 53 million acre-feet as expected, the **Pacific** Northwest's electricity generators will be **unable** to meet demand. The proposed action of the **DEIS** relies on fish spill which exacerbates electricity shortfalls during times of drought or energy **emergency**. This effect of water quantity shortages and associated socioeconomic impacts should be **addressed** in the **DEIS**. Any proposed action should include operational provisions that may be enacted **when** a declared drought, energy alert or emergency **exists**.

6. The DEIS Does Not Contain An Adequate Analysis of Impacts on Species Other Than The Four "Plan Species"

Four "**Plan Species**" of salmon are the subjects of the **DEIS** analysis (See page S-1). The analysis of effects on resident fish species in the Columbia River system concludes that: "Little is known about the effects of project operations on **resident fish** populations in the Mid-Columbia River" (page 4-27) although it is noted that bull **trout** have **been** listed as threatened and are the subject of ongoing consultation and the potential exists for negative impacts on **pacific** lamprey. The **DEIS** **should** be strengthened to reflect available information on the possible effects of the **alternatives** on other fish species.

7. The DEIS Does Not Meet NEPA Requirements to Consider Cumulative Effects of the Proposed Action

The **DEIS** contains no comprehensive cumulative effects analysis. The only resources evaluated for cumulative effects in this **DEIS** were listed **anadromous salmonids**. That analysis was based on an incomplete **NMFS** analysis that was cited as **NMFS (2000c)** but not included in the **DEIS** reference section. In addition, this Quantitative Analytical Report is incomplete, has never received peer review, is not available for public review and any reference to it should be removed and **the** analysis presented **as** **NMFS'** simulations based on a variety of unverifiable assumptions. The analysis presented relies on a subset of available data (**1980-94**) to conclude **that** extinction risks are **high without** presenting information from the full data set analyzed (1960-94) that concludes that extinction risks are actually quite low. The analysis presented also fails to consider recent data showing very large returns of spring chinook. The **DEIS** fails to include any cumulative effects analysis **for summer/fall** chinook salmon, sockeye **salmon**, **coho** salmon, or any other resource area.

8. The DEIS Does Not Adequately e r the Impacts of the Proposed Action on Other Agreements Relating to Plan Species

The **HCPs** are **intended** to support incidental take permits for four **permit** species **including** Upper Columbia River summer/fall chinook (page S-1). Fall chinook are protected under the **Vernita** Bar Settlement Agreement and **the** Hanford Reach Juvenile Fall Chinook Protection Program. **Both** Douglas and Chelan **PUDs** are included in these

programs. However, the DEIS does **not** analyze the consistency of **the HCPs with** these other agreements nor does it include an analysis of the obligations of the HCP parties under those agreements.

In **conclusion**, we reiterate our support for a scientifically supportable HCP and comprehensive DEIS **which** would justify **the** issuance of incidental take permits for **the permit** species. However, for the reasons stated above, we do not believe the DEIS prepared by NMFS adequately provides **the** necessary science or analysis of the alternatives considered.

Sincerely,



Douglas M. **Ancona**, Manager
Natural Resources and Regulatory Affairs

Cc: Susan **Fruchter**
Dick **Nason**
B o b **Clubb**
Brian Brown
Malcolm McClellan
Tim Brewer
Keith Brooks
Brian Cates
Bill **Frymire**
Jim **Hastrieter**
Merrill Hathaway
Bob **Heinith**
Ken Johnston
Brett Joseph

Chris Leahy
Robert Lothrop
Jerry Marco
Carl **Merkle**
Joe Peone
Starla Roels
Nolan Shishido
Curt Smitch
Brett Swift
Bill Tweite
Tim Weaver
Timothy Welch
Rodney **Woodin**
Ron Boyce

Mike Erho
Cary Feldmann
Rick **Klinge**
Chuck **Peven**
Bob Rose
Shane Bickford
Bryan **Nordlund**
Steve Hays
Robert McDonald
Thad Mosey
Tom **Scribner**
Paul Ward
Steve Parker

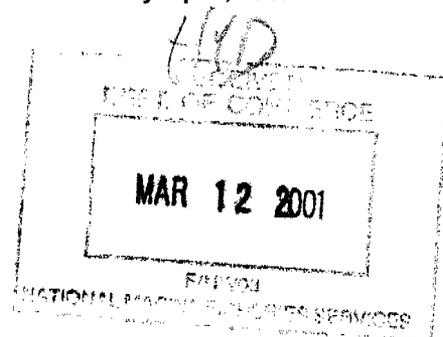


United States
Department
of Agriculture

Animal
and Plant
Health
Inspection
Service

Wildlife
Services

720 O'Leary St., NW
Olympia, WA 98502



March 8, 2001

National Marine Fisheries Service
525 NE Oregon Street, Suite 420
Portland, Oregon 97232-2737

Dear Sir/Ma'am:

The United States Department of Agriculture-Wildlife Services (WS) would like to thank you for the opportunity to review **and** comment on the DEIS regarding the proposed Anadromous Fish Agreements and **HCP's** for the Wells, Rocky Reach, and Rock Island hydroelectric projects.

After reviewing the document we have compiled a list of comments based on the context of the DEIS and how it relates to the Cooperative Service Agreements (CSA) we have with the Chelan and Douglas County **PUD's**.

The objectives and goals of the CSA at Rocky Reach and Rock Island dam are to reduce predation on downstream migrant **salmonid** smolt and steelhead fingerlings by populations of predatory gulls, cormorants, and other piscivorous birds. This includes the reduction of damage to electrical utilities/structures caused by nesting/roosting cormorants.

In Douglas County, the CSA with Wells Hatchery directs WS to reduce or alleviate predation on juvenile salmonids by piscivorous birds, primarily mergansers, cormorants, gulls, herons, and diving ducks. The CSA at Wells Dam is in place to maintain the integrity and function of the existing overhead wire exclusion system over the **tailrace** area, thus reducing predation on juvenile salmonids by piscivorous birds. This wire exclusion system is also in place over the rearing ponds at Wells Hatchery.

Our comments focus on the lack of information and discussion of piscivorous birds at each of the hydroelectric projects. Predation on **salmonid** species by fish-eating birds is well documented in the literature, and we find the omission of all piscivorous bird species but gulls to be a serious oversight of the DEIS.



APHIS ■ Protecting American Agriculture

COMMENTS

Section 2.2.4.3 Predation

The last paragraph (p. 2-22) discusses bird predation and measures taken to reduce the damage. The methods listed include: *wires, propane cannons, and other pyrotechnic methods*. It is important to reveal that lethal methods are used to reinforce the nonlethal methods. Shooting in the direction of, but not at, target birds is sometimes augmented by intentional shooting of individual target birds. The intent of such shooting is to enhance the scaring efficiency of firearms and pyrotechnics by training the birds to anticipate injury when they hear explosions. Birds that learn to fly beneath the wires strung over the tailraces, at certain projects, are shot. The discussion of lethal measures should not be a red-flag issue.

Section 2.3.1.1. Wells Hydroelectric Project

Measures Planned

2. Juvenile Passage

C. Predation

Part C under Juvenile Passage reads: *continue to refine and implement a northern pikeminnow removal program*. It is our understanding that Wells Hatchery is affiliated with Wells Dam. If Wells Hatchery is indeed a facility within the Wells Hydroelectric Project then mention must be made to the piscivorous bird program at the hatchery. As mentioned earlier, our CSA with Wells Hatchery includes a multitude of fish-eating birds. Similar wording used in section 2.3.1.2., paragraph 4, bullet 4 on avian predation would be suggested.

Section 2.3.1.3. Rock Island Hydroelectric Project

Unlike the two hydroelectric projects described prior to Rock Island, there is no mention in this section as to the piscivorous fish and bird programs in place, nor mention of their continuation in the future. We believe there should be mention made to these programs.

Section 2.3.3.8. HCP Conservation Plan and Compensation Measures

Wells Dam

Once again there is no mention of Wells Hatchery. Does the hatchery compliment the dam and are both operated by the Douglas PUD? Wells Hatchery is not combined under the proposed plan for Wells Dam, nor is it mentioned anywhere under section 2.3.3.8. We believe that Wells Hatchery needs to be included, either separately or under Wells Dam.

Section 3.2.9.2. Project Area Rearing

Predation

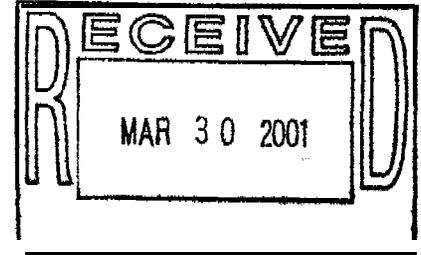
The lack of data, literature, and discussion of piscivorous birds is problematic. The DEIS has but one reference (Ruggerone, 1986) to the only piscivorous bird species mentioned. Gulls are only one of many fish-eating birds found at Wells, Rocky Reach, and Rock Island dams. WS is under agreement to control cormorants, herons, mergansers, diving ducks, and terns. A separate section discussing piscivorous birds and their associated damage is needed. Failure to address this issue could result in a forced cessation of bird control activities for Chelan and Douglas County PUD's due to insufficient NEPA. We would conclude that a deeper look at predator/pest management programs be taken.

Please let us know if we can be of assistance in providing information needed for this or other analyses.

I would like to thank you again for allowing Wildlife Services to review and comment on the DEIS regarding the proposed Anadromous Fish Agreements and HCP's for the Wells, Rocky Reach, and Rock Island hydroelectric projects. We hope our comments will be of some help in the completion of a thorough and complete Environmental Impact Statement.

Sincerely,


J. Gary Oldenburg
State Director, WA/AK



March 28, 2001

National Marine Fisheries Service
Northwest **Region** - Hydro Program
525 N.E. Oregon St, Suite 420
Portland, OR 97232-2737

To Whom it May Concern,

I have reviewed the Draft EIS for Anadromous Fish Agreements and Habitat Conservation Plans for the Wells, Rocky Reach, and Rock Island Hydroelectric Projects. I strongly support Alternative 3, the proposed HCPs for Rock Island Dam, Rocky Reach Dam, and Wells Dam. I am familiar with the provisions of the Endangered Species Act (ESA) and believe that the development of these HCPs is the only practical way for Chelan and Douglas PUDs to meet the requirements of the ESA. I complement the PUDs on their proactive approach to meeting the requirements of the ESA. This is a bold and progressive step that demonstrates true leadership.

Let me make it clear that the Chelan-Douglas Land Trust (CDLT) is not simply an interested observer. The CDLT is actively involved in the protection of salmon habitat and other fish and wildlife habitat in North Central Washington. We recently received nearly \$1.5 million from the Salmon Recovery Funding Board to purchase salmon habitat along the Entiat River and we will be applying for additional money from the Salmon Recovery Board in the future. We are developing the capacity and expertise to own properties and easements and manage them for their habitat values. It is likely, therefore, that the CDLT can play an important role in the proposed Tributary Conservation Plan.

Now that you know where I am coming from, let me state the CDLT perspective on some of the specifics of the Draft EIS. I would rather see the compensation for unavoidable project mortality come more from the tributary program and less from the hatchery programs. The tributary program will provide numerous public benefits above and beyond improving salmonid spawning and rearing habitat. However, I know this is a very difficult and contentious issue. I will support the proposed 7 percent compensation through hatchery programs and 2 percent through habitat improvement programs. The hatchery program should be closely monitored however. On a recent tour of Columbia and Methow River hatcheries I observed firsthand that hatcheries require careful evaluation and monitoring. Otherwise they can become institutionalized commodity production facilities that churn out fish like widgets with little regard for their

CHELAN-DOUGLAS LAND TRUST

cdlt@cdlandtrust.org

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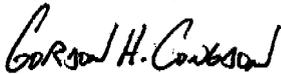
genetic makeup and unique life histories. Hatcheries should enhance natural reproduction not attempt to replace it.

I also hope that the funds in the Plan Species Account will be spent prudently and in conjunction with other salmon recovery efforts. Chelan, Douglas, and Okanogan counties have developed an outstanding regional process for evaluating projects submitted to the Salmon Recovery Funding Board. Their efforts helped entities in this region to garner nearly \$5 million in the latest round of Salmon Recovery Funding Board grants. The proposed Tributary Committee should work closely with this existing group, rather than duplicating their efforts.

I also believe that that a majority of the funds in the Plan Species Account should be spent sooner rather than later. There is an urgent need to protect critical habitat now, before it is further subdivided and degraded. With the decline in the orchard economy, many of the orchards along the tributaries will be put up for sale in the next two years. This presents a unique opportunity to acquire property or easements to protect riparian areas and floodplain along the tributaries. Some of the funds in the Plan Species Account also need to be dedicated to the long-term maintenance of these properties and easements. If the CDLT should end up acquiring properties or easements with these funds, we would require that a certain percentage of the funding be dedicated to long-term maintenance. I also recommend that funding be set aside to make property tax payments or payments in lieu of taxes. There will be strong opposition to protecting habitat along the tributaries if this means the properties are removed from the tax rolls. Providing funding for tax payments will make this effort much more acceptable to local citizens and elected officials.

I recognize that there is strong opposition to HCPs from all sides of the political spectrum. Conservation groups argue that HCPs are a sellout and not enough is known about the affected species to make such long-term agreements. While I acknowledge these as valid concerns, I believe that there is more to be gained than lost by the implementation of the proposed HCPs. With the recent HCP revisions (June 1, 2000) that clarify the importance of biological goals, adaptive management, monitoring, permit duration, and public participation, I feel confident that the proposed HCPs can be evaluated and monitored to make changes when appropriate. I therefore strongly support the HCPs as proposed in the Draft EIS.

Yours sincerely,

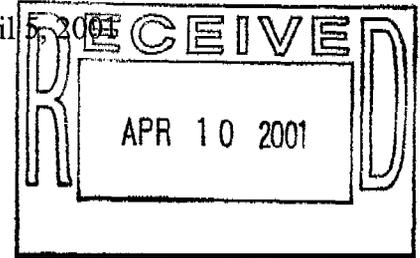


Gordon H. Congdon
Executive Director



File Code: 2770

Date: April 5, 2001



Mr. Bob Dach
NMFS, NWR, Hydro Program
525 NE Oregon Street, Suite 420
Portland, OR 97232-2737

Dear Mr. Dach:

The Okanogan & Wenatchee National Forest (OWNF) would like to submit the following comments on *the Anadromous Fish Agreements and Habitat Conservation Plans, Draft Environmental Impact Statement for the Wells, Rocky Reach, and Rock Island Hydroelectric Projects* which we received January 2, 2001. We have organized our comments in two categories; (1) general and (2) specific, according to page numbers from the DEIS. We hope this facilitates your review and response.

General Comments

The DEIS has been reviewed by OOWNF Fishery Biologists, Hydrologists, District Rangers and other specialists from the following Ranger Districts: Leavenworth/Lake Wenatchee, Entiat/Chelan, Methow Valley, and Tonasket. The consensus of the reviewers is that the DEIS chapters covering Affected Environment and Environmental Consequences with respect to the associated tributaries tend to be overly general, out dated, and in some cases inaccurate. The developmental lifespan of the HCP/DEIS has been such that it does not reflect recent advances in a number of areas:

- Watershed Restoration: The DEIS hints at the possible effects of these ongoing activities but is short on specifics.
- Watershed Analyses: The DEIS utilizes USFS documents in an uneven manner, often overly generalized. More recent documents are unutilized.
- Watershed Monitoring: Aquatic habitat monitoring in the tributaries has intensified in recent years yielding new information (particularly regarding thermal and sediment regimes) that would increase the quality of the DEIS.
- Biological Assessments: The associated tributaries are now covered by analytical baselines completed according to the NMFS ESA-matrix for steelhead and spring chinook **salmon** and the USFWS ESA-matrix for bull trout. These **BAs** are typically updated annually and include a wealth of information and interpretation that is not reflected in the DEIS.

It is our opinion that sections of the DEIS that pertain to the associated tributaries are inadequate to serve as a basis for effective protection and restoration of Plan species habitat in the tributaries. Requiring the DEIS to be updated would serve little purpose other than to further delay implementation of the HCP. The OOWNF is concerned that implementation of the HCP will not be timely enough to reverse the declining population



trends of Plan species. It is acknowledged that attempts to keep the DEIS up-to-date regarding the tributaries would continually lag behind. The process of watershed analysis is iterative by design to account for changes in the dynamic processes that shape watersheds and the advances in our knowledge of these processes. To solve this dilemma, we propose that the parties to the HCP add wording to the adaptive management sections of the DEIS that would require the following:

- Prior to selecting projects for the associated tributaries, the Tributary Committee conduct a thorough review of the **current status** of Plan species and habitat-limiting factors within the associated tributaries.
- The PUDs become involved (technically and financially) in future watershed analyses of the associated tributaries.

The OWNF supports Alternative 3, particularly the Tributary Conservation Plan and the dam passage survival standards, The OWNF has some reservations regarding the Hatchery Compensation Plan. The policy and direction of the OWNF is to manage habitat for natural production; therefore, it is mandatory that Forest Fishery Biologists carefully review any HCP-driven proposals to artificially supplement **salmonid** populations within the National Forest. It is understood that artificial supplementation may be required to restore some anadromous species. The Forest's opinion is that artificial supplementation should be applied as a short-term stop-gap measure and phased out over time. Because of concerns about broodstock mining, appropriate release sites, and species interactions (competition, disease, genetic integrity) the OWNF expects to be directly involved in reviewing plans for hatchery supplementation,

The Forest is one of the principal aquatic habitat managers in the Wenatchee, Entiat, **Methow**, and Okanogan Subbasins. The Forest expects to be an integral part of the Tributary Committees proposed by the HCP.

Monitoring and adaptive responses will be keys to evaluating the success of the HCP. The Forest expects to be involved in reviewing monitoring results after the HCP is implemented. The Forest expects to make future recommendations based on HCP monitoring results.

Specific Comments

Page S-40: Vegetation impacts during **drawdown** should also disclose the increase of noxious weeds if **drawdown** occurs.

Sage 1-31: "Any additional measures NMFS deems necessary for the permit would be detailed in the biological opinion." and **page 2-2** "If NMFS determines that the proposed measures are not adequate to ensure the continued existence of the species, a reasonable and prudent alternative to the proposed action would be developed". These statements give the appearance that NMFS has not disclosed all of the actions associated with the alternatives and consequently has not disclosed all of the effects. We cannot comment on the proposed action and effects unless they are disclosed in their entirety.

Page 2-40: Project Cumulative Effects appears incomplete. 40CFR1508.7 defines cumulative effects as: "the impact on the environment which results from the incremental impact of the action when added to other past, present and reasonably foreseeable actions regardless of what agency (Federal or **non-Federal**) or person undertakes such action." This DEIS addresses neither impacts of past actions nor



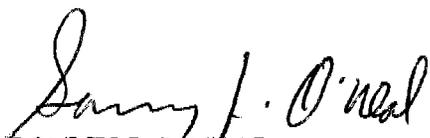
reasonably foreseeable actions. It is our opinion that reasonably foreseeable actions would include all actions proposed in each of the tributaries including cumulative effects of DEIS hatchery supplementation programs combined with current hatchery programs including **coho** re-introduction during implementation of alternatives 2 or 3 and actions proposed as restoration projects in the watershed analyses for each of the tributaries, What are the expected effects of all the smolt outplanting on wild fish, both in the tributaries and during migration out to the Columbia estuary?

Page 3-68: The reported Entiat River spring chinook salmon average escapement estimates (redds) based on dam counts (turnoff estimates) are clearly in error. The OWNF considers spawning ground surveys to produce more accurate estimates of escapement and population trends and suggest the use of redd count expansions as recommended by Carie (1996). For example: if Entiat steelhead escapement is estimated by subtracting Wells Dam counts from Rocky Reach Dam counts and then subtracting Wells hatchery broodstock take, the resulting escapement estimates are often negative numbers (1982, 1983, 1984, 1991 & 1992). Chapman et al. (1994) concluded that steelhead escapement to the Entiat River cannot be accurately calculated.

Page 3-89: The reported average monthly flows in the lower Entiat River are incorrect and inconsistent with the flows correctly depicted in Figure 3-9.

Section 4.1.3.2 identifies specific projects that would be implemented under alternative 3. The projects generally relate to reducing erosion, sedimentation and turbidity. These are worthy goals; however, none of these tributaries are on Washington Sate Department of Ecology's 303(d) list for sediment or turbidity. They are 303(d)-listed for **instream** flows. An action that would increase **instream** flows while reducing the risk of landslides **after** catastrophic wildfires is captured in the OWNF dry site strategy. This strategy of reducing vegetative stocking and fuel levels in fire-prone landscapes would increase streamflows in the tributaries, especially during the critical base-flow time of year. This strategy has been subjected to a blind peer review. The OWNF has more than 500,000 acres of dry site in these four tributaries that could benefit from some form of stocking control and fuels reduction over the next 50 years.

Sincerely,



SONNY J. O'NEAL
Forest Supervisor

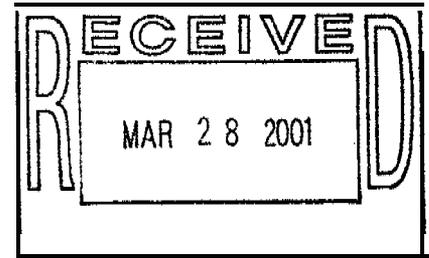
Cc

Susan Fruchter, U.S. Dept of Commerce
Mark Morris, Tonasket District Ranger
John Newcom, Methow Valley District Ranger
Karin Whitehall, Entiat District Ranger
Bob Sheehan, Chelan District Ranger
Glenn Hoffman, Leavenworth/Lake District Ranger



Bob Dach
NMFS, NWR, Hydro Program
525 NE Oregon St. #420
Portland, Oregon 97232-2737

March 26, 2001



RE: Comments on DEIS for Wells, Rocky Reach, and Rock Island Hydro Projects

Thank you for allowing the public to comment on future operations of the Mid-Columbia **Hydro** projects as to their impacts on the fishery resource. The **DEIS** is very general and is lacking in what it doesn't say rather than what it says. The following comments are directed mostly to habitat considerations rather than dam operations.

Consistency

The Okanogan Wilderness League (OWL) has followed the Mid-Columbia process since, the late 1980's and has commented on the different protocols that have been developed for spring chinook recovery in the **Methow** Basin. I am including two of our comments as enclosures that point out some of the inconsistencies and deviations from the adopted **FERC** Settlement Agreements, The **FERC** agreement identifies three separate spring chinook populations in the **Methow** Basin and the **DEIS** identifies the spring chinook as "composite" stock. The escapement of wild **fish** for natural spawning is not consistent with previous protocols.

Fish flow

The **DEIS** recognizes that in-stream flow is a habitat consideration in its analysis of tributaries such as the Wenatchee and the **Methow**, but fails to analyze fish flows for the Columbia River.

Fish management must be flexible enough to change. It should not be held hostage in committees that have veto power for change. This is especially important when that veto power is held by the **PUDs** who have an economic vested interest detrimental to the best interest of fish. The **HCP**(alt 3) runs for **50** years and recognizing the above considerations, is not in the best interest of the fisheries resource. Because of the flexibility in the consultation process the only acceptable alternative in the **DEIS** is alternative 2.

Sincerely,

A handwritten signature in black ink, appearing to read "Lee Bernheisel". The signature is fluid and cursive, with a large loop at the end.

Lee Bernheisel

Okanogan Wilderness League
9 0 T C R
Carlton, Wa. 98814
(509) 997 3794

encl: 2

OKANOGAN WILDERNESS LEAGUE

Star Route Box 244 • Carlton, WA 98814 • (509) 997-3794

Leo Bernheisel • President
Peter Howard • Vice President
Lucy Reid • Secretary

Columbia Coordination Committee

October 16, 1999

RE: 1999 Methow Spring Chinook Spawning Observations

Dear Sirs:

I have been involved as a lay person in the development and implementation of the new Methow supplementation project since its start in the late eighties. Being an outsider and not a scientist my observation parameters have been pragmatic in nature. Simply stated the primary objective has been to see how many adult spring chinook return from their spawning year and if a better that 1 to 1 ratio is consistently occurring recovery is underway. My intentions are to stimulate further discussion within the committee to revisit the protocols for broodstock collection for production in the two hatcheries in the Methow basin. There are three issues I will address, including the wild fish return, the identification of the broodstock taken and suggested protocols for next year.

Wild Fish

We need to go to the 1995 brood year for a comparison and analysis of the 1999 estimated wild return. In 1995 the return was so bad that the protocols dictated that the entire spring chinook for the year was left in the Methow river system to spawn. Approximately 72 adult spring chinook were observed passing Wells Dam (returning from 687 adults in 1991). Of those the return 14 adults (8 female and 6 males) volunteered to the Winthrop National Hatchery and were used for hatchery production. Dire predictions were generated because of this pathetic return and the protocols for broodstock collection were changed. Prior to 1996 the protocols for hatchery production were secondary to natural spawning and before the wild stock could be collected for hatchery production there had to be a threshold number of natural escapement (see encl.) The collection was to take place in the three distinct biological spawning areas in the Methow system, the Twisp river, Chewack river and the "Upper Methow river. Fish returning to the Winthrop National Fish Hatchery were considered a separate stock and to be spawned at the hatchery for production.

The prediction that the naturally spawning 1995 wild stock would be unable to locate one another to successfully spawn was the justification given by the committee to change the broodstock collection protocols. It was felt by the committee that to protect the wild fish it was best to first collect all the fish for production if the run size was predicted to be less than 500 fish. This was a complete reversal of the previously adopted protocols that had put emphasis on letting the three distinct methow stock naturally spawn unless the return projections were high enough to warrant collection for the hatcheries. The committee also decided to homogenize the three methow stock by collecting all the fish, wild and hatchery, at Wells Dam. (note: there is an effort to do a captive broodstock for the Twisp river spring chinook)

The 1999 wild methow spring chinook return should give the committee an opportunity to revisit its 1996 protocols. I have attempted to get a approximate number for the wild 1999 fish returning from the spawning records made available to me. On 6/9/99 there were 86 fish re-released for the Wells fish hatchery and 5 of those fish were wild. On 6/14/99 there were 50 fish released into the Carlton pool from earlier collected fish for the Methow fish hatchery and

20 of those fish were wild. There were 76 wild fish spawned for production in the Methow hatchery. Of the 77 adults passed at Wells dam after 6/9/99 I estimated that 9 were wild (based on a % of wild on the 6/9/99 release). The grand total of approximately 110 wild fish returning from the 1994 broodyear is almost a 2 to 1 return. Also of interest is that there were aprx. 32 redds this year with 7 in the Chewack, 6 in the Twisp and 19 in the upper Methow and its tributaries. This compares with a total of 15 redds in 1995 with 2 in the Chewack, 4 in the Twisp and 9 in the upper Methow. The redd count also seems to be aprx. 2 to 1. This should make the committee wonder if the dire prediction in 1995 were valid and should a reevaluation of protocols should be considered.

Hatchery Broodstock Identification

As previously discussed, in 1995 there were 14 adult spring chinook that were assumed to be the Winthrop National Hatchery fish (from the 91 BY). From these fish approximately 28000 eggs were obtained and the resulting fish were shared with the National Hatchery and the Methow Hatchery (State). All the resulting fry were identified with Methow hatchery tags. There were 91 Winthrop Hatchery returning adults this year (54 males and 37 females) which is a very high return rate.

The Methow Salmon Hatchery (State) has been in operation since 1992 and was funded by Douglas County PUD as mitigation for its FERC licence and the Winthrop National Hatchery, has been in operation since the 1940's as federal dam mitigation. The Methow Hatchery was designed to breed wild fish to supplement the three spring chinook species in the Methow basin. The 1999 spawning records mis identifies this years returning marked fish as Methow Hatchery fish when their origin is the Winthrop National Fish Hatchery. The National Hatchery fish originally were to be considered a separate stock and not to be mixed with the wild stock. If this has occurred the records need to reflect this distinction so the integrity of the wild Methow basin stock can be maintained.

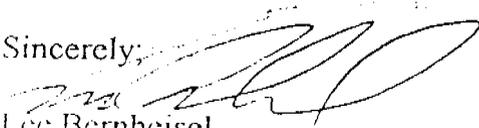
Protocols 2000

The current protocols for spring chinook broodstock collection appears to be justified by the committee because of the dire predictions after the 1995 run and because they have been embraced by the yet to be adopted Habitat Conservation Plan (HCP) for two of the three Mid-Columbia PUD's. (An unpublished Biological Opinion by NMFS may also have justification) From the weak wild run in 1995 the 1999 wild run almost doubled and at least for this year shows the potential for recovery. The pre-1996 adopted protocols for protection of the integrity of the wild run needs to be revisited. To maintain the viability of three separated Methow stocks and reduce the number of spring chinook that need to be destroyed because of straying the trapping-location needs to be changed from Wells Dam. The tributary traps could be utilized again or other methods such as live trapping, or if proven redd suctioning. The large return of National Hatchery fish with such small broodstock may indicate that less is better in the hatchery environment.

encl.

cc: Hon Stephen Grossman

Sincerely,


Lee Bernheisel



OKANOGAN WILDERNESS LEAGUE

Star Route Box 244 • Carlton, WA 98814 • (509) 997-3794

Mr. Mike Erho, Chairman
Wells Coordinating Committee
c/o Douglas County PUD

May 2, 1996

Re: Methow Broodstock Collection protocol for 1996

Dear Mr. Erho

It has come to our attention that the collection of spring chinook in the Methow basin for the Spring Chinook Enhancement Project has taken a dramatic change in protocol from previous years. The 1996 protocol will eliminate all of the naturally spawning spring chinook in the Methow's three basins, the Twisp river, the Chewuch river and the upper Methow River. It is our understanding, that all the fish headed for the Methow will be trapped at Wells Dam for distribution to the hatcheries for their broodstock. The committee justifies the change in protocol because "Spring chinook stocks of the Methow River Basin have decreased to critically low levels and the trend is toward extinction" (protocol 4/1/96). It is clear that the committee has decided that hatchery propagation of this stock is better and safer than natural spawning and that the supplementation goal of maintaining stock separation is secondary to numerical run strength.

HISTORY

The Methow River Basin Spring Chinook Enhancement Project arose from a settlement agreement between the Federal Energy Regulatory Commission and The Douglas County PUD for the relicensing Wells Dam in the late 1980's. The agreement stipulates, among other things, to the goal of rebuilding the natural spawning salmon and steelhead runs in the Columbia Basin, creation of an oversight committee, and obtaining all the necessary permits. The environmental review that we are aware of was done with a SEPA checklist and DNS in 1989. The protocol for broodstock collection developed by the committee since 1992 has always given priority to natural escapement level for natural spawning until this year.

PROTOCOL DISCUSSION

The current protocol changes are drastic in nature and are a one-hundred and eighty degree change from past years protocol for broodstock collection. This shift in protocol raises several procedural questions and problems that need answers. Questions also arise from the changes between the 1996 first draft protocol and the second final draft which we assume has been adopted and implemented as of May 1st. Hard data also seems to be lacking in some of the numbers that are used in the protocol.

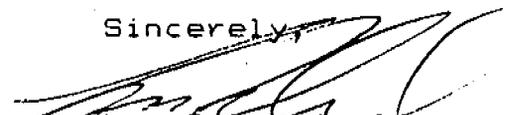
The first draft protocol dated January 18, 1996 gives precedence to natural escapement over broodstock collection and allows no broodstock trapping unless the run size can support both natural escapement minimum viable population(MVP) and hatchery supplementat ion MVP. The MVP for natural escapement was set at 185 adult salmon and for the hatchery the MVP is set at 92. The 1996 forecast is for 350 returning spring chinook at Wells Dam. The change in this draft from past year protocols is that if the run size is less than the MVP for natural escapement, that will be considered grounds for intervention to prevent extinction. In 1995 when the run size was only 72 all natural fish were allowed to spawn. The protocol adopted for this year is to capture all the spring chinook run up to 500 adults for broodstock. The justification for this appears to be that the "management empahasis will be on rebuilding numerical run strength through existing supplementation project or, in the worst case, total stock intervent ion"(draft protocol 4/1/96).

The concept of keeping fish separate on the basis of tributary origin is a basic philosophy on which the Methow Hatchery was based. The ability to identify the fish origin through scale differentiation cannot at this point in time give strong assurance that a genetic sub-stock integrity will be maintained. Intermixing and loss of a genetic species is unacceptable to us unless all -other solutions have been thoroughly explored.

SOLUTIONS

This year will provide the first opportunity to gauge the return of the first released and tagged fish in 1992. Until the viability of the original concepts and philosophy can be analyzed, the elimination of natural spawning could be grossly counter-productive. These changes in protocol, coupled with the general agreement that the spring chinook in the Methow drainage is at serious risk of extinction, call for a formal listing under the Endangered Species Act. There is little doubt that there have been substantial changes made to the program and that SEPA and NEPA analysis has been triggered and should be done before complete implementation of the adopted protocol. This could be done either in conjunction with ESA procedures or separately. Thank you for your time and consideration.

Sincerely,



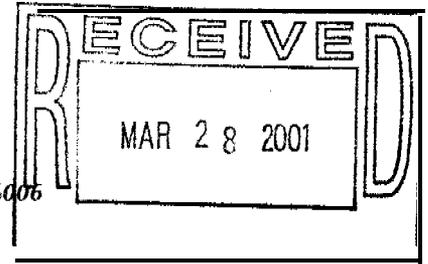
Lee Bernheisel



STATE OF WASHINGTON

DEPARTMENT OF ECOLOGY

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March 26, 2001

Mr. Robert Dach
U.S. Department of Commerce
National Oceanic & Atmospheric Admin.
National Marine Fisheries Service
525 NE Oregon Street, Suite 420
Portland, OR X7232-2737

Dear Mr. Dach:

Thank you for the opportunity to comment on the draft environmental impact statement (EIS) for the Habitat Conservation Plan for the Wells, Rocky Reach, and Rock Island Hydroelectric Projects. As the state agency responsible for protecting the waters of Washington State for fish habitat and other uses, we support your ongoing efforts to find improved methods for fish. As you know, one of our responsibilities is to address water quality, and particularly, in this case, temperature.

The draft EIS does not evaluate measures for improving temperatures in the Columbia River. As you know, temperature has a significant impact on fish habitat, rearing and migration. It is possible that changes might be made to improve one or more of the following: the distribution of temperatures within the river, the timing and/or duration of temperatures at critical times and/or critical locations within the river, and the overall temperature of the river. The EIS should evaluate changes to dam operation and/or associated structures that might address this issue.

The main impacts to water temperature by dams in a river the size of the Columbia River are through increased solar radiation, caused by reduced speed of water movement down the river and increased overall surface area. Operation of the dam also has modified timing and patterns of water movement down the river. By ponding waters, dams also impact recharge of cooler groundwater to the river.

The EIS should consider modifications that might counter these negative impacts, especially during critical times. Some options to consider: 1) Reservoir drawdown, which might both increase the speed of water movement through the reservoir and reduce surface area exposed to the sun. 2) Modified patterns of turbine operation. 3) Change in the timing of water releases (by days or even by hours). 4) Increased recharge of cooler waters in areas impacted by fluctuating river levels.

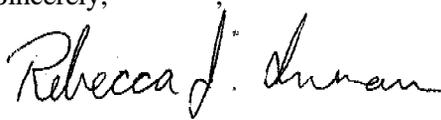
Mr. Robert Dach

March 26, 2001

Page 2

Thank you for your considering our comments. If you have any questions, please contact Ms. Pat Irle with our Water Quality Program at (509) 454-7864.

Sincerely,

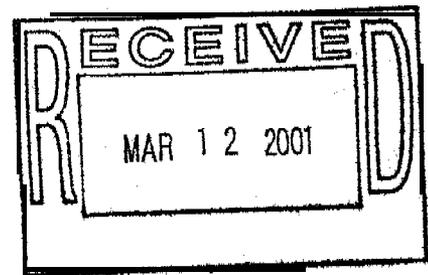
A handwritten signature in cursive script that reads "Rebecca J. Inman". The signature is written in black ink and is positioned below the word "Sincerely,".

Rebecca J. Inman

Environmental Coordination Section

EIS #008657

cc: Steve Hayes, Chelan County PUD
Pat Irle, CRO
Jeff Marti, WR
Debbie Smith, CRO



Icicle Creek Watershed Council
P. O. Box 773
Leavenworth, WA 98826

February 27, 2001

U.S. Department of Commerce
National Oceanic & Atmospheric Administration
National Marine Fisheries Service
525 NE Oregon Street
Suite 420
Portland, OR 87232-2737

Re: Chelan and Douglas County's Draft Environmental Impact Statement (DEIS) for fish conservation.

Gentlemen:

We appreciate the time and resources the Chelan and Douglas County Public Utility Districts (**PUDs**), tribes, and agencies spent developing the **DEIS** and also appreciate the opportunity to comment.

The **PUDs** want, among other things, to ensure the production of hydroelectric power will not be disrupted by changing requirements for anadromous fish. They want this certainty to last for 50 years. We would like to see fish populations increase with the hope that listed species will be removed from threatened or endangered lists and that other fish species will continue to flourish as well.

The Public Utility Districts indicate in the **DEIS** that they prefer Alternative three. For the following reasons, we equally prefer Alternative three:

1. Citizens at the local level have an opportunity to be involved through the habitat improvement programs"
2. Alternative 3 promotes an ongoing action separated from the swings of political forces to recover listed fish species while at the same time assuring a measure of protection for other fish species as well.
3. The preferred alternative provides certainty for both the **PUDs** goal of producing electricity and certainty for those of us who regard fish 'in our streams as one of the indicators of continued prosperity.

We agree with the concerns National Marine Fisheries Service has about the seven per cent hatchery compensation levels and how they may adversely affect wild salmon populations. We recommend that the PUD guarantee in writing that only native stock will be produced under the seven per cent hatchery compensation program and that hatchery management protocol will ensure **the** genetic integrity of wild fish.

We were disappointed to read that such a small portion of the nine percent compensation was given over to habitat improvements. We understand the difficulty in quantifying the results of habitat improvements. Nevertheless, at the heart of declining fish populations, is loss of habitat. We would have preferred four per cent of the compensation given to habitat improvements instead of two per cent with less emphasis on hatchery production.

Finally, we would like to see assurance that the majority of funds for habitat improvement and restoration be spent in the first part of the **50-year** agreement. The sooner habitat improvements are completed, the sooner the results can be monitored.

Sincerely,

A handwritten signature in black ink, appearing to read "Buford Howell", written in a cursive style.

Buford Howell,
President



Main office: 424 Third Avenue W, Suite 100 . Seattle, WA 98119 . (206) 286-4455 • (206) 286-4454 fax
Field offices: 2031 SE Belmont Street • Portland, OR 97214 • (503) 230-0421 • (503) 230-0677 fax
1511 N Eleventh Street . Boise, ID 83702 . (208) 345-9067 • (208) 343-9376 fax
419 Sixth Street, Suite 328 . Juneau, AK 99801 • (907) 586-6667 • (907) 463-3312 fax
also in Washington, DC and Spokane, WA

Alaska Trollers Association
American Rivers

Antioch Living Systems Collective

Association of Northwest Steelheaders

Boulder-White Clouds Council

Clearwater Forest Watch

Coalition for Salmon and Steelhead Habitat

Coast Range Association

Defenders of Wildlife

Earth Justice Legal Defense Fund

Federation of Fly Fishers

Friends of the Earth

Idaho Conservation League

Idaho Rivers United

Idaho Steelhead and Salmon Unlimited

Idaho Wildlife Federation

Institute for Fisheries Resources

Izaak Walton League-Greater Seattle Chapter

Lands Council

Long Live the Kings

The Mountaineers

Natural Resources Defense Council

North Cascades Conservation Council

Northwest Ecosystem Alliance

Northwest Environmental Defense Center

Northwest Resource Information Center

Northwest Sportfishing Industry Association

NW Energy Coalition

Oregon Natural Desert Association

Oregon Natural Resources Council

Oregon Outdoors Association

Oregon Trout

Oregon Wildlife Federation

Pacific-Coast Federation of
Fishermen's Associations

Pacific Marine Conservation Council

Puget Sound Gillnetters Association

Purse Seine Vessel Owner's Association

River Network

Rivers Council of Washington

Salmon For All, Inc.

Salmon For Washington

Sawtooth Wildlife Council

Sierra Club

The Wilderness Society

Trout Unlimited

Washington Kayak Club

Washington Trollers Association

Washington Wilderness Coalition

Water Watch of Oregon

Wild Angels

Willamette Riverkeepers

May 1, 2001

Bob Dach

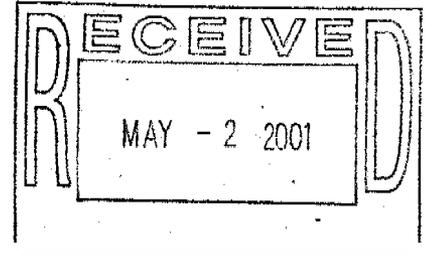
National Marine Fisheries Service
525 NE Oregon Street, Suite 420
Portland, Oregon 97232-2737

Re: **Draft Environmental Impact Statement: Anadromous Fish
Agreements and Habitat Conservation Plans for the Wells, Rocky
Reach, and Rock Island Hydroelectric Projects**

Dear Mr. Dach:

The Save Our *Wild* Salmon Coalition, National Wildlife Federation; Friends of the Earth, Cascade Chapter of the Sierra Club, Northwest Sportfishing Industry Association, Pacific Coast Federation of Fishermen's Associations, and Institute for Fisheries Resources appreciate the opportunity to comment on the draft Environmental Impact Statement (DEIS) for the proposed Anadromous Fish Agreements and Habitat Conservation Plans for the Wells, Rocky Reach, and Rock Island Hydroelectric Projects, dated November 2000. We have reviewed the document and offer the following comments.

The hydropower projects at issue have played a significant role in the decline of anadromous fish populations in the Columbia River basin, several of which are now listed under the Endangered Species Act. Any alternative for continued operations of the projects must promote recovery of these stocks and ensure that such operations do not jeopardize their continued existence. The proposed Habitat Conservation Plan purports to be a comprehensive agreement to promote actions that will improve conditions and lead to the recovery of species. However, based on the limited analysis contained in the DEIS, we believe it would be imprudent for the National, Marine Fisheries Service to move forward with the proposed Habitat Conservation Plans (HCPs). Due to the lack of legal and scientific analyses of any of the alternatives in the DEIS, we cannot support any of the alternatives at this time. Section 7 of the Endangered Species Act requires NMFS to consult with the Federal Energy Regulatory Commission over the operation of these projects immediately. Anything less than this, such as the alternatives discussed in this DEIS, does not comply with the law. We are deeply troubled by this blatant lack of compliance with federal law and policy and urge you to reconsider your approach to satisfying your responsibilities under the National Environmental Policy Act (NEPA), the Endangered Species Act (ESA), the Clean Water Act (CWA), and the Federal Power Act (FPA).



National Environmental Policy Act

1. The DEIS fails to take a “hard look” at all of the environmental information and consequences of each alternative.

The fundamental purposes of NEPA are to guarantee that: (1) federal agencies take a “hard look” at the consequences of their actions before the actions occur by ensuring “that the agency, in reaching its decision, will have available, and will carefully consider, detailed information concerning significant environmental impacts,” *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989); and (2) “the relevant information will be made available to the larger audience that may also play a role in both the decisionmaking process and the implementation of that decision,” *id.* at 349. In short, NEPA requires federal agencies to look before they leap. This DEIS fails to serve this critical function.

To satisfy the requirement that it take a “hard look” at the environmental consequences of its actions, an agency must engage in a “reasoned evaluation of the relevant factors” to ensure that its ultimate decision is truly informed, *Greenpeace Action v. Franklin*, 14 F.3d 1324, 1332 (9th Cir. 1992). The DEIS must be searching, detailed and comprehensive; “[g]eneral statements about ‘possible’ effects and ‘some risk,’ do not constitute a ‘hard look’ absent a justification for why more definitive information could not be provided,” *Neighbors of Cuddy Mountain v. United States Forest Service*, 137 F.3d 1372, 1380 (9th Cir. 1998).

An agency’s failure to include and analyze information that is important, significant, or essential renders an EIS inadequate — for, without such detailed information, there is no way for the public or the agency to adequately assess the impacts of a proposed action. *See California v. Bergland*, 483 F. Supp. 465, 495 (E.D. Cal. 1980), *aff’d sub nom.*, *California v. Block*, 690 F.2d 753 (9th Cir. 1982) (by failing to disclose key data, “the Forest Service effectively undercut the twin goals of environmental statements: informed decisionmaking, and full disclosure”).

NMFS may not, as it has done throughout this DEIS, ignore relevant information and rely upon conclusory statements and unsupported assertions to satisfy NEPA’s “hard look” requirement. We believe that these deficiencies present an inaccurate picture of the impacts to the public, making it impossible for anyone, including NMFS, to draw any reasoned conclusions about the environmental impacts of the three alternatives presented in this DEIS.

For example, the HCPs (Alternative 3) rely on “off-site” habitat improvements and hatchery supplementation to make up for 2% and 7%, respectively, of the 9% “unavoidable” mortality caused by these projects. As a threshold matter, NMFS fails to justify or explain this 2/7% division and provides no explanation for how it will measure these needed improvements. *See infra* at 14-15. Compounding this omission, the DEIS contains no explanation for whether the funds to implement these measures will be adequate to achieve the benefits necessary to mitigate for this mortality. The DEIS does not even attempt to connect the funding proposed for Alternative 3 with the actions to be taken as part of the HCPs. Not surprisingly, since the DEIS contains no explanation of what these measures may be, or how/when they will be funded or implemented, NMFS presents no data or scientific analysis whatsoever to explain how the benefits will accrue. The best the DEIS can do is to acknowledge that “there is considerable difficulty measuring the effectiveness of habitat improvement projects, [but] there are numerous areas with degraded habitat in the Mid-Columbia River tributaries that would benefit from improvement or plan protection programs.” DEIS at 4-4.1. This may well be the case, but this conclusory statement does not approach the level of analysis required to allow the public or a decisionmaker to conclude that Alternative 3 will actually provide the survival benefits necessary to mitigate for the effects of the PUD’s actions, nor does it present enough information to support NMFS’ threshold conclusion that it will result in a quantifiable increase in survival. Such generalized and speculative statements about hoped-for benefits

do not satisfy NEPA's "hard look" requirement. "A mere listing of mitigation measures is insufficient to qualify as the reasoned discussion required by NEPA." *Neighbors of Cuddy Mountain*, 137 F.3d at 1380. Courts routinely reject such vague discussions of mitigation measures where, as here, they "are so general that it would be impossible to determine where, how, and when they would be used and how effective they would be." *Id.* at 1381.

2. The DEIS fails to analyze the cumulative impacts of myriad other actions that affect Middle and Upper River Columbia salmon and steelhead.

Perhaps the most glaring omission in the DEIS is NMFS' failure to consider cumulative impacts in its analysis. To ensure that the combined effects of separate activities do not escape consideration, NEPA requires that federal agencies consider cumulative environmental impacts in their environmental analyses. Cumulative impacts result "from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time." 40 C.F.R. § 1508.7

NEPA requires a cumulative impacts analysis to: (1) catalogue past projects in the area; (2) assess the cumulative environmental impacts of those projects with the proposed project; and (3) analyze the additive cumulative impact of all reasonably foreseeable Federal and non-Federal actions, whether or not they have actually been proposed. *See City of Carmel-By-The-Sea v. United States Dep 't of Transp.*, 123 F.3d 1142, 1160 (9th Cir. 1997) (rejecting cumulative impacts analysis that referred generally to other past "development projects" and did not discuss the additive impacts of foreseeable future projects); *Fritiofson v. Alexander*, 772 F.2d 1225, 1243 (5th Cir. 1985) (agency must consider reasonably foreseeable actions regardless of whether they have yet formally been proposed). Furthermore, NEPA requires that a cumulative impacts analysis provide "some quantified or detailed information" because "[w]ithout such information, neither courts nor the public . . . can be assured that the Forest Service provided the hard look that it is required to provide." *Cuddy Mountain*, 137 F.3d at 1379.

The DEIS falls far short of satisfying a single one of these requirements. For example, the DEIS ignores even the impacts of other dams in the Columbia River. Most notably, the DEIS contains no analysis of the cumulative impacts of these alternatives when combined with the Grant County PUD's Priest Rapids and Wanapum dams, located just downstream of those covered by the HCPs analyzed in Alternative 3. Nor is there any mention of the cumulative effects of hydro operations on the Middle or Upper Columbia River tributaries, such as the Yakima and Chelan rivers. These tributaries house numerous hydro and diversion projects and irrigation withdrawals that have a significant impact on these same listed Middle and Upper Columbia River stocks. In addition, the U.S. Army Corps of Engineers has recently analyzed a proposal to deepen the Lower Columbia River – an action that, if approved, will impact Middle and Upper Columbia River juvenile and adult salmon and steelhead as they migrate through the lowest reach of the Columbia River estuary. This dredging project – while currently awaiting a Record of Decision – has been analyzed in a Final ETS and is therefore clearly "reasonably foreseeable," but there is no mention of it in the DEIS.

These examples are by no means exclusive. There are myriad other, easily identifiable actions and conditions that impact the Middle and Upper Columbia stocks, including, but not limited to, continuing habitat destruction and modification from on-going and proposed land-management activities, such as timber sales and livestock grazing on both public and private lands and the operation of the FCRPS. All of these activities and factors – whether they be in the development stage, or completed projects – must be catalogued and considered in NMFS' cumulative effects analysis.

Nowhere, however, does the DEIS meaningfully discuss the cumulative impacts of any these activities. Although NMFS alludes to its “Quantitative Analytical Report” (QAR) purportedly used to identify cumulative effects, it fails to employ or explain this model, drawing only the most general conclusions about the impacts of actions in other life stages in conjunction with each alternative. See, e.g., DEIS at 4-44 (“The protection and enhancement of riparian habitat . . . are expected to result in increased natural production levels for both anadromous and resident fish species.”). Such conclusory and generalized statements do not satisfy the requirement that NMFS take a “hard look” at cumulative impacts.

The DEIS compounds these errors by painting an optimistic outlook for the Middle and Upper Columbia’s listed stocks. See, e.g., DEIS at 4-4 to 4-16. NMFS’ discussion of these other actions takes full advantage of the potential positive effects of actions, but fails to account for or even mention — any of the actions that may have negative impacts. Looking at only the positive side of the ledger distorts the true picture of the effects of the action to the public and inflates the already speculative benefits of many of these actions. NEPA’s cumulative effects requirement demands that NMFS complete a comprehensive analysis that includes all of the actions occurring in the basin.

NEPA “emphasize[s] the importance of coherent and comprehensive up-front environmental analysis to ensure informed decision making to the end that ‘the agency will not act on incomplete information, only to regret its decision after it is too late to correct.’” *Blue Mountains Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1216 (9th Cir. 1998). The DEIS’ terse and incomplete discussion of cumulative effects fails to satisfy this fundamental requirement. The DEIS’ failure to analyze all past, present, and reasonably foreseeable future actions results in a skewed, and ultimately inaccurate picture of the impacts of the proposed actions, leading to the kind of “blinders-on” decision-making that NEPA is designed to prevent.

3. The DEIS Fails To Consider an Adequate Range Of Alternatives

NEPA, § 101(2)(C)(iii), requires that an EIS contain a discussion of the “alternatives to the proposed action.” The discussion of alternatives is at “the heart” of the NEPA process. 40 C.F.R. § 1502.14. The CEQ regulations require the agency to “[r]igorously explore and objectively evaluate all reasonable alternatives.” 40 C.F.R. § 1502.14(a). All federal agencies shall, to the fullest extent possible, “[s]tudy, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources.” 42 U.S.C. § 4322(2)(E); *Idaho Conservation League v. Mumma*, 956 F.2d 1508, 15 19-20 (9th Cir. 1992). A federal agency must look at every reasonable alternative within the “nature and scope of the proposed action,” *California v. Block*, 690 F.2d 753, 761 (9th Cir. 1982), “sufficient to permit a reasoned choice.” *Methow Valley Citizens Council v. Regional Forester*, 833 F.2d 8 10, 8 15 (9th Cir. 1987), *rev’d on other grounds sub nom. Robertson v. Methow Valley Citizens Council*, 490 U.S. 332 (1989). The failure to consider all reasonable alternatives is fatal to the adequacy of an agency’s NEPA analysis. *Idaho Conservation League*, 956 F.2d at 15 19 (“The existence of a viable, but unexamined alternative renders an environmental impact statement inadequate.”). The DEIS is deficient in many respects with regard to the alternatives considered.

First, according to the Habitat Conservation Planning Handbook, the “no action” alternative “means that no permit would be issued and take would be avoided or that the project would not be constructed or implemented.” Handbook at 3-35. The “no action” alternative presented in the DEIS does neither. Indeed, the “no action” alternative is really not an alternative at all because, as NMFS admits, it would violate the ESA and leave both the Federal Energy Regulatory Commission (“FERC”) and the PUDs liable for causing a “take” of listed species. DEIS at 1-14 (only the “action alternatives . . . will provide FERC and the PUDs legal coverage from the take prohibitions under section 9 of the act.”). In short, Alternative 1 fails to present any alternative at all.

NMFS should evaluate a true “no action” alternative that considers “no project” conditions to fully assess the impacts of issuing incidental take permits for the Rocky Reach, Rock Island, and Wells hydroelectric projects. The reason for analyzing river conditions without the project is not just to consider past impacts, but to open up the full range of alternatives and impacts associated with a decision to continue the project. Understanding environmental conditions that would exist without a project is essential to evaluating the ongoing impacts of the projects and discerning key ecological components of a healthy aquatic ecosystem. Only by considering a no-project alternative can NMFS “explore all issues relevant to the public interest, including future power demand and supply, alternative sources of power, the public interest in preserving reaches of wild rivers and wilderness areas, the preservation of anadromous fish for commercial and recreational purposes, and the protection of wildlife,” *LaFlamme v. FERC*, 852 F.2d 389, 402 (9th Cir. 1988) (quotation omitted).

As Courts have explained:

[t]he goal of [NEPA] is to ensure that federal agencies infuse in project planning a thorough consideration of environmental values. The consideration of alternatives requirement furthers that goal by guaranteeing that agency decisionmakers have before them and take into proper account all possible approaches to a particular project (including total abandonment of the project) which would alter the environmental impact and cost-benefit balance. . . . Informed and meaningful consideration of alternatives – including the no action alternative – is thus an integral part of the statutory scheme.

Bob Marshall Alliance, 852 F.2d at 1228 (citations and quotations omitted; emphasis in original).

The DEIS gives short shrift to considering this true “no action” alternative. Instead, NMFS states that, due to perceived legal and timing constraints, “dam removal is not considered a reasonable alternative.” If the baseline against which all alternatives are judged is the present state of the hydropower project, there can be no way to evaluate the pluses and minuses of rejecting or substantially modifying those operations. Without collecting and disclosing the costs and benefits of such options, the informed decisionmaking and full public disclosure purposes of NEPA cannot be met.

Whether better characterized as a “no-action” or an action alternative, NEPA requires NMFS to give full consideration to alternatives that include not proceeding with the activities. NMFS must analyze the condition of the river without the project and outline the public benefits gained from restoring the river to a more natural state. Both these inquiries are necessary for NMFS to fulfill its NEPA obligations.

Second, stripping away the alternatives given only brief consideration and eliminated in the EIS, and the “no action” alternative – which violates the ESA – NMFS is left with only two alternatives. Such a narrow range of alternatives does not fulfill NEPA’s mandate to rigorously explore alternatives. For example, the Court in *Commonwealth of Massachusetts v. Clark*, 594 F. Supp. 1373 (D. Mass. 1984), found that the Department of Interior had not considered an adequate range of alternatives in its analysis of an offshore oil drilling proposal. Of the thirteen alternatives presented in the document, the court found that, “once the illegal and overlapping alternatives are removed from the FEIS, the Secretary was presented with basically only two different configurations for the sale... the FEIS is hopelessly skewed in favor of only small deletions from the propos[ed action].” *Id.* at 1380.

The DEIS’ failure to consider a reasonable range of alternatives is even more troubling in light of the fact that many alternatives clearly exist. Notably, the DEIS fails to consider any alternative that would be more protective of fish, such as drawdown, non-power operations, or the installation of sluiceways at each

project. While such alternatives may cost more, the DEIS presents no information for the decision-maker or the public to draw any conclusion about the benefits, or cost of such a measure.’

Finally, the DEIS relies on inaccurate information in its comparative analysis of alternatives. The DEIS emphasizes repeatedly that Alternative 2 will take longer to implement due to the potential for legal challenges from the PUDs. See, e.g., DEIS at s-32, 1-15, 2-53, 4-6. This fear, however, is nothing more than a straw man of NMFS’ own construction. First, while it is true that the PUDs may prefer the less stringent measures that would result from Alternative 3, it is irrational to make the leap from that to a delay. The section 7 consultation with FERC described in Alternative 2 will yield the measures necessary to avoid jeopardy and will provide incidental take coverage for FERC and, by proxy, the PUDs. Even if either entity challenges these measures, they must still adhere to the results of consultation during that challenge, or they would be liable for a take under section 9 of the ESA. 16 U.S.C. § 1538. Thus even if, as NMFS assumes, one of the actors challenges the results of consultation, the measures required must still be implemented immediately to avoid take liability. The DEIS fails to disclose and to account for this fact in its analysis.

4. **The DEIS fails to adequately inform the public and decision-makers of the requirements and responsibilities of all federal statutes and treaties.**

“A reasoned evaluation of the relevant factors” must also include an understanding of all the federal laws with which an agency must comply, especially when those other laws have been enacted to protect environmental and natural resources. In this case, the DEIS fails to inform adequately the public and the decision-makers of the requirements under numerous other laws including, but not limited to the Endangered Species Act (“ESA”), 16 U.S.C. §§ 1531 et seq., and the relationship between the alternatives and the requirements of these laws and treaties. To give the public and decision-makers the tools necessary to balance all relevant factors, the DEIS must address the basic requirements of these statutes.

For example, the DEIS states that Alternative 3 is intended to meet the requirements of the Federal Power Act and purports to analyze this requirement. Indeed, the DEIS implies that Alternative 3 is the only alternative that meets the requirements of the FPA. The DEIS does not, however, disclose that other alternatives must also comply with the FPA. By failing to disclose and analyze this requirement for the other alternatives, the DEIS presents the public and the decisionmaker with an inflated and inaccurate picture of the benefits of Alternative 3.

Endangered Species Act

NMFS’ analysis in the DEIS is wholly **insufficient** to comply with the underlying legal obligations of the Endangered Species Act (ESA), 16 U.S.C. §§ 1531 *et seq.* The ESA is the “most comprehensive legislation for the preservation of endangered species ever enacted by any nation.” *TV4 v. Hill*, 437 U.S. 153, 180 (1978). “[T]he language, history, and structure of the legislation . . . indicate[] beyond a doubt that Congress intended endangered species to be afforded the highest of priorities.” *TVA*, 437 U.S. at 174.

¹ The DEIS states that the “purpose of the HCPs is to protect fish in the Mid-Columbia River while generating electricity.” DEIS at 1-3. This statement too narrowly cabins the rest of the analysis by removing, among other things, consideration of a true “no action” alternative. Moreover, it assumes that the HCPs analyzed in Alternative 3 are the proper means to comply with the ESA. We believe that the purpose and need must be expanded to emphasize protection of listed species and compliance with the requirements of the Endangered Species Act. The HCPs are only a proposal to meet the requirements of the ESA, they are not an end in themselves. Indeed, to perform a valid NEPA analysis, NMFS must not assume, as it does in the current purpose and need statement, that the HCP Alternative fulfills the mandates of the ESA.

As a result, agencies are required to use “all methods and procedures which are necessary,” 16 U.S.C. § 1532(2), to “prevent the loss of any endangered species, regardless of the cost.” *TVA*, 437 U.S. at 188, n. 34. The DEIS does not meet that standard and in fact, if implemented would result in serious harm to listed species in the Middle and Upper Columbia.

Specifically, the DEIS violates the ESA’s requirements for three basic reasons. First, the DEIS fails to abide by the ESA’s fundamental principle of caution in the face of uncertainty. Second, the DEIS assumes, contrary to law, that the underlying Habitat Conservation Plans (HCPs) are legal in the context of federally regulated hydroelectric dams. Third, the DEIS fails to understand fundamental requirements of the ESA. All three issues are discussed more broadly below,

1. The DEIS Violates the Fundamental Principle of Species Conservation -- Erring on the Side of Caution in the Face of Uncertainty.

Effective conservation management requires a conservative, species-protective approach to ensure that management decisions made in the face of uncertainty do not place the species further at risk.² An independent peer review panel recently criticized the state of Washington’s statewide salmon recovery plan for failing to heed that precautionary principle.³

The Supreme Court has recognized the importance of this approach in ESA decisionmaking. “Congress has spoken in the plainest of terms, making it abundantly clear that the balance has been struck in favor of affording endangered species the highest of priorities, thereby adopting a policy which it described as ‘institutionalized caution.’” *TVA*, 437 U.S. at 194. The ESA’s policy of “institutionalized caution” requires that [t]he risk [presented by an action] must be borne by the project, not by the endangered species. . . . Congress clearly intended that [federal agencies] give the ‘the highest of priorities’ and the ‘benefit of the doubt’ to preserving endangered species.” *Sierra Club v. Marsh*, 816 F.2d 1376, 1386 (9th Cir. 1987). (citations omitted)(emphasis added). NMFS appears headed down an errant path with the DEIS, by placing the risk of uncertainty squarely on the backs of listed stocks.

NMFS’ failure to err on the side of protecting listed fish is endemic throughout the DEB. See *infra* at 12-14. For example, the DEIS states at the very on-set that the purpose of the preferred alternative, the HCPs, is to protect fish while at the same time generating electricity. DEIS at S-2. The ESA strictly forbids this type of analysis. Instead, the ESA requires that the biological needs of the species be identified and addressed. The ESA only allows economics and other interests to come into the determination once recovery and survival thresholds have been met. Setting out the purpose as one that must protect economic interests is inconsistent with the ESA’s obligations in this regard.

This problem is also apparent in the DEIS’ analysis of scientific gaps. The DEIS specifically states that under Alternative 3, there is no requirement to provide the benefit of the doubt to the species of concern with respect to data gaps or disputes over information. DEIS at S-33. This determination is clearly inconsistent with the ESA and fails to provide sufficient protection to listed species.

Moreover, NMFS specifically finds in the DEIS that the long-term risks to listed stocks is greater than the long-term risks to the PUDs. DEIS at 4-77. Again, the ESA does not allow for this type of imbalance. The “risk of uncertainty on the long-term effects to the species” cannot legally be balanced on the backs

² See Noss, R.F., M.A. O’Connell, and D.P. Murphy. *The Science of Conservation Planning*. (island Press. Washington, D.C. 1997)

³ Independent Science Panel. Review of “Statewide Strategy to Recover Salmon: Extinction is Not an Option.” (2000).

of the fish. Instead, the law requires these risks to be borne by the action. That is, the PUDs' facilities must bare those risks.

Although NMFS and the PUDs might argue that the adaptive management provisions of the HCPs eliminate the illegal risk to the listed stocks, this simply is not the case. The current agreement promises not to use the HCPs' "off-ramp" until year 15 (even if the stocks are plummeting) and the burden of proof requirements under a "no surprises" policy, limit any positive impacts the adaptive management provisions might otherwise present. Simply put, NMFS has negotiated an agreement that while it provides "a substantial amount of planning and financial certainty for the PUDs," it puts a significant risk on the likely survival of the listed species. DEIS at 4-77. We urge NMFS to do what the ESA requires and place the unknown risk on the project, not the species.

2. FERC's Licensing of a Hydroelectric Facility Requires a Section 7 Consultation Process.

The operation of these federally licensed projects should be the subject of a § 7 consultation between the NMFS and the FERC, not the subject of a § 10 incidental take permit (ITP) in an HCP. Issuing an ITP to these projects would be misguided for several reasons.

First, § 7 and NMFS' Handbook make clear that the ITPs are available only for nonfederal activities. See 16 U.S.C. § 1536(b)(4) & (o) (providing for incidental take statements for federal activities and ITPs for nonfederal actions); HCP Handbook at 1-4 ("[The Section 10] process is designed to address non-federal land or water use or development activities that do not involve Federal action that is subject to section 7 consultation."). As the DEIS makes clear throughout the document, the projects at issue in the HCPs are FERC-licensed projects. See, e.g., DEIS at S-5 (discussing the Wells Hydroelectric Project as a FERC-licensed project). FERC's permitting authority over these projects and its continuing authority over the projects through so-called reopener clauses, constitute federal activities. As such, FERC must consult with NMFS over its actions under § 7 of the ESA. The use of the § 10 HCP process is inappropriate, and likely illegal, in this context.

Second, even if an ITP were appropriate in this context, the ITPs and HCPs would not relieve FERC of its § 7 responsibilities. Section 7 of the ESA requires federal agencies to "insure that any action authorized, funded, or carried out by such agency . . . is not likely to jeopardize the continued existence of any endangered or threatened species." 16 U.S.C. § 1536(a)(2) (*emphasis added*). Section 7 also requires federal agencies to conserve listed species. 16 U.S.C. § 1536(a)(1). Section 10 of the ESA merely requires that actions not "take" a listed species. 16 U.S.C. § 1539(a). The difference is extraordinary.

We recognize that NMFS acknowledges the need to complete a § 7 consultation on the implementation of the HCPs. However, by blessing the HCPs first, NMFS simultaneously renders the § 7 consultation process meaningless and places the agencies in a position that, very likely, will result in a process that is contrary to the law. The "no surprises" policy of the HCPs would negate the ability of the agencies to insert provisions into the FERC licenses that the agencies found necessary to comply with their § 7 conservation, survival, and recovery obligations. Contrary to the "no surprises" assurances that certain commitments will not be revisited, NMFS would illegally restrict the ability of FERC and NMFS to comply with their § 7 responsibilities. In the very least, the consultation process must occur prior to any further development or agreement to the HCPs.

Third, a "no surprises" cap on these projects' responsibilities is particularly troubling due to the river-based nature of these operations and each individual dam's impacts on migrating salmon and steelhead. To justify the promises of certainty in the face of rapidly changing conditions, NMFS and Fish and Wildlife Service asserted in their "no surprises" rulemaking that the agencies can rely on conservation contributions from neighboring land owners or voluntary conservation organizations to compensate for

the cap on the permittee's responsibilities. See 63 Fed. Reg. 8859 (1998), codified at 50 C.F.R. §§ 17.22(b)(5), (6) & 17.32(b)(5), (6) (1998). This justification makes absolutely no sense for the salmon and steelhead of the middle and upper Columbia River, which will not survive dams that prove to be harmful regardless of the extent to which neighboring landowners step up their conservation contributions. In essence, there is no "neighbor" to make up for the adverse impacts to the species.

Finally, no surprises assurances have already created significant new risks for endangered species as they have been applied over the past five years to nonfederal activities. "No surprises" guarantees tend to lock-in an HCP's initial design, rendering adaptive management meaningless, by setting extremely high burdens of proof for the Services, requiring additional mitigation to **first** occur on public lands, requiring any additional mitigation to be fully subsidized by the public, and/or allowing any additional mitigation to be voluntary. Even in cases where an HCP's initial provisions are more adequate, changes and additions to these measures may well become necessary over time, including as a result of changes in the permittees' resource management practices, changing environmental conditions, or other foreseeable and unforeseeable circumstances. Rather than repeating our general concerns regarding the no surprises policy here, we include by reference, the National Wildlife Federation's comments on the "no surprises" policy rulemaking and American Lands' comments on the Scoping Notice for these HCPs. These concerns are heightened by the fact that NMFS has found the listed species at issue in these HCPs to be some of the most imperiled in the Columbia River Basin. This is not a time to add to the obstacles these species must face, but rather a time to provide the maximum protections afforded by law and policy.

3. **The DEIS Misunderstands the Requirements of the ESA.**

The DEIS fundamentally misunderstands the requirements of the ESA and its relationship to hydroelectric projects. In several places, the DEIS states that NMFS cannot legally mandate drawdown or dam removal until project relicensing. See, e.g., Table 2-8 at 2-57 or 4-29 & 2-45, respectively. This is simply not the case. These projects currently hold licenses that contain reopener clauses that allow FERC to change or revoke the licenses due to fish and wildlife concerns. As a result, FERC retains ongoing authority and jurisdiction over these projects. Courts have found that this ongoing jurisdiction requires the federal agency with this authority to reinitiate consultation and to take whatever action necessary to protect the listed species. See *WaterWatch of Oregon v. U.S. Army Corps of Engineers*, Civ. No. 99-861-BR (D. Or. June 7, 2000) (finding that a reopener clause in a federal permit required the Corps to reinitiate consultation over a water withdrawal). NMFS' elimination of the dam removal alternative is simply inconsistent with federal law. We strongly urge the agency to reconsider its elimination of this alternative.

Additionally, the ESA requires NMFS to consider alternatives that are much more protective of fish than the HCPs proposed in Alternative 3 of the DEIS. The ESA requires that an HCP minimize and mitigate the taking of endangered and threatened species to the "maximum extent practicable." 16 U.S.C. § 1539(a)(2)(B)(ii). As discussed earlier, the DEIS fails to consider any alternative that would be more protective of fish, such as the installation of sluiceways at each project. NMFS' failure to consider this and other, more protective alternatives violates the ESA's "maximum extent practicable" requirement. As Courts have held, "the most reasonable reading of the 'maximum extent practicable' nonetheless requires the Service to consider an alternative involving greater mitigation . . . , 'The Administrative Record must contain some analysis of why the level or amount [of take] selected is appropriate for the particular project at issue.'" *National Wildlife Fed'n. v. Babbitt*, 128 F.Supp.2d 1271, 1292 (E.D. Cal. 2000) (citing *Sierra Club v. Babbitt*, 15 F.Supp.2d 1274, 1279-82 (S.D. Ala. 1998)). NMFS must not only show that the mitigation proposed in the HCPs is practicable, but must demonstrate that a higher level of mitigation would be impracticable. Just as NMFS cannot satisfy NEPA's range of alternatives requirement with the discussion of only 2 alternatives, such a narrow range of alternatives similarly fails to satisfy the requirements of the ESA.

Also disturbing is the manner in which the DEIS treats permit revocations. The ESA requires revocation of the permit if the permittee is not meeting the permit's terms and conditions. 16 U.S.C. § 1539 (a)(2)(C). However, the HCPs appear to limit this revocation authority in two significant ways. First, the HCPs only allow revocation after year 15. So, the PUDs could fail to meet the terms and conditions of the HCPs for 14 years without recourse. DEIS at S-1 6; 2-33. Second, the revocation at year 15 may be exercised only if NMFS is specifically seeking drawdown, dam removal, and/or a non-power operating action. Neither limitation is consistent with ESA requirements. We urge NMFS to review the law and the underlying HCP agreements to ensure consistency.

Finally, NMFS' failure to provide an adequate review of the HCPs' monitoring and evaluation programs undermines the very essence of the ESA. The monitoring and evaluation of the HCPs are critical for compliance with the ESA. Without accurate and adequate monitoring and evaluation mechanisms, NMFS and FSW will be unable to determine, in any scientifically or legally credible manner, whether the PUDs are complying with the HCPs and thus, with the ESA. The DEIS fails to adequately address the obvious limitations with the alternative's monitoring and evaluations processes. We urge the agency to do a more thorough analysis of the limitations of these processes and to articulate how the agency **will** be able to ensure compliance with federal law.

Federal Power Act

The DETS specifically states that the HCPs would "supersede the existing FERC license articles and settlement agreements as they pertain to anadromous fish." DEIS at 1-9. It is also the intention of the PUDs that the HCPs satisfy NMFS' obligations pursuant to sections 18, 10(a), and 10(j) of the Federal Power Act. However, the DEIS falls far short of including the analysis and requirements necessary to supersede these statutory requirements.

Both the Federal Power Act (FPA) and NEPA obligate a hydroelectric licensee to incorporate pre-project conditions in the relicensing process. As currently written, the DEIS and HCPs limit these requirements. Section 10 of the FPA establishes two mechanisms for requiring the analysis of pre-project conditions. First, section 10(a) requires an assessment that ensures the "equal consideration" of non-power values, including fish, wildlife, recreation, and environmental quality, when relicensing a hydroelectric facility. 16 U.S.C. § 803(a). The FPA's legislative history further clarifies that the intent of the FPA's SO-year cap on hydroelectric licenses was to ensure that the commitment of a river to power production be reevaluated anew at the time of relicensing. See, e.g., Statement of Theodore Roosevelt, H.R. Rep. No. 507, 99th Cong., 2nd Sess. 11 (1986) stating that "[t]he public must retain the control of the great waterways. It is essential that any permit to obstruct them for reasons and conditions that seem good at the moment should be subject to revision when changed conditions demand.") A proper assessment of giving equal consideration cannot be determined without first understanding how the project has impacted environmental resources and how these resources could be restored. The DEIS utterly fails to address those issues by ignoring the pre-project conditions. Including a dam removal alternative would help rectify this serious oversight.

Second, §10(j) of the FPA also compels a pre-project analysis by requiring that relicensing be conditioned upon the inclusion of 'adequate and equitable' fish and wildlife protection, mitigation, and enhancement (PM&E) measures. 16 U.S.C. § 803 (j). This first step in determining the appropriate level of PM&E measures is to identify the historic conditions within which fish and wildlife existed prior to the hydroelectric project. The goal is to understand the key ecological conditions required for a healthy, self-sustaining fish and wildlife populations, and to strive to restore the physical, chemical, and physiological processes that create and maintain those conditions. However, reaching this goal is impossible without

first assessing the conditions of the ecosystem prior to dam construction. Again the DEIS is woefully lacking in this analysis.

Third, the DEIS provides no analysis of whether the HCPs at issue satisfy the FPA. It seems obvious that NMFS has blinded itself to these requirements. Certainly, by not analyzing the impacts to the FPA requirements, NMFS has failed to present the issues squarely for the public and decision-makers. The FPA grants certain authorities to NMFS to protect fishery resources, (listed and non-listed), affected by the hydroelectric project. The DEIS fails to analyze whether the HCPs' measures will satisfy such obligations. We urge the agency to complete a thorough analysis of how the proposed alternative will comply with the FPA requirements.

Finally, the very concept of the HCPs at issue in the DEIS circumvent the FPA requirements by including a "no surprises" assurances. As discussed earlier, the "no surprises" policy pre-supposes both the content and the term of years for the PUD FERC licenses. This is particularly disconcerting in terms of content where FERC has regularly inserted reopener clauses into its licenses in order to ensure "equitable treatment for fish and wildlife over the terms of the license agreement. The "no surprises" policy in the HCPs would eliminate FERC's ability to ensure compliance with this section of the FPA and many of its own license terms.

Clean Water Act

The CWA requires that all federal agencies "having jurisdiction over any property or facility . . . shall be subject to and comply with" all applicable federal, state, and local water quality laws. 33 U.S.C. § 1323. As a federal court has recently held, dams are no exception to this rule. See National Wildlife Fed'n v. U.S. Army Corps of Engineers, 92 F. Supp.2d 1072 (D. Or. 2000) (holding that the Corps' dams on the lower Snake River must comply with state water quality standards). As the permitting agency, FERC has jurisdiction over the operation of these dams. Nowhere in the DEIS, however, is there an analysis of whether any of the alternatives will comply with water quality standards. NMFS must analyze the water quality impacts of these projects and ensure that state water quality standards are met.

In addition, as a result of the actions analyzed in this DEIS, NMFS will issue an incidental take permit or an incidental take statement. However, both the ITP and the ITS require state certification under section 401 of the CWA. 33 U.S.C. § 1341. To the best of our knowledge, NMFS has not acknowledged receipt of such certification from the applicants. We ask the agency either to identify where in the DEIS this certification is discussed or to seek such certification prior to issuance. To issue one of these permits without a certification is a violation of section 401 of the CWA.

Inadequacy of HCP Provisions

The HCPs establish a no net impact standard for salmon and steelhead at the Rocky Reach, Rock Island, and Wells hydroelectric projects. The key components include a 91 percent total project survival rate, including an independent 95 percent juvenile passage rate, and 9 percent compensation through hatchery and tributary improvement programs. The DEIS clearly illustrates the shortcomings of the proposed standards and the unacceptable risk placed on the species as a result. Nonetheless, NMFS' analysis overlooks the serious shortcomings with the HCPs.

1. Adult and Juvenile Survival Standards Are Insufficient.

The DEIS must determine whether the adult and juvenile survival standards proposed in the HCPs are sufficient to recover the species and importantly, whether it is even possible to measure compliance with the proposed standards. The DEIS fails on both accounts.

Perhaps one of the most significant problems with Alternative 3 is the inability to accurately measure the key components of the HCPs -juvenile and adult survival standards. The DEIS makes clear that there is considerable uncertainty surrounding the available survival information for juvenile and adult salmonids passing the Mid-Columbia hydroelectric projects. Further, the DEIS states that (1) methodologies do not currently exist to measure total project survival for all species for juvenile migration, and (2) there are no specific plans to assess overall adult survival at the projects due to the lack of accurate methods to do so. Despite a lack of scientifically credible methods to determine whether the PUDs are meeting the proposed survival standards, NMFS relies on the standards when evaluating risks to the species of the proposed action. The DEIS fails to explain such reliance or evaluate the risk associated with standards that cannot be measured. NMFS cannot issue an incidental take permit while at the same time expressly acknowledging an inability to determine whether the applicant is in compliance with its terms.

Until such time as accurate assessment methods are developed, NMFS proposes to utilize representational studies of yearling spring chinook and steelhead to determine juvenile survival of all species and proposes nothing with regard to measuring total project survival, which includes adult survival. In the absence of adequate methods to measure whether the specified standards are being met for all of the life stages of all covered species, the standards are meaningless. Yet, the DEIS does not account for this considerable uncertainty in its analysis.

Compounding the risk to species is the provision that in the absence of methods to accurately determine unavoidable project mortality – defined as 5 percent juvenile dam passage mortality and 4 percent mortality from all other project effects, including adult mortality – NMFS assumes that the underlying estimates are correct. There is absolutely no data to justify such an assumption, and making this assumption runs counter to the fundamental principles of the ESA requiring that uncertainty be resolved in favor of the species. See *supra*, at 7-8. Therefore, until the PUDs accurately assess the specified survival standards, NMFS should assume non-attainment of the standards.

Moreover, the assumptions regarding the underlying mortality estimates serve as a disincentive for the PUDs to develop and implement studies of total project survival in a timely manner. The HCPs allow the PUDs to transition from Phase I to Phase III based solely on attainment of the 95 percent juvenile survival standard. As a result, the PUDs can forego studying total project survival, relying instead on the unjustified assumptions in the HCPs. Again, this result runs afoul of the ESA's cautionary principles.

We acknowledge the difficulty in evaluating certain standards and that the HCPs call for such protocols to be developed at some future date. However, NMFS may not rely on survival standards for which there are no technologies available to evaluate when determining whether the proposed HCPs comply with the ESA. A promise of future assessments, coupled with assumptions that standards are being met in the absence of such assessments, falls far short of what the ESA requires, and cannot be used to support any conclusions as to the HCPs' adequacy. See, e.g., *Sierra Club v. Marsh*, 816 F.2d 1376 (9th Cir. 1987) (the benefit of the doubt must be given to species not the action). There must be scientifically credible means to determine whether the standards set forth in the draft HCPs are being met prior to issuance of an incidental take permit, And, NMFS must consider the accuracy, reliability, and feasibility of the proposed measuring techniques in its analysis of the HCPs.

Recent actions undertaken by Chelan County PUD highlight the risk posed to the species by failing to develop agreed-upon methods for assessing whether survival standards are being met for all species prior to implementation of any HCPs. Despite lack of support from tribal, federal, and state fishery experts,

Chelan County PUD concluded that the Rocky Reach Hydroelectric Project was providing 95 percent juvenile dam passage survival and decided to forego the minimum spill requirement set forth in the HCPs. The PUD relied on inadequate analysis to support its conclusion, and ignored the requirement that all parties agree that the standard has been met prior to foregoing spill. Similar situations are likely to occur in the absence of measurable criteria.

Even if the 95 percent juvenile dam passage survival standard was measurable for all species, NMFS' analysis of the expected survival improvements and their adequacy in recovering the species is deficient in several respects. First, the HCPs call for the PUDs to maintain a 95 percent juvenile dam passage survival standard over only 95 percent of the run. NMFS fails to analyze **the** effect of protecting only 95 percent of the run and whether this approach is even legal under the ESA. Additionally, the HCPs allow for **the** exclusion of spring migrating chinook smaller than 50 mm in length from the 95 percent juvenile dam passage survival for the full run of that species in **the** event turbine intake screens are installed certain instances. The DEIS does not consider the effect of such exclusion on the species.

Finally, the PUDs, rather than NMFS, have the ultimate decision on what measures to implement during Phase I of the HCPs. The minimum required of the PUDs is that they demonstrate "steady progress" toward project survival standards throughout the duration of Phase I. However, the DEIS provides no criteria to determine adherence to steady progress, and importantly, states that such adherence will not be monitored until actual implementation of the HCPs. The result is that despite Phase I beginning in 1998, NMFS is not requiring the PUDs to comply with the steady progress requirement. Failure to provide steady progress delays implementation of critical protection measure and shifts the burden onto the species.

The insufficient analysis of the 95 percent standard, the lack of scientifically credible methods by which to determine whether the PUDs are achieving the HCP standards, and the lack of a requirement to provide the benefit of the doubt to the species of concern with respect to information gaps or disputes results in insufficient protection for the species.

We recommend that NMFS identify and **evaluate** feasible measurement protocols to assess compliance with all aspects of the survival standards. Such protocols should address all species and all life stages, including adult survival. In conjunction with development of study methodologies, NMFS should evaluate the potential impacts on the species that may result from implementation of such studies. Further, any uncertainties with regard to whether standards are being met must be resolved in favor of the species.

2. The DEIS Lacks Any Adequate Analysis of the Off Site Mitigation Proposals.

The DEIS notes that the ultimate goal of the HCPs is to achieve no net impact to each species covered by the HCPs. This standard requires a 9 percent compensation for unavoidable project mortality through two programs – 7 percent compensation to be provided through hatchery programs and 2 percent compensation provided through tributary habitat improvement programs. However, the DEIS fails to provide a detailed evaluation of either program, including the manner **in** which NMFS will assess the projected benefits. Rather, the DEIS acknowledges that there are no means to assess these benefits and then simply assumes that the funding and supplementation levels contained in the HCPs are adequate.

a. Tributary Improvements

A critical component of any salmon protection and recovery effort will involve the protection and restoration of salmon and steelhead habitat throughout the basin. Thus, while a tributary habitat improvement fund is a laudable goal, it must be accompanied by measurable actions and objectives. The

proposed tributary fund in the HCPs fails to meet that requirement and as a result, raises questions about the legality of such a program under the ESA.

The DEIS provides no analysis to support the proposed tributary habitat improvement fund levels established in the HCPs or to suggest that the fund will result in the 2 percent compensation for unavoidable project mortality as intended. The fund is defined in monetary terms, with no connection to specific habitat improvement measures or goals necessary to meet the habitat needs of salmon and steelhead. And, although the DEIS states generally that habitat conditions are expected to improve, there is no way to measure the actual benefits of such improvements or determine whether the PUDs are complying with the 2 percent compensation standard. Despite this inability to measure and the uncertainty surrounding the fund, the DEIS quantifies and relies upon expected survival increases for steelhead and spring chinook resulting from such improvements. The DEIS fails to support its finding that the fund will either provide 2 percent compensation or provide the projected survival benefits.

Additionally, the DEIS does not explain how the funding structure may affect when or whether improvements are made and survival benefits realized. Similarly, the DEIS fails to explain how the funding structure will actually achieve interim goals for recovery. The QAR analysis assumes that survival improvements from off site mitigation will be realized immediately, even though the funding for such improvements is spread out over the 50 years of the permit. NMFS clearly understands that the survival improvements cannot be immediately realized. And yet, the DEIS, while acknowledging this discrepancy, simply ignores the problem. NMFS' avoidance technique and lack of analysis presents an illegal burden of risk on the listed species and violates both the ESA and NEPA.

Finally, the DEIS fails to explain why Douglas County PUD's contribution to the tributary improvement fund would be reduced by half in the event that the PUD is achieving 95 percent juvenile dam passage survival or higher at the Wells dam. There is no justification for linking the tributary habitat fund solely to the juvenile dam passage survival standard. Such a reduction runs counter to the goal of attaining no net impact at the project and is not considered in the DEIS estimation of survival benefits. The projected benefits, although not supported by data or scientific analysis, are based on tributary improvements to mitigate for 2 percent of unavoidable project mortality. Changing the contribution level without scientific justification is irrational and contrary to law.

b. Hatchery Mitigation

The DEIS fails to adequately analyze the hatchery supplementation component of the HCPs. Not only does the QAR analysis fail to consider a long-term program, but NMFS also provides no analysis to support a program that compensates for 7 percent unavoidable project mortality. Although the HCPs rely on 7 percent compensation through hatchery programs to attain the underlying goal of no net impact, NMFS expressly states that it cannot guarantee a program at that level. The DEIS notes that any hatchery program must be designed and implemented in a manner consistent with recovery goals, but provides no information as to how that might be accomplished nor whether such consistency will prevent the PUDs from meeting the required 7 percent hatchery compensation. Nevertheless, the analysis fails to factor in the potential for non-attainment of 7 percent compensation through the hatchery program, and in turn, the no net impact standard. The failure of this analysis raises questions as to whether the HCPs and the no net impact standard meet the obligations of the ESA.

Although the DEIS identifies continued supplementation as an important factor to consider and clearly a key component of the HCPs, the QAR fails to analyze the impacts of a long-term supplementation program intended to provide the 7 percent compensation. In fact, the QAR analysis assumed a short-term supplementation program would be suspended upon attainment of certain goals, while supplementation under the HCPs would continue unless shown to have a negative impact to ESA listed species.

Insufficient information about the hatchery program, in combination with uncertainty surrounding both the survival standards and the tributary program, preclude NMFS from fully assessing the environmental impacts of the HCPs and drawing any conclusions as to its sufficiency under the ESA.

3. Inconsistencies between QAR & DEIS Call DEIS Analysis into Question

The DEIS relies on the Quantitative Analytical Report (QAR) to assess the impacts of implementing the survival standards and tributary habitat improvement measures in the HCPs. NMFS' reliance on the QAR analysis is misguided for several reasons. First, the QAR "assumed that the survival improvements called for at the hydroprojects, and through off-site mitigation, occur instantaneously," when in fact, as the DEIS notes, the survival benefits from the measures in the HCPs may not be realized for years. DEIS at 4-1 1. The QAR also assumes that Grant County PUD's Priest Rapids Project has achieved a 95 percent juvenile survival standard, similar to the juvenile dam passage survival standard called for in the HCPs. However, the DEIS provides no support for this assumption. As discussed above, the QAR also fails to adequately assess the proposed hatchery supplementation program. Finally, the QAR incorporates the survival improvements called for in the Federal Columbia River Power System Biological Opinion, even though such standards are not currently being met. The QAR relies upon unsupportable assumptions contrary to the requirement that NMFS articulate a rational connection between its findings and the available facts. Inconsistencies between the QAR and available facts call into question NMFS' reliance on the analysis to draw any conclusions about the adequacy of the HCPs.

Conclusion

The DEIS fails to demonstrate that the proposed HCPs provide sufficient protection of anadromous salmon and steelhead. It relies on immeasurable standards and too often places the risk of uncertainty associated with such standards on the species. A plan that is to govern salmon and steelhead protection measures at the Rocky Reach, Rock Island, and Wells hydroelectric projects must contain significantly more certainty with regard to attainment of standards, effectiveness of standards in light of all the impacts in the Columbia River Basin, and must be conservative in favor of ESA-listed species. The DEIS does not provide sufficient analysis of the environmental impacts of the alternatives to warrant adoption of the HCPs.

Thank you for the opportunity to comment. Please feel free to call if you have any questions regarding these comments.

Sincerely,



Pat Ford, Save Our *Wild* Salmon
John Kober, National Wildlife Federation
Steve Gerritson, Chair, Cascade Chapter of the Sierra Club
Liz Hamilton, Northwest Sportfishing Industry Association

Glen Spain, Pacific Coast Federation of Fishermen's Associations &
Institute for Fisheries Resources
Shawn Cantrell, Friends of the Earth

cc: Susan Fruchter, NEPA Coordinator
Office of Policy and Strategic Planning
Room 6117
Herbert C. Hoover Bldg.
U.S. Department of Commerce
Washington D.C. 20230

FEB 14 2001

STATE REPRESENTATIVE
12th DISTRICT
CLYDE BALLARD
REPUBLICAN SPEAKER OF
THE HOUSE

State of
Washington
House Of
Representatives

RULES
CO-CHAIRMAN



February 12, 2001

Northwest Region - Hydro Program
National Marine Fisheries Service
525 NE Oregon St. Suite #420
Portland, OR 97232-2737

Dear Sirs:

Affordable, reliable electricity has been the lifeblood of Washington's state's economy for decades. Fueled largely by clean, renewable energy from hydroelectric power, our state as a whole has been able to grow and prosper. Now, hydroelectric power is in short supply. Environmental regulations have all but eliminated new hydropower plant construction, and conditions imposed on existing power plants have significantly reduced generation. Our state faces an immense challenge in finding new generation sources to fuel an expanding economy.

In many rural Eastern Washington communities, affordable hydroelectric power is not **only** critical for growth, it is critical for survival. The agricultural industry is in serious decline, in part due to the cost of endless regulations imposed by unyielding agencies. Aluminum plants are closing or severely cutting production due to rising energy costs. Jobs are in short supply.

For several years, I have been closely watching the development of the Habitat Conservation Plan (HCP) for the hydro projects in the mid-Columbia area. Frankly, I have been disappointed that we have all had to wait so long for this plan to wade through the regulatory process. We cannot afford to wait any longer.

The HCP offers hope that the mandates of the Endangered Species Act can be met, while retaining critical hydroelectric power supplies. Rather than relying upon agencies to mandate never-ending fish protection measures, the plan establishes an outcome-based standard. The Public Utility Districts (PUDs) have the opportunity to meet the agree-upon survival standards, with unavoidable losses compensated through state-of-the-art hatchery production and habitat funding.

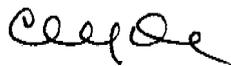
Finally, we may have a model for addressing fishery protection that embraces common sense. It's about time.

Habitat Conservation Program
page 2,

I would like to note for the record that our PUDs have not been waiting for the regulatory review process to conclude before moving ahead with resource protection plans. For example, Chelan County PUD has thoroughly tested a prototype surface collection system at Rocky Reach Dam. Construction of a permanent surface collector will begin later this year. The PUD is also nearing completion of a turbine replacement project, using a more fish-friendly design. The cost of these programs is significant and the PUD should be applauded for its environmental stewardship.

I support the HCP and urge you to move it swiftly through the review process. This is a golden opportunity to demonstrate to the citizens of Washington State that cooperation can yield positive results. Our citizens are growing more and more skeptical that something like this is possible. Don't disappoint them.

With Warmest Regards,



CLYDE BALLARD
Speaker of the House



City
of
Leavenworth

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FEB 12 2001

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City Council
Bill Bauer - Mayor
Bill Wells - Mayor Pro-Tern
Trisha Bradley
Peter D. DeVries
Carl Florea
Jack Koenig
John Pool
Keith Tower

Scott Hugill • City Administrator

February 7, 2001

National Marine Fisheries Service
Northwest Region —Hydro Program
525 NE Oregon Street, Suite 420
Portland, OR 97232-2737

After discussion with the City Council, I am writing in support of the Chelan County PUD's Habitat Conservation Program (HCP) now under review by your agency.

Since a national fish hatchery is located in our back yard (on Icicle Creek, a tributary of the Wenatchee River in Chelan County), most citizens of Leavenworth are keenly aware of the issues surrounding salmon survival. They know about the competing demands on our rivers and streams - demands for domestic water, irrigation, hydro generation, fisheries and recreation, among others. They are also aware of the stalemates that can result when these seemingly competing interests are at legal loggerheads.

The proposed HCP offers a common-sense approach to the fish problem. The HCP gives Chelan County PUD a fixed target, the outcome-based standard of 91 percent overall survival. It allows the PUD time to find the most economical means of satisfying the regulatory agencies' fish protection requirements. And it appears to avoid the courtroom, where so many of these issues end up.

Of particular interest to the citizens of Leavenworth are the provisions for habitat protection and improvements included in the HCP. Leavenworth is situated near several important tributaries to the Columbia River, and we support habitat improvements to these rivers and streams.

On the business side, I represent a community that has become an outstanding pillar of the tourism industry of the Pacific Northwest. More than one million (1,000,000) visitors come to Washington's Bavarian Village each year. It is our hope that the PUD will be allowed to continue as the provider of low-cost, reliable electricity while maintaining its status as a good steward and good neighbor.

Please place the City of Leavenworth on record as supporting the Habitat Conservation Plan (HCP) of Chelan County PUD.

Sincerely,

William J. Bauer, Mayor



April 4, 2001

Ms. Donna Darm
National Marine Fisheries Service
Northwest Region - Hydro Program
525 N.E. Oregon St., Suite 420
Portland, OR 97232-2737

Dear Donna:

The Pacific Northwest Utilities Conference Committee (PNUCC) has played an important role in the region's electric utility industry for over 50 years. As a voluntary, non-profit organization, PNUCC is a forum for bringing the power of good ideas to bear on a range of issues including the recovery of ESA listed salmon.

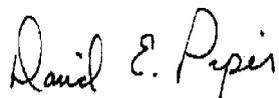
PNUCC has been engaged in the salmon issue for many years seeking a regional plan that will successfully recover endangered salmon. In order for a plan to succeed it must address the salmon's entire lifecycle; have clear, consistent goals; clearly articulate who is accountable for meeting the goals; and be acceptable by all interested parties. Such a regional plan would provide a guide for local actions for fish. In addition, the regional plan would be used to assure that individual actions at the local level are consistent with the region's goals and are complementary and not at cross-purposes.

The mid-Columbia Habitat Conservation Plan (HCP) is consistent with our regional goals and we ask that NMFS fully endorse it. The HCP successfully meshes fish management with hydropower operations and it embodies many key principles PNUCC strongly supports for recovering salmon in the Pacific Northwest. It establishes overall survival targets for fish. It is comprehensive in nature, relying on habitat improvements and hatchery operations, as well as, hydro operations to improve fish survival. It relies on the innovations of the project owners, giving them the responsibility and accountability for meeting fish survival targets yet provides for oversight from and cooperation with interested agencies and parties. And most importantly, the mid-Columbia HCP is the product of a comprehensive, collaborative process that included all the major stakeholders. We see this as a successful formula that recognizes the unique characteristics of each hydroproject.

In order to maintain system reliability and ensure a stable power supply for the Northwest, it is imperative that the region has certainty to the amount of power available from the NW hydropower system. The HCP provides some additional certainty for the operation of the three dams it addresses and thus their power contributions.

This HCP is one example of how to locally and effectively address salmon recovery. We urge you to adopt the principles of the HCP and move forward on meeting its admirable goals.

Sincerely,



Gerry Miller
Chairman
Goldendale Aluminum

Dave Piper
1st Vice Chairman
PNGC Power

Jim Miller
2nd Vice Chairman
Idaho Power Company

cc: PNUCC Board of Directors

FEB -9 2001

LYNN W. BAKER, ED.D.
Superintendent



CASHMERE SCHOOL DISTRICT NO. 222

210 South Division Street
Cashmere, WA 98815-1198

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February 6, 2001

National Marine Fisheries Service
Northwest Region • Hydro Program
525 N.E. Oregon Street, Suite 420
Portland Oregon 97232-2737

To Whom It May Concern:

Collaboration is one of the best lessons we can teach.

When we're facing a challenge as difficult as protecting salmon and steelhead in the Columbia River, it is remarkable to find a solution such as the Mid-Columbia Habitat Conservation Plan. The fact that it is a negotiated effort in an arena marked by adversarial action provides a valuable template for the future,

I endorse the plan for these reasons:

- * It ensures protection of salmon and steelhead while maintaining an economical and reliable energy supply for our region.
- * It establishes performance standards, based on the best available scientific evidence and allows local PUD fisheries staff to develop the most cost-effective ways to meet them.
- * The plan provides a balanced approach to compensation for unavoidable losses.
- * It includes a commitment to improve habitat in the Columbia River as well as important tributaries such as the Wenatchee River, a touchstone of our town.
- * A dispute resolution process is included to avoid expensive and time-consuming legal battles that would take resources away from helping fish.

Overall the Mid-Columbia Habitat Conservation Plan is a much needed, innovative and rational approach to protecting endangered salmon and steelhead while also ensuring continued operation of our local hydroelectric dams. That power source is crucial to the region to ensure there will be jobs for our students in the future. This is particularly true because our agricultural industry is eroding.

Sincerely,

A handwritten signature in black ink, appearing to read "Lynn W. Baker".

Lynn W. Baker, Ed.D.
Superintendent



P.O. Box 218 • 11724 Riverbend Dr. • Leavenworth, WA 98826-0218
 Drywall Division - Wenatchee (509) 663-5154 • Fax (509) 663-5 154

February 6, 2001

National Marine Fisheries Service
 Northwest Region - Hydro Program
 525 NE Oregon Street, Suite 420
 Portland, OR 97232-2737

To Whom It May Concern:

Our firm has been in business for 45 years, serving the residents of North Central Washington. The economic situation for our area is very precarious and uncertain for the future. For the past several years, I have watched countless regulations pile up on the citizens of Chelan County. Many of the continued mandates are produced by out-of-town bureaucrats without a regard for our local citizens and our way of life. Our area is now to the point where many orchardists are either ripping out their fruit trees and/or facing bankruptcy. Water regulations are stifling growth in other areas, Housing starts are down and living wage jobs are hard to come by. The future of the Alcoa plant in Wenatchee is in question. All of these things have certainly had an impact on our family-owned business and those of my friends and neighbors.

In these **difficult** times, one of the blessings we have been able to count on is relatively low-priced, dependable electricity from our citizen-owned public utility district. The PUD has certainly faced its' challenges in dealing with costly mandates as well. Re-licensing the dams, expensive fish programs and many other items have steadily **increased** rates, although fortunately not nearly as much as in other areas that have to rely upon coal, nuclear power and other more expensive forms of electric generation.

Eastern Washington has not experienced the dynamic economic growth that Western Washington has achieved. People in our area are also very concerned that somehow California will be able to siphon off our power further jeopardizing our area's economy. We must keep our hydroelectric dams providing reasonably priced power if our communities are to have a chance to grow and prosper. That is why I am voicing my support in this letter for the habitat conservation plan for our PUD's dams on the Columbia River.

Although I do not know wery detail about the HCP, it is my understanding that it addresses the ESA mandates. I support the idea of outcome-based survival standards as opposed to simply ordering the PUD to take expensive actions to protect the **fish** with no accountability from outside agencies. Having the PUD establish and implement cost-effective, scientifically-based programs that are unique to our dams gives us the opportunity to protect our local power generation while doing what is right for the fish. If we do our part, the dams are protected from removal and re-licensing is assured. That makes good sense.

From my **point** of view, it seems as though **all** of these **various** government agencies, Indian **tribes** and other parties can rarely agree on anything. We have wasted tens of millions of dollars spending money on fish programs that represented somebody's best guess on solving the problem. The HCP appears to be the exception. Although for some reason, this program took over five years to negotiate. It has taken even longer to wade through the regulations, I noted that some pretty diverse groups, like American Rivers, National Marine Fisheries, Indian tribes and others signed the declaration stating that the HCP is a good idea. Now, maybe we finally have a program we can all support

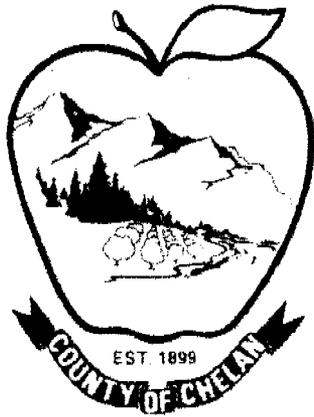
Without further delay, please keep the HCP moving forward. We need this program to protect our dams, to meet the ESA mandates and to keep our communities growing and surviving.

Sincerely,

A handwritten signature in black ink that reads 'Ken Marson, Jr.'

Ken Marson, Jr.
 President

FEB -7 2001



BOARD OF COMMISSIONERS
CHELAN COUNTY

STATE OF WASHINGTON
CHELAN COUNTY COURTHOUSE
350 ORONDO AVENUE, WENATCHEE, WA 98801
TELEPHONE (509) 664-5215 SCAN (509) 748-5215
FAX (509) 664-5599

CATHY MULHALL
County Administrator
cathy.mulhall@co.chelan.wa.us

KATHLEEN L. WARD
Clerk of the Board
kathy.ward@co.chelan.wa.us

January 29, 2001

National Marine Fisheries Service
Northwest Region - Hydro Program
525 NE Oregon Street, Suite 420
Portland, OR 97232-2737

In our capacity as the elected officials representing the citizens of Chelan County, we are writing to support the mid-Columbia Habitat Conservation Plan (HCP).

Over the past several years, we have literally seen our local government and our citizens strangled by endless federal and state regulations. Our once-plentiful and prosperous orchards are being plowed under because their owners are finding it impossible to make a profit. Government regulations: have played a major role in this catastrophe.

Other landowners are also hampered by too many rules and regulations. Substantial amounts of privately-owned land can't be developed due to water rights issues, setback requirements, required lot sizes or other concerns.

The HCP offers some hope that diverse interests can work together and craft workable solutions to address challenging environmental and regulatory issues. It includes a measure of certainty that our hydroelectric dams can continue operating in a cost-effective manner, while meeting fishery obligations mandated by the ESA.

Our county and its economic future rely heavily upon hydroelectric power. With a per-capita income half that of the Seattle area and with unemployment at nearly double-digit levels in Chelan County, we desperately need the affordable energy that the Chelan County PUD provides through ownership of its Columbia River dams.

The outcome-based approach outlined in the HCP makes great sense as opposed to the traditional method of endless mandates with no accountability and a lack of clear goals. The HCP approach sets survival standards to be achieved by the PUD at its dams: The PUD has the expertise to develop cost-effective fish protection and enhancement

RON WALTER
1st District, Wenatchee
ron.walter@co.chelan.wa.us

JOHN A. HUNTER
2nd District, Cashmere
john.hunter@co.chelan.wa.us

ESTHER STEFANIW
3rd District, Chelan
esther.stefaniw@co.chelan.wa.us

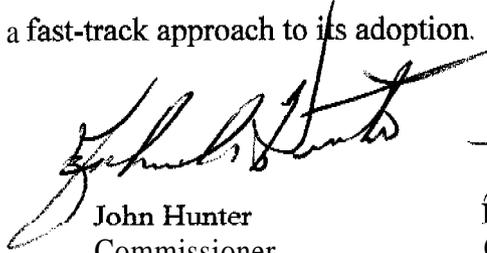
programs while maintaining critical operating standards. They have demonstrated their stewardship countless times, most recently with the unique, new surface collection system at Rocky Reach Dam.

We also applaud the approach to compensating for unavoidable losses. The fund provided by the PUD will address some of the critical habitat improvement needs in Chelan County. Those needs are among the items being discussed by Chelan, Douglas and Okanogan counties and the Colville and Yakama tribes as we work on the Upper Columbia River Salmon Recovery Board to formulate recovery planning for our area. The fund may also provide habitat recovery program partnership opportunities.

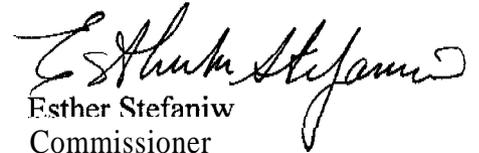
We support the HCP and urge a fast-track approach to its adoption. Thank you for the opportunity to comment.



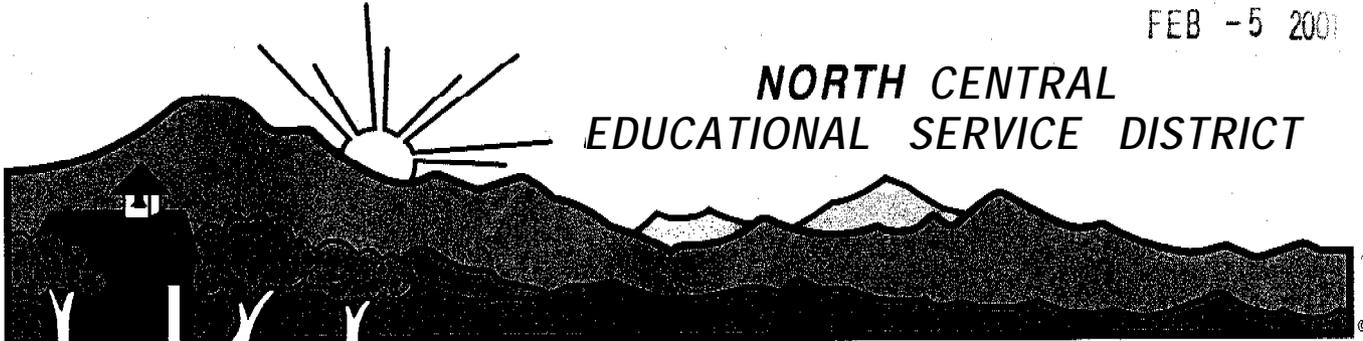
Ron Walter
Commissioner



John Hunter
Commissioner



Esther Stefaniw
Commissioner



NORTH CENTRAL EDUCATIONAL SERVICE DISTRICT

Sharina the Vision for Student Success

January 29, 2001

National Marine Fisheries Service
Northwest Region - Hydro Program
525 N.E. Oregon Street, Suite 420
Portland, OR 97232-2737

To Whom It May Concern:

During my nine years of service as the superintendent of the North Central Educational Service District 171, I have had the pleasure to work with the Chelan County PUD on many successful projects.

In the field of education, the PUD has been a leader in the development of a four-county educational cooperative that provides high-quality, well-respected curriculum from kindergarten through middle school.

Chelan County PUD has also proven to be an outstanding partner in several other successful community education projects, including bringing distance learning to Wenatchee Valley College, helping to develop the North Central Technical Skills Center and developing a Technology Center in the Olds Station Industrial Area.

In my role as both an educator and an avid recreationist, I have noted the PUD's role in yet another collaborative venture - the development of a comprehensive Habitat Conservation Plan (HCP) for the mid-Columbia area. For the record, I wholeheartedly endorse this program.

The HCP demonstrates to our community, from students to business leaders, that parties with diverse interests can work together to develop common-sense programs that address our hydroelectric energy requirements while protecting our valuable fisheries resources.

All too often regulatory agencies seem determined to mandate specific measures, evaluate their success and add on still more measures. We then end up with an endless cycle of more regulation. Under that scenario, the focus on results is lost, millions of dollars are wasted and court battles are the only recourse.

The HCP challenges that trend. With survival standards as the goal, all parties work cooperatively on the development of solutions. Testing ensures results. Unavoidable losses are compensated through a unique balance of natural hatchery production and habitat enhancements.

National Marine Fisheries Service
January 29, 2001
Page Two

Endangered Species Act requirements are met while protecting our low-cost hydropower resources that benefit not just our local citizens, but also millions of citizens throughout Washington and the Northwest.

I urge your continued resolve to move the HCP swiftly through the regulatory process. Citizens are anxiously awaiting a national model for cooperatively addressing both our energy and environmental needs. This appears to be it.

Sincerely,

A handwritten signature in cursive script that reads "Gene Sharratt". The signature is written in dark ink and is positioned above the typed name.

Gene Sharratt
Superintendent

41

FEB -5 2001



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February 2, 2001

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National Marine Fisheries Service
Northwest Region -- Hydro Program
525 N.E. Oregon Street, Suite 420
Portland, OR 97232-2737

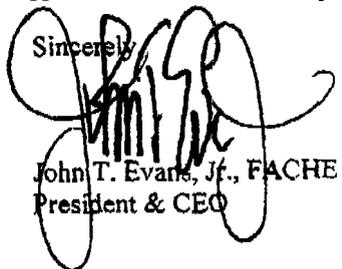
To Whom It May Concern:

Central Washington Hospital in Wenatchee and our power provider, Chelan County Public Utility District, share the challenge of providing a vital service at a reasonable cost for our community. As the head of a regional, non-profit hospital, I oversee a team striving daily to accomplish this, even though factors outside our control often drive those costs.

This is why I support the Mid-Columbia Habitat Conservation plan negotiated by Chelan and Douglas County PUDs. It would provide a measure of financial certainty for the complex proposition of protecting and enhancing salmon and steelhead in our region. Its performance-standard approach provides an incentive to find a cost-effective solution, based on the best science available. That ensures a benefit not only for fish, but our region as well, by providing a balanced approach to compensation for an unavoidable loss.

I also endorse the Habitat Conservation Plan's collaborative approach, which includes a method for resolving future disputes and avoids the lengthy governmental processes that can lead to long and expensive legal battles. The plan also provides a guarantee - something that can be hard to come by in these challenging times - of no net impact on fish from the PUDs' hydropower operations. If Chelan and Douglas County PUDs fail to meet that standard within five years, then the regulatory agencies have a guarantee the PUDs will put the agencies' recommendations into place quickly.

In conclusion, the Mid-Columbia Habitat Conservation plan offers a cost-effective process, based on the best scientific information available for protecting the Northwest's salmon and steelhead, and I urge your approval of this innovative approach.

Sincerely,

John T. Evans, Jr., FACHE
President & CEO



CITY OF CASHMERE

101 Woodring Street • Cashmere, WA 988151034
Business (509) 782-35 13 • Fax (509) 782-2840

February 1, 2001

National Marine Fisheries Service
Northwest Region – Hydro Program
525 NE Oregon Street, Suite 420
Portland, OR 97232-2737

Dear Sir or Madam:

As mayor of Cashmere, WA, located on the shores of the Wenatchee River, I am very familiar with the competitive interests laying claim to the water of our rivers and streams. Farmers, fishermen, environmentalists, river rafters, power producers . . . all have a vested interest in our water.

These competing demands frequently result in stalemates at best and court battles at worst. The Habitat Conservation Plan forwarded by Chelan County PUD takes a new approach, and I commend the PUD for its vision.

The HCP offers a common-sense plan for alleviating the fish problem. The HCP sets fixed targets for fish survival, allowing the PUD some freedom in how to meet those targets. Yet it includes regulatory oversight that should satisfy both environmentalists and the various federal and state agencies. It creates a spirit of cooperation not evident in many, many other water issues.

I also strongly support the focus on habitat, since the Wenatchee River is a Columbia River tributary that could stand to gain under the HCP program.

The PUD supplies wholesale power to Cashmere and is an important player in the economic health of our region. The HCP allows the PUD to do what it has always done best -- generate power -- while providing for continued mitigation and enhancement of the local fishery.

I urge you to move ahead on the HCP process.

Sincerely,

Gordon Irle
Mayor

FEB 12 2001



**FOREMAN ARCH DODGE
VOLYN & ZIMMERMAN PS**

DALE M. FOREMAN

124 NORTH WENATCHEE AVENUE, SUITE A

BRANCH OFFICES:

POST OFFICE BOX 3 125
WENATCHEE, WASHINGTON 98807-3125
509/662-9602 F A X 509/662-9606
E-MAIL: dale@fadv.com

MOSES LAKE
CHELAN
OMAK

February 9, 2001

National Marine Fisheries Service
Northwest Region – Hydro Program
525 N.E. Oregon Street, Suite 420
Portland, OR 97232-2737

Re: Comments on Habitat Conservation Plan

To Whom it May Concern:

Having served in the State Legislature to represent the people of North Central Washington (and to protect the interests of all the citizens of the entire State of Washington), it is with a sense of urgency that I write to endorse the concept of Habitat Conservation Plan (HCP) now being reviewed as a way to deal with the important fishery resources of the mid-Columbia.

This region is faced with extremely serious economic problems, The HCP speaks to economic concerns by offering long-term business certainty on fish spending costs and power rates, It speaks to environmental concerns by providing a balanced approach to compensate for unavoidable losses at dams on the river. It affords quick resolution of disputes rather than plunging issues into the limbo of long, drawn out court battles. It promotes cooperation by establishing review panels involving regulatory agencies and PUD staff. And it sets an example for the rest of the country that illustrates how complicated issues can be resolved through hard work and a collaborative spirit.

With pressures mounting on successful hydropower generators as a result of energy shortages in California and elsewhere, it is increasingly important to protect operators, such as Chelan PUD, who have demonstrated their farsightedness and their competency in managing both the environmental and the generation aspects of their industry. This HCP affords outside regulators a way to do their duty to protect fishery resources while allowing Chelan PUD the

National Marine Fisheries Service
Northwest Region – Hydro Program
February 7, 2001
Page 2

flexibility to find creative and workable solutions that produce results. Such an enlightened approach is long overdue, I urge you to do everything possible to allow it to work.

Sincerely,

FOREMAN, ARCH, DODGE
VOLYN & ZIMMERMAN, P.S.

A handwritten signature in cursive script that reads "Dale Foreman".

DALE M. FOREMAN

DMF:kj
cc: Roger Braden
H:\FOREMAN MISC\NMFS-1.ltr

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FEB 15 2001

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February 12, 2001

National Marine Fisheries Service
Northwest Region-Hydro Program
525 N.E. Oregon Street, Suite 420
Portland, Oregon 97232-2737

To Whom It May Concern:

As a lifetime resident of North Central Washington who is currently serving as the President of Cashmere Valley Bank, a six branch community Bank with headquarters in Chelan County, I have deep concerns regarding our local economy. The performance of a community bank is the reflection of the success or failure of the customers it serves.

Currently our agricultural based economy is suffering serve setbacks as it deals with the challenges of pesticide use, land use restrictions, water regulations and Federal trade policy. The financial difficulty is resulting in numerous bankruptcies and beginning to impact our unemployment rates, retail sales volume and housing industry.

One of the strengths of our local economy is the dependable, reasonably priced supply of electricity provided by the Chelan County Public Utility District. But they are experiencing increasing costs from salmon and relicensing projects. Sooner or later those costs will need to be passed along to the local customers. I have grave concerns over the impact of those increases on our local economy.

It is because of the need for the dams to continue to provide reasonably priced power that I support the habitat conservation plan for our PUD's dams on the Columbia River.

Although I am not an expert on the HCP, I understand that it address the mandates of the Endangered Species Act in a logical and reasonable manner. I believe we will be best served by giving our PUD the survival targets and let them decide on how to best meet them. I believe that hatchery programs and habitat improvements are the best way to supplement fish losses. Local control with reasonable oversight makes the most sense to me.

As a banker I understand the impact of regulation on our ability to do what is best for our customers. These regulations are often born of good intention and end up having exactly the opposite of the intended impact. Please don't let this happen to our PUD as they work diligently doing what is best for fish and the best for our local power supply.

Sincerely,

Ken Martin
President

FEB 15 2001



GROWERS, INC.

Apples • Pears • Cherries

National Marine Fisheries Service
Northwest Region - Hydro Program
525 N.E. Oregon St, Suite 420
Portland, Oregon 97232-2737

February 12, 2001

To Whom It May Concern:

As a resident of North Central Washington, a fruit grower and the President of **Stemilt** Growers, Inc., I want to comment on the Habitat Conservation Plan for salmon recovery in our area.

Like almost everyone I know I have a high interest in the salmon recovery success. I work with over four hundred fruit growers in Central Washington. We employ well over a thousand people in our packing plant and orchards. We rely on the natural resources of the mid Columbia region to support these family farms and to employ these hundreds and hundreds of people in production jobs. I would like to endorse enthusiastically the principles behind the Habitat Conservation Plan (HCP) now being reviewed by your agency for the **fish** resources of the Columbia River.

Ample water is **necessary** to irrigate our orchards. Reliable low-cost electricity is necessary to pump that water to the trees, to run the packing lines which process the fruit and enable the controlled atmosphere storage rooms to maintain their precise conditions for top marketing of the products. In an era when so many other pressures are squeezing the agricultural industry, cooperative approaches like this HCP help by providing more long-term **certainty regarding water supplies and electric power.** **It would** be a shame to remove yet one more cornerstone of our increasingly shaky foundation.

As we understand it, the HCP approach lets the knowledgeable people at the Chelan County PUD use their insight and understanding to achieve measurable results on fish issues. As a business owner, I can appreciate the approach. Regulatory burdens too often lead to nothing but long drawn out legal battles.

The region will best be served by allowing Chelan County PUD to match it's fish protection measure with other aspects of hydroelectric operation, especially with the guaranteed review of the results provided for in the HCP. Stemilt Growers adds its voice to those calling for implementation of the agreement as it has been presented.

Thank you,

Thomas K. Mathison
President - CEO
Stemilt Growers, Inc.

FEB 16 2001



PACIFIC AEROSPACE & ELECTRONICS, INC.

February 13, 2001

National Marine Fisheries Service
Northwest Region - Hydro Program
525 N.E. Oregon Street, Suite 420
Portland, OR 97232-2737

On behalf of Pacific Aerospace & Electronics, Inc. (PAE), I am writing to support the mid-Columbia Habitat Conservation Plan (HCP).

PAE employs over **450** people in Chelan County. Our company designs, manufactures and sells components and subassemblies used in technically demanding environments. Affordable, reliable electricity is a critical element of our bottom line. We simply cannot tolerate major price increases and/or interruptions in electric service and remain competitive.

With the energy crisis in California and the Northwest, it is apparent that we maximize all of our existing generation, especially the clean, renewable hydropower dams that fuel this region. Further, new power plants must be built immediately.

From my perspective, it appears that the HCP preserves affordable, reliable hydropower for our business and our communities while meeting federal and state requirements to protect the Columbia River fish.

The HCP offers the Chelan and Douglas PUDs an opportunity to seek cost-effective fish protection methods that are unique to the individual dams, as opposed to seemingly endless fish protection mandates from outside agencies. Mandates without accountability equals waste, and quite frankly that is exactly what we have been seeing from regulatory agencies in the past,

Please add our voice to the public record in support of the HCP.

Sincerely,

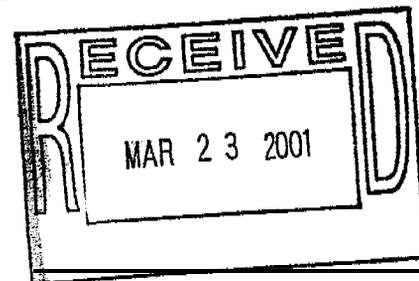
Don A. Wright
President & CEO

David Gellatly
Conrad Kuehl

Mann & Gellatly

Commercial Real Estate Rentals & Investments
103 Palouse Street Wenatchee, WA 98801
Bus. (509) 662-5552 Fax (509) 663-4086

March 20, 2001



National Marine Fisheries Service
Northwest Region – Hydro Program
525 N. E. Oregon Street, Suite 420
Portland, OR 97232-2737

Gentlemen:

As a longtime businessman in Chelan County and a Lake Chelan Valley resident, I am writing to add my support for the mid-Columbia Habitat Conservation Plan (HCP).

From my perspective, Chelan County businesses, farms and industries are feeling the squeeze of intense regulatory burdens. Often the regulations come in the form of mandates from agencies that know very little about the issues of our area and are unapproachable about unique, local solutions.

The HCP provides Chelan County PUD the opportunity to design programs and systems to meet agreed-upon survival standards for its Columbia River dams. The PUD knows the business of running its dams better than anybody else. Giving-t-he PUD the opportunity to design and implement- fish protection measures, rather than respond to agency-driven mandates, make good sense to me.

Another item that I particularly like is the “no net impact” standard, If the PUD achieves the survival standards at its hydroelectric projects, it provides supplementation hatchery capacity and habitat funding to make up for unavoidable losses. The end result is the certainty that the PUD can relicense Rocky Reach Dam and continue to provide reliable, reasonably-priced electricity to its customer-owners.

It is also important to note that Chelan PUD has not been idly standing by waiting for the HCP to go through the long regulatory process. As an example, the PUD has thoroughly tested a prototype state-of-the-art bypass system at Rocky Reach and will begin a permanent installation during this year.

While many of us in Chelan County may not agree with the requirements of the Endangered Species Act, it appears that we have little choice but to comply with

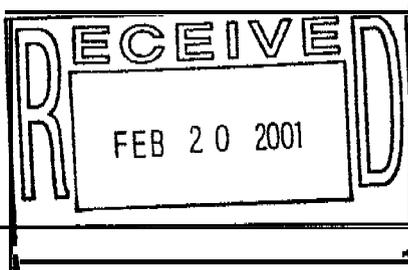
the law. What we need is a reasonable template to work from that allows for common sense and local solutions in achieving survival standards. This HCP seems to meet that mark. Let's stop wasting time and get it done.

Sincerely,

A handwritten signature in black ink, appearing to read "David Gellatly". The signature is written in a cursive style with a large initial "D" and a long, sweeping tail.

David Gellatly

BL



David Gellatly
Conrad Kuehl

Mann & Gellatly

Commercial Real Estate Rentals & Investments
103 Palouse Street Wenatchee, WA 98801
Bus. (509) 662-5552 Fax (509) 6634086

National Marine Fisheries Service
Northwest Region - Hydro Program
525 N. E. Oregon Street, Suite 420
Portland, Oregon 97232-2737

February 7, 2001

Gentlemen:

As a longtime businessman in Chelan County and a Lake Chelan Valley resident, I am writing to add my support for the mid-Columbia Habitat Conservation Plan (HCP).

From my perspective, Chelan County businesses, farms and industries are feeling the squeeze of intense regulatory burdens. Often the regulations come in the form of mandates from agencies that know very little about the issues of our area and are unapproachable about unique, local solutions.

The HCP provides Chelan County PUD the opportunity to design programs and systems to meet agreed-upon survival standards for its Columbia River dams. The PUD knows the business of running its dams better than anybody else. Giving the PUD the opportunity to design and implement fish protection measures, rather than respond to agency-driven mandates, makes good sense to me.

Another item that I particularly like is the "no net impact" standard. If the PUD achieves the survival standards at its hydroelectric projects, it provides supplementation hatchery capacity and habitat funding to make up for unavoidable losses. The end result is the certainty that we can relicense Rocky Reach Dam and continue to provide reliable, reasonably-priced electricity to our customer-owners.

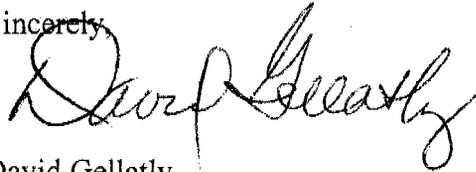
It is also important to note that Chelan PUD has not been idly standing by waiting for the HCP to go through the long regulatory process. As an example, the PUD has thoroughly tested a prototype state-of-the-art bypass system at Rocky Reach and will begin a permanent installation in 2001.

National Marine Fisheries Service

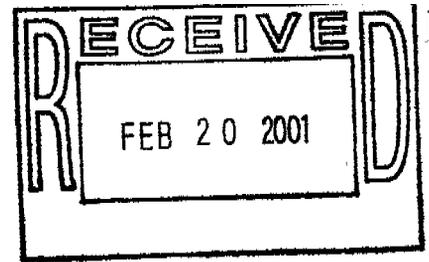
Page two

While many of us in Chelan *County* may not agree with the requirements of the Endangered Species Act, it appears that we have little choice but to comply with the law. What we need is a reasonable template to work **from** that allows for common sense and local solutions in achieving survival standards. This HCP seems to meet that mark. Let's stop wasting time and get it done.

Sincerely,

A handwritten signature in black ink, appearing to read "David Gellatly". The signature is written in a cursive style with a large initial "D" and "G".

David Gellatly



National Marine Fisheries Service
Northwest Region -- Hydro Program
525 NE Oregon St. #420
Portland, OR 97232-2737

Feb. 15, 2001

Dear Sirs:

We are residents of East **Wenatchee**, and have been involved in conservation issues for many years. We have worked through the **Chelan/Douglas** Land Trust, the Foster Creek Conservation District, and The Nature Conservancy of Washington to preserve riparian habitat and aid **salmonid** survival and restoration in the Mid-Columbia Region.

We heartily endorse the HCP as prepared by the Chelan County PUD, While we cannot comment with any authority on the specific recommendations and actions, we support the increased certainty re: future licensing and take issues that the HCP addresses. We don't feel that dam breaching or removal is a reasonable alternative, and therefore extensive mitigation measures need to be pursued as outlined in the HCP.

We look forward to working with the PUD in the near future regarding conservation easements on riparian lands on both the tributaries and the main stem of the **Columbia**. We have already met with the senior staff of the **PUD** and look forward to more meetings to plan ways that local conservation groups can work with the PUD to ensure healthy fish stocks into the future. We agree with the comment: "extinction is not an option," and we welcome the proactive approach as outlined in the HCP.

Thank you for the opportunity to submit these comments, and we look forward to seeing the implementation of the HCP.

Sincerely Yours,

A handwritten signature in cursive script, appearing to read "Eliot W. Scull".

Eliot W. Scull

A handwritten signature in cursive script, appearing to read "Christine E. Scull".

Christine E. Scull

February 16, 2001

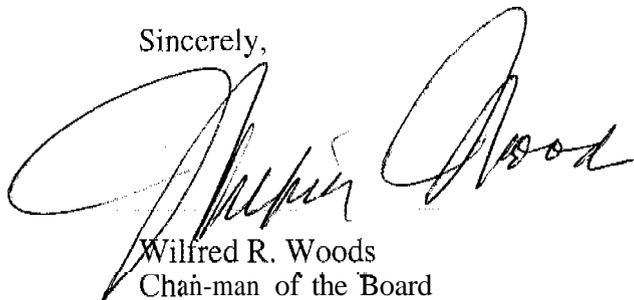
National Marine Fisheries Service
Northwest Region Hydro Program
525 NE Oregon St., Suite 420
Portland, OR 97232-2737

To whom it may concern:

I am writing to offer my hearty support for the Habitat Conservation Plan for salmon. The plan, developed by Chelan and Douglas public utility districts, is the result of government agencies, tribes and environmental groups working together. It is proof that organizations with opposing views can collaborate to produce a compromise that is beneficial to the environment and that also protects a critical source of renewable energy.

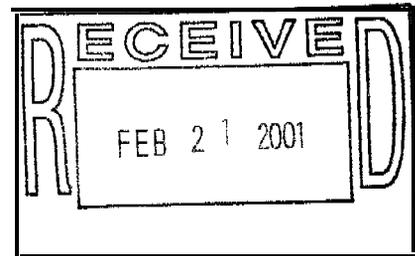
I urge the National Marine Fisheries Service to approve the HCP. This collaborative effort will result in improved fish runs while preserving an important economic resource for the region.

Sincerely,



Wilfred R. Woods
Chairman of the Board

cc: Roger Braden, Chelan County PUD



DL

February 16, 2001

National Marine Fisheries Service
Northwest Region — Hydro Program
525 NE Oregon St., Suite 420
Portland, OR 97232-2737

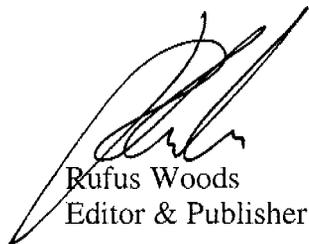
To whom it may concern:

I would like to offer my enthusiastic support for the Habitat Conservation Plan for salmon that has been developed by Chelan and Douglas public utility districts working in collaboration with various government agencies, tribes and environmental groups.

The plan is a model for demonstrating how organizations with opposing viewpoints can come together and develop a compromise that benefits the environment and protects an important source of renewable energy. The HCP is a landmark agreement that also demonstrates conclusively that these decisions can be made without lengthy, costly legal battles.

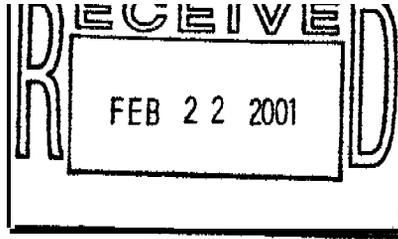
I would urge the National Marine Fisheries Service to approve the HCP as a step in encouraging collaborative efforts to balance the need for improving fish runs and at the same time preserving an important economic resource for the region.

Sincerely,



Rufus Woods
Editor & Publisher

cc: Roger Braden, Chelan County PUD



February 16, 2001

President's Office
1300 Fifth Street
Wenatchee, WA 98801-1799
(509) 664-2553
FAX (509) 664-2552

National Marine Fisheries Services
Northwest Region ■ Hydra Program
525 NE Oregon St., Suite 420
Portland OR 97232-2737

Gentlemen:

For the past 30 years I have been familiar with the Chelan County PUD stewardship of their three hydro electric projects here in central Washington. I am an avid recreationalist and very active in community development projects. One of those projects was the completion of our Columbia River Loop Trail. Citizens, through an organization known as Complete the Loop Coalition, raised money through private donations and grants to build a six-mile trail on the east shore of the Columbia River so it could be linked to the trails which were built by the Chelan County PUD in connection with the Exhibit R project in the late 1980s. The completed 11-mile loop trail, in my humble opinion, is the diamond in the crown of the many wonderful recreational opportunities created by the PUD here in central Washington.

It was because of the vision of Kirby Billingsly, a former commissioner and manager of Chelan County PUD, that a series of parks line the shore of the Columbia River where hydroelectric reservoirs have been created by the PUD's dams. The financial backing of the PUD and these hydro electric projects made that vision a reality. The PUD's subsequent stewardship through the operation of the parks that have been built has been complimented by museums, fish hatcheries, and educational programs that it has supported. Without question, the PUD has proven to be an excellent steward of the community's resources.

I am currently serving as the president of Wenatchee Valley College. The college looks forward to a close working relationship with the PUD for future educational programs. Some of our students are working on salmon habitat recovery efforts on the Icicle River. Much needs to be done on habitat recovery, and it is frustrating to hear the PUD respond that they cannot spend resources on securing habitat at the present time because the Habitat Conservation Plan (HCP) has not yet been finally approved. There was much fanfare in June of 1998 about the HCP and the recovery efforts, but precious little has been done in the intervening time to initiate the habitat recovery efforts because of the slow, laborious review process for the HCP. It seems to me that a rapid and positive approval of the HCP is exactly what is needed for salmon recovery. Quick action would clear up the confusing and conflicting views and agendas of the many stakeholders in the

National Marine Fisheries Services

February 14, 2001

Page 2

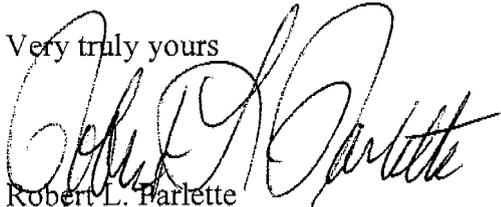
salmon recovery process. We need natural habitat restored and protected as rapidly as possible if we, as a nation, are really serious about saving these threatened and endangered species. Acquisition of shoreline and conservation easements is in order.

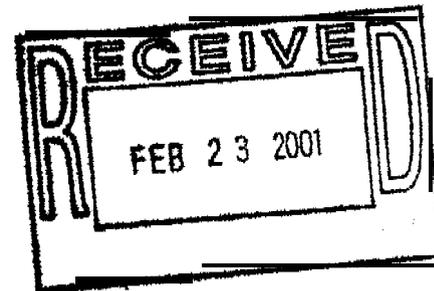
The public is extremely frustrated with the consequences of legal gridlock, and the provisions of the HCP for dispute resolution and cooperative accountability are refreshing alternate solutions to the agonizing and counterproductive lawsuits that clog our system. I am pleased to see that HCP allows for midcourse corrections.

Please consider this an endorsement of the HCP approach and an urgent request for speedy implementation of the HCP. I believe that if the PUD had the confidence that the HCP will be favorably considered by NMFS and the FERC, as well as all the other signatories, they could speed up the process of securing salmon recovery habitat by purchasing options for select parcels of property that are currently for sale in the Wenatchee River and Entiat River tributaries. Please give this serious consideration as it is plain, from preliminary numbers being offered in Washington State legislature, that there will be a tight budget and a probable restriction of other funds available for securing habitat through the Washington Wildlife and Recreation Program.

There is one other unrelated matter that I wish to bring to your attention. As a citizen volunteer, I have been working for five years to get an extension built along the shoreline for the Columbia River Loop Trail referred to in the first paragraph of this letter. This trail extension is proposed to be operated by Washington State Parks and connects the Confluence State Park (built with PUD--Exhibit R-money)- to Lincoln-Rock State Park- (also built with PUD Exhibit R money). This extension is approximately 4.5 miles long. I am told that all agencies have reviewed and approved the biological assessment prepared by Washington State Parks except for National Marine Fisheries Service. It seems to me to be fundamentally sound logic that a riverfront trail adjacent to the river would be far preferable for salmon habitat than the potential for sprays and fertilizer residue finding its way to the river from adjoining agricultural lands. The biological assessment for this trail has been in NMFS hands for several months. I cannot understand why NMFS has taken so long to review this project and would certainly hope that it would have a positive response when its review is complete.

Very truly yours


Robert L. Parlette
President



February 21, 2001

National Marine Fisheries Service
Northwest Region – Hydro Program
525 N.E. Oregon Street, Suite 420
Portland, OR 97232-2737

Greetings:

For the past several years, I have been working with business, government and industry leaders to enhance economic development in North Central Washington. While we have had some successes, there are also many challenges for our region to overcome.

Our region's agricultural industry is suffering, due largely to increasing government and environmental regulations. Our low per-capita income reflects a lack of family-wage jobs. Alcoa, one of this area's two largest industrial employers, is cutting production significantly.

One of **our** main selling points in keeping existing businesses and attracting new ones is a reliable supply of reasonably-priced electricity from the hydroelectric projects owned and operated by Chelan County PUD.

For the past few years, I have been following the development of the mid-Columbia HCP. It has been my hope that somehow all of the diverse parties involved in this process could come up with a plan to not only protect our fishery resources, but to protect affordable, reliable electricity for residents and businesses in this area. It appears as though the plan that is outlined in the recently released Draft Environmental Impact Statement has a high potential of meeting that goal.

The outcome-based survival standards in the HCP address both performance and compliance in protecting fish. Working with agencies, Indian tribes and other interested parties, the **PUD** can develop the protection and enhancement measure necessary to achieve the survival goals. Unavoidable losses are compensated through supplementation hatchery production and a significant habitat enhancement fund. Although the fish protection measures will be expensive, it appears that waste will be minimized and our dollars will be channeled into programs that will achieve agreed-upon goals. This is a far better approach than a series of broad-based agency mandates focused on a moving **target**. Lawyers are the only winners under that scenario.

Development Partners, L.L.C.
624 Meadows Dr. Wenatchee, WA 98801
509-663-7515 fax 509-662-0279 jeberle@developmentpartners.net

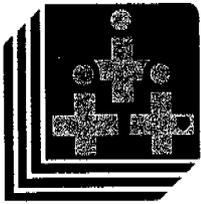
The HCP provides a measure of certainty for local citizens and businesses and for the other utilities whose customers rely upon Chelan PUD's hydroelectric energy. Meeting the survival standards provides long-term business assurances that fish mitigation requirements won't dramatically escalate in the future. Our PUD should be able to continue to provide the reliable, affordable electricity that we desperately need to sustain, grow and prosper in this region. And, with the ongoing energy crisis in the Northwest, we can ill afford to lose any further generating capacity.

Finally, there is a cooperative plan that makes sense in addressing the requirements of the Endangered Species Act. I support the mid-Columbia HCP and I urge all parties involved to waste no time in implementing this valuable program. Let's keep it moving!

Sincerely,

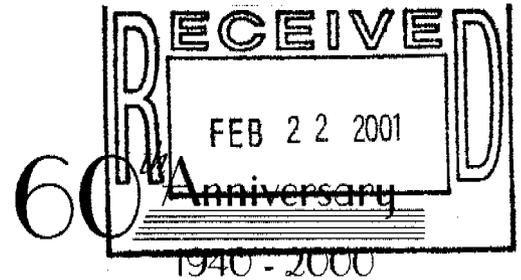
Jon Eberle
President

CC: Gary Montague, PUD Commissioner



**Wenatchee
Valley
Clinic**

(509) 663-8711
Fax (509) 664-4860
820 N. Chelan Ave.
P.O. Box 489
Wenatchee, WA 98807-0489



February 16, 2001

National Marine Fisheries Service
Northwest Region - Hydro Program
525 NE Oregon Street, Suite 420
Portland, Oregon 97232-2737

Dear Sir or Madam:

On behalf of the 1200 physicians and employees of the Wenatchee Valley Clinic, we are writing to endorse the Habitat Conservation Plan of Chelan County PUD.

The Wenatchee Valley Clinic is a growing enterprise headquartered in Chelan County. We are a regional organization with eight clinic locations that offers a comprehensive array of medical and diagnostic services. We serve a geographic area that spans approximately 12,000 square miles; and care for over 125,000 unique individuals annually.

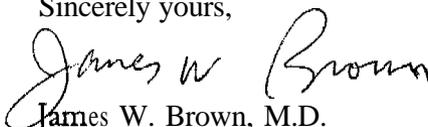
The Chelan County PUD is also a longstanding regional resource. They are a "Good Neighbor" to our region, and have an excellent power generation and delivery system. They are a linchpin in our region's infrastructure, and have been a strong advocate, and responsible steward, of our area's natural resources.

Medicine and energy are both industries operating under intense regulatory requirements and scrutiny. We see these parallels between our business and that of the PUD:

- The PUD is seeking cost-effective means, compatible with its other business needs, to meet regulatory requirements for resource protection
- The PUD knows the region and its business better than others from outside the region, and should be given the opportunity to apply that knowledge toward finding optimal solutions to salmon recovery issues
- The PUD (and the region) need assurances, provided in the Habitat Conservation Plan, that it can continue the business of maintaining an economical and reliable energy supply while working diligently to develop and institute mitigation and enhancement plans.

Chelan County PUD is regarded as an outstanding citizen, and as an integral component, of North Central Washington. The PUD has a long history of providing both a reliable energy supply and protecting our environmental resources. We urge you to continue toward quick adoption of the Habitat Conservation Plan.

Sincerely yours,

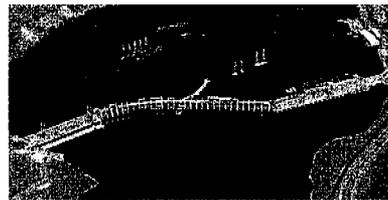
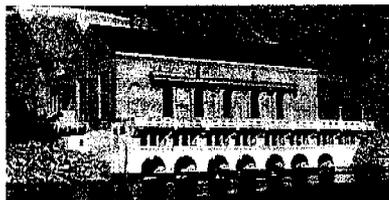
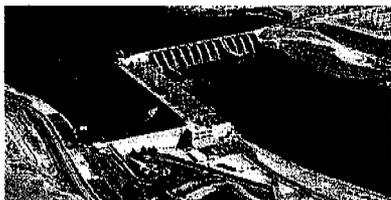

James W. Brown, M.D.

Chairman, Board of Directors



Shaun Koos
Administrator

The mission of Wenatchee Valley Clinic is to provide our patients with, the highest quality health care and service in a friendly and caring atmosphere.



PUBLIC UTILITY DISTRICT NO. 1 of CHELAN COUNTY

P.O. Box 1231, Wenatchee, WA 98807-1231 • 327 N. Wenatchee Ave., Wenatchee, WA 98801
(509) 663-8121 • Toll free 1-888-663-8121 • www.chelanpud.org

February 8, 2001

Shaun Koos
Wenatchee Valley Clinic
820 N. Chelan
Wenatchee, WA 9880 1

Dear Shaun:

I am writing to request your written support for Chelan PUD's Habitat Conservation Plan (HCP) for salmon. As you know, Chelan PUD has agreed upon the HCP in order to protect and enhance salmon and steelhead runs in the Mid-Columbia River. The formal environmental review process regarding the HCP has now begun, National Marine Fisheries Service (NMFS) recently published a Draft Environmental Impact Statement addressing the HCP. This step is required by the National Environmental Policy Act, The public comment period ends March 29, 2001. We are seeking input from community leaders in support of our HCP.

Enclosed are four documents for your information:

- (1) A letter from Roger **Braden** briefly explaining the HCP process;
- (2) A 48-page executive summary of the DEIS;
- (3) A question-and-answer piece that provides some key information; and
- (4) A draft letter to NMFS containing possible language in support of the HCP.

The language contained in the draft letter is simply to give you suggestions as to possible content.

Comments should be addressed to NMFS directly at the following address:

National Marine Fisheries Service
Northwest Region - Hydro Program
525 NE Oregon Street, Suite 420
Portland, OR 97232-2737

I would appreciate receiving a copy of your comments if you are so inclined. You do not need to make note of this copy on the original letter.

We appreciate your taking the time to consider our request and to familiarize yourself with the HCP. **Chelan** PUD is committed to the HCP and its success. If you desire any further information before writing your comments, please let me know. I'd be glad to arrange a meeting to provide you as much information as you wish.

Thank you again for your help in this important endeavor.

Very truly yours,



Carol A. Wardell
General Counsel

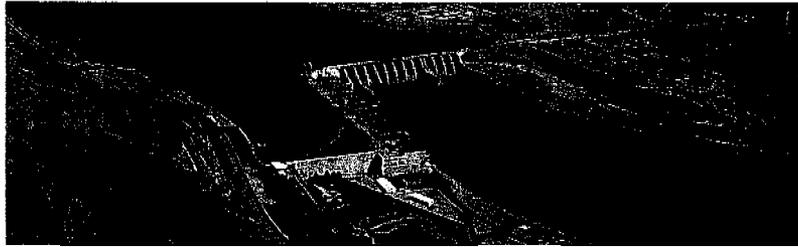
Phone: 663-8121, ext. 4465

E-mail: carola@chelanpud.org

enclosure

COMMISSIONERS
BARBARA B. TILLY, PRESIDENT
DAVID PFLUGRATH, VICE-PRESIDENT
GARY L. MONTAGUE, SECRETARY
JAMES R. WALL, ASSISTANT SECRETARY
BOB BOYD, PAST PRESIDENT

ROGER A. BRADEN, GENERAL MANAGER



Public Utility District No. 1 of Chelan County

P.O. BOX 1231 WENATCHEE, WASHINGTON 98807-1231 (509) 663-8121

Habitat Conservation Plan for salmon is a unique collaborative effort

Dear friends,

Six years ago, work began on the development of comprehensive anadromous fish agreements and Habitat Conservation Plans (HCPs) to protect and enhance migrating salmon and steelhead in the Mid-Columbia River. Referred to commonly as the Mid-Columbia HCP, the overall plan is a unique collaborative effort involving Chelan and Douglas County PUDs, the National Marine Fisheries Service, the U.S. Fish and Wildlife Service, the Washington Department of Fish and Wildlife, the Yakama, Colville and Umatilla tribes, American Rivers, Inc., and major purchasers of wholesale energy. Hydroelectric projects included in the plan are Wells, owned by Douglas County PUD, and Rocky Reach and Rock Island, owned by Chelan County PUD.

In June 1998, the parties to the HCP gathered on the Columbia River shoreline in Wenatchee to celebrate the principles embodied in the plan and to recognize their joint accomplishment. Participants noted the plan's unique elements including an outcome-based concept that sets targets for fish survival, a balanced approach to compensating for unavoidable losses, cooperative development of science-based protection and recovery measures, long-term assurances of a reliable supply of hydroelectric energy, compliance with the Endangered Species Act and an extensive evaluation program for adaptive management of programs and methods. A commemorative declaration was signed to formally recognize the significance of jointly developing this document, the first HCP for anadromous fish in our nation's history.

Regulatory review of the HCP has been under way for the past two years. During that time, Chelan County PUD has aggressively pursued testing and implementation of fish protection and enhancement measures to achieve standards identified in the HCP, even though the HCP is not yet formally adopted.

We have now reached another milestone in the review process. The National Marine Fisheries Service has completed a **Draft** Environmental Impact Statement for the HCP as required under the National Environmental Policy Act. Release of the document on Dec. 29, 2000, signals the start of a 90-day public comment period, which concludes on March 29, 2001.

This is an opportunity for anyone with an interest in this plan to comment for the record. For your review, Chelan County PUD has compiled a comprehensive notebook with both summary and detailed information about the HCP, the Draft Environmental Impact Statement and our fisheries programs. We have also included press accounts of the document and a Question and Answer section. Please feel free to copy any of this material for use in preparing comments or in correspondence or presentations.

To comment, address your remarks to:

National Marine Fisheries Service
Northwest Region ~~---~~ Hydro Program
525 N.E. Oregon Street, Suite 420
Portland, OR 97232-2737

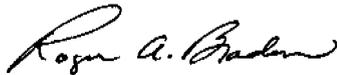
Once again, the deadline is March 29, 2001.

Following the 90-day comment period, the National Marine Fisheries Service will also release the HCP for public comment, as required by the Endangered Species Act. This information should prove useful at that time as well.

Chelan County PUD is firmly committed to the HCP. It is our hope that when it becomes final, the HCP Will serve as a model for other groups and organizations seeking a collaborative, effective process to address the considerable challenges we face throughout the Northwest in protecting and enhancing our valuable fisheries resources.

Thank you for considering this material.

Sincerely,

A handwritten signature in cursive script that reads "Roger A. Braden".

Roger Braden
General Manager/Chief Executive Officer
Chelan County PUD

QUESTIONS AND ANSWERS ABOUT THE HABITAT CONSERVATION PLAN

Q: What is the proposed Mid-Columbia Habitat Conservation Plan?

A: This HCP is an agreement among Chelan County and Douglas County Public Utility Districts (PUDs); the National Marine Fisheries Service; US. Fish and Wildlife Service; state of Washington; the Colville, Umatilla and Yakama Tribes; American Rivers environmental organization and power purchasers. It sets goals to be met for salmon and steelhead protection but allows the PUDs to determine how to manage their hydropower operations to meet those goals.

Q: Why is it significant?

A: The Endangered Species Act has built-in flexibility that allows federal fishery agencies to take advantage of state and local conservation efforts. The focus is on protecting the fish, not on requiring specific measures to do that. The HCP will allow recovery with flexibility. The HCP, the first of its kind for salmon protection, should encourage local organizations to produce their own conservation plans with the reasoning that they know their own conditions and circumstances best and should enjoy broad local support for implementing the plans.

Q: What will the HCP do for fish?

A: It sets a "no net impact" standard for salmon and steelhead. This means that the HCP will result in the survival of the same number of fish, through its implementing projects, as would occur if these dams weren't there.

Q: How will that happen?

A: The PUDs guarantee the survival of 91 percent of fish (adults and juveniles) passing through the geographic area of each project. In addition, there is an independent standard of 95-percent survival of juveniles at each dam. The PUDs must compensate for the lost 9 percent of fish through a hatchery and tributary habitat fund. Hatcheries will provide 7 percent of the fish, and habitat will provide a 2-percent increase in survival by improving conditions in the Columbia's tributaries,

Q: What will the HCP do for the public utility districts and their power purchasers?

A: This agreement assures the availability of power supplies through a "no surprises" policy that will guarantee power generation at these dams. It will allow the PUDs to obtain Section 10 incidental-take permits for continuation of their hydropower operations. These measures provide certainty that the PUDs and their power purchasers will be able to maintain their economic health. It should also provide support for hydropower projects relicensing, under the Federal Power Act.

Q: What will the HCP do for the citizens of Washington?

A: This agreement should provide assurances from resource advocates to avoid costly and time-consuming lawsuits. It should also help ensure stability in power supplies and pricing for consumers, And, of course, it will help protect and recover salmon and steelhead,

Q: How long did it take to reach this agreement?

A: Discussions started in August 1993. The first year was spent developing the scope of the HCP, and actual negotiations began during the second year.

Q: What happens next?

A: The HCP must still go through the National Environmental Policy Act (NEPA) process. That will take 12- 18 months. It includes production and review of a draft environmental impact statement, public hearings and comment period, and development of a final EIS.

Q: How does the HCP affect Federal Energy Regulatory Commission hydropower licensing issues?

A: The proposal would ensure that the parties take the agreement in total into the FERC relicensing process in a united effort to reduce or eliminate what are normally controversial and unpredictable fishery issues. This should greatly increase the speed and efficiency of relicensing. FERC issues were addressed during the negotiations. The HCP also will form the basis of a FERC license for each project. That process requires additional public review, which will coincide with the HCP approval schedule. (A White Paper on the relationship of the HCP to relicensing of the Rocky Reach Hydroelectric Project is available on Chelan County PUD's Web site at www.chelanpud.org/rr_relicense/existing/hcp_whitepaper/white_paper.htm)

Q: Won't that increase the time it takes to navigate the FERC process?

A: No, it should instead decrease the processing time. It will avoid litigation, and it represents a major shift from the traditional method of decision-making where FERC orders utilities to employ certain protection measures.

Q: How will the HCP be implemented?

A: A coordinating committee will monitor the HCP's implementation. The agreement includes cooperative but sophisticated adaptive management and dispute-resolution systems.

Q: How can we be sure that the public utility districts will meet the required standards?

A: If concerns arise over meeting the standards, the resource parties will have increased participation in decision-making. The PUDs will have decreased decision-making flexibility as accountability increases.

Q: Grant County PUD has two dams in the mid-Columbia. Why isn't it part of this plan?

A: Grant County PUD has elected to pursue a separate discussion with the parties to further consider its options for a long-term resolution of its environmental obligations under the ESA and the Federal Power Act.

Q: How will implementation of this plan affect the issue of breaching dams?

A: There is no single cause for salmonid decline, and there is no single solution for restoration. There are many issues that must be considered to protect and recover Pacific Northwest fish. The HCP addresses several of them – habitat quality, predator control, dam passage, hatcheries. But we must keep in mind that differing circumstances may call for differing solutions. Appropriate salmon and steelhead recovery responses for one location cannot necessarily be considered appropriate for all.

Q: What is Chelan County PUD's financial commitment to meet the survival standards for salmon and steelhead called for in the Habitat Conservation Plan?

A: One of the Habitat Conservation Plan's most powerful points is that it does not mandate spending on specific measures. Under the HCP, success is measured by performance. Monitoring and evaluation will determine when Chelan County PUD has met the survival standards for young salmon and steelhead. The PUD is charged with finding the most cost-effective way to meet those standards. In addition to construction of fish bypass facilities and spill, Chelan County PUD has committed to about \$36 million over the 50-year life of the HCP to protect and improve fish habitat in Columbia River tributaries. Preliminary estimates put the PUD's overall financial commitment under the HCP in the range of \$260 million, for the permanent fish bypass system, unit screens and spill at Rocky Reach, testing and spill at Rock Island and habitat work.

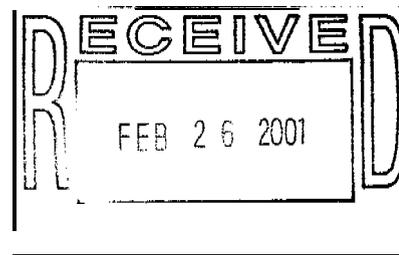
Q: What is Chelan County PUD doing to protect fish while the Habitat Conservation Plan is under review?

A: The PUD is moving forward on testing and fish protection as if the HCP was in place. A prototype fish bypass system for the Rocky Reach Hydro Project was built in 1995 and tested through 2000. Final design for a permanent fish bypass system is under way, and construction is slated to start in fall 2001. Plans call for the new system to be in place for the spring 2002 migration. In addition, testing and evaluation of options for fish passage at Rock Island Hydro Project continues. Recognizing its responsibility for stewardship of the Columbia River, the PUD has invested in direct expenditures and lost revenue some \$200 million in the last two decades on fish protection measures. That figure includes money for testing, evaluating screens for the generating units, revenue lost to spill for fish passage, installing more fish-friendly turbines as part of the Rocky Reach rehabilitation project, hatchery programs and predator control.

Q: Where can I find the Habitat Conservation Plan?

A: The full HCP is available at www.nwr.noaa.gov/1hydroplhydroweblferc.htm (under the "Related Documents" heading).

Reprinted from a June 1998 National Oceanic and Atmospheric Administration fact sheet. Updated January 2001 by Chelan County PUD.



Washington
Public
Utility
Districts
Association

February 22, 2001

Mr. Bob Dach
Hydro Division
National Marine Fisheries Service
525 NE Oregon St.
Portland, OR 97232-2737

1411 Fourth Ave.
Suite 810
Seattle, WA 98101
206 682-3110
Fax 206 682-3913

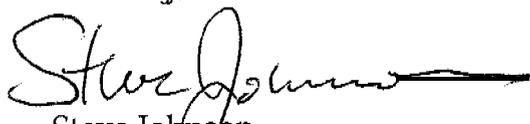
Dear Mr. Dach:

We applaud NMFS, Chelan and Douglas PUDs for their efforts to develop long-term habitat conservation plans for the Wells, Rocky Reach and Rock Island Hydroelectric Projects. These plans are an important component in the state of Washington's continuing effort to recover listed anadromous salmonids.

The proposed Anadromous Fish Agreement and Habitat Conservation Plans are particularly timely given the Northwest's present short supply of renewable electric energy. Our region is presently struggling to maintain its economic viability, given recent developments in the wholesale power market. Solutions to these issues must be found through proactive planning and long-term solutions. The proposed HCP represents both of these ideals.

We support the proposed Wells, Rocky Reach and Rock Island HCPs as the preferred alternatives for salmon recovery in the Upper Columbia River. The selection of the long-term HCPs over the alternative of narrowly focused Section 7 consultations will ensure the future viability of anadromous salmonids while maintaining the benefits of clean, renewable hydroelectric power generation. We encourage the fisheries service to select and fully implement Alternative 3 as described in the Draft Environment Impact Statement for the proposed Wells, Rocky Reach and Rock Island Anadromous Fish Agreements and Habitat Conservation Plans.

Sincerely,


Steve Johnson
Executive Director

SJ/sw



CHELAN COUNTY POMONA
No. 23



February 15, 2001

National Marine Fisheries Service
Northwest Region ■ Hydro Program
525 N.E. Oregon Street, Suite 420
Portland, OR 97232-2737

Re: Habitat Conservation Plan

Gentlemen:

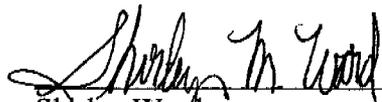
The Chelan County Granges have reviewed the "Anadromous Fish Agreements and Habitat Conservation Plans" prepared by the Chelan County Public Utility District #1 dated November 2000. The Granges find Alternative #3 to appropriately and adequately address the environmental impact including the protection of anadromous fish species and non-threatened species and to allow continued operation of the three dams to provide power, recreation, and other uses for the human species.

The Grange has always been a proponent of sound environmental policies and procedures and conservation of our natural resources. We also believe an adequate supply of electrical energy at a reasonable cost is absolutely necessary to allow continued economic viability of the region. Therefore, some compromise is essential to **balance** the requirements of the resources necessary for people with those of fish and other wildlife.

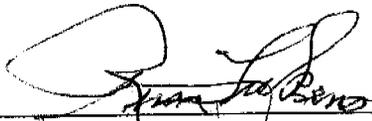
We strongly encourage you to approve the proposed alternative #3 in the process of re-licensing the Mid Columbia dams and issue the incidental take permits authorized under Section 10 (a)(1)(B) of the Endangered Species Act.

Also for your information, we are attaching a document developed by the Chelan County Pomona Grange in 1992 which reflects the Grange's past as well as its current position and concern on the issue of salmon recovery.

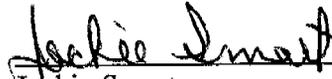
Sincerely,


Shirley Ward
Washington State Deputy Master


Donald W. Dwinell
Master, Chelan County Pomona #23
Master, West Wenatchee Grange



Russ Lukens
Master, Beacon Hill Grange



Jackie Smart
Master, Bee Hive Grange



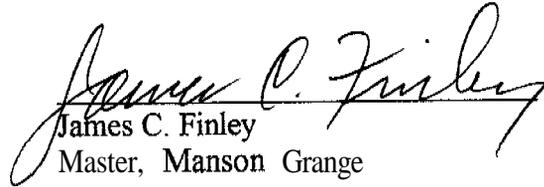
Dale Stewart
Master, Cashmere Grange



Stephen Clark
Master, Chumstick Grange



LeRoy Sorenson
Master, Entiat Grange



James C. Finley
Master, Manson Grange



Gordon Goodwin
Master, Sternilt Hill Grange

Chelan County Pamona Grange #23 Comments on Endangered Species - Salmon

Members of the Grange have been resource managers for many years and so understand and appreciate the effort and expense associated with revitalizing declining runs of fish. The following statements reflect the considered opinion of Grange members,

The purpose of the Endangered Species Act is to preserve and maintain diversity between and within species. In selecting programs to restore the vitality of selected species of fish it is important to not forget this important principle. To manage the Columbia River for the benefit of a single or a few species would violate this important principle to the detriment of all other species and uses of the river system.

It is also important that the applied definition of a species not be drawn too finely. The process of natural selection allows for the adaptation of species to changing environments. In some cases this may mean the disappearance of certain colonies or subgroups of a given species in geographic locations where it is not well suited. Some habitats in the Pacific Northwest may be irreversibly altered to the extent that it would be imprudent to attempt the development of recovery programs in those areas. Perhaps efforts should be made to enhance the productivity of a given species in habitats where the chances of succeeding are greater.

The Snake River Sockeye have shown themselves to be a resilient species, They have survived preclusion from their spawning habitat by a dam with no fish ladders and efforts to eradicate them by the State of Idaho.

The Regional Power Act, National Environmental Policy Act and even the Endangered Species Act itself all require the consideration of matters of economic importance before committing to any course of action to assist the depressed stocks. We must carefully consider the consequences of our actions for the long-term

The Grange is aware of the complex and time consuming processes associated with the determination of the status of the petitioned stocks and, in the longer term, the development of plans by agencies to assist the recovery of those stocks which have been depressed and listed.

We think that for any recovery plan to be successful, it must be sensitive to the following factors:

Harvest

The most effective way to increase the number of salmon reaching the spawning grounds is to assure the survival of returning adults. Escapement objectives keyed to maintaining sustainable levels of populations for depressed species should be established.

Recovery programs should focus on harvest reductions of adult Snake River salmon. Both ocean fisheries and in-river harvest programs must be modified. Currently allowed in-river harvest

levels of 60% of returning Snake River fall Chinook is too high to sustain these populations. In order to provide for the recovery of these species, we must stop harvesting this extremely small return of salmon. We urge the involved agencies to take the steps necessary to reduce the harvest on Snake River runs. We also urge an immediate stop to any harvest of this species until a commercially viable and sustainable population is reached.

Harvest controls on returning adults should be evaluated for all other salmon and steelhead species well before any of them reach a point of being depleted. The issue of harvest is the single most critical and effective feature of any protection and recovery plan.

Mainstem Survival

Water is the most valuable resource of the Pacific Northwest. The manner in which we manage this resource dictates the health of the regional economy. The current balances of uses is delicate and should not be hastily modified. Streamflows are likely not the primary factor affecting wild salmon survival. Passage and flows may only be a small part of the whole problem. Many factors have contributed to the decline of salmon stocks. Any solution must address all of the causes.

Various proposals for recovery focus on the relationship of flows to survival of the species in the mainstem of the river. The biological evidence presented in several proceedings support the fact that increased flows alone will not result in recovery of weak stocks. Clear, measurable performance standards that explicitly spell out the desired fishery survival goals should be set. Those responsible for operating the system can most appropriately determine the proper methods of achieving those goals in concert with others,

Members of the Grange recognize that appropriate levels of water flow may prove to be a necessary ingredient in any long-term solution. To obtain the long-term solution we must set the appropriate flow objectives and allow the system operators to develop the most efficient and cost effective means for meeting those objectives. We must then establish procedures by which we can measure and monitor the effectiveness of different flow regimes in promoting migrant survival rates.

Proposals have been made to experiment with drafting reservoirs in order to increase water velocity and presumably to reduce smolt travel time. There are important concerns about the effects of this kind of program with regard to dewatering pump intakes, precluding or making river transportation hazardous, not to mention losses of power. Water users as well as other species of anadromous and resident fish and wildlife have adapted to normally high reservoir levels. To now change these methods of operation may result in impacts which are not realized until some time in the future,

Verification

We need to establish measurable, scientifically valid data collection and analysis of all aspects of recovery programs. Independent third parties could be employed to collect the data and perform the analysis.

Habitat

Plans should provide for improving habitat for the weak salmon runs. A habitat management and restoration program must be implemented for each weak stock. A healthy habitat is an important part of natural production processes.

Hatcheries

Programs should ensure the production of hatchery fish of similar quality and genetic characteristics as naturally produced fish. The biological goal of the hatcheries should be to maintain the valuable genetic diversity of salmon. To ensure this goal, an annual audit of the hatchery operations should be performed by an independent third party.

Where the distinction of hatchery versus wild fish is of no particular consequence, such as for canning or other consumptive uses, hatchery fish should be utilized in those cases. Perhaps there should be a better education program for consumers who would make a choice of another species of fish if it were known that their choices would make a difference. (labelling program)

Conclusion

The economy of the region is primarily dependant on the availability and use of Columbia and Snake River waters. To make any substantive change in the operation or use of these river systems could have long-term economic consequences. We must seek the most cost-effective solutions to the fishery problems. Clear cost advantages to the region can be demonstrated for modification of harvest and fish hatchery practices.

We request that our comments and concerns be considered in the various administrative and political processes which will ultimately lead to recovery programs.

Chelan County Pamona Grange #23

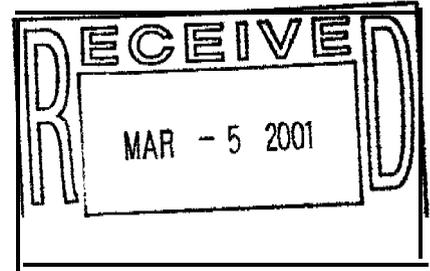
Master

Secretary



WENATCHEE RECLAMATION DISTRICT

514 EASY STREET
WENATCHEE, WA 98801-9652
(509) 663-0002
FAX (509) 665-0341



March 1, 2001

National Marine Fisheries Service
Northwest Region -- Hydro Program
525 N E Oregon Street, Suite 420
Portland, OR 97232-2737

As members of the Wenatchee Reclamation District Board of Directors we are writing to support the Mid-Columbia Habitat Conservation Plan (HCP).

How the precious water resources of this valley are used to benefit people and fish is a major concern for us.

The hydropower produced at Chelan County PUD's dams is vital to the economy of the region. It is affordable, reliable and renewable. The Habitat Conservation Plan ensures that hydropower generation can continue while listed salmon and steelhead stocks are protected.

The parties to the HCP should be applauded for working cooperatively. All too often, the command-and-control approach has led to endless, costly court battles. When that happens, nobody wins.

Specifically, we note that the plan addresses unavoidable losses. The Chelan County PUD will provide both supplementation hatchery production and funding to improve habitat to achieve the "no-net-impact" standard. The fund will likely provide badly needed habitat improvements on the Wenatchee River, as overseen by a committee process. In addition, the habitat fund could provide money for partnership projects with communities and individuals throughout the river system. We wholeheartedly support this concept.

Thank you for the opportunity to comment in support of the Mid-Columbia Habitat Conservation Plan.

Sincerely,

WENATCHEE RECLAMATION DISTRICT

Alan H. Witte, President

Lynn O. Smith, Director

Donald E. VanWinkle, Director

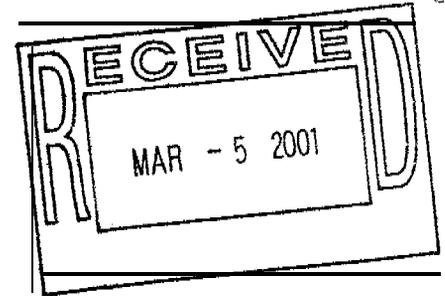


Alcoa Primary Metals

Wenatchee Works
6200 Malaga/Alcoa Highway
Malaga, WA 98828-9784 USA

March 2, 2001

Mr. Bob **Dach**
Hydro Division
National Marine Fisheries Service
525 NE Oregon St.
Portland, OR 97232-2737



RE: Comments related to the **DEIS** for the Wells, Rocky Reach and Rock Island Anadromous Fish Agreements and Habitat Conservation Plans.

Dear Mr. Dash:

Chelan County is under duress. Many longtime area orchardists, burdened by regulations, market conditions and crop failures, are at or near bankruptcy. Family wage jobs are scarce. New housing starts are at a near standstill. Drought conditions have severely impacted energy supplies. There are problems everywhere you turn.

At Alcoa's Wenatchee Works, one of the area's largest employers, skyrocketing energy prices have forced us to cut aluminum production in half over the past few months. Alcoa's employment levels are scheduled to be reduced this summer, further impacting the struggling local economy.

We are fortunate to have contracted with the Chelan County PUD for a supply of reliable, affordable energy from Rocky Reach Dam -- enough to power approximately two of our five potlines under normal water conditions. Without our long-term contract, Alcoa would likely be unable to continue any level of production at the Wenatchee Works.

Looking to the future, it is absolutely vital that the mid-Columbia Habitat Conservation Plan (HCP) be approved to maintain this area's energy production capabilities and provide cost certainty for Alcoa and all Chelan County PUD customers.

The PUD has demonstrated over the years its outstanding stewardship abilities in protecting the environment while efficiently operating and maintaining its hydroelectric projects. We note that the parties to the HCP have agreed that the PUD has an opportunity to meet established fish survival standards, as opposed to dealing with an endless string of costly mandates imposed by outside agencies.

We have every confidence that the PUD will meet the survival standards. It is worth noting that the PUD has forged ahead, absent an approved HCP, on the installation of a permanent fish bypass system at Rocky Reach Dam.

This kind of commitment demonstrates the PUD's innovation and willingness to meet its regulatory obligations in an aggressive, yet cost-effective manner. The Rock Island Settlement Agreement, construction of the supplementation hatchery and fish friendly turbine installations at Rocky Reach Dam are further examples of the PUD's demonstrated stewardship abilities.

Please consider this letter as a vote of support for the long-negotiated HCP that is outlined in the Draft Environmental Impact Statement. We urge the swift adoption of this program. It is the right approach to protecting both critical energy supplies and the environment.



Jack Speer
Northwest Energy Director
Alcoa Inc.
6200 Malaga/Alcoa Hwy.
Malaga, Wa 98828

cc: Mr. Dick **Nason**
PUD No. 1 Chelan County
PO Box 1231
Wenatchee, WA 98807- 123 1

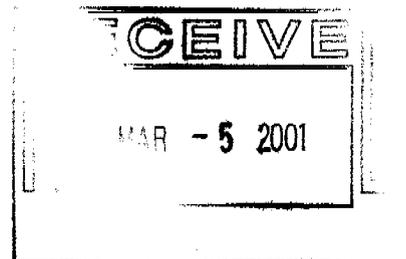


Alcoa Primary Metals

Wenatchee Works
6200 Malaga/Alcoa Highway
Malaga, WA 98828-9784 USA

February 14, 2001

Mr. Bob Dach
Hydro Division
National Marine Fisheries Service
525 NE Oregon St.
Portland, OR 97232-2737



RE: Comments related to the DEIS for the Wells, Rocky Reach and Rock Island Anadromous Fish Agreements and Habitat Conservation Plans.

Dear Mr. Dach:

The proposed Anadromous Fish Agreements and associated Habitat Conservation Plans represent a milestone in the development of environmental protection and species recovery planning. We encourage NMFS to continue their efforts to find a balance between environmental concerns and the need for renewable hydroelectric generation. The HCPs, as defined by Alternative 3 in the Draft Environmental Impact Statement (DEIS), should be selected as the preferred alternative and implemented in its' entirety. The assurances provided in the proposed HCPs include long-term monitoring and evaluations, the guarantee of achieving survival standards and the maintenance of No Net Impact conditions for listed and not-listed anadromous salmonids.

No Net Impact, as defined in the DEIS allows for continued generation of renewable, non-polluting, cost-efficient hydroelectric power while ensuring that important fisheries resources are not harmed. Monitoring and evaluation activities outlined within the proposed HCP will ensure compliance with specified survival standards. Fish populations will be enhanced through the production of hatchery fish and wild fish populations will be augmented through the enhancement of fish habitat found in tributary streams.

In contrast, Alternative 2 should not be selected as the preferred alternative. Alternative 2 covers only spring chinook and steelhead, will result in significant delays in the full implementation of recovery plans and will increase the level of uncertainty concerning future dam operations and power generation.

We are encouraged by the long-term certainty prescribed by the proposed **HCPs** and anadromous fish agreements. Future certainty in fish recovery planning and in power generation will be important to the future economic viability of the Pacific Northwest.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Huber', with a long horizontal flourish extending to the right.

Robert D. Huber
Northwest Energy Manager
Alcoa Inc
6200 Malaga/Alcoa Highway
Malaga WA 98828

cc: Mr. Dick Nason
PUD No. 1 of Chelan County
P.O. Box 1231
Wenatchee, WA 98807-1231

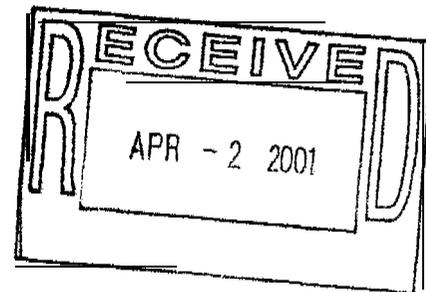
Gateway to Excellence

ENTIAT SCHOOL DISTRICT NO. 127

2650 Entiat Way • Entiat, Washington 98822 • Telephone (509) 784-1800 • Fax (509) 784-2986

March 28, 2001

Mr. Bob Dach
NMFS, NWR, Hydro Program
525 N.E. Oregon St., Suite 420
Portland, OR 97232-2737



RE. Anadromous Fish Agreements and Habitat Conservation Plans for
Wells, Rocky Reach, and Rock Island Hydroelectric Projects

Dear Mr. Dach:

As superintendent of the Entiat School District, I wish to express my concern that Page 2-40 Project Cumulative Effects of the above-referenced plan is inadequate.

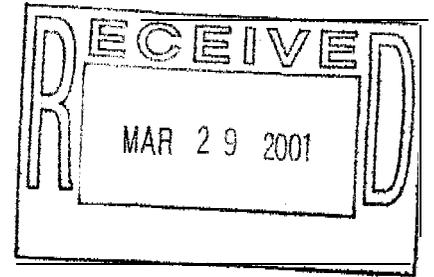
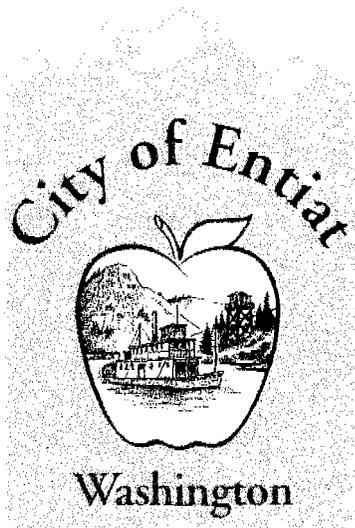
It is our position that any further erosion of our tax base would cause irreparable harm to the children and parents of this school district. In our current situation, funds designed to mitigate the loss of fish habitat have seriously impacted the fiscal condition of this school district. The proposal of an additional \$45 million for possible land acquisition is obviously a frightening proposition to the officials of this district.

Thank you for providing us an opportunity to express our concern.

Sincerely,

A handwritten signature in black ink that reads "Jeff Davis". The signature is cursive and stylized.

Jeff Davis
Superintendent



March 12, 2001

To Whom It May Concern:

As Mayor of a community situated along the reservoir created by **Rocky** Reach Dam, I am directly aware of the importance of balancing river uses.

The City of Entiat relies on tourism created by having an attractive waterway for recreation; on the economic benefits of a sustainable sport fishery; on the use of water to irrigate the **fruit** orchards within and surrounding the community and on the economic boost afforded our financially stressed region by low electric power rates made possible by Rocky Reach Dam. Implementation of the Habitat Conservation Plan (HCP) will help preserve all of these benefits.

Chelan County PUD has demonstrated how well it knows the business of running its' dams, and the sizable expenditures and endless work on fish protection over the last 20 years are equally **significant**. With the cooperative approach envisioned by this HCP, there is every reason to believe all the critical resources will be protected long into the future.

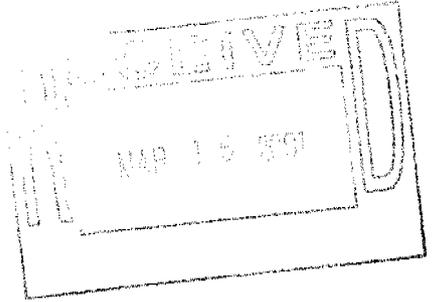
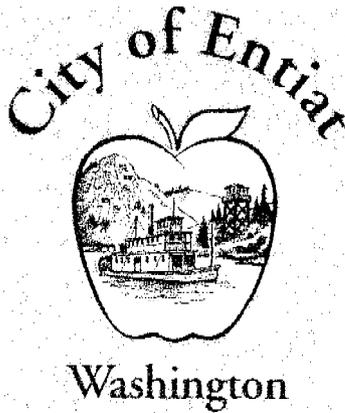
On behalf of the City Council of **Entiat**, I compliment all the participating agencies on the work that went into creating this Habitat Conservation Plan. We support the provisions it contains and recommend their implementation as quickly as possible.

Sincerely,

A handwritten signature in cursive script that reads "Wendell Black".

Wendell Black
Mayor

P.O. Box 228, 14070 Kinzel Street • Entiat, Washington 98822
Phone: (509) 784-1500 • Fax: (509) 784-1112
Email: city@entiat.org



March 12, 2001

National Marine Fishery Service
Northwest Region **Hydro Program**
505 NE Oregon, Suite 420
Portland, OR 97232

To **Whom** It May Concern:

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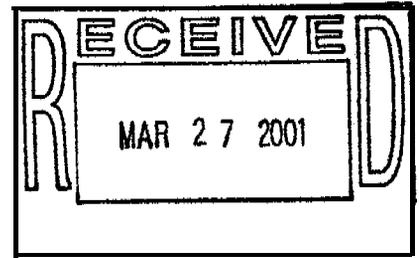
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Sincerely,

A handwritten signature in cursive script that reads "Wendell Black".

Wendell Black
Mayor

P.O. Box 228, 14070 Kinzel Street • Entiat, Washington 98822
Phone: (509) 784-1500 • Fax: (509) 784-1112
Email: city@entiat.org



March 26, 2001

Mr. Bob Dach
NMFS, NWR, Hydro Program
525 N.E. Oregon Street, Suite 420
Portland, Oregon 97232-2737

RE: Habitat Conservation Plans Proposed by Chelan and Douglas PUDs

Dear Mr. Dach:

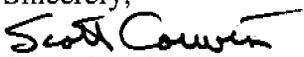
I am writing on behalf of Pacific Northwest Generating Cooperative (PNGC Power) to express support for the Habitat Conservation Plans (HCPs) for the Wells, Rocky Reach and Rock Island Hydroelectric Projects that are currently the subject of a Draft Environmental Impact Statement that is out for public comment. PNGC Power is an energy services cooperative owned by 15 rural electric cooperatives throughout the Northwest. We have a strong interest in plans that effectively protect natural resources while taking into account the serious needs of the rural economy in the Northwest.

There are several aspects to these HCPs that make them worthy of your approval. In fact, these same aspects make these HCPs models that will serve the region well during discussion over other species recovery efforts. First, the emphasis on setting specific outcome-based targets will prove extremely useful during implementation, monitoring, and review of the plans. Proper focus is put upon real results regarding the species themselves, rather than upon fulfilling a checklist of measures that may or may not be effective.

Second, the balance within these plans is very evident and is another key towards creating a viable, enforceable approach. Especially in light of the current predicament in the West Coast energy market, the balancing of species protection and recovery with the need to preserve a reliable supply of energy is crucial for the economic health of the region.

Finally, the level of collaboration evidenced by the diverse array of supporters for these plans is very impressive. As we have seen in many other natural resource proceedings this type of broad collaboration is very difficult to achieve and is to be commended.

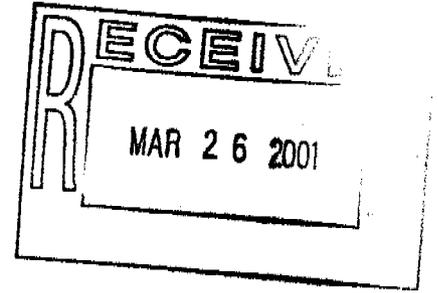
In summary, these HCPs form a balanced approach to addressing some very challenging issues. Their unique proposals for creating scientific and economic accountability in species recovery should serve the region well. We ask that you adopt the principles included in these HCPs.

Sincerely,

Scott Corwin
Manager, Government Affairs

Cc: Susan Fruchter, NEPA Coordinator, NOAA

Pacific Northwest Generating Cooperative
711 NE Halsey, Suite 200 • Portland, OR 97232-1268
(503) 288-1234 • Fax (503) 288-2334 • www.pngc.com

Washington



Frank L. Cassidy, Jr.
"Larry"
Council Chair

March 15, 2001

Mr. Dick Nason
PUD No. 1 of Chelan County
P.O. Box 1231
Wenatchee, WA 98807-123 1

Dear Mr. Nason,

The Northwest Power Planning Council appreciates the opportunity to comment on the Habitat Conservation Plan to protect and enhance salmon and steelhead in the Mid-Columbia River. We commend you for sticking with the development of this document, six years in the making.

It is the Council's understanding that a collaborative effort involving a group with diverse interests has worked to develop this Habitat Conservation Plan. Chelan and Douglas PUD's, the National Marine Fisheries Service, the U.S. Fish and Wildlife Service, the Washington Department of Fish and Wildlife, the Yakama, Colville, and Umatilla Tribes, American Rivers, Inc, and major purchasers of wholesale energy are some of the partners identified as participating in this endeavor. The Council supports the development of these negotiated agreements.

In the next couple of years, the Council will be embarking on a **subbasin** planning process, and will be working to bring parties with diverse interests together to protect, mitigate, and enhance fish and wildlife harmed by the operation of the hydropower system. Your demonstrated commitment to fish and wildlife will be instrumental in assisting the Council to successfully develop a broad-based plan for the Mid-Columbia.

The Northwest Power Planning Council understands that Chelan County PUD is firmly committed to this Habitat Conservation Plan. We continue to wish you success in your endeavor, and appreciate the hard work you have put in to develop this negotiated agreement.

Regards,

A handwritten signature in black ink, appearing to read "Frank-L. Cassidy, Jr.".

Frank-L. Cassidy, Jr., Chairman
Northwest Power Planning Council

Olympia Office Mailing address:
600 Capitol Way, N.
Olympia, WA 98501-1091
Phone: 360-902-2302
FAX: 360-902-2319
E-mail: bwalsh@nwppc.org

Olympia Office location:
Natural Resources Building
1111 Washington St. S.E.
Olympia, WA 98501

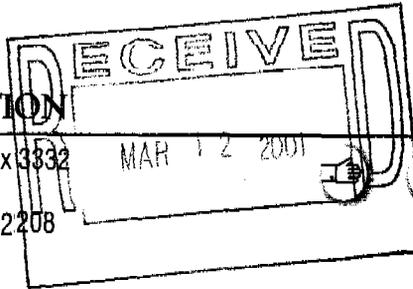
Vancouver Office
Post Office Box 2187 (98668)
110 "Y" Street
Vancouver, WA 98661
Phone: 360-693-6951
FAX: 360-699-4093
E-mail: fcassidy@flo-riteproducts.com



For North Central Washington

GREATER WENATCHEE COMMUNITY FOUNDATION

7 No. Wenatchee Ave., Suite 201 • PO Box 3332
Wenatchee, WA 98807-3332
Phone (509) 663-7716 • FAX: (509) 667-2208
E-mail: gwcf@gwcfncw.org



For good. For ever."



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Cordell, Neher & Co. PLLC

March 8, 2001

National Marine Fisheries Service
Northwest Region Hydro Project
525 NE Oregon Street, #420
Portland, OR 97232-2737



Dear Sirs:

The Greater Wenatchee Community Foundation was formed 15 years ago to provide a new source of funding for worthy organizations. Over the years I have had the privilege of associating with a diverse group of social service and educational organizations. While each pursues individual goals, one thing is also clear; each understands the need to work together with others in the community to develop solutions to problems.

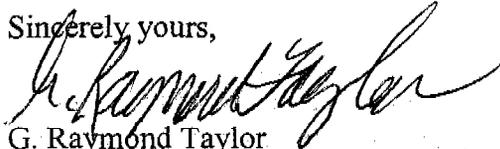
It appears a similar spirit of cooperation is behind the Habitat Conservation Plan developed by the Chelan and Douglas PUDs. As outlined in the plan, the PUDs and regulatory agencies work cooperatively to find and implement the best methods for ensuring fish survival. The plan also includes provisions for timely resolution of any disputes. It sets up an oversight committee for coordination and consultation between the PUDs and interested parties and agencies,

The PUDs are a key ingredient in the economic vitality of the Greater Wenatchee area. The plan they are proposing holds the key ingredients to their success, and to ensuring continued economic operation of the public utilities.

While it is important that endangered salmon be saved, it is also important to invest in the most cost-effective, scientifically sound solutions. The plan ensures that the PUDs will do their part to save salmon, while providing for long-term, affordable hydropower for local residents.

I urge you to favorably consider the Habitat Conservation Plan of the two PUDs and to move it forward as quickly as possible.

Sincerely yours,


G. Raymond Taylor
President and CEO

GRT: lre



Serving
Chelan,
Douglas,
Grant
and
Okanogan
Counties

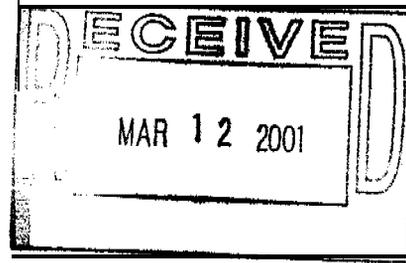
— Since 1986 —



(503)

March 9, 2001

Mr. Bob Dach
Hydro Division
National Marine Fisheries Service
525 NE Oregon Street.
Portland, OR 97232-2737



Dear Mr. Dach:

The Public Power Council (PPC) is a trade association of consumer-owned electric utilities in six states here in the Pacific Northwest. We applaud NMFS, Douglas and Chelan PUDs for their efforts to develop long-term habitat conservation plans for the Wells, Rocky Reach and Rock Island Hydroelectric Projects.

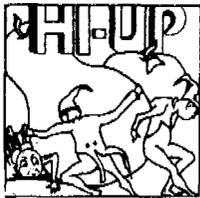
The proposed Anadromous Fish Agreement and Habitat Conservation Plans (HCP) are particularly timely given the Northwest's present short supply of renewable electric energy. Our region is now struggling to maintain its economic vitality in light of recent developments in the wholesale power market. Solutions to these issues must be found through active planning and long-term solutions. The proposed HCP represents both of these ideals.

We support the proposed Wells, Rocky Reach and Rock Island HCPs as the preferred alternatives for salmon protection, mitigation and enhancement at those hydraprojects. The selection of the long-term HCPs is intended to ensure the future viability of anadromous salmonids while maintaining the benefits of clean, renewable hydroelectric power generation. We encourage NMFS to select and implement Alternative 3 as described in the Draft Environment Impact Statement for the proposed Wells, Rocky Reach and Rock Island Anadromous Fish Agreements and HCPs.

Sincerely,

A handwritten signature in black ink, appearing to read 'C. Clark Leone'.

C. Clark Leone
Manager



PESHASTIN HI-UP GROWERS

P.O. Box 446

PESHASTIN, WASHINGTON 98847

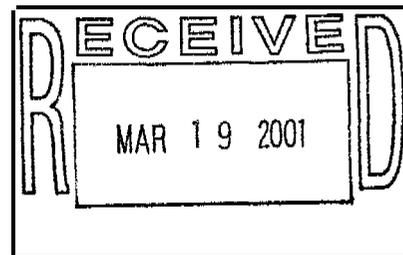
FAX: (509) 548-6619

Phone (509) 548-7312



March 16, 2001

National Marine Fisheries Service
Northwest Region - Hydro Program
525 N.E. Oregon Street, Suite 420
Portland, OR 97232-2737



Dear Sirs:

Please consider this a strong endorsement of the Habitat Conservation Plan (HCP) for Chelan and Douglas PUDs now under review by your agency.

Agriculture – long the lifeblood of North Central Washington – is hurting. Thousands of fruit trees are being ripped out as growers give up and file for bankruptcy. Agriculture's plight is having a ripple effect throughout our communities, and we are in the midst of a serious economic downturn.

But so far, we can still count on reliable, low-cost energy. It remains a pillar of our past and a key foundation to building our future. We must have ample water to irrigate our remaining and future orchards. We need low-cost power to pump that water to the orchards, to run the packing lines where we process our fruit, and to power the controlled-atmosphere storage that maintains pears, apples and other produce in quality marketing condition. With so many other forces squeezing agriculture, the Habitat Conservation Plan can help by providing more long-term certainty regarding water supplies and electric power.

The Habitat Conservation Plan assures the PUDs of guidelines under which they can operate most effectively and efficiently. It provides a framework for fish mitigation with identifiable targets. The plan lets the local experts direct operations, but with federal and state oversight. It offers a common-sense approach that is good for fish and good for our region.

Our PUDs have done a great job caring for our local resources. The Habitat Conservation Plan demonstrates responsible stewardship. We can help fish and help people too, by ensuring the continued production of reliable hydropower for the citizens of the northwest.

Thank you,

Dan Gaspar, General Manager
Peshastin Hi-Up Growers



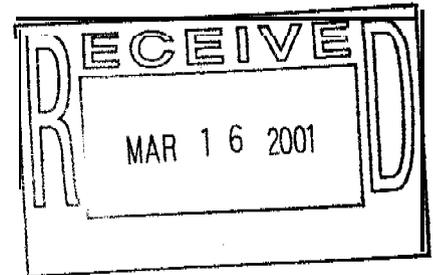
City of
Wenatchee

City Hall
(509) 664-3300
Fax (509) 664-3301
129 S. Chelan
P.O. Box 519
Wenatchee, WA 98807-0519

Public Works
(509) 664-3360
Fax (509) 664-5986
25 N. Worthen
PO. Box 519
Wenatchee, WA 98807-0519

March 8, 2001

National Marine Fisheries Service
Northwest Region - Hydro Program
525 N.E. Oregon Street, Suite 420
Portland, OR 97232 - 2737



Dear Sirs:

We would, on behalf of the citizens of Wenatchee, like to collectively voice our support for the mid-Columbia River Habitat Conservation Plan (HCP).

Our community relies heavily upon affordable, reliable hydroelectric power. Public Utility District (PUD) dams therefore provide the foundation for the local economy, which has been struggling for the past several years due to extremely unfavorable agricultural market conditions and intense regulatory pressure. We must maintain the economic stability provided by hydroelectric power to preserve an affordable lifestyle for our citizens and to attract new businesses to the Wenatchee area.

The HCP is a carefully planned, collaborative approach to protect mid-Columbia fisheries resources. By establishing performance standards rather than arbitrary mandates, the HCP provides a measure of business certainty for the PUD and its customer owners while ensuring that effective, scientifically-based fish protection measures are implemented.

The City applauds the Chelan County PUD for not waiting until the conclusion of the HCP regulatory process to start implementing such **fish** protection measures. At Rocky Reach Dam, for example, testing of a fish, collection and bypass system is nearing completion, with the permanent system scheduled for installation next year. This work is a vital part of meeting the fish survival standards outlined in the HCP.

The HCP provides a common sense model for addressing the requirements of the Endangered Species Act, and provides a far more productive approach than court system battles of regulatory disputes. We are **hopeful** that **other** jurisdictions will embrace this model throughout the region, as we **all** must do our part to save our salmon.

National Marine Fisheries Service
Pace Two

It is our understanding that the HCP outlines fish survival standards at the hydroelectric projects, with compensation for unavoidable losses to be provided by a PUD-funded conservation account. We believe this is an excellent idea, as it may provide an avenue for future partnerships with other government entities and organizations for matching funds to address critical habitat areas.

We are hopeful that the HCP will move swiftly through the regulatory review process and that its terms and conditions will be implemented as soon as practical.

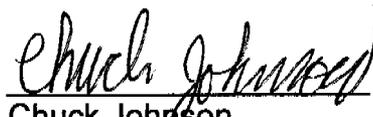
Sincerely,

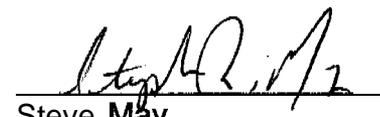

Dennis Johnson
Mayor


Bill Edwardson
City Council

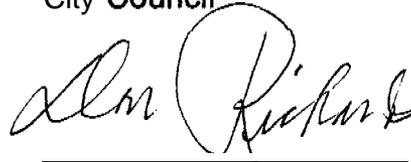

Randy Gold
City Council


Don Gurnard
City Council


Chuck Johnson
City Council


Steve May
City Council


Mark Peterson
City Council

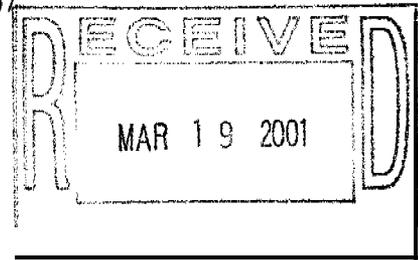

Don Richards
City Council

WASHINGTON GROWERS CLEARING HOUSE ASSN.

PO BOX 2207

WENATCHEE WASHINGTON 98807-2207

PHONE 509-662-6181; FAX 509-664-6670



March 15, 2001

National Marine Fisheries Service
Northwest Region---Hydro Program
525 N. E. Oregon Street, Suite 420
Portland Oregon 97232-2737

The Washington Growers Clearing House is a non-profit tree fruit grower association representing approximately 2,600 tree fruit growers in North Central Washington.

I am writing on behalf of our membership to express our strong support for the Mid-Columbia Habitat Conservation Plan.

This particular plan maximizes the opportunity to create a meaningful salmon and steelhead recovery and protection program while creating the certainty that is necessary to enable the region to remain economically viable.

The economic engine that drives the economy in North Central Washington is the Washington Tree Fruit Industry. The Tree Fruit Industry has been able to offset most of the advantages of our competition because of three factors: 1.) The excellent climate, 2.) Development of an efficient cost effective water delivery system, and 3.) Low electric rates. The low electric rates have enabled individuals to justify the expenditure of billions of dollars on industry and community infrastructure. A reliable supply of low-cost electricity is the key component in ensuring the future economic survival of the Washington Tree Fruit Industry and the economy of North Central Washington.

Far too much time, money and effort has been spent on a wide range of scientific based salmon recovery efforts with very little measurable results. This particular Habitat Conservation Plan takes a unique new approach, one that is based not only on local input from all stakeholders, but on measurable results. This Habitat Conservation Plan recognizes that one size does not fit all, and that to be effective a program must be flexible, comprehensive and results oriented. This plan gives the local Public Utility District the flexibility necessary to produce a successful outcome. As situations change it is important that the recovery plan has the flexibility and opportunity to change in an innovative and timely manner.

Another crucial component of this HCP is the creation of an invaluable source of funding to aid local citizen group efforts to protect and improve fish habitat on Columbia River tributaries.

The Habitat Conservation Plan ensures that **fish** and people can live together and that vital hydroelectric production can continue. The Chelan County Public Utility District has responded to the citizen's demands that they be a good steward of this valley's resources. The Habitat Conservation Plan is another example of the PUD's commitment to the citizens, the environment and the resulting quality of life so highly valued by the citizens of North Central Washington,

Sincerely,

Kirk B. Mayer, Manager