

THE CONFEDERATED SALISH AND KOOTENAI TRIBES
OF THE FLATHEAD NATION

P.O. BOX 278
Pablo, Montana 59855
(406) 275-2700
FAX (406) 275-2806
www.cskt.org



A Confederation of the Salish,
Upper Pend d'Oreilles
and Kootenai Tribes

TRIBAL COUNCIL MEMBERS:
James Steele Jr. – Chairman
E.T. "Bud" Moran – Vice Chair
Steve Lozar – Secretary
Jim Malatare – Treasurer
Joe Durglo
Carole Lankford
Michel Kenmille
Reuben A. Mathias
Charles L. Morigeau
Terry L. Pitts

December 1, 2008

Bill Booth, Chair
c/o Mark Walker, Director of Public Affairs,
Northwest Power Planning Council
851 S.W. Sixth Avenue, Suite 1100
Portland, Oregon 97204

RE: Tribal Amendments to Columbia River Basin Fish and Wildlife Program

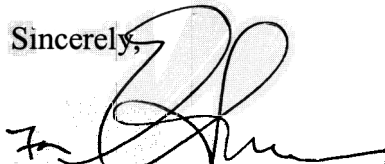
Dear Mr. Booth,

On behalf of the Confederated Salish and Kootenai Tribes, attached please find the Tribes' review comments of the Northwest Power and Conservation Council's (Council) Draft Columbia River Basin Fish and Wildlife Program (Program). These comments are a continuation of the previously submitted Resolution of the CSKT Tribal Council supporting the Tribes' and Program recommendations.

Our original recommendations and these comments and edits are necessary to effectively and efficiently implement the Program and achieve its - and the Tribes' - fish and wildlife mitigation goals.

We are in the process of scheduling formal consultation on this matter and look forward to discussing these matters. We maintain our April 1, 2008 request to participate in all facets of the process for Program amendment and subsequent implementation.

Sincerely,



James Steele, Jr., Chairman

**The Confederated Salish and Kootenai Tribes’
Proposed Amendments to
The Northwest Power and Conservation Council’s
*Columbia River Basin Fish and Wildlife Program***

The Confederated Salish and Kootenai Tribes (Tribes) have participated in the Northwest Power and Conservation Council’s (Council) Columbia River Basin Fish and Wildlife Program (Program) for over 15 years. During that time we have developed experience and familiarity not only with the Program but also with local/regional resources and fish and wildlife mitigation actions needed to mitigate impacts resulting from construction and inundation of the Hungry Horse Dam and Reservoir. The Tribes’ previous recommendations and current comments are based on this experience and familiarity and their implementation is necessary to effectively and efficiently implement the Program and achieve fish and wildlife mitigation goals. We therefore respectfully submit these comments in light of our review of the draft Program and look forward to our consultation with Council representatives.

The Tribes’ recommendations are organized into six major sections. The first five sections are structured identically to our initial recommendations. Section 6 was added to address page-specific issues brought to our attention through review of the draft program. The sections are as following:

- (1) Resident Fish Crediting;
- (2) Establish Full Settlement Options;
- (3) Funding Operations and Maintenance of Mitigation Parcels;
- (4) Allocation
- (5) Implement HEP Wildlife Impact Assessment.
- (6) Page-specific issues

All are necessary to effectively and efficiently mitigate impacts to Tribal natural resources caused by construction and inundation of the Hungry Horse and Libby dams as well as the associated reservoirs. Our technical and legal staffs look forward to working with the Council and other participants to successfully draft and implement our proposed amendments.

I. Resident Fish Crediting

The draft program did not include the following principles and language in the Resident Fish Crediting Sections:

Maintain at Least a 1:1 Ratio for Losses:Mitigation

Construction and inundation losses to resident fish habitat that have been assessed thus far have been generally quantified in acres or stream miles inundated and/or blocked. These losses are most effectively mitigated by acquiring interests in real property for the primary purpose of protecting, preserving, enhancing restoring, and/or replacing fish and

wildlife habitat equal to the quantity and quality of habitat that was lost. The draft program did not incorporate a minimum mitigation quotient for blocked inundated fish habitat. In areas where construction and inundation losses have been assessed and quantified by the appropriate agencies and tribes, BPA needs to fund the acquisition of appropriate interests in real property to achieve mitigation at a minimum ratio of 1:1, mitigation to lost distance/area.

Provide Funding at Current Market Rates

The draft program did not specify that habitat acquisitions need to be funded at current market rates. To be an effective mitigation tool, BPA must fund the acquisition of interests in real property based on current market rates.

Provide Funding to Protect and Improve Degraded Habitat

We appreciate that the Council incorporated the ability to target land transactions that enhance natural ecosystem function and species diversity over the long term (page 110, line 29 & 30). Through the incorporation of this statement, the Council recognizes that (1) land is a finite resource and (2) protecting degraded habitat may be the only reasonable means to achieve mitigation goals. Therefore, BPA shall fund the purchasing of or otherwise protecting marginally degraded habitat where it is deemed by the fish and wildlife agencies and Tribes to represent effective mitigation. Further, the BPA shall provide restoration funding to enhance, restore, and create habitat functions and values on acquired lands that are degraded.

II. Establish Full Settlement Options

Amend the program by including the following language in the Resident Fish Crediting Sections:

We applaud the Council for its efforts to reduce process and move toward multi-year implementation plans in the future (page 8, line 18-20). We however feel that multi-year plans should be implemented sooner rather than later (2010) for all tenured projects that are clearly consistent with subbasin plans. These multi-year plans should be accompanied by multi-year contracts with standard Pisces reporting to “check in”. The current process of annual workplans and budgets takes a tremendous amount of time, effort and funding when more effort should be directed to on-the-ground activities.

Many fish and wildlife agencies have entered into forms of multi-year implementation plans through long term Agreements with BPA (Fish Accords). Other agencies have submitted them as parts of their individual recommendations for the revised Fish and Wildlife Program. Within the initial CFWA recommendations to the Program, the Confederated Salish & Kootenai Tribes submitted Flathead Subbasin objectives and limiting factors and the strategies and measures to address them. The Council accepted these recommendations as part of the Program (pages 105-106, line 35-38 and 1-13, respectively). Further, CSKT is currently working with BPA to create a 9-year MOA to fund CSKT ongoing efforts through 2018. CSKT will work collaboratively with the

Council and BPA to add additional detail to this MOA/multi-year workplan within the next few months. Consistent with the ongoing processes and schedules, we do not submit additional detail as part of these comments at this time. We therefore reserve the right to include relevant materials as part of these ongoing processes and further expect to be treated equitably with the rest of the region as the Council moves forward with defining future priorities and projects for funding. If the Council does not agree with this assessment and process, please so advise the Tribes and we will submit those materials accordingly.

The draft Program did not incorporate or seem to support large or full settlement options, except in the case of wildlife (Page 39, lines 22 & 23), even though such large or cash-out options may best serve the resources, are most cost effective, and facilitate good governance and government relations. Regardless of fauna, when a loss assessment has been developed and accepted by the Program for a particular facility or sub-basin, the Program should encourage large or full cash-out settlements for such losses that vest ownership and control of the settlement funds in the local government trustee(s). This approach will promote control over implementation of mitigation actions by the fish and wildlife managers that know the resource best and that have the most interest in its success. It will promote efficiency by disentangling local government trustees from BPA at the project level. Accordingly, when an opportunity arises for full settlement for well defined and accepted losses that will benefit the effectiveness and efficiency of mitigation, the Program should promote - and BPA budget for - "full cash-out settlements," as compared to annual incremental settlements.

The fisheries loss assessment for the construction and inundation impacts attributable to Hungry Horse Dam and Reservoir was completed in 1991. Based on current planning, by the end of fiscal year 2009 up to 20.5 km of mitigation credit will have been achieved against the 125.8 kilometers of assessed losses. Due to significant human population growth, subdivision, and development, the costs to implement mitigation in the Flathead Basin have risen dramatically in the recent past and in spite of current economic trends are expected to continue to rise in the future. Related, opportunities for mitigation in the Flathead Basin are becoming increasingly fragmented and complicated. This combination of increasing costs and decreasing opportunities results in large or "full settlement" for construction and inundation impacts possibly being the most effective and efficient means to mitigate resident fish impacts. Therefore the Program should incorporate, and BPA budget for, large or full-scale mitigation settlement options.

III. Funding Operations and Maintenance of Mitigation Parcels

We applaud the Council for incorporating the ability to utilize the land acquisition fund to pay local taxes and fees on habitat acquisitions. However, as stated in our initial recommendations, responsible ownership of real property also involves stewardship of the attendant natural resources. Such responsible ownership requires funding for operations and maintenance. The draft program specifically refers to operations and maintenance costs for wildlife acquisitions (Page 38, lines 39-41; Page 39, lines 1-2;

Page 40, lines 7-12) but does not mention the need for these costs under fisheries habitat protection projects. Regardless of the type of real property interest acquired, every capital investment made under the Program for the purpose of habitat acquisition/protection should include an endowment or other long term funding for the purpose of supporting the operations and maintenance activities necessary to perpetuate the attendant habitat functions and values. Perpetual mitigation can only be achieved if the Program maintains habitat investments. The Program needs to incorporate the same language referenced above for all habitat acquisitions to ensure that. Therefore, BPA should fund reasonable (current market value) long term operations and maintenance activities for all acquisitions, regardless of fauna.

IV. Allocation

We commend the Council for maintaining the 70/15/15 (page 109, lines 24-27) proportional funding allocation for anadromous fish/resident fish/wildlife. We hope that the Council remains diligent in upholding this allocation until another method is supported by the region.

V. Implement HEP Wildlife Impact Assessment

The Council did not address the inconsistency in assessing wildlife impacts across the basin, but indirectly supported the continuation of multiple methods. Assessments of the impacts to wildlife from the construction and inundation of the Hungry Horse and Libby Projects were completed in 1984. These were the first mitigation assessments of hydroelectric dams completed within the Columbia Basin. In the years since, methods within the basin have evolved to assess and mitigate wildlife losses using habitat evaluation procedures (HEP). HEP have become “the standard of the industry” within the basin and are widely and consistently used when assessing impacts and assessing mitigation proposals/activities. HEP provides consistent results and allows different projects to be compared over both time and space. The Hungry Horse and Libby Wildlife Impact Assessments were completed using methods that were neither approved nor adopted by the Program. Accordingly, its results may be unreliable and are inconsistent with the rest of the region.

Therefore, BPA should fund the reassessment of wildlife impacts from construction and inundation at the Hungry Horse and Libby projects utilizing HEP methodology. Additionally, BPA shall fund the assessment of habitat currently protected under the Montana Agreement utilizing the HEP methodology. This will ensure that construction and inundation impacts are consistent with the rest of the region.

VI. Page Specific Comments

Page 19, line 11- Remove the words “Where feasible”. Loss assessments for resident fish should be completed across the basin to provide accountability and document progress as individual projects work toward offsetting these losses.

Page 19, line 20 – Add “Develop and implement habitat acquisition and enhancement projects to mitigate for construction and inundation losses.” as an objective for resident fish.

Page 19, line 43- Remove the words “As appropriate”. Operational loss assessments for wildlife (and fish) should be completed across the basin to provide accountability and document progress as individual projects work toward offsetting these losses.

Page 37, line 9 – Remove the words “least-adverse effects” and reword. As it reads, this paragraph places primacy on anadromous fish.

Page 96, line 27 – Remove the words “in general”. The language, as written, provides deference to anadromous fish over resident fish.

Page 111, lines 4-5; 13-14 - We are concerned about Council micromanaging all land and water acquisitions. This could slow an already slow process required to get each acquisition funded. If criteria are established and approved to guide parcel selection and acquisitions are consistent with subbasin plans, fish and wildlife managers should be trusted to choose lands appropriate to achieve mitigation goals.