

THE CONFEDERATED SALISH AND KOOTENAI TRIBES  
OF THE FLATHEAD NATION

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A People of Vision

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

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April 1, 2008

Dr. Thomas Karier, Chair  
Northwest Power Planning Council  
851 S.W. Sixth Avenue, Suite 1100  
Portland, Oregon 97204-1348

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

Dear Dr. Karier,

On behalf of the Confederated Salish and Kootenai Tribes, attached please find the Tribes' recommended amendments to the Northwest Power and Conservation Council's (Council) Columbia River Basin Fish and Wildlife Program (Program). Also enclosed is the Resolution of the Tribal Council supporting the Tribes' and Program recommendations.

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

We request the opportunity 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 generally but also specifically with fish and wildlife mitigation actions needed to mitigate impacts resulting from construction and inundation of the Hungry Horse Dam and Reservoir. The Tribes’ recommendations are based on this experience and familiarity and are needed to effectively and efficiently implement the Program and achieve its, and the Tribes’, fish and wildlife mitigation goals. We therefore respectfully submit these recommendations and request to participate in all facets of the process for Program amendment and subsequent implementation.

The Tribes’ recommendations are broken into five sections, including:

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

All are necessary to effectively and efficiently mitigate impacts to Tribal natural resources caused by construction and inundation of the Hungry Horse and Libby facilities. 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**

*Amend the program by including the following 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 preserving, enhancing restoring, and/or creating fish and wildlife habitat equal to the quantity and quality of habitat that was lost. In areas where construction and inundation losses have been assessed and quantified by the appropriate agencies and tribes, BPA shall 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*

To be an effective mitigation tool, BPA shall fund the acquisition of interests in real property based on current market rates.

*Provide Funding to Protect and Improve Degraded Habitat*

If funding is provided only for pristine or undegraded habitat, then opportunities for mitigation will be significantly limited and opportunities to protect important, albeit degraded, habitat will be lost. By adopting such a limit, the Program would impose a “zero-gain” ratchet against fish and wildlife habitat under the Program because we can not improve habitat function or gain habitat value - but at best can only attempt to maintain existing conditions. In some cases, areas targeted for perpetual protection have been degraded due to previous land management activities. In spite of the land’s condition, it sometimes represents the best opportunity for mitigation. The Program 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:*

The Program currently anticipates regular program mitigation payments for incremental mitigation. It does not anticipate or provide for large or full settlement options even though such large or cash-out options may best serve the resources, are most cost effective, and facilitate good government. When a loss assessment has been developed for a particular facility or sub-basin, using the best available scientific methods, and the loss assessment is accepted by the Program and the local governmental trustees for the impacted resources, then the Program should encourage 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 approximately 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 are expected to continue to rise in the future. Relatedly, 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 being the most effective and efficient means to mitigate resident fish impacts. Therefore the Program should allow, and BPA budget for, such large or full-scale mitigation settlement options.

### **III. Funding Operations and Maintenance of Mitigation Parcels**

Responsible ownership of real property involves stewardship of the attendant natural resources. Accordingly, such responsible ownership requires funding for operations and maintenance. Regardless of the type of real property interest acquired, each capital investment made under the Program for the purpose of habitat acquisition/protection shall 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.

The Program often makes long term investments to mitigate the impacts of the hydrosystem. The Program should likewise make long term investments in the operations and maintenance of acquired real property that are an intrinsic and necessary component of the investment in mitigation. Perpetual mitigation can only be achieved if the Program maintains habitat investments. Therefore, BPA shall fund reasonable (current market value) long term operations and maintenance activities.

### **IV. Allocation**

Previous programs have established a 70/15/15 proportional funding allocation for anadromous fish/resident fish/wildlife. However, actual funding levels have generally not conformed with the established proportions - whether viewed on an annual or averaged basis. For managers to effectively mitigate for impacts to the hydrosystem, it is critical to conform with these proportions, and provide a minimum of 15% for resident fish and 15% for wildlife in addition to anadromous fish allocations. If impacts are assessed across the basin prior to the next amendment process, the Council may consider some sort of reallocation. If this occurs, one means of protecting such agreed-upon proportional funding allocations may be to amend the Program to budget the resident fish and wildlife funds and distribute them at the sub-basin level, based on level of impact.

### **V. Implement HEP Wildlife Impact Assessment**

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, the program has evolved through experience and adaptation to adopt habitat evaluation procedures (HEP) as its preferred assessment method. 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 provide consistent results and allow different projects to be compared over 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, those results may be unreliable and may be inconsistent with the results from rest of the region.

Therefore, BPA shall fund the reassessment of wildlife impacts from construction and inundation at the Hungry Horse and Libby projects utilizing HEP. Additionally, BPA shall fund the assessment of habitat currently protected under the Montana Agreement utilizing HEP. This will ensure that construction and inundation impacts are assessed with the latest available science and consistently with those in the rest of the region.

**RESOLUTION  
OF THE GOVERNING BODY OF  
THE CONFEDERATED SALISH AND KOOTENAI TRIBES  
OF THE FLATHEAD NATION**

BE IT RESOLVED BY THE TRIBAL COUNCIL OF THE CONFEDERATED SALISH AND KOOTENAI TRIBES ("TRIBES"):

**Whereas:** The Confederated Salish and Kootenai Tribes have a vested interest in and concern for the mitigation for construction and operation of the Hungry Horse Dam and reservoir; **and,**

**Whereas:** The Tribes receive mitigation funding through the Columbia Basin Fish and Wildlife Program of the Northwest Power and Conservation Council (NPCC) and the Bonneville Power Administration; **and,**

**Whereas:** the Northwest Power and Conservation Council is in the process of amending the Fish and Wildlife Program under the 1980 Northwest Power Act; **and,**

**Whereas:** The Act requires that the NPCC gives deference to the fish and wildlife managers when they consider amendments that they will include in the Fish and Wildlife Program; **and,**

**Whereas:** The Tribes have worked to develop a comprehensive set of recommended amendments specific to the needs of the Tribes' resources and that are necessary to effectively mitigate impacts from the construction and operation of the Hungry Horse Dam and Reservoir; **and,**

**Whereas:** The Tribes have further worked collaboratively through the Columbia Basin Fish and Wildlife Authority, an association of the Columbia Basin's Fish and Wildlife agencies and Tribes, to develop a comprehensive set of recommended amendments to the Fish and Wildlife Program; **and,**

**Whereas:** These recommendations seek to provide a sound scientific framework that defines operations of the hydropower system to minimize impacts on the Columbia Basin's fish and wildlife resources and systematically mitigate for the remaining damages with supplementation, habitat improvements, and other non-hydro actions; **and,**

**Whereas:** These recommendations are based on the application of best available science standards and principles combined with the socio-political constraints inherent in the agencies and Tribes resource management plans and actions; **and,**

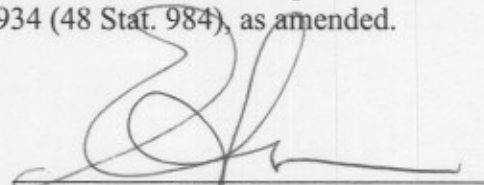
**Whereas:** These amendment recommendations are necessary to, and allow the Tribes to, fulfill their statutory obligations prescribed in the Northwest Power Act and other obligations consistent with Tribal Treaties, laws, and historic activities;

**Be It Resolved:** That the Tribal Council approves submitting to the Northwest Power and Conservation Council the amendments of the Confederated Salish and Kootenai Tribes to the Columbia River Basin Fish and Wildlife Program; **and,**

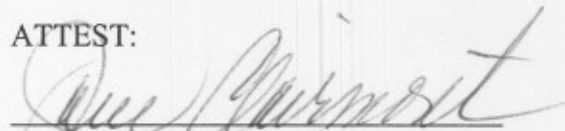
**Be It Further Resolved:** That the Tribal Council supports and approves submitting to the Northwest Power and Conservation Council the amendments of the Columbia Basin Fish and Wildlife Authority, which together with the Tribes' amendments establish the architectural framework for adaptive management, including the prescriptions for measures which implement that framework, to the Northwest Power and Conservation Council.

#### CERTIFICATION

The foregoing resolution was adopted by the Tribal Council on April 1, 2008, with a vote of 9 for, 0 opposed, and 0 not voting, pursuant to the authority vested in the Tribal Council by Article VI, Section 1(a) and (u) of the Tribes' Constitution adopted and approved under Section 16 of the Act of June 18, 1934 (48 Stat. 984), as amended.

  
Chairman - Tribal Council

ATTEST:

  
Executive Secretary