



Nez Perce

TRIBAL EXECUTIVE COMMITTEE
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January 31, 2003

Mr. Mark Walker
Public Affairs
Northwest Power Planning Council
851 SW 6th Ave., Suite 1100
Portland, OR 97204

RE: Document 2002-16
Draft Mainstem Amendments

Dear Mr. Walker:

The Nez Perce Tribe has a vital interest in the Northwest Power Planning Council's Draft Mainstem Amendments to the Columbia River Basin Fish and Wildlife Program (Document 2002-16). The final amendments adopted into the Program are intended to provide guidance and direction that will affect the future existence and persistence of culturally significant fisheries resources, including chinook salmon, coho salmon, steelhead, Pacific lamprey, white sturgeon and bull trout. The Columbia and Snake River mainstems provide critically important habitats for anadromous fish spawning, incubation, freshwater rearing, juvenile migration and adult migration. Twelve species of Columbia Basin anadromous salmonids are listed pursuant to the Endangered Species Act as threatened or endangered, and have had critical habitat designated, as follows:

- Snake River (SR) spring/summer chinook salmon (*Oncorhynchus tshawytscha*; listed as threatened on April 22, 1992 [57 FR 14653]); critical habitat designated on December 28, 1993 [58 FR 68543], and revised on October 25, 1999 [64 FR 57399]
- Snake River (SR) fall chinook salmon (*O. tshawytscha*; listed as threatened on April 22, 1992 [57 FR 14653]); critical habitat designated on December 28, 1993 [58 FR 68543]
- Upper Columbia River (UCR) spring chinook salmon (*O. tshawytscha*; listed as endangered on March 24, 1999 [64 FR 14308]); critical habitat designated on February 16, 2000 [65 FR 7764]
- Upper Willamette River (UWR) chinook salmon (*O. tshawytscha*; listed as threatened on March 24, 1999 [64 FR 14308]); critical habitat designated on February 16, 2000 [65 FR 7764]
- Lower Columbia River (LCR) chinook salmon (*O. tshawytscha*; listed as threatened on

March 24, 1999 [64 FR 14308]); critical habitat designated on February 16, 2000 [65 FR 7764]

- Snake River (SR) steelhead (*O. mykiss*; listed as threatened on August 18, 1997 ([62 FR 43937]); critical habitat designated on February 16, 2000 [65 FR 7764]
- Upper Columbia River (UCR) steelhead (*O. mykiss*; listed as endangered on August 18, 1997 [62 FR 43937]); critical habitat designated on February 16, 2000 [65 FR 7764]
- Middle Columbia River (MCR) steelhead (*O. mykiss*; listed as threatened on March 25, 1999 [64 FR 14517]); critical habitat designated on February 16, 2000 [65 FR 7764]
- Upper Willamette River (UWR) steelhead (*O. mykiss*; listed as threatened on March 25, 1999 [64 FR 14517]); critical habitat designated on February 16, 2000 [65 FR 7764]
- Lower Columbia River (LCR) steelhead (*O. mykiss*; listed as **threatened** on March 19, 1998 [63 FR 13347]); critical habitat designated on February 16, 2000 [65 FR 7764]
- Columbia River (CR) chum salmon (*O. keta*; listed as threatened on March 25, 1999 [64 FR 14508]); critical habitat designated on February 16, 2000 [65 FR 7764]
- Snake River (SR) sockeye salmon (*O. nerka*; listed as endangered on November 20, 1991 [56 FR 58619]); critical habitat designated on December 28, 1993 [58 FR 68543]

In its Final 2000 Federal Columbia River Power System (FCRPS) Biological Opinion, the National Marine Fisheries Service (NMFS) concluded that the proposed operation and configuration of the FCRPS and Bureau of Reclamation projects are likely to jeopardize the continued existence of listed Snake River spring/ summer chinook salmon, Snake River fall chinook salmon, Snake River sockeye salmon, and Snake River steelhead, and adversely modify their designated critical habitat. Section 9.1.2 of the 2000 Biological Opinion identified a set of specific, hydrosystem actions that NMFS determined, based available scientific information, would achieve the FCRPS hydrosystem performance standards. Most of the measures address improved passage survival through FCRPS dams and reservoirs by changing project operations and improving project configuration. The NMFS also included in Section 9.1.3 of the Biological Opinion additional measures calling for offsite mitigation. Additional offsite mitigation measures were included because NMFS determined that, *even with survival improvements in fish passage at and between dams, significant mortality associated with FCRPS operations will continue to occur, and additional offsite mitigation for habitat, hatcheries, and harvest is needed to avoid jeopardy.*

These listings, and the plight of other severely reduced species such as Pacific lamprey, demonstrate that no species can survive the failure to provide for the full range of their life history needs. To be of value as a relevant source document to protect, mitigate and enhance fishery resources of the Columbia River Basin affected by the development and operation of the basin's hydroelectric facilities, the document must focus on providing for the full range of these life history needs. As indicated above, aggressive action is needed to improve survival through the mainstem FCRPS projects. Even with aggressive and progressive action, however, losses

will still be severe and will jeopardize the continued existence of listed species, if additional offsite measures are not undertaken to attempt to compensate for those losses,

The above discussion is intended to capture a sense of urgency and to describe the critical status of fish populations linked with mainstem habitats. Our general perception of the Draft Mainstem Amendments is that energy supply and cost considerations tend to unduly dampen aggressive mainstem actions needed to serve life history needs of severely reduced fish populations and to avoid jeopardy. We believe this is a mistake and will result in continued mortalities through the hydrosystem at levels irrecompensable through offsite mitigation measures.

We offer the following comments on specific sections of the referenced document:

Page 6, second bullet, The Council's stated ultimate goal to provide recommendations for more biologically effective spill, flow and other mainstem operations and actions at the minimum of economic cost is worthwhile. However, the Council must also be prepared to acknowledge that certain measures are expensive, but very much needed. It is unacceptable to exhaustively explore cost-savings options for needed actions while severely depressed populations continue to wither.

Page 6. Last paragraph. The Council's responsibility to meet both the fish and wildlife requirements of the Power Act and power supply obligations is recognized. However, in view of the multiple listings pursuant to the Endangered Species Act, attention to the fish and wildlife side of its responsibilities needs to be considerably enhanced.

Page 8, first paragraph. A "habitat-based" program is desirable. Regarding the application of "other methods" where application of a habitat-based approach is not feasible, any strategy that does not provide for the full complement of life history needs of the affected species will fail. Page 9, last sentence. This sentence implies that system changes needed to meet critical life history needs of species at risk must be put on hold until the economics and power supply needs have been satisfied. Given the critical plight of affected fish populations, as discussed in our opening remarks, this is not acceptable.

Page 10, fourth paragraph, We support the Council's efforts to protect, mitigate and enhance all fish and wildlife in the basin affected by the hydrosystem and the Council's broader goal to allow for recovery of listed species *and abundant opportunities for tribal trust and treaty right harvest and non-tribal harvest.*

Page 11. Another area where emphasis should be provided to protect and restore mainstem spawning and rearing habitats and populations is the Snake River above the Hells Canyon Complex. About 80% of the historical Snake River fall chinook spawning habitat was above the Hells Canyon Complex. To treat the Columbia Basin as a "system" in accordance with the Pacific Northwest Electric Power Planning and Conservation Act, this area must be incorporated as well.

Page 12, third bullet. Artificial transportation would seem to select for traits for surviving barging rather than surviving and adapting to environmental variability of in-river conditions.

Page 12, last bullet. This objective should include increasing the amount of fall chinook spawning habitat in the Snake River above the Hells Canyon Complex, as well,

Page 13, first bullet, first tick, In furtherance of this objective, the Council should provide vigorous support for the regional flood control reassessment as called for in the 2000 Biological opinion.

Page 13, first bullet, last tick. Delete this tick due to redundancy. This approach is adequately covered in the above tick.

Page 14, first bullet. Reestablishing a normative hydrograph would support ecosystem functions in the estuary.

Page 19, last bullet. Accepting measures in the 2000 Biological Opinions except where these measures are inconsistent with specific objectives and measures included in the mainstem plan is nebulous. These differences should be more explicitly defined.

Page 20, first paragraph. In its zeal to achieve cost-effectiveness, the Council should not lose sight of the strategy identified on page 19, to *provide conditions that best fit those natural behavior patterns and river processes that most closely approximate the physical and biological conditions needed by the relevant species.*

Page 21, last bullet. Add the Hells Canyon Complex to the feasibility evaluation list,

Page 23, first bullet. Improvement of the smolt to adult return ratio (SAR) should be emphasized as a high priority.

Page 23, last bullet. The need for dam breaching should be revisited if, when, and at any time it is concluded that continuation of ongoing measures in and of themselves will not lead to recovery and restoration. Imminent threat of extinction is a requisite call to action, regardless of process timetables.

Page 24, first bullet. Analysis should not focus on the efficacy of artificial transportation compared to in-river survival within a severely degraded and altered mainstem migration environment, but rather on determining the most effective means of achieving recovery and restoration targets,

Page 24, fourth bullet, second tick. Is a mass spill component targeting fall chinook incorporated into the study?

Page 24, fourth bullet, last tick, We advise against wholesale application of transportation as a strategy until delayed survival and adverse effects on homing behavior are more clearly determined.

Page 25, first bullet. The recommendation to use spill for populations that cannot be transported or are ineffectively transported implies that a determination has been made that some populations can be effectively transported, Because delayed survival effects from transportation and adverse effects on homing behavior are not clearly defined, how can a determination be made that transportation is effective?

Page 25, second bullet. A goal is stated to determine if it is possible to achieve the same or greater levels of survival and biological benefit to migrating fish as currently achieved while reducing the amount of water spilled, thus decreasing the adverse impact on the region's power supply, Unnecessary costs to the power system are not desirable, however, the NMFS 2000 Biological Opinion clearly indicates that current hydrosystem mitigating measures are not adequate to avoid jeopardizing the continued existence of listed species. Even with aggressive hydrosystem measures added, jeopardy is still at issue and compensatory off site mitigation measures are necessary, Spill is a needed action to assist in the recovery of listed species. More, rather than less, spill is likely to be required, and spill can be expensive. Spill is a necessary expense. The fish and wildlife resources impacted by construction and operation of the hydrosystem have born very high costs, as well, to the point of near extinction.

Page 26, fourth bullet, The notion to use a portion of foregone spill proceeds to finance projects or activities elsewhere in the basin apparently assumes that losses from reduced spill can be recompensed elsewhere. The NMFS in their 2000 Biological Opinion has posed a similar notion that off-site mitigation activities can somehow compensate for unavoidable losses caused by the hydrosystem. The off site mitigation strategy has basically bought some time to determine if anything short of dam breaching can save listed species from extinction, This is a grand experiment and whether the off-site mitigation strategy will provide enough benefits to counteract hydrosystem mortalities has not yet been evaluated by the NMFS. As stated earlier, any strategy that does not provide for the full complement of life history needs of the affected species will fail.

Page 28, second bullet, fourth tick. Incorporate research on stress from by-pass and latent effects on disease and survival.

Page 29, last bullet. Historically, anadromous and resident fish co-existed in the basin and thrived. It is the construction and operation of the hydropower system that created the upstream/downstream and storage reservoir/downriver "balance" issues, All flow augmentation does is use water from an unnatural, constructed storage reservoir upstream to compensate, in part, for unnatural conditions created by the construction of run of the river reservoirs downstream. We need to keep our eyes on the ball and manage water to more closely approximate the natural hydrographic patterns and reestablish natural river processes.

Page 30. Controversy, biological bantering and political posturing over flow-survival relationships, flow targets, flow measures, and flow augmentation in general can be counter-productive and go a long way to stymie decision-making and delay action. Again, we need to keep our eyes on the ball and manage water to more closely approximate the natural hydrographic patterns and reestablish natural river processes. If the region is successful in re-shaping flood control operations, many of the flow augmentation conflicts would likely dissipate.

Page 32, fourth bullet. Do *not* eliminate the April 10 upper flood control rule curve target for Dworshak Reservoir, The US Army Corps of Engineers' Water Control Manual for Dworshak Dam and Reservoir indicates that the variable April 1 (not April 10) upper flood control rule curve targets are based on a 95% probability of refill. This Water Control manual also indicates that reservoir drawdown and variable refill operations are based on water volume forecasts *and* a mean daily release of 2,000 cfs from the forecast date through July 31. If the forecast-based target upper flood control rule curve elevations are based on 95% probability of refill *and* a minimal release of 2,000 cfs during such refill period, then how could there be a 95% probability of refill if reservoir elevations were pulled down below the upper flood control rule curve level? The upper flood control rule curve targets already incorporate a "cranking down" of reservoir outflows to achieve the 95% probability of refill, so the concept of drawing the reservoir down below the upper flood control rule curve and catching up on refill by "cranking down" on outflows appears invalid. Additionally, water forecasts often decrease with time, as the primary snowpack accumulation period nears completion. Committing to a reservoir elevation below the most current upper flood control rule curve early in the forecast cycle could spell disaster in the event of overly exuberant early water content forecasts.

Page 35, first bullet, second tick. The Council should remain active in Upper Snake and Hells Canyon Complex flow issues pursuant to Section 4,(h)(1)(A) of the Pacific Northwest Electric Power Planning and Conservation Act that directs the program to deal with the Columbia River and its tributaries as a system, Dworshak operations are linked to water management decisions for the Upper Snake and the Hells Canyon Complex, and therefore require a systems approach.

Page 37, second bullet. We concur with and support the proposed operational criteria for Dworshak Reservoir,

Page 40, second paragraph. We see no reason to change the administrative structure of the Fish Passage Center.

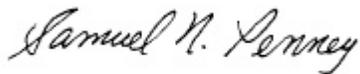
Page 41, second bullet, The proposed research priority basically addresses the costs of fish and wildlife actions to the power system, As previously stated, NMFS 2000 Biological Opinion clearly indicates that current hydrosystem mitigating measures are not adequate to avoid jeopardizing the continued existence of listed species. Even with aggressive hydrosystem measures added, jeopardy is still at issue and compensatory off- site mitigation measures are necessary. The off site mitigation strategy is experimental and its potential success is unknown, Some hydrosystem mitigation actions, such as spill, are necessary and come at a cost to the hydrosystem. A purpose of the Pacific Northwest Electric Power Planning and Conservation Act

is to protect, mitigate and enhance the fish and wildlife, including related spawning grounds and habitat, of the Columbia River and its tributaries, particularly anadromous fish. Since passage of the act in 1980 and establishment of the Northwest Power Planning Council to further the purposes of the act, twelve species of Columbia Basin anadromous salmonids have been listed pursuant to the Endangered Species Act as threatened or endangered, The fish and wildlife resources impacted by construction and operation of the hydrosystem have already born very high costs, to the point of near extinction. To the Nez Perce Tribe, these costs have been and are particularly hard to bear for many reasons, including the facts that Pacific salmon are part of our spiritual and cultural identity, are a source of livelihood, and are an essential component of our nutritional health.

Page 43. The lack of supportive funding for involvement in the annual and in-season Biological Opinion implementation structure, including the Technical Management Team and Implementation Team, limits effective participation.

Thank you for this opportunity to comment on the referenced document.

Sincerely,

A handwritten signature in cursive script that reads "Samuel N. Penney".

Samuel N. Penney
Chairman