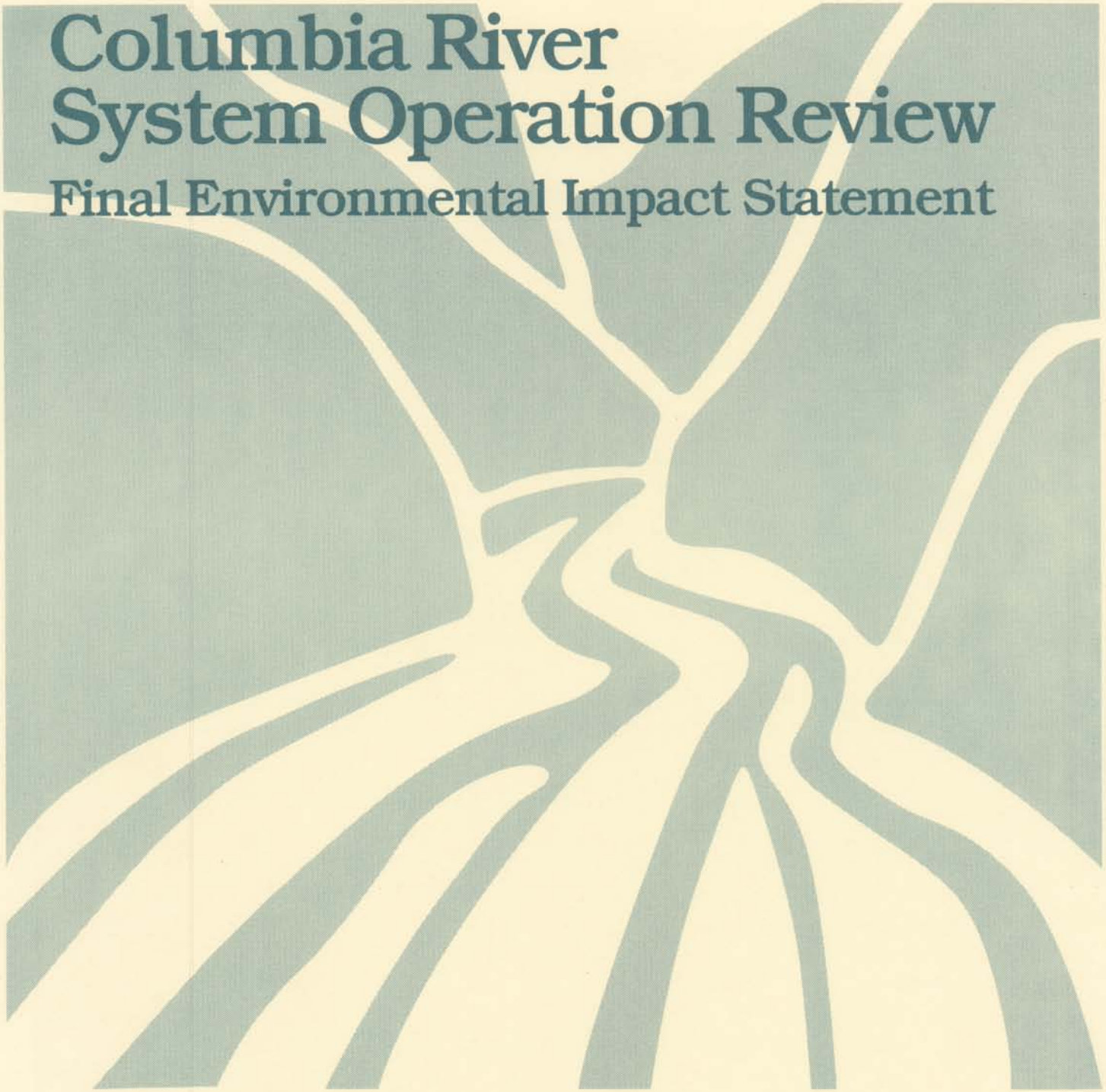
Columbia River System Operation Review

Final Environmental Impact Statement



Appendix T

Comments and Responses

BONNEVILLE POWER ADMINISTRATION

US Army Corps of Engineers
North Pacific Division

U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

DOE/EIS-0170

November 1995

PUBLIC INVOLVEMENT IN THE SOR PROCESS

The Bureau of Reclamation, Corps of Engineers, and Bonneville Power Administration wish to thank those who reviewed the Columbia River System Operation Review (SOR) Draft EIS and appendices for their comments. Your comments have provided valuable public, agency, and tribal input to the SOR NEPA process. Throughout the SOR, we have made a continuing effort to keep the public informed and involved.

Fourteen public scoping meetings were held in 1990. A series of public roundtables was conducted in November 1991 to provide an update on the status of SOR studies. The lead agencies went back to most of the 14 communities in 1992 with 10 initial system operating strategies developed from the screening process. From those meetings and other consultations, seven SOS alternatives (with options) were developed and subjected to full–scale analysis. The analysis results were presented in the Draft EIS released in July 1994. The lead agencies also developed alternatives for the other proposed SOR actions, including a Columbia River Regional Forum for assisting in the determination of future SOSs, Pacific Northwest Coordination Agreement alternatives for power coordination, and Canadian Entitlement Allocation Agreements alternatives. A series of nine public meetings was held in September and October 1994 to present the Draft EIS and appendices and solicit public input on the SOR. The lead agencies received 282 formal written comments. Your comments have been used to revise and shape the alternatives presented in the Final EIS.

Regular newsletters on the progress of the SOR have been issued. Since 1990, 20 issues of *Streamline* have been sent to individuals, agencies, organizations, and tribes in the region on a mailing list of over 5,000. Several special publications explaining various aspects of the study have also been prepared and mailed to those on the mailing list. Those include:

The Columbia River: A System Under Stress
The Columbia River System: The Inside Story
Screening Analysis: A Summary
Screening Analysis: Volumes 1 and 2
Power System Coordination: A Guide to the Pacific Northwest Coordination Agreement
Modeling the System: How Computers are Used in Columbia River Planning
Daily/Hourly Hydrosystem Operation: How the Columbia River System Responds to Short–Term Needs

Copies of these documents, the Final ElS, and other appendices can be obtained from any of the lead agencies, or from libraries in your area.

Your questions and comments on these documents should be addressed to:

SOR Interagency Team
P .O. Box 2988
Portland, OR 97208–2988

PREFACE: SETTING THE STAGE FOR THE SYSTEM OPERATION REVIEW

WHAT IS THE SOR AND WHY IS IT BEING CONDUCTED?

The Columbia River System is a vast and complex combination of Federal and non-Federal facilities used for many purposes including power production, irrigation, navigation, flood control, recreation, fish and wildlife habitat, and municipal and industrial water supply. Each river use competes for the limited water resources in the Columbia River Basin.

To date, responsibility for managing these river uses has been shared by a number of Federal, state, and local agencies. Operation of the Federal Columbia River system is the responsibility of the Bureau of Reclamation (Reclamation), Corps of Engineers (Corps) and Bonneville Power Administration (BPA)

The System Operation Review (SOR) is a study and environmental compliance process being used by the three Federal agencies to analyze future operations of the system and river use issues. The goal of the SOR is to achieve a coordinated system operation strategy for the river that better meets the needs of all river users. The SOR began in early 1990, prior to the filing of petitions for endangered status for several salmon species under the Endangered Species Act.

The comprehensive review of Columbia River operations encompassed by the SOR was prompted by the need for Federal decisions to (1) develop a coordinated system operating strategy (SOS) for managing the multiple uses of the system into the 21st century; (2) provide interested parties with a continuing and increased longterm role in system planning (Columbia River Regional Forum); (3) renegotiate and renew the Pacific Northwest Coordination Agreement (PNCA), a contractual arrangement among the region's major hydroelectric generating utilities and affected Federal agencies to provide for coordinated power generation on the Columbia River system; and (4) renew or develop new Canadian Entitlement Allocation Agreements (contracts that divide Canada's share of Columbia River Treaty downstream power benefits and obligations among three participating public utility districts and BPA). The review provides the environmental analysis required by the National Environmental Policy Act (NEPA).

This technical appendix addresses only the effects of alternative system operating strategies for managing the Columbia River system. The environmental impact statement (EIS) itself and some of the other appendices present analyses of the alternative approaches to the other three decisions considered as part of the SOR.

WHO IS CONDUCTING THE SOR?

The SOR is a joint project of Reclamation, the Corps, and BPA-the three agencies that share responsibility and legal authority for managing the Federal Columbia River System. The National Marine Fisheries Service (NMFS), U.S. Fish and Wildlife Service (USFWS), and National Park Service (NPS), as agencies with both jurisdiction and expertise with regard to some aspects of the SOR, are cooperating agencies. They contribute information, analysis, and recommendations where appropriate. The U.S. Forest Service (USFS) was also a cooperating agency, but asked to be removed from that role in 1994 after assessing its role and the press of other activities.

HOW IS THE SOR BEING CONDUCTED?

The system operating strategies analyzed in the SOR could have significant environmental impacts. The study team developed a three-stage process-scoping, screening, and full-scale analysis of the strategies-to address the many issues relevant to the SOR.

At the core of the analysis are 10 work groups. The work groups include members of the lead and cooperating agencies, state and local government agencies, representatives of Indian tribes, and members

of the public. Each of these work groups has a single river use (resource) to consider.

Early in the process during the screening phase, the 10 work groups were asked to develop an alternative for project and system operations that would provide the greatest benefit to their river use, and one or more alternatives that, while not ideal, would provide an acceptable environment for their river use. Some groups responded with alternatives that were evaluated in this early phase and, to some extent, influenced the alternatives evaluated in the Draft and Final EIS. Additional alternatives came from scoping for the SOR and from other institutional sources within the region. The screening analysis studied 90 system operation alternatives.

Other work groups were subsequently formed to provide projectwide analysis, such as economics, river operation simulation, and public involvement.

The three-phase analysis process is described briefly below.

- **Scoping/Pilot Study**—After holding public meetings in 14 cities around the region, and coordinating with local, state, and Federal agencies and Indian tribes, the lead agencies established the geographic and jurisdictional scope of the study and defined the issues that would drive the EIS. The geographic area for the study is the Columbia River Basin (Figure P-1). The jurisdictional scope of the SOR encompasses the 14 Federal projects on the Columbia and lower Snake Rivers that are operated by the Corps and Reclamation and coordinated for hydropower under the PNCA. BPA markets the power produced at these facilities. A pilot study examining three alternatives in four river resource areas was completed to test the decision analysis method proposed for use in the SOR.

- **Screening**—Work groups, involving regional experts and Federal agency staff, were created for 10 resource areas and several support functions. The work groups developed computer screening models and applied them to the 90 alternatives identified during screening. They compared the impacts to a baseline operating year—1992—and ranked each alternative according to its impact on their resource or river use. The lead agencies reviewed the results with the public in a series of regional meetings in September 1992.

- **Full-Scale Analysis**—Based on public comment received on the screening results, the study team sorted, categorized, and blended the alternatives into seven basic types of operating strategies. These alternative strategies, which have multiple options, were then subjected to detailed impact analysis. Twenty-one possible options were evaluated. Results and tradeoffs for each resource or river use were discussed in separate technical appendices and summarized in the Draft EIS. Public review and comment on the Draft EIS was conducted during the summer and fall of 1994. The lead agencies adjusted the alternatives based on the comments, eliminating a few options and substituting new options, and reevaluated them during the past eight months. Results are summarized in the Final EIS.

Alternatives for the Pacific Northwest Coordination Agreement (PNCA), the Columbia River Regional Forum (Forum), and the Canadian Entitlement Allocation Agreements (CEAA) did not use the three-stage process described above. The environmental impacts from the PNCA and CEAA were not significant and there were no anticipated impacts from the Regional Forum. The procedures used to analyze alternatives for these actions are described in their respective technical appendices.

For detailed information on alternatives presented in the Draft EIS, refer to that document and its appendices.

WHAT SOS ALTERNATIVES ARE CONSIDERED IN THE FINAL EIS?

Seven alternative System Operating Strategies (SOS) were considered in the Draft EIS. Each of the seven SOSs contained several options bringing the total number of alternatives considered to 21. Based on review of the Draft EIS and corresponding adjustments, the agencies have identified seven operating strategies that are evaluated in this Final EIS. Accounting for options, a total of 13 alternatives is now under consideration. Six of the alternatives remain unchanged from the specific options considered in the Draft EIS. One is a revision to a previously considered alternative, and the rest represent replacement or new alternatives. The basic categories of SOSs and the numbering convention remains the same as was used in the Draft EIS. However, because some of the alternatives have been dropped, the numbering of the final SOSs are not consecutive. There is one new SOS category, Settlement Discussion Alternatives, which is labeled SOS 9 and replaces the SOS 7 category. This category of alternatives arose as a consequence of litigation on the 1993 Biological Opinion and ESA Consultation for 1995.

The 13 system operating strategies for the Federal Columbia River system that are analyzed for the Final EIS are:

SOS 1a Pre Salmon Summit Operation represents operations as they existed from around 1983 through the 1990–91 operating year, prior to the ESA listing of three species of salmon as endangered or threatened.

SOS 1b Optimum Load–Following Operation represents operations as they existed prior to changes resulting from the Regional Act. It attempts to optimize the load–following capability of the system within certain constraints of reservoir operation.

SOS 2c Current Operation/No–Action Alternative represents an operation consistent with that specified in the Corps of Engineers' 1993 Supplemental EIS. It is similar to system operation that occurred in 1992 after three species of salmon were listed under ESA.

SOS 2d [New] 1994–98 Biological Opinion represents the 1994–98 Biological Opinion operation that includes up to 4 MAF flow augmentation on the Columbia, flow targets at McNary and Lower Granite, specific volume releases from Dworshak, Brownlee, and the Upper Snake, meeting sturgeon flows 3 out of 10 years, and operating lower Snake projects at MOP and John Day at MIP.

SOS 4c [Rev.] Stable Storage Operation with Modified Grand Coulee Flood Control attempts to achieve specific monthly elevation targets year–round that improve the environmental conditions at storage projects for recreation, resident fish, and wildlife. Integrated Rules Curves (IRCs) at Libby and Hungry Horse are applied.

SOS 5b Natural River Operation draws down the four lower Snake River projects to near riverbed levels for four and one–half months during the spring and summer salmon migration period, by assuming new low level outlets are constructed at each project.

SOS 5c [New] Permanent Natural River Operation operates the four lower Snake River projects to near riverbed levels year–round.

SOS 6b Fixed Drawdown Operation draws down the four lower Snake River projects to near spillway crest levels for four and one–half months during the spring and summer salmon migration period.

SOS 6d Lower Granite Drawdown Operation draws down Lower Granite project only to near spillway crest level for four and one–half months.

SOS 9a [New] Detailed Fishery Operating Plan includes flow targets at The Dalles based on the previous year's end–of–year storage content, specific volumes of releases for the Snake River, the drawdown of Lower Snake River projects to near spillway crest level for four and one–half months, specified spill percentages, and no fish transportation.

SOS 9b [New] Adaptive Management establishes flow targets at McNary and Lower Granite based on runoff forecasts, with specific volumes of releases to meet Lower Granite flow targets and specific spill percentages at run-of-river projects.

SOS 9c [New] Balanced Impacts Operation draws down the four lower Snake River projects near spillway crest levels for two and one-half months during the spring salmon migration period. Refill begins after July 15. This alternative also provides 1994-98 Biological Opinion flow augmentation, integrated rule curve operation at Libby and Hungry Horse, a reduced flow target at Lower Granite due to drawdown, winter drawup at Albeni Falls, and spill to achieve no higher than 120 percent daily average for total dissolved gas.

SOS PA Preferred Alternative represents the operation proposed by NMFS and USFWS in their Biological Opinions for 1995 and future years; this SOS operates the storage projects to meet flood control rule curves in the fall and winter in order to meet spring and summer flow targets for Lower Granite and McNary, and includes summer draft limits for the storage projects.

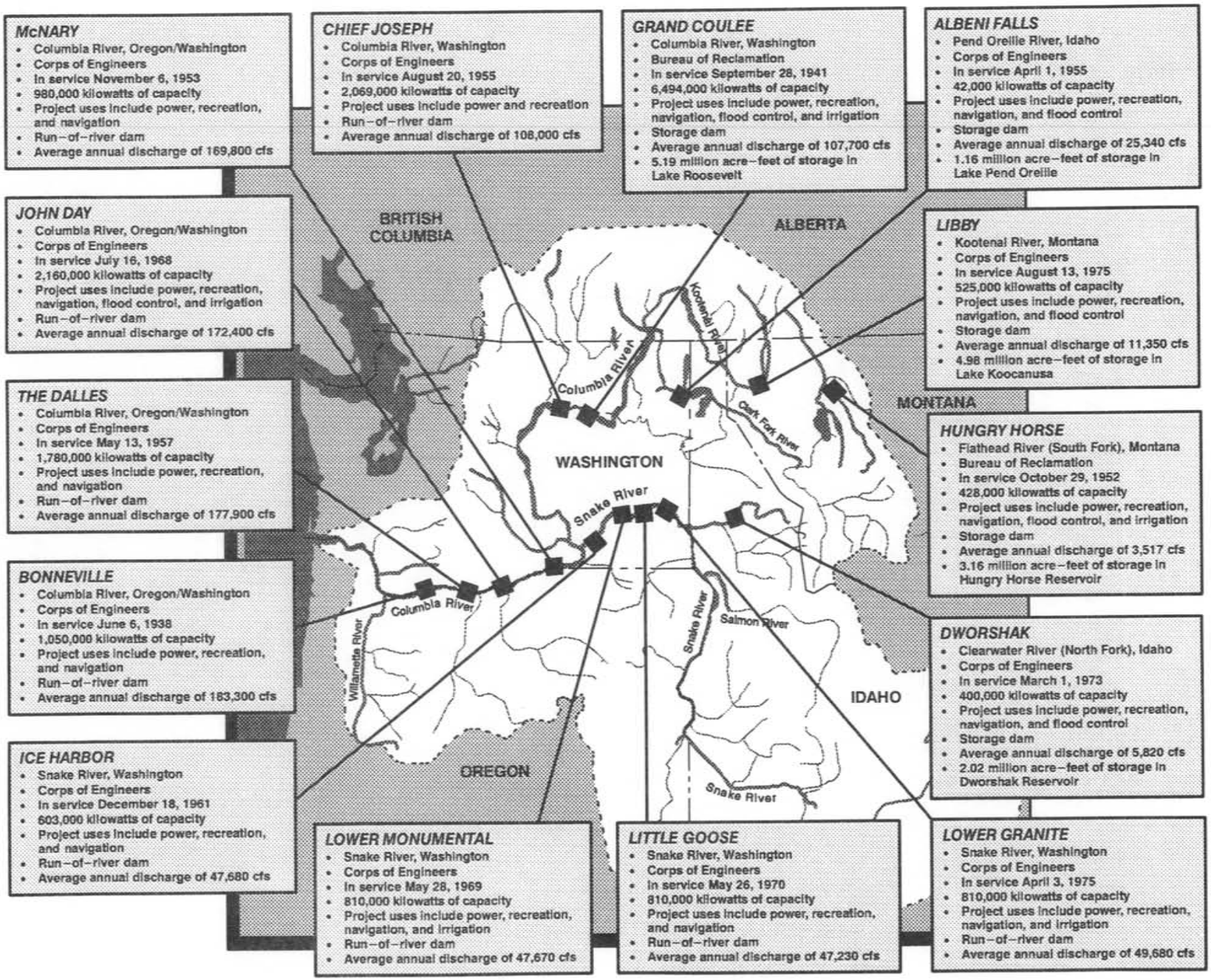
WHAT DO THE TECHNICAL APPENDICES COVER?

This technical appendix is one of 20 prepared for the SOR. They are:

A. River Operation Simulation
B. Air Quality
C. Anadromous Fish & Juvenile Fish Transportation
D. Cultural Resources
E. Flood Control
F. Irrigation/Municipal and Industrial Water Supply
G. Land Use and Development
H. Navigation
I. Power
J. Recreation
K. Resident Fish
L. Soils, Geology, and Groundwater
M. Water Quality
N. Wildlife
O. Economic and Social Impacts
P. Canadian Entitlement Allocation Agreements
Q. Columbia River Regional Forum
R. Pacific Northwest Coordination Agreement
S. U. S. Fish and Wildlife Service Coordination Act Report
T. Comments and Responses

Each appendix presents a detailed description of the work group's analysis of alternatives, from the scoping process through full-scale analysis. Several appendices address specific SOR functions (e.g., River Operation Simulation), rather than individual resources, or the institutional alternatives (e.g., PNCA) being considered within the SOR. The technical appendices provide the basis for developing and analyzing alternative system operating strategies in the EIS. The EIS presents an integrated review of the vast wealth of information contained in the appendices, with a focus on key issues and impacts. In addition, the three agencies have prepared a brief summary of the EIS to highlight issues critical to decisionmakers and the public.

There are many interrelationships among the different resources and river uses, and some of the appendices provide supporting data for analyses presented in other appendices. This Comments and Responses appendix relies on supporting data contained in Appendices A-S. For complete coverage of all aspects of comments and responses, readers may wish to review all 20 appendices in concert.



1 million acre feet = 1.234 billion cubic meters
1 cubic foot per second = 0.028 cubic meters per second

Figure P–1. Projects in the System Operation Review.

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CHAPTER 1

COMMENTS AND RESPONSES

This appendix documents the public and agency review of the system operation review (SOR) Draft EIS and how the SOR agencies used the review to formulate the FINAL EIS. The appendix includes a summary of the review process, a discussion of the nature of the comments, a list of all commentors, reproductions of comment letters, and responses to all comments. Changes in the EIS text in response to comments are noted in the responses.

1.1 DRAFT EIS REVIEW PROCESS

The Draft EIS was officially filed with the U.S. Environmental Protection Agency and released for public and agency review on July 25th, 1994. Approximately 1,000 copies of the Draft EIS were distributed to elected officials, government agencies, tribal organizations, associations, businesses, individuals, and public libraries. The review period for the Draft EIS lasted 144 days; it ended on December 15, 1994.

Nine public meetings were held at Boise, Lewiston, and Sandpoint Idaho; Grand Coulee, Pasco, and Seattle, Washington; Kalispell and Libby, Montana; and Portland, Oregon, between September 19 and October 4, 1994, to enable review of the Draft EIS. Approximately 500 people attended the meetings.

Each meeting consisted of three parts. The first part was a slide presentation addressing the purposes, alternatives, issues involved, and anticipated effects of the SOR and the EIS. The second part was a question and answer session in which the audience asked questions of a technical panel. The panel included key staff from BPA, the Corps, and Reclamation. The third part of the meeting was a formal public hearing open to all speakers who wished to provide testimony. A court reporter recorded all hearing testimony (including the panel discussions). Transcripts of the hearings are available for purchase, at the cost of reproduction, from the SOR Interagency Team.

The SOR agencies encouraged recipients of the Draft EIS to submit written comments on the document. Over 250 letters were received. The agencies reviewed these letters as part of the Final EIS preparation.

1.2 DRAFT EIS COMMENTS

The SOR agencies received written or verbal comments from over 370 people during the review process. This included 114 statements from speakers at the public hearings, 253 letters, and seven comments written on comment cards issued at the public meetings. The total number of individuals commenting on the Draft EIS was actually fewer than 370, as many of the public hearing speakers also submitted letters and/or comment cards. The comment letters ranged from one-page handwritten notes to form letters to large packages with lengthy reviews supported by multiple attachments. All comments received full consideration, regardless of their style or volume.

The SOR agencies reviewed all comment letters, comment cards, and hearing records and identified all substantive comments with a number. Comments were numbered sequentially to provide a unique identifier for each comment. This process resulted in the identification of 2,063 separately numbered comments from all the comment sources.

Table 1-1 summarizes the types of commentors and comments received during the comment period on the Draft EIS. Seventy-six percent of the letters and written statements were from individuals and businesses throughout the region and the SOR study area. Comment letters were received from many state agencies and elected officials in Idaho, Oregon, Washington, and Montana. Eleven Federal agencies submitted letters.

Table 1–2 is a complete list of all commentors. This table, which follows the introduction of this appendix, functions as a table of contents for the comments reproduced here. Attachments to the comment letters that do not contain substantive comments directly addressing the EIS are omitted. Because of the length of the hearing transcripts and the fact that most hearing testimony is repeated in the comment letters, comments identified from the hearing record are also not reproduced. Copies of the hearing transcripts are available on request. The complete printed record of all comments received on the Draft EIS is maintained by the SOR agencies and is available for public review at the Columbia River Coordination Office, Bureau of Reclamation, 825 N.E. Multnomah Street, Suite 1110, Portland, OR 97232–2135.

Table 1–1. Summary of Draft EIS Review Input

Category	Number
Letters	
Tribal (T)	21
Federal government (F)	11
State government (S)	19
Local government (L)	8
Association/Organization/ Business (O)	77
Individual (I)	
Non–Form Letters (incl. hearing comment cards)	116
Form Letters	8
Total Letters	**260**
Testimony at hearings	**114**
Total	**374**

As part of the comment review process, comments were categorized according to the issues addressed and support for or opposition to SOR alternatives. The NEPA process, including comments regarding the lack of a preferred alternative, was the most frequent issue category mentioned and was the subject of about 230 percent of all coded comments (478 out of 2,051). The second most frequent issue category was plan selection, which received about 17 percent of all comments (346 comments). Most of the plan selection comments were categorized according to opposition to or support for SOS options. These numbers are addressed below. Other frequent issue categories were anadromous fish (265 comments, including 70 on fish transportation; 52 on harvest, hatcheries, and habitat; and 36 on model analysis), related processes (107 comments, including 38 comments on NMFS ESA/Recovery Plan), resident fish (95 comments), and economics (113 comments). Each of the other issue categories received less than 3 percent of the comments.

More than 450 comments explicitly stated support for or opposition to a specific SOS option or for general operation concepts (e.g., drawdown, natural river, DFOP, etc.). Thirty–three comments specifically stated support SOS 4, while 13 comments stated opposition to SOS 4. Other supporting comments included 40 comments favoring fish transportation; 22 comments on surface collectors; and 72 comments favoring Recover 1, a package of structural and operational measures advocated by a river user group. On the other hand, 34 comments stated oppsition to the general concept of drawdown, 22 opposed flow augmentation, 17 opposed SOS 7, and 14 opposed spill. SOSs 1, 3, 5 and 6 also had from 11 to 17 comments each in opposition.

1.3 RESPONSE TO COMMENTS

The SOR agencies prepared a response to each of the 2,051 comments received on the Draft EIS. Certain issues were mentioned repeatedly in the comments. These broad, recurring themes frequently involved the factors contributing to the current status of ESA–listed salmon stocks or to issues generated by the specific focus of the EIS.

Table 1–2. Commentors on the Draft EIS

Comment	Organization	Person
Tribal Letters		
T1	Columbia River Inter–Tribal Fish Commission	Ted Strong
T2	Kalispel Tribe of Indians	Glen Nenema
T3	Coeur D'Alene Tribe	Ernest L. Stensgar
T4	Nez Perce Tribe, Dept. Fisheries	Silas Whitman
T5	Confederated Tribes of the Umatilla Indian Reservation	Donald G. Sampson
T6	Kootenai Tribe of Idaho	Ron Abraham
T7	Kootenai Tribe of Idaho	Paul Anders
T8	Confederated Tribes of Warm Springs	Nathan Jim, Sr.
T9	Spokane Tribe of Indians	Larry Goodrow
T10	Spokane Tribe of Indians	Larry Goodrow
T11	Mid–Columbia River Council & Chiefs	Leroy George
T12	Colville Confederated Tribes	Eddie Palmanteer
T13	Confederated Tribes of the Umatilla Indian Reservation	Donald G. Sampson
T14	Yakama Tribal Council	Jerry Meninick
T15	Shoshone–Bannock Tribes	Marvin D. Osborne
T16	Upper Columbia United Tribes Fisheries Research Center	Allan T. Scholz
T17	Salish and Kootenai Tribes	Michael T. Pablo
T18	Columbia River Inter–Tribal Fish Commission	Ted Strong
T19	Columbia River Inter–Tribal Fish Commission	Ted Strong
T20	Coeur d'Alene Tribe	Ernest L Stensgar
T21	Spokane Tribe of Indians	Warren Seyler
Federal Letters		
F1	Northwest Power Planning Council	R. Ted Bottiger
F2	Columbia Basin Fish & Wildlife Authority	John R. Donaldson
F3	U.S. Department of the Interior	Willie R. Taylor
F4	Northwest Power Planning Council	Jay L. Webb
F5	U.S. Bureau of Indian Affairs	Dan Speaks
F6	U.S. Environmental Protection Agency	Charles E. Findley
F7	Canada Fisheries and Oceans	Gordon L. Ennis
F8	U.S. Bureau of Indian Affairs	Dan Speaks

Table 1–2. Commentors on the Draft EIS – CONT

Comment	Organization	Person
Federal Letters – CONT		
F9	U.S. Bureau of Mines	John R. Norberg
F10	Northwest Power Planning Council	Edward W. Sheets
F11	U.S. Department of the Interior	Willie R. Taylor
State Letters		
S1	Idaho State Senate	John T. Peavey
S2	CalTrans District 2	Vicki Compton
S3	The Resources Agency of California	James T. Burroughs
S4	Montana House of Representatives	Mary Lou Peterson
S5	State Engineer's Office, State of Wyoming	Gordon W. Fassett
S6	Montana State Senate	Bob Brown
S7	Nevada State Clearinghouse	Julie Butler
S8	State of Idaho	Cecil D. Andrns
S9	State of Oregon	Barbara Roberts
S10	State of Montana	Marc Racicot
S11	Oregon Water Resources Dept.	Martha O. Pagel
S12	State of Washington Dept. of Ecology	Barbara J. Ritchie
S13	Lower Columbia River Water Quality Study	Jean Cameron
S14	Idaho Dept. of Water Resources	R. Keith Higginson
S15	State of Montana	Marc Racicot
S16	Oregon Dept. of Environmental Quality	Michael J. Downs
S17	Oregon Dept. of Fish & Wildlife	Douglas A. Dehart
S18	State of Idaho	Cecil D. Andrus
S19	Idaho State Historical Society	Robert M. Yohe II
Local Letters		
L1	Board of County Commissioners, Clearwater County, Idaho	V. James Wilson
L2	City of Umatilla, Oregon	George Hash
L3	Dept. of Community Development, Clark County, Washington	Richard Hines
L4	Board of County Commissioners, Lincoln County, Montana	Noel E. Williams
L5	Dept. of Water & Power, City of Los Angeles, California	J. Alan Walti

Table 1–2. Commentors on the Draft EIS – CONT

Comment	Organization	Person
Local Letters – CONT		
L6	Board of County Commissioners, Benton County, Washington	Raymond E. Isaacson
L7	Board of County Commissioners, Grant County, Washington	LeRoy Allison
L8	City of Boardman, Oregon	Barry Beyelar
Organizational Letters		
O1	Port of Portland	Mike Thorne
O2	Northwest Environmental Defense Center	Daniel J. Rohlf
O3	Columbia Basin Field Office, Sierra Club	Jim Baker
O4	Ling, Nielsen & Robinson	Roger D. Ling
O5	Port of Camas/Washougal	Greg Ermis
O6	Orofino Chamber of Commerce	James W. Grunke
O7	Columbia Rural Electric Assoc. Inc.	Clark A. Brewington
O8	AgriNorthwest	R. Thomas Mackay
O9	Port of Mattawa	Mike Conley
O10	Lake Pend Oreille – Idaho Club	Bill Schaudt
O11	Douglas Electric Cooperative	Dave Sabala
O12	Okanogan County Electric Cooperative	Warren Pringle
O13	Cheran Orchards, Inc.	Daniel Dufault
O14	Oregon Wheat Growers League	Norm Goetze
O15	Western Montana Electric G&T Cooperative	William K. Drummond
O16	Port of Whitman County	Gerald Drnffel
O17	Port of Whitman County	James Weddell
O18	Montana State University	Brnce Morton
O19	Quincy–Columbia Basin Irrigation District	Keith Franklin
O20	Oregon Water Coalition	Bob Hoeffel
O21	State of Idaho Water District 1	Claude Storer
O22	Orofino Chamber of Commerce	James W. Grunke
O23	Middle Snake Regional Water Resource Commission	Bob J. Muffley
O24	Northern Wasco County People's Utility District	Dave Huntington
O25	Columbia Basin Development League	Alice Parker
O26	Columbia River Towboat Association	Whitney Olson
O27	Washington Wheat Commission	James R. Walesby

Table 1–2. Commentors on the Draft EIS – CONT

Comment	Organization	Person
Organizational Letters – CONT		
O28	North Side Canal Company	John A. Rosholt
O29	Independent Hydro Developers Inc.	Douglas A. Spaulding
O30	Anglers' Club of Portland	Greg McMillan
O31	Washington State Water Resources Association	Paul R. Cross
O32	Friends of the Wild Swan	Arlene Montgomery
O33	Columbia Grain International, Inc.	Terry Cleaver
O34	USA Dry Pea and Lentil Council	Tim McGreevy
O35	Lincoln Electric Co–op, Inc	Ralph Byre
O36	Nespelem Valley Electric	John D. Hofman
O37	North Side Canal Company	Ted Diehl
O38	Koocanusa International Coalition	Linda McClure
O39	Columbia River Estuary Study Taskforce	Peter Britz
O40	Bonner County Shoreline Property Owners	Ellsworth D. Brown
O41	Parsons, Smith, Stone & Fletcher	Kent Fletcher
O42	Pacific Northwest Waterways Association	Glenn Vanselow
O43	Columbia River Alliance	Bruce J. Lovelin
O44	Public Power Council	C. Clark Leone
O45	Oregon Grains Commission	Daren Coppock
O46	Public Utility District No. 1 of Okanogan County	Harlan Warner
O47	League of Oregon Cities	Jane Cummins
O48	Pacific Northwest Utilities Conference Committee	Al Wright
O49	Inland Empire Fly Fishing Club	M. Patrick Whitehill
O50	Okanogan Resource Council	Bonnie Lawrence
O51	Greater Sandpoint Chamber of Commerce	Jonathan S. Coe
O52	Idaho Chapter, American Fisheries Society	Wayne Paradis
O53	Public Utility District No. 1 of Chelan County	Willard D. Fields
O54	Direct Service Industries, Inc.	Nanci Tester
O55	Western Montana Electric G&T Cooperative	William K. Drummond
O56	Big Bend Economic Development Council	William R. Riley
O57	The American Waterways Operators	Gerald P. McMahon
O58	Oroville–Tonasket Irrigation District	Dennis P. Burton
O59	Umatilla Electric Cooperative	M. Steven Eldrige

Table 1–2. Commentors on the Draft EIS – CONT

Comment	Organization	Person
Organizational Letters – CONT		
O60	Aberdeen–Springfield Canal Company	Charles E. Yost
O61	Port of Lewiston	David R. Doeringsfeld
O62	Montana Power Company	William A. Pascoe
O63	Potlatch Corporation	William J. Nicholson
O64	Board of Commissioners of Cons. Diking Dist #1, Wahkiakum County, Washington	William J. Faubion
O65	American Rivers	F. Lorraine Bodi
O66	Bullivant Houser Bailey Pendergrass & Hoffman	R. Daniel Lindahl
O67	Libby Area Chamber of Commerce	Janice E. Wood
O68	American Rivers	F. Lorraine Bodi
O69	Sierra Club, Cascade Chapter	Robert A. Blomquist
O70	Fremont–Madison Irrigation District	Dale L. Swensen
O71	The Mountaineers	Craig Rowley
O72	Western Environmental Trade Association	Peggy Olson Trenk
O73	Natural Resources Defense Council	Karen Garrison
O74	Northwest Environmental Defense Center	Daniel J. Rohnlf
O75	Direct Service Industries Inc.	Unsigned
O76	Oregon Natural Resources Council	Diane Valantine
O77	Northwest Irrigation Utilities	John Saven

Individual Letters					
Comment	**Person**	**Comment**	**Person**	**Comment**	**Person**
I1	Lyman Schwarzkopf	I11	Brent Helether	I20	Paul & Katherine Rechnitzer
I2	Daniel M. Ogden	I12	Sol & Darleen Pusey	I21	Scott Maxwell
I3	Scott D. Maxwell	I13	Keith Weist	I22	Claud Judd
I4	Harry Smith	I14	Monica & Roger Van Fossen	I23	Charles M. Wolfe, PhD
I5	Ray S. Hewitt	I15	Bernice Rosenthal	I24	Leon & Vivien Rich
I6	Robert F. Mueller	I16	Arlene Howell	I25	Laura Stalsberg
I7	William Mathis	I17	Alton Howell	I26	Jack Heaston
I8	James F. Buehner, Jr.	I18	Joan C. & David A. Milbrath	I27	Don Guenther
I9	Donna L. Buehner	I19	Raymond Dosher	I28	Greg & Mary Peterson
I10	Ruth W. & Robert Zeller				

Table 1–2. Commentors on the Draft EIS – CONT

Individual Letters – CONT					
Comment	**Person**	**Comment**	**Person**	**Comment**	**Person**
I29	Theodore W. Bailey	I60	G. M. Nelson	I92	Donald T. Stephens
I30	Stephen D. Finlayson	I61	Marriner Orum	I93	William A. Donahue
		I62	Herb G. Davis	I94	Irene Loveless
I31	E. Zahn	I63	Vicki Massey	I95	R. M. Denowh
I32	E. Zahn	I64	Roger & Brenda Kreitzberg	I96	Gerald R. Criner
I33	David Corkran			I97	Kenneth Sorenson
I34	Tim & Kathi Templeton	I65	Dewitt A. Moss	I98	Fred S. Thompsen
		I66	Jess Jaca	I99	Jerry Wolcott
I35	Catherine O'Hare	I67	Gary Defenbaugh	I100	L. H. Sorleys
I36	John Mott	I68	Dale Snipes	I101	W. J. Riddil, Jr.
I37	Gary and Connie deBlaquiere	I69	Thomas E. Cooke	I102	Linda F. Gerard
		I70	Richard N. Congreve	I103	Robert F. Kamena
I38	Paul Dukes	I71	James Fenton	I104	J. H. Hoyer
I39	Barbara Dutro	I72	W. C. Behrens	I105	Russ Ohm
I40	Dennis Harper	I73	Eric Trued	I106	Michael D. Bissell
I41	John and Darlene Grove	I74	Gregory H. Bowers	I107	Mike Miller
		I75	John E. Christenson	I108	E. Anderson
I42	Fred Keller	I76	Jim Pritchard	I109	Russell Bainer
I43	L. C. Greenwood	I77	Fields W. Cobb, Jr.	I110	Russ Der
I44	Jerry Weiser	I78	Bruce McAffee	I111	John W. Leedy
I45	Judy Millard	I79	Kenneth B. Schuster	I112	Bob Kehn
I46	Alton Haymaker	I80	Floyd & Shirley Schneider	I113	RitaWindom
I47	Steve Linton			I114	Eugene Yahvah
I48	Richard Congreve	I81	Brad Carkin	I115	D. Parkening
I49	Thayne Huntsman	I82	Marjorie Stanley	I116	Howard Skelton
I50	Bob Smeltz	I83	William Riley	I117	R. K. Hart
I51	Roger Kreitzberg	I84	Ron Kowitz	I118	Hugh Pickrell, Jr.
I52	Ronald Kreulen	I85	Aubrey F. Taylor	I119	Vince Witt
I53	Curt Leslie	I86	Stan Ogden	I120	Mike Tomasini
I54	Clayton King	I87	Harold Otley	I121	Mike Tuthill
I55	Ralph Zusman	I88	Greg Mallette	I122	Robert Zitterkopf
I56	Robert Domes	I89	Tim Scullen	I123	Scott Ransmier
I57	Russell Kinney	I90	Thomas Townsend	I124	Ron Wagar
I58	Charles Mabbott	I91	Caroline Canavan		
I59	Joanne R. Shelley				

Other recurring themes involved specific criticisms of the EIS and/or particular resource concerns. Comments relating to these recurring themes have been grouped into 13 common issues. These issues are discussed below, followed by a synopsis of each issue and the SOR agencies' response.

Responses to each comment follow the discussion of common issues. When an individual comment relates to one of the 13 common issues, the response refers the reader to the master response. Individual responses are provided for all comments not related to the common issues. Many of the comments stated values or beliefs; others noted support for, or opposition to, a specific system operating strategy (SOS), or agreed with specific statements in the EIS. These types of comments do not require or invite a specific response; they are generally acknowledged with "Thank you for your comment."

Common Issues and Responses

The 13 common issues identified in the comments are as follows, with no significance attached to their order:

1. Lack of a *Preferred Alternative*
2. Adequacy of the SOS Alternatives
3. Geographic Scope of the Analysis
4. The Juvenile Fish Transportation Program
5. Consideration of the Surface Collector Concept
6. Actions involving Harvest, Hatcheries, and/or Habitat
7. Indian Tribal Coordination, Treaty Rights, and Trust Responsibilities
8. Summer Draft of Lake Pend Oreille
9. Use of IRCs for Montana Reservoirs
10. Using Montana Water for Salmon Flow Augmentation
11. Consideration of the Recover 1 Alternative
12. Validity of Measures to Improve River Velocity
13. Loss of Property Values and/or Infringement of Property Rights

Common Issue No. 1: Lack of a Preferred Alternative

Issue:

Approximately 20 written comments criticized the SOR agencies for not identifying a preferred alternative in the Draft EIS. Some of these comments simply objected to the lack of a preferred alternative, and/or asserted a right to review a document that defined a preferred alternative. A number of comments went further, coupling objection to the lack of a preferred alternative with the claim that the SOR agencies should issue a revised draft or supplemental EIS that includes a preferred alternative. In such cases, the need for an additional NEPA document prior to the Final EIS was typically linked to the adequacy of the alternatives presented in the Draft EIS (see Common Issue No. 2). At least one comment questioned the legality of issuing a Draft EIS without a preferred alternative.

Response:

The SOR agencies reaffirm their position on this issue, as presented in the Draft EIS. There were several good reasons for not identifying a preferred alternative at the Draft EIS stage, including the need for extensive public review of all of the alternatives, the likelihood that the final SOS would be a mix of elements from several Draft EIS alternatives, and the links between the SOR alternatives and related processes going on in the region.

The Draft EIS review comments were very helpful in refining the agencies' views of the merits of the respective alternatives. SOS PA, the preferred operating strategy identified in the Final EIS, does indeed reflect a mix of elements from several operational alternatives. Most importantly, in SOS PA, the agencies have selected the operating recommendations made by NMFS and USFWS in their recent Biological Opinions for operation of the system in 1995 and future years. The NMFS opinion followed

months of ESA consultation on system operation, and was not available at the time the Draft EIS was issued. NMFS issued the opinion in draft form on January 25, 1995, and as a final document on March 2, 1995. USFWS issued a final opinion concerning sturgeon, four species of snail, bald eagle, gray wolf, grizzley bear, and peregrine falcon on March 1, 1995.

Through the ESA process and through SOR public information materials, the region has had an opportunity to review and become familiar with the Preferred Alternative prior to publication of the Final EIS. In addition, as specified under NEPA, there will be a 30-day no action period following release of the Final EIS before the agencies issue their Record of Decision. This will allow an additional opportunity for review of SOS PA before action is taken.

Common Issue No. 2: Adequacy of the SOS Alternatives

Issue:

Many commentors questioned the adequacy of the SOS alternatives presented in the Draft EIS. Several different perspectives were represented by the comments on this issue. The most common theme was that none of the SOS alternatives would be sufficient to meet the stated purposes. In fact, the statement "The seven strategies outlined in the Draft EIS are inadequate to provide for salmon enhancement and the needs of the multi-use river system" was repeated almost verbatim in many comment letters from river user interests, suggesting a coordinated response among these groups. Some of these comments simply stated that the alternatives were all inadequate, while others based their position on a cost/benefit perspective (i.e., that the SOSs would entail high costs, but yield little salmon recovery benefit).

Many of the letters and hearing statements that took this position also expressed support for non-operational measures, such as juvenile fish transportation improvements and surface collection systems. In general, comments of this type indicated that the SOS alternatives went too far in the direction of operational measures to increase river flows and velocities.

Conversely, some of the comments in this issue group criticized the SOS alternatives for not doing enough to improve in-stream conditions for migrating anadromous fish, or for a lack of balance or completeness. Specific examples included comments that the alternatives were geared too much toward status quo river operations; that some alternatives (such as SOSs 5 and 6) were incomplete strategies and did not address the entire system; and that the alternatives represented an imbalance between the needs of anadromous fish and those of resident fish and wildlife, or between upriver and downriver interests. Some tribes commented that the range of alternatives was inadequate because they had not been consulted on the development of the alternatives, and therefore had not had the opportunity to recommend fish restoration measures.

Response:

The SOR agencies believe that the SOS alternatives evaluated in the Draft and Final EIS were developed through a comprehensive and rigorous process, represent an adequate range of alternatives, and are consistent with the stated purposes for the SOS evaluation. The SOSs evaluated in the Draft EIS reflect the results of a lengthy screening process (documented in the "Screening Analysis Report") in which a large number and wide range of alternatives were consolidated to a more manageable 21 options. Other types of alternatives were considered initially, but were not evaluated in detail. The SOSs evaluated in the Final EIS are based on a further consolidation of the draft SOSs, plus inclusion of additional perspectives on operational possibilities. The analytical results presented in the Final EIS indicate that the SOS alternatives would generally provide varying degrees of improvement in migratory conditions for salmon, while most SOSs would still maintain the other uses of the river system. Operational measures intended to benefit salmon are appropriate and necessary for inclusion among the SOSs, because the agencies cannot ignore their responsibilities under the ESA. Conversely, non-operational measures (regardless of their merits) are

not appropriate as part of the alternatives because they are not within the defined scope for the SOR. However, some non–operational measures are addressed in the SOR in the form of sensitivity analysis, such as the varying assumptions on juvenile fish transportation that were included in the anadromous fish modeling.

While some of the SOSs are similar to current or past operations, others are significant departures from the status quo. SOS PA is based on reordering the prioritization of the basic uses of system storage space, such that providing flows for fish now follows flood control and precedes power generation in the hierarchy of priorities. The SOS impact analysis results bear out this significant shift away from the status quo. SOS 4 also represents a significant change in direction from past system operations, as do any of the SOSs incorporating drawdown actions. Among the latter types of alternatives, it should be noted that SOSs 5 and 6 are complete strategies that specify operational measures for all 14 Federal projects; these strategies incorporate significant operational changes for the lower Snake River projects because they emphasize actions intended to benefit the listed Snake River salmon stocks.

The SOR agencies agree that there appears to be some imbalance between the needs of anadromous fish and those of resident fish and wildlife, but this is unintentional and unavoidable given the influence of ESA considerations on the SOR. Nevertheless, one of the SOS alternatives (SOS 4) is a strategy based entirely on balancing these resource needs, and SOS PA incorporates several features (primarily summer draft limits on the upstream storage reservoirs and flows for Kootenai River white sturgeon) specifically intended to protect upriver resources. In addition, the SOS mitigation measures are largely geared toward reducing or offsetting the unavoidable consequences for upriver resident fish, wildlife, cultural, and recreation resources.

The SOR agencies have worked diligently to improve their relationship and consultation with the tribes. The agencies believe that they have provided ample opportunities for all parties to recommend operational measures and state their views on alternatives. The screening process for the SOS alternatives extended over more than 2 years, during which the SOR agencies made several formal efforts to publicize the process and solicit input from all interested parties. Most notably, the roundtable meetings from November 1991 through January 1992 and the mid–point meetings of September 1992 focused specifically on the SOS alternatives. These opportunities for input on the alternatives were in addition to the August 1990 scoping meetings, the public review of the screening analysis documents, and several issues of Streamline that focused on the SOS alternatives.

Common Issue No. 3: Geographic Scope of the Analysis

Issue:

Many reviewers of the Draft EIS felt that the geographic scope of the document was unduly restricted to the 14 Federal dams specified by the SOR agencies. Comments on this issue generally represented one of two viewpoints. One viewpoint focused on the adequacy of water volumes to be used for flow augmentation and argued that the SOR agencies should have investigated additional water supplies from the upper Snake River (above Brownlee Dam) in Idaho and from the upper Columbia River in Canada.

The second viewpoint reflected concerns that the EIS was ignoring the impacts of SOS alternatives that would occur outside the area specified in the analysis. Most of the comments in this second group were from Idaho interests. They maintained that the flow augmentation measures in the SOS alternatives would have significant adverse effects on southern Idaho's irrigation–based economy and on resident fish and wildlife resources, and that these effects should have been analyzed in the EIS. A few comments offered similar statements about the omission of SOS impacts at projects in Canada, or at non–Federal projects in the United States operated in coordination with the Federal system.

Response:

The scope of the SOR was limited to those 14 Federal projects for which operations are coordinated through the PNCA and CEAA. The need to renew and/or revise the PNCA and to renegotiate CEAA were the initial reasons for undertaking the SOR. The SOR remains the study to balance the multiple uses of the 14 projects. System operations effects in the Snake River above Hells Canyon and the Columbia River above Grand Coulee were included in the SOR, as the impact of flows from or through each of those areas was analyzed. Operation of the Canadian reservoirs was in fact simulated in the river/reservoir modeling for each of the SOSs; the reservoirs above Hells Canyon were not.

The Federal projects above Brownlee Reservoir are "hydro independent" and generate power only as a consequence of moving water for other purposes. They are not operated or coordinated for power generation through PNCA. Storage of water at these projects is accomplished primarily for irrigation needs and other non–power uses.

The 14 Federal projects included in the SOR are operated for hydropower, navigation, flood control, and some irrigation. The Federal projects above Brownlee are operated for irrigation, flood control, and recreation, with power generation occurring as a result of these other operations. Therefore, it is appropriate to exclude operation of these projects, and related actions such as water acquisition, from the SOR scope.

The SOR agencies analyzed the impacts on downstream reaches for providing additional water from the Snake River above Brownlee, but did not consider it necessary or appropriate to analyze the upstream areas. Water requirements from the Snake River above Brownlee under SOS PA would be about the same as with current practice, and the SOS PA operation is within current system limits. Certain other SOS alternatives assumed larger volumes of water from the Snake River above Brownlee, which we recognize would have impacts that were not analyzed in the SOR. Additional studies might be required if, in fact, one of these SOS alternatives were selected in the future.

Reclamation is beginning a study of the Federal reservoir system on the Snake River above Brownlee. This study will provide in–depth, additional information on operation of those projects and on impacts that might result from additional flow augmentation. Data or results from this study were not available for the Final EIS; however, data from other studies or ongoing work have been incorporated where available.

For further detail on the geographic scope, please see Section 1.3.1 of the main report.

Common Issue No. 4: The Juvenile Fish Transportation Program

Issue:

A large number of comments addressed the SOS alternatives within the context of the existing means of bypassing fish at the mainstem projects, primarily the smolt transportation program. Comments criticizing and supporting the transportation program were received. One viewpoint maintained that fish transportation does not work, has been shown to be damaging to salmon runs, and should be stopped. Generally, fisheries agencies, tribes, and organized fish advocacy and environmental groups submitted comments of this nature.

The contrasting view was that transport has been demonstrated to be effective. Such comments were often coupled with a call for improvements to be made to fish collection and transportation systems. Many of the comments in favor of the transportation program were submitted by river users and their associations.

Response:

The juvenile fish transportation program has received intensive study and evaluation over the past two decades. The preponderance of scientific studies of the transportation program show that transported fish survive at a higher rate than fish migrating through the highly altered river. The benefits of transportation vary somewhat among species, and are greater in low–flow years than in

high–flow years. Improvements in the program have resulted in positive responses in juvenile fish survival and adult returns, and research on further potential improvements is continuing.

Despite the indications of the research, the transportation program remains the focus of much controversy and debate. The SOR agencies believe that the best available scientific information shows that transportation provides the highest juvenile survival through the river system, compared with in–river migration under various operational alternatives. The agencies also recognize that they will not be able, and should not try, to resolve this debate in the SOR EIS. Consequently, the agencies have analyzed juvenile survival under the SOS alternatives both with and without transportation, and have approached the transportation question in the logical, stepwise fashion outlined in the EIS Summary.

In its 1995 Biological Opinion, NMFS recognized that transportation has a role in protecting the Snake River stocks from extinction and recommended that transportation continue while measures to improve in–river passage through the system continue. SOS PA incorporates this recommendation, as well as recommended provisions for spill to improve in–river passage conditions. Improvements to the transportation program and to other fish passage facilities are not operational measures that are being evaluated through the SOR, and therefore are being addressed through other processes.

Common Issue No. 5: Consideration of the Surface Collector Concept

Issue:

Among the many structural and operational recovery measures referenced in the comments, the concept of a surface collector to bypass juvenile fish at the dams may have been the most popular. Wells Dam on the middle Columbia River is equipped with a surface–oriented collection/bypass system that has performed favorably. More than 20 commentors recommended that the SOR preferred alternative include rapid planning, development, and implementation of surface collectors, similar to those at Wells Dam, at Lower Granite Dam or at the mainstem Snake and/or Columbia River dams in general.

Many comments on this issue can technically be considered a subset of Common Issue No. 4, because surface collection facilities were often mentioned in the same comment or letter as the transportation program. This category (Common Issue No. 5), however, only includes those comments that specifically mention a surface collector. Many comments suggested a surface collector could increase collection efficiency for the transportation program, although some envisioned a surface collector as purely a bypass means to allow juvenile fish to avoid turbines.

Response:

The SOR agencies recognize that surface collection may be a promising technology, although its success and transferability are not assured. Wells Dam is a hydro combine facility, a significantly different configuration than the conventional dam structure found at the lower Columbia and Snake River dams. Retrofitting Lower Granite Dam or another mainstem dam with this type of collector requires considerations beyond current designs and does not guarantee the same success for bypassing juvenile salmon. Moreover, surface collection is a structural measure that goes beyond the operational scope of the SOR.

The Corps is currently evaluating, through its System Configuration Study (SCS), the application of the Wells–type collector/bypass for use at conventional hydroelectric projects. The study is examining other possible methods to bypass salmon and develop a prototype surface–oriented collectors for testing in 1996. The results of these tests and related evaluations such as studies of juvenile fish behavior in the dam forebays, will be important factors in regional decisions on the effectiveness and applicability of surface collection.

Common Issue No. 6: Actions Involving Harvest, Hatcheries, and/or Habitat

Issue:

These comments addressed factors other than river system configuration and operation that have influenced the current status of the listed salmon stocks. The comments generally pointed to fish harvest, hatchery production, or habitat quality conditions as significant problems to be considered. Many of the comments requested actions be taken in these areas as alternatives to, or in addition to, river operation measures. Most commonly, these comments requested a ban on commercial fishing, removal of nets, or restrictions on a specific type of fishing gear or commercial fishing sector. Some comments recommended stream habitat improvements or changes in hatchery releases or production levels.

Response:

The proposed actions addressed by this EIS relate specifically to operation of the 14 Federal dams in the Columbia/Snake River system. Actions relating to habitat, harvest, or hatchery improvements are not considered in the EIS because they do not address the purposes identified for the proposed action, and they would go beyond the operational jurisdiction of the SOR agencies. Recovery measures involving habitat, harvest, and hatcheries are being addressed in several of the related processes described in Chapter 10 of the EIS. Most notably, in March 1995, NMFS released a draft Snake River Salmon Recovery Plan that covers all phases of the salmon life cycle.

Many of the comments in this category reflected the belief that proposed operational measures to improve salmon migration conditions were inappropriate because the condition of the listed stocks were a result of habitat, harvest, and/or hatchery impacts. While it is generally accepted that these sources have contributed to the salmon problem, since they are not related to the hydro system, they have no bearing on whether the SOR agencies should act to improve salmon migration conditions. Federal agencies have responsibilities under the ESA to help conserve listed species, and it has been established that the hydro system has contributed to the decline of the salmon runs.

Common Issue No. 7: Indian Tribal Coordination, Treaty Rights, and Trust Responsibilities

Issue:

Indian tribes submitting comments on the Draft EIS were critical of the SOR agencies for their relationships with the tribes and the document's coverage of tribal concerns. Comments on this issue emphasized three primary themes. First, because the tribes are sovereign nations, they should be consulted on a government–to–government basis, and that consultation with the tribes has been inadequate throughout the SOR. Second, while the SOR agencies have an obligation to uphold tribal treaty rights, the Draft EIS provided insufficient treatment of these rights, and that actions to be taken as a result of the SOR would likely harm treaty rights. Third, as representatives of the Federal government, the SOR agencies have an obligation to fully identify, address, and carry out their trust responsibilities to the tribes. Some of these comments drew linkages to other SOR issues, for example, comments that said the EIS was inadequate because it did not include alternatives that would fully protect tribal treaty fishing rights.

Response:

The SOR agencies take their responsibilities for coordination and consultation with the sovereign tribes very seriously. We recognize the government–to–government relationship that exists between the tribes and the agencies. SOR managers have made extensive efforts to meet with the 14 tribes affected by the SOR. Meetings have been held with many individual tribes at their reservation headquarters, and there have been larger group meetings and SOR work group meetings where some tribal representatives have been present. The agencies agree that the process has developed slowly; however, we are committed to carrying through on our responsibilities.

In 1991, the SOR agencies sent the tribes a notice of public meetings to scope the alternatives and issues to consider in the SOR process and invited the tribes to participate. In 1992, interested tribes were involved in the Resident Fish and Wildlife Work Groups. In mid-1993, the agencies began meeting with tribes individually on their reservations to consult on SOR issues, particularly the potential impacts of the alternatives on cultural resources. These meetings have continued. The SOR agencies took additional actions to involve tribes in the SOR. In spring 1993, an Indian Coordination Group with representatives from each agency was started to advise SOR managers on tribal relations and participation. All tribes were given copies of the preliminary Draft EIS and Final EIS (including all appendices) for comment prior to its release for public review.

The SOR agencies recognize and understand their tribal-related obligations and commitments. The SOR staff began without a full appreciation of the effort required to engage the tribes in the appropriate fashion. The agencies have tried to rectify these earlier shortcomings. We believe, however, that the tribes share some responsibility by not recognizing the importance of the SOR and its objectives, which were communicated in the initial letters and for which some response on the tribes' behalf was warranted. The agencies were ready to join with the tribes, as early as 1991, to pursue the activities that were justified. Subsequent to these past events, the agencies have attempted to provide the tribes the opportunity to participate in the SOR, to solicit information that is uniquely theirs, and to contract for this participation and information.

The SOR agencies made a good-faith effort in the Draft EIS to address Native American resources and concerns; the Final EIS includes an expanded discussion that provides more emphasis on treaty rights and trust assets, using additional information developed since the Draft EIS was issued. The SOR EIS contains extensive analysis of the impacts of the SOS alternatives on fish and wildlife and treaty rights. Fish and wildlife in the Columbia River Basin are a mixed treaty/non-treaty resource. These resources are affected by Federal, non-Federal, state, and tribal actions involving hatcheries, habitat, and harvest, as well as the hydro system. These resources are also affected by natural conditions such as El Niño, seal mammal predation, and limited pasturage in the North Pacific shared by wild salmon with hatchery fish from North America and Asia. Full restoration of all anadromous fish is not one of the goals of the Northwest Power Act, the ESA, the Council's Fish and Wildlife Program, the Columbia River Compact, or NMFS' 1995 Biological Opinion or Draft Recovery Plan—the primary guides for fish mitigation in the Basin. Moreover, there is no known technology capable of reviving extirpated stocks. Full anadromous fish restoration would fail to fulfill the purpose and need of the SOR EIS, and it is inappropriate for inclusion in the SOR EIS.

A number of the tribal comments appear to suggest that Columbia River salmonids need significantly more water, or drawdown actions, to improve migration conditions and that the SOR agencies must undertake such actions to protect treaty rights. The SOR agencies believe the issue is how to safely allow fish past Federal dams and through the reservoirs. Increasing flows is just one means to attempt to achieve improved fish passage. To address passage problems, the agencies are proposing to implement numerous alternatives and measures proposed by both the NMFS Biological Opinion for Reinitiation of Consultations on 1994-98 Operation of the FCRPS and Juvenile Transportation Program (March 1995) and the NPPC'S River Basin Fish and Wildlife Program (December 1994). These measures and alternatives call for the FCRPS to use much more water for fish than it has before. The program measures are based on submissions from all of the region's fish management agencies and tribes and therefore reflect the collective wisdom of the region's fishery managers. These alternatives and measures would change FCRPS operation priorities to put fish protection above power production and second only to flood control. The SOR agencies believe that fulfilling their obligations under the ESA and the Northwest Power Act to protect fish, and consideration of those actions in the SOR

NEPA process, provide full recognition and protection for the tribes' treaty fishing rights.

The SOR agencies believe that by funding tribal participation in the SOR; consulting with the tribes on cultural resources, fish and wildlife, and river operations; and by making good faith efforts to implement department and agency tribal policies, the agencies have recognized and taken action to meet their Federal trust responsibilities to the tribes. The agencies offered the 14 tribes in the study area $600,000 that they could share in any manner they chose, to support tribal participation in the SOR. The sum was divided equally among the tribes, making $42,800 available to each tribe. The agencies also offered additional funding for studies or literature review, and to cover travel and per diem so tribal representatives could attend specific SOR work group meetings.

As for particular resource–based trust duties, the tribes have not shown how there is a resource that one or more of the SOR agencies manage exclusively for the tribes pursuant to specific management statutes, orders, or regulations. Absent such a showing, *United States v. Mitchell*, 463 U.S. 206 (1983) indicates that a specific federal agency shares the general trust responsibility with all other federal agencies. This duty has been addressed in the EIS, within the limits of available information on trust assets.

Common Issue No. 8: Summer Draft of Lake Pend Oreille

Issue:

The SOR agencies received voluminous comment about one element of SOS 4c, a late–summer draft of Lake Pend Oreille from the normal full–pool elevation of 2,062.5 feet (628.7 m) to 2,060 feet (627.9 m). All of the comments on this issue opposed this change in operations in particular, or SOS 4c in general, because it includes the late–summer draft. Criticism of this operation was the single most common theme among the comment letters from individuals; the issue dominated the public meeting held in Sandpoint.

Some of the comments simply stated opposition to the late–summer draft and made general references to severe adverse consequences for Lake Pend Oreille residents and the surrounding area of northern Idaho. Many comments expressed concern about specific impacts, such as loss of use of recreational boat docks; blocked access to shallow–water areas of the lake or to sloughs; dewatered wetlands; loss of habitat for waterfowl and other wildlife; and damage to resident fish. Some commentors indicated that the recreation–related losses from the late–summer draft would significantly reduce revenues for local businesses dependent upon tourism and real estate values for waterfront property, and that the combined effects would devastate the local economy and the tax base of Bonner County. A few comments stated that a decrease in property values resulting from changes in the lake level would be an infringement of property rights and, without compensation, would represent an unconstitutional "taking."

A number of the comments in this issue category linked the late–summer draft of Lake Pend Oreille with flow augmentation measures for salmon. These comments indicated a belief that Lake Pend Oreille water would be used to help salmon in downstream areas, and stated opposition to this approach. Many of these comments questioned the validity or effectiveness of using stored water from upstream reservoirs to increase velocities in the lower river. Common Issue No. 8 also includes a few comments that mention both the late–summer draft and an experiment being considered by the Northwest Power Planning Council that would limit the winter draft of Lake Pend Oreille to elevation 2,056 feet.

Response:

Appendix J, Recreation presents information on impacts to recreation use from the subject action. Information on economic impacts is presented in Chapter 4 and Technical Exhibit D of Appendix O, Economic and Social Impacts. The results of analyses of the potential impacts on wetlands and associated resident fish and wildlife are presented in Appendices K, Resident Fish, and N, Wildlife, respectively. Potential impacts on property values

and taxes were not evaluated because such analysis was determined to be beyond the scope of the SOR.

The SOR agencies concur that lowering the level of Lake Pend Oreille during summer would result in adverse effects on recreational use of the lake. As described in Appendix J, Recreation, the extent of these effects depends on the level of drawdown. Several of the alternative SOSs under consideration would lower the lake from full pool by as much as 2.5 feet during July and August. Drawdowns to this extent would make many facilities, such as boat docks, swimming beaches, boat ramps, and marinas less usable or unusable. As a result of these impacts, recreational use of the lake could be reduced. The impacts of lower lake levels could be partially compensated for by modifying existing recreation facilities. Boat ramps, docks, and swimming beaches could be extended to make them fully usable throughout the summer.

On the other hand, since SOS 4c calls for lowering the lake somewhat during summer to maintain a stable pool elevation, this could actually improve recreational use of the lake by helping to restore habitat conditions for sport fish. Before Albeni Falls Dam was built, Lake Pend Oreille was a natural lake, subject to seasonal fluctuations in water elevation. Over the last 40 years of dam operation, the sport fishery has declined. Long–term improvement in sport fish habitat could increase recreational fishing. This may offset losses resulting from lower visitation and actually provide additional benefits.

Common Issue No. 9: Use of IRCs for Montana Reservoirs

Issue:

SOS 4 incorporates operational guidelines, known as IRCs, for the Libby and Hungry Horse projects in western Montana. The IRC concept was proposed and developed by the State of Montana and was strongly supported by the commentors who addressed either of these projects. However, several parties criticized the IRC specifications used in the hydroregulation modeling for the Draft EIS. Such comments often indicated that the IRCs used in the models were incorrect or out of date. In fact, the Draft EIS used an early version of IRCs, which were known as Biological Rule Curves. Several of the comments specifically noted that the IRCs used by the SOR agencies resulted in unnecessary or exaggerated impacts to power generation and flood control.

Response:

Computer models used to analyze systemwide hydroregulations did not accurately describe the intent of SOS 4 in the Draft EIS. This problem resulted in an overestimate of power impacts (costs to implement) and produced errors in flood control analyses (greater flood risks). In June 1994, the correct IRCs, formerly known as Biological Rule Curves, were successfully modeled by BPA and NPPC, and provide the basis for Final EIS results. Modelers are now focusing on a balance between the needs of resident fish in the headwaters, and recovery actions for dwindling anadromous stocks in the lower Columbia and Snake Rivers.

Common Issue No. 10: Using Montana Water for Salmon Flow Augmentation

Issue:

A number of SOR reviewers from Montana expressed opposition to the use of releases from Libby and Hungry Horse to increase flows in the lower Columbia River during juvenile salmon migration periods. Some comments identified geographic– or species–based equity concerns, stating that it was unfair or unwise to harm upriver resident fish and wildlife resources to benefit downstream anadromous fish. The effectiveness or incremental benefit of storage releases from Montana was also frequently cited. A few comments addressed water rights concerns, and the authority of the Federal government to use Montana water in this manner.

Response:

SOS PA includes provisions, including summer draft limits for the storage reservoirs and spring flows for the Kootenai River white sturgeon, that are intended to benefit or protect upriver fish and wildlife resources in Montana and elsewhere. Several other SOS alternatives, primarily SOS 4, incorporate measures that focus on upriver resources.

While releases from upstream storage reservoirs can have adverse consequences for resident fish and wildlife, as well as cultural resources and recreation, it is necessary for the SOR agencies to consider such releases to augment flows for stocks listed under the ESA. The agencies recognize that releases from Montana reservoirs will only augment flows on the Columbia River portion of the system, but such flows will still provide some benefit for Snake River fish as they transit the four lower Columbia River pools. Flow augmentation releases from Montana reservoirs will also benefit mid-Columbia River anadromous fish stocks, which are not listed but have been in decline and need protective measures. The contributions of Montana releases to salmon survival are incorporated within the anadromous fish model results presented in the EIS.

The SOR agencies will not implement river system operations in a way that would violate state water laws or water rights. This situation applies to releases from storage reservoirs in Montana or other Northwest states. The SOR agencies believe that the measures included in the SOS alternatives, including SOS PA, are within the Congressional authorizations for operation of Hungry Horse and Libby. These projects have little, if any, storage space that is contracted to downstream water users.

Common Issue No. 11: Consideration of the Recover 1 Alternative

Issue:

Among SOR reviewers expressing support for a specific alternative, an alternative known as Recover 1 was cited most frequently. The Columbia River Alliance (CRA), a Portland-based coalition of river user interests, proposed and publicized Recover 1. Recover 1 includes both operational and structural measures for the Columbia River system. It proposes improvements to the juvenile fish transportation program and the development of surface collection and bypass facilities for the lower mainstem dams, while limiting flow augmentation volumes and spill.

Support for Recover 1 was expressed in the written comments and by those who spoke at the public meetings. Nearly one-third of the letters received from organizations stated support for Recover 1. Some of these comments simply expressed support, while others summarized the measures included in Recover 1 and their merits. A few of the comments specifically indicated that the Draft EIS should have included Recover 1 in its analysis. In general, comments that expressed support for, or opposition to, a specific alternative or type of measure have simply been noted and have not been given a specific response. The SOR agencies have addressed Recover 1 as a common issue because it was not one of the alternatives evaluated in the Draft EIS and because it includes elements that go beyond the operational scope of the SOR.

Response:

The SOR agencies believe Recover 1 is a mixture of elements covering both operational measures and nonoperational system modifications. The operating measures of Recover 1 involve specific flow augmentation volumes for fish migration and limits on spill. These measures are modeled in the SOR alternative known as Pre-Salmon Summit Operation and labeled as SOS 1a. Thus, we believe we have evaluated the operational aspects of Recover 1 in the Draft EIS and have also included this alternative in the Final EIS.

Recover 1 also suggests the development and use of several nonoperational measures such as surface bypass/collection systems and expanded use of fish transportation systems. These features are being studied within the Corps' System Configuration Study (SCS) and decisions regarding implementation are dependent on results of this evaluation. For surface bypass/collection systems, the Corps is planning to test various prototypes over the next 4 years. Fish transportation improvements, such as additional barges, new release points, short haul barging, etc., are under consideration by the Corps, both within the context of the SCS and the recent Biological Opinion issued by NMFS. Some of these improvements are discussed in the Final EIS, in Appendix S, Anadromous Fish, as they relate to

system operations and as alternatives to certain operational measures.

The agencies are confident that each of the measures suggested in Recover 1 is receiving scrutiny either in SOR or through the ongoing SCS evaluation. To make the system work for salmon is an important objective or purpose of several processes. The package of measures represented by Recover 1 will not appear in total within the SOR or SCS. Rather, the essential parts of Recover 1 are being studied in both processes.

Common Issue No. 12: Validity of Measures to Increase River Velocity

Issue:

A number of comments questioned the validity or effectiveness of system operational measures to increase lower Snake and Columbia River velocities during the juvenile salmon outmigration period; they expressed opposition to such measures. Most of these comments specifically referenced flow augmentation, although some mentioned drawdown, and a few identified spill as their concern. Comments in this group typically asserted that velocity measures had been proven to be ineffective, or that they should not be implemented because they had not been proven to be effective. Some comments specifically requested that the rationale for velocity measures be re-evaluated.

Response:

There is evidence that higher flows benefit listed species of salmon. Juvenile survival indices calculated by NMFS during the 1970s provide such evidence. However, the benefits associated with flow may have been attributable to at least two mechanisms. One was the volume of spill that increased with flow and routed fish away from powerhouses, which were particularly destructive during that era. The second is migration speed, which increases with flow for some species and stocks and reduces exposure time to predatory fish in-river. There is, however, considerable disagreement regarding the extent to which each mechanism was important in influencing the observed changes in smolt survival. In addition, the accuracy, precision, and relevance of those smolt survival estimates have been questioned repeatedly.

The SOR agencies recognize that the presumed linkage between increased migration speed and improved survival is a hypothesis and, as such, requires validation. We attempted in Appendix C-1 of the Draft EIS to characterize the uncertainty regarding the theory. In addition, the SOR agencies support research to clarify and define the nature of the migration speed/survival relationship.

Common Issue No. 13: Loss of Property Values and/or Infringement of Property Rights

Issue:

In addition to the comments about property values at Lake Pend Oreille (Common Issue No. 8), a number of other comments on the Draft EIS identified effects on property values and rights as an issue. These comments were generally of two types. The first consisted of comments from the Kalispell, Montana, public meeting about water levels at Flathead Lake and their effects on property values and rights. The concern expressed is similar to the Lake Pend Oreille summer draft issue, but the response warrants separate treatment. The second type of comments generally involve property rights to irrigation water, and apply to lower Snake and Columbia River drawdown measures. These comments stated that the property value/rights effects of such measures are a significant issue that the Draft EIS did not address.

Response:

The comments from the Kalispell public meeting concerning Flathead Lake water levels stemmed from an apparent misunderstanding over jurisdiction, and how operation of Flathead Lake was considered in the SOR. While it is true that modification of Hungry Horse operations could conceivably affect water levels in Flathead Lake, all of the SOS alternatives were modeled specifically to retain the existing Flathead Lake operating pattern; none of the SOSs would result in changed Flathead Lake water levels. However, there have apparently been some discussions in local forums concerning propos-

als for a change in Flathead Lake water levels. Flathead Lake is controlled by Kerr Dam, which is operated by Montana Power Company under license from the Federal Energy Regulatory Commission (FERC). Any change in Kerr Dam/Flathead Lake operations would have to occur through an FERC proceeding, and is not within the jurisdiction of the SOR agencies.

The SOR Draft and Final EIS both discuss the effects of drawdown measures for the lower Columbia and Snake Rivers on access to irrigation water supplies. The general approach to this issue in the SOR has been to identify the number and location of affected users and the affected acreage, and to estimate the costs of modifying delivery systems to maintain irrigation capability for these users. In essence, the nature and cost of mitigation for these impacts have been determined, but the source and availability of payment for these costs has not been established. Coverage of the modification and mitigation costs associated with John Day drawdown to MOP is a Federal appropriations issue that must be resolved by Congress. This issue also applies to any potential future drawdown action for the lower Snake River. The Corps would have to conduct additional NEPA analysis on drawdown which would include identification of costs and how the costs would be borne, if known.

COLUMBIA RIVER INTER-TRIBAL FISH COMMISSION
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November 1, 1994

RECEIVED BY SOR
PUBLIC INVOLVEMENT
LOG # 08-0125
RECEIPT DATE
NOV 1 1994

System Operation Review
Draft Environmental Impact Statement
Interagency Team
P.O. Box 2988
Portland, Oregon 97208-2988

Dear Mr. Anderson, Mr. Dooley and Mr. Thor:

The Columbia River Inter-Tribal Fish Commission (CRITFC) joins the Northwest Power Planning Council in requesting an extension of the comment deadline for the Draft System Operation Review DEIS (DEIS) to March 15, 1995. As outlined below, several important considerations should be included in development of the DEIS so that our member tribes can provide comprehensive comments on the DEIS. Thus, we believe the additional time is warranted.

T1-1

Other important ongoing processes will influence the direction of the development of the DEIS. These include negotiations under IDFG v. NMFS and issuance of a new Biological Opinion in 1995, the Council's finalization of the amendments to the fish and wildlife program, and development of the NMFS recovery plan under the Endangered Species Act.

Further, we are concerned with the relationship of the DEIS with respect to the Bonneville Business Plan EIS. Clarification of the relationship is important as both NEPA actions will likely impact anadromous fish for many years in the future. We understand that BPA intends to issue a supplemental DEIS on the business plan in December. Obviously, our comments on the SOR cannot take into account the information in the supplemental DEIS or the business plan unless the deadline is extended.

T1-2

The current coordination and consultation process undertaken by the lead federal agencies with respect to our sovereign tribes is unsatisfactory. Additional time is necessary to rectify fundamental problems, including recognition by the federal agencies of the government-to-government relationship that exists between the agencies as representatives of the United States and our member tribes.

T1-3

Many impacts of the Columbia Basin hydropower system have not been included in the DEIS. For example, the DEIS analysis does not include any Federal Energy Regulatory Commission projects which impact anadromous fish.

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T1-1. The comment period for the Draft EIS was extended twice in response to the concerns expressed by CRITFC and others. The original close-of-comment date, October 24, 1994, was extended until November 7, 1995. Then it was extended again to December 15, 1994.

The SOR agencies agree that other regional processes should and will have an effect on the SOR outcome. We have included several alternatives in the Final EIS that were identified during the settlement discussions on *IDFG v. NMFS*.

BPA issued a Supplemental Draft EIS on its Business Plan in April 1995, a Final EIS in June 1995 and a record of decision in August 1995. The scope of the Business Plan EIS covers the business and market activities that BPA might pursue in response to the competitive environment now facing the agency. The SOR examines the effects of different ways of operating the Federal hydropower system. The operating strategy selected as a result of the SOR will affect BPA's future business activities. The SOR EIS examines and will largely determine the impacts of variations in the amount and timing of energy production; the Business Plan EIS evaluates different business activities given two generation availability results. These two results were drawn from the analysis for 2 SOR alternatives in the Draft EIS.

T1-2. The SOR agencies take their responsibilities for coordination and consultation with the sovereign tribes very seriously and recognize the government-to-government relationship that exists between the tribes and the agencies. SOR managers have made extensive efforts to meet with the 14 tribes affected by the SOR. Meetings have been held with some individual tribes at their reservation headquarters, and there have been larger group meetings and SOR work group meetings where some tribal representatives have been present. The SOR agencies agree that the process has developed slowly; however, we are committed to carrying through on our responsibilities. All tribes were given copies of the preliminary SOR Draft EIS for comment prior to its release for public review. They were also subsequently given copies of the Draft EIS for review. As noted above, the comment period was extended twice from the original close-of-comment date of October 24, 1994, until December 15, 1994, as requested by tribes and others.

T1-3. The scope of the SOR EIS covers only Federally constructed hydropower projects because the SOR agencies' jurisdiction is limited to these projects. The Federal Energy Regulatory Commission (FERC) is the Federal entity responsible for licensing the operation of non-Federal projects in the United States. FERC routinely prepares EISs during the licensing process and considers the environmental effects of the operation of such projects. While the SOR is restricted to Federal projects, the EIS does address effects at non-Federal projects when such projects are impacted by the SOSs.

Letter T1

Comments

T1-4 As well, the DEIS does not contain any analysis of the fishery agencies' and tribes' 1994 Detailed Fishery Operating Plan. We also view the lack of comprehensive modeling analysis, particularly the omission of the FLUSH and Empirical Life Cycle models, as a serious oversight.

In conclusion, we reiterate our request for an extension to March 15, 1995.

Sincerely,

Ted Strong
Executive Director

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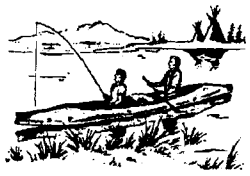
Responses

T1-4. The state and tribal fishery agencies Detailed Fishery Operating Plan is evaluated in the Final EIS. It was labeled as SOS 9a. In addition, the SOR agencies requested several times that FLUSH modeling be completed by the states and tribes for inclusion in the Final EIS on all alternatives, as well as, for the Draft EIS. No response has been received. The SOR agencies are not able to complete such analysis without the assistance of the states and tribes.

Letter T2

Comments



KALISPEL TRIBE OF INDIANS

November 2, 1994

The SOR Interagency Team
P.O. Box 2988
Portland, OR 97208-2988

Dear Interagency Team:

The Kalispel Tribe of Indians would like to take this opportunity to comment on the Draft Environmental Impact Statement (DEIS) Columbia River System Operation Review (SOR).

T2-1 Our main concern with the DEIS is the lack of involvement in the SOR process. The process started in 1990 and we were not brought in until late 1993. The amount of time and resources was the limiting factor with the Tribe's involvement. The Tribe began their involvement in May of 1994 and since that time has been collecting valuable information to adequately review and address the alternatives in the DEIS. Until information is gathered and assessed in the areas of resident fish, wildlife, water quality and cultural resources, the Kalispel Tribe will be unable to make detailed comments on the draft.

T2-2 The Tribe feels that a preferred alternative should have been offered by the SOR team. Thus comments could have been directed toward impacts and benefits of the preferred alternative for inclusion into the final EIS.

T2-3 Considering the information provided in the DEIS the Tribe feels that the only alternative that provides a system-wide or "ecosystem" approach to operations is SOS 4. However, it seems that the model analysis of SOS 4 is faulty and therefore is misleading as to the impacts to power production and flood control. The Tribe suggests that SOS 4 be evaluated as the preferred alternative, incorporating the use of the Integrated Rule Curves (IRC). The Kalispel Tribe is confident that if SOS 4 is used (including IRC's), it will be the most beneficial and realistically implementable strategy for the Columbia River System.

T2-4 We would also like to remind you that the Tribe's SOR contracts for resident fish and cultural resources were awarded in May and November 1994 respectively. With this in mind, the Tribe's comments and information cannot be fully integrated into the EIS which is due to be completed in May or June of 1995. We would not be comfortable with the EIS until our issues and concerns were fully included in the document.

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Responses

T2-1. See Common Response No. 7.

T2-2. See Common Response No. 1.

T2-3. SOS 4, revised to incorporate the latest provisions of the Integrated Rule Curves (IRCs), is included as an alternative in the Final EIS. Specific provisions designed for resident fish and wildlife and recreation at all five major Federal storage projects are included in this strategy. SOS 4c was not selected as the preferred alternative because it lacks some of the requirements deemed necessary for the recovery of anadromous fish and white sturgeon. The preferred alternative simulates the operating provisions contained in the 1995 Biological Opinions issued by NMFS and USFWS. The preferred alternative has incorporated some of the aspects of the IRCs in its operations.

T2-4. The SOR agencies agree that the timing of the contracts may have precluded incorporation of information into the Draft EIS and the submission of comments during the formal comment period. The agencies have established timelines for the preparation of the Final EIS recognizing the need for tribal participation and have tried to provide opportunities for that participation through contracts and other means. The SOR schedule also reflects internal management objectives and deadlines for the Federal agencies. Information provided to date by the tribes through the contracts has been included in the development of the Final EIS.

Letter T2

Comments

Responses

T2-4 In closing, the Kalispel Tribe would like to restate our concern on the lack of participation the Tribe has had throughout the SOR process. Only recently have the SOR managers shown initiative in providing funding so that the Tribal governments could adequately participate in the process. The lack of consultation with the Tribal governments was visibly apparent in the DEIS. Three years of planning and process occurred without proper Tribal participation. The Tribe feels that for the sake of producing an accurate and useful document, timelines should be realistic enough to allow for pertinent information to be included. Anything short of this expectation will be met with considerable opposition from the Kalispel Tribe of Indians.

Please find the enclosed comments that we are able to provide the SOR Interagency Team at this time.

Sincerely,

Glen Nenema

Glen Nenema, Chairman
Kalispel Tribe of Indians

encl.

Letter T2

Comments

At this time we are able to make the following comments on the DEIS:

RESIDENT FISH:

Pg. 2-21 (2.2.1.16 Box Canyon Reservoir)

There are several concerns in this section that should be addressed. First, there is no mention of studies done by the Upper Columbia United Tribes (UCUT). A three year baseline fisheries assessment was done on the Box Canyon reach of the Pend Oreille River (Assessment of the Fishery Improvement Opportunities on the Pend Oreille River: Recommendations for Fisheries Enhancement, 1992). It concerns the Tribe that information was not used from this report and it appears quite obvious that communication did not exist between the SOR resident fish group and the Tribe. A copy can be made available to you upon request.

This section should include the following information:

T2-5

1) There are other limiting factors besides the temperature problem cited in the section. It was identified in the UCUT final report that the largemouth bass (*Micropterus salmoides*) population could be improved by addressing age class problems associated with overwinter kills. Overwintering habitat accessibility could be altered by system operations and should be addressed in the document.

2) The importance of slough areas for the warmwater/coldwater species in the Pend Oreille River was overlooked in this document and should be addressed. The water levels in the slough areas are directly linked to system operations.

3) There is concern for spawning areas being dewatered during critical times of the year. Currently the Tribe is studying the effects of system operations on fish habitat utilization, migration, temperatures and spawning areas.

4) Certain operations may have detrimental effects on migration of adfluvial species of trout from the Pend Oreille River into tributaries.

5) The document should address the issue of severely depleted populations of native trout species in the Box Canyon Reach and its tributaries. Bull trout (*Salvelinus confluentus*) and cutthroat trout (*Oncorhynchus clarki*) are a major concern with the Kalispel Tribe and should be adequately represented.

Responses

T2-5. Appendix K, Resident Fish, has been updated to reflect the information provided.

Letter T2

Comments

Qualitative Analysis-Non Modeled Projects Pg. 3-21 (3.3.8)

T2-6

Paragraph 3: "Within each of the locations, a resident fish expert was identified as a contact person."

We are not aware of any meaningful contacts made with the Tribe during the four year SOR process. The only input we have been asked to give to the SOR resident fish group is our proposal for studying bass pertaining to system operation. The literature and information within the DEIS appears to come from research conducted by the University of Idaho. This is a major concern of the Tribe as the University of Idaho is not a resource manager and does not make management decisions in the Pend Oreille River. The Kalispel Tribe and the Washington Department of Fish and Wildlife should have their concerns/comments addressed foremost in the document. There is no reflection of the Tribe/State management concerns relating to system operation in the DEIS.

There is a substantial information gap in the 57 mile Box Canyon Reach of the Pend Oreille River in the DEIS. Based on the information currently being gathered under our SOR contract, we will be able to provide you with detailed comments on the alternatives for system operations and the mitigation that would be needed for the various alternatives.

WILDLIFE

T2-7

Chapter 2, section 2.2.5, Albeni Falls.

This section and the physical habitat section 2.2.5.1 are too general and have no valuable information contained within them. Section 2.2.5.2, Wildlife, is also lacking any valuable information of the system operation and associated wildlife. One specific concern within this section is in the Endangered, Threatened and Sensitive Species section. This section does not include either of the candidate frog species (*Rana pretiosa* and *R. pipiens*). The Tribe is concerned that of all the species listed within the document, amphibians will suffer the greatest impacts upon changes to current operation of the system. This needs to be addressed within the final EIS.

T2-8

Page 2-20, in the Table, a 3 was added to the number 923 and should read "92" for the 1991 - 1993 adult bald eagle numbers observed.

Responses

T2-6. The Kalispel Tribe's participation in the Resident Fish Work Group was secured for the Draft EIS, and assistance from the tribe's fisheries staff was used to prepare the Final EIS.

T2-7. Most of the information in this section came from coordination with the Upper Columbia United Tribes (UCUT), the Idaho Department of Fish and Game, and the USFWS, and is considered to be complete. With regard to two frog species mentioned, the Wildlife Work Group recognizes these species to be candidate species. The section in the Draft EIS appendix reflects the list as provided by the USFWS. The SOR agencies also received what is believed to be a complete listing of sensitive plants and animals found in the vicinity of Lake Pend Oreille from the Idaho Department of Fish and Game, Non-game and Endangered Wildlife Program. Neither species of frog was included on either of these lists. Therefore, neither species was discussed in the Draft EIS.

T2-8. See Response S18-91e.

Letter T2

Comments

Chapter 3.

T2-9 Page 3 - 7, in the ranking system, a 3 was deleted from the line that should read "2 equals a 34% to 66% increase in the measure." The Tribe is very concerned with the subjectivity of the ranking process and its representation of the actual habitat value and use.

Chapter 4, Section 4.2.7, Albeni Falls.

T2-10 The major concern within this section is the apparent lack of information to determine actual impacts to wildlife and wildlife habitat. There seems to be an effort to base the suspect "benefits" on acreage quantities only. Nowhere is quality of habitat considered within the Draft EIS. The issue of the potential quality of this acreage is important and should be addressed in the final EIS.

The statements "benefit" and "negative impacts" have been used as a subjective value to the acreages inundated or left barren by the proposed operations. The Tribe feels that these statements should be changed to "decreased negative impacts" and "no increased negative impacts" respectively. There is uncertainty as to the re-establishment of emergent and riparian habitat cover types within barren zones due to changes in soils within reservoirs.

T2-11 There must be clear determination of impacts to all groups of wildlife and habitats that affect Tribal management concerns. Currently, the Tribe manages a 480 acre wildlife mitigation project in the Box Canyon Reach of Pend Oreille River. The affects of the individual SOSs upon mitigation projects has not been considered. The Tribe will not tolerate the need to mitigate impacts to existing mitigation projects.

T2-12 Page 4 - 38, section 4.2.7.1, the second sentence needs to be deleted as it is an invalid statement. Plant beds covered by water and/or ice are as unavailable to wildlife as vegetation exposed by drawdown and covered by snow.

T2-13 Page 4 - 39, Physical Habitat Impacts, values of 33% and 37% are referenced to habitat lost as emergent and riparian vegetation, respectively. The Tribe is unclear as to what habitat the additional 30% refers to. This needs to be addressed in the final EIS.

T2-14 Page 4 - 41, insert in the last sentence after "by allowing" and before "re-establishment", the following statement, "an opportunity for."

T2-15 We are also very concerned about the lack of effort made to incorporate Tribal information, expertise, or concerns on wildlife issues during the SOR process. Once the SOR team has decided upon an operation strategy, the Tribe will make specific comments and mitigation recommendations.

Responses

T2-9. The number has been changed to "34." The ranking process was developed by the Wildlife Work Group as the best available method to represent habitat and wildlife impacts in the absence of substantive data.

T2-10. It is important to recognize that the acres of different habitat types may vary in value. The lack of an objective value measure for the acres of habitat lost is recognized in Section 3.3.4.3 of Appendix N

The SOR agencies realize that uncertainty exists, but the consensus of opinion was that the change in operations would likely result in an expansion of existing wetland habitat acres at Albeni Falls. Any increase in wetland acres over existing conditions is likely to result in some benefit to wildlife species dependent upon that habitat type.

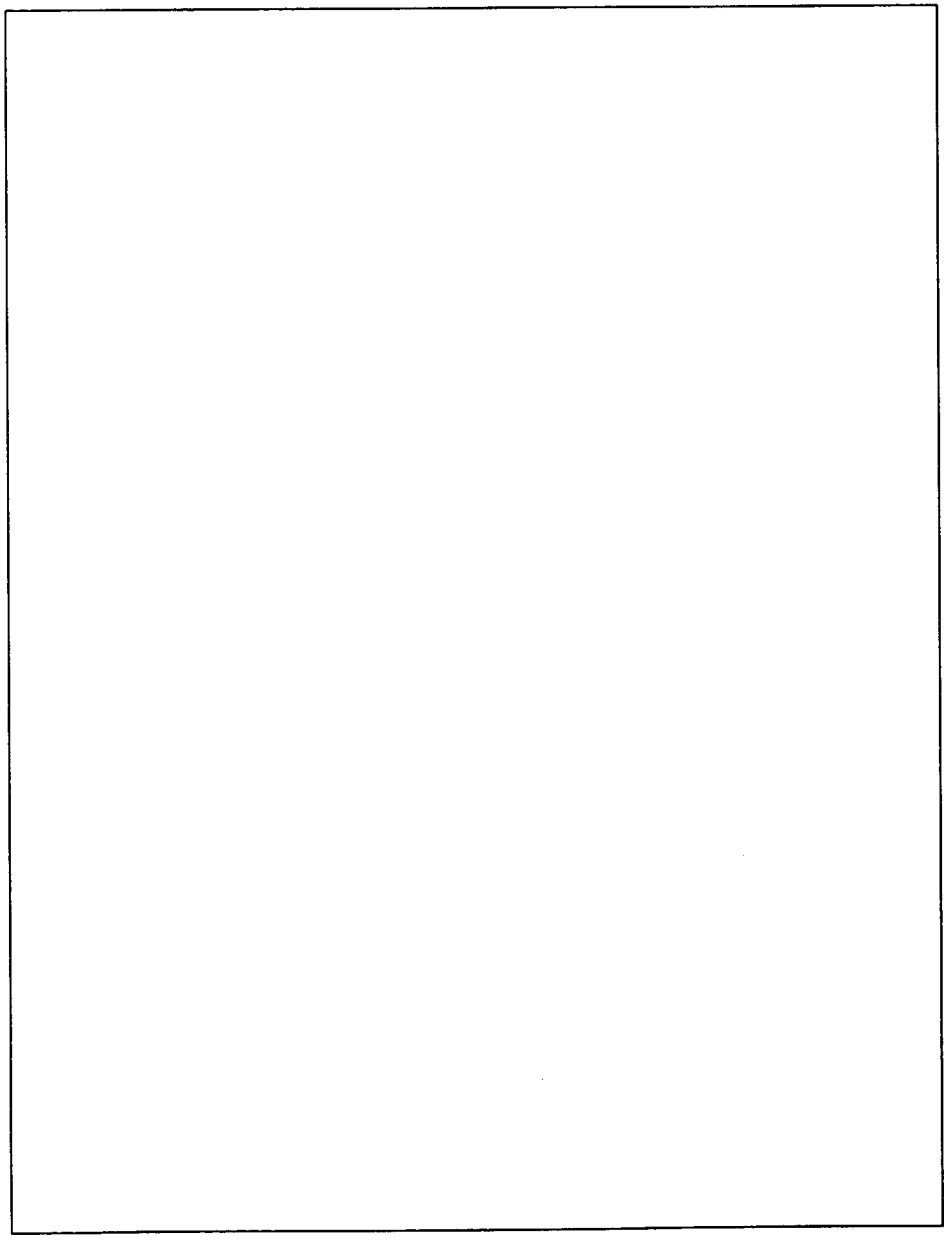
The point about the uncertainty concerning adequate soils for re-establishment is well taken, and new language has been included in Section 3.3.4.3, as follows:

- The ability of soils long inundated to support wetland/riparian vegetation is uncertain because of possible chemical and physical changes in the soils.

T2-11. The areas downstream from Albeni Falls were not evaluated because the hydrographs of the various SOSs showed there would be no change in average flows from Albeni Falls Dam.

T2-12. Lake Pend Oreille is not completely covered by ice in the winter months. Thus, the agencies believe the statement is true that aquatic plants will be available during the winter and a higher and/or a stable reservoir should increase this availability.

T2-13. The SOR agencies apologize for the confusion caused by the complex methodology used in this section. The section attempts to illustrate that approximately 37 percent of the riparian habitat (about 1,150 acres) that once existed prior to construction of Albeni Falls Dam has been lost; similarly, 33 percent (or about 1,025 acres) of emergent wetland has been lost since construction of the dam. The section then indicates that with a 2.5-foot summer drawdown, an area of 1,166.7 acres would be available for colonization by emergent and riparian habitat types. Assuming 100 percent colonization, the emergent vegetation would take 47 percent (or 548.35 acres) of the 1,166.7 acres, while the riparian vegetation would take 53 percent (or 618.35 acres). These percentages are derived by the following formula: .33 + .37=.70. .70/X=.33 (or X=.33/.70), and .70/X=.37 (or X=.37/.70). Thirty-three percent divided by 70 percent equals 47 percent, and 37 percent divided by 70 percent equals 53 percent. The exercise was



T2-13. cont'd. merely intended to ascertain the amount of acreage occupied by emergent and riparian habitats, assuming the gains would be the same percentages as the historic losses. Thus, there is no "additional 30 percent," in response to the question raised in your comment.

T2-14. These words have been added.

T2-15. The agencies followed advice that UCUT was the official point of contact for the Kalispel Tribe of Indians. UCUT representatives were invited to all meetings and were mailed drafts of documents for review. The Wildlife Work Group met several times in Spokane with the intent of involving key tribal personnel, including the Kalispel Tribe; however, as the Work Group felt UCUT would represent the Tribe, only UCUT was invited. UCUT submitted comments on the initial wildlife document, which the SOR agencies assumed incorporated tribal concerns.

WATER QUALITY

Chapter 5. Section 5.2.2 Recommendations for Mitigation.

Page 5 - 19, We do not believe that it is necessary to have "An improved understanding of whole river dynamics" before solutions to water quality problems can be addressed and management decisions made. Decisions must be made and implemented that will best represent the needs of all interested parties and resources involved.

T2-16

We do not believe that there is time and money to expend for additional extensive studies and research on water quality, related to the Columbia River System Operations. Instead, time and efforts would be better spent on deriving solutions with the best available data and implementing these management actions before it is too late for critically threatened, endangered, sensitive, or candidate fish and/or wildlife species such as salmon (*Oncorhynchus* sp.), and bull and cutthroat trout species of the Pacific Northwest. There is currently enough data available to make informed decisions and go forth with a management plan.

Instead of investigating and exploring mitigative measures further, its time to seek out the recommendations of water quality professionals in order to develop and implement a management plan that will provide the maximum benefit to the resources and interests involved. The listed recommendations for mitigation appear to be a delay tactic to avoid confronting tough decisions.

At this time, the Kalispel Tribe does not wish to comment on specific recommended mitigation measures. Once an operation strategy is chosen, the Tribe will provide mitigation recommendations for effects to the Box Canyon Reach of the Pend Oreille River.

Technical Exhibit B, B - 1 Historical and Current Water Quality Conditions

T2-17

This section needs to include water quality conditions of different rivers within the Columbia River Drainage in order that managers could utilize the sight specific data available to formulate their opinions and recommendations for the best management plan. For example, the Box Canyon Reach of the Pend Oreille River has had numerous water quality problems since the construction of dams such as: shoreline erosion (created by continual fluctuations in water levels); proliferation of noxious aquatic plants such as Eurasian watermilfoil (*Myriophyllum spicatum*); elevated water temperatures, etc.

T2-16. While additional extensive studies and research may come too late for those fish and wildlife species that are threatened, deriving and implementing solutions without the best available data is also equally risky. Indeed, the need to expedite remedial actions has never been questioned. The basic research cited above was all identified by water quality professionals, many of whom fully support expeditious management plans.

T2-17. Water quality data were not available for the Box Canyon Reach of the Pend Oreille River. The best information available on water quality near this reach was at Newport and Northport, Washington. The USGS operates a water quality monitoring station at Northport. Northport is downstream of the confluence of the Pend Oreille and Columbia Rivers. The Washington Department of Ecology operates an ambient water quality monitoring station at Newport. Data from the Newport station would be a better indicator of water quality in the Box Canyon Reach. Appendix M, Exhibit B, Section 3.1.6, describes the water quality parameter sampling history at the Newport station. Figures B-12 through B-44 present maximum and minimum sample values.

Letter T2

Comments

T2-18

CULTURAL RESOURCES

The main comment in this section would be the obvious lack of information pertaining to the cultural resources of the Kalispel Tribe. The Tribe is currently awaiting SOR funding to begin the process of gathering and organizing pertinent information for inclusion into the DEIS. The comments and information, including protection and mitigation plans, will be provided to the cultural resource working group as they become available.

It must be understood, however, that the contract is yet to be signed and the timeline for comment inclusions is very unrealistic for a May or June 1995 target date. The Tribe would strongly insist that their information be included into the final document and that proper mitigation measures be included.

Responses

T2-18. There was a lack of information in the Draft EIS concerning the cultural resources of the Kalispel Tribe. The Tribe has entered into a contract with BPA to fill this gap, and information submitted by the Tribe has been included in the Final EIS. Future management of affected cultural resources will be addressed in a programmatic agreement under terms or compliance with Section 106 NHPA and other acts.

REFERENCE:

COEUR D'ALENE TRIBE

ROUTE 1
TRIBAL HEADQUARTERS • C&A SUBAGENCY
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RECEIVED BY SOR
PUBLIC INVOLVEMENT
LOG #. 08-0179
RECEIPT DATE
NOV 8 1994

November 2, 1994

SOR Interagency Team
P.O. Box 2988
Portland, Oregon 97208-2988

The Coeur d'Alene Tribe has conducted a preliminary review of Appendix D, Cultural Resources, Columbia River System Operation Review, Draft Environmental Impact Statement. The Tribe would like to have the following comments incorporated into the EIS, with the understanding that more detailed comments will be submitted upon the conclusion of the formal review being conducted under Contract Number 94BI32728.

The Coeur d'Alene Tribe's issues and concerns are as follow:

T3-1

The Coeur d'Alene Tribe considers the SOR to be 50 years too late. Our input is similar to placing the cart before the horse and expecting the load to get to market with no trouble. Where was the request for government to government consultation before the SOR process steamrolled the Tribal reviews? The Tribes have stated in many meetings with the SOR Federal agencies that they question what value will be placed on the Tribes' comments in relation to the whole SOR process. It appears the whole process is demeaning to the Tribes.

T3-2

Sections 1.3, 1.4.1, 1.4.2 and 1.4.3 all relate to how the Cultural Resources Working Group (CRWG) was formed and how it related with the Tribes. Section 1.3 mentions "trust responsibility", yet no mention is made of what this means to the SOR group, or how important this concept is for the Tribes. Section 1.4.1 and 1.4.2 both identify that Tribes were not in the development of system alternatives or initial screening process. Rather the Tribes were either contracted to make comments, or ignored because "CRWG determined that it was not possible to coordinate effectively with Indian tribes ...". Further, Section 1.4.3 states that "CRWG agreed that other factors affecting specific cultural sites would be taken into account in determining appropriate management or treatment measures once the operating strategy was chosen". Due to the sections listed above, we question the viability of the whole Cultural Resource Appendix based on the lack of Tribal input at the start of the SOR process.

T3-1. While studies like the SOR would have been a good idea as the current system was developed, the objective of the SOR is to evaluate continued future operation of the existing system. To that end, the SOR agencies have compared several operating alternatives and attempted to present the environmental impacts associated with each. This information should help inform Federal agency decisionmakers as they consider how to operate the Federal system now and into the future. Comments by the Coeur d'Alene Tribe and others are included in the Final EIS and help expand the information available for decisionmaking. The SOR agencies recognize the unique role of the tribes in Columbia River system operation and have provided specific opportunities to tribes to voice their perspectives. The agencies do not intend the process to be demeaning to tribes and believe it is an open, worthwhile, and logical process for Federal decisionmaking.

T3-2. The Federal agency staff assigned to the Cultural Resources Work Group acknowledged that they possess neither the information nor the perspective of the tribes. While the SOR agencies are familiar with the treaties, executive orders, and judicial and executive pronouncement delineating the meaning of the trust responsibility, the agencies here were looking for the tribes' views on the meaning of cultural resources and trust responsibility. Therefore, the agencies invited and requested the tribes to provide their perspective, and describe what the cultural resources of the Columbia River mean to them, through contracts with SOR agencies. Chapters 1 and 2 of the Draft Cultural Resources Appendix (Appendix D) were rewritten for the Final EIS to include a more detailed discussion of Native American views, issues, and concerns. The added material reflects contributions and perspectives of the tribes, as expressed through written comments and contract submittals from the tribes and in transcripts of the Cultural Resources Work Group meetings.

Letter T3

Comments

T3-3 Exhibits D, E, F, G and H from the 5 contracting Tribes all expressed grave concerns with the Cultural Resource Appendix as prepared by the SOR. The Coeur d'Alene Tribe agrees with each concern, and the lack of involvement by the Tribe in any planning stage of the SOR.

T3-4 The definitions used to identify Cultural Resource areas are confusing and incorrect. We agree with the concerns expressed in Exhibit F, by the Confederated Tribes of the Warm Springs Indian Reservation, and Exhibit G, by the Confederated Tribes and Bands of the Yakima Indian Nation. The definitions used in the Appendix D do not account for the spiritual aspects of the culture of the Native Americans.

T3-5 Consider for example as comparison what the public outcry would be if Arlington National Cemetery were to be located behind a dam and flooded. We all know what the spiritual value is for that area, and should not the same consideration placed on the burial places of the Native Americans?

T3-6 Section 2.2.2, page 2-3, quotes the Yakima Indian Nation as follows: "The cultural and spiritual components of resources cannot be separated from other aspects of the resources. The proper balance must be nourished and renewed between the People and continuing creation of the Earth." Yet the following paragraph in the SOR document expresses the CRWG appendices from a technical nature, ignoring completely the close spiritual and cultural ties the Native Americans have with the earth. It is as if nobody was listening. Therefore, what value does the SOR place on the various Tribal comments?

T3-7 Section 2.3.2, page 2-6, relates to the historical uses of the Upper Columbia, Kootenai, Pend Oreille and Flathead Rivers. No mention is made of the Coeur d'Alene Tribe and its use of the Pend Oreille River and lake. Yet interviews conducted by the cultural staff of the Tribe show historical use of this area by the Coeur d'Alene Tribe. Additionally, the map shown in Figure 2-1 does accurately reflect the use of the Pend Oreille system by the Coeur d'Alene Tribe. The map reflects linguistic families, not "on the ground" use or the close ties the Tribes of the area have with each other.

T3-8 A main point of concern with Appendix D is the complete lack of recognition of all the Tribes within the Columbia basin covered by the SOR. Each Tribe is unique and has its individual culture. Yet in Section 2.3.3 only a brief description was made of the Colville and Nez Perce Tribes.

Responses

T3-3. See Response T3-2.

T3-4. See Response T3-2.

T3-5. Federal agencies have the responsibility under the Native American Graves Protection and Repatriation Act to identify grave sites and cemeteries and consult with affected tribes when human remains are found on Federal land. Efforts to provide for more frequent monitoring of sensitive areas is one of the management options that might be included among the stipulations of a cultural resources programmatic agreements with the tribes.

T3-6. The Cultural Resources Appendix has been revised to include a broader discussion of Native American concerns. This discussion covers the Native American view of cultural resources.

T3-7. The discussion of historical uses of the Columbia River Basin by Native American tribes is generalized, and does not go so far as to try to distinguish the specific uses by each of the tribes. Similarly, the map shown in Figure 2-1 is not intended to illustrate the historical use of the study area by individual tribes, but simply to identify who was in the region and approximately where they were located.

T3-8. Section 2.3.3 in the Cultural Resources Appendix describes where Native American lands are affected by the SOR. Chapter 2 has been revised to include more detailed information about the individual tribes and their concerns regarding the SOR.

Letter T3

Comments

Section 2.3.5, page 2-10, relates to usage of the Lake Pend Oreille area by the Upper Kalispel and the Kootenai Tribes. Yet this area was also used by the Coeur d'Alene Tribe and the Pend Oreille Tribe, as documented through interviews with Tribal elders.

T3-9

Any action regulating the Columbia River System will cause damage to the cultural sites of the Tribes. Unfortunately the review of the system is 50 years too late and, short of full removal of the dams, there is probably no way to eliminate the adverse effects caused by exposure of the river banks. It is important to recognize that any drawdown, and resulting bare ground, causes the exposure of burial sites, camp sites and petroglyph areas to looting and destruction. These areas are sacred to the Tribes and their protection is of vital necessity.

T3-10

The September 9, 1994, 9th Circuit Court of Appeals action regarding the Northwest Power Planning Council's 1992 Strategy for Salmon may have a tremendous effect on the proposed SOR alternatives. It may be that in almost every case the effect of this decision will be a disaster to the protection of cultural sites. The SOR alternatives operate on the assumption that there will be water behind the dams to protect the cultural sites. What happens if mandated discharges are required to aid the salmon and large fluctuations occur in the reservoir levels?

T3-11

The Federal agencies must recognize that those sites which are not identified by the Federal agencies will not be released by the Tribes. We do not believe the agencies will keep the locations confidential due to the number of federal employees with the agencies, the possible release through Freedom of Information Act disclosure requests, and the overall distrust Native Americans have as a result of past Federal actions.

T3-12

The Coeur d'Alene Tribe has burial and sacred sites behind Albeni Falls Dam, as well as in the slack water area of the Spokane River. Many of these sites are not known by Federal agencies. The Coeur d'Alene Tribe feels the ultimate protection of these sites should rest with the Tribe. This means funding must be provided directly to the Tribes by the Federal agencies to allow for protection activities. This will prevent strangers invading our relatives' resting place with the handling of the remains and artifacts, which would be a sacrilege to us as Indian people.

Responses

T3-9. As your comment noted, continued adverse impacts to significant cultural resources would be an unavoidable consequence under any SOR alternative. Site protection, through more intensive monitoring and stabilization measures, is a possible management option that could be included in the provisions of a cultural resources programmatic agreements with the tribes and any follow-on historic preservation plans for individual projects.

T3-10. While it may be an overstatement to say that SOR alternatives requiring large-scale drawdowns "will be a disaster to the protection of cultural sites," there would be adverse impacts to significant historic properties which would require mitigation efforts. Chapters 4 and 5 of Appendix D (Cultural Resources) discuss the potential impacts, and Chapter 6 describes possible mitigation actions for the impacts.

T3-11. Site-specific cultural resources records are generally exempt from the disclosure requirements of the Freedom of Information Act, but more general archeological reports that do not identify specific site locations are available to the public. Some older archeological reports written and distributed prior to ARPA (1979) describe specific site locations; many of these reports are in public libraries and are available to students and the public. Even though the public has limited access to some of these older sources of information, the archeological sites themselves are protected by the ARPA, which provides for Federal land management agencies to arrest and prosecute persons found willfully damaging archaeological resources on Federal land.

T3-12. The development of programmatic agreements and the follow-on development of historic preservation plans will address this need. Historic preservation plans will present scope, schedule, and funding needs for long-term programs to deal with the protection and preservation of cultural sites.

The disposition of ancestral human skeletal remains found in the Albeni Falls Dam reservoir area would follow the procedures under NAGPRA for Federal lands, or provisions of Idaho State law for privately owned lands. The process under NAGPRA would require the Corps, as the managing agency, to consult with the affected Indian tribes to determine the preferred handling and place for reburial of the remains.

Letter T3

Comments

In closing, the Coeur d'Alene Tribe wants Bonneville Power Administration, U.S. Corps of Engineers and Bureau of Reclamation to address the Tribe as a sovereign nation and on a government to government basis. Second, as proclaimed by President Clinton on April 29, 1994, there needs to be a re-affirmation of the Federal government's commitment to the fulfillment of the trust responsibilities to the Indian nations. This requires open consultation on a government to government basis with each Tribal government. Third, assurances must be given to the Coeur d'Alene Tribe that we retain sole authority and jurisdiction on all issues with our respective territory.

T3-13

Additionally, these comments to the EIS developed for the SOR group do not fully address the concerns of the Coeur d'Alene Tribe in relation to Appendix D or the concerns the Tribe has with the fisheries appendixes. Final comments will not be forthcoming from the Tribe until the middle of 1995 when all the data obtained through interviews of Tribal elders have been completed. Therefore, the Tribe wishes to make the point that any "no response" from the Tribe should not be considered as "consent" on any Federal action.

T3-14

Sincerely,

Ernest L. Stensgar, Chairman
Coeur d'Alene Tribe

Responses

T3-13. See Common Response No. 7.

T3-14. Comments from the Coeur d'Alene Tribe will be included as part of the record when received. The Cultural Resources and Resident Fish Work Groups incorporated comments from the Coeur d'Alene Tribe in Appendices D and K. The SOR managers understand that "no response" from the Tribe does not equal "consent."

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November 4, 1994

Re: SOR DEIS dated July 1994 comments

Dear Sirs:

As you can appreciate, the immenseness of the referenced document and appendices presents a formidable challenge for substantive review. The following general and specific technical comments focus on those aspects of the System Operation Review (SOR) that are of direct concern to the Nez Perce Tribe. Additional technical, policy and legal issues of concern to the Nez Perce Tribe are being submitted via the Columbia River Inter-Tribal Fish Commission.

T4-1

None of the System Operation Strategies (SOS's) considered in the referenced document represents an effective "mix" of key operational components. We believe that this can ultimately be accomplished, however, by taking a basin-wide, ecosystem approach to water management.

The Nez Perce Tribe looks forward to further participating in the SOR as an ongoing management process, and to monitoring results of operational decisions.

General Comments

Your efforts to base operational decisions on an in depth system-wide approach is encouraging. We do have serious concerns, however, relative to the overall scope of the referenced document and your approach to comparing the effects of various SOS's.

T4-2

Although you indicate that multiple river uses are increasingly competing for the limited water resources in the Columbia River Basin (Main Report, page 1-1, paragraph 2), you limit the scope of the SOR to the 14 Federal dams in the Columbia River Basin that are subject to the Pacific Northwest Coordination Agreement (PNCA) and Canadian Entitlement Allocation

T4-1. The Final EIS includes several new alternatives and a preferred alternative. All alternatives reflect some balance or mix among the multiple uses, regardless of the relative importance afforded any one use.

T4-2. As discussed in Common Response No. 3, the scope of the SOR was limited to those 14 Federal projects whose operations are coordinated through the PNCA and CEAA. The need to renew and/or revise the PNCA and to renegotiate the CEAA was the initial reason for beginning the SOR.

Letter T4

Comments

T4-2

Agreements (CEAA). This falls short of developing a true basin-wide strategy. Water uses throughout the entire basin are interconnected and interdependent, and therefore require a Columbia Basin watershed based, ecosystem management approach. We believe that limiting the scope to the 14 Federal dams that are subject to the PNCA and the CEAA is in conflict with your stated need to, "develop a coordinated system operation strategy (SOS) for managing the multiple uses of the system into the 21st century."

T4-3

Impacts in this document are assessed and compared relative to the "Base Case" Alternative 2c. This is inappropriate in view of your following statements:

> "...the reality is that the need to recover threatened and endangered salmon, specifically, and all salmon generally, has taken precedence over other considerations. Much of the trading off that will be done in deciding on a system operating strategy will hinge on what can be gained for threatened and endangered salmon and at what cost to other uses." (Summary, page 7, paragraph 2)

> "the most immediate and salient issues in the SOR now are recovering endangered runs of wild salmon on the Snake River, assuring that populations of other native species of fish and wildlife are not diminished in the process, and assessing the impact these actions will have on system operations." (Summary, page 7, paragraph 3)

Rather than gauging and comparing various alternative strategies to the "Base Case," evaluations and rankings should emphasize the following criteria:

> a) **Effectiveness of recovering threatened or endangered salmon.**
>
> Any alternative that does not provide for recovery and rebuilding of all threatened or endangered salmon stocks would further jeopardize these sensitive populations. We are opposed to the selection of any alternative that does not provide for the recovery and rebuilding of all threatened or endangered salmon stocks. Further, the Final EIS must provide thorough analysis and justification as to how the selected alternative will produce favorable smolt to adult survival ratios and lead to recovery of all threatened and endangered stocks.

T4-4

> b) **Compatibility with the conservation of the native flora and fauna of the Columbia River watershed (i.e., consistency with sound ecosystem management).**
>
> It is nonsensical to recover one native species/stock at the expense of another, and enter a never ending death spiral of threatened and endangered species. An ecosystem approach is key to avoiding this potentiality. An ecosystem approach is also integral to the Northwest Power Planning Council's Fish and Wildlife Program (Section 2 of the Phase 4 ruling, Document 93-20, November 1993). This concern is directly tied to the above discussion regarding scope of the

Responses

T4-3. The National Environmental Policy Act (NEPA), the guiding statute for Federal agencies conducting environmental reviews, requires all alternatives be compared to a no action alternative. The SOR agencies have continued to make these comparisons in the Final EIS. This requirement does not affect the ultimate decisions, nor the criteria used in making those decisions. The agencies agree that recovery of listed species is an important criterion in the decisions and have included the effects on listed species arising from each alternative, in comparative form, in the EIS.

T4-4. The agencies agree, and have tried to incorporate a broad view of impacts covering all aspects of the ecosystem in the Final EIS, as evidenced by the multitude of technical appendices. This analysis is limited, however, by the scope of the review, which by definition is the operation of 14 Federal projects. Please see the discussion on scope in Response T4-2 above.

subject document.

T4-5 Barging is in essence a band-aid approach whereby the migrating juvenile fish are escorted through poor in-river migratory conditions that reflect a poorly managed and seriously stressed Columbia Basin ecosystem. The poorer the in-river conditions become, the greater the emphasis on barging. Regardless of whether alternative operations incorporate barging, in-river migration, or a combination of approaches, the ultimate test for their effectiveness should be satisfaction of the items a and b, above.

T4-6 All of the drawdown SOS's (5a, 5b, 6a, 6b, 6c, 6d and 7a) consist of temporary drawdowns for about 2 to 4 months annually. Temporary drawdowns are inherently disruptive to aquatic and riparian ecosystems and cultural resources. Direct and indirect impacts to fish, including native white sturgeon, inhabiting the drawdown reservoirs can be severe. Refill requirements also have negative seasonal impacts to fishery resources, including native westslope cutthroat trout and bull trout, in upstream storage reservoirs. Further, the temporary drawdown options evaluated in detail also fall short of addressing migration needs of all stocks of threatened and endangered salmon. Therefore, the subject document should include at least one ecosystem based SOS that incorporates permanent drawdown. We recommend that the Nez Perce Plan alternative, described in Appendix C-2, be one of the permanent drawdown alternatives evaluated at the "full scale" analysis level. The qualitative evaluation provided in the subject document for the Nez Perce Plan is very incomplete.

T4-7 Finally, an additional "Interim" DEIS should be made available to the public for critical input and review of your proposed alternatives, prior to the formal Records of Decision.

Specific Comments

Summary Document

T4-8 Page 3, paragraph 4. The extensive public review and comment process mentioned should include the opportunity to review and comment on your preferred alternatives.

T4-9 Page 8, last paragraph. Survival during downstream migration in itself does not constitute an adequate analysis of a given alternative's effect on migrating juvenile salmonids. Among additional considerations are migration rate (i.e., velocity), opportunity to imprint on environmental cues for adult homing, stress, disease, latent mortality, and physiological readiness for the salt-water transition. Ultimately, a more successful downstream migration produces a higher ratio of returning adults:smolts.

T4-10 The array of operational strategies evaluated were mostly minor variations of flow augmentation and seasonal drawdown themes. Analyses of substantively different and more comprehensive operational alternatives, such as permanent drawdown or permanent drawdown with flow augmentation, could show a greater influence from operations. Therefore, it is premature to downplay operations and to site artificial transportation as the key variable for a successful juvenile outmigration.

T4-5. See Common Response No. 4. The term "band-aid approach" does not do justice to the extensive research, development, capital investment, operation and maintenance cost, or the Congressional review and approval that have gone into the development and execution of the juvenile fish transportation program. Management of anadromous fish passage and transportation around FCRPS dams cannot, by itself, bring about recovery of the listed species. Habitat improvement, hatchery management, harvest management, and a better understanding of the role of ocean survival are essential elements of a recovery plan.

T4-6. A permanent, year-round drawdown is included in the Final EIS, namely SOS 5c, Permanent Natural River Drawdown. This alternative assumes the four lower Snake projects operate at near riverbed levels. As your comment pointed out, there are reduced biological impacts with year-round drawdowns because the disruptive effects of alternating evacuation and refill of reservoirs are avoided. On the lower Snake River, permanent drawdown could also significantly reduce implementation costs because the need for adult and juvenile fish passage facilities and other dam modifications would be eliminated. The preferred alternative includes a year-round John Day Reservoir drawdown to minimum operating pool.

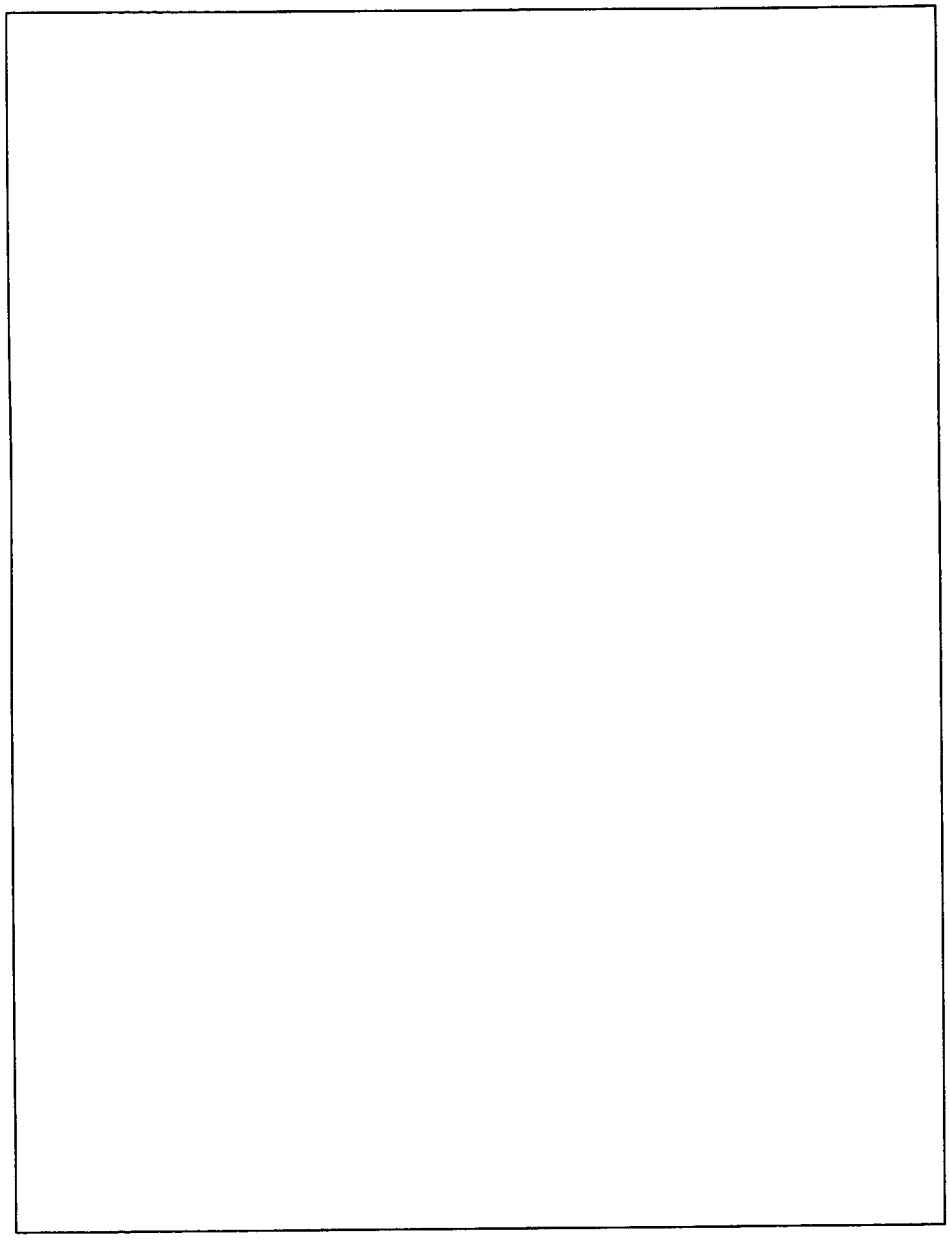
T4-7. The SOR agencies appreciate your concern about an additional "interim" review and critical input from the public. The Final EIS will be made public for 30 days before any decisions are made. The agencies will not have another round of public meetings or re-open the SOR for additional comment. The SOR has had extensive meetings and public comments since the process began some five years ago. The Draft EIS had a 4-1/2 month period for review and comment.

T4-8. See Common Response No. 1.

T4-9. The foundation for the flow/travel time/survival theory, as applied in various passage models, is a component of downstream migration survival estimates acquired by NMFS during the 1970s. Juvenile survival estimates should be the most instructive measure of performance among SOR alternatives. That is not to say other measures are not useful, and the SOR analysis also reports changes in adult returns, as projected from changes in juvenile survival. Outside the model world, adult returns are many years removed from the juvenile migration and are affected by many other mechanisms that mask in-river effects experienced years earlier. This reinforces the argument for using juvenile survival as the most informative performance measure. Furthermore, in Appendix C, the SOR Final EIS reports smolt travel time as an alternative or supplementary performance measure. In the CRiSP model, faster migration translates to higher

Letter T4

Comments



Responses

T4-9. cont'd. survival. But as spill increases, deleterious gas saturation conditions can be created. Excessive total dissolved gas levels can cause smolt mortality and potentially offset gains associated with increased migration speed. This again points to smolt survival as the most readily interpretable measure.

T4-10. It was not the intent of the SOR to "...downplay operations and to site artificial transportation as the key variable for a successful juvenile outmigration." The best available scientific information supports transport as providing the highest survival through the FCRPS, compared with other operational alternatives. Under the ESA, the Federal action agencies are required to protect listed species by methods supported by scientific information. Also, please see Response T4-6 regarding the inclusion of a permanent drawdown.

Letter T4

Comments

T4-11 Page 9, paragraph 3 (To Barge or not to Barge). You state the following:

> "A wide-scale transportation program is integral to the way the Federal agencies currently operate the system, and the results of the analysis of the system operation strategies, coupled with the findings of other entities, suggest that this effort should be continued."

It would also be appropriate to mention here that the current operation, coupled with barging, has contributed to the near extinction of the native Snake River salmon stocks. To endorse the continuation of this strategy would be contrary to the salmon recovery goal and in violation of the Endangered Species Act.

T4-12 Page 10, paragraph 2 (Near-term Versus Long-term Decisions). Structurally, the Nez Perce Plan alternative could be tested and implemented in the near-term.

T4-13 Page 11, paragraph 2, 1st sentence. The drawdown SOS's were all seasonal drawdowns and minor variations of the same theme. Your evaluation of the drawdown concept is, therefore, incomplete, inadequate and misleading.

Page 11, paragraph 2, last sentence. You would expect these types of impacts to other uses from seasonal drawdowns, but a permanent drawdown would promote ecosystem integrity and associated values, including resident fish, wildlife, recreation, cultural resources and flood control. Consequently, blanket statements regarding "drawdown" are inaccurate and misleading.

T4-14 Page 11, paragraph 3 (What About Flows). Benefits from flow augmentation are diminished by keeping mainstem reservoirs at near full pool conditions. Flow augmentation and drawdown are both intended to achieve desired water velocities, and should be simulated concurrently for analysis purposes

T4-15 Page 13, paragraph 3 (What's the Bottom Line). The SOS's are basically single purpose in nature, and none reflect an earnest attempt at a comprehensive, ecosystem based strategy. The SOS's are seemingly intentionally structured to pit drawdown against flow augmentation, anadromous fish against resident fish, power against anadromous fish, etc. The array of SOS's presented does not represent a good faith attempt at responsible ecosystem management. Therefore, it is not surprising that the analysis to date has not identified a "clear winner." (See General Comments above, relative to scope)

Page 14, paragraph 1. The SOS's evaluated actually represent a narrow range of options, with many strategies being minor variations of similar approaches.

T4-16 Page 18 (SOS 2 Effects). Your evaluation of SOS 2 (Current Operations) indicates that juvenile anadromous fish survival is high. These existing conditions, however, have driven Snake River salmon stocks to near extinction. There appears to be a serious flaw in your impact assessment methodology/modeling for anadromous fish.

T4-17 Page 39, paragraph 2, 3rd and last sentences. "Expedited" decisions regarding the PNCA and

Responses

T4-11. Critics of transportation contend that operation of the FCRPS, including barging, is responsible for the current status of the fish runs. That position is not supported by credible scientific information. The region-wide status of anadromous fish runs clearly indicates that runs are in decline in dammed and undammed rivers alike because of habitat degradation, excessive harvest, and unfavorable ocean conditions. NMFS has recognized the role of transportation in protecting Snake River anadromous fish runs from extinction and recommended that transportation continue while improvement of in-river passage through the FCRPS continues. NMFS has recognized the necessity for protecting spawning and rearing habitat in a separate Biological Opinion on use of U.S. Forest Service and Bureau of Land Management lands. William Stelle, Regional Director of NMFS, stated in reference to the simultaneously issued biological opinions, "we must ensure that the necessary actions are being taken in both the hydrosystem and in the national forests, because protection for salmon in only one of these areas will not lead to long-term survival and recovery...."

T4-12. Two important aspects of the Nez Perce Plan would require other actions before implementation could occur—namely, acquisition of 3 MAF of water from the upper Snake Basin and drawdown of Lower Granite. Near-term implementation means that the strategy could proceed without delay simply through changes in operation. The two identified provisions are not possible without other related actions. Acquisition of water would require contract modifications, purchases, leasing arrangements, etc. in Idaho. Drawdown would require construction to accommodate juvenile and adult salmon passage, among other things, at the new lower pool operating level. Testing of drawdown may be possible in the near term.

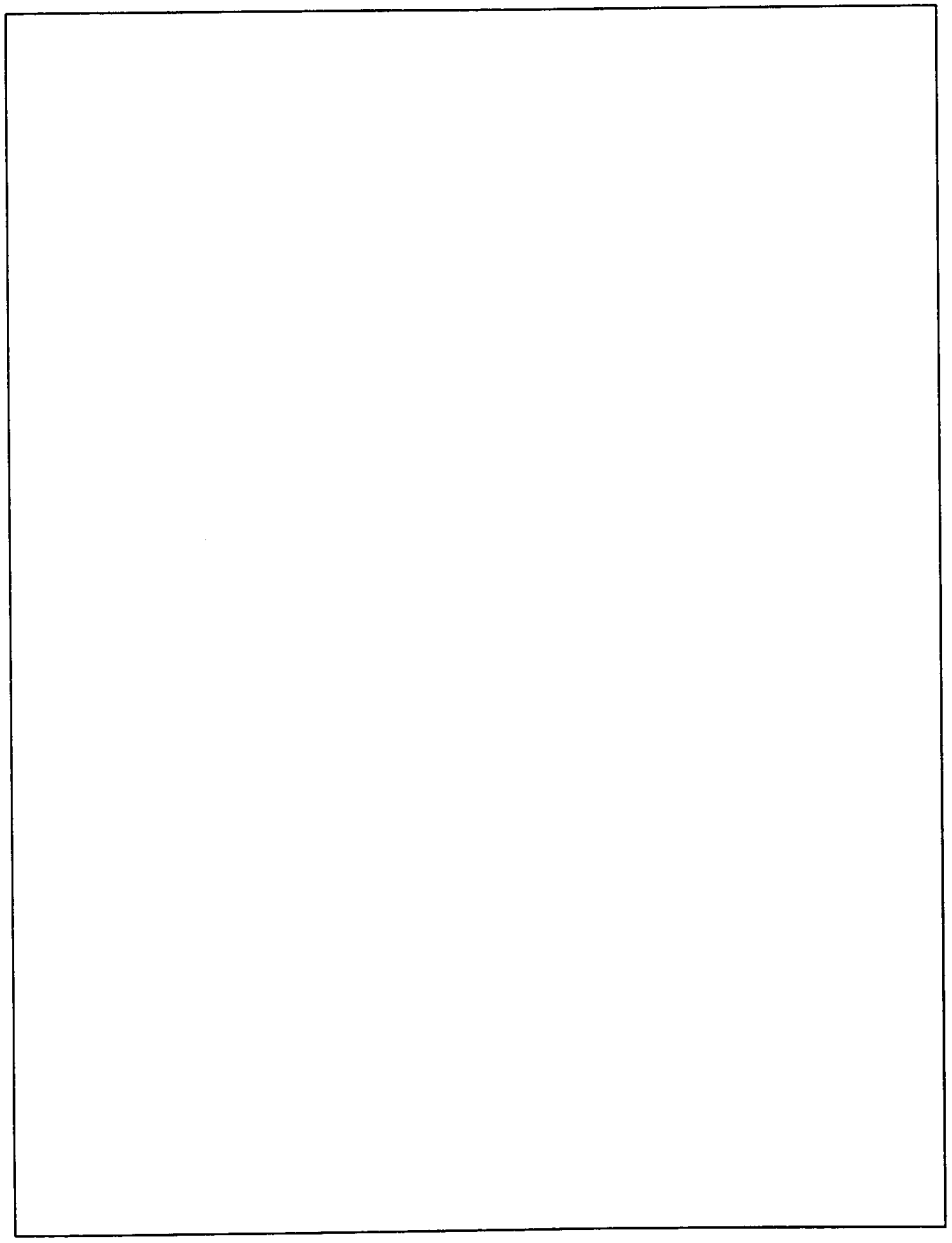
T4-13. Permanent drawdown might ultimately result in more ecosystem stability than temporary drawdowns. Also, please see Response T4-6 above regarding inclusion of a permanent drawdown alternative.

T4-14. Several new alternatives were added to the Final EIS that combine drawdown with flow augmentation, namely SOSs 9a and 9c.

T4-15. While it is true that many of the alternatives are directed at improving conditions for anadromous fish, they were not designed to pit one river use against another. Recovery of ESA-listed species is probably the most important motivation behind the development of the operating strategies. In addition, while ecosystem management is an appropriate objective, the SOR agencies do not believe the SOR approach to analysis would change. SOS PA in the Final EIS captures an ecosystem approach as embodied in the 1995 Biological Opinions.

Letter T4

Comments



Responses

T4-16. Salmon have a complex life cycle which spans a variety of different habitats. High survival in one or several portions of that life cycle can be consistent with declining populations if the cause(s) of the decline lie in other habitats. Poor ocean conditions and habitat loss/degradation on and near spawning grounds could be the cause of salmon declines even in the face of relatively high juvenile downstream passage survival.

Current data—Snake River PIT-tag data from 1989-1993 and the NMFS/UW survival studies of 1993 and 1994—suggest that in-river survival of juvenile salmonids actually is high, lending credence to the modeling results.

There is considerable uncertainty in estimating survival of salmon in any phase of their life cycle. Modeling results for downstream migration are not intended to represent absolute numbers, but instead to provide grounds for ranking among alternative operating strategies.

SLCM results in Anadromous Fish Appendix C-1 of the Draft EIS showed that Snake River fall chinook would go extinct under all SOR alternatives, while spring and summer chinook would decline under most alternatives. SLCM results for the Final EIS do not predict the same outcome. Keeping in mind the uncertainties noted above, this suggests that increases in downstream survival cannot, by themselves, recover the Snake River stocks. The SOR analysis, both draft and final, explicitly assumes that all other conditions, including harvest and rearing, remain the same as the base period.

T4-17. The SOR agencies disagree; the PNCA and CEAA alternatives do not limit or distinguish among SOS alternatives. All PNCA alternatives are as flexible as the current PNCA. Its flexibility to adapt and accommodate any SOS is demonstrated by the fact that the PNCA has accommodated changes in reservoir operations, from before the Water Budget was instituted up to and through the recent Biological Opinion operations, without any PNCA modifications being required. Likewise, CEAA alternatives are independent of the SOSs. Appendix P contains the CEAA analysis, and Appendix Q contains the PNCA analysis. Each appendix displays and discusses a set of alternatives from which a Preferred Alternative has been selected.

Letter T4

Comments

T4-17 CEAA, especially prior to selection of a preferred SOS, would place operational constraints and sideboards to selection and implementation of the SOS. This, in essence, would render the SOS portion of the SOR EIS an after the fact justification document for major Federal actions already made. This would be in violation of NEPA.

T4-18 Page 47, paragraph 5. You indicate that, "The SOR may result in more public awareness of the limits that government has in resolving these high-profile resource conflicts." The "government" created these high-profile resource conflicts by implementing lofty and pervasive missions without due regard for the sensitivity of the environmental resources. These missions included providing the irrigation infrastructure to make the desert bloom, providing a cheap source of power through hydropower development (including reduced rates to large commercial users), creating an inland seaport some 500 miles from the ocean, and allowing extensive development within floodplains through flood control. All of these missions have been accomplished, and it is time for the government to finally rectify the cumulative environmental effects of its actions. The three agencies represented by the SOR Interagency Team must now focus on Columbia Basin ecosystem restoration with the same vigor and resolve with which they pursued the economic development of the region.

Main Report

T4-19 Page 1-2, paragraph 6, last sentence. The SOR should also provide for ongoing monitoring of aquatic resources to evaluate effects of operational decisions.

T4-20 Page 1-8, paragraph 4. Renegotiation and renewal of the PNCA is but one of the four stated purposes of the SOR. Operation of Federal projects, and their effects, above Brownlee Dam are integral to and extremely important components of a comprehensive SOS. Further, operation of Federal projects above Brownlee Dam would/should certainly be a major consideration in the deliberations of a Columbia River Regional Forum. The Interagency Team is therefore remiss in excluding from the SOR scope the Federal projects within the Snake River basin above Brownlee Dam.

T4-21 Page 2-7, paragraph 3. To say that the effect of water diversions is not large, but measurable is an understatement. Water storage projects, primarily for irrigation, in the Snake River basin above Brownlee Dam can hold more than 9.5 million acre-feet, or about 50% of the natural average annual run-off. Irrigation in this region has reduced the average annual run-off by a minimum of 6 million acre-feet. Irrigation reservoirs hold back spring freshet flows for refill, thereby greatly reducing instream flows for resident fish reproduction and juvenile anadromous fish migration. Impacts are amplified during low water years. The significance of these impacts, especially as they relate to Snake River salmon recovery, underscores the necessity of including this area in the SOR scope. The importance of water management in this area also necessitates its inclusion in deliberations of the Columbia River Regional Forum.

T4-22 Page 3-17, paragraph 2 (Water Budget). As mentioned above, water storage projects, primarily for irrigation, in the Snake River basin above Brownlee Dam can hold more than 9.5 million acre-feet, or about 50% of the natural average annual run-off. Therefore, it is more accurate to say that most spring flows are held back by storage, rather than most spring flows depend on

Responses

T4-18. While a study like the SOR may not seem to be a contribution to the "resolve" needed to find ways to mitigate for the development of the Federal Columbia River system called for in your comment, it is a first step toward that objective. The SOR's examination of operating strategies may uncover new ways to operate the system that strike a better balance among river uses. It can focus regional attention on the changing needs of the system and suggest appropriate alterations, and it highlights the importance of regular, periodic looks at system operation.

T4-19. The statement has been modified to include monitoring. Some monitoring is occurring, in the form of various studies and research programs. The SOR and ESA consultation should result in further review of the current state of these programs by the agencies to determine what additional monitoring work should go forward.

T4-20. See Common Response No. 3 and Responses T4-2 and T4-4.

T4-21. The comment is noted. The EIS has been revised to more accurately reflect the concept that while the proportion of the total Columbia River water supply diverted from rivers for irrigation and M&I is not large relative to the total supply, the impact of such diversions is measurable, and is especially significant in low water years and in certain river basins, namely the Snake.

T4-22. The comment is noted. The intent of the paragraph is to characterize the Snake River portion of the Water Budget. Given the fixed amount of water stored for irrigation in the upper Snake basin, the actual amount of flow augmentation provided through the water budget is more closely determined by natural runoff. You are correct that a large portion of the spring flow is stored.

Letter T4

Comments

T4-22 natural run-off. Use of this storage capacity to hold back virtually all spring freshet flows in low water years negates Water Budget flows contributed elsewhere in the Snake River basin.

T4-23 Page 3-31, paragraph 1. With regards to changes in instream flows for migrating anadromous salmonids, the cumulative impact from individual irrigation projects is not only "measurable," but devastating, particularly in low water years.

T4-24 Page 4-52, paragraph 5. It is neither desirable nor accurate to evaluate alternatives based primarily on a passage survival criterion alone, without consideration of how the mode of passage may affect the biological/physiological requirements of the species. See above discussion for Summary Document, page 8.

T4-25 Page 4-76, paragraphs 3 and 4. This discussion casts serious doubts on the validity of the TCR method of analysis. Therefore, the validity of your entire comparative analysis of artificial transportation versus in-river survival is questionable.

T4-26 Page 4-76, paragraphs 4-7 (Stress) and (Disease). Stress and disease should not be discussed independently. In addition to the stress caused at the by-pass and collection points, and liberation from the barges/trucks, stress is also associated with the osmoregulatory changes that occur during the saltwater transition period. In is common knowledge that stress can increase the severity of a BKD infection, possibly transforming a benign infection to a lethal infection. To say that fish "recover" from the stress during hauling is a grave oversimplification. Latent mortality is likely due to combined effects of stress and BKD. Although little quantitative data is available on this type of latent mortality, it can potentially be a critical factor limiting survival to adulthood. The interactions among artificial transportation, stress and disease are not as innocuous as your discussion would suggest.

Appendix C-1

T4-27 Page 1-2, last paragraph, 1st sentence. One thing *is* certain, and that is the fish adapted and evolved to the natural hydrologic regime of the Columbia River basin. Therefore, the closer operating agencies can mimic the natural hydrograph (flow periodicity, magnitude and velocity), the closer they will come to satisfying the requirements of all stocks of the migrating anadromous salmonids. The agencies represented by the Interagency Team do not necessarily have to ascertain *why* it works, just acknowledge that it does work, and operate the water regulation projects accordingly.

T4-28 Page 4-15, (Results Relative to Base Case). As stated in our General Comments, assessing and comparing alternative operations to the "Base Case" is not appropriate, due to ESA considerations. The primary consideration is whether a given alternative will or will not meet recovery standards, not whether a given alternative is better or worse than the "Base Case."

T4-29 Page 4-15 through 4-18 (Hydrology). Comparisons to "Base Case" are of limited value. Valuable points of reference for comparisons, including graphs of monthly outflows, are data points for an unregulated system (i.e., natural hydrograph). These data would allow analysis of the degree to which alternative operations tend to mimic the natural hydrograph. We

Responses

T4-23. See Response T4-21 above. Irrigation development in the Pacific Northwest is the product of historical diversions using natural flow rights and ground-water pumping rights administered by the various states, and storage rights in Congressionally authorized Federal storage projects. Evaluating the cumulative historical impacts from irrigation and M&I diversions in the Pacific Northwest is beyond the scope of the SOR.

T4-24. See Response T4-9.

T4-25. The primary debate on TCRs (Transport/Control Ratios) is whether the controls are true controls. The fisheries agencies and tribes adopted Transport/In-river Ratios (TIRs) in October 1994 as a more representative comparison. Whether called TCRs or TIRs, the preponderance of scientific studies of transportation show greater survival by transport than by migration through the highly altered river. Until in-river survival can be increased to where it exceeds transportation survival, transportation remains a viable option for improving downstream migration.

T4-26. Appendix C-2, Juvenile Fish Transportation, in the Draft EIS (pages 4-52 to 4-53 and page 5-5) examines stress in detail and discusses the linkage between disease and stress. This information is also presented in the Final EIS.

T4-27. Clearly, salmon prospered in Pacific Northwest rivers that were undeveloped that had natural seasonal runoff. The Final EIS considers alternatives that move toward higher spring and summer flows (SOS 9a) and that better reflect an undeveloped river (SOS 5c). The alternatives are, however, constrained by reasonableness, given the current state of the system and its development, and the limitations of water availability.

Selection of the preferred alternative was based on public comment and subsequent deliberation. The goal of the SOR is to balance conflicting uses on the Columbia River system with an emphasis on endangered salmon recovery. SOS PA best meets these goals. It contains elements found in several of the different SOS alternatives.

T4-28. The base case was used to provide a clear, common benchmark for analysis. Work groups compared the impacts of a particular alternative on their river use to this baseline operation. The base case was the no action alternative and it represents how the system operated in1992 to help in the recovery of salmon stocks listed under the ESA. The use of such a base case allows easy comparison between the way the hydro system used to be operated when power and flood control were the predominant uses, and system operating strategies designed to accommodate a much broader array of uses.

Letter T4

Comments

recommend inclusion of these data.

T4-30

Page 4-19 through 4-21 (Travel Time). Comparisons to "Base Case" are of limited value. Valuable points of reference for comparisons, including graphs of juvenile travel time, are data points for an unregulated system. These data would allow analysis of the degree to which alternative operations tend to match the natural travel time conditions under which the species have adapted and evolved. Pre-dam travel time data is available for the Lower Snake River. Other areas may have to be simulated. We recommend inclusion of these data.

Appendix C-2

T4-31

Page 2-12 (Post-Transportation Mortality). This is a highly significant data gap, especially in view of the preponderance of BKD in chinook salmon and the connection of BKD severity with stress. This data gap casts serious doubts regarding assumptions of transported fish survival to adulthood.

T4-32

Page 3-3 (Transportation Survival Hypothesis). In the calculation of TCR's, what you refer to as the "control group" is not representative of actual in-river migration with spill (i.e., migrating in the river exclusively, avoiding by-pass and turbines to the maximum extent). Therefore, you have not presented an effective, unbiased comparison of the transportation alternative to other alternatives. In this case, the "best" biological data is inadequate and can lead to erroneous conclusions in the context in which it has been applied.

T4-33

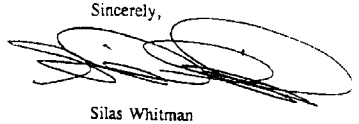
Page 4-37, paragraph 5. We look forward to reviewing your detailed analysis of the "Nez Perce Plan" alternative. This alternative is a unique "blend" within the SOR framework that attempts an ecosystem approach to operations. This alternative incorporates a stable drawdown for one Lower Snake Reservoir, *and* a stable full pool at Dworshak Reservoir, *and* a natural hydrograph for the Clearwater basin, *and* flow augmentation from the Upper Snake. We believe this alternative merits "full scale" analysis in subsequent SOR evaluations. Transportation and this alternative are not necessarily mutually exclusive. Its application would largely obviate the need for new and expensive upstream collection facilities, as described on page 4-50.

T4-34

Page 4-51, paragraph 6. We encourage further exploration of the surface-oriented juvenile fish collection and bypass systems.

The opportunity to comment on the referenced document is appreciated.

Sincerely,



Silas Whitman
Fisheries Program Manager

Responses

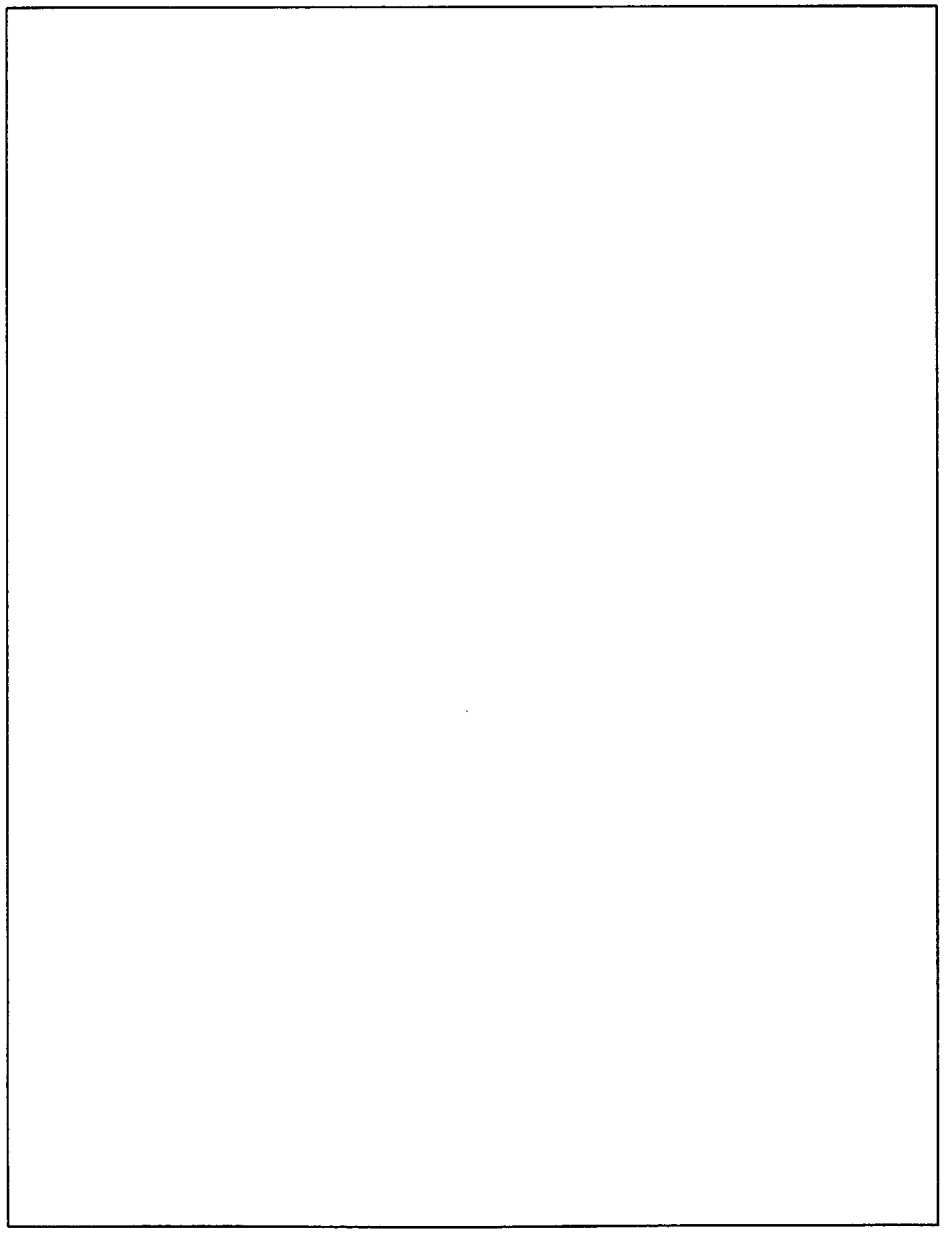
T4-28. cont'd. Recovery standards have not yet been translated into an annual operating plan. However, predicted adult production by SLCM gives some measure of performance as related to recovery. Appendix A, ROSE, contains the information you cite.

T4-29. The Anadromous Fish Work Group selected three value measures representing critical areas in which to compare fish responses: juvenile travel times; smolt survival; and total adult production. The concept of comparing the alternatives based on how they mimic the natural hydrograph was felt to be impractical. The relationship between mimicking the natural hydrograph and salmon survival is extremely controversial (see Appendix C, pages 2-14 to 2-15 of the Final EIS and the Final EIS Main Report, pages 4-56 to 4-57) and data are limited. Flow/survival relationships developed through past research are incorporated into the computer models used to analyze the SOS alternatives (see Chapter 3 of Appendix C, Final EIS). The effects of flow on survival were incorporated into the discussion of model results.

T4-30. There are some pre-dam travel time estimates available for a few reaches. Response O37-4 cites investigations that document a two to threefold increase in smolt travel time associated with impoundment. Please see Response O37-4.

T4-31. No hard data exist to support post-transport mortality assumptions. Modelers assumed high post-release mortality to explain a decline in TBR/TCRs in 1986 and 1989. This decline may also be explained by increased in-river survival due to additional screening of turbines, operation of turbines more efficiently to decrease turbine mortality, and a shift from predominantly wild to predominantly hatchery fish. Smolt-to-adult returns (SARs) have declined from 3 percent to 4 percent in the 1970s and early 1980s to less than 1 percent in the 1990s, with the shift from predominantly wild fish to predominantly hatchery fish. From a few turbines screened in the early 1970s, seven of eight dams are now fully screened, and The Dalles Dam has had two of 22 turbines screened for research for the past couple of years. Turbines that were operated outside the 1 percent peak efficiency range through most of the 1970s and 1980s have been operated the majority of the time within the 1 percent peak efficiency range, presumably reducing turbine mortality.

T4-32. The validity of the term "control" in TCRs has been widely debated. Regardless of what in-river marked fish are called, they have consistently shown lower survival than transported fish. Until critics recognize that it was a paired comparison, not a test of control versus test fish, this debate will continue. Statistical experts agree that the paired comparison is a valid test. The research has shown that transported fish survive at a rate higher than those fish migrating in-river for the test groups, and that is a valid way



T4-32. cont'd. of estimating survival of transport and in-river migrants as a whole. Until research shows that in-river survival has improved to where it exceeds transport survival, transport remains a practical method to increase the overall survival of the fish.

T4-33. The SOR agencies have decided not to include the Nez Perce Plan as an alternative in the Final EIS. Except for maintaining Dworshak at full pool levels year-round, the key elements of that plan are included in other SOR alternatives. SOS 6d includes drawdown of Lower Granite. SOSs 9a, 9b, and 9c have various amounts of upper Snake Basin water up to nearly 2 MAF. Holding Dworshak at full pool year-round would be a significant departure from authorized operation at this project and from a reasonable, logical operation. With a full pool, no flood protection, either local or systemwide, is provided. The Federal resource agencies, NMFS and USFWS, consulted regarding ESA-listed species, have always maintained some need for flood protection. The operating elements in the final, adopted SOS need not exactly match those in the Preferred Alternative. Any element considered in one or more alternatives can be combined to form the final SOS. Consequently, while the Nez Perce Plan in total is not considered, some of its elements are included and could be adopted.

T4-34. See Common Response No. 5.

Letter T5

Comments

Responses

GENERAL COUNCIL
and
BOARD OF TRUSTEES

CONFEDERATED TRIBES
of the
Umatilla Indian Reservation

P.O. Box 638
PENDLETON, OREGON 97801
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PUBLIC INVOLVEMENT
LOG #. 08-0182
RECEIPT DATE
NOV 8 1994

November 4, 1994
3:55 p.m. via FAX

Response Due: CKC
cc: A-3, CK, C, CKP, M
John Smith-CK (Spokane)

RECEIVED BY BPA
ADMINISTRATOR'S
OFC-LOG #: 94-1847
RECEIPT DATE:
11-7-94
DUE DATE:
11-21-94

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John Keys
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1150 N. Curtis Road
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FAX: (208) 378-5019

Re: System Operation Review (SOR) Draft Environmental Impact Statement (DEIS)

Dear Mr. Hardy, General Harrell, and Mr. Keys:

T5-1

The current comment deadline for the System Operation Review (SOR) Draft Environmental Impact Statement (DEIS) is November 7, 1994--this Monday, three days from now. The Confederated Tribes of the Umatilla Indian Reservation (CTUIR) believe that this deadline does not provide sufficient time in which to effectively comment on the SOR DEIS. For this reason the CTUIR ask that the deadline be extended to, at a minimum, March 15, 1995.

The SOR DEIS is seriously flawed in many important respects. We look forward to working with you on a cooperative basis to resolve these problems. We ask that, given the significance of this planning effort, we are afforded adequate time and opportunity to do so. Again, the Confederated Tribes of the

T5-1. The comment period was extended twice, to November 7, and then to December 15, 1994.

Letter T5

Comments

Responses

T5-1 Umatilla Indian Reservation ask that the comment deadline be extended until March 15, 1995 or thereafter. Thank you for your consideration.

Sincerely,

Donald G. Sampson
Chairman, Board of Trustees

cc: Columbia River Inter-Tribal Fish Commission
Northwest Power Planning Council
Governor Barbara Roberts
Governor Mike Lowry
Governor Cecil Andrus

KOOTENAI TRIBE OF IDAHO

P.O. Box 1269 Bonners Ferry, Idaho 83805
(208) 267-3519 Fax. No. (208) 267-2960

November 7, 1994

Interagency Team
Columbia River Systems Operations Review
P.O. Box 2988
Portland, Oregon 97208-2988

To the Interagency Team:

The following document is from the Kootenai Tribe of Idaho in Bonners Ferry, Idaho. The following comments are for review by the Interagency Team in relation with the Columbia River System Operations review and for the inclusion of the Tribe's comments into the final Environmental Impact Statement.

We appreciate the extension of the review process deadline as it gave us the opportunity to reply with our comments and feel that this has been beneficial to the Kootenai Tribe of Idaho regarding our concerns with the future of the Columbia River Operations and the impact that it may have on the Reserved Rights and Resources of the Tribe.

If you have any questions, please do no hesitate to contact Raymond Abraham or Ron Abraham at the Kootenai Tribal Headquarters at the address or telephone number above. Contact may be made Monday through Friday between 8:00 a.m. and 4:00 p.m. nce again, thank you for your consideration regarding the review and comment of the Kootenai Tribe of Idaho.

Sincerely,

Ron Abraham
Rights Protection Program

RA:da

Enclosures

Letter T6

Comments

THE COLOMBIA RIVER SYSTEMS OPERATIONS REVIEW
FROM THE KOOTENAI TRIBE OF IDAHO

The following document is the response from the Kootenai Tribe of Idaho regarding the Colombia River Systems operations review.

First of all we will give a very brief history of the Kootenai Tribe of Idaho.

The Kootenai Tribe of Idaho is a separate band of the Kootenai Nation, which consists of seven individual bands.

The Kootenai Tribe of Idaho resides approximately Three miles West of the City of Bonners Ferry, Idaho, which is located some thirty miles South of the International Boundary.

We reside on 12.5 acres of "Tribal Trust lands" and therefore have no "Reservation Status" as accorded other Tribes. We are actually a Non Treaty Tribe as our ancestors did not attend the Hellgate treaty of 1855 nor did they want too.

Because this decision was made, it started a chapter in the Kootenai Tribal history that will never be forgotten by the Kootenai Nation. The Kootenai Tribe of Idaho has resolved in itself a survival tactic that has been unique in the years following the Hellgate treaty.

T6-1

Since the Kootenai Tribe of Idaho was left landless, it continued to live in their aboriginal territory as they had always done. Hunting and Fishing and Gathering in thier usual and accustomed places of thier aborignal territory.

It wasn't until the Dawes Act that the members of the Kootenai Tribe of Idaho were allotted lands along the Kootenai River valley in Northern Idaho. At that time there was approximately 4000 acres that were alloted to the individuals. Today there is probably less than two thousand acres left in the original allotted lands. At least 60% of those lands are in a non-trust status as the Kootenai Tribe is related with the Canadian Kootenai bands and they have inherited lands in the Kootenai Valley as they are related through marriages and kinship.

Although the Kootenai Tribe of Idaho is a non Treaty Tribe, it is a beneficiary of the Hellgate treaty of 1855 as documented in the Idaho Supreme court case," Idaho vs Coffey", in 1972.

This case opened the way for the tribe to realize exactly what they were entitled to according to Reserved Treaty Rights. This case supplied that information. Since that time we have been diligently and patiently working to better our lives and those of our children, even those yet unborn.

The Colombia River Systems Operations Review is very important to the Kootenai Tribe of Idaho as it afford them a chance to educate the different agencies that are involved in the process to get to know this band of Kootenais, or at least get aquainted as we feel that there is a vast misunderstanding of the different tribes in the region. Maybe through this process we will be able to work in a manner that is consistant with the national policy of dealing with the tribes on a "Government to Government basis".
It is a pleasure for the Tribe to be involved in the SOR Process.

T6-2

Responses

T6-1. Thank you for your comment. Your material has been used in preparing the revised Cultural Resources Appendix.

T6-2. Thank you for your comment.

Letter T6

Comments

The Tribe will respond to the different issues as they relate to the Kootenai Tribe of Idaho. If any issue does not affect the Tribes reserved Treaty Rights, there will be a comment to that effect.

We would like to start our comments with the cultural concerns of the Kootenai Tribe of Idaho.

T6-3

The Tribes concerns with cultural resources is truly far beyond the legal description of "Cultural Resources". Cultural Resources to the tribe relate in many ways to the Kootenai religion and is difficult to explain. The Kootenai Tribe of Idaho even goes to the length of not revealing thier religious practices to outside parties. This makes it difficult to relate our cultural concerns in relations to protection of Religious sites and other cultural sites related to archeological scientific research.

T6-4

One point that we will bring out is the feelings of Kootenai Tribal members when it comes to Archeological research. We feel that when a site is located and an archeological team comes in to excavate the site, then it is not a site any longer. In certain ways the site has been disturbed and is no longer Culturally important, just as if it is disturbed through inundation or other means, it is no longer scientifically important archeologically.

On the other hand, Archeologists do this type of work for "scientific purposes" and to "be in compliance" with different laws related to there studies. But when these studies are done, no information is related back to the Tribe and the specimens are kept on display that usually no Kootenai will see or is kept in warehouses full of other specimens from other sites and tribes, that it serves no purpose for even the archeologists. It is stated in the SOR that a lot of the "research" has not been completed. Just how much of it is not completed? Will it ever be completed? If it is so back logged, then why continue to excavate? Let's do something to the remaining sites that have been located and protect them from the different ways of being disturbed. Excavating them being one problem. One way that the Tribe has protected sites in the past, in cooperation with the U.S Forest Service is to cover the sites and document the findings. This has been a way that has satisfied both parties.

This will not work on every site that is located but it is one alternative that satifies the Kootenai Tribe of Idaho. Discussion of other alternatives can be done for other sites that are also satisfactory with the Tribe and other parties involved. The programatic agreement may serve this purpose.

There are two different levels that the Kootenai Tribe is concerned about in relation to "Cultural Sites".

T6-5

The first is with the religious sites and that may not really be important to the SOR process as the Tribe feels that it has a handle on the subject and deals with the United States Forest Service on those matters. Those sites are in the higher elevations of the surrounding mountains and away from the Rivers and Lakes.

T6-6

The others are those along the River and Lakes. These sites are the ones that seem to have the most "disturbance" done to them as it is easier to locate them. A concern lies in the different ways that a site can be disturbed, The area that the Tribe is concerned regarding this is along the shores of Lake Pend O'rielle and the Rivers that enter and leave the lake, the Pend Orielle and Clark Fork. The other is the Reservior behind Lake Koocanusa.

First the Pend O'rielle lake issue, This is a difficult one to assess due to the fluctuation of the lake for the different river uses. The only way that the Tribe can see any relief in the problem is the programmatic agreement and some very serious and thorough discussion with any party that is delegated to this concern.

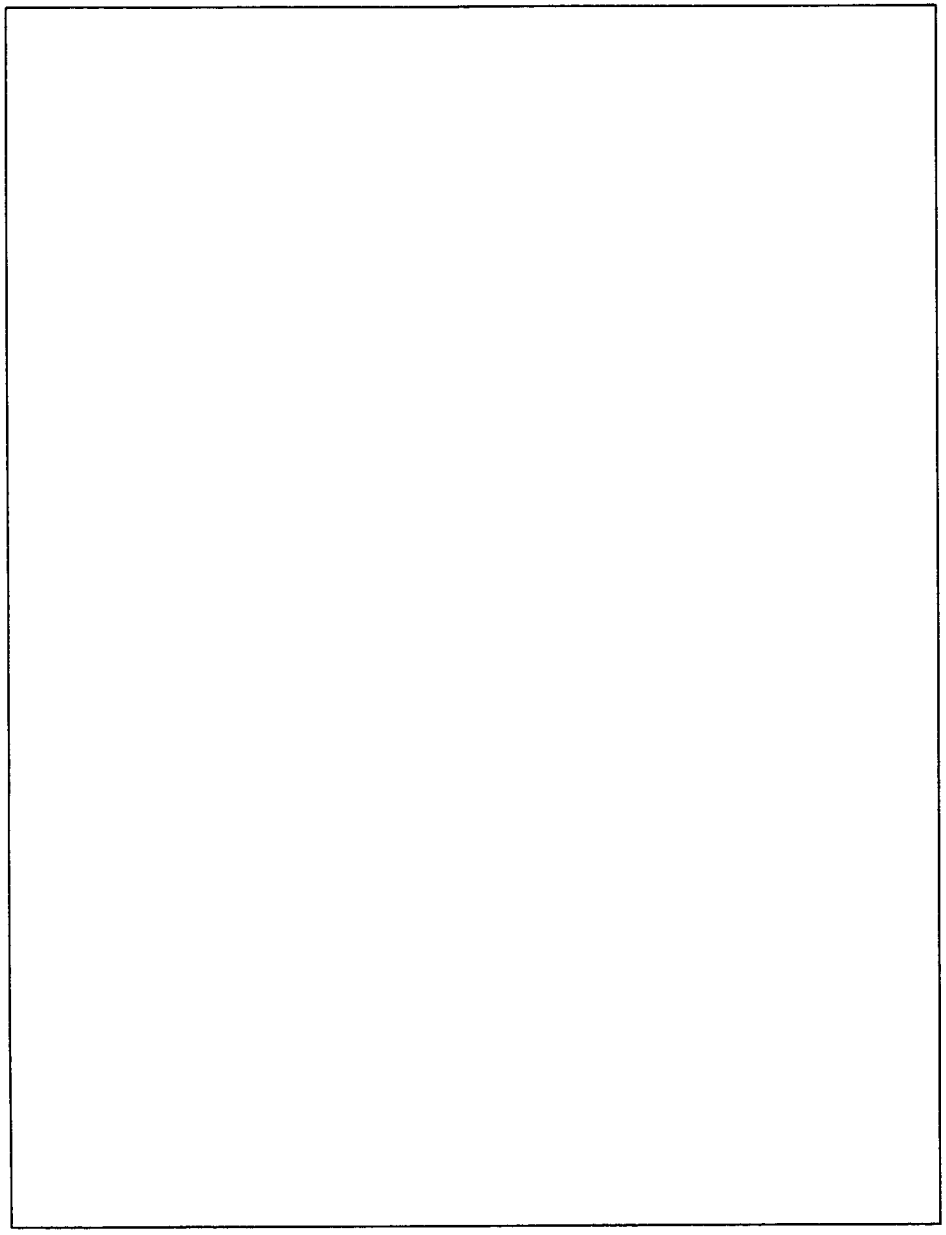
Responses

T6-3. The SOR agencies recognize that there is a religious dimension to cultural resources. Out of respect for this fact, the SOR agencies have only described the kinds of cultural resources involved, and have relied upon input from participating tribes to provide a more detailed discussion of the Native American view of cultural resources in the revised technical appendix and the Final EIS. Potential conflicts between Indian religious values and the goals of archeological research will need to be worked out on a case-by-case basis in the Historic Property Preservation Plans prepared for each Federal dam and reservoir as part of the cultural resources Programmatic Agreements and/or Memorandums of Agreement.

T6-4. The focus of scientific research on cultural resource sites deals with the numbers, kinds, age, location, and physical qualities of objects, sediments, and qualities of specimens or information recovered from archeological or historical sites. The legal purpose of these studies is usually to establish the scientific significance of these things within the framework of what is known about similar sites in the area and region; and in some cases, it is designed to recover information and objects that may be lost, destroyed, or vandalized. Different Federal dam reservoirs are at different stages in this work. At Albeni Falls Dam, this kind of work is just beginning. Inventory surveys have been completed, but we know almost nothing about the inventoried sites. On the other hand, at the reservoir behind Libby Dam, the basic surveys have been completed and most sites evaluated, so future work will be much more selective and limited to just a few sites. Site monitoring work to evaluate the ongoing condition of cultural sites and effective stabilization measures that might be used to protect sites from erosional loss can only be done after cultural sites have been identified and evaluated, so that we know where the site is and what we are protecting. There is no plan to excavate all archeological sites, and this is not an objective of scientific research. Artifacts and data from archeological sites are rarely displayed and are usually stored in secure laboratories and warehouses. The main problem for artifact curation and storage until recently has been the lack of funding for analysis (such as identification of rock types and species of animals) of the specimens, and special analytical studies like radiocarbon dating or residue analysis. Therefore, some scientific research is ongoing, but most is conducted during the site evaluation phase after site locations have been determined. In nearly all cases when excavation is done, it is only a small sample of the total extent of the site. The sample serves as a window to the past, giving clues about site age, content, use, and extent. Informed decisions can then be made about long-term management.

Letter T6

Comments



Responses

T6-4. cont'd. Treatment alternatives, such as covering sites with protective material to preserve and protect them, can and should be discussed by Federal agencies and the tribes. As the comment points out, the programmatic agreements may help to list principles of historic preservation that the Tribes and agencies can agree on.

T6-5. It is noted that most sites of religious significance to the Kootenai Tribe of Idaho are at higher elevations and away from lakes and rivers affected by the SOR.

T6-6. The protection of cultural resources sites from disturbance at Federal reservoirs, such as those behind Albeni Falls and Libby Dams, depends upon Federal agency programs for identification, evaluation, data recovery monitoring, and curation. Since the adverse effects of fluctuating water levels cannot be avoided, the SOR agencies plan to address these effects by establishing site protection measures in programmatic agreements that will provide more intensive monitoring, stabilization, public education, increased law enforcement, data recovery, and curation.

Letter T6

Comments

NOV-07-1994 15:14 FROM KOOTENAI TO 15032305211 P.04

T6-7 The other is the reservior behind Lake Koocanusa, Even though the Tribe has Treaty Rights in the area, it is limited to helping the Montana Kootenais on the Flathead Reservation in the protection of those sites, as they have a more direct access to the protection of those sites. Our concern is that the problem is more extreme then had originally been contemplated and what can be done to adequately protect these sites, Both located and yet undiscovered sites.

T6-8 Again, cultural resource sites are very important to the Kootenai Tribe of Idaho and thier protection is needed.

RESIDENT FISH AND RESIDENT FISH HABITAT

The second concern of the Kootenai Tribe is the resident fish and thier habitat.

T6-9 Resident fish are important today as it has been a thousand years ago and more, as we fish the same Rivers and Streams as we always have done. Fishing is to the Tribe, as much a recreation as it is utilized for subsistance purposes. Since the construction of the Libby Dam, fishing has taken a negative impact, especially when talking of reserved Treaty Rights. Destruction of marshes and other waterfowl habitat has never been mitigated for the Kootenai Tribe. Also there has never been an assessment that has been done as to what has been the cost to the lives of resident fish in regards to spawning ground reduction, which includes any fish from the Brook Trouts to the Kootenai River White Sturgeon.

T6-10 The Kootenai River White Sturgeon is the most important species that the Tribe is concerned with at this time. In the last few years the Tribe, in cooperation with Idaho fish and Game, has had a Sturgeon rearing facility in order to attempt to re-populate the Kootenai River with the species. This facility is funded by the Bonneville Power Administration for that purpose, but the Tribe is at a stand still at this time with the Kootenai River White Sturgeon recently being added to the endangered species list. The Tribes concern is now that the Sturgeon is listed, where does the review process stand? We feel that the recovery of the Snake River Salmon is central to all the issues of the SOR process. All alternatives seem to lean towards the Salmon recovery plan. Will the Sturgeon listing affect the other Tribes and interested parties comments? If so, where does that leave the review process? A plan needs to be set in place for the Sturgeon as it has been done with the Snake River Salmon. The concern of the Tribe is, this will put the Columbia River system that much more under stress and may make it difficult to adequately address the Sturgeon re-population plans that the Tribe has started.

T6-11 Again the Libby Dam is one concern that the Tribe has with the Resident fish issues and we will decribe very briefly what happens when there is drawdowns from the Libby Dam Reservior. During the most critical times that the resident fish need stable water levels for spawning purposes, the level of the River is lowered and this causes spawning grounds to be left high and dry, destroying any eggs that have been deposited by any resident fish. The other extreme is that there can also be too much water discharged and has an effect opposite of the lowered river levels due to unacceptable water temperatures that have the same effect as the above, and that is by being too cold. Either of these instances have an impact on the reserved Treaty Rights of the Kootenai Tribe, as it diminishes the population of the resident fish, to what extent though is not known.

WILDLIFE AND WILDLIFE HABITAT

T6-12 The resident wildlife habitat is probably the most important of all to the Kootenais' as it relates to their subsistance and any activity that is conducted in the aboriginal lands of these people relate back directly to those Reserved Rights.

Responses

T6-7. See Response T6-6.

T6-8. See Response T6-6.

T6-9. The SOR agencies acknowledge fisheries impacts from construction and operation of Libby Dam. Murray Springs Hatchery was constructed as mitigation for the effects of construction on resident fish. Impacts due to operation have been discussed as they have become known; the Kootenai River white sturgeon is especially of concern, and research on other species is also occurring.

T6-10. SOSs 4c and 9c include provisions to benefit Kootenai River white sturgeon at the same time that attempts are being made to benefit the salmon downriver in the Columbia basin. The SOR agencies also acknowledge the analysis and planning efforts being made on behalf of the sturgeon by the Kootenai River Steering Committee, and which will be made by the Kootenai River White Sturgeon Recovery Team. SOS PA also includes specific measures for sturgeon since it includes the recommendations contained in the 1995 Biological Opinion issued by USFWS.

T6-11. When the reservoir is drawn down, river levels increase over the levels that would result from inflow. However, from the comment about "drawdowns from the Libby Dam Reservoir," it appears that river levels are in question. The comment is not specific as to season, but may mean springtime, when reservoir refill reduces river flows to the 4,000 cfs minimum. Much of the spawning that takes place should occur after the beginning of refill, so that few eggs are likely to be deposited at elevations subject to dewatering. SOS 4 includes provisions against power peaking, which is a related source of concern. With regard to the second concern about high flows and low temperatures, Libby Dam includes selective withdrawal capabilities which allow river temperatures to be within prescribed levels. SOS PA provides for higher river flows in the spring to benefit white sturgeon and would probably benefit other river species as well.

T6-12. Thank you for your comment.

Letter T6

Comments

NOV-07-1994 15:15 FROM KOOTENAI TO 15032305211 P.05

The loss of habitat is mostly due to the logging industry as we see it at this time. We say this because most of the area that we utilize for hunting and fishing is within the surrounding National Forests and the areas that are near the Lake and Rivers are highly populated and mostly private lands.

Regarding the above, the new Eco-system management that has been introduced to the logging industry does have an impact to the Kootenai Reserved Treaty Rights, but we feel it is too early to say whether it will have a positive or negative impact on those Rights and Resources.

T6-13

The concern that is related to the SOR is that there is limited information regarding wildlife in the Lake Koocanusa and we cannot reply to this issue. Also, the mention of the Sharp Tailed Grouse, it is not known if there are any more of that species in the area and further, these reports come from after the Libby Dam was constructed and the loss to the Kootenai Tribe in regards to wildlife habitat and the displacement of the resident wildlife has never been mitigated.

Along the shores of Lake Pend O'rielle, much of the area is private lands as has been mentioned and in the areas that the Tribe has access to is extremely limited and will serve no purpose to comment with the exception that the tribe is concerned with the cultural sites in the area, but that is not related to wildlife.

RECREATION

T6-14

In the area of recreation, The Kootenai Tribe has no particular concern regarding any impacts that may occur due to any alternative that is chosen and will not comment on this issue at this time.

POWER

Power production along the Colombia River, is of course, the main purpose of all the activities being reviewed. This issue is very important to the Kootenai Tribe of Idaho as any activity that is related to producing power may affect the Kootenai Tribe of Idaho. This concern is justified by the Kootenai Falls litigation that had taken about 13 years to come to a conclusion that this is a central religious site of the Kootenai people and therefore no power producing station can be constructed at the Kootenai Falls area. This was a case that was a combination effort of all the Kootenai bands due to Freedom of Religion. In another attempt to construct a "Run of the River" project just above the falls, the same conclusion was stated regarding our opposition of that project as well as the destruction of resident fisheries spawning habitat.

T6-15

These are two examples of how power production will affect the Kootenai Tribe as it relates to thier Freedom of Religion and thier Hunting and Fishing Rights.

The only other project that the Tribe endorsed was the Smith Creek Hydro. Located in Northern Idaho near the International Boundary, this project was thoroughly discussed with the Tribe and only when the Tribe felt that it had reserved the areas fishing grounds which was in one of their numerous usual and accustomed places and no significant loss was contemplated , the Tribe conceded to the construction of the project.

Any other project related to hydro power in the future will more than likely come under heavy resistance by the Kootenai Tribe as it will not be willing to face any more loss of fishing and hunting areas due to construction of these kinds of projects. But that is not saying we will not review any plans that are brought to our attention, it is more important to say that any project that is planned will be brought to the attention of the Kootenai Tribe of Idaho as we are aware of the impacts of hydro power production plants in regards to the Rights and Resources we are entitled too.

Responses

T6-13. The SOR agencies agree that information regarding wildlife is limited. Analyses conducted for the Draft EIS have been necessarily generic. Sharp-tailed grouse historically occupied territory in the Tobacco Plains area north and west of Eureka, Montana. A remnant population is still present near the Eureka airport. Efforts to restore this grouse population are currently underway as mitigation for construction of Libby Dam. Other mitigation efforts with regard to Libby Dam include acquisition of habitats for big game; restoration of big game habitats, including those for Ural-Tweed bighorn sheep and mule deer; an initial survey of neotropical migrant bird use, with future management implications; and waterfowl habitat restoration.

T6-14. Thank you for your comment.

T6-15. The SOR neither envisioned the construction of nor evaluated any additions of new hydro projects in the Columbia basin.

Letter T6

Comments

FLOOD CONTROL

T6-16 The affects of flood control has had an impact on the Tribe in the following way. Even though the flooding was controlled along the Kootenai River, the impacts to the Kootenai Tribe were never mitigated, by this we mean that the yearly flooding that happened prior to the construction of Libby Dam had a economic advantage to the Tribe in that it created pools that were the homes of water fowl and other animals that made these pools there temporary homes. The members of the Tribe would go to these pools and collect eggs from the water fowl and also hunt the animals that utilized these pools.

T6-17 Other effects that the Libby Dam created due to its' construction has been that more land has been accessable for agriculture use and housing development. Through this the Tribe has lost a lot of hunting and fishing areas, also never mitigated.

T6-18 One particular point that we will make is that the Sturgeon has been the most adversely affected by the flood control that may have been a benefit to others. Natural river flows will never be the same due to this. The Kootenai River White Sturgeon and the Kootenai Tribe will always be at a loss when you talk of "Flood Control".

WATER QUALITY

T6-19 Under existing Treaty Rights the Kootenai Tribe has the authority to manage and set water quality standards for the Kootenai River. The Kootenai Tribe if highly concerned about present and future water quality problems within thier territorial waters, due to the many activities that have occurred on the Kootenai River (Libby Dam operations, Mining, Agricultur activities, Forestry practices). These activities have prompted short term studies from a conglomerate of parties and their findings have caused a great concern of the water quallity of the Kootenai River. Some of the findings:

1. Heavy metals in fish species (Anders and Apperson '90)
2. Nutrient Deficiency in the Primary Reproductive Levels in the Biological communities (Idaho State University, Erick Snyder '93).
3. Libby Dam Operation, inconsistent flows, relating to numerous upset conditions within the Rivers' system.

With the concerns of the Kootenai Tribe focused on the water quality of the Kootenai River, we applied for a grant from the Bureau of Indian Affairs to assist us in the development of our own water quality monitoring program. In December of 1994 after securing that grant, work was started to develop a water study of the affected areas of concern within the Kootenai River. This program is in the early stages of data gathering and trend monitoring and we feel that it is too early to make any declrarions of causes to the degradation of water quality other than those already addressed by the studies performed.

AIR QUALITY

T6-20 Air quality has been a concern of the Kootenai Tribe for many years due to prevailing winds which in the warmer months flow from the Southwest. The Kootenai people live in the middle of an agricultural district and during the times that local farm activities are in full swing is the time that the Tribe is mostly concerned with. Fertilizer application, pesticides and other chemicals that are applied throughout the

Responses

T6-16. BPA has provided mitigation funding for Libby Dam in the form of a trust fund to the State of Montana. Mitigation proposals are submitted to the State of Montana for consideration by an advisory council. Please contact Alan Wood of the Montana Department of Fish, Wildlife and Parks in Kalispell, Montana, if you have mitigation recommendations.

T6-17. See Response T6-16.

T6-18. The IRCs incorporated into SOSs 4c and 9c include provisions for sturgeon spawning, while accounting for flood control. This is done by drafting Lake Koocanusa less than has been done traditionally for flood control and power during the fall and winter. With higher spring elevations, IRCs would provide more sturgeon spawning flows in many years without sacrificing the ability to keep the Bonners Ferry area from flooding and allow for reservoir refill.

T6-19. The Tribe's concern over Kootenai River Water Quality is noted. Thank you for information about local water quality studies.

T6-20. The SOR agencies acknowledge the Kootenai Tribe's concerns over air quality. While the comment provides useful and valid information about air quality and illness monitoring, the agencies note that the suspected sources of the epidemiological episodes are related to local agricultural practices and not to reservoir operations.

Letter T6

Comments

agricultural fields, blow directly into the Kootenai housing project and that has been our concern. This activity is uncertain to the long term health affects on the the Kootenai people.

T6-20

Air Quality was the key issue in the original Multi-Media grant. The Environmental Management Department has been studying the air quality of Boundary County, Idaho and trying to relate Boundary County's air quality to that of the National Ambient Air Quality Standards (NAAQS) which is set by the EPA. By this, air core samples are taken once every six day for a twenty-four hour period throughout the year. These samples are obtained using a PM-10 air particulate sampler. Two monitoring stations have been established, one at the Kootenai River Inn, Bonners Ferry, and the other at the Kootenai Tribal Headquarters.

The data that is gathered is then applied to an IdDEQ PM-10 air particulate model (U.S. EPA approved) to determine the totatl particulates under 10 µg that has been sampled during that twenty-four hour period. That data is then compared to NAAQS to determine if air quality standards are being met. The data then is compared to illnesses (rashes and flu-like symptoms) recorded at the Kootenai Tribal Indian Health Clinic to correlate any illness related to poor air quality. The Environmental Management Department is also monitoring pesticide spraying within Boundary County adjacent to Tribal property. Data has been gathered the last two years has not been abla to determine if the spraying events that are occurring have any correlation to the illnesses recorded at the Clinic. These illnesses are still occurring during the spray period months. Herbicides, fungicides, plant growth inhibitors, and fertilizers are suspected to be agents that are causing these epidemiological episodes.

SOILS, GEOLOGY AND GROUNDWATER

T6-21

In this category the Kootenai Tribe has concerns when it relates to soils and ground water. As mentioned above in water quality and air quality, the tribes concern is mostly with the applications of the different pesticides and fertilizers. What the long term effect is or may be is not really known by the Tribe. Other than these types of activities have been going on for many years. The Tribe will continue to study the effects through thier air and water quality programs. Turning to the ground water issue, The logging practices of the past may have had an affect but nothing has been brought to the attention of the Kootenai Tribe of Idaho.

NAVIGATION

T6-22

The Kootenai Tribe has no real problem relating to navigation as it is and will not comment on the issue at this time.

LAND USE DEVELOPMENT

T6-23

Land use development is of concewrn to the Tribe when it comes to the destruction of wildlife habitat. There is a growing population in Northern Idaho and the alteration of natural wildlife habitat has a negative impact on the Kootenais' Rights and resources, but we can do little to curb this and can only keep up on this type of activity and intervene when necessary in order to protect those Rights and Resources and take appropriate action.

Although the Kootenai Tribe has had only 12.5 acres that was declared " trust Status" in 1974, we have been actively purchasing property back from nontrust land owners within the Kootenai allotment system and other opportunities that have been purchased by the Tribe for future needs in housing and other aspects under the Tribes comprehensive plans.

Responses

T6-21. Similar to Comment T6-20, this comment expresses concerns related to local agricultural practices, and possibly to logging practices.

T6-22. Thank you for your comment.

T6-23. Thank you for your comment.

Letter T6

Comments

ECONOMIC AND SOCIAL IMPACTS

T6-24 The social and economic impacts to the tribe is long standing as they have continuously lost areas that were hunting and fishing and gathering sites in the past and in many cases were never contacted for thier participation or comments regarding thier activities. The Tribe has been playing a "catch-up" game with the past practices of surrounding agencies in thier reluctance to include the Tribe in thoselinds of activities.

T6-25 Since the national policy has continued along the lines of dealing with Tribes on a "Government to Government" basis, the past practices have lessened, but only slightly. The Tribe will continue to hold the Government and "all" agencies to that national policy as they have a "Trust Responsibility" as was stated by President Clinton when he met with the Tribal leaders from across the nation.

Final comment from the Kootenai Tribe of Idaho;

T6-26 There is one particular point in the review that we agree on with the other Tribes and that is that we feel that the definition of Cultural Resource is too narrow.

The Tribe feels that there is a significant misunderstanding of the different tribes in the region as indicated in the Cultural Resources appendix. There has been too many "blanket covers" used in the past when it comes to being in compliance with Federal Laws relating to the different Native American Tribes.

T6-27 It is stated in the appendix that the inventory of the different cultural sites is not complete. Maybe that is where something can be done that will be acceptable to the different parties. It is stated in the Cultural Resources appendix that .."as the cultural resources of the region become more fully known through systematic investigation and analysis, so does our knowledge of the lifeways of the people who left them behind and our ability to learn from it." We have been made aware of warehouses full of artifacts from different Tribes within the region that are stored and never again touched. This disturbs us very much. It seems to us that although they have not or cannot keep up with the inventory of these specimens, archeologists keep excavating sites and keep collecting artifacts and continue to store them for what, we don't know and from the statement in the appendix that the inventory is not complete, well you can guess where we come from and relate it to "cultural Resources" and "Archeology" and maybe see one of the differences in the way of importance and misunderstanding between the two groups for a start.

If the opportunity was there to learn from the different sites that have been exploited, it doesn't indicate that in the appendix. Traditional cultural resources and sites as partitioned from historical and archeological importance has a vastly different meaning from the Native American point of view, even from those who have "personally observed", "professional experience", or inherited knowledge. A programatic agreement is the only way that this issue may be addressed, at least from this Tribes point of view regarding the protection of cultural sites in the future. We are now starting to set meetings regarding that issue at this time.

These are the comments from the Kootenai Tribe of Idaho regarding the Colombia River Systems Operations Review - Draft Environmental impact statement 1994.

Thank you for your consideration of our comments.

Signed:

Ron Abraham

Responses

T6-24. The SOR agencies recognize that the tribes have suffered significant economic and social impacts as a result of past decisions and actions regarding the development and use of the Columbia River. The analysis of economic and social impacts conducted for the SOR and presented in Appendix O (Economic and Social Impacts) is limited to potential impacts associated with the alternative SOSs. The analysis of economic impacts specifically identifies impacts to the tribal in-river salmon fishery (see Chapter 4, Section 4.3 and Technical Exhibit A) and the assessment of social impacts addresses potential impacts on focus communities (see Chapter 5, Section 5.5 and Technical Exhibit F).

T6-25. See Common Response No. 7.

T6-26. The definition of cultural resources in the revised Cultural Resources Appendix has been expanded to include the usage of the term by participating tribes. The appendix has also been revised to clearly differentiate between the views of different tribes.

T6-27. By cultural resources inventory, the appendix and EIS mean the pedestrian survey of the reservoir areas to discover and record archaeological sites and other cultural resources that the projects may affect. Archaeologists excavate sites to recover scientific information that would otherwise be lost due to the operation of the reservoirs. The artifacts recovered are catalogued and stored so that future archaeologists can study these to check scientific results or to come up with new findings.

Treatment of archaeological sites to save some of their scientific value does not address the issue of the significance of these sites in traditional culture. Programmatic agreements developed in consultation with the Tribes will specify measures to be taken to preserve and protect cultural sites in terms of their scientific value and their value in traditional culture.

The main purpose of a programmatic agreement will be to establish historic preservation plans for each reservoir for completion of a cultural resources inventory; a summary overview of what has been learned from previous technical studies; development of a framework for site evaluation; and to set goals and priorities for site protection, study, data recovery, and curation. It is the responsibility of the Federal agency working with the tribe to develop this plan. The programmatic agreements will identify the roles for regional Indian tribes in the development and implementation of these plans.

Letter T7

Comments

Responses

KOOTENAI TRIBE OF IDAHO

P.O. Box 1269 Bonners Ferry, Idaho 83805
(208) 267-3519 Fax. No. (208) 267-2960

November 6,1994

Interagency Team
Columbia River Systems Operation Review
P.O. Box 2988
Portland OR. 97208-2988

Interagency Team:

Enclosed are SOR-DEIS comments from the Kootenai Tribe of Idaho regarding wildlife. You will be receiving additional comments on resident fish aspects of the SOR-DEIS.

Sincerely,

Paul Anders

Paul Anders
Fishery Biologist

Letter T7

Comments

RA DA

UPPER COLUMBIA UNITED TRIBES FISHERIES RESEARCH CENTE

ADMINISTRATION AND ACCOUNTING OFFICE
P.O. Box 100
Wellpinit, WA 99040
509-838-3465

RESEARCH OFFICE
Department of Biology
Eastern Washington University
Cheney, WA 99004
509-359-6397

9-20-94

Velma Bahe, Chair
Kootenai Tribe of Idaho
Bonners Ferry, ID 83805

RE: Systems Operation Review DEIS Comments--Wildlife and Kootenai River

Dear Chair Bahe:

T7-1

I have reviewed the above reference discussion concerning SOR alternative and potential impact to wildlife on the Kootenai River. In general there was very little specific information available on changes in Libby Dam operation and its effects on habitat downstream. This resulted in **no** changes being expressed for any alternative. In effect, impacts to the river habitat and wildlife were discounted and not considered further in the SOR DEIS.

T7-2

My comments therefore are limited. I feel this illustrates the continuing bias against upriver impacts. It is now imperative that we push the Kootenai River Wildlife Amendment, using SOR DEIS to illustrate the critical need for quantitative data prior to the selection of a preferred alternative.

I have previously forwarded a copy of the amendment to you and your staff. Please let me know if you would like to see changes prior to its submission to the Northwest Power Planning Council. I will also use the following comments to edit it prior to its submission to the Northwest Power Planning Council, by the November 17 deadline. In the meantime, if you have no objections I will forward these comments to the SOR review.

Thank you.

Christopher Merker
Assistant Director/Wildlife Biologist

c.c. A. Scholz
L. Goodrow

Responses

T7-1. A concerted effort was made to associate flows with stages (river elevations), as was done for the Clearwater River below Dworshak Dam in Idaho. Unfortunately, hydrologists indicated that there are no stage gages on the Kootenai River between Libby Dam and Bonners Ferry. The SOR agencies found no consistent correlation between Libby Dam flows and stage level at Bonners Ferry, and therefore had no basis to attempt to do the same upstream of Bonners Ferry. The agencies were left with analyzing outflows from Libby Dam, and comparing those under the various alternatives to existing outflows. Once again, data are limited, as flows are expressed in average monthly flows. Average monthly flows for all alternatives, while varying between alternatives for certain months, are nevertheless not significantly different from existing outflows. The main concern was erosion from significantly high flows, particularly in the winter, when such flows are often followed by low flows, leaving a sheet of ice attached to the bank, which then causes the bank to slough from the weight of the ice. No difference from existing conditions was found. Because the SOR would not result in a change from current operating conditions, the agencies did not compare outflows to pre-dam flows. Thus, the Draft EIS found no impacts to areas downstream from Libby Dam.

T7-2. Thank you for your comment.

Letter T7

Comments

SOR DEIS comments - Kootenai River

T7-3

Section 2.2.1.1. Lower Kootenai River
Existing

- Acreage figures were given by habitat type. Were these figures available prior to construction of Libby Dam?

T7-4

Section 2.2.1.2. Wildlife

- Sharp-tailed grouse are mentioned as present along the river. We know of none remaining.

Section 2.2.2. Lake Koocausa

- Sharp-tailed grouse are **not** mentioned, but there is a remnant population near the upper reservoir that has been impacted by dam construction.

T7-5

Section 3.2.5.2.

- No correlation was constructed between flows/river elevation/habitat changes. Because of this, no changes were noted in any SOS alternatives. This does not mean that no changes can be expected, quite the contrary. I feel Matrix Tables 5-3 and 5-4 are inaccurate in that they imply this. They should be left blank and footnoted that almost no data was available that would allow an assessment of impacts.

Section 4.2.2.1. Kootenai River Elevation Results

- Effects of various flows on vegetation are unknown. Analysis is again very general. As a result, no alternative was sufficiently different to show changes.

T7-6

Section 4.2.2.2. Data Gaps

- Poor sensitivity with SOR process means a more detailed effort is needed. Daily flows need to be analyzed. This might be done by correlating Libby Dam releases with staff gauges along the river, including at Bonners Ferry. This data should then be used with aerial photos to create a flood curve for the river, and its effects on habitat types. Monthly flows are not sensitive enough to show these effects.

- The above was done on the Clearwater River (See Section 4.2.16). This effort showed negative effects there, while SOR showed "no" changes along Kootenai River. This can be assumed to affect decision-making process in selecting an alternative. Why was it not possible to do the same type of analysis for Kootenai River? This needs to be done prior to the final EIS.

Responses

T7-3. The acreage figures were calculated from recent aerial photographs. Acreage figures for habitats prior to Libby Dam construction were not needed for this analysis.

T7-4. The sharp-tailed grouse was deleted from this paragraph. Sharp-tailed grouse are not mentioned for Lake Koocanusa because they no longer occur along the reservoir and would not be affected by a change in the operation of Libby Dam. The occurrence of the remnant population is recognized, and mitigation for this population is occurring.

T7-5. Regarding your comment about Section 3.2.5.2, please see Response T7-1. For Section 4.2.2.1, adverse effects on vegetation from the alternatives analyzed in the Draft EIS are not expected since outflows from Libby Dam would not be significantly different from existing operations.

T7-6. The SOR agencies agree that information on daily flows would be desirable. Monthly and seasonal changes caused by the alternatives are captured by monthly flows (refer to assumptions in Chapter 3 of Appendix N).

In order to develop necessary input data for some of the models used to evaluate impacts, some work groups transformed the monthly flows into daily values based on an analysis of recent actual daily, weekly and monthly flow patterns at the dams. Please note Response T7-1 above, that flows were not correlated with the staff gauge at Bonners Ferry, primarily because of the additional flows from tributaries, such as the Fisher, Yaak, and Moyie rivers. The SOR agencies worked with hydrologists in an attempt to develop a method to correlate Libby Dam outflows to river elevations, but could not find a reliable method.

The method was successful on the Clearwater River because of the presence of several staff gauges that not only accounted for Dworshak Dam outflows, but also accounted for the flows of tributary streams. The agencies do not feel it is possible to conduct the same kind of analysis for the Kootenai River without gauges that account for tributary flows.

Letter T7

Comments

T7-7

- There was clearly a major data gap in upriver (subjective) versus downriver (quantifiable) projects. This needs to be redressed both in this process, and through the Power Council's focus through the amendment process. Upriver projects have clearly been ignored too long. The result is that your efforts in conducting the SOR have been compromised.

T7-8

Section 5.1. Habitat Acres and 5.2. Wildlife Effects

- "*There is no evident changes in acres for any habitat or land form evaluated for. . . Kootenai River. . . As a result these will not be addressed in this discussion of acreage (wildlife) changes related to SOR.*"

This is very misleading in implying no changes, when the actual situation involved an almost total lack of data available to predict changes. This should be noted in the SOR discussion, and a recommendation in Section 4.2.2.2 Data Gaps for useful data collection prior to the final EIS.

Responses

T7-7. Thank you for your observation concerning data gaps. The SOR agencies have made additional attempts to improve and quantify data gaps. The additional work completed through the agencies work groups, public meetings and comments, and in other arenas have assisted us in more equitably treating all projects.

T7-8. See Response T7-1.

Letter T8

Comments

Responses

Warm Springs, Oregon 97761 / 503 553-1161

November 14, 1994

Mr. James Fodrea
U.S. Bureau of Reclamation
911 NE 11th Avenue, Room 125
Portland, OR. 97232

Dear Mr. Fodrea,

T8-1

The Confederated Tribes of Warm Springs **ARE NOT FINDING** the following critical items in the Draft SOR Environmental Impact Statement:

1. The DFOP.
2. The correct model used.
3. **TREATY OBLIGATIONS.**
4. A comprehensive look at the system.
5. Flows for fall chinook.
6. A long term planning approach.
7. Single scientific approach from managers.

It appears to us, that none of the options noted will help fish.

Sincerely,

Nathan Jim Sr.
Vice-Chairman
Fish & Wildlife Committee - On Reservation

NJ/rm

cc: William McGinnis, U.S. Army Corps of Engineers, Portland, OR.
Philip Mesa, Bonneville Power Administration, Vancouver, WA.
Raymond Calica Sr., Chairman, Tribal Council

T8-1. The Anadromous Fish Work Group was tasked with developing alternatives that would represent near optimum operations for anadromous fish. The group was then asked to describe alternatives that, while not ideal, would provide an acceptable environment for anadromous fish. Additional alternatives were developed by the Analysis Management Group during screening. Some of these came directly from public scoping meetings. Others were developed from activities occurring in the region, such as the Salmon Summit, and from the Corps' 1992 Columbia River Salmon Flow Measures Options Analysis/EIS and a drawdown test the Corps conducted on the Snake River in 1992. The NPPC's Fish and Wildlife Program amendments were the source of other alternatives, as was a 1991 proposal by CBFWA to increase flows in the Columbia River. The 10 work groups (including the Anadromous Fish Work Group) proposed a total of 90 different ways to operate the river.

These alternatives were felt to be the best currently available. Only those actions directly related to operation of the hydro system were included. Many other factors have a great bearing on anadromous fish survival that were not included, such as habitat, harvest, and ocean conditions. Additionally, alternatives that severely affected other uses, while not providing significant benefits, were screened out (see Screening Analysis, Volume 1, for details).

Following the screening phase, the number of alternatives were reduced to 7 SOSs. These 7 SOSs, with associated options, provided 21 possible approaches for operating the system and were evaluated in the Draft EIS. Following public review and comment, several of these options were dropped or replaced. For the Final EIS, 13 alternatives are considered. They represent the results of the third iteration of alternative screening and cover the broad spectrum of operating elements for the FCRPS.

The SOR EIS has not attempted to look at all possible combinations of river operations and variables. The analysis has, however, developed substantial data on the major operating elements. This data will provide a basis for combining the elements in new ways based on public comment and subsequent deliberation. The final SOS may be a mix of operating elements or components currently included in separate alternatives.

Planning and operation of the Columbia River hydro system are part of a dynamic process that will be continually refined as new information becomes available.

Spokane Tribe of Indians
P.O. Box 100 - Wellpinit, WA 99040 - Ph. (509) 258-4581/838-3465
CENTURY OF SURVIVAL
1881 - 1981

November 14, 1994

RECEIVED BY SOR
PUBLIC INVOLVEMENT
LOG #. 08-0220
RECEIPT DATE
NOV 28 1994

Ms. Linda Burbach
Columbia River Systems Operation Review
Interagency Team
c/o United States Department of Energy
Bonneville Power Administration
P.O. Box 2988
Portland, OR 97208-2988

RE: Comments on Columbia River System Operation Review
Draft Environmental Impact Statement
Appendix D - Cultural Resources

Dear Ms. Burbach:

Attached are initial comments from the Spokane Tribe of Indians on the SOR DEIS Appendix D - Cultural Resources. We are providing these comments for your information, pending a more in-depth look at the document by the Tribe. However, these comments are preliminary and should not be considered the final comments, concerns, or statements by the Spokane Tribe on the Cultural Resources Appendix.

We request that these comments, as well as any comments we submit in the future, be considered very seriously in the development of the Columbia River System Operation Strategy. The Spokane Tribe could not endorse any strategy which has not addressed our concerns.

Thank you for your timely review of these comments. Please direct any response or questions to James SiJohn, Tribal Council Member, Spokane Tribe of Indians, Telephone 509-258-4581.

Sincerely,

Larry Goodrow
Executive Director

Letter T9

Comments

PRELIMINARY COMMENTS OF THE SPOKANE TRIBE
REVIEW OF SOR DRAFT EIS APPENDIX D - CULTURAL RESOURCES

I. INTRODUCTION

The Spokane Tribe of Indians is a Native American Tribe whose traditional lands and cultural resources are directly and indirectly affected by Columbia River hydropower systems operations. As part of the EIS process, the Spokane Tribe submits the following concerns about the SOR as related to cultural resources. These comments express some, but not all, of the Spokane Tribe's concerns, and should not be considered final or exhaustive.

Area of Impact

T9-1

With the construction of Grand Coulee Dam, the reservoir waters which are known as "Lake Roosevelt" inundated land bordering the Columbia and Spokane Rivers. This includes the traditional lands of the Spokane Indians on the east bank of the Columbia River, beginning at the mouth of Hunters Creek southward to the old townsite of Peach, and on both banks of the Spokane River, from the confluence with the Columbia River eastward to the Little Falls Dam.

The width of area affected by reservoir operations includes not only those areas which are inundated, but a much larger area which is increasing steadily due to erosion, landslides, higher visitation, etc. For example, the reservoir originally may have inundated land to Point X, but due to destabilization by reservoir waters, landslides have occurred, destroying lands (and any cultural resources thereon) a quarter mile back from the reservoir. Consequently, additional land has become unstable, in a gradual domino effect of landsliding and destabilization.

Of course, these effects have major impacts on the integrity of any cultural resources on adjacent landforms, so that cultural resources anywhere within the visual catchment are negatively affected. Furthermore, the erosion process continues, so that a larger and larger area is impacted directly or indirectly by reservoir operations through time. A comparison of diachronic topographic maps and photographs, as well as studies of erosion of the rivers' banks, substantiates this claim.

T9-2

The physical impacts are direct and obvious. However, indirect effects of Columbia River systems operations have caused even greater degradation of Spokane Tribal cultural resources. Elements of Tribal language, religion and custom that dealt with riverine resources are in danger or destroyed. For example, much

Responses

T9-1. The SOR agencies concur with your statements indicating the past and ongoing loss of cultural resources from construction of Grand Coulee Dam. The SOR agencies have altered the discussion in Section 2.3.5 concerning Grand Coulee Dam/Lake Roosevelt to more completely acknowledge the loss of traditional culture and the continued impacts upon the archaeological resources. Discussions of resources that are of traditional cultural value to tribes have also been added in Chapters 1 and 2.

T9-2. See Response T9-1.

Letter T9

Comments

T9-2

of the technology and technological jargon of fishing has disappeared; all of the critical religious rituals relying on the river or its resources have been destroyed. Stories and traditional names of places never seen by today's children are forgotten. The operation of Columbia River hydropower systems directly and indirecIty affects these less tangible cultural resources at least as much as it affects archaeological artifacts.

[To be completed.]

II. SPOKANE TRIBAL CULTURAL RESOURCES

T9-3

Spokane Tribal cultural resources affected by Columbia River systems operations include every "type" currently recognized as potentially eligible for National Register status by the Advisory Council on Historic Preservation, and include, but are not limited to, archaeological and historic sites, traditional cultural properties, historic (and prehistoric) landscapes, and locations significant in the lives of important persons. Other types of cultural resources, such as culture-specific memories, activities and language, also are recognized by the Spokane Tribe as significant.

John Ross completed an inventory of cultural resources for the Spoaken Tribe in 1993. The results of this study are contained in a multi-volume report, proeprty of the Tribe. Much of the contents of that report are confidential in nature. Parties needing information on the cultural resources within the Spokane Reservation can contact the Tribe, which is willing to release information about the number of sites affected by systems operations, but not the specific locations of those sites.

T9-4

Due to the special and often sacred relationship of these cultural resources to the Spokane people, the Tribe chooses to perform its own cultural resource management activities. This ability to perform such activities does not imply that other agencies' responsibilities as set forth in federal mandates are in any way relieved; but the Tribe will be the agency to perform any actions concerning Spokane cultural resources. When expertise is needed which Tribal members do not currently hold, they will be responsible for seeking that expertise from outside sources.

[To be completed.]

Responses

T9-3. The comment is noted. The Cultural Resources Appendix has been revised to include a more detailed discussion regarding the tribes' view of cultural resources. Section 2.3.5 has been revised to more clearly represent the Spokane Tribe's cultural resources program accomplishments. Chapter 2 has been revised to include more discussion of traditional cultural values.

T9-4. The comment is noted. The SOR agencies agree that tribes should have a significant role in managing cultural resource evaluation and preservation.

Letter T9

Comments

III. GENERAL COMMENTS
CONCERNING THE SOR DRAFT EIS APPENDIX D

[To be completed.]

IV. COMMENTS ADDRESSING SPECIFIC PARTS
OF THE SOR DRAFT EIS APPENDIX D

Chapter 1: Introduction

[To be completed.]

Chapter 2: Cultural Resources in the Columbia Basin

[To be completed.]

Chapter 3: Study Methods

T9-5

Section 3.3 deserves a closer look, as the validity of SOR DEIS analyses is based on these assumptions and limitations. Assumptions must be made in the course of any study, and all projects are subject to limitations. However, the assumptions involved in the SOR DEIS render any conclusions questionable at the least, and probably completely invalid.

T9-6

3.3.1: "This analysis is limited in scope to areas downstream of Brownlee Reservoir, as is the SOR analysis in general." Is this implying that reservoirs have no impact on upstream cultural resources? Or you don't know, so you're not going to check it out? Or are you just not going to be responsible for these areas, even though you're federally mandated to do so? Perhaps you are assuming the downstream effects of reservoirs are the same as upstream, and so aren't considering them in your modelling. This really needs to be addressed.

T9-7

3.3.2: "The analysis assumes that cultural resources sites are equally susceptible to erosion and processes of landform change as are non-sites." This is a false assumption. Cultural resources (landscapes, archaeological sites, cemeteries, sacred areas) are rarely of the same material as the soil and rock matrix they are associated with. Therefore, these cultural resources are most often drastically unequal to landforms interms of susceptibility to erosion and change.

Even though a landform does not show substantial change (say, and inundated terrace of sand and gravel), its matrix and those materials therein are not necessarily (and in fact rarely are) in a static state. Read a book on turbation processes! One very

Responses

T9-5. Comments T9-5 through T9-13 question the assumptions behind the geomorphic and simulation studies in the Cultural Resources Appendix, and propose that conclusions based on those assumptions are invalid. Most of the assumptions under discussion relate to deficiencies in the cultural resource site data available for impact analysis. This response deals with that general issue pertinent to each of Comments T9-5 through T9-13. Further information specific to each of these comments is provided after the general response.

NEPA allows analysis to be accomplished using existing data when deficiencies are found in the available data. Their potential influence upon NEPA analysis are clearly defined and are taken into consideration when interpreting the results of impact analysis.

The scope and size of the SOR precluded collecting additional or corrected cultural resources data for use in NEPA impact analysis. We considered eliminating from use data that was considered unreliable or incomplete. However, at some reservoirs, including Lake Roosevelt, this would have eliminated essentially all of the existing site information. This would have produced such generic results that they would have had no meaning and would not have met the NEPA impact analysis requirements. Therefore, we stressed development of analytical tools to put the existing data to best use. The analytical tools were designed to measure effects of various operational conditions (exposure in a drawdown zone, inundation, or shoreline erosion) on landforms within reservoir pools, with the assumption that this would correlate to a worst case impact analysis on sites. The model also analyzed the same operational conditions for identified cultural resources by elevation. Finally, unquantified observations or experiences of Federal and tribal cultural resources managers were factored into the analysis. The intent was to expose and address errors created by gaps or inaccuracies in the database. Additional assumptions were phrased to define processes to bridge data gaps or errors for impact analysis; for example, the assumption that potential for increased erosion of landforms is equivalent to increased erosion of cultural resources was used to bridge incomplete survey data at some reservoirs.

Chapters 3, 4, and 5 of the appendix have been revised to discuss assumptions and limitations of the analysis in greater detail. These chapters acknowledge the effects on interpretation of the analysis assumptions. As the revised Chapter 3 states, cultural resources data for some reservoirs (Libby, Albeni Falls, Chief Joseph, lower Snake River projects) is fairly complete and relatively good. For others (lower Columbia, Grand Coulee), the data is both incomplete and poor. For still others, the data quality is good, but survey coverage is incomplete (Hungry Horse, Dworshak). The geomorphic analysis and simulation model can therefore only estimate rates of ongoing effect on known resources. As long as the appendix does not generalize these results beyond the known resources, the conclusions are valid for the known resources. These conclusions have to do with the general levels of

T9-5. cont'd. impact at various reservoirs and with potential differences in rates of ongoing impact between the various alternatives.

Section 2.3.5 has been altered to more clearly explain the data limitations for Lake Roosevelt in particular. Future management actions at Lake Roosevelt will be implemented using the new data that is based on cultural resources surveys that began in 1995. As Chapter 4 of the appendix explains, the simulation results for the Grand Coulee project may not be as useful for management planning because they are based on an older data set.

T9-6. The agencies limited the study of effects to reservoirs below Brownlee because reservoirs above Brownlee were not affected by the operational agreements that triggered SOR. Therefore, no change in the operation of those upper Snake reservoirs was anticipated. Project operations above Brownlee, furthermore, would not significantly differ between SOR alternatives. (See also the Main Report discussions of the factors defining the SOR process, and Common Response No. 3.) The Federal agencies do recognize their responsibility to manage cultural resources on lands under their jurisdiction or affected by their operations upstream of Brownlee, but those responsibilities are not pertinent to this study. The Bureau of Reclamation is presently beginning a review of operations of their reservoirs above Brownlee, and the effects of those operations on cultural resources along the middle and upper Snake will be one topic examined during the review. Other parties, particularly affected tribes, will be invited to participate in the review.

T9-7. The EIS has been revised to clarify this statement. The statement in the Draft EIS that sites are equally susceptible to erosion as non-sites is derived from the understanding that archaeological sites are embedded in the soils matrix that constitutes the geological landform. We assumed that any change in a landform due to reservoir operations equates to destruction of archaeological sites or some types of traditional resources. Therefore, erosional processes that alter landforms are equivalent to damage or destruction of archaeological sites on the landform. Using this assumption, we were able to address the kinds of effects that would occur to resources in unsurveyed areas. The purpose of stating the assumption was also to establish that examination of kinds of landform changes caused by reservoir operations is one way to understand how those operations might affect cultural resources. The goal of the EIS is to assess such effects.

Letter T9

Comments

T9-7

common example is a lithic scatter on a low terrace: the terrace may be fairly stable because seasonal erosion and depositon may be about equal, but the lithic scatter will be subject to vertical sorting and horizontal scattering from water action, as well as visitor "pickup" if it is exposed for part of the year. Furthermore, losing a couple of feet of a landform per year may be insignificant to the landform, but devastating to a cultural resource.

T9-8

Some kinds of sites, such as archaeological sites, however, occur at higher density in places such as river terraces that may be less susceptible to erosion, landsliding, and slumping than some other locations. Steep slopes that are more subject to geomorphic processes, such as land slumping and sliding, may have fewer cultural resources.

Cultural resources probably do have differential distribution, but there are three faults to the above statement from the DEIS. First, it is based on studies which have been mainly federally-funded projects around reservoir waters, which creates a strong bias toward sites in those areas. Neither the original Columbia River bed under Lake Roosevelt, nor much of the area above the 1310 line, for example, ever have been surveyed. Second, making such statements is dangerous without testing. Without equal sampling above and below, we cannot know how archaeological sites are distributed; with adequate information, this hypothesis could be tested. Finally, the implicit assumption is that river terraces are not as subject to erosion and landsliding. River terraces have fronts, often with steep slopes, and these are subject to erosion if located at reservoir level. Even more importantly, because they are often composed of unconsolidated sands and gravel, river terraces not only erode, but often continue to erode without reaching a point of stabilization.

T9-9

3.3.3: "The analysis assumes that the known cultural resources are representative in type and location of all the cultural resources, known and unknown, at the reservoirs." As addressed in the previous paragraph, the surveyed area is small, and very biased toward the "bathtub ring" and fluctuation zone. Surveys have been of vastly different quality. Traditional cultural properties and historic (and prehistoric) landscapes have only recently been recognized, and few have been recorded. Native American groups have not been fully consulted concerning their knowledge of cultural resources. Therefore, these things considered, the "known" cultural resources definitely do not represent all cultural resources in type or location.

Responses

T9-8. While it is true that most early investigations focused on sites along the mainstem Columbia and Snake, since that time large tracts of land have been surveyed that are well removed from the mainstem rivers. These more recent surveys support the concept of a riverine focus, and simply modify earlier models to recognize the important but more short-term use of upland areas.

The generalization in the Draft EIS that there is a higher site density on river terraces was not intended to address major issues of regional settlement patterns or subsistence economics models. It was instead intended to indicate that more level areas (such as river terraces) are typically the focus of use. However, your comment underlines that this generalization does not recognize some types of types of procurement locations (such as many primary lithics sources), areas that might have been used for religious purposes, or the overall landscape values the larger area may hold for Native Americans. The SOR Final EIS addresses these factors.

The point that erosion fronts on terrace cutbanks can cause severe and progressive damage to archaeological sites is an important one, and the Draft EIS was revised to emphasize it more strongly.

T9-9. Section 3.3.3 of Appendix D acknowledges that the known cultural resources are not perfectly representative of all cultural resources at the projects, known and unknown. The analysis acknowledges also that little is known about Native American traditional use resources and traditional cultural properties. The discussion has been revised to discuss the adequacy of existing data in greater detail. The revised Chapter 3 includes a table (Table 3-2) showing estimated percentage of reservoir areas surveyed.

Letter T9

Comments

Spokane Tribe - Comments on Appendix D 5

T9-9

"It is not clear from existing data what percentage of the reservoirs has been surveyed." This information is necessary before modeling or planning can occur. Who will take on the requisite task of determining the total survey information available?

T9-10

"The hydroregulation models assume a constant rate of reservoir change from month to month with no interim fluctuation, which is not necessarily accurate." Month to month fluctuations are a key factor affecting the quantity of erosion and landslides. The effects of a reservoir which fluctuates 10 feet per month are quantitatively and qualitatively different from one which doesn't fluctuate for 10 months, and then fluctuates 120 feet in the remaining 2 months. These are very real differences which not only make the assumptions "not necessarily accurate," but actually invalidate the analysis.

"The hydroregulation models assume no significant daily or weekly fluctuation in reservoir operations These fluctuations would not necessarily differ among SOS alternatives, however." Whether they differ among SOS alternatives or not, the daily and weekly fluctuations have strong impacts on cultural resources, and must be considered.

T9-11

"The anslysis assumes that all reservoirs are equally susceptible to vandalism and artifact theft." While the DEIS admits that this is an inaccurate assumption, the error is not corrected. Vandalism and artifact theft are related directly to reservoir-induced erosion; looters know as well as archaeologists to check eroding areas for new exposures of artifacts. It is precisely the most sacred cultural resources - burials - which are most often sought by looters. Assuming away this factor does not erase responsibility for damage which has and will occur. In assessing the effect of systems operations on cultural resources, a more serious look must be given to vandalism and artifact theft.

"The analysis treats all site types equally, even though some may be more or less susceptible to damage because of exposure and erosion." Again, different material types are differentially susceptible to weathering, to the effects of inundation, to vandalism, etc. Further examples here are not needed. This assumption, as those mentioned above, renders the resulting analysis invalid.

T9-12

"The analysis assumes that inundation is a relatively benign impact, since it presents most kinds of erosion and site exposure." First, this assumption, though common, is a false one (check those Corps of Engineer studies cited at the beginning of Appendix D!). This common assumption has not been comprehensively tested, but there have been many archaeological projects (including the Kettle Falls Project within Lake Roosevelt) which

Responses

T9-10. The hydroregulation models contain estimated reservoir elevations for each month at each reservoir. They simplify the process of reservoir elevation change by including only the end-of-month elevations, rather than day-to-day changes. Records of operations over the last 50-year period indicate that, for the most part, real changes in reservoir elevation are mostly constant and one-directional within a monthly interval. The hydroregulation models are designed to accurately depict the actions of the hypothetical case provided in the comment, which postulates two reservoirs, where one fluctuates 10 feet per month, and the other does not fluctuate at all for 10 months and then moves 120 feet in two months.

T9-11. The Final EIS discloses the problem of vandalism and artifact theft, which affects every reservoir and is a major concern for Native Americans, archaeologists, and the general public. The agencies do not have accurate information, however, regarding the relative severity of vandalism and artifact theft at different reservoirs or in portions of reservoirs. In management actions following the Final EIS, we would employ factors such as you pointed out to prioritize actions to address vandalism.

The stated assumption that all reservoirs are equally susceptible to vandalism is used for the simulation model only. The simulation holds effects such as susceptibility to vandalism equal for all sites, and focuses on the major reservoir operation effects. The simulation attempts to measure the differences between the alternatives in terms of their potential to increase or decrease opportunities for vandalism. This is done by modeling the relative amount of archaeological drawdown zone exposure at each known site under each alternative.

T9-12. The Appendix has been revised to more completely address several important points provided in this comment. The Kettle Falls example you provided is an interesting example of the effects of long-term erosion. There, excavations following nearly 30 years of inundation revealed that some sites contained intact pit houses, while others located nearby were highly eroded. This is a good example of continued underwater erosion due to eddy pools and the damages that can occur in inundated sites, and it has been included as a case in point in the revised appendix. Furthermore, the model has been revised to simulate the number of days of inundation at each recorded site, to more directly assess the potential effects of inundation. The comment also raises the important issue of site accessibility, and discussion of this issue have been expanded. Chapter 4 discusses the effects of inundation on archaeological deposits and artifacts.

Letter T9

Comments

suggest the opposite. Sites which have been excavated after long-term inundation have provided evidence that many forces which actively destroy sites, such as eddy pools, do exist in reservoirs.

Second, even if a site is subject only to deposition and not to erosion, we do not know that the site is not being destroyed. We can't get to it now, nor probably ever, to see.

T9-12 Third, there are many materials which are subject to deterioration in water. Most of these probably have been destroyed already, but some (such as pictographs) may deteriorate more slowly.

Finally, and most importantly, a site that is permanently inundated is uesless to the people who need it: scientists cannot obtain information from it; the public cannot enjoy nor appreciate it; and Native Americans cannot use or protect it. Therefore, even if the site is not physically deteriorated, its usefulness is detroyed.

T9-13 Not listed, but implicit in this analysis nevertheless, is the assumption that recorded elevations are correct and that all sites are equal in priority. Most site elevations are estimates at best, and vary greatly in accuracy. All sites are not equal, and some receive higher priority (such as burial sites), not distinguished by the National Register system.

In summary, the assumptions on which your analyses are based are false. Though you recognize this in the text, you do not make any corrections. These false assumptions render any results completely invalid. Valid analyses must be based on a more realistic, specific, and complete set of data.

[To be completed.]

Chapter 4: Alternatives and Their Impacts

[To be completed.]

Chapter 5: Comparison of Alternatives

[To be completed.]

Chapter 6: Management Responsibilities

[To be completed.]

Responses

T9-13. Some older data are not consistent with today's standards. Older surveys using 1:62,500 scale maps, for example, may not have recorded elevations that are as accurate as those based on plotting to 1:24,000-scale maps. Future investigations at the reservoirs will recognize the data limitations, and work from a reliable survey database. New techniques will be applied that will more reliably record site locational information. The Cultural Resources Work Group cultural resources sites database has been checked for accuracy as much as possible against the existing records. Most of the elevational data on the existing site forms was taken from USGS topographic maps. As discussed in the revised Chapter 2 of the Cultural Resources Appendix, the agencies recognize that some of the elevational data at Lake Roosevelt are faulty.

The simulation treats all sites equally because under the National Historic Preservation Act, all sites are potentially eligible for National Register listing until found ineligible by the State Historic Preservation Officer or Keeper of the National Register. Sites were included in the analysis unless there was strong evidence that they had been completely destroyed. We agree that certain sites, such as burial sites, may be of greater significance than others.

Letter T9

Comments

Spokane Tribe - Comments on Appendix D 7

List of Preparers

[To be completed.]

Appendix A: Development of an Analytical Geomorphic Procedure for the Management of Cultural Resources on the Columbia River System

T9-14

In the introduction to this appendix (p.A-2), management of cultural resources calls for use of a Geographic Information System (GIS). Who would operate this sytem? Where would it be located? Who can obtain information from it? You do not address the input of cultural resource site locations, though it is implied in order to create your management model. How is confidentiality of sacred sites to be maintained?

One problem which lies in using your suggested methodology with a GIS system (which requires pin-point location) is that most sites are not mapped using the accuracy that this methodology implies. As any field archaeologist knows, a site is often assigned UTM coordinates based on where someone had much earlier plotted a site number on a 1:24,000 topographic map, which had never been intended to be accurate to 10 meters, and rarely ever is. Sites frequently are mismapped on 1:24,000 topo maps by 200 to 500 meters. Sites usually are re-located using descriptive information. If garbage data is plugged into a GIS system, garbage output will be the result.

Furthermore, site boundaries must be defined for a GIS system. Will a raster system be used to deal with this, or are you going to use a vector system? What effect does this have on your model?

T9-15

In the section on the development of data bases for cultural resource management, the DEIS states that data is obtained from 1:500,000 and 1:24,000 scale maps. These scales are absurdly too general to address the geomorphological conditions at the site level. Those factors affecting site stability occur on a more local scale: erosional and depositional processes, while describable in general terms, are in effect very site-specific. For example, while a site may appear to be located on a glacial terrace underlain by granite, as seen on a 1:24,000 scale map, the site actually may lie on or within very different matrices, such as glacial till, sand dunes, clay, or on bedrock, which would not appear on that scale map, but which would most greatly affect that site's stability. Resource management prediction or planning based on information from the sources cited in the DEIS would have no validity.

Responses

T9-14. Geographic information systems are a management tool of demonstrated utility in other programs of natural and cultural resources management. Needs, conditions, and the parties involved are unique at each reservoir. Therefore, the details of GIS database creation and management will be defined for each SOR reservoir according to management agreements with tribes specific to the reservoirs. At Lake Roosevelt, for example, the NPS, Reclamation, and the Colville Confederated Tribes have in place GIS systems. These entities and the Spokane Tribe will design the uses of the GIS for cultural resources management at the reservoir. New locational information will be recorded for sites using an automated global positioning system.

T9-15. The maps referenced are the most detailed currently available for Dworshak Reservoir (the case study used). The geomorphic analysis also used large-scale aerial photography with ground-truthing to carry out the Dworshak study. The geomorphic studies will use the most detailed site-specific information whenever it is available.

Letter T9

Comments

Spokane Tribe - Comments on Appendix D 8

T9-16

Discussion of geomorphic processes in the DEIS is very general, having no time depth and no quantification; there is no discussion of where or why each process occurs, and the text is not predictive in nature. The distinction between direct and indirect impacts does not matter in the destruction of cultural resources.

A more adequate analytical geomorphic procedure for the management of cultural resources must first include a total inventory of sites (as much as that is possible). Study of geomorphic processes must include visits at intervals throughout the annual cycle to a large sample of actual cultural resource sites in each area. Both quantitative (example: volume disturbed per month) and qualitative (example: geomorphic setting and processes) data must be recorded at each visit. Static information based on one visit per site is inadequate for realizing the processes at work. Time depth and the ability to predict accurately are two key elements in a good model. With quantitative and qualitative diachronic information from multiple visits to a large sample of actual sites, a valid statistical model could be created.

T9-17

In the DEIS discussion of a cultural resource monitoring plan, there is an asssumption of adequate data. The DEIS does not account for where or by whom monitoring will occur. Are you going to monitor all cultural resource sites forever? The most critical element in a discussion of monitoring is missing: how specifically is monitoring going to be used in the management of cultural resources?

There has been no mention in this appendix of a plan to conduct inventories to supplement inadequate data. There has been no regard for confidentiality of information. Who is going to make management decisions? Who will pay, to whom, and how, for destroyed resources? No provisions have been made for any needed site excavations. How do you mitigate for losses of traditional cultural properties that can't be used due to inundation?

T9-18

The DEIS does not mention consultation with Native American groups during planning nor implementation. Consultation should have been carried on beginning long before this draft was generated, and should continue at every stage throughout the project. Responsible parties, timing, procedures, etc., for true consultation with Native Americans, should be spelled out in the EIS. Adequate consultation will not occur as something tacked on at the last minute.

The comments in the preceding paragraph also pertain to the curation of materials recovered during this project.

[To be completed.]

Responses

T9-16. The purpose of the geomorphological study for SOR was to suggest a tool that might be applied to aid in the design and implementation of future cultural resource studies and management planning actions. The discussions are intentionally general, since the reservoirs under discussion are widely distanced from each other, and each contains complex, varied, and unique conditions. At specific reservoirs, application of this tool must be integrated with reliable site locational and soils data and an understanding of system operation and other factors.

T9-17. The Final EIS describes in Chapter 2 the extent of cultural resources inventory. Chapter 3 has also been revised to include more detailed information on the extent of survey. Measures for monitoring of cultural resources sites would be developed as part of each reservoir's Historic Preservation Plan. The HPPs will be prepared according to stipulations in the Programmatic Agreements for cultural resources management developed for each reservoir in cooperation with tribes.

T9-18. See Common Response No. 7. Procedures for future consultations with tribal governments regarding cultural resources management will be outlined in the Section 106 Programmatic Agreement for SOR and defined more specifically in reservoir-specific agreements between the Federal agencies and tribes that wish to enter into these agreements. At Lake Roosevelt, both the Colville Confederated Tribes and the Spokane Tribe will be consulted concerning resource management for the lake, and will be invited to be management partners in planning and implementing the SOR cultural resources management program. This will be a continuation of the existing partnership in managing resources at the lake under the Cooperative Management (5-Party) agreement.

Spokane Tribe - Comments on Appendix D 9

Appendix B: Cultural Resource Site Inventories

The Spokane Tribe does not want sites with burials listed for public review, as has been done in the DEIS document. These sites are sacred, and they should be treated with confidentiality. It would be acceptable and sufficient to list "6 burial sites" rather than to list specific site numbers and their contents.

The column listing "Period" is completely useless in addressing the effect of dam operations on cultural resources.

A very useful category which should be included in cultural resource management planning is "Material Types," i.e., "Heavy Lithics," "Small Lithics," "Textile," "Bone-Antler-Shell," "Hair," "Ceramics - Manufactured Glass," "Metal," etc. Material types are differently affected by processes of weathering, so this information would be helpful in prioritizing site management actions. Note must be made, though, that any material types listed would be only the minimum of materials at each site; many more may yet be undiscovered.

T9-19

What is the "Current Condition Estimate" based on? There is an unacceptable lack of qualitative and quantitative data in this field on which to base any decision-making. There is an obvious, tremendous variance between recorders as to what is "good," "fair," or "poor" condition; one person may rate a site in "good" condition if artifacts can be seen on the surface; another may rate a site as "poor" if some of the features are disturbed. Furthermore, an estimate made four years ago probably has nothing to do with the current condition of a site. In fact, the condition of a site may vary greatly in the course of one month. With no standard given for the "conditions," no date entered to indicate when the estimate was more or by whom, this column is useless, and is potentially dangerous if decisions are made based on this meaningless data.

The list of sites in this inventory is not complete, and it inexplicably and incorrectly implies that the cultural resources all have been recorded and their current condition known. The list also implies a higher quality of information than is actually present. There are many mistakes and out-of-date information in this list. If you are compelled to list specific sites in the EIS, it must be noted that this list is incomplete, that some areas have not been surveyed, and that the "Current Condition Estimate" may not reflect current conditions.

[To be completed.]

T9-19. Because several tribes expressed concerns that Appendix B might compromise the confidentiality of some of the sites listed, the Final EIS does not include this list. A table showing site numbers by reservoir has been substituted for it. The list was not intended to imply that all cultural resources have been recorded. Chapters 2 and 3 have been revised to clarify descriptions of the extent of survey. A revised Chapter 3 discusses more thoroughly the quality of the existing data.

Letter T9

Comments

Spokane Tribe - Comments on Appendix D 10

V. THE SEVEN PROPOSED SOS ALTERNATIVES

[To be completed.]

VI. SUMMARY AND CONCLUSIONS

T9-20

After reviewing Appendix D, the Spokane Tribe of Indians is positive that the DEIS evaluation of impacts on cultural resources is entirely inadequate. The models and plans set forth in this document are based on assumptions which render them invalid. A model and plan must be constructed separately for each area along the Columbai River. Consultation and curation have not even been addressed.

Planning must be preceded by a total inventory of cultural resources, then must include studies of actual resources at each reservoir, with a large sample of actual cultrual resources sites and multiple visits to the sites at intervals in the annual cycle. Action must include inventory, evaluation, protection and preservation for all significant cultural resources affected by system operations. Finally, responsible parties, timing, and procedures all must be spelled out.

Again, due to the special and often sacred relationship of these cultural resources to the Spokane people, the Spokane Tribe chooses to perform its own cultural resource management activities. This ability to perform such activities does not imply that other agencies' responsibilities as set forth in federal mandates are in any way relieved; but the Tribe will be the agency to perform any actions concerning Spokane cultural resources. When expertise is needed which Tribal members do not currently hold, they will be responsible for seeking that expertise from outside sources.

[To be completed.]

1. See National Trust for Historic Preservation v. United States Army Corps of Engineers, 552 F.Supp. 784 (S.D. Ohio 1982).

Responses

T9-20. The models developed for the EIS are appropriate to meet the NEPA mandate that lead agencies make the best possible use of existing data to estimate the potential impacts of the undertaking and to compare the relative potential effects of the alternatives of the SOR as a whole (see also Response T9-5). The Final EIS does provide for the development of Programmatic Agreements between the Federal lead agencies and tribes regarding the future management of cultural resources at the reservoirs. These PAs will contain provisions for development of Historic Preservation Plans which will specify procedures for continued archaeological site inventory and evaluation.

At Lake Roosevelt, for example, an inventory to collect reliable site locational information began in spring of 1995 and will continue for several years. Using that information, the participating parties will complete an action plan to address site evaluation and other management measures. The tribes will be partners in management planning and implementation, and the PAs will define the partnership process.

Spokane Tribe of Indians
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CENTURY OF SURVIVAL
1881 - 1981

November 14, 1994

Mr. Phillip W. Thor, Project Manager
Bonneville Power Administration
P.O. Box 3621-PG
Portland, OR 97208-3621

RE: Comments of the Spokane Tribe of Indians on the Columbia River System Operation Review Draft Environmental Impact Statement

Dear Mr. Thor:

The Spokane Tribe desires to provide meaningful input into the SOR process, and to participate actively in consultation with the federal agency managers. We are very concerned about the potential for outcomes that would be devastating to the Spokane Tribe's cultural, natural, and economic resources on Lake Roosevelt.

T10-1 As stated in our comments submitted on the Preliminary Draft EIS, the Spokane Tribe has little choice but to recommend one of the SOS 4 alternatives. These alternatives have the least damaging effects, while incorporating concerns for fish, wildlife, and recreation and allowimg for power generation and flood control. However, none of the alternatives truly fulfills federal trust responsibilities to the Spokane Tribe, nor successfuly resolves conflicts among affected parties.

T10-2 It continues to be our firm stance that the federal SOR managers must find the means to balance measures taken for anadromous and resident fish. This hardly seems possible without creating some new SOS options, other than those already proposed, which can better integrate the conflicting demands of upriver and downriver trust responsibilities.

T10-1. Thank you for your comment.

T10-2. See Common Response Nos. 2 and 7.

Letter T10

Comments

T10-3 Additional data will be **essential** to any plausible analysis of the alternatives. Commentary on **all** technical appendices reviewed by Spokane Tribal staff pointed toward the insufficiency of the data when trying even to project outcomes of the different alternatives, much less to foresee any sound management decisions. We simply do not know enough about existing conditions, which means we cannot accurately predict the outcomes of the different SOS alternatives. Our comments on the Preliminary DEIS outlined numerous recommendations for needed monitoring and analysis. We reiterate those suggestions for the Draft EIS.

T10-4 What we do know is that constantly fluctuating pools in Lake Roosevelt have caused irreversible damage to many different resources. Even as we try to study these resources so that we can give meaningful input into the SOR process, we are forced to restructure our research constantly to try to validate "shooting at a moving target."

For example, in our research on the impacts of systems operations on Lake Roosevelt fisheries, we are trying to judge the effects of different zooplankton responses on the size and health of the fishery, while zooplankton characteristics, themselves, fluctuate wildly with an erratic drawdown regime. We would like to comment on the effects of different holding times and reservoir levels on terrestrial wildlife and birds, but habitat flux precludes the study of any recurring conditions.

T10-5 Because we do not have the staff to thoroughly review and comment on each of the voluminous appendices in the DEIS, we presume that the DEIS appendices do not differ substantially from the appendices circulated with the Preliminary Draft EIS. Based on that presumption, we hereby re-submit our previous comments on the Preliminary Draft EIS as comments on the Draft EIS.

Separate comments on Appendix D (Cultural Resources) are being submitted under separate cover, directed to Ms. Linda Burbach.

T10-6 Due to the many uncertainties and the potential serious adverse impacts on the Spokane Tribe, we expect that the SOR Team will continue to provide us with opportunities for comment before a final decision on the System Operation Strategy is concluded.

Sincerely,

Larry Goodrow
Executive Director

Responses

T10-3. Additional data were collected and included as the appendices and Final EIS Main Report were completed. There are data gaps which are discussed where recognized, and appropriate conditions are then imposed on the analysis. The agencies are using the best available data, as NEPA requires.

T10-4. Thank you for your observations concerning Lake Roosevelt. Lake level fluctuations are inherent in any reservoir operation. The SOR team understands that resources are affected by these fluctuations. The team also knows that fluctuations will continue to occur at Lake Roosevelt unless an SOS is selected that imposes different operational criteria. Data collection and analysis are difficult, but we encourage you to continue your efforts and to provide the agencies with the data and conclusions that you have made.

T10-5. The appendices that were circulated with the January 1994 Preliminary Draft EIS were revised to varying degrees for the July 1994 Draft EIS, based on new information and review comments on the January document. The appropriate work groups were requested to re-review your comments on the Preliminary Draft EIS to see if they address any issues that remained unresolved when the Draft EIS was published.

T10-6. Your assumption is correct. While formal comment periods are specified for documents that are published for review, the SOR agencies have provided opportunities for, and are open to public input at any time in the process. There will also be a formal 30-day, no-action period after the Final EIS is released and before the agencies issue Records of Decision, during which others may pursue action as appropriate.

Letter T11

Comments

12/15/94 17:33 ☎ 503 296 3141 002

Leroy George, Mid-Columbia River Council & Chiefs
P.O. Box 782, The Dalles, Oregon 97058

12-14-94 Comments on the SOR Draft EIS

In the stance the three lead agencies take regarding certain aspects of the SOR one is compelled to attempt to decipher through the technical aspects of comments already included. In other words, there is a heavy reliance on technical breakdown: i.e. "My technician can whip your technician!" Thus, it is with the comments and Tribal responses to the SOR review process. However...

T11-1 How is it that "gas supersaturation" has become popular in local and regional papers, arguing more in favor to stop the flow of water downstream. The argument the ratepayer will have to pay more, etc. does very little to encourage salmon restoration, among other factors.

T11-2 The warming waters behind the dams surely induce other forms of aquatic life to encroach where anadromous fish were common. Ecosystem and biological diversity are more-less one and the same.

T11-3 The heavy favor in the overal Draft EIS favors a very conservative stance that "people are important too!" This downplays several decades of what was a slow disease of adding more species to the Endangard Species Act. Now the process will be speeded back up with business as usual attitude.

T11-4 The atmospheric affect that the acres of the warming waters behind the dams haven't been given much or any space in these reports. The ecosystem of the Columbia River has far-reaching effects, both directly and indrectly. It surely has influence on the weather system of a large part of this country. It is part of a cycly that most Native Americans understand without any formal education. Most natural cultures the world over understand this; that this is a finite planet. Popular media even portray children having this understanding, and these ads are backed by major corporations in their attempts to improve their corporate image.

Responses

T11-1. Thank you for your comment.

T11-2. The impact of increased water temperatures resulting from impoundment was examined in the Final EIS Appendix C, Anadromous Fish, in the section entitled *Predation on Juveniles*, pages 2-15 to 2-16. The impacts of the various alternatives on water temperatures are also analyzed in detail in Appendix M, Water Quality, Appendix K, and in the Final EIS Main Report.

T11-3. The SOR agencies have attempted to seek an appropriate balance among multiple resource needs, legal and regulatory requirements, and views of the affected publics concerning the desired management of the system. The agencies recognize that there is a wide divergence among these views, and that there will inevitably be disagreement over the balance sought.

T11-4. The text of Appendix M, Section 2.2 has been revised to better acknowledge the atmospheric relations between air and reservoirs.

Letter T12

Comments

Responses

Colville Confederated Tribes

P.O. Box 150 - Nespelem, WA 99155 (509) 634-4711

RECEIVED BY SOR
PUBLIC INVOLVEMENT
LOG #. 68-6231
RECEIPT DATE
DEC 16 1994

SOR Interagency Team
P.O. Box 2988
Portland, OR. 97208-2988

Dear Interagency Team,

The Confederated Tribes of the Colville Indian Reservation (Colville Tribes) have conducted a cursory review and offer the following correspondence in reference to the draft Environmental Impact Statement (DEIS) for the Columbia River Systems Operation Review (SOR).

T12-1

The Colville Tribes are deeply concerned with the formulation and implementation of operating alternatives for operation of the Columbia River Basin. The Colville Tribes believe that the operating alternatives identified in the Systems Operating Review have not been evaluated to determine the positive or negative impacts, quantitatively, as a result of the implementation of the proposed alternatives.

T12-2

Grand Coulee Dam destroyed the salmon that returned to the upper Columbia River. It ended forever one, if not, the largest salmon fisheries located at Kettle Falls on the North half of the Colville Indian Reservation. Today, mitigative efforts have focused on utilizing resident fish species as substitution for anadromous fish losses in the blocked area above Chief Joseph and Grand Coulee Dams. Significant populations of kokanee trout, rainbow trout and walleye inhabit Lake Roosevelt, their survival and future is dependent upon the reservoir rearing conditions. In addition populations of bull trout and white sturgeon are present in Lake Roosevelt and are currently in a depressed state. These species have been subject to petitions under the endangered Species Act or are likely to be subject to such a petition in the near future.

T12-1. Please see Common Response No. 2 with respect to formulation of the SOR alternatives. The SOR work groups have made extensive efforts to quantify the effects of the SOS alternatives, and the SOR agencies believe the EIS provides adequate demonstration of that effort.

T12-2. Thank you for your comment.

Letter T12

Comments

T12-3 The Colville Tribes realize that the condition of the Snake River salmon requires serious action. However it is our opinion that any action to benefit Snake River salmon proceed only after full compliance with all environmental and consulting requirements.

The Colville Tribes major concerns regarding the DEIS for the Systems Operation Review are: (1) Lack of timely funding for meaningful Tribal participation (2) incomplete scope of the SOR project and (3) inadequate time-frame for the SOR completion.

T12-4 The Colville Tribe is concerned that the federal operating agencies were delinquent in providing meaningful funding for tribal participation. The agencies realized their oversight in failing to include adequate tribal participation 12 to 18 months ago, yet the operating agencies did not make funding available until very late in the SOR process. The Colville Tribes did not receive a contract for review until early October 1994. A Sixty day review period is obviously inadequate to review and sign a contract, assemble personnel/assistance and review and develop comments for a document the size and complexity of the SOR Draft EIS.

T12-5 The Colville Tribe has notified the operating agencies on several occasions, both verbally and in writing that it is inappropriate to develop a systems operation review without including the entire Columbia River System. Intentionally excluding the British Columbia contribution of possible water volume and timing may severely limit the flexibility of the system to meet the multi-use demands of the system that exist today.

T12-6 The Colville Tribe feels that the time-frames for completion of the SOR have been inadequate. Additional modeling to accurately display the intent of all the SOS's, review assumptions, and provide additional data analysis needs to take place to develop a beneficial, realistic and balanced approach to implementing an operational strategy for the Columbia River System. The Colville Tribe anticipates conducting a full review of all existing SOS's, their possible modifications/combinations and any new SOS's that may arise between now and the final EIS.

T12-7 Recent court decisions (Judge Marsh decision and the 9th Circuit Court decision) and NMFS recovery plan may alter SOS criteria and their associated impacts to resources in the basin. To complete a finalized EIS without modeling NMFS revised recovery plan is inappropriate.

Responses

T12-3. Thank you for your comment.

T12-4. The SOR agencies requested participation by the tribes early in the SOR, dating back to 1991. It is true we did not provide general funding for that participation until later because, as a rule, we don't provide such funding. However, contracts were available through the work groups to provide information or to contribute expertise as early as 1993. Likewise, the formal comment period on the Draft EIS was extended twice for a total period of over 4-1/2 months. Informally, tribes were given many months after signing of their general SOR contracts to provide comment and information. The agencies have incorporated all information received to date into the Final EIS.

T12-5. See Common Response No. 3.

T12-6. The SOR agencies need to make timely decisions on the actions under consideration in this EIS and consequently have established a firm schedule to complete the EIS. The SOR agencies believe the schedule is sufficient to evaluate the alternatives comprehensively and provide opportunity for complete public participation. The NEPA process allows for reconsideration through Supplemental EISs, if new information arises or conditions change significantly. NEPA was not intended to delay decisionmaking, but rather to make decisionmaking more informed and logical.

T12-7. The SOR agencies agree and have identified the operational recommendations contained in the 1995 Biological Opinions and Draft Recovery Plans as SOS PA in the Final EIS. SOS PA has been modeled using the same process as other SOSs included in the Final EIS.

T12-8 The Colville Tribe also believes that recent negotiating activities conducted by the federal operating agencies relative to the Pacific Northwest Coordination Agreement (PNCA) and the Canadian Entitlement Allocation Agreement (CEAA) both violate the NEPA process. It appears to the tribe that agreements regarding the operation of the system have taken place prior to completing the SOR process.

T12-9 The following specific comments have been developed for the resident fish and water quality sections of the DEIS only and are the Tribes initial review of the DEIS. The comments should be considered incomplete due to the lack of tribal participation throughout the SOR process. The ambitious time schedule currently driving the Systems Operation Review EIS has precluded the tribe from developing comprehensive comments including but not limited to anadromous fish, cultural resources, power production, resident fish, water quality and wildlife.

RESIDENT FISH (Appendix K)

Section 1.2.3.2 Biological Rule Curves

T12-10 This section currently discusses drafting as it relates to benthic food production, primarily related to Libby and Hungry Horse reservoirs (i.e. SOS 4). One of the intents of SOS 4 was to provide operations to meet biological rule curves for other reservoirs in addition to Libby and Hungry Horse, including Lake Roosevelt. Important biological production in Lake Roosevelt include benthic production, zooplankton and fish entrainment. This section should include a discussion of these biological production components for Lake Roosevelt in relation to the operating criteria proposed for Lake Roosevelt in SOS 4 a,b and c.

Section 2.2.2.2 Lake Rufus Woods

T12-11 Lake Rufus Woods also includes naturally producing kokanee, rainbow trout and brown trout in addition to walleye that provide substantial recreational sport angling opportunities. This section needs to be modified to include this information.

T12-8. The SOR agencies do not agree with the Colville Tribe that the PNCA and CEAA contract negotiations constitute a violation of NEPA. No commitments nor irretrievable actions have occurred as a result of the negotiations. Nor will action to enter into a new agreement be taken until the Final EIS and appropriate Records of Decision are published. The SOR NEPA process for the PNCA and CEAA revealed the environmental concerns of many reviewers, although most of those concerns were already known by the Federal agencies. PNCA and CEAA negotiators were able to use the information and concerns expressed in the SOR to develop a proposed replacement contract that offers some solutions to many of the environmental concerns. Those concerns are analyzed as options to many of the coordination elements in Chapter 4.3 of Appendix R and influenced the PNCA Preferred Alternative (see Chapter 5.7, Appendix R). For CEAA, please see Appendix P.

T12-9. See Response T12-4.

T12-10. Zooplankton and entrainment were included as part of the model for Lake Roosevelt. Benthic production was not included because of the lack of available data at the time of the study. See Appendix K, Section 3.3.3 for methods used for entrainment and zooplankton modeling.

T12-11. The text has been modified as suggested.

Section 3.1 Pilot Analysis

T12-12 It is not clear to the reader how LRMOD and HRMOD were modified and utilized to model each identified reservoir.

Section 3.3.3 Lake Roosevelt

T12-13 The tribe believes that utilizing only 14 time steps to model SOS impacts is inappropriate. The varying SOS alternatives have the capacity to alter the reservoir operation greatly during any particular month, including summer periods, therefore additional time steps are necessary to depect SOS impacts. In addition this section states that water retention times below 30 days will negatively impact kokanee. While this is a true statement for the winter and spring period, the tribe also believes that retention times and elevations below historical reservoir operating levels and regimes will also negatively impact kokanee in Lake Roosevelt. Historical summer and fall (July-October) retention times range from 40-65 days.

Section 4.1 SOS 4 Stable Storage Project Operation

T12-14 The intent of this SOS not only included minimizing reservoir fluctuations and utilizing natural flows, but also maximizing water retention times in Lake Roosevelt. A full explanation of the intent of SOS 4 needs to be included in this section.

T12-15 The Colville Tribe request that SOS 4 include an additional modification (SOS 4d). Criteria for SOS 4d include:

(1) Meet the following end-of-month elevation targets while attempting to maintain the monthly mean retention times as follows: January- 1270 fmsl (45 days ret.); February- 1260 fmsl (40 dats ret.); March-April 15th- 1250 fmsl (25-30 days ret.); April 16-May 1- 1255 fmsl (30 days ret.); May- 1265 fmsl (35 days ret.); June-December- 1288 fmsl (40-60 days ret.).

(2) Meet Integrated rule Curves for Libby and Hungry Horse.

(3) Meet winter draw up criteria for Albeni Falls.

(4) Draft Columbia River run-of-river projects to help achieve flow equivalent targets (to be established) at a lower Columbia River project (to be established).

T12-12. The pilot adaptation of HRMOD and LRMOD was not specific to any reservoir; as stated in Section 3.1 of Appendix K, the pilot analysis was a generic adaptation for testing purposes using the variables described in that section. The values used in the models were based on the experience of the biologists in the work group, in an attempt to determine if the models could produce results that made sense in a context other than the Montana reservoirs. In the screening analysis that followed, resident fish models were generated for selected reservoirs (Lake Roosevelt, Lake Pend Oreille, Dworshak, Brownlee, Lower Granite, and John Day, the last two intended to be representative of Snake and Columbia run-of-river reservoirs). The models were different from each other and from HRMOD and LRMOD, and were based on data sets that varied markedly among reservoirs.

T12-13. Time steps shorter than that represented by the 14 steps used are not feasible because data does not exist, the models are unable to process and the amount of output would be unmanageable for impact analysis. Water retention time (WRT) impact relationships were obtained from existing data and from expert judgment, including input from the Resident Fish Work Group. The only WRT relationship that was supportable was with entrainment. Entrainment values were calculated monthly from seasonal relationships. These relationships were taken from existing studies (Beckman et al. 1985).

T12-14. Further explanation of SOS 4 has been included.

T12-15. Except for a few of the specific spring elevations at Grand Coulee, SOS 4c operates the Federal storage system as suggested. The run-of-river projects on the Columbia are also not lowered in this alternative. Likewise, SOS 9c has many of the elements suggested, including drawdown on the Snake River. The impacts of these alternatives provide insight into such "balanced" alternatives like the one suggested and help the operating agencies select the most appropriate long-term operating strategy.

Letter T12

Comments

Responses

T12-15

The Colville Tribe believes that the "best" possible operation for the Columbia River Basin will be a combination of several of the SOS's and or their modifications. SOS 4 is an attempt to "balance" the operation of the system and has the potential to provide benefits to many of the river uses. Modifications to SOS 4 such as varying storage reservoir elevations/retention times; restriction of some anadromous fish flow requirements (particularly summer flows during drought periods) in combination with juvenile transportation, run-of-river project drawdown for Columbia and Snake River projects; Power marketing exchanges; British Columbia water contribution/acquisition; and acquisition of Snake River irrigation water volumes, including obligated water will provide the flexibility required to provide a balance to the system.

The Colville Tribe appreciates the opportunity to comment on the Systems Operation Review DEIS and anticipates working closely with the federal operating agencies to develop a satisfactory balanced operation for the Columbia River Basin.

Sincerely,

Eddie Palmanteer
Chairman
Colville Business Council
Colville Confederated Tribes

Letter T12

Comments

Colville Confederated Tribes
P.O. Box 150 - Nespelem, WA 99155 (509) 634-471

ENVIRONMENTAL TRUST DEPARTMENT
DEC. 9, 1994

TO: Alan Stay

FR: Gary Passmore

RE: SOR Draft EIS Comments

Water Quality

T12-16

Our major concern is the failure of the EIS to address the potential for resuspension of toxic sediments in Lake Roosevelt (Grand Coulee Dam reservoir) as a result of the SOS's evaluated in the EIS.

Numerous studies and monitoring have established the fact that millions of tons of smelter and pulp mill waste reside in the bed of Lake Roosevelt. This waste contains the metals arsenic, lead, cadmium, copper, lead, zinc, and mercury; dioxins, furans, and PCB's; and other chemicals of unknown toxicity. Cadmium, copper, lead, zinc, and mercury levels in sediments exceed the severe-effect level on aquatic biota (US Geological Survey Open File Report 94-315). These chemicals enter the human food chain through fish. Studies by the Washington State Department of Ecology (Johnson and Yake, 1988, and Johnson et. al., 1991) and others have detailed the amount metals and dioxin/furan compounds found in fish tissue in Lake Roosevelt. Additional studies on dioxin/furan compounds and mercury in fish tissue are pending.

Although significant steps have been taken to reduce or eliminate the sources of this pollution from Canadian industrial discharges at Castlegar and Trail B.C. concern remains over the fate of the materials in the sediment. Unexplained "disease clusters" have created in local residents a great deal of concern regarding consuming Lake Roosevelt fish. The Washington State Department of Health has proposed an approach to evaluate human health effects. (See attached.)

The relationship between sediment reentrainment (or reexposure to the aquatic environment) and reservoir operations is an area requiring further study. Without modeling and further study there is no way to accurately predict the environmental and human health impacts of significant changes in Grand Coulee Dam operations. It is logical to predict, however, that any increase in the frequency and/or magnitude of Lake Roosevelt drawdowns will increase the exposure of toxic materials to the environment. The US

Responses

T12-16. None of the SOSs would draw down Lake Roosevelt more than it is currently drawn down. The resuspension of Lake Roosevelt bottom sediment was not identified as a major water quality concern in any of the proposed SOSs. When sediment quality data were being collected, the USGS did not provide their Lake Roosevelt sediment contamination report (Open File Report 94-315) to the SOR Water Quality Work Group, nor did this information reside in EPA STORET database. This additional information would have enhanced the current HEC-5Q full-scale water quality model of the Columbia Snake River system. However, the system operations do not significantly affect the input of contaminants to Lake Roosevelt.

Letter T12

Comments

Responses

T12-16

Geological Survey at the request of the Lake Roosevelt Water Qulaity Council is developing methods for evaluating the relationship between river flows, reservoir (dam) operations, and toxic exposure to organisms. Before any significant changes to dam operations are proposed it would be prudent to fully evaluate these impacts: The USGS and Department of Health studies should be funded, completed and peer reviewed, and public hearings should be held to disseminate the findings. To date no funding has been identified for this work.

I regret that absent ~~and~~ environmental health officer and environmental coordinator we could not more fully review the EIS. By January, both of these positions should be filled. If you need anything more call me at 594.

cc: Patti Stone, Scott Hall

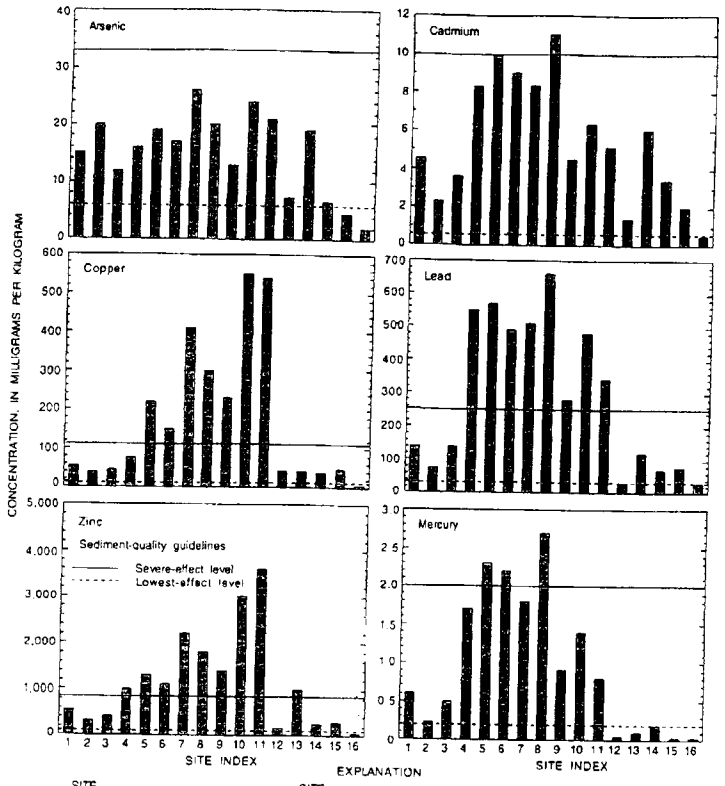


Figure 32.--Concentrations of trace elements in bed sediment from depositional sites in major tributaries, the Northport reach of the Columbia River, and Lake Roosevelt and sediment-quality guidelines. Guidelines are based upon the severe-effect level on aquatic biota (Persaud and others, 1991).

(Source: USGS Open File 94-315)

Letter T12

Comments

Responses

STATE OF WASHINGTON
DEPARTMENT OF HEALTH
OFFICE OF TOXIC SUBSTANCES
Airdustrial Center, Building 4 • P.O. Box 47825 • Olympia, Washington 98504-7825

December 6, 1994

TO: Lake Roosevelt Water Quality Council

FROM: Carl Sagerser DO for Carl Sagerser
Director

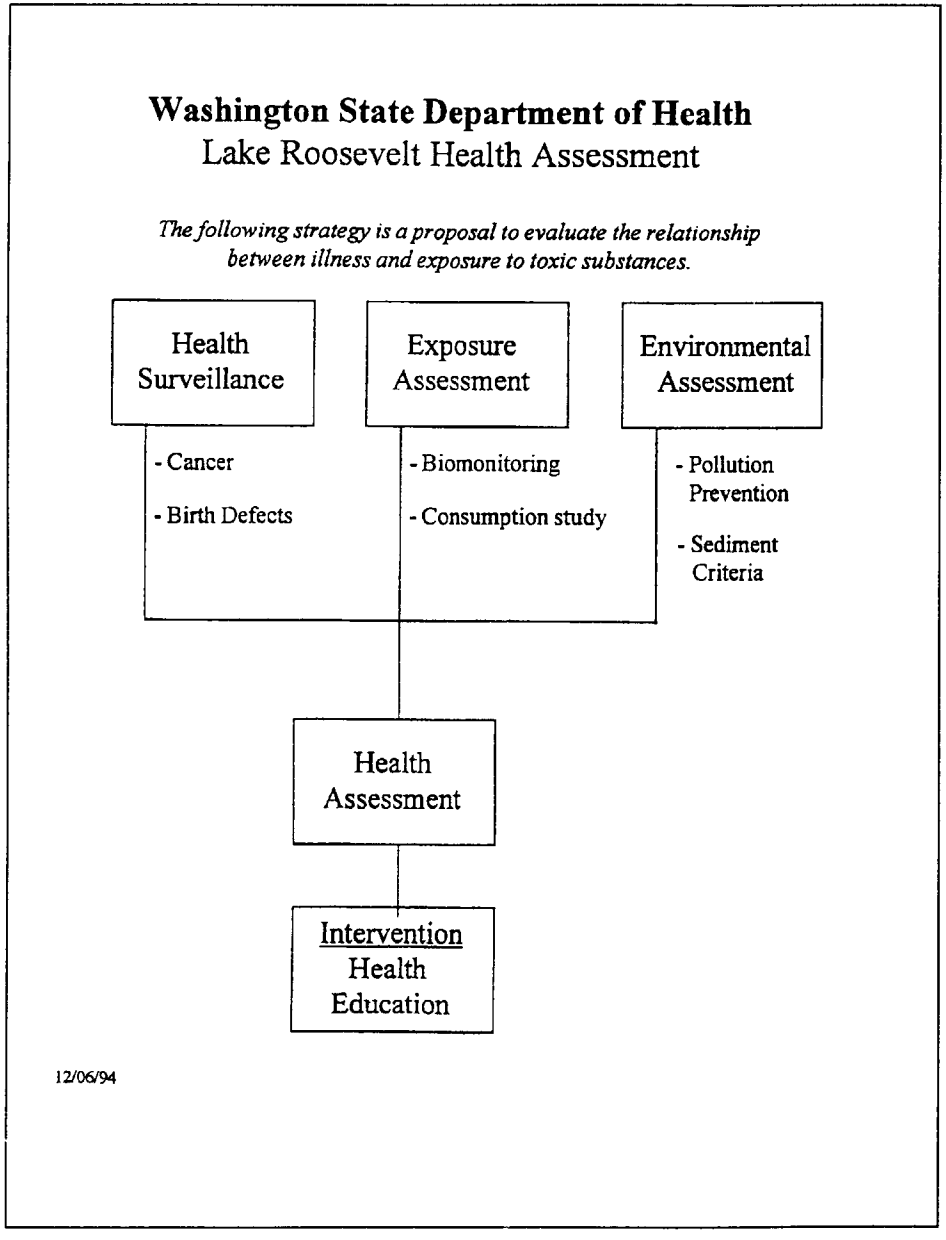
SUBJECT: HUMAN HEALTH ISSUES SURROUNDING LAKE ROOSEVELT

The Department of Health, Office of Toxic Substances has committed substantial resources in the investigation and evaluation of environmental and epidemiological data from Lake Roosevelt and the Northport area. The Department of Health is committed to ensuring the protection of the health of citizens around the Lake Roosevelt area.

As a follow-up to past health related activities and ongoing evaluations (dioxin and mercury in fish tissue), this office has identified several tasks which will provide additional information for determining the health status of residents and visitors to the Lake Roosevelt area. An overall strategy is outlined within the enclosed document along with general information on specific tasks. We feel this strategy and related tasks are vital to addressing health related concerns raised in the past. This information is provided for your consideration and for future project prioritization.

This information is being presented by Glen Patrick, who can answer any questions you may have regarding the outlined tasks. We look forward to working with the Water Quality Council in addressing health concerns of the communities around Lake Roosevelt.

Enclosure


Washington State Department of Health
Lake Roosevelt Health Assessment
The following strategy is a proposal to evaluate the relationship between illness and exposure to toxic substances.
Health Surveillance
Exposure Assessment
Environmental Assessment
- Cancer
- Birth Defects
- Biomonitoring
- Consumption study
- Pollution Prevention
- Sediment Criteria
Health Assessment
Intervention Health Education
12/06/94

HEALTH SURVEILLANCE PROPOSAL

THE DEVELOPMENT OF AN EPIDEMIOLOGICAL SURVEILLANCE SYSTEM TO EXAMINE THE OCCURRENCE OF SELECTED HEALTH CONDITIONS AMONG THE POPULATIONS RESIDING NEAR LAKE ROOSEVELT, WASHINGTON

Toxic substances have been detected in the waters of Lake Roosevelt. These include methyl mercury, PCBs, dioxin and others. When toxic substances are detected in the environment at significant levels concerns, regarding human health ensue. However, the relationship between environmental exposures and adverse human health effects is often unclear.

In order to assess the public health significance of these exposures, a study is proposed to determine whether an increase in the number of selected health conditions has occurred in the exposed population.

An epidemiological surveillance system would be developed to track new cases of cancer and the occurrence of birth defects in this community. This surveillance system will actively gather information from health care providers, clinics and hospitals that provide medical services to the residents of the community. Historical data (1980 - 1994) will be collected and analyzed during the first year.

The findings of the surveillance project will be disseminated to the community annually.

Time to Project Completion: Ongoing basis with annual report

FISH TISSUE CONTAMINANT EXPOSURE ASSESSMENT

Lake Roosevelt Recreational
Angler Fish Consumption Survey

Fish consumption data for Lake Roosevelt anglers have been recognized by the Management and Technical Advisory Committees as information essential for estimating human exposure to chemical contaminants contained in consumed Lake Roosevelt fish.

The Spokane Tribe of Indians, Region 10 EPA, and the Washington State Department of Health initiated a fish consumption survey of Lake Roosevelt recreational anglers in October 1994, following an initial pilot survey effort. Shore interviews have been conducted at popular Lake access points and shore angling locations by creel clerks employed by the Spokane Tribe.

Initial funding provided by EPA to the Spokane Tribe will be exhausted in February 1995. Approximately $12,000 are needed to continue collection of fish consumption data at the upper, middle, and lower reaches of Lake Roosevelt from March through September 1995. These data are an essential component in the assessment of human health implications posed by mercury and dioxin contamination of Lake Roosevelt caught fish.

Letter T12 Comments

Responses

ENVIRONMENTAL ASSESSMENT PROPOSAL

A PROACTIVE APPROACH TO PREVENTING ORGANIC CHEMICAL CONTAMINATION IN FISH FOUND IN LAKE ROOSEVELT/COLUMBIA RIVER

Contaminants such as dioxin and furans, PCBs, and chlorinated pesticides have been detected in fish from Lake Roosevelt and its tributaries, which has led, in some instances, to the promulgation of fish advisories. Recent information has shown that fish can acquire such contaminants from suspended organic solids in the water in which they swim. At the present time, no standards exist to control the amount of contaminant allowed as suspended organic solid, or in sediment, since the quantitative relationship between the extent of contamination and the resulting level of contaminant in fish has not been established.

Department of Health has established a methodology to set criteria for contaminated sediments in Puget Sound, a marine environment. Similar methodologies may be applied to freshwater lakes and rivers to account for the relationship between sediment, suspended solids, and the levels of contaminant in fish. Such a relationship could provide the basis for setting freshwater criteria to prevent the exposure of fish to high enough contaminant levels that could result in health advisories limiting consumption by the human population. Such a proactive approach could aid in preventing the problem of fish contamination rather than reacting to contamination by advising limits on consumption. Once established, such a model could be used in all fresh-water systems.

PROPOSAL:

1. Develop a sediment-suspended solid model for predicting accumulation of contaminants by fish in a freshwater system.

2. Set criteria values for sediment/suspended solids levels.

3. Apply criteria values to polluters to prevent future contamination of Lake Roosevelt or other freshwater system sediments.

Estimated time frame: 18-24 months

Letter T13

Comments

GENERAL COUNCIL
and
BOARD OF TRUSTEES

CONFEDERATED TRIBES
of the
Umatilla Indian Reservation
P.O. Box 638
PENDLETON, OREGON 97801
Area code 503 Phone 276-3165 FAX 276-3095

December 15, 1994
9:15 p.m. via FAX
Hard Copy via U.S. Mail

Philip Thor, Project Manager
Bonneville Power Administration
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Army Corps of Engineers
North Pacific Division
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Bureau of Reclamation
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Portland, OR 97232
FAX: (503) 230-5019

Re: CTUIR's Comments on the System Operation Review Draft Environmental Impact Statement

Dear Sirs:

The Confederated Tribes of the Umatilla Indian Reservation (CTUIR) appreciate the opportunity to review and comment on the System Operation Review (SOR) Draft Environmental Impact Statement (DEIS). Comments submitted by the Columbia River Inter-Tribal Fish Commission (CRITFC) are incorporated herein by reference.

T13-1

Federal Columbia River Power System (FCRPS) activities and operations, and their impacts on the Columbia and Snake Rivers, their tributaries and watersheds, are matters of great importance to the CTUIR. Hydrosystem facilities and functions directly affect our Treaty Rights, our Treaty-reserved resources and other rights and resources not explicitly ceded to the federal

Responses

T13-1. Thank you for your comment.

Letter T13

Comments

government in the Treaty of 1855.[1]

T13-2

From the CTUIR's perspective, the SOR DEIS is inadequate. The range and analyses of actions and alternatives is inadequate. The identification of trust assets and assessment of impacts to them from the proposed actions and alternatives is inadequate. Moreover, the SOR DEIS is fundamentally plagued by insufficient and unclear information that precludes the effective evaluation of actions and decisions of such enormous and far-reaching magnitude.

Substantive deficiencies in the SOR DEIS, described in more detail below, are in part the inevitable result of the extensive procedural flaws that were pointed out to you nearly a year ago by the CTUIR, and which to this date have gone uncorrected.[2] We offer these comments in addition to those provided previously, with the hope and expectation that they will be fully and fairly considered. Our comments are arranged in the following format:

I. Aboriginal Rights
II. The Treaty of 1855 and Treaty Rights
III. Trust Responsibility and Trust Assets
  A. Salmon and Other Fish
  B. Water and Indian Reserved Water Rights
  C. Cultural Resources
IV. Indian Policies
  A. President Clinton's April 29, 1994, Memorandum
  B. Department of Energy's Indian Policy
  C. Bureau of Reclamation's Indian Trust Assets Policy
  D. Department of the Interior's Order No. 3175
  E. Other Indian Policies
    1. President Bush's Indian Policy
    2. President Reagan's Indian Policy
    3. Department of Agriculture's Indian Policy
    4. Forest Service's Indian Policy
    5. Environmental Protection Agency's Indian Policy
  F. Government-to-Government Consultation in the SOR Process
V. National Environmental Policy Act Requirements and Trust Responsibility/Trust Assets Protection
VI. Additional Substantive SOR DEIS Deficiencies

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[1]Treaty with the Walla Walla, Cayuse, and Umatilla, June 9, 1855, 12 Stat. 945, reprinted in 2 C. Kappler, Indian Affairs: Laws and Treaties 694 (1904) (hereinafter "Treaty of 1855").

[2]See Confederated Tribes of the Umatilla Indian Reservation, Department of Natural Resources, "Communication About Columbia River System Operation Review Draft Environmental Impact Statement" (Jan. 1994), reprinted as Exhibit 1, SOR Draft EIS, Main Report (July 1994) (hereinafter "CTUIR Communication").

Responses

T13-2. Please refer to subsequent responses coded T13, which address comments that provide greater detail concerning these points about overall EIS adequacy, alternatives, trust assets, and the level of information.

A. Scope of the SOR DEIS
B. System Operating Strategies
C. Columbia River Regional Forum
VII. Conclusion

I. ABORIGINAL RIGHTS

Long before the construction of Bonneville Dam, before the expedition of Lewis and Clark, before the formation of the United States and the adoption of the U.S. Constitution, members of the Cayuse, Umatilla and Walla Walla Tribes used, occupied and enjoyed the lands and waters of what is now the Pacific Northwest. We fished, hunted, and gathered plants, roots and berries as integral parts of the seamless circle of life.

Much later, in a effort to legitimize the subsequent invasion of the North American continent by European powers, the United States Supreme Court adopted the doctrine of discovery in the case of Johnson v. M'Intosh.[3] In Johnson, Chief Justice John Marshall held that

> [D]iscovery gave title to the [European] government by whose . . . authority, it was made, **against all other European governments**, which title might be consummated by possession. . . . **Those relations which were to exist between the discoverer and the natives, were to be regulated by themselves.** The rights thus acquired being exclusive, no other power could interpose between them.[4]

T13-3

While discovery gave the Europeans and the United States, as the discovering nations' successor, "ultimate dominion" over the land, reasoned Marshall, it remained "subject . . . to the Indian right of occupancy."[5] Under this doctrine, Indians were recognized as the "rightful occupants" of the land, with a legal claim to possession.[6] This right to use, occupy and enjoy the land--and waters--came to be known as "Indian title" or aboriginal title.[7]

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[3]21 U.S. (8 Wheat.) 543 (1823).

[4]Id. at 573-74 (emphasis added).

[5]Id. at 574.

[6]21 U.S. at 574.

[7]See, e.g., Sac and Fox Tribe of Indians of Okla. v. United States, 383 F.2d 991 (Ct. Cl. 1967), cert. denied, 389 U.S. 900 (1967):

T13-3. The Draft EIS and Final EIS both address these rights. By examining the impacts of the SOR alternatives on treaty rights, the agencies have, by the CTUIR's own terms, addressed aboriginal rights as well.

The CTUIR treaty rights are based on their aboriginal rights and involve the same resources, such as hunting and fishing rights. Aboriginal rights are use rights only, and loss of an aboriginal right is not grounds for compensation under the Fifth Amendment. The treaty rights are greater rights which encompass the lesser aboriginal rights. See e.g., *U.S. vs. Adair*, 723 F.2d 1394, 1414 (9th Cir. 1983). For NEPA purposes, examination of treaty rights also covers aboriginal rights.

T13-3

The discovery doctrine acknowledges that our aboriginal title is a property interest "as sacred as the fee simple of the whites."[8] The Indian right of use, occupancy and enjoyment can only be terminated by sovereign act.[9] Congress can extinguish aboriginal title only by a "clear and plain indication" of such an intent.[10] Only Congress, and not states, may do so.[11] Similarly, and more to the point, federal administrative agencies have no power or authority to extinguish Indian title.

Aboriginal title encompasses aboriginal rights, such as the rights to fish and hunt.[12] Aboriginal rights of the CTUIR and our members to fish, hunt, and gather plants, roots and berries have existed since time immemorial. They are based on our customs and practices over millennia.[13] They are independent of

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> [T]he right of sovereignty over discovered [sic] land was always subject to the right of use and occupancy and enjoyment of the land by Indians living on the land. This right of use and occupancy by Indians came to be known as "Indian title." It is sometimes called "original title" or "aboriginal title."

Id. at 997.

[8]United States ex rel. Hualpai Indians v. Sante Fe Pacific R.R., 314 U.S. 339, 345 (1941) (citing Mitchel v. United States, 34 U.S. (9 Pet.) 711, 746 (1835)).

[9]See, e.g., Oneida Indian Nation of New York State v. County of Oneida, 414 U.S. 661, 667 (1974).

[10]Sante Fe, 314 U.S. at 353-54 ("extinguishment cannot be lightly implied in view of the avowed solicitude [sic] of the Federal Government for the welfare of its Indian wards.").

[11]See Johnson v. M'Intosh, 21 U.S. (8 Wheat.) 543, 586 (1823) (discussing "the exclusive right of the United States to extinguish" Indian title); United States ex rel. Hualpai Indians v. Sante Fe Pacific R.R., 314 U.S. 339, 347 (1941) ("The power of Congress [to extinguish Indian title] is supreme.").

[12]See, e.g., United States v. Minnesota, 466 F. Supp. 1382, 1385 (D. Minn. 1977), aff'd per curiam sub nom., Red Lake Band of Chippewa Indians v. Minnesota, 614 F.2d 1161 (8th Cir. 1980), cert. denied, 449 U.S. 905 (1980); State v. Coffee, 556 P.2d 1185 (Idaho 1976).

[13]See F. Cohen, Handbook of Federal Indian Law 442 (1982).

aboriginal title to land, a treaty, or an act of Congress.[14] They were not superseded nor replaced by the rights specifically reserved by the CTUIR in the Treaty of 1855 with the United States.[15] Our aboriginal rights are separate and distinct from, and coexist with, our Treaty Rights.

Aboriginal rights retained by the CTUIR, our members, and other tribes and their members in the Columbia River Basin must be recognized and protected throughout the SOR process and all FCRPS activities and operations, pursuant to the federal government's Trust Responsibility.[16] Furthermore, agency policies such as the Indian Trust Assets Policy of the Bureau of Reclamation (BOR) also require such protection.[17]

T13-3

In the SOR DEIS, aboriginal rights were not properly considered in identifying Indian Trust Assets, in assessing potential impacts to them, or in developing the range and analyses of actions and alternatives. These omissions must be corrected, in consultation with the CTUIR and other affected Indian tribes.[18]

Aboriginal rights of the CTUIR and our members to fish, hunt, and gather plants, roots and berries, as part of our use, occupancy and enjoyment of the lands and waters of the Pacific Northwest, have not been legally extinguished by Congress. They have not--and cannot--be legally extinguished by any federal government agency. Our aboriginal rights, like our Treaty Rights, remain in full force and effect to this day, a fact that should given appropriate attention and due regard in the SOR DEIS

[14]Sante Fe, 314 U.S. at 347. Tribes possess extra fishing and hunting rights even when they are not delineated by specific treaties because subsistence fishing, hunting and gathering are intimately connected with how Indian lands are held. Menominee Tribe v. United States, 391 U.S. 404, 406 (1968). Aboriginal rights to fish and hunt incidental to aboriginal title may survive even when aboriginal title to the land has been ceded by treaty. Reynolds, Indian Hunting and Fishing Rights: The Role of Tribal Sovereignty and Preemption, 62 N.C. L. Rev. 743, 746 (1984).

[15]Treaty of 1855, supra note 1.

[16]See infra notes 41-66 and accompanying text.

[17]See infra note 41-66 and accompanying text.

[18]See Bureau of Reclamation, NEPA Handbook for Implementing Indian Trust Assets Policy (describing the consultation process for identifying Indian Trust Assets and assessing impacts to them).

and in operating the FCRPS.

II. THE TREATY OF 1855 AND TREATY RIGHTS

The Treaty of 1855 between the United States and "the Walla-Wallas, Cayuses, and Umatilla tribes, and bands of Indians, occupying lands partly in Washington and partly in Oregon Territories"[19] (now the CTUIR) defined and formalized the interests, rights and responsibilities of the signatories, and their successors, with respect to the natural and cultural resources of the Columbia River Basin. In the Treaty, the CTUIR ceded (**gave**) 6.4 million acres of land to the United States. In the Treaty, the CTUIR also specifically reserved, in perpetuity, rights to use, occupy and enjoy off-reservation lands and waters, to access them for the continuation of our traditional customs and practices, including plant, root and berry gathering, hunting for small and large game, and fishing at all usual and accustomed stations:

> Provided, also, That the exclusive right of taking fish in the streams running through and bordering said reservation is hereby secured to said Indians, and at all other usual and accustomed stations in common with citizens of the United States, and of erecting suitable buildings for curing the same; the privilege of hunting, gathering roots and berries and pasturing their stock on unclaimed lands in common with citizens, is also secured to them.[20]

Tribal rights secured[21] by the Treaty of 1855 (and others),[22] including the right to fish at all usual and

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[19]Treaty of 1855 (preamble), supra note 1.

[20]Treaty of 1855, supra note 1 at 946.

[21]"Secure" is defined as, inter alia, "assured in opinion or expectation: having no doubt . . . free from risk of loss . . . affording safety: INVIOLABLE . . . TRUSTWORTHY, DEPENDABLE . . . ASSURED, CERTAIN . . . to relieve from exposure to danger: act to make safe against adverse contingencies . . . to put beyond hazard of losing or of not receiving: GUARANTEE (['secure] the blessings of liberty[']--U.S. Constitution)." Webster's New Collegiate Dictionary 1037 (1979).

[22]See Treaty with the Yakima, June 9, 1855, 12 Stat. 951; Treaty with the Nez Perce, June 11, 1855, 12 Stat. 957; Treaty with the Tribes of Middle Oregon, June 25, 1855, 12 Stat. 963; Treaty with the Nisqually, Puyallup, etc., Dec. 26, 1854, 10 Stat. 1132; Treaty with the Dwamish, Suquamish, etc., Jan. 22, 1855, 12 Stat. 927; Treaty with the Sklallam, Skokomish, etc.,

accustomed stations, were **not** granted to the CTUIR and other sovereign Indian Nations by the United States. We **reserved**--retained--such pre-existing rights as part of our status as a prior and continuing sovereign.[23] In United States v. Winans,[24] the U.S. Supreme Court established and described the reserved rights doctrine:

> The right to resort to the fishing places in controversy was a part of larger rights possessed by the Indians, upon the exercise of which there was not a shadow of impediment, and which were not much less necessary to the existence of the Indians than the atmosphere they breathed. . . . **In other words, the treaty was not a grant of rights to the Indians, but a grant of rights from them--a reservation of those not granted.** . . . They imposed a servitude upon every piece of land as though described therein. There was an exclusive right of fishing reserved within certain boundaries. There was a right outside of those boundaries reserved "in common with citizens of the Territory." . . . [T]he Indians were secured in its enjoyment by a special provision of means for its exercise. . . . The contingency of the future ownership of the lands, therefore, was foreseen and provided for--in other words, the Indians were given [sic] a right in the land--the right of crossing it to the river--the right to occupy it to the extent and for the purpose mentioned. . . . And the right was intended to be continuing against the United States and its grantees as well as against the State and its grantees.[25]

Treaty Rights--those of the CTUIR and other tribes--should be of paramount concern to the United States, its departments and agencies, and in the SOR DEIS:

Since rights granted pursuant to treaties are rights

Jan. 26, 1855, 12 Stat. 933; Treaty with the Makah, Jan. 31, 1855, 12 Stat. 939; Treaty with the Quinaielt and Quillehute, July 1, 1855 and Jan. 25, 1856; 12 Stat. 971; Treaty with the Flathead, Kootenay, and Upper Pend d'Oreille, July 16, 1855, 12 Stat. 975.

[23]See, e.g. Worcester v. Georgia, 31 U.S. (6 Pet.) 515 (1832) (state law does not apply within reservation boundaries without express Congressional consent).

[24]198 U.S. 371 (1905).

[25]Id. at 381-82 (emphasis added).

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granted to the United States from the tribes and the tribes reserve all those rights not granted, . . . **treaty rights should be afforded the highest priority possible.**[26]

T13-4

The U.S. Constitution proclaims that "**all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land**; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."[27] Treaties with Indian tribes are contemplated by this constitutional provision.[28] Tribal rights secured by treaty are superior to the rights other citizens enjoy.[29] Furthermore, "[t]he preservation of treaty rights is the responsibility of the entire federal government."[30] Thus, the SOR agencies--the Bonneville Power Administration (BPA), the Army Corps of Engineers (ACOE), and the BOR--have an affirmative legal duty to protect the CTUIR's Treaty

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[26]Memorandum from Michael J. Anderson, Associate Solicitor, Division of Indian Affairs, Office of the Solicitor, U.S. Department of the Interior, to Solicitor and Assistant Secretary for Indian Affairs, U.S. Department of the Interior, re: "Indian Treaty Hunting and Fishing Rights and the Endangered Species Act," at 7 (Nov. 8, 1994) (citing United States v. Winans, 198 U.S. 371, 381 (1905) (emphasis added).

[27]U.S. Const. art. VI, cl. 2 (emphasis added). See United States v. Washington, 384 F. Supp. 312, 330 (W.D. Wash. 1974), aff'd, 520 F.2d 676 (9th Cir. 1975), cert. denied, 423 U.S. 1086 (1976). The Treaty of 1855 was ratified on March 8, 1859. Treaty of 1855, supra note 1.

[28]See, e.g., Worcester v. Georgia, 31 U.S. (6 Pet.) 515 (1832).

[29]See generally F. Cohen, Handbook of Federal Indian Law 285-86, 335-36 (1942); S. Pevar, The Rights of Indians and Tribes 189-208 (1992).

[30]Associate Solicitor's Opinion, supra note 26 at 7 (citing United States v. Eberhardt, 789 F.2d 1354, 1363-64 (9th Cir. 1986) (Beezer, J., concurring) ("Cooperation among all agencies of the government is essential to preserve those Indian fishing rights to the greatest extent possible.")); Nance v. EPA, 645 F.2d 701, 711 (9th Cir. 1981), cert. denied, 454 U.S. 1081 ("It is fairly clear that **any** federal government action is subject to the United States' fiduciary responsibilities toward the Indian Tribes." (emphasis added)).

Responses

T13-4. The section in the EIS on impacts to treaty rights addresses most of the issues the CTUIR raise. Several issues require additional responses.

Concerning the treaty right for access to usual and accustomed fishing grounds and sites as reserved in the CTUIR's treaty, several actions have been taken or are already under way. The 1945 Rivers and Harbors Act provided for the acquisition of fishing sites inundated by the construction of the Bonneville Dam. Congress authorized the improvement of existing fishing sites and acquisition of additional sites in 1988. The Corps of Engineers is preparing to initiate work on those sites. Further information on in-lieu fishing sites is available in the Corps' *Final Phase Two Evaluation Report and Environmental Assessment/Finding of no significant impact on Columbia River Treaty Fishing Access Sites* (April 1995).

The Federal government has also compensated tribes for land lost as a result of the development of Federal hydro projects. Tribes whose lands were inundated have been compensated for the taking of their property.

Since the 1930s, Federal agencies have implemented the Mitchell Act. Beginning in the 1970s, agencies began implementing the Fish and Wildlife Compensation Plan For the Lower Snake River. Both provide for Federal funding for the operation of state, Federal, and tribal hatcheries in the Columbia River Basin to compensate for fisheries affected by Federal hydro development. Many of these hatcheries now operate to provide fish for tribes as directed by the settlement agreement in *U.S. v. Oregon*. Mitigation for the loss of fish--and for the impact of Federal development on treaty rights--with hatcheries has been, and continues to be encouraged by state, Federal, and tribal fisheries managers, including the CTUIR.

The SOR agencies are the primary entities implementing the NPPC's Fish and Wildlife Program and the protection, mitigation, and enhancement provisions of the Northwest Power Act. By implementing the program and the Act's fish provisions, the agencies fulfill their general trust responsibilities to the tribes. The CTUIR have benefited more than most tribes from this fish mitigation. As a treaty tribe with lower Columbia River fishing rights, actions that mitigate and protect mainstem fisheries, such as the Water Budget and smolt transportation, directly benefit the CTUIR. In addition, the CTUIR have been direct beneficiaries of extensive actions taken by the SOR agencies to benefit fish and wildlife on or adjacent to the Umatilla Reservation. Since 1986, the agencies have worked on the reintroduction of salmonids into the Umatilla River at the request of the CTUIR and the Northwest Power Planning Council. (NPPC, Fish and Wildlife Program §§ 7.4I, 7.9B, 1994). BPA has spent over $40 million to date, including the cost of providing power to the Bureau of Reclamation to pump water from the Columbia River to irrigators so they will leave their water in the Umatilla River to improve flows for Umatilla hatchery project fish. (Umatilla Basin Project Act, P.L. 100-557, §§ 201-13.) Protection and mitigation for Columbia Basin fisheries through these actions will continue under all SOR alternatives.

Rights.[31]

T13-4 Nevertheless, the SOR DEIS does not fully and effectively incorporate this solemn obligation, nor does it address its implications for FCRPS System Operating Strategies (SOSs) and the other proposed SOR decisions. For example, discussions of Indian treaties and the rights and responsibilities arising from them in the SOR DEIS warrant additional exposition and clarification. The Stevens-Palmer Treaties are only briefly noted and described.[32]

T13-5 In addition, the SOR DEIS mentions that "[t]reaties are presumed [sic] to reserve to Tribes the right to fish and hunt on their reservations."[33] This is incorrect--such rights are not "presumed" to have been reserved in the treaties. No presumption was or is involved; reserved rights were unambiguously delineated in explicit terms.[34] Judicial opinions have affirmed the clear and unequivocal nature of this right.[35]

Tribal rights to fish and hunt (and to regulate on- and off-reservation exercise of those rights by tribal members) are well-established.[36] Furthermore, the right of many Indian Tribes of

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[31]Treaties with Indian Tribes are also binding on state governments, see Washington v. Washington State Commercial Passenger Fishing Vessel Ass'n, 443 U.S. 658, 682 and n. 25 (1979), and private citizens, see, e.g., United States v. Winans, 198 U.S. 371 (1905). The right to take fish at all "usual and accustomed stations" must be respected by the federal government and its agencies, state governments and their agencies, and private parties.

[32]SOR Draft EIS, Main Report, at 2-25, 2-26, 2-27 (July 1994) (Chapter 2, The Columbia River Basin; Section 2.2.2, Native Americans).

[33]SOR Draft EIS, Main Report, at 2-26 (July 1994) (Chapter 2, The Columbia River Basin; Section 2.2.2, Native Americans).

[34]See, e.g., Treaty of 1855, supra note 1 at 946 ("the exclusive right of taking fish in the streams running through and bordering said reservation is hereby secured to said Indians.").

[35]See New Mexico v. Mescalero Apache Tribe, 462 U.S. 324, 330 (1983); Leech Lake Band of Chippewa Indians v. Herbst, 334 F. Supp. 1001 (D. Minn. 1971); State v. McClure, 268 P.2d 629 (1954).

[36]See also Letter from William F. Shake, Assistant Regional Director, U.S. Fish and Wildlife Service, to Don Sampson, Chairman, Board of Trustees, Confederated Tribes of the Umatilla

T13-5. Section 2.2.2 of the Final EIS Main Report acknowledges this point; the agencies regret the inadvertent implication of the original wording.

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the Pacific Northwest--including the CTUIR--to take fish at all "usual and accustomed stations" has also been affirmed by repeated court decisions.[37]

T13-5 The Stevens-Palmer Treaties' formalization of the off-reservation fishing right reflects the overriding aim of preserving our traditional way of life that was, and continues to be, centered around the river and its myriad resources. The Treaty of 1855 did not presume to reserve the fishing right; it was **secured**--guaranteed--both on and off the reservation. The SOR agencies must be cognizant of this fact and conduct their analyses accordingly.

T13-6 Finally, the CTUIR understand the significance of the FCRPS to the Pacific Northwest. We acknowledge the major role it plays with regard to hydroelectric power, flood control, irrigation, municipal and industrial water supply, navigation and recreation. The SOR agencies, their facilities and functions are subject to a number of statutory and regulatory authorities and constraints, such as those listed in Chapter 11 (Environmental Consultation, Review, and Permit Requirements) of the SOR DEIS Main Report.[38]

Indian Reservation (June 24, 1994) ("The U.S. Fish and Wildlife Service . . . considers the Tribes . . . as co-managers of fishery resources.").

[37]See, e.g., Sohappy 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, 99 S.Ct. 3055, 61 L.Ed.2d 823 (1979).

[38]The list includes the National Environmental Policy Act; the Endangered Species Act; the Fish and Wildlife Conservation Act; the Fish and Wildlife Coordination Act; the National Wildlife Refuge System Administration Act; the Migratory Waterfowl Act; the Marine Protection, Research, and Sanctuaries Act; the Pacific Northwest Electric Power Planning and Conservation Act; the National Historic Preservation Act; Existing Programmatic Agreements; the Archeological Resources Protection Act; the Native American Graves Protection and Repatriation Act; the American Indian Religious Freedom Act; the Coastal Zone Management Act; Executive Order 11990 (wetlands protection); the Farmland Protection Policy Act; the CEQ Memorandum on Analysis of Impacts on Prime or Unique Agricultural Lands; the Wild and Scenic Rivers Act; the Columbia River Gorge National Scenic Area Act; the Water Resources Development Act; the Federal Water Project Recreation Act; the Land and Water Conservation Fund Act; the Clean Air Act; the Clean Water Act; the Safe Drinking Water Act; the Estuary Protection Act; and the Watershed Protection and Flood Protection Act.

Responses

T13-6. Chapter 11 of the Final EIS has been modified to include references to the treaties, as requested.

T13-6 However, conspicuously absent from this seemingly exhaustive list is any mention of the Treaty of 1855.[39]

We find the evident disregard for Tribal Rights and Treaty-secured resources in the SOR DEIS deeply regrettable, and of questionable legality. Through meaningful consultation, we hope to rectify this situation and help develop a Final Environmental Impact Statement more attentive to the CTUIR's interests, rights and resources.

As Antone Minthorn, Chairman of the General Council and member of the Board of Trustees of the CTUIR, has stated,

> As long as the Indians believe that the salmon are important and that they have the legal right that the treaties uphold, then the salmon will survive, but the white people must honor those treaties in order for that to happen, and when they honor the treaty, it is not only the Indians that benefit, but all people will benefit.

III. TRUST RESPONSIBILITY AND TRUST ASSETS

In addition to respecting our aboriginal rights and treaty-reserved rights, the United States must honor its Trust Responsibility to the CTUIR and other Indian Tribes. This doctrine arose through judicial interpretation and analysis, and has since been supplemented and reinforced by formal federal agency policy.

The Trust Responsibility doctrine can be traced to Cherokee Nation v. Georgia,[40] where the U.S. Supreme Court stated that Indian Tribes were not foreign nations, but constituted "distinct political" communities "that more correctly, perhaps, be

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[39]The SOR DEIS also neglects to note the various federal Indian law doctrines and principles arising from numerous judicial decisions, and the many Indian Policies promulgated by the SOR agencies and others, to which they are bound. The minimal acknowledgement and recognition of the Treaty of 1855 in the SOR DEIS is particularly incongruous and inappropriate given that one of the driving forces propelling the entire SOR process is the upcoming expiration of the Canadian Entitlement Allocation Agreements, which are based on the Columbia River Treaty between the United States and **Canada**. Equivalent attention to and regard for other treaties, such as those with sovereign Indian Nations (which are, equally, "the supreme Law of the Land") is necessary, and would be a welcome departure from the traditional treatment afforded Indian issues in this and similar circumstances.

[40]30 U.S. (5 Pet.) 1 (1831).

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denominated domestic . . . nations" whose "relation to the United States resembles that of a ward to his guardian."[41] This language first enunciated the doctrine of federal trusteeship in Indian affairs, a doctrine that continues to govern the relationship between Tribes and the United States today.[42]

T13-7

"[T]he undisputed existence of a general trust relationship between the United States and the Indian people"[43] has been confirmed by the U.S. Supreme Court, noting that it "has previously emphasized 'the distinctive obligation of trust incumbent upon the Government,'[44] a "principle [that] has long dominated the Government's dealings with Indians."[45]

Numerous court decisions have defined and described the Trust Responsibility as requiring the federal government to adhere to stringent fiduciary standards of conduct in matters related to Indian Tribes.[46] The Trust Responsibility applies to **all** federal agencies.[47] They must ensure that their actions do not breach their Trust Responsibility to Indian Tribes, including

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[41] Id..

[42] See, e.g., United States v. Creek Nation, 295 U.S. 103, 109-10 (1935); United states v. Kagama, 118 U.S. 375, 383-84 (1886).

[43] United States v. Mitchell, 463 U.S. 206, 225 (1983).

[44] Id. (quoting Seminole Nation v. United States, 316 U.S. 286, 296 (1942)).

[45] Id. (citing United States v. Mason, 412 U.S. 391, 398 (1973); Minnesota v. United States, 305 U.S. 382, 386 (1939); United States v. Shoshone Tribe, 304 U.S. 111, 117-118 (1938); United states v. Candelaria, 271 U.S. 432, 442 (1926); McKay v. Kalyton, 204 U.S. 458, 469 (1907); Minnesota v. Hitchcock, 185 U.S. 373, 396 (1902); United States v. Kagama, 118 U.S. 375, 382-384 (1886); Cherokee Nation v. Georgia, 5 Pet. 1, 17 (1831)).

[46] See, e.g., Seminole Nation v. United States, 316 U.S. 286, 296-97 (1942) (United States is charged "with moral obligations of the highest responsibility and trust"); United States v. Creek Nation, 295 U.S. 103 (1935). See also Northern Cheyenne Tribe v. Hodel, 12 Indian L.Rep. 3065, 3070-71 (D. Mont. 1985), modified on other grounds, 842 F.2d 222 (9th Cir. 1988).

[47] Nance v. EPA, 645 F.2d 701, 711 (9th Cir. 1981), cert. denied, 454 U.S. 1081 (1980) (any federal government action is subject to the United States' fiduciary responsibility to Indians); White v. Califano, 581 F.2d 697 (8th Cir. 1978) (HEW is responsible for providing mental health care for Indians).

Responses

T13-7. The SOR agencies believe that by funding CTUIR participation in the SOR; consulting with the CTUIR on cultural resources, fish and wildlife, and river operations; and by making good faith efforts to implement department and agency tribal policies, the agencies have recognized and have taken action to meet their Federal trust responsibilities to the CTUIR. The agencies offered the 14 tribes in the study area $600,000, to support tribal participation in the SOR. The sum was divided equally among the tribes, making $42,800 available to the CTUIR. The agencies also offered additional funding for studies or literature review, and to cover travel and per diem so tribal representatives could attend specific SOR work group meetings.

In 1991, the SOR agencies sent the CTUIR and other tribes a notice of public meetings to scope the alternatives and issues to consider in the SOR process. In 1992, interested tribes were involved in the Resident Fish and Wildlife Work Groups. In mid-1993, the agencies began meeting with tribes individually on their reservations to consult on SOR issues, particularly the potential impacts of the alternatives on cultural resources. These meetings have continued.

The SOR agencies took additional actions to involve tribes in the SOR. In spring 1993, an Indian Coordination Group with representatives from each agency was started to advise SOR managers on tribal relations and participation. The SOR agencies believe these actions fulfill the general Federal trust responsibility owed the CTUIR. See also Response T13-16.

As for a particular trust duty owed to the CTUIR only, the tribes have not shown how there is a CTUIR resource that one or more of the SOR agencies manage exclusively for the tribes pursuant to specific management statutes, orders, or regulations. Absent such a showing, *United States v. Mitchell*, 463 U.S. 206 (1983) indicates that a specific federal agency shares the general trust responsibility with all other federal agencies

The SOR EIS contains extensive analysis of the impacts of the SOS alternatives on fish and wildlife and treaty rights. Fish and wildlife in the Columbia River Basin are a mixed treaty/non-treaty resource. These resources are affected by Federal, non-Federal, state, and tribal actions involving hatcheries, habitat, harvest, as well as the hydro system. These resources are also affected by natural conditions such as El Nino, seal mammal predation, and limited pasturage in the North Pacific shared by wild salmon with hatchery fish from North America and Asia. Full restoration of all anadromous fish is not one of the goals of the Northwest Power Act, the ESA, the Council's Fish and Wildlife Program, the Columbia River Compact, or NMFS' Draft Recovery Plan—the primary guides for fish mitigation in the Basin. Moreover, there is no known technology capable of reviving extirpated stocks. This goal fails to fulfill the purpose and need of the SOR EIS, and it is inappropriate for inclusion in the SOR EIS.

the CTUIR.

According to the principles of federal Trust Responsibility, government departments and agencies must utilize their authority to scrupulously safeguard that which is the subject matter of federal treaties with Indian Tribes--Indian Trust Assets.[48] Trust Assets are property in which Indians hold and maintain legal interests, and which are held in trust by the United States for tribes and individuals. They include, but are not limited to, lands, water, fish, wildlife, plants, minerals--essentially, everything necessary to preserve and maintain a way of life.

The duty to consider and protect Trust Assets is broad and comprehensive. In Northern Cheyenne Tribe v. Hodel,[49] the court stated that "a federal agency's trust obligation to a tribe extends to actions it takes off a reservation that uniquely impact tribal members or property on the reservation."[50] Even where an agency asserts that other responsibilities conflict with its Trust Responsibility to Indian Tribes, the Trust Responsibility remains in effect:

T13-7

> [C]onflicting responsibilities and federal actions taken in the "national interest," however, do not relieve [the Secretary of the Interior] of his trust obligations. To the contrary, identifying and fulfilling the trust responsibility is even more important in situations such as the present case where an agency's conflicting goals and responsibilities combined with political pressure asserted by non-Indians can lead federal agencies to compromise or ignore Indian rights.[51]

In Escondido Mut. Water Co. v. FERC,[52] the U.S. Court of Appeals for the Ninth Circuit stated that

There is no guarantee . . . that the tribal interests

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[48]See United States v. Creek Nation, 295 U.S. 103 (1935). See also Northern Cheyenne Tribe v. Hodel, 12 Indian L.Rep. 3065, 3070-71 (D. Mont. 1985; modified on other grounds, 842 F.2d 222 (9th Cir. 1988).

[49]12 Indian L.Rep. 3065 (D. Mont. 1985), modified on other grounds, 842 F.2d 222 (9th Cir. 1988).

[50]Id. at 3071.

[51]Northern Cheyenne Tribe v. Hodel, 12 Indian L.Rep. at 3070-71 (citations omitted).

[52]692 F.2d 1223 (1982).

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which the United States has a fiduciary duty to protect and defend will coincide with the interest of the public at large. A water and hydropower project might be vastly beneficial to the public in general, for instance, even though by inundating an entire reservation it might be utterly inimical to the interest of the Indians whose reservation is concerned. We find in the plain language of the FPA [Federal Power Act, 16 U.S.C. Sec. 791a et seq. (1976)] a policy to foster the development of water power projects in the public interest, **to the extent, and only to the extent, that such can be done without abandoning the fiduciary duties owed by the United States to . . . Indian tribes.**[53]

Consequently, the federal departments and agencies principally responsible for the disastrous decline in Northwest anadromous fish runs--the SOR agencies[54]--cannot continue to permit their obligations to Indian Nations to be lost or compromised in their concern for outraged local citizens, influential special interest groups, or powerful economic lobbies.[55] Treaty-reserved Tribal Rights are legitimate property interests stemming from property rights which pre-date the formation of the United States.[56] One of their unique aspects is

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[53]Escondido Mut. Water Co. v. FERC, 692 F.2d 1223, 1236 (1982) (emphasis added).

[54]See, e.g., Winninghoff, Where have all the salmon gone?, Forbes, Nov. 21, 1994, at 104.

[55]See, e.g., Matsen, Barging Down the River, Pacific Northwest, December 1994, at 51:

> [T]he smelting companies, which consume 47 percent of the power from the eight Corps of Engineers dams, are buying television and radio time to tell us that without aluminum we can't have airplanes and trips to visit loved ones and sick friends. Development boosters are reminding us that our society made a choice on the Columbia and Snake, it cost us the salmon, and jobs are more important than fish.

[56]United States v. Truckee-Carson Irrigation Dist., 649 F.2d 1286, 1289, 1305 (9th Cir. 1981), modified, 666 F.2d 351 (9th Cir.), cert. granted, 103 S.Ct. 205 (1982); United States v. Ahtanum Irrigation Dist., 236 F.2d 321, 338-39 (9th Cir. 1956), cert. denied, 352 U.S. 988 (1957); Northern Paiute Nation v. United States, 30 Ind. Cl. Comm. 210 (1973); Whitefoot v. United States, 293 F.2d 658, 659 (Ct. Cl. 1961), cert. denied, 369 U.S. 818 (1962).

that they are not considered susceptible to balancing against other priorities.[57]

T13-7

Federal actions that interfere with the free exercise of Treaty Rights cannot be sanctioned by "accommodating" or "balancing" such rights with lesser competing interests.[58] Any such accommodation or balancing by federal agencies violates their Trust Responsibility to the CTUIR and would constitute a de facto abrogation of our Treaty Rights.[59] Courts have

[57] Muckleshoot Indian Tribe v. Hall, 698 F. Supp. 1504, 1515 (W.D. Wash. 1988).

[58] See, e.g., Memorandum from Michael J. Anderson, Associate Solicitor, Division of Indian Affairs, Office of the Solicitor, U.S. Department of the Interior, to Solicitor and Assistant Secretary for Indian Affairs, U.S. Department of the Interior, re: "Indian Treaty Hunting and Fishing Rights and the Endangered Species Act," at 7 (Nov. 8, 1994) ("Acknowledgement that treaty rights are to receive the highest protection possible leads to the conclusion that non-treaty impacts on treaty resources must be minimized to permit the fulfillment of treaty promises.").

[59] Our Treaty Rights are not for sale. Nevertheless, it has been suggested that any infringement on Indian Treaty Rights or degradation of Indian Trust Assets--temporary or permanent, partial or complete--may constitute a "taking" for which just compensation would be mandated under the Fifth Amendment to the U.S. Constitution. In his Memorandum to the Solicitor and Assistant Secretary for Indian Affairs, U.S. Department of the Interior, entitled "Indian Treaty Hunting and Fishing Rights and the Endangered Species Act" (Nov. 8, 1994), the Associate Solicitor, Division of Indian Affairs, Office of the Solicitor, U.S. Department of the Interior, stated:

> Federal responsibility to preserve tribal wildlife resources is analogous to the federal responsibility for tribal trust land. Because of the responsibility to tribes for trust land, the United States may not unilaterally use Indian trust lands strictly for governmental purposes unless it adequately compensates the Indian owner. The United States cannot dispose of Indian trust lands as it can other federally owned lands. In addition, if trust lands are sold, the Government must ensure that the Indian landholder receives the best possible price for those lands. **Where the exercise of treaty rights is unduly limited . . ., compensation for those limitations may be warranted.** The Fifth Amendment obligates Congress to pay "just compensation" when private property rights are taken by the government for public use. Thus,

consistently held that Indian treaty rights can only be abrogated by the U.S. Congress, and that "clear evidence" of an intent to do so must be shown.[60]

T13-7

Pursuant to the Trust Responsibility the SOR agencies have an affirmative duty to conduct their operations in a manner that preserves and protects all our treaty-secured resources--including salmon. Furthermore, you are obligated to not merely "recover" anadromous fish runs listed under the Endangered Species Act (ESA)[61] to a level where de-listing can occur, but, in addition, to **restore** such runs beyond that point, to where they can provide for healthy, viable populations sufficient for sustainable Indian harvest. Full restoration of **all** anadromous fish runs (including those presently extirpated and those declining but not yet listed under the ESA) must be a primary purpose and goal of the SOR agencies, and a prominent guideline for all FCRPS operations.

By neglecting to pay adequate attention to Indian treaty rights and your Trust Responsibility to Indian tribes, the SOR DEIS allows government officials, employees, contractors and others to remain uneducated and uninformed about the nature and scope of the legal duties and obligations you owe to Indian tribes. The public will remain largely ignorant of the superior rights held by the CTUIR and other tribes, and will also erroneously equate assertion of those rights with just another conflicting demand from among the many competing user groups.

The SOR DEIS acknowledges that

> while the Congress has the power to abrogate or limit the exercise of treaty rights, **this lost use of protected property rights may require compensation under the Fifth Amendment, even in the case of a temporary taking . . .. Equity demands that holders of treaty rights have at least as great an interest in receiving compensation as do non-Indian resource users when access to treaty resources is curtailed.**

Memorandum at 13-14 (emphasis added) (citations omitted).

[60] United States v. Dion, 476 U.S. 734, 740 (1986) ("clear evidence that Congress actually considered the conflict between its intended action on the one hand and Indian treaty rights on the other, and chose to resolve that conflict by abrogating the treaty[,]" is required); Menominee Tribes v. United States, 391 U.S. 404, 413 (1968); Muckleshoot Indian Tribe v. Hall, 698 F. Supp. 1504 (W.D. Wash. 1988); Confederated Tribes of the Umatilla Indian Reservation v. Alexander, 440 F. Supp. 553 (D. Or. 1977).

[61] 16 U.S.C. §§ 1531-1543.

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The United States (including all of the SOR agencies) has a trust responsibility to protect and maintain such rights reserved by or granted to Indian Tribes or individuals by treaties, statutes, executive orders, and other agreements entered into by Reclamation or the Department of the Interior.[62]

Nevertheless, the SOR DEIS does little more to explore the nature, scope or ramifications of Trust Responsibility.

T13-7

In the general overview of the "Affected Environment,"[63] the SOR DEIS should include a section identifying Indian trust assets that could be impacted by the actions and alternatives. Identification of Trust Assets must be performed not only in the context of Treaty Rights, but also in terms of our aboriginal rights. Consultation with the CTUIR and other affected tribes would be required to accomplish this task.

The SOR DEIS Summary[64] should include a brief description of the expected impacts of the proposed alternatives and actions on Indian Trust Assets. Significant adverse or beneficial impacts on Indian trust assets, and proposed mitigation, will need to be described in narrative and, when possible, quantitative terms. Where no impacts to Trust Assets are anticipated, a statement to this effect should be included.

The SOR DEIS Main Report also needs to identify potential impacts to Indian Trust Assets when describing the SOS alternatives, project features and mitigation measures.[65] Cumulative impacts to Trust Assets must be identified and analyzed as well. Reasonable measures that could eliminate or reduce adverse effects on Trust Assets should be identified.

A. SALMON AND OTHER FISH

T13-8

The SOR DEIS does not sufficiently emphasize salmon and other fish as treaty-protected resources and Indian Trust Assets. Unfortunately, the underlying theme that seems to permeate the SOR DEIS is that salmon protection and enhancement measures are inevitably pitted against those for other "Indian" resources

[62]SOR Draft EIS, Main Report, at 2-28 (July 1994) (Chapter 2, The Columbia River Basin; Section 2.2.2, Native Americans).

[63]Chapter 2. The Columbia River Basin, SOR Draft EIS, Main Report (July 1994).

[64]System Operation Review: The Summary (July 1994).

[65]SOR Draft EIS, Main Report (July 1994) (Chapter 4, Alternatives and Their Impacts).

Responses

T13-8. The SOR agencies have not deliberately opposed one resource against another in the Draft EIS. Because of the breadth and complexity of the FCRPS and its operations, it is impossible to take an action that does not affect some resource. Because the CTUIR have treaty rights to, and statutory protection for, so many resources, it is difficult for the FCRPS to be operated without affecting one or more of those resources. The point of NEPA is to examine these and other impacts to allow decisionmakers to be informed prior to making their decisions.

While the CTUIR object to the balancing of their resources against other needs and interests, they have been legally compensated for many of the losses they seem to be claiming again now. Those resources for which the CTUIR have already been compensated may be balanced in decisions regarding FCRPS operations. In addition, some interests impose mandatory duties on federal agencies in addition to duties imposed by treaty rights. See, e.g., *Application of the ESA to Native Americans with Treaty Hunting and Fishing Rights*, 87 Int. Dec. 525 (1980). Other interests similarly apply to federal agencies, along with Indian treaty rights, such as the United States' obligations under its Columbia River Treaty with Canada and the statutory directives establishing the FCRPS. Finally, conflicts sometimes arise from measures to protect Indian resources. For example, to draft Grand Coulee to increase downstream flows for the protection of Yakama Indian Nation burial sites may result in the partial destruction of the Colville Tribes' fisheries in Lake Roosevelt. Consequently, tradeoffs will be made no matter what operating regime is selected. The SOR agencies are working to minimize the conflicts arising from such tradeoffs through studies, analysis, and consultation with the affected tribes.

T13-8 defined by the SOR agencies, such as "cultural resources" (e.g., burial sites) and resident fish. This is inappropriate and unacceptable. This approach must be corrected through serious consultation with the CTUIR.

B. WATER AND INDIAN RESERVED WATER RIGHTS

Water is the lifeblood of the Pacific Northwest. It is the lifeblood of all the resources upon which our religion, culture and economy are based. It is, like salmon, sturgeon and eels, an integral part of our existence as Indian people, here in the Columbia River Basin (and throughout North America).[66]

When we ceded 6.4 million acres of land to the United States, we never gave away the water needed to support our religious, cultural and economic life. Our ancestors explicitly reserved the right to fish, hunt and gather plants roots and berries in all our usual and accustomed areas. Thus, they implicitly retained the water necessary to sustain these resources off-reservation, throughout our usual and accustomed areas.[67]

Federal courts have consistently recognized this reservation

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[66]See, e.g., American Indian Resources Institute, Perspective on Indian Policy, History and Law: Selected Readings (1983), quoting Frank Tenorio, a leader of the San Felipe Pueblo:

> There has been a lot said about the sacredness of our land which is our body; and the values of our culture which is our soul; but water is the blood of our tribes, and if its life-giving flow is stopped, or it is polluted, all else will die and the many thousands of years of our communal existence will come to an end."

(quoted in Getches and Wilkinson, Cases and Materials on Federal Indian Law 20 (2nd ed. 1986)).

[67]Winters v. United States, 207 U.S. 564 (1908) is a landmark case recognizing the implicit reservation of water rights by tribes in their treaties. One of the several reasons the U.S. Supreme Court cited for its decision is a canon of construction that states that "[b]y a rule of interpretation of agreements and treaties with the Indians, ambiguities occurring will be resolved from the standpoint of the Indians." Our ancestors did not anticipate at the time of the Treaty of 1855 that massive dams would be built throughout the region, disrupting the lifegiving flows of water so vital to our fish, wildlife and plants.

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Comments

of instream water rights to ensure our treaty fishing right.[68] This reserved instream water right has a priority date of "time immemorial."[69] Under the prior appropriation doctrine, this water right is superior to any and all other water rights in the Columbia and Snake River Basins.

At this time, the CTUIR have not made a claim to minimum instream flows in the Columbia and Snake Rivers based on our time immemorial priority date treaty water right. Even when an instream water right has not been formally adjudicated, however, the federal government must honor a tribe's superior priority date to prevent impacts to treaty-protected fisheries.[70]

The United States has a duty to uphold the promises and agreements it made to the CTUIR in the Treaty of 1855. Furthermore, the federal government has a Trust Responsibility to preserve and protect the resources our ancestors reserved for us in the Treaty when they are threatened by private individuals or by governmental agencies.

T13-9

The deplorable condition of our treaty-reserved resources and our tribal economy based on them is largely the result of the federal government's failure in the past to protect our water rights. The United States and its agencies have a duty to restore the water rights wrongfully taken away from us in the past, as well as to safeguard them in the future.

In the Umatilla Basin, the BOR and the BPA have shown great leadership in working to fix the mistakes of the past and to

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[68] United States v. Adair, 478 F. Supp. 336 (D. Or. 1979), aff'd 723 F.2d 1394 (9th Cir. 1984); cert. denied sub nom., Oregon v. United States, 467 U.S. 1252 (1984); Colville Confederated Tribes v. Walton, 460 F. Supp. 1320 (E.D. Wash. 1978), aff'd, 647 F.2d 42 (9th Cir. 1980), cert. denied, 454 U.S. 1092 (1981); enforced, Colville Confederated Tribes v. Walton, 752 F.2d 397 (9th Cir. 1985); United States v. Anderson, 736 F.2d 1358 (9th Cir. 1984); Kittitas Reclamation District v. Sunnyside Valley Irrigation District, 763 F.2d 1032 (1985); Muckleshoot Indian Tribe v. Trans-Canada Enterprises, Ltd., 713 F.2d 455 (9th Cir. 1983), cert. denied, 465 U.S. 1049 (1984); Joint Board of Control of the Flathead, Mission and Jocko Irrigation District v. United States, 832 F.2d 1127 (9th Cir 1987); Washington Dept. of Ecology v. Yakima Res. Irr. Dist., 850 P.2d 1306 (Wash. 1993).

[69] See e.g., United States v. Adair, supra note 68.

[70] See Joint Board of Control of the Flathead, Mission and Jocko Irrigation District v. United States, supra note 68.

Responses

T13-9. The CTUIR comments request protection of an off-reservation treaty right to in-stream flows in the Columbia River sufficient to preserve the tribes' fishing rights. The CTUIR note that such rights have not been quantified. All of the authorities cited by the CTUIR to support their assertion of these flow rights address in-stream flow or Winters Doctrine water rights necessary to support treaty or aboriginal resources on current or former reservations.

The request to address the CTUIR-reserved water rights is somewhat unclear. The reserved water rights for the Umatilla Reservation were at least partially quantified in *Byers v. Wa-Wa-Ne*, 86 OR 617 (1916). The CTUIR's extensively annotated letter makes no reference to the adjudication. Having been quantified, those reserved rights are not managed by the SOR agencies.

The CTUIR appear to suggest that Columbia River salmonids need more water, the SOR agencies should provide it because water is a trust asset, and the CTUIR has reserved water rights available for this purpose. The SOR agencies do not necessarily agree with all of those assumptions. Instead, the agencies think the issue is how to safely allow fish past Federal dams and through the reservoirs. Increasing flows is just one means to attempt to achieve improved fish passage. To address passage problems, the agencies are proposing to implement numerous alternatives and measures proposed by both the NMFS Biological Opinion for Reinitiation of Consultations on 1994-98 Operation of the FCRPS and Juvenile Transportation Program (March 1995) and the Northwest Power Planning Council Columbia River Basin Fish and Wildlife Program (December 1994). These measures and alternatives call for the FCRPS to use much more water for fish than it has before. The program measures are based on submissions from all of the region's fish management agencies and tribes and therefore reflect the collective wisdom of the CTUIR and the other fishery managers. These alternatives and measures would change FCRPS operation priorities to put fish protection above power production and second only to flood control.

Although there is no mandate expressly requiring the SOR agencies to manage Columbia River flows as an Indian resource, fulfilling their obligations under the ESA and the Northwest Power Act to protect fish, and consideration of those actions in the SOR NEPA process, provide full recognition and protection of the CTUIR's unquantified water rights to the extent they exist.

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T13-9

restore our treaty water rights and fishery.[71] In this instance, the agencies' assumption of responsibility for fixing the problems of the past has brought benefits to Indians and non-Indians alike. Such leadership in the entire Columbia-Snake system would go a long way towards protecting non-Indian interests as our Treaty Rights are restored to us.

The SOR DEIS must specifically address issues related to water, both as an Indian Trust Asset and as the basis of an impliedly-reserved, legally recognized right.

C. CULTURAL RESOURCES

T13-10

The SOR DEIS Main Report and Cultural Resources Appendix D portray Cultural Resources as best protected by stable storage alternatives, and most affected by drawdown alternatives. Such a broad statement may not be an accurate assumption based upon the results of the actual data and analysis presented in Appendix D. Basically, with the smoke-and-mirror barrage of graphs and tables, there is not enough solid substantial data to make such a general statement. Simply stated, the information provided is insufficient to fully determine the effects to Cultural Resources from any of the proposed SOS alternatives.

Originally the SOR agencies indicated that navigation, irrigation, and hydroelectric concerns were the driving factor in decisions, and that Cultural Resource management issues would be entirely reactionary to the selected alternative. Therefore, it is shocking to the informed reader how Cultural Resources and other appendices are presented suggesting that stable storage alternatives are in the best interest of the resources within the Columbia River Basin. Current operations and stable storage alternatives in many ways just continue to hide the problem of Cultural Resource management. All of the SOS alternatives are really nothing but an elaborate prescription in which we will not realize the actual effects for several years to come.

Cultural Resource issues are presented in Appendix D near the beginning of a lengthy document very noticeably toward the front of the package. Cultural Resources are presented in a fashion that makes the reader believe it is a driving concern and force in the process. Although there are extensive tables and graphs, the information presented in the Main Report and Appendix D fail to provide substantial data to support the view that stable storage alternatives are best suited for Cultural Resources management.

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[71]The Umatilla Basin Project has been hailed as a model for resolving the conflict created by the federal government's past failure to protect treaty-reserved instream water rights. The project was authorized by Congress in 1988. Pub. L. No. 100-557.

Responses

T13-9. cont'd. The SOR agencies are implementing the Umatilla Basin Project, including the Umatilla hatchery, to mitigate fish and fish habitat affected by the construction of Federal hydro projects. In addition, Reclamation is reviewing and preparing to act on the water spreading issue the tribes have raised. Finally, there is a factual question regarding the need for and effectiveness of additional in-stream flows for fish in the mainstem. The SOR agencies are already implementing the flow actions recommended by the Council and NMFS for 1995 and propose to implement similar actions in future years. For these reasons, the agencies believe it is unnecessary at this time to determine the nature or extent of the CTUIR's reserved water rights for off-reservation in-stream flows and, to the extent they exist, ensure that they are available for fish passage measures.

T13-10. The purpose of the SOR EIS analyses is to comply with NEPA by making the best possible use of available information to: 1) assess proposed project impacts, and 2) compare the effects of the project alternatives. In the case of the SOR, all of the alternatives will have serious ongoing adverse effects on cultural resources. Though archaeological surveys and site evaluations of the 14 projects are not complete, there is sufficient information gathered over a long enough period of time to conclude that system operation is impacting cultural resources. Cultural resources managers at the projects also understand the variety of forces resulting from system operation that are causing the impacts and these are described in the EIS.

Forecasting differences in impacts the SOS alternatives would cause and comparing these is more difficult, but NEPA requires it. The geomorphological and simulation model analyses are attempts to do so. The geomorphological analysis looks at system operational features and their propensity to cause landform changes that can affect cultural resources. The simulation model uses the managing agencies' best estimate of how the reservoirs will operate over a hypothetical 50-year-long period in the future (the hydroregulation model), and all of the available information on the location of cultural resources to simulate the operation of the reservoirs. It then compares the alternatives based on the magnitudes of simulated impacts at the known reservoirs. The results are an estimate of how ongoing impacts would differ if different alternatives were chosen for implementation. These results may help indicate which reservoirs are suffering impacts most rapidly, but the actual management of cultural resources during implementation of the SOR must be based on thorough inventory and first-hand information.

Letter T13

Comments

The graphs and discussions of drawdown alternatives are presented such that the drawdown alternatives provide the worst-case scenarios regarding the protection of Cultural Resources. Information from the same analysis could be presented to suggest otherwise, further illustrating the subjective character of the analysis. The analysis actually suggests that there are weaknesses and strengths of both stable storage and drawdown alternatives, however, the analysis does little to discuss the full spectrum. The authors of the document simply assume that stable storage is the best selection.

T13-10

The analysis is based entirely upon models and theories using two different types of reservoirs (flow and storage) as examples. The results of this analysis will be used to make long-term management decisions about all 14 federal projects. Again we will not know the impacts of selected operating strategies for several years. The models are essentially a qualitative analysis based upon geomorphological factors and a quantitative analysis based upon time and exposure factors. While these models are useful, they are far from being tested to the point that a broad statement about stable storage alternatives can be presented in the SOR DEIS.

After reviewing the analysis in the Main Report and the Cultural Resources appendix it is apparent that there is insufficient baseline data to make such broad generalizations about the management of Cultural Resources. There are several variables described in the Main Report and Appendix D which illustrate the complexity of Cultural Resource management issues. The Columbia River Plateau is one of the most significant archaeological regions in the country, perhaps the world. Cultural Resources are irreplaceable, non-renewable resources that are essentially priceless; such considerations are not incorporated in any meaningful way.

T13-11

The Cultural Resource analysis points out that most of the data was gathered prior to the inundation of the sites and properties. The data available from these surveys is often incomplete by today's standards and frequently outdated. In many cases these sites have not been revisited since they were originally recorded. The baseline data is very incomplete and inaccurate; as such, there is a desperate need to re-record these sites using new technologies such as site forms, cameras, video recorders and oral histories.

Appendix D also points out that many sites have been eroded and deflated leaving them with very little integrity and/or scientific significance. Other sights may have eroded away in their entirety; others have been buried by geomorphological processes. There is however, no way of estimating the degree that sites have been impacted and degraded. It may be necessary to actually conduct drawdowns to establish a credible baseline of

Responses

T13-10. cont'd. While the comparisons done for the Draft EIS indicate that the alternatives that include large drawdowns (SOS 5 alternatives) would increase the rate of ongoing adverse impacts to cultural resources more than any others, the EIS does not conclude that the storage alternatives (SOS 4) would be best for cultural resources. Instead, it concludes that the alternatives that would cause the least amount of change from the existing operating system (SOSs 1 and 2) would be best. Although SOS 4, with its stable storage features, would lead to less dramatic geomorphological changes generally in the reservoirs, it would cause an acceleration in the rate of shoreline erosion at the known sites, according to the simulation. This is because many of the known sites are located high in the reservoir pools, where the shoreline would be located a greater percentage of the time under this SOS.

The alternatives compared for the Final EIS are somewhat different than those compared for the draft. The Final EIS still concludes that the SOS 1 and 2 alternatives, which would result in the least amount of change from existing conditions, would be best for cultural resources. The conclusions regarding SOS 5 are somewhat different in the Final EIS than in the draft, however, because of revised alternatives, SOS 5b and 5c, which involve drawdowns to natural river levels for all or part of the year. Analysis of the revised alternatives shows that SOS 5c would benefit cultural resources at the lower Snake River projects because it would involve permanent drawdown to natural river level. This means that ongoing impacts from reservoir operations would cease, access to cultural resources sites would be restored, and revegetation would protect the sites from ongoing erosion. The Final SOR EIS has also been revised to include more discussion of site accessibility for scientific research and traditional cultural practice. Sites are more accessible when there are longer periods of drawdown.

T13-11. Your comment is noted. Please see Response T13-10. Without a complete inventory, it is impossible to accurately determine the exact course of action. The geomorphic process is a model to be applied to determine what is occurring, to predict what type of erosion would occur, and to allow the agencies and tribal governments to plan for the correct actions for evaluation, protection, and stabilization.

Without a total drawdown to original river level, it is impossible to work within the EIS time frame to complete an archeological inventory and cultural history reconstruction to use in this analysis.

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data, in order to make the most accurate determinations.

Many previously unknown and unrecorded sites are currently being impacted and will be discovered during the implementation of any of the selected alternatives. This concern is based in part upon observations of federal agency failure in the past to develop and implement adequate Cultural Resource inventory strategies as required under the National Historic Preservation Act (NHPA). Agencies have typically allocated resources (exclusively) to NHPA Section 106 **undertakings** and have not maintained programs that assess the effects of their actions on properties under their jurisdiction and control.

T13-11

Modeling cannot assess the full range of qualities and values of Cultural Resource properties. Determining the value and integrity of Cultural Resource properties cannot be determined by a model. Scientific value/integrity and tribal/traditional significance of Cultural Resource properties also cannot be generated by a computer or models. The evaluation of Cultural Resources for significance is typically accomplished as part of the NHPA Section 106 process.[72] The SOR agencies must first identify the properties and then assess values such as integrity, and this cannot be completed without "ground truthing" or field testing the models.

The geomorphological model indicates that regardless of the SOS selected, there is an adverse effect on Cultural Resource properties. Depending upon the SOS alternative selected, 86-100% of known cultural properties are impacted. The data in the geomorphological model identifies the kinds of impacts and indicates that each of these kinds of impacts occurs on each alternative to one degree or another.

T13-12

In the John Day pool alone there are over 200 known and previously recorded properties representing all ranges of site types with 13,000 years of proven occupation. The implementation of any of the SOS alternatives will result in future discoveries of new cultural properties. The implementation of any of the alternatives is an **undertaking**.

It is suggested that the drawdown scenarios may lead to increased access to cultural properties encouraging traffic, looting and vandalism, as well as making the site susceptible to wind erosion. The analysis implies that the adverse effects increase proportionally to the increase in exposure during drawdowns. Further, the analysis suggests that Cultural Resource properties will suffer increasing natural erosion due to greater exposure.

T13-13

[72] See 36 C.F.R. § 800.

Responses

T13-11. cont'd. The best data available were used. These data will be augmented during the formulation of Historic Preservation Plans and continue during the monitoring and protection/preservation phase of SOR implementation.

T13-12. Your comment is noted.

T13-13. The EIS did not intend to imply that vandalism and wind erosion would not occur under stable storage conditions. The simulation model simply estimates the amount of time that each known site would be exposed in a drawdown zone over a 50-year period. These estimates vary according to the alternative chosen. The EIS notes that high-pool, stable storage alternatives such as SOS 4 result in accelerated wave attack to the known sites. This occurs because the known sites are disproportionately located high in the reservoir pools. See also Response T13-10.

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The reality is, the very same natural erosion factors will be present in all SOS alternatives and occur daily along pools where reservoir levels are stable. Wave erosion characteristics have actually buried Cultural Resource properties, preventing them from being exposed during drawdown. The analysis fails to recognize that vandalism and wind erosion occur on stable storage reservoirs as well as on drawn-down pools, and that the shorelines in stable storage pools fluctuate as much a six feet a day, causing impacts to cultural properties including vandalism and erosion.

T13-14

The Cultural Resources analysis was conducted to simulate a 50-year time span; examination of wave erosion potential and site exposure suggests that stable storage may actually have the most dramatic effects on Cultural Resource properties. The results of the quantitative analysis as stated in the SOR DEIS indicate that

> When reservoirs are high for longer periods of time such as under SOS 4 options, site exposure decreases, but shoreline erosion increases. Conversely, alternatives that involve large drawdowns such as the SOS 5 options, cause more site exposure but less shoreline erosion than other alternatives.[73]

This may suggest that, for the scientific integrity of the Cultural Resource properties, drawdowns may actually be the optimum alternative for the protection of cultural resources. This is because drawdowns provide the opportunity for site recordation and site stabilization efforts, and may actually minimize shoreline erosion on some sites. The Archaeological Resources Protection Act (ARPA) requires the SOR agencies to protect cultural properties during daily operations and during the implementation of the selected SOS. There has been very little done by these agencies in the way of public education as a measure to protect such resources.

The agencies failure to fully support programs to address ongoing historic and Cultural Resource preservation has left the agencies in a situation where they need to make recommendations about resources without the necessary baseline data to sufficiently portray the effects of the SOS alternatives. This past failure to properly invest in the management of Cultural Resources during facility operations is tantamount to outright neglect and malfeasance. There is no indication from the agencies that they will begin to implement their historic and cultural preservation responsibilities.

T13-15

The Cultural Resource values portrayed in the SOR DEIS emphasize scientific/archaeological values. This emphasis does

[73]SOR DEIS, Main Report 4-119.

Responses

T13-14. The EIS has been revised to include more discussion of the benefits of drawdowns in terms of access to cultural resources for scientific study and traditional cultural practice. There are some adverse effects of drawdowns, as well. For example, alternatives involving new drawdown regimes would probably cause new wave-cut benches to form in areas where shoreline wave attack was previously not as severe. This could damage archaeological sites in the new drawdown zone that were previously somewhat protected by inundation and siltation. Archaeological sites exposed in a drawdown zone may also be very visible to vandals and looters.

T13-15. The Cultural Resources Appendix has been revised to include more discussion of traditional cultural properties, including some discussion of the significance of the Columbia River in Native American traditional culture. Programmatic Agreements for the management of cultural resources at the projects will be developed jointly with the tribes. These will include provisions for development of Historic Preservation Plans, which will also specifically address traditional cultural properties.

not reflect the importance of tribal members continuing to use those resources to enhance and restore aspects of living cultures. Drawdowns, for instance, may provide access to areas that are currently inundated and may allow tribal members to utilize these areas for traditional, cultural, religious or other uses even during brief drawdowns.

T13-15 Almost nothing is discussed about the Columbia River as a traditional Cultural Property as described in Bulletin 38 prepared by the National Park Service. This deference to science is troubling to the CTUIR given the abundant comment we provided on the significance of the Columbia River to our way of life. The Cultural Resource analysis justifies the need for future Historic Preservation Plans and Programmatic Agreements (PAs). These plans and agreements will ostensibly address all concerns not addressed in detail in the study and bring the SOR agencies into compliance with historic preservation laws.

In summary, the Cultural Resource information in the SOR DEIS is misrepresented, implying that stable storage alternatives represent the best-case scenario for Cultural Resource management. In actuality there is not enough quality data to make this determination. Further, all the SOS alternatives will have an adverse effect on Cultural Resources and the agencies must act accordingly. The Cultural Resource modeling is an academic exercise and is useful to a degree, but these models need to be adequately tested before such broad statements can be made. The SOR agencies must begin to identify how Cultural Resource management will be funded, and also demonstrate to the CTUIR and the public that such funding will be used to implement historic and Cultural Resources planning.

IV. INDIAN POLICIES

Indian Nations are like no other legal, political or cultural entities in the United States. Their singular nature and character are derived from many sources, and exhibit many unique features shared by no other groups, organizations or governments.[74] Indian Nations are sovereigns, their status founded in part on international law and its precept that only sovereign nations may negotiate and enter into treaties:

> A basic principle of international law is that states possess sovereignty, which includes both the power to

[74] See, e.g., Cherokee Nation v. Georgia, 30 U.S. (5 Pet.) 1 (1831) ("The condition of the Indians in relation to the United States is perhaps unlike that of any other two people in existence. . . . [T]he relation of the Indians to the United States is marked by peculiar and cardinal distinctions which exist no where else.").

govern citizens and territory and the capacity to enter into relations with other states.[75]

This basic principle was recognized in the U.S. Constitution, which gave Congress the authority "[t]o regulate commerce with foreign Nations, and among the several States, and with the Indian Tribes."[76] The U.S. Constitution went on to approve "all treaties made"[77] (most of which were with Indian Tribes)[78] and declared all existing and future treaties to be "the supreme Law of the Land."[79]

The U.S. Supreme Court has long recognized Indian sovereignty:

> The Indian nations had always been considered as distinct, independent political communities, retaining their original natural rights, as the undisputed possessors of the soil, from time immemorial The very term "nation," so generally applied to them, means "a people distinct from others." The constitution, by declaring treaties already made, as well as those to be made, to be the supreme law of the land, has adopted and sanctioned the previous treaties with the Indian nations, and consequently admits their rank among those powers who are capable of making treaties. The words "treaty" and "nation" are words of our own language, selected in our diplomatic and legislative proceedings, by ourselves, having each a definite and well understood meaning. We have applied them to Indians, as we have applied them to the other nations of the earth. They are applied to all in the same sense.[80]

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[75]Suagee, Self-Determination for Indigenous Peoples at the Dawn of the Solar Age, U. Mich. J.L. Ref. 671, 682 (1992) (citing Brownlie, Principles of Public International Law 287 (3d ed. 1979)).

[76]U.S. Const. art. I, § 8, cl. 3.

[77]U.S. Const. art. VI.

[78]Getches and Wilkinson, Cases and Materials on Federal Indian Law 36-37 (2nd ed. 1986).

[79]U.S. Const. art. VI.

[80]Worcester v. Georgia, 31 U.S. (6 Pet.) 515 (1832) (holding that Indian Tribes, as sovereigns, are not subject to state law within reservation boundaries without express Congressional consent).

Nevertheless, Indian Nations are not entirely synonymous with foreign nations, but constitute "distinct political societ[ies]" that "may, more correctly, perhaps, be denominated domestic . . . nations" whose "relation to the United States resembles that of a ward to his guardian."[81] While Indian Tribes do not enjoy some of the benefits that come with the status of a foreign nation,[82] their relationship to the United States is one that confers upon them the rights of a beneficiary to a trustee, in addition to those specific rights guaranteed by treaty.[83]

T13-16

Many federal departments and agencies have reinforced and elaborated on the basic Indian law principles of sovereignty, the treaty-making power, Trust Responsibility and protection of Indian Trust Assets by developing and adopting formal policies. These explicitly acknowledge their Trust Responsibility to Indian Tribes and their duty to consider and protect Indian Trust Assets in the course of agency decisionmaking. Furthermore, the United States has committed to dealing with Indian Tribes, tribal officials and representatives in the context of **Government-to-Government Relationships**.

The importance of these policies cannot be understated. Failure to comply with administrative policies intended to protect Indian interests, including policies mandating consultation with Indians, has been held to be a breach of the trust responsibility:

> [W]here the Bureau [of Indian Affairs] has established a policy requiring prior consultation with a tribe, and

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[81] Cherokee Nation v. Georgia, 30 U.S. (5 Pet.) 1 (1831).

[82] See, e.g. Deloria, "The Era of Self-Determination: An Overview," in Indian Self-Rule: First-Hand Accounts of Indian-White Relations from Roosevelt to Reagan 191-94, 206-07 (K. Philip ed. 1985):

> Indian governments are thus subjected to a different status than other governments. There are not constant reviews of the demographic status of all the little countries in Europe that are frequently compared in size and population with Indian tribes. No one asks whether Monaco and Liechtenstein are sufficiently culturally distinct from neighboring countries to justify their continued existence. Unlike that of Indian tribes, their political status is taken for granted.

[83] See, e.g., Seminole Nation v. United States, 316 U.S. 286, 296-97 (1942) (United States is charged "with moral obligations of the highest responsibility and trust").

T13-16. As noted above, the SOR agencies have funded tribes, including the CTUIR, to participate in the SOR. Please see Response T13-7. The agencies have consulted and worked with the tribes to address potential impacts to tribal treaty rights and cultural resources. (See Appendix D, Cultural Resources.) A section examining treaty rights as part of the Affected Environment and analysis of the impacts of the alternatives on Indian trust assets has been added to the Final EIS. Two of the agencies have hired full-time Indian affairs coordinators to help establish government-to-government relationships and consultation with the tribes. BPA also began discussions with tribes and solicited their assistance in drafting a government-to-government policy, a direct response to the tribes' September 1993 request for agency action to enhance tribal relations. Reclamation has an Indian Trust policy, and the Corps is drafting a tribal policy. The agencies believe these actions have fulfilled the spirit of the cited policies and declarations.

> has thereby created a justified expectation on the part of the Indian people that they will be given a meaningful opportunity to express their vies before Bureau policy is made, that opportunity must be afforded. failure of the Bureau to make any real attempt to comply with its own policy of consultation not only violates those general principles which govern administrative decisionmaking, . . . but also violates "'the distinctive obligation of trust incumbent upon the Government in its dealings with these dependent and sometimes exploited people.'"[84]

A. PRESIDENT'S CLINTON'S APRIL 29, 1994, MEMORANDUM

T13-16

On April 29, 1994, at the historic meeting with tribal leaders in Washington, D.C., President Clinton reiterated the federal government's commitment to government-to-government relations with sovereign tribal governments. On this date he also issued a Memorandum, later published in the Federal Register, formalizing this commitment.[85]

In addition, at the "Native American Listening Conference" the following week, Attorney General Janet Reno stated that "I want to underscore the commitment of this administration to American Indian sovereignty and to the government-to-government relationship between all of our people."[86] Secretary of the Interior Bruce Babbitt also stated that "[w]e need to get the problems out on the table and start down the pathway of a new day of sovereignty and government-to-government relations."[87]

B. DEPARTMENT OF ENERGY'S INDIAN POLICY

The Indian Policy established by the Department of Energy (DOE) states:

> The Department recognizes and commits to a government-to-government relationship with American Indian Tribal governments....The Department recognizes that some Tribes have treaty-protected interests in resources outside reservation boundaries....In keeping with the

[84] Oglala Sioux Tribe of Indians v. Andrus, 603 F.2d 707, 721 (8th Cir. 1979) (citations omitted).

[85] Memorandum of April 29, 1994, re: "Government-to-Government Relations with Native American Tribal Governments," 59 Fed. Reg. 22,951-52 (May 4, 1994).

[86] Indian Country Today, May 11, 1994, at A1-2.

[87] Id. at A2.

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trust relationship, the DOE will consult with Tribal governments regarding the impact of DOE activities on the energy, environmental and natural resources of American Indian Tribes when carrying out its responsibilities.[88]

C. BUREAU OF RECLAMATION'S INDIAN TRUST ASSETS POLICY

The Bureau of Reclamation (BOR) established a similar Indian policy:

> Indian trust assets are legal interests in property held in trust by the United States for Indian tribes or individuals. Examples of things that may be trust assets are lands, minerals, hunting and fishing rights, and water rights. The United States, with the Secretary of the Interior as the trustee, holds many assets in trust for Indian tribes. . . . The United States has an Indian trust responsibility to protect and maintain rights reserved by or granted to Indian tribes . . . by treaties, statutes, and executive orders, which rights are sometimes further interpreted through court decisions and regulations. . . . Reclamation will carry out its activities in a manner which protects trust assets and avoids adverse impacts when possible. When Reclamation cannot avoid adverse impacts, it will provide appropriate mitigation or compensation.[89]

T13-16

To comply with this policy, BOR must identify and list all Indian Trust Assets and resources in the "Affected Environment," analyze the SOS alternatives and other proposed actions in terms of their impacts to them, and fully consult with the CTUIR on a

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[88]U.S. Department of Energy, Order No. 1230.2 (Apr. 8, 1992).

[89]Bureau of Reclamation, Indian Trust Asset Policy (July 27, 1993). The BOR policy is contrary to existing, well-established case law. The BOR does **not** have the discretion to abrogate treaty rights as the policy implies--to provide appropriate mitigation or compensation when adverse impacts to treaty-protected resources occur as a result of its decisions or actions. Only Congress may abrogate treaty rights and must do so explicitly, according to current law. See, e.g. Menominee Tribes v. United States, 391 U.S. 404, 413 (1968); Confederated Tribes of the Umatilla Indian Reservation v. Alexander, 440 F. Supp. 553 (D. Or. 1977).

government-to-government basis in doing so.[90] The SOR DEIS has not fulfilled these obligations.

D. DEPARTMENT OF THE INTERIOR'S ORDER NO. 3175

The Department of the Interior (DOI) has declared that

T13-16

> [E]ach bureau and office [in the DOI] will operate within a government-to-government relationship with federally recognized Indian tribes . . .. Bureaus and offices are required to consult with the recognized tribal government with jurisdiction over the trust property that the proposal may affect. . . . All consultations with tribal governments are to be open and candid so that all interested parties may evaluate for themselves the potential impact of the proposal on trust resources.[91]

E. OTHER INDIAN POLICIES

Acknowledgement of Government-to-Government relations between the United States and Indian Tribes, the existence of the Trust Responsibility and the duty to consider and protect Indian Trust Assets is not a new development.

1. PRESIDENT BUSH'S INDIAN POLICY

President George Bush issued an Indian Policy on June 14, 1991, "which reaffirmed the government-to-government relationship

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[90] See D. Beard, Commissioner, Bureau of Reclamation, National Environmental Policy Act (NEPA) Handbook Procedures to Implement Indian Trust Asset Policy (Nov. 29, 1993).

[91] B. Babbitt, Secretary of the Interior, Department of the Interior, Order No. 3175 Departmental Responsibilities for Indian Trust Resources (Nov. 8, 1993). See also Letter from William F. Shake, Assistant Regional Director, U.S. Fish and Wildlife Service, to Don Sampson, Chairman, Board of Trustees, Confederated Tribes of the Umatilla Indian Reservation (June 24, 1994):

> The U.S. Fish and Wildlife Service [an agency within DOI] considers the Tribes and states as co-managers of fishery resources. This makes fish production planning and the Section 7 BA [Biological Assessment] process a shared responsibility. It is imperative that we all commit to open communication and good faith negotiations in developing the BA, production plans, Section 10 permit applications, and in consulting with the National Marine Fisheries Service.

between Indian tribes and the Federal Government."[92] The Bush Policy sought to "move forward toward a permanent relationship of understanding and trust," asserted its proponents, and further stated that

> [The government-to-government] relationship is the cornerstone of the Bush-Quayle Administration's policy of fostering tribal self-government and self-determination. This government-to-government relationship is the result of sovereign and independent tribal governments being incorporated into the fabric of our Nation, of Indian tribes becoming what our courts have come to refer to as quasi-sovereign domestic dependent nations.[93]

2. PRESIDENT REAGAN'S INDIAN POLICY

On January 24, 1983, President Reagan published an Indian Policy "supporting the primary role of Tribal Governments in matters affecting American Indian reservations."[94] The Reagan Policy "stressed two related themes: (1) that the Federal Government will pursue the principle of Indian 'self-government' and (2) that it will work directly with Tribal Governments on a 'government-to-government' basis."[95]

3. DEPARTMENT OF AGRICULTURE'S INDIAN POLICY

The U.S. Department of Agriculture (USDA) has a policy encompassing "interactions with Indians, Alaska Natives, tribal governments, and Alaska Native Corporations . . . ."[96] "USDA policies are based on and are coextensive with Federal treaties

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[92]United States Department of the Interior, Bureau of Indian Affairs, American Indians Today: Answers to Your Questions 5 (3rd ed. 1991).

[93]Id.

[94]Environmental Protection Agency, EPA Policy for the Administration of Environmental Programs on Indian Reservations 1 (Nov. 8, 1984).

[95]Id. See also United States Department of the Interior Bureau of Indian Affairs American Indians Today: Answers to Your Questions 5 (3rd ed. 1991) ("On January 24, 1983, the Reagan-Bush Administration issued a statement on Indian policy recognizing and reaffirming a government-to-government relationship between Indian tribes and the Federal Government.").

[96]USDA, Departmental Regulation Number 1020-6, Policies on American Indians and Alaska Natives 1 (Oct. 16, 1992).

and law."[97] As "background" to its policy, USDA notes that

> The United States Government has a unique, legal and political relationship with Indians and their tribal governments as defined through treaties, statutes, court decisions, and the United States Constitution. The United States Government has obligations under treaties and statutes to protect and maintain the lands, resources, and traditional use areas of Indians.[98]

USDA's policy includes the following:

> Consistent with applicable law, USDA officials will consult with tribal governments . . . regarding the influence of USDA activities on water, land, forest, air, and other natural resources of tribal governments . . . . Consistent with applicable law, USDA officials will solicit input from tribal governments . . . on USDA policies and issues affecting tribes . . . . Consistent with applicable law or regulation, USDA managers will facilitate tribal . . . participation in USDA program planning and activities.[99]

4. FOREST SERVICE'S INDIAN POLICY

The U.S. Forest Service (USFS) has expressed its commitment to (1) maintain governmental relationships with federally recognized tribal governments ("build and enhance a mutual partnership"), (2) implement programs and activities honoring Indian treaty rights and fulfill legally mandated trust responsibilities to the extent they are determined applicable to National Forest System lands, (3) administer programs and activities to address and be sensitive to traditional native religious beliefs and practices, and (4) provide research, technology transfer and technical assistance to Indian governments.[100]

5. ENVIRONMENTAL PROTECTION AGENCY'S INDIAN POLICY

The Environmental Protection Agency (EPA) adopted a formal Indian Policy in 1984, becoming the first federal agency to do

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[97] Id.

[98] Id. at 2.

[99] Id. at 2-3.

[100] D. Robertson, Chief, U.S. Forest Service, Policy Statement (Feb., 1990).

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so.[101] Carol Browner, current EPA Administrator, has stated that

> [T]he core principle of the Policy, a commitment to working with Federally recognized tribes on a government-to-government basis to enhance environmental protection, has been reaffirmed by President Clinton and remains the cornerstone of EPA's Indian program. Accordingly, therefore, I formally reaffirm the EPA Indian Policy.[102]

The EPA Indian Policy says that

> EPA recognizes that a trust responsibility derives from the historical relationship between the Federal Government and Indian Tribes as expressed in certain treaties and Federal Indian Law.[103]

As one of its guiding principles, the EPA Indian Policy also asserts that

> The Agency stands ready to work directly with Indian Tribal Governments on a one-to-one basis (the "government-to-government" relationship), rather than as subdivisions of other governments. EPA recognizes Tribal Governments as sovereign entities with primary authority and responsibility for the reservation populace. Accordingly, EPA will work directly with Tribal Governments as the independent authority for reservation affairs, and not as political subdivisions of States or other governmental units.[104]

T13-17

Commitment to government-to-government relations and due regard for Trust Responsibility and Indian Trust Assets is widely proclaimed by the federal government, yet fulfillment of this commitment has been lacking in the SOR process. As an example, it is suggested that the Columbia River Regional Forum envisioned in the SOR DEIS would be subject to the Federal Advisory Committee Act (FACA).[105] To the extent that non-federal, non-

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[101]Memorandum from Carol M. Browner, EPA Administrator, to Tribal Leaders (Mar. 14, 1994).

[102]Id.

[103]Environmental Protection Agency, EPA Policy for the Administration of Environmental Programs on Indian Reservations 3 (Nov. 8, 1984).

[104]Id.

[105]Pub. L. No. 92-463, 86 Stat. 770.

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T13-17. The SOR agencies did not mean to suggest that FACA would be applied to government-to-government relations between Federal agencies and tribes. Rather, the agencies recognized a concern that, given different alternatives for a Columbia River Regional Forum, FACA might affect the decision to establish a Forum and the actual operation of that Forum. Separate distinct relationships between the Federal government and individual tribes must be established and maintained. This would not preclude tribes from electing to participate in the Forum, however. The SOR agencies are not aware of any claim by the operating agencies or other agencies that FACA applies to Tribal-Federal government relations.

tribal participants are involved, this may be correct. On the other hand, the Forum **cannot** serve as a substitute for government-to-government consultations between the United States and a sovereign Indian Nation.

A separate, government-to-government relationship--solely involving the federal government and an Indian Tribe--is essential to maintain and honor Treaty Rights, the Trust Responsibility and the official policies referred to above. This would remain a necessity no matter what decision is ultimately made on the formation of a regional forum.

T13-17

Any claim that FACA applies to tribal-federal government interactions would allow federal agencies to effectively avoid their Trust Responsibility toward Indians and Indian Trust Assets. It would enable them to disregard their duties and obligations to sovereign Indian Nations. Any asserted application of FACA would constitutes a de facto abrogation of reserved treaty rights by the federal government. Such a claim is wholly contrary to fundamental principles and doctrines of Federal Indian Law that have evolved over centuries, as manifested in the U.S. Constitution, treaties, statutes, executive orders, policies and court decisions.

F. GOVERNMENT-TO-GOVERNMENT CONSULTATION IN THE SOR PROCESS

Contrary to the assertions of the SOR agencies in the DEIS, consultation with the CTUIR thus far has been inadequate. It has not taken place in terms of a government-to-government relationship consistent with President Clinton's Memorandum and the various department and agency policies. The SOR DEIS demonstrates little awareness of Indian Trust Assets as such. Consultation on a government-to-government basis with the CTUIR is necessary to ensure proper identification, assessment, and analysis of potential impacts to them.

T13-18

The CTUIR appreciate the efforts extended thus far by the SOR agencies in their attempts to foster better coordination in this complex and daunting process. However, merely printing our earlier correspondence without devoting much attention to integrating the concerns it expressed is not consultation, nor does it comply with the above policies and pronouncements.

Through the Treaty of 1855, we reserved certain rights throughout a large portion of the Columbia and Snake River Basins. Yet no consultation with us regarding these rights and the resources to which they attach has occurred in connection with development or analysis of SOR actions and alternatives. For example, the CTUIR has yet to be contacted for consultation purposes as required under Section 5 of the Native American

T13-18. The SOR agencies recognize and understand their tribal-related obligations and commitments. The SOR staff began without a full appreciation of the protocols required to engage the tribes in the appropriate fashion. The SOR agencies have tried to rectify these earlier shortcomings. The agencies feel the tribes share some responsibility by not recognizing the importance of the SOR and its objectives, which were communicated in the initial letters and for which some response on the tribes' behalf was warranted. The agencies were ready to join with the tribes, as early as 1991, to pursue the activities that were justified.

Subsequent to these past events, the agencies have attempted to provide the tribes the opportunity to participate in the SOR, to solicit information that is uniquely theirs, and to contract for this participation and information.

Graves Protection and Repatriation Act,[106] Section 110 of the National Historic Preservation Act (as amended in 1992),[107] and Section 470cc(c) of the Archaeological Resources Protection Act.

A description of the shortcomings of previous SOR procedural steps will perhaps help illustrate the problem. First, an informational letter was sent to the CTUIR in June, 1991. This was ten months **after** a series of "public" meetings in which SOR issues, concerns, and opportunities were defined, the geographic and topical scopes were addressed, a time schedule was determined to govern the process, and the role of the public was decided. Despite the claim that the issues, geography and jurisdiction were established after "coordination with . . . Indian tribes," no such coordination occurred between the SOR agencies and the CTUIR until a meeting in December, 1993. This lack of coordination has produced a document that poorly identifies and addresses (1) legal responsibilities, (2) the role of the CTUIR, (3) geographic scope, and (4) key issues.

T13-18

In August, 1992, another letter was sent to tribal chairpersons offering to "brief" tribal governments and "coordinate" with them during "full-scale analysis." However, from July, 1991, to August, 1992, work groups representing 10 key river uses had already defined values and developed and screened 90 initial system operation alternatives. Ten "candidate" strategies were formulated from these 90 alternatives and, up to that point, the CTUIR had received one informational letter. The August, 1992, letter to tribes "included information on how the tribes could get involved in the SOR." However, as noted above, values and key issues had already been identified, a fairly large body of work had already been performed, and critical decisions had already been made.

The SOR agencies have stated that "representatives of several of the tribes have participated in SOR work groups from the beginning, because they have special interests in those river uses or functions." Inferring nothing regarding other tribes, the CTUIR does not have a "special interest." The CTUIR is a sovereign nation with policy, law, and technical expertise, all of which are formulated with the expectation that the federal government will uphold the terms and provisions of the Treaty of 1855. Adherence to the Treaty and the United States' Trust Responsibility means that the federal government will consider and propose only those actions which are consistent with the Treaty of 1855, the protection and restoration of resources important to the CTUIR, and the body of statutes and case law which has developed since treaty signing and ratification.

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[106]25 U.S.C. § 3003.

[107]16 U.S.C. § 470h-2.

In January, 1993, the tribes were invited to a meeting to "initiate coordination" on the cultural resources appendix. Initiation of coordination with the CTUIR and other tribes on cultural resource management is seen as a positive step. Nevertheless, the CTUIR was not consulted in this process from its inception. The work group solicited help from the tribes in September, 1993, for obtain information needed to complete its appendix. At this point, the critical decisions had been made, the work group had already developed and screened alternatives, and the "full-scale analysis" had been ongoing for over a year.

In April, 1993, nearly three years after the initiation of the project, the Indian Coordination Group was formed. Arrangements were finally made for a presentation by the SOR agencies to the CTUIR in December, 1993. At this point it was explained that the CTUIR would have 30 days to comment on the 400-plus-page preliminary DEIS before it is sent to Washington, D.C. for lead agency headquarters approval. The CTUIR was further informed that additional time to comment would be available once the DEIS was released for full public review.

T13-18

The SOR agencies attempts to coordinate and consult with the CTUIR consistently presume that we can simply be kept informed, and invited to participate like any other public group. Moreover, Indian Tribes are often seen as just another "special interest" group whose "use interests" simply can be balanced or accommodated with other interest groups. This is impermissible. The total lack of tribal coordination on cultural resource matters until May, 1993--three years after the project began and long after alternatives had been developed and screened--clearly illustrates the SOR agencies' basic lack of understanding of the CTUIR's sovereignty, its Treaty Rights, and their own Trust Responsibility.

The SOR agencies must return to the SOR process and observe their existing policies. In this task, consultation with the CTUIR and other tribes should result in meaningful participation by the CTUIR and specific direction on the actions and alternatives that the federal government can take to protect treaty-reserved resources.

V. NATIONAL ENVIRONMENTAL POLICY ACT REQUIREMENTS AND TRUST RESPONSIBILITY/TRUST ASSETS PROTECTION

T13-19

We have serious questions about compliance of the SOR DEIS with both the letter and the spirit of the National Environmental Policy Act (NEPA).[108] NEPA reflects the Congressional goal of elevating the role of agencies with environmental expertise

[108] 42 U.S.C. §§ 4321-4347.

T13-19. The SOR agencies have solicited comments from the CTUIR and other tribes within the region, as discussed in more detail in Common Response No. 7. Please refer to Common Response No. 2 concerning the reasonableness of the range of alternatives. The agencies made a good-faith effort in the Draft EIS to address Native American resources and concerns; the Final EIS includes an expanded discussion that provides more emphasis on treaty rights and trust assets, using additional information developed since the Draft EIS was issued.

within the federal bureaucracy.[109] Indian Tribes are specifically included among those "comment agencies" from whom the lead agencies must solicit comments.[110] Nevertheless, the way the SOR process has been conducted so far has effectively denied meaningful participation by the CTUIR.

An essential element of informed decisionmaking is involvement of all relevant parties at the outset of the process:

> Permitting the submission of views after [an administrative decision has been made] is no substitute for the right of interested persons to make their views known to the agency in time to influence the [administrative] process in a meaningful way.[111]

T13-19

We believe timely involvement in the SOR process has not been able to occur here. Additionally, we believe that a full range of reasonable alternatives has not been developed and presented. We feel that you have inadequately addressed Indian aboriginal rights, treaty-secured rights, Indian Trust Assets, and your Trust responsibility in the particular context of a NEPA analysis intimately involving such issues, contrary to established case law.[112]

Where impacts to treaty-secured resources and Indian Trust Assets are foreseen from federally-proposed actions, a NEPA analysis (and the resulting environmental impact statement) must examine and analyze physical, social, economic and cultural effects particular to the tribe.[113] In Northern Cheyenne Tribe,

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[109]NEPA § 102(2)(C) states:

> Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved.

42 U.S.C. § 4332(2)(C).

[110]40 C.F.R. § 1503.1(a)(2)(ii).

[111]Oglala Sioux Tribe of Indians v. Andrus, 603 F.2d 707, 720 (8th Cir. 1979) (quoting City of New York v. Diamond, 379 F. Supp. 503, 517 (S.D.N.Y. 1974)).

[112]See Northern Cheyenne Tribe v. Hodel, 12 Indian L.Rep. 3065, 3070-71 (D. Mont. 1985), modified on other grounds, 842 F.2d 222 (9th Cir. 1988).

[113]Id.

the district court held that

> It appears obvious that the Department [of the Interior] was required to consider the impacts, including social and economic impacts, of federal coal development on the Northern Cheyenne community.[114]

The court found the EIS fatally flawed, stating that

> The EIS . . . does not acknowledge the existence of the tribal government and its powers and responsibilities, does not recognize that the reservation is culturally distinct within the region . . .. Throughout the EIS it appears that discussion of the social, economic, and cultural impacts of federal coal development on the Northern Cheyenne Tribe, either as a tribal entity or simply as people affected by the sale, has been systematically excluded.[115]

It may be prudent to re-visit the SOR EIS with a better appreciation for the views expressed by the federal district court in Northern Cheyenne Tribe v. Hodel.

T13-20

The CTUIR also has doubts about the range and analyses of actions and alternatives. We question not only whether Indian rights and resources have been satisfactorily addressed, but also whether the actions and alternatives now included in the SOR DEIS have been sufficiently analyzed in terms of cumulative impacts and effects.[116] Also, Appendix C-2 on Transportation does not fulfill the judicial directive to conduct a full NEPA analysis of the juvenile fish transportation program; it does little more than justify the existing program.

T13-21

The SOR agencies' compliance with other applicable statutes and authorities is uncertain and is a matter worthy of further examination. The ESA's Section 7 requirement for consultation on actions that may affect listed species is implicated by the large number of negotiations and other activities in which you are already engaged regarding power sales contracts, the Pacific Northwest Coordination Agreement, and the Canadian Entitlement

[114] Id. at 3068.

[115] Id.

[116] See City of Tenakee Springs v. Clough, 915 F.2d 1308, 1313 (9th Cir. 1990); Sierra Club v. Penfold, 857 F2d 1307, 1320-21 (9th Cir. 1988) (where several actions have a cumulative or synergistic environmental effect, the consequences must be considered in an EIS); 40 C.F.R. § 1508.7.

T13-20. The SOR agencies believe that the discussions of cumulative impacts in Section 4.3.4 of the Main Report, and in corresponding locations in the appendices, provide sufficient consideration of these issues. The Corps and the other SOR agencies have taken the "hard look" at the juvenile fish transportation program that was mandated by the Federal district court.See Appendix C of the Final EIS.

T13-21. The SOR agencies have conducted ESA Section 7 consultation on operation of the Federal Columbia River Power System (FRPS) and are now implementing the March 2, 1995 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") issued by NMFS. The Opinion provides for reinitiation of consultation under certain conditions. It also provides that to the extent prospective agreements are used to achieve operation and are in accordance with the biological opinion, the effects of those prospective agreements on the Snake River salmon were considered in the biological opinion. If the proposed agreements have effects on FCRPS operations that effect listed species in ways not considered in the biological opinion, or go beyond implementing the operations in the opinion, those actions may require separate consultation or reinitiation of consultation. This Opinion is the primary basis for the SOS Preferred Alternative. The SOR agencies have determined that prospective agreements addressed in the EIS, including PNCA and Canadian Entitlement, as documented in appendices R, "Pacific Northwest Coordination Agreement" and P, " Canadian Entitlement Allocation Agreements" to the SOR Final EIS, are consistent with the biological opinion, and therefore, are considered in the biological opinion.

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Allocation Agreement.[117]

VII. ADDITIONAL SUBSTANTIVE SOR DEIS DEFICIENCIES

A. SCOPE OF THE SOR DEIS

The geographic and topical scope of the SOR DEIS is too narrowly defined. It needs to be broadened so as to include all dams and other hydropower facilities in the Columbia River Basin, and all federal actions related to managing them. The scope of the analysis must encompass those actions and impacts that are connected, cumulative, and/or similar, and must include an evaluation of the impacts that are direct, indirect, and cumulative.[118] The DEIS, in its current format, excludes this level of analysis because of the limited geographical scope of the environment under consideration.

T13-22

The narrow topical scope of the analysis and inclusion of only selected projects in the Basin while excluding other hydropower facilities and activities in the upper reach of major tributaries (such as the middle and upper Snake River) does not fulfill the stated purpose and need of the DEIS. It also does not provide an adequate framework to address Treaty Rights, natural resource issues, and the Trust Responsibility of the federal agencies.

The purpose of and need for action contained in the SOR DEIS is to provide river managers, users, and the general public an opportunity to examine river system operations in detail, to investigate how each use of the river affects all other uses, and to consider the consequences of changing the framework within which the system currently operates.

Throughout the SOR DEIS, the agencies refer to the need for evaluating operations of the Columbia River dams as a "system" and profess to include all facilities that affect multiple uses of the river environment. However, the scope of the analysis contained in the DEIS is limited to only 14 of the 27 major Northwest dams in the Columbia River Basin. Moreover, there are over 250 facilities in the Basin that potentially affect Treaty Rights and resources that should be integrated into the "system" analysis. For example, the SOR DEIS excludes from consideration

[117] See Letter from Theodore Kulongoski, Attorney General, State of Oregon, to Randall Hardy, Administrator, Bonneville Power Administration, et al., re: "Sixty Day Notice of Intent to Sue for Violations of the Endangered Species Act Arising from Operation of the Federal Columbia River Power System" (Nov. 29, 1994).

[118] 40 C.F.R. § 1508.25.

Responses

T13-22. See Common Response No. 3.

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T13-22 in its analysis all Snake River water above Hells Canyon and all Non-Treaty Storage Agreement water. The agencies should include both, as they were asked to during the scoping stage.

B. SYSTEM OPERATING STRATEGIES

T13-23 Flow augmentation is an important component of the restoration of mainstem flow velocities. However, none of the alternatives would achieve adequate velocities. Flow augmentation must be used in conjunction with other methods of increasing velocities so as to achieve the velocities described in the DFOP. Many options for obtaining additional water for instream flow augmentation simply were not addressed. Others were only inadequately addressed.

T13-24 The primary means of flow augmentation discussed appears to place the burden of providing fish flows on the Bureau of Reclamation solely. The DEIS discusses Reclamation activities to obtain water from such sources as uncontracted storage space, studies to identify locations in which to build new dams, water rental, purchases and "dry-year" option contracts.

Reclamation's activities in these areas is commendable. Conspicuously absent from these actions, however, is any discussion of reallocation of water illegally used by irrigators or other users. Reclamation is developing a process for resolving the problem of water spreading. So far, Reclamation has ignored the connection between the illegal consumptive use of water and devastated salmon populations. This is despite the fact that one of the critical causes of salmon mortality is inadequate instream flows.

Our treaty water rights, having a time immemorial priority date, take precedence over the desires of irrigators to legalize their previously illegal uses of water. Water spreading can no longer be dealt with in a vacuum while pretending that there is no connection to the crisis of salmon extinction in the Columbia-Snake Basin.

The Inspector General's Audit from earlier this year found that fully half of the Reclamation projects engaged in water spreading were located in the Columbia-Snake Basin.[119] The

[119]U.S. Department of the Interior, Office of Inspector General, Audit Report: Irrigation of Ineligible Lands, Bureau of Reclamation, Report No. 94-I-930, July 1994. The report concluded that "the majority of the water delivered to ineligible lands could have have [sic] been used to enhance stream flows for declining fisheries or to reduce potentially toxic irrigation drainage." Cover Memorandum of report, from Joyce N. Fleischman, Acting Inspector General, to the Secretary of the Interior, July

Responses

T13-23. Several new alternatives, specifically directed at increasing the amount of flow augmentation for fish, have been included in the Final EIS. Additionally, DFOP was modeled as SOS 9a and evaluated. Drawdown continues to be a part of several alternatives. The specific impact of water acquisition from other parts of the basin is outside the scope of the SOR. However, we assumed varying amounts of flow augmentation water as inflow to Brownlee and evaluated the effects of this additional water downstream.

T13-24. Water spreading (or unauthorized use of water) investigations by Reclamation are now in the rulemaking phase. When quantities of available water have been identified, Reclamation will re-allocate those quantities of water for many needs, including salmon. Reclamation will continue its efforts and activities to find additional water supplies for flow augmentation.

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T13-24 reallocation of water which has been used illegally and mitigation for the impacts of water spreading in the past must be included as means for augmenting instream flows.

In addition, Reclamation should not limit its water acquisition efforts to the Upper Snake. All Reclamation projects within the Columbia-Snake Basin should contribute water for instream flow augmentation.

The Bonneville Power Administration and the U.S. Army Corps of Engineers should also shoulder the burden of obtaining additional water which can be used for instream flow augmentation. They should explore all options available for doing so.

T13-25

In addition, acquisition of additional water supplies for fish flow augmentation must be a primary objective and accomplishment of the agencies' negotiations of the Pacific Northwest Coordination Agreement, the Canadian Entitlement, the Canadian Entitlement Allocation Agreement, the assured operating plan for Canadian Treaty Storage, and the detailed operating plan for Canadian Treaty Storage. Given the significant need for increased water supplies for fish flow augmentation, failure by the involved agencies to include this issue in these negotiations would be a serious breach of the agencies' Trust Responsibility to this and other Tribes in the region.

If changes in flow regime to benefit fish are considered as impacts affecting the cost of power, then all other user's activities should be given the same treatment as well. Such an assessment should recognize **actual** costs to hydropower and include discussion of issues such as consumptive versus non-consumptive use of the system's water supply.

Consumptive uses remove the water from the system permanently. For instance, water used for irrigation is taken up by plants and does not return to the system. The higher up in the system the water is permanently removed, the greater the impact. For instance, consumptive uses in the Upper Snake mean lost power generation for all the hydropower facilities downstream in the Lower Snake and in the Columbia. The cost of the lost power generation due to irrigation and other consumptive uses must be quantified and included in the economic analyses.

T13-26

Non-consumptive uses which leave or return the water instream mean that the water is still available for power generation. For instance, changes in flow regime for salmon still provide for power generation, although not necessarily at peak demand times. The fact that instream flows for salmon still

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13, 1994.

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T13-25. Thank you for your recommendation. Water acquisition will continue to be a major part of Reclamation's effort to find water for flow augmentation. Reclamation will look at areas other than the Snake River above Brownlee. In fact, during current operations, uncommitted or uncontracted space in Hungry Horse and Grand Coulee is a very important source for flow augmentation, as is water from the Corps reservoirs in the lower Snake River and the Columbia River. All three SOR agencies are participating. Please see Response T4-17 for additional information regarding the PNCA and CEAA.

T13-26. Water spreading is often defined as the illegal or inappropriate use of water from Federal Reclamation projects. What constitutes water spreading is still the subject of discussion within the irrigation and environmental community and Reclamation. The elimination of water spreading will not result in decreased diversions in every case.

A task force has been formed, including representatives from various interest and user groups, including the tribes, to study water spreading on Reclamation projects. The task force is drafting procedures to ensure that Federal water is used as authorized by law and contract. The public will have an opportunity to comment on the procedures.

The agencies agree that consumptive uses of water, both legal and illegal, decrease the water available for fish and power generation. For a study such as the SOR, the appropriate treatment of competitive uses of water is determined by the conditions of the base case, against which changes in the operation of the system are measured. The current operation of the system, as defined by the 1993 Biological Opinion, was selected as the base case for the SOR. Key elements or requirements of this operation include the following: (1) existing irrigation diversions; (2) existing municipal and industrial water use; and (3) management of system flood control storage to limit flow at The Dalles to 450,000 cfs, which represents bankfull conditions in lower Columbia River reaches that are not protected by levees.

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generate power must be recognized.

When water use is changed from consumptive uses (such as irrigation) to non-consumptive uses (such as fish flow augmentation), more water is available for power generation. Again, this is especially true when the water comes from the Upper Snake. These additional power generating **benefits** of fish flow augmentation must be included in the economic analyses.

T13-26

The costs of illegal water uses, such as water spreading, must also be included in the economic analyses. Water spreading increases consumptive use of the system's water supply, making less water available for hydropower generation. Again, this cost is passed on to the power users of region.

T13-27

Concerning the regional economic effects of drawdowns and reallocation of irrigation water in the upper Snake, the substance and conclusions of the Department of Agriculture's report on this issue should be included. The report is entitled Salmon Recovery in the Pacific Northwest: A Summary of Agricultural and Other Economic Effects (AIB-699), U.S. Department of Agriculture, Economic Research Service, June 1994.

T13-28

The only model used in SOR appears to be CRISP, which is unsatisfactory. Models supported by the tribal and state fishery agencies should be utilized as well. CRISP has insupportable assumptions for fish transportation, among others. A recent peer review describes a number of problems, but the results of this review were not addressed.

C. COLUMBIA RIVER REGIONAL FORUM

T13-29

The proposed Regional Forum is to provide a new collaborative approach for tribal, state and federal fish and wildlife agencies to help shape future river operations. However, the decisionmaking is retained by the federal agencies and there are no provisions in the process to assure the that Treaty Rights and co-management authority would be given any more consideration than currently exists.

The Regional Forum at best duplicates the role and function of the Northwest Power Planning Council. The Forum poses a danger that the agencies will view this mechanism as fulfilling their obligations to deal with the Tribes as independent sovereign nations on a government-to-government basis, which it does not. The Federal Advisory Committee Act (FACA)[120] does not apply to government-to-government consultations between the United States and Indian Nations.

[120] See supra note 105 and accompanying text.

Responses

T13-27. Evaluation of the upper Snake, including the regional economic effects of re-allocation of water in the upper Snake mentioned in the comment, was beyond the scope of the SOR analysis as discussed in Common Response No. 3. However, Appendix O, Economic and Social Impacts, has been revised for the Final EIS to include a reference to this study and a summary of its findings.

In addition, information in the USDA report and other data sources will be considered in the study of the upper Snake basin that Reclamation recently initiated.

T13-28. The SOR agencies note that CRiSP was one of two passage models used for the SOR Draft EIS (PAM is the other; although requested, PAM results were not available for inclusion in the SOR Final EIS). The agencies agree that models supported by the tribes and state fishery agencies should be used, but point out that these modelers have chosen not to participate in this process. Finally, please note that CRiSP-calibrated values for transport mortality were not used in the SOR. Instead, the Anadromous Fish Work Group decided to use transport mortality models. They reflect a variety of assumptions about transport survival, from low to high.

T13-29. Not all of the Forum alternatives retain decisionmaking authority within the three operating agencies solely. Forum alternatives 4, 5, and 7 suggest either an expanded number of decisionmakers, or new decisionmakers, other than the Corps, Reclamation, and BPA. As for duplication of the NPPC, there is one alternative (Forum 2) that reflects their role in regional planning and suggests a refocus of their activities directly toward resolving operating strategies for the Federal system. The existing authority of the NPPC is limited to the twin functions of fish and wildlife and power planning. The Forum would deal with all of the multiple purpose functions and uses of the river system that Federal agencies have long dealt with.

Unless changed by Congress, the lead Federal agency for a specific project, or Federal agencies for Federal system operation will retain decisionmaking authority. Treaty rights cannot be affected by the Forum, as the Forum would be many levels lower in the hierarchy of Federal priorities. Regardless of whether or not the Forum is implemented, the Federal agencies acknowledge their responsibility to deal directly with each tribe as a sovereign entity. As noted in Response T13-17 above, FACA does not apply to tribal government-to-government relations.

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VII. CONCLUSION

Salmon, other fish, and the right to take them at "all usual and accustomed stations" are vitally important to the CTUIR. We have lived in harmony with salmon, and all the resources of the Pacific Northwest, for thousands of years. But salmon are now disappearing--disappearing because of non-Indian actions. Those actions have drastically changed and degraded our world and all its elements, contrary to the intent of our ancestors who signed the Treaty of 1855 to preserve and maintain our way of life.

Antone Minthorn, Chairman of the General Council and member of the Board of Trustees of the CTUIR, notes that

T13-30

> In the Treaty of 1855, our ancestors specifically protected our economic base. We never gave up our right to fish, to hunt or to gather food and medicinal plants in the lands which we ceded. Instead, we explicitly retained or reserved these rights and these resources in the Treaty. Despite the Treaty, these resources have been devastated, and as a result, our economy has been devastated as well.
>
> Right now our tribal resources overall are in a horrible condition. For over one hundred years, they were mismanaged by the federal government, which favored extraction and exhaustion over sustainability. This failure of the federal government to honor its Trust Responsibility to this Tribe and to protect our resources has left our economic base in shambles. It is hard to have a thriving economy when the basis of your economy is listed as an Endangered Species.[121]

We can no longer merely look at the symptoms of the salmon's destruction, but must stop the deadly actions that have caused it. The System Operation Review offers some possibility of changing this disastrous situation. However, significant and substantial changes need to be made in the DEIS and the federal agencies' approach to the process.

In its current incarnation, the SOR DEIS fails to sufficiently acknowledge and comport with the our Treaty Rights and the Trust Responsibility the United States owes to the CTUIR and other Columbia River Basin tribes.

T13-31

At the very least, a supplemental EIS with a preferred alternative would be one improvement. If the Final EIS is not demonstrably altered and improved to reflect the concerns expressed here, then it would appear to be of little use--and questionable legal validity.

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[121]A. Minthorn, Speech to the President's Council on Sustainable Development (Nov. 3, 1994).

Responses

T13-30. Thank you for your comment.

T13-31. See Common Response No. 1.

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We are not alone in our criticism:

Consider the weighty July 1994 draft environmental impact statement for the Columbia River System Operation Review, prepared by the Bonneville Power Administration, the U.S. Army Corps of Engineers, and the federal Bureau of Reclamation. The report could just as well have been published ten years ago, since it reflects no evidence of the experience gained during the intervening decade. It couches the issue as jobs vs. salmon--the economy and environment as substitutes--ignoring the choice Oregonians (and Oregon's economy) have already made for the environment **and** the economy.[122]

We challenge the SOR agencies to take the bold steps necessary to do more than just prevent the imminent extinction of a priceless part of our living heritage. The federal government must honor its' promises and responsibility to the CTUIR and other Indian Nations, and begin to **recover and restore** salmon. A return to sustainable, healthy, and harvestable populations of fish, wildlife, and plants and the protection of our Treaty Rights and other resources should be a primary focus of the SOR process.

T13-32

The federal agencies-BPA, ACOE and BOR--should expand their vision. For example, development and implementation of alternative power sources should be explored--which is, after all, one of the mandates of the Northwest Power Act. In this way, BPA (for one) may be able to live up to its claim to be "the most competitive and socially responsible power system in the nation."[123]

T13-33

Salmon are the centerpiece of our culture, religion, spirit, and, indeed, our very existence. As Indians, we speak solely for the salmon. We have no hidden agenda. We do not make decisions to appease influential special interest groups. We do not bow to the will of powerful economic interests. Our people's desire is simple--to preserve the fish, to preserve our way of life, now and for future generations.

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[122]E. Whitelaw, Swimming Upstream, Oregon Quarterly 12, 13 (Winter 1994) (emphasis in original) (Mr. Whitelaw is Professor of Economics at the University of Oregon in Eugene, president of ECO Northwest, an economic consulting firm in Eugene, Portland and Seattle, and a member of the Oregon Progress Board).

[123]Message board, Executive Conference Room, BPA Headquarters, Portland, OR.

Responses

T13-32. BPA has consistently supported and implemented the mandate of the Northwest Power Act to explore alternative power sources. The SOR power analysis assumes a certain resource acquisition response to reduced hydroelectric generation, based on recent history and careful consideration of current energy supply conditions (see Appendix I for details). However, the agency decisions resulting from the SOR will not include a specific, directed resource acquisition response. BPA's response to reduced hydro generation will ultimately follow the policies developed through other energy planning processes, specifically the Resource Programs EIS and the BPA Business Plan EIS. Both of these processes included full consideration of alternative energy sources.

T13-33. Thank you for your comment.

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Comments

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Thank you for your consideration of the Confederated Tribes of the Umatilla Indian Reservation's comments on System Operation Review Draft Environmental Impact Statement. If you have any questions or wish to discuss any of these issues further, please contact Carl Merkle with our Department of Natural Resources.

Sincerely,

Donald G. Sampson
Chairman
Board of Trustees

cc: Randall Hardy, Administrator, Bonneville Power Administration
General Ernest Harrell, Commander, U.S. Army Corps of Engineers
John Keys, Regional Director, U.S. Bureau of Reclamation
Ted Strong, Executive Director, Columbia River Inter-Tribal Fish Commission
Charles H. Hayes, Nez Perce Tribal Executive Council
Raymond Calica, Sr., Confederated Tribes of the Warm Springs Reservation
Jerry Meninick, Yakama Indian Nation
Barbara Roberts, Governor, State of Oregon
John Kitzhaber, Governor-Elect, State of Oregon
Mike Lowry, Governor, State of Washington
Cecil Andrus, Governor, State of Idaho