

American Rivers ♦ Association of Northwest Steelheaders
Audubon Society of Portland ♦ Backcounty Hunters and Anglers
Cascadia Wildlands ♦ Center for Biological Diversity
Center for Environmental Law and Policy ♦ Central Oregon Landwatch
Columbia Riverkeeper ♦ Earthjustice ♦ Earth Ministry
Friends of the Columbia Gorge ♦ Idaho Conservation League ♦ Idaho Rivers United
Natural Resources Defense Council ♦ Northwest Sportfishing Industry Association
Oregon Coast Alliance ♦ Oregon Environmental Council
Oregon League of Conservation Voters ♦ Oregon Natural Desert Association
Oregon Physicians for Social Responsibility ♦ Oregon Shores Conservation Coalition
Oregon Wild ♦ Pacific Rivers ♦ Save Our Wild Salmon Coalition ♦ Sierra Club
Snake River Waterkeeper ♦ Spokane Riverkeeper ♦ Tualatin Riverkeeper
Washington Wild ♦ WaterWatch of Oregon

August 31, 2018

Jill Smail, Chief Negotiator, Columbia River Treaty
U.S. Department of State
Office of Canadian Affairs

Dear Ms. Smail,

On behalf of the undersigned organizations and the millions of members and electrical ratepayers in the Pacific Northwest we represent, we would like to thank you, Mr. Palmieri and the rest of the negotiating team for sharing your perspective on the renegotiation of the U.S.-Canada Columbia River Treaty at the Lake Roosevelt Forum and the town hall meeting. Our coalition includes conservation, fishing, renewable energy and faith-based groups who depend on a healthy Columbia River ecosystem.

As you and others have noted, the treaty is often heralded as one of the most successful transboundary river management agreements in existence. And while there is little doubt that the current treaty has produced benefits for both nations in the form of flood risk management and hydropower capacity, it has done so at great cost to fish and wildlife populations and to many residents of the Columbia River Basin (CRB). Decisions made long ago need not, however, impede a robust effort today to restore environmental, economic and social equity through treaty renegotiation. Integrating new governance systems that address the river's ecosystem and enhance public participation in treaty implementation are important goals for our coalition and the region. Achieving these outcomes would truly make the CRT the gold standard for transboundary river management agreements between nations.

Now that formal treaty negotiations have begun, we respectfully offer the following recommendations for the U.S. negotiating team's consideration. They can be summarized as follows. We believe these measures are fully consistent with the Regional Recommendation:

- Protect and enhance the immense value of the Columbia Basin ecosystem by recognizing Ecosystem-based Function as a primary purpose of a modernized treaty, co-equal with flood risk management and hydropower generation.
- Establish a water bank-type leasing system to provide assured ecosystem flows in low and average water years.
- Expand the U.S. Entity to include appropriate representation for ecosystem function.
- Create advisory committees of affected stakeholders and sovereigns to support the U.S. Entity in treaty implementation.
- Reform the U.S. negotiating team to ensure balanced representation of the issues involved.
- Support a review of flood risk management in the U.S. portion of the basin, as called for in the 2013 Regional Recommendation.
- Restore the bi-national Collaborative Modeling Workgroup

Treaty Governance

The treaty's narrow focus on flood risk management and hydroelectric production and the closed, command and control implementation structure is out of step with contemporary management of hydroelectric dams in the CRB and with other transboundary water agreements with Canada, including those established under the Boundary Waters Treaty. Treaty renegotiation offers a chance to institute structural reforms that make the treaty far more responsive to the needs of the residents of the CRB and the environmental conditions created by the treaty dams. We offer three suggestions here: make ecosystem function a primary purpose of the treaty; expand the U.S. Entity to include a representative for the ecosystem; and third, establish advisory committees that would consult with and advise the Entity during implementation.

Ecosystem Function as a formal Treaty Purpose

Our coalition views treaty modernization as one prong of a basin-wide strategy for recovering salmon populations to sustainable levels, and as a way to help important indigenous species like Pacific lamprey. Notably, orca would also benefit from improved salmon survival tied to improvements in the treaty. We seek an outcome where a reliable source of water is available in treaty storage dams to augment flows in the spring and early summer during low and average flow years in order to speed the migration of salmon to the sea, promote essential habitats, and maintain river temperatures within ranges tolerable for juvenile and adult salmon. Additionally, we believe it is necessary to make once historical spawning and rearing habitats available again through a passage and reintroduction plan. We strongly believe that only by making ecosystem-based function a primary purpose of the treaty will these outcomes be realized.

The best available science demonstrates that the curtailment of spring flows to manage flood risk seriously impacts the survival of young salmon migrating downstream to the ocean. In its 1995 Biological Opinion on the impacts of the Federal Columbia River Power System on salmon, NOAA Fisheries set spring and summer flow objectives at various dams in the CRB. These flow targets serve as surrogates for river velocity and its influence on the survival of juvenile salmon. In the last 23 years, the spring target has been missed roughly 27% of the time. The summer target has been missed nearly

74% of the time. Nature decides the amount of snowpack, but overly-conservative flood risk management and deep winter drafts for hydropower generation exacerbate the problem in low flow years and undermine conditions in average flow years, thereby increasing mortality of juvenile and adult salmon. Climate change is expected to make conditions even worse, as we witnessed in 2015 when nearly 90% of the returning adult sockeye run died from elevated river temperatures. Treaty negotiations must address this issue by securing water for assured ecosystem flows in low and average flow years.

The terms of the treaty require Canada to provide 15.5 million-acre feet (maf) of storage for “improving” the flows of the Columbia River. Of that amount, 8.45maf is dedicated to assured flood control. Clearly, there is ample water available from treaty storage alone to augment spring and early summer flows for fish needs. Non-treaty storage for these needs should also be considered. Based on Biological Opinions developed by NOAA Fisheries, we believe 6-12maf is needed in low and average flow years to move fish safely through the hydrosystem and to provide important riverine, estuary and near ocean habitat while keeping river temperatures tolerable for salmon. We request the treaty negotiating and modeling teams explore this scenario through modeling. We stand at the ready to provide additional information regarding this request.

Water Bank

In order to provide assured ecosystem flows, we recommend exploring the development of a water bank-type of leasing system with Canada. Water banks are used successfully throughout the CRB for fish flow augmentation needs and other ecosystem purposes, including in the Snake River basin. A water bank will allow for the efficient allocation of water for ecosystem needs, both in the U.S. and Canada, and for other authorized purposes of treaty storage water. A new formula for calculating downstream benefits to include payments for ecosystem flows and dam spill for fish (and credit for implementing these measures) would be necessary. For example, it does not make sense, under the current treaty operation and protocol, to charge the U.S. for fish spill when that spill is benefiting Canadian origin salmon stocks as well as U.S. salmon.

Fish Passage

As we heard at the Lake Roosevelt Forum, fish passage and reintroduction into currently blocked areas in the U.S. and Canada is clearly a high priority for many tribes, First Nations and residents of the CRB. The work done to date shows promise for eventual reintroduction into historic habitats. Treaty negotiators can assist this effort by including provisions in a new treaty that will promote and advance these concepts to fruition.

Therefore, we urge the U.S. negotiating team to seek an outcome where ecosystem function is enshrined as a primary purpose of a modernized treaty, co-equal with flood risk management and hydropower production. As documented by the Earth Economics Report, “The Value of Natural Capital in the Columbia River Basin: A Comprehensive Analysis”, enhancing ecosystem function could create an additional \$1.5 billion in added sustainable value to the Basin with only minimal impact to hydropower. This analysis

excludes the cost of maintaining hydropower facilities as they degrade and does not account for the rapid increase in solar and wind sources coming online. We offer a more extensive briefing to you and the negotiating team on this report to assist you in negotiations.

Establishing ecosystem function as a primary purpose of the treaty will harmonize it with U.S. law governing hydroelectric facilities in the CRB for the benefit of fish and wildlife. For example, the Northwest Power Act and the Federal Power Act require dam operators to balance power production with the needs of fish and wildlife. While the current treaty has some limited flexibility to address fish flows on an ad-hoc basis through the development of supplemental agreements, that flexibility is constrained by the two current overarching treaty objectives. Further, these supplemental agreements occur with little to no public involvement. Ultimately, this seriously limits ecosystem function objectives from being realized and sustained due to the optimization of the hydrosystem for power and managing flood risk. Adding ecosystem function as a formal treaty purpose creates much needed flexibility to address water quantity and quality concerns.

We are growing increasingly concerned that the U.S. negotiating team has distanced itself from the regional expectation that ecosystem function will be a formal purpose of the treaty, as expressed in the listening sessions, the Regional Recommendation and other forums, including the recent town hall meeting. It also appears that additional commitments of water from treaty storage for irrigation has become a greater priority than water for streamflows and ecosystem function needs. We request your assurances that our concerns are misplaced.

Reforming the Treaty Negotiating Team

In 1992, sockeye salmon originating in Idaho were protected under the Endangered Species Act (ESA). Today, thirteen stocks of salmon and steelhead in the CRB are protected under the ESA. With the exception of the Department of State, the federal agencies on the U.S. negotiating team have a twenty-five year track record of failure when it comes to managing the hydrosystem in a manner compatible with salmon and in accordance with the ESA. Only when forced through court order (the current court-ordered spill program is but one example) do these agencies respond to the salmon crisis, and then only reluctantly - and so far, wrongly - by focusing only on actions to prevent extinction rather than taking actions designed to recover these species to sustainable levels as is required by law. This history underlies our lack of confidence that the current composition of the negotiating team will aggressively advocate for ecosystem flows and other measures necessary to protect and recover ESA-listed populations and resident species.

Adding to our concern is the fact that the Bureau of Reclamation is the only entity from the Department of Interior on the negotiating team. Out-of-stream water usage cannot be given the same level of priority as ecosystem function, as displayed in the Regional Recommendation. Any volume sought for water supply must be distinct from the volume needed to enhance currently impaired environmental conditions in the river.

Further, none of the agencies represented have a water quality focus, which is an important component of ecosystem function. There are significant concerns with toxic contaminants entering the U.S. portion of the river, and with existing river temperatures.

In short, the current negotiating team is over-represented by agencies whose mission is incompatible with salmon health and the river's ecosystem. We strongly urge adding the Environmental Protection Agency to the team to create a balanced representation of the interests involved in treaty modernization.

As you heard at the Lake Roosevelt Forum and the town hall meeting, there is widespread support for the tribes to be a part of the U.S. negotiating team. We share this viewpoint and request that you reconsider your decision to exclude them.

Expanding the U.S. Entity to include a voice for Ecosystem Function

The U.S. Entity can only be an effective advocate for salmon and the river's ecosystem if it includes an additional representative with the expertise and credibility to represent these issues. We strongly believe that U.S. Army Corps of Engineers and the Bonneville Power Administration are not the appropriate agencies to perform this task. Adding either the Environmental Protection Agency, NOAA Fisheries, the U.S. Fish and Wild Service or a tribal representative (if the tribes are interested) to the Entity would rectify this shortcoming. We respectfully request your support for this change.

Advisory Committees to the U.S. Entity

A primary deficiency of the current treaty is the inability of affected states, tribes, stakeholders and residents to provide input on the environmental, cultural and socio-economic impacts caused by operation of the treaty dams – and suggest possible solutions - to the U.S. Entity during the development of Assured Operating Plans (AOP) and Detailed Operating Plans (DOP). Technical advisory bodies have been established under the Entity, but they do not allow for public participation and they are limited to addressing existing treaty purposes. We believe that more equitable and environmentally sustainable outcomes are achieved when affected communities can participate in the decision-making process, particularly when natural resources are involved, and especially for decisions with a geographic impact of the size of the CRB. The International Joint Commission shares this viewpoint - it established International Watershed Initiatives because it recognized that solutions to transboundary watershed problems often emerge from local communities. Further, the IJC incorporates the views of the public when developing the lake level orders for the Great Lakes. Great Lakes Water Quality Agreements also include a role for the public.

There are several options for allowing affected stakeholders and sovereigns to participate in treaty implementation. Advisory committees consisting of affected interests could be formed to advise the Entity during the development of AOPs and DOPs regarding reservoir levels, ecosystem flows, fish and wildlife concerns, flood risk and riparian conditions. Decision-making authority would remain with the Entity, of course, but the advisory committees would create a procedure for affected interests to assist the Entity in identifying and solving

inherent conflicts associated with transboundary river management. Another option for improved transparency and public participation is to establish an international watershed council, which would advise both the U.S. and Canadian Entities. Watershed councils are well established throughout the nation and are often utilized to identify common interests, inform research, and channel funding to improve habitat or water quality. Both of these options offer the promise of improved decision-making and outcomes in the treaty and we encourage the Department of State to develop a framework for public participation in treaty implementation.

Support for Flood Risk Review

We are concerned that the rush to begin treaty negotiations has left the U.S. without vital information to advance necessary and meaningful changes in system operations or create the flexibility necessary to address the ongoing and future impacts of climate change. For many years, we have sought a review of CRB flood risk management by the U.S. Army Corps of Engineers to:

- 1) Identify where and what infrastructure is vulnerable to flood,
- 2) Identify where floodplains can be restored to help absorb flood water and recreate habitat for fish and wildlife, and,
- 3) Identify when and where flood rule curves can be relaxed to optimize flows for fish.

Working with the tribes, we have discussed this issue at length with the City of Portland, Pacific Northwest Waterways Association, the states of Oregon and Washington and the Multnomah Drainage District in order to understand their perspectives and build support for the review. We worked with our congressional delegation to add this study to 2016 Water Resources Development Act and will do so again in the future. We see little chance of ensuring the U.S. will have the flexibility to address ecosystem needs in a meaningful way and keep life and property safe without this analysis. Negotiators must preserve the ability to adjust flood risk operations in Canada as necessary when more information becomes available.

The Collaborative Modeling Workgroup

The conservation community has long advocated for a collaborative modeling process in order to provide a common analytic base for all participants in the treaty modernization process (See attached February 10, 2016 letter to Sec. Kerry et al.). Your predecessor, Brian Doherty, who established the Collaborative Modeling Workgroup (CMW) in 2016, invited the conservation community to participate because he recognized the value we could bring to the process. Some of this letter's signatories attended all meetings, provided input for consideration, and we had a well-respected modeler at the ready to participate. Our modeler was going to assess the temperature impacts of the various flow scenarios. When we met with you in November of 2017, we discussed the merits of the CMW and urged its continuation. Frankly, the establishment of the CMW stands as the high water mark for public participation in the treaty renegotiation process. Its demise prevents our organizations from exchanging information and advancing and testing operational concepts designed to improve river conditions, or to know what the modelers from the U.S. Army Corps and Bonneville Power Administration are doing. It is worth noting that, despite the objections of these two agencies, the presiding judge in Oregon's federal District Court has ordered (and

the Ninth Circuit Court of Appeals has upheld) dam operators to implement an operation developed in part by our coalition members to improve the survival of salmon migrating out to sea. This fact underscores our ability to develop credible ecosystem operations that are supported by science.

We urge you to reconsider the decision to disband the CMW. Doing so will restore a level of confidence that U.S. treaty negotiators value public participation and input and that negotiations will be based on thorough examinations of potential operational scenarios designed to improve ecosystem function by expanding use of treaty storage for fish flows and to keep river temperatures cool enough for fish.

As you have heard throughout the CRB, the region is interested in significant changes to the current treaty, changes that elevate ecosystem management and enhance public participation. Our conservation community stands ready to assist in any way possible to advance these concepts in order to achieve the goal of a truly modernized treaty that protects, enhances, and sustains the river's ecosystem, serving both present and future generations.

In service,

Pacific Rivers

Gregory Haller, Executive Director

WaterWatch of Oregon

John DeVoe, Executive Director

Save Our Wild Salmon Coalition

Joseph Bogaard, Executive Director

Idaho Rivers United

Kevin Lewis, Executive Director

Sierra Club

Dan Ritzman, Our Wild America Campaign

Earth Ministry

LeeAnne Beres, Executive Director

Center for Environmental Law and Policy

Trish Rolfe, Executive Director

American Rivers

Wendy McDermott, Director Rivers of Puget Sound-Columbia Basin

Earthjustice

Steve Mashuda, Managing Attorney

Columbia Riverkeeper

Brett VandenHeuvel, Executive Director

Natural Resources Defense Council

Guilia Good Stefani, Staff Attorney

Friends of the Columbia Gorge

Michael Lang, Conservation Director

Washington Wild

Tom Uniack, Executive Director

Oregon League of Conservation Voters

Doug Moore, Executive Director

Northwest Sportfishing Industry Association

Liz Hamilton, Executive Director

Backcounty Hunters and Anglers

Bob Mirasole, Washington State

Spokane Riverkeeper

Jerry White, Jr., Program Director

Oregon Coast Alliance

Cameron LaFollette, Executive Director

Tualatin Riverkeeper

Ruby Buckholtz, Advocacy Manager and Riverkeeper

Central Oregon Landwatch

Paul Dewey, Executive Director

Oregon Natural Desert Association

Dan Morse, Conservation Director

Center for Biological Diversity

Noah Greenwald, M.S., Endangered Species Director

Oregon Environmental Council

Andrea Durbin, Executive Director

Oregon Shores Conservation Coalition

Phillip Johnson, Executive Director

Oregon Physicians for Social Responsibility

Regna Merritt, Healthy Climate Program Director

Cascadia Wildlands

Josh Laughlin, Executive Director

Oregon Wild

Sean Stevens, Executive Director

Audubon Society of Portland

Bob Sallinger, Conservation Director

Snake River Waterkeeper

Buck, Ryan, Executive Director

Idaho Conservation League

Marie Callaway Kellner , Water Associate

Association of Northwest Steelheaders

Tom VanderPlaat, President

CC: Members of the Northwest Congressional Delegation
Governor Kate Brown
Governor Jay Inslee
Governor C.L. "Butch" Otter
Governor Steve Bullock