



The Confederated Tribes of the Colville Reservation

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April 20, 2004

Chairman Pat Wood
Commissioner Nora Brownell
Commissioner Joseph Kelliher; and,
Commissioner Suedeen Kelly
Federal Energy Regulatory Commission
888 First Street, N.W.
Washington, D.C. 20426

Re: Mid-Columbia HCP Proceeding-Response to Yakama letter.

Dear Chairman Wood and Commissioners:

The Colville Tribe appreciated the opportunity to address the Commission on February 11, 2004, regarding the Mid-Columbia Habitat Conservation Plans (HCPs) for the Rocky Reach, Rock Island and Wells Projects. We recently became aware of the Confederated Tribes and Bands of the Yakama Nation's correspondence to you regarding the HCPs (Yakama letter dated March 12, 2004). We write to you today to express our views with regards to this letter.

The federal government has a trust responsibility to protect the federal reserved fishing rights of the Colville Tribes. The Colville Reservation was established by Executive Order in 1872. At that time the Reservation consisted of all the lands within the United States bounded by the Columbia and Okanogan Rivers, roughly 3.0 million acres. The U.S. Court of Appeals for the 9th Circuit has unequivocally ruled that under the 1872 Executive Order one of the primary purposes of the Colville Reservation was to preserve tribal fisheries and access to traditional tribal fishing areas. While the hydropower projects have impacted tribal anadromous fish resources, the Colville Tribe believes the provisions contained within the HCP's move us a long way towards restoring anadromous fish resources.

The Colville Tribe is supportive of the HCPs, which provide a standard of "no-net-impact" on salmon and steelhead runs. These landmark agreements were ten years in the making and are the product of settlements reached between the PUDs, NOAA Fisheries, the U.S. Fish and Wildlife Service (FWS), the Washington Department of Fish and Wildlife (WDFW) and the twelve Confederated Tribes of the Colville Reservation (Colville Tribe). The goal of no-net-impact on salmon and steelhead is extremely ambitious and currently represents the highest level of protection provided by any hydropower projects within the Columbia River basin.

With regards to the decision making process identified in the HCP's, they do create new coordinating committees that replace existing Wells and Rock Island committees and also provide that only parties to the HCP agreements have the right to vote on the new HCP committees. However, this same committee process was established and used in the previous Wells and Rock Island settlements. The Yakama have representatives on these existing committees because they became parties to the previous settlement agreements that created these committees. The Colville Tribe believes the same contractual standard should be used in this proceeding since the HCP's are basically contractual agreements among the parties.

In order to become a voting member of the new HCP committees, the non-signatory parties, including the Yakama must sign the HCP agreements. If the Yakama or any other non-signatory party expect to obtain the full benefit of the HCP settlements without becoming a party to the agreements, then what incentive would any of the signatory parties have to continue to remain a party to the HCP agreement. If the Commission were to order that Yakama be made a voting member of the HCP committees, it would be inconsistent with the Commission's policy that encourages parties to reach settlement agreements and would also breach the contractual rights of the signatory parties, including the Colville Tribe. In fact, if the Commission were to modify the HCP's in this manner, the Colville Tribe would seriously consider withdrawing from the HCP's pursuant to the HCP provisions that permit such an action if FERC adds conditions inconsistent with the HCPs

Thank you for the opportunity to address the Commission regarding the HCPs once again and your consideration of our comments.

Sincerely,

Margie Hutchinson
Joseph Pakootas, Chairman *for*
Colville Tribal Business Council