

Columbia Basin Tribes Coalition

on the
Columbia River Treaty 2014/2024 Review

TRIBES

- Burns Paiute Tribe
- Coeur d'Alene Tribe
- Confederated Salish and Kootenai Tribes of the Flathead Nation
- Confederated Tribes of the Colville Reservation
- Confederated Tribes of the Umatilla Indian Reservation
- Confederated Tribes and Bands of the Yakama Nation
- Confederated Tribes of the Warm Springs Reservation of Oregon
- Cowlitz Indian Tribe
- Fort McDermitt Paiute Shoshone Tribes
- Kalispel Tribe of Indians
- Kootenai Tribe of Idaho
- Nez Perce Tribe
- Shoshone-Bannock Tribes of the Fort Hall Reservation
- Shoshone Paiute Tribe of the Duck Valley Indian Reservation
- Spokane Tribe of Indians

INTERTRIBAL

ORGANIZATIONS

- **Columbia River Inter-Tribal Fish Commission**
700 NE Multnomah St
Suite 1200
Portland, Oregon 97232
- **Upper Columbia United Tribes**
25 W. Main, Suite 434
Spokane, WA 99201
- **Upper Snake River Tribes**
950 W. Bannock Street
Suite 1100
Boise, ID 83702

STATEMENT OF

JOEL MOFFETT, CHAIRMAN

COLUMBIA RIVER INTER-TRIBAL FISH COMMISSION

ON THE

DRAFT REGIONAL RECOMMENDATION

REGARDING THE

COLUMBIA RIVER TREATY

BEFORE THE

COMMITTEE ON ENERGY AND NATURAL RESOURCES

UNITED STATES SENATE

NOVEMBER 7, 2013

Good morning Mr. Chairman. I am Joel Moffett, a citizen of the Nez Perce Tribe and an elected member of the Nez Perce Tribal Executive Committee. I am testifying before you today in my capacity as the Chairman of the Columbia River Inter-Tribal Fish Commission and on behalf of the 15 tribes in the Coalition of Columbia Basin Tribes. These 15 Columbia Basin Tribes have natural resource management authorities and responsibilities affected by the implementation of the Columbia River Treaty. There are 5 other tribes with interests in the basin that may be affected by the Columbia River Treaty; the U.S. Entity is consulting with them individually.

High level policy consensus based recommendation, no tribal alternative

At the outset, I want to highlight the fact that the Columbia Basin Tribes are working with the U.S. Entity and the other regional sovereigns to finalize a high level, consensus based regional policy recommendation on the future of the Columbia River Treaty. This high level policy recommendation will be submitted to the U.S. Department of State by December 13, 2013. There is no technical analysis or recommendation to accompany this high level policy recommendation. Notwithstanding what may have been conveyed to you by others, the Columbia Basin Tribes do not have their own alternative technical recommendation or draft technical proposal for river and reservoir operations under the Treaty.

Need to continue Collaboration of Regional Sovereigns

Over the course of the last three years, the Columbia Basin Tribes have collaborated with the U.S. Entity and the other regional sovereigns to complete three iterations of modeling and analysis of a wide variety of river and reservoir operations. This expansive modeling and analysis was completed so that the region would have a common understanding of the various results and potential impacts from modified operations. While the goal had been to fully integrate this wealth of knowledge into a technical document that would support the regional recommendation, that final step was not taken at the request of the State Department. Yet, the region's work is not complete – the regional sovereigns will need to continue their technical and policy collaboration in order to support the next phase – the State Department's consideration of the high level policy recommendation developed by the region.

Key Elements of a Regional Recommendation

I do want to summarize what the Columbia Basin Tribes see as critical elements of the draft regional recommendation:

- modernize the Columbia River Treaty by integrating ecosystem-based function as a third primary purpose of the Treaty, equal to the Treaty's obligations for the two countries to coordinate hydropower generation and flood risk management;

- enhance spring and summer flows while stabilizing reservoir operations;
- pursue the restoration of fish passage to historical locations, I am including the tribes' issue paper on this subject as part of this testimony;
- pursue an assessment with Canada of potential alternatives for post-2024 operations to meet flood risk management objectives, including the possibility of using planned or assured Canadian Storage, consistent with ecosystem function, completing an infrastructure assessment and updating reservoir management through a domestic process as necessary to accomplish this objective; and,
- rebalance the Canadian Entitlement.

It will also be important that sufficient flexibility be built into the modernized Treaty so that operations can adapt to the impacts of climate change and other factors. We believe that all of the regional sovereigns are coalescing around these broad policy goals and we look forward to working with the U.S. Department of State to advance these goals through discussions with Canada, the province of British Columbia and the First Nations.

Background on the Treaty

As you know, the Columbia River Treaty was signed and ratified by the United States in 1961 and, after the adoption of a protocol, was ratified by Canada and implemented by the two countries in 1964. Under the Treaty, Canada agreed to build three storage dams and coordinate the operation of these new storage facilities with the U.S. hydroelectric power supply system in order to optimize hydroelectric power production and to provide coordinated flood control benefits.

The U.S. Entity will tell you that the Treaty is a model of international cooperation for the management of a transboundary river system – and for the limited purposes of optimizing hydropower generation and providing coordinated flood risk management, it is – but the Treaty is not currently designed to provide for ecosystem-based functions. I do want to point out that the Treaty increased the impacts of hydropower to communities by moving the flood upriver, these impacts began before the Treaty with the earlier constriction of dams on the mainstem in the United States that affected the cultural and natural resources of the Columbia Basin Tribes, First Nations and other communities all the way up to the Basin headwaters in Montana, Idaho and British Columbia.

No Prior and Informed Consent of Tribes and First Nations

In developing this coordinated system operation under the Treaty with Canada, the U.S. did not consult with the Columbia Basin Tribes nor consider the effect of the Treaty on our cultural and natural resources, yet the Treaty has had far reaching impacts on our cultural and natural resources that continue to this day. Not only were the Columbia Basin tribes not consulted during the Treaty's negotiation, the tribes have also been

excluded from its governance and implementation. The Treaty does not include considerations of critical tribal cultural resources. The coordinated power and flood control system created under the Treaty degraded rivers, First Foods, natural resources, and tribal customs and identities. The coordinated flood risk management plan, while providing substantial protections for Portland and Vancouver, permanently moved the floods upriver through the creation and maintenance of large storage reservoirs. The Treaty currently limits what can be accomplished with Treaty and non-Treaty water agreements to address these issues and meet tribal resource priorities.

Columbia River Treaty 2014/2024 Review and the Sovereign Participation Process

When the U.S. Entity initiated the Columbia River Treaty 2014/2024 Review, the tribes recognized the opportunity to work with the U.S. Entity to correct past mistakes and improve upon the Treaty. The Columbia Basin Tribes began meeting in January 2008 to identify their common issues and concerns with the Treaty and its implementation, while also meeting with the U.S. Entity to develop a better understanding of the Treaty's implementation. By February 2010, the tribes' several meetings and workshops on the Treaty led to the development of the "Columbia Basin Tribes' Common Views on the Future of the Columbia River Treaty" – known as the tribes' Common Views document. I have included a copy of this document with my testimony. I have also provided you with a map of the Basin that shows you the location of the fifteen tribes, as well as that of the First Nations in Canada that have asserted interests affected by the Treaty's implementation in Canada.

Developing the Sovereign Participation Process for the Treaty Review

The Columbia Basin Tribes met with the U.S. Entity in July 2010 to discuss their issues and concerns with the Treaty and how best they could collaborate with the U.S. Entity to address these issues through the Treaty Review. At that meeting, the U.S. Entity agreed to work with the Columbia Basin Tribes, other federal agencies and the states to establish the Sovereign Participation Process for the Treaty Review. The Sovereign Participation Process is three-tiered: the first tier is government-to-government, where decisions are made regarding policy issues; the second tier is the Sovereign Review Team, where the regional sovereigns coordinate, discuss policy issues and provide guidance to the Sovereign Technical Team; and finally, the Sovereign Technical Team, which conducts the technical modeling and analysis.

The Sovereign Participation Process also provided for expert policy and technical input from stakeholders, including presentations from expert panels on power, water supply and irrigation. Building upon the bilateral Phase I Report released by the U.S. and Canadian Entities in August 2009, the sovereigns completed three more iterations of modeling and analysis. As each of the three iterations of modeling and analysis was completed over the last three years, the U.S. Entity, with the support of the other sovereigns, took the lead on reporting out the results to stakeholders through a series of public meetings or "listening sessions" held across the basin. These listening sessions

provided cities, counties and other public representatives and stakeholders to ask questions and provide feedback.

Additional detail on Ecosystem Function

During the course of the discussions at government-to-government and Sovereign Review Team meetings, tribal representatives and staff were often asked what they meant by “ecosystem-based function.” Tribal leaders explained that since time immemorial, the rivers of the Columbia Basin have been, and continue to be, the life blood of the Columbia Basin Tribes. They went on to explain that Columbia Basin Tribes view the ecosystem of the Columbia Basin watershed as its ability to provide, protect and nurture cultural resources, traditions, values and landscapes throughout its’ length and breadth. We hold that clean and abundant water that is sufficient to sustain healthy populations of fish, wildlife, and plants is vital to holistic concept of ecosystem-based function and life itself.

The Tribes believe that a modernized Treaty needs to address the Columbia Basin using a watershed approach that integrates ecosystem-based function, hydropower, and flood risk management on both sides of the border. The eleven years of technical studies that led to the negotiation of the Treaty focused on hydropower and flood risk management, the region now has the opportunity during the next phase of the Treaty Review to expand the scope of bilateral technical studies to encompass ecosystem as a third purpose.

This was not done in the past and we are now dealing with a CRT that has not addressed the needs and rights of the peoples of the Columbia Basin whose cultural and natural resources have been affected by the Treaty’s implementation. The Columbia Basin Tribes provided the U.S. Entity, other regional sovereigns and the Sovereign Review Team with a definition of ecosystem-based function. While this definition has been adopted by the tribal caucus for use in the Treaty Review process, it has not been adopted by the U.S. Entity. I have appended the definition to my testimony for your information and to provide context for future conversations about the Treaty moving forward.

A restored, resilient and healthy watershed under a modernized Treaty will include ecosystem-based function as described by this definition. Again, this definition has not been adopted as part of the Treaty Review, nor has it been implicitly adopted by the U.S. Entity by the inclusion of ecosystem-based function in the draft regional recommendation, it has been put forward by the Columbia Basin Tribes as an aspirational definition for the Basin and to provide a context for further regional discussions.

Closing

Mr. Chairman, over the next month, the Columbia Basin Tribes will work with the U.S. Entity, other regional sovereigns and stakeholders to resolve the remaining differences in the draft recommendation before it is submitted to the U.S. State Department. The Columbia Basin Tribes would be happy to answer any additional questions you might

have about the tribes' views on the progress of the regional consensus based recommendation now, or in the future. We look forward to completing this phase of the Treaty Review with the U.S. Entity and then working with them and the other regional sovereigns as the State Department considers the regional recommendation.

Definition of Ecosystem-based Function adopted by the Coalition of Columbia Basin Tribes in June 2013

Since time immemorial, the rivers of the Columbia Basin have been, and continue to be, the life blood of the Columbia Basin tribes. Columbia Basin Tribes view ecosystem-based function of the Columbia Basin watershed as its ability to provide, protect and nurture cultural resources, traditions, values and landscapes throughout its' length and breadth. Clean and abundant water that is sufficient to sustain healthy populations of fish, wildlife, and plants is vital to holistic ecosystem-based function and life itself. A restored, resilient and healthy watershed will include ecosystem-based function such as:

- Increased spring and summer flows resulting in a more natural hydrograph;
- Higher and more stable headwater reservoir levels;
- Restoring and maintaining fish passage to historical habitats.
- Higher river flows during dry years;
- Lower late summer water temperature;
- Reconnected floodplains throughout the river including a reconnected lower river estuary ecosystem as well as reduced salt water intrusion during summer and fall;
- Columbia River plume and near shore ocean enhanced through higher spring and summer flows and lessened duration of hypoxia; and,
- An adaptive and flexible suite of river operations responsive to a great variety of changing environmental conditions, such as climate change.

Improved ecosystem-based function in the Columbia Basin Watershed is expected to result in at least:

- Increased recognition, protection and preservation of tribal first foods and cultural/sacred sites and activities. First foods includes water, salmon, other fish, wildlife, berries, roots, and other native medicinal plants.
- An estuary with an enhanced food web and increased juvenile fish survival;
- Increases in juvenile and adult salmon survival;
- Decreased mainstem travel time for migrating juvenile salmon;
- Increased resident fish productivity that provides stable, resilient populations;
- Increased wildlife productivity that provides stable, resilient populations; and,
- Salmon and other juvenile and adult fish passage to historical habitats in the Upper Columbia and Snake River basins, and into other currently blocked parts of the Columbia River Basin.

Columbia Basin tribes¹
Common Views on the Future of the Columbia River Treaty
February 25, 2010

The present Columbia River power and flood control system operations are negatively affecting tribal rights and cultural interests throughout the Columbia Basin. The Columbia River Treaty is foundational to these operations.

The Columbia River Treaty –

- Was negotiated and continues to be implemented without regard to the tribes’ unique legal and political relationship with the federal government.
- Is narrowly designed for the benefit of power and flood control.
- Does not include ecological considerations for critical tribal natural resources.
- Does not include considerations of critical tribal cultural resources.
- Created a power and flood control system that degraded rivers, First Foods, natural resources, and tribal customs and identities.
- Significantly affects tribal economies.
- Excludes tribal participation in its governance and implementation.
- Limits what can be accomplished with non-Treaty agreements to meet tribal resource priorities.

The Columbia River Treaty is under review by the U.S. and Canadian governments for reconsideration in 2014. Reconsideration of the Treaty provides an opportunity for the tribes to seek benefits not realized in 50 years of Treaty implementation.

The Columbia Basin tribes’ interests must be represented in the implementation and reconsideration of the Columbia River Treaty. The Columbia River must be managed for multiple purposes, including -

- Respect for the sovereignty of each tribal government - each tribe has a voice in governance and implementation of the Columbia River Treaty.
- Tribal cultural and natural resources must be included in river management to protect and promote ecological processes – healthy and useable fish, wildlife, and plant communities.
- Integrate the tribes’ expertise of cultural and natural resources in river management.
- Equitable benefits to each Tribe in priority to other sovereign parties in Columbia River management.
- Respecting and preserving the benefits of settlement agreements with tribes.
- Recognize tribal flood control benefits.
- Protecting tribal reserved rights to current and future beneficial uses, in a manner consistent with ecosystem-based management.

In order to realize these principles, the tribes’ collective voices must be included in the implementation and reconsideration of the Columbia River Treaty.

¹ The Burns Paiute Tribe, the Coeur d’Alene Tribe, the Confederated Salish and Kootenai Tribes of the Flathead Nation, the Confederated Tribes of the Colville Reservation, the Confederated Tribes of the Umatilla Indian Reservation, the Confederated Tribes and Bands of the Yakama Nation, the Confederated Tribes of the Warm Springs Reservation of Oregon, the Cowlitz Indian Tribe, the Kalispel Tribe of Indians, the Kootenai Tribe of Idaho, the Nez Perce Tribe, the Fort McDermitt Paiute Shoshone Tribe, the Shoshone-Bannock Tribes of the Fort Hall Reservation, the Shoshone Paiute Tribes of the Duck Valley Indian Reservation, and the Spokane Tribe of Indians, with support from the Columbia River Inter-Tribal Fish Commission, Upper Columbia United Tribes, and the Upper Snake River Tribes tribal organizations have been working together to consider the effects and alternatives related to the Columbia River Treaty.

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Restore Fish Passage

Issue: The loss of salmon into the upper Columbia Basin was a monumental, inadequately mitigated, and bilateral infringement on the cultures of native salmon peoples and a loss of economic opportunity for all residents of the Pacific Northwest, including the commercial fishing industry. Beneficiaries of the coordinated, bilateral development of the Columbia River Basin have not adequately mitigated for this loss, in no small part because they underestimated the scope and challenge of doing so. The modernization of the Columbia River Treaty presents an opportunity to address this injustice.

Solution: The Pacific Northwest region has proposed that Ecosystem-Based Function be included as a third purpose in a modernized Treaty. The tribes have proposed that restoring fish passage and reintroducing salmon and other species into areas where they are currently blocked is a critical component of future ecosystem management within the Treaty. The tribes have formulated a pragmatic, bilateral, multi-phased approach to salmon passage and reintroduction in the upper Columbia:

1. Planning
2. Testing
3. Construction
4. Evaluation and Adaptation

Progress through these phases would occur only after successful conclusions or outcomes from previous phases. Efficiencies in implementing these phases should be achievable if undertaken in a comprehensive and bilateral approach. Testing of fish passage could be accomplished in a sequential manner with interim passage facilities shared between U.S. and Canadian projects. In addition to restoring the cultural and subsistence values of salmon to indigenous peoples, restoring salmon and steelhead access to the upper Columbia Basin may be critical to bolster their viability in the face of expected and imminent climate change by providing salmon access to the cooler waters above Grand Coulee Dam and into Canada.

A more detailed fish passage paper and proposal, focused on the upper Columbia, is being developed jointly by the tribes and First Nations for presentation soon to their respective federal governments.

Background: The upper Columbia River Basin in the U.S. and Canada once produced annual runs of 1 to 3 million salmon and steelhead and provided habitat for lamprey, sturgeon and other fish species. These aquatic resources were critical to the cultures, spirituality, subsistence, and economies of Native Americans and First Nations in Canada. Fish access to the upper Basin was lost with the construction of Grand Coulee Dam and further diminished with the construction of Chief Joseph Dam in the U.S. and Hugh Keenleyside (Arrow), Brilliant, Waneta, and other dams in Canada. The potential for restoring fish passage back into the upper basin was foregone with the ratification of the Columbia River Treaty that led to construction of additional dams and management of river flows counter to the health and viability of upper basin salmon.

The cumulative decisions in the U.S. and Canada to block fish access and inundate habitats were made over the objections or without consultation and consideration of Native American and First Nations' rights. Since Treaty ratification, awareness and interpretation of these aboriginal rights has been considerably clarified.

In recent years, science and technologies have been developed that can effectively pass adult and juvenile salmon and other fishes over existing dams, though the larger Treaty dams and reservoirs will present greater challenges. These new facilities are being installed at other dams throughout the Pacific Northwest, including Round Butte and Cougar dams in Oregon and Upper Baker, Lower Baker, and Lewis River dams in Washington.

Summary:

- Specifically include fish passage restoration and reintroduction into the upper Columbia River Basin as an element and action item within a modernized Columbia River Treaty.
- Modernized Treaty operations should not interfere with other opportunities to restore fish passage and reintroduction of anadromous fish in other blocked areas of the Columbia River.
- Undertake a comprehensive, bilateral approach to salmon reintroduction that targets Chief Joseph and Grand Coulee dams in the U.S. and Arrow, Brilliant and Waneta dams in Canada.
- Tribes and First Nations should have a leadership role in this fish passage effort.
- With bilateral agreement, the planning and testing phases of this proposal could and should be initiated promptly once there is agreement to pursue modernization of the Treaty.
- A modernized Columbia River Treaty should include both a commitment to study and then implement fish passage based on positive study results.

- L. Vaughn Downs, an engineer who worked on the design and construction of Grand Coulee Dam, stated about fish passage in the 1930s: “It was just money. If you build the dam, you could sure as hell build a fish ladder.”
- Now is the time to make fish passage into the Upper Columbia a reality.

Contact:

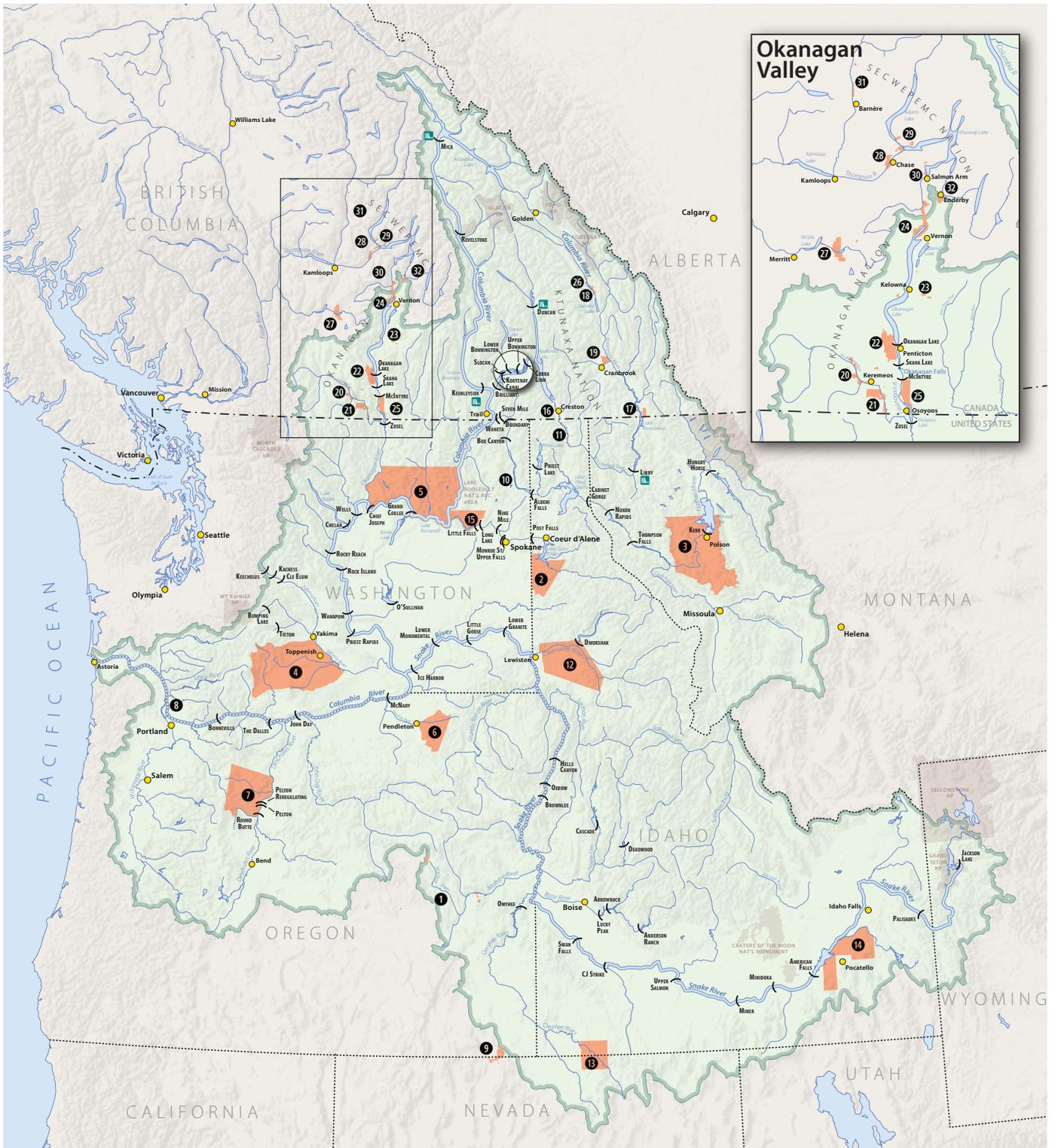
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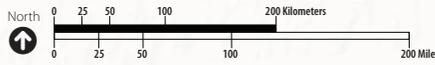
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This map was produced by the Columbia River Inter-Tribal Fish Commission. It is meant for informational and display purposes only and was created with the best data available at the time of production. It does not represent any legal boundaries or information.
Map date: March 2013



Columbia Basin Boundary
 Reservation or Reserve
 Dam authorized by Columbia River Treaty

Tribal Nations in the United States*

- 1 Burns Paiute Tribe
- 2 Coeur d'Alene Tribe
- 3 Conf. Salish and Kootenai Tribes of the Flathead Nation
- 4 Conf. Tribes and Bands of the Yakama Nation
- 5 Conf. Tribes of the Colville Reservation
- 6 Conf. Tribes of the Umatilla Indian Res.
- 7 Conf. Tribes of the Warm Springs Res. of Oregon
- 8 Cowlitz Indian Tribe
- 9 Ft. McDermitt Paiute Shoshone Tribes
- 10 Kalispel Tribe of Indians
- 11 Kootenai Tribe of Idaho
- 12 Nez Perce Tribe
- 13 Shoshone Paiute Tribe of the Duck Valley Indian Res.
- 14 Shoshone-Bannock Tribes of the Ft. Hall Res.
- 15 Spokane Tribe of Indians

First Nations in Canada

Inside the Columbia Basin

- 16 Yaqaṇ nuʔkiy (Lower Kootenay Indian Band)
- 17 ʔakinkumtasnuqtiʔit (Tobacco Plains Indian Band)
- 18 ʔakisqṇuk (Columbia Lake Indian Band)
- 19 ʔaqam (St. Mary's Indian Band)
- 20 c'əc'əwixəʔ (Upper Similkameen Indian Band)
- 21 kək'əmiws (Lower Similkameen Indian Band)
- 22 snpintktn (Penticton Indian Band)
- 23 stqaʔk'əwəʔ (Westbank First Nation)
- 24 suknaqinx (Okanagan Indian Band)
- 25 swiws (Osoyoos Indian Band)
- 26 Kenpésqʔ (Shuswap Indian Band)

Outside the Columbia Basin with Asserted Interests

- 27 spaxomən (Upper Nicola Band)
- 28 Qw'əwət (Little Shuswap Indian Band)
- 29 Sexqəltqɪn (Adams Lake Indian Band)
- 30 Skemtsin (Neskanlith Indian Band)
- 31 Simpcw (Simpw First Nation)
- 32 Splitsin (Splitsin First Nation)

Columbia River Treaty

* management authorities and responsibilities affected by the Columbia River treaty; does not include all tribes in the Columbia Basin