

**Columbia River Policy Advisory Group
September 25, 2013**

Columbia River Treaty

Panel 1

The meeting was devoted primarily to a review and discussion of the Columbia River Treaty. Matt Rea of the U.S. Army Corps of Engineers and Birgit Koehler of the Bonneville Power Administration, two agencies who comprise the United States Entity, provided an overview of the Treaty. The Treaty has no specified end date; however, it has a provision allowing either the United States or Canada to end most of the power provisions in the Treaty with a minimum of 10 years notice, beginning in 2014. The current flood control provisions are designed to terminate in 2024. The U.S. Entity convened a Sovereign Review Team in 2010 of state and tribal governments and multiple federal agencies to review Treaty provisions and suggest changes to the Treaty.

Following a multi-year review, the U.S. Entity has prepared a draft recommendation with four tenets for modernizing the Treaty: (1) The Treaty needs to better address the region's need for a reliable and economically sustainable hydropower system; (2) A similar level of flood control risk management should be pursued; (3) Ecosystem based functions should be incorporated into the Treaty; and (4) Flexibility should be built in to respond to climate change, changing water supply needs, and potential future system operations, while continuing to provide for navigation. An additional set of issues would be better addressed in a Post-2013 Domestic Review, rather than in international negotiations. A final recommendation will go to the State Department in December 2013. The State Department will likely decide whether or not to engage in negotiations with Canadian representatives in 2014.

Several panelists from the Sovereign Review Team provided perspectives on the draft recommendations. Paul Lumley, of the Columbia River Inter-Tribal Fish Commission, noted that the current Treaty makes no mention of tribes, fish or wildlife. Despite guaranteed protections under the Treaty of 1855, Chinook runs have declined to 10% of their historical runs (from 17m to 1.7m). Of particular concern to CRITFC is that flood control provisions of the Columbia River Treaty have fundamentally altered the spring freshet in the Columbia River. After 2024, the U.S. can call upon Canada for flood risk management, but only after first making effective use of U.S. reservoirs, and then the U.S. must compensate Canada for its operational expenses and opportunity costs. After 2024, the Treaty is not a good deal for the U.S. CRITFC believes that a modified treaty is in the best interest of the U.S. and region. The region needs to hold together with a broad consensus in order to be successful. That consensus should add an ecosystem function, reduce the Canadian entitlement to power, and address flood control.

Tom Karier of the Northwest Power Planning Council noted that Washington State pays 70% of the Canadian entitlement, which means that the State has a paramount interest in discussions about the entitlement. Washington State has made huge investments in fish

and wildlife, and therefore it is keenly interested in opportunities to improve flow conditions in a modified treaty. The State also has water supply needs, flood control interests, water quality requirements, and navigation interests that need to be protected. The Columbia River Treaty required a balance between hydropower and fish and wildlife interests similar to the Northwest Power Act, but the Treaty has several distinct differences from the Power Act: (1) The outcome of negotiations will not be determined by legislation; (2) The outcome of negotiations won't be determined by litigation; and (3) The outcome is dependent on a federal agency (the State Department) to look at our interests and to strike a balance. The State Department has limited knowledge about the issues. Unlike other power or natural resource issues, the recommendation that has emerged is not detailed, in order to provide the State Department some negotiating room. A central challenge moving forward is to maintain a regional consensus. If the State Department perceives that the region is divided, it will extend and delay the negotiations.

Bill Tweit of the Washington State Department of Fish and Wildlife noted that among the Northwest states, Washington has the largest set of interests involved in the Columbia River Treaty. Typically in issues involving fish and wildlife, the debate is where to make the tradeoff with other interests. An insight of the tribes during the Sovereign Review discussions is that there are solutions which don't require such tradeoffs, but which instead offer multiple concurrent benefits. The key to optimizing the system is to require additional flexibility and to move to adaptive management. This allows experimenting over time, especially since we don't yet know how climate change will actually play out. The fish issues are not just about anadromous fish. Lake Roosevelt has a great resident fishery that could be much improved.

Derek Sandison then solicited questions from the CRPAG:

- How will Canada be induced to accept less money in the entitlement? [The State Department will be careful not to use the threat of termination.][The Canadian perspective is that the U.S. gets a lot of benefits from certainty of operations that we don't pay for. If the entitlement payment is less, then there will be a need to rebalance these matters.] [We expect that entitlement will go down, but we will need to compensate for flood control. Flood control payments should come from U.S. taxpayers.] [Both countries benefit from improved ecosystem management.]
- What is the strategy for presentation to the State Department? [We don't yet have a complete strategy. We have been interacting with State for the last six months to develop a relationship.][We need a regional campaign to get the State Department to do what we want.]
- In terms of changes to flow levels, what volume are we talking about? [The current agreement has 1maf. We have run scenarios for 1.4 to 4.4maf. It is likely that the additional flows would not be available each year. There would also be a split between in-stream and out-of-stream uses, which would be left to domestic discussion.][Canada also has multiple interests. If we expand the scope of the ecosystem, lots of Canadians will be interested, for example, getting additional sockeye to Canada.][A concept of a dry year strategy has shown considerable theoretical survival benefits.]

- You have all argued that regional consensus is key to success. What is the region: the ratepayers or the taxpayers? The counties think that water supply is a major concern that at this time is not adequately reflected in the draft recommendation. [Success is if we don't have people running back to Congress with their different perspectives.][There are a series of questions we need to ask about the best way to get additional storage. If we can get Canadian water released, that will be money saved that could be applied in another context to develop new supplies.][We need a dry year strategy. It is an open question how far to push the negotiations for water supply.][The federal agencies have heard clearly that storage should be in the recommendation, and we think this draft has a strong statement on water supply.]
- Regarding water supply, it is a domestic decision. As we look for unity, we don't know if the additional supply would be for out-of-stream or in-stream. It is hard to get backing without knowing the split. [Agreed. It is a dilemma without knowing the details. We won't have a domestic agreement before the recommendation goes forward.]

Panel 2

Gregg Carrington of the Chelan County PUD provided a perspective not only of the Mid-Columbia PUDs but also a larger group of 70 utilities known as the Power Group. The Power Group represents about 6.4m meters and an estimated 10m consumers. Gregg noted that Canada currently stores about 15maf of water and provides about 1 maf spring flow augmentation in the Treaty. This is a relatively small amount: 1maf is equivalent to 1,500 cfs and there is about 120,000 cfs behind the Mid-Columbia dams. The Mid-Columbia PUDs (via rate payers) provide 27.5% of the entitlement. The formula for the entitlement was a negotiated figure, and was not calculated by empirical factors. The total value transferred to Canada since 1997 is estimated to be about \$4-6b. There is now a considerable mismatch between the entitlement paid and what we receive in benefits – estimated to be about 10% of the value transferred. The Power Group's position is: (1) The payments for downstream power should not exceed one-half of the benefits; (2) Flood control funding should be the responsibility of the U.S. taxpayer; and (3) Domestic ecosystem mitigation requirements should not be included.

Eric Johnson of the Washington State Association of Counties focused his comments on the counties' concerns about water supply. Due to two Supreme Court decisions, there is a direct nexus between the availability of water and land use planning, which is a paramount county responsibility. Washington State's population has grown by 70 % from 1980 to 2013 (4.1m to 7.0m people), and demand for water has grown accordingly. The counties support including ecosystem functions in the Treaty, along with power and flood control, and they also seek adding a fourth major issue: water supply for municipal, industrial and agricultural use. The counties are also concerned that they are being excluded from the process. They would like more direct representation, both in Treaty discussions and in post-2013 domestic matters. At present, they are not directly represented in either.

Phil Ward of the Oregon Department of Water Resources voiced Oregon's support of the process. Oregon supports adding ecosystem function and water supply to the Treaty, in addition to the flood control and hydropower element. Oregon is very strongly focused on flood protection, given historical impacts on Oregon citizens. Oregon would also like to preserve current navigation and recreational uses of the Columbia River. The Treaty should be amended provide the necessary flexibility to adapt to climate change. The draft recommendation generally comports with Oregon's interests, but a lot of important detail needs to be worked out in the domestic post-2013 discussions.

Michael Garrity of American Rivers echoed earlier comments that the appropriate way of addressing the Treaty was to stop treating the Columbia River matters as a zero-sum game, but instead seek to optimize multiple uses. American Rivers supports inclusion of ecosystem function in the Treaty, but believes that more specificity would be better. Regarding spring and summer flows, there is a clear international nexus with Canadian runs and the effect of Canadian dam operations on flows for U.S. fish, so these issues should be included in the negotiations. The goal should be to integrate flood control and ecosystem protection, to get as close to a natural hydrograph that maintains public safety while improving salmon outmigration conditions. It is also important to come up with flexible Treaty conditions that could respond to climate change. It is unclear how the NOAA fisheries post-2018 salmon recovery report will fit into the Treaty discussions. Most past federal discussion about dam operations and salmon has been about how to minimize what federal agencies have to do in order to comply with federal agencies' narrow reading of the Endangered Species Act. The NOAA process provides an opportunity for a more integrated discussion about improving river conditions that allow for salmon recovery as well as mere survival while meeting economic needs of other stakeholders and the region. Overall the Treaty review hasn't been very open to outside parties, although recent public workshops have been useful.

CRPAG and audience members had these questions and comments:

- How does the Treaty work differently from the ESA or Clean Water Act? If the ecosystem function were included, would environmental organizations be able to use these acts to force compliance under the Treaty? [All of the discussions to this point have been about getting agreements with Canada. The addition of the ecosystem function would not affect how the ESA or CWA are dealt with.] [At some point the implementing agencies will need to do operating reports, which will be subject to ESA and CWA provisions.][It is unlikely that any third-party would have standing to challenge implementation of the Treaty.]
- There is an obvious need to rebalance the entitlement payment. Would the Mid-Columbia PUDs be interested in sharing these monies to reduce rates? [Yes. We want these benefits to be returned to our ratepayers. If some portion of the benefit were returned, it would need to be shared.]
- What geographic area do the Mid-Columbia PUDs serve? [Downstream of Grand Coulee to the Vernita Bar.]
- Who pays for the entitlement? [BPA customers pay 72.5%; the Mid-Columbia PUDs 27.5%.]

- I represent all of the interests in my county. We have a short time period to come together. It would be best if the counties and the tribes can get together.
- Who paid the initial \$64m to Canada? [It was a direct Congressional appropriation.]
- Is there a plan to tighten up the accounting of the value to Canada; these projections seem vague. [The actual payments vary because they depend on the price of power moving forward.]

State of Oregon Water Supply Legislation

Phil Ward, Director of Oregon's Department of Water Resources, reviewed legislation to develop additional supply that was passed in June by the Oregon legislature. Oregon's perspective was strongly influenced by the 2001 drought in the Klamath Basin, which ultimately led to shutting off irrigation water. Oregon had not historically been active in water supply, but the effect of the Klamath Basin shutoff was dramatic. Oregon has taken a number of steps over the last decade. The current legislation establishes a \$10m fund to evaluate in-stream and out-of-stream projects. New projects must develop seasonally variable flows, and 25% of new water would be dedicated to in-stream flow. A Task Force has been formed to address water supply governance. Oregon is interested in the CRPAG experience.

CRPAG members had these observations:

- Having a Columbia River program that addresses both in-stream and out-of-stream needs has been a critical component of our success.
- Having discussion early and often has been useful. Building relationships has been essential to figuring out mitigation strategies.
- It has helped that Ecology incorporated counties into the process; it brought the program up to speed faster.
- The counties' relationship with Ecology has transcended the historical conflicts, due to the State's openness and outreach.
- Relationship building is key. Our discussion started out with a narrow focus but became broader over time.
- Does the public benefit provision of the new statute need to meet all three tests (economic, environmental, and social/cultural) or just one of the three? [Must meet all three.]

Columbia River Funding

Derek Sandison noted that the new biennial budget provided funding for a suite of projects that the CRPAG had reviewed from May through August of 2012, including: East Low Canal expansion, Red Mountain, Sullivan Lake, Methow Valley flow improvements, integrated planning funds for Walla Walla and Icicle Creek, Colville cooperative water supply, and Horse Heaven Hills, among others. Contracting has been delayed due to the extended legislative session, but is now getting underway.

The next CRPAG meeting is December 4 at the Hal Holmes Center in Ellensburg.

Attendees:

CRPAG members and alternates:

Dale Bambrick, National Marine Fisheries Service
Dan Brudevold, Colville Tribes
Michael Garrity, American Rivers
Mike Leita, Yakima County Commission
Wes McCart, Stevens County Commission
Darryll Olsen, Columbia Snake River Irrigators Assc.
Gary Passmore, Colville Tribes
Lisa Pelly, Trout Unlimited
Tom Ring, Yakama Indian Nation
Teresa Scott, Washington Department of Fish and Wildlife
Mike Schwisow, WA Water Resources Assc./Columbia Basin Development League
Warren Seyler, Spokane Tribe
Craig Simpson, East Columbia Basin Irrigation District
Mark Stedman, Lincoln County Commission
John Stuhlmiller, Washington State Farm Bureau
Carl Merkle, Confederated Tribes of the Umatilla Reservation
Rob Swedo, Bonneville Power Administration
Stephanie Utter, Bureau of Reclamation
Ron Walter, Chelan County Commission

Others in attendance:

Ron Baker, Grant County Conservancy Board
Joe Becker, Robinson Noble, Inc.
Moroni Benally, University of Washington
Lisa Berntsen, GeoEngineers, Inc.
Kevin Bouchey, Yakima County Commission
Sally Carpenter, citizen
Gregg Carrington, Chelan PUD/Power Group
Wendy Christensen, Bureau of Reclamation
Marie Cobb, graduate student
Sara Cornell Columbia Basin Development League
Stuart Crane, Yakima Indian Nation
Jim Davenport, Yakima County
Charity Davidson, Washington Department of Fish and Wildlife
Mike Dixel, Washington Department of Health
Melissa Downes, Department of Ecology
Rand Elliott, Yakima County Commission
Tim Flynn, Aspect Consulting
Joel Freudenthal, Yakima County
Donald Gatchalian, Yakima County
Dan Haller, Aspect Consulting
Jim Heffernan, Columbia River Inter-Tribal Fish Commission
Trevor Hutton, Department of Ecology

Eric Johnson, Washington State Association of Counties
Al Josephy, Department of Ecology
Mike Kaputa, Chelan County
Tom Karier, Northwest Power Planning Council
Gerry Kelso, Bureau of Reclamation
Chuck Klarich, Yakima Basin Storage Alliance
Birgit Koehler, Bonneville Power Administration
Ben Lee, Landau Associates
Paul La Riviere, Washington Department of Fish and Wildlife
Paul Lumley, Columbia River Inter-Tribal Fish Commission
David Lundgren, Lincoln County Conservation District
David McClure, Klickitat County
Jason McCormack, Washington Water Trust
Dave Nazy, Department of Ecology
Mark Nielson, Benton and Franklin County Conservation Districts
Kevin Nordt, Grant County PUD
Mike Paulson, Representative Cathy McMorris Rodgers
Matt Rea, U.S. Army Corps of Engineers
Rick Roeder, Department of Natural Resources
Pete Rogalsky, City of Richland
Derek Sandison, Department of Ecology
Mark Schuppe, Department of Ecology
Peter Schwartzman, Pacific Groundwater Group
Evan Sheffels, Washington State Farm Bureau
Dan Silver, facilitator
Jim Sizemore, Klickitat County Commission
Ken Slattery, Washington Water Trust
Toni Smith, Landau Associates
Paul Stoker, Groundwater Management Area
Ed Thomas, CH2MHill
Kacie Thrift, Columbia Basin Development League
Steve Thurin, HDR
Duane Unland, Nakaty Enterprises
Chris Voigt, Washington State Potato Commission
Bill Wagoner, National Frozen Foods Coop
Rich Walpole, Columbia Northwest Engineers
Phil Ward, Oregon Water Resources Department