

**COMMENT LETTERS AND RESPONSES TO COMMENTS**



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*Umatilla Indian Reservation*  
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Comments of the  
Confederated Tribes of the Umatilla Indian Reservation  
Department of Natural Resources

On the  
*Draft Programmatic Environmental Impact Statement for the  
Columbia River Water Management Program*

Submitted in response to the Draft Programmatic EIS for the Columbia River Water Management Program, issued by Washington Dept. of Ecology, dated October 5, 2006. Ecology Publication Number 06-11-030

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**I. Introduction and Overview**

The Confederated Tribes of the Umatilla Indian Reservation (CTUIR) submits the comments below on the Columbia River Water Management Program Draft Programmatic Environmental Impact Statement (DPEIS) which was issued October 5, 2006.

The CTUIR is a federally-recognized Tribal Government with rights, interests and vital economic assets located in the State of Washington subject to the 1855 Treaty between the United States and the tribes of the CTUIR (12 Stat. 945). Said Treaty was ratified by Congress March 8, 1859.

1-1 Rights, interests and vital economic assets of CTUIR attach to and include the Columbia River, the Snake River, the lower Yakima River, the Grande Ronde River, the Walla Walla River, the Tucannon River and the lands and resources in the Columbia River Basin to which the DPEIS applies.

The CTUIR is honored to be a part of Washington's Columbia River Water Management Program and looks forward to working closely with the Governor's office, Ecology and Department of Fish and Wildlife, and Washington's citizens to make the Program a success.

The comments below are submitted by CTUIR to provide constructive advice and recommendations for improvement, to identify key and critical areas of deficiency – especially regarding the rights, interests and vital economic interests of CTUIR – and to assist in making the Columbia River Water Management Program a success.

**II. CTUIR Water Rights and the Programmatic EIS**

1-2 The Programmatic DPEIS was prepared to generally address probable significant adverse and beneficial impacts associated with implementation of components of the Columbia River Water Management Program. To this end, and pursuant to RCW 90.03.380, Ecology may not approve a new water right or change of water right if detriment or injury to existing water rights would result. Nor may Ecology approve a Voluntary Regional Agreement (VRA) that impairs or diminishes valid water rights.

1-3 Tribal water rights, are deserving of protection because they arise under federal law, because of their early priority date, and because they cannot be forfeited by non-use. Necessarily, in order to ensure against injury to existing water rights and to address probable adverse impacts associated with implementing the Program, Ecology must present in the DPEIS an adequate explanation, analysis and estimation of impacts to existing water rights. Unfortunately, the DPEIS fails to present the extent of existing, but largely unadjudicated Tribal water rights.

1-4 The DEIS says little more than that the, "[c]reation of a tribal reservation may also imply the use of water for long-established aboriginal uses such as fishing and hunting." In

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1-4 section 3.4.1.1, at page 3-18, the DEIS states that there are no tribal in or out-of-stream flow requirements pursuant to the Tribal water right. The graph on the same page indicates that the quantity of the water right is "not specified - fishing and hunting in Usual and Accustomed places; practicably irrigable acres." And again, at 3-43, the DEIS states that Tribal water rights for fish is "largely unquantified". These brief statements in the DEIS indicate that Ecology needs to express to the public a broader understanding of Tribal water rights. This lack of information and analysis must be corrected.

It is a certainty that Tribes have water rights implied from existing fishing rights. That water right is necessary to protect the fishing right. The quantity of water Tribes have a right to is the amount of water necessary to protect the hunting and fishing rights of Tribes. Many cases have addressed Tribal in-stream flow water rights to satisfy rights reserved by treaty or under the Winter's Doctrine, including the following cases:

United States v. Winans, 198 U.S. 371 (1905); Colville Confederated

Tribes v. Walton, 647 F.2d 42 (9<sup>th</sup> Cir. 1981), cert. denied, 454 U.S.

1092 (1981)(Walton I); United States v. Adair, et. al., 478 F. Supp.

336 (D. Or. 1979), aff'd 723 F.2d 1394 (9<sup>th</sup> Cir. 1984), cert. denied sub

nom., Oregon v. United States, 467 U.S. 1252 (1984); Kittitas

Reclamation Dist. v. Sunnyside Valley Irr. Dist., 763 F.2d 1032 (9<sup>th</sup>

Cir. 1985), cert. denied, 474 U.S. 1032 (1985); Joint Board of Control

of the Flathead, Mission and Jocko Irr. Dist. v. United States, 832 F.2d

1127 (9<sup>th</sup> Cir. 1987); Wash. Dept. of Ecology v. Yakima Res. Irr. Dist.,

850 P.2d 1306 (Wash. 1993).

Whatever amount of water that is necessary to ensure the viability of the fishery in an amount that meets the Tribes' economic, cultural, subsistence and dietary needs is the amount of stream flow to which the Tribes are entitled. Nor is the water right limited to stream flows, for it extends to whatever is necessary to ensure the viability of the fishery, such as maximum temperatures.

The CTUIR treaty right to harvest fish implies a water right. The United States Supreme Court has held that, "[w]here water is necessary to fulfill the very purposes for which a federal reservation was created, it is reasonable to conclude, even in the face of Congress' express deference to state water law in other areas, that the United States intended to reserve the necessary water right." *United States v. New Mexico*, 438 U.S. 696 at 702 (1978).

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The water right extends to the exercise of off-reservation fishing rights and is to an amount necessary to protect the fishing right. In *United States v. Adair*, 478 F. Supp. 336 (D.C. Or. 1979) the court held that "Indians are... entitled to as much water on ... Reservation lands as they need to protect their hunting and fishing rights." *Adair* at 345. This water right was not limited to Reservation lands as the case involved the water right of the Klamath and Modoc Tribes over lands that were once their reservation lands, but were terminated in 1954. The treaty these tribes have granted them the exclusive right to take fish in the streams and lakes of the Reservation. That right ran with the lands regardless of who owned the land. Because the right to fish ran with the lands, so did the water right necessary to protect the right to fish. As the court wrote, "[i]f the preservation of these rights requires that the Marsh be maintained as wetlands and that the forest be maintained on a sustained-yield basis, then the Indians are entitled to whatever water is necessary to achieve those results." *Adair* at 346.

At the very least, the water right is to a quantity necessary to maintain a fishery. In *Colville Confederated Tribes v. Walton*, 647 F.2d 42 (9<sup>th</sup> Cir. 1981) the court held that the executive order establishing a reservation for the Colville Tribes necessarily included a reservation of a right to the quantity of water necessary to main a fishery at Omak Lake, despite the fact that there was no language in the executive order either granting an express right to fish nor a right to water, because the preservation of the tribe's access to fishing grounds was one of the primary purposes for which the Reservation was created. *Walton* at 48.

The water right includes a right that water temperatures be maintained at an appropriate level and a right that there be adequate instream flow to maintain the fishery. In *United States v. Anderson*, 591 F. Supp. 1 (E.D. Wash. 1982, overturned on other grounds) the court found that the Spokane Tribes had a right to water along the Chamokane Creek sufficient to preserve their fishing rights. Their fishing rights, as with the Colville Tribe, were implied from the purposes for which the Spokane Reservation was created. The water rights, which were implied from the implied fishing right, included both the right that the water not exceed a certain maximum temperature and that there be a minimum flow of water through the creek in order to ensure the viability of the fishery. *Anderson* at 5.

This water right attaches regardless of the impact it has on other competing uses. In each of the above-mentioned cases the courts held that a Tribal water right existed by implication from an either explicit or implied right to fish. The implied water right was to a quantity and quality sufficient to ensure protection of the right to fish, and consequently, to a viable fishery. Because of this, these Tribal water rights arise without regard to equities that may favor competing water uses. *Cappaert v. United States*, 426 U.S. 128 (1976).

The DPEIS must be amended to reflect the full scope of Tribal water rights. It must acknowledge that tribes not only have rights implied from existing rights to harvest fish, but that the right is capable of being quantified in so far as Ecology can establish

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1-7 [ minimum stream flows and maximum temperatures necessary to ensure against the diminishment of existing fisheries and fish habitat. Finally, Ecology must acknowledge in the DPEIS that this right to minimum flows and maximum temperatures exists regardless of the impact it has on competing uses, that is to say, on other existing and potential future non-Tribal water rights as well as the creation of new storage facilities and other mitigation actions.

1-8 [ The DPEIS must account for the CTUIR water rights in the Columbia River by acknowledging their existence. Ecology should strongly consider the ruling of the Montana Supreme Court that the state Department of Natural Resources and Conservation was prevented from acting on applications for non-Indian water rights and changes in points of diversion and place of use until such time as the Department had quantified Tribal reserved water rights. In the matter of the Application for Beneficial Water Use Permit, 278 Mont. 50; 923 P.2d 1703 (Mont. Sup. Ct. 1996) Ecology should consult with CTUIR to develop an estimation of the amount of water and the water quality necessary to protect and restore the fishery such that the Endangered Species Act does not limit it, and such that the fishery provides an acceptable level of harvest and sustainability consistent with the Tribe's treaty rights.

**III. Purpose and Need of the Proposal and the Programmatic EIS**

1-9 [ The DPEIS does an adequate job of describing the needs, subject to Engrossed Second Substitute House Bill 2860, for new water development to address pending consumptive use water right applications, communities with unreliable or inadequate water supplies to meet current or future needs, and the inconveniences of "interruptible" water rights issued since 1980.

1-10 [ The DPEIS should add an assessment of the opportunity to revise existing flood storage rules to reshape the flood water storage regime. This could provide a substantial amount of "new" water without the costs of large federal water project development and in a more timely way. This proposal should be analyzed as an early action alternative.

1-11 [ The DPEIS does a wholly inadequate job of representing the mutual, second major goal of ESSHB 2860 – protection and recovery of Columbia Basin anadromous and resident native fisheries through restoration of critical instream flows. The DPEIS does not provide an adequate or substantive analysis of the need for flow protection, of the need for flow enhancement nor of the potential conflicts between new water development and allocation to instream flows or out-of-stream uses. This deficiency is reflected at a minimum in the following key areas:

- 1-12 [
- Disclosure and examination of the criticality of salmon and other native fish stocks, such as sturgeon and Pacific lamprey – from interpretation of the status that many stocks are extinct and most extant stocks are so critically impacted as to be listed under the Endangered Species Act as either threatened or endangered.

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1-13 [ • Disclosure and examination of the direct causative factors for the past (1930's through the present) decimation of salmon and other stocks being water development, dam construction and operations and reshaping of the hydrograph.

1-14 [ • Socio-economic analysis of the losses to Tribal economies and to the Washington economy from lack of commercial, recreational and tribal fisheries and of the potential economic, cultural and social contribution from robust fisheries.

1-15 [ • "A major area of uncertainty in the Columbia River Basin is the relationship between environmental variables and the survivability of anadromous fish. . . . In particular, the relationship between flow levels in the Columbia River and salmon survival is not clear. It is known that lower survival rates and changes in salmon migratory behavior are expected when stream flows become critically low or when water temperatures become excessively high." DPEIS Pg. S-10.

1-16 [ The DPEIS also does an inadequate job of representing the interests of Tribal Governments and their fishing constituencies, the current and potential economics of tribal and non-tribal fisheries and the balance that must be struck between out-of-stream development of new water sources and restoration and protection of instream flows. Tribal treaty rights to fish, and their inherent rights to stream flows and habitat conditions necessary to protect the fishing rights are not adequately described relative to providing water to satisfy tribal needs and rights.

1-17 [ The DPEIS notes generally that "[t]he socioeconomic impacts of additional water supply would likely be positive for those who receive the water, but may have negative impacts for others at the local and regional level" (DEIS, Page S-4). Even in its general treatment of the issue, however, the DEIS does not sufficiently address the potential socioeconomic impacts on the CTUIR and other tribes from possible further damage to and degradation of the fishery resource and the habitat on which it depends that might result from the Program or individual projects.

1-18 [ The DPEIS fails to adequately recognize and plan for, similar to the way it inadequately addresses the fishery needs and CTUIR water needs, the needs and requirements of the State of Oregon.

1-19 [ Because the purpose and needs portions of the DPEIS do not describe the criticality of fish populations, the restored habitat conditions required by the fish, and the requirement that new water developed under this Program be provided to offset this need, the remaining chapters are substantively deficient in describing current conditions, developing alternatives, and documenting and analyzing impacts of program components and early actions. And, logically, those deficiencies preclude defining and analyzing the policy issues extant in implementing programs to restore stream flows needed to recover fish populations.

1-20 [ The passage quoted above, from DPEIS Pg. S-10, places undue emphasis on "uncertainty" and a supposed lack of clarity. It is clear that dams on the mainstem Columbia and Snake Rivers, coupled with extensive water withdrawals from both the mainstem and the tributaries, have contributed significantly to an overall, substantial

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1-2 increase in the amount of time it takes for downstream migrating juvenile salmonids to reach the estuary and then the ocean. This increased travel time has forced such migrants to endure, for a longer period, increasingly hostile in-river conditions. These conditions are also created and aggravated by those same factors—dam passage mortality (direct and indirect, or delayed) and lower, slower flows and concurrent higher water temperatures and other habitat changes that promote increased predation on salmon (caused by the creation of reservoirs and impoundments and less water because of withdrawals). This extended travel time, under increasingly unnatural conditions, is contrary to the evolutionary history and development of anadromous fish in the Columbia River Basin.

1-2 The risk from further exacerbating this situation is one that salmon cannot afford. Additional out-of-stream diversions, at *any* time of the year, must be fully mitigated, and consistent with ESSHB 2860, additional water developed and provided permanently to restore instream flows. Recent data and other information, particularly that which has been derived, and continues to be developed, in the remand process for the ongoing litigation over the Biological Opinion for the Federal Columbia River Power System (FCRPS), indicates increased survival correlates with decreased travel time—and higher flows reduce travel time. The Columbia River Water Management Program must provide solid assurances that instream flows will not be diminished—not just in July and August, but throughout the year.

1-2 The National Research Council study and report highlighted the particularly harmful conditions that often prevailed in the later summer (specifically naming July and August) from lower flows and related higher temperatures. The CTUIR does not believe the Council's work suggested or implied that conditions were always satisfactory for the other ten months of the year, every year, and that unmitigated water withdrawals were therefore necessarily appropriate during those periods. As part of the repeated Biological Opinions for the FCRPS issued by NOAA Fisheries, seasonal flow targets have been established as desired mileposts to be achieved. Over a number of years, however, those targets have routinely not been met, most often in the summer but at other times of the year as well. Additional out-of-stream diversions should occur only when their negative impacts on fish are completely mitigated, regardless of when they occur.

1-2 The DEIS is unclear as to whether or not it will improve the likelihood of meeting current flow targets. It is similarly unclear as to how the Program would be reconciled with additional requirements for instream flows and related measures that may result from ongoing litigation over the FCRPS BiOp and/or the upper Snake River BiOp involving Bureau of Reclamation storage projects (*See* DEIS, Page S-7). CTUIR recommends the DPEIS move ahead of this unpredictable litigation and the gridlock in the Basin by promoting, quantifying and implementing instream flow protection and restoration as an inherent component of the Program

1-2 Ecology, in drafting the Programmatic EIS, must incorporate, or at least give serious consideration to, Tribal materials that bear on pertinent issues that it has not yet reviewed.

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1-2 ESSHB 2860 is intended to operate in a manner that ensures conservation and the instream flow needs of fish. It also requires Ecology to assess the short term and long term effects implementation of the Act has on cultural and the environmental resources. Section 1(1) of the Act states in part, "The legislature finds that a key priority of water resource management in the Columbia river basin is development of new water supplies that includes... conservation in order to meet... the instream flow needs of fish." To this end, Section 2(3)(a) prohibits funds being expended to develop new storage facilities until Ecology evaluates, among other things, the benefits and costs of water uses to be served by the facility, which includes short-term and long-term cultural and environmental effects.

1-2 Ecology must consider material from various sources, including Tribes, that it has not yet considered in drafting the DPEIS. Section 2(3)(b) of the Act states, "The department of ecology may rely on studies and information developed through compliance with other state and federal permit requirements and other sources." The usage of these other sources is to assist it in evaluating, in part, the instream flow needs of fish and the cultural and environmental costs of expending funds to develop new storage facilities. Section 5(1) of the act requires Ecology to work with tribal governments to develop a Columbia river water supply inventory and supply and demand forecast in order to, in part, support the development of new water supplies to protect instream flows. Pursuant to Section 5(1)(b)(ii) and (iv), that inventory must include estimates of the benefit to fish and other instream needs as well as environmental and cultural impacts. Section 6(1) requires Ecology to establish and maintain a Columbia river mainstem water resources information system, the purpose of which is to provide information necessary for effective mainstem water resource planning and management. Presumably, that effective planning and management includes the instream flow needs of fish, and the cultural and environmental impacts of any action taken under the Act. Section 6(2) requires Ecology, in order to accomplish this objective, to "use information compiled by existing ... and other available sources."

1-2 Unfortunately, neither the list of background materials used in preparing the Draft EIS, found at page 5, nor Chapter 7.0 entitled "references", include any Tribal materials. Most notably, there is no mention of Wy-kan-ush-mi Wa-kish-wit or any other materials developed and published by Columbia River Intertribal Fish Commission.

1-2 CTUIR encourages Ecology to consult and consider including in the DPEIS information from the following sources:

1-2 **Fish Passage Center, "2005 Annual Report," July 2006.** This report, like others before it, documents (among other things) failure to meet ESA flow targets; e.g.,

1-2 "The runoff volume for 2005 was approximately 74% of average at The Dalles Dam and 68% of average at Lower Granite Dam. This low runoff volume associated with 2005 resulted in two significant results: first, Biological Opinion seasonal flow targets of 85 Kcfs at Lower Granite Dam, 220 Kcfs at McNary Dam and 135 at Priest Rapids Dam were not met; and secondly, since flows were predicted to be below 85 Kcfs at Lower

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1-27 Granite Dam, the Biological Opinion spring spill did not occur at the transportation collector projects in the Snake River. Spill at Ice Harbor Dam occurs under any conditions according to the Biological Opinion." (P. 230)

**CRITFC, 2006 River Operations Plan.**

1-28 **Oregon & CRITFC, "The Oregon/CRITFC Proposal" or "Hydro Actions Matrix" (10/18/06).** The ESA BiOp remand process is subject to certain confidentiality limitations; however, Ecology should be able to obtain the proposal from Washington's representatives to the remand.

**CRITFC, *Wy-Kan-Ush-Mi Wa-Kish-Wit (Spirit of the Salmon)* (1995)**  
(<http://www.critfc.org/text/trp.html>).

1-29 The DPEIS must define the needs of instream flow restoration and then, consistent with SEPA, analyze the methods and the impacts of those methods to get there. Ecology will find that in some places the arbitrary two thirds-to-one third standard of water for new out-of-stream water rights is inadequate to achieve instream flow restoration objectives. In those cases Ecology will find that a successful Program will depend upon the flexibility to put more water than a one part out of three from new storage into stream flow restoration. CTUIR is hopeful that Ecology will plan for that need in the next revision to the DPEIS.

**IV. Proposal and Alternatives**

1-30 The DPEIS does an adequate job of displaying, describing and linking programmatically the primary projects that will be analyzed to provide new water for consumptive uses. Section 2.1.2 illustrates the primary problem in Chapter 2 which then is carried forward throughout the remainder of the Chapter and of the document – the section identifies four primary needs in response to ESSHB 2860 for which the Program is to respond. It unfortunately omits the need of protecting and restoring instream flows for fish recovery and habitat restoration. ESSHB 2860 provides the following direction relative to stream flows:

*Sec. 1 (1) The legislature finds that a key priority of water resource management in Columbia river basin is the development of new water supplies ...to meet the instream flow needs of fish."*

*Sec. 3 (ii) One third of active storage shall be available to augment instream flows..."*

It is impossible for Ecology to carry out the Program without, at the start, planning to achieve stream flow restoration.

1-31 Adequate prioritization and analysis of projects to address instream flows needs and the impacts of projects upon instream flows, both requirements of the legislation<sup>1</sup>, is missed

<sup>1</sup> Not to mention other requirements such as Tribal treaty rights and the Endangered Species Act

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1-31 throughout the remainder of the document because Chapter 2 of the DPEIS did not identify the instream flow need. This serious flaw and omission, arguably inconsistent with the requirements of Washington SEPA and certainly at odds with the requirements of the National Environmental Policy Act, must be remedied throughout the document.

1-32 Certainly, a successful Washington Columbia River Water Program is inherently contingent upon a fair, balanced treatment of the need to protect instream flows and provide a quantifiable amount and quality of water for stream flow restoration. Proper disclosure, assessment and analysis of such in the DPEIS are prerequisite. The DPEIS should be amended to reference an amount of water necessary to protect instream during all months, and the amount of water necessary to "develop" and return to instream flows in order to protect and restore the fishery and the potential sources for that water.

1-33 The list of potential impacts of Lake Roosevelt drawdown, additional storage development, conservation and all other Program components should include increased instream flows and increased ability to meet minimum mainstem Columbia and Snake river flow targets established by NOAA Fisheries. It should also reference increased ability to meet tribal instream flow water rights, protect CTUIR interests and restore the ability of CTUIR to exercise its treaty rights to fish.

1-34 It should be noted that Chapter 2 suggests, e.g. on page 2-3 under New Large Storage Facilities, that a new large storage project would benefit the proposed Walla Walla exchange project. Under the current planning and scoping of the exchange project alternative for the Walla Walla River, new mainstem Columbia or Snake river storage is not required and would probably not provide a benefit to the exchange project. In addition, Sec. 2.1.2.2 Pump Exchanges should note that the Walla Walla exchange proposes to exchange *Columbia River* water for Walla Walla River water.

1-35 Though the ESSHB 2860 indicates that impacts from the Voluntary Regional Agreements need only meet a no net loss standard on the Columbia River in July and August, and on the Snake River in April through August, both overwhelming science and controlling law indicate otherwise. Instream flows are critical in both rivers in every month of the year – not recognizing that fact has led to the current situation of dry rivers, or rivers with compromised flows and many salmon extinctions and population crashes. The DPEIS must provide a balanced analysis of the instream flow situation that reflects the science of the Columbia River Intertribal Fish Commission and its member tribes (CTUIR is included), the National Marine Fisheries Service (NOAA Fisheries), Oregon Department of Fish and Wildlife (ODFW) and Washington Department of Fish and Wildlife (WDFW). It is noted here that the NOAA Fisheries indicated to the Columbia Program Policy Advisory Group that instream flows are critical in each month and cannot sustain further depletion in at least April through August and that Fall Chinook, a critical species to Washington in the Hanford Reach are spawning in November and December and also cannot sustain further flow reductions or fluctuations.

1-36 CTUIR commends Ecology and the Washington Legislature for requiring the data collection and analysis – Inventory and Demand Forecasting – necessary to answer

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1-36 questions about current demand, use within water right constraints, future demand and the opportunities for reallocations. The DPEIS should specifically direct and schedule timeframes for metering of all diversions and a link between future development of "new" water to achievement of that objective.

*Definitions and Alternatives for Program Implementation:*

Ecology should incorporate the following alternatives into a revised PEIS:

- 1-37
1. Planning, providing for and analyzing the impacts of water volumes to achieve stream flows necessary to protect tribal water rights and restore fisheries
  2. Aggressively pursue storage options as an optional means to restore stream flows and provide water for future economic development.
  3. CTUIR agrees that Ecology should consider any conservation project, including those implemented prior to the date of the legislation. The amount of water conserved and provided for protection should be the amount conserved and funded by public funds.
  4. Ecology should reconsider disallowing inter-WRIA transfers as such transfers could provide the most benefits to instream flows, especially where a new downstream use is at distant from the conservation or addition of flow. Additionally, this could preclude implementation of the Walla Walla exchange which would transfer water from the Columbia River to the Walla Walla River Basin.

*Policy Issues:*

CTUIR recommends the following on policy choices:

- 1-38
1. Ecology should aggressively pursue storage projects.
  2. Ecology should use the best available science/methodology that provides the most return to instream flows.
  3. Ecology should fund projects that benefit instream flows and water quality only.
  4. Acquisition and transfer should, consistent with Trust Water Program, apply to any non-storage project.
  5. Ecology should not waive the instream water right until the Program, exemplified in a revised DPEIS, specifically plans to develop new water to achieve a quantified instream flow regime in the Columbia and Snake rivers.
  6. Ecology should aggressively pursue VRA's to implement instream flow restoration and protection.
  7. Ecology should process VRA's consistent with existing Rule.
  8. "No Net Negative Impact" should be defined so as to preclude withdrawal upstream from new water savings but allow withdrawal as far downstream as is measurable in order to maximize instream flow benefits.
  9. No comment on mains channel definition.
  10. Ecology should deny new water right applications if mitigation water is not readily available as part of the application.
  11. Ecology should group applicants by WRIA.

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- 1-8
12. Ecology should not use Program funds to mitigate for VRA applications unless a substantial instream flow benefit can be demonstrated.
  13. Exempt wells must be included to complete the inventory and are not precluded by the legislation.

**V. Walla Walla Basin Project**

The Walla Walla Basin Project is arguably one of the most popular stream flow/irrigation projects in Washington. CTUIR recommends the DPEIS include additional details on the technical mechanics of the proposed Walla Walla River stream flow enhancement project currently under study by the U.S. Army Corps of Engineers and the CTUIR. The project, developed after the successful Umatilla Basin Project in Oregon, is a potential model for achieving a successful Columbia River Program in Washington.

1-9 Technically, the Feasibility Study is assessing the options to achieve stream flow restoration in order to allow, under separate authority, actions to recover native fish. Flow restoration will be achieved either by construction of a new storage reservoir or of an exchange pump project that would provide Columbia River water to current, legitimate irrigation rights. Full, efficient restoration will occur by implementing one of these projects in conjunction with water rights acquisitions or lease from willing sellers, conservation and potentially other environmental projects.

The project, identical to the Columbia River Program, seeks to achieve two mutual objectives: 1) restore stream flows; 2) protect existing legitimate uses of out-of-stream water as an inherent part of the project and potentially provide for additional water for future development.

Columbia River Program support for and funding of the Walla Walla Project is very important to residents of the Walla Walla Basin, elected officials that represent the Basin and to the CTUIR. CTUIR appreciates Washington's investment in the restoration of stream flows, recovery of native fish, enhancement of CTUIR Treaty rights and the concurrent protection of irrigated agriculture in the Walla Walla River Basin.

1-40 CTUIR is concerned that ESSHB 2860 may negatively impact implementation/construction of the Walla Walla Project. For example, if a reservoir were constructed to restore stream flows it would not allocate two thirds of the project water to new water rights and one third to instream flows. Rather it would allocate most of the reservoir volume to existing irrigation in order to exchange that volume for a similar volume that would be left instream in the Walla Walla River to restore flows. An exchange with Columbia River water would work similarly. At a minimum we'd like to see a more robust analysis as part of consultation with CTUIR to determine whether there is a likely conflict between the Walla Walla Project and ESSHB 2860 and, if there is, what should be done to rectify it.

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**VI. Water Quality and Bio-accumulative Toxins**

- 1-41 Toxic chemicals, especially those that are bio-accumulative, are an existing problem in the Columbia River Basin (*see U.S. EPA Region 10, Columbia River Basin Fish Contaminant Survey, July, 2002.*). This study should be referenced and cited in addition to the USGS and state assessments as it is the most comprehensive in the Basin.
- 1-42 Future water development should address and consider the impacts it would have on existing and additional toxic contaminants in the sediments, in the water column and in fish and upon existing high water temperatures in summer and fall. Dissolved gases also need to be addressed as they are an extant problem at the tailraces of existing dams.
- VII. Voluntary Regional Agreements**
- 1-43 Voluntary Regional Agreements are a potential tool for reallocating existing water so that instream flow needs and out-of-stream needs can be better met. CTUIR believes Ecology should pursue new agreements if Ecology chooses to implement the Program in such a way that protection and restoration of instream flows is a co-equal objective in implementing the legislation and Program.
- 1-44 Most important at this point to CTUIR is that it be clearly stated in the DPEIS that VRA agreements may not interfere with or injure a valid water right. The legislation is clear on that point. CTUIR's water rights in the Columbia River and elsewhere may not be injured by VRA projects or any other project contemplated in the Program.
- 1-45 VRAs should only be processed ahead of prior competing applications if the impact on instream flows is mitigated or avoided *and* if there is a substantial contribution toward the restoration of instream flows over and above that of mitigation or avoidance. Said another way, VRA applications that are consistent with the spirit of the legislation – that new water be made available for development and that instream flows are protected and restored should be rewarded.
- 1-46 The scope of “No Negative Impact” should be defined as either the same pool or the same pool but only downstream of the project. To go beyond that scale at programmatic level is to lose the ability to measure and manage.
- 1-47 Ecology should spend Program funds only on projects that provide substantial improvements in instream flow in the mainstem Columbia and Snake rivers and in major tributaries such as the Walla Walla River. VRA proposals should be self-funded unless there is an extraordinary reason to expend public funds – such as inclusion of a substantial improvement in instream flows as part of the project.
- 1-48 CTUIR questions the adequacy or relevancy of the Columbia-Snake River draft VRA proposed payment of \$10 per acre foot to acquire new water or fund new projects but CTUIR does believe a substantially higher payment amount is warranted. The market value of water should be used to set this payment amount.

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- 1-49 Again, and as stated above, Ecology must in this DPEIS evaluate the months beyond July and August in the Columbia River and April through August in the Snake River during which critical flow shortages exist and when additional flow is needed to recover native fish.
- VIII. Cultural Resources**
- 1-50 Overall CTUIR appreciates the review and analysis of cultural resources. We have the following specific questions and suggestions:
- 1-51 **Page S-6: Cultural Resources**  
COMMENT: Change the fourth bullet to read: “Effects to integrity of Traditional Cultural Properties (TCPs) through inundation or alteration of characteristics that make the areas TCPs.”
- 1-52 **Page S-7: S.3.1.6 Mitigation Measures**  
Second sentence:  
“Archaeological monitoring would be conducted during construction.”  
  
COMMENT: This may not be sufficient to mitigate effects to historic properties. The mitigation measures cannot be defined until the effects and the sites are understood.
- 1-53 **Page S-8: S.3.2.1 Lake Roosevelt Drawdown**  
COMMENT: Add another bullet addressing erosion.
- 1-54 **Page 3-80: 3.10.1 Legal Framework for Protection**  
Paragraph 1, second sentence:  
“Ecology has initiated the project review process for the Management Program with DAHP.”  
  
COMMENT: Why haven't the affected Tribes been included in this review process?
- 1-55 Paragraph 2, first sentence:  
“SEPA requires that cultural resources within a proposed project area be identified and that measures be proposed to reduce or control impacts on these resources.”  
  
COMMENT: It would be helpful if the definitions of cultural resources in the different laws (SEPA, NHPA, etc.) were explained here.
- 1-56 Paragraph 3:  
“Section 106 requires that the effects of an undertaking on historic properties within the project's Area of Potential Effects (APE) be considered...”  
  
COMMENT: The summary of section 106 of the NHPA should be clarified. Additional details may be necessary.

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- 1-57 [ **Page 3-81: 3.10.1 Legal Framework for Protection (continued)**  
Paragraph 1:  
 "Other federal laws that may apply..."  
 COMMENT: The Archaeological Resources Protection Act (ARPA) should be included.
- 1-58 [ **Page 3-81: 3.10.2 Overview of Cultural Resources in the Project Area**  
Paragraph 3, first sentence:  
 COMMENT: "[Add "Pre-contact"] archaeological resources could range in age from 11,000 BP (years before present) to AD 1800."  
Paragraph 3, third sentence:  
 "Historic materials may include structures or land alterations related to agriculture, transportation, homesteading, mining, logging, irrigation, orcharding, as well as historic cemeteries."  
 COMMENT: Historic archaeological sites should also be included.
- 1-59 [ **Table 3-23. Historic Properties at Columbia-Snake River Reservoir Sites**  
 COMMENT: The word "historic properties" in third column is misleading because most of these sites have not been evaluated for their eligibility for inclusion in the National Register of Historic Places. Additionally, it is not clear whether the built environment and Traditional Cultural Properties are included in the count. They most likely are not included but should be.
- 1-60 [ COMMENT: "275" historic properties in John Day Reservoir is incorrect if using Washington sites only.
- 1-61 [ **Page 3-83: 3.10.2.3 EuroAmerican History of Region**  
Paragraph 2, last sentence:  
 COMMENT: All treaty rights retained should be added – hunting, gathering, grazing, and water.
- 1-62 [ **Page 3-84: 3.10.2.4 Archaeological Resources**  
Paragraph 6, last sentence:  
 COMMENT: Fort Walla Walla was inundated by the backwaters of the McNary Dam (Garth, Thomas R. 1951 Archaeological Excavations at Fort Walla Walla. Region Four, National Park Service. San Francisco, California).
- 1-63 [ **Page 3-85: 3.10.3 Cultural Significance of Rivers**  
Paragraph 1, second sentence:  
 COMMENTS: "Petroglyphs and pictographs, [delete "art", add "images"] carved..."
- 1-64 [ **Page 3-86: Crab Creek Route Alternative**  
Fourth sentence:

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- 1-64 [ "Eleven other sites are presumed eligible for the NRHP."  
 COMMENT: By whom are these sites presumed eligible? Does this mean the others are presumed not eligible?
- 1-65 [ **Page 3-86: W20 Route Alternative**  
First sentence:  
 COMMENT: How old is the West Canal? Is it a historic resource?
- 1-66 [ Third sentence:  
 "Nine site are presumed eligible for the NRHP."  
 COMMENT: By whom are these sites presumed eligible? Does this mean the others are presumed not eligible?
- 1-67 [ **Page 3-86: Frenchman Hills Route Alternative**  
Fourth sentence:  
 "None of the sites are listed on the Washington Heritage Register or the NRHP, although two are presumed eligible for the NRHP."  
 COMMENT: By whom are these sites presumed eligible? Does this mean the others are presumed not eligible?
- 1-68 [ **Page 4-24: Long-term impacts**  
 COMMENT: Changes to the landscape and rivers could affects TCPs. For example, blockage of migrating fish and eels will compromise the integrity of traditional fishing areas.  
Paragraph 2:  
 COMMENT: Long-term inundation could also introduce chemical changes to artifacts and features.
- 1-69 [ Paragraph 2, thirteenth sentence:  
 "With increased boat use, more sites could be accessible and become vulnerable to vandalism."  
 COMMENT: Increased boat wakes will adversely affect archaeological sites through erosion.
- 1-70 [ **Page 4-25: Mitigation**  
Paragraph 2, second paragraph:  
 "A Programmatic Agreement is appropriate when compliance with Section 106 of the NHPA is required due to federal involvement."  
 COMMENT: Usually a PA is entered into to outline an alternative route to comply with Section 106.

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- 1-71 Paragraph 2, fourth sentence:  
“Signatories to the PA would likely include Ecology, Reclamation, and DAHP.”  
COMMENT: Rather than say DAHP, it should read “the appropriate historic preservation office(s).”
- 1-72 Paragraph 3, second sentence:  
COMMENT: These are not really mitigation measures; they should be considered advanced planning efforts – archaeological remote sensing, excavation of archaeological sites, documentation of historic structures, etc.
- 1-73 Paragraph 3, second sentence:  
COMMENT: “...and archaeological monitoring during construction [add “and for the length of the project”].”
- 1-74 Paragraph 3, third sentence:  
COMMENT: “...and DAHP and a professional archaeologist [add “and Tribes”] would be contacted for further assessment...”
- 1-75 Paragraph 4:  
COMMENT: Mitigation measures also need to 1) mitigate indirect effects through purchase and protection, 2) mitigate on-going effects of project, and 3) provide for off-site mitigation in consultation with affected cultural group(s) as appropriate.
- 1-76 Page 4-32: Table 4-2. Comparison of Impacts for Types of Storage Projects New Large Storage (>1 Million AF): second sentence:  
COMMENT: “...and land development Mitigation measures [reword “should include development of” to “should be outlined in”] a Cultural Resources Management Plan and possibly a Programmatic Agreement [add “developed in consultation with Tribes”].”
- 1-77 Page 4-43: Long-term impacts  
COMMENT: Existing systems may be historic properties and the effects to them would also need to be mitigated.
- 1-78 Page 4-47: Table 4-3. Comparison of Impacts for Types of Conservation Projects Municipal:  
COMMENT: Add “unless there are modifications to historic infrastructure” at end of sentence.
- 1-79 Regional Agricultural Efficiency Improvements, first sentence:  
COMMENT: “...which involve ground disturbing activities [add “or modifying historic structures”] have potential to impact cultural resources.”  
  
On-Farm Conservation:

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- 1-80 COMMENT: “...which involve ground disturbing activities [add “or modifying historic structures”] have the potential to impact cultural resources.”
- 1-81 Industrial:  
COMMENT: Add “unless there are modifications to historic infrastructure” at end of sentence.
- 1-82 Page 5-46: 5.4.1.9 Cultural Resources (Short-term Impacts, Long-term Impacts, Mitigation)  
COMMENT: For them to say that the existing policy has no impacts on cultural resources is incorrect; granting water rights and determining flows have impacts on cultural resources.
- RECOMMENDATIONS:**  
CTUIR wishes to ensure that the State of Washington complies with SEPA cultural resource provisions, state laws, and federal laws when applicable. More than likely the State of Washington will be required to apply for a Section 404 permit from the U.S. Army Corps of Engineers or will receive federal funding for this program which will trigger federal cultural resource laws.  
  
Specifically, the CTUIR would like to ensure:
- Compliance with Section 106 of the National Historic Preservation Act is started early on including 1) consultation; 2) a determination of Area of Potential Effect (APE); 3) determinations of eligibility; 4) and determinations of effect.
  - A Cultural Resources Management Plan and/or Historic Properties Management Plan are written to include provisions for adaptive management and revision in the future.
  - Cultural Resources Inventory Surveys of the APE are completed.
  - Tribal Cultural Resources are addressed to include customary traditional uses, protection of the First Foods, Traditional Cultural Properties (TCP), sacred sites, and sacred landscapes.
  - A Monitoring Plan is developed to continue monitoring known sites (archaeological, rock image, TCP, and built environment sites) identified in the APE and periodic inventory and re-evaluations of sites.
  - Mitigation should be looked at from a holistic view such as access to sites and usual and accustomed areas and site protection. Below is a list of other types of mitigation.
    - Law Enforcement – personnel are trained and educated to enforce cultural resource laws.
    - Public Awareness to educate the community about cultural resources laws and illegal activities.
    - Discourage use of dispersed recreation sites
- 1-83

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- 1-83 [ o Cultural Sensitivity Training should be required for State of Washington employees

#### IX. Shrub Steppe Habitat and CTUIR Rights and Interests

- 1-84 [ Though there is little information in the DPEIS regarding the impacts to the shrub-steppe habitat types, it is important to recognize and for CTUIR to comment that the habitat is endangered and many of the species dependent upon it are threatened.

- 1-85 [ Shrub-Steppe and Eastside interior grassland habitats were identified through the Northwest Power and Conservation Council's Subbasin Planning process as important focal habitats that were greatly reduced from historic levels, having a high level of threat from future development and a low level of existing protected status. The Columbia River Water Management Plan DIES considers impacts to these habitats from the perspective of a relatively narrow irrigation development corridor without due consideration of the large scale habitat conversion that could result from the expansion of irrigated agriculture associated with this development. This oversight significantly understates the magnitude of the total effect on wildlife. The DPEIS should correct that deficiency.

- 1-86 [ CTUIR exercises hunting, gathering and fishing rights in these habitat types.

#### X. Consultation and Coordination with CTUIR

It is hoped that Ecology, the Washington legislature and the Governor's office will consult regularly and fully with the CTUIR. Our rights and interests require it and our commitment to work with Washington compels it.

Page 4-55 of the DEIS reads, "To avoid the potential cumulative impacts of the Management Program, Ecology will continue to coordinate with the local, state and federal agencies that manage resources in the area." It fails to include Tribes. Tribes need to be included in the consultation process, particularly with respect to potential cumulative impacts that negatively affect Tribal water rights, as well as fish and wildlife habitats in general.

- 1-87 [ Adequate mitigation aside, CTUIR requests that Ecology consult formally, coordinate regularly and work side by side with CTUIR to implement the Program to its fullest potential.

The CTUIR has extensive legal and economic assets, treaty rights and other interests in the Columbia River. These holdings have been fully shared, if not over-appropriated with the rest of the State of Washington and the region. Salmon, sturgeon, eels – all of CTUIR's cultural and traditional resources have been pushed to the brink, and cannot be pushed any farther. They are already on the Endangered Species List – the next step is extinction.

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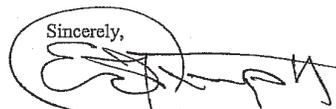
- 1-88 [ The Tribal Government wishes to work cooperatively and effectively with Washington to restore the Columbia River, recover harvestable fish runs and build the State's agricultural economy. A healthy, robust agricultural economy can co-exist with a sustainable river of salmon and sturgeon and eels. That future is not likely to happen by repeating the past. We hope the Columbia River Water Management Program will plow new ground that replicates and improves upon our experience in the Umatilla River Basin in Oregon and the Walla Walla River Basin in Oregon and Washington. Success will be measured by the amount of stream flow restored, the numbers of salmon and other fish recovered, the amount of water irrigated and the number of acres in production. The CTUIR desires to engage in all aspects of Washington's development that will arise from the Program – including development of new irrigated agriculture and other consumptive water use development.

- 1-89 [ CTUIR incorporates by this reference the formal comments from the CRITFC as part of these comments.

The Department of Natural Resources is happy to assist where it can. We appreciate the invitation to work with Washington and its residents on the Policy Advisory Group.

Thank you for the opportunity to comment on the DPEIS.

Sincerely,



Eric Quampt, Director  
Department of Natural Resources

Cc: Chairman A. Washines, YIN; Chairman R. Miles, NPTEC; Chairman R. Suppa CTWSIO; Chairman M. Marchand, Conf. Tribes of the Colville Reservation; Chairman R. Sherwood, Spokane Tribe of Indians; Olney "JP" Patt, Jr. – CRITFC.

**Comment Letter No. 1—Confederated Tribes of the Umatilla Indian Reservation**

- 1-1. Comment noted.
- 1-2. Comment noted. Many federal reserved rights within Washington and other northwest states within the Columbia River basin, including those of the CTUIR, remain unadjudicated more than a century after signing of the treaties. Nevertheless, Ecology is required by RCW 90.03.290 and RCW 90.03.380 to consider the effects of any new permits and water right changes on existing water rights, whether quantified or not.
- 1-3. The EIS acknowledges the importance of the protection of Tribal water rights. See Section 3.6.1.3. An in-depth discussion of the extent of Tribal water rights is beyond the scope of the EIS. Although reserved rights are largely unquantified, the State recognizes those rights that were implied with the creation of the federal reservations within Washington. Ecology has selected among the policy alternatives presented in the revised Section 2.2 of the Final EIS to ensure that the program is managed to provide flow benefits from conservation and acquisition projects. Ecology will manage the Trust Water Rights and any mitigated permits to achieve at least no net loss to the mainstem Columbia River. Also, any new storage projects constructed using funds from the Water Supply Development Account would provide one-third of the water for instream purposes.
- 1-4. In Section 3.4.1.1, the EIS states that there are no *quantified* tribal in- or out-of-stream flow requirements. The importance of tribal water rights is emphasized in the first paragraph of Section 3.6.1.3. The text in Appendix G has been amended to reflect this comment.
- 1-5. The text in Section 3.6.1.3 has been amended in response to this comment.
- 1-6. The text in Section 3.6.1.3 has been amended in response to this comment.
- 1-7. The reference in the EIS to unquantified tribal water rights is to the fact the tribes' rights have not been quantified through a general stream adjudication or through negotiations with the state.
- 1-8. Comment noted. Tribal rights are acknowledged throughout the EIS, including in Table 3-3.
- 1-9. Comment noted.
- 1-10. The Flood Control Rule Curves for the Columbia River system establish the minimum reservoir elevation that must be maintained to prevent flood damage in the basin. Maintaining storage for flood control often requires releases of water to drawdown reservoirs. The rule curves are managed by the Corps of Engineers through the Coordinated Columbia River System and are outside the authority of Ecology or the State of Washington.
- 1-11. It is acknowledged that the provision of instream flows to meet the needs of fish is a goal of the Management Program. This need was established by the legislation and is summarized in Section 2.1.2.4 of the Final EIS. Section 2.1.2.4 also provides information on Ecology's proposal for flow augmentation.

- 1-12. It is acknowledged that salmon and other fish stocks are extremely important to the overall ecology of the Pacific Northwest. The decline of salmonids and other species is acknowledged in Section 3.1.1. Additional information on listed species is provided in Section 3.7.1.1. The purpose of the EIS is to provide a discussion of the potential impacts of the proposed program; historical information is provided to provide context for currently proposed actions.
- 1-13. It is not the purpose of the EIS to provide an exhaustive study of the causes of the decline of salmon and other Columbia River species; however, this issue is acknowledged in the document. The purpose of the EIS is to describe the potential impacts of the future actions resulting from implementing the Management Program. Section 3.1 describes the modifications to the Columbia River system and notes the decline of salmonids. Section 3.4.1 specifically describes the alterations to the Columbia River hydrograph.
- 1-14. Your comment is noted. The EIS has been revised where appropriate (see sections 3.2.1.1 Value of Goods and Services and 3.2.1.2 Jobs and Income) to point out the potential impacts to tribal welfare from the proposed actions.
- 1-15. Comment noted. The quotation from Section S.5 of the EIS is a summary of Section 1.3.1.3, the conclusions of the National Research Council report.
- 1-16. See the response to Comment 1-14.
- 1-17. Your comment has been acknowledged. Sections 4.1.1.1 Socioeconomics–Long-Term Impacts and 4.2.1.1 Socioeconomics–Long-Term Impacts of the EIS have been revised to describe how the proposed actions may impact the CTUIR and other tribes and their fishery resources.
- 1-18. The legislation requires Ecology to develop a water supply inventory and supply and demand forecast that will be updated. The initial reports were prepared in October 2006. The inventory and demand forecast include Oregon water rights. Oregon is a member of the Columbia River Policy Advisory Group and Ecology is coordinating with Oregon on Management Program implementation.
- 1-19. Comment noted. A new Section 2.1.2.4 has been added to the Final EIS. The sections describes Ecology’s program for augmenting streamflows.
- 1-20. The purpose of Section S.5 of the EIS is to document the areas of significant uncertainty and controversy that could be associated with the Management Program. As stated in Section S.5, one of those areas is the relationship between survivability and anadromous fish. While some of these relationships are understood, there are others, such as the relationship between flow levels and the survivability of salmon that are not well understood. As you note, the extended travel time through the river system has contributed to the decline of salmon. However, as pointed out in the National Resource Council’s report, the amount of flows needed for safe migration are not known.
- 1-21. See the Master Response regarding July and August mitigation.

- 1-22. Comment noted. See the Master Response regarding July and August mitigation.
- 1-23. Comment noted. The intent of the program is to manage a portfolio of Trust Water Rights acquired through a variety of projects and water right acquisitions. These Trust Water Rights will be managed to meet instream and out-of-stream needs. See also the responses to Comments 9-9 and 22-11.
- 1-24. Comment noted.
- 1-25. Ecology has considered material from a variety of sources in preparing the water supply inventory and supply and demand forecast (Ecology, 2006). That inventory was not complete when the Draft EIS was issued. Information on the inventory has been added to the Final EIS, Section 2.1.2.4 and is available on Ecology's web site. Future reports will include additional information and use refined methodologies.
- 1-26. Thank you for the input. Ecology has reviewed the CRITFC work products and incorporated them where appropriate into the Final EIS. See the response to CRITFC's Comment 5-5.
- 1-27. This report was reviewed and relevant information was incorporated into the Final EIS. See the response to Comment 5-5.
- 1-28. As noted in response to your Comment 1-26, this document has been reviewed and incorporated in the Final EIS where appropriate. The one-third to two-thirds allocation of water to stream flows was established by the legislation and cannot be altered by Ecology without legislative amendment.
- 1-29. The one-third to two-thirds allocation was established by the legislation and cannot be modified without further legislation action. See the Master Response regarding July/August mitigation.
- 1-30. Additional information on Ecology's program for instream flows has been added to Section 2.1.2.4 in the Final EIS. Ecology's approach will be an incremental one benefiting both instream and out-of-stream uses and users. The approach cannot significantly reduce or eliminate existing problems with ESA-listed species, but it can be managed to avoid causing new problems and modestly improve conditions for ESA-listed species.
- 1-31. See the response to Comment 1-30; additional information on instream flow protection has been added to the Final EIS text. The Management Program is not a federal action and does not involve federal funding; therefore, there is no requirement to analyze the Management Program under the National Environmental Policy Act. Subsequent project-specific analyses under NEPA will be conducted for those projects with a federal nexus.
- 1-32. See the response to your Comment 1-23.
- 1-33. Comment noted. The FEIS text has been revised regarding flow targets and tribal reserved rights in Surface Water Impact Sections 4.1.1.3 and 4.1.2.3 and 5.1.2.3.
- 1-34. Discussion of the Walla Walla pump exchange has been deleted from Section 2.1.2.2.

- 1-35. See the Master Response regarding the July/August mitigation standard for VRAs.
- 1-36. Comment noted. Ecology has developed a water metering project for the Columbia River Basin as part of the Water Information System. See Section 2.1.2.6.
- 1-37. Your recommendations regarding the Policy Alternatives considered in the EIS are noted. Since the Draft EIS was released, Ecology has worked with the Columbia River Policy Advisory Group and others to finalize the Policy Alternatives. Section 2.2, Section 2.3, and Chapter 6 have been revised with changes to the Policy Alternatives. See also the responses to Comments 9-8 through 9-19 for specific responses to the Policy Alternatives. In addition, Section 2.1.2.4 has been added to more clearly articulate the Management Program's approach to providing water for instream uses.

RCW 90.90.010(2)(a) does not provide Ecology with authority to acquire and transfer water rights from one WRIA to another without legislative approval. Ecology could seek legislative approval when it appears that the program or the public interest would benefit from such transfers.

- 1-38. See the response to comment 1-37.
- 1-39. The Walla Walla Basin Project is undergoing a separate NEPA environmental review process by the Corps of Engineers. That document will describe the details of the proposed project, which is described at a conceptual level in this EIS on the Columbia River Water Management Program.
- 1-40. Ecology understands the concerns of the CTUIR regarding allocation of water from the Walla Walla Project. The one-third to two-thirds ratio was established by the enabling legislation and cannot be modified without legislative action. Ecology will work with the CTUIR to determine if it is appropriate to fund the Walla Walla Project under the Management Program or if other funding for that project should be sought.
- 1-41. A discussion of toxic chemical bioaccumulation in fish tissue in the Columbia Basin has been added to section 3.4.2 and a reference provided for the EPA study.
- 1-42. Section 4.1.1.3 summarizes the potential impacts that new large and small storage facilities could have on water temperature and dissolved gases. A detailed analysis of these impacts would be conducted on a project-level basis for the proposed storage facilities, and this has been clarified in Section 4.1.1.3 and 4.3. A discussion of the potential short-term impacts that storage facilities could have on releasing toxic contaminants into the water column and in aquatic species was added to Section 4.1.1.3 of the FEIS text.

- 1-43. Comment noted. Ecology has decided it will primarily pursue VRAs when approached by applicants. Ecology would more actively organize or match up water users when it benefits the program and is in the public interest.
- 1-44. Comment noted.
- 1-45. Ecology has elected to continue processing applications in accordance with its existing WAC 173-152. Applications would be taken “out of line” only when they meet the criteria for expedited process.
- 1-46. Ecology has selected the “Same pool and downstream” alternative. See section 6.2.8.
- 1-47. Ecology has elected to use the account funds to obtain both instream and out-of-stream benefits. See section 6.2.3. Ecology does not interpret RCW 90.90 to require all of the account funds for purposes other than new storage projects (acquisition, conservation, etc.) to be used exclusively for instream flow improvements.
- 1-48. The CSRIA VRA and \$10 per acre-foot mitigation fee would result in a payback to the Columbia River Basin Water Supply Development Account on the order of 50 years. During that time, the state will accrue benefits associated with 1) Trust Water Rights on tributary streams, 2) Trust Water Rights on the Columbia River mainstem between the time the conservation project is completed and the new use is permitted, and, 3) additional Trust Water Rights acquired and created using the revenue stream after the 50-year repayment period.
- 1-49. See the response to Comment 1-22.
- 1-50. Comment noted.
- 1-51. The Final EIS text has been changed to reflect this comment
- 1-52. The Final EIS text has been changed to reflect this comment. Mitigation will be specifically tailored to impacts, should they be determined. .
- 1-53. The Final EIS text has been modified.
- 1-54. Upon completion of the Final EIS Ecology will initiate development of a cultural resources management plan for the Columbia River Water Management Program. Through that process, Ecology will consult with affected tribes to address their specific issues and concerns. Ecology will request participation of tribes and DOAHP in an advisory committee to guide development of the cultural resources management plan.
- 1-55. “Cultural Resources” is not explicitly defined in SEPA or in any federal law. In this context, cultural resources are presumed to be those archaeological, historical, or traditional cultural properties, either recorded or unrecorded, that are of significance for cultural or historic reasons.
- 1-56. Section 3.10.1 has been expanded to provide more details on Section 106 of the National Historic Preservation Act.

- 1-57. Text in Section 3.10.1 has been changed to reflect this comment.
- 1-58. Text in Section 3.10.2 has been changed to reflect these comments.
- 1-59. Table 3-23 heading and title have been changed to reflect this comment and explanatory text has been added.
- 1-60. Table 3-23 has been changed.
- 1-61. Text in Section 3.10.2.3 has been changed to reflect this comment.
- 1-62. Text in Section 3.10.2.4 has been changed to incorporate this comment.
- 1-63. Text in Section 3.10.3 has been changed to incorporate this comment.
- 1-64. Text has been changed to clarify the issue of site eligibility.
- 1-65. Text has been changed to address this comment.
- 1-66. Text has been changed to clarify the issue of site eligibility.
- 1-67. Text has been changed to clarify the issue of site eligibility.
- 1-68. This issue is addressed in Section 4.1.1.9, first and fourth paragraphs under Long-term impacts. Text in Section 4.1.1.9 has been changed to include chemical changes.
- 1-69. Text in Section 4.1.1.9 has been changed to reflect this comment.
- 1-70. The FEIS text has been changed to clarify the paragraph.
- 1-71. Text has been changed to reflect this comment.
- 1-72. Mitigation measures seek to avoid, minimize, rectify, reduce/eliminate, or compensate for impacts. Depending on the situation, the measures listed may appropriately mitigate for various impacts.
- 1-73. The FEIS text has been changed to reflect this comment.
- 1-74. The FEIS text has been changed to reflect this comment.
- 1-75. The FEIS text has been changed to incorporate this comment.
- 1-76. The FEIS text has been changed to reflect this comment.
- 1-77. The FEIS text has been changed to reflect this comment.
- 1-78. The FEIS text has been changed to reflect this comment.
- 1-79. The FEIS text has been changed to reflect this comment.

- 1-80. The FEIS text has been changed to reflect this comment.
- 1-81. The FEIS text has been changed to reflect this comment.
- 1-82. The FEIS text has been changed to reflect this comment.
- 1-83. Where there is a federal nexus such as a Section 404 permit for the U.S. Army Corps of Engineers, Ecology will comply with Section 106 and other applicable federal requirements. Where no federal nexus exists, Ecology will comply with Executive Order 0505. The Final EIS text has been changed to reflect this comment.
- 1-84. Ecology acknowledges and understands your concern for shrub-steppe habitats and the species dependent on this habitat in the Management Program project area. As stated in Section 3.7.2, “Conservation of remaining shrub-steppe habitat and restoration of disturbed lands are now top priorities for natural resource agencies. Very little shrub-steppe occurs within protected areas, such as national parks or wilderness areas, and the majority is owned publicly for livestock grazing and managed by state and federal agencies (Knick et al. 2005).” Ecology understands the importance of shrub-steppe habitat, its declining trend, and that many of the species that depend on this habitat are listed by federal and state agencies as endangered, threatened, candidate, or species of concern. In response to your comment regarding shrub-steppe-dependant species, the Final EIS text has been modified to provide additional details regarding these specific species and a more comprehensive list of state listed species in Section 3.7.3.

In response to your comment on the level of detail regarding the impacts to the shrub-steppe habitat types, it should be noted that the Management Program is currently being evaluated on a programmatic basis and thus specific impact to shrub-steppe habitat types due to the program are unknown at this time. Please refer to the Master Response for a Programmatic EIS for a complete discussion of this issue and how it relates to fish, habitat, and wildlife impact analyses.

- 1-85. As stated in Section 4.1.1.6, the Final EIS discusses the potential conversion of habitats to agricultural uses as a result of new storage facilities, “. . .increasing the risk for further habitat loss for species dependent on shrub-steppe habitats. Listed plant species may include Spalding’s catchfly, northern wormwood, and whitebluffs bladderpod. Wildlife may include listed species such as pygmy rabbit, Columbia white-tailed deer, Washington ground squirrel, and sage grouse. As required by federal and state regulations, a site-specific evaluation of threatened and endangered species in the proposed project area would be conducted for each storage project.”

Projects undertaken as part of the Management Program would vary in the degree to which they could influence shrub-steppe conversion. Water from a large Columbia River mainstem storage facility, such as those described in Section 2.1.2.1, could be used by Reclamation to provide water for part or all of the second half of the Columbia Basin Project. While that would likely result in some conversion of shrub-steppe habitat to irrigated agriculture, most of the area affected by the second half project has already been converted to dry land agriculture. In any case, a NEPA EIS would be required for a Columbia River mainstem storage facility. The EIS would need to address the direct, indirect, and cumulative impacts

of the facility. The Odessa Subarea Special Study is a water source replacement project that addresses lands that are already in irrigated agriculture. Similarly, the Supplemental Feed Route Project is intended improve the system for delivery of water to lands that are already irrigated. The proposed Columbia-Snake River Irrigators Association (CSRIA) Voluntary Regional Agreement (VRA) would address two classes of water users or potential water users: current interruptible water right holders and new water right applicants. The supplemental water rights for interruptible water right holders would apply to existing irrigated lands. While the supplemental rights may result in a conversion of the types of agricultural crops produced, it will not significantly expand the amount of land in irrigation. New water rights associated with the VRA could result in land conversions, primarily along the Columbia and Lower Snake River mainstems. However, portions of the lands that would potentially be served by the new water rights are already in dry land agriculture. The VRA implementation plan and the associated SEPA environmental review would need to address the direct, indirect, and cumulative impacts associated with specific VRA projects and permit actions.

- 1-86. Comment noted. Traditional use of these lands is noted in Section 3.10.2.2. Information on use of shrub steppe habitat for fishing and hunting and gathering has been added to that section.
- 1-87. Comment noted. Omission of consultation with tribes in Section 4.3 was an oversight that has been corrected. Ecology will continue to consult with the CTUIR and other tribes as the Management Program is implemented. As noted in the response to Comment 1-83, Ecology will follow federal and/or state consultation requirements as appropriate.
- 1-88. Comment noted.
- 1-89. Comment noted.

November 22, 2006

Derek Sandison  
Department of Ecology CRO  
15 W. Yakima Ave., Suite 200  
Yakima, WA 98902-3452

Dear Mr. Sandison,

2-1 Yakama Nation staff submits the following comments on the Draft Programmatic Environmental Impact Statement for the Columbia River Water Management Program. These amended comments are submitted as an amendment to and replacement of the comments we submitted two days ago on November 20<sup>th</sup>, 2006. We received an extension from the SEPA responsible official by email on November 20<sup>th</sup>. We incorporate by reference the scoping comments previously submitted and the comments on the inventory and supply and demand inventory previously submitted.

2-2 We are also incorporating a draft Economic Analysis of the Columbia River Basin Water Mitigation Program. This document concludes that the proposed mitigation fee under the CSRIA VRA may be substantially less than the actual cost of providing mitigation. This concern was also raised in the National Research Council Report referenced in 1.3.1.3.

2-3 Most of the actions considered in the PEIS have a federal nexus. The Yakama Nation reserves all rights and remedies in any federal process that may occur as a result of the CRWMP.

2-4 Although titled as a Programmatic EIS, the document is a mix of programmatic and project elements. We believe this is inappropriate and that separate EIS's should be done for the project actions. At a minimum, the EIS should spell out which actions are being considered only programmatically and will require further SEPA review and which, if any, Ecology considers to have been fully analyzed in the PEIS.

2-5 The PEIS addresses many proposed actions in the form of "maybe we will do this or maybe we will do that". This lack of definition leaves the reader unable to fully comment. The programmatic EIS is insufficient to put the public on notice of the Department of Ecology's proposals and should be reissued when those actions are decided. We reserve the right to respond to future proposals as they become more clear.

2-6 The DPEIS perpetuates the often-repeated offensive language discounting the importance of the fish based economy of the northwest. Drawing the distinction between water supplies "to meet the economic and community development needs of people" and those to meet "the instream flow needs of fish" is an apparent expression of disregard for the native people of the region and the human economy that sustained them for 700 generations before the non-Indian European settlers arrived. For the Yakama people, water for fish is water for people.

2-7 We wish to clarify our view on the ratios used in the CRWMP to describe the distribution of water that would be stored in facilities that may be proposed for construction under the CRWMP. The Yakama Nation provides these comments as to the State's proposed action under state law. However, any action that the State takes can have no impact on the Nation's Treaty rights and the Yakama Nation fully reserves its rights to assert and protect its Treaty rights and other rights under federal and state law. The State can only speak for and concerning any state-funded share of stored water, and then only to the extent that storing or appropriating water under state law does not impair the rights or damage the resources and interests nor impair senior water or other Treaty rights or federal interests. Any decisions on new storage and distribution of water will be ultimately be determined by the United States Congress in an open public process involving federal stake holders including the Federally Recognized Indian Tribes whose Treaty Reserved Water Rights associated with their Treaty Fisheries are the senior water rights in the Columbia River. The Yakama Nation was not a party to the agreement on distribution of water made in Olympia referenced in the DEIS, and such agreement, however characterized by Ecology here, cannot affect, impair, reduce or quantify the Yakama Nation's Treaty fishing and water rights.

2-8 It is not accurate or appropriate to assume that the ratio for distributing stored water dictated by the new state law would be followed by the United States. On the contrary, given that the state has only elected to address impacts during July and August (April to August for the Snake) with the funding it would provide for water storage and some other measures in the bill, it stands to reason that the United States would see the legal obligation to protect and enhance flows during all periods of the year when flows are not adequate to meet the needs of all life history stages of all species of fish and other aquatic life in the river.

2-9 For a hypothetical reservoir constructed under the Columbia River Bill, with a cost of one billion dollars and a state cost share of one hundred million dollars and one million acre feet of capacity, the analysis should assume that 66,666 acre feet of stored water would go for out of stream uses, 33,333 for summer flows in the Columbia River, and 900,000 acre feet would be determined by act of Congress.

2-10 It is also reasonable to assume that the United States Congress may have different priorities than the Washington State Legislature. Congress may find it less of a priority to subsidize water for new real estate developments and new agricultural enterprises than to shore up unmet demands in existing federal irrigation projects and fisheries restoration projects such as in the Yakima Basin. The Yakama Nation was not a party to the prioritization of new uses from the Columbia River ahead of existing uses elsewhere in the basin.

2-11 The PEIS greatly understates the year-round complexity of managing the Columbia River. The PEIS fails to analyze its proposal in the context of the system of federal projects and federal and Treaty rights on the Columbia. We find no regard shown in the PEIS for the tradeoffs that must occur for water to be shifted from instream to out of stream consumptive uses and from season to season. It is as if the PEIS pretends that no months exist besides July and August. This limitation of the analysis to July and August is arbitrary and capricious and not in accordance with Ecology's duties under SEPA.

2-11 This error by Ecology may be the result of an overly simplistic reading of the National Research Council Report (see 1.3.1.3).

2-12 The PEIS fails to recognize or address the cascading effects (cumulative impacts) of upstream actions on downstream facilities. The PEIS fails to address, for example, the increased difficulty that might be experienced by downstream dam operators and water users by reducing the annual water budget and altering the seasonal flow patterns downstream of Grand Coulee. These proposals cannot be addressed in isolation on the Columbia River, where there is a large nexus of federal, state, interstate, international, and private activities along with natural variations. The NRC report advises a great deal more consideration of cumulative impacts, and the complex inter-jurisdictional nature of Columbia River management than appears in the CRWMP PEIS.

2-13 2.2.2 This section does not provide adequate definition of how conservation savings will be calculated to allow adequate analysis of potential impacts associated with conservation and possible reuse of water.

2-14 2.2.8 This is deficient in that it fails to consider impacts on other months than July and August. SEPA requires that the the State consider all environmental impacts, not just those in July and August.

2-15 2.2.4 The act does not prohibit acquisition and transfer of water from one WRIA to another, as a matter of state law, but simply requires Ecology to obtain specific legislative approval for such where Columbia River Account money is being spent. Any expenditures from the account require appropriation of funds, which constitutes specific legislative authority. Thus this section overstates the limitation on this important and economical tool for supplying new desires for water. The section should be corrected to reflect the actual statutory language. The EIS should properly evaluate acquisition and transfer as a tool that has proven effective, where it has been properly utilized, as a way to meet needs at lower cost and with less environmental damage than constructing new infrastructure.

2-16 2.5.1 This section appears to be mislabeled. The text describes large new proposed diversions from the Lake Roosevelt reach of the Columbia. The proposed diversions would result in a drawdown, of course, but the action whose impacts should be analyzed would seem to be the diversions. This appears to be impermissible piecemealing the SEPA analysis. See further discussion below.

2-17 2.5.2 This section fails to make the case for the need for the Supplemental Feed Route. Has there ever been an instance where the SCBID failed to receive water because of the purported need. If so, why is it not documented?. If this is a proposal to free up canal capacity to supply additional water to new lands, the PEIS must not fail to disclose this.

2-18 As CRWMP has evolved from the Columbia River Initiative, non-construction alternatives appear to have been dismissed in favor of more expensive, more damaging construction project. The CRWMP PEIS has not adequately studied the non-construction

2-18 alternatives. An earlier proposal to solve this purported problem was acquiring flood easements downstream of Potholes to allow additional winter storage, an option requiring no construction, undoubtedly less cost, and less environmental damage. This is an example of CRWMP and the PEIS failing to consider reasonable alternatives.

2-19 2.5.3.1 How will CSRIA or its members document compliance with law? How will Ecology verify? How will Ecology document compliance? These questions should be discussed here.

2-20 3.1 Describes affected area as east of the Columbia. The inventory of potential conservation projects published by Ecology includes the tributary basins west of the Columbia. These areas stand to be affected and should be included in the affected environment.

2-21 3.1.1 In addition to diet and culture, salmon were a vital part of the economy of the native people of the Columbia basin.

2-22 3.4.1.1 (p. 3-18) and Table 3-3. While we realize that the main aim of the report is to discuss the Columbia Mainstem, we cannot agree that, in the Columbia River Basin system, there are "no other quantified international, interstate, or tribal in- or out-of stream flow requirements." The state court adjudication in *Ecology v. Acquavella* in Yakima County Superior Court of surface water rights in the Yakima River Basin has recognized a Treaty water right for fish for the Yakama Nation. The Court has recognized that the Yakama Nation has a Treaty water right to maintain fish and other aquatic life found in the Basin. The right is not limited in geographic scope to the Yakama Reservation but applies to all tributaries in the Yakima Basin which provide fish and other aquatic life at identified usual and accustomed fishing places off reservation. The right has a priority date of Time Immemorial. There is also a water right for fish and other aquatic life on reservation.

2-23 4.1.3.1 The discussion of VRA short and long term impacts failed to discuss or disclose that a negative impact of a VRA is that the VRA would increase consumptive use of water in the Columbia basin both regionally and locally and impair fish passage and fish life (see National Science Academy).

2-24 2.2.7 Out of line processing of applications for new, consumptive, out-of-stream water rights raises serious legal and constitutional issues and should be discussed here.

2-25 4.3 Cumulative Impacts of Management Plan. The plan fails to study or consider alternatives concerning the cumulative impacts on the anadromous fish runs of the Columbia Basin.

2-26 Chapter 5.0 intro p. 5-1. The EIS needs to disclose for which actions the State considers this document to provide final environmental review, and which actions will be analyzed further in project level EIS's.

2-27 If a VRA requires new diversions above the SEPA threshold, will Ecology perform separate SEPA analysis, or does it assert that this EIS constitutes project level review of VRA based diversions? This is insufficient to comply with SEPA absent a new, separate EIS for each project..

2-28 5.1 This section mislabels the action. The "action" is not drawing down Lake Roosevelt. The proposed "action" is the issuance of large new water rights out of the Columbia River and the new diversions. The point of diversion is Lake Roosevelt. The drawdown is but one consequence of the proposed action. It appears the State is doing an EIS on the wrong action.

2-29 5.1.1.3 Repeatedly the PEIS characterizes the impact on streamflow of the "Drawdown" as an increase in flow. It is physically impossible that diverting more water and using it consumptively could result in a net increase in flow downstream of the point of diversion. Given the most basic truth of hydrology, that inflow equals outflow plus change in storage, and that storage remains constant when averaged over time, an increase in outflow and consumptive use must, over time, decrease outflow from the reservoir to downstream reaches. This net loss in water budget would have to be made up at the expense of streamflow at some time. The PEIS must analyze the effects of this deficit in the water budget on other components of the flow regime, including the likelihood of meeting BIOP and WAC set instream flow. The PEIS compounds this error by stating that no mitigation is required.

2-30 5.1.1.5 Given that the actual proposed action is issuing new water rights, not drawing down the reservoir, the analysis of effects on water rights is inadequate and misses the point. The USBR's claimed storage rights do not allow it to operate the reservoir any way it chooses if it is affecting downstream interests or Treaty rights of the Yakama Nation. It may not simply choose to divert more water, as this section suggests. Mitigation (or denial of new water rights) would be required for any impacts of the proposed action, not merely the effects on users of Lake Roosevelt.

2-31 5.1.1.6 (p. 5-5). SEPA requires Ecology to study, develop and describe appropriate alternatives. The DEIS fails to study effects on anadromous fish in the Columbia Basin of the proposed drawdown. Instead, it examines only local impacts of resident fish. On those resident species, it concludes that impacts will be "small" without citation to any evidence. This despite the DEIS' own statement that "there is a "[m]ajor area of uncertainty in the Columbia River Basin ...the relationship between environmental variables and the survivability of anadromous fish." section S.5 (p. S-10). The DEIS goes on to state that "... [i]t is known that lower survival rates and changes in salmon migratory behavior are expected when stream flows become critically low or when water temperatures become excessively high." *Id.* Ecology ignores the National Academy of Sciences report which advised against any new withdrawals or diversions that might affect, as this will, the Columbia River water available to aide fish migration. (Cite to National Academy Report ). We do not concede there is any "uncertainty" in terms of the

2-31 impact on fish life of Ecology's proposed action and urged that it be fully studied and disclosed here.

2-32 5.1.1.6 Mitigation The net effect of the proposed action would be a decrease, not augmentation of streamflow as is stated. The PEIS correctly points out that in drought years BIOP target flows are not met. What is not disclosed is that the effect of CRWMP on drought years would be particularly severe, given the intention to divert additional water for out of stream uses in those years. The PEIS must analyze the impacts of further depleting the water budget in dry years, including decreasing the likelihood that flow targets will be met in months other than July and August. Impacts on the hydro system should also be analyzed. The PEIS should consider other reasonable alternatives like deeper drafting of Lake Roosevelt in drought years to provide adequate flows downstream.

2-33 Page 5-9 What is meant by the phrase "at least on an administrative basis"? The Olsen 2005 reference should either be eliminated or any of the large number of contrary opinions should be offered in balance.

2-34 5.1.2.3 The "total discharge from the lake (Roosevelt) to the Columbia River" is much greater than stated and would, on an annual basis be diminished by the proposed action.

2-35 5.1.2.5 What about the application for the water right for instream flow? Has that been neglected? What guarantee is there that any of the promised "mitigation" would ever make it to the river? Ecology can only approve the application for new out of stream use if water is available from the Columbia River, not just Lake Roosevelt as stated. Again, this action would cause a negative change in the annual water budget. This discussion is inadequate. The depletion may cause increased difficulty in meeting BIOP flows, contrary to the PEIS, particularly in dry years. Analysis is required. The mitigation section is not EIS worthy and violates SEPA, as it leaves the question of mitigation until later.

5.1.2.6 We note the acknowledgement that the CRWMP proposes only biologically inconsequential improvements (and then only in July and August) as mitigation for large new water diversions.

2-36 **S.3.2.1 (For example)** Section states that USBR has determined that drawdowns of Lake Roosevelt "are within normal operations of the reservoir and do not require any additional analysis under ...NEPA" (See Chapter 5.0 at p. 5-1). It is not the drawdown alone (i.e. change in water level regime in Lake Roosevelt) that must be subjected to disclosure and analysis under both SEPA and NEPA. It is the proposed new diversions. These proposed diversions are not within the normal operations of the reservoir or the river and must be subjected to scrutiny under SEPA, NEPA, and other required reviews including analysis under the Endangered Species Act of the effects of the proposed new diversions on listed species, Treaty-protected fish, and target flows in all months of the year, including dry years.

2-37 USBR draws down Lake Roosevelt annually to a level much lower than proposed in the action without conducting an EIS. An EIS is, however, required for diversions of the size proposed. Does this section of the Draft Programmatic EIS also purport to be a project EIS for the diversion proposed? This level of analysis cannot be considered to be an adequate review for the purpose of issuing new water rights out of the Columbia River.

2-38 The metric used in the PEIS to describe the proposed mitigation (percent increase in flow caused by the one-third left in stream) is not valid. The flaw becomes apparent when one considers that even larger depletions in stream flow by increased diversions, themselves causing further damage, would "increase the effectiveness" of mitigation by increasing the "augmentation" as a percent of the of the further diminished flow. New diversions would reduce the volume of water available for instream flow. This adverse effect would be greatest in dry years when the "mitigation" would be "most effective" according to the analysis in the PEIS.

2-39 5.2 If the proposed new feed route would result in greater diversions from the Columbia River, this must be disclosed.

2-40 Page 5-8 See meeting notes from CRPAG meeting of 10-11-2006 (federal panel). Any action that makes it less likely that flow targets and other flows needed for fish will be met in any year would be problematic (see Ecology Web Page).

2-41 **5.3 Columbia-Snake River Irrigators Association VRA.**  
This fails to consider cumulative impacts of proposed VRA on the anadromous fish runs of the Columbia River.

2-42 The DPEIS fails to study the impacts on storage and on the fish runs of the Pacific Northwest that result from the "presumption ... that protecting instream flows during July and August in the Columbia River... is adequate mitigation for new water rights under a VRA." p. 5-41. This fails to disclose the Ecology's own statement on its web page at

[www.ecy.wa.gov/programs/wr/cwp/crwmp\\_info.html#draftvra](http://www.ecy.wa.gov/programs/wr/cwp/crwmp_info.html#draftvra)

under which it describes a "Voluntary Regional Agreement (VRA) Example" that "State expenditures could only meet the July/August mitigation standard (150 ac-ft) through the use of storage."

2-43 6.2.7 (p. 6-13) Has Ecology considered all reasonable and prudent alternatives? Ecology needs to consider, among its options for, "no negative impact to stream flow during July and August" no impact on total acre-feet available in entire Columbia River system and no impact on any pool and any storage anywhere in the Basin, not merely no impact in specific reaches. There can be no granting of a new state right which would be a new consumptive use right unless the State can show that, as mitigation, another actual water right which has been used with identical consumptive use is retired in exchange.

2-44 4-38 This section contains a pernicious spin on the Burke case. The EIS should analyze Impact, not impairment. Compare with 90.03.380.

#### Appendix G. - Water Rights Summary.

2-45 There is much discussion in the report of interpretations of law by the report writers. We do not agree with a number of these assertions but comment briefly on a few of them. However, these comments do not address all of these issues, do not constitute a legal position of the Yakama Nation, and we specifically reserve our right to comment and dispute these points as appropriate later.

2-46 **State-based water rights.** Fish and Wildlife rights under state law are not limited to "fish and wildlife maintenance".

2-47 **Exempt Ground Water Rights.** The definition offered is based on an opinion by the Attorney General's office and is contrary to long-standing Ecology interpretation, is disagreed with by many entities, and has not been tested in court. We specifically dispute the Attorney General's opinion.

2-48 **Municipal Water Rights.** This section claims that the legislation "clarified the definition of municipal water supply." We believe that the legislation cited attempted to change, rather than clarified, existing state law in violation of applicable constitutional and other applicable law.

2-49 **Federal Tribal Reserved Water Rights.** This section does not fully nor completely describe the rights of the tribes in the Columbia Basin. The Yakima Nation holds Treaty water rights for fish and other aquatic life with a priority date of time immemorial. The Nation also has a Treaty water right for, *inter alia*, irrigation of all practicably irrigable acreage, both on and off reservation, owned by it or its tribal members with a priority date of 1855 as well as water for the Yakama Nation for all other purposes to the fullest extent reserved by Treaty.

Thank you for the opportunity to comment.

Sincerely,

Philip Rigdon, Deputy Director  
Yakama Nation Department of Natural Resources

**Comment Letter No. 2 – Yakama Nation Department of Natural Resources**

- 2-1. Comment noted.
- 2-2. This document was received and is discussed in Sections 3.2.2 and 3.2.2.5.
- 2-3. Comment noted.
- 2-4. See the Master Response regarding a Programmatic EIS. Information regarding anticipated project-level review for subsequent actions has been added to Section S.4 of the Final EIS.
- 2-5. See the Master Response regarding a Programmatic EIS. Additional information has been added to Section S.4 regarding future project specific review.
- 2-6. The language referred to is taken directly from the Columbia River Management Act (Chapter 90.90 RCW). The language is not intended to disregard the views of native people. The significance of the relationship between fish, people and water to native people is acknowledged in Section 3.10.3 of the EIS.
- 2-7. Ecology acknowledges that state action cannot impact treaty rights of the Yakama Nation or any other native tribe.
- 2-8. Instream flow contributions from new storage facilities made possible with funding from the Columbia River Basin Water Supply Development Account are not limited to the July/August time frame. RCW 90.80.020 states that: in regard to the one-third of active storage to be available to augment instream flows: “timing of the releases of this water shall be determined by the Department of Ecology, in cooperation with the Department of Fish and Wildlife and fisheries comanagers [sic], to maximize benefits to salmon and steelhead populations.” Releases can occur at any time of the year. The establishment of the mitigation standard of no negative impact to the Columbia River during July and August applies only to Voluntary Regional Agreements per RCW 90.90.030.
- 2-9. While it is acknowledged that Congress, in its authorization of a federal project, can apply whatever conditions it deems appropriate, the state of Washington has discretion in determining its conditions for providing matching state contributions to the project. The one-third allocation for augmentation of instream flows applies to: “water supplies secured for development of new storage facilities made possible with funding from the Columbia River Basin Water Supply Development Account . . .” (emphasis added)(RCW 90.90.020). That portion of the RCW is interpreted as stipulating that if money from the account is necessary to “make a project possible,” the one-third allocation for instream flow augmentation would apply. In the current Columbia River Mainstem Off-Channel Storage Study appraisal level evaluation being undertaken by Reclamation with financial contributions from the Account, the assumptions for reservoir water demand include allocation of one-third of all active storage for instream flow augmentation.
- 2-10. See responses 2-8 and 2-9.
- 2-11. It is acknowledged that the year round management of the Columbia River is very complex,

and that tradeoffs will occur. As noted in Comment 2-8, the July/August mitigation only applies to Voluntary Regional Agreements. See the Master Response regarding July/August mitigation.

- 2-12. Cumulative impacts have been considered at a broad level for this evaluation, in accordance with information currently known about potential projects. The cumulative impacts discussion in Section 4.3 has been modified to acknowledge that potential downstream benefits could accrue at a cost to upstream users. Additional analysis of potential tradeoffs, including potential cumulative impacts, will be included in all project-level evaluations.
- 2-13. Additional discussion of calculating conservation savings is provided in Chapter 6 of the Final EIS.
- 2-14. See the response to your Comment 2-8 regarding the applicability of the July/August mitigation requirement to Voluntary Regional Agreements. See also the Master Response regarding July/August mitigation.
- 2-15. See the revised Section 2.2.4 and 6.1.5 for an expanded discussion of this policy alternative.
- 2-16. The section title is not intended to limit the discussion to drawdown of the lake. The project is referred to as the Lake Roosevelt Drawdown by Ecology and Reclamation and that is how the project is identified in the EIS. Section 2.5.1 of the EIS describes both the drawdown of Lake Roosevelt and the diversions. The impacts of both are described in Chapter 5 of the EIS.
- 2-17. The Supplemental Feed Route will not expand the area of irrigated agriculture. As stated in the EIS, the Supplemental Feed Route would improve the reliability of the delivery of water to Potholes Reservoir. While there are no past instances where Reclamation has been unable to provide deliveries to the South Columbia Basin Irrigation District, it has proven to be a difficult task for Reclamation to meet their responsibilities.

As stated in Section 2.6.2, the Supplemental Feed Route would also free up capacity in the East Low Canal to deliver replacement water to the portion of the Odessa Subarea within the boundaries of the Columbia Basin Project. The purpose of the Odessa Subarea Special Study is to identify measures to replace ground water with surface water on existing agricultural lands, not to expand the acreage of irrigated lands. Increased reliability of irrigation water may result in changes to crop types. Additional evaluation of the purpose of the Supplemental Feed Route and its potential impacts will be provided in Reclamation's NEPA Environmental Assessment of the project. It should be noted that development of the Supplemental Feed Route is a stand-alone project. Several of the initial alternatives being evaluated in the Odessa Subarea Special Study would be facilitated by the feed route project. However, the Supplemental Feed Route does not create a commitment on the part of Reclamation or Ecology to implement future projects associated with Odessa Subarea Special Study.

- 2-18. Non-construction and conservation program components are addressed in the EIS. The potential acquisition of an evacuation route and flood easements in Crab Creek downstream of Potholes Reservoir, as well as options for re-operation of Potholes Reservoir, are being

evaluated in the Odessa Subarea Special Study. The feasibility level and analysis and EIS associated with that study are expected to commence in 2008 and be completed in 2010.

- 2-19. Ecology will account for Trust Water Rights and permits that rely on Trust Water Rights through a combination of measuring, reporting, field verification and aerial photography assessment. Permits issued to mainstem water users that rely on water from the Trust Program for mitigation will be required to measure and report in accordance with RCW 90.03.360 and WAC 173-173, plus any specific requirements arising out of the final VRA. Before the draft CSRIA VRA can be signed, Ecology must provide a public comment period. Ecology has determined that it will negotiate with CSRIA to address comments received during the 60-day consultation prior to the initiating the public comment period.
- 2-20. Section 3.1 states that the focus of the affected environment is the Columbia River basin in eastern Washington because it is likely that most projects proposed under the Management Program will be located in that area. However, the entire Columbia Basin in the state of Washington is described in Chapter 3 as the affected environment.
- 2-21. Comment noted. The Final EIS text has been revised to include economy of the native people.
- 2-22. Comment noted. The reference to "no other quantified" tribal instream flow requirements in Section 3.4.1.1 is a reference to numerically quantified requirements. The state court adjudication in Ecology v. Acquavella confirmed a narrative rather than numerical treaty water right for fish.
- 2-23. Comment noted. A discussion of increased consumptive use has been added to Section 4.1.3.1.
- 2-24. Ecology has elected to continue processing applications in accordance with its existing WAC 173-152. Applications would be taken "out of line" only when they meet the criteria for expedited process.
- 2-25. The FEIS text has been revised to reflect potential cumulative impacts to fisheries resulting from alterations to hydrology that could accompany specific components of the management plan. Additional discussion of this issue will occur associated with project-level evaluations, once specific projects have been identified.
- 2-26. Additional information has been added to Section S.4 regarding future environmental review.
- 2-27. If the CSRIA VRA is signed, Ecology intends to prepare a periodic implementation plan jointly with CSRIA that would specifically identify water supply projects and match them to the candidate applications to receive mitigation benefits associated with the VRA. Ecology would provide public notice and SEPA review, including a threshold determination for the series of related actions described within the implementation plan.
- 2-28. See the response to Comment 2-16.
- 2-29. The paragraph in Section 5.1.1.3 describing long-term impacts to water quantity has been revised to provide more explanation of the potential impacts to streamflow. Additional

information on the potential impact on streamflow will be provided in the Supplemental EIS that Ecology will be preparing on the Lake Roosevelt drawdown.

- 2-30. The EIS does not dispute that the Yakama Nation has a senior water right for fish and other aquatic life (see Section 3.6.1.3 and Appendix G). Reclamation's operation of the Lake Roosevelt reservoir may not adversely impact the rights of the Yakama Nation. Section 5.1.1 discusses impacts at Lake Roosevelt, and additional detailed analysis will be conducted as part of the Supplemental EIS prepared by Ecology for the Lake Roosevelt drawdown. For a discussion of impacts downstream in the receiving area, see Section 5.1.2.
- 2-31. Comment noted. See the response to Comment 1-15. Ecology incorporated the National Research Council report as a part of the EIS by reference (Section 1.7).
- 2-32. Ecology has determined that additional review of the Lake Roosevelt drawdowns is required and will prepare a Supplemental EIS. Refer to the Master Response regarding July/August mitigation.
- 2-33. This statement has been modified in the Final EIS to remove "on an administrative basis." The Olsen reference was included to indicate that not all reviewers agree with the National Research Council conclusion and has been retained.
- 2-34. The discharge from Lake Roosevelt to the Columbia River that is presented in Section 5.1.2.3 is the total **additional** volume of water to be discharged as part of the Lake Roosevelt drawdown project. This is the discharge associated with the additional drawdown of one (non-drought years) to one and a half (drought years) feet. The Final EIS text has been changed for clarification.
- 2-35. The water right for instream flow will be established when the water is transferred to the state Trust Water Rights Program and identified as a trust water right for purposes of instream flow. The priority date of the Trust Water Right will be the same as the underlying right, in this case 1938, the date of Reclamation's withdrawal of water for the Columbia Basin Project. The out-of-stream uses resulting from additional drawdown of Lake Roosevelt will be beneficial uses secondary to Reclamation's reservoir rights in Lake Roosevelt. Mitigation of new water rights must be determined on a case-by-case basis when the application is processed by Ecology. The text has been modified in response to this comment.
- 2-36. It is acknowledged that the diversion of water associated with the Lake Roosevelt Drawdown is subject to SEPA review. Refer to the response to comment 2-16 for a discussion about the naming convention in the EIS. The impacts associated with the diversions are discussed programmatically in this EIS, and will be discussed in more detail in the Supplemental EIS that will be prepared by Ecology regarding the Lake Roosevelt Drawdown and associated diversions.

- 2-37. This EIS is a programmatic EIS, the first phase in SEPA under phased environmental review. Additional evaluation will be conducted on the Lake Roosevelt Drawdown as part of a Supplemental EIS being prepared by Ecology. In addition, Reclamation will conduct NEPA review on any federal action for use of water.
- 2-38. Diversions and releases from Lake Roosevelt as part of the drawdown project would occur after re-filling of Lake Roosevelt is completed on July 1st. The water diverted and released would from the 6.4 million acre-feet of water stored by Reclamation under its 1938 storage rights. The drawdown project would have the effect of augmenting streamflow downstream of Grand Coulee Dam during July and August. A portion of that water (27,500 acre-feet every year and an additional 17,000 acre-feet during drought years) would be held in trust for instream flow the entire length of the river downstream of Grand Coulee Dam.
- 2-39. The proposed Supplemental Feed Route will not increase diversions from the Columbia River, but will provide an alternative route for channeling existing diversions to Potholes Reservoir. As stated in Section 1.1, the impacts of the Supplemental Feed Route will be further evaluated by Reclamation in a NEPA EA.
- 2-40. See the Master Response regarding the July/August mitigation issue. Additional information has been added to Section 3.1 regarding federal management of the Columbia River system.
- 2-41. The general impacts of VRAs on fish are described in Section 4.1.3.1. These same impacts would apply to the CSRIA VRA. The cumulative impacts sections (4.3 and 5.5) have been expanded in the Final EIS.
- 2-42. See the Master Response regarding the July/August mitigation issue.
- 2-43. Comment noted. Ecology believes that all reasonable alternatives to the Management Program developed under the provisions of Chapter 90.90 RCW have been considered. The Management Program will be implemented in a manner that is consistent with priorities and objectives of Chapter 90.90 RCW.
- 2-44. Comment noted. The EIS analyzes impact and impairment. The latter constitutes a negative impact in the context of water rights.
- 2-45. Comment noted.
- 2-46. Comment noted. The reference to fish and wildlife maintenance in Appendix D is part of a list of beneficial uses of water and was not intended to define the extent of water rights for fish and wildlife under state law.
- 2-47. Comment noted.
- 2-48. Comment noted. The text has been amended to include a reference to the recently-filed lawsuit challenging the Municipal Water Law.
- 2-49. Comment noted. The text is intended to be a brief overview of federal tribal reserved water rights and is not specific to the Yakama Nation or any other tribe.

**Confederated Tribes of the Colville Reservation  
Comments on Draft Programmatic Environmental Impact Statement  
For the Columbia River Water Management Program**

Prepared by  
**Environmental Trust Department,  
Fish and Wildlife Department, and  
Office of the Reservation Attorney**

Submitted to  
**State of Washington  
Department of Ecology**

November 22, 2006

**A. Introduction**

The Colville Tribes welcomes this opportunity to participate with the State of Washington in this process towards the common goals of providing a healthy environment and economy for future generations, while at the same time protecting the Tribes' reserved rights to the use of water in the Columbia basin.

The DEIS is based on a conceptual plan that contemplates considerable future refinement in all of its elements. The plan contemplates, by our count, at least 23 separate processes and documents, few of which now exist, and many of which have potential impacts on the Colville Tribes. Accordingly, the Tribes reserves the right to comment on these plan components as they are refined in the future. In commenting at this stage on such a broad and complex plan the Tribes' will of necessity focus on major areas of concern. Indeed, the programmatic DEIS describes more of a process than a plan, the ramifications of which may not be known for many years. Some of our comments therefore address the process by which the Tribes' involvement in the CRWMP proceeds.

The comments that follow are divided into General Legal and Policy Matters, Water and other Natural Resources Matters, and Cultural Resources. Each section provides general comments and numerous page-specific comments.

**B. General Legal and Policy Matters**

As the State and Ecology are aware, the Colville Reservation consists of roughly 1.4 million acres bounded by the Columbia and Okanogan Rivers. The Reservation boundaries are located in the center of these boundary rivers. Accordingly, much of Lake Roosevelt is within the Colville Reservation. In addition, the Colville Tribes holds significant fishing, hunting, gathering and water rights within the former North Half of the

Reservation, and area of roughly 1.5 million acres between the current northern boundary of the Reservation and the Canadian border, and between the Columbia and Okanogan Rivers. The Colville Tribes holds significant instream and out of stream water rights (federal reserved rights) in all waters of the current Reservation and former North Half. The priority date of these rights is not later than 1872, when the Reservation was established, and in the case of instream rights to preserve or restore aboriginal fisheries, the priority date is time immemorial. The Colville Tribes actively regulates water use within the Reservation by both members and non-members of the Tribes and has developed an increasingly cooperative and constructive relationship with Ecology relative to coordination of regulation of waters under our respective jurisdictions that are hydrologically or hydraulically connected.

A principal, but not exclusive, basis of the Tribes' interest in the CRWMP is our Agreement In Principle with the State of Washington relative to the Lake Roosevelt Component of the CRWMP. The AIP recognizes the Tribes' fundamental and critical interests in the CRWMP and in Lake Roosevelt, as set forth above. The AIP is a framework document that contemplates the negotiation and execution of a comprehensive Memorandum of Agreement that will compensate the Tribes for, or otherwise mitigate for, impacts to the Tribes' interests caused by the new Lake Roosevelt annual drawdown of 82,500 acre feet. The AIP also contemplates other benefits and inducements for the Tribes' consent to the new drawdown. Until the MOA is executed, the Tribes' consent for the new drawdown is merely conditional. We are currently working on impact studies to quantify the impacts of the new drawdown, and performing other work, in an attempt to conclude the MOA by the end of summer 2007. Apart from the implementation of the AIP, the Colville Tribes has other critical interests in the Columbia basin that will be affected by implementation of the CRWMP. Our comments on the DEIS are informed both by our interests as recognized in the AIP and by the other aspects of the CRWMP that affect the Tribes. We look forward to a continued constructive relationship with the State of Washington with respect to implementation of both the AIP and the CRWMP. At several points in the comments that follow, we note the need for a meeting with Ecology to address certain questions, and we urge that that happen as soon as possible.

Specific comments follow:

**Page S-8.** Any additional mitigation measures that may be necessary with respect to impacts of the new Lake Roosevelt are not simply a matter of SEPA compliance as this section implies. The AIP with the Colville Tribes provides that certain impacts will be mitigated, subject to agreement as to quantification, irrespective of SEPA.

**Page 1-5, 1.3.1.2.** The spelling of "Principle" in the caption must be corrected.

3-5 **Page 2-24.** At some point in the discussion it should be noted that availability of the new Lake Roosevelt drawdown is contingent on completion of a comprehensive MOA with the Colville Tribes pursuant to the AIP.

3-6 **Page 3-7.** In the general discussion of Lake Roosevelt it should be noted that substantial portions of the reservoir lie within the Colville Reservation and are subject to tribal fishing and water rights, as well as regulatory authority. In addition, the Colville Tribes was not properly compensated for the taking and use of its lands for Lake Roosevelt and Grand Coulee Dam at the time the project was built. Several decades of claims litigation finally resulted, in 1994, in an historic Congressionally approved settlement under which the Colville Tribes now receives annual payments from BPA, under a formula based in part on BPA revenues. As a result, the Colville Tribes now has a crucial interest in protecting Lake levels for a variety of cultural, fisheries and economic reasons.

3-7 **Page 3-18, Table 3-3.** This Table does not accurately reflect the nature of the Colville Tribes' interest in the Columbia River. We are the only Tribe with a Reservation on the mainstem Columbia, with waters of the Columbia and Lake Roosevelt actually, and substantially, within Reservation boundaries. The Colville Tribes' right to fish in these waters is not limited to usual and accustomed places, but is a right that applies broadly throughout these waters. Similarly, there is no limitation on the Tribes' fishing rights in these waters within the former North Half of the Reservation. This effectively includes all waters of the mainstem Columbia and Okanogan Rivers within the United States above the Columbia-Okanogan confluence.

3-8 **Page 3-43, Table 3-14.** The information about the Colville Tribes must be revised. There are roughly 9500 tribal members as of the end of 2006. The reservation acreage is correct at 1.4 million acres, but there should be an additional reference to the 1.5 million acre North Half, where the Tribes holds the fishing and water rights (and other rights) referred to herein. In addition to the 1872 Executive Order that established the Reservation, the relevant Agreement with the United States under which the Tribes reserved rights in the North Half was executed in 1891. It was ratified by Congress in 1906 through 1910.

#### **Water Rights Summary (unnumbered pages at conclusion of DESI).**

3-9 **Trust Water Rights.** This discussion should expressly acknowledge that the one-third of new water supplies for the mainstem Columbia that are allocated to fish flows under the CRWMP must be placed in that portion of the Trust Water Rights Program that provides for the flows are "protected water rights," in order to ensure that they are truly protected as needed for fisheries purposes.

3-10 **Federal Tribal Reserved Water Rights.** While we generally concur in the brief discussion in this section, we note that federal courts have expressly concluded that under the 1872 Executive Order that established the Colville Reservation, the Reservation has

3-10 at least two primary purposes with respect to the implied reservation of water rights under the Winters Doctrine – agriculture and fishing (including preservation of access to traditional fisheries). The priority date of tribal reserved rights for out of stream uses at the Colville Reservation is 1872, and the priority date for the many traditional, aboriginal fisheries that still exist at the Colville Reservation or former North Half is time immemorial. *Confederated Tribes of the Colville Reservation v. Walton*, 647 F.2d 42 (9<sup>th</sup> Cir. 1981).

#### **C. Specific Comments re Water Resources, Hydro-Power, Fisheries and Wildlife**

**Page S-2,** addition of the following to the list of policy alternatives and guidelines for implementing the Management Program, is respectfully requested:

- *inclusion of the plans for development of reserved and aboriginal rights to use the waters of the Columbia River and its tributaries by the Confederated Tribes of the Colville Reservation (and of other Tribes) in VRA's and/or other agreements involving the State of Washington and the United States.*

This subject needs full development in the discussion of Voluntary Regional Agreements throughout the programmatic EIS and as a subject separate from the VRA's involving the State of Washington and the United States. Discussion of the inclusion of plans for development by the Confederated Tribes concurrent with the "early actions" is needed.

**Page S-3.** Remove the third bullet immediately above section S.2.2.2 resulting in the following new paragraph:

*The non-drought year diversion would result in approximately a one-foot drawdown of the reservoir and the drought year diversion would draw the lake down another 0.5 feet. Reclamation's proposals and water rights applications are predicated on agreement being reached with the Confederated Tribes of the Colville Reservation regarding the diversion."*

It is believed that the narrative is intended to contribute not only to the drought year discussion but also to the full subject of the Lake Roosevelt drawdown in drought and non-drought years.

**Page S-8, S.3.2.1.** Add the following below the bullet "Reduced potential for hydropower generation at downstream facilities:"

- *impacts on payments by BPA to the Colville Confederated Tribes pursuant to 1994 Settlement Agreement between the Confederated Tribes of the Colville Reservation and the United States.*

**S.3.2.1.** In addition, the EIS should address the following impacts:

Species listed under the ESA such as Bald Eagles  
Native fish species

Ongoing mitigation measures currently in place will have to be re-evaluated to determine if proposed early actions will impair goals of those programs (specifically BPA funded projects)

Impacts on contaminants in sediments are more than an airborne issue, but the plants and transport of contaminated sediments, relocation of the water flow and pore water and destabilizing contaminated sediments.

Impacts to near shore vegetation.

Tribal economic resource impacts including current and future

Shrub-steep ecosystems are depleted in the State, the conversion of additional Shrub-steep habitats may have the potential to impact to these critical ecosystems, and a cap on conversion must be made as a part of this management plan. The CCT through its current mitigation programs are promoting the maintenance and increase of this habitat specifically for sharp tailed grouse and have relocated grouse for enhancement and mitigation at Lake Roosevelt.

**Page 1-7, 1.3.1.4**

The section fails to address economic impacts to Lake Roosevelt in its entirety.

In addition, revise the second bullet as follows:

- Will have moderately large negative impacts on hydropower production (which requires evaluation of the impact on payments by BPA to the Confederated Tribes pursuant to 1994 Settlement Agreement between the Confederated Tribes of the Colville Reservation and the United States).

**Page 2-2, 2.1.2.1**

The Black Rock Project and Wymer Project off channel reservoirs as proposed would pump water to the Black Rock from Priest Rapids Lake to put more water in the Yakama, but the Wymer Project is intended to pump water from the Yakima (unidentified use). The benefits from Black Rock would appear to be nullified by the impacts of the Wymer. Please clarify.

The Smilkameen Shaker's Bend Project has heavy steelhead spawning habitat, any project considered for storage should be upstream from this critical steelhead spawning habitat.

**Page 2-13, 2.1.2.4**

An inventory and demand forecast must incorporate the Colville Tribes' availability and need studies. The Tribal studies have only just begun and will take one to two years to complete. Note: We have not seen the inventory and demand forecast, although the completion date listed was Nov. 15, 2006. **We request a meeting with Ecology to discuss inclusion and timing of the tribal studies.**

**Page 2-15, 2.2.3**

Funding criteria have not been set for conservation projects; this proposal only addresses the funding criteria for the storage projects. What formula will be utilized for the 1/3 allocated for "other purposes" in this section?

**Page 2-18, 2.2.9**

An extensive volume of Columbia River water behind three dams is stored within the boundaries of the Colville Reservation. **The Tribes requests a meeting with Ecology to discuss application of integrating the boundary concepts in RCW90.90.30 with Tribal water resources planning, in particular with the availability and needs determination discussed above.**

**Page 2-21, 2.2.13**

So-called "exempt wells" must be included in the inventory/information system. Unregulated domestic wells are already impacting the Tribes reserved water rights. Ignoring the impacts of an entire class of wells on the region's hydrology is unrealistic and unacceptable. The Colville Tribes regulates water use within the Colville Reservation, by both members and non-members of the Tribes, and our Water Code and permitting and records systems do not provide exemptions for this or any category of wells.

**Page 2-23, 2.5.1**

The Tribes intends to coordinate with Ecology and USBR on all phases of any additional proposed water withdrawals at the Grand Coulee Project.

**Page 2-24, 2.5.1.1**

The statement that "...Lake Roosevelt drawdown is approximately 40 feet in an average year and as much as 80 feet in a drought year..." is not consistent with our understanding of normal operations. We believe that drawdown is less than average in drought years and more than average in wet years. Accordingly, this statement should be reviewed and clarified or corrected as appropriate. In addition, the DEIS suggests that irrigation withdrawals are to occur during regular current season drawdown. This too is not consistent with our understanding and we would appreciate clarification. When DOE proposes to draw down Lake Roosevelt for irrigation season, the lake will be at full pool. The timing of this proposed drawdown does not appear to coincide with the current seasonal drawdown. The operational fluctuations during the full pool operations will continue to occur, but at a foot and half less than current.

- 3-25 **Page 3-26, 3.4.2.1**  
Pursuant to our AIP with the State of Washington, the Tribes is currently studying impacts to its resources of the proposed changes in Lake Roosevelt operations/levels. This study is supposed to be completed in 2007. Evaluation of impacts associated with metals and organic contaminants cannot be adequately described until the ongoing EPA RI/FS for the site has been completed. It is unlikely this will happen before 2010.
- 3-26 **Page 3-37, 3.5.3.1** A more appropriate caption may be *Odessa Subarea Study* instead of *Lake Roosevelt Drawdown*.
- 3-27 **Page 3-43, 3.6.1.3** The able needs to be corrected to accurately reflect nature of CCT's rights. This could be an additional subject of a meeting between the Tribes and Ecology.
- 3-28 **Page 3-71, Table 3-21.** Consideration should be given to a brief narrative on the marginal value of payments by BPA to the Confederated Tribes pursuant to 1994 Settlement Agreement between the Confederated Tribes of the Colville Reservation and the United States. The Tribes could assist with values and narrative.
- 3-29 **Page 3-72, 3.8.2.1.** Consider the following change shown in italic:  
  
"Increases in agricultural, municipal, and industrial uses, for example, might result in increased omission of pollutants (*including total dissolved gases*) that would diminish water quality downstream..." *Water temperatures might also be adversely impacted.*
- 3-30 **Page 3-78, 3.9.4**  
Lake Roosevelt does not simply *abut* tribal land; the lake overlies tribal lands as well as federal lands (BLM/USBR). Restate as: *A substantial portion of Lake Roosevelt is within the boundaries of the Spokane and Colville Reservations.* The tribal use of tribal member boating (or boating access) should be added as it was in the Columbia Basin authorization act. The authorizing legislation for Grand Coulee Dam explicitly recognizes a "paramount right" of the Colville Tribes for fishing and related purposes at Lake Roosevelt.
- 3-31 **Page 3-93, 3.13.1.** Same comment as at page 2-13 above concerning the need to include the Tribes needs and the need for further discussions on how to accomplish this.
- 3-32 **Page 4-4.**  
It is not considered necessary to address the impact on payments by BPA to the Confederated Tribes pursuant to 1994 Settlement Agreement between the Confederated Tribes of the Colville Reservation and the United States at all mention of hydropower impacts in the programmatic EIS, but as decisions on narrative revisions are made to address the subject, consideration might be given to the discussion on page 4-4 as modified by the italic:

- 3-32 Increased demand for irrigation water could reduce hydropower production and *BPA payments to the Confederated Tribes of the Colville Reservation.*
- 3-33 **Page 4-6, 4.1.1.3**  
There is no mitigation offered for the long term water quality impacts identified. We request that mitigation be initiated for long term water quality effects of storage facilities.
- 3-34 **Page 4-21.** Similar to comment re page 4-4., consideration might be given to the discussion on page 4-21 as modified by the italic:  
  
Diverting water from the Columbia River for storage and use elsewhere might reduce the amount of water available to generate hydropower... Any potential impacts to hydropower or navigation would be closely reviewed with the potentially affected utilities, *the Colville Confederated Tribes* and coordinated under the Federal Columbia River Power System.
- 3-35 The discussion at the bottom of page 4-21 under the subject of "Mitigation" is appreciated by the Confederated Tribes:  
  
"Coordination with tribal and non-tribal resource managers, and consultation with communities of interest would promote the identification and balancing of their respective economic concerns."
- 3-36 **Page 4-29.** See comments on 4-4 and 4-21, above, which can result in improvement of the narrative on page 4-29, first paragraph:  
  
Potential impacts to hydropower generation would depend on the specifics of any proposed project. For any project that could reduce power generation potential, Ecology would work in conjunction with Reclamation to coordinate and negotiate with Bonneville Tower Administration, Columbia River PUD's, *the Confederated Tribes* and the Corps of Engineers to determine potential impacts and appropriate mitigation.
- 3-37 **Page 4-39, 4.1.2.6**  
Assumptions made about potential impacts to fish or other resources are premature.
- 3-38 **Page 5-1, 5.1**  
Rather than make specific comments on this document the Tribes will be submitting our own report describing impacts of the proposed withdrawals in 2007.
- 3-39 **Page 5-2, 5.1.1.1**  
Areas where sloughing may occur must be mapped to evaluate probability of slope failure.

**Page 5-6, 5.1.1.6**

3-40 The EIS does not assess the impact of the draw downs may have on fall passage adult spawning kokanee in the Sanpoil River. This may require dredging near the confluence of the Sanpoil River to maintain passage.

3-41 **Pages 5-5 through 5-8.** In addressing the subject of total dissolved gases, the DEIS does not appear to provide sufficient discussion of the existing baseline, including the current impact of Canadian dams on total dissolved gases extending to Grand Coulee Dam. The subject is not addressed in the cumulative impacts sections (4.3 and 5.5). More discussion of the issue is needed.

3-42 Water temperature has been addressed properly in the draft EIS in numerous locations, but conclusions that flow augmentation will reduce temperatures (for example at page 5-8) requires more support and analysis than provided. The generalized conclusion that increased flows will reduce temperature is reached elsewhere in the draft EIS and is unsupported. Other structural and management practices at Grand Coulee Dam and at other locations along the Columbia River mainstem may have greater potential for temperature improvement than flow augmentation. The draft EIS does not establish a baseline from which to measure the marginal and cumulative impacts on temperature of Columbia River Management Plan alternatives.

**Page 6-16, 6.2.8**

3-43 See comment at 2.2.9 above.

**Page 6-22, 6.2.12**

3-44 See comment at 2.2.13 above.

**D. Cultural, Archaeological, and Historic Resources**

3-45 The Colville Tribes' Historic Preservation Office and History and Archaeology reviewed the October 5, 2006 Washington State Department of Ecology Publication # 06-11-030: Draft Programmatic Environmental Impact Statement for the Columbia River Water Management Program (CRWMP). This proposed undertaking is of such a massive scale with numerous direct and indirect impacts that it is beyond our ability to understand fully without proper planning and consultation. The purported area of potential effect is all of Eastern Washington. Our comments follow:

- 3-46 • Under various cultural resource laws, but most particularly SEPA, Washington State EO 05-05, the Centennial Accord, NEPA, National Historic Preservation Act, EO 11593, EO 13175 and EO 12898, there must be consultation with tribes and Tribal Historic Preservation Officers. Recommendation – the various state and federal agencies organize and fund a cultural resources working group of all concerned parties to address cultural resource management issues. There may

3-46 need to be two groups, one with clearance to discuss archaeological, traditional, and sensitive (burials and cemeteries) site specific issues. This group would consist only of agency and tribal representatives. The second group would be comprised of all groups and individuals with heritage issues and concerns; it might include recreationists, businesses, historical groups, museums, etc.

- 3-47 • The VRA with irrigators held no specific cultural concern, but any associated actions would require review, analysis and possible mitigation. Recommendation – review actions in the working groups described in the first bullet.

3-48 We addressed the Lake Roosevelt drawdown issue with the CCT Columbia River Initiative working group on several occasions. See summary at the end of this section captioned Summary of Earlier Impact Analyses.

- 3-49 • On September 27, 2006, we sent Derek Sandison of Ecology a letter pointing out a lack of consultation on the off-channel reservoirs, reminding Ecology of their responsibilities under various laws and requesting a meeting. Mr. Sandison replied the reservoirs are primarily a Reclamation undertaking. Based on Mr. Sandison's response we are making a similar request for consultation to the Bureau of Reclamation. Recommendation – The state and federal agencies should appoint a lead agency or agencies with a 'responsible agency official', as defined in the National Historic Preservation Act, Section 106 implementing regulations 936 CFR Part 800).

- 3-50 • Page 3-80, Section 3.10.1 of the DEIS states EO 05-05 establishes a review process by the Department of Archaeology and Historic Preservation (DAHP) and affected tribes and that Ecology has initiated the review process with DAHP. Recommendation – initiate the review process with affected tribes.

- 3-51 • Page 3-80, Section 3.10.1 also discusses federal involvement. Recommendation – federal consultation needs to be initiated.

- 3-52 • Page 3-81, Section 3.10.2 states archaeological resources could date between 11,000 years before present to AD 1800. This is not specifically correct, archaeological resources need only be 100 years old, thus AD 1906. Other cultural resources and other mandates and regulations suggest that there is not absolute age cut off. Recommendation – re-word the document to reflect a fuller understanding of the pertinent laws.

- 3-53 • Page 3-82, Section 3.10.2 includes a table of properties at reservoir sites. Given the area of potential effect, several reservoirs are not listed: Lower Monumental, Little Goose, Lower Granite, Lake Chelan, Roza, etc. Recommendation – Need to better define the area of potential effect or include more reservoirs in the document.

3-54 Page 4-25, Section 4.1.1.9 discusses mitigation of adverse impacts to cultural resources, a cultural resources management plan and a programmatic agreement. The document does not emphasize the potential difficulties involved in implementing these broad suggestions. Coordination on the scale discussed will take a massive effort. Recommendation – Develop the cultural resource working groups recommended earlier and provide them with the funding and professional support needed to start addressing these issues now.

3-55 Page 5-10, Section 5.1.1.9, regarding Lake Roosevelt drawdown states, “No short-term impacts to cultural resources are anticipated as a result of additional drawdowns within the normal range of reservoir operation fluctuations.” This is a good example of the inability of the drafters of the impact statement to appreciate the impacts anticipated. This response reflects and may have even been forwarded by Reclamation employees that view Lake Roosevelt impacts as occurring within an ‘envelope’ between elevations 1220’ and 1290’. Regardless of the nature, size, or periodicity of impacts, they are all viewed as occurring in the same envelope so there is no distinction or difference in impacts to cultural resources within that zone. See below where we have addressed this very issue at Lake Roosevelt for a proposed summer drawdown.

3-56 In the past we requested federal agencies fund a full time cultural resource position to address all the various impacts associated with reservoir operations and fish-recovery throughout the Columbia River Basin for flow augmentation, VARQ, irrigation, recreation, habitat plans, etc. We were denied. Once again, this suggestion seems reasonable and prudent.

#### Summary of Earlier Impact Analyses

##### Additional Lake Roosevelt Drawdowns

Drawdown creates increased erosion to and exposure of banks and sediments during the peak recreation period. This increases the number and visibility of archaeological materials and human remains. Wakes and shoreline recreation related to boat and jet-ski activities will result in increased erosion because impacts will not be along vegetated shores and high water erosion protection. More erosion, more exposure, more people means archaeological and burial site materials will be exposed.

- 3-57
- Summer drawdown would require enhanced Archaeological Resource Protection Act patrols.
  - Summer drawdown would require Archaeological Monitoring during August (the last month of the drawdown)
  - Increased erosion will result in increased inadvertent discoveries of Human Remains
  - Increased erosion will result in loss of traditional sites requiring additional Traditional Cultural Property Studies

- 3-57
- Costs for these mitigation actions on an annual basis are estimated to approach \$100,000.00

##### Off-Channel Storage Assessment

We reviewed the several proposed off-channel sites. Of the 11 feasible candidate locations identified in the December 2005 WS Ecology and Reclamation Mainstem Off-Channel Storage Assessment report, all but Alder Creek, Rock Creek and Kalama River are in the traditional territory of the CCT.

- 3-58
- We predict the traditional community will be strongly opposed to any such developments.
  - A standard measure for cultural resource costs for federal undertakings are up to 1% of total appropriations (Archeological and Historic Preservation Act of 1974 (7a)). There would be subsequent costs for annual work. Based on the 1% figure, costs for initial cultural resource work could range in the millions of dollars.

Areas of Additional Concern now include state agencies for the whole CRWMP

- 3-59
- Coordination with federal agencies. It is imperative to coordinate with federal agencies with the same or similar responsibilities in the Lake Roosevelt reservoir for efficiency and to avoid duplication of effort. However, it is important to avoid over complication and slow down of the process often created at the technical level at a cost to overall management and policy goals.
  - Site stabilization. Archaeological, ethnographic and traditional places eroding into the reservoir must often be stabilized. Previous shoreline stabilization efforts proved complicated, time consuming and costly. It will be important to identify sites requiring protection, assign responsibility for protection, prioritize protection areas and develop a long-range plan considering fiscal and engineering factors. We estimate site protection costs at \$1,000,000.00 at one or two sites per 5-year period.
  - It is important to remain flexible in any agreements. As the impacts of the undertaking are better understood, as new concerns arise and other concerns are resolved, and as costs change, there must be a mechanism with the structure of any agreements to revisit and modify understandings between parties.
  - Historic preservation officer concurrence with process. As with any undertaking involving federal and tribal lands, it is imperative to follow the National Historic Preservation Act, Section 106 implementing process. This will mean the early and continued involvement of, consultation with and concurrence by the State Historic Preservation Officer and the Tribal Historic Preservation Officers.

##### E. Conclusion

- 3-60
- In closing, the Colville Tribes appreciates the opportunity to comment and looks forward to a continued constructive relationship with Ecology in implementation of the AIP and CRWMP.

**Comment Letter No. 3 – Confederated Tribes of the Colville Reservation**

- 3-1. Comment noted. The Confederated Tribes are welcome to comment on all future proposals.
- 3-2. Comment noted. Ecology will continue to coordinate closely with the Confederated Tribes.
- 3-3. Information has been added to Section S.3.2.1 regarding mitigation requirements in the Agreement in Principle.
- 3-4. The spelling error has been corrected in the Final EIS text.
- 3-5. This is noted in the first paragraph of Section 2.5.1 on the previous page. Additional information on the development of a Memorandum of Agreement has been added.
- 3-6. Additional information has been added to Sections 3.1 and 3.9.4.1 regarding the Colville Reservation, the Spokane Reservation, and the Lake Roosevelt National Recreation Area.
- 3-7. Table 3-3 in Section 3.4.1.1 is taken from a report by the National Resources Council 2004. It is not intended to be specific to the Colville Tribes. Rather it reports on agreements affecting Columbia River Basin stream flows, including the quantity of stream flow required in the agreement. Significantly, for purposes of management of the Columbia River, tribal treaties do not specify the quantity of the tribes' water rights.
- 3-8. Comment noted. Table 3-14 has been changed to reflect this comment.
- 3-9. Text has been added to Appendix D, Trust Water Rights to address this comment.
- 3-10. Comment noted.
- 3-11. Comment noted. See Responses to comments 1-2 and 1-3.
- 3-12. The Final EIS text has been revised as requested.
- 3-13. The new bullet has been added as requested. Information on the impacts has also been added to Section 5.1.2.12.
- 3-14. Section S.3.2.1 is a summary section and highlights the general impacts of the project. Impacts to the items listed in your comment are addressed in Sections 5.1.1 and 5.1.2. Additional impact analysis will be provided in the Supplemental EIS on Lake Roosevelt drawdowns.
- 3-15. Potential impacts to shrub steppe habitat are noted in Section 4.1.1.6. See also the response to Comments 1-84 and 1-85. Additional information on shrub steppe habitat has been added to the Final EIS text.

- 3-16. The bullets in Section 1.3.1.4 are a summary of the economic report prepared by Huppert et al. Your suggested text has not been added to the summary because this conclusion was not included in that report. However, as noted in Comment 3-13, information on the Settlement Agreement has been added to Sections S.3.2.1 and 5.1.2.12.
- 3-17. Only the Black Rock Reservoir proposal would result in pumping of water from the Priest Rapids pool. Water from the approximately 1 million acre-foot Black Rock Reservoir would be used to replace water currently being diverted from the Yakima River, thus improving stream flows during the irrigation season. The proposed Wymer Reservoir is an alternative to the Black Rock Reservoir; both are alternatives in the Yakima Basin Water Storage Feasibility Study being developed by Reclamation. Diversions to the Wymer reservoir would occur at times of the year other than the irrigation season.
- 3-18. As noted in Section 2.1.2.1, The Okanogan PUD and Okanogan County have proposed that Ecology consider funding an Appraisal Study of a storage project on the Similkameen River. This project would undergo separate environmental review under SEPA. That review would include impacts to spawning habitat.
- 3-19. The first inventory and supply and demand forecast was released in November 2006. Because of statutory limits on the amount of time available to complete these initial reports, it is acknowledged that some valuable information was omitted. However, Ecology intends to gather additional data for subsequent reports, including that which may be available from the Colville Tribes.
- 3-20. Ecology has revised the Policy Alternatives based on input from the Columbia River Policy Group and others. The revised policies, including funding for conservation projects, are included in Chapter 6.
- 3-21. Comment noted. Ecology concurs with the need for such a meeting.
- 3-22. Ecology has elected to include exempt uses in its information system. This inventory will be phased in and will first include the information available in electronic formats.
- 3-23. Comment noted. Ecology will continue to work closely with the tribes and Reclamation.
- 3-24. The description of the drawdown in Section 2.5.1.1 has been revised and additional discussion of the drawdown provided. Additional information and analysis will be provided in the Supplemental EIS that Ecology will be preparing on the Lake Roosevelt drawdown.
- 3-25. Ecology has reviewed the preliminary results of the study prepared by the Confederated Tribes. Based on those preliminary results, Ecology has determined that the Lake Roosevelt project has the potential for significant environmental impacts and will prepare a Supplemental EIS on the project. Ecology will continue to work closely with the Tribes to prepare the Supplemental EIS.

- 3-26. Section 3.5.3.1 describes the impacts of the Lake Roosevelt drawdowns on groundwater. The Odessa Subarea Study is a separate process being undertaken by Reclamation. However, the Odessa Subarea is included in this section because water from Lake Roosevelt drawdowns will be applied to the Odessa area. Reclamation's Plan of Study for the Odessa Subarea is referenced because it is the most recent information on groundwater in the Odessa Subarea. The Final EIS text has been revised to clarify this section.
- 3-27. See the response to Comment 3-8.
- 3-28. Text has been added to section "4.1.1.1 Socioeconomics–Long-Term Impacts" to address possible impacts on Confederated Tribes' annual stream of revenue received from BPA for lands needed by the United States for Grand Coulee Dam and Lake Roosevelt and taken from the Colville Reservation.
- 3-29. The requested changes have been made in section "3.2.2.1 Value of Goods and Services."
- 3-30. Section 3.9.4.1 has been revised to clarify the relation of Lake Roosevelt to tribal lands.
- 3-31. See the response to Comment 2-19.
- 3-32. Information on the Settlement Agreement has been added to Section 5.1.1.12, Public Utilities and Section 4.1.1.7, Socioeconomics.
- 3-33. Mitigation measures for water quality impacts are described in the Mitigation section that follows the Impacts discussion. Specific mitigation measures will be developed during project-level evaluations of any proposed projects.
- 3-34. The Final EIS text has been changed as requested.
- 3-35. Comment noted.
- 3-36. The requested text has been added to the Final EIS.
- 3-37. Specific impacts will be determined during future environmental reviews. Section 4.1.2.6 is a general discussion of the range of potential impacts that could be associated with conservation projects.
- 3-38. Comment noted.
- 3-39. The proposed change in reservoir elevation totaling 1-1.5 feet is relatively minor when compared with the existing reservoir operation, and falls within the existing range of reservoir drawdown operation of between 20 and 82 feet. It is not anticipated that any additional significant sloughing may result beyond the current condition, because the proposed reservoir change is so small and falls within the existing range of reservoir operation. However, additional evaluation of the potential for sloughing will be done as part of the Supplemental EIS for the proposed Lake Roosevelt Drawdown.

- 3-40. The DEIS discusses the effects of added risk to keeping the reservoir at 1,283 feet elevation and above for access of fall spawning kokanee to tributary waters during wet years (Section 5.1.1.6; Fall Drawdown). The Sanpoil River was not specifically mentioned, but was intended to be included in an all-encompassing nature. Specific reference to the Sanpoil River has been added to the FEIS. Additional information on kokanee will be addressed in the Supplemental EIS that Ecology will prepare on Lake Roosevelt drawdowns.
- 3-41. Additional baseline information on total dissolved gases (TDG) levels has been added to the FEIS in Section 3.4.2 under the subheading Total Dissolved Gas. A discussion of potential cumulative impacts of TDG has been added to Sections 4.3 and 5.5. The increased discharge from Lake Roosevelt is not likely to result in increased levels of TDG because the flow releases are expected to be small relative to the normal releases from Grand Coulee (see the new Flow Release Table in Section 2.6.1 of the Final EIS). Additional baseline information on TDG, including the current impact of Canadian dams, will be included in the Supplemental EIS and potential impacts will be further evaluated.
- 3-42. Section 5.1.2.3 discusses the potential increase in flow resulting from additional withdrawals from Lake Roosevelt. The generalized conclusion is that the increase in flow will depend on how the water is released, but assuming that all instream flow storage in Lake Roosevelt is released over a two-month period, the maximum additional release in July and August in a drought year would be approximately 834 cfs as compared to a mean monthly flow in the River during a drought year of 50,590 cfs. This is a small overall flow increase. Section 5.1.2.3 also states that it is possible that **small** improvements to water quality in the Columbia River **could** occur from increased releases from Lake Roosevelt. The Final EIS text has been revised to state that temperature impacts of Lake Roosevelt discharge on receiving waters will be assessed as part of the Supplemental EIS that Ecology will prepare on the Lake Roosevelt drawdowns.
- 3-43. See the response to Comment 3-21.
- 3-44. See the response to Comment 3-22.
- 3-45. Comment noted.
- 3-46. See response to comment 1-54.
- 3-47. See the response to Comment 3-46.
- 3-48. Comment noted; refer to the response to Comment 3-57 below.
- 3-49. Comment noted. Ecology will continue to coordinate with the Confederated Tribes and Reclamation regarding the off-channel reservoirs. Because Section 106 is a federal requirement, Reclamation would be the lead agency.
- 3-50. Tribal consultation under Executive Order 05-05 will be initiated when project specific environmental review is conducted. Ongoing coordination and discussions with the Confederated Tribes will continue.

- 3-51. Federal consultation will be initiated when project specific environmental review is conducted. Ongoing coordination and discussion will continue.
- 3-52. Text has been changed to reflect this comment.
- 3-53. Table 3-26 focuses on Columbia River dams and was not meant to be inclusive of all the dams in the region, rather to provide background for considering a new reservoir. Additional text has been added to Section 3.10.2 to clarify the intent of the table. Defining the area of potential effects is not possible at the programmatic level and will be conducted at the project level.
- 3-54. It is acknowledged that coordination efforts will be significant and should start early in the process. See also the response to Comment 3-46.
- 3-55. Ecology has determined that impacts of Lake Roosevelt drawdowns need further analysis and will prepare a Supplemental EIS on the drawdowns.
- 3-56. Comment noted. Through the process of developing the Cultural Resources Management Plan described in response to comment 1-54, Ecology will evaluate this recommendation.
- 3-57. These potential impacts are noted in Section 5.1.1.9. Site specific impacts will be identified as part of the Supplemental EIS for Lake Roosevelt drawdowns. Mitigation for any identified impacts will be negotiated as part of the Memorandum of Agreement that will be developed between the state and the Colville Tribes. The mitigation measures suggested in this comment will be discussed at that time.
- 3-58. Comment noted.
- 3-59. Comment noted. See the response to Comment 3-57. Ecology will continue to coordinate with the Confederated Tribes and with federal agencies involved in the management of Lake Roosevelt.
- 3-60. Comment noted.

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November 22, 2006

Derek I. Sandison, Regional Director  
Central Regional Office  
Washington State Department of Ecology  
15 West Yakima Avenue, Suite 200  
Yakima, WA 98902

Re: Spokane Tribe of Indians' comments on Draft Programmatic EIS for the Columbia River Water Management Program

Dear Mr. Sandison:

The Spokane Tribe of Indians' connection to the Columbia River and its upriver tributaries date from time immemorial, and is deeper than any others in what is known today as eastern Washington. This letter and the attachments are submitted on the Tribe's behalf to express its concerns arising from that deep connection with the Washington State Department of Ecology's Draft Programmatic EIS for the Columbia River Water Management Program ("Draft EIS").

**Background**

The Spokane Tribe of Indians' physical and spiritual dependence on area streams and natural resources is well documented. Known by neighboring tribes as a salmon people, the Spokane ancestral lands ran the length of the Spokane River, from the Columbia to Lake Coeur d'Alene. In 1877, Tribal leaders entered an agreement with the U.S. War Department establishing the Spokane Indian Reservation at the two rivers' confluence. Four years later, President Rutherford B. Hayes by Executive Order uniquely set the reservation's boundaries at the far banks of its border waters, ensuring that they and their resources would forever be a part of the Tribe's permanent homeland. But during the century that followed, dramatic and unforeseen change came to the Spokane through non-Indian settlement, Washington's statehood, the Grand Coulee dam and mining activities, both on- and off-Reservation.

The Tribe's survival during the 129 years following its Reservation's establishment may be credited to the Spokane's ancestors, both for the physical and spiritual sustenance drawn from the homeland they reserved, and for the culture and the distinction it gives them in their place. The Spokane continue to honor their ancestors by living their religion and culture. With that comes an ongoing physical and spiritual reliance on the mountains, waters, fish, wildlife, and plants – all of the natural resources their ancestral homeland provides. Many tribal members use these resources to the near exclusion of the outside to fulfill food, medicine, spiritual and cultural needs that revere the waters and the life they give. Some, in continuing honor of their ancestors' ways, perform almost daily sweat lodge and other ceremonies. Although the salmon no longer make their way to the Spokane Reservation, they continue to be valued by the people and honored in their ceremonies.

It is the Tribe's modern policy to ensure the Reservation's resources are available to meet its membership's physical and spiritual needs, and to aggressively protect the Spokane people when using



4-2 those resources in the ways promised to their ancestors. The proposals considered in the Draft EIS potentially jeopardize many interests of critical importance to the Spokane people's future.

**Water Quantity**

4-3 Over twenty-five years ago, the United States filed a federal lawsuit to protect the Spokane Tribe's rights to the waters of Chamokane Creek, which forms the Reservation's eastern boundary. The *U.S. v. Anderson* adjudication ultimately included the Spokane Tribe, the Washington Departments of Ecology and Natural Resources, and various basin water users as well. The court determined the Tribe is entitled to sufficient surface- and groundwaters to fulfill the agriculture and fishery purposes of the Reservation. Although the adjudication was limited to Chamokane Creek, the federal doctrine of impliedly reserved water rights, on which the *Anderson* court relied, applies with equal force to the Spokane and Columbia Rivers. Thus, any assessments of proposed state or federal actions that might affect the availability of the Tribe's waters to satisfy its Reservation's purposes must include analyses of the potential for such impacts. The Draft EIS does not do so.

4-4 The proposed Lake Roosevelt drawdowns will affect surface- and groundwater flows of the Spokane and Columbia Rivers, and may have hydrologic effects in the Chamokane Creek basin as well. The EIS needs to include analyses of these impacts. For example, what effect will the drawdowns have on domestic or community wells along the Columbia River and its tributaries? What effect will they have on groundwater storage and the timing of groundwater releases to surface water flows? The potential hydrologic impacts the proposed Hawk Creek dam would have on the Columbia River and its tributaries must also be assessed, including both surface- and groundwater impacts.

4-5 Ecology should also consider potential mitigation measures for negative impacts caused by the proposed actions. In addition to the water quantity impacts just discussed, the Volunteer Regional Agreement appears to focus mitigation on the months of July and August. Its impacts, however, are likely to extend beyond the two summer months, and should be addressed. Finally, Ecology should take great care to not mislead its water users into believing their rights are secure when tribal rights up and down the system will be senior to all.

**Water Quality**

For several years, the Spokane Tribe has worked closely with the Confederated Tribes of the Colville Indian Reservation, the State of Washington, and various United States agencies, in an intergovernmental effort to clean up hazardous substances released from Teck Cominco's Trall, British Columbia, smelting facility. Over a 100-year span, the company dumped countless tons of mercury-dominated heavy metals into the Columbia River, which then carried the contaminants downstream to Washington and the Colville and Spokane Reservations. As the suspended metals settle, concentrations increase toward the bottom of the river and reservoir systems. The Draft EIS fails to consider and address the effects its proposed actions will have on the Columbia River's water quality with respect to the metals released by Teck Cominco.

4-6 The drawdowns proposed for Lake Roosevelt will undoubtedly re-suspend hazardous substances that have settled in the reservoir. What metals are more likely to be re-suspended, and in what concentrations? Will re-suspended hazardous substances be in solid or dissolved form? How does the timing of the drawdown affect the re-suspension of the hazardous substances? Will a deeper drawdown to a lower elevation suspend more of the hazardous substances due to the manner in which they have settled? Will the drawdown result in the surfacing of groundwaters causing the re-release of hazardous substances? Will flow rates affect the how long the metals remain suspended? Where will the various re-suspended hazardous substances settle? Will the Grand Coulee dam cause the metals to settle there? The EIS must analyze these and other impacts related to the re-suspension of Teck Cominco's hazardous substances.

**Air Quality**

4-7 The drawdowns will have other effects related to the hazardous substances released by Teck Cominco. As mentioned above, when the metals settle, they concentrate toward the bottom of the river and

reservoir systems – the deeper the drawdown, the higher the metals concentrations in the exposed beaches. As those beaches dry, their soils and the hazardous substances that settled there will be vulnerable to the winds. The Draft EIS does not consider and address these effects.

- 4-7 What are the metals concentrations in the beach areas that will be exposed by the deeper drawdowns proposed for Lake Roosevelt? What metals are more likely to be taken up by the wind, and how will they affect air quality? What locations will wind-blown contaminants be a greater problem due to higher metals concentrations or higher frequency or velocity of winds? These, and related questions must be assessed.

#### Wildlife and Fish

- 4-8 The soils, water and air quality issues described above present possible exposure concerns for wildlife and fish in and near Lake Roosevelt that are not adequately analyzed in the Draft EIS. What are the risks to the fish and wildlife that ingest the waters that carry re-suspended hazardous substances? What are the risks to wildlife that ingest air laden with wind-blown contaminants? What are the risks to wildlife that ingest contaminated fish or plants on which wind-blown contaminated dust has settled? Additionally, wildlife using beach areas during the drawdown periods will be further exposed to hazardous substances through the ingestion of soils as plants and insects are sought and consumed. The risks to such wildlife should be examined as related to contaminated areas exposed by the drawdowns in combination with the risks related to the ordinary operations of Grand Coulee dam.

- 4-9 Furthermore, the Spokane Tribe has committed substantial resources to building and protecting Lake Roosevelt's resident fishery – an effort that benefits both tribal members and non-tribal members. The potential for additional losses of these fish due to the proposed increased drawdowns is of great concern to the Spokane. Although the Draft EIS mentions the Colville Tribes' interests in this regard, no mention is made of the Spokane's interests.

The EIS should consider and address these and related potential impacts that the proposed drawdowns will have on fish and wildlife.

#### Human Health

- 4-10 The ecological risk factors discussed above implicate human health considerations that are not included in the Draft EIS. As explained in the background section, Spokane Tribal members are more closely connected to the waters and natural resources of the Reservation than are others. As a consequence, Tribal member exposure to hazardous substances in the natural environment is intensified in several critical ways. Importantly, the Spokane people do not fall within the category of recreational user, who might be exposed to the contaminants of concern for a few days to a couple of weeks per year. Instead, Spokane Tribal members who reside near Lake Roosevelt or who regularly use its resources for subsistence and cultural purposes will be directly exposed to the air, water and beaches for substantially longer periods. Add to the duration of direct exposure the fact that Tribal members will consume more potentially contaminated fish, wildlife and plants, and are more likely to directly ingest the waters, and it becomes clear that the risk to their health is significantly more extensive.

When examining the potential risk posed to Spokane Tribal members by the proposed actions, it will be important to understand the exposure pathways unique to the Tribe. The necessary considerations are contained in a document entitled: *The Spokane Tribe's Multipathway Subsistence Exposure Scenario and Screening Level RME*. The EIS should consider and address these risks in the proper context of the media of concern and exposure pathways discussed in this document.

#### Landslides

- 4-11 Since Grand Coulee began operating, the Spokane Indian Reservation has suffered the loss of several acres of lands that sloughed into the reservoir due to the erosive actions of Lake Roosevelt's waters. A substantial amount of these losses occurred decades after the waters first rose behind the dam, suggesting assumptions made in the Draft EIS regarding this potential may be inaccurate. Thus the Draft EIS does not adequately consider the potential for further sloughing related to the drawdowns.

- 4-11 Furthermore, it fails to address possible mitigation measures for lost Tribal lands. These deficiencies should be addressed.

#### Culture

- 4-12 As discussed above, the Spokane were a salmon people. And while the salmon no longer reach the Spokane Tribe's waters, there remains a close physical and spiritual connection to the streams and their resources. Understandably, many of the Spokane people's ceremonies involve their waters. For example, burials were often performed along the streams – undoubtedly post-dating the 1800 data referenced in the Draft EIS. As a consequence, there exist many burial and other cultural and spiritual sites in areas that would be affected by the proposed actions, including both the Hawk Creek dam and Lake Roosevelt's drawdowns. The Draft EIS fails to adequately consider these impacts. Further, in addition to the laws cited in the Draft EIS that bear on cultural resource issues, Ecology should consider the potential applicability of the Archaeological Resource Protection Act, 16 U.S.C. 470aa-470mm, and the American Indian Religious Freedom Act, 42 U.S.C. Secs. 1996, 1996a.

#### Additional Considerations

It was explained earlier that the Spokane Tribe, as a sovereign, actively seeks to protect its people and resources. In so doing, the Tribe works on a government-to-government basis with the federal and state governments. It is in that spirit that the following additional comments are offered for consideration.

- 4-13 In several places, the Draft EIS identifies and discusses the Colville Tribes' Lake Roosevelt and Grand Coulee related interests. For example, the Draft EIS covers at some length the agreement in principle entered between the Colville Tribes and the State. It should be noted that the Spokane Tribe possesses interests in the Columbia and Spokane Rivers similar to those of the Colville Tribes. In fact, the Spokane Tribe's Grand Coulee related losses were proportionally greater than those of the Colville Tribes. And while it is true that the Spokane Tribe has not entered an agreement in principle as the Colville Tribes have, it is also true that the Spokane Tribe was not approached by Ecology until after the Colville agreement was reached, and that contact was minimal. Ecology is well aware that the Spokane Tribe is deeply concerned about Lake Roosevelt and should seek to more thoroughly consider and address the Spokane interests through closer coordination. The intergovernmental consultation inadequacies caused by conflicting schedules should not stand to justify the deficient treatment of Spokane interests in the Draft EIS. The Spokane Tribal government is underfunded, its staff overworked. Beyond the issues discussed above of human and environmental health and water rights, the Tribe's concerns include Grand Coulee's operations, mining and industrial related contamination, and various jurisdictional issues. The reservation's location at the confluence of the Spokane and Columbia Rivers places the Tribe in the crosshairs of several Superfund caliber sites, further depleting the Tribe's limited resources. But despite these pressures on Tribal staff, better communication would undoubtedly have yielded better results in arranging consultation opportunities. The Tribe will continue to exercise its sovereign prerogatives in connection with these issues. Ideally, the opportunity will exist for the Tribe to do so in coordination with the State of Washington.

- 4-14 One issue on which the State and Tribe have coordinated during recent years is Teck Cominco's contamination of the Upper Columbia. Although the Tribe has not formally intervened in the State's and Colville Tribes' litigation against the company, it has submitted an amicus brief supporting the State, and directly participated in negotiations the various involved governments have held with Teck Cominco. Given the State's position in this litigation, it is interesting that the potential re-mobilization of contaminated sediments received no attention in the Draft EIS. Given this possibility, perhaps the Comprehensive Environmental Response, Compensation and Liability Act should be among the laws considered potentially applicable.

- 4-16 Finally, there are a number of inaccurate or misleading statements in the Draft EIS concerning the legal status of various affected tribes, their reservations and their lands. Importantly, there exists no legal distinction between treaty tribes and those, like the Spokane, whose reservations were formalized by Executive Order. See, Sections 3.9.3, 3.10.2.3, Table 3-3. As the Supreme Court stated in 1963: "We can give but short shrift at this late date to the argument that the reservations either of land or water are invalid because they were originally set apart by the Executive." *Arizona v. California*, 373 U.S. 546

4-16

(1963). It should also be noted that while allotted lands on Indian reservations may be individually held, such lands are also held in trust by the United States. See, Table 3-14 (distinguishing between "acres held in trust" and "additional acres held as allotments").

**Conclusion**

4-17

The federal courts have recognized that at times states have been the worst enemies of Indian tribes. Washington's history with the tribes within its boundaries stands as an example of this, and the state has more than once found itself on the opposite side of court room from the Spokane. In recent years, however, Washington and the Spokane Tribe have found that coordination and cooperation can yield good relations and positive results, with greater benefit to the citizens of both. The Spokane Tribe remains hopeful that such can be the case concerning the waters of Lake Roosevelt and the Upper Columbia system.

Sincerely,

Shannon D. Work  
Attorney at Law

- cc: Rick Sherwood, Chairman, Spokane Tribal Business Council
- Warren Seyler, Vice-Chairman, Spokane Tribal Business Council
- Gerald Nicodemus, Secretary, Spokane Tribal Business Council
- Richard Garry, Member, Spokane Tribal Business Council
- Matt Wynne, Member, Spokane Tribal Business Council
- Rudy Peone, Director, Spokane Tribe Dept. of Natural Resources
- George Hill, Director, Spokane Tribe Culture Dept.
- Brian Crossley
- Deanne Pavlik-Kunkel

**COMMENTS FROM STOI CULTURE PROGRAM  
NOVEMBER 17, 2006**

Submitted by George Hill, STOI Culture Program Director

4-18

1. Ramping of the water levels within Lake Roosevelt Reservoir creates erosion along the exposed beaches. The erosion is created by the wind when the beaches are exposed and the ramping of the water levels speeds up the erosion process. This erosion exposes cultural resources to "Pot Hunters", and vandalism. Also once the cultural resources are exposed to weather their deterioration speeds up and important data is lost forever. The exposed cultural resources are also moved from place to place by the wind and the water thus the site loses its integrity and the cultural resource is lost forever. Not only are cultural resources lost this way our ancestral burials are lost or damaged by the same process. The exposure of the ancestral remains and associated funerary objects are favorite items for "Pot Hunters" to collect and sell on the black market.

4-19

2. Any action such as the state is proposing creates a larger workload for the Tribes to protect the cultural resources. The ARPA Patrols would have to be operated on a year round basis which takes a large amount of money. The state would have to mitigate with the tribes to ensure that the funds would be available for the protection of the cultural resources.

4-20

3. Exposure of the beaches during peak recreation times in the summer and fall would serve to create new "Pot Hunters". People that normally would not be looking for artifacts or human remains would be tempted to do so just by the fact that the items would be readily visible. People are naturally curious and once that curiosity is piqued you cannot take it back. The problem would even get bigger by word of mouth.

4-21

4. The proposed action of the state will create a large void within the protection of the cultural resources and ancestral burials in Lake Roosevelt Reservoir. The large financial burden to protect these cultural resources and ancestral burials would become a state responsibility. The state would have to mitigate with the tribes to ensure that funds would be available to provide adequate protection for these resources for as long as the dams exist.



## Spokane Tribal Natural Resources

P.O. Box 480 • Wellpinit, WA 99040 • (509) 258 - 9042 • fax 258 - 9600

### Entrainment and Elevation Effects on Resident Fish in Lake Roosevelt:

The 82,500 to 132,500 acre-feet (1.0-1.5 feet) of drawdown requested in the EIS were repeatedly identified as being within the normal operating range of the reservoir. However, the timing of the withdrawal is not within the norm, and the proposed action is requesting 1.0-1.5 feet of drawdown in addition to the normal operating range of 10-12 feet already taken from the reservoir for fish flows in the lower and mid-Columbia River. The proposed actions may potentially have considerable adverse effects on the Lake Roosevelt fishery. The proposed action would be taking place when the artificial production program normally releases fish following the start of refill. The current strategy of releasing fish after refill begins has been shown to decrease entrainment. Withdrawing water during this critical period would potentially increase entrainment of hatchery fish.

Low lake elevations have also been shown to negatively impact fish in Lake Roosevelt. The lower elevations proposed will make native species and fish stocked by the artificial production program more vulnerable to predation by forcing fish out of nursery/rearing areas and concentrating them in a smaller pool of water at a time when feeding rates are highest due to higher water temperatures. Lower water elevation will also reduce macroinvertebrate production in the reservoir and tributaries where numbers are already severely depressed as a result of flood control elevations. In addition, lower elevations will potentially dewater eggs, strand young fish, and block resident fish access to available spawning sites. Current program direction has been to use an upper Columbia River kokanee stock in Lake Roosevelt to address genetic integrity concerns in the Upper Columbia River. This stock is more genetically similar to indigenous stocks of the Columbia River, however it is an early spawn stock and additional drawdowns would limit access to available spawning sites. Increased entrainment, predation, reduced food resources, decreased access to spawning areas, and lower larval and juvenile fish survival will reduce the numbers of fish available for recreation and subsistence uses.

### Water Retention Effects in Lake Roosevelt:

The EIS mentions retention time in the reservoir, and that it may be affected, but does not address the potentially negative impacts. Productivity in Lake Roosevelt is already significantly delayed as a result of the flood-control drawdown. Productivity begins to increase as flow decreases in the reservoir, allowing plankton to begin reproducing at higher rates and be retained in the reservoir. The proposed actions would negatively impact this on two points:

- 1) Additional withdrawals will decrease retention times, causing reduced production of plankton during the critical period when the food web is being established for the season. As Lake Roosevelt is primarily a pelagically driven system, further reductions in the available forage base in an already nutrient limited system will negatively impact fish survival and growth.
- 2) In the advent that additional water is pushed through Lake Roosevelt as a result of the international treaties, VRA's or new storage facilities, these negative impacts would be more severe.

### Economic Impacts:

Lake Roosevelt is one of the most visited lakes in Washington (nearly 350,000 anglers at an economic value of 9.7 million dollars). The economic value of the fishery in Lake Roosevelt will be jeopardized by these actions as it would reduce fish available for recreational and subsistence uses. This will lead to reduced income for the Tribes and other stakeholders around the reservoir.

4-25

While we appreciate the needs of irrigators and fish managers in the lower and mid Columbia River, we feel it is a constant battle to remind lower and mid-river interests that we have needs in the upper Columbia River region as well and are not interested in all downriver water needs being met at the expense of Lake Roosevelt, it's fishery, or the Tribe and stakeholders of Lake Roosevelt.

### Temperature

EPA and ECY initiated a temperature TMDL that has been sidetracked by federal dam operators. I have recently reviewed a presentation by BOR that is looking at some of the possibilities of reducing temperature increases at caused by Grand Coulee. Additional drawdowns or off-site storage; either through a new impoundment (ie Hawk Creek) or through bolstering existing ones (ie Banks Lake), could have an adverse affect on temperatures in Lake Roosevelt. This could specifically affect Tribal waters of the lower Spokane River and a portion of the Columbia River.

4-26

Water storage reservoirs, when used for summer irrigation, generally do not stratify and will not be deep enough or maintain a body of water long enough to provide cool waters through stratification and selective withdrawals. When waters do not currently meet Water Quality Standards efforts should be taken to improve water instead of degrading it.

4-27

The overarching intent of this process has been to provide "two buckets for consumption/irrigation while providing one bucket for fish. This proposal appears to only determine that one bucket for fish be applied to those waters below Grand Coulee with total disregard for the fish upstream of Coulee.

Thank-you.

Deanne Pavlik-Kunkel  
Lake Roosevelt Fisheries Evaluation Program Manager, Spokane Tribe of Indians.

And

Brian Crossley  
Water & Fish Program Manager

**Comment Letter No. 4 – Spokane Tribe**

- 4-1. Comment noted.
- 4-2. Comment noted.
- 4-3. Ecology has determined that a Supplemental EIS will be prepared to further address impacts of the Lake Roosevelt drawdowns. Potential impacts to the availability of the Spokane Tribe's waters to satisfy reservation purposes will be addressed in the Supplemental EIS.
- 4-4. Impacts to the Chamokane Creek basin will be evaluated in the Supplemental EIS on Lake Roosevelt drawdowns. If Hawk Creek is selected as a feasible reservoir site, additional environmental review will be conducted and hydrologic impacts will be evaluated in detail. See also the Master Response regarding Future Studies for Off Channel Reservoir Proposals.
- 4-5. See the Master Response regarding the July/August mitigation issue. The seniority of tribal water rights is acknowledged in Section 3.6.1.3.
- 4-6. The Teck Cominco contamination is described in Section 3.3.5 and Section 5.1.1.2 as an air quality impact because the most likely impact to occur as the result of additional drawdown of Lake Roosevelt would be the suspension of contaminated particles. As stated in the EIS, the EPA is studying potential impacts and results of that study will be incorporated into the operational procedures for the lake. Other impacts from the contamination and drawdown of Lake Roosevelt are being addressed in a study being prepared by the Colville Tribes. That information will be included in the Supplemental EIS on Lake Roosevelt drawdowns.
- 4-7. See the response to Comment 4-6 regarding inclusion of additional information on the Teck Cominco contamination in the Supplemental EIS.
- 4-8. See the response to Comment 4-6 regarding inclusion of additional information on the Teck Cominco contamination in the Supplemental EIS.
- 4-9. Comment noted. Information on the Spokane Tribe's involvement with Lake Roosevelt resident fish has been included in the Final EIS.
- 4-10. The Supplemental EIS on Lake Roosevelt drawdowns will include information on human health impacts and the exposure pathways identified in the document cited.
- 4-11. See the response to Comment 3-39. The Draft EIS assumptions clearly state the existing conditions of sloughing and outline the potential issues addressing sloughing during the proposed drawdown. As such, no additional mitigation measures are necessary at this time. Should potential impacts be identified during the project-level evaluations conducted for the proposed drawdowns, specific mitigation measures will be developed to address them.
- 4-12. Text in Sections 3.10.1 and 3.2.2 has been updated to reflect this comment. Please refer to a Programmatic EIS Master Response regarding the level of detail in this Programmatic EIS.
- 4-13. The Spokane Tribe's interest in Lake Roosevelt and the Management Program is acknowledged. Ecology continues to invite and welcome Spokane Tribe's participation in the development of the Management Program. Ecology will coordinate with the Spokane

Tribe as the Supplemental EIS on Lake Roosevelt drawdowns is prepared.

- 4-14. See the response to Comment 4-6.
- 4-15. The applicability of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) to the Teck Cominco contamination of Lake Roosevelt is the subject of ongoing legal rulings. The Ninth Circuit Court of Appeals ruled in July 2006 that CERCLA does apply to Teck Cominco even though the contamination originated in Canada. Teck Cominco requested a new hearing on that decision. Ecology will continue to monitor the outcome of this legal ruling to determine if CERCLA requirements are relevant.
- 4-16. A footnote was added to Table 3-3 to address this comment.
- 4-17. Comment noted. Ecology will work to strengthen current coordination efforts and enhance that coordination in the future.
- 4-18. These issues are addressed in Section 5.1.1.9.
- 4-19. Ecology will coordinate with the Spokane Tribe as site specific studies are conducted and to negotiate appropriate mitigation measures.
- 4-20. The issue of increased vandalism is addressed in Section 5.1.1.9.
- 4-21. See the response to Comment 4-19.
- 4-22. Comment noted. The range of potential impact is outlined in the Programmatic EIS. A more detailed discussion of potential impacts to the Lake Roosevelt fishery will be considered in the Supplemental EIS that Ecology will prepare on Lake Roosevelt drawdowns.
- 4-23. See the response to Comment 4-22.
- 4-24. See the response to Comment 4-22.
- 4-25. As noted in Section 5.1.1.7, Ecology anticipates few short-term and no long-term socioeconomic impacts on the local economy from the proposed actions; however, Ecology will further evaluate the potential impacts associated with the proposed drawdowns in the Supplemental EIS. Ecology will continue to coordinate with irrigators and fish managers along the entire length of the Columbia River, to ensure that management approaches are balanced.
- 4-26. It is acknowledged in Section 5.1.1.6 that reduced lake elevations in Lake Roosevelt could result in negative impacts to fish. These and other potential impacts will be discussed in the Supplemental EIS on Lake Roosevelt drawdowns. Temperature impacts of specific reservoirs will be evaluated during project specific environmental review. See the Master Responses regarding Future Studies for Off Channel Reservoir Proposals.
- 4-27. Comment noted.