

Columbia River Treaty Review The Idaho Position

This position Statement outlines the current position of a broad range of Idaho stakeholders (identified below and collectively referred to as “Idaho Stakeholders”) on the efforts to modernize the Columbia River Treaty (“CRT”) with Canada.

I. Hydropower:

The CRT provides for an “entitlement” for power benefits derived from the agreement. *See CRT Article V.1* (“Canada is entitled to one half the downstream power benefits determined under Article VII”). The entitlement is determined as “the difference in the hydroelectric power capable of being generated in the United States of America with and without the use of Canadian storage, determined in advance, and is referred to in the Treaty as the downstream power benefits.” *CRT Article VII; see also CRT Annex B ¶ 1* (“The downstream power benefits in the United States of America attributable to operation in accordance with Annex A of the storage provided by Canada under Article II will be determined in advance and will be the estimated increase in dependable hydroelectric capacity in kilowatts for agreed critical stream flow periods and the increase in average annual usable hydroelectric energy output in kilowatt hours on the basis of an agreed period of stream flow record”). Over time, this “Canadian Entitlement” has proven to greatly exceed the actual benefits. Discontinuation of the Canadian Entitlement would result “in an overall increase in annual revenue for the United States (about \$180 million to \$280 million).”¹ As explained in the Regional Recommendation, at page 4, “rebalancing is necessary because the present Treaty power benefits are not equitably shared and Canada is deriving substantially greater value from coordinated power operations than the United States.”

Idaho Stakeholders take the following position on Hydropower:

1. The Canadian Entitlement should be rebalanced to reflect actual value of coordinated operations.

II. Flood Control:

The CRT provides for guaranteed flood control until 2024 using reservoirs designated for “system wide” flood control.² *See CRT Articles II & IV*. At that time, the CRT provides for “called upon” flood control. *CRT Article IV* (full text below). The CRT provides for compensation for this “called upon” flood control. *CRT Article VI* (full text below). In the January 22, 1964 “Protocol – Annex to Exchange of Notes,” the US and Canada provided that

¹ <https://www.crt2014-2024review.gov/Files/Columbia%20River%20Treaty%20Recent%20Study%20Results%20-%20FINAL%20June%202012%20-%20singles.pdf> (viewed Aug. 18, 2017).

² At times, these reservoirs are also considered “treaty reservoirs” and include the following dams: Libby, Hungry Horse, Dworshak, Brownlee, Kerr, Albeni Falls, Grand Coulee, John Day. These reservoirs were authorized to provide flood controller operations for the entire Columbia system. This is distinguished from dams authorized for “local flood control” – i.e. to address localized flood risk. In Idaho, reservoirs such as Palisades in the Upper Snake River Basin, and Lucky Peak, in the Boise Basin, are authorized for local flood control operations and not system wide flood control.

the “called upon” flood control would be used “only to control potential floods in the United States of America that could not be adequately controlled by all the related storage facilities in the United States of America existing at the expiration of 60 years.” (Emphasis added).

The Canadian Entity has taken the position that “called upon” flood control operations would require the use of “all the smaller US reservoirs on the Columbia, Snake and other tributaries.” *US Benefits from the Columbia River Treaty*, BC Ministry of Energy Mines, at p.9 (June 25, 2013). It concludes that “such operations would likely impact multiple water uses on these smaller reservoirs.” *Id.* Idaho Stakeholders are concerned that Canada’s interpretation of the “called upon” flood control provisions would impact the operation of water facilities throughout Idaho (including storage projects in Idaho’s upper Snake River basin above Brownlee Reservoir). Many of these water facilities are used to provide local flood control, irrigation storage and other benefits, including recreation, navigation and fish and wildlife. Changing operations to provide system wide flood control would have an adverse impact on the operation of water facilities throughout Idaho, including North Idaho lakes and rivers.

Idaho Stakeholders take the following position on Flood Control:

1. The CRT flood control provisions should be renegotiated prior to 2024 to provide for coordinated flood control operations consistent with the guaranteed flood control operations that have been in effect since the CRT was initially executed.
2. There should be no additional flood control obligations placed on Idaho’s storage projects, water facilities or water users. The term “Idaho’s storage projects” includes the private and federal storage projects in Idaho or on rivers forming the Idaho border.
3. “Effective use” of the US storage system should not place any additional flood control obligations on Idaho’s storage projects or water facilities and should not alter or affect State-based water rights, State Laws or Congressional Authorizations, including the Snake River Water Rights Agreement (i.e. the Nez Perce Settlement Agreement) of 2004, in any manner.

III. Ecosystem Function:

As part of the effort to “modernize” the CRT, the US Entity Regional Recommendation includes new “Ecosystem Function” purpose for the treaty. This new purpose has not been defined. Idaho Stakeholders take the following position on the proposed Ecosystem Function purpose:

1. The US Entity should reconsider and eliminate Ecosystem Function as an additional purpose of the CRT. Habitat and other ecosystem functions are already addressed under current US and State-specific laws and regulations – including, but not limited to, the Endangered Species Act and the Clean Water Act. These laws and regulations

impose conditions and limitations on the use and development of Idaho's water resources and are sufficient to protect the ecosystem functions of the Columbia River Basin.

2. Any Ecosystem Function that may be included in a renegotiated CRT should not affect Idaho storage projects, water facilities or water users and must not alter any state-based water rights, State Law or Congressional Authorizations. This includes, but is not limited to the 2004 Snake River Water Rights Agreement (i.e. the Nez Perce Agreement), which was ratified by Congress. *See* Snake River Water Rights Act of 2004, Pub. L. No. 108-447, 118 Stat. 2809, 3431 (div. J, title X of Consolidated Appropriations Act of 2005). The agreement includes several components – including a flow augmentation component that provides for the annual release of up to 487,000 acre feet of water in the Snake River Basin. The obligations and protections of Nez Perce Agreement should not be altered as a result of any renegotiation of the CRT.

IV. Negotiation Process & Potential Termination

Under the CRT, either Country may terminate the treaty by providing 10-year notice of such termination. *CRT Article XIX.2*. However, termination does not affect the “called upon” storage provisions of the CRT – which will remain in effect “until either the end of the useful life of those facilities or until those conditions [identified in Article IV.3] cease to exist, whichever is the first to occur.” *CRT Article XIX.4*.

Idaho Stakeholders have 2 goals in modernizing the CRT: (1) updating the Canadian Entitlement to reflect current conditions; and (2) identifying and clarifying post-2024 flood control operations. However, the ability to bring Canada to the table to renegotiate these important terms is uncertain. Although there are modeling exercises being conducted to look at post-2024 flood control, there have been no substantive negotiations on these issues.

Idaho Stakeholders take the following position relating to the ongoing negotiation process and potential termination:

1. Modernizing the CRT should be accomplished through an amendment, minutes or other similar process and should be limited to addressing (1) the Canadian entitlement and (2) post-2024 flood control operations.
2. The US Entity should begin *substantive* negotiations with Canada on the Canadian Entitlement and post-2024 flood control operations before the end of 2017. Further, the US Entity should regularly review the progress of negotiations. If, at any time the US Entity determines that substantive negotiations are not making progress toward a renegotiated CRT, a Notice of Termination should be submitted.

3. The US Entity should prepare an updated statement of position that defines the US positions relative to the future of the Canadian Entitlement and post-2024 flood control operations. This statement should provide specific details about the US Entity's vision for these future operations and should be submitted to the Canadian Entity as basis for negotiations.

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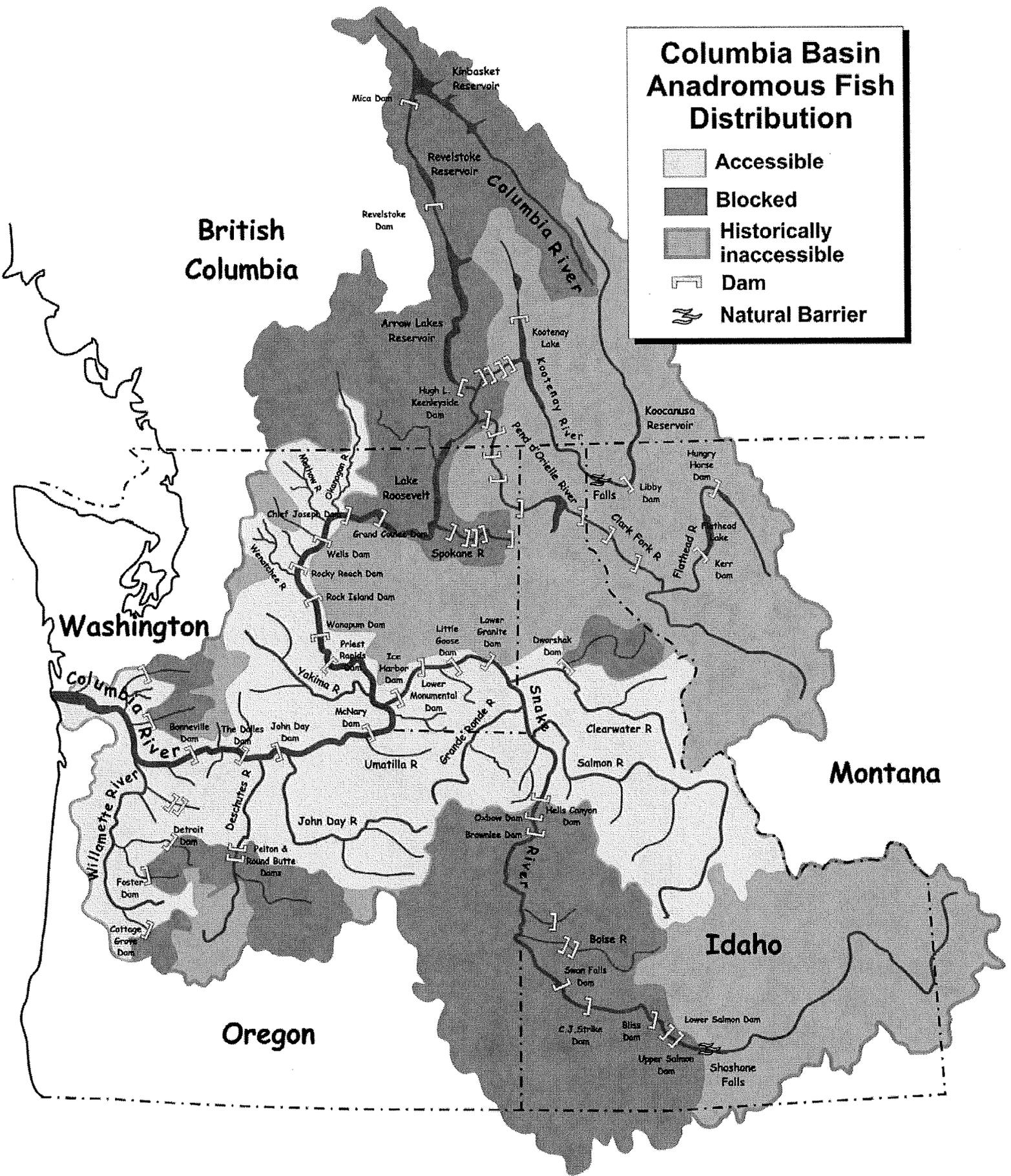
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Idaho Stakeholders include:

- Coalition for Idaho Water
- Committee of Nine
- Federal Instream Flow Coalition
- Food Producers of Idaho
- Idaho Alfalfa & Clover Seed Growers Association
- Idaho Association of Soil Conservation Districts
- Idaho Consumer Owned Utilities Association
- Idaho Cooperative Council, Inc.
- Idaho Farm Bureau Federation
- Idaho Hay and Forage Association
- Idaho Honey Industry Association
- Idaho Onion Growers Association
- Idaho Sugarbeet Growers Association
- Idaho Weed Control Association
- Lake Pend Oreille Alliance
- Nezperce Prairie Grass Growers Association
- Payette River Water Users Association
- United Onion USA, Inc.
- Water District 65 Advisory Board

Columbia Basin Anadromous Fish Distribution

-  Accessible
-  Blocked
-  Historically inaccessible
-  Dam
-  Natural Barrier



British Columbia

Washington

Oregon

Idaho

Montana

Appendix A Canadian Entitlement Provisions

➤ Columbia River Treaty 2012/2024 Review “Canadian Entitlement”:¹

In addition, the US Entity has taken the position that the payments under the contract (i.e. the flood control payment and the Canadian Entitlement) were intended to repay the cost of construction of the treaty dams:

The U.S. Entity believes that the Canadian Entitlement, combined with a separate flood risk management payment to Canada, has more than repaid the cost to Canada of the three dams over the Treaty’s expected minimum life of approximately 50 years (beginning after the last of these dams was completed in 1973).

In other words, the U.S. Entity’s view is the Canadian Entitlement and the flood risk management payment were designed to produce a value that reflected an appropriate total payment to Canada for the cost of Treaty dams by the time the Treaty could be terminated in 2024.

...

When the Treaty was enacted, Canada did not need the power provided through the Canadian Entitlement to meet its demand for electricity. Thus, it decided to sell that power to utilities in the United States for \$254 million over the first 30 years of the Treaty’s term. This transaction covered almost all of the original capital cost of the Canadian Treaty dams.

...

The original Treaty negotiators expected the downstream power benefits to diminish significantly over time. The final Treaty negotiations forecast the Canadian Entitlement for the 2010 to 2024 period to be about 134 aMW of energy and zero MW capacity, meaning Canada would have no flexibility regarding when the United States returned Entitlement power. Using the current calculation methodology, the 2025 forecast is 450 aMW of energy and about 1,300 MW of capacity.

...

Certainly, the world has changed over the past 50 years. Canada’s Treaty dams are in place and will be more than fully paid for by 2024. Given this reality, the U.S. Entity prefers to evaluate the Entitlement value, not in terms of whether the Treaty dams exist but on whether Canada and the United States continue to work together to coordinate hydro system operations or choose to operate independently.

¹ <https://www.crt2014-2024review.gov/Files/Columbia%20River%20Treaty%20Review%20-%20Fact%20Sheet%20-%20Canadian%20Entitlement--FOR%20PRINT.pdf>.

The U.S. Entity is studying the difference in value between coordinated and uncoordinated cross-border hydro system operations. Initial estimates indicate that the power benefit from coordinated Treaty storage operations, compared to uncoordinated operation, is \$26 million a year, a sum much smaller than those produced using either the current Canadian Entitlement calculations or the estimated cost of a replacement resource. Analyses continue to be conducted.

Considerations for Treaty Review

From a power perspective, the U.S. Entity believes that by 2024 the United States will have fully compensated Canada. If the formula is updated to reflect the post-2024 value of a coordinated hydro system operation, the Canadian share of downstream power benefits will be significantly lower than the established 450 aMW forecast for U.S. returns. The method for calculating these benefits is explicitly fixed through 2024 and cannot be significantly changed without renegotiating the Treaty's Entitlement methodology.

- *Columbia River Treaty Past & Future*, John M. Hyde, P.E.:²

Canadian Entitlement: The expected value of the Canadian Entitlement for the 1964 30-year sale to the U.S. was determined by studies that averaged calculations from a high and a low load forecast. Actual load growth was much less than even the low load forecast, resulting in a large under-forecast of the future amount of Energy Entitlement. Today, the high uncertainty of future load growth, renewable resources, thermal resources, capacity procedures, and transmission and power markets, make any forecast of the future Canadian Entitlement highly uncertain.

For today's purposes, the Entitlement calculation established under the CRT is unnecessarily complex, and the procedures for "first added", "average annual usable energy", and "dependable capacity" do not account for the modern realities of non-Base System projects, fishery objectives, the market values of power, and the option to terminate the CRT. The unique procedures produce a variable and unstable calculation for the Capacity Entitlement, and the adherence to a 1961 Base System operated only for power and flood control requires forecasting data and procedures for an imaginary world. An adjustment to bring the Canadian Entitlement closer to actual incremental value appears highly desirable.

² https://www.crt2014-2024review.gov/Files/10Aug_Hyde_TreatyPastFuture_FinalRev.pdf. "John M. Hyde, P.E., (email: jmhyde@bpa.gov) works for the U.S. Department of Energy, Bonneville Power Administration, where he leads the power related Phase 1 studies for the 2014/2024 CRT Review, and as a Member of the CRT Operating Committee leads the annual preparation of operating plans for Canadian reservoirs and calculation of power benefits owed to Canada."

Appendix B
Excerpts from the CRT Relating to Post-2024 Flood Control Operations

➤ CRT Article IV: “Called Upon” flood control:

3. For the purpose of flood control after the expiration of sixty years from the ratification date, and for so long as the flows in the Columbia River in Canada continue to contribute to potential flood hazard in the United States of America, Canada shall, when called upon by an entity designated by the United States of America for that purpose, operate within the limits of existing facilities any storage in the Columbia River basin in Canada as the entity requires to meet flood control needs for the duration of the flood control period for which the call is made.

4. The return to Canada for hydroelectric operation and the compensation to Canada for flood control operation shall be as set out in Articles V and VI.

➤ CRT Article IV: Compensation for “called upon” flood control:

4. For each flood period for which flood control is provided by Canada under Article IV(3), the United States of America shall pay Canada in United States funds:

(a) the operating cost incurred by Canada in providing the flood control, and

(b) compensation for the economic loss to Canada arising directly from Canada foregoing alternative uses of the storage used to provide the flood control.

5. Canada may elect to receive in electric power, the whole or any portion of the compensation under paragraph 4(b) representing loss of hydroelectric power to Canada.

➤ Protocol – Annex to Exchange of Notes (Dated Jan. 22, 1964): Further discussion of “called upon” flood control:

I. If the United States entity should call upon Canada to operate storage in the Columbia River Basin to meet flood control needs of the United States of America pursuant to Article IV(2)(b) or Article IV(3) of the Treaty, such call shall be made only to the extent necessary to meet forecast flood control needs in the territory of the United States of America that cannot adequately be met by flood control facilities in the United States of America in accordance with the following conditions:

(1) Unless otherwise agreed by the Permanent Engineering Board, the need to use Canadian flood control facilities under Article IV(2)(b) of the Treaty shall be considered to have arisen only in the case of potential floods which could result in a peak discharge in excess of 600,000 cubic feet per second at The Dalles, Oregon, assuming the use of all related storage in the United States of America existing and under construction in January 1961, storage provided by any dam constructed pursuant to Article XII of the Treaty and the Canadian storage described in Article IV(2)(a) of the Treaty.

(2) The United States entity will call upon Canada to operate storage under Article IV(3) of the Treaty only to control potential floods in the United States of America that could not be adequately controlled by all the related storage facilities in the United States of America existing at the expiration of 60 years from the ratification date but in no event shall Canada be required to provide any greater degree of flood control under Article IV(3) of the Treaty than that provided for under Article IV(2) of the Treaty.

(3) A call shall be made only if the Canadian entity has been consulted whether the need for flood control is, or is likely to be, such that it cannot be met by the use of flood control facilities in the United States of America in accordance with subparagraphs (1) or (2) of this paragraph. Within ten days of receipt of a call, the Canadian entity will communicate its acceptance, or its rejection or proposals for modification of the call, together with supporting considerations. When the communication indicates rejection or modification of the call the United States entity will review the situation in the light of the communication and subsequent developments and will then withdraw or modify the call if practicable. In the absence of agreement on the call or its terms the United States entity will submit the matter to the Permanent Engineering Board provided for under Article XV of the Treaty for assistance as contemplated in Article XV(2)(c) of the Treaty. The entities will be guided by any instructions issued by the Permanent Engineering Board. If the Permanent Engineering Board does not issue instructions within ten days of receipt of a submission the United States entity may renew the call for any part or all of the storage covered in the original call and the Canadian entity shall forthwith honor the request.

II. In preparing the flood control operating plans in accordance with paragraph 5 of Annex A of the Treaty, and in making calls to operate for flood control pursuant to Articles IV(2)(b) and IV(3) of the Treaty, every effort will be made to minimize flood damage in both Canada and the United States of America.

Appendix C

Statements on the Scope of Post-2024 Flood Control

- *White Paper on Columbia River Post-2024 Flood Risk Management Procedure*, U.S. Corps of Engineers (Sept., 2011):³

See Table 1 (pp.17-21) (identifying flood control reservoirs and identifying the Brownlee complex as “system flood control” projects and Palisades and the Boise projects as “local flood control” projects.

See Section 3.9 (pp.24-25): “Projects that are specifically authorized to operate for local flood management conditions rather than system flood management include Palisades (Upper Snake River), Anderson Ranch, Arrowrock and Lucky Peak (Boise River), and the Willamette Projects. In some cases, the local flood operations may be a secondary operation. These projects are usually operated to control the flow or elevation at a nearby control point. While the system may benefit from the local flood operations, these projects are not directly operated to control the flow at the designated system control point. The flood storage benefit provided by these projects is accounted for by the use of modified regulated flows as input to the Corps’ flood model.

See Section 3.15 (p.27):

Section 2 of this document sets out Treaty and Protocol provisions that require U.S. projects be taken into account in determining flood risk management needs prior to calls on Canadian storage. These provisions obligate the U.S. to consider its own related reservoirs’ ability or effectiveness to manage flooding within the Columbia River Basin prior to making a call to Canada for Called Upon storage. To define the appropriate procedure for implementing Canadian flood storage within the Treaty context, the related provisional assumptions are restated here:

- To be considered as a related flood control facility, a project or reservoir ***must be authorized by the U.S. government for system flood control in the Columbia River Basin.***
- The project or reservoir must be effective at reducing the flow at the system control point (The Dalles) during a flood event.

³ https://www.crt2014-2024review.gov/Files/Post%202024%20White%20Paper%20September%202011_FINAL.pdf.

For the current CRT flood risk studies, *a project must meet both of these criteria to be included in the forecasts of U.S. flood risk management needs*. This analysis is applied only to the U.S. projects currently authorized and operated for system or conditional system flood control as indicated in Table 1, and is consistent with the categorization of projects within the Treaty FCOP. (Emphasis added).

See Page 32:

Local Flood Control – Controlled by Project Owners (Uncertain)

As shown in Table 1, some projects provide local flood control storage that also adds benefits to the system. While this storage is real, these projects are not operated as part of the system, and the amount of storage that may be available is uncertain. This is problematic when trying to determine the need for Called Upon storage. These projects are located in the Upper Snake and Boise basins. The model does not presently include any storage reservoirs upstream of Brownlee. However, the benefit provided by these projects is accounted for by the use of modified regulated flows as upstream input for Brownlee.

- *Assessing the Canadian Hydro Operation Post-2024 in the Absence of the Treaty*, Bonneville Power Administration (Jan. 31, 2012):⁴ Providing discussion regarding post-2024 flood control operations. Unable to find specific discussion on post-2024 flood control and the impact on Idaho storage projects.

- *US Benefits from the Columbia River Treaty*, BC Ministry of Energy Mines, at p.9 (June 25, 2013):

British Columbia's view is that Called Upon Flood Control may be able to provide the same level of flood risk to the U.S. by using all the smaller U.S. reservoirs on the Columbia, Snake and other tributaries. Such operation would likely impact multiple water uses on these smaller reservoirs.

⁴ https://www.crt2014-2024review.gov/Files/Final_Report_No_Treaty_Canadian_Operations.pdf.

From: Kierscht, Cynthia A
To: [Kierscht, Cynthia A](#)
Subject: Announcing our new Columbia River Treaty negotiator
Date: Monday, October 16, 2017 2:21:11 PM

Greetings:

I am delighted to announce the arrival of our new Columbia River Treaty negotiator Jill Smail, replacing CRT negotiator Brian Doherty. Jill comes to us from the State Department's Bureau of Near Eastern Affairs where she previously served as the Senior Water advisor. She has extensive experience in negotiating transboundary water issues in the Middle East and has represented the U.S. Government on water issues in various bilateral and multilateral fora. Please find a short resume below. We are delighted to have her to join our team in the Office of Canadian Affairs to work on this important issue.

Today is Jill's first day in our office. We expect she will first conduct internal consultations, but will soon be reaching out to all relevant stakeholders in Washington, DC and in the region to hear your interests and concerns. We also hope to get Jill out to the region to coincide with the Collaborative Modeling Working Group that we understand will be held in early November.

We look forward to working with you all closely in the weeks ahead as we work to modernize the CRT treaty. Please let me know if you have any questions. Thank you.

Biography

Jill Smail joined the Office of Canadian Affairs as the Columbia River Treaty Negotiator in October 2017. From 2009-September 2017, she served as the Senior Advisor in the Bureau of Near Eastern Affairs for Environment, Science, Technology, and Health, with a focus on Middle East water negotiations and programs. She worked with Middle East negotiating teams on water issues related to a final status agreement and managed programs to facilitate greater cooperation among the parties in watershed management, research, desalination, infrastructure development, and agriculture.

Ms. Smail's previous assignments at the U.S. Department of State include serving on a Provincial Reconstruction Team in Afghanistan and negotiating small arms and light weapons destruction projects in post-conflict regions in Southeast Europe, Africa, and Asia. She joined the U.S. Department of State in 2001.

Ms. Smail is a native of Groesbeck, Texas. She received a Bachelor of Science in Sociology and a Master of Science in Government and Public Service from Texas A&M University. She also earned a Master of Science in National Resource Strategy from the National Defense University.

Cindy Kierscht
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