

Columbia River Treaty Review
Working Draft of a Regional Recommendation

Improving the Columbia River Treaty Post-2024

June 27, 2013

Preface

This working draft recommendation identifies potential modifications to the Columbia River Treaty (CRT) post-2024. It was developed by the U.S. Entity with input from sovereigns and stakeholders including the Sovereign Review Team (SRT), comprised of designated representatives of the states of Washington, Oregon, Idaho and Montana, eleven federal agencies, and fifteen Native American Tribes. The U.S. Entity and the SRT have not yet reached agreement on all parts of this draft document, and discussions with the SRT are ongoing to address these remaining differences.

This working draft includes a set of general principles followed by more specific recommendations related to a number of Treaty elements. It identifies substantive content of a potential recommendation at a high level. In addition to providing potential elements for a post-2024 Treaty, this working draft also identifies matters related to possible post-2024 Treaty implementation for consideration by domestic interests. Some of these are appropriate for consideration once the U.S. Entity makes its recommendation to the Department of State in December 2013, and others are more appropriate for consideration once the U.S. Government has a better understanding of what the post-2024 circumstances will be.

This working draft considered input received by the U.S. Entity through an extensive, multi-year consultation process known as the Columbia River Treaty Review. Key to that process has been the collaboration with the SRT. This group, supported by the Sovereign Technical Team, has met at least monthly to provide recommendations on every aspect of the Treaty Review.

In addition, the Treaty Review has also benefited from the extensive involvement and input of the region's stakeholders. Stakeholders have provided comments and advice in workshop sessions, panel discussions, and presentations. This feedback has been considered in this working draft recommendation. Discussions will continue with the SRT, as well as with regional stakeholders, between late-June and mid-August 2013.

In September 2013, a draft recommendation with an associated report will be provided for formal review and comment. The U.S. Entity will deliver the final recommendation to the U.S. Department of State by December 2013. It is hoped that these ongoing, iterative discussions will result in a broad level of consensus between the U.S. Entity, sovereigns, and stakeholders on a final recommendation.

Regional Goals for the Columbia River Treaty

The Pacific Northwest recognizes the value of the Columbia River Treaty in facilitating shared water resource management in the Basin to maximize benefits to both countries. When the

Treaty was originally drafted in the 1960s, it was designed to provide hydropower and flood risk management as its two primary benefits. Since that time, the region has come to increasingly recognize and value the importance of the Basin's ecosystem. The region's goal is for the U.S. and Canada to develop a modernized framework for the Treaty that ensures a more resilient and healthy ecosystem-based function throughout the Columbia River Basin while maintaining an acceptable level of flood risk¹ and preserving reliable and economic hydropower benefits. Therefore, it is important to achieve a modernized framework for the Treaty that balances power production, flood risk management, and ecosystem-based function as the primary purposes.²

Other important elements of a modernized Treaty include water supply, recreation, and navigation. Water supply for out-of-stream uses will need to be carefully considered as we work to reshape water into spring and summer periods. In addition, the Treaty should include both short- and long-term mechanisms that allow for adapting the Treaty to build in flexibility of operations as conditions change or as new information becomes available.

In this document the term "modernization" of the Treaty refers to the construct of a post-2024 arrangement that might be achieved by various mechanisms yet to be determined. These include amendments or revisions to the existing Treaty, diplomatic notes or protocols, or other means.

General Principles

Several key principles underlie this recommendation and a modern approach to the Treaty:

1. CRT provisions should enable the greatest possible shared benefits in the U.S. and Canada from the coordinated operation of Treaty reservoirs for ecosystem, hydropower, and flood risk management, as well as water supply, recreation, navigation and other pertinent benefits and uses, as compared to no longer coordinating Treaty storage operations.
2. The minimum duration of the CRT post-2024 should be long enough to allow each country to rely on the CRT's planned operations and benefits for purposes of managing their long-range budgets, resource plans and investments, but adaptable enough to allow periodic integration of new scientific and social knowledge, with rebalancing of the purposes and benefits if necessary.
3. U.S. reservoirs/projects will continue to meet authorized uses consistent with applicable legislation and other U.S. laws such as Treaty and Trust Responsibilities to the Columbia Basin Tribes, the Clean Water Act, and the Endangered Species Act.

¹ Throughout this document, "acceptable" flood risk is defined as "similar to the current level" of flood risk; however, as noted in item one listed in the *Domestic Matters to be Addressed Post-2013* Section, the "acceptable" level of flood risk may change pending the outcome of the recommended regional flood risk review process post-2013.

² In this document, the "primary purposes" refers to the "benefits" to be achieved through the Treaty. Where noted, "authorized purposes" is used to connote those purposes that have been authorized in the Basin through the U.S. Congress or Treaty provisions.

4. The United States and Canada should integrate both Treaty and Canadian non-Treaty storage into the CRT to increase the flexibility to, and benefits of, meeting ecosystem-based function, power, flood risk management and other authorized water management purposes in both countries.
5. The region anticipates impacts from climate change to all of the elements described in this document. The strategy for adapting the CRT to future changes in climate should be resilient, adaptable and flexible.

Consistent with the intent of the general goals and principles, the following sections provide more specific recommendations for a modernized Treaty.

Ecosystem-based Function

Working to restore a healthy Columbia River Ecosystem should be a shared obligation between the United States and Canada, and the CRT should incorporate a comprehensive ecosystem-based function approach throughout the Columbia Basin watershed. To achieve this goal in a modernized Treaty:

1. Provide stream flows with appropriate timing, quantity, and water quality to promote productive populations of anadromous and resident fish, and provide reservoir conditions to promote productive populations of native fish and wildlife.
2. Recognize and minimize adverse effects to Tribal and First Nations cultural resources in Canada and the U.S. To the extent there are adverse effects to U.S. cultural resource interests, such changes should be addressed under the Federal Columbia River Power System (FCRPS) Programmatic Agreement.
3. Expand on present CRT agreements to further augment flows for spring and summer, with the recognition that these increased flows come from less fall and winter draft in Canadian reservoirs.
4. Design and incorporate a dry-year strategy.
5. Gain long term assurance of ecosystem-based function, through mechanisms such as flow augmentation/dry-year water (not negotiated every year).
6. Design the Treaty to be adaptable to meet ecosystem-based function requirements as new information becomes available or conditions change (e.g. climate change) based on the science and management priorities of both countries.
7. Determine Canada's interest in assessing the feasibility of fish passage on the main stem Columbia to Canadian spawning grounds. If that interest exists, develop a joint program, with shared costs, to analyze that feasibility. Modernized CRT operations should not interfere with other opportunities to restore fish passage in other blocked areas of the Columbia River Basin.

8. Determine the extent to which Canada believes the Columbia River ecosystem is a shared obligation. If that interest exists, pursue a bilateral commitment toward that ecosystem, modifying current flows to achieve mutual ecosystem benefits, or otherwise equitably balancing by sharing benefits and costs.
9. Continue to coordinate U.S. operation of Libby Dam with Canada, with the goal of achieving mutually desirable ecosystem benefits on both sides of the border. VARQ at Libby and Hungry Horse Dams, including any modifications to VARQ, balances the multiple uses of the dams and incorporates ecosystem-based function.

Hydropower

In order to maintain coordinated hydropower operations, and a reliable, economically sustainable hydropower system in a modernized Treaty, the region recommends the following:

1. Rebalance the actual coordinated power benefits between the two countries. The present CRT power benefits are not equitably shared. Canada is deriving substantially greater value from coordinated power operations than the U.S. For the CRT to be sustainable after 2024, the coordinated power benefits must be reasonably balanced between the U.S. and Canada.
2. Renegotiate for the replacement of the present "Aspects of Delivery Agreement" to create the least cost transmission strategy for both countries to return the Canadian Entitlement to Canada. This includes reconsidering the flexibility of the return.
3. Retain the ability for both the U.S. and Canada to maintain an economical and reliable power supply post-2024 under the modernized Treaty. This requires consideration of the implications of any reductions in generation capability for either country, including lost revenue, system reliability, substantial increases in loss of load probability, renewable resource integration, energy efficiency and conservation, and carbon emissions.
4. Avoid substantial changes in power generation during peak load periods that result in substantial increases in system loss of load probability.

Flood Risk Management

In order to maintain coordinated flood risk management, and to protect public safety and the region's economy, the region recommends the following:

1. Implement post-2024 CRT flood risk management, including effective use and called upon, through a coordinated operation plan that provides for an acceptable level of flood risk. This level of flood risk will be similar to the level of risk existing prior to 2024, which may be modified based on future review of flood risk management policy for the Columbia River. (see "Domestic Matters to Be Addressed" section)
2. Establish a common understanding between the U.S. and Canadian Entities of the methods and procedures for post-2024 "called upon," using the U.S. Entity white paper (*Columbia River Post-2024 Flood Risk Management Procedure*, September 2011) as a

starting point for implementing Post-2024 Flood Risk Management. Called upon storage would be considered only if assured Canadian power drafts do not provide sufficient storage in conjunction with the use of U.S. system flood storage.

3. Operate U.S. and Canadian projects according to the principles outlined in the *Columbia River Post-2024 Flood Risk Management Procedure*:
 - A. Draft U.S. projects according to their current storage reservation diagram (SRDs). Future flood risk management studies may evaluate alternative SRDs to include incorporation of ecosystem-based function.
 - B. Operate Canadian projects first to their expected power objectives and other project purposes, including Canadian local flood control, before a called upon request is made.
 - C. Define “effective use” as applying to the eight U.S. reservoirs authorized for system flood control.
4. Determine Canada’s interest in the potential for alternative post-2024 flood risk management operations, including the possibility of using Planned Assured Canadian Storage.
5. Identify reasonable compensation to Canada for economic losses and operating costs associated with called upon.
6. Enable the necessary flexibility to adapt to changing flood risk management objectives in the U.S. and Canada and to climate change (such as the potential for more frequent and intense winter flood events) to avoid additional risks to authorized purposes.

Water Supply

1. The Treaty should allow the storage and release of water from Canada in the spring and summer for additional out-of-stream and in-stream water uses.
2. U.S. domestic sovereigns, in conjunction with domestic stakeholders, will determine how any water shifted to spring and summer period flows will be managed and allocated for in-stream and out-of-stream uses. (see “Domestic Matters to be Addressed” section)
3. Such allocations are subject to the requirement that they not adversely affect the operation of upstream reservoirs, such as VarQ.

Navigation

Minimum and maximum flows/water levels should be provided to support navigation system operations on the Columbia River and its tributaries, and where appropriate, U.S. reservoirs. This will facilitate the economic value of port and transportation facilities, including commercial import and export of agricultural, bulk and manufactured goods.

Recreation

The region recognizes and supports the recreational and cultural opportunities that are a significant outcome of the Columbia River watershed management processes. Future Treaty operations should strive toward the protection of these resources.

Climate Change

As noted previously, the post-2024 CRT should consider impacts from climate change to all elements described above. U.S. and Canadian Entities' Hydro-Meteorological Team should continue to collaborate and share the best available climate change data and information.

Additional Areas of Discussion for U.S. and Canada

1. If unable to achieve agreement in principle on key aspects by summer 2014, we recommend evaluating other options to create a modernized post-2024 Treaty, such as starting from a clean slate.
2. Both countries need to establish the period of negotiation (stating a schedule or overall timeframe) so that all involved in the processes can set expectations/resource commitments accordingly.

Domestic Matters to be Addressed Post-2013

The following identifies matters related to possible post-2024 Treaty implementation for consideration by domestic interests. Some of these are appropriate for consideration once the U.S. Entity makes its recommendation to the Department of State in December 2013, and others are more appropriate for consideration once the U.S. Government has a better understanding of what the post-2024 circumstances will be.

1. **U.S. Columbia River Basin Flood Risk Policy Review:** Pacific Northwest States and Tribes support the pursuit of Congressional authorization and appropriations for a region-wide public process to assess potential changes to the current level of flood risk protection in the Columbia River Basin to provide greater ecosystem flows. Any such process should occur between 2014 and 2024. Post-2024 CRT provisions, including called upon, will be designed to adapt to any such changes that may be authorized. If a process is initiated, it will be a comprehensive approach, subject to public input, that addresses all opportunities to manage high flow events, including floodplain management, Columbia Basin reservoir operations, and strategic improvements to existing levees and the need for additional levees.
2. **Water Supply Allocation:** Pacific Northwest States and Tribes will design and initiate a process that includes appropriate Federal agencies, to allocate any additional spring or summer flows derived through the post-2024 CRT operations. The U.S. Entity will incorporate decisions from this process into their post-2024 CRT planning and operations.

3. **Assessment of Canadian Entitlement:** BPA will host a public process in which States, Tribes, federal agencies and stakeholders can participate. This process will take place between 2014 and 2024 to assess the expected potential changes to its annual revenue requirements and rates due to any re-design of the CRT post-2024, and discuss with the region how to manage those costs and benefits consistent with BPA's statutory authorities.
4. **Plan for Post-2024 CRT Implementation:** Following the conclusion of the U.S. and Canadian negotiations of the terms of the post-2024 CRT, subject to funding, the U.S. Entity will lead an effort, in consultation with regional Sovereigns and stakeholders, to develop a plan identifying the steps necessary to implement the modern Treaty post-2024. This plan will define the appropriate work needed to incorporate and implement any new ecosystem-based function, flood risk management, hydropower and any other expected new operational objectives under the CRT.
5. **U.S. Flood Plain Reconnection:** Tribal, Federal, and State Sovereigns will work with the Northwest Power & Conservation Council Fish and Wildlife Program and NOAA/NMFS Recovery Planning process (particularly estuary actions) to advance selective flood plain reconnection for the purpose of achieving additional benefits from a modernized Treaty.
6. **Composition of U.S. Entity:** Following the conclusion of the U.S. and Canadian negotiations on a modernized Treaty, membership of the U.S. Entity should be reviewed, with consideration given to including representation from a federal agency best-suited to represent ecosystem-based function. The intent of this third member would be to work jointly with the other Entity members to balance ecosystem-based function operations with hydropower and flood risk management operations.
7. **U.S. domestic advisory mechanism:** During the course of the Treaty negotiations, the Department of State should establish a domestic advisory mechanism to assist, inform, and advise the State Department throughout those negotiations. This mechanism may also be used to provide advice regarding additional work needed to address ecosystem-based function, hydropower, flood risk management, and other beneficial water uses.