April 19, 2004

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Brigadier General William T. Grisoli
Commander and Division Engineer
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D. Robert Lohn
Northwest Regional Administrator
National Marine Fisheries Service
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Re: Comments on the Preliminary Proposal for Federal Columbia River Power System Summer Juvenile Bypass Spill Operations

Dear Messer's Wright and Lohn and General Grisoli:

The Confederated Tribes of the Colville Indian Reservation (Colville Tribes) has reviewed the Preliminary Proposal for Federal Columbia River Power System Summer Juvenile Bypass Spill Operations. We appreciate the opportunity to review the document and provide the following comments.

The reduction of summer spill will negatively impact summer/fall Chinook in the Upper Columbia ESU. The Colville Tribes have had their rights to fish for salmon in the Columbia River taken away one at a time and today, once again the only remaining Chinook salmon fishery is being negatively affected by this proposal. The federal government has a trust obligation to provide fishing opportunities to the Colville Tribes and the current summer spill proposal fails to account for this obligation. In addition, in order to meet minimum legal

mandates of an "aggressive non-breach" Biological Opinion (BiOp), the project-by-project spill requirement in the 2000 FCRPS BiOp is essential. Spill in both the spring and summer is a critical element of any plan that attempts to meet federal trust responsibilities to the tribes and to achieve salmon recovery.

In this letter we outline two pervasive themes: 1) the analysis conducted by the federal government and BPA fails to sufficiently account for impacts to upper Columbia summer/fall Chinook, and 2) the proposed offset measures are weak, poorly developed, and are deficient in addressing the true impact of your proposal. To address the second theme in a more robust and meaningful manner, we will outline a series of more credible and sufficient measures for your consideration. We ask that you take these recommendations seriously, as we do your proposal, and that by funding these actions, a more "reasonably certain to occur" standard can be reached.

To begin, it is particularly apparent in the midst of ongoing litigation over the recently invalidated FCRPS BiOp that eliminating or reducing spill would be a significant step back from a BiOp already found legally insufficient because it was based on actions uncertain to occur. In the following analysis, the Colville Tribes have determined that many of the offset measures proposed by Bonneville and the Corps are both "uncertain to occur" and inadequate to mitigate for the negative effects caused by cessation or reduction of summer spill.

Furthermore, in Table 1 and Figure 1 below, we present five years of PIT tag data that clearly show that upper Columbia summer/fall Chinook are present in the system during the period of proposed spill reduction. The data indicate that ***up to 71 percent*** of these fish would be subject to impacts associated with elimination of spill.

In the government's analysis, only the Hanford Reach Chinook population is analyzed and only passing reference is given to "other Chinook stocks." In fact, the upper Columbia summer/fall Chinook sub-yearlings are the last fish to migrate through the federal hydropower system each summer, and thus, are subject to the highest impacts. The upper Columbia summer/fall Chinook are the last remaining ceremonial and subsistence fish available to the Colville Tribes and are not merely "[an]other Chinook stock," they are our Heritage and play a vital role in meeting our tribal Members' ceremonial and subsistence needs.

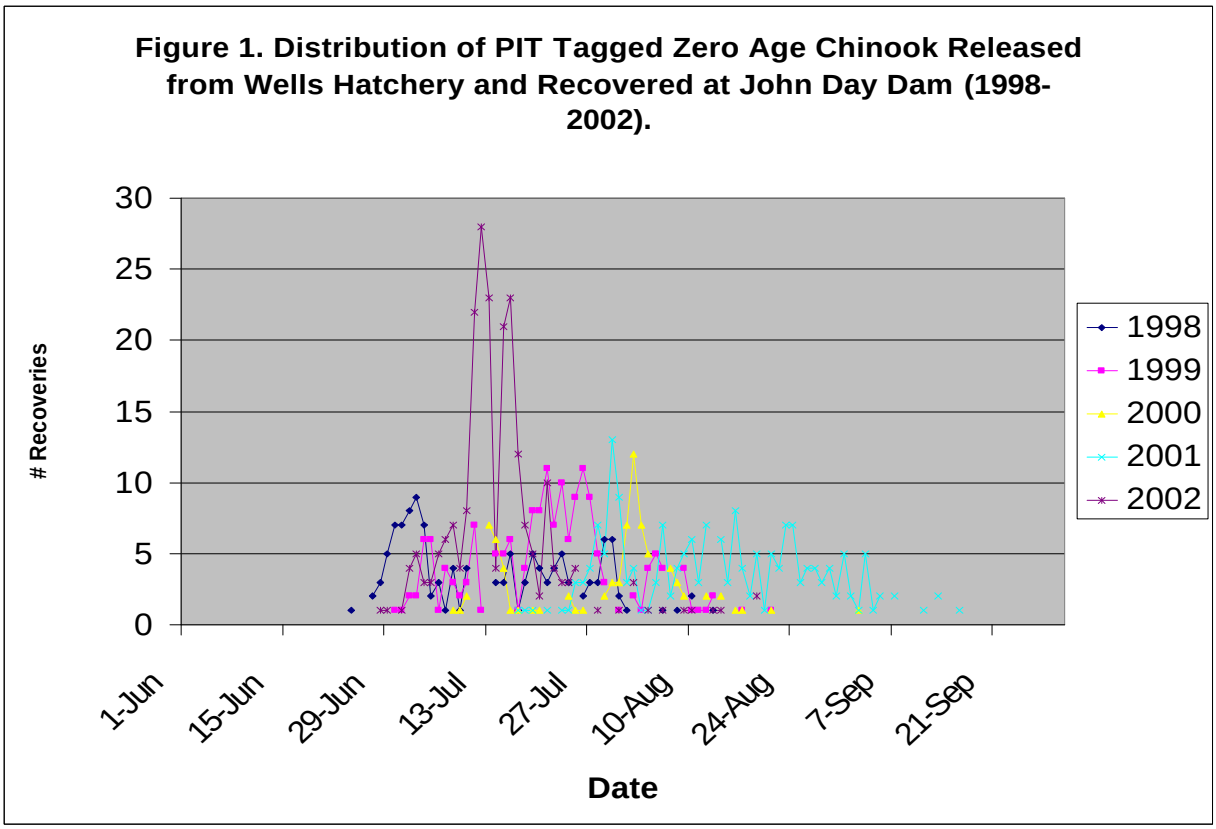
Table 1. Recovery of PIT tagged Wells Hatchery zero-age Chinook at John Day Dam (1998-2002)

Release Year	Total Number Recovered	Total Recovered at John Day in August	% Recovered at John Day in August
1998	131	6	**5 %**
1999	175	27	**15%**
2000	85	48	**56%**
2001	190	140	**71%**
2002	232	11	**5%**

In addition to the impacts on upper Columbia stocks from elimination from spill, we are further troubled by the Corps' proposal to remove the 1% peak efficiency turbine operating criteria at McNary Dam for the 2004 salmon migrations. Stocks that would be impacted include wild Wenatchee, Okanogan and Methow summer/fall Chinook, sockeye, coho, and endangered upper Columbia steelhead and spring Chinook.

The two vertical lines in figure 2 represent the times when both reduction in spill and removal of the 1% peak efficiency turbine operating criteria would impact upper Columbia stocks.

Figure 1. Distribution of PIT Tagged Zero Age Chinook Released from Wells Hatchery and Recovered at John Day Dam (1998-2002).



In their March 29th letter to you, the Governors of Washington, Oregon, Idaho and Montana said:

> In light of the considerations outlined in this letter, we will support a spill reduction proposal that mitigates for the impacts to nonlisted salmon and steelhead, and that NOAA Fisheries determines is adequate to avoid adversely affecting listed salmon and steelhead [emphasis added].

Further, Members of Congress, the Governors, the Northwest Power and Conservation Council and your proposal itself conclude that "mitigation actions should assure salmon runs are left in an equal or better condition than exists today." Our analysis, along with the states of Oregon and Washington, various environmental groups and the 59 Affiliated Northwest Indian Tribes and

their technical experts, have all found that your proposal does not meet this standard. This applies to the flawed analysis of impacts and the substandard offset measures proposed in your various "discussion papers" and the draft proposal. The balance of scientific evidence among juvenile salmon passage routes favors the use of spill. The survival benefits of spill compared to other passage routes are irrefutable. The decision process to this point has been disconnected from the best available science, recovery objectives, or the needs of our tribal members who rely on salmon for religious, cultural and subsistence purposes.

The following list lends further credence to our supposition that significant modifications to your proposal must occur before the Colville Tribes can agree to any actions proposed by your agencies:

- The biological benefits/impacts of either eliminated or reduced spill have not been fully vetted by the science. They are poorly documented and underdeveloped.

- The biological benefits/impacts of removal of the 1% peak efficiency have not been fully vetted by the science. They are poorly documented and underdeveloped.

- No credible study design exists to monitor either proposal. There are no reporting or performance criteria. The proposal does not address the NPCC amendment calling for evaluation of the effectiveness of spill.

- The Grant County (Hanford reach reduced stranding) provides an exaggerated credit to BPA of 8-160,000 adults. The range of this estimate speaks to its level of confidence. Further, BPA has not signed this agreement, making this action "uncertain to occur."

- In general, the impacts have been understated, while the benefits of the proposed offset measures have been wildly overestimated or misapplied. An increase of 1-2% in the northern pikeminnow "Heavy Up" action is not substantial enough to realize any detectable reductions in predation on upper Columbia stocks.

- In fact, predation may increase with elimination or reduction of spill as spill increases velocity in tailraces that disperses predators away from bypass outfalls and below turbines where smolts are most vulnerable to predation.

- Removal of smallmouth bass may not be an efficient way to increase survival of juvenile salmon migrating out of the upper Columbia. The overall abundance of these predators is relatively low (compared to northern pikeminnow), thus removing large numbers would be difficult and expensive.

- Avian Predation Research and Pile Dike Removal offer no material or estimated value for mitigating losses in 2004 or beyond, from what we can surmise.

- None of the offsets would provide mitigation for specific life histories affected by spill reductions ("in place in kind" concept), one of the stated offset principles.

Thus, and in order to more adequately mitigate for these irrefutable impacts, the Colville Tribes propose that the Action Agencies fund the following actions should you decide to proceed with your proposal for reduced spill:

1. **Construct the Omak Acclimation Pond.** Develop a new summer/fall Chinook acclimation pond on the Okanogan River near the city of Omak. This acclimation pond would promote greater use of existing natural spawning habitat for Okanogan River summer/fall Chinook - the zero-age fish most directly affected by the proposed spill reduction experiment. A comprehensive monitoring and evaluation program is already in place that would measure the efficacy of this program and related natural productivity of the summer/fall Chinook in the Okanogan basin. Anticipated one-time costs: $665,000.

2. **Modify the Tonasket Acclimation Pond.** This acclimation pond would disperse existing summer/fall Chinook production to make greater use of natural spawning habitat and improve production from over escaped spawning habitat in the upper Okanogan basin. A comprehensive monitoring and evaluation program is already in place that would measure the efficacy of an integrated program and natural productivity of the summer/fall Chinook in the Okanogan basin. Anticipated one-time costs: $250,000.

3. **Operate and Maintain the Bonaparte, Omak and Tonasket Acclimation Ponds**. As identified above, these acclimation ponds would disperse existing summer/fall Chinook production to make greater use of natural spawning habitat and improve production from over escaped spawning habitat in the upper Okanogan basin. A comprehensive monitoring and evaluation program is already in place that would measure the efficacy of these programs and natural productivity of the summer/fall Chinook in the Okanogan basin. Anticipated annual costs: $225,000.

4. **Purchase and operate a "gravel gurdy".** The gravel gurdy would be operated in selected river reaches to remove sediments from spawning gravels and evaluated on whether it could improve survival of natural-origin summer/fall Chinook. Anticipated one-time costs: $129,000.

5. **Initiate a Habitat Protection and Improvement Program for the Okanogan River.** As described in the draft Subbasin Plan, this program would begin implementation of a phased and programmatic habitat protection and improvement effort in the Okanogan River. Benefits include: improved passage survival, egg-fry survival and increased rearing habitat in selected reaches of the Okanogan River for spring and summer/fall Chinook, sockeye and steelhead. Anticipated three-year costs: $950,000.

6. **Initiate an Enhanced Tribal Enforcement Program.** Target areas include the mainstem Columbia River above and below Chief Joseph Dam, and in the Okanogan River mainstem. Benefits include increased education and outreach, reduced losses associated with harassment or "take" of listed and/or non-listed species. Anticipated annual costs: $275,000.

7. **Evaluate Effects of Summer Spill Experiment**. The potential effects of the reduced spill program on the Colville Tribes' trust resources would best be evaluated by PIT tagging natural-origin summer/fall Chinook emigrating from the Okanogan River. An

experiment would be designed to assess the timing of the summer/fall Chinook migration and survival past the federal dams on the lower Columbia River. Anticipated annual costs: $50,000.

In closing, this proposal, absent implementation of a much more comprehensive set of offset measures as described above, is further evidence that the federal commitment to recover salmon and steelhead to self-sustaining, harvestable levels is incomplete at this time.

The proposal as written does not fully or adequately mitigate for impacts and jeopardy caused by the federal hydropower system, especially as they relate to upper Columbia stocks of listed and non-listed salmonids. It is evident that instead of capitalizing on recent returns (caused primarily by cyclical improvement in ocean conditions), the action agencies are using the opportunity to seek decreases in protections that are essential to long-term salmon and steelhead recovery. This concerns us deeply and reaffirms our belief, substantiated by NOAA Fisheries' legal briefs, that the current federal plan will not, and is not intended to, result in meaningful recovery.

It is our hope that the information provided in this letter, and the list of reasonable and certain actions we propose, will truly offset and rectify this situation

I look forward to your reply.

Sincerely,

Joe Peone, Director
Fish and Wildlife Department.

cc: Deb Louie, CCT
D.R. Michel, CCT
Governor, Gary Locke
Judi Danielson, NPCC
Tom Karier, NPPC
Larry Cassidy, NPCC