

# **DRAFT Proposal for Transforming Transboundary Water Governance in the Columbia River Basin**

This draft proposal was co-created by an informal working group of water governance experts and interests in July 2019. The intent of this document is to support for an ongoing conversation about the future of the Basin's water resources, beginning at Columbia River Transboundary Conference in Kimberley, BC in September 2019.

Working group participants provided perspectives based on their individual expertise and were not participating as formal representatives of their organizations or governments. There was healthy discussion and the group was not in consensus on every issue. The working group participants believe this proposal should be used to stimulate a Columbia basin wide discussion on water governance. The intent of circulating this DRAFT proposal is to facilitate a discussion, solicit feedback and to inform future iterations of this proposal and parallel governance initiatives.

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### **EXECUTIVE SUMMARY**

For over 50 years the Columbia River Treaty (CRT) has largely focused on the two limited objectives it was designed for: (1) optimizing hydro power and (2) flood control in both Canada and the United States.

The ongoing CRT re-negotiations provide a unique opportunity to begin to align governance of the international transboundary Columbia River Basin with emerging and urgent imperatives including but not limited to: climate change, (active) adaptive management, ecosystem function and services, water quality, changing energy markets, meaningful participation of local governments and stakeholders in decision making, and – critically – recognition of the rights of First Nations and Tribes to self-determination both in terms of their aboriginal titles and rights and in regards to their legally protected Treaty rights to govern their lands and resources.

While these issues go beyond the current, or likely future, scope of even a ‘modernized’ CRT, reforming the CRT remains a critical and practical first step to strengthening governance of the transboundary basin. By relying on international experiences i.e. lessons from second and third generation treaties, indigenous leadership, and results from the CRT review process, the next two steps in the evolution of good governance in the international Columbia River Basin are:

- First, it is critical to seize the immediate opportunity to modernize and re-vitalize the CRT. This will include: a) establishment of ecosystem function and protection of Indigenous cultural values as a co-equal purpose of the Treaty; b) increasing the inclusivity of CRT governance, and; c) utilizing adaptive management as a primary tool for decision-making in the face of uncertainty.
- Second, it is necessary to advance a long-term transboundary governance objective that specifically includes the establishment of a Columbia basin-wide International River Basin Organization (IRBO).

IRBOs are now a feature of over 260 international watercourses throughout the world. An IRBO in the Columbia will unquestionably help meet the deficiencies of the CRT and can support the implementation of principles of adaptive management. IRBO’s provide a mechanism for enhanced public engagement and transparency, coordination, and scientific review, and can operate as a referral resource to address emerging issues. An IRBO can provide accountable oversight for technical management entities. It can be designed to comply with international norms regarding the rights of indigenous peoples.

Those who live in the Columbia River Basin must adapt to climate change, changing energy markets, shifts in land use and a changing society. All will therefore benefit from the formation of a forum that responds to social and ecological change.

#### **Actions required include:**

1. Continued engagement of Indigenous sovereigns, other levels of government and Basin citizens in the process to reform the Columbia River Treaty to represent a 21<sup>st</sup> century tool for governance of transboundary waters.
2. Distribute this draft proposal to interested parties to ignite a conversation on the future of the Columbia River Basin governance.
3. Begin the process of both designing the institutional architecture and creating the implementation strategy for the IRBO. Early steps will include extensive engagement within and among sovereigns and interest communities across the transboundary Basin.

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### **DETAILED PROPOSAL**

This proposal outlines how governance and management of transboundary waters can be strengthened across the transboundary Columbia River Basin through the creation of an International River Basin Organization (IRBO) that operates alongside a modernized Columbia River Treaty (CRT). This proposal complements the research and work already accomplished and underway in other forums on this subject by articulating a clear set of next steps needed to advance an inclusive, holistic, and nested governance approach.

#### **Issue Statement:**

The current international water governance structure in the Columbia River Basin is based on management by Canadian and US Utilities which have responsibility for coordinating flood control and power benefits, the two original, limited objectives of the CRT. The principal elements of transboundary governance in the Columbia River Basin are currently based on the International Joint Commission (IJC), IJC orders, and the Columbia River Treaty.

This governance structure is no longer viable as the Columbia Basin as a whole faces a number of risks and emerging issues which will lead to increasing water insecurity unless addressed in an improved governance model. These factors include: a legacy of adverse environmental impacts i.e. water quality; a failure to include Tribes and First Nations in decision making; climate change affecting river hydrology and temperatures; restoring ecosystem function to make the rivers more resilient to these changes; evolving energy technology and markets required to adapt to a low carbon future; and shifting social dynamic factors including values expressed by indigenous peoples and basin citizens on both sides of the border i.e. Traditional Ecological Knowledge.

The current governance structure fails to address restoration of ecosystem function now recognized as an additional necessary objective by both signatories. It is not flexible enough to address water management as conditions change. It lacks a useful mechanism for public input and is not transparent. Coordination between stake holders and information-sharing is limited. Finally, monitoring and scientific review is often ad-hoc or non-existent.

#### **Drivers for Governance Reform:**

The current CRT model, implemented and governed by technocratic utilities, does not support transparency nor does it have the capacity to implement an adaptive management approach in the face of climatic, social and ecological uncertainty. There is a need to integrate ecosystem based function objectives within the existing operations mandate to optimize the shared benefits of flood control and power production.

1. Due to climatic uncertainties, changing energy markets, and changing social values, there is a need for active adaptation. The implementation of adaptive management is one tool resource managers may use to experiment and tweak operations as desired outcomes evolve or as conditions necessitate.
2. When decision-making moves beyond science, engineer-managing entities are not well-suited to deliberating governance issues because they are not mandated to consider a broad array of social values nor reflect the emotional or spiritual aspects of water in their decisions. There currently exists no appropriate governing body to make value judgements in the Columbia River Basin.
3. The Governments of Canada and British Columbia committed to reconciliation and the renewal of the relationships with Indigenous Peoples based on the principles set forth in the United Nations Declaration on the Rights of Indigenous Peoples. Federal and State agencies in the United States of America have entered into agreements, backed by legal precedents, with tribes in the Northwest to act as co-managers of natural resources in the Columbia River Basin and beyond. Any modifications to the CRT or subsequent inter or intra-national agreements must ensure full engagement and consent from tribes and First Nations and be in alignment with articulated Indigenous governance principles.
4. Water quality, invasive species, migratory species protection, anadromous salmon restoration and habitat restoration are examples of issues currently not included in the CRT. Addressing these ecological issues

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will require mechanisms for coordination and data sharing that should be included in future transboundary agreements. The CRT (and the basin as a whole) is lacking a forum to identify and address complex environmental and social issues. In light of ecological and social uncertainties, coupled with the narrow operational mandate of the CRT, managers are cautious and resistant to modifying operations to account for emerging objectives.

### What is Needed:

Building upon the content and tenor of the CRT review process, the Shared Vision and Declaration of the Indigenous Peoples of the Columbia Basin, the One River-Ethics Matter conference series, and the work of the Universities Consortium on Governance of the Columbia River Basin, we propose an adaptive water governance model.

**Immediate Actions:** (1) an appropriate authority develop and review an adaptive governance framework for the Columbia River Basin; (2) a modernized Columbia River Treaty that identifies the objective of incorporating Ecosystem Based Function as a priority alongside optimizing river flow and storage projects for hydropower and flood control; (3) the modernization of IJC orders to include principles of adaptive management; (4) begin a transparent process to form an IRBO to address transboundary basin wide issues

### We Recommend:

Existing best practices require that a flexible, sustainable, ethics-based and legitimate water governance structure must include:

1. the inclusion of sovereign representation, including the full participation and leadership of indigenous nations, states, province, and local government;
2. transparency in decision making;
3. long-term and sustainable resourcing (i.e. staff, funding, institutional structure);
4. a mechanism for prioritization of issues and joint decision-making;
5. a mechanism for oversight of adaptive management implemented under transboundary agreements;
6. a mechanism for compilation and sharing of information relevant to transboundary river issues;
7. meaningful public participation; and
8. a basin-wide educational outreach effort.

We therefore propose a governance framework that divides the delegation of authority between management (operations, implementation) and governance (vision, objectives, value judgements), and which supports the implementation of adaptive management in operations of the CRT (and the basin as a whole). This would take the form of an umbrella framework for an International River Basin Organization (IRBO). A nested approach would include both a CRT/transboundary scale forum and a basin wide, IRBO forum to address issues of appropriate scale and substance.

We envision that the IRBO be paired with science and citizen/cultural advisory bodies designed to facilitate transboundary cooperation and transparency. We imagine that the IRBO will have oversight and referral authority for enforcement of existing and future transboundary agreements on the management of the waters of the Columbia River Basin.

**Proposed Implementation Process:** *Transboundary Governance of the Columbia River Basin through Multiple Mechanisms: an IRBO and a Modernized CRT*

A phased implementation process that will take resources, time, coordination and commitment by all partners. These next steps broadly fall into three categories: (1) education and dialogue; (2) CRT modernization; and (3) the establishment of an IRBO as a holistic governing body in the Columbia River Basin.

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*A two-fold approach to good governance in the Columbia River Basin:*

### 1) Short-term goals – a 21<sup>st</sup> century Columbia River Treaty

- a. Review of this proposal by CRT negotiators and further consultation with parties such as Tribes, First Nations, states, local governments and the public to guide the next steps.
- b. Issue a request for proposal for a feasibility analysis for the use of adaptive management principles for the CRT. Scope of work to include:
  1. review the best practices for applying adaptive management used by other International River basins;
  2. outline the issues and extent of social-ecological uncertainties facing Columbia River; and identify which issues would be better addressed through international coordination and cooperation
  3. establish a vision, objectives and operating principles; and
  4. describe the resources (technical expertise and budgets) required to implement Adaptive Management.
- c. Adjust the Entity composition to enable consistency with a future mission and goals of an IRBO and modernized CRT.
  1. Reorganize and rename the Permanent Engineering Board to align with a broadened scope to include Ecosystem Based Function.
  2. Institutionalize a consensus building process for a diverse governing body to articulate a vision with clearly defined goals. Such a document could serve as a “constitution” for a novel committee or organization.
  3. Decision-making authority and oversight must shift to those more directly impacted by river decisions, notably tribes and First Nations in addition to other sovereigns.
- d. Establish a forum to provide transboundary coordination, scientific review, and information sharing on basin-wide issues associated with ecosystem-based function. Such a forum would also provide oversight and referral authority for problems faced by managing entities that were not anticipated by the drafters of the new Treaty or that cannot be solved by existing scientific information.
- e. Modernization of existing IJC orders to include principles of adaptive management and reflect changes in the current social-ecological system.
- f. Recognize the need for a governance and coordination mechanism that encompasses the entire basin. This includes a nested forum at the CRT scale to address emerging social and ecological objectives within the storage and river-flow scope of the CRT.

### 2) Long-term goals – Basin wide approach

- a. Establishment of a transboundary committee made up of representatives and leaders from a diverse – basin wide - group of stakeholders to participate in creating and articulating a shared vision for the future of the Columbia River Basin.
- b. Establish an IRBO to address the multitude of issues and objectives that fall both in and outside the scope of the CRT and create two advisory bodies to support the IRBO:
  1. A knowledge and science advisory board composed of Indigenous scientists and knowledge-keepers as well as state, provincial, federal agency and university scientists; and
  2. A citizens and cultural advisory board representing communities and interests in the basin.
- c. Support opportunities for indigenous nations to engage internally and externally to ensure that all governance dialogue is informed by Indigenous Peoples’ governance principles and values.

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- d. Evaluate existing models for governance and adaptive management, their justification, and how they might be tailored to the specific context of the Columbia River Basin.
- e. Produce a series of transboundary workshops across the basin to inform the public, seek their input and ideas, and share information about possible approaches to an IRBO for the Columbia Basin.
- f. Engage with local governments, NGOs and economic sectors to gain input, build support and explain the function and form of the IRBO and the need for a novel governance framework
- g. Revise this proposal based on initial feedback and reactions at the 2019 Transboundary conference in Kimberly, BC

### **Function of the CRT within the IRBO:**

The Columbia River Treaty (CRT) will remain an important transboundary water governance mechanism, but its scope and governance structure must be modernized. Currently, the CRT is a management document with two goals: (1) flood risk management; and (2) the optimization of river-flow at the border for the maximum shared benefits of hydro-power production. Proposals to modernize the CRT identify the objective of incorporating Ecosystem Based Function as a third priority. However, even if modernized to include this objective, the CRT is still bound by its narrow focus on river-flow and storage. It is critical therefore, that the CRT forum be nested within a broader transboundary governance agreement which addresses the non-treaty related objectives discussed above.

The CRT must be modernized to recognize the need to adapt to change while carefully separating the management role of scientific entities who do not represent the public. Technical managers should not be permitted to make decisions outside those informed by science (e.g. value-based tradeoffs such as deciding when to optimize operations for power production vs. environmental flows for salmon and the ecosystem). In a time of accelerating change, there will be the need for decisions that involve more than science. By creating an accountable, representative and transparent governance body, those decisions can be addressed without returning to the expense and delay of a new Treaty negotiation. Further, a modernized CRT that supports the proposed governance structure, will be better suited to implement adaptive management principles.

### **Functions of the International River Basin Organization (IRBO):**

The IRBO will draw strength and accountability from leadership of tribes and First Nations, and the United States and Canada. The IRBO for the Columbia River also will also build on transboundary governance models used elsewhere such as the Great Lakes Treaty and subnational Compact. We propose that broad functions of the IRBO would include: creating a database and repository for studies, review of science, coordination on priority issues, information sharing and public forums, and, when warranted, studying the need for and developing new inter and intra-national agreements in parallel with the CRT. Further, this Transboundary governance forum would have referral or binding minute authority.

This would enable the IRBO to:

- (1) Develop and recommend to state, provincial and federal governments new binding international agreements on emerging issues such as water quality;
- (2) Provide oversight on existing agreements, such as the CRT, by reviewing science and management decisions based on periodic monitoring, and;
- (3) To receive public input and make adjustments to management authority when changes occur that make it impossible or unadvisable to operate within the delegated bounds of the initial agreement.