

**Columbia River
Inter-Tribal
Fish Commission**



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October 18, 2002

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Bonneville Power Administration
P.O. Box 3621
Portland, OR 97298

Frank Cassidy, Jr., Chairman
Northwest Power Planning Council
851 SW 6th Avenue, Suite 100
Portland, OR 97204-1248

Dear Sirs:

Thank you for the opportunity to begin to engage the region in a discussion of how BPA will market the power and distribute the costs and benefits of the Federal Columbia River Power System (FCRPS) in the Pacific Northwest after 2006. Many important issues need to be part of this discussion, such as the duty and ability of BPA to carry out its fish and wildlife obligations and its power obligations as "co-equal" partners.

The "Future Roles" discussion appears to be partially in response to a proposal of BPA's large customers for new 20-year power sales contracts. Under the Joint Customer Proposal (sometimes referred to as "Perma-Slice"), BPA's customers would each purchase a share of BPA's power output and pay that share of BPA's total operating costs. According to the proposal, the Slice customers would also be responsible for their own load growth and relieve BPA of that obligation. Make no mistake. These proposals represent a fundamental shift in policy from that represented by the provisions of the Northwest Power Act.

We recommend that BPA begin scoping and preparation of an environmental impact statement before entering into new long-term contracts. The following comments identify issues that should be fully addressed in a NEPA process that provides involvement and disclosure rules that are documented and well-understood by the agency and the public.

When BPA signed initial 20-year contracts in 1981, following passage of the Act, it failed to prepare an environmental impact statement

1977-2002

25 Years of Protecting Salmon
and Tribal Treaty Rights

and BPA was subsequently instructed by the Ninth Circuit Court of Appeals of its error. Admittedly, BPA was time-pressured by a one-year statutory deadline to offer these initial contracts by the terms the Act. Nevertheless, the time-pressures did not excuse BPA's failure to comply with NEPA. BPA is no longer under similar constraints. BPA has the time to prepare an EIS. It should begin scoping now.

The following concerns should be addressed in NEPA required processes:

- The distribution of an equitable share of the benefits of the FCRPS to the Tribes should be carefully addressed in an EIS in a manner satisfactory to the Tribes.

The Council and BPA have asked for comment on how the benefits of the FCRPS should be distributed within the region. There is certainly a great deal of focus on the distribution of FCRPS-generated energy among BPA's various customer classes. We assert that this narrow focus overlooks a more fundamental question regarding the distribution of the benefits from the FCRPS. As described in the Report entitled "Tribal Circumstances and Impacts of the Lower Snake River Project on the Nez Perce, Yakama, Umatilla, Warm Springs and Shoshone Bannock Tribes" the development of the Corps' dams have resulted in a tremendous transfer of wealth from the Commission's member Tribes to power and navigation-based industries. Essentially, the productive capacity of the river has been harnessed to benefit non-Indian industries to the detriment of Indian economies. A copy of the executive summary for this document is attached, and we ask that the full Meyer Report be included in the record. BPA and the Council have copies of this document. If additional copies are needed we would be pleased to provide them.

We ask that BPA return an equitable share of the economic productive capacity of the river to the Basin's tribes, who have suffered more than any other group from the redistribution of wealth that occurred with the development of the Basin's hydroelectric system. This is the fundamental issue the region must face regarding distributing the benefits of the FCRPS. Alternative means to return an equitable share of the benefits of the FCRPS should be addressed in consultations with the tribes and within the EIS.

- We support changes in BPA's role that would increase the tribes' role in river operations and fish and wildlife implementation. The status quo is not acceptable.

We support the proposal of the Save Our Wild Salmon comments "that the Columbia River Treaty Tribes be vested with explicit authority equal to the federal agencies in all river operations forums and decisions." We encourage BPA and the Council to consider the procedures established in the Pacific Salmon Treaty and its domestic implementing legislation, the Pacific Salmon Treaty Act, as a model for increasing the accountability of the federal government and sharing authority with tribal and state sovereigns in the management of the Columbia River.

Commentators have identified tribal self-sufficiency as a key required element to enhance tribal wellbeing¹. An adequate level of control over one's economic, social and psychological environment is essential for individual and communal health. Representatives of the Columbia/Snake study tribes have been consistent over the past several decades in reporting that Columbia Basin dams were killing salmon - and in opposing the progressive eradication of the salmon resources of the Snake and Columbia rivers and their tributaries. At no time, from construction of earliest dams to the present, has their advice been sufficiently credited and acted upon by dominant hydroelectric authorities. This disempowerment of the tribes is of continuing concern. Tribal commentators, in talking about tribal benefits from renewal of the salmon, again and again emphasize the need for greater consideration of tribal knowledge and recommendations in regional decision-making affecting survival of the salmon.

- BPA must provide equitable treatment for salmon.

The Northwest Power Act was enacted in an effort to ensure, among other things, that the Pacific Northwest maintains an adequate, efficient, economical and reliable power supply while providing adequate protection, mitigation and enhancement for the Columbia River Basin's fish and wildlife resources affected by the management, operation and regulation of the Federal Columbia River Power System (FCRPS). 16 U.S.C. §§ 839 & 839b(h); *NRIC*, 35 F.3d at 1377. *See also*, *NRIC* 35 F.3d at 1378 (“[I]n making fish and wildlife a ‘co-equal partner’ with the hydropower industry, the NPA adopted several innovations, marking the Act for its legislative craftsmanship.” (Citing 126 Cong. Rec. H9852 (Rep. Swift))).

BPA is required to use its funds and authorities to protect, mitigate and enhance fish and wildlife to the extent affected by the development and operation of the FCRPS in a manner consistent with the Fish and Wildlife Program. *Id.* at §839b(h)(10)(A). Further,

The Administrator [of BPA] and other Federal agencies responsible for managing, operating, or regulating Federal or non-Federal hydroelectric facilities located on the Columbia River or its tributaries shall -

- (i) exercise such responsibilities consistent with the purposes of this Act and other applicable laws, to adequately protect, mitigate, and enhance fish and wildlife, ... *in a manner that provides equitable treatment* for such fish and wildlife with the other purposes for which such system and facilities are managed and operated.

Id. at §839b(h)(11)(A) (emphasis added). This section of the NPA imposes a substantive obligation to ensure equitable treatment for fish and wildlife, which is independent of obligations to fund the Council's Fish and Wildlife Program and comply with other applicable

¹For example, see: Task Force Seven, 1976. Report on Reservation and Resource Development and Protection. Final Report to the American Indian Policy Review Commission, Washington, D.C. , p. 128; and; White, Robert H., 1990. Tribal Assets: The Rebirth of Native America. New York: Henry Holt & Company.

environmental laws. *Confederated Tribes and Bands of the Yakima Indian Nation v. FERC*, 746 F.2d 466, 473 (9th Cir.1984); *Public Utility Dist. No. 1 of Douglas County v. BPA*, 947 F.2d 386, 392 (9th Cir. 1991).² Section 6 of the NPA mandates that BPA acquire sufficient resources to assist in meeting the fish and wildlife obligations of Section 4(h) of the NPA. 16 U.S.C. §839d(a)(2)(B).

The Commission's member tribes are pressing their concerns regarding BPA's failure to provide equitable treatment in two lawsuits now underway. We ask that the tribal briefs in CTUIR v. BPA and Blachly-Lane v. BPA be considered by BPA and be included in the record. We would further note that these lawsuits demonstrate controversy, which is one of CEQ's regulatory indicators of the need for preparation of an EIS.

- Customer operational control of federal water resources projects is not allowed under law and any changes in scheduling practices or operating practices that may result from a change in BPA role should be addressed in the EIS.

In the late 1970's, BPA prepared its Roles EIS. This draft EIS addressed in detail the operating procedures associated with the Pacific Northwest Coordination Agreement, such as Firm Energy Load Carrying Capability, Critical Water Planning, and the application of rule curves to the operation of the FCRPS. Since the Roles EIS, the operations of the FCRPS have changed significantly. For instance, the three-year critical period and associated power planning and operational features have been abandoned. BPA no longer formally engages in shifting FELCC to serve a portion of its direct service industrial customer loads.

According to the Joint Customer Proposal, the customers would simply share the operational rights that BPA currently holds under current agreements. It is, however, far from clear to the tribes' fisheries technical managers, including those who are very familiar with certain aspects of system operations, exactly what BPA's operational rights, if any, are. This basic information is not readily available even to tribal and other participants in the Technical Management Team, who regularly interact with the Corps, BPA and BuRec on system operations. Broad descriptions of system operation arrangements such as those in the "Insider Story" a publication of BPA, the Corps, and BuRec are helpful, but they do not substitute for in-depth public disclosure of the rules for system operation and alternatives. Such disclosure was provided in the BPA Roles EIS over 20 years ago. Times and operations have changed. The intervening NEPA analyses performed by BPA on the SOR and PNCA have obscured more than illuminated actual system operation procedures. BPA's role in future system operation and alternative roles should be explored in a new EIS.

² The 1994 *NRIC* decision contains an extensive, and easy to read, discussion of the fish and wildlife provisions of the NPA. 35 F.3d 1371.

- BPA's statutory obligations to acquire conservation and renewable resources sufficient to meet its fish and wildlife obligations in accordance with the Tribal Energy vision should be addressed in an environmental impact statement.

By recently entering into contractual obligations that far exceed what the FCRPS generating resources can provide on a firm basis without first ensuring that BPA can acquire adequate resources to meet both its contractual obligations and its fish and wildlife obligations under the NPA and other environmental laws, BPA has violated the Northwest Power Act. Section 6(a)(2) of the NPA provides:

- (2) In addition to acquiring electric power pursuant to section 5(c) [16 U.S.C. §839c(c)], or on a short-term basis pursuant to section 11(b)(6)(i) of the Federal Columbia River Transmission System Act [16 U.S.C. §838i(b)(6)(i)], the Administrator [BPA] *shall* acquire, in accordance with this section, sufficient resources-
- (A) to meet its contractual obligations that remain after taking into account planned savings from [conservation and renewable resources] measures provided for in paragraph (1) of this subsection, and
 - (B) to assist in meeting the requirements of section 4(h) of this Act [16 U.S.C. §839b(h)].

The Administrator *shall* acquire such resources without considering restrictions which may apply pursuant to section 5(b) of this Act [16 U.S.C. §839c(b)].

16 U.S.C. §839d(a)(2)(*emphasis added*). Section 4(h) of the Act contains the fish and wildlife provisions of the NPA discussed above. Congress expressly told BPA that it *shall acquire* sufficient resources to meet both its statutory fish and wildlife requirements and contractual requirements to power customers.

We have seen no analysis from the Joint Customers or BPA that the Joint Customer proposal will satisfy this requirement of the Northwest Power Act. As BPA is fully aware, during the Regional Review BPA's customers discouraged BPA from acquiring power resources. Instead the customers assured BPA that they would assume such responsibilities. As the region is fully aware, these customers failed to acquire sufficient resources needed to meet the region's firm energy demands. The obligations of BPA and its customers to acquire resources to serve load and alternatives to address this obligation should be fully explored in an environmental impact statement.

The severity of the 2001 emergencies declared by BPA are a testament to the region's failure to acquire energy resources. We will not know the full impacts of 2001 operations for another three years, however, there was a high level of observed juvenile mortality for various stocks, particularly including stocks from the Columbia River tributaries above the mouth of the Snake River. Smolt to adult survival for preliminary returns from the Yakima River Basin measured in 2002 based on jack returns were much lower than in preceding years.

- BPA's role of transmission service provider should be addressed in the BPA Roles NEPA document so that the tribes and the public can assess this matter, including the trade-offs between transmission development and BPA resources acquisition as they affect salmon.

It is clear that there are trade-offs between development of new generation and development of new transmission. Many of these trade-offs are economic. However, many are environmentally related and will affect the operation of the region's electricity generating resources. BPA's role is not just that of a power marketer. BPA is the largest provider of transmission services in the Pacific Northwest. Consideration of BPA's future role must include BPA's roles in providing transmission services and how those services will meet the fish and energy needs of the region. The Commission has previously provided comments and questions to BPA on INDEGO and many of those concerns remain applicable to RTO West. Moreover, the Commission's draft energy vision describes a proposal for the types of energy development (generation and transmission) that should occur in the region to reduce the pressure of energy demands on the Columbia River. We believe that this energy vision and BPA's role therein should be addressed in an EIS. We encourage BPA to implement those actions described in the Energy Vision document as its authorities permit pending development of an EIS.

- BPA's current NEPA analysis addressing its role (the Business Plan EIS) is out of date.

In its 1995 Business Plan, BPA adopted a "market driven" business strategy which "provides basic policy direction for BPA to decide a number of major issues related to products and services, rate designs, energy resources, and transmission." BPA's adoption of a market driven strategy put in motion a series of decisions that have strongly and adversely affected BPA's ability to protect, mitigate, and enhance fish and wildlife. Under this strategy, BPA decided to limit or stabilize costs, including costs of fish and wildlife obligations, increase its contractual load commitments, keep rates at existing levels, and acquire sufficient energy resources to serve its load commitments by short term market purchases. BPA is now facing a short term financial crisis as a result of these decisions.

Despite mentioning the phrase "equitable treatment" a number of places in the Business Plan and its underlying NEPA environmental impact statement (Business Plan EIS), the Business Plan does not adequately address how BPA's market strategies would place fish and wildlife on a par with BPA's power operations. In fact, many of the references to equitable treatment simply state that equitable treatment will not be threatened because the options considered or chosen will allow BPA to maintain efforts with other agencies to provide equitable treatment.³

³ BPA states that decisions made in the Business Plan are to be made within the operating constraints for the FCRPS detailed in the System Operation Review EIS Record of Decision. The Business Plan Decision treated the System Operation Review EIS as contemporaneous with BPA's Business Plan decisions. In reality, the Business Plan was completed nearly two years before BPA issued its record of decision on the System Operation Review. With virtually no analysis of fish and wildlife effects, the Business Plan simply assumed that each of its alternative strategies would meet BPA's statutory fish and wildlife obligations. By delaying its decision, BPA lost the opportunity to balance its power and fish purposes to assure that fish would not be

Although the Business Plan and the Business Plan EIS run well over 640 pages, the complete text of the analysis of equitable treatment can be found in the Business Plan in two paragraphs:

Under all alternatives, BPA would manage hydro operations to provide equitable treatment for fish and wildlife along with power production, and would continue its commitment to fund fish and wildlife mitigation measures. However, high power costs due to changes in hydro operations, or adverse developments in the power market, could reduce BPA's ability to generate revenues to fund fish and wildlife measures and, consequently, BPA's ability to provide equitable treatment for fish and wildlife.

Under the Market-Driven alternative, BPA is reinventing its fish and wildlife program to emphasize better results, effectiveness, and efficiency. The program will be reoriented to establish priorities, provide stable funding, monitor results, and focus on ecosystem management. This reinvention, coupled with marketing initiatives and cost management efforts, will enhance BPA's ability to ensure equitable treatment.

BPA decided to limit its fish and wildlife costs as part of an effort to provide more cost certainty to its customers. According to BPA's analysis, it needed more customers to be financially sound enough to help fish. The market strategy adopted in the Business Plan also anticipated the creation of a trust fund for fish and wildlife that would benefit from surplus BPA revenues in good years. *Id.* Such a trust fund was not established.⁴ Perhaps most significantly, the decision did not analyze what could be done to avoid the potential threat to providing equitable treatment identified by BPA itself in the above quote from the Business Plan.

The Business Plan EIS does not contain any specific analysis about how this fundamental change in business operations would put fish and wildlife protection, mitigation, and enhancement on a par with BPA's statutory purposes related to the management and operation of the Columbia Basin's hydroelectric facilities. Minor references to equitable treatment can be found in the Business Plan EIS in BPA's responses to public comments. Specifically, the Columbia River Inter-Tribal Fish Commission questioned whether BPA was meeting its equitable treatment mandate under the NPA and recommended a supplemental EIS to analyze this issue. BPA responded that it had included a specific purpose of equitable treatment in the final documents. The Friends of the Earth raised concerns about BPA's proposal to limit fish and wildlife expenditures. BPA responded that "BPA is not proposing to set a 'cap' on its

subordinated to power. The delay undermined the statutory scheme to treat fish on a par with power, by advancing BPA's power strategy ahead of decisions fish operations.

⁴ In fact, by the end of the fish and wildlife funding cap period of 1996-2001, BPA estimated that it had actually spent \$230 million less than the cap had accounted for. These unspent funds have yet to be specifically targeted for fish and wildlife obligations, instead they have become part of BPA's financial reserves. We herein incorporate by reference the comments of the Commission and the Yakama Nation on BPA's Financial Choices in their entirety including attachments and ask that these comments in their be considered by BPA with regard to its future roles.

responsibilities to provide 'equitable treatment' in operations of the hydrosystem... Whatever is decided for this budget, it will not include the costs of the hydrosystem operations for fish and wildlife. It is largely through these operations that BPA and other operating agencies achieve their equitable treatment responsibilities."

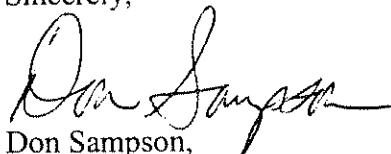
Finally, the conclusion to fix fish costs because more load [customers] is good for fish was undercut by BPA's pronouncement in its 2001 Decision that due to excessive load commitments, BPA has sought, and will probably seek again, suspension of ESA hydro operations for fish to assist BPA's financial situation. Nevertheless, BPA has continued to finalize power sales contracts and set power rates consistent with the Business Plan's decision that committing to serve more load is better. Continuing on this course of action is not in accordance with the clear statutory direction of the NPA to ensure that the balance between BPA's load commitment and resources available to BPA to meet that commitment is sufficient to assist in meeting the fish and wildlife requirements of the NPA. See, e.g., 16 U.S.C. at §§ 839b(e)(2) & 839d(a)(1)&(2). The serious public harm suffered by suspension of the ESA's requirements to benefit BPA's financial situation was not an outcome anticipated by the drafters of the NPA.

- BPA must work with the tribes to have an organized effort to address these issues with the tribes, which process is satisfactory with the tribes and by which BPA and the tribes would seek a mutually satisfactory outcome.

We encourage BPA to undertake consultations with the Commission's member tribes to address BPA's future roles and seek a mutually satisfactory conclusion to these issues. The future role of BPA is of critical importance to the Commission's member tribes, just as it has been important in the past. In Confederated Tribes v. Callaway, the Umatilla Tribe sued BPA and the Corps in response to BPA's proposed Hydro-Thermal Program that would have increased peaking operations to the detriment of the tribes fishery. In the 1980's the Commission's member tribes have consistently testified before Congress that BPA should not be privatized, particularly when such proposals were specifically put forward during the Reagan Administration.

Thank you for the opportunity to provide these comments. We look forward to a continuing dialogue on these matters.

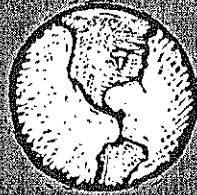
Sincerely,


Don Sampson,
Executive Director

cc: Fish and wildlife committees
Tribal attorneys

Tribal Circumstances & Impacts from the Lower Snake River Project

on the Nez Perce, Yakama, Umatilla,
Warm Springs, and Shoshone Bannock Tribes



—Executive Summary

Prepared by
Meyer Resources, Inc. for

Columbia
River
Inter-Tribal
Fish
Commission

with funding from the
US Army Corps of Engineers

1.0 Executive Summary of Tribal Circumstances and Impacts from the Lower Snake River Project

This report considers impacts on the Nez Perce Tribe, the Yakama Indian Nation, the Confederated Tribes of the Umatilla Indian Reservation and the Confederated Tribes of the Warm Springs Reservation of Oregon. Each of these tribes is a sovereign nation, and is unique in many ways. At the same time, these four tribes have retained close linkages over the years: through blood ties; in cooperative pursuit of salmon and other food; and through religion, sharing of languages and similarity of treaties.

The Report also assesses impacts on the Shoshone-Bannock peoples, who live further upriver in the Snake River drainage, and who are more separated from the other four study tribes.

1.1 Present Circumstances of the Study Tribes

Viewed from the perspective of objective statistics, the peoples of the study tribes must today cope with overwhelming levels of poverty, unemployment that is between three and thirteen times higher than for the region's non-Indians, and rates of death that are from twenty percent higher to more than twice the death rate for residents of Washington, Oregon and Idaho as a whole. If located outside the United States, such conditions might fairly be described as "third world".

Present Circumstances of the Five Study Tribes								
Indicator of Wellbeing	Nez Perce	Shoshone Bannock	Yakama	Umatilla	Warm Springs	Non-Tribal Data		
						Idaho	Oregon	Wash
Families in Poverty (%)	29.4	43.8	42.8	26.9	32.7	9.7	12.4	10.9
Unemployment (%)	19.8	26.5	23.4	20.4	19.3	6.1	6.2	5.7
:In winter (%)	62.0	80.0	73.0	21.0	45.0			
Per Capita Income (\$'000)	8.7	4.6	5.7	7.9	4.3	11.5	14.9	13.4
Percent Who Can Speak their Tribal Language (%)	25.0	34-38	15.0	9.0	12.0	-	-	-
Ratio of Tribal Death Rate to Non-Tribal Death Rate.	1.7	2.3	1.9	1.2	1.6	-	-	-

*These data are from the US Bureau of the Census (1990), the US Bureau of Indian Affairs (1995) and the Indian Health Service, various years. See the tribe by tribe sections in the main report for further detail.

A 1991 report by Central Washington University provides more graphic description.

“The personal suffering and tragic lives of many (Indian) people are not revealed in the cold reports of tribal and federal governments. It can, however, be seen and felt in the towns and the countryside--in the eyes of men and the despair of mothers, with few options for change.

When you can no longer do what your ancestors did; when your father or mother could not do these things either; when they or you found little meaning in and limited access to the ways of mainstream culture--the power of 70 percent winter time unemployment, and 46 percent of the population below the poverty level, is visible throughout the Nez Perce landscape.”

Tribal spokespersons are uncomfortable with statistical treatment of their peoples – and the “blaming the victim” reaction such data sometimes elicits.

I don't much like this talk of unemployment and poverty. Before the white man came, we had no such thing as poverty. We lived off the land. We fished, we hunted, we gathered roots and berries. We worked hard all year round. We had no time for unemployment.

Poverty came with the Reservations. We were forced to live away from our salmon and our other resources. Our poverty is our lack of our Indian resources. These resources are being destroyed by the white man. That's what's causing our poverty.

(Nathan Jim, Sr., Warms Springs Fish Commissioner)

Whether considered through tribal or non-Indian eyes, the present extreme difficulties these circumstances cause for the peoples of the study tribes is inescapable.

1.2 Principal Causes of the Present Impoverishment of Peoples of the Study Tribes

1.2.1 Losing Tribal Salmon

Today, the study tribes have lost the greatest part of the salmon they protected in their treaties with the United States. The further up-river one goes, the greater the losses that have occurred. Above the four lower Snake River dams, tribal salmon are presently harvested at less than one percent of pre-contact levels. These impacts are summarized on the following page.

A Comparison of Estimated Tribal Harvests from the Columbia/Snake System Contact Times to the Present					
Benchmark	Nez Perce	Shoshone/ Bannock	Yakama	Umatilla	Warm Springs
	harvest in thousands of pounds				
Estimated harvest in Contact Times	2,800	2,500	5,600	3,500	3,400
Percentage of fish in diet.	40%	28%	40%	38%	50%
Estimated Harvest at Treaty Times.	1,600	1,300	2,400	1,600	1,000
Current tribal harvest.*	160	1	1,100	---77---	
Percentage of Treaty-Period Salmon lost.	90.0%	99.9%	54.0%	97.0%	
Present Harvest as a Percentage of Present Need.	9.4%	0.04%	14.3%	1.7%	

* Shoshone Bannock estimates include harvests by Sho-Pai Duck Valley peoples.

** Refer to each subsequent tribal report section for derivation of these estimates.

Initially, these losses of salmon were principally caused by preemption by competing non-Indian harvesters, and obstruction or denial of access to usual and accustomed fishing places - sometimes fenced off by non-Indian property owners. Most of these actions were eventually challenged in court, and struck down as illegal. With each Court affirmation, the tribes looked forward to once again sustaining their people with the salmon.

But over time, when tribal people were once more able to return to the river, they have found the salmon were no longer there. For during the struggle to reaffirm the right to Treaty access to fishing, another tribally adverse process had been occurring - **the transformation of the rivers to produce electricity, irrigation for agriculture, navigation services, and waste disposal. Increasingly, this transformation left no place for the salmon - and hence, little place for the tribes.**

As each dam was constructed, the tribes objected, calling on the government to reconsider - pointing out that these actions were contrary to the Treaties the United States had signed with them, and predicting adverse consequences for the salmon - and for their tribal peoples. Each time, these tribal objections were ignored, given little weight, or actively opposed by non-Indian interests - and tribal salmon harvests continued to decline.

1.2.2 Losing Tribal Lands

Today, the five study tribes control 2.6 million acres of their original Reservation lands - only 22 percent of the lands they reserved for themselves in their treaties with the United States. Nine million acres of original Treaty-protected tribal lands, together with the wealth those lands produce, are no longer in the hands of the tribes or their members. Primarily, these lands have been taken from the tribes by force; by “errors” in surveying reservation boundaries, always made against Indian interest; by creation of “new” law, including post-facto legislation and pseudo-treaties to legalize prior illegal takings by non-Indians (i.e. the “steal treaty” with some Nez Percés in 1863); and by subsequent laws such as the Dawes Act of 1887, that facilitated the transfer of tribal wealth associated with Reservation lands into non-Indian hands.

Not only have the tribes lost substantial lands due to these actions, but non-Indians often hold the highest valued lands within Reservation boundaries. Further, Reservation lands held by Indians are often interspersed with lands held by non-Indians in a “checkerboard” - exacerbating difficulties for tribal resource protection and economic development.

An Estimate of the Extent of Tribal “Own Lands” - Contact Times to the Present					
Benchmark	Nez Perce	Shoshone/ Bannock	Yakama	Umatilla	Warm Springs
	in thousands of acres				
Contact times.	15,000.0	E-NQ	12,000.0	6,900.0	10,000.0
Retained Treaty lands -1855.	7,500.0		1,600.0	510.0	578.0
Land retained after boundary “survey error” (Umatilla only).				245.0	
Retained after 1863 “steal treaty” with Nez Perce.	760.0				
Retained after Fort Bridger Treaty of 1868.		(approx.) 2,000.0			
Lands owned today - after Dawes Act “surplusing” & sales/ right-of-way takings/ and other losses.	94.0	544.0	1,126.0	158.0	658.0
: Percentage of Original Homeland now tribally owned*.	0.6%	na	9.4%	2.3%	6.7%
: Percent of Treaty Lands now tribally owned*.	1.2%	27.2%	70.4%	31.0%	100.0%

* Owned by the tribe, and/or by individual tribal members. Nez Perce percentage based on 1863 Treaty.

*E-NQ = Extensive, but not quantified.

1.2.3 A Summary of the Principal Causes of Present Adverse Circumstances for the Study Tribes

From Treaty times to the present, non-Indians have taken most Treaty-protected assets of value from the tribes - particularly their lands, waters and salmon. The cumulative effects of these actions are evident throughout the tribal landscape.

Some non-Indians say; "All these things happened before I got here." But it was their forefathers who displaced the Indians - raped our mothers and daughters - who killed the children - and then forced us to go to different areas because of the precious metals - because they wanted the water - because they wanted the forests. These are the ugly histories they say do not pertain to them. Unfortunately some of us still carry the hurt and pain in our hearts.

(Hobby Hevewah, Shoshone-Bannock Councilor)

My heart cries for my people, cuz we are no more Indians....All our horses are gone. No more cattle. All the pastures, the land, the hillsides, taken up by the farmers, by the white man.... Every inch of tillable ground is taken up. Where our houses used to be, they tear that down, and they put wheat in there or peas right on every inch of the ground. And they've taken down all the fences, and they've plowed through there. These big farmers, they've got everything in the world. The (Indian) owners have nothing. And they've taken everything.

Like I say, they've taken our land, they've taken our rivers, they've taken our fish. I don't know what more they want.

(Carrie Sampson, CTUIR Elder)

When the United States began building power dams in the Pacific Northwest, construction crews ruined several burials in canyons along inland rivers, including the Snake River. Sometimes archaeologists working for the federal government raided Indian burials to preserve choice specimens for university collections before water from a new dam inundated the locations. ...The Yakama and their neighbors have faced a continued onslaught of ghouls, construction crews, and government agencies that disregard and discredit the spiritual beliefs of the Northwest Indians in reference to their dead. ...

The reservation system of the United States destroyed the native standard of living and introduced a host of viruses and bacilli to the Indians living on the Yakama Reservation. The result was poverty, ill health and death among the Yakama people.

(Clifford Trafzer, in "Death Stalks the Yakama")

1.3 The Continued Importance of Salmon for the Tribes

Despite the deprivations summarized previously, today, salmon remain connected to the core of tribal material and spiritual life. Faced with bleak present circumstances, and severely limited prospects for remedy, the tribal peoples still look first to the salmon with hope of a better future.

Traditional activities such as fishing, hunting and gathering roots, berries and medicinal plants build self-esteem for Nez Perce peoples - and this has the capacity to reduce the level of death by accident, violence and suicide affecting our people. When you engage in cultural activities you build pride. You are helped to understand "what it is to be a Nez Perce" - as opposed to trying to be someone who is not a Nez Perce. In this way, the salmon, the game, the roots, the berries and the plants are the pillars of our world.

(Leroy Seth, Nez Perce Elder)

The loss of the food and the salmon is monumental - and its all tied together. Food is a really big part of the Yakama culture - as it is elsewhere. Anywhere you look in the world, food carries culture. So if you lose your foods, you lose part of your culture - and it has a devastating effect on the psyche. You also lose the social interaction. When you fish, you spend time together - you share all the things that impact your life - and you plan together for the next year. Salmon is more important than just food.

In sum, there's a huge connection between salmon and tribal health. Restoring salmon restores a way of life. It restores physical activity. It restores mental health. It improves nutrition and thus restores physical health. It restores a traditional food source, which we know isn't everything - but its a big deal. It allows families to share time together and builds connections between family members. It passes on traditions that are being lost. If the salmon come back, these positive changes would start.

(Chris Walsh, Yakama Psycho-Social Nursing Specialist)

Salmon are the centerpiece of our culture, religion, spirit, and indeed, our very existence. As Indians, we speak solely for the salmon. We have no hidden agenda. We do not make decisions to appease special interest groups. We do not bow to the will of powerful economic interests. Our people's desire is simple--to preserve the fish, to preserve our way of life, now and for future generations.

(Donald Sampson, CTUIR)

1.4 Reservation of the Tribal Right to Harvest Salmon in the Treaties between the Study Tribes and the United States

The rights and responsibilities of the United States and the five study tribes are spelled out in the treaties made between them. The major treaties are:

Treaties Between the Five Study Tribes and the United States		
Treaty	Signing Date	Present Tribal Organization
Treaty with the Yakima Tribe	June 8, 1855	Yakama Indian Nation
Treaty with the Umatilla Tribe	June 9, 1855	Confederated Tribes of the Umatilla Indian Nation
Treaty with the Nez Perce Tribe	June 11, 1855	Nez Perce Tribe
Treaty with the Tribes of Middle Oregon	June 25, 1855	Confederated Tribes of the Warm Springs Reservation of Oregon
Fort Bridger Treaty	July 3, 1868	Shoshone-Bannock Tribes

Historically, virtually all the original Indian bands now represented in the five study tribes moved through their territory, taking each traditional food at its right time and place. For ancestors of the Nez Perce, Yakamas, Umatillas and Warm Springs, **salmon was the most important food**. For the Shoshone Bannock, salmon took an important place alongside the buffalo.

God created this country... He put the Indian on it. They were created here in this country, truly and honestly, and that was the time this river started to run. Then God created fish in this river and put deer in these mountains and made laws through which has come the increase in fish and game.... When we were created, we were given our ground to live on, and from that time these were our rights.

My strength is from the fish; my blood is from the fish, from the roots and the berries. The fish and game are the essence of my life. I was not brought from a foreign country and did not come here. I was put here by the Creator.

(Yakama Chief Meninock)

It's just that salmon are part of the country, they're part of the environment. They belong here as much as the Indians belong here. And in that way they complement each other. They've become a part of us because it's what we depend on to live.

(Antone Minthorn)

At certain times of the year, certain ceremonies would be held, like the first foods feast of the season.... And in these ceremonies water would be drunk first, and that would be recognizing the importance of water, you know, for sustaining life. And these other foods came in order after water - salmon, and deer meet, and the roots and the berries. And we say that the water was the same as the blood in our body. In relation to the Mother Earth, the water flows like blood in our veins along the various

rivers and, you know, inside the earth. So that's how we related the water to our Earth and to our bodies.

(Alan Pinkham)

Our religious leaders told us that if we don't take care of the land, the water, the fish, the game, the roots and the berries we will not be around here long. We must have our salmon forever!

(Delbert Frank, Sr.)

The five tribes ceded more than 40 million acres of land to the United States and agreed to move on to 12.2 million acres of Reservation lands. But tribal negotiators were careful to protect their rights to harvest salmon and the other key resources they depended on for survival in their treaties. The following explicit protection can be found in each of the treaties of the Nez Perce, Yakama, Umatilla and Warm Springs.

Article 3: The exclusive right of taking fish in all streams, where running through or bordering said reservations, is further secured to said confederated tribes and bands of Indians, as also the right of taking fish at usual and accustomed places in common with the citizens of the Territory, and of erecting temporary buildings for curing them; together with the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed lands.

The Fort Bridger Treaty between the United States and the Shoshone-Bannock states:

Article 4: The Indians herein named...shall have the right to hunt on the unoccupied lands of the United States so long as the game may be found thereon, and as long as peace subsists among the whites and the Indians on the borders of the hunting districts.

And the Court in State of Idaho v Tinno stated that, in Article 4, "to hunt" also meant "to fish".

Court cases have affirmed that the Treaties between the five tribes and the United States cannot be overturned or contradicted by ordinary federal laws, by state laws, or by interagency agreements. The U.S. Supreme Court has further affirmed that:

In construing any treaty between the United States and an Indian tribe...the treaty must...be construed, not according to the technical meaning of its words to learned lawyers, but in the sense they would be naturally understood by the Indians.

These Supreme Court mandated Canons of Construction are of particular importance in establishing tribal entitlements, against which alternative actions affecting salmon on the Columbia and Snake River systems can be evaluated. It is clear that, while ceding immense expanses of land to the United States, the tribal treaty negotiators took care to protect their salmon and other "life-support" resources.

At Treaty times, **the salmon resource reserved by the tribes was the harvest from river systems that were biologically functional and fully productive.** If the tribal treaty negotiators had perceived that they were bargaining to reserve “only a small fraction” of the salmon available to harvest in the mid-1800’s, the treaty negotiations would have been much different – if they had occurred at all.

The treaty signers, both tribal and non-tribal, were also clear that the Treaties were designed to take care of the needs of tribal peoples **into the future without limit.** Successive tribal leaders have reminded us of this intent. Consequently, there is no date in time, subsequent to 1855, that cuts off tribal Treaty entitlements.

In conclusion, the Treaty tribes are entitled to a fair share of the salmon harvest from all streams in their ceded area(s) – measured at the **fully functioning production levels** observed in the mid-1800’s. This was the tribal entitlement at Treaty times. It is still so today, and into the future. **Declines in the salmon productivity of the river due to subsequent human action have not changed this entitlement.**

Federal tribal trust responsibility includes, but is not limited to, treaty obligations. Its central thrust recognizes a federal duty to protect tribal lands, resources and the native way of life from the intrusions of the majority society. Each federal agency is bound by this trust responsibility.

1.5 Impacts of the Lower Snake River Dams on the Study Tribes

The four lower Snake River dams evaluated in this report have significant, but not sole responsibility for the desperate present circumstances of study tribes. Construction of these dams has transformed the production function of the lower Snake River - taking substantial Treaty-protected wealth in salmon away from the tribes, as evidenced by the miniscule tribal harvests currently taken above the dams.

At the same time, the lower Snake River dams have increased the wealth of non-Indians through enhanced production of electricity, agricultural products, transportation services, and other associated benefits. Tribal peoples have not shared in this increased wealth on a comensurate basis.

Construction of the four lower Snake River dams and reservoirs also inundated approximately 140 river miles of tribal usual and accustomed areas – flooding lands previously frequented by three of the study tribes – the Nez Perce Tribe, the Yakama Indian Nation and the Confederated Tribes of the Umatilla Indian Reservation.

The Relationship Between Present Tribal Treaty-Based Entities and Pre-Treaty Tribal Groups in the Lower Snake Reservoir Area

Tribal Organization	Original Tribal Groups in Lower	Associated Inundation by
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	Snake Territory	Lower Snake Reservoirs
Nez Perce Tribe	Nez Perce Indians living along the Clearwater River, and downstream along the lower Snake to Palouse River (north side) and Tucannon River (south side).	Lower Granite Little Goose Lower Monumental
Yakama Indian Nation	Palouse peoples living at the confluence of the Snake and Palouse Rivers and downstream along the north riverbank Possibly other bands near the mouth of the Snake.	Lower Monumental Ice Harbor
Confederated Tribes of the Umatilla Indian Reservation	Palouse peoples living at the confluence of the Snake and Palouse Rivers, and downstream along the north riverbank Walla Walla peoples living from the mouth of the Tucannon River downstream along the south bank of the Snake River.	Lower Monumental Ice Harbor

1.6 Present Lower Snake River Project Alternatives

The Lower Snake River Project considers future alternatives with respect to the four dams and their reservoirs, affecting about 140 miles along the lower Snake River and approximately four miles along the lower Clearwater River:

- Ice Harbor Dam, near the confluence of the Snake River with the Columbia River;
- Lower Monumental Dam, near Matthews, Washington;
- Little Goose Dam, upstream of the Tucannon River;
- Lower Granite Dam, whose reservoir effects extend about 4 miles upstream of the confluence of the Snake River and the Clearwater River.

The Lower Snake Project is considering three broad actions, and a variety of modifications to those actions. The three main alternative actions are evaluated here. They are:

Alternative A1 (Base Case): Continued operation of the four lower Snake River dams as they are today, with supplemental flows for salmon as provided in the 1995 National Marine Fisheries Service (NMFS) Biological Opinion.

This alternative would continue to flood the river sections and stream side lands under the reservoirs. Recent work on spring and summer chinook salmon by PATH and its Scientific Review Panel indicates a probability between 35 percent and 42 percent that these salmon would recover sufficiently to be removed from the Endangered Species List within 48 years.

It is estimated that this alternative would increase tribal wild salmon and steelhead harvests slightly – to 94,000 pounds after 25 years, and to 102,000 pounds after 50 years. Total tribal harvests of both wild and hatchery stocks under this alternative are estimated at 402,000 pounds after 25 years, and at 450,000 pounds after 50 years.

After 25 years, A1 would provide an 8 percent increase in tribal ceremonial, subsistence, and commercial harvests of wild salmon and steelhead over present-day total tribal Columbia/Snake catches .

Alternative A2 (Transportation): This alternative would be the same as A1, except that added measures to pass salmon by the dams and through the reservoirs would be initiated.

The dams would stay in place. PATH and its Scientific Review Panel estimate that this alternative would be worse for spring and summer chinook salmon than A1, with only a 30 percent to 40 percent chance of removing the salmon from the Endangered Species List over 48 years. Tribal wild salmon and steelhead harvests would be less than under A1 – 88,000 pounds after 25 years, and 90,000 pounds after 50 years. Counting both wild and hatchery stocks, tribal harvests of salmon and steelhead would be 383,000 pounds after 25 years, and 412,000 pounds after 50 years.

After 25 years, A2 would provide a 7 percent increase in tribal ceremonial, subsistence and commercial harvests of salmon and steelhead over present-day total tribal Columbia/Snake catches.

Alternative A3 (Drawdown): This alternative would breach the four dams, and eliminate their reservoirs, so that the lower Snake River flowed at near natural conditions.

PATH and its Scientific Review Panel estimate an almost 80 percent probability that spring and summer chinook would be removed from the Endangered Species List within 48 years under this alternative. Tribal wild salmon and steelhead harvests under this alternative would be substantially higher than under A1 or A2 – 285,000 pounds after 25 years, and 317,000 pounds after 50 years. Counting both wild and hatchery stocks, tribal catches of salmon and steelhead would reach 682,000 pounds after 25 years, and 734,000 pounds after 50 years.

After 25 years, A3 would increase tribal ceremonial, subsistence and commercial harvests of wild and hatchery salmon and steelhead by 29 percent, compared to present-day total tribal Columbia/Snake catches.

Given the low probabilities that Alternatives A1 and A2 will remove Snake River salmonids from the Endangered Species List within 48 years, estimates of harvest associated with A1 and A2 are contingent upon stocks not going extinct.

1.7 Selection of Alternatives A1 or A2

After 25 years, Alternatives A1 and A2 will supplement present meagre tribal catches of salmon and steelhead from the Columbia/Snake system by a mere 8 percent and 7 percent, respectively. The probability that Snake River salmonid stocks would not be delisted under these alternatives, even after 48 years, is greater than 50 percent.

From a tribal perspective, **neither Alternative A1 nor A2 offer evidence of substantial renewal of Snake River salmon and steelhead stocks. Both will act to perpetuate the adverse impacts upon tribal culture, economy and health described in this report.**

Present tribal suffering stems, in large part, from the cumulative stripping away of tribal Treaty-protected resources to create wealth for non-Indians of the region. Selection of A1 or A2 will perpetuate and protect such prior actions and wealth transfers.

In earlier decades, bureaucrats working to convert the river to produce electricity, irrigate agriculture, carry commodities by river barge, and accommodate deposit of waste, asserted that “uncertainty regarding impacts on salmon could be managed” as the conversion of the river moved forward. Today, with transformation of the river system complete, some maintain that “no major action should be taken to restore salmon until results are certain” – and favor either A1 or A2 on that account.

This new “uncertainty adverse” attitude surrounding actions to save/restore salmon is contrary to that of earlier decades – and serves to perpetuate the redistribution of the rivers’ wealth away from the tribes – and in favor of non-Indian residents of the region.

A coincident strategy which commits to “further study” and delay in enacting more substantial recovery measures also commits to continued suffering, ill health and premature death for the peoples of the study tribes – all at unconscionable levels.

The study tribes are unwilling to contemplate the continued levels of pain, suffering and death that waiting as long as 100 years into the future for salmon recovery would bring – and such distant benchmarks for salmon recovery are not discussed in this report.

For the tribes, evaluation of Alternatives A1 and A2 is clear cut. **Selection of A1 or A2 would continue the Treaty-breaking actions that have been a feature of the last 144 years in the Columbia/Snake River system.**

1.8 Selection of Alternative A3.

Selection of the A3 Drawdown Alternative would increase present meagre tribal catches of salmon and steelhead from the Columbia/Snake system by an estimated 29 percent, within 25 years. This represents a small fraction of tribal Treaty entitlement – and does not approach the levels of salmon and steelhead lost due to construction and operation of the Lower Snake dams.

At the same time, A3 offers a relatively high probability that Snake River salmonids would be delisted, and estimated improvements in tribal salmon catch are 3 _ times greater than for A1, and 4 times greater than for A2.

Finally, A3 would open the lower Snake River to fish passage - facilitating opportunities for additional salmon recovery resulting from habitat restoration and similar improvement actions.

Considered on balance, selection of A3 would not fully restore Snake River salmon and steelhead stocks – nor would it fully ameliorate the difficult economic conditions, ill health and suffering of the tribal peoples. But A3 represents the most significant action considered to date to reverse the cumulative trend toward destruction of tribal resources, the taking of tribal Treaty-protected wealth by non-Indians, and the consequent damaging of tribal peoples. A3 represents a strong action to reverse this cumulative trend – and to paraphrase a statement from a nurse on the Yakama Reservation, **“if the salmon begin to come back, positive changes will start”**.

1.9 Impacts of Project Alternatives on Flooded Lands Important to the Tribes

Alternatives A1 (Status Quo) and A2 (Status Quo with More Fish Passage) will continue to separate the peoples of the Nez Perce, CTUIR and Yakama from the grounds in which their ancestors are buried along lower Snake River stream sides - and render it impossible to care for their graves.

The four reservoirs preempt 140+ miles of Treaty-protected tribal fishing, hunting, and harvesting of roots, plants and berries at usual and accustomed stream side locations. They prevent the subject tribes from holding religious and cultural ceremonies at these places - and “filter” the spiritual relationship between the tribes, their ancestors and their spiritual places through many feet of reservoir waters.

Effectively, the dams and reservoirs inundate most substantial aspects of cultural, material and spiritual life along the lower Snake River for affected tribal peoples - and separate the tribal peoples from them.

Overall, the four reservoirs inundate almost 34,000 acres of river basin - an area approximately one-third the size of all remaining lands owned by the Nez Perce, and one-fifth the size of remaining lands owned by CTUIR.

Alternative A3 (Drawdown) would permanently drain the four lower Snake River reservoirs, and create substantial benefits for affected tribes. It would allow tribal peoples to renew their close religious/spiritual connection with approximately 34,000 acres of lands where their ancestors lived and are buried - and allow them to properly care for their grave sites. They could return to more than 600-700 locations where they were accustomed to live; fish; hunt; harvest plants, roots and berries; conduct cultural and religious ceremonies; and pursue other aspects of their normal traditional lives. Tribal benefits from A3 could be obtained as follows:

1. By restoring Treaty-based tribal access rights to usual and accustomed fishing places along the restored river sides.
2. By restoring Treaty-based tribal access rights to hunt and gather on ceded public lands alongside the restored river sides.
3. By returning tribal individual allotment lands in the reservoir area, taken by the federal government when the reservoirs were built, to tribal hands.
4. By deeding uncovered reservoir lands to appropriate tribes as partial compensation for prior damages caused by lower Snake River dams, or for other system damages.

A summary of tribal impacts associated with flooding effects at the four reservoirs follows.

Summary of Tribal Impacts from Lower Snake River A1, A2 and A3 Project Alternatives			
Impact	A1 Dams Remain+Biop.	A2 Dams+Added Fish Passage	A3 Reservoirs Gone/Breach Dams
Fishing sites.	Access to many salmon fishing sites preempted. Some alternative sites available (principally, non-salmon).	Same as A1.	Would reestablish usual and accustomed fishing locations along 150 miles of river.
Hunting/ gathering areas	33,890 acres flooded.	33,890 acres flooded.	Up to 33,890 acres restored for tribal Treaty-based hunting and gathering of roots, berries and plants.
Tribal land base.	Eliminated 33,890 acres from tribal use.	Same as A1.	Would provide added land based opportunities up to one-third the size of all present Nez Perce land holdings/ or, up to one-fifth the size of all present CTUIR land holdings.
Cultural activities.	Floods more than 600-700 locations where cultural activities occurred.	Same as A1.	Would enable tribal peoples to reestablish contact and use of over 600-700 usual and accustomed locations.
Religious/ Spiritual.	Floods numerous tribal graves. Involved violation and stealing of the bodies of ancestors. Separates tribal peoples from their land, their rivers, and their sacred and ceremonial places.	Same as A1.	Would reunite tribal peoples with the land, the river and the creatures of the lower Snake. Would allow tribes to care for the graves of loved ones. Would recover sacred and ceremonial places.

1.10 Cumulative Tribal Impacts of Lower Snake River Project Alternatives

Selection of Alternative A1 (Status Quo) or A2 (Status Quo + Transportation), by continuing the inundation of river side lands along the lower Snake River, and by failing to offer reasonable prospects for substantial restoration of tribal salmon fisheries for 48 years or more, **will ensure that transformation of the production function of the lower Snake river continues - that the tribes continue to lose treaty-protected wealth as a result - and that benefits from this transformation of the river continue to flow, disproportionately, into non-tribal hands.**

Selection of Alternative A3 (Dam Breaching and Reservoir Drawdown to Natural River) would have the opposite effect on cumulative trends along the lower Snake River. It would remove flood waters presently covering some 140+ miles of important usual and accustomed locations along the lower Snake river. It offers an 80 percent chance that salmon would recover and be delisted within 48 years - with the attendant prospect of renewed tribal fisheries.

From a cumulative policy perspective, selection of A3 would reverse an almost century and one-half trend to cumulatively strip the tribes of their valued and treaty-protected assets - and would move toward "rebalancing" distributions of the wealth that the lower Snake River can produce, between the tribes and non-tribal peoples of the study area.

Such actions may not result in immediate improvements to tribal material wellbeing and health - but over future years, as the salmon stocks become stronger, so would the health and economic wellbeing of tribal members.

Our study conclusions with respect to the cumulative impact of lower Snake River Project alternatives on **distribution of wealth, tribal health and material wellbeing, tribal spiritual and religious wellbeing and tribal self-sufficiency and self-empowerment** follow.

Summary of Cumulative Tribal Impacts from Lower Snake River A1, A2 and A3 Alternatives			
Impact	A1	A2	A3
	Dams Remain+Biop.	Dams+Added Fish Passage	Reservoirs Gone/ Breach Dams
Wealth distribution.	Non-tribal interests continue to accumulate wealth. Tribes continue to lose valuable assets-particularly Treaty assets associated with the salmon.	Same as A1, but slightly more adverse.	Begins rebalancing of the river's production function. Some wealth transfers from non-Indian interests back to the tribes begin, as stream sides are unflooded and salmon harvests are improved.
Tribal health and material wellbeing.	Will continue to preempt tribal subsistence and economic activity. Will continue adverse effects on tribal nutrition, self-perceptions and health.	Same as A1, but slightly more adverse.	Will begin to reverse cumulative conditions with respect to tribal nutrition and health. Will have a positive effect, over time, on tribal poverty. Will improve, on a broad basis, tribal subsistence, and where appropriate, tribal economies.
Spiritual/religious wellbeing.	Continues to endanger the salmon, one of the key elements that provide religious, spiritual and cultural definition for the peoples of the study tribes.	Same as A1, but slightly more adverse.	Will restore salmon to the point where they are no longer endangered. This will generate major benefits for key elements of tribal religion and spirituality - which will be removed from endangerment as well.
Tribal empowerment.	Continues to ignore the Treaties – and the knowledge and recommendations of tribal peoples concerning survival of Snake River salmon. Disempowers the tribes.	Same as A1.	Credits tribal Treaties and knowledge. Would encourage feelings of empowerment and self-worth among tribal peoples.

1.11 Mitigation to Protect Tribal Sites and Resources

Prehistoric and historic village areas, gravesites, usual and accustomed fishing, hunting and gathering areas and other areas/resources important to the culture of the tribes must receive adequate protection to ensure their wellbeing under all alternatives. These sites and resources provide tangible evidence of "who a people are". Adequately protected and managed, they provide ongoing opportunity for present-day tribal members to continue to practice their culture, now and in the future. These protection and management measures

should be led and controlled by the affected tribes. They should include tribally controlled restoration of these areas and sites – and measures to assess and evaluate, protect and secure, and mitigate for any unavoidable impacts to such sites and resources. Past and current efforts have been inadequate – and future efforts need to be more extensive, and follow explicit tribally-approved plans.

1.12 A Summary Tribal Assessment of Lower Snake River Project Alternatives

This summary comparison of project alternatives utilizes two overriding benchmarks.

- Impact on federal tribal Treaty obligations and tribal trust responsibilities;
- Impact on Environmental Justice, as defined by the Environmental Protection Agency.

The four lower Snake River dams do not have sole responsibility for devastation of **tribal Treaty harvests**, but they have played a significant role. This role continues through inundation of spawning areas and via passage losses in each present year. Beaty, Yuen, Meyer and Matylewich (1999) estimate the contribution of these four dams to lost tribal harvest of salmon at between 8.4 and 14.3 million pounds annually.

PATH, and its Scientific Review Panel of independent experts, estimate that most of the beneficial effects on salmon from lower Snake River project alternatives will occur within 25 years. A summary table of expected effects on **Tribal Treaty harvests** at the 25-year benchmark follows. Probability of removal from the Endangered Species List is at a 48-year benchmark.

Summary of Impacts on Treaty Harvests of Wild Salmon from Alternative Actions Affecting Lower Snake River			
Project Alternative	Improved Tribal Harvest	Increase	Probability of Delisting
	'000 lbs.		in percent
A1: Status Quo	94	8	35-42
A2: Status Quo + Transportation	88	7	30-40
A3: Dam Breaching	317	29	80

The historic record of tribal harvest identifies that biologists have often been too optimistic concerning their ability to protect and recover Columbia/Snake system salmon. Considering that historic tendency, and the very small improvements forecast by PATH modellers under either A1 or A2, there also appears to be a significant risk that, over time, tribal Treaty-protected salmon stocks could also become extinct under selection of either A1 or A2.

Only selection of A3 – breaching the lower Snake dams – offers the Treaty tribes significant reversal of the cumulative trend of losses to Treaty-protected salmon

harvests, and substantial relief from the risk of extinction of Treaty-protected stocks.

The US Environmental Protection Agency (EPA) defines **Environmental Justice (EJ)** as:

The fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations and policies. Fair treatment means no group of people, including racial, ethnic, or socioeconomic group should bear a disproportionate share of the negative environmental consequences from industrial, municipal and commercial operations or the execution of federal, state, local, and tribal programs and policies.

EPA's Environmental Justice criteria address two key issues:

- Does the affected community include minority or low-income populations?
- Are the environmental impacts likely to fall disproportionately on minority and/or low income members of the community and/or on tribal resources?

Tribal information from this report that is relevant to Environmental Justice issues is summarized on the two following pages, using assessment factors identified in EPA's EJ guidance.

Summary of Environmental Justice Effects for the Tribes from Lower Snake River Project Alternatives	
EJ Factors	Relative Effects on the Tribes
Alternative A1 (Status Quo)/ Alternative A2 (Status Quo + Transportation):	
Income Level/ Health.	<ul style="list-style-type: none"> • Tribal families are impoverished and unemployed at 3-4 times levels of Washington/Oregon/Idaho residents as a whole (Table 41). Winter-time tribal unemployment reaches as high as 80 percent. • Tribal members are dying at from 20 percent to 130 percent higher rates than non-Indian residents. • Recent analyses describe tribal health and health care access as "poor". • Implementation of A1 or A2 would have no discernible effect in remedying these cumulative adverse conditions.
Life-support Resources.	<ul style="list-style-type: none"> • Extensive information in this report places salmon at the center of the study tribes' cultural, spiritual and material world. Table 43 identifies that salmon guaranteed to the tribes by Treaty has almost entirely been lost. Tribal spokespersons and health experts cited throughout this report have identified the devastating effect these losses have had on tribal culture, health and material wellbeing. • Beaty, et.al (1999) identify lower Snake River dams have contributed substantially to destruction of these life-support resources • Selection of A1 or A2 would not significantly change these cumulative conditions- and the pain, suffering and premature deaths of tribal peoples would continue for decades.
Economic base.	<ul style="list-style-type: none"> • The cumulative effects of dam construction have transferred potential wealth produced in the river basin from the salmon on which the tribes depend to electricity production, irrigation of agriculture, water transport services and waste disposal, these latter primarily benefiting non-Indians. These transfers have been a significant contributor to gross poverty, income and health disparities between the tribes and non-Indian neighbors. • Selection of A1 or A2 would continue these conditions and disparities.
Inconsistent Standards.	<ul style="list-style-type: none"> • Historically, agencies asserted confidence that they could manage uncertainty concerning adverse impacts on salmon during construction of the dams that facilitated wealth transfers from the tribes to non-Indians. Some of the same agencies now claim to be risk adverse, when considering more substantial remedial action which would recover salmon and result in some measure of rebalancing of wealth to improve the circumstances of tribal peoples.

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Summary of Environmental Justice Effects for the Tribes from Lower Snake River Project Alternatives	
EJ Factors	Relative Effects on the Tribes
Alternative A3 (Dam Breaching):	
Income Level/ Health.	<ul style="list-style-type: none"> The 29 percent increase in harvest of wild salmon under A3 will not be sufficient to fully restore tribal harvests to the levels obtained before the lower Snake River dams were built. But A3 is the only alternative under consideration that will substantially improve opportunities for tribal fishing and for tribal consumption of salmon. Tribal spokespersons and experts cited in this report inform us that as salmon recovery occurs, tribal health would improve, tribal incomes would increase, and the cultures of the five tribes would be strengthened. Cumulatively, as salmon recovery progressed, A3 could be expected to significantly reduce the differences between tribal and non-Indian material wellbeing, cited in Table 41, and elsewhere in this report.
Life-support Resources.	<ul style="list-style-type: none"> Despite severe damage to most stocks, salmon and water remain the central elements of tribal cultural, spiritual and material survival. Today, beset by a narrow on-Reservation resource base, and still coping with racial prejudice and limited opportunity off-Reservation, the tribes continue to first look to the salmon as they seek to build a more secure future. Selection of A3 would significantly reverse a 144 year post-Treaty cumulative trend that, to date, has resulted in endangerment of the salmon, and consequently, endangerment of tribal peoples - while peoples as a whole in the region have prospered.
Economic base.	<ul style="list-style-type: none"> Selection of A3 would provide significant restoration for salmon. The tribes have harvested and processed salmon from pre-contact times, and possess an economic comparative advantage respecting such activities. A3 would allow significantly more tribal harvesting and processing; would facilitate extended distribution of salmon as food through extended families and to elders; and would expand the fundamental economic base for tribal wellbeing. The positive economic effects discussed here would be expected, over time, to significantly reduce the differentials in poverty and unemployment levels between tribal members and their non-Indian neighbors.
Inconsistent Standards.	<ul style="list-style-type: none"> Selection of A3 would reverse more than a century of cumulative regional takings of the Treaty-protected resources of the tribes – and provide a step toward more equitable sharing of potential wealth from the Columbia/Snake river basin between tribal and non-tribal peoples.

On this basis, it is concluded that **selection of either Alternative A1 or A2 does not meet federal Treaty or tribal trust obligations. Selection of A3 represents a significant step toward meeting these obligations.**

With respect to Environmental Justice, it is likewise clear from this report that the lower Snake River dams have benefited many regional citizens, while damaging the tribes severely – and represent a clear case of unjust action, as defined by EPA. **Selection of either Alternative A1 or A2 would perpetuate this environmental injustice. Selection of A3 would represent a significant step toward redressing such injustice to the tribes.**

Comparison of Lower Snake River Project Alternatives with Respect to Tribal Treaty Obligations and Environmental Justice			
Evaluative Criteria	A1	A2	A3
	Dams Retained + Biological Opinion	A1 + Added Fish Passage	Dams Breached/ Reservoirs Gone
Meets tribal Treaty & trust responsibilities.	No	No	Yes
Meets Environmental Justice criteria.	No	No	Yes

Bill Yallup, present Chairperson of the Yakama Indian Nation, points out that this assessment process offers a clear choice with respect to how the salmon, and affected tribal peoples, will be treated in the Columbia and Snake River Basins.

Some of the people that have gone before made some big mistakes on this river. We tried to tell them, but they wouldn't listen. We now have an opportunity to fix those mistakes. Each generation of officials, bureaucrats, scientists and so on has a choice. We can become part of the problem – or part of the solution.

(Bill Yallup, Sr. - An Address to the Drawdown Regional Economic Workgroup, July 18, 1997)