



Nez Perce

TRIBAL EXECUTIVE COMMITTEE

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4 February 2004

Steven Wright (*via facsimile*)
Bonneville Power Administration
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Portland, OR 97208

B. G. William Grisoli (*via facsimile*)
U. S. Army Corps of Engineers
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Portland, OR 97208-2870

Bob Lohn, Director (*via facsimile*)
National Marine Fisheries Service
Northwest Regional Office
7600 Sand Point
Seattle, WA 98115-0700

Re: Nez Perce Tribe's Opposition to Elimination/Reduction in Summer Spill

We are appalled by the continuing efforts of Bonneville Power Administration, the Corps of Engineers and NOAA Fisheries to eliminate or reduce summer spill.

The Nez Perce Tribe has long supported the spill and flow to vital measures to provide passage conditions for juvenile salmon. Absent breaching the four lower Snake River dams and investing in affected local communities, these measures are even more critical to salmon survival.

These proposals directly impair the United States' ability to comply with the Endangered Species Act, which is the currently the subject of the National Wildlife Federation v. National Marine Fisheries Service litigation in the United States District Court in Portland. These proposals also contain measures that represent a direct infringement on the Nez Perce Tribe's treaty-reserved fishing rights, which are the under the United States District Court's continuing jurisdiction in United States v. Oregon. Finally, as the State of Alaska has expressed, these proposals are inconsistent with the Pacific Salmon Treaty.

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The federal government's "Summer Spill Update and Analysis" is woefully short of actual analysis, and the information that is presented is flawed and inaccurate. This document grossly understates the impacts to salmon (as documented by the analysis conducted by the fish and wildlife co-managers). This document also includes numerous flaws in even the most basic of information, such as considering Nez Perce and Big Canyon releases to be releases of "unlisted" fish.

The "Offsets" contained in the "Summer Spill Update and Analysis" and in the "Alternative Mitigation Actions" document are particularly disturbing. In contrast to the actual documented benefits that spill provides, the United States proposes a handful of "potential biological offsets" consisting of the following:

- things such the United States previously committed to in the 2000 FCRPS BiOp ("Law Enforcement");

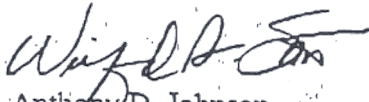
- things that are of unspecified benefit to salmon (the vague reference to "Habitat Improvements" with no indication of where, when or what benefit they would provide which is similar to the deficiencies which led the United States District Court in the NWF v. NMFS case to rule that NOAA's reliance on such measures was "arbitrary and capricious");

- things that admittedly have no direct benefit to outmigration ("Avian Predation Research"); and,

- things that would violate the Nez Perce Tribe's treaty-reserved rights ("Commercial Harvest Reductions").

As you have previously acknowledged at the Regional Executives Meeting last August, any change in summer spill would affect the NWF v. NMFS litigation, and we trust you will advise the Court accordingly.

Sincerely,


Anthony D. Johnson
Chairman

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cc: Governor Frank H. Murkowski
Senator Ted Stevens
Senator Lisa Murkowski
Representative Don Young
James Connaughton, Chairman, Council on Environmental Quality
Governor Ted Kulongoski
Governor Gary Locke
Governor Judy Martz
Governor Dirk Kempthorne
IT/TMT
Stan Speaks, BIA
J. William McDonald, Northwest Regional Director, U.S. Bureau of Reclamation
Alaska Trollers Association
Fred Disheroon, DOJ, Counsel in NWF v. NMFS and U.S. v. Oregon