



Confederated Tribes and Bands  
of the Yakama Nation

Established by the  
Treaty of June 9, 1855

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May 6, 2010

Dick Wallace, Vice-Chair  
Northwest Power & Conservation Council  
851 SW 6th Avenue, Suite 1100  
Portland, Oregon 97204-1348

Re: Yakama Nation response to Council document 2010-4

Dear Mr. Wallace:

We provide the following comments to the “Draft Monitoring, Evaluation, Research and Reporting Plan” (Council document 2010-4). We reviewed the document and could find little or no mention of the 2008-2017 *U.S. v Oregon* Management Agreement, the Columbia River Fish Accords, or the Biological Opinion Remand process and associated Adaptive Management Implementation Plan. Thus, our main concern with this document and the process as presented is that it does not adequately address the policy and legal framework within which it will be implemented. This is a long-standing concern of ours that has been conveyed to the Council regarding other documents and processes on many occasions over the past several years.

BPA’s comments to the Council (see letter and attachment from William Maslen to Doug Marker dated December 5, 2005) regarding the ISRP’s retrospective report (ISRP 2005-14) appear to be relevant again here:

*Funding decisions are a matter of policy choices. The direction of the Fish and Wildlife Program is ultimately determined by the policy makers' decisions about project funding. ... [While some may operate from] the premise that scientific merit alone is the principal determinant in project funding recommendations, this premise neglects to consider all the attributes of project implementation that must be taken into account – legal, policy, financial, and scientific – in making project funding decisions.*

Specific laws or agreements that must be taken into account when implementing the MERR Plan are:

Northwest Power Act

839b(h)(1)(B). This subsection shall be applicable solely to fish and wildlife, including related spawning grounds and habitat, located on the Columbia River and its tributaries. **Nothing in this subsection shall alter, modify, or affect in any way the laws applicable** to rivers or river systems, including electric power facilities related thereto, other than the Columbia River and its



tributaries, **or affect the rights and obligations of any agency, entity, or person under such laws.** [Northwest Power Act, §4(h)(1)(B), 94 Stat. 2708.] Emphasis added.

### United States versus Oregon

The 2008-2017 Management Agreement is a court-ordered management plan, signed by representatives of the state and federal governments, which identifies specific actions the Parties agreed to take during this management period. Many of these actions are a high priority to the Yakama Nation and the Columbia River Treaty Tribes. The Council must not allow implementation of the MERR Plan to interfere with these actions.

### Columbia River Fish Accords

The projects funded through the Accords were the result of long and difficult government-to-government negotiations. The Yakama Nation believes the Accords are a long overdue step toward fulfilling federal treaty trust obligations to restore salmon to tribal usual and accustomed fishing areas. Implementation of the MERR Plan must not alter, delay or interfere with the ability of Accords projects to meet restoration objectives.

### 2008 FCRPS Biological Opinion and Adaptive Management Implementation Plan

As the Council is well aware the reasonable and prudent alternatives (RPAs) identified in the 2008 BiOp and AMIP must be “reasonably certain to occur” per the Court’s guidance. Many of the actions and projects in the *U.S. v Oregon* Management Agreement and the Fish Accords were designed specifically to address RPAs. The Council must not allow implementation of the MERR Plan to interfere with the certainty of these actions moving forward.

Of special concern is a quote from p. 23 of the draft on compliance, implementation, and performance monitoring. "The ISRP assesses whether actions and projects are having the intended biological and physical impact at the project level. The ISRP will accomplish this by annually assessing a selected subset of Program projects to determine whether performance expectations, as stated in the most recent project proposals, have been met." While we understand and support the need to provide the region with accountability on project accomplishments and funding, snapshot views of project impacts and performance, especially in the absence of other considerations (policy, legal, local project knowledge, etc.), can be misleading. The Council must be careful not to cede its authority on pre-determined matters of law and policy to staff or the Independent Scientific Review Panel. Certainly the ISRP and others may make recommendations pursuant to implementation of the MERR Plan, but ultimately the Council may only decide to move forward with these recommendations after careful consideration of all of its other obligations under the Northwest Power Act.

We must not lose our focus or commitment to achieving the overriding goal of restoring salmon and fisheries. We believe the upward trend in Fall Chinook counts in the Snake River and coho counts in the mid- and upper Columbia in recent years are just some of the signs that our efforts



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to restore habitat and fish in upriver areas are finally starting to bear fruit. We must remember that these achievements were possible because of the region's desire to remain focused on implementation of "on-the-ground" fisheries and habitat projects. The MERR plan must not be implemented in a manner that would cause us to lose the momentum we have gained with these "on-the-ground" activities.

We seek explicit assurance from the Council that it will abide by the provisions of all applicable laws and agreements as it works to implement the MERR Plan.

Sincerely,

Virgil Lewis, Chair  
Fish, Wildlife and Law and Order Committee  
Yakama Nation Tribal Council

cc: Nancy Leonard, NPCC  
Tony Grover, NPCC  
Greg Delwiche, BPA  
Bill Maslen, BPA  
Phil Roger, CRITFC  
Paul Lumley, CRITFC

**From:** Bill Bosch  
**Sent:** Monday, May 10, 2010 1:06 PM  
**To:** Leonard, Nancy  
**Subject:** Comment on Draft MERR report

Additional Yakama Nation technical comment

Re: Council document 2010-4, "Draft Monitoring, Evaluation, Research and Reporting Plan" The Yakima-Klickitat Fisheries Project (YKFP), including its monitoring and evaluation component, has been extensively reviewed throughout its 25+ year history. Over 15 years of planning and review went into the development of the project, culminating in a 500+ page "Final Environmental Impact Statement" (EIS) issued in January of 1996. The EIS was by law, subject to public review and addressed over 100 pages of comment. The project was subject to ISRP review in 2001-2002 as part of the NPCC Columbia Plateau provincial review process (see [FY 2002 Proposal 199506325](#), [ISRP 2001-6](#), and [ISRP 2001-8](#)). Because the YKFP consists of artificial production programs for spring and fall Chinook and coho, the project was subject to the regional [Artificial Production Review and Evaluation](#) process in 2003. Public and environmental review of a preliminary [Master Plan](#) for the coho portion of the project was conducted from 2004 to 2007. Long-term master plans for the coho and fall Chinook portion of the project are being developed and will be submitted for review under the Council's [three-step review process](#).

The full project was again reviewed in the [FY 2007-09](#) NPCC proposal process; this review included a subbasin/local stakeholder level review on June 5, 2006. Because many of the programs in the YKFP are considered supplementation in nature, the programs were part of the regional "[Ad Hoc Supplementation Monitoring and Evaluation Workgroup](#)" review in 2008. The YKFP programs were also reviewed by the [Hatchery Scientific Review Group](#) in 2007-2009. Pursuant to the Endangered Species Act, the YKFP was required to prepare Hatchery Genetic Management Plans (HGMPs) for all YKFP production programs. The [HGMPs](#) will be reviewed by NOAA fisheries in 2010 as part of the formal consultation process. The YKFP has hosted an [annual project review](#) since the project was implemented. These annual project reviews are open to interested scientists, policy representatives, and members of the public from throughout the region. The YKFP has submitted numerous publications to scientific journals, all of which were subject to a stringent peer-review process; more than 10 articles related to YKFP programs have been published in the peer-reviewed literature. In addition to all of the above review, we now anticipate further NPCC/ISRP review pursuant to the [Monitoring, Evaluation, Research, and Reporting](#) (MERR) Plan and the [FY2010 RM&E / Artificial Production Review](#) process.

If the Council is concerned about redundancy, perhaps it should start with its own process for reviewing projects, especially those that are long-term in nature and do not change a lot from year to year. At the least, the MERR plan should explain why it is necessary, and (assuming it is necessary) how it fits in the context of all this other regional review.

Bill Bosch  
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