

United States House of Representatives
Committee on Natural Resources

Written Testimony of Nez Perce Tribal Executive Committee
Vice-Chairman McCoy Oatman on
“The Federal Columbia River Power System: The Economic
Lifblood & Way of Life for the Pacific Northwest”

September 10, 2018

Honorable Chairman and members of the Committee, as Vice-Chairman of the Nez Perce Tribal Executive Committee, I would like to thank you for the opportunity to provide testimony on behalf of the Nez Perce Tribe (Tribe) for this oversight hearing by the Committee on Natural Resources (Committee) regarding the Federal Columbia River Power System (FCRPS) and its impact in the Pacific Northwest. The Tribe understands the premise of the hearing is an appreciation for the current system and the economy that has grown around it. The Tribe, however, challenges the Committee to look beyond memorializing the status quo, and instead conduct an honest examination of all ideas and concepts that can restore the health of the Columbia Basin such as providing spill, addressing impacts of climate change, examining dam removal, restoring habitat, decreasing carbon emissions, and furthering scientific study.

The Nez Perce Tribe is a federally-recognized Indian tribe with treaty-reserved fishing, hunting, gathering, and pasturing rights throughout the Columbia River Basin. The Tribe’s traditional lands and waters encompass what are today northeast Oregon, southeast Washington, north-central Idaho, and western Montana. The Tribe engages in fishing, hunting, gathering, pasturing, and associated activities, and in the co-management of resources, within much of this area. The FCRPS system has had, and continues to have, a uniquely harmful impact on the Nez Perce people. The Tribe’s fishermen fish in the mainstem Columbia River where four of the dams are located while the Tribe’s Reservation and many of the Tribe’s other usual and accustomed fishing places lie above the four dams on the lower Snake River.

Despite the impacts from the current operation of the FCRPS, the Tribe’s treaty-reserved fishing right and fisheries within the Columbia Basin continue to be critically important to the Tribe in maintaining and practicing its culture, economy, and ways of life as it has done for thousands of years. In addition, implementation of treaty fisheries is consistent with the Tribe’s legally enforceable treaty-reserved fishing right and resources and with the United States’ treaty and trust obligations and responsibilities to the Tribe.

The importance of salmon and steelhead to the Tribe and to the Pacific Northwest cannot be overstated. The Tribe is deeply committed to restoring salmon and steelhead in the Columbia and Snake Rivers to healthy, harvestable levels for all citizens of the Northwest and to fairly sharing the conservation burden.

The Tribe has long advocated before Congress and through the federal court system for the FCRPS to be managed in a way that minimizes adverse impacts on fish and the basin. As a result, the Tribe disagrees with proposed legislation or any language that would restrict the use of federal

funds for dam removal or studies related to dam removal, or that would circumvent federal court orders related to the operation of the FCRPS.

For example, HR 3144 attempts to short-circuit the federal judiciary and federal appellate process with respect to providing additional spill to protect fish. The Federal District Court for the District of Oregon has issued rulings on the dams that make up the FCRPS only after reviewing thorough and voluminous briefing and expert scientific information presented by the federal government, the states of Oregon, Washington, Idaho, and Montana, tribal sovereigns including the Tribe, and fishing, utility, conservation, and irrigation interests.

The District Court's May 4, 2016 decision held that the 2014 Biological Opinion on the operation of the FCRPS was arbitrary and capricious under the Endangered Species Act (ESA), and that the federal action agencies' failure to prepare an environmental impact statement (EIS) on the implementation of that Biological Opinion violated the National Environmental Policy Act (NEPA). The Court observed that "Perhaps following the processes that Congress has established in the National Environmental Policy Act and in the Endangered Species Act finally may illuminate a path that will bring these endangered and threatened [salmon and steelhead] species out of peril." None of the parties pursued an appeal of the District Court's ruling. In contrast to HR 3144, the federal agencies are indeed actively assuming their responsibilities under NEPA, engaging with the public, and with the region's sovereigns.

After the federal agencies refused to implement any additional protective actions for salmon and steelhead during the ordered ESA and NEPA processes, the state of Oregon, supported by the Tribe and several fishing and conservation groups in the Pacific Northwest, requested interim protection for salmon and steelhead in the form of spill in the springtime that would be implemented only in those years where such levels of spill would not naturally occur simply as a result of runoff. The Oregon District Court did not order spill to begin until the spring 2018 migration season, ensuring that "the parties and experts in the region ha[d] sufficient time to consider an appropriate protocol and methodology for spill at each dam, incorporating the most beneficial spill patterns." Tribal Fisheries Department staff were among those experts in the region and were instrumental in helping craft spill operations that were feasible and met the intent of the Court's direction. The District Court's March 27, 2017 order went on to state that it expects that "the parties, amici, and other regional experts will work together to reach consensus." No party sought a stay pending appeal or an expedited appeal of the order. And again, the federal action agencies and the region's state and tribal sovereigns have been actively engaged in, and are making considerable progress in, developing spill implementation plans.

HR 3144 would short-circuit and subvert federal judiciary and federal appellate processes and would undermine collaborative efforts that the region's sovereigns and the federal government are presently engaged in

Second, HR 3144 attempts to short-circuit the full consideration of all alternatives to redress the impacts of the Federal FCRPS dams on salmon and steelhead—including breaching the four lower Snake River dams. The bill, in Section 4, would prohibit the identified agencies from even studying removal of the four lower Snake River dams through any EIS process without additional Congressional authorization. This would undermine the existing EIS process proceeding now

under existing NEPA law that the Court has ordered and that the federal agencies are presently engaged in with the public and the region's sovereigns.

Again, as the District Court observed, "Perhaps following the processes that Congress has established in the National Environmental Policy Act and in the Endangered Species Act finally may illuminate a path that will bring these endangered and threatened [salmon and steelhead] species out of peril."

The Tribe has also opposed similar language proposed in the FY 2019 appropriations package for Energy and Water Development, Legislative Branch, and Military Construction and Veterans Affairs. Section 506 of General Provisions of HR 5895 limits the use of FY 2019 funds to operate the FCRPS hydroelectric dams in a manner that is inconsistent with the Army Corps of Engineers' 2017 Fish Operations Plan. The Tribe opposes this provision because it will prevent implementation of District Judge Simon's March 27, 2017 spill injunction order that the Tribe advocated for to limit the impacts of the current system operations on fish.

These legislative "fixes" are not solutions to the current issues but instead are roadblocks to ultimately finding answers to the issues created by the operation of the FCRPS that will work for everyone. They also cause unnecessary division between stakeholders and distract from productive conversations.

The current history of the FCRPS in the Pacific Northwest is dwarfed by the ancient history and existence of the Columbia River Basin prior to the FCRPS' construction. The current dynamic between the economy and the FCRPS is not natural, nor is it the only path forward. It is based on assumptions that should be challenged and explored.

There are ways for all people in the Pacific Northwest to thrive and be successful beyond an unexamined status quo. Pre-FCRPS history shows a thriving and prosperous economy and way of life for both Nez Perce and non-Nez Perce. The Nez Perce have had to adjust their way of life to accommodate the modern status quo. However, that is no reason to stop questioning and studying and then implementing better ways. The legislative actions proposed to Congress are attempts to end examination and exploration of better ways. They are a head-in-the-sand approach at an exact moment in time when we should all be fearlessly looking for better solutions. We encourage you to demonstrate your leadership by helping to support current efforts to find better solutions, not hide from them. The Tribe would be happy to continue dialogue with members of this Committee and the Northwest congressional delegation to search for those new solutions. Thank you for your time today.