



# COLUMBIA RIVER INTER-TRIBAL FISH COMMISSION

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November 4, 2020

John Hairston  
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Bonneville Power Administration  
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Portland, OR 97232

Brigadier General D. Peter Helmlinger  
Division Commander, Northwestern Division  
U.S. Army Corps of Engineers  
1201 N.E. Lloyd Blvd., Suite 400  
Portland, OR 97232

Lorri J. Gray  
Regional Director, Pacific Northwest Region  
Bureau of Reclamation  
1150 North Curtis Road  
Boise, ID 83706

Dear Administrator Hairston, General Helmlinger, and Regional Director Gray:

The Columbia River Inter-Tribal Fish Commission (CRITFC) operates at the direction of four member tribes: the Confederated Tribes and Bands of the Yakama Nation, the Confederated Tribes of the Warm Springs Reservation of Oregon, the Confederated Tribes of the Umatilla Indian Reservation, and the Nez Perce Tribe. The Constitution and Bylaws of the Columbia River Inter-Tribal Fish Commission require that, "All decisions by the Commission shall be by unanimous vote."

The Yakama Nation and Warm Springs and Umatilla Tribes have agreed to the 2020 Reaffirmation and Amendment of the 2018 Extension of the 2008 Columbia Basin Fish Accords MOA (2020 Amendment). The Nez Perce Tribe is not a party to the 2020 Amendment, the 2018 Accord Extension, or the 2008 Accord, and certain positions described in the 2020 Amendment, the 2018 Accord Extension, and the 2008 Accord do not reflect the position of the Nez Perce Tribe.

In order to maintain its responsibility to all of its member tribes, and thereby to allow for CRITFC's execution of the 2020 Amendment, this letter provides the Action Agencies with CRITFC's understanding of the following:

- A. The Nez Perce Tribe's response to the Action Agencies' invitation to enter into a 2020 Memorandum of Understanding is set forth in the Nez Perce Tribe's letter to BPA, the Corps, and Reclamation dated September 23, 2020 (copy attached).
- B. CRITFC understands that the 2020 Amendment (and the 2018 Accord Extension and 2008 Accord that it amends) does not represent the views or policies or legal positions of the Nez Perce Tribe.
- C. CRITFC understands that this clarification letter to the Action Agencies will be available on BPA's website as occurred with CRITFC's 2018 clarification letter. *See:* <https://www.bpa.gov/efw/FishWildlife/CBFA/Pages/default.aspx>

We appreciate this opportunity to provide the Action Agencies with a shared understanding of how CRITFC will carry out the 2020 Accord Extension MOA and meet its responsibility to all four tribes.

Sincerely,



Jeremy Takala  
Commission Chair



Ryan G. Smith  
Commission Secretary



Nez Perce

TRIBAL EXECUTIVE COMMITTEE  
P.O. BOX 305 • LAPWAI, IDAHO 83540 • (208) 843-2253

23 September 2020

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***Re: Nez Perce Relations with Bonneville Power Administration, Corps of Engineers, and Bureau of Reclamation***

Dear Mr. Hairston, General Helmlinger, and Ms. Gray:

The Nez Perce Tribe (Tribe) writes to respectfully decline your invitation to enter into a Memorandum of Understanding (MOU) at this time with the Bonneville Power Administration, the Corps of Engineers, and the Bureau of Reclamation.

The Nez Perce Tribe continues to focus – in vision and action – on what our people see as core truths: 1) the status of salmon, steelhead, and lamprey is dire; 2) the four concrete barriers on the lower Snake River have had – and continue to have – a devastating impact on the fish and on

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tribal people; 3) restoring the lower Snake River to a natural river and eliminating these barriers that stand between the largely-pristine habitat in the Salmon, Snake, and Clearwater basins is the cornerstone to rebuilding returns along with ongoing hatchery and habitat actions; and 4) as dire as the situation already is, these fish may have even less time given the looming impact of a warming climate.

The Tribe does not see an MOU with your agencies at this time as aligned with these core truths. Nor do we see an offer to address and correct the plain flaws of the Columbia River System Environmental Impact Statement and the 15 year Biological Opinion it has been merged with, or to provide additional protective measures for fish (or restore measures for fish deleted from the Proposed Action/Preferred Alternative). Our constant duty is to the Nez Perce people – the *Nimiipuu* – and the vision we maintain of a better future for our people.

The Tribe's relationship with Bonneville, the Corps, and Reclamation is a direct one, established by our 1855 Treaty with the United States, in which the Tribe reserved, and the United States secured to the Tribe, rights – including the right to take fish at all usual and accustomed places – essential to our way of life, culture, economy, and health – physical and spiritual. As two sovereigns, through government-to-government consultation, we have regularly met with you in a spirit of collaboration to address the importance of the United States honoring its Treaty and trust obligations to the Nez Perce Tribe. Under the U.S. Constitution, United States treaties are the “supreme law of the land”; United States treaty and trust obligations to Indian tribes cannot be delegated or passed to the states. Our relationship with Bonneville, the Corps, and the Bureau is strong and sincere. We have found much success together. Our relationship will continue to be strengthened as we, together, directly confront issues with transparency.

As long-standing partners carrying out fish and wildlife restoration against the backdrop of the Northwest Power Act and the Endangered Species Act, the portfolio of work that we will continue to jointly implement in the Snake River Basin will benefit the fish and benefit all peoples throughout the Columbia-Snake watershed. In the course of implementing this portfolio, we routinely discuss priority implementation issues, and elevate larger issues for government-to-government discussion – for example, the need to address aging hatchery infrastructure or concerns with reductions in fish and wildlife funding.


We view restoring the lower Snake River – a living being to us, and one that is injured – as urgent and overdue. We will be providing leadership in all forums: from our discussions with you as our federal agency trustees and partners, to the halls of Congress, to the courtroom, to the statehouses, to conversations with our neighbors, energy interests, and other river users. Our experience is that rarely can one forum operate in exclusion of others, and often litigation plays a constructive role in advancing interest-based solutions.

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We look forward to continuing to engage with you on a government-to-government basis concerning the operation of the dams on the lower Snake and Columbia rivers and as partners in implementing fish and wildlife actions in the Snake River Basin.

*Qe'ci'yew'yew'* (thank you) for your consideration of these matters at this important moment in time.

Sincerely,



Mr. Shannon F. Wheeler  
Chairman