



Confederated Tribes and Bands  
of the Yakama Nation

Established by the  
Treaty of June 9, 1855

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## **TESTIMONY OF JEREMY TAKALA**

**CHAIR OF THE YAKAMA TRIBAL COUNCIL FISH & WILDLIFE COMMITTEE  
THE CONFEDERATED TRIBES AND BANDS OF THE YAKAMA NATION**

**TO THE**

**UNITED STATES HOUSE OF REPRESENTATIVES  
ENERGY AND COMMERCE COMMITTEE  
SUBCOMMITTEE ON ENERGY, CLIMATE, AND GRID SECURITY**

**JANUARY 30, 2024**

Good morning, Chairman Duncan, Vice Chair Curtis, Ranking Member DeGette, and distinguished Members of the House Energy and Commerce Subcommittee on Energy, Climate, and Grid Security. My name is Pax'anashat; and I am known as Jeremy Takala. I submit this testimony on behalf of the Confederated Tribes and Bands of the Yakama Nation ("Yakama Nation") in my capacity as the Chair of the Yakama Tribal Council's Fish and Wildlife Committee.

The Yakama Nation is deeply concerned that Congressional representatives are hearing a one-sided story – fueled by fear and misinformation – about the Biden Administration's December 14<sup>th</sup> Agreement and what it means for the people of the Pacific Northwest.

Some have called the Agreement a secret deal brokered by radical environmentalists behind closed doors, and suggest it was rubber stamped by the Biden Administration. I was on the Yakama Nation's negotiation team, and I can tell you this is simply untrue.

Others worry that the cost of implementing the Agreement will fall on the Bonneville Power Administration ("BPA") and its ratepayers, and significantly increase electric bills in their communities. But BPA's own analysis indicates that the Agreement will have little to no rate impacts.

As a signatory to the December 14th Agreement, the Yakama Nation appreciates the opportunity to testify today and help set the record straight. This Agreement is a historic opportunity to help save our salmon and secure a just and prosperous future for everyone in the Columbia Basin.

### **Background**

The Yakama Nation is a sovereign Native Nation comprised of the confederated peoples of fourteen historic tribes and bands from the Columbia River Basin. Our inherent sovereign rights and privileges – including our reserved right to catch 50% of the harvestable adult salmon returning to the Columbia River each year – are recognized and guaranteed by the Treaty we signed with the United States in 1855.<sup>1</sup> The U.S. Constitution requires our Treaty rights be upheld and respected as the supreme law of the land here in these United States of America.<sup>2</sup>

The Yakama Nation exercises direct jurisdiction over about 1.3 million acres in Central Washington, including the Yakama Reservation and multiple off-reservation trust allotments. Pursuant to its status as a sovereign Native Nation and its Treaty-reserved authority, the Yakama Nation works to protect all of the natural and cultural resources in Yakama Nation’s historic Treaty-territory, and to provide for the health, safety, and welfare of the more than 11,000 enrolled Yakama Members. We also regulate our Members’ exercise of their Treaty-reserved rights off-reservation in our ceded lands, which comprise about 1/3 of the State of Washington, and at traditional use areas throughout the Northwest.

Since time immemorial, the strength of the Yakama Nation and its People have come from Nch’í Wána – the Columbia River – and its tributaries, and from the fish, game, roots and berries nourished by their waters. Today, the majority of tribal fishermen on the Columbia River are Yakama Members. And Yakama Nation Fisheries operates one of the largest and most sophisticated fisheries management and restoration programs in the Nation.

We are Salmon People; but we are also farmers, ranchers, loggers, and entrepreneurs. For example, the Yakama Nation government owns and operates tribal enterprises, including: Yakama Forest Products, which harvests and mills around 88 million board feet of lumber each year; Yakama Nation Farms, which cultivates nearly 2000 acres and produces organic and conventionally grown fresh produce crops for wholesale and community food distribution purposes; and Yakama Power, which delivers electricity to more than 3000 customers located on the Yakama Reservation, and is the only tribal electric utility with membership in the regional Public Power Council.

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<sup>1</sup> U.S. Treaty with the Yakamas of June 9, 1855 (12 Stat. 951) (ratified Mar. 8, 1859), Art. III. Treaty fishing rights were also reserved by the Umatilla, Warm Springs, and Nez Perce tribes (together with the Yakama Nation, the “Columbia River Treaty Tribes”). See, Treaty of June 25, 1855, with the Tribes of Middle Oregon (12 Stat. 963); Treaty of June 9, 1855, with the Umatilla Tribe (12 Stat. 945); Treaty of June 11, 1855, with the Nez Perce Tribe (12 Stat. 957).

<sup>2</sup> U.S. Const. art. VI, cl. 2. Treaties between Indian tribes and the United States are within the ambit of the supremacy clause of the Constitution. *Worcester v. Georgia*, 31 U.S. 515, 559 (1832) (“The constitution, by declaring treaties already made, as well as those to be made, to be the supreme law of the land, has adopted and sanctioned the previous treaties with the Indian nations and consequently, admits their rank among those powers who are capable of making treaties.”); *Menominee Tribe v. United States*, 391 U.S. 404, 412 (1968) (“The Treaty of Wolf River was, under Article VI of the Constitution, the ‘supreme law of the land.’”).

Through the Columbia River Inter-Tribal Fish Commission (“CRITFC”), we have worked with our sister Columbia River Treaty Tribes to develop a Tribal Energy Vision to advance regional energy needs planning in a manner that protects the Tribes’ treaty-secured fish, wildlife, cultural, and other resources.

### **Columbia Basin Salmon in Crisis**

The continued and increasing peril of Columbia Basin fish stocks, and the increasingly urgent need for additional and enhanced mitigation Actions, has been clearly documented by federal, state, and tribal fish managers, and fisheries experts. As summarized by NOAA’s National Marine Fisheries Services in their 2022 Rebuilding Report:

Sixteen stocks historically spawned above Bonneville Dam. Of those, four are now extinct, and seven are listed under the federal ESA—including one reliant on a captive breeding program. Of the remaining five, only one approaches its historical numbers. Recent abundance trends (where data are available) are negative and [smolt to adult return] productivity values are below replacement [levels].

The risk of extinction from demographic collapse is moderate-to high for all ESA-listed stocks, as is the risk of reduced adaptive capacity, all resulting from small population size. For example, while there have been improvements in abundance and productivity in several populations relative to the time of listing, the majority of interior Columbia River basin populations experienced sharp declines in abundance in the recent 5-year period.<sup>3</sup>

When the Columbia River Treaty Tribes reserved our Treaty fishing rights back in 1855, approximately 10-18 million salmon and steelhead returned to the Columbia River each year. Today, we are lucky to see a year where 2 million fish return; and the United States is largely to blame. Over the course of the 20th century, the United States constructed and permitted dams throughout the Columbia River Basin without Tribal consent, which decimated native fish runs. The dams reshaped the Columbia River into a series of slow-moving pools, blocked fish passage, decreased escapement, increased predator-take of salmonids, and warmed up the Columbia River.

The Northwest Power and Conservation Council (“NPCC”) (which was established by Congress via the Northwest Power Act and is operated jointly by the states of Washington, Oregon, Idaho, and Montana) determined that the hydropower system kills between 5

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<sup>3</sup> NOAA 2022 Rebuilding Report, at 7.

million and 11 million anadromous fish each year.<sup>4</sup> To be clear, these are not losses attributable to ocean conditions, or climate change.

Since 1987, the NPCC has had an “interim goal” of recovering annual salmon and steelhead runs to 5 million adult fish, commensurate with the lowest estimated level of hydrosystem impacts;<sup>5</sup> but this recovery goal has never been met. Nor have we yet made meaningful progress towards the recovery goals set by the Columbia Basin Tribes,<sup>6</sup> or most recently by regional sovereigns and stakeholders via the Columbia Basin Partnership Task Force.<sup>7</sup>

The extensive deterioration of the Columbia Basin’s natural ecosystem and native fish populations has had enormous consequences for Tribal Nations,<sup>8</sup> and also for recreational and commercial fishermen who call the Northwest home. Critically, our ability to actually catch fish – even those stocks that are doing well – is necessarily constrained because we must impose harvest limitations to ensure the continued survival of listed salmon and steelhead.

In the face of climate change, these impacts may become exponential, because reduced watershed health means reduced community and ecosystem resilience to a changing climate. In sum, our Columbia Basin fisheries are in a state of crisis that requires an urgent and substantial response if we want to avoid further salmon extinction and decline.

### **The Critical Need for Lower Snake River Restoration**

Wild salmon and steelhead from the Snake River Basin are in especially dire straits, in spite of the fact that the Snake River Basin contains the largest accessible amount of pristine, protected habitat remaining in the Columbia Basin. Key stocks are on the brink of extinction; and the overwhelming majority of regional fish managers and fisheries experts agree that breaching the lower Snake River dams is necessary to ensure their restoration.<sup>9</sup>

As NOAA recognized in their 2022 Rebuilding Report, restoring Snake River stocks to healthy, harvestable populations; reducing the currently high likelihood of further

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<sup>4</sup> See generally, NPCC’s 2000 Columbia River Basin Fish & Wildlife Program, at 11 (citing to Northwest Power Planning Council, Compilation of Information on Salmon and Steelhead Losses in the Columbia River Basin (Mar.1986)).

<sup>5</sup> NPCC’s 1987 Columbia Basin Fish & Wildlife Program, at 34.

<sup>6</sup> See generally, 2014 Update to Wy-Kan-Ush-Mi Wa-Kish-Wit (Spirit of the Salmon): The Columbia River Anadromous Fish Restoration Plan of the Nez Perce, Umatilla, Warm Springs, and Yakama Tribes.

<sup>7</sup> See generally, Columbia Basin Partnership Task Force of the NOAA Marine Fisheries Advisory Committee, Phase II Report – A Vision for Salmon and Steelhead: Goals to Restore Thriving Salmon and Steelhead to the Columbia River Basin (2020), available at [https://s3.amazonaws.com/media.fisheries.noaa.gov/2020-10/MAFAC\\_CRB\\_Phase2ReportFinal\\_508.pdf?null](https://s3.amazonaws.com/media.fisheries.noaa.gov/2020-10/MAFAC_CRB_Phase2ReportFinal_508.pdf?null) (last accessed Jan. 29, 2024).

<sup>8</sup> See generally, 2019 Tribal Circumstances Report.

<sup>9</sup> See e.g., NOAA 2022 Rebuilding Report; AFS Statement.

extirpation; and allowing them to fully utilize high elevation, climate resilient habitat will require breaching the four Lower Snake River dams.

Consistent with recommendations from bi-partisan federal and state leaders – including Representative Mike Simpson’s Columbia Basin proposal,<sup>10</sup> and the lower Snake River benefits replacement report<sup>11</sup> and recommendations<sup>12</sup> developed by Governor Jay Inslee and Senator Patty Murray – we must act now to invest in replacing the lower Snake River dams’ benefits in order to make breaching a viable policy action. These investments can best ensure a future that includes healthy and abundant salmon and steelhead, reliable and affordable energy systems, a robust economy, and valuable ecosystem services throughout the Columbia River Basin.

### **Models for Success**

The Yakama Nation and its Members have been successfully defending our Treaty fishing rights for more than 150 years, from the Washington Territorial Court back the 1880’s<sup>13</sup> all the way up to the U.S. Supreme Court.<sup>14</sup> But 50% of nothing is nothing. So, in addition to asserting our rights in court, we have taken an active role in partnering with the federal government, the states, and other stakeholders to rebuild diminished fish runs to ensure that our children and grandchildren will be able to fish on the Columbia River and its tributaries.

A great example is the Yakima River Basin Integrated Water Management Plan, which offers a 30-year vision for responding to drought and changing climate, assuring water is clean and ample, and lands are both protected and productive for growing communities and for the natural environment. We have seen a remarkable story unfold in the Yakama Basin where groups that once only met in a courtroom have instead come together to support each other’s goals. We now have irrigators who have become advocates for the instream flows needed by salmon, we have environmentalists who have agreed with the need to build new water storage dams and an Indian tribe advocating for the drinking water needs of off-reservation communities and farmers. As a result of this cooperation, we are seeing salmon returning to upriver tributaries where they have not been seen for decades. More information can be found at: <https://yakimabasinintegratedplan.org/>.

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<sup>10</sup> See e.g., [https://simpson.house.gov/uploadedfiles/simpson\\_presentation\\_idaho\\_3\\_31.pdf](https://simpson.house.gov/uploadedfiles/simpson_presentation_idaho_3_31.pdf) (last accessed Jan. 28, 2024).

<sup>11</sup> Available at [https://governor.wa.gov/sites/default/files/2022-11/LSRD%20Benefit%20Replacement%20Final%20Report\\_August%202022.pdf](https://governor.wa.gov/sites/default/files/2022-11/LSRD%20Benefit%20Replacement%20Final%20Report_August%202022.pdf) (last accessed Jan. 28, 2023).

<sup>12</sup> <https://governor.wa.gov/sites/default/files/2022-11/Murray-Inslee%20Process%20Recommendations.pdf> (last accessed Jan. 28, 2023)

<sup>13</sup> See e.g., *United States v. Taylor*, 3 Wash. Terr. 88 (1887).

<sup>14</sup> See e.g., *United States v. Winans*, 198 U.S. 371 (1905).

We have appreciated Representative Newhouse’s and Representative Schrier’s support for the Yakima Basin Integrated Plan; and we would welcome the opportunity to talk with them and with other Legislators about how the lessons we learned in the Yakima Basin can benefit our efforts in the Columbia.

### **Context and Impacts of the Biden Administration’s December 14<sup>th</sup> Agreement**

The federal commitments made by the Biden Administration in the December 14<sup>th</sup> Agreement were not developed by environmental special interest groups. They are a direct response to a comprehensive Columbia Basin Restoration Initiative developed advanced to the Administration by the Yakama, Umatilla, Warm Springs, and Nez Perce tribes, and the states of Washington and Oregon (for ease of reference, the “Six Sovereigns”).

The Six Sovereigns developed the Initiative because we all understand that rapidly changing economic, energy, and climate conditions in the Pacific Northwest – and the dire status of Columbia Basin fisheries – require a comprehensive and urgent plan of action to respond to inevitable changes and meet regional needs during the coming decades.

Both the Six Sovereigns’ Initiative, and the Administration’s commitments, were developed through a federal mediation process aimed at resolving decades of litigation over the operation of the federal hydro system. This process – like all mediation processes – was confidential; but it was not secret or nefarious.

Had we not negotiated for a more comprehensive approach, there is a high likelihood that the federal judge overseeing the underlying litigation would have ordered massive water spill over the dams (i.e. water not going through turbines). Would the utilities now expressing concern about the December 14<sup>th</sup> Agreement have preferred that outcome?

The Biden Administration has shown an unprecedented and long-overdue level of federal commitment to saving Columbia Basin salmon, and to putting the federal government’s money where its mouth is when upholding tribal Treaty rights. But most of the cost of implementing the December 14<sup>th</sup> Agreement’s additional fish, energy, and other actions will not be borne by the region’s ratepayers.

Applying BPA’s preliminary rate analysis, the potential monthly rate increase for an average residential customer would be about 24 cents if their power came 100% from BPA (which is not typical). And there would be no increased costs for customers of investor-owned utilities, like those serving the cities of Yakima and Spokane, which do not buy firm power from BPA. For example: the Washington customers of Avista, Pacific Power, and Puget Sound Energy would have zero risk of a rate increase from the December 14<sup>th</sup> Agreement.



## **Securing a Just and Prosperous Future for the Columbia Basin**

To secure a just and prosperous future for the Columbia Basin, we need a comprehensive, durable strategy to restore our native fish populations to healthy and abundant levels, to honor Federal commitments to Tribal Nations, to deliver affordable and reliable clean power, and to meet the many resilience needs of stakeholders across the region. The Biden Administration and the Six Sovereigns share this vision, and recognize that business as usual will not get the job done.

Consistent with the recommendations of the Columbia Basin Restoration Initiative, sovereigns and stakeholders must work together to:

Objective 1: Develop and advance an urgent, comprehensive strategy to (a) restore salmon and steelhead to “healthy and abundant levels” consistent with NOAA’s Columbia Basin Partnership Task Force (CBP) and Rebuilding reports; and (b) complete the actions and investments necessary to secure continuity of services<sup>4</sup> associated with Lower Snake River (LSR) restoration prior to LSR dam breaching.

Objective 2: Ensure that all species, regardless of ESA-listing status, are considered in the comprehensive strategy in a way that improves ecosystem function in the Columbia River and its tributaries.

Objective 3: Ensure interim fish measures minimize additional generational decline of fish populations.

Objective 4: Invest in and support communities and economic sectors (e.g., energy, transportation, agriculture, and recreation) in a manner that: is consistent with meeting decarbonization goals and mandates an integration of renewables; delivers “affordable and clean power”; improves resiliency and adaptability to climate change and supports “the many resilience needs of stakeholders across the region”; and “[honors] commitments to Tribal Nations”.

Objective 5: Secure necessary regulatory compliance, authorizations, and appropriations for implementation of the strategy proposed in Objective 1 above with an urgency reflecting the needs of the fish.

Objective 6: Ensure that the strategy proposed in Objective 1 and associated federal actions “honor Federal commitments to Tribal Nations” and address past and ongoing inequities related to the federal hydro system to reflect and uphold federal Treaty and trust responsibilities to Columbia Basin tribes.

As further described in the Columbia Basin Restoration Initiative, achieving these objectives will require us to:

- Ensure that federal hydropower mitigation efforts in the Columbia Basin are directed by joint recommendations of tribal and state fish management entities in coordination with federal fisheries services;
- Significantly increase funding for restoration to levels sufficient to address identified mitigation needs and obligations and support “healthy and abundant” fisheries recovery goals;
- Address the significant backlog of authorized and recommended, but historically underfunded, actions necessary for the safe and effective operation of critical fisheries infrastructure, assets, and programs;
- Replace the benefits of the lower Snake River dams with due urgency to enable breaching to move forward, and ensure interim fish measures are adequate to minimize additional generational decline of fish populations;
- Implement the Upper Columbia United Tribes’ Phase Two Implementation Plan to reintroduce and provide passage of priority anadromous species above Chief Joseph and Grand Coulee dams; and
- Establish a long-term biological performance monitoring and reporting program to measure progress and support accountability towards the qualitative and quantitative recovery and abundance goals identified in the CBP Phase II Report.

Some of these items can and should be advanced by the President and federal agencies under existing authorities and appropriations. Other parts will require Congressional support through additional appropriations or legislation, or both. Time is of the essence in both cases to meet the urgent needs of Columbia Basin fisheries and communities, and the inevitable changes facing the region.

### **Conclusion**

The successful implementation of the Biden Administration’s December 14<sup>th</sup> Agreement is vitally important. Our Columbia Basin salmon are in crisis, and we are facing rapidly changing economic, energy, and climate conditions in the Pacific Northwest.

The status quo is not a realistic option, because it will lead to salmon extinction. And the courtroom simply cannot deliver the creative and comprehensive solutions that we need. If Congress or litigation frustrates this Agreement, the result will likely be higher costs and more uncertainty for the region and the ratepayers.

We must put aside our differences and come together restore Columbia Basin fisheries to healthy and abundant levels. The economic and ecological health of our region requires it, and my People’s Treaty rights demand it. Because Tribal Treaty fishing rights include the right to actually *catch* fish, not just the right to dip our nets into empty waters devoid of salmon.



## **ATTACHMENTS FOR THE RECORD**

- 1) December 14, 2023 Memorandum of Agreement (the “December 14<sup>th</sup> Agreement”), including its attachments:
  - a) The Six Sovereigns’ 2023 Columbia Basin Restoration Initiative (the “Initiative”)
  - b) USG Commitments in Support of the Columbia Basin Restoration Initiative (the “USG Commitments”)
- 2) Six Sovereigns Informational Presentation on the Columbia Basin Restoration Initiative
- 3) Bonneville Power Administration Preliminary Rate Assessment
- 4) Columbia River Inter-Tribal Fish Commission Energy Vision for the Columbia River Basin (“Tribal Energy Vision”)
- 5) NOAA National Marine Fisheries Service, Rebuilding Interior Columbia Basin Salmon and Steelhead (Sept. 30, 2022) (“NOAA Rebuilding Report”)
- 6) 2014 Update to Wy-Kan-Ush-Mi Wa-Kish-Wit (Spirit of the Salmon): The Columbia River Anadromous Fish Restoration Plan of the Nez Perce, Umatilla, Warm Springs, and Yakama Tribes
- 7) Columbia Basin Partnership Task Force of the NOAA Marine Fisheries Advisory Committee, Phase II Report – A Vision for Salmon and Steelhead: Goals to Restore Thriving Salmon and Steelhead to the Columbia River Basin (2020)
- 8) Columbia River Treaty Tribes’ 2019 Tribal Perspectives Report
- 9) Statement of the American Fisheries Society (AFS) and the Western Division AFS About the Need to Breach the Four Dams on the Lower Snake River (2023) (the “AFS Statement”)