

Universities Consortium on  
Columbia River Governance  
<https://transboundarywaters.ceoas.oregonstate.edu/universities-consortium-columbia-river-governance>

U.S. Negotiating Team for the  
Columbia River Treaty  
U.S. Department of State  
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November 21, 2024

Dear Jill Smail and the U.S. Negotiating Team,

We are writing on behalf of the Universities Consortium on Columbia River Governance (UCCRG). The UCCRG came together in 2008 from public universities within the Columbia River Basin to offer a nonpartisan platform to (1) provide public education on the review and renegotiation of the Columbia River Treaty; (2) facilitate an informed, inclusive, international dialogue among key decision-makers and other interested individuals and organizations; (3) connect our students and research at our universities to issues facing water managers; and (4) transmit what we hear from the people of the Columbia River Basin to decision-makers for a modernized Columbia River Treaty. We write to convey the hopes of members of the Columbia River Basin for a Modernized Columbia River Treaty expressed during a recent Symposium at which Treaty negotiators from both sides of the border presented on the Agreement in Principle. Specifically, the following paragraphs will cover the background on specific areas that lead to public comment and urge you to seek changes in four key areas:

- (1) Address the gap in transparency in river operations by providing for robust and continuing public engagement under a modernized Treaty;
- (2) Address ambiguity in the AiP by clarifying the equal place of ecosystem function alongside the original Treaty purposes of hydropower production and flood risk management, and which of these purposes the KTWG will focus on;

(3) Address the lack of guidelines in how tradeoffs among Treaty purposes will be resolved by providing a mechanism dispute resolution (particularly disputes over adoption of JEB recommendations by the Entities) with the capacity to reach out for independent scientific input; and

(4) Address the uncertainties in future water supply and demand by allowing adaptation to changed circumstances within the bound of the modernized Treaty through a process for regular review of implementation and a process for adjustment to both operations and governance.

### **Background on Key Aspects of the Agreement in Principle**

On July 11, 2024, at the close of the NATO Summit, Secretary Anthony Blinkin of the U.S. Department of State and Minister of Foreign Affairs Mélanie Joly of Global Affairs Canada announced an Agreement in Principle (AiP) that addresses some of the key interests and expectations of citizens in the Columbia River Basin. For those on the U.S. side of the border, the shifting of costs for shared benefits from hydropower to a more equitable distribution among flood risk management, ecosystem function, and hydropower should be a welcome outcome to electricity ratepayers in the Pacific Northwest. For those on the BC side of the border, the reduction in demand for storage space for flood risk management and corresponding use of that storage for environmental, Indigenous, cultural, and socioeconomic values should be a welcome outcome for those in the Columbia River valley. In addition, the AiP takes a step forward in river governance by setting up the Joint Ecosystem and Indigenous and Tribal Cultural Values Body (JEB) with representatives from Tribes and First Nations and tasking it with the use of adaptive management to take a One River approach, including tributaries. Similarly, the Kootenay/Kootenai Transboundary Collaborative Workgroup (KTCW) is a welcome addition to river governance. Notwithstanding this progress, additional measures are necessary to achieve a modernized Treaty that is consistent with the Regional Review completed in 2013 on the U.S. side of the basin.

Following public announcement of the AiP, we were asked by members of the Basin's public to once again provide a forum for public education and dialogue on this new development. On November 13-14, 2024, we helped facilitate a Symposium in Spokane, Washington in which the U.S. and Canada negotiating teams presented the AiP and explained steps to be taken to modernize the Columbia River Treaty. We deeply appreciate their time and

effort and believe that it helped educate the public about the AiP. Other organizations (One River Ethics Matters, the University of British Columbia, the North American Youth Parliament for Water, and Gonzaga University) provided the funding and organization. Our role was to develop and facilitate discussion, and to then capture and share the results of the symposium with key decision makers, adding the context of our fifteen years of work with citizens of the Basin. A more complete report on the results of the meeting is being prepared by the Symposium organizers but may not be timely given the recent call by Canada Foreign Affairs Minister Mélanie Joly and U.S. Secretary of State Antony Blinken to finalize an agreement in January 2025.

The participants at the symposium identified four main gaps in the AiP: (1) the absence of robust and continuing public engagement under a modernized Treaty, particularly on the U.S. side of the border; (2) ambiguity regarding the equal place of ecosystem function alongside the original Treaty purposes of hydropower production and flood risk management, and the purposes the new Kootenay/Kootenai Transboundary Working Group (KTWG) will focus on; (3) lack of guidelines for decisions on tradeoffs among Treaty purposes and a means of dispute resolution (particularly for disputes over adoption of recommendations from the Joint Ecosystem and Indigenous and Tribal Cultural Values Body (JEB) by the operating Entities); and (4) lack of a process for adaptation of both operations and governance as circumstances change. These comments are tempered by the understanding that any additional elements must be within the boundaries of the key points in the AiP arrived at through a long and difficult process of negotiation, and that changes going forward must be made through a process of review to ensure that they are warranted and do no harm to the shared benefits of a Modernized Columbia River Treaty. We begin with background on the four points, followed by a “strawman” proposal that represents one way of achieving them without treading on the AiP.

### *Public Engagement*

The annual Symposia on the Columbia River Treaty facilitated by the UCCRG from 2009 – 2013, were driven by a need for public education within the Basin. To this end, the Northwest Power and Conservation Council and Columbia Basin Trust funded and organized several of the Symposia. A constant theme during these annual meetings was the call for greater public engagement and a means for representations during negotiations and implementation of a modernized treaty. In 2013, both sides of the border completed a review of the Columbia River

Treaty. The [U.S. Regional Review](#) was transmitted to the Department of State, and the [Recommendation of British Columbia](#) was transmitted to Global Affairs Canada.

The U.S. Regional Recommendation released in December 2013 included the following statements:

*The U.S. Department of State should establish and resource a structured domestic advisory mechanism to assist, inform, and advise the Department of State in the negotiations phase of this process. The Department of State should seek to involve a broad cross-section of regional parties in this mechanism.*

*Following the conclusion of the United States and Canadian negotiations of the terms of the post-2024 Treaty, and subject to funding, the U.S. Entity will lead an effort in consultation with regional sovereigns and stakeholders to develop a plan identifying the steps necessary to implement the modern Treaty post-2024.*

The recommendation of British Columbia was transmitted to Global Affairs Canada in December 2013, and includes the following statements:

*Public participation in decisions that affect them has changed greatly since the 1960s. Today, residents and stakeholders want to receive timely and pertinent information that they can understand, and have input and influence in management of resources, such as Treaty operations including Libby Dam.*

*The Canadian Entities (Province of British Columbia and BC Hydro) will continue to engage First Nations and communities throughout any negotiation process.*

In addition to convening and facilitating the annual symposia, the Universities Consortium on Columbia River Governance completed a series of independent studies that revealed that one of the biggest changes in the U.S. and Canada (and in fact, globally) since 1964 is the expectation and provision of public engagement as part of decision-making. Water management agencies across the world, operating at different spatial scales (including international, transboundary river basins) increasingly provide meaningful opportunities for public information, education, and engagement. In many ways, the Columbia River is way behind in this effort. Public engagement (as opposed to mere public involvement) serves the purpose of informing the public and connecting their views and needs to the decision makers.

The Agreement in Principle released by the negotiating parties on July 11, 2024, contains no mention of a mechanism for public engagement during either the period of development of

the final modernized Treaty or during subsequent implementation of the Treaty beyond two advisory bodies on ecosystem function. While the Province of British Columbia has developed domestic mechanisms for public engagement during the negotiation process, we know of no similar effort in the United States. An explicit process for public engagement would substantially enhance the perception of legitimacy over the course of implementation of the modernized Treaty.

#### *Clarification of the Role of Ecosystem Function*

Symposium participants were excited to see “ecosystem function” in the AiP and the two new bodies, the JEB and the KTWG, focused on this element and are highly supportive of these developments. The participants, however, expressed concern that the lack of an explicit statement that ecosystem function is a third objective of the Treaty, co-equal to hydropower production and flood risk management and confusion between use of the term “ecosystem function” and “ecosystem health” will lead to ambiguity and result in its treatment as a secondary goal. In addition to highlighting the need for an express statement, this observation leads to the question of how to make trade-offs and resolve disputes among the three objectives of a modernized Treaty.

#### *Dispute Resolution*

Currently the AiP directs the Entities and “Parties” to “consider” the recommendations of the JEB with no guidelines on how to make tradeoffs among Treaty purposes. Citizens are concerned that this unlimited discretion could relegate ecosystem function to a secondary consideration, and thereby reduce the perceived legitimacy of Treaty operations. Currently, Annex A. 7. of the Treaty requires operational tradeoffs between hydropower production and flood risk management to maximize power from release of water in Canada. This provision leads to proportional draft of reservoirs in reverse order of their contribution to hydropower production. With ecosystem function clearly established as a third, equal, purpose of the Treaty, new guidance on what to do in the inevitable case of conflict among the three purposes is needed. In addition, a mechanism for transparent conflict resolution provided within the Treaty and relied on when the JEB and the Entities disagree will enhance the actual and the perceived legitimacy of decisions made.

#### *Review and Adaptive Evolution*

With the help of negotiators present at the Symposium, the public was made aware of the fact that uncertainty regarding the future due to changes in power demand, production and transmission; flood risk due to changes in timing of peak runoff; ecosystem health (particularly as water temperature rises); societal needs and values; and climate renders it impossible to plan for all potential futures, and dangerous to make wholesale changes in anticipation of one possible future. The public recognizes that the time between commencement of review of the existing Treaty and the announcement of the AiP was 11 years. A Modernized Treaty with a 20-year life and no means for review and incremental change beyond operational seasonal planning within the outer bounds of the Treaty means that negotiations for the next Treaty must begin immediately. This is not a sustainable approach. The public strongly requests a means for regular review and adjustment that proceeds incrementally, which would not only allow proof of concept before making widespread changes, but also provide a mechanism for Treaty adaptation (something sought by both the Regional Recommendation and the BC Review).

### **Moving Forward: A *Strawman* Proposal**

Building on the feedback provided by participants at the symposium and integrating our own experience in both within the Basin and in transboundary water policy and management generally, we offer the following concepts as one way to refine the AiP consistent with public interests and expectations. These concepts support adaptation of Treaty implementation to change, and only as warranted. We ask that you consider these suggestions as a possible means to a long-lasting agreement that will withstand the test of time and avoid the costly process of re-negotiation for years to come. Our suggestions are informed by several examples, including but not limited to the Great Lakes Water Quality Agreement; the Colorado River's Federal-State-Tribal Working Group; the IJC Watershed Councils; and examples of public engagement from around the world, including the Nile, Mekong, and Danube River basins and informal efforts in the Sava River Basin. We are happy to provide details on these models if helpful.

1. Expressly state that Ecosystem Function is a third purpose of the shared benefits of the Columbia River Treaty alongside Hydropower Production and Flood Risk Management.
2. Change the composition of the Entities to reflect the addition of Ecosystem Function as a third purpose of the Treaty. This can be accomplished within the existing Treaty but should be done either based on recommendation from the JEB or in consultation with Tribes and First Nations who have served as observers and experts in negotiations.

3. Limit the statement in Annex A. 7. of the Treaty requiring operation to maximize power from release of water in Canada to application to tradeoffs between hydropower and flood risk management. Supplement that statement with guidelines for making tradeoffs among the three purposes of the Treaty by providing a seasonal floor and preferred target for both hydropower production and flood risk management and requiring that JEB recommendations on Ecosystem Function be adopted provided those targets can be met.
4. Change the composition and name of the Permanent Engineering Board (PEB) that was developed for dispute resolution at a time when river operation was considered simply an engineering challenge and climate change outside of historic variability was unknown. An example of an appropriate name could be The Columbia River Treaty Board. The CRT Board should represent basin sovereigns – i.e. Federal, Tribal, First Nation, Provincial, and State representatives. From the south side of the border, the Sovereign Review Team relied on for the Regional Recommendation could serve as a model for the Board’s composition balanced to reflect the need for equal representation across the border. State members could overlap with appointments to the Northwest Power and Conservation Council to increase integration and knowledge transfer with U.S. energy and fish and wildlife planning. From the north side of the border, the negotiating Team including Indigenous observers could serve as a model for the Board’s composition, again balanced to reflect equal representation on both sides of the border. Indigenous members could overlap with the JEB to increase communication.

To clarify the purpose and scope of the CRT Board, authorize it to seek referral to the International Joint Commission and task it with the following:

- (1) Dispute resolution concerning implementation of the Treaty including tradeoffs among the three purposes and authority to rely on external scientific advice for this purpose;
- (2) Public engagement, including a regular forum (annual or biennial) for a two-way dialogue on the State of the River with the ability to formalize a citizen advisory board if it would further the purpose of public engagement;
- (3) Review of Treaty operation every 5 years with authority to make incremental adaptations to include among other things:

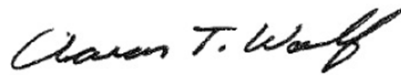
- i. Changes to targeted goals of the three purposes made necessary by climate and other changes in the basin;
- ii. Depending on the success of the KTWG as “proof of concept,” expansion of KTWG approach to the other purposes of the Treaty (unless, as noted above, the scope already includes all three purposes) and the geographic scope by adding subbasin working groups to include the entire basin; and
- iii. Extension of the timeline of the 20-year Modernized Treaty if the implementation and process of incremental evolution is working.

We appreciate the opportunity to convey the ideas raised at the Columbia River Transboundary Symposium. We also appreciate all that you continue to do for the people of the Columbia River Basin. Please contact us if you have any questions.



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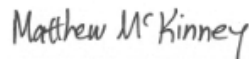
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