

## Memorandum

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To: Wells, Rocky Reach, and Rock Island HCP  
Policy Committees

Date: September 26, 2019

From: John Ferguson, HCP Policy Committees Chairman

cc: Kristi Geris

**Re: Final Minutes of the July 9, 2019 HCP Policy Committees Meeting**

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The Wells, Rocky Reach, and Rock Island Hydroelectric Projects Habitat Conservation Plan (HCP) Policy Committees met at the Chelan PUD office in Wenatchee, Washington, on Tuesday, July 9, 2019, from 9:00 a.m. to 12:40 p.m. Attendees are listed in Attachment A to these meeting minutes.

### Action Item Summary

- Steve Parker (Yakama Nation [YN] HCP Policy Committees Representative) and Cody Desautel (Colville Confederated Tribes [CCT] Natural Resources Director) will discuss with their respective policy staff about convening the YN and CCT Tribal Councils to discuss potential paths forward for the Scaffold Camp Acquisition #2 Project, including third-party ownership (Item V-A).
- Tracy Hillman (HCP Tributary and Hatchery Committees Chairman) will communicate HCP Policy Committees guidance to the HCP Tributary and Hatchery Committees to base funding decisions on technical merit, and to notify respective HCP Coordinating and Policy Committees representatives of any potential policy issues needing to be addressed in those forums (Item V-A). (*Note: Hillman communicated this guidance to the HCP Tributary and Hatchery Committees, as discussed.*)
- Steve Parker and Cody Desautel will discuss with their respective policy staff about convening the YN and CCT Tribal Councils to: 1) attend a joint meeting and presentation by Chelan PUD, Douglas PUD, and YN and CCT HCP technical representatives about the function of the HCPs; and 2) provide guidance on land ownership issues that might impact implementation of the HCPs (Item V-A).
- HCP Policy Committees representatives will each discuss with their respective HCP Tributary and Hatchery Committees representatives the option of abstaining in lieu of a disapproval vote to preserve a policy position (Item V-A).
- John Ferguson (HCP Policy and Coordinating Committees Chairman) will coordinate with each HCP signatory about an optimal date, time, and location for an annual meeting of the HCP Policy Committees (Item VI-A).

## Decision Summary

- There were no HCP Policy Committees Decision Items approved during today's meeting.

## Agreements

- There were no HCP Policy Committees Agreements discussed during today's meeting.

## Review Items

- There are no HCP Policy Committees items that are currently available for review.

## Finalized Documents

- There are no HCP Policy Committees documents that have been recently finalized.

## I. Welcome

### A. Review Agenda (John Ferguson)

John Ferguson welcomed the HCP Policy Committees and reviewed the agenda. Ferguson asked for any additions or changes to the agenda. Kirk Truscott (CCT HCP Coordinating Committees Representative) said Cody Desautel will be 30 minutes late and requested that the YN agenda item be postponed until Desautel arrives. No other changes were requested.

### B. Purpose and Objectives (John Ferguson)

John Ferguson summarized the three objectives for this meeting are to: 1) have a clear exchange of thoughts, opinions, and position on this issue; 2) develop guidance for the HCP Tributary and Hatchery Committees; and 3) maintain the proper functioning and implementation of the HCPs.

Ferguson said as history shows, implementation of the HCPs is going extremely well. He recalled in 2013, the first official check-in was very positive. He said the HCP Coordinating Committees have worked through all issues, fish passage goals have been met, and spill is in compliance. He said the HCP Hatchery Committees have been successful in meeting the hatchery production and mitigation goals, and the HCP Tributary Committees have funded many projects and have now built up the fund accounts to be able to implement large-scale projects. He said the issue at hand is just one small sliver in a hugely successful program.

## **II. HCP Tributary Committees**

### **A. Review of Events and Revisions to Decision Evaluation Criteria (Tracy Hillman)**

Tracy Hillman said a document titled, "Dispute Regarding Basis for Decision Making in the HCP Tributary Committees," (information package; Attachment B) was prepared by the HCP Tributary Committees in response to a formal dispute submitted by the YN, dated May 23, 2019. Hillman clarified that the YN has since withdrawn the formal dispute; however, the information package, as distributed to the HCP Policy and Coordinating Committees on June 11, 2019, refers to the issue as a dispute, which is not the case at this time. Hillman said the information package reviews the sequence of events concerning this issue including two parallel paths: 1) development of scoring criteria for funding projects; and 2) review and voting on a draft Statement of Agreement (SOA).

Hillman said the HCP Tributary Committees have always followed criteria outlined in the "HCP Tributary Committees Policies and Procedures for Funding Projects," (Policies and Procedures document) when making funding decisions. He said the criteria consider the biological benefit, technical merit, durability, feasibility, and cost effectiveness of a proposed project. He said in 2018, Brandon Rogers (YN) and Catherine Willard (Chelan PUD) became new representatives on the HCP Tributary Committees. Hillman said both Rogers and Willard have experience working on the Upper Columbia Regional Technical Team where there are very specific scoring criteria for evaluating projects. Hillman recalled that Willard asked about detailed evaluation criteria in the Policies and Procedures document, and at the time there were only general criteria. Hillman said Willard expressed interest in developing specific criteria and Rogers agreed. Hillman said as suggested, the HCP Tributary Committees started the process of developing specific scoring criteria to include in an updated Policies and Procedures document.

Hillman said the other path began in December 2018, when the HCP Tributary Committees received a General Salmon Habitat Program Proposal from the YN titled, "Scaffold Camp Acquisition #2 Project." Hillman said the HCP Tributary Committees evaluated the project and based on the general criteria in the Policies and Procedures document, agreed this is an important property to protect and a good opportunity to restore a side-channel. Hillman said Chris Fisher (CCT HCP Tributary Committees Representative) agreed with the biological importance of the project; however, he received policy-level direction to vote "no" because approving the project meant the YN would own property in the Methow River Basin. Hillman clarified a "no" vote from the CCT had nothing to do with the HCP Tributary Committees evaluation criteria; rather, it was a policy-level directive that overrode the Committees criteria. He said at that time, the HCP Tributary Committees brainstormed what could be done to protect this property and recommended that the YN discuss the acquisition of the parcel with other conservation-minded entities such as the Methow Salmon Recovery Foundation, Methow Conservancy, Washington Department of Fish and Wildlife (WDFW), or the CCT,

and coordinate enhancement work on the property with the YN. Hillman said the YN was not supportive of this recommendation and indicated they would likely dispute the decision based on principle. He said after internal deliberation, the YN elected not to dispute the decision on the Scaffold Camp Acquisition #2 Project but decided to develop an SOA that places boundaries on how the HCP Tributary Committees make funding decisions. He said on February 25, 2019, the YN distributed a draft SOA titled, "Basis for Decision Making in HCP Tributary Committees," which stated that the HCP Tributary Committees will make mitigation funding decisions based exclusively on the merits of proposed projects (biological benefit, technical merit, feasibility, durability, and cost effectiveness) having a direct nexus to plan species, plan species habitat, or plan species management. Hillman said the draft SOA was available for a 45-day review. He said no edits to the draft SOA were received and during the HCP Tributary Committees meeting on April 11, 2019, he asked each HCP Tributary Committees representative to vote on the SOA as well as provide justification for their vote. He said all representatives voted "no" except for the YN. He said the reasons for voting "no" on the draft SOA included: 1) the representatives believe the evaluation criteria in the Policies and Procedures document are sufficient for evaluating project proposals; 2) the representatives believe this is more of a tribal issue and not an HCP issue; and 3) representatives do not want to lose their discretionary rights to vote "no" on a project for reasons that may not entirely fit within the Policies and Procedures criteria.

Hillman said while the SOA was under review, the HCP Tributary Committees were also reviewing and updating their criteria for evaluating restoration, protection, design, and assessment projects. He said specific criteria for biological benefit, technical merit, durability, feasibility, and cost effectiveness were developed for each project type. He said this is when the two parallel paths converged. He said there were now more robust and specific criteria to evaluate projects and the HCP Tributary Committees decided an SOA was not needed to stipulate the use of these criteria. He said because the draft SOA was rejected, the YN elected to submit a formal dispute in accordance with Section 11 of the HCPs, which was the impetus for developing the information package (Attachment B). He said since announcing the formal dispute, the YN has withdrawn the dispute and the HCP Policy Committees are convened today to further discuss this topic.

Hillman said he appreciates that this is no longer a formal dispute. He said when an HCP Tributary Committees representative votes "no" on a proposed project, as Chair of the Committees he must understand the reasonings for the "no" vote because he has to communicate the decision and the reason for the decision to the project sponsor. He said the sponsor then has an opportunity to address the issues and resubmit an application, which they often do. Hillman said a "no" vote is often due to the project sponsor proposing the wrong project, in the wrong place, at the wrong time, any combination of these factors, or the cost effectiveness of the project. He said, however, Fisher supported the project based on the benefits to the resource but was directed by policy staff to vote

"no." Hillman argued that the HCP Tributary Committees Policies and Procedures are not the issue; rather, the issue is policy-level decisions that override HCP Tributary Committee criteria. He said the HCP Tributary Committees have criteria in place; however, policy staff can override these criteria. He said if this topic was still a formal dispute that went to the HCP Coordinating Committees, he believes the vote at the HCP Coordinating Committees level would be similar. He asked then, do the HCP Coordinating Committees also have an issue with their criteria for making decisions? He said the HCP Coordinating Committees also receive direction from policy staff. He said, therefore, this discussion within the HCP Policy Committees is valuable because this group oftentimes is providing guidance to the technical representatives. He said he is in the position where he needs to defend the HCP Tributary Committees position with project sponsors. He said he needs to understand and believe the decisions are correct, and this Scaffold Camp Acquisition #2 Project is the first case where he could not defend the decision based on what was best for the resource. He said the HCP Tributary Committees decision was trumped by policy staff, which is not the fault of the HCP Tributary Committees and is why he believes the HCP Policy Committees need to address this issue.

John Ferguson asked to what extent is ownership captured in the HCP Tributary Committees criteria. Hillman said ownership only applies to protection projects where the land is typically owned by the project sponsor. He said when a protection project is evaluated, the HCP Tributary Committees consider who will hold the title. He said, for example, if the entity has a bad reputation for allowing disturbances to occur, the HCP Tributary Committees would vote "no" based on biological merit and durability and would indicate they do not believe the entity would adequately protect the resource. He said the criteria do not indicate who can or cannot own a property, but the criteria do question whether the landowner is appropriate. He said, for example, anytime a Plan Species Account is used to fund projects, the landowner must allow public access and maintain the resources. Jim Craig asked, so the criteria do give the HCP Tributary Committees the ability to say who owns the property? Hillman said yes, the HCP Tributary Committees could say they believe that a property should be protected but that a certain entity should not hold title and recommend that another entity hold the title. He said similar language is included in the HCPs.

Alene Underwood (Chelan PUD HCP Policy Committees Representative) clarified that per Section 7.4.4 of the Rock Island and Rocky Reach HCPs,<sup>1</sup> "Title may be held by the District, by a resource agency or tribe or by a land or water conservancy group, as determined by the Tributary Committee." Tom Kahler (Douglas PUD HCP Coordinating and Tributary Committees Representative and HCP Hatchery Committees Alternate) said, importantly, there are separate sections in the HCPs describing ownership of assets and funding decisions, which are distinct from each other. Kirk Truscott said Section 7.4.4 of the Rock Island and Rocky Reach HCPs<sup>2</sup> also states, "Unless the Tributary Committee

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<sup>1</sup> Also, per Section 7.3.7.4 of the Wells HCP.

<sup>2</sup> Also, per Section 7.3.7.4 of the Wells HCP.

determines that there is a compelling reason for ownership by another entity, the District shall have the right to hold title.” Truscott said it may not be who is the best entity to hold the title; rather, it is more a function of multiple entities are capable of holding titles.

Jim Brown (WDFW HCP Policy Committees Representative) asked if the HCPs include reserved rights, and Kahler said there are sections describing authorities to whom each of the signatories are subject. Kahler said the HCPs were not intended to take away rights granted in other documents; rather, the HCPs are a recovery plan. Brown said it seems then by signing the HCPs, the signatories agreed to comply with the processes and criteria contained within the HCPs. Kahler explained that the HCPs define each committee and state that it is up to each committee to develop its own operating procedures and submit them to the HCP Coordinating Committees. He said ultimately, the HCP Coordinating Committees deferred management of the respective operating procedures to each committee so long as the procedures uphold the tenants of the HCPs and accomplish the objectives outlined in the HCPs. Ferguson also noted that Section 9.7 of the Wells HCP<sup>3</sup> states “However, the Party shall use reasonable efforts to exercise their rights and authority under such statutes, regulations, and treaties (consistent with their duties and responsibilities under those statutes, regulations and treaties) in a manner that allows this Agreement to be fulfilled.”

Hillman said the HCP Tributary Committees review their Policies and Procedures document every year and evaluate whether the document needs revising. He said, for example, conservation easements formerly did not require public access, but the HCP Tributary Committees changed this to allow public access.

Ferguson said the HCP Coordinating Committees discussed this potential dispute in December 2018, after it was first discussed within the HCP Tributary Committees. He said there was general agreement that this issue could not be resolved within the HCP Coordinating Committees and would need to be elevated to the HCP Policy Committees. He said this general thought did not change when the topic was discussed again in January and February 2019. He said there was never a vote, but this was the way the discussion was headed, which is what led him to contact the YN to convene the HCP Policy Committees for further discussion of this issue outside the formal dispute process.

Brown said he believes caution needs to be taken about overly focusing on the HCP Tributary Committees policies and procedures and to keep the focus of the discussion at the policy level. He suggested focusing on how to make policy decisions that translate into marching orders to technical staff.

Ritchie Graves (National Marine Fisheries Service [NMFS] HCP Policy Committees Representative) said he is interested in the unbiased implementation of the HCPs and believes it is worth refreshing

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<sup>3</sup> Also, per Section 9.4 of the Rock Island and Rocky Reach HCPs.

representatives' memories on how the HCPs got to where they are today. He recalled back in the 1980s, there was a lot of litigation, fisheries managers were operating under court orders, there was a very prescribed but miniscule amount of spill for fish passage, and everything was tied strictly to monetary value. He said in the mid-1990s, after the Snake River stocks started to be listed and stocks in the Upper Columbia River Basin were not in good shape, these statuses were reviewed. He said it is his understanding that the U.S. Fish and Wildlife Service was very pro-HCP and convinced Will Stelle (NMFS Regional Administrator) there should be an effort devoted towards developing HCPs for the Mid-Columbia PUDs. Graves said he was part of the third team for NMFS to participate in this process, which took 8 to 10 years to finish. He said in 2001, he participated in the final effort to complete the process. He said key improvements in the final effort included a better understanding of the Tributary Program portion of the HCPs and the addition of the decision matrix the HCP Coordinating Committees use to make sure survival standards<sup>4</sup> are being met and determine how to continue to achieve those performance standards. He said there were also clarifications concerning the Hatchery Program portion of the HCPs. He said in August 2003, forward progress of the HCPs slowed when NMFS was issuing permits for Grant, Chelan, and Douglas PUDs. He said it was at this time that Grant PUD elected to leave the HCP development process. He said by the end of 2003 when the Biological Opinions (BiOps) were submitted to the Federal Energy Regulatory Commission (FERC), there were still some disputes; several parties were not enamored with the HCPs and even submitted filings to FERC expressing disapproval of components of the HCPs. He said ultimately, FERC approved the interim BiOps and NMFS issued a second round of BiOps.

Graves said there is a lot of history here and a lot of effort went into getting the HCPs to where they are today. He said following FERC's approvals he believes the Columbia River Inter-Tribal Fish Commission and the YN was in the process of formally disputing the FERC approvals. He said after a tribal meeting, the YN ultimately decided it would be more beneficial to join the HCPs rather than challenge them. Graves said some environmental groups had the option to join but declined, he believes due to staffing reasons. He agreed with Ferguson that implementation of the HCPs to date has gone well. He said he believes the framers of the HCPs did a good job in laying out the key issues, and he views the issue today as a bit outside of what anyone was entertaining would be an issue at the time the HCPs were negotiated—where there are policy goals over-riding technical goals and how to address this. He said he also agrees with Ferguson's and Hillman's appreciation for the HCP Policy Committees convening to address this issue because he does not want to see technical staff tearing each other up over this when it is really out of their control. He said this type of thing hurts working relationships and he believes the HCP Policy Committees owe the technical committees some guidance on this issue. He said he is still trying to understand if there is an issue with this particular

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<sup>4</sup> Figure 1. in Section 4.1.2 of the Wells HCP (and, as included in the RI and RR HCPs).

project other than ownership. He said he understands the tribes have relationships, some good some bad, and the job of the HCP Policy Committees is to uphold the viability of the HCP process. He asked how to steer this process so it cannot be accused of being prejudice on behalf of one tribe or another. He said decisions need to be made to make sure this process is fair and objective. He said to this day, he does not know of any HCPs for a hydropower project in the country and he believes the Mid-Columbia HCPs are working well. He said the signatories have really focused on benefiting the species. He said he personally has a lot of pride in how the HCPs have functioned over time and he hopes to see them continue to function in the future.

Steve Parker explained the reason why the YN initially did not want to sign the HCPs was based on concern about the voting procedures being consensus-based, and the perceived conveyance of rights and authorities to the HCPs, which they did not possess. He said the YN has worked very hard to establish themselves as a self-regulating fisheries manager and the Tribal Council takes this very seriously. He said the YN is reluctant to share authorities with other entities that do not share the same views for the resources; however, at that time, it was decided it was better to be in the room where the HCP decisions are being made rather than dealing with the outcomes, and so the YN signed onto the HCPs.

### **III. Yakama Nation**

#### **A. Basis for Decision Making in the HCP Tributary Committees (Steve Parker)**

Steve Parker thanked the HCP Policy Committees for convening today. He said this is not a typical issue and his key objectives today are to make sure the HCP Policy Committees understand what the YN perceptions are and the reasoning behind this issue. He said it is equally important to determine what remedies may exist. He said this is a difficult situation to deal with at this level. He said he wants to separate the specific example that precipitated this meeting from the principle the YN is trying to bring to the HCP Policy Committees for awareness and guidance, which is to define the acceptable criteria for voting procedures.

Parker said stepping back several months, the YN was taken by surprise by the decision on the Scaffold Camp Acquisition #2 Project. He clarified the CCT position was no surprise to the YN, as both tribes have historically been very candid about circumstances of geographic regions in the Upper Columbia River Basin. He said the YN has an appreciation for the CCT position and understands it. He said the YN's greater concern was not about the specific detail of this vote but rather about the larger principle of what criteria can be brought into a vote. He questioned where there should be bounds around what is considered acceptable criteria. He recalled when the HCPs were developed, the Parties agreed there would likely be 9% unavoidable project mortality even with all measures to improve passage survival. He said of this 9% only about 7% could be mitigated



through hatchery production, which he believes was based on limitations in hatchery capacity. He said the other 2% was to be mitigated through habitat improvements. He said then as now, there was no way to document whether the 2% was being achieved; however, it was taken in good faith that by implementing the Tributary Habitat Program this would satisfy this portion of the mitigation program. He said based on this agreed upon level of mitigation required, implementation plans and procedures were developed and incorporated into the FERC licenses to operate the respective projects. He said the YN's concern is about the new criteria developed and incorporated into the HCP Tributary Committees Policies and Procedures document, which in the YN's view presents a material modification to the FERC license terms. He said the YN is conducting an internal analysis of this; however, they have not yet come to a final determination. He said the analysis is looking into the possibility of having FERC weigh in on a dispute; however, it appears this might not be possible. He said it is not clear to him after reading the HCPs what happens after an HCP Policy Committees decision. He said the HCPs just state other remedies are available. He said the YN is in a quandary being the Party bringing this dispute. He said if the dispute cannot be resolved within the HCP Policy Committees, what happens next? He said he hoped to discuss this with the HCP Policy Committees to search for solutions.

Parker said the YN is struggling with the potential that Parties can bring criteria to a funding decision that do not relate to benefiting the resource. He said this establishes a precedent that the YN does not want to contemplate. He said each Party potentially has differences in policy perspectives and management priorities. He said if these differences can drive the decision-making, he views this as a degradation in the process of the mitigation program and what the signatories signed up for.

## **IV. Discussion**

### **A. Comments and Perspectives (All)**

Ritchie Graves said one of his concerns is starting a dynamic within the committees whereby anyone who feels slighted will elevate a topic to the policy level. John Ferguson said he believes all HCP Policy Committees representatives share this concern, which gets to the heart of his third objective of today's meeting, which is to maintain the proper implementation of the HCPs.

Tom Kahler asked Steve Parker to clarify what he said about changes to the FERC license. Parker explained that his hypothesis is that to the extent the HCP Tributary Committees policies and procedures are part of the FERC license terms, by incorporation (i.e., the HCP and all its derivative parts, including its operating procedures, are considered part of the license), any change to those voting criteria represent a change to the license terms. Ferguson said the HCP Tributary Committees Policies and Procedures document is not part of the HCP text; rather, the HCP states that the HCP Tributary Committees will develop these criteria. Parker said it is a negotiated process. He said

thinking back to when the HCPs were negotiated, if someone had suggested a decision criterion based on policy goals other than mitigation priorities, this would be hard to agree to (i.e., decision criteria based on territorial claims or political aspirations would not have been acceptable then and, accordingly, should not be acceptable now). He said this is adding an element that has nothing to do with mitigation itself.

Kahler said early on, there were a lot of questions about how the implementation of the tributary program would work. He said it started with an agreement to coordinate the selection of habitat projects for funding with the ongoing annual project-funding cycle of the Washington State Salmon Recovery Funding Board (SRFB) and adapted to accommodate other regional funding needs over time. He recalled Bob Rose (YN HCP Tributary Committees Representative, retired) wanted the HCP Tributary Committees to be self-directed in project development and funding, and now the committees have finally achieved this, while maintaining their integration with the SRFB annual funding cycle. Kahler said the approach to implementing the tributary program has always been an adaptive process tailored to what the HCP Tributary Committees view as being needed, and the committees have adapted their policies and procedures accordingly. He said the HCP Tributary Committees are unique in that all representatives are truly only interested in benefiting the resource. He said the HCP Tributary Committees are not flawless, but there has never been an atmosphere of partisanship. He said he believes the HCP Tributary Committees have done a lot of good things and now the committees have encountered a new issue. He said he believes it is important that the HCP Policy Committees provide direction to the HCP Tributary Committees regarding Section 7.3.7.4 of the Wells HCP<sup>5</sup> (Ownership of Assets).

Ferguson said he is not sure that tying the five general criteria outlined in the HCP Tributary Committees Policies and Procedures document to the FERC requirement is accurate. He said the HCP is what is in the FERC license, and the HCP states "The Tributary Committee shall select projects and approve project budgets from the Plan Species Account by joint written request of all members of the Tributary Committee." Ferguson said he is unsure whether there is a nexus between the five general criteria and FERC license because the HCP Tributary Committees Policies and Procedures document is not part of the actual HCP text. Alene Underwood said however, each year the PUDs submit an annual report to FERC for approval, which outlines the activities conducted that year for all HCP committees. She said FERC approves the annual reports, and therefore, the changes noted within.

Cody Desautel said he does not recall this being an issue prior to 3 years ago, and he believes the concern started when the YN opened the coho salmon fishery in the Methow River basin. He said historically, the CCT have been supportive of habitat work; however, the incident with the fishery

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<sup>5</sup> Also, per Section 7.4.4 of the Rock Island and Rocky Reach HCPs.

threw up a red flag for the CCT Council who now thinks the YN uses habitat work to leverage work on certain lands. He said this is why the CCT Council is opposed to land purchases by the YN in the CCT territory. He said the question is how to move forward from here. He recalled some discussion about third-party ownership where there is still benefit to the resource but that avoids territory issues. He suggested developing alternatives that need to be presented to, and approved, by the respective tribal officials. He said he and Phil Rigdon (YN Natural Resources Manager) both want to see habitat work done, and this situation is difficult for everyone. Jim Brown asked Desautel if he and Rigdon have discussed this issue. Desautel said yes, and they discussed attempting to convene the YN and CCT Tribal Councils because ultimately those are the people who have the concerns. Desautel said this meeting would also need someone with an HCP background to help find a workable solution. Ferguson agreed with Desautel and said the principle issue is outside the HCPs. Ferguson said the HCP Policy Committees can try and provide guidance to the HCP Tributary Committees; however, this would only be a work-around and not a solution. He said the solution needs to fit within the respective Tribal Councils' guidance.

Parker said the YN has discovered that in the course of implementing the Columbia River Accord Habitat Program in the Upper Columbia River Basin, it is in the best interest for the YN to own the property where work is being done because there can be constraints with working with a property owner. Parker said constraints may take the form of differences in opinion on project objectives, design and implementation, or the terms of a conservation easement on the property after restoration work is completed. He said he does not believe the YN is interested in owning a lot of land because this comes with liabilities and responsibility, and he does not believe it is the best use of the YN restoration funding to buy and hold property. Desautel agreed with Parker noting that property owners with little technical background can get very opinionated about what needs to be done. He said, however, from the CCT Tribal Council's view, the CCT would prefer to own the land if it is located within the CCT territory. He asked about the possibility of WDFW being a third-party owner. Ferguson agreed this might be a solution and suggested perhaps identifying the geographic region where the tribes agree third-party ownership is required to address future similar issues.

Brown said he was directly involved with the YN coho salmon fishery incident. He clarified it was an unfortunate case of a lower-level staff person establishing a regulation that was not fully vetted with policy staff and the regulation was withdrawn shortly after it was released. Parker agreed it was an oversight, which caused a bit of friction between the tribes. Desautel suggested if the YN and CCT Tribal Councils convene, this should be explained and clarified. Parker agreed and said the YN action did not consider the CCT's likely reaction.

Kirk Truscott said he believes this issue can only be resolved at the Tribal Council level. He said what is needed is solution-oriented direction from the Tribal Councils, whether it be identifying a

geographic area or other options for what can be done in these situations. He said it is too cumbersome to take every solitary issue to a council, on a case-by-case basis. He said this puts staff in a difficult position and may result in lost opportunities due to the time involved to seek council approvals. He said further, he believes the HCP Tributary Committees should continue evaluating projects based on technical merit and this should be set apart from policy decisions.

Graves recalled several regulating documents and discussions behind the language in the HCPs regarding decision making by unanimous consent, and he said the focus at that time was keeping the committees from misusing funds on poor projects. He said he thinks the Parties were reviewing all the FERC orders and everybody took comfort in the idea that if something was bad for a habitat project, the Parties would have the ability to veto the decision. He said, however, the Parties did not account for good projects that could be funded, but which would not be funded for policy reasons. He said this was a bit of a blind spot in the HCPs. He agreed convening the Tribal Councils seems to be a positive step because he is unsure the HCP Policy Committees have any more ability to resolve this issue than the technical staff in the other committees. He said regarding the YN going to FERC for resolution, he said he believes it will be difficult to get FERC to weigh in on tribal issues; rather, he believes convening the Tribal Councils is the better option. He asked what the HCP Policy Committees can do to help move this forward.

Desautel said he can contact Rigdon to start these discussions of trying to convene the Tribal Councils. Parker agreed this is worth doing to resolve this specific issue; however, he noted there is still the broader principle to remain focused on. He said regarding Graves's comment about contacting FERC, the YN believes the substance of the principle has merit but questions the procedural hurdles in place to access FERC. He said the substantive issue in his mind is to what extent can other factors besides fish and wildlife restoration be a basis for decision-making. He said FERC may not want to get involved in a tribal dispute; however, the YN does not view the larger principle as a tribal dispute. Graves said he understands the broader principle and agrees it is a fair question to ask.

Brown said he has participated on a workgroup that had a consensus-driven model where parties departed from the workgroup because consensus could not be reached on particular issues. He said when there are ideological or policy opinions that underpin a decision it can wreak havoc on a consensus-driven process. He asked where is the line, what is on or off the table?

Jim Craig said for the Scaffold Camp Acquisition #2 Project, it seems the HCP Tributary Committees diverged from the established Policies and Procedures document and did not vote based on technical merit. He said this is a unique situation given that all HCP Tributary Committees representatives were initially supportive of the project before policy-level aspects to the proposed project intervened. He said to date, the HCP Tributary Committees have functioned very well and he

hopes this continues in the future. He said Section 7.3.7.4 of the Wells HCP and Sections 7.4.4 in the Rock Island and Rocky Reach HCPs discuss ownership of assets and indicate the HCP Tributary Committees may make ownership determinations of real and personal property purchased with funds from the Plan Species Account. He said the sections state that title may be held by a PUD, resource agency, tribe, or a land or water conservation group. He said it seems in this case, where the title holder is the issue, the YN and the CCT should be exploring options for a third-party to hold the title. He said this could be a PUD, WDFW, or a conservation group such as the Salmon Recovery Foundation or the Methow Conservancy, both of which have proven track records of outstanding land conservation and habitat recovery implementation.

Underwood said in her experience on the HCP Hatchery Committees, staff have worked very hard to accommodate work-arounds and she believes the HCP Tributary Committees do the same. She applauded these committees for this; however, she asked how long can staff be asked to do this? She said she advocates on behalf of the HCPs and the fantastic track record so far, and she hopes for more transparent, repeatable criteria to evaluate projects. She said she does not believe this can be achieved on this level; rather, it needs to be addressed at the highest level to continue the good work. She said continuing to have staff do work-arounds is not a long-term solution. She said it would be a real shame if after so many years of demonstrated successes in all committees, this one thing puts a blight on the successful implementation of the HCPs, and how decisions have historically been made. She said the fact that all signatories can sit down in this room together is a testament to how well this process has worked. She said it is important to pass on these sentiments and information to the Tribal Councils. She said Chelan PUD is willing to do whatever they can to help.

Tracy Hillman said a lot of what is being discussed today has also been discussed within the HCP Tributary Committees. He agreed with Parker about the benefits of owning the property where habitat restoration work is being conducted, not only for implementing actions but also for ongoing monitoring. He said determining what is in and what is out is a difficult question. He recalled reviewing the YN's draft SOA and asking the HCP Tributary Committees about other issues that might fall outside the established criteria, and the committees could not think of any. He said after this discussion, the HCP Tributary Committees were reviewing a protection project on Nason Creek that would be a great property to protect; however, a voting member received input that if agreement cannot be reached with the project sponsor on another project, that entity would not approve the Nason Creek project. He said there is no issue with the HCP Tributary Committees general and specific evaluation criteria; rather, the issue is with policy-level input that overrides the HCP Tributary Committees criteria. He said this could happen in any HCP Committee. He agreed with Parker that this is about the principle of decision-making. He said HCP Tributary Committees representatives could not agree on the YN's draft SOA because in part it did not allow policy-level

authority. Brown said further, sometimes technical staff are not aware of the reasoning behind policy decisions, which can lead to conflict.

Kahler said he has been an HCP Tributary Committee representative since March 2005. He recalled in the early years discussing similar issues of what and how to do things and when and where can policy intervene. He said this reminded him of the Enloe Dam removal project that never came through the HCP Tributary Committees because of a policy issue. From a biological-benefit level, removing the dam and opening the Similkameen habitat is perhaps the most profound action that could be taken for certain salmonid species. He said that, before submitting the proposal to the HCP Tributary Committees, project proponents asked the PUDs whether they could support this project. He said prior to Okanogan PUD's recent decision to not energize Enloe Dam, Douglas PUD was constrained because Douglas PUD has a basic operating principle to not interfere in the affairs of other PUDs. He said although he believes this is a great project, he could not have voted yes had it been brought to a vote prior to Okanogan PUD's decision to not energize. Therefore, the proponents never submitted a proposal for assisting with dam removal, knowing that the PUD could not approve it. He said another situation might be when an entity known to have done great harm in the grand scheme of resource management proposes a project with biological benefit, can the PUD support this? He said there was another project where design work was already being conducted, another entity proposed to do something there, and the project was rejected because someone else was already working there. He said a few projects have also been approved with relatively low biological benefit because of an expectation of realizing greater habitat benefits in the future with the relationships fostered by approval. These examples represent a few instances that did not cleanly fit within the evaluation criteria. Kahler said over time, there has been a pattern of approving good projects. He said there have also been projects that were not approved because the committees could not reach a consensus on benefits. He said overall, the evaluation criteria have served the committees well, and now include more specificity the HCP Tributary Committees representatives asked for. He said these policies and criteria act as a filter in how projects are evaluated. He said there is nothing wrong with these; rather, ownership of assets needs to be clarified by policy staff.

Parker said for this specific case, it seems seeking third-party ownership is the optimal route, which will need to be a council-level decision. He said for the larger principle, he believes technical staff should only be tasked to vote based on technical merit and if a policy issue arises this should be elevated to the next level. He said from the YN's point of view, the *US v. Oregon* process has been effective and can be viewed as a successful model. He said under *US v. Oregon* there are two technical committees (Production Advisory Committee and the Technical Advisory Committee) that must reach a consensus on the technical aspects of an issue so that the policy aspects can be elevated to the Policy Committee or argued in front of a judge. He said in the event of a dispute, the topic is not about the data; rather, it is a policy issue.

Hillman noted that the Scaffold Camp Acquisition #2 Project is a rare situation where a technical team made a technical decision but was given policy direction to not approve the project. He said he does not believe this is a conflict with the HCPs, it is just a single issue that needs to be addressed at the highest policy level.

Underwood said the HCPs specifically describe the role of the HCP Tributary Committees including their right to make decisions within the committees. She said she is hesitant to change this. She said, however, to Hillman's point, this is a rare situation.

## **V. Summary**

### **A. Consensus on Recommendations (All)**

The HCP Policy Committees discussed and summarized four key recommendations and associated action items based on comments and perspectives expressed, as follows:

#### Recommendation #1: The YN and CCT Tribal Councils meet and discuss potential paths forward for the Scaffold Camp Acquisition #2 Project, including third-party ownership.

John Ferguson asked if there is time sensitivity associated with this project. Tracy Hillman said he is unsure whether the landowner has sold the property yet, but if it is still available, the HCP Tributary Committees are interested in protecting it.

Ferguson recalled Tom Kahler providing a number of examples of past history where decisions were made based on factors outside of the formal criteria. Ferguson said this spoke to what is the principle solution here. He said it seems this can only be answered by the Tribal Councils. He asked if the HCP Policy Committees want to suggest defining acceptable land ownership in geographical terms, should they simply indicate this decision is outside the HCPs, or are there other recommendations? Cody Desautel said he believes that it is important to educate the Tribal Councils about the mitigation resources, the intent and background of the FERC license and HCPs, and provide a clear understanding of what the signatories are trying to do and why. He said he believes this will provide better context for funding decisions. Ferguson agreed and said it would also be good to clarify the coho fishery incident by explaining that history, too. Kirk Truscott cautioned that there is much more history between the YN and the CCT on fisheries and natural resource management activities than just the coho salmon fishery incident. He suggested staying focused on reaching agreement on a predetermined path forward on land acquisition. Steve Parker said he would like to reach a process that is not rights based; rather, it would be solely based on best mitigation for the resources.

Jim Brown said WDFW is interested in helping in any way possible and hopes to see continued successful implementation of the HCPs in the future. Ritchie Graves agreed and said the decision-

making process needs to be monitored carefully and if this begins to happen regularly it will need to be revisited.

Kahler noted that more than 90% of project applications received are from entities who have no voice in the process. He said if an entity outside the HCP Tributary Committees brings in a project for funding and the project is rejected, there is no disagreement that can be disputed. He said as signatories to the HCPs bring forth projects for funding, this has placed the signatory at a different level of consideration compared to a non-signatory. He said the HCP Tributary Committees try to treat all projects the same, but project sponsors who are also a signatory to the HCPs have the right to dispute.

Ferguson said Parker and Desautel will discuss convening the YN and CCT Tribal Councils with their respective policy staffs and potential paths forward for the Scaffold Camp Acquisition #2 Project, including third-party ownership.

Recommendation #2: Provide HCP Policy Committees guidance to the HCP Tributary and Hatchery Committees regarding funding criteria.

John Ferguson said Tracy Hillman will communicate HCP Policy Committees guidance to the HCP Tributary and Hatchery Committees to base funding decisions on technical merit, and to notify respective HCP Coordinating and Policy Committees representatives of any potential policy issues needing to be addressed in those forums.

Recommendation #3: Request Guidance from the YN and CCT Tribal Councils on land ownership issues.

Kirk Truscott reiterated Cody Desautel's suggestion to first provide context about the HCPs before requesting guidance. Alene Underwood and Tom Kahler agreed.

John Ferguson said Steve Parker and Desautel will discuss with their respective policy staffs about convening the YN and CCT Tribal Councils to: 1) attend a joint meeting and presentation by Chelan PUD, Douglas PUD, and YN and CCT HCP technical representatives about the function of the HCPs; and 2) provide guidance on land ownership issues, which might impact implementation of the HCPs.

Recommendation #4: Consider abstention in lieu of disapproval to preserve respective policy positions.

Alene Underwood suggested considering using discretion in the form of abstention as opposed to a "no" vote. She said this approach preserves policy views but also maintains the HCPs. She said this has been discussed before within the HCP Hatchery Committees. She said understanding that abstention is not perfect, it seems it would occur rarely, and it give Parties the ability to state their



policy position in a more transparent manner. She said this does not necessarily address the issues, but it preserves the functionality of the HCPs and the HCP committees.

Steve Parker agreed there is a lot of merit to this. John Ferguson said by abstaining the project still goes forward. Parker said, however, the Parties can still preserve their policy position. Underwood said, for example, there was a project within the HCP Tributary Committees from the Cascade Columbia Fisheries Enhancement Group for work at Tumwater Dam. She said after discussing this internally, Chelan PUD chose to abstain because the PUD thought approving or disapproving the project would be unfair to one party or another. She said abstaining preserved Chelan PUD's policy position while also recognizing the PUD signed onto something that needed to happen. Tom Kahler said for the Scaffold Camp Acquisition #2 Project, the intent of voting "no" was to keep the action from moving forward and abstaining would not do this. Kirk Truscott agreed abstention might work if the Party does not want to side with one position or the other; however, with the Scaffold Camp Acquisition #2 Project, abstaining would not work. Underwood said unless the direction from policy is that this outcome is acceptable. Jim Brown agreed with Underwood that this is something to consider in order to preserve the opportunity for the HCP Policy Committees to gather outside a formal dispute.

Brown said this also illustrates the need for the HCP Policy Committees to meet more frequently, to build a regular rapport within the committees and perhaps help with scheduling meetings.

Underwood agreed it makes sense to gather under conditions other than just a dispute.

Tracy Hillman also agreed and said projects where there may be policy concerns will most likely happen with protection projects; and typically, if the HCP Tributary Committees are interested in using the Plan Species Accounts for protection it means the resource is in imminent danger of being lost and action needs to be taken as soon as possible. Ferguson agreed and said if the HCP Policy Committees met more frequently in person, the committees could convene by conference call on short notice if needed to address a time-sensitive issue.

HCP Policy Committees representatives will each discuss with their respective HCP Tributary and Hatchery Committees representatives the option of abstaining in lieu of a disapproval vote to preserve a policy position.

## **B. Final Remarks (All)**

The HCP Policy Committees representatives thanked each other for the productive discussions during today's meeting.

## **VI. HCP Administration**

### **A. Next Steps (John Ferguson)**

John Ferguson will coordinate with each HCP signatory about an optimal date, time, and location for an annual meeting of the HCP Policy Committees.

## **VII. List of Attachments**

Attachment A List of Attendees

Attachment B Dispute Regarding Basis for Decision Making in the HCP Tributary Committees

**Attachment A**  
**List of Attendees**

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<b>Name</b>	<b>Organization</b>
John Ferguson	Anchor QEA, LLC
Kristi Geris	Anchor QEA, LLC
Tracy Hillman	BioAnalysts
Alene Underwood*	Chelan PUD
Tom Kahler	Douglas PUD
Ritchie Graves†	National Marine Fisheries Service
Jim Craig*	U.S. Fish and Wildlife Service
Jim Brown*	Washington Department of Fish and Wildlife
Steve Parker*	Yakama Nation
Kirk Truscott	Colville Confederated Tribes
Cody Desautel	Colville Confederated Tribes

Notes:

\* Denotes HCP Policy Committees member or alternate

† Joined by phone