

**COLUMBIA RIVER TREATY FISHING ACCESS SITES,  
OREGON & WASHINGTON**

**POST AUTHORIZATION CHANGE  
For  
CELILO VILLAGE REDEVELOPMENT**



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May, 2003

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**Post Authorization Change Report**  
Columbia River Treaty Fishing Access Sites:  
**Celilo Village Redevelopment**  
**13 May, 2003**

**EXECUTIVE SUMMARY.**

The Celilo Falls and associated area villages have long served as the center of Native American fishing in the Columbia River Basin, and are collectively recognized as a National Register Site. The ancient Village in the Celilo area was a year-round home for many Native Americans, a seasonal home during the salmon runs for others, and a trade center, sacred fishing ground, and gathering place for the Northwest Indian Tribes. Several Federal projects severely impacted the traditional subsistence fishing and trade, including construction of the Dalles-Celilo Canal and the Bonneville Dam, and climaxing with the elimination of Celilo Falls with the completion and filling of the Dalles Dam and reservoir in 1957. The Federal Government built the existing Celilo Village as mitigation for these actions. The establishment of the current Village has a complicated and controversial past that has resulted in very poor living conditions for the established residents as well as the many Native Americans that visit and live temporarily at this location during different times of the year.

Numerous Tribal, Federal, and state interests have sought ways to improve living conditions at Celilo Village. The Confederated Tribes of the Umatilla Indian Reservation (CTUIR) conducted a “Celilo Village Redevelopment Study” (CTUIR 1998) that has served as the impetus for making Village improvements. The purpose of this report is to provide the necessary documentation for the United States Army Corps of Engineers (Corps) to develop and implement a comprehensive improvement plan for Celilo Village. The original residents were moved to their current location as a result of numerous Corps actions related to Federal Columbia River water resources development. The ultimate goal is to redevelop Celilo Village to improve conditions for both the residents and the Tribal members who use the site for Treaty Fishing and related cultural purposes.

This Post Authorization Change (PAC) report recommends redeveloping Celilo Village in conjunction with the Columbia River Treaty Fishing Access Site (CRTFAS) project, and requests that the Administration consider authorization of the project. The report recommends a specific plan for improving Celilo Village and provides justification for implementing this plan as part of the ongoing CRTFAS project. The specific recommendations are to (1) change the CRTFAS project authorization to include Celilo Village redevelopment, (2) improve the infrastructure of Celilo Village, (3) replace the current substandard residential housing, (4) transfer adequate Operation and Maintenance (O&M) funds to the Department of Interior, Bureau of Indian Affairs (DOI-BIA) for specific O&M of Celilo Village, and (5) reestablish the Wyam Board to provide a Village governance structure. The estimated total project cost is \$13,238,000 with an annual Operations and Maintenance cost of \$132,000 (See Table A-1).

Figure 1 provides an aerial view of the existing Celilo Village, the Celilo Park, and the Celilo Treaty Fishing site. The Village is located about 7 miles east of The Dalles, Oregon adjacent to US Interstate I-84 and the major railroad line on the south bank of the Columbia River. The highway and railroad separate the Village from the existing Celilo CRTFAS site and the Celilo Park located along the Columbia River.

Celilo Village consists of approximately 34 acres of land, held in trust for the Confederated Tribes of the Umatilla and Warm Springs Indian Reservations; the Confederated Tribes and Bands of the Yakama Indian Nation; and the other Columbia River Indians, by the United States of America, under the jurisdiction of the BIA. Celilo Village currently supports 13 dwellings and approximately 50 people, with most living at or below poverty level. The residents' primary source of subsistence is derived from the Treaty Fishery. In its current state, Celilo Village lacks adequate sanitary and water systems, resulting in public health and safety problems that concern Federal, Tribal, state and local health officials. [See (Legal) Appendix E for a detailed historical perspective.]

The recommended plan for Village improvement includes facilities typically provided at other CRTFAS sites: complete water and sewer systems, roads, fencing, fish drying sheds, restrooms, safe railroad crossing, temporary camping facilities, and a ceremonial gathering place (improvement to the existing longhouse). The layout of the existing Village is provided in Figure 2. Figure 3 provides a conceptual plan for the recommended improvements. This recommended plan was developed in coordination with the Treaty Tribes, the BIA and the Celilo Village residents through a series of meetings and workshops. It is estimated that the improvements could be completed a year and a half to two years after authorization.

Comparing the existing Village to the new conceptual plan shows that land use changes are minimal. In the new plan, the 34 acres are better utilized to provide safe and sanitary water and sewer facilities, ensure decent residential conditions, and enable traditional cultural activities associated with fishing. Since land use changes are minimal, the environmental disturbance and long-term impacts are also minimal. Appendix F includes the Environmental Assessment (EA) and the Finding of No Significant Impact (FONSI).

The plan also recommends removing the current substandard housing and replacing it with "decent, safe and sanitary" housing comprised of manufactured homes on permanent foundations. In conjunction with infrastructure improvements, it will be necessary to comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended (P.L. 91-646). (See Appendix B for a description of the Real Estate Plan.) It is anticipated that the Corps' Celilo Village redevelopment activities will displace the current residents from dwellings on either a temporary or permanent basis. These activities will necessitate acquisition of privately owned dwellings, replacement of impacted federally owned facilities (dwellings) and payment of compensation and relocation benefits. There are 8 privately owned dwellings and 6 Federally owned facilities. It is anticipated that the Corps will provide 14 residential units. The final count will depend on the status of legal residents as defined by the BIA, in consultation with the

Tribes. No land acquisition is required for the project, as all lands are owned by the United States of America and are under the jurisdiction of the BIA.

FIGURE 1. Celilo Village and Related Facilities

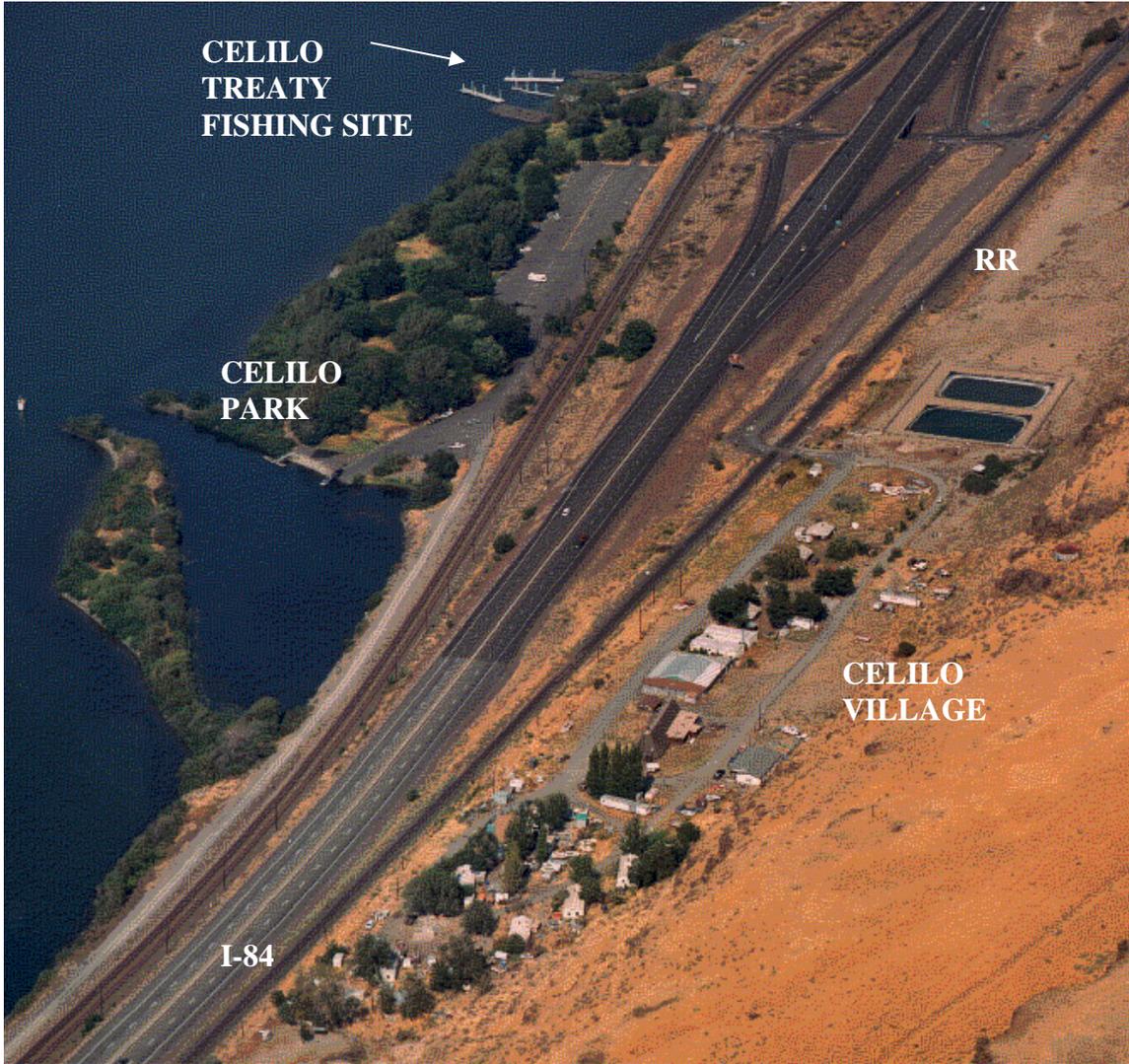


FIGURE 2. Celilo Village – Existing Features

# Celilo Village: Existing Features

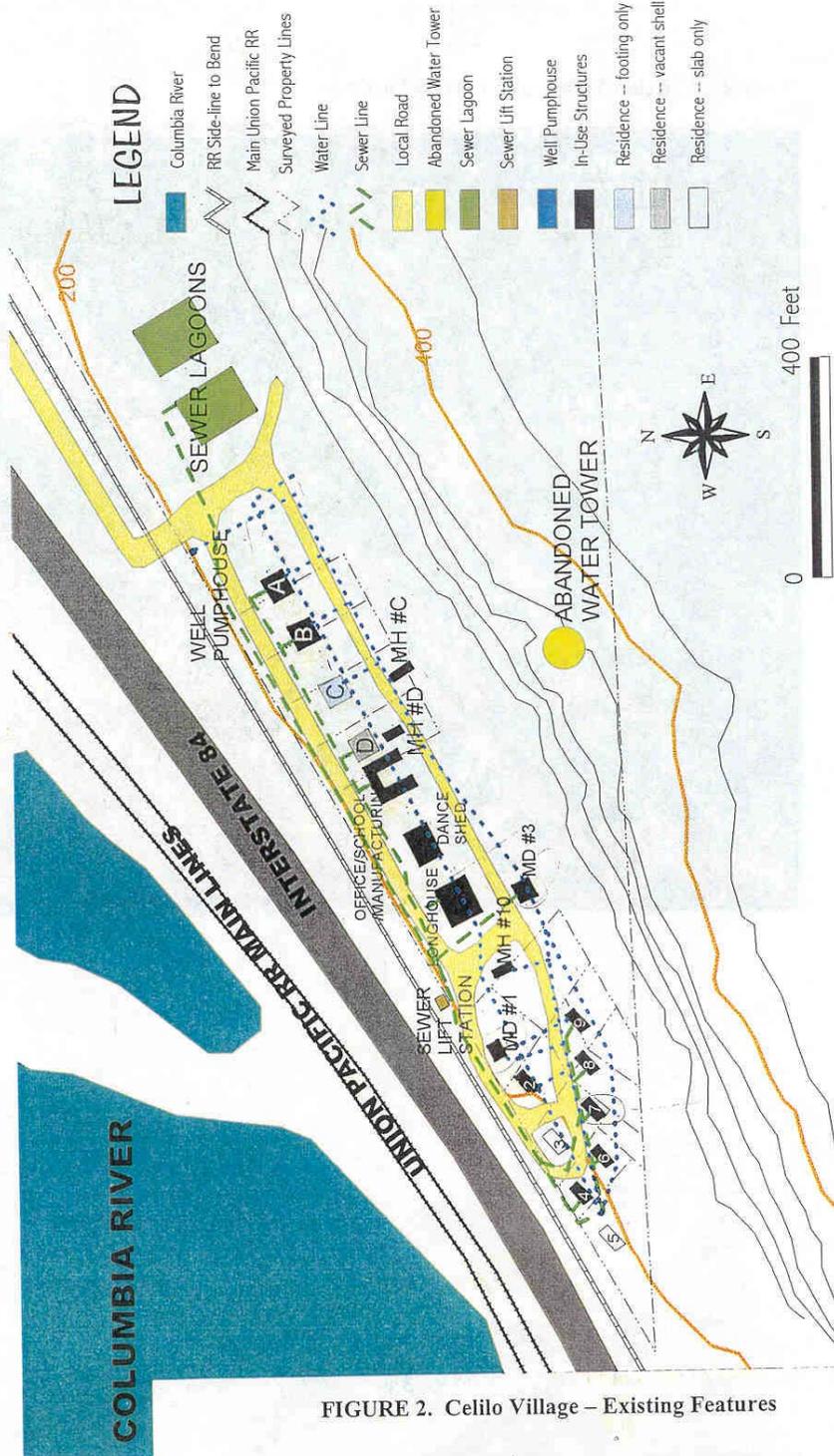


FIGURE 2. Celilo Village – Existing Features

FIGURE 3. Celilo Village Redevelopment Plan (Conceptual Plan)



## **1. DESCRIPTION OF AUTHORIZED PROJECT**

The CRTFAS Project, authorized by P.L. 100-581, as amended (see discussion beginning on Page 10), consists of acquisition, improvement, rehabilitation and transfer of thirty-one sites to the DOI-BIA. These sites are located in Oregon and Washington on the Bonneville, The Dalles and John Day pools. The project provides fishing access to the Columbia River for the four Treaty Tribes (Nez Perce Tribe, Confederated Tribes of the Umatilla Indian Reservation, Confederated Tribes of the Warm Springs Reservation, Confederated Tribes and Bands of the Yakama Indian Nation). Improvements include, but are not limited to camping and park facilities to the same standards as those provided by the National Park Service; all weather access roads and boat ramps; docks; sanitation; fish cleaning, curing and ancillary fishing facilities; electrical and sewage facilities; and landscaping.

At the time this report was released, 28 of the 31 CRTFA sites have been completed. One site has been acquired on the Bonneville Pool, and design will be initiated in FY 04. Efforts to acquire the two final additional sites on the Bonneville Pool are underway, with the completion of these sites to be determined.

The intent of this PAC report is to recommend including the Celilo Village as part of the CRTFAS project. This report specifically addresses the infrastructure and residential improvement and operations and maintenance necessary to improve the Village.

## **2. JUSTIFICATION FOR CHANGE**

This section presents the justification for adding Celilo Village to the CRTFAS project, the justification for Corps involvement, and the authorities for the proposed actions. A detailed presentation of the legislative history is provided in Appendix E.

### **2.1 Problems and Needs**

The CRTFAS authorization recognized the need to provide adequate fishing access and associated facilities for the Treaty Tribes as mitigation for the Columbia River dams.

The Celilo Falls and associated area villages have long served as the center of Native American fishing in the Columbia River Basin. The ancient Village in the Celilo area was a year-round home for many Native Americans, a seasonal home during the salmon runs for others, and a trade center, sacred fishing ground, and gathering place for the Northwest Tribes. Several Federal projects severely impacted traditional subsistence fishing and trade, including construction of the Dalles-Celilo Canal and the Bonneville Dam, and climaxing with the elimination of Celilo Falls with the completion and filling of the Dalles Dam and reservoir in 1957. The Federal government built the existing Celilo Village as mitigation for these actions. The current state of the Village is deplorable and living conditions are such that health and safety are of major concern to the Village residents; Treaty Tribes; and the Federal, state and local governments.

## **2.2 Justification for Corps Involvement**

The Corps contributed to the current problems at Celilo Village through Federal Columbia River dam development that resulted in incomplete relocation activities in 1948 and 1955. The Corps provided inadequate housing and infrastructure. These problems were exacerbated by the fact that no specific long-term governance structure or O&M funding were developed.

Through the creation of the CRTFAS project in Public Law 100-581, Congress directed and gave the Corps the authority to develop Treaty Fishing access and to fix much of the unfulfilled mitigation for damaging Tribal Treaty Fishing. Celilo Village has long served as the center of Treaty Fishing on the Columbia River. The Treaty Tribes and the BIA have requested the Corps undertake improvements at Celilo Village under the CRTFAS project. Appendix C (Public Involvement) provides statements of support for Corps of Engineers implementation provided by each of the four Treaty Tribes and the BIA. Before the Corps can undertake improvements at Celilo Village however, the agency must first receive authorization. Both the Corps and the Tribes are thus recommending that the Administration and Congress consider authorizing the Celilo Village Redevelopment project.

## **2.3 Authorization**

### 2.3.1 Introduction.

The authorization for the ongoing CRTFAS Project is Section 401, Public Law 100-581, Columbia River Treaty Fishing Access Sites, signed into law on November 1, 1988. The House Bill number is HR2677. PL 100-581 identified 23 specific fishing access sites and directed the Secretary of the Army to identify, purchase and develop additional sites on the Bonneville Pool, as well as to make improvements to five existing in-lieu fishing sites. Congress has amended the original authorization three times to accomplish the following: transfer of O&M funds to BIA (subsection 401 (g)), adjustment of site boundaries (subsection 401 (a)(2)), and further appropriation of \$2 million dollars for acquiring additional lands in the Bonneville Pool (amended subsection 401 (d)).

P.L. 100-581, as amended, authorized the Corps to satisfy previous legal commitments to replace “usual and accustomed” fishing sites inundated by Federal Columbia River dam construction. Under the Treaty of 1855, Celilo Village is a well-established usual and accustomed site. The Corps’ construction of the Bonneville and The Dalles Dam projects directly impacted the Village. In conjunction with The Dalles project, the Flood Control Act of 1950 specifically authorized the Corps to construct “a new Village satisfactory to the Indians and Bureau of Indian Affairs”. Based on review of existing government records, it is clear that satisfactory compensation for the taking of the Tribal lands and impacts on fishing access was never fully provided, in terms of numbers of residences provided or the quality of their construction. P.L. 100-581, as amended, provides the Corps sufficient discretion to study and recommend congressional authorization to provide additional Treaty Fishing access and to meet Corps compensation responsibilities for previous Federal project impacts on Celilo Village. This action would ultimately

resolve a major legal gap in Corps compensation to the Tribes for the Dalles Dam construction.

P.L. 100-581, read in concert with the Columbia River basin authority under the Flood Control Act of 1950, provides sufficient reasons to recommend project changes including improvements at Celilo Village. The recommendation to improve the housing that was provided as compensation for The Dalles Dam impacts is also based on the fact that the Flood Control Act of 1950 was never fully satisfied to any reasonable standard.

In the spirit of the Indian Self-determination Act Amendments of 1994 (25 USC 450 ff, original act P.L. 93-638, Jan 4, 1975) the impetus for improvements to Celilo Village came from the Tribal governments. In September 1998, the CTUIR Planning Office released the “Celilo Village Redevelopment Study” outlining some alternative plans for Village improvement. The CTUIR study focused discussions and directed efforts to final plan development. The recommendations made in this PAC are to a very large extent consistent with the alternatives in the Umatilla study.

Each of the Treaty Tribes provided a letter or has signed a Tribal government resolution providing support for developing an improvement plan for Celilo Village, as have the BIA, Wasco County, the state of Oregon, and the Oregon congressional delegation (see Appendix C). The Treaty Tribes, in addition to providing letters supporting the development of an improvement plan for Celilo Village, have joined the Corps in actively pursuing authorization permitting the Corps to begin, engage in, and complete construction.

The following presents the legislative authority and history in several key areas that impact the project.

### 2.3.2 Project Authorization Statute.

The authorization for the CRTFAS project is Section 401, Public Law 100-581, November 1, 1988, 102 Stat. 2944. The text of the law, with amendments *italicized*, is as follows:

“Sec. 401(a) All federal lands within the area described on maps numbered HR2677 sheets 1 through 12, dated September 21, 1988, and on file in the offices of the Secretary of the Interior, the Secretary of the Army, and the Columbia River Gorge Commission shall, on and after the date of enactment of this Act, be administered to provide access to usual and accustomed fishing areas and ancillary fishing facilities for members of the Nez Perce Tribe, the Confederated Tribes of the Umatilla Indian Reservation, the Confederated Tribes of the Warm Springs Reservation of Oregon and the Confederated Tribes and Bands of the Yakima Indian Nation.”

Sec. 512 of WRDA 1996, PL 104-304, Oct. 12, 1996, 110 Stat. 3762 replaced 401(a) as follows:

“ *Sec. 401:*

*EXISTING FEDERAL LANDS –*

*IN GENERAL -- All Federal lands that are included within the 20 recommended treaty fishing access sites set forth in the publication of the Corps of Engineers entitled ‘Columbia River Treaty Fishing Access Sites Post Authorization Change Report, dated April 1995’; and*

*(2) BOUNDARY ADJUSTMENTS – The Secretary of the Army, in consultation with affected tribes, may make such minor boundary adjustments to the lands referred to in paragraph (1) as the Secretary determines are necessary to carry out this title.”*

(b) Notwithstanding any other provision of law, the Secretary of the Army shall  
(1) identify and acquire additional lands adjacent to the Bonneville Pool from willing sellers until such time that at least six sites have been acquired adjacent to the Bonneville Pool for the purpose of providing access and ancillary fishing facilities for the members of the Indian tribes referred to subsection (a); and

(2) improve the lands referred to in subsections (a) and paragraph (1) of subsection (b) and maintain such lands until such time as the lands are transferred to the Department of the Interior for the purpose of maintaining the sites. Such improvements shall include, but not be limited to, camping and park facilities to the same standards as those provided in the National Park system; all weather access roads and boat ramps; docks; sanitation; fish cleaning, curing, and ancillary fishing facilities; electrical and sewage facilities; and landscaping; and

(3) make improvements at existing sites, including but not limited to dredging at the site at Wind River, Washington, and constructing a boat ramp on or near the site at Cascade locks, Oregon.

(c) The Secretary of the Army shall treat the costs of implementation of paragraphs (2) and (3) of subsection (b) as project costs of the Army Corps of Engineers Columbia River projects, and such costs shall be allocated in accordance with existing principles of allocating Columbia River project costs. Funds heretofore and hereafter appropriated to the Secretary of the Army for maintenance and development of Columbia River projects may be used to defray the costs of accomplishing the purposes of this Act.

(d) There is hereby authorized to be appropriated a sum not to exceed \$2,000,000 to implement the purposes of subsection (b)(1).

*WRDA 2000, PL 106-541, Dec. 11, 2000, amended the dollar amount in 401(d) to \$4,000,000.*

(e) The Secretary of the Interior shall be vested with the right of first refusal, after consultation with the Indian entities in subsection (a), to accept any lands adjacent to the Columbia River within the Bonneville, Dalles, and John Day Pools now owned or subsequently acquired by any federal agency and declared to be excess lands or otherwise offered for sale or lease by such federal agency, and upon such acceptance, such federal

agency shall transfer such lands to the Secretary for the purpose of Indian treaty fishing: Provided however, that total acreage of sites provided under this section adjacent to Bonneville Pool of the Columbia River not exceed three hundred sixty acres.

(f) Nothing in this Act shall be construed as repealing, superseding, or modifying any right, privilege, or immunity granted, reserved, or established pursuant to treaty, statute, or Executive order pertaining to any Indian tribe, band, or community.”

Sec. 15, PL 104-109, Feb. 12, 1996, 102 Stat. 2944-2945, added subsection 401(g) to PL100-581:

(g) *“The Secretary of the Army is authorized to transfer funds to the Department of the Interior to be used for purposes of the continued operation and maintenance of sites improved or developed under this section.”*

Section 401(b)(3) included “existing sites” in the CRTFAS project site improvements. Congress directed specific improvements at two of the five in-lieu sites, but otherwise only broadly directed improvements at “existing sites”. During the initial CRTFAS Congressional hearings, the Tribes only sought improvements at the five run-down in-lieu sites, four of which are near Bonneville Dam, and the remaining fifth site, Lone Pine, downstream of The Dalles Dam. As noted herein, the Tribes now seek improvements at the “new” Celilo Village.

This site was authorized and constructed under the 1948 Interior Appropriations Act as an added area to the historical Celilo Village site. It was authorized as part of the series of congressional adjustments to Treaty Fishing sites. This was in response to Tribal needs for new fishing sites replacing those already flooded out by Bonneville Dam or about to be flooded out by The Dalles Dam, which was originally proposed to Congress in 1930 Corps study reports and finally authorized in the 1950 Flood Control Act.

The reasons for including Celilo Village in the CRTFAS project authorization include the following: (1) Celilo Village was created in 1948 for support of Treaty Fishing rights, just as the in lieu sites were created in 1945. (2) Celilo Village shares the same Treaty fishermen and uses, and substantially the same Treaty Fishing purposes as the in-lieu sites. (3) Celilo Village was created by Congress to deal with the same harm to historical fishing sites resulting from Corps dam flooding as the in-lieu sites. (4) In 1955, Congress authorized the Corps to make further major improvements at Celilo Village to accommodate the increase in Tribal fishing residents displaced by the construction of The Dalles Dam. (5) Including Celilo Village as part of the project is consistent with and furthers the remedial purposes of the CRTFAS Act, especially in light of the 1950 Flood Control Act authorization providing a replacement Village for the historical Celilo Village flooded by The Dalles Dam. (6) Not including Celilo Village in the CRTFAS project frustrates and obstructs the overall remedial purposes of the CRTFAS Act. An intent of the CRTFAS Act as stated by Congress was to remedy all of the old, unfulfilled Corps promises made in connection with the construction and operation of the

Bonneville, The Dalles, and John Day dams. Celilo Village is as much a part of the compensation program for the three dams as the in-lieu sites and the new CRTFA sites. The fact that the Corps provided substandard housing for the original 1948 Village and an insufficient capacity under the 1955 appropriations further ties the Corps to the problems at Celilo Village. The long Corps involvement with Celilo Village (1894 portage railway intrusions, 1902-1915 lock construction takings, 1929 land return, 1948 housing provisions, 1950 Village replacement authorization, 1955 improvements) sets this site peculiarly apart as a Corps responsibility; unlike other fishing site locations.

This unique legal history also makes Celilo Village the only “existing site” with congressionally mandated Tribal residential housing – furnished both by the DOI and the Corps. Thus the lengthy and unique legislative history justifies and authorizes unique treatment of Celilo Village under the CRTFAS program.

### 2.3.3 Infrastructure Improvements.

The legislation authorizes the Corps to build and improve the type of infrastructure measures proposed for Celilo Village. Improvements designated in PL 105-581 “shall include, but not be limited to, camping and park facilities to the same standards as those provided in the National Park system; all weather access roads and boat ramps; docks; sanitation; fish cleaning, curing, and ancillary fishing facilities; electrical and sewage facilities; and landscaping.” All the land-based measures discussed in the Act are recommended for Celilo Village, but none of the water-based infrastructure is included. Once Celilo Village is included in the CRTFAS project, the numerous infrastructure needs of the Village are authorized and can be met under the project.

### 2.3.4 Residential Improvements.

The recommendation in this PAC is to replace the current 14 substandard residential units provided by the Corps in 1948 and 1955 with manufactured homes of sufficient size to accommodate the portion of the current population having a legal right to reside in Celilo Village. The existing residential homes contain health hazards such as asbestos and lead paint, along with substandard plumbing and electrical facilities. (See Figures 4 and 5). The replacement homes will eliminate the hazards and meet current building standards, resulting in a safer and healthier Village.

Generally, with the exception of housing, all of the improvements at Celilo Village are similar to improvements discussed by Morgan Rees [staff ASA (CW)] when testifying to Congress in support of the original CRTFAS statute, and to improvements constructed at other CRTFA sites. Thus there is no authority issue involved with the non-housing improvements, provided the Corps receives congressional authorization to add Celilo Village to the CRTFAS project.

The housing improvements proposed at Celilo Village are supported by a variety of authorizations discussed in Appendix E (Legal).

The 1947 and 1950 authorizations discussed in Appendix E of this PAC authorized Celilo Village and the Corps to provide a replacement Village. The 1955 Corps authorization specifically authorized the Corps to provide much of the actual housing that needs replacement.

The Corps itself has an unmet authorization from the 1950 Flood Control Act to provide a replacement Indian Village for the Celilo Falls residential areas inundated by The Dalles Dam. Moreover when Morgan Rees (ASA (CW)) and Brigadier General Kelly (HQUSACE) testified to Congress on the CRTFAS project, they were not aware of the 1929, 1947, 1950, and 1955 authorizations at Celilo Village. These old authorizations and unfinished work had been forgotten until after CRTFAS was wholly authorized in 1988 and work began on planning and creating/restoring individual sites.

The Uniform Relocation Assistance Act requires some residential benefits simply to carry out the other required construction activities at the site. These requirements are still being reviewed in concert with BIA, to determine who are the eligible recipients of relocation assistance.

These authorities provide ample justification to recommend that the agency carry out the proposed residential measures, provided the overall Celilo Village Redevelopment receives authorization

#### 2.3.5 BIA Operation and Maintenance Responsibility.

Upon completion of the Celilo Village improvements, the BIA will assume O&M responsibility for Village infrastructure and common areas. This section summarizes the BIA's maintenance authority, and Appendix D provides the draft Operations, Maintenance and Governance Plan.

The CRTFAS Act as amended and the legislative history of sections 401(b)(2) and 401(e) direct site transfer upon completed construction to BIA for O&M.

Section 401(g) (added in 1996) authorizes the transfer of Corps funding to BIA for use in O&M payment. The legislative history of Section 401(b)(2), states:

“This section also provides that the Federal agency currently owning the lands may negotiate an agreement concerning operation and maintenance costs with the Department of the Interior to transfer the sites, after improvements have been made, to the Department of Interior for maintenance and Management purposes.” (Senate Report 100-577 at p. 31)

With regard to Section 401(e), after the Corps has improved such sites, the sites are to be

“transferred to and maintained by the Department of the Interior.”

In light of these statutes and legislative history, there is no question that the Corps can make the improvements once Celilo Village is added to the CRTFAS list and that BIA can then operate and maintain these improvements.

This transfer will be accomplished by adding Celilo Village to the existing 23 June 1995 Memorandum of Understanding between The Department of the Army and Department of Interior for the Transfer, Operation, Maintenance, Repair, and Rehabilitation of the Columbia River Treaty Fishing Access Sites. This MOU is included in Appendix D. The BIA has the further to delegate their responsibility to Tribal Governments under the Indian Self Determination Act.

FIGURE 4. Typical Residential Structures



FIGURE 5. Interior Conditions of Inhabited Residence



### 3. FUNDING SINCE AUTHORIZATION

The CRTFAS project, from its authorization through fiscal year 1994, was funded with General Investigation appropriations. For fiscal years 1994 to date, funding has primarily been from Construction General with some adjustments to General Investigation. Funds have been allocated for Treaty Site design and construction and have also been transferred in lump sums to BIA for site O&M. This has been done under the 23 June 1995 MOU, and authorized by PL 104-46, 109 Stat. 402 (Title 1), dated 13 November 1995. The following table shows the breakdown of funding by allotment for each fiscal year.

Figure 6. CRTFAS Allotment History  
**Record of Civil Allotments – Portland District**  
**Columbia River Treaty Fishing Access Sites**

Fiscal Year	Program	Allotment Amount (\$1000) 1/	Total to Date (\$1000) 1/
1991	GI (PED)	368.0	368.0
1992	GI (PED)	695.0	1063.0
1993	GI (PED)	294.0	1,357.0
1994	GI (PED)	778.0	2,135.0
1995	GI (PED)	(50.0)	2,085.0
1996	GI (PED)	-	2,085.0
1997	GI (PED)	(3.0)	2,082.0
1994	CG	3,360.0	5,442.0
1995	CG	(593.0)	4,849.0
1996	CG	2,970.0	7,819.0
1997	CG	2,729.0	10,548.0
1998	CG	7,460.1	18,008.1
1999	CG	7,774.4	25,782.5
2000	CG	6,717.0	32,499.5
2001	CG	7,775.5	40,275.0
2002	CG	2,114.8	42,389.8
2003	CG	5,829.0	48,218.8
<b>Totals</b>			

1/ Does not include payments to BIA for O&M of CRTFAS. Amount transferred to BIA to date is \$7 million.

#### **4. CHANGES IN SCOPE OF AUTHORIZED PROJECT**

The Planning Guidance Notebook, ER 1105-2-100 states that changes in scope are “increases or decreases in the outputs for the authorized purposes of a project. Outputs are the project’s physical effects which (usually) have associated benefits (hence, project purpose).” The authorizing document, Phase II Evaluation Report, April 1995, defines outputs as “river access” and “land-based activities”. River access is defined as the movement of people, equipment and boats from land to water. Land-based fishing activities are defined as cultural, religious, or commercial activities, such as cleaning, drying, smoking, or other fish processing activities; and trading and selling of fish. Also included are camping, and support facilities for preparation, maintenance and repair of nets and other fishing gear. If camping is provided, more land-based facilities are included, such as potable water and restroom and shower buildings.

Celilo Village supports all types of land-based activities and outputs identified in the planning report, including residential use. The anticipated improvements would support all associated activities except river access. If, for purposes of analysis, the number of sites is used to index land-based outputs; the authorized project includes 31 sites. Expanding outputs at one site would not constitute a 20 percent increase. If acreage is used to index land-based outputs; the authorized project includes at least 400 acres. Addition of 34 acres at Celilo does not constitute a 20 percent increase. Even if the output analysis were taken further than it was taken for formulation purposes in the planning report, to an analysis of fully developed upland sites with similar infrastructure (i.e. water, power, and sewer systems beyond vault toilets), addition of Celilo Village would not constitute a 20 percent increase. Twelve such sites were included in the current approved plan.

Based on even the most critical analysis, it is clear that additional improvements at levels anticipated at Celilo fall well within the discretionary 20 percent increase in land-based outputs normally delegated to the Division Engineer.

#### **5. CHANGES IN PROJECT PURPOSE**

There is no change to the existing CRTFAS project purpose of providing replacement lands and facilities for usual and accustomed Treaty Fishing sites destroyed by the construction and operation of the Bonneville, The Dalles, and the John Day Dams, that have not been replaced previously. The authorized purpose of the CRTFAS project is mitigation for impacts of Federal water project development on the Treaty Fishing rights of four Northwest Indian Tribes. All planning reports, budget documents, and previously approved Post-Authorization Change reports have consistently identified mitigation as the project purpose.

Although the CRTFAS authorization relies heavily on the impact of Bonneville Dam and the unmet commitments outlined in the 1939 agreement for its impetus, it also makes several references to the cumulative impacts of Federal water project development on the Treaty Fishery. Celilo Village improvements would be consistent with that purpose even

if it were assumed that the project purpose was only to mitigate for Bonneville impacts. The authorizing legislation incorporates improvements to 19 sites on The Dalles and John Day pools intended to mitigate for Bonneville impacts. Improvements at Celilo also mitigate for Bonneville losses by providing land-based outputs on property purchased and developed for, and currently used by, Tribal fishermen impacted by Bonneville, The Dalles, and John Day projects.

## **6. CHANGES IN LOCAL COOPERATION REQUIREMENTS**

There are no local cooperation requirements as such in this authorized project.

## **7. CHANGES IN LOCATION OF PROJECT**

The location of the authorized project is the Columbia River between Bonneville Dam and McNary Dam. There are 31 sites within this project location on the Bonneville, The Dalles, and John Day pools. The recommended action requires the addition of one, estimated 34 acre, site. The proposed site is located on land within DOI jurisdiction immediately adjacent to the Celilo CRTFA site, separated only by the railroad line and Oregon I-84.

## **8. DESIGN CHANGES**

There are no recommended changes in the proposed design of other CRTFA sites resulting from this report. The design of the Celilo site will include the infrastructure facilities and residential redevelopment in Celilo Village.

This PAC includes a conceptual plan for Celilo Village that has been prepared in coordination with Celilo Village residents, the BIA, Tribal councils of each of the four Treaty Tribes and other interested groups and individuals. This conceptual plan is provided in Appendix A and is shown graphically in Figure 3. The design is largely based on the 1998 CTUIR Tribal Planning Office report and was further developed in Engineering Design Report DACW-01-C-0022 (19 December 2001). Meetings have been held with Celilo Village residents, the BIA, the 4 Treaty Tribes, and a variety of other stakeholders to obtain their input for this conceptual design. The final design will be developed and Tribal concurrence will be obtained at the 60% design stage.

The design that was significantly developed in Engineering Design Report DACW-01-C-0022, and summed up in Appendix A is of sufficient detail to establish the baseline cost estimate for Celilo redevelopment. Appendix B (Real Estate) defines the steps needed to accomplish the residential relocation and re-establishment of Village residents. Figures 6 through 8 show some of the existing Village facilities the recommended plan will improve.

FIGURE 6. Existing Railroad Crossing (Note no lights or signal arms)



FIGURE 7. Existing Sewage Lagoons With Village in the Background  
(These will be moved further away from Village and water well)



The conceptual plan for improvement of Celilo Village includes the following general features:

**Infrastructure and Common Areas:**

- New water well and pumphouse of sufficient size to provide all residential and fire protection needs.
- New sewage lagoon facilities to be designed by the Indian Health Services (IHS).
- Two restroom and shower facilities similar to those provided at other CRTFAS sites.
- Two fish cleaning facilities similar to those provided at other CRTFAS sites.
- Two net repair areas with sufficient off-season storage space.
- Two drying sheds similar to those provided at other CRTFAS sites.
- Perimeter fencing around site, along railroad, and around sewage lagoons.
- Minor landscaping around longhouse.
- Roadway around the two main Village loops and access area.
- Parking areas with some overflow areas for peak use times.
- Longhouse repairs to bring it to current health and safety standards.
- Camping sites (8 to 12) similar to those provided at other CRTFAS sites.
- Improved railroad crossing.

**FIGURE 8. Existing Storage Areas for Fishing Equipment (Designated storage areas will be provided in proposed plan)**



### **Housing Improvements:**

- Manufactured home units of appropriate size to be temporarily located while demolition of existing structures and infrastructure improvements are made. The modular units will later be placed permanently on the improved sites.
- After demolition of existing homes, new mainline and secondary water and sewer lines will be constructed.
- Foundations for modular units will be placed.
- Electrical and telephone upgrade, line and pole placements.

## **9. HISTORY OF PROJECT**

### **9.1 Columbia River Treaty Fishing Access Sites**

Native Americans of the Pacific Northwest have a long tradition of fishing on the Columbia River. Through treaties signed with the United States in the 1850s, the Tribes reserved the right to fish at usual and accustomed fishing locations along the Columbia River. In 1905, and again in 1919, the United States Supreme Court upheld these fishing rights and Tribal rights of access.

In 1855, the four Tribes entered into treaties with the Federal government, which were later ratified in 1859. Under these treaties, the Tribes ceded to the Federal government all Indian title to the non-reservation lands in the Columbia River Basin, reserving for themselves the right to fish the banks of the lower Columbia River.

In the 1930s, Congress directed the Secretary of War to study the feasibility of constructing and operating dams on the Columbia River. The Corps completed studies and, in 1933, began construction of Bonneville Dam. The Bonneville pool inundated approximately 40 usual and accustomed fishing sites between the dam and The Dalles, Oregon. The Federal government, through the Corps, has constructed four multi-purpose dams on the mainstem of the lower Columbia River in Oregon and Washington since the time the treaties were approved. The four dams on the Columbia River mainstem generate 6,946 megawatts of peaking capacity hydroelectric power and provide navigation facilities to carry between 7 and 9 million tons of cargo annually. Portland District recreation sites on the Columbia provided over 7.4 million recreation user days in 1997. The U.S. Bureau of Reclamation, the Corps, and several private and public utility districts have constructed numerous additional power generation projects on the main stem of the Columbia and Snake Rivers and other tributary streams.

There are two agreements: one reached in 1939 and another in settlement of a lawsuit in 1972, which affect the provisions of what are commonly referred to as in-lieu sites. In addition, the 1945 River and Harbor Act authorized acquisition of unspecified sites and facilities, subject to certain fiscal limitations.

An agreement was negotiated with the Tribes for inundation of their accustomed fishing sites in 1939 and approved in 1940 by the Secretary of War. The agreement called for the government to acquire more than 400 acres of land at six described sites to serve as “in-lieu” fishing sites. The Corps was to make certain improvements, and then turn the sites over to the BIA, to be administered for the permanent use and enjoyment of the tribes.

Section 2 of the 1945 River and Harbor Act was the congressional implementation of the agreement. Congress authorized the Secretary of War “...to acquire lands and provide facilities...to replace Indian fishing grounds submerged or destroyed as a result of the construction of Bonneville Dam...” Funds not to exceed \$50,000 were authorized to be expended for this purpose. This amount proved inadequate for acquisition, and was subsequently raised by Congress to \$185,000 in 1955. The Act did not specify the number, location, or size of the sites to be acquired however.

Because of disagreements among the various parties to the 1939 agreements, not all the sites outlined were acquired and some sites were substituted. In all, five tracts, totaling 40 acres, were purchased for the use and benefit of the Treaty Tribes. Decisions concerning acquisition of the sixth site and the disposition of the balance of the funds for improvement of the sites authorized by the 1945 River and Harbor Act were approved by the Nez Perce, Umatilla, Warm Springs, and Yakama governing bodies.

Based on the original authorization for construction of Bonneville Dam, the Bonneville Power Administration and the Corps began studies to enlarge existing Bonneville power generating capability in the late 1960s and early 1970s. This was accomplished by raising the water levels behind the dam to generate additional power at peak loads to help meet the Pacific Northwest Power requirements. This proposal was the subject of a lawsuit, Confederated Tribes of the Umatilla Indian Reservation v. Callaway, in the United States District Court in Oregon. At issue were the effects of changing Bonneville pool levels on certain in-lieu sites and on salmonid migration.

The Executive Branch of the Federal government and the Indian Tribes settled the Confederated Tribes of the Umatilla Indian Reservation v. Callaway lawsuit in 1972. The Executive Branch agreed to pursue obtaining additional congressional authority for acquiring additional in-lieu fishing sites replacing those lost in the Bonneville, the Dalles, and John Day pools, and to improve facilities at the existing Bonneville pool in-lieu fishing sites. The original 1945 authorization was limited to the Bonneville pool.

The District Court Decision in the Confederated case, filed in 1973 and based on these negotiations, recognized that Federal agencies had no authority to acquire additional in-lieu sites. The decision noted that the agencies were recommending legislation for the acquisition of additional in-lieu fishing sites on the lower Columbia River and for construction of improvements and facilities on the existing sites to the Office of Management and Budget. Such facilities would include access roads, boat ramps, sanitation, fish cleaning, curing, and other ancillary facilities with electrical service and landscaping.

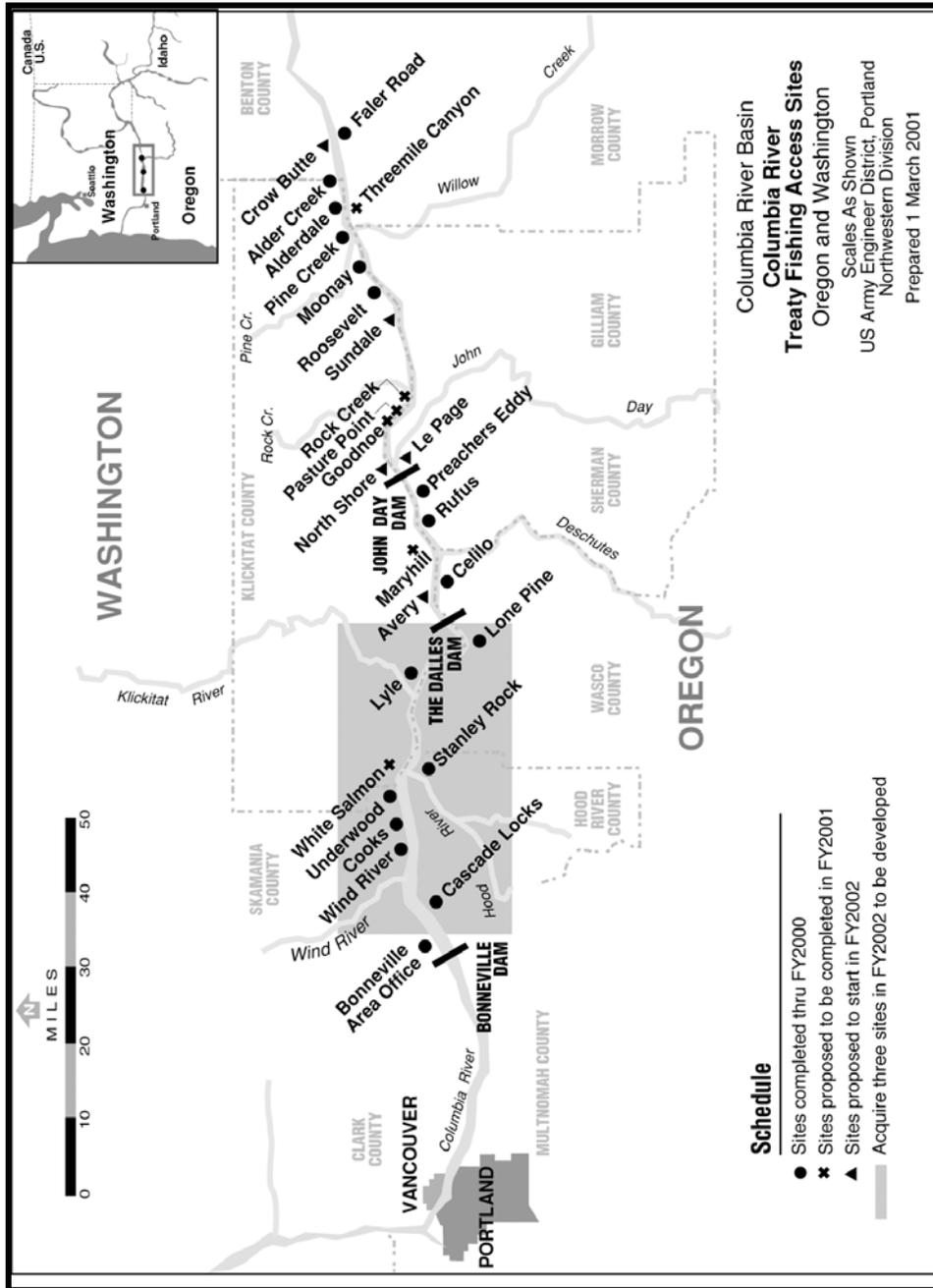
To fulfill the 1972 negotiated settlement, the Corps constructed additional improvements to the in-lieu sites. In addition, proposed legislation was submitted to Congress in 1974 under the signature of the Secretary of the Army, Howard H. Callaway, to authorize the acquisition of additional in-lieu sites at Bonneville, the Dalles, and John Day Dams. The legislation was never enacted however. In summary, the Corps exhausted all authority to acquire in-lieu sites under the 1945 River and Harbor Act, as amended.

In the 1970s and 1980s, the pressures on existing treaty fishing sites increased in response to improving Columbia River fish runs. Public use of the river also rose, and competition for the limited available river access increased as the Columbia River Gorge's popularity grew for windsurfing, fishing and other recreation. National attention focused on the area as the Columbia River Gorge National Scenic Area Act legislation passed and was signed into law. Further, a lawsuit in the U.S. District Court of Oregon (October 1987, Sohappy v. Hodel.) highlighted issues pertaining to Tribal requests for additional lands to replace those submerged by the construction of Bonneville Dam and the issue of regulation of use at the existing in-lieu fishing sites. This well publicized case and other attention focused on the Columbia River heightened congressional interest in these issues.

During 1987 and 1988, the four Tribes identified suitable sites on the Columbia River for additional fishing access and support. During this same period, the United States Senate Select Committee on Indian Affairs called the Secretary of the Army to appear, and testify that transfer of additional lands to the four Tribes for fishing access could not be accomplished without congressional authorization. The Senate Select Committee on Indian Affairs' staff then drafted legislation authorizing the transfer of a portion of the lands previously identified by the four Tribes to the Secretary of the Interior for administration as Treaty Fishing Access Sites. Congress directed the Secretary of the Interior to administer the new law upon its passage.

The CRTFAS Project consists of thirty-one individual sites located on Oregon and Washington shore lands of the Columbia River, from river mile (RM) 146 to RM 268. In Section (a) there are twenty (20) sites that are Federally owned and administered by the Corps that need to have site improvements and then to be transferred to the BIA. In-Lieu Sites: Five (5) sites with improvements located on the Bonneville Pool have been upgraded and transferred to BIA. Six (6) new sites on the Bonneville Pool are to be acquired, improved and transferred to BIA.

**FIGURE 9. Treaty Fishing Access Sites Map.**



## **9.2 Celilo Village.**

The Celilo Falls and associated villages in the area have long served as the center of Native American fishing in the Columbia River Basin. The ancient Village in the Celilo area was a year-round home for many Native Americans, a seasonal home during the salmon runs for others, and a trade center, sacred fishing ground, and gathering place for the Northwest Tribes. The Federal Government severely impacted the long history of subsistence fishing and trade with several projects, including construction of the Dalles-Celilo Canal and the Bonneville Dam, climaxing with the elimination of Celilo Falls with the completion and filling of the Dalles Dam and reservoir in 1957. As mitigation for these actions the Federal Government built the existing Celilo Village. The establishment of the current Village has a complicated, controversial past that has resulted in very poor living conditions for the several established residents and the large number of Native Americans that visit and live temporarily at this location during different times of the year. The legal opinion that is provided in Appendix E describes the long history of legal and legislative history that has led to the current conditions.

In recognition of the impending construction of The Dalles Dam, Congress appropriated funds (Act of June 29, 1948, 62 Stat. 1120) to construct, repair or rehabilitate the buildings and utilities on this land and to hold them in trust for the benefit and use of the four Tribes and the other Columbia River Indians. Pursuant to this, 10 homes were constructed and the occupancy of each assigned to designated beneficiaries of the trust. The BIA granted permits to original assignees that contained language regarding maintenance obligations and revocation for non-compliance. By the Act of July 15, 1955, 69 Stat. 361, Congress appropriated funds to relocate the permanent resident Celilo Indian families who were in the project area. The Act authorized the acquisition of lands as necessary, title to be acquired in the “name of the United States in trust for individual Indian for whose benefit it is acquired.” Several families were relocated to neighboring communities, while five families were relocated to Celilo Village. Four additional homes were provided, and one family moved into house #7, which the BIA owned and had previously provided in 1948.

Celilo Village consists of approximately 34 acres of land, held in trust for the Tribes and the other Columbia River Indians by the United States of America, and is currently under jurisdiction of the Bureau of Indian Affairs. The Village currently supports 13 dwellings and approximately 50 people, most of whom live at or below poverty levels. The residents’ primary, if not only, source of subsistence is derived from the Treaty Fishery. The Village lacks adequate sanitary and water systems, which result in public health and safety problems that concern Federal, state and local health officials. To further complicate the problem, the Village supports a large seasonal influx of Treaty Fishermen during the spring and fall. Despite these problems, the Village remains a central cultural and religious gathering place for Northwest Indian tribes exercising Treaty Fishing rights on the Columbia River.

The CTUIR study provided an accurate description of the poor living conditions that currently exist in Celilo Village. CTUIR Facility Maintenance staff thoroughly inspected

the 13 residential structures and concluded that only the two newer modular dwellings should not be removed and replaced. The residences were run down and presented health hazards, with many testing positive for asbestos and lead paint and some without water or sewer service. The community facilities were also in major disrepair. The longhouse has structural damage, electrical system problems, and no smoke alarms, sprinkler systems, or restroom facilities. The Indian Health Service (IHS) completed a needs assessment of the water and sewer facilities in October 1997. IHS concluded there is no storage system for fire protection or contact time for chlorine disinfecting of well water, and inadequate metering. IHS also found problems with the sewer system that consists of a gravity collection system, lift station and force main, and two-cell lagoon. There are problems with the roads and the railroad crossing; sanitation concerns with stacks of garbage in several locations; and the absence of parks or playgrounds for Village children.

The lack of Village governance has contributed to some of the existing living conditions by poorly defining roles and responsibilities, laws and appropriate conflict resolution. As part of the recommended actions, a draft governance plan was prepared to help facilitate a suitable long-term plan that assuring better conditions once the Village is improved. This plan clearly defines O&M responsibilities for the community infrastructure and common buildings. It is recognized that many revisions to this draft plan will occur before all parties agree to a new government structure. However, this draft, provided in Appendix D, can serve as a skeletal structure on which the final comprehensive governance plan can be fleshed out. This report also calls for an advance transfer of capitalized O&M dollars to the BIA to be used for developing and adopting such a plan.

## **10. CHANGES IN TOTAL PROJECT FIRST COSTS**

The total project first costs were developed in the April 1995 Phase II Evaluation Report, and will not change substantially as a result of the Celilo Village Redevelopment project. The current cost estimate for the Celilo Village Redevelopment project is \$13.238 million dollars – See Table A-1 in Appendix A (Engineering Plan and Cost Estimate). Based on actual and projected efficiencies at the current substantial completion of 28 of 31 sites, the project is carrying sufficient contingency to complete Celilo Village Redevelopment within the authorized cost for the CRTFAS project.

## **11. CHANGES IN PROJECT BENEFITS**

Since project economic benefits have never been quantified for the Columbia River Treaty Fishing Access Sites, there are no changes in the project economic benefits for this report.

## **12. BENEFIT-COST RATIO**

A benefit-to-cost ratio has not been developed; therefore there is no change.

### **13. CHANGES IN COST ALLOCATION**

There are no changes in cost allocation.

### **14. CHANGES IN COST APPORTIONMENTS**

There are no changes in the cost apportionment.

### **15. ENVIRONMENTAL CONSIDERATIONS IN RECOMMENDED CHANGES**

A FONSI has been signed for the Celilo Village Redevelopment project. An Environmental Assessment (EA) was prepared pursuant to the requirements of the National Environmental Policy Act (NEPA) for the Celilo Village Redevelopment Project and is included in Appendix F. The EA addressed the potential impacts of project construction to threatened and endangered fish and wildlife, cultural resources, and impacts to recreation and social resources. Since there is no in-water work proposed for the project, there will be no effect on anadromous and resident fish species nor will there be permitting requirements under Section 404 the Clean Water Act. A species list was requested from the U.S. Fish and Wildlife Service (USFWS) that identifies threatened and endangered species in the project area. A biological assessment documenting potential impacts to the species was prepared and sent to the USFWS for review and concurrence of finding. A “no effect” determination was made. A Coordination Act Report (CAR) from USFWS was not required.

Under section 106 of the National Historic Preservation Act (NHPA), Federal agencies are required to take into consideration the affects of their undertakings on historic properties that are included in, or eligible for, the National Register of Historic Places (Register). Consultation regarding cultural resources in the proposed project area with affected Indian tribes and interested parties will continue throughout the compliance process. A cultural resources survey of the Area of Potential Effect (APE) will be conducted prior to any land altering activities and the results will be coordinated with the Oregon State Historic Preservation Officer (SHPO) and Tribal Historic Preservation Officer (THPO) as appropriate. It is known from previous studies that locations within the APE contain some cultural resources, and the proximity to the Columbia River and areas of prehistoric and historic occupation makes it probable that there are more present. It is also known that there are human remains located within the APE. Therefore, a Memorandum of Understanding (MOU) covering cultural resources will need to be developed and signed between the U.S. Army Corps of Engineers (USACE), the Bureau of Indian Affairs (BIA), the Oregon SHPO, tribal THPO, and the Advisory Council on Historic Preservation (ACHP). The MOU should contain clauses addressing all cultural resources related matters for the project, including, avoidance of impacts to eligible properties through design changes, principles to be followed in formulating any impact

mitigation plans, and inadvertent discovery protocols. The Corps, the BIA and the contractors will work with the four Tribes and the residents to insure that any disturbed cultural resources are dealt with according to existing policy and regulations, recognizing the significant historical, cultural, and religious value of the resources.

The public, Tribes, and resource agencies had the ability to review the draft EA for 30 days. For the reasons stated above, no significant impacts were identified during the public review process. Since no significant impact was identified during the public review process, an Environmental Impact Statement (EIS) was not required. Since an EIS was not required, full compliance with NEPA was achieved when the FONSI was signed.

## **16. PUBLIC INVOLVEMENT**

The development of a comprehensive redevelopment plan for Celilo Village was not possible without extensive coordination and the cooperation of all entities associated with this unique location. The Village residents have been actively involved in planning development, proposed plan implementation, and the design of a long-term management plan. Figures A-2 & A-3, contained in Appendix A, show alternative site plans that were considered and ultimately discarded due to public preference of the recommended plan, while Appendix C provides a summary of the public cooperation program. Included are the letters of support provided by the four Tribal governments, the Regional Director of the BIA, Wasco County, the Oregon State Legislature, and Oregon congressional delegation members. A draft Celilo Village Operation, Maintenance and Governance Plan is contained in Appendix D, outlining methods for public involvement in structuring the future of the Village. Appendix F includes comments gathered at the public meeting held in The Dalles, Oregon, and the Corps' responses to these comments, while Appendix H is the transcript of this public meeting.

## **17. RECOMMENDATIONS**

The recommendations contained in this PAC report are restated as follows.

First, it is recommended that the Tribes and the Corps seek the simplest acceptable legislative solution, specifically adding "Celilo Village" as a named site for improvement under Sec. 401(b)(3) as follows:

"(3) make improvements at existing sites, including but not limited to *rehabilitating Celilo Village as proposed by the 2002 Post-Authorization Change Report*, to dredging at the site at Wind River, Washington, and constructing a boat ramp on or near the site in Cascade Locks, Oregon."

Second, it is recommended that the Corps implement the infrastructure improvements presented in this report. These will include: improvements and additions to the existing

sewage system; new water source and storage facilities; reconfiguration of existing roadways to allow access for emergency vehicles, including fire protection; addition of facilities for Tribal Fishing use (i.e. secured storage area, restroom/shower building, net repair area, camp pads); and improvements to existing cultural facilities (longhouse, health, and safety improvements).

Third, it is recommended that the Corps provide “decent, safe and sanitary” housing to the residents that have a legal right to reside in the Village. It is recommended that new modular homes be provided as replacement for the existing substandard homes. In conjunction with infrastructure improvements the Corps of Engineers will be required to comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended (P.L. 91-646). The redevelopment activities associated with the infrastructure improvements and the Celilo Village Redevelopment Study will displace the current residents from their current dwellings on either a temporary or permanent basis. Said activities may necessitate acquiring privately owned dwellings, replacing impacted Federally owned facilities (dwellings), compensation payments and relocation benefits payments. There are currently 8 private and 5 Federally owned dwellings in the Village. There originally were 14 Federally-provided homes, but some became uninhabitable and were replaced with modular units. The BIA will determine which residents can legally reside in the Village, which will affect the final design. Cost estimates were based on 20 units, composed of 14 newly-constructed units, plus the assumption that for equity reasons some heirs would be compensated for inadequate original units at the value of the new units (up to a total of six additional units). Because the United States owns all the land in Celilo Village under the jurisdiction of the BIA, no land acquisition is required.

Fourth, it is recommended, as with other CRTFA sites, that the Corps transfer adequate Operation and Maintenance funds to the Department of Interior (BIA) for the specific purpose of O&M of the Celilo Village. This will be accomplished by adding Celilo Village to the existing MOU between the Department of the Army and the Department of Interior for the “Transfer, Operation, Maintenance, Repair, and Rehabilitation of the Columbia River Treaty Fishing Access Sites.” The Corps will make an advance O&M transfer of \$150,000 to be used for the development and adoption of a Celilo Village governance plan. This sum will be deducted from the total O&M funds the Corps will transfer to the BIA after construction.

Implementing these recommendations will serve a number of important purposes, including meeting both the Corps’ legal responsibilities and the expectations of the Tribal governments that have been active participants in the genesis and refining of this redevelopment plan. Implementing the recommendations will also resolve major on-the-ground problems, including providing acceptable housing facilities and decent, safe, and sanitary water and sewage systems. Finally, it should be noted that implementing these recommendations will accomplish these purposes in a manner that is consistent with the spirit of the project authorization.



## **APPENDICES:**

- A: Engineering Plan and Cost Estimate**
- B: Real Estate Appendix**
- C: Public Involvement (Letters of Support)**
- D: Draft Governance and Operation Plan**
- E: Legal Appendix**
- F: Environmental Appendix and FONSI**
- G: List of Acronyms Used**
- H: Public Meeting Transcript**

## **APPENDIX A: ENGINEERING PLAN AND COST ESTIMATE**

This appendix provides a summary of the plan formulation process, the draft conceptual plan for Celilo Village redevelopment, draft alternative site plans, and the cost estimate. For more detailed information regarding engineering design, please see Engineering Design Report DACW57-01-C-0022 (19 December 2001), available upon request.

### **1. PLAN FORMULATION**

The plan for Celilo Village redevelopment presented in this appendix is preliminary and is only conceptual. To develop a final design many actions need to occur and considerably more coordination is required. The most important elements in developing the final design will be defining which residents have a legal right to reside in the Village and the final mix of homeowners and permitted residents.

The following describes how the conceptual plan was developed to this point.

Plan development was an iterative process that initiated with the concepts provided in the CTUIR “Celilo Village Redevelopment Study”. Meetings were held with the Celilo Village residents, the Treaty Tribes’ planning staffs, and Indian Health Services, to solicit opinions on possible redevelopment plans. Facilities were added to the plan in recognition of the Village’s role in Treaty Fishing. Camping facilities were included to accommodate the Treaty Tribes’ rights to temporarily reside at the Village during the fishing seasons. The IHS provided design criteria for the water and sewer systems.

One basic concept used in the development of the conceptual plan for the PAC process was to incorporate all reasonable facilities at a sufficiently high level to assure that the cost estimate would be on the “high side” when defining the possible scope of Corps involvement. Specific areas in which “high side” assumptions were made are:

- The number of residents to be provided housing units and relocation assistance under the Uniform Relocation Act. As described in the Real Estate Appendix, the Corps has a responsibility for 14 structures, but it is possible that the outcome of the BIA’s determination of legal residency and implementation of the relocation laws may require more or fewer facilities to be provided. The cost estimate and Village layout therefore incorporate different possible structure totals.
- Treaty Fishing related facilities such as drying sheds, fish cleaning stations, and restrooms for temporary residents were included in the plan. It was assumed that two of each of these facilities would be needed to accommodate permanent residents and those fishermen temporarily camping at Celilo Village for fishing and ceremonial functions.
- Many options exist to temporarily relocate residents during construction. Options include: (1) Relocation of all residents to motels or apartments in nearby communities during the entire construction period. (2) Relocation of about one half of the residents while one half of the Village is constructed, followed by replacement into the new

structures. This process would be repeated with the remaining one half of the residents. (3) Temporarily locating about 7 of the new modular homes in the Village and moving about one half of the families into them while their permanent locations are rebuilt. The modular units would then be moved to the new improved sites, and the process repeated for the balance of the residents. This last approach would have the smallest social and cultural impact on the residents since they would not be relocated out of the Village for the construction period, and was favored by most of the residents. This approach was the most expensive, and it was the assumed approach for computation of project costs.

The estimated costs for O&M of the Village after completion of the redevelopment project assumed that a full time operation supervisor would be hired who would contract out for much of the maintenance. It is likely that once specific O&M tasks are defined, the operation supervisor could accomplish almost all activities and only minimal additional contracting costs would be incurred on a periodic basis.

## **2. DRAFT SITE DEVELOPMENT PLANS**

Figure A-1 provides the general layout of the recommended plan for Celilo Village redevelopment. This plan is conceptual at this stage and will be finalized through additional meetings with the Celilo residents, the Tribes, and the BIA. The final design will be developed in the 60% design stage. This conceptual plan best reflects the desires of all parties. Alternative plans were also developed and refined, but ultimately discarded. These are presented in Figures A-2 and A-3.



### **3. COST ESTIMATE.**

Table A-1 provides the cost estimate at current price levels (\$12,061,000) and full-funded (\$13,238,000). Table A-2 provides the cost estimates for specific items of the recommended plan. The following describes the specifics of the cost estimate.

#### **3.1 Project Description:**

The project change will consist of improving the infrastructure of Celilo Village within the general authorities provided by the CRTFAS and this report and authorization, and replacing the current substandard residential housing. Village improvements will include: new domestic water and sewage systems, replacement homes, roads (improve primary and secondary roads), fencing, limited irrigation and landscaping, fish drying sheds (2), restrooms (2), fish cleaning stations (2), net repair areas (2), dumpster pads (4), entry signs (1), parking area, safe railroad crossing, camping sites (12), remodeling existing longhouse, and dump station. Fred Cooper Consulting Engineers, Inc. was contracted by the Corps as part of the CRTFAS Contract E design effort to prepare an Engineering Design Report for Celilo Village.

An estimate has been prepared for the improvements discussed above and is based on the conceptual design for the Village. However, detailed plans and contract costs from the CRTFAS Contract D were used to develop the costs for identical features proposed for Celilo Village.

#### **3.2 Basis of Design.**

The basis for the design is the PAC Report.

#### **3.3 Estimate References:**

ER 1110-2-1302 (Civil Works Cost Engineering)

EP 1110-1-8 (Construction Equipment Ownership and Operating Expense Schedule)

EI 01D010 (Construction Cost Estimates)

EM 1110-2-1304 (Civil Works Construction Cost Index System, CWCCIS)

#### **3.4 Construction Schedule:**

The proposed Celilo Village construction schedule is to award the contract in July, 2004. The contract will have a two-year duration. Subject to the project receiving authorization, a detailed schedule will be developed following such authorization and as designs progress.

a. Overtime. Overtime will not be required for this contract.

b. Construction Windows. N/A.

Acquisition Plan. It is anticipated that construction will require one to one and a half years to complete.

### **3.5 Subcontracting Plan.**

Subcontracting is anticipated for the hazardous, toxic and radioactive wastes (HTRW); plumbing; electrical; asphalt paving; and landscaping.

### **3.6 General Estimating Information.**

- a. Sources of Historical Data. The contract costs for CRTFAS Contract D (March 2000) were used for costing identical facilities proposed at Celilo Village including: restrooms, fish cleaning stations, net repair areas, fish drying sheds, dumpster pads and an entrance sign. These costs were updated to 2001 price levels using CWCCIS factors. The IHS provided costs for the proposed new domestic and sanitary water systems features.
- b. Hazardous, Toxic and Radioactive Waste (HTRW) Remediation Costs. Lead based paint and asbestos are known to be present in the existing homes on the site. Costs have been estimated to identify these substances (quantity) in the homes and for proper disposal of these substances as required.
- c. Site Access. Access to Celilo Village is available on existing roads.
  - d. Environmental Concerns. See the Celilo Village PAC Report.
  - e. Contingencies by Feature or Sub-Feature.
    - 1) Construction Contingency. A contingency of 10% was used for the 14 account features including: restroom and shower buildings, fish cleaning stations, net repair areas, fish drying sheds and railroad crossing. The cost for these features were based on CRTFAS Contract D costs. A contingency of 25% was used on the remaining features to cover uncertainties in the quantities, materials to be excavated, and design.
    - 2) Contingencies for Functional Accounts. The contingency included in the 01 account costs are 15% for acquisition and PL 91-646 Relocation Payments. Contingencies of 5% were included in the 30 and 31 accounts to cover uncertainties in engineering, design and construction management related to the 14 account discussed above.
- f. Effective Dates for Labor, Equipment, Material Pricing. The effective date for all pricing is October 2001.

### **3.7 Quantities.**

Quantities were provided by the designers. The quantities developed for Contract D were used for the features that were identical to those to be constructed under this project contract.

### **3.8 Labor Rates.**

Labor rates were updated using recent Davis-Bacon information.

### **3.9 Mobilization (Mob), Demobilization (Demob) and Preparatory Work.**

This was calculated as 5% of the direct costs. Mob was assumed to equal Demob.

### **3.10 Use of the Micro Computer Assisted Cost Estimating System (MCACES).**

a. General. This CWE was estimated in MCACES.

b. Overhead, Profit and Bond. Field office overhead (FOOH) and home office overhead (HOOH) were input as a “rule of thumb” percentage for this type and size of project. The percentage varied depending on whether the feature involved the prime contractor and/or subcontractors. Profit was computed using the weighted guidelines sheet in MCACES. This project is not considered very risky, so the profit percentage is relatively low. Bond costs were computed using the built-in table in MCACES as a percentage.

### **3.11 Functional Costs:**

Functional costs associated with this work were provided by the Task and/or Project Managers as follows:

a. 01 Account – Lands and Damages:

- 1) Land Acquisition for site improvements.
- 2) PL 91-646 Relocation Payments.

b. 30 Account – Planning, Engineering and Design:

1) Plans and Specifications: This item covers preparing plans and specifications, District review, technical review, value engineering studies, contract advertisement and award activities.

2) Engineering During Construction: This item consists of Engineering and Construction Division support to Construction Management during construction and participation in the prefinal and final inspections of the contracts.

3) Project Management Service and Coordination: This item covers managing and monitoring such matters as definition of scope of work, schedules, studies,

funding, programming, real estate studies and acquisition, and coordinating with the Tribes, Residents, BIA, and other interested groups and individuals.

c. 31 Account – Construction Management: This account covers construction management for the Celilo Village redevelopment contract.

#### **4. OPERATION AND MAINTENANCE**

A cost estimate for the Corps contribution for operations and maintenance at Celilo Village has been developed for the PAC. This estimate represents an attempt to quantify annual O&M costs on the project using the methodology agreed upon and reflected in the MOU. The estimate assumes a full time maintenance supervisor will be hired (\$48,300) and additional operating costs will be incurred (\$118,245). It is likely that O&M at Celilo will be less than the \$166,245 per year estimate once coordination is completed with BIA and specific O&M items are identified. The capitalized equivalent of this annual O&M estimate will be transferred to BIA in accordance with the MOU. The capitalized value of \$166,245 per year, for 50 years, at the project interest rate of 7-3/4% determined at the time of negotiations, is \$1,828,694.

Under the MOU, after the completed functional portion of the project is turned over to the DOI-BIA, DOI “shall be solely responsible for operating, maintaining, repairing, and rehabilitating the Project or functional portion of the Project in accordance with Article IV” of the MOU.

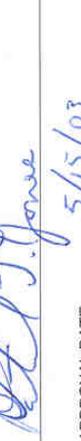
Because the Corps acknowledges the critical need for Celilo Village governance planning to occur prior to construction, there will be an advanced transfer of \$150,000 O&M dollars for the development and adoption of a governance plan. This \$150,000 will be deducted from the total estimated amount of capitalized O&M transferred to the BIA after the completion of construction.

Table A-1. Cost Summary

**** CELILO VILLAGE PAC COST SUMMARY****														PAGE 1 OF 1	
PROJECT: CELILO VILLAGE PAC		DISTRICT: PORTLAND										13-May-03			
LOCATION: CELILO VILLAGE, OREGON		P.O.C.: PAT JONES, CHIEF, COST ENGINEERING SECTION													
CURRENT MCACES ESTIMATE PREPARED:		Jul-01		AUTHORIZ./BUDGET YEAR: 2003											
EFFECTIVE PRICING LEVEL:		Jul-01		EFFECT. PRICING LEVEL: MAY 03											
ACCOUNT NUMBER	FEATURE DESCRIPTION	COST (\$K)	CNTG (\$K)	ONTG (%)	TOTAL (\$K)	OMB (%)	COST (\$K)	CNTG (\$K)	ONTG (%)	TOTAL (\$K)	FEATURE MID PT	OMB (%)	COST (\$K)	CNTG (\$K)	FULL (\$K)
14-...	FISH AND WILDLIFE FACILITIES														
	RESTROOM & SHOWER BUILDINGS	420	42	10%	462	3.2%	433	43	477	Jan-06	6.8%	463	46	509	
	FISH CLEANING STATIONS	75	8	10%	83	3.2%	77	8	85	Jan-06	6.8%	83	8	91	
	NET REPAIR AREAS	29	3	10%	32	3.2%	30	3	33	Jan-06	6.8%	32	3	35	
	DRYING SHEDS	88	9	10%	97	3.2%	91	9	100	Jan-06	6.8%	97	10	107	
	DUMPSTER PAD	7	1	10%	8	3.2%	7	1	8	Jan-06	6.8%	8	1	8	
	ENTRY SIGN	5	1	10%	6	3.2%	5	1	6	Jan-06	6.8%	6	1	6	
	RAILROAD CROSSING	217	22	10%	239	3.2%	224	22	246	Jan-06	6.8%	239	24	263	
	CAMP SITES	239	24	10%	263	3.2%	247	25	271	Jan-06	6.8%	263	26	290	
	OTHER FACILITIES	5,296	1,324	25%	6,620	3.2%	5,465	1,366	6,832	Jan-06	6.8%	5,837	1,459	7,296	
	O & M	1,662	166	10%	1,828	3.2%	1,715	172	1,887	Jan-06	6.8%	1,832	183	2,015	
	TOTAL CONSTRUCTION COSTS	8,038	1,598	20%	9,636	3.2%	8,295	1,649	9,945	Jan-06	6.8%	8,859	1,761	10,621	
01-...	LANDS AND DAMAGES	422	63	15%	485	3.2%	436	65	501	Aug-04	4.1%	453	68	521	
18-...	CULTURAL RESOURCE PRESERVATION	225	23	10%	248	3.2%	232	23	255	Aug-04	4.1%	242	24	266	
30-...	PLANNING, ENGINEERING AND DESIGN	1,219	61	5%	1,280	3.2%	1,258	63	1,321	Aug-04	4.1%	1,310	65	1,375	
31-...	CONSTRUCTION MANAGEMENT	393	20	5%	412	3.2%	405	20	426	Jan-06	6.8%	433	22	454	
	TOTAL COST	10,297	1,765	17%	12,061	3.2%	10,626	1,821	12,447		NA	11,297	1,941	13,238	

APPROVED:  CHIEF, ENGINEERING AND CONSTRUCTION DIVISION

 CHIEF, PROGRAMS AND PROJECT MANAGEMENT DIVISION

 CHIEF, COST ENGINEERING SECTION

APPROVAL DATE: 5/15/03

Table A-2. Project Elements Cost Summary

<b>CONSTRUCTION COST SUMMARY WITH CONTINGENCIES</b>				
<b>COLUMBIA RIVER TREATY FISHING ACCESS SITES CELILO VILLAGE POST AUTHORIZATION REPORT CURRENT WORKING ESTIMATE Update May 13, 2003</b>			<b>PORTLAND DISTRICT P.O.C. : PAT JONES COST ENGINEERING SECTION CENWP-EC-DX</b>	
<b>Item</b>	<b>Construction Costs (\$)</b>	<b>Contingency ( \$)</b>	<b>Contingency (%)</b>	<b>Total Construction Costs (\$)</b>
Mob-Demob	\$398,024	\$99,506	25%	\$497,530
Sewer System Improvements	\$719,496	\$179,874	25%	\$899,370
Potable Water System Improvements	\$351,166	\$87,792	25%	\$438,958
Site Cleanup	\$108,526	\$27,132	25%	\$135,658
Replacement Homes	\$1,971,907	\$492,977	25%	\$2,464,884
New Water Well & Pumphouse	\$235,129	\$58,782	25%	\$293,911
Restroom & Shower Building #1	\$209,705	\$20,971	10%	\$230,676
Restroom & Shower Building #2	\$209,705	\$20,971	10%	\$230,676
Fish Cleaning Station #1	\$37,334	\$3,733	10%	\$41,067
Fish Cleaning Station #1	\$37,334	\$3,733	10%	\$41,067
Net Repair Area #1	\$14,568	\$1,457	10%	\$16,025
Net Repair Area #2	\$14,568	\$1,457	10%	\$16,025
Longhouse Repair	\$881,771	\$220,443	25%	\$1,102,214
Parking Area	\$53,299	\$13,325	25%	\$66,624
Roadway	\$215,783	\$53,946	25%	\$269,729
Drying Shed #1	\$43,703	\$4,370	10%	\$48,073
Drying Shed #2	\$43,703	\$4,370	10%	\$48,073
Wire Fencing	\$8,265	\$2,066	25%	\$10,331
Fencing with Screening	\$80,770	\$20,193	25%	\$100,963
Landscaping	\$89,642	\$22,411	25%	\$112,053
Irrigation System	\$27,764	\$6,941	25%	\$34,705
Landscaping Maintenance	\$1,752	\$438	25%	\$2,190
Irrigation System Maintenance	\$15,765	\$3,941	25%	\$19,706
Dumpster Pad	\$7,446	\$745	10%	\$8,191
Entry Sign	\$4,686	\$469	10%	\$5,155
Railroad Crossing	\$217,290	\$21,729	10%	\$239,019
Camp Sites	\$239,245	\$23,925	10%	\$263,170
Dump Station	\$45,894	\$11,474	25%	\$57,368
Electrical System	\$91,352	\$22,838	25%	\$114,190
O & M 50 years	\$1,662,449	\$166,245	10%	\$1,828,694
<b>TOTAL</b>	<b>\$8,038,041</b>	<b>\$1,598,250</b>	<b>20%</b>	<b>\$9,636,291</b>

Note: This sheet covers construction cost only. Lands & damages; cultural resource preservation; planning, engineering and design; construction management; and inflation are not included.



## **APPENDIX B: REAL ESTATE**

### **REAL ESTATE PLAN IN SUPPORT OF THE POST AUTHORIZATION CHANGE REPORT CELILO VILLAGE REDEVELOPMENT CELILO, OREGON**

#### **1. PROJECT DESCRIPTION.**

This Real Estate Plan (REP) is developed in support of the Post Authorization Change Report under authority of Section 401, Public Law 100-581, Title IV, signed into law on November 1, 1988, as amended. The project is located at Celilo, Oregon approximately seven miles east of The Dalles, Oregon.

This Federally funded project consists of the following distinct elements: improvements and additions to the existing sewage system, new water source and storage facilities, reconfiguration of existing roadways to allow access for emergency vehicles, including fire protection, replacement of Federally provided substandard units with modular housing, and addition of facilities for Tribal use (i.e. secured storage area, restroom/shower building, net repair area, camp pads). In conjunction with infrastructure improvements and replacement housing as a distinct element of this Federally funded project feature, it will be necessary to comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended (P.L. 91-646). It is anticipated that the Corps' Celilo Village redevelopment activities will displace current residents from their existing dwellings on either a temporary or permanent basis. There are 8 privately owned dwellings and 5 Federally owned facilities currently occupied. There are 2 privately owned dwellings and 2 Federally owned facilities that are uninhabitable and consequently have been abandoned. All land is owned by the United States of America, currently under the jurisdiction of the Bureau of Indian Affairs, therefore no land acquisition is required for the project.

#### **2. PROJECT HISTORY (RELOCATIONS)**

Celilo Village, one of the most visible Indian communities in the United States, is a direct result of relocations associated with Federal Dam construction. By the Act of June 29, 1948, 62 Stat. 1120, Congress appropriated funds to construct, repair or rehabilitate the buildings and utilities on this land and hold in trust for the benefit and use of the three Tribes and the other Columbia River Indians. Pursuant to this, 10 homes were constructed and the occupancy of each was assigned to designated beneficiaries of the trust. BIA granted permits to original assignees that contained language regarding maintenance obligations and revocation for non-compliance. By the Act of July 15,

1955, 69 Stat. 361, Congress appropriated funds to relocate the permanent resident Indian families who were in the project area at Celilo. The act authorized the acquisition of lands as necessary, title to be acquired in the “name of the United States in trust for individual Indians for whose benefit it is acquired.” Several families were relocated to neighboring communities, while five families were relocated to Celilo Village.

### **3. CURRENT DESCRIPTION OF AREA.**

The Village currently supports 13 dwellings and approximately 50 people, most of whom live at or below poverty levels. The primary source of subsistence for the residents is derived from the Treaty Fishery. The Village lacks adequate sanitary and water systems, resulting in public health and safety problems which concern Federal, state and local health officials. To further complicate the problem, the Village supports a large seasonal increase in use by Treaty Fishers during each spring and fall fishing season. Despite these problems, the Village remains a central cultural and religious gathering place for Northwest Indian tribes exercising Treaty Fishing rights on the Columbia River.

### **4. GOVERNMENT OWNED LAND.**

Celilo Village consists of approximately 34.5 acres of land, held in trust for the three tribes and the other Columbia River Indians by the United States of America, and is currently under jurisdiction of the Bureau of Indian Affairs.

### **5. NAVIGATION SERVITUDE.**

The issue of navigation servitude is not applicable to this project.

### **6. ACQUISITION CRITERIA.**

It is assumed that at least 9 of the 10 privately owned dwellings, or remnants thereof, will be acquired prior to construction. According to a memorandum from the Regional Solicitor’s opinion to the Area Director, Portland, dated June 11, 1975, the BIA used the 1955 relocation funds of Abe Showaway, Jimmie George, Minnie Johnley and Hannah Yallup to build houses (A, B, C, D) on the land previously acquired under the 1947 Act. Per said memorandum, it appears the BIA also used the relocation funds of Effie Cushingway Gunnier to rehabilitate house #7 which had been built for use of the Tribes and Indians designated in the 1947 Act. This house had been previously assigned to Irene Williams Brunoe. In said opinion, it was stated “where relocation funds were used to repair or build houses on the trust land acquired under the 1947 Act, the houses should be considered as held in trust for the individual Indian, the ownership of which could descend to the heirs. The land would continue to be held in trust for the Tribes and Indians as designated in the 1947 Act.” Additionally, only a slab remains where house C was located and the shell remainder of house D is vacant.

The Corps has requested that the BIA compile probate orders to determine the heirs or devisees of houses #7, A, B, C and D, prior to Corps acquisition, so the Corps can

appraise the real property and make payment for fair market value to the rightful heirs. If the heirs cannot be located, the funds will be deposited in trust to be claimed at a later date by the rightful heirs.

If the probate orders compiled indicate the current occupants of houses #7, A and B are heirs to the original Indians relocated in 1955, the Corps will appraise the real property and make payment for fair market value to acquire the dwellings directly from them and proceed with the implementation of P.L. 91-646 (for further information regarding payments to owner-occupants, see paragraph #7, Public Law 91-646 Relocation Data, Last Resort Housing in this report). If the probate orders compiled indicate the current occupants of houses #7, A and B are not heirs to the original Indians relocated in 1955, the Corps will request the BIA to determine whether or not they are lawful occupants in the Village. If they are determined to be lawful occupants, they will receive the relocation benefits of persons with tenant status, as described in the “Public Law 91-646 Relocation Data, Tenants” section of this report.

## **7. PUBLIC LAW 91-646 RELOCATION DATA.**

### **7.1 General.**

Public Law 91-646, Title II, authorizes payment of relocation benefits to persons displaced from homes, businesses or farms by Federal or Federally-assisted programs. Those benefits comprise moving expenses and replacement housing benefits. They are separate from and in addition to the acquisition payments for real property. Estimated benefits for residential displacements include moving expenses and replacement housing. Owner-occupants and tenant-occupants of mobile homes will be afforded the same benefits as occupants of conventional dwellings.

### **7.2 Cultural Considerations.**

Given the cultural and religious significance, as well as the socio-economic factors in Celilo Village, residents determined to be lawfully present and eligible to receive relocation benefits will most likely be allowed, by BIA, to resettle in the Village after all infrastructure improvements are complete. As previously stated, the primary source of subsistence for the residents is derived from the Treaty Fishery. Residents are highly apprehensive and concerned about the potential of being displaced and not being permitted to return to reside in the Village when redevelopment is complete. It appears to be a cultural norm for extended families to reside within the same dwelling or within close proximity to one another. The residents have expressed that they do not desire to relocate to neighboring areas outside the Village. Therefore, resettlement appears to be the only viable option for the residents.

### **7.3 Eligibility.**

Eligibility for relocation assistance begins on the date negotiations are initiated for an occupied property. When negotiations are initiated, all occupants are to be promptly notified in writing of their eligibility. The Corps will work with BIA, the jurisdictional agency, in an effort to make all such individual determinations of status prior to the Corps' issuance of this “Notice of Eligibility for Relocation Assistance”. The Corps

intends to use the date of authorization of the Celilo Redevelopment project as the official date to issue said Notice.

#### **7.4 Tenants.**

With regard to the 10 homes originally constructed in the Village pursuant to the Act of June 29, 1948, 62 Stat. 1120, the BIA does not list the homes on its inventory. However, to date, no records indicating that the homes were ever deeded to individual Indians have been located (such an action would not be consistent with the 1948 Act). BIA still owns the remaining 1948 homes and administers a permit program allowing tenants to reside in said homes. Additionally, the status of the current residents in the remaining 1955 homes and the other privately owned dwellings in the Village has not been verified. In order for the Corps to fulfill its statutory obligations as the displacing agency for this project, the Corps has requested that BIA to provide information on the status of all persons currently residing in the Village (i.e. tenant, owner-occupant, lawful or unlawful occupant). This determination is critical as it clarifies, for the Corps, each individual's status and eligibility as displaced persons for relocation benefits in accordance with P.L. 91-646. Persons determined to be lawfully residing in the remaining 1948 homes will be classified as tenants. Further discussion on those residing in the 1955 homes can be found in the following section ("owner-occupants"). Persons determined to be unlawful occupants may not qualify for relocation benefits. 49 CFR Part 24.2 defines "unlawful occupancy" as follows: "A person is considered to be in unlawful occupancy if the person has been ordered to move by a court of competent jurisdiction prior to the initiation of negotiations or is determined by the Agency to be a squatter who is occupying the real property without the permission of the owner and otherwise has no legal right to occupy the property under State law. A displacing agency may, at its discretion, consider such a squatter to be in lawful occupancy." Again, it is the responsibility of BIA to make every attempt to determine the status of each individual, lawful or unlawful, currently residing in the Village. It is the Corps' understanding that the BIA and the Tribal governments will make a coordinated effort to accommodate unlawful residents by either issuing them a permit to reside in the replacement housing to be provided in the Village (thereby making them a lawful resident) or by providing a place for them to reside on tribal land elsewhere.

With regard to the remaining 1948 homes, replacement housing will be provided by the Corps to mitigate for the substandard quality of the original 1948 units placed in the Village (BIA dwellings). Said housing will be transferred to BIA upon completion of construction, for BIA's operation, maintenance and administration of a permit program allowing tenancy to eligible displaced persons. No payment shall be made to BIA for the value of the 1948 homes destroyed or rendered uninhabitable by the infrastructure improvements.

#### **7.5 Owner-occupants.**

If the probate orders compiled indicate the current occupants of houses #7, A and B are heirs to the original Indians relocated in 1955, they will receive relocation benefits as displaced persons with owner occupant status. Additionally, other owner occupants, if determined to be lawful occupants in the Village (potentially includes houses MH C, D &

#10, MD #1 & #3) will receive relocation benefits with owner occupant status. The relocation benefits for owner occupants differ from those previously described for displaced persons with tenant status. If the BIA and Tribes determine that private structures continue to be appropriate on Trust land, individuals with owner occupant status could receive title to a new unit to be placed on the site. If the BIA and the Tribes determine that private structures are not appropriate on Trust land, current owner occupants could receive the value of a replacement unit in combination with an offer to occupy (through permit) one of the new modular units or they would have the option of replacement housing off-site.

Should any of the owner occupied dwellings to be acquired be encumbered by a bona fide mortgage, the displacee will be placed in the same position with regard to the mortgage payment when relocated to their replacement dwelling. This may require supplementing the mortgage either in the form of a lump sum payment to the displacee or a paydown on the amount of the new loan if the interest rate is higher. However, if the existing mortgage can be transferred to the replacement dwelling, these mortgage benefits would not be applicable. In addition, reasonable expenses incurred by the displacee for evidence of title, recording fees, and other costs incident to obtaining the replacement dwelling (excluding prepaid expenses) will be paid.

#### **7.6 Last Resort Housing.**

Section 206, P.L. 91-646, provides that, as a last resort, the head of the displacing agency may take such action as is necessary or appropriate to provide comparable housing when it is not otherwise available to permit a project to proceed on a timely basis. Such actions can be taken on a case-by-case basis or on a project-wide basis. Agencies have broad latitude in implementing last resort provisions of the law; however such actions are to be cost effective in accordance with Section 24.404, 49 CFR. Last resort housing based on payments in excess of the statutory limits of Section 203 and 204, P.L. 91-646 will most likely be required for this project. The cost of said housing is anticipated to exceed the last-resort housing limit delegated to the District. Therefore, the District intends to request blanket authority for last resort housing from the Division for the project on a project-wide basis.

## **APPENDIX C: PUBLIC INVOLVEMENT**

This appendix includes letters of support and Tribal resolutions from the four Columbia River Treaty Tribes, and letters of support from the Bureau of Indian Affairs, Wasco County, the Oregon State legislature, and members of Oregon's congressional delegation. Additional public involvement information is located in Appendix H, which contains the transcript of the public meeting held in the Dalles regarding Celilo Village redevelopment, and in Appendix F, which contains the comments received at the meeting and the Corps' responses to these comments.



GENERAL COUNCIL  
and  
BOARD OF TRUSTEES

CONFEDERATED Tribes  
of the

*Umatilla Indian Reservation*

73239 Confederated Way  
P.O. Box 638  
PENDLETON, OREGON 97801  
Area code 541 Phone 276-3165 FAX 276-3095

November 30, 2001

General Robert Flowers, Chief of Engineers  
US Army Corps of Engineers  
441 G St NW  
Washington DC 20314

Dear General Flowers:

This letter is written to request your support for a change to the ongoing Columbia River Treaty Fishing Access Sites project, in Oregon and Washington. This project was authorized in 1988 to mitigate for Columbia River dams impacts on treaty fishing rights of four Pacific Northwest Indian Tribes. The project is proceeding under the Corps Construction General program and the tribes are generally pleased with progress to date.

Recently, Tribal Governments requested that the Corps consider a project change that would modify the boundary and extend facility improvements at one of the thirty one authorized treaty fishing access sites. The boundary would be extended to include Celilo Village, Oregon. Celilo Village is located on Federal land administered by the Department of Interior held in trust for the Umatilla, Warm Springs, Yakama Tribes and other Columbia River Indians. The land was purchased to support use by river Indians and designated tribes who were displaced from the Celilo Falls fishery by the Dalles Dam construction. Residents of Celilo Village are directly dependent on the treaty fishery for their livelihood. The site also supports a large increase in seasonal use during the treaty fishing seasons. In our view it is reasonable for the Corps to exercise its discretion and extend this remedial legislation to improve the facilities at the Celilo Village location.

Celilo Village is the surviving remnant of the historic Celilo Falls. In Pre-Dalles Dam days, the area supported 5000 tribal members' fishing activities. Corps activities encroached on this treaty fishing site many times without compensation. In 1894 and 1902, Corps construction activities associated with a portage railroad and the Celilo canal occupied tribal riparian fishing lands without compensation. In 1938, the Bonneville

tpo/jwb/sdj/12-06-01

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TREATY JUNE 9, 1855 ♦ CAYUSE, UMATILLA AND WALLA WALLA TRIBES

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Dam flooded riparian areas below Celilo Falls - with no compensation until the 1948 in lieu sites act (1945 Rivers and Harbors Act provision). In 1948, in response to the forthcoming Dalles Dam construction, additional lands were acquired and the Corps provided deteriorated World War II surplus Army prefab housing for a few families on the site. In House Document 531, the Columbia River Basin Corps Project document, incorporated by reference and enacted into the May 17, 1950 Flood Control Act, the Corps recommended and Congress authorized the replacement of the Celilo, Oregon and Spearfish, Washington Indian fishing villages. At that time the Villages were home to 1000 permanent tribal residents and 4000 fishing-season "temporary" residents as documented in the Corps' own reports. These authorizations were never fully carried out because of the Eisenhower administration's policies of terminating tribal reservations and programs. In 1955 the Corps took additional land at Celilo for project purposes and relocated 26 additional families 4 of those families into houses in Celilo village, while forcing most of the other tribal fisher families to move away from Celilo Village and Spearfish, Washington. Since this series of Federal relocations, the entire village has been allowed by the Federal Government to deteriorate to third-world conditions, with water and sanitary conditions that violate federal statutes and endanger the health and safety of Native American residents at the site.

Under the proposed change to the Columbia River Treaty Fishing Access Sites (CRTFAS) program, the existing Celilo Village would be added to the Columbia River Treaty Fishing Access Sites project and rehabilitated like other sites under the program. The water and sewer systems would be updated, residences rebuilt and additional support facilities would be provided. About 20 additional temporary fishing campsites would be provided also. This is important because the two existing CRTFAS sites within 30 miles of the historic Celilo Falls fishery only have a total of 5 fishing camp sites now - for an area where over 5000 Native Americans have recognized treaty fishing rights.

The Portland District staff analyzed the proposed project change of this scope and concluded it can be accomplished within existing authorities. Further, after review of applicable regulations pertaining to Post-Authorization Change reports, the District concluded that the change falls within the discretionary approval of the Division Commander. The District elevated their recommendations to the Northwestern Division office in May of 2001 and concurrently proceeded with planning for the project change. At that time, the Division office was supportive of the initiative. Now after nearly five months of review, that the Northwestern Division office appears to be withdrawing their support.

We understand that there appears to be a dispute over the Celilo Village proposal among the Corps' lawyers and policy staff. The District lawyers have supported the proposal, we understand, recognizing that the Columbia River Treaty Fishing Access Sites statute, a purposeful remedial statute for injuries to tribal treaty fishing rights by the Corps in the Columbia River dam reservoirs in Portland District, is entitled to broad interpretation in favor of the treaty fishing tribes, in compliance with Supreme Court case law. Apparently, the Northwest Division lawyers have taken a much narrower, restrictive

view of the CRTFAS statute and oppose the project, contrary to what we understand Supreme Court case law requires.

After five (5) years of intensive efforts and meetings with Celilo Village residents, Tribal Leaders, Oregon Congressional Representatives, top level Corps of Engineers and Bureau of Indian Affairs officials, State of Oregon Legislators, Wasco County Commissioners and the Columbia River Gorge Commission, substantial documentation has been developed in support of Celilo Village redevelopment and implementation of the Columbia River Treaty Fishing Access Sites Legislation at the Village site.

The following documents are attached to this letter as evidence of the overwhelming need and local support for Celilo Redevelopment and Corps assistance with the project;

- 1.) Exhibit "A" - Celilo Redevelopment Study;
- 2.) Exhibit "B" - CTUIR Resolution #00-67; and Corps Support Letter
- 3.) Exhibit "C" - Yakama Indian Nation Resolution #T-166-01; and Corps Support Letter
- 4.) Exhibit "D" - Warm Springs' Tribes Resolution #10093
- 5.) Exhibit "E" - Nez Perce Letter of December 13, 2000 to Colonel Butler;
- 6.) Exhibit "F" - NWRO/BIA Stan Speaks Area Director Letter to Colonel Butler;
- 7.) Exhibit "G" - Oregon Legislative Assembly House Joint Memorial Resolution #12;
- 8.) Exhibit "H" - Wasco County Commissioner's Resolution of July 21, 1999;
- 9.) Exhibit "I" - October 12, 2001 Letter - Senator Smith and Wyden and Congressman Walden.

In addition the Tribes have had considerable interaction and consultation with the Corps of Engineers Portland District and Division staffs regarding Celilo Redevelopment. In August 2000 I traveled to Portland and met with Colonel Mogren and other Corps staff to request assistance ranging from process facilitation to design and construction.

On October 2, 2000, at the Umatilla Indian Reservation, General Strock, Division Commander, Colonel Butler of the Portland District, Colonel Waggaener of the Walla Walla District and members of their support staffs met with the Umatilla Tribes' Board of Trustees and discussed in detail the Corps involvement at Celilo Village.

George Miller of the Portland District staff has traveled to the Yakama, Umatilla and Warm Springs Reservations and made presentations to the Tribal Councils to obtain input on the redevelopment project and use of In-lieu Site funds for the project.

The BIA, Corps, Tribes and Village residents are continuing to meet to work out site plan, residency, governance and long-term maintenance and operations issues. It is extremely important that we not lose the momentum and confidence of the Village people and Tribal Councils because of bureaucratic delays and posturing.

The need for your action on this matter should be considered a high priority and urgent by the Army. You see Celilo Village is an Army legacy dating back to October 22-23, 1805 when Lewis and Clark, in their pursuit of the Pacific, stopped at the Village. Here they entered into their Journals a description of the historic community and gathering place, the Indian fishery operations and a detailed map of the "Great Falls" and traded for provisions with the ancestors of the current residents. In the year 2003 hundreds of thousands people from all over the world visiting Celilo during the National Lewis and Clark Bicentennial Observance will now find at the Village site a beautifully improved and maintained Corps Park in sharp contrast to the deteriorated and impoverished relocated Celilo Village across the freeway left behind by Corps dam projects. The Celilo Village Redevelopment Project provides the Corps with a unique opportunity to showcase a new Corps legacy in Government to Government relations with native people in time for the Bicentennial Observance.

In this regard I am requesting your assistance in persuading the Division Commander to use his authority and act immediately in support of local resolve to design and construct improvements at Celilo Village without further delay.

Sincerely,



Antone Minthorn, Chairman  
Confederated Tribes of the Umatilla Indian Reservation

Pc: Stan Speaks, Area Director, Portland Area Office  
Colonel David A. Fastabend, Division Commander  
Colonel Randall Butler, District Commander  
Olney Patt, Chairman, WSIR  
Lonnie Selam, Chairman, Yakama Nation  
Phil Sanchez, Superintendent, Umatilla Agency  
Clarence Holford, Superintendent YIN Agency  
Gerald Henrikson, Superintendent WSR agency  
Senator Gordon Smith  
Senator Ron Wyden  
Greg Walden, U.S. Congressman  
Mark Phillips, Tribal Lobbyist  
Marlene White, YIN  
Louie Pitt, WSIR  
Randy Settler, YIN  
George Miller, USACOE

# CELILO VILLAGE

## REDEVELOPMENT STUDY



Photo credit to Wilma Roberts from Celilo Falls: Remembering Thunder, pg #29.

Document Preparation:

Confederated Tribes of the Umatilla Indian Reservation  
Tribal Planning Office  
September 1998

**Contents of EXHIBIT A:  
Celilo Village Redevelopment Study  
Available Upon Request**

**EXHIBIT B**

RESOLUTION NO. 00-67

**C E R T I F I C A T E**

The undersigned, Antone C. Minthorn and Rose Mary Narcisse, hereby certify that they are the Chairman and Secretary, respectively, of the Board of Trustees of the Confederated Tribes of the Umatilla Indian Reservation and that a regular held meeting of said Board of Trustees in the Board Room of the Tribal Office building, Pendleton (Mission), Oregon, on the 24<sup>TH</sup> day of July, 2000, a quorum of said Board was present and the following Resolution was regularly moved, seconded, and adopted by a vote of 6 to 0, and 1 abstaining.

**R E S O L U T I O N**

- WHEREAS,** the Board of Trustees is the duly constituted governing body of the Confederated Tribes of the Umatilla Indian Reservation, Pendleton (Mission) Oregon by authority of the 1949 Constitution and By-laws of the Confederated Tribes of the Umatilla Indian Reservation, **AND**
- WHEREAS,** the Confederated Tribes of the Umatilla Indian Reservation, Warm Springs and Yakama Nation have had a presence at Celilo Falls from time immemorial, **AND**
- WHEREAS,** Celilo Village has been a seasonal fishing grounds, gathering, market and spiritual place for the three Tribes, **AND**
- WHEREAS,** in 1957 the Dalles Dam destroyed the single most productive salmon fishing site in the world, **AND**
- WHEREAS,** in 1947 the Federal Government acquired the relocated Village site to be managed for the use and benefit of all members of the three Tribes, **AND**
- WHEREAS,** loss of the salmon fishery, lack of Federal support and BIA Agency mismanagement have resulted in poverty and unhealthy and unsafe living conditions at the Village, **AND**
- WHEREAS,** a responsive and legally constituted entity is needed now to accept financial responsibility for development and long term management of the Village site and improvements, **AND**
- WHEREAS,** Celilo Village is still a significant cultural and historic place to all Indian people of the region that must be restored and preserved. **AND**

**WHEREAS,** The Celilo Falls area is certain to be a popular attraction to people from all over the world during the upcoming **Lewis and Clark Bicentennial Observance** and the Village should be restored and showcased as an example of the survival of the Indian people's cultural heritage on the River, **AND**

**WHEREAS,** a Joint Resolution was passed by the Oregon State Legislature on May 3, 1999 urging Congress to appropriate funds to restore and redevelop Celilo Village, **AND**

**WHEREAS,** Wasco County Commissioners approved a Resolution on July 21, 1999 supporting Congressional action for a special appropriation to restore Celilo Village to its original purpose and uses, **AND**

**WHEREAS,** the three Tribes must develop a unified approach to accomplish restoration and preservation of the Village, **NOW THEREFORE BE IT**

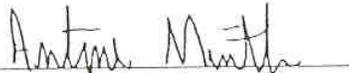
**RESOLVED,** the Board of Trustees adopts and forwards to the Yakama and Warm Springs Tribes for their consideration and adoption, the following policies as their approach to restoring Celilo Village. ""

- 1) The Wy-Am Board be structured and empowered to provide recommendations to the three Tribal Governing bodies and the BIA on development plans and management policies; and
- 2) A Comprehensive Redevelopment Plan be adopted that includes at a minimum all the uses and facilities of the original community; and
- 3) A plan for maintenance, operation, and advisory governance of the community be developed; and
- 4) A legal entity be established to be financial responsible for the development and long term management of the Village, and
- 5) Celilo Village redevelopment be used as a model in approach and form to accommodate the needs of other Indian people and communities in the area; and

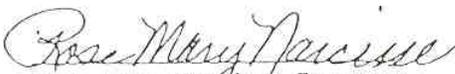
- 6) Each of the three (3) tribes referenced herein provide housing opportunities for the residential overflow needs from the Village for their own tribal members either along the River on potential land surpluses of the Corps of Engineers or at their respective Reservation.

**And**, that said Resolution has not been modified, amended or repealed and is still in full force and effect.

Dated this 24<sup>th</sup> day of July, 2000.

  
Antone C. Minthorn, Chairman  
Board of Trustees

ATTEST:

  
Rose Mary Nacisse, Secretary  
Board of Trustees



GENERAL COUNCIL  
and  
BOARD OF TRUSTEES

CONFEDERATED TRIBES  
of the  
*Umatilla Indian Reservation*

P.O. Box 638  
PENDLETON, OREGON 97801  
Area Code 541 Phone 276-3165 FAX 276-3095

November 13, 2000

Colonel Randall J. Butler  
District Engineer  
USACOE  
PO Box 2946  
Portland, OR 97208

Dear Colonel Butler:

In response to your letter regarding assistance with Celilo Village, we are generally in concurrence with your approach but want to clarify our understanding of your intent.

When you talk about studying the "residential infrastructure needs" that includes housing and other community facilities in addition to essential services as well as management systems needed to operate, maintain and govern the Village.

We appreciate the need for the Corps to conduct a broad review of its relocation records in view of a continuing role to address unfinished business on the River. It appears to be a necessary first step in servicing our request. We also recognize that the overflow needs of Celilo Village may need to be met at other locations along the River. This initial effort is acceptable as long as Celilo Village Redevelopment is the first priority of the Post Authorization Change Report scope of work. We would, however, like to see as much of the preliminary work on the Village as possible be conducted concurrent with this first step.

tpo/jwb 11-13-00

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**TREATY JUNE 9, 1855 ♦ CAYUSE, UMATILLA AND WALLA WALLA TRIBES**

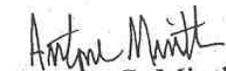
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We will continue to work with the other two tribal councils to create an environment and “framework for consultation” involving all interested parties. We will also encourage the other two tribes to respond immediately to your letter giving their concurrence and terms to your study approach.

We hope these comments will move your efforts forward and we are committed, as you know to restoring Celilo Village with your assistance. If you have questions, please contact me at 541-966-2015 or Jim Beard, Planning Director at 541-966-2599 or [jimbeard@ctuir.com](mailto:jimbeard@ctuir.com).

Sincerely,



Antone C. Minthorn, Chairman  
CTUIR

Pc: Mr. Stanley Speaks, Area Director, BIA  
Mr. Olney Patt, Sr. Chairman Warm Springs Tribal Council  
Mr. Lonnie Selam, Chairman Yakama Tribal Council



Confederated Tribes and Bands  
of the Yakama Nation

EXHIBIT C

Established by the  
Treaty of June 9, 1855

RESOLUTION

T-166 -01

WHEREAS, the Confederated Tribes and Bands of the Yakama Nation is a federally recognized Nation pursuant to the Treaty of 1855 (12 Stat. 951), and

WHEREAS, the Yakama Tribal Council is the governing body of the Confederated Tribes and Bands of the Yakama Nation of the Yakama Reservation, Toppenish, Washington by the authority delegated by Resolution T-38-56, and

WHEREAS, the Yakama Tribal Council has the duty and responsibility according to Resolution T-38-56 and T-10-61 to protect and preserve the Treaty Rights of the Yakama Nation, and

WHEREAS, the federal government through the United States Army Corps of Engineers (USACOE) has built four dams resulting in the inundation of these usual and accustomed fishing places and fishing villages; and

WHEREAS, Public Law 100-581, Title IV, Nov. 1, 1988, Columbia River Treaty Fishing Access Sites, was adopted by Congress to be administered to provide access to usual and accustomed fishing areas and ancillary fishing facilities for members of the Yakama Nation and

WHEREAS, the USACOE, governed by P.L. 100-581, Title IV, Columbia River Treaty Fishing Access Sites and the Treaty of 1855, is under current and on-going commitments/obligations to the Yakama Nation to undertake and analyze, review and recommend remediation/mitigation aspects of infrastructure development, cultural, environmental and religious rights and traditional practices lost to Tribes by hydroelectric development; and

WHEREAS, the Columbia River Treaty Fishing Access Sites Project is nearing completion and the Yakama Nation recommends the USACOE to make the addition of the Celilo Village Redevelopment Project to the USACOE Post Authorization Change (PAC) report. The PAC Report shall identify the changes in project purpose, scope, cost, location and other parameters necessary to address the infrastructure needs at these locations under P.L. 100-581, the Columbia River Treaty Fishing Access Sites Project. The PAC Report shall then be submitted to the proper USACOE headquarters office for final review and approval; and

WHEREAS, the Yakama Nation recognizes that many descendants of the original Federal relocatees living on lands provided by the Department of the Army near the Bonneville and The Dalles pools live in unsuitable housing with inadequate water, sanitation, utilities and sewage systems (this includes Celilo Village). A study for changes is incomplete; and

WHEREAS, the Fish, Wildlife, Law and Order Committee, through the Tribal Council, presently has oversight and through the delegation of Randy Settler met and discussed the issues and resolutions with USACOE. The USACOE understands and will develop a final report and will be presented to the full tribal council for approval.

NOW, THEREFORE, BE IT RESOLVED, by the Yakama Tribal Council meeting in regular session at the Governmental Offices of the Confederated Tribes and Bands of the Yakama Nation, Toppenish, Washington, with a quorum being present, recognizes that the construction of

Post Office Box 151, Fort Hood, Toppenish, WA 98948 (509) 865-5121

the dams on the Columbia River by the USACOE has created severe economic hardships to the Indian fishery and the Indian fisherman and that there exists authorized funds under the current authorization for P.L. 100-581, the Columbia River Treaty Fishing Access Sites Project, and adopts and forwards to the USACOE the following to be considered in the final PAC Report:

1. The immediate redevelopment and restoration of the Celilo Village to reasonable health and safety standards; and
2. Transfer of additional lands owned by the USACOE adjacent to the Celilo Village to expand and meet the overflowing residential infrastructure needs for the Yakama Nation; and
3. Transfer of additional lands owned by the USACOE or the purchase of lands to replace tribal fishing villages inundated by the hydroelectric development to the Yakama Nation; and
4. Assist in the Development/Construction of the residential, religious and economic infrastructure to assist the needs of the Columbia River people along or near the ceded, usual and accustomed areas of the Yakama Nation; and
5. Assist in the development of the operation and maintenance plans for each site that is considered.

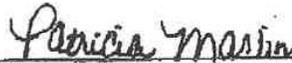
BE IT FURTHER RESOLVED, the Yakama Nation concurs with the USACOE that immediate funding is available and gives consent to the USACOE to begin the Celilo Village Redevelopment Project as soon as possible.

BE IT FURTHER RESOLVED, the Yakama Nation will continue to work with the USACOE with the "infrastructure needs" and the development of "framework for consultation".

BE IT FINALLY RESOLVED, that the Yakama Nation does not waive, alter, or otherwise diminish its Sovereign Immunity, whether expressed or implied, by virtue of this contract for any and all administrative or legal action which may arise directly or indirectly from the same, nor does the Yakama Nation waive, alter, or otherwise diminish its rights, privileges, remedies or services guaranteed by the Treaty of 1855.

DONE AND DATED on this 13<sup>th</sup> day of July, 2001, by the Yakama Tribal Council by a vote of 7 for, 2 against, 1 abstention.

ATTEST:

  
Patricia Martin, Secretary  
Yakama Tribal Council

  
Lonnie Selam, Sr., Chairman  
Yakama Tribal Council



Confederated Tribes and Bands  
of the Yakama Indian Nation

Established by the  
Treaty of June 9, 1855

Colonel Randall J. Butler  
District Engineer  
USACOE  
PO Box 2946  
Portland, OR 97208

Dear Colonel Butler:

In response to your letter regarding assistance with Celilo Village, the Yakama Nation is generally in concurrence with your approach but wish to clarify our understanding of the United States Corps of Engineers (USACOE) intent. The Yakama Nation is in agreement with the USACOE that the Celilo Village Redevelopment should be first priority and the first step to be taken.

Although we agree to utilize PL100-581 Columbia River Treaty Fishing Access Sites funding to initiate the engineering and feasibility study related to Celilo Village, we believe obligations are still owing to Columbia River treaty tribes for dislocation of usual and accustomed fishing villages vacated by hydroelectric development.

There is, as stated in your letter dated October 27, 2000, a need to address the "infrastructure needs" of Columbia River Treaty Fishing Access Sites. However, the Yakama Nation believes a historical review of records of the USACOE will show that the USACOE made commitments to provide and adequately fund the replacement and relocation of structures, villages and housing for members of the Columbia River treaty tribes, including land acquisitions for these purposes. The Yakama Nation believes the record will show these obligations are still owing today and are firm commitments that were not conditioned upon any study or needs analysis.

The Yakama Nation urges the USACOE to fully review Public Law 100-581 and note that section (3) make improvements at existing sites, including but not limited to dredging at the site at Wind River, Washington has not been completed. Other concerns prior to any Post Authorization Change (PAC) Report's scope of work should include:

- (1) Acquisition of additional or transfer of COE lands to meeting the housing needs adjacent to Celilo Village
- (2) Acquisition or transfer of COE lands in Washington State to meet the "infrastructure needs"; of additional housing development.

The Yakama Nation will continue to work with the other tribes to create an environment and "framework for consultation" involving all interested parties. We will also encourage the other tribes to respond immediately to your letter giving their concurrence and terms to your study approach.

Post Office Box 151, Fort Road, Toppenish, WA 98948 (509) 865-5121

The Yakama Nation hopes these comments will move the USACOE's efforts forward and together our commitment will result in the restoration of Celilo Village in a timely manner and address our other concerns.

If you have any questions, please contact Mr. Randy Settler, the Yakama Nation's In-Lieu Task Force representative at 509-865-7260.

Sincerely,



Donnie Selam,  
Chairman, Yakama Nation

## EXHIBIT D

RESOLUTION NO. 10093

WHEREAS, The Confederated tribes of the Warm Springs Reservation of Oregon is a federally recognized tribal entity pursuant to the Treaty of 1855 with the Tribes and Bands of Middle Oregon; and,

WHEREAS, The Tribal Council is the duly constituted governing body of the Confederated Tribes of the Warm Springs Reservation of Oregon by the authority of the Constitution and By-Laws as approved and amended to fulfill purposes that include a duty and obligation to protect and preserve the sovereign, Treaty and reserved rights of its members in perpetuity; and,

WHEREAS, The people of the Warm Springs Reservation of Oregon maintain a rich and vibrant cultural and spiritual heritage that has been inextricably linked to land and resources of the mid-Columbia River region and beyond since the immemorial; and,

WHEREAS, The Celilo Village is a vital element of our ageless spiritual, ceremonial, social, economic and political existence and whose presence inspires an awareness and respect for the common bonds of kinship present among the original inhabitants of this region from the time of beginning; and,

WHEREAS, The federal government through the U.S. Army Corps of Engineers built a series of dams that inundate many important usual and accustomed fishing sites and villages; and,

WHEREAS, The U.S. Congress enacted P.L. 100-581, with the intent of addressing Columbia River Treaty Fishing Access Sites to ensure access to usual and accustomed fishing sites and facilities for the members of the Confederated Tribes of the Warm Springs Reservation; and,

WHEREAS, The Army Corps of Engineer have undertaken a substantial effort to implement the intent and provisions of P.L. 100-158 which include a proposed change to add a project for the re-development of the Celilo Village to correct the severely unsafe and inadequate living conditions with appropriate infrastructure and facilities; and,

WHEREAS, The implementation and completion of this project will require full and active consultation and concurrence of the effected Tribes consistence with their sovereign and lawful treaty status and territories to protect their rights as successors in interest; now, therefore

**RESOLUTION NO. 10093**  
**PAGE TWO OF THREE**

**BE IT RESOLVED**, By the (Twenty-Second) Tribal Council of the Confederated Tribes of the Warm Springs Reservation of Oregon pursuant to the Constitution and By-Laws, Article V, Section 1 (a) (d) and (1) do hereby reaffirm a need and a call for the Federal Government to undertake more timely and deliberation action for the implementation of the Columbia River Treaty Fishing Access Sites Legislation, P.L. 100-581; and,

**BE IT FURTHER RESOLVED**, The Tribal Council generally concurs with and supports the expeditious re-development of Celilo Village in accordance with the concepts recently presented by representatives of the USACOE; and,

**BE IT FURTHER RESOLVED**, The Tribal Council endorses the following Guidelines to be forwarded to the USACOE for the re-development and restoration of the Celilo Village:

1. The Wy-Am Board be reconstituted and authorized to make recommendations to their respective Tribal Governments and the BIA for on-going development needs and management policies.
2. A Celilo Village Master plan be completed for reviewed and concurrence by the affected Tribes to preserve traditional and historic values while accommodating compatible uses and facilities that preserve its unique ceremonial character.
3. A plan and budget be created for the operation, maintenance and expansion of facilities, infrastructure and alternate levels of use or development.
4. Establish and/or designate a legal entity that can be delegated the necessary fiscal responsibility and operational management of the Village and surrounding area, consistent with Tribal review and oversight.
5. Seek to enhance the unique heritage, character and values associated with the Celilo Village as an endearing tribute to the ageless belief in the unwritten laws, visions, wisdom, honor and perseverance that guided our elders and ancestors which we are obligated to pass onto our successive generations.

RESOLUTION NO. 10093  
PAGE THREE OF THREE

BE IT FURTHER RESOLVED, That the Tribal Council seeks and expects active participation with the USACOE to develop additional infrastructure needs and a consultation framework.

CERTIFICATION

The undersigned as Secretary-Treasurer of the Confederated Tribes of the Warm Springs Reservation of Oregon, hereby certifies that the Tribal Council is composed of 11 members of whom 9, constituting a quorum, were present at a meeting thereof, duly and regularly called, noticed, convened and held this 3<sup>rd</sup> day of October, 2001; and that the foregoing resolution was passed by the affirmative vote of 8 members, the Chairman not voting; and that said resolution has not been rescinded or amended in any way.

APPROVED: OCT 12 2001

  
Charles V. Jackson  
Secretary-Treasurer

  
Gerald Henrikson  
Acting Superintendent

cc: Secretary-Treasurer  
Superintendent  
Administrative Services Center



*Nez Perce*

EXHIBIT E

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

December 13, 2000

Colonel Randall J. Butler  
District Engineer  
U.S. Army Corps of Engineers  
P.O. Box 2946  
Portland, Oregon 97208

DEC 18 2000

RECEIVED

RE: Celilo Village

Dear Colonel Butler:

The Nez Perce Tribe has received a copy the October 10, 2000 letter from Antone Minthorn, Chairman of the Confederated Tribes of the Umatilla Reservation, to you regarding assistance at Celilo Village. A copy of this letter is attached.

Contrary to the impression that Chairman Minthorn's letter may give, the Nez Perce Tribe is very interested in playing a direct role in the management of issues of Celilo Village. By virtue of the Treaty of 1855, the Nez Perce Tribe reserved the right to fish at all usual and accustomed fishing places. This includes the right to fish on the mainstem of the Columbia River at and near Celilo. Members of the Nez Perce Tribe have and continue to exercise these rights to this day.

We hope as management decisions are made at Celilo that the Corps continues to include all of the Columbia River Treaty Tribes, including the Nez Perce. We appreciate your attention to this matter. Thank you.

Sincerely,

*Samuel N. Penney*

Samuel N. Penney  
Chairman

cc: Antone C. Minthorn, Chairman, CTUIR  
Olney Patt, Sr., Chairman, Warm Springs  
Lonnie Selam, Chairman, Yakama

Attachment (1)



IN REPLY REFER TO:

## United States Department of the Interior

BUREAU OF INDIAN AFFAIRS  
Northwest Regional Office  
911 N.E. 11th Avenue  
Portland, Oregon 97232-4169



FEB 20 2001

Colonel Randall Butler  
Department of the Army  
Portland District Engineers  
P.O. Box 2946  
Portland, OR. 97208-2946

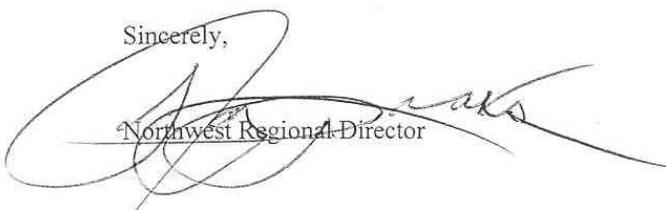
Dear Colonel Butler:

In response to your letter of October 27, 2000 regarding the redevelopment of Celilo Village, while we support the initiative your agency and the treaty tribes have demonstrated, we also have concerns regarding the expenditure of funds from the In-Lieu/Treaty Fishing Access Site legislation, they are as follow:

- If you are to use construction funds for the planning process for the redevelopment of Celilo Village we support this issue. However, we would suggest the operation and maintenance funds not be used, as we are finding some shortfalls in the money we receive from the COE for O&M expenses.
- While we understand that any excess construction funds will be used for the purpose of redevelopment of Celilo Village, we would first like to see any excess construction funds aid in completing needed constructions improvements for the existing In-Lieu/Treaty Fishing Access Sites.
- Inclusion of the Nez Perce Tribe becomes paramount when decisions are being made relative to PL100-581 legislation.
- We must consider concurrent annual operation and maintenance funds for any improvements that are made to the Village.

We look forward to working with your agency and the tribes in developing a "consultation framework" for redevelopment of Celilo Village. If you have questions, please contact me directly or contact Mr. Lee Skenandore, Regional Facilities Manager on 503/231-6278.

Sincerely,

  
Northwest Regional Director

Cc: Antone Minthorn, Chairman, CTUIR Board of Trustees  
Lonnie Selam, Chairman, Yakama Nation  
Samuel N. Penney, Nez Perce Tribal Executive Committee  
Olney Patt, Chairman, CUTSIR

70th OREGON LEGISLATIVE ASSEMBLY--1999 Regular Session

Enrolled  
House Joint Memorial 12

Sponsored by Representative SIMMONS, Senator NELSON (at the request of Confederated Tribes of the Umatilla Indian Reservation)

To the Senate and House of Representatives of the United States of America, in Congress assembled: We, your memorialists, the Seventieth Legislative Assembly of the State of Oregon, in legislative session assembled, respectfully represent as follows:

Whereas the historic Celilo Village has twice been moved or altered by projects of the United States Government; and

Whereas Celilo Village is one of the most visible Indian communities in the nation with thousands of visitors per day; and

Whereas the once prosperous center of fishing and trade has been lost to neglect, deterioration and poverty; and

Whereas the Confederated Tribes of the Umatilla Indian Reservation have committed to assist the "River People" and have prepared a detailed inventory of existing buildings and a preliminary plan for replacement and refurbishing; and

Whereas the land, infrastructure and five of the remaining houses from 1947 are held in trust by the Bureau of Indian Affairs for use by the Umatilla, Warm Springs, Yakima and other Columbia River Indians; now, therefore,

Be It Resolved by the Legislative Assembly of the State of Oregon:

(1) The Congress of the United States is urged to appropriate the necessary funds to restore and redevelop Celilo Village.

(2) A copy of this resolution shall be sent to each member of the Oregon Congressional Delegation.

Adopted by House May 3, 1999

*Ramona J. Henady*  
Chief Clerk of House

*Spencer Probst*  
Speaker of House

Adopted by Senate May 24, 1999

*Brody*  
President of Senate

FILED: June 15, 1999  
AT 4:50 O'CLOCK P.M.  
*Paul Uhly*  
Secretary of State

**EXHIBIT H**

IN THE COUNTY OF THE STATE OF OREGON  
IN AND FOR THE COUNTY OF WASCO

RECEIVED  
JUL 29 1999  
TRIBAL PLANNING OFFICE

A RESOLUTION IN SUPPORT OF A }  
CONGRESSIONAL APPROPRIATION TO} RESOLUTION  
RESTORE CELILO VILLAGE. }  
}

WHEREAS, Celilo Village is built on federally owned land in Wasco County and not under the jurisdiction of the county government; and

WHEREAS, the Wasco County Court is concerned with the health, safety and welfare of all people who live in the County; and

WHEREAS, the Village site has deteriorated over the years to a blighted, unsightly and apparently unsafe and unhealthy condition that is highly visible from Interstate 84; and

WHEREAS, the Umatilla, Warm Springs and Yakama Indian Tribes in concert with Bureau of Indian Affairs have developed a plan to restore the Village to its original purpose; and

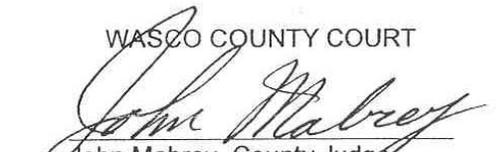
WHEREAS, the Celilo Legacy is a cultural and historic treasure that belongs to the people of Wasco County and all the region; and

WHEREAS, during the Lewis and Clark Bicentennial years of 2005 and 2006 people from all over the world will be in Wasco County visiting the Celilo site; and

NOW, THEREFORE, BE IT RESOLVED BY THE COUNTY COURT OF WASCO COUNTY, OREGON, AS FOLLOWS: That they support the Tribes' efforts to restore the community to its original purpose and uses and support a special congressional appropriation in the amount of \$6.5 million to fund the Redevelopment Plan.

Dated this 21<sup>st</sup> day of July, 1999.

WASCO COUNTY COURT



John Mabrey, County Judge

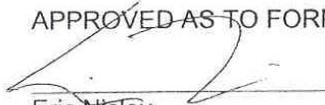


Dan Ericksen, County Commissioner



Scott McKay, County Commissioner

APPROVED AS TO FORM:



Eric Nisley  
Wasco County District Attorney

*Obledo  
2001 letters*

Congress of the United States  
Washington, DC 20510

EXHIBIT I

October 12, 2001

The Honorable Robert C. Byrd  
Chairman  
Senate Appropriations Committee  
Dirksen 127  
Washington, DC 20510-6030

The Honorable Bill Young  
Chairman  
House Appropriations Committee  
2362 Rayburn HOB  
Washington, D.C. 20515-6020

Dear Chairmen Byrd and Young:

We are writing to urge that language be added to the Conference Report on the Fiscal Year 2002 Energy and Water Development Appropriations.

The ancient and famous Native American fishing and trading site of Celilo Falls on the Columbia River was submerged by the reservoir created with the 1957 construction of the Dalles Dam. At that time, the Native American village at Celilo was re-established at a nearby site just off Highway I-84, the major route through the Columbia Gorge. About 100 members from the Umatilla, Yakama, and Warm Springs Tribes reside in the Village – held in trust by the Bureau of Indian Affairs – which over the years has become overcrowded and very decrepit. Immediately adjacent to I-84, Celilo Village is the single most visible Native American community in the Northwest along the Lewis and Clark Trail, which is being heralded during the Lewis and Clark Bicentennial Observance.

When the Dalles and other federal dams were built by the Corps of Engineers on the lower Columbia River in Oregon and Washington, the regional Tribes were promised new fishing access sites on the edge on the new reservoirs for the Tribes' continued exercise of their treaty-protected fishing rights. Although 400 acres of sites were promised, only a few were developed, which also became overcrowded and decrepit. To rectify this, in 1988 Congress passed Title IV of PL 100-581, authorizing the Corps of Engineers to rehabilitate existing access sites and develop specific new sites. Those specified sites did not include Celilo Village, which is not on the water's edge.

The Corps of Engineers is now well into the process of developing the new and rehabilitated fishing access sites. The process is on schedule and well within the amount

budgeted in the fishing sites account. Working with the Tribes, the Corps has determined it can rehabilitate Celilo Village within the budgeted amount for the fishing sites. The Corps is fully prepared and very willing to undertake this needed and worthwhile effort, which requires Congressional language to add Celilo Village to the specified list of eligible sites.

In order to get the redevelopment underway in time for the Lewis and Clark Bicentennial, that authority is needed almost immediately. We feel that the FY 2002 Energy and Water Development Appropriations bill, H.R. 2311, is the most appropriate vehicle to accomplish this.

We therefore request that the following bill language be included:

**Funds appropriated herein and subsequently appropriated for Title IV of P.L. 100-581 are available for redevelopment of Celilo Village, Oregon.**

We would also request that the following committee report language be included:

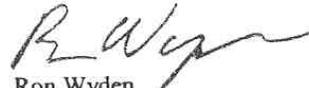
**The Flood Control Act of 1950 authorized the construction of a replacement treaty fishing village for Celilo Village, Oregon. The Columbia River Treaty Fishing Access Sites Act, Title IV, P.L. 100-581, November 1, 1988, was enacted to remedy this and other Indian compensation deficiencies from the construction and operation of the Bonneville, the Dalles, and John Day dams. Funds are available to rehabilitate Celilo Village using plans developed by the Portland District and in consultation with the affected Indian Tribes and the Department of the Interior, Bureau of Indian Affairs.**

Thank you in advance for your consideration of our request. Please contact Matt Hill (224-8319) of Senator Smith's staff or Sarah Bittleman of Senator Wyden's staff at 224-3163 if we can be of any assistance to you.

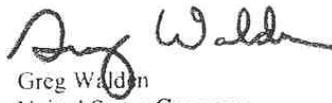
Sincerely,



Gordon H. Smith  
United States Senate



Ron Wyden  
United States Senate



Greg Walden  
United States Congress

## **APPENDIX D: DRAFT GOVERNANCE AND OPERATION PLAN**

### **CELILO VILLAGE OPERATIONS, MAINTENANCE AND GOVERNANCE PLAN**

#### **1. INTRODUCTION**

In addition to traditional project elements discussed earlier in the PAC, the four Treaty Tribes have asked the Corps to support development of a Celilo Village governance plan. Redevelopment benefits will accrue through simple construction, but will be fleeting without a viable governance plan, resulting in the Village rapidly returning to its present unsatisfactory condition. This Appendix to the PAC outlines a tentative governance plan for Celilo. It is only a draft proposal outlining Corps governance suggestions, and may be readily modified by the parties. Its primary purpose is to serve as a starting point for discussions between the Tribes, the BIA, and the residents of Celilo Village.

This emphasizes the reality that when redevelopment is complete Corps involvement in Village governance ceases. Others are responsible for O&M at the site, and for the project's ultimate success. The Corps realizes, however, the necessity of having a viable governance plan and structure in place prior to construction being finalized at Celilo. The Corps will thus make an advance transfer of O&M funds to the BIA for the process of developing and adopting a Celilo Village governance plan.

Celilo Village, one of the most visible Indian communities in the Columbia River Basin, is a direct result of relocations associated with Federal Dam construction. The population dynamics, as well as the structure of the Village itself have changed multiple times since its creation. Currently there are approximately 50 individuals living in Celilo. The bulk of the population is composed of enrolled members of the four Treaty Tribes. There are also a number of residents not enrolled in any federally recognized Tribe, and several individuals not of Native American descent. Several residents lack the legal right to occupy homes in Celilo, raising questions regarding who should actually have a voice in Village affairs. Because residents possess a spectrum of legal rights and tribal affiliations, it has been difficult to forge Village governance consensus. There have been several attempts over the years to bridge this distance. They have largely failed.

In 1976, the Tribes and the residents created the Wyam Board "to provide adequate, safe and sanitary housing as well as granting resident eligible Tribal members...a voice in the affairs of Celilo." Unfortunately, the board accomplished little during its tenure, as it lacked real power, and was eventually disbanded.

The Mid-Columbia River Council was created in 1985, "to represent the people of the Mid-Columbia area." The Council included Celilo Village in a broader plan to provide structure throughout the Mid-Columbia region, as well as to empower area residents not enrolled in any recognized tribe. This was important because a number of Native Americans living in the Mid-Columbia region are "River People," a group that has never entered into treaties with the U.S. government, and is not a Federally recognized tribe.

Their rights and concerns must be considered while redeveloping Celilo. Though the Mid-Columbia River Council had a promising beginning, including the pursuit of non-profit status and plan formulation for a Celilo cultural center, it has since languished into obscurity.

## **2. PURPOSE**

For years there has been no stable governance structure at Celilo Village. The Wyam Board was disbanded. The Mid-Columbia River Council faded. The BIA's nearest agency is located on the Yakama Reservation, eighty miles distant. The tribes often disagree on what is best, and have historically been opposed to Village self-governance. While there are strong authority figures among the residents, none assumes the mantle of responsibility for providing services and security. These factors all contribute to a vacuum of authority at Celilo.

This vacuum is directly related to the problems facing Celilo today. The buildings and infrastructure were inadequate when constructed, and deteriorated rapidly. Garbage and abandoned vehicles have accumulated. There are no readily available law enforcement resources for combating crime and vandalism. Essential services are not provided, and those that are, such as water and sewage, fall below current health standards.

The Celilo Village Redevelopment project will solve the physical problems by providing safe housing and modern water and sewage systems. It will improve the appearance of the highly visible Village, making it a positive example of cooperation between Native Americans and the Federal government, rather than a bleak reminder of past mistakes. This appendix's purpose is to build on the foundation provided by these physical improvements to resolve some of the nonphysical problems: the "who," the "how," and the "when" of regulation, law enforcement, and community planning and decision making. The plan is composed of four major sections: 1) an Operations and Maintenance Plan, 2) an overview of an Interim Decision Making Structure, 3) a Governance Plan, and 4) suggestions for the possible transition to self-governance at Celilo.

There are several themes that characterize the overall plan. First, all efforts should be made to include the major actors in both the design and construction of the project. The BIA, the Tribes, and the residents all have a great deal of influence over the future of the Village, and should be frequently consulted to maintain project buy-in, as should all groups and individuals interested in Celilo. Second, it is crucial that a permanent, funded O&M Plan be created to insure that maintenance and repair is not haphazard and temporary as in the past. Finally, the Wyam Board should be resurrected and empowered to serve as the voice for Village affairs and a force for Village improvement.

## **3. OPERATIONS AND MAINTENANCE PLAN**

### **3.1 Roles And Responsibilities For Implementation**

The roles and responsibilities of the Corps, the BIA, the Wyam Board, the Tribes, and the residents, will evolve over the course of Celilo Village redevelopment. For a detailed

breakdown of these roles and responsibilities, please review Tables D-1 to D-3, which chart party responsibility from the planning, through design, and into operations and maintenance.

### 3.1.1 BIA.

The O&M of Celilo Village is currently the responsibility of the DOI-BIA. In response to the CRTFAS authorizing legislation, P.L. 100-581, a plan to share costs of OMR&RR between the Corps and BIA evolved in discussions (November 1994 and January 1995) between the Assistant Secretary of the Army for Civil Works, the Assistant Secretary of Interior for Indian Affairs. The discussions resulted in the 23 June 1995 Memorandum of Understanding between the Department of the Army and the Department of the Interior, entitled "Transfer, Operation, Maintenance, Repair, and Rehabilitation of the Columbia River Treaty Fishing Access Sites." (Hereafter 23 June, 1995 MOU). The 23 June 1995 MOU provides for the DOI, BIA to accept OMR&RR of the Treaty fishing access sites after construction and transfer.

Recognizing the need to develop Celilo Village governance prior to construction, the Corps will make an advanced transfer of OMRR&R dollars, in the sum of \$150,000, to the BIA to be used for the development and adoption of a governance plan. This sum will be deducted from the total estimated amount of OMRR&R that will be transferred to the BIA. The BIA will accept the remaining OMRR&R of Celilo Village after construction and transfer, upon completion of the redevelopment process, and all efforts will be made to insure the transfer from the Corps to the BIA is as rapid and seamless as possible.

It is recommended that the BIA create a hired position, preferably from among the Village residents, to provide basic repair and maintenance work at Celilo. The BIA previously considered a similar idea, where a locally hired maintenance worker would be employed 3 hours a day, 3 days a week. A full time employee may be necessary however. This employee would be charged with OM&R of the Village common areas and buildings, and would advise the Wyam Board and the BIA regarding any larger scale projects that may become necessary. The employee would also be responsible for general OM&R of the water and sewage systems, advising the BIA of any larger scale projects that may become necessary. The BIA should preferably hire a resident for three reasons. First, it provides an economic opportunity where few are available. Second, it will lead to more project buy-in by the residents as they will have an additional voice in Village affairs (particularly regarding physical conditions therein). Finally, it allays the residents' concerns regarding the security of their homes and possessions from "outsiders."

The Corps will provide the maintenance worker with a publication outlining technical standards for the buildings and grounds. The publication will include technical standards for both the frequency of service (buildings) and desired results (grounds). The requirements for maintenance will be outlined in the O&M Manuals. Potable water quality standards for the Village will be in accordance with current state standards for community water systems.

### 3.1.2 The Residents.

Village residents will be responsible for basic home repairs that the O&M Manuals do not specifically allocate to the maintenance worker. This will include general upkeep, as outlined in the residency permits. Residents will secondarily be responsible for monitoring the upkeep of the common buildings and areas, and helping to insure that the condition of these common properties does not interfere with their use by the Tribes and other residents.

### 3.1.3 The Tribes.

The three Treaty Tribes will be responsible for monitoring the upkeep of the common buildings and areas, and insuring that the condition of these common properties does not interfere with their use by the Tribes and the residents.

### 3.1.4 The Corps.

During the redevelopment process, the Corps will continue to consult with the BIA, the Tribes, and the residents. By actively engaging the other parties in discussions, the Corps better insures that the O&M needs of these groups are considered and met to the greatest extent practicable. This interaction will also enable the Corps to design and site buildings optimally at the Village, providing a better environment for the eventual residents. The Corps will not be responsible for O&M of Celilo buildings and facilities following their construction and transfer to the BIA.

## **3.2 Funding**

Celilo Village was constructed with substandard materials that created substandard housing and fishing facilities. One of the major causes of the deterioration of Celilo, beyond the historical fact of substandard initial materials and construction, has been the lack of funding for Village maintenance. There are few available income sources for the Village, and this is exacerbated by the fact that Celilo effectively has no tax base. Therefore, any funding for the Celilo Village Redevelopment Project, including general site preparation and debris removal, demolition and construction of buildings, O&M, and later governance of the Village, must be provided by sources outside of Celilo.

The Corps will use CRTFA project funds to complete Celilo Village redevelopment. Additionally, the Corps has agreed to contribute a one-time amount for O&M of Celilo Village, consistent with other sites included in the project authorization. After construction the Corps will transfer the capitalized funds to BIA. As stated before, the Corps will make an advance transfer of these funds, which will be deducted from the total of funds transferred, for the purpose of developing and adopting a Village governance plan.

It is recommended that the BIA contract with the Tribes to establish a trust fund, using these funds to provide for the salary of the maintenance worker, meet other O&M costs, and to possibly support governance efforts at the Village. This agreement will be an Indian Self-Determination Agreement for O&M between the Tribes and the DOI-BIA. The provisions of Title I of the Indian Self-Determination and Education Assistance Act

(25 U.S.C. 450 et seq.) are incorporated in this agreement. The agreement would contain investment guidelines and would call for the BIA and Tribes to develop a Five-Year Plan for O&M. Another option would be for the BIA to transfer these funds to a not-for-profit organization organized by the Tribes that could oversee these activities.

The Tribes have limited resources, and though they have allocated funds for Celilo in the past, these sums have been too little to effectuate lasting change or progress. Similarly, BIA funds have been unable to make a significant difference. The BIA has formerly expended funds to provide for maintenance work in the Village, and to hire individuals for performing repairs, but has not budgeted for a regular O&M program on a continuing basis. Currently the BIA is rethinking its procedures and considering creating a permanent funding allocation for the O&M at Celilo. This allocation would be added to the O&M funds the Corps provides, and would greatly enhance the rapidity of completion as well as the potential scale of future O&M projects. It is essential that, at a minimum, the Tribes and BIA both continue to support Celilo at current funding levels. Corps funding should not, and cannot, replace these sources. They must remain to ensure that there is a maximum gain in O&M funding resulting from the Redevelopment Project.

Future funding may be available through the State of Oregon and the Federal government. Oregon legislators have suggested that funds might be available if the Tribes were united in their support for redevelopment at Celilo, and if a proper governance structure was created to insure the long-term success of such redevelopment. Sympathetic members of Congress have made similar statements. Additional monetary support could come from other Federal or state agencies. This support in the state legislature and on the federal level serves as added encouragement for the diverse parties to come together for a long-term solution at Celilo, a solution that would appear much more likely as a result of these additional funds.

### **3.3 O&M Manuals, Technical Standards And Maintenance Schedules.**

The Corps will produce operation manuals, technical standards, and maintenance schedules that the operations manager can refer to in the pursuit of his duties and responsibilities. These documents will be designed, edited, and produced concurrent with the construction at the Village, and will be available upon completion of the project. There will be no lag between project completion and publication availability, insuring that O&M will commence immediately, and that there will be no dead time when structures and facilities might deteriorate without care.

## **4. INTERIM DECISION MAKING STRUCTURE**

### **4.1 Planning, Design, And Construction Phase**

The Corps has consulted with the Tribes, the BIA, and the residents in developing the Celilo Village Redevelopment plan, and will consult with the Wyam Board when it is operational.

## **4.2 Re-creation of the Wyam Board**

The residents, the BIA, and the Tribes have begun to develop a governance structure that will inherit a large portion of decision-making authority as the redevelopment process proceeds: the re-created Wyam Board. This process will be finished concurrently with the completion of the PAC report and before the Corps completes designs for redevelopment of the Village buildings and infrastructure.

The Umatilla, Yakama, and Warm Springs Tribes have appointed representatives and alternates to the Wyam Board. The Tribes and the BIA have cooperated in developing a list of the Village's legal residents that is the primary means for determining voter eligibility. The Tribes, their staffs, and their appointed representatives on the re-created Wyam Board have made board position eligibility determinations, and have conducted an election at Celilo to determine which two legal residents will serve on the re-created board.

### 4.2.1 Historical Makeup of the Wyam Board

By the 1970's, Celilo had greatly deteriorated, and the residents of the Village were in need of better houses and living conditions, as well as participation in the decisions that affected them. The Tribes desired to provide adequate, safe, and sanitary housing as well as granting resident eligible Tribal members a voice in Celilo affairs. To this end, Resolution Number 76-01 on 27 May, 1976, created the Wyam Board, which was established to carry out certain administrative functions and responsibilities at Celilo. (CTUIR Historical Record). The board was composed of one member and one alternate appointed by each of three Treaty Tribes (the Confederated Tribes of the Umatilla Indian Reservation, the Confederated Tribes of the Warm Springs Reservation, and the Confederated Tribes and Bands of the Yakama Indian Nation), and two representatives elected by and from Celilo residents.

While the Tribes granted some powers to the Wyam Board, they reserved approval authority, subject to the concurrence of the Secretary of the Interior, over all leases, permits or developments that would be an encumbrance of the land, and the ability to plan for the future of Celilo. The Tribes also reserved the right to veto any decision of the Wyam Board, ensuring that they and not the Wyam Board existed as the ultimate authority in Celilo.

### 4.2.2 Changing Climate for Governance

Though the first incarnation of the Wyam Board in the 1970's was not as successful as hoped, there are a number of signs that the body could be more effective the second time around. The Tribes are apparently united in supporting redevelopment at Celilo. They have all supported the re-creation of the Wyam Board, and reaffirmed their participation on that board. Included in their support is the belief, at least on the part of the Umatilla Tribe, that an increase in Village self-governance may lead to the residents taking a more active role in maintaining the condition of the Celilo buildings and common areas. Because each of the Tribes views Celilo to be of great cultural, spiritual, and economic importance, and uses Village common areas and fishing facilities extensively, each has a vested interest in future conditions at the site, even apart from their established treaty

rights. Though the Tribes may be against relinquishing authority in the Village, they may well be disposed to share or refocus it if this results in improved conditions at Celilo.

The residents also support the Redevelopment Project and the creation of a governance structure, because of the potential for living condition improvements. They are concerned regarding the health and safety of the Village, particularly the quality of their water and sewage systems. The Redevelopment Project will improve these physical systems, while the creation of a governance structure presents the residents the opportunity to have a new, stronger voice in Village decision-making. If the recreated Wyam Board also provides a better forum for interaction with the Tribes and the BIA, all the better.

The BIA is taking a much more active role in Celilo Village affairs as well. Though the BIA has a trust responsibility for Celilo, Congress has structured the BIA to deal directly with Tribes, rather than individual settlements inhabited by Native Americans with various Tribal affiliations. This has led to Celilo having a tenuous status regarding BIA funds and attention. Residents who are enrolled members of the Yakama, Warm Springs, or Umatilla Tribes can access benefits and services through those respective reservations, but the rest of the residents, and the Village itself, can fall through the Federal protective net. The BIA's participation in the redevelopment process insures that additional technical resources are available for Village governance.

Another factor portending improvement is the approaching Lewis & Clark bicentennial. All parties involved: the BIA, the Corps, the Tribes, and the residents, have a great deal to gain culturally, spiritually, and/or economically from the redevelopment of the Village. The new governance structure will be a vital part of that redevelopment. The fact that the bicentennial is quickly approaching is a great impetus for the groups to put aside their perceived historical differences and to do what they are able to finish the project in the near future. All these factors taken together suggest there is greatly increased support for a new Wyam Board, and that it will have a much greater chance at success than during its first inception.

#### **4.3 The Structure Of The New Wyam Board**

Though the Wyam Board is being resuscitated to serve as the governance entity for Celilo Village, it should not be a mirror image of its previous form. Several changes should be implemented to remove some of the prior obstacles to its effectiveness. These suggested changes are only independent Corps recommendations, and the Tribes and the BIA are free to implement or ignore them.

The new Wyam Board should be composed of five members, with non-voting BIA advisors possessing various technical areas of expertise joining the three representatives from the Treaty Tribes and the two elected representatives from Celilo Village as appropriate. The Corps will have no role on the Wyam Board. Each of the five board members should be able to cast a vote in board decisions. The presence of three voting members of the Wyam Board should constitute a quorum. Board members elected from

among the residents should serve staggered, six-year terms, while the Tribes will determine their representatives' tenures. It is recommended that the Regional Director of the BIA designate staff persons from the Bureau with relevant expertise in the issues under discussion before the Wyam Board, to serve as liaisons to the board. The particular staff persons designated will change, as the needs of the board and the issues before it change.

The Wyam Board will be the primary governance body during the Implementation and Post-Project Stages, in consultation with the BIA and the Tribes. After the Board is constructed, and its operating regulations are set, the Board will have the opportunity and discretion to create advisory committees for particular topics of interest. The Wyam Board should also be responsible for the creation of a Master Development Plan for Celilo Village, which will be created, at least in part, during the development and adoption of a governance plan prior to construction. This will focus attention on using the Village's redevelopment as a springboard for further economic, social, structural and cultural improvements. The board will have decision-making authority over Celilo Village matters not specifically reserved for the BIA or the Tribes. Obviously, the board would not have any power to bind the agencies or the Tribes to its decisions unless these groups first consent to the board's authority.

Four votes should pass any resolution before the full board, while three votes would be sufficient if less than five voting members attend. If voting had to be unanimous, it is possible that little would be accomplished. A simple majority voting structure would also be unacceptable, because it would minimize the ability of minority voices to affect board decisions.

The board will be housed in the current doublewide trailer previously used by the BIA, the Wyam Board and the Mid-Columbia River Council, or elsewhere should a more suitable structure become available.

The role of the Wyam Board will change as it moves from the planning phase, through design and construction, and into the operations phase. Early on, the Board should focus on designing regulations governing its own internal practices and procedures, in consultation with the Tribes and the residents. While the Corps develops plans and specifications for the Village, the board should actively participate in drafting ordinances regulating activities within the redeveloped Village. These draft ordinances should be reviewed by the DOI –BIA, which would accept, modify, and/or supplement them in consultation with the Tribes and the residents, prior to their being published. During the operations and maintenance phase, the board should focus more on creating a Development Plan for the Village, and possibly on the creation of Advisory Committees. The board itself will assume an advisory role regarding nearly all activities within the Village, from O&M to security and law enforcement. The board will be a crucial liaison between the residents, the BIA, and the Tribes, while also serving as a link between the Village and exterior services that may be pursued, including "head start" and other educational programs, health care, etc., and as a contracting body for those services.

When the board has succeeded in creating and implementing regulations and ordinances, and attains some organization stability, it will be ready to move on to more aspirational goals. These goals include fixing some of the chronic problems facing Celilo Village: unemployment, indifference, and isolation. The Wyam Board would pursue cultural and economic development within the Village, consistent with the social, spiritual, and cultural significance of Celilo. The board may also create frameworks for providing economic opportunities, substance abuse programs, and day-care for young children.

#### 4.3.1 The BIA Representative

Currently, there are no designated BIA advisors to the re-created Wyam Board. Reflecting the authority that the BIA has traditionally held in matters regarding Celilo Village, the agency should designate appropriate staff members to advise the reestablished Wyam Board on technical matters within the BIA's expertise. BIA advisors would serve as a link between the Bureau and the residents. This would allow for more direct and productive interaction between the two groups than has been the case in the past.

One of the traditional complaints of Celilo Village residents is that they are distanced from benefits and that the BIA does not address their concerns quickly. They maintain that the BIA has historically been lax regarding O&M at the Village. The BIA counters that the residents have not always communicated their needs and concerns to the agency, and have not participated adequately in the maintenance of their homes. Having a BIA representative at relevant board meetings would address each group's communication needs, in that both side's concerns and issues could be easily discussed, if not resolved, within the board setting.

The BIA's delegated advisors should be nonvoting liaisons to the board for several reasons. First, the BIA and the Tribes have not always seen eye-to-eye on issues, and the three Tribes, as well as the residents, may be uncomfortable with the BIA having voting authority in Celilo Village decisions. By having advisors to the board however, BIA can still affect decisions through discussion and consultation.

The BIA would devise its own method for designating staff representatives to the Wyam Board. Such elements as eligibility, appointment authority, and length of service should be left to the discretion of the agency.

#### 4.3.2 The Tribal Representatives

Celilo Village is of undeniable cultural, historical and spiritual importance for the Treaty Tribes. They traditionally came to Celilo Falls for fishing, trade, and spiritual purposes. For 10,000 years Celilo Falls was the Interior Columbia River Indian Tribe's most valuable economic asset. Salmon caught at the falls provided for the subsistence and market economy of the region's people. Indians came from all over the Northwest to trade on the banks of the world's greatest salmon river. (CTUIR handout). When the site of the original Celilo Falls Village was flooded by the backwaters of the Dalles Dam in 1957, the Village was moved upland to its present location. Though the Village currently

has only about 50 permanent residents, it is the temporary home of a significant number of additional individuals during the spring and fall fishing seasons. Because of the long history of the Tribes in the area, each of the Tribes desires to have a strong voice in affairs at Celilo Village. Each of the Tribes deserves to have that voice.

To this end, each of the three Tribes will have a position on the new Wyam Board, insuring that each will be able to participate in decisions that affect their traditional fishing grounds. Each Tribe will be able to devise its own method for electing or appointing members to the Board. Each Tribe will also elect or appoint an alternate, who will have voting authority in the absence of the usual Board Member. Since the release of the draft PAC report, each of the three Treaty Tribes took these steps and appointed members and alternates to the re-created Wyam Board.

The presence of the Tribal members on the Wyam Board is not solely for the benefit of the individual Tribes. Placing Tribal representatives on the Board also insures that there is an effective continuing line of communication between the Treaty Tribes and Celilo Village residents. This insures that the Tribes will be able to protect their interest in fishing access, as well as other economic, religious and cultural interests. Placing Tribal members on the board keeps the Treaty Tribes informed regarding the current state and needs of Celilo in a formalized and direct fashion. Additionally, this close interaction insures that the Tribes are cognizant of the highest priority Village needs, so that limited Tribal funds can be earmarked for Celilo and expended for the best possible result.

#### 4.3.3 The Celilo Village Representatives

While the Treaty Tribes have an unquestioned right to be involved with affairs at Celilo, there are also a number of Indians residing on the Columbia River who do not have a Tribal affiliation or local Tribal membership, and yet still deserve a voice. This lack of local Tribal enrollment is caused by outside marriages and/or an eventual loss of required blood degree, or by never entering into a treaty with the Federal Government (ex. The River People). Thus, many are not eligible for benefits offered by nearby Reservation Agencies. The River People consider themselves a separate entity and not affiliated directly, at least in part, with any of the neighboring Tribal Agencies.

The major complaint of the residents is that they have difficulty receiving assistance from the Tribal Agencies responsible. They attribute the lack of help to the distance from the Agencies, funding problems and differences of interest between they and the reservation Indians. Tribal Agencies are quite remote from Celilo Village. Yakama Agency is 80 miles away, Warm Springs Agency is 100 miles away, and Umatilla Agency is 120 miles distant.

Because the location is so important to the Treaty Tribes, and because they provide useful resources for the Village, they must be included in any governance plan for Celilo. It is important however, that the Treaty Tribes do not dominate the governance structure to the extent that the voices of the residents are silenced. The representatives of Celilo Village have long claimed that they have had little political influence over Village affairs.

To partially rectify this problem, there should be two Village representatives on the new Wyam Board.

These representatives should be elected from among eligible Village residents. Additionally, two alternates should be elected who would have voting authority in instances when the Board Members are unable to attend. Many of the villagers recognize a traditional chief, but this recognition is not universal among the residents. Voting allows the residents to determine whether or not to recognize the traditional chief by placing him on the Board. Election notices for resident board members should be posted for 30 days and conducted by the appointed Tribal Board Members. Determining who qualifies for election is a contentious issue however. This governance plan suggests that all legal residents of Celilo Village aged eighteen or over should be entitled to participate in the election. This method increases the likelihood of buy-in because more members of the Celilo Village community would be able to have a hand in determining elected representatives, than if elections were limited to enrolled tribal members, giving elected representatives a stronger mandate from the residents. A procedure should be created for determining who qualifies as a legal resident.

The problem with this method however, is that it could prove difficult administratively to track who the legal residents are over time, as well as determining the length and individual must reside at Celilo to qualify as a resident. This can be particularly difficult because American interpretations and practices of residency are frequently different from their Tribal equivalents. As stated previously, the BIA and the Tribes are currently formulating a list of the legal residents at Celilo Village. This list will be used to determine who will have voting rights in the Village.

Since the release of the draft PAC report for public review, the Tribes, in consultation with the BIA, have made voter eligibility decisions, conducted an election for the two available resident board positions, and promulgated a number of rules and procedures for future elections.

#### **4.4 Tribal Review Authority**

Though the Treaty Tribes had representatives on the original Wyam Board, each Tribe retained the ability to retroactively veto board decisions. This insured that the board had little real power or authority, as any Tribe could effectively block any unpopular decision. Because the Tribes have different cultures, histories, and objectives, this blockage could occur frequently.

The new Wyam Board should initially retain the previous structure that allowed for Tribal veto of board decisions, but should also limit the Tribes' ability to exercise this power to a certain period of time. Each of the Tribes should be able to veto decisions of the new board, but any veto should be registered with the board within 60 days of the initial decision, and should need to be accompanied by an explanation to insure that vetoes are not registered as a matter of habit. Ideally, if Celilo Village approaches self-governance, the Tribes will relinquish their veto power, but such a significant step, if it is ever taken, is still far in the future.

## **5. GOVERNANCE PLAN**

### **5.1 Applicable Laws**

Tribal governments have a unique legal and political relationship with the United States government, defined by history, treaties, statutes, court decisions, and the U.S. Constitution. The United States has entered into over 600 treaties and agreements with American Indian Tribes. These treaties give the United States a variety of legal responsibilities toward Tribes and provide the basis for a government-to-government relationship. Congress created other responsibilities toward Indians through statutory enactment. Although the DOI, through the BIA, has the statutory responsibility for upholding the Federal government's obligations to Indians, this responsibility extends to all Federal agencies.

The text of the CRTFAS statute, Title IV, PL 100-581, November 1, 1988, Sec. 401(a) states that "All federal lands within the area described on maps numbered HR2677 sheets 1 through 12, dated September 21, 1988, and on file in the offices of the Secretary of the Interior, the Secretary of the Army, and the Columbia River Gorge Commission shall, on and after the date of enactment of this Act, be administered to provide access to usual and accustomed fishing areas and ancillary fishing facilities for members of the Nez Perce Tribe, the Confederated Tribes of the Umatilla Indian Reservation, the Confederated Tribes of the Warm Spring Reservation of Oregon and the Confederated Tribes and Bands of the Yakama Indian Nation.

### **5.2 Published Policies**

#### 5.2.1 Executive Policy

On 6 November 2000, President William Jefferson Clinton issued Executive Order 13175, dealing with Consultation and Coordination with Indian Tribal Governments. The executive order stated that the United States continues to work with Indian tribes on a government-to-government basis to address issues concerning Indian tribal self-government, tribal trust resources, and Indian tribal treaty and other rights. The United States recognizes the right of Indian tribes to self-government and supports tribal sovereignty and self-determination.

#### 5.2.2 The Corps

The Northwest Division of the Corps issued a Native American Policy regulation on 15 August, 2001, that covers the policy, responsibilities, and implementation of the U.S. Army Corps of Engineers Tribal Policy Principles. It is the policy of the Northwestern Division to apply the USACE Tribal Policy Principles in all division activities that may impact any federally recognized Indian Tribe. In those activities where consultation is warranted, it is the policy of the Northwestern Division to consult on a government-to-government level consistent with guidance found in references 3a-3e and Tribal regulations.

### 5.2.3 The BIA

The land for Celilo Village was acquired by deed pursuant to the Act of July 25, 1947, 61 Stat. 466, the title being taken in the name of the United States in trust for the Yakama Indian Tribes, the Umatilla Indian Tribes, the Confederated Tribes of the Warm Springs Reservation and other Columbia River Indians as described in the act and deed. It is the BIA's opinion that land ownership in Celilo is not dissimilar to the ownership of other lands held in trust by the United States for designated tribes and Indians. The Bureau's trust responsibility in respect to the Celilo property is the same as the responsibility the Bureau has for Tribal trust properties elsewhere, since the Celilo property is held in trust for the Umatilla, Warm Springs and Yakama Tribes. Celilo is within the service jurisdiction of the Warm Springs Agency. Currently, funds have come from the Warm Springs Agency solely on an "as needs" basis.

Under the 23 June 1995 MOU, after the Corps transfers the capitalized funds to BIA, the BIA will in turn contract with the Tribes to establish a trust fund, using these funds to provide for the salary of the maintenance worker, meet other O&M costs, and to possibly support governance efforts at the Village. This agreement will be an Indian Self-Determination Agreement for O&M between the Tribes and the DOI (BIA). The provisions of Title I of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) are incorporated in this agreement.

### 5.2.4 Tribal

The Tribes do not have a unified published policy per se regarding Celilo other than the Modified Draft Memorandum of Understanding, but there are copious written records revealing their position on the Village, including correspondences between the Tribes and several federal agencies. Additionally, each of the Tribes has passed resolutions expressing support for Celilo Village redevelopment. (See Appendix C).

As was stated earlier, Celilo Village has great cultural, historical, and spiritual significance for the three Treaty Tribes, and each feels that they have a right to continue their traditional practices at the site. Also, the Tribes feel they have a right to reside at the Village, at least at the times of the year they traditionally moved down to the river for fishing and commerce.

The Tribes have often disagreed however, on how the Village should be governed. The Tribes have been opposed to the idea of self-governance at Celilo in the past, and even the Umatilla Tribe, the strongest proponent for self-governance at Celilo, believes the Village is a long way from reaching autonomy. The Tribes apparently feel they are the best source of Village governance, and that they should continue to have the strongest voice in governance. Perhaps there is no greater example of Tribal reticence in supporting self-governance at Celilo than their historical veto power over Wyam Board decisions.

However, the Tribes have worked on a draft joint resolution regarding guidelines in their approach to Celilo Village. These guidelines include that 1) the Wyam Board be structured and empowered to provide recommendations to the three Tribal Governing

bodies and the BIA on development plans and management policies; and 2) a Comprehensive Redevelopment Plan be prepared that includes at a minimum all the uses and facilities of the original community; and, 3) a plan for the maintenance, operation and governance of the community be developed; and, 4) Celilo Village redevelopment be used as a model in approach and form to accommodate the needs of other Indian people and communities in the area. (CTUIR Handout).

#### 5.2.5 Celilo Village

Celilo Village does not currently have any published governance policies, beyond those regulations contained in the particular building assignments, and in the now defunct Wyam Board regulations. In practice however, a significant number of residents defer to the traditional chief of Celilo, who has a great deal of authority in managing Village affairs. This deference is not universal among the Residents however, and does not encompass all aspects needed for proper governance of the Village.

### **5.3 Regulations**

Celilo Village was established pursuant to the Act of 25 July, 1947, (61 Stat. 466) the Title being taken in the name of the United States in trust for the Yakima Indian Tribes, the Umatilla Indian Tribes, the Confederated Tribes of the Warm Springs Reservation, and other Columbia River Indians affiliated with the aforementioned Tribes with all authority of ownership for such land resting in the Tribes mentioned above, subject to the approval, when necessary, of the Secretary of the Interior as the Trustee for the United States.

The Appropriations Act of 29 January, 1948, (69 Stat. 1120) provided funds to construct, repair and rehabilitate the buildings and utilities on the land, and by Act of 15 July 1955 (69 Stat. 361) funds were appropriated to relocate the permanent resident Indian families who were in the project area at Celilo.

Unfortunately, no regulations ever instituted and implemented for providing for the governance of the Village have attained any level of permanency.

#### 5.3.1 Current Status

Regulations are needed to deal with a wide variety of issues at the Village. The physical condition of the residences is one concern. The condition of the common areas and buildings is another. Regulations dealing with the use of these common areas and buildings, as well as with community development and law enforcement are critical. Additionally, regulations must be created spelling out who may reside at Celilo and for how long; alleviating Tribal concerns regarding the number of illegal residents currently inhabiting the Village and its environs, as well as residents' concerns regarding Tribal members lingering beyond the traditional fishing seasons.

Currently there is no code of regulations or body of local ordinances for Celilo Village. There are a number of Federal and state regulations that apply to the Village and its residents, yet there is no set program for regulation and enforcement at Celilo. A number of different authorities come together and overlap at the site, though this effectively

results in an absence of responsibility, rather than a surplus. One of the problems is that authorities are unsure of what their actual powers and responsibilities are at the Village. Another problem is that the residents themselves are selective in acknowledging outside bodies attempting to regulate activities within the Village and in their opinions of how regulations should be enforced.

The Assignments and Occupancy Permits for the existent buildings are a secondary source of regulation, containing provisions covering use and maintenance of the houses, and procedures for termination of the occupancy permits. BIA has enforcement responsibility for the assignment provisions, but does not actively pursue this responsibility. Some reticence is appropriate in cases where residents are unable to fulfill occupancy permit requirements due to advanced age or some similar physical incapacity, yet the BIA must be swifter in responding to permit violations caused by deliberate neglect or apathy.

### 5.3.2 Required in Conjunction with Redevelopment

The adoption of more stringent regulations regarding the use of common areas and buildings should be mandated concurrently with construction. It is critical to ensure that the historical pattern of neglect and deterioration that has characterized Celilo will not be tolerated following redevelopment, and that individuals falling afoul of these regulations could well lose their occupancy permits. Redevelopment and increased input in Village matters constitute positive encouragement for maintaining a certain state of repair and orderliness at Celilo. Perhaps active enforcement of regulations for the first time in the history of the Village can present an effective penalty for failing to do so.

A number of published codes could also be adopted by reference or used as a model for developing Village standards prior to redevelopment. The input of the residents, Tribes, and BIA must be considered carefully when determining what regulation structures and authorities will be created at Celilo. The Wyam Board can serve as an excellent lens for focusing this input, particularly during the effort to develop and adopt a governance plan prior to construction that will be funded with the advanced transfer of the OMRR&R dollars.

### 5.3.3 Roles of the Parties

The Wyam Board will perform the majority of regulation development and adoption, in consultation with the Tribes, and subject to review by the BIA. The Wyam Board will develop procedures for designing and adopting regulations covering a wide variety of topics of concern within the Village, focusing primarily on the use of the common areas and buildings. Ideally, this process of regulation creation and adoption would occur during the Planning Stage. Regardless of when this process occurs, the Wyam Board will continue creating and adopting needed regulations following the completion of Celilo redevelopment.

The Tribes will have a great deal of input in the creation and adoption of regulations, reflecting their continued role at Celilo Village. This input will take place in two ways. First, the Tribes will actively participate in the process through their presence on the

Wyam Board, and their veto power. Second, the Tribes will consult with the residents and the board on a more informal basis, presenting their opinions and advice, and offering their expertise.

The BIA has the ultimate authority to promulgate regulations at Celilo; either of its own design or through reviewing those drafted by the Wyam Board, residents, and the Tribes. The agency has important additional roles to play. Staff delegated to advise the Wyam Board on issues of Bureau concern have no voting power, but will inform the voting members regarding the Federal perspective towards any potential regulations. Hopefully the BIA liaisons to the reconstituted Wyam Board will also lead to the agency being more conscious of conditions at Celilo. In recent meetings, the BIA has exhibited a strong desire to be more actively involved with Village affairs. Having advisors to the Wyam Board presents the perfect opportunity.

#### **5.4 Permits**

The original residents signed Assignment and Occupancy Permits authorizing they and their family to live in and use permanent housing units at Celilo, subject to a number of conditions. Houses were to be used for residence purposes only, by the assignee and his or her family. No non-Indians were permitted to live in the houses. The buildings had to be kept in good repair, and in an orderly, clean and healthful condition. Any additions had to be approved by the government, in writing. When the original occupant died, his or her family could continue residing in the building.

The occupancy permits also provide for building reassignment in the case of abandonment, or for continued violation of permit conditions following a written noncompliance notice. As stated earlier, the BIA has been loath to enforce these conditions, preferring instead to pursue a strategy of either ignoring the poor conditions at the Village, or occasionally releasing moneys for repair and maintenance that are the responsibility of the residents.

##### 5.4.1 Current Status

The BIA in coordination with the Tribes is currently researching the status of all the original permits as well as that of all the current occupants, to determine who has a legal right to reside in the buildings at Celilo.

##### 5.4.2 Requirements for Redevelopment

The redevelopment process affords a number of opportunities to improve the physical condition of Celilo Village, as well as to insure that the condition of the rebuilt buildings is maintained. Perhaps the best method for insuring the maintenance of the private buildings in the Village is to include maintenance conditions in the new residency permits that will be created during redevelopment. Another option might be to adopt the package of rules and standards that Indian Housing Authorities use dealing with collection of rent and eviction notices. Housing and Urban Development CFRs may also be useful.

The BIA will have primary responsibility for reissuing occupancy permits, and then enforcing the conditions placed in them.

## **5.5 Enforcement**

Since its construction in the 40's, Celilo has had difficulties with law and regulation enforcement. This applies to the existence of crime in the Village, as well as it does to the frequent avoidance of building and housing regulations. These factors have contributed greatly to Celilo's current unsightliness and poor state of repair. The lawlessness that results in crime and building and facilities deterioration has been exacerbated by a host of other factors, from lack of economic opportunity to Federal abandonment.

Still, the need for enforcement is essential to insure that the redevelopment of the Village does not prove to be a mere cosmetic improvement. Cooperation and overlap of jurisdiction is necessary and must be acknowledged by the variety of Federal, state, local, and Tribal actors that have jurisdiction at the Village. It is equally important that the residents acknowledge the jurisdiction of these groups, and allow them to exercise that jurisdiction at the Village. The Wyam Board and the Tribes can devise numerous needed and positive regulations and ordinances for review by the BIA, but without enforcement and cooperation from the residents they will have little if any power to change Celilo. The residents themselves must take a greater role in maintaining the condition of the Village in general and of their specific residences. The BIA and other Federal, state, local, and Tribal actors must actively enforce regulations tied to the residency permits. Funding for enforcement and security measures must be available at Celilo. Other Federal agencies may need to be involved, as well as state or local law enforcement officers and Tribal officers, and the Federal judicial system must be more willing to prosecute misdemeanors. Another issue revolves around the possible bifurcation of regulations regarding the housing units and the common areas that will be accessible to the Treaty Tribes.

### 5.5.1 Current Status

Whatever the legal structure for enforcement and security, the reality is that little is being done in Celilo Village on either count. The houses and infrastructure have been deteriorating for years, from a state that was already considered poor in the late nineteen sixties. There has been insufficient effort to arrest this process on the part of both the Village residents and the BIA. Crime and vandalism occur frequently at Celilo, apparently perpetrated to a great extent by non-residents. There is uncertainty regarding who should provide services. Particularly chilling was a remark made by one of the residents at a 13 August, 2001 meeting with the Corps that she had witnessed her daughter's car being stolen, but "didn't know who to call." In order to insure a safer Village with better living conditions, it is essential that responsibilities for enforcement and security be clearly delineated. The BIA should work closely with the residents and the Tribes through the structure of the Wyam Board to clarify enforcement and security responsibilities and providers at the earliest possible date.

### 5.5.2 Requirement for Redevelopment

It is suggested that all law-enforcement authority, responsibilities, and duties be established and clearly delineated concurrent with design and construction and prior to the completion of redevelopment. Input from all actors should be considered, and it may be advisable to include the State of Oregon and the Columbia River Intertribal Fisheries Commission (CRITFC) in enforcement discussions as well.

### 5.5.3 Federal Presence

The BIA does in some cases provide law enforcement on tribal lands, but it is unclear whether such provisions can or will be made for Celilo Village. More consultation between the BIA, the Tribes, and the residents is needed to determine what role the BIA and other Federal agencies will have in law enforcement at Celilo. Through the maintenance worker position, the BIA will also assume some of the responsibility for the condition of the Village, and will be able to allocate moneys from the trust fund to provide for security measures.

Obviously, the BIA will have significant responsibility for insuring that any regulations tied to the Celilo Village Redevelopment Plan are honored by the residents of the Village, and not regularly ignored as in the past. The BIA has the discretion to determine the severity of the penalties for failing to meet these conditions.

The BIA certainly appears ready to take a greater role in activities at the Village, and the agency's yeoman work on determining the legal status of the current residents is an indication of a new intent to hold the residents to the conditions of the occupancy permits.

### 5.5.4 Tribal Jurisdictional Issues

A method for law enforcement at Celilo Village that has not been explored in great depth to this point would be expanding the law enforcement authorities of CRITFC. While CRITFC's duties are primarily guided by fishing issues on the Columbia River and at Tribal fishing sites, there exists a credible rationale for including law enforcement at Celilo Village within these duties. Again, consultation between the BIA, residents, and the Tribes, with the possible inclusion of CRITFC and the state might prove fruitful.

### 5.5.5 Contracts With State or Local Jurisdictions

According to Sec. 4, Subpart A of P.L. 280, which still applies to Celilo Village, the State of Oregon has exclusive jurisdiction over crimes and offenses committed by or against Indians to the same extent that the State has jurisdiction elsewhere in the State. It might be advisable to assign a particular law enforcement unit the duty to patrol the Village and its surroundings at regular intervals so that there is a visible and approachable law enforcement contact for the residents. Contracts could be entered into with the State, or with a local police department such as that present in The Dalles to provide this service.

### 5.5.6 Roles of Other Parties

A pride in the condition of the Village must somehow be instilled so that the residents become more concerned with the condition of the common areas and buildings and their

own residences, and pursue a program of self-enforcement regarding regulations. The redevelopment process will hopefully lead to improve civic pride, and be exhibited by better Village upkeep. The BIA will provide maintenance work for these structures, but the job will be significantly easier if there is buy-in by the residents.

The Tribes will also be involved with the upkeep of the common areas and structures, as they use them during their visits to the Village, and have an interest in maintaining their condition. The residents are concerned regarding the activities of “outsiders,” and must be provided with readily available law enforcement resources able to respond to disruptive or criminal activities of these offenders within the Village. Additionally, the Tribes can engage in self-policing of their own members who temporarily reside at Celilo during the fishing seasons. With the twice-annual influx of individuals, there is bound to be more strain on the facilities and grounds at Celilo, but Tribal influence could have a strong hand in minimizing this strain.

Finally, the Wyam Board will advise all the parties involved in enforcement of the perceived needs of the Village, and streamline the way in which agents of enforcement regulate activities in Celilo.

## **6. THE TRANSITION TO SELF GOVERNANCE**

### **6.1 Objectives**

Ideally, Celilo Village would become a self-governing unit upon completion of the redevelopment plan. Unfortunately, it is impossible to attain this ideal in a short time frame. Because of the fragmentation of authority and interests detailed in this appendix, it will be a difficult task to approach self-governance at Celilo. There are few economic opportunities beyond Treaty Fishing for the residents, ensuring a paucity of monetary resources for supporting a complete self-governing body. Certain outside resources are available however. O & M funds will be available through the BIA. The Tribes must continue to contribute as well.

The Corps of Engineers needs to construct a safe, healthy, and sound Celilo Village, including necessary buildings and water and sewer systems. BIA needs to implement their trust responsibility and authority to the full extent. The Tribes need to put aside their differences, as well as their differences with the Residents and the BIA. The residents must embrace change rather than focusing on criticizing the past. In time, Celilo may become a vital community, a cultural and spiritual center, a meeting place for diverse groups, as well as the present and the past.

After redevelopment, the Wyam Board will continue to grow and develop experience and expertise in dealing with the issues facing Celilo Village. As the Village moves towards self-governance, the abilities and authority of the Wyam Board will continue to increase, and the decision-making powers of the Tribes in the Village may metamorphize from absolute final authority to a more advisory bent.

## **6.2 Methods And Tools For Self-Governance**

### 6.2.1 Education & Training

To have effective governance at Celilo, it is necessary to develop and nurture the leadership skills and abilities of the Wyam Board members. The Treaty Tribes have engaged in self-governance for a significant period of time, and their appointed representatives on the Wyam Board will likely bring considerable abilities and expertise to their positions. The BIA's designated advisors would have similar talents. The two Village residents elected to the Wyam Board should be provided with opportunities to develop these skills and expertise if they do not already possess them. All efforts should be made to take advantage of available resources in order to sharpen the skills of all those serving on the Wyam Board, and to improve the level of training of Village residents in general. This will result in more local leadership and responsibility for redevelopment, maintenance, operation, and decision-making affecting the health, welfare and community identity of the Village and its residents.

This education can be provided by several readily available sources. As stated, the Tribes have considerable experience with governance, and the lessons derived from this experience should be passed on to the residents of Celilo. This can be accomplished either through informal discussion with resident Wyam Board members, or through formalized training for Board members and Village residents.

Another option for training can be the utilization of programs available through local educational institutions. The Hatfield School of Government at Portland State University has recently created a Tribal Governance program that regularly schedules classes on such diverse topics as strategic planning, program evaluation and management, and grantwriting. The school has scholarship monies available that could defray the cost of education opportunities sought by the board and/or the residents. Additional funding could be available through state and federal programs focusing on tribal welfare and education.

### 6.2.2 Accessing Service Programs

The Wyam Board and the BIA should also network with other groups that could aid in improving the opportunities and benefits available to the residents, including partnerships with local businesses and associations with nonprofit organizations. An existing Celilo nonprofit organization provides residents with bottled water, and may be a useful springboard for providing other services. The BIA should make all efforts to coordinate with other agencies and entities so that it can best serve its trust responsibility regarding Celilo Village.

### 6.2.3 Authorization or Legislative Changes Required

Formal federal or state legislation is not needed to recreate the Wyam Board or to move toward self-governance at Celilo. What is needed for either step however is the concurrence of the Treaty Tribes involved with the Celilo Village Redevelopment Project. That concurrence is present, as evidenced by the steps already taken to resuscitate and re-create the Wyam Board. The Tribes have traditionally been opposed to

complete self-governance at Celilo, whether because of voting inequity among the Village population or to protect their individual Tribal interests in a location that has such spiritual, cultural, and historic value.

## **7. SUMMARY AND CONCLUSIONS**

Though the Tribes have asked the Corps to create a Governance Plan for Celilo Village, the reality is that the plan's success will ultimately be determined not by its design, but rather by the continued efforts of the other parties involved. After the initial planning phase, the Corps' role is limited to site rehabilitation and construction. When redevelopment is complete, the Corps is finished with the project. Actual implementation of any governance plan, from the re-creation of the Wyam Board, to an upgraded and continuous BIA presence at Celilo, is the responsibility of the Tribes and the BIA.

The important thing to note is that all sides seem to realize that this may well be the best opportunity to improve conditions at Celilo.

The Corps has the opportunity to meet its original commitment to provide a relocated Village as part of its Federal dam building responsibilities, and to rectify past errors regarding property reduction, inadequate building materials and construction, and lack of Treaty Fishing Access Sites.

The Tribes have the opportunity to see Celilo Village restored to some semblance of its past status as a cultural, economic, and spiritual gathering place.

The BIA has the opportunity to address Celilo's current lack of management and pattern of neglect, and point to a positive, highly visible, example of government-to-government cooperation.

The residents have the opportunity to realize advantages in housing, sanitation and health, and, perhaps, improved opportunities for the young to attend school and take their place in the world while still residing in a vital Indian community. There would be long-term benefits to the Indian residents, and the expense to the government would be less in the long run. An upgraded and more attractive Celilo Village would present improved opportunities for a successful economic and/or cultural enterprise of whatever sort the residents might choose to promote.

Through a collaborative effort, the Corps, the Tribes, the residents, and the BIA will be able to move beyond past differences and misunderstandings to create an environment promoting a positive future for Celilo Village.

**8. 23 June 1995 MOU between The Department of the Army and The Department of Interior**

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE DEPARTMENT OF THE ARMY

AND

THE DEPARTMENT OF INTERIOR

FOR THE

TRANSFER, OPERATION, MAINTENANCE, REPAIR, AND REHABILITATION OF  
THE COLUMBIA RIVER TREATY FISHING ACCESS SITES

THIS MEMORANDUM OF UNDERSTANDING (MOU) is entered into this 23rd day of June, 1995, by and between the U.S. DEPARTMENT OF THE ARMY, acting by and through the Acting Assistant Secretary of the Army (Civil Works), and the U.S. DEPARTMENT OF THE INTERIOR, acting by and through the Assistant Secretary of the Interior (Indian Affairs);

WITNESSETH, THAT:

WHEREAS, Public Law 100-581, Title IV, Columbia River Treaty Fishing Access Sites (102 Stat. 2944 (1988)) (the Fishing Sites Act) requires that certain designated Federal lands "be administered to provide access to usual and accustomed fishing areas and ancillary fishing facilities" for members of the Nez Perce Tribe, the Confederated Tribes of the Umatilla Indian Reservation, the Confederated Tribes of the Warm Springs Reservation of Oregon, and the Confederated Tribes and Bands of the Yakama Indian Nation (the Tribes); and,

WHEREAS the Fishing Sites Act requires the Secretary of the Army to acquire and improve additional lands to accommodate "at least six sites . . . adjacent to the Bonneville Pool" and provides that the Army shall maintain the lands until they "are transferred to the Department of the Interior for the purpose of maintaining the sites"; and,

WHEREAS, the Department of the Army and the Department of the Interior (the parties) have agreed to seek legislation authorizing the Secretary of the Army to transfer funds to the Secretary of the Interior for Interior's use in operating and maintaining the sites after transfer; and,

WHEREAS, the parties recognize the Federal trust responsibility to Native Americans; and,

WHEREAS, nothing herein is intended to alter or affect any treaty right of any Native American Tribe or nation,

NOW THEREFORE, the parties agree as follows:

ARTICLE I - Definitions and General Provisions

a. The term "Project" shall mean lands identified in Section 401(a) of Public Law 100-581, which shall "be administered to provide access to usual and accustomed fishing areas and ancillary facilities" for the subject Tribes and additional lands acquired by the Army pursuant to Section 401(b)(1) of Public Law 101-581 plus such improvements to the lands as are described in Corps of Engineers design plans and/or construction documents jointly approved by the Army and DOI after consultation with the Tribes (See Appendix A).

b. The term "functional portion of the Project" shall mean one or more completed fishing access sites ready for beneficial occupancy as determined by the Corps of Engineers Contracting Officer to be suitable for tender to the U.S. Department of the Interior to operate and maintain in advance of completion of construction of the entire Project.

c. The term "DA" or "Army" shall mean the U.S. Department of the Army.

d. The term "COE" or "Corps" shall mean the U.S. Army Corps of Engineers, of the U.S. Department of the Army.

e. The term "DOI" or "Interior" shall mean the U.S. Department of the Interior.

f. The term "BIA" shall mean the U.S. Bureau of Indian Affairs, of the U.S. Department of the Interior.

g. The term "District Engineer" shall mean the U.S. Army Engineer for the Portland District or his or her designee.

ARTICLE II - Obligations of the Parties

a. The DA, acting by and through the COE, subject to and using funds appropriated by the Congress of the United States, shall expeditiously proceed with construction of the Project, applying those procedures usually followed or applied in Federal projects, pursuant to Federal laws, regulations, and policies and in accordance with any other agreements related thereto between the DA, DOI and/or the Tribes.

b. When the District Engineer determines that a functional portion of the Project is complete according to approved Army and DOI plans, the Army shall turn the completed portion over to the DOI, in accordance with the procedure set forth in Article III. DOI shall

accept the completed functional portion of the Project in accordance with Article III and after transfer, shall be solely responsible for operating, maintaining, repairing, and rehabilitating the Project or functional portion of the Project in accordance with Article IV hereof.

c. The DOI shall be responsible for the costs of O&M training, law enforcement, and for other maintenance needs of the fishing access sites. It is anticipated that the monetary value of the DOI contribution will exceed \$250,000 annually for the next eight years, beginning in Fiscal Year 1996.

#### ARTICLE III - Transfer of Administrative Jurisdiction

a. Documentation, transfer of administrative jurisdiction, and acceptance of the Project for operation, maintenance, rehabilitation, and repair by the DOI shall be accomplished in accordance with the following procedures:

1. After notification by the District Engineer of the completion of a functional portion of the Project, the DA shall sign and transmit a transfer letter (of the fishing access sites) to DOI.

2. Within sixty (60) days from receipt of the transfer letter from DA, the DOI shall evaluate the proposed transfer and, by letter to the COE, either acknowledge preliminary acceptance of the functional portion of the Project, or notify the COE that DOI believes the site(s) do not conform to the approved construction plans. The District Engineer shall, in good faith, consider DOI's assertion regarding nonconformity and shall expeditiously notify DOI, in writing, of whether he determines that the functional portion of the Project conforms or, alternatively, identify the measures that would make it conform. If the parties are unable to resolve this disagreement at the local level, the issue will be raised to the Director of Civil Works for the COE for resolution. The Director of Civil Works shall consult with the Assistant Secretary of Interior (Indian Affairs) or the Assistant Secretary's designee concerning the alleged nonconformity and shall promptly notify the DOI of the COE's final decision.

3. When DOI notifies the Corps of its preliminary acceptance or when the Director of Civil Works notifies DOI of his determination that the sites do, in fact, conform to the approved construction plans, the Portland District, COE shall prepare a Property Disposition Voucher (Engineering Form 3061) for physical transfer of administrative jurisdiction of land and improvements and send it to the Area Director of the BIA. The Area Director of the BIA shall sign the Property Disposition Voucher and within sixty (60) days from receipt of the form, shall return it to Portland District, COE to complete the transfer process. Lands and improvements constituting the fishing access sites will thereupon be under the administrative jurisdiction of the Secretary of the Interior, acting by and through the BIA.

4. The transfer process shall be conducted in accordance with COE Engineering Regulation 405-1-12, Chapter 11, paragraphs 11-100, 101 and 102, which is applicable to transfer of COE administered lands to other Federal agencies.

ARTICLE IV - Operation, Maintenance, Repair, and Rehabilitation

a. After the DA has transferred a functional portion of the Project to the DOI in accordance with the procedures described in Article III herein, the DOI shall operate, maintain, repair, and rehabilitate the completed functional portion of the Project in accordance with regulations prescribed by the Secretary of the Interior. In carrying out these responsibilities, DOI shall use its own funds and any funds provided to it from the DA for this purpose under Article VI of this Agreement.

b. The DOI shall establish use rules specifically applicable to the Tribes' future utilization of the Project after transfer of administrative jurisdiction to the DOI.

ARTICLE V - Project Operational Guidelines

After the Army transfers a functional portion of the Project to DOI, DOI shall operate and maintain the sites in a manner not inconsistent with the legislatively authorized purposes of the adjacent Bonneville and Dalles-John Day Corps Project facilities, and in accordance with Public Law 100-581.

ARTICLE VI - Funding Transfer

a. The parties agree that the Army will seek legislation necessary to authorize the Army to pay DOI capitalized O&M of the Project or any functional portion of the Project proposed for transfer to DOI. Capitalized O&M for the Project is currently estimated to be \$6,300,000.

b. Once Congress has authorized the Army to transfer funds to DOI and has provided such funding, the Army will transfer the funds as follows: Upon receipt of a signed ENG Form 3061 by the COE, the COE will, within 60 days, transfer to BIA such sum of money as has been allocated for capitalized O&M of that particular functional portion of the Project.

c. The parties acknowledge that funding and completion of the Project depend upon actions of Congress and other circumstances not within the control of the parties, and no claim shall result from delays in funding and completion of the Project or changes in the Project or funding caused by Congress, the federal courts, or other circumstances beyond the control of the parties.

ARTICLE VII - Contingency

No transfer of any functional portion of the Project will occur until the necessary authorities and appropriations are obtained or the parties agree on a substitute Article VI. If transfer still does not occur, the Army and DOI have no obligations under this MOU, except those discussed in Article III; however, the parties recognize their continuing statutory obligations under Public Law 100-581.

ARTICLE VIII - Notices

a. Notices and communications regarding implementation of this MOU shall be sent to the following personnel:

1. If to the COE:

Timothy L. Wood, Colonel, CE  
District Engineer  
U.S. Army Corps of Engineers  
P.O. Box 2946  
Portland, Oregon 97208-2946

2. If to the BIA:

Mr. Stanley Speaks  
Area Director-Portland Area Office  
U.S. Department of Interior  
Bureau of Indian Affairs  
Holladay Federal Building  
911 N.E. 11th Avenue  
Portland, Oregon 97232

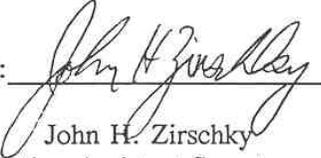
b. A party may change the address to which such communications are to be directed by giving 30 days written notice to the other party.

ARTICLE IX - Miscellaneous Provisions

Either party may seek to modify this MOU upon 30 days written notice to the other party. The MOU will not be modified unless both parties consent in writing.

IN WITNESS WHEREOF, the parties hereto have executed this MOU as of the day and year first written above.

DEPARTMENT OF THE ARMY

BY: 

John H. Zirschky  
Acting Assistant Secretary  
(Civil Works)

DEPARTMENT OF THE INTERIOR

BY: 

Ada E. Deer  
Assistant Secretary  
(Indian Affairs)

## APPENDIX A

### ESTIMATED FISHING ACCESS SITES AS OF JUNE 21, 1995

Alder Creek Treaty Fishing Access Site, Washington  
Alderdale Treaty Fishing Access Site, Washington  
Avery Treaty Fishing Access Site, Washington  
Bingen Boat Channel Treaty Fishing Access Site, Washington  
Bonneville Area Office Treaty Fishing Access Site, Washington  
Cascade Locks In-Lieu Fishing Site, Oregon  
Celilo Treaty Fishing Access Site, Oregon  
Cooks In-lieu Fishing Site, Oregon  
Crow Butte Treaty Fishing Access, Washington  
Dallesport Treaty Fishing Access Site, Washington  
Faler Road Treaty Fishing Access Site, Oregon  
Goodnoe Treaty Fishing Access Site, Washington  
LePage Treaty Fishing Access Site, Oregon  
Lone Pine In-lieu Fishing Site, Oregon  
Lyle Treaty Fishing Access Site, Washington  
Maryhill Treaty Fishing Access Site, Washington  
Moonay Treaty Fishing Access Site, Washington  
North Shore Treaty Fishing Access Site, Washington  
Pasture Point Treaty Fishing Access Site, Washington  
Pine Creek Treaty Fishing Access Site, Washington  
Preachers Eddy Treaty Fishing Access Site, Oregon  
Rock Creek Treaty Fishing Access Site, Washington  
Roosevelt Treaty Fishing Access Site, Washington  
Rufus Treaty Fishing Access Site, Oregon  
Stanley Rock Treaty Fishing Access Site, Oregon  
Sundale Treaty Fishing Access Site, Washington

Three Mile Canyon Treaty Fishing Access Site, Oregon

Underwood In-lieu Fishing Site, Washington

White Salmon Treaty Fishing Access Site, Washington

Wind River In-lieu Fishing Site, Washington

Wind River Treaty Fishing Access Site, Washington

Figure D-1: Planning Stage Roles and Responsibilities

<u>ROLES AND RESPONSIBILITIES MATRIX: CELILO VILLAGE, PLANNING STAGE</u>						
Party Responsibility						
<u>Project Activity</u>	<u>(COE)</u>	<u>(BIA)</u>	<u>Wyam</u>	<u>Reside nts</u>	<u>Tribes</u>	<u>Other</u>
Upkeep of Residences*	N	S	N/A	P/L	N	
Upkeep of Common Buildings #	N	P/L	N/A	S	A	
Upkeep of Common Areas Operations/Maintenance #	N	P/L	N/A	S	A	
Sewer Facilities	N	P/L	N/A	N	N	
Water Systems	N	P/L	N/A	N	N	
Roads	N	P/L	N/A	N	N	
Planning and Development	P/L	P	N/A	P	P	
Code of Regulations	N/A	N/A	N/A	N/A	N/A	
Security	N	N	N	S	N	State
Re-creation of the Wyam Board	S	P	N/A	P	P	
Advisory Committees	N/A	N/A	N/A	N/A	N/A	
Site Cleanup	N	P/L	N/A	S	N	
Site Preparation and Relocations	P/L	P	N/A	A	A	
Construction	N/A	N/A	N/A	N/A	N/A	
KEY: P – Primary P/L - Primary/Lead S – Support A – Advisory N – No Role						
* - The definition of “upkeep” and individual roles are provided in the residency permits						
# - The maintenance schedules are defined in the Operation Plan.						

Figure D-2: Implementation Stage Roles and Responsibilities

<u>ROLES AND RESPONSIBILITIES MATRIX: CELILO VILLAGE, IMPLEMENTATION STAGE</u>						
Party Responsibility						
<u>Project Activity</u>	<u>(COE)</u>	<u>(BIA)</u>	<u>Wyam</u>	<u>Reside nts</u>	<u>Tribes</u>	<u>Other</u>
Upkeep of Residences*	N	S	N	P/L	N	
Upkeep of Common Buildings #	N	P/L	A	S	A	
Upkeep of Common Areas#	N	P/L	A	S	A	
Operations/Maintenance #						
Sewer Facilities	N	P/L	A	N	N	
Water Systems	N	P/L	A	N	N	
Roads	N	P/L	A	N	N	
Planning and Development	A	P	P/L	A	P	
Code of Regulations	N	N	P/L	N	P	
Security	N	N	A	S	N	State
Re-creation of the Wyam Board	N/A	N/A	N/A	N/A	N/A	
Advisory Committees	N	A	P/L	P	A	
Site Cleanup	N	P/L	N/A	S	N	
Site Preparation and Relocations	P/L	P	A	A	A	
Construction	P/L	A	A	A	A	
KEY: P – Primary P/L - Primary/Lead S – Support A – Advisory N – No Role						
* - The definition of “upkeep” and individual roles are provided in the residency permits						
# - The maintenance schedules are defined in the Operation Plan.						

Figure D-3: Project Stage Roles and Responsibilities

<u>ROLES AND RESPONSIBILITIES MATRIX: CELILO VILLAGE, POST PROJECT STAGE</u>						
Party Responsibility						
<u>Project Activity</u>	<u>(COE)</u>	<u>(BIA)</u>	<u>Wyam</u>	<u>Residents</u>	<u>Tribes</u>	<u>Other</u>
Upkeep of Residences*	N	S	N	P/L	N	
Upkeep of Common Buildings #	N	P/L	A	S	A	
Upkeep of Common Areas#	N	P/L	A	S	A	
Operations/Maintenance #						
Sewer Facilities	N	P/L	A	N	N	
Water Systems	N	P/L	A	N	N	
Roads	N	P/L	A	N	N	
Planning and Development	N	A	P/L	A	P	
Code of Regulations	N	N	P/L	N	P	
Security	N	N	A	S	N	State
Re-creation of the Wyam Board	N/A	N/A	N/A	N/A	N/A	
Advisory Committees	N	A	P/L	P	A	
Site Cleanup	N/A	N/A	N/A	N/A	N/A	
Site Prep and Relocations	N/A	N/A	N/A	N/A	N/A	
Construction	N/A	N/A	N/A	N/A	N/A	
KEY: P – Primary    P/L - Primary/Lead    S – Support    A – Advisory    N – No Role						
* - The definition of “upkeep” and individual roles are provided in the residency permits						
# - The maintenance schedules are defined in the Operation Plan.						

## **APPENDIX E: LEGAL APPENDIX**

12/12/01 rev. 2/19/2002

The purpose of this appendix is to provide a fuller discussion of the facts and legal issues involved in this Post-Authorization Change (PAC)<sup>1</sup> report. This PAC concerns the integration of the Celilo Village into the Columbia River Treaty Fishing Access Sites (CRTFAS) program, authorized under the CRTFAS Act (Title IV of Pub. L. 100-581, Nov. 1, 1988, 102 Stat. 2944, as amended.)

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<sup>1</sup> The Post-Authorization Change (PAC) process, set forth at Appendix G, Section III, of ER 1105-2-100 (22 Apr 2000 edition), Planning Guidance Notebook, is the Corps' process for proposed changes to authorized civil works projects. The lowest level for approving a PAC change is the Division Engineer.

## 1. THE PARTIES TO THE PROJECT

### 1.1 The Other Federal Parties

The Bureau of Indian Affairs (BIA) of the Department of Interior (DOI), and the Indian Health Service of the Department of Health and Human Services, are parties to the proposed project by virtue of their Native American programs<sup>2</sup>.

### 1.2 The Tribal Parties

Four federally-recognized, treaty tribes are parties to this project. The four tribes are the Confederated Bands and Tribes of the Yakama Indian Nation, the Confederated Tribes of the Umatilla Indian Reservation (CTUIR), the Confederated Tribes of the Warm Springs

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<sup>2</sup> The Corps of Engineers (COE) is the oldest manager of the Nation's waterways, with the original civil works projects being created by Congress in response to defense needs of the East Coast ports during the War of 1812. Congress expanded the Corps's civil works authority as the Nation expanded, first into the Mississippi River Valley, and then finally in 1850 to the Presidio of San Francisco for the new West Coast states and territories. Portland District COE was created shortly after Oregon's admission as a state in 1859, in order to provide for Oregon's coastal ports and for navigation on the Columbia River. In the Rivers and Harbors Act of August 18, 1894, 28 Stat. 362, Congress enacted 33 USC 1, which provides in part:

"It shall be the duty of the Secretary of the Army to prescribe such regulations for the use, administration, and navigation of the navigable waters of the United States as in his judgment the public necessity may require for the protection of life and property, or of operations of the United States in channel improvement, covering all matters not specifically delegated by law to some other executive department."

In carrying out this function, the Corps has always partnered with other federal and state agencies. Among the applicable statutes for the Corps' reservoir management planning are 33 USC 2297 (operation and maintenance on recreation lands), 33 USC 2319 (reservoir management), and 33 USC 2320 (protection of recreational and commercial uses). It is on the basis of these and other Corps statutes that the Corps asserts primary jurisdiction (as the term is used in administrative law) with regard to its operations and management of the navigable waters of the Columbia River. As the Supreme Court has stated:

"The doctrine of primary jurisdiction, like the rule requiring exhaustion of administrative remedies, is concerned with promoting proper relationships between the courts and administrative agencies charged with particular regulatory duties. . . . 'Primary jurisdiction,' on the other hand, applies where a claim is originally cognizable in the courts, and comes into play whenever enforcement of the claim requires the resolution of issues which, under the regulatory scheme, have been placed within the special competence of an administrative body; in such a case the judicial process is suspended pending referral of such issues to the administrative body for its views. General American Tank Car Corp. v. El Dorado Terminal Co., 308 US 422, 433." United States v. Western Pacific RR Co., 352 US 59, 1 L Ed. 2d 126, 77 S Ct 161 (1956).

The importance of primary jurisdiction is that it lets the Portland District COE, in consultation with other federal and state partners, make certain administrative decisions concerning its delegated missions on the Columbia River with some assurance that the federal courts will consider and follow such decisions as made by the agency charged with administrative primary jurisdiction. The CRTFAS program puts the Portland District in such a position, as Congress entrusted the program to the Corps primarily, instead of the BIA where it might have been assigned under other circumstances. The CRTFAS program is an outgrowth of the District's involvement with the treaty fishing tribes for over 125 years. The District's involvement with the treaty fishing tribes of the Mid-Columbia River is detailed below, and has developed as the tribes' treaty rights have developed.

Reservation of Oregon<sup>3</sup>, and the Nez Perce Tribe. The current political grouping of the tribes and bands involved in this project is the result of 1855 treaties, in which Territorial Governor Stevens of Washington negotiated the cessation of tribal lands in Eastern Oregon and Washington and Western Idaho in exchange for four designated reservations<sup>4</sup> and a series of off-reservation fishing, hunting, and food-gathering rights<sup>5</sup>.

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<sup>3</sup> H.Doc. 531, 81st Congress, 2nd Session, Vol. VII, Appendix Q, Legal, March 20, 1950, page 2949, states that:

“The Confederated Tribes of Warm Springs by treaty in 1865 [Treaty of Nov. 15, 1865, 2 Kapler 908] relinquished ‘the right to take fish, erect houses, hunt game, gather roots and berries, and pasture animals upon lands without the reservation.’ Hence, these Indians have no fishing rights upon the Columbia River, though many of them still fish there. The Indians, parties to the this treaty, allege that it was obtained by fraud and misrepresentation, and as such is void and of no effect. However, since the treaty has been ratified by Congress (March 2, 1867) and has never been repealed or modified by that body, it would appear to be still in full force and effect. The treaty has never been held by the courts, specifically, to have been invalid, nor has its validity been questioned by them.”

Subsequent legislation discussed herein has annulled the negative impacts of the 1865 treaty on the Warm Springs as far as Columbia river treaty fishing rights. The 1947 1948 Interior Department Appropriations Act specifically included the Warm Springs as a named tribal beneficiary at Celilo. The Corps appropriations acts from 1953 to 1957 included them as a named tribal beneficiary. The Nov. 1, 1988 PL 100-581 CRTFAS Act also listed them, as well as the Nez Perce, as specific tribal beneficiaries. Moreover, the case law on 1855 treaty fishing rights involving the Columbia River has also recognized Warm Springs tribal rights.

<sup>4</sup> The Yakama Indian Nation [spelled “Yakima” for many years until 1994 when the original treaty “Yakama” spelling was restored by tribal resolution] is comprised of 14 tribes and bands including the Palouse, Piquouse, Yakama, Wenat-chapam, Klinquit, Oche Chotes, Kow was say ee, Sk’in-pah, Kah-miltpah, Klickitat, Wish ham, See ap Cat, Li ay was, and Shyiks. Their tribal headquarters is at Toppenish, Washington, near Yakima, Washington and the Yakima River.

The Warm Springs is comprised of members of the Warm Springs (Tenino Band of Walla Walla Indians), Wasco, and Paiute Tribes, as well as descendents of Western Oregon tribes like the Calapooia who intermarried with members of the three tribes, and an assortment of members of other tribes (the 1950 Indian census reported 45 Puyallup-Pitt river, 2 Cowlitz, 1 Upper chinook, 13 Yakama-Klickitat, and 4 Klickitat Indians living on the reservation with the Warm Springs, Wasco, and Paiute Indians.) The tribal headquarters is near Madras, Oregon, on the banks of the Deschutes River.

The Umatilla Reservation includes three tribes, the Cayuse, the Umatilla, and the Walla Walla tribes, as well as members of other tribes including the Paiute. Extensive intermarriage of Umatilla Indians with the members of the Nez Perce Tribe is also reported. The tribal headquarters is outside Pendleton, Oregon, near the Umatilla River.

The Nez Perce Tribe negotiated its own separate reservation under the 1855 treaties. Its tribal headquarters is at Lapwai, Idaho.

<sup>5</sup> Celilo Village is on the Oregon shore adjacent to the historic and currently inundated Celilo Falls. As discussed in the text, all 4 listed tribes have off-reservation treaty fishing rights at the site, although the site is technically ceded lands of the Warm Springs tribe.

The following Supreme Court quotations stated fundamental principles of Indian law applicable herein: Oneida Indian Nation v. County of Oneida, 414 US 661, 39 L Ed 2d 73, 94 S Ct 772 (1974), at 39 L Ed 2d 79, stated:

"It very early became accepted doctrine in this court that although fee title to the lands occupied by Indians when the colonists arrived became vested in the sovereign -- first the discovering European nations and later the original States and the United States -- a right of occupancy in the Indian tribes was nevertheless recognized. That right, sometimes called Indian title and good against all but the sovereign, could be terminated only by sovereign act."

County of Oneida v. Oneida Indian Nation, 470 US 226, 84 L Ed 2d 169, 105 S Ct 1245 (1985), amplified the language in the earlier decision above, at 84 L Ed 2d 178-179:

All four tribes share similar languages and cultures, and their members have extensively intermarried over the nearly 150 years since the 1855 treaties were signed.

The tribal involvement in this project stems from ancient, off-reservation fishing sites along the banks of the Columbia River<sup>6</sup>, which were recognized and preserved in the

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"By the time of the Revolutionary War, several well-defined principles had been established governing the nature of a tribe's interest in its property and how those interests could be conveyed. It was accepted that Indian nations held "aboriginal title" to lands they had inhabited from time immemorial. . . . The "doctrine of discovery" provided, however, that discovering nations held fee title to these lands, subject to the Indians' right of occupancy and use. As a consequence, no one could purchase Indian land or otherwise terminate aboriginal title without the consent of the sovereign."

"With the adoption of the Constitution, Indian relations became the exclusive province of federal law. . . . From the first Indian claims presented, this Court recognized the aboriginal rights of the Indians to their lands. . . . This principle has been reaffirmed consistently."

<sup>6</sup> In 1889, Indian Agent Gordon surveyed the Indian fishing sites along the banks of the Columbia River in connection with the Winans litigation cited below. His report listed the following data regarding treaty fishing sites on the Columbia River banks:

CASCADE RAPIDS [flooded by Bonneville Dam]

Skamania County, Wash.: 6 miles of scattered sites, Sec. 11-21, T2N R7E (River Miles (RM) 145-149)

CELILO FISHERY [lower sites flooded by Bonneville Dam; upper sites flooded by The Dalles Dam]

a. Tum-water, Wash. (Spearfish) ; Lot 2, Sec.25, T2N R13E to Lot 3, Sec.19, T2N, R14E (RM 193-194) 594 acres

b. Island, mid-river (E of Avery); SE part Sec. 14, T2N R14E (RM 198)

c. Skin or Skein, Wash. (Celilo); Lot 2, Sec.13, T2N, R14E to Lot 2, Sec.18, T2N, R15E (RM 199-200) Island and Skin: 633 acres total

d. Tame Musqua, Wash. (E of Miller Is.) Lot 1, Sec. 13 to Lot 1, Sec. 12, T2N R15E (RM 206) 5.5 acres

e. Dalles, Oregon (Tenino) Lot 3, Sec. 36, T2N R13E to Lot 2, Sec. 20, T2N R14E (RM 192-194) 125.5 acres

f. Celilo, Oregon (Celilo Park) Sec. 19 -20, T2N R15E (RM 200-201) 94.4 acres

g. Wat-tince, Wash. (John Day Dam) Lot 3, Sec. 29 to Lot 1, Sec. 13, T3N, R17E (RM 215-219) 160 acres

h. Tom's, Wash. (Rock Cr.) Lot 4 to Lot 3, Sec.32, T3N R19E (RM 228-229) 207.5 acres

i. John Day River, Ore. NE 1/4 of Sec. 13, T2N R18E (RM 10 on John Day River)

3. ABANDONED SITES:

THOSE FLOODED BY JOHN DAY DAM:

a. Jackson, Wash. (E of Bates) Lot 3 to Lot 1, Sec.34, T3N R19E (RM 231) 3.36 acres

b. Tah-wash, Wash. (E of Blalock Lagoon; 2 mi. W of Sundale) Lots 1&2, Sec. 30, T3N R20E (RM 234)

Both of these sites were rated inferior third class by Gordon.

SITE FLOODED BY MC NARY DAM (Walla Walla District)

Wallula, Wash. Sec. 18, 17, 8, T6N R31E 56.8 acres

4. SITES EAST AND NORTH OF CORPS MID-COLUMBIA RIVER DAM RESERVOIRS:

a. Palouse & Snake River 163 acres

b. Priest Rapids 110.3 acres

1855 treaties, as interpreted seven times by the United States Supreme Court.<sup>7</sup> Seufert Bros. V. United States, 294 US 194, 197 (1918), stated:

“The district court found, on what was sufficient evidence, that the Indians living on each side of the river, ever since the treaty had been negotiated, had been accustomed to cross to the other side to fish; that the members of the tribes associated freely and intermarried; and that neither claimed exclusive control of the fishing places on either side of the river or the necessary use of the river banks, but used both in common.”

“The record also shows with sufficient certainty. . . that the members of the tribes designated in the treaty as Yakima Indians, and also the Indians from the south side of the river, were accustomed to resort habitually to the locations described in the decree for the purposes of fishing at the time the treaty was entered into, and they continued to do so . . . and also that Indians from both sides of the river built houses on the south bank in which to dry and cure their fish during the fishing season.”

Following the last of these decisions in 1979, the States of Oregon and Washington, along with the US Fish and Wildlife Service of the DOI , the National Marine Fisheries Service of the Department of Commerce, and the US Department of Justice negotiated a compromise solution to treaty fishing rights on the Lower and Mid-Columbia River, which was divided into 6 zones<sup>8</sup>. The compromise created and designated a Zone VI commercial fishery exclusively for the treaty fishing Indians between the Corps’

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PORTLAND DISTRICT AND INDIAN CLAIMS COMMISSION COMPENSATION FOR DAMAGES TO THESE FISHERIES FLOODED BY PORTLAND DISTRICT DAMS includes:

Cascade Rapids: (1) 1945 in-lieu sites authorization; (2) 1946 Indian Claims Commission Act for pre-August 1946 damages; (3) CRTFAS program

Celilo Falls: (1) 1946 Indian Claims Commission Act for pre-August 1946 damages; (2) Special compensation in 1954-1958 civil works appropriations acts; (3) CRTFAS program

Abandoned Sites flooded by John Day Dam: (1) 1946 Indian Claims Commission Act for pre-August 1946 damages; (2) CRTFAS program

<sup>7</sup> United States v. Winans, 198 US 371 (1905), Seufert Bros. v. United States, 294 US 194 (1918), Tulee v. State of Washington, 315 US 681 (1942), Puyallup Tribe v. Washington Dept. of Game (Puyallup I), 391 US 392 (1968), Washington Dept. of Game v. Puyallup Tribe (Puyallup II), 414 US 44 (1973), Puyallup Tribe v. Washington Dept. of Game (Puyallup III), 433 US 165 (1977), and Washington v. Washington State Commercial Passenger Fishing Vessel Assn. (Fishing Vessel Assn.), 443 US 658 (1979). Winans established that the 1855 treaty rights superseded subsequent real estate rights, including real estate rights gained by the States of Oregon and Washington upon admission to the United States under the “Equal Footing” doctrine. Seufert reaffirmed the treaty rights and held that the Yakama tribal members had fishing rights on the Oregon shore, outside the ceded lands of the Yakama Indian Nation. After these two decisions, the off-reservation treaty right was characterized as an “Indian servitude” on riparian lands along the Columbia River that had been historic “usual and customary” fishing sites.

<sup>8</sup> United States v. Oregon has been the on-going lawsuit under which the fisheries of the Columbia River in the stretch between Bonneville and McNary Dam have been regulated for the tribes' benefit. Some of the many, ongoing United States v. Oregon decisions include the following: 302 F. Supp. 899 (D Ore. 1969), aff'd. 529 F.2d 570 (9th Cir. 1976); further proceedings: 657 F.2d 1009 (9th Cir. 1981); 718 F.2d 299 (9th Cir. 1983); 699 F. Supp. 1456 (D Ore. 1988); 913 F.2d 576 (9th Cir. 1990); and related case: Settler v. Lameer, 507 F.2d 231 (9th Cir. 1974).

Bonneville Dam at River Mile 146 and the McNary Dam at River Mile 192. It includes also the reservoirs behind The Dalles Dam at River Mile 192 and the John Day Dam at River Mile 215.<sup>9</sup>

### 1.3 US Army Engineer District, Portland

#### 1.3.1 Before Bonneville Dam's Operation

The Columbia River has always been a navigable waterway.<sup>10</sup> Archeologists have dated human use through artifacts as far back as 9000 B.C. The Lewis and Clark Expedition, that left St. Louis, Mo., in 1803 traversed the region at issue in 1805-1806. It passed downstream during October and November 1805 when the tribal fishing season was at its height (escorted from the Clearwater River in Idaho down the Snake and Columbia Rivers to the vicinity of Cascade Locks by Nez Perce elders). It returned upstream in the early Spring of 1806.

Numerous rapids and slack water areas made navigation of the Columbia River difficult and dangerous. The Portland District undertook a series of navigation improvements prior to the construction of the Bonneville Dam, 1933-1938 (the first of the 4 dams on the Mid-Columbia River to be constructed.) These improvements focused on two locations – (1)The Cascade Rapids which were permanently flooded and made safe for navigation by the 1938 operation of the Bonneville Dam<sup>11</sup>, and (2) rapids and falls known as Celilo

<sup>9</sup> The boundary between the Portland and Walla Walla Districts is the I-82 freeway bridge, about 1 mile downstream (west) of the McNary Dam. All but this last mile of Zone 6 is thus within Portland District project boundaries.

<sup>10</sup> Congress recognized this fact in the Oregon Admission Act, Act of Feb. 14, 1859, Sec. 2: “Oregon shall have concurrent jurisdiction on the Columbia and all other rivers and waters bordering on the said State of Oregon, so far as the same shall form a common boundary to said State, and any other State or States now or hereafter to be formed or bounded by the same; and said rivers and waters, and all the navigable waters of said State, shall be common highways and forever free, as well as to the inhabitants of said State as to all other citizens of the United States, without any tax, duty, impost, or toll therefor.” [reprinted in appendices to Oregon Revised Statutes, Vol. 15, 1999 edition].

<sup>11</sup> The Civil Appropriations Act of June 23, 1874 in Sec. 2 authorized the survey of the Cascade Rapids and the rocks and rapids around The Dalles for canals and locks. In the following acts, the construction of Cascade Locks through the Cascade Rapids was authorized and funded for construction:

Rivers and Harbors Approp. Act	August 14, 1876	\$90,000
Rivers and Harbors Approp. Act	June 18, 1878	\$150,000
Rivers and Harbors Approp. Act	March 3, 1879	\$100,000
Rivers and Harbors Approp. Act	June 14, 1880	\$100,000
Civil Appropriations Act	March 3, 1881	\$100,000
Rivers and Harbors Approp. Act	August 2, 1882	\$265,000
Rivers and Harbors Approp. Act	July 5, 1884	\$150,000
Rivers and Harbors Approp. Act	August 5, 1886	\$187,500
Rivers and Harbors Approp. Act	August 11, 1888	\$300,000
Rivers and Harbors Approp. Act	September 9, 1890	\$435,000
Rivers and Harbors Approp. Act	July 13, 1892	\$326,250

The construction and operation of Bonneville Dam in 1938 flooded out Cascade Locks and the rapids around the Locks.

Falls, about 10 miles upstream of the present The Dalles Dam<sup>12</sup>. The Dalles Dam was placed in operation in 1958, followed by the John Day Dam in 1968.

### 1.3.2 Bonneville Dam

The construction of Bonneville Dam in 1933 started out as a Depression-era public works project in fulfillment of a campaign promise by President Roosevelt. Congressional authorization followed the start of the construction work. When Bonneville Dam was completed and put into operation in 1938, it was apparent that the dam's rising reservoir was flooding out numerous tribal treaty fishing sites along the river banks. BIA conducted its own investigations<sup>13</sup>.

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<sup>12</sup> During the latter part of the 19th Century, multiple surveys to advance the navigability of the Columbia River through the Celilo Falls area were authorized:

- (1) Civil Appropriations Act of June 23, 1874;
- (2) Rivers and Harbors Appropriation Act of March 3, 1879;
- (3) Rivers and Harbors Appropriation Act of August 11, 1888;
- (4) Rivers and Harbors Appropriation Act of July 13, 1892; and
- (5) Rivers and Harbors Emergency Appropriation Act. of June 6, 1900.

Before authorizing the Dalles-Celilo Canal, Congress in the Rivers and Harbors Appropriation Act of August 18, 1894, authorized a boat railway from The Dalles to Celilo Falls, in accordance with Senate Document 7, 53rd Congress, 1st Session. Due to a variety of problems, the boat railway was never completed. Not even all of the real estate for the project could be acquired due to conflicts with other users.

Congress authorized construction of the Dalles-Celilo Canal in accordance with House Document 228, 56th Congress, 2nd Session, in the June 13, 1902 Rivers and Harbors Appropriation Act. The Canal was finally finished in 1915. The construction and operation of The Dalles Dam in 1958 flooded out Celilo Falls and the Dalles-Celilo Canal. The current navigation channel makes no use of the old flooded-out canal.

<sup>13</sup> In July 1937, RL Simmons of BIA made an inspection trip by boat between Celilo Falls and Bonneville Dam. Simmons' party identified, photographed, and documented usual and customary fishing sites.

Simmons submitted a Nov. 23, 1937 letter report to the Commissioner of Indian Affairs. This letter report included extracts of old historical documents on the extent of the tribal fishery. The following are key quotes from these documents.

(a) "The United States Exploring Expedition 1838-1842", Wilkes, p. 380: "At the Cascades, during the fishing season, there are about three hundred Indians, only about one-tenth of whom are residents: They occupy three lodges; but there was formerly a large town there. Great quantities of fish are taken by them; and the manner of doing this resembles that at the Willamette Falls. They also construct Canals, on a line parallel with the shore, with rocks and stones, for about fifty feet in length, through which fish pass in order to avoid the strong current, and are here taken in great numbers."

(b) "The Cascades", Wilkes, p. 386:

"The number of Indians within The Dalles Mission is reckoned at about two thousand; in but few of these, however, has any symptom of reform shown itself. They frequent the three great salmon fisheries of the Columbia, The Dalles, Cascades, and Chutes and a few were found at a salmon fishery about twenty five miles up the Chutes [Deschutes] River."

"The season for fishing salmon, which is the chief article of food in this country, lasts during five months, from May to September."

(c) Message from the President to the Two Houses of Congress, 33rd Congress, printed in 1854, pages 460-461, estimates of Indian Population:

"Estimates by

Governor Stevens	7,356
Lewis & Clark, 1806-1807	42,200
Wilkes 1841	2,650-7,600
Ware & Vavasour, in Hudson's Bay Territories 1849	4,500
Dr. Dart 1851	7,103

(d) Report of the Commissioner of Fisheries, 75th Congress, 1st Session, Senate Document 87, page 18:

"The original Indian inhabitants of the Columbia Basin represented a considerable population, which some authorities estimate at about 50,000 individuals. . . . Indian fisheries are reported along the main Columbia from Kettle Falls to the mouth, as well as on many of the tributaries. Among the famous Indian fishing grounds were Kettle Falls, the falls of the Spokane River, the San Poil, Celilo Falls, Cascade Rapids, and the falls of the Willamette."

"Natives in the vicinity of Cascade Rapids, The Dalles, and Celilo Falls made pemmican of the salmon . . . and used this product in trading with tribes in regions remote from the fishing areas."

"By 1861 commercial fishing on the Columbia River [by white settlers] had become an important industry."

(e) Charles H. Carey, "A General History of Oregon Prior to 1861", page 188:

"At the dangerous portage around the swift water near Celilo was a native Village on the north side, called Wishram, where from time immemorial the Indians have been accustomed to assemble in the salmon fishing season; . . . In the fishing season they numbered, perhaps 3,000, comprising not only Klickitats, who lived here permanently, but numerous representatives from different tribes throughout the country."

On August 26, 1942, the Interior Department attorney Edward Swindell transmitted his letter report, which included affidavits from Columbia River tribal members about their fishery history. At p. 148, Swindell stated the importance of the Celilo Falls (Wyamn) site and the adjacent Washington shore known as Spearfish, Wishram, and Nixluidix. Swindell also cited the major cases supporting the tribes' fishing rights: United States v. Seufert Bros., 233 Fed. 579, aff'd 249 US 194 (1919), and United States v. Brookfield Fisheries, 24 F. Supp. 712. Swindell also noted the number of tribal users of Celilo had greatly increased due to the loss of other tribal fishing sites. At p. 148A, he quoted others' estimates:

"It has been estimated that as many as 1500 Indians are assembled in the area during the height of the season, most of whom reside at Celilo Falls."

Swindell also included among the affidavits the affidavit of Chief Tommy Thompson, an hereditary chief of the Wyam or River People. Key testimony of Chief Tommy Thompson includes the following:

"Affiant deposes that up until the time the Celilo Ship Canal was constructed, the old Indian Village and camping ground was located up near where the present upstream or intake end of the canal comes out of the river, and that the Indians did not move to their present location until after they were forced to move by reason of construction of the canal; that when he was a small boy his parents as well as the other older people told him that Wyam was and always had been a permanent Village and that Indians lived there all the year around; That he was told that prior to the time he was born, there were a large number of Indians living at Wyam, probably as many as 600 or 700 individuals; that of this number about 200 were adults;"

"Affiant further deposes that the fishing platform locations on the banks of the river and on the rocks and islands in the river by the falls, have been used by the local people from as long back as the Indians can remember; that these stations have been handed down from the older to the younger Indians of the same family from generation to generation;"

### 1.3.3 The Original In-Lieu sites

On July 12, 1939, Major Thoron D. Weaver, Portland District Engineer, wrote Superintendent MA Johnson of the Yakima Indian Agency at Toppenish, Washington, providing a formal response to tribal claims for fishing sites flooded out by Bonneville Dam. The Corps proposal offered the following replacement sites to the tribes:

- (1) Tenino Site: a parcel of land between the river and the Celilo Canal, in the vicinity of the Five-Mile Lock on the canal on the Oregon side, on land owned partly by the Federal Government and partly by Seufert Bros.;
- (2) Big Eddy Site: a state owned site in Klickitat County, Wash., comprising Sec. 36;
- (3) Big White Salmon Site at Underwood, Wash.: a parcel of land on the west bank of the Big White Salmon River, near the Columbia river, to be acquired by related condemnation proceedings against Northwest Electric Company;
- (4) Wind River Site: 20 acres approximately between the Bonneville-Coulee transmission line and the river on the Washington side to be acquired; and
- (5) Herman Creek Site: a parcel of land including 5 acres of privately cleared land and part of an Oregon State hatchery<sup>14</sup>.

The letter sought the tribes' formal approval of the sites by tribal council resolutions, prior to submitting the report to higher headquarters .

World War II intervened. In 1945 Congress, by the Rivers and Harbors Act, Public Law 14 of March 2, 1945, authorized appropriations to purchase in lieu sites as follows:

“Columbia River at Bonneville, Oregon: The Secretary of War is hereby authorized, under such terms and conditions as he may deem advisable, to acquire lands and provide facilities in the

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"Affiant further deposes that when he was a boy he recalls the Indians lived in houses made of tullees . . . and that the same material was used for their drying sheds; that in some of the large houses as many as five or six families would live and in other instances there would be only one family to a house;"

<sup>14</sup> House Document 531, 81st Congress, 2nd Session, Appendix Q, Legal, Oct. 1, 1948, p. 2951, repeated this list of sites and added Little White Salmon, Wash. to the list. The Flood Control Act of May 17, 1950 authorized House Document 531. Subsequent events changed the actual in-lieu sites provided. Lone Pine (downstream of The Dalles Dam) was substituted for Tenino. Cascade Locks was substituted for Herman Creek due to Oregon State fish hatchery on Herman Creek next to the proposed fishing site. Big Eddy was abandoned due to flooding problems. Big White Salmon (Underwood, Wash.), Little White Salmon (Cook, Wash.), and Wind River (Carson, Wash.) were built as planned. The tributary rivers adjacent to these sites are restricted from further development by various limitations in the Columbia Gorge National Scenic Area Act. 16 USC 544 ff., especially 544k(b) and 544o. House Document 531 also on the same list and page identified Celilo Falls, Ore. and Wash.; Klickitat River, Wash.; Spearfish, Wash.; and White Bluffs, Wash. as “usual and accustomed fishing places” that development of proposed dams (including The Dalles and John Day Dams) would impact. The Klickitat River site is now within the Columbia Gorge National Scenic Area, 16 USC 544 ff., and the Klickitat River is partially within Yakama Reservation borders, putting it under 16 USC 544k(b) restrictions. White Bluffs is at Priest Rapids Dam, a PUD dam. Celilo Falls and Spearfish were inundated by The Dalles Dam, discussed *infra*. Four Yakima River fishing sites at Horn, Prosser, Wapate, and Sunnyside Diversion Dams were also listed as fishing sites to be impacted by development by others.

States of Oregon and Washington to replace Indian fishing grounds submerged or destroyed as a result of the construction of Bonneville Dam: *Provided*, That not to exceed \$50,000 may be expended for this purpose from funds heretofore or hereafter appropriated for maintenance and improvement of existing river and harbor works: *Provided further*, That such lands and facilities shall be transferred to the Secretary of the Interior for the use and benefit of the Indians, and shall be subject to the same conditions, safeguards, and protections as the treaty fishing grounds submerged or destroyed;”

For a variety of reasons, progress on acquiring, constructing, and transferring the in lieu sites was slow. Eventually, by 1963, five in lieu sites were acquired, constructed, and transferred to BIA.<sup>15</sup>

#### 1.3.4 The Indian Claims Commission Act

On August 13, 1946, the Indian Claims Commission Act (ICCA), 25 USC 70 ff., c. 959, Sec. 1, 60 Stat. 1049, became law<sup>16</sup>. The ICCA provided a forum and relief mechanism

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<sup>15</sup> BIA’s Les McConnell prepared a summary of the history of the in lieu sites process. Key facts from this summary include the following:

In 1950 the Corps instituted litigation to remove a logging company that had obstructed the Big White Salmon site. The Corps suggested BIA take the site, the balance of the money, and complete the program. BIA refused.

In 1951 the State of Oregon continued its opposition to the Herman Creek site adjacent to the state fish hatchery. The Corps also exhausted the appropriations for the in lieu sites, and told the tribes that more appropriations were needed. At a meeting with the intertribal Celilo Fish Committee, resolutions were adopted including the following last paragraph:

"Be it resolved that the Fish Committee feels that the War Department should replace the living quarters and drying shacks, sheds that were destroyed by the Bonneville Pool in addition to other facilities agreed upon."

In 1957 the original 2 in-lieu sites came under DOI regulation. In March 1959, the Fish Committee met and divided up maintenance responsibility: (1) The Yakama were given responsibility for Big White Salmon in lieu site, and (2) Lone Pine was assigned to the Warm Springs and Umatilla jointly. In September 1959, the Corps was about to refer the matter back to Congress when agreement was reached on Little White Salmon and Wind River sites.

Throughout 1957-1960, the sites deteriorated. In September 1960 the Area office of BIA did a survey of the sites, and distributed its report and photos to the tribes and affected federal agencies. A Nov. 22, 1960 conference resulted in the tribes accusing the Corps of not doing its job. The Corps sent a financial summary to the tribes dated April 19, 1961, which showed a balance of \$75,327.62 in the in lieu site appropriation. Discussions followed through June 12, 1962, when finally the Yakima joined the other tribes in agreeing to the Government acquiring the Lower Cascade Lock site. The Corps proceeded to condemn 1.6 acres at Cascade Locks.

The final Cascade Locks site was acquired in 1963 and constructed in 1963, with work completed in December 1963. There was a balance of \$40,873 left in the in lieu appropriation. It was agreed between BIA and the Corps to use the balance of the money to improve existing sites.

In 1964-1966, health conditions deteriorated at most of the sites. Finally in 1966, the tribes agreed that the balance of the \$40,873 could be used for site improvements in lieu of acquiring additional sites. The summary of the site acquisition program in 1966 was as follows:

Big White Salmon, Wash.	4.19 acres	(1942 acquisition)
Little White Salmon, Wash.	3.14 acres	(1959 acquisition)
Lone Pine, Oregon	9.0 acres	(1956 acquisition)
Wind River, Wash.	23.6 acres	(1959 acquisition)
Cascade Locks, Oregon	1.6 acres	(1963 acquisition)

<sup>16</sup> Since the statute is now omitted from the USCA, the key jurisdictional section is recorded here:

for all tribal claims that arose on or before its effective date, August 13, 1946. It also codified the Indian trust responsibility of the United States with regard to claims arising under its jurisdiction. The four treaty fishing tribes all succeeded in getting relief for pre-August, 1946, treaty-fishing injuries under the act<sup>17</sup>.

### 1.3.5 The Dalles Dam

Corps planning for The Dalles Dam originated in the 1930's, but it was the 1948 Vanport Flood that precipitated speedy authorization<sup>18</sup>. The result was that the authorization document, House Document 531, 81<sup>st</sup> Congress, 2d Session, March 20, 1950, an 8-volume encyclopedia of information, was transmitted to Congress within a year and authorized by the Flood Control Act of May 17, 1950. As had occurred with Bonneville Dam, the speedy authorization left most of the negotiations over compensation for adverse impacts to tribal treaty fishing rights until after the Congressional authorization. However, Congress had authorized a number of tribal compensation measures in House Document 531, including the following:

Paragraph 652 provides in part:

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"Sec. 2 The Commission shall here and determine the following claims against the United States on behalf of any Indian tribe, band, or other identifiable group of American Indians residing within the territorial limits of the United States or Alaska:

- (1) claims in law or equity arising under the Constitution, laws, treaties of the United States, and Executive orders of the President;
- (2) all other claims in law or equity, including those sounding in tort, with respect to which the claimant would have been entitled to sue in a court of the United States if the United States was subject to suit;
- (3) claims which would result if the treaties, contracts, and agreements between the claimant and the United States were revised on the ground of fraud, duress, unconscionable consideration, mutual or unilateral mistake, whether of law or equity, or any other ground cognizable by a court of equity;
- (4) claims arising from the taking by the United States, whether as a result of a treaty of cession or otherwise, of lands owned or occupied by the claimant without the payment for such lands of compensation agreed to by the claimant; and
- (5) claims based upon fair and honorable dealings that are not recognized by any existing rule of law or equity.

No claim accruing after the date of the approval of this Act shall be considered by the Commission.

All claims hereunder may be heard and determined by the Commission notwithstanding any statute of limitations or laches, but all other defenses shall be available to the United States."

[The rest of the section dealt with what was allowable as a deduction to the United States and what wasn't.]

Section 24 of the act gave the Court of Claims jurisdiction to hear any claims that arose after the date (August 13, 1946) of the act. The Indian Claims Commission had its tenure extended several times by Congress till its final dissolution around 1978 - and the transfer of all pending cases to the Court of Claims.

<sup>17</sup> Records of ICCA relief to the tribes can be obtained from the National Archives in Washington, DC, and the Oregon Historical Society in Portland, Oregon.

<sup>18</sup> On Sunday, Memorial Day, May 30, 1948, Oregon's second largest city, Vanport, Oregon, was destroyed by flooding, about 5 hours after the local federal officials, including the Portland District Engineer, assured the residents that they were safe. The political embarrassment to President Truman's reelection campaign, coming between the May Oregon primary and the June California primary, caused the President to direct the Secretary of War to fix the flooding problem on the Columbia River immediately. The Secretary of War directed the Corps to complete its flood control plan and deliver it to Congress as fast as possible.

“The most important Indian fishing sites remaining on Columbia River are at or in the immediate vicinity of Celilo Falls. There are now approximately 5,000 Indians who claim fishing rights and fish at the sites, first, for subsistence purposes, and secondly, for commercial purposes – that is, selling fish wholesale to canneries and retailing fresh fish to local purchasers.

Construction of a dam at The Dalles site would cause inundation of Indian lands, partial inundation and disruption of Indian villages at Celilo, Oreg., and Spearfish, Wash., and inundation of the ancient and accustomed fishing sites at and near Celilo Falls. Certain lands are owned in fee by individual Indians, but the patents are held in trust by the tribes and the Bureau of Indian Affairs, Department of Interior. Other lands occupied by the Indians are in the public domain, but the Bureau of Indian Affairs and other agencies recognize Indian squatter rights on these lands.” [at p. 276-277]

Paragraph 673 provides :

“ 673. Special considerations. – As a solution to the Indian fishery problem and restitution for the disruption of the Indian fishing grounds, The Dalles Dam project will include the following provision and items:

Inundated lands and properties which cannot be replaced will be purchased.

(b) An allowance will be made for construction of a new Indian Village satisfactory to the Indians and the Bureau of Indian Affairs.

(c) Provision of suitable natural or artificial alternative fishing sites below the dam.

(d) Further restitution and dispensation as deemed fitting and proper by the Congress.” (at p. 281)

The primary focus of compensation was on Celilo Falls, which was to be inundated, and the neighboring Indian villages and residences. In 1952, Portland District prepared a Supplemental Report for the Chief of Engineers and Congress on the matter<sup>19</sup>. In 1953,

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<sup>19</sup> 13 "Special Report on Indian Fishery Problem, The Dalles Dam, Columbia River, Oregon -Washington", dated March 10, 1952. The report supplements considerably the data in House Document 531 ("the 308 report"). The report includes useful facts for current discussions on Celilo Village:

At p. 4, the report notes that approximately 5000 Indians were entitled to fish at Celilo.

At p. 65, 25 allotments are identified, as well as 168 acre public domain tract associated with Yakama Tribe (Tract B-225). At page 66, the report states that 21 parcels of Indian lands totaling 1428.11 acres are within the project.

At p.71, the report notes that the New Village at Celilo was completed and occupied in December, 1949. The "New Village" included 10 family dwelling units, 5 bathhouses, 60 slabs for erecting tents on, and 4 dormitory-type buildings intended as drying sheds but used as housing.

At p. 72, the "Original Celilo Village", which was inundated by The Dalles Dam in 1958, comprised 22 homes and shacks. Twenty-four families resided year-round, despite the lack of water or sewer facilities. Some of the old Village was on private land and much on federal land, transferred from the Army (War) Dept. to the Indian Service (BIA) by Public Law 713, 70th Congress (S.4036). (Act of Feb. 9, 1929 above). On the "1929 transfer Property", 11 year-round homes and 34 other shacks and drying sheds were constructed and in use when this 1952 report was prepared. (p. 72, report).

At p. 73, it was noted that railroad relocation construction would evict 14 families and remove some 60 buildings in 1955, whereas most of the rest of the Native American dwellings and buildings would not be affected by the dam construction until the pool was raised (1958).

administrative review by the Corps determined that then-existing law provided no compensation for lost fishing rights of individual Native Americans but only for the tribes' lost rights.

Negotiations with the tribes over compensation for Celilo Falls dragged out for several years, with the need for special language to be included in several years' appropriations laws<sup>20</sup>. In addition, the need to relocate some Indian families immediately out of the way

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At p. 73, it was noted that Spearfish had about 50 buildings that would be destroyed and less than ten families who were permanent residents.

The report also discusses then efforts at assimilation (1952 was in midst of tribe derecognition efforts) and also tribal claims pending before Indian Claims Commission (pre-Aug. 13, 1946 claims).

<sup>20</sup> Congress followed upon House Document 531 by authorizing appropriations for tribal compensation.

(a) The Civil Functions Appropriations Act of 1954, July 27, 1953, authorized the expenditure of Construction General funds as follows:

*"Provided further,* That funds appropriated herein may at the discretion and under the direction of the Chief of Engineers be used in payment to the accounts of the Confederated Tribes of the Yakima Reservation; the Confederated Tribes of the Warm Springs Reservation; the Confederated Tribes of the Umatilla Reservation; or other recognized Indian tribes, and those individual Indians not enrolled in any recognized tribe, but who through domicile at or in the immediate vicinity of the reservoir and through custom and usage are found to have an equitable interest in the fishery, all of whose fishing rights and interests will be impaired by the government incident to the construction, operation, or maintenance of the Dalles Dam, Columbia River, Washington and Oregon, and must be subordinated thereto by agreement or litigation."

(b) The Civil Functions Appropriations Act of 1955, June 30, 1954, authorized the expenditure of Construction General funds as follows:

*"Provided further,* that not to exceed \$750,000 of the funds appropriated herein may at the discretion and under the direction of the Chief of Engineers be used in payment to the accounts of the Confederated Tribes of the Yakima Reservation; the Confederated Tribes of the Warm Springs Reservation; the Confederated Tribes of the Umatilla Reservation; or other recognized Indian tribes, and those individual Indians not enrolled in any recognized tribe, but who through domicile at or in the immediate vicinity of the reservoir and through custom and usage are found to have an equitable interest in the fishery, all of whose fishing rights and interests will be impaired by the government incident to the construction, operation, or maintenance of the Dalles Dam, Columbia River, Washington and Oregon, and must be subordinated thereto by agreement or litigation."

(c) The Act of June 8, 1955, Public Law 62, amended the dollar amount of the March 2, 1945 authorization for in lieu sites from \$50,000 to \$185,000.

(d) The Public Works Appropriation Act of 1956, July 15, 1955, authorized the expenditure of Construction General funds as follows:

*"Provided,* That funds appropriated herein may at the discretion and under the direction of the Chief of Engineers be used in payment to the accounts of the Confederated Tribes of the Yakima Reservation; the Confederated Tribes of the Warm Springs Reservation; the Confederated Tribes of the Umatilla Reservation; or other recognized Indian tribes, and those individual Indians not enrolled in any recognized tribe, but who through domicile at or in the immediate vicinity of the reservoir and through custom and usage are found to have an equitable interest in the fishery, all of whose fishing rights and interests will be impaired by the government incident to the construction, operation, or maintenance of the Dalles Dam, Columbia River, Washington and Oregon, and must be subordinated thereto by agreement or litigation."

*"Provided further,* That not to exceed \$210,000 of funds appropriated herein may be transferred to the Secretary of the Interior for the relocation of those permanent resident Indian families in The Dalles project

of construction also generated special language in the Public Works Appropriations Act of 1955.

When negotiations were finally completed, a rate of \$3,751.94 per Indian claimant was agreed upon for the loss of commercial fishing rights, with \$15,007,760 being paid to the Yakama Tribe (based upon 4000 tribal fisher-persons) and a total of \$26,888,395 to all four tribes<sup>21</sup>.

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who were domiciled within the project area on May 17, 1950, and to acquire such lands as may be necessary therefor on the condition that the Secretary of the Interior transfer to the control of the Secretary of the Army for use in connection with The Dalles Dam project, Oregon, an irregular shaped parcel of land containing in the aggregate approximately five and five-tenths acres located in lot 1 of section 17 and in lots 1 and 2 of section 20, township 2 north, range 15 east, Willamette meridian, Oregon, being a portion of the land previously transferred to the Secretary of the Interior by the Secretary of the Army pursuant to the Act approved February 9, 1929 (45 Stat. 1158). Title to the lands acquired by the Secretary of the Interior for the above stated purpose shall be taken in the name of the United States in trust for the individual Indian for whose benefit it is acquired; any such trust may be terminated by the Secretary of the Interior by conveyance of a fee simple title to the Indian or his heirs or devisees, without application therefor, when in the judgment of the Secretary of the Interior the Indian or his heirs or devisees are capable of managing their own affairs. In carrying out such relocations, the Secretary of the Interior may enter into a contract or contracts with any State or political subdivision thereof."

(d) The Public Works Appropriation Act of 1957, July 2, 1956, authorized the expenditure of Construction General finds as follows:

*"Provided*, That funds appropriated herein may at the discretion and under the direction of the Chief of Engineers be used in payment to the accounts of the Confederated Tribes of the Yakima Reservation; the Confederated Tribes of the Warm Springs Reservation; the Confederated Tribes of the Umatilla Reservation; or other recognized Indian tribes, and those individual Indians not enrolled in any recognized tribe, but who through domicile at or in the immediate vicinity of the reservoir and through custom and usage are found to have an equitable interest in the fishery, all of whose fishing rights and interests will be impaired by the government incident to the construction, operation, or maintenance of the Dalles Dam, Columbia River, Washington and Oregon, and must be subordinated thereto by agreement or litigation."

(e) The Public Works Appropriation Act of 1958, August 26, 1957, authorized the expenditure of Construction General funds as follows:

*"Provided*, That funds appropriated herein may at the discretion and under the direction of the Chief of Engineers be used in payment to the accounts of the Confederated Tribes of the Yakima Reservation; the Confederated Tribes of the Warm Springs Reservation; the Confederated Tribes of the Umatilla Reservation; or other recognized Indian tribes, and those individual Indians not enrolled in any recognized tribe, but who through domicile at or in the immediate vicinity of the reservoir and through custom and usage are found to have an equitable interest in the fishery, all of whose fishing rights and interests will be impaired by the government incident to the construction, operation, or maintenance of the Dalles Dam, Columbia River, Washington and Oregon, and must be subordinated thereto by agreement or litigation."

(f) The Public Works Appropriation Act, 1959, Sep. 2, 1958, Public Law 85-863, 72 Stat. 1572, contained the identical appropriation act language stated above in the 1958 Public Works Appropriation Act. This was the final year of this appropriations rider.

<sup>21</sup> NEZ PERCE TRIBAL RIGHTS IN THE MID-COLUMBIA TREATY FISHERY AND CELILO FALLS When the Lewis and Clark Expedition traversed down the Snake and Columbia Rivers in October – November 1805, during the fall fishing season, two Nez Perce chiefs (" Twisted Hair" and

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Tetoharsky) accompanied them as friendly escorts, introducing them to successive tribes and bands as the Expedition moved down river from the mouth of the Clearwater River on the Snake River to below Celilo Falls, where the chiefs took their leave, saying that “their nation extended no further down the river than those [Celilo] falls.” [Journals of Lewis and Clark, editor Bernard de Voto, Houghton Mifflin Co., Boston, 1953, pages 242-267.] The 1889 Gordon report states concerning the Celilo Fisheries and tribal rights there:

“The lands embracing these fisheries are now owned by F. A. Seufert and T. H. Tafe . . . The Indians of the Warm Springs reservation and the non-reservation Indians originally belonging to said reservation, were formerly accustomed to take fish at these fisheries, but are now practically excluded from doing so by the whites and upon the same grounds upon which they were excluded from ‘The Dalles fisheries’.”

Gordon’s data indicates that there was an extensive period of history, after the 1855 treaties were signed, in which the treaty fishing rights were obstructed by white men. The Seufert of Gordon’s report is the same Seufert that was the party to the 1918 Supreme Court decision, upholding the treaty fishing rights and barring their interference by white men. The simple mathematics of the timing of Gordon’s report and the subsequent litigation is that from around as early as 1855 until sometime around 1920 all of the tribes’ treaty fishing rights at Celilo Falls and vicinity on the Oregon side of the Columbia River were obstructed by white men. Finally, when the Portland District did its own investigation of the matter in the 1947-1956 period, it was generally agreed that the Nez Perce had returned to the Celilo Falls fishing site, like the other tribes’ members. At a meeting on December 5, 2001 at the regional BIA offices in Portland, Jay Minthorn, a Umatilla Council member and CRTFAS task force member, stated that he remembered knowing and seeing the Nez Perce camping sites at Celilo Falls before the District flooded the falls in 1957-1958 with The Dalles Dam. In connection with the proposed CRTFAS project at Celilo Village, none of the leadership of the other three tribes has taken exception to the fact that the Nez Perce Tribe has members with traditional fishing rights at the site.

The issue has been extensively debated within the government over the years. In 1933, in United States v. Brookfield Fisheries, 24 F. Supp. 712 (D. Ore., issued in 1933, published in 1938), Judge Fee made the single statement that “The testimony is not convincing that the Nez Perce ever fished there.” But the judge also made other statements that undermined the objectivity and credibility of the opinion, characterizing the Indian witnesses as “members of a moribund and conquered race, mindful of ancient wrongs, and tempted to secure by guile from the overmastering force of the white man a portion of their ancient heritage.”

BIA in its current published regulations, 25 CFR 248.2, states “The in-lieu fishing sites are for the benefit of the Yakima [Yakama], Umatilla, and Warm Springs Indian Tribes, and such other Columbia River Indians, if any, who had treaty fishing rights at locations inundated or destroyed by Bonneville Dam, to be used in accordance with treaty rights. The use of the sites is restricted to such Indians; however, this shall not preclude the use of camping areas on the sites by the families of such Indians.” The Nez Perce have access to fish all of the Zone 6 treaty fishery (the Bonneville, The Dalles, and John Day Dams’ reservoirs).

For Celilo Falls area and up river from there, the final agency and Congressional decisions recognized Nez Perce rights. In 1947 when Congress identified the beneficiary tribes at Celilo Village, no mention of the Nez Perce Tribe was made. In 1953 the Senate Appropriations Committee heard testimony on the subject from the tribes and the then Portland District Engineer, Col. Lipscomb, whose testimony stated that the matter was still under agency review at that time. So Congress in the appropriations language used to authorize tribal compensation for fishing rights at Celilo Falls in fiscal years 1954-1959, identified the three other tribes by name and added “other recognized Indian tribes” to include the Nez Perce if the agency so recommended. [These appropriation acts are provided in another footnote.] The Nez Perce Tribe submitted its final legal defense of its rights in a Memorandum of June 1, 1955, stating among other things that the 1933 Brookfield decision was the result of federal agency action in preventing the Nez Perce evidence ever being presented in court. Although there are documents in the agency file supporting both possible conclusions, the final agency decision was the July 19, 1956 agreement with the Nez Perce Tribe to pay them \$2,800,000 – on the same per capita basis as the other three treaty-fishing tribes – for the loss of their commercial fishing rights at Celilo Falls as a result of the falls inundation by The Dalles Dam. This agreement was approved by the Chief of Engineers for the Corps and by the Commissioner of Indian Affairs W. Barton Greenwood and by Secretary of Interior Fred A. Seaton for DOI. Congress subsequently authorized and appropriated funds to pay the settlement. The result is that, although the 1947 act did not

## 2. THE CRTFAS PROGRAM

The CRTFAS program includes a number of remedial features authorized by statute. The history and purpose of Title IV (the CRTFAS Act<sup>22</sup>) is stated in Senate Report (SR) 100-577, Sep. 30, 1988, as follows:

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create any residential rights for the Nez Perce Tribe at Celilo Falls, the 1956 compensation agreement did recognize their treaty fishing rights there. Furthermore, absent Congressional or judicial action changing the situation, this agency determination is considered the final decision on the matter for the Corps. It is further noted that not only has the CRTFAS Act specifically included the Nez Perce Tribe, but so has the United States v. Oregon treaty fishing rights litigation on the Columbia River. See the District Court of Oregon decision at 302 F. Supp. 899 (1969) in which the Nez Perce Tribe is an intervening party. The CRTFAS BIA regulations, 25 CFR 247.3, specifically include the Nez Perce Tribe also.

At the crux of the dispute, it would appear that those who would argue against Nez Perce rights fail to appreciate that the tribes' concept of real property ownership is collective ownership, often called Indian title. Under this concept, one only looks to whether significant numbers of a tribe used a site, without trying to determine individual rights under English common law. The treaty fishing rights are also unique in that it has always been taken for granted that they are shared, intertribal, collective rights. Exclusive use by one tribe is not a condition of having a valid treaty right. Nor are ceded lands a treaty requirement for fishing rights. From the outset, it was recognized that the fishing rights were separate from other Native American rights. While the historical record shows that the other three tribes' members, residing closer to Celilo Falls, also used the falls in greater numbers, the concept of shared, collective ownership among the four tribes allows for recognition of Nez Perce fishing rights even though fewer members of the Nez Perce Tribe actually use the Celilo Falls fishing area. From a cultural standpoint, it is noted that the four tribes share a similar Indian language family and culture, which reinforces the long centuries of intermarriage and shared use of Mid-Columbia region resources.

<sup>22</sup> The text of the CRTFAS Act, as amended (with amendments in *italics*) is as follows:

“Sec. 401(a) All federal lands within the area described on maps numbered HR2677 sheets 1 through 12, dated September 21, 1988, and on file in the offices of the Secretary of the Interior, the Secretary of the Army, and the Columbia River Gorge Commission shall, on and after the date of enactment of this Act, be administered to provide access to usual and accustomed fishing areas and ancillary fishing facilities for members of the Nez Perce Tribe, the Confederated Tribes of the Umatilla Indian Reservation, the Confederated Tribes of the Warm Springs Reservation of Oregon and the Confederated Tribes and Bands of the Yakima Indian Nation.

Sec. 512 of WRDA 1996, PL 104-304, Oct. 12, 1996, 110 Stat. 3762 replaced 401(a) as follows:

“ *Sec. 401 (a) EXISTING FEDERAL LANDS –*

- (1) IN GENERAL -- All Federal lands that are included within the 20 recommended treaty fishing access sites set forth in the publication of the Corps of Engineers entitled ‘Columbia River Treaty Fishing Access Sites Post Authorization Change Report, dated April 1995’; and*
- (2) BOUNDARY ADJUSTMENTS – The Secretary of the Army, in consultation with affected tribes, may make such minor boundary adjustments to the lands referred to in paragraph (1) as the Secretary determines are necessary to carry out this title.”*

(b) Notwithstanding any other provision of law, the Secretary of the Army shall

- (1) identify and acquire additional lands adjacent to the Bonneville Pool from willing sellers until such time that at least six sites have been acquired adjacent to the Bonneville Pool for the purpose of providing access and ancillary fishing facilities for the members of the Indian tribes referred to subsection (a); and

“Title IV of H.R. 2677 was added by the Committee in markup. Offered by Senator Evans, it provides for the administrative transfer of Federal lands at certain sites along the Columbia River to the Department of the Interior for the use of Indian treaty fishermen to attain an equitable satisfaction of the United States’ commitment to provide lands for Indian treaty fishing in lieu of those inundated by flooding caused by the construction of the Bonneville Dam.

\* \* \* \* \*

In the 1930’s the United States constructed the Bonneville Dam on the Columbia River which caused the inundation of approximately 40 of the Indians’ traditional fishing sites and severely restricted access to much of the river. In 1939 a settlement agreement between the treaty Indians and the United States provided that the United States would

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- (2) improve the lands referred to in subsections (a) and paragraph (1) of subsection (b) and maintain such lands until such time as the lands are transferred to the Department of the Interior for the purpose of maintaining the sites. Such improvements shall include, but not be limited to, camping and park facilities to the same standards as those provided in the National Park system; all weather access roads and boat ramps; docks; sanitation; fish cleaning, curing, and ancillary fishing facilities; electrical and sewage facilities; and landscaping; and
  - (3) make improvements at existing sites, including but not limited to dredging at the site at Wind River, Washington, and constructing a boat ramp on or near the site at Cascade locks, Oregon.
- (c) The Secretary of the Army shall treat the costs of implementation of paragraphs (2) and (3) of subsection (b) as project costs of the Army Corps of Engineers Columbia River projects, and such costs shall be allocated in accordance with existing principles of allocating Columbia River project costs. Funds heretofore and hereafter appropriated to the Secretary of the Army for maintenance and development of Columbia River projects may be used to defray the costs of accomplishing the purposes of this Act.
- (d) There is hereby authorized to be appropriated a sum not to exceed \$2,000,000 to implement the purposes of subsection (b)(1).

WRDA 2000, PL 106-541, Dec. 11, 2000, amended the dollar amount in 401(d) to \$4,000,000.

- (e) The Secretary of the Interior shall be vested with the right of first refusal, after consultation with the Indian entities in subsection (a), to accept any lands adjacent to the Columbia River within the Bonneville, Dalles, and John Day Pools now owned or subsequently acquired by any federal agency and declared to be excess lands or otherwise offered for sale or lease by such federal agency, and upon such acceptance, such federal agency shall transfer such lands to the Secretary for the purpose of Indian treaty fishing: Provided however, that total acreage of sites provided under this section adjacent to Bonneville Pool of the Columbia River not exceed three hundred sixty acres.
- (f) Nothing in this Act shall be construed as repealing, superseding, or modifying any right, privilege, or immunity granted, reserved, or established pursuant to treaty, statute, or Executive order pertaining to any Indian tribe, band, or community.”

Sec. 15, PL 104-109, Feb. 12, 1996, 102 Stat. 2944-2945, added subsection 401(g) to PL100-581:

“ (g) *The Secretary of the Army is authorized to transfer funds to the Department of the Interior to be used for purposes of the continued operation and maintenance of sites improved or developed under this section.*”

provide more than 400 acres of lands at six described sites along the Columbia in lieu of those sites inundated. To date, the United States has provided five sites totaling approximately 40 acres. These sites are currently referred to as 'in-lieu' sites. Subsequently, more dams were built on the Columbia, including Dalles, John Day, and McNary, causing the inundation of more fishing sites.

\* \* \* \* \*

In 1973, as a result of litigation initiated by treaty tribes after the United States proposed a project to alter the water levels of the pools behind the dams, a settlement Order was entered by the U.S. District Court of Oregon. The judgment and order noted that the Secretary of the Army and the Secretary of the Interior agreed to propose legislation providing for the acquisition and improvement of additional sites. The agreement of the two Departments to propose this legislation was the key to attaining the tribes' consent in the court order and project. Legislation was forwarded to the Congress in 1974, but no action was taken by the Congress at that time, and no legislation has been forwarded since that time.

Presently, all five existing in-lieu sites are within the Bonneville Pool, the demography of which forces access to these sites and those upriver in the John Day, Dalles, and McNary Pools through private lands and public parks, increasing tensions between the Indians and the general public and taxing public park facilities which are not equipped for Indian fishing treaty activities. Highways, railroads, and fences further hinder access. Also, a phenomenal recent influx of windsurfing or boardsailing in the Columbia Gorge has increased overcrowding and tensions. Finally, facilities at the existing in-lieu sites are in dire need of repair.

Title IV of H. R. 2677 provides a vehicle for the United States to satisfy its commitment to the Indian tribes which exercise fishing rights on the Columbia River and whose traditional fishing places were inundated by flooding caused from the construction of the Bonneville Dam. The provision designates certain sites and authorizes the acquisition of additional sites from willing sellers to allow more and better access to the river for Indian and non-Indian fishermen and to ease overcrowding of access sites by fishermen and recreationists along the Columbia River." (SR 100-577, 100<sup>th</sup> Cong., 2<sup>nd</sup> Ses., p. 21-22)

The section by section analysis of SR 100-577 states with regard to Sections 401(e) and (f) as follows:

"Section 401(e) grants the Secretary of the Interior the right of first refusal to accept any lands that any Federal agency of the United States makes available, provided that the total acreage of lands provided as in-lieu sites under subsections (a), (b), and (e) not exceed 360 acres, so that the total acres of in-lieu sites in the Bonneville Pool, including existing sites [40 acres] not exceed 400 acres.

The Committee understands that the Corps of Engineers is currently undergoing a master planning process and that as a result of that process, some of the lands the Corps now owns may be determined to be no longer needed for project purposes. Other Federal agencies often take similar planning exercises. If, after consultation with the named tribes, the Secretary of the Interior determines that any lands that would be declared excess would be suitable for fishing sites, he should take the necessary steps to inform the agency and the lands should be designated as new in-lieu sites and immediately managed by that agency as fishing sites for the named tribes, improved by the Department of the Army, and transferred to and maintained by the Department of the Interior.

Section 401(f) provides that nothing in this Section shall affect any claims the named tribes

or any other tribes may have concerning the Dalles, John Day, McNary Dams or any other projects on the Columbia River except the Bonneville as provided for in subsection (e). This subsection also provides that this Section does not affect the legal status of the existing in-lieu sites and further assumes that the legal status of the newly provided in-lieu sites will be entirely consistent with those of existing sites.”

## **2.1 Status Of CRTFAS Program**

The Section 401(a) List Sites. Senator Evans’ staff organized a tour of the Columbia Gorge to look at potential sites, and prepared a list of about 30 sites<sup>23</sup>. This list was then reviewed and amended by BIA and the 4 treaty tribes. It was then used by Senator Evans as Section 401(a) list. Because of the haste in creating the statutory list, SR 100-577 provided that:

“The maps to which the Act refers have been prepared by the Army Corps of Engineers, at the request of the Committee, in conjunction with the named Indian tribes. It is the intent of the Committee that the lands be managed by the Federal agency currently holding them for the purpose of access to fishing sites, and that improvements to the sites be made, from the time of the passage of this legislation. In the event that privately owned lands appear to be represented as sites on the numbered maps, only Federally owned lands are subject to this subsection.”

None of the original listed sites were able to be developed as originally described. With the concurrence of the tribes and BIA, the District submitted a PAC report in April, 1995 that yielded the statutory authority in Sec. 512 of WRDA 1996 to amend the original listed sites<sup>24</sup>. Once this authority was received, construction of the original amended list of sites began, and is nearing completion.

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<sup>23</sup> SR 100-577 included in the body of the report a letter from BG Patrick Kelly, then Corps Director of Civil Works, to Senator Evans, concerning additional fishing sites. BG Kelly identified the need for legislative authority to provide 3 types of sites: (1) transfer of existing Corps project lands on a list of proposed sites developed through joint field trips in the Columbia Gorge; (2) acquisition of new non-federal lands; and (3) acquisition of additional lands (federal and non-federal) to complete the proposed sites on the new site list. BG Kelly’s letter also advised the Senate that the Corps needed more time to prepare a recommended list of Corps sites for fishing access use. But, Senator Evans, the sponsor of the measure, was in his final year as a Senator, and could not wait for the Corps to complete a study.

<sup>24</sup> The details of the Section 512 changes in the original 23-site list are as follows.

a. SCOPE CHANGES:

Four sites were abandoned – two because the Federal Government didn’t own them; and two because they were unbuildable. Boardman was politically unbuildable because it took the existing municipal water supply for Boardman. Cliffs was unbuildable because no boat facilities were possible as its name suggests.

b. LOCATION CHANGES:

With exception of the two sites not owned by the Federal Government and two sites where the geography permitted no construction or improvements, changes were proposed for all remaining 19 sites. The changes included adding land and swapping sites. Multiple problems required the changes. Acreage calculation errors left inadequate space to develop some sites. Many sites had conflicts with other facilities. Other sites lacked any suitable areas for docks and boat ramps. Many sites had access problems or lacked practical access at all. And other sites included private lands that had to be deleted.

An entirely new site, taken from undeveloped lands at Maryhill State Park (owned by Corps; leased by State), was substituted for Cliffs. And the Boardman site was replaced with expansion of the Faler site.

c. ACREAGE CHANGES:

Large changes were approved here:

Improvements to existing in lieu sites. The improvements to the existing five in-lieu sites, directed by Sec. 401(b)(3), were among the first project features completed.

Acquisition and construction of new sites. The district is still in the process of acquiring and constructing additional new sites under the authority of Sec. 401(b)(1) and (d). Some have been acquired and completed. Others are still in the real estate acquisition process.

Transfer and improvement of other acquired lands under Sec. 401(e) This authority is also still being used. Walla Walla District has proposed the transfer of some of its Washington shore riparian lands to the CRTFAS program in settlement of litigation with the Yakama Indian Nation. Portland District is also proposing to transfer surplus lands formerly used for the Bonneville Area Office. And the Celilo Village site at issue has also been proposed for Sec. 401(e) treatment by BIA.

Implementation of Sec. 401(f) The Sec. 401(f) savings clause has protected tribal and individual Native American rights from other sources. In-lieu sites' Native American

SITE	ORIGINAL	REVISED
Celilo	11.1 acres	7.6 acres
Preacher's Eddy	3.6	5.0
Roosevelt	3.3	5.0
Boardman	4.6	none
Faler Road	8.4	6.9
Avery	1.8	3.1
Cliffs	8.6	none
Maryhill	none	9.9
North Shore	7.5	5.5
LePage	2.8	1.9
Goodnoe	2.7	5.0
Pasture Point	12.0	53.4
Rock Creek	5.7	5.0
Sundale	6.5	1.9
Moonay	10.3	0.9
3-Mile Canyon	5.7	33.2
Pine Creek	4.6	6.9
Alder Creek	5.7	2.6
Crow Butte	28.1	21.7
TOTALS	133.0 acres	178.9 acres

There is no published legislative history on the Sec. 512 amendment. There is no mention of the contents of Section 512 in the November 9, 1995 Senate Report 104-170 on the Senate WRDA 1995 bill (S. 640).

Only the final conference report (House Report 104-843 of September 25, 1996) notes at page 164:

“Sec. 512 Columbia River Treaty Fishing Access

Senate Sec. 343, no comparable House section – House recedes.”

The oral legislative history is discussed elsewhere.

residents, for example, have had their residential rights under the Sohappy v. Hodel, 911 F.2d 1312 (9<sup>th</sup> Cir. 1990) respected in work done at those sites<sup>25</sup>.

### 3. THE PROPOSED CELILO VILLAGE PROJECT

Following years of success at other sites, in 1999 the four tribes proposed to the Corps CRTFAS project team that the Celilo Village site be added to the CRTFAS program in order to accomplish badly needed improvements at the site. The tribes specifically requested that a 1999 draft plan drawn up by the CTUIR be implemented. The Corps CRTFAS project team undertook an examination of the matter. Among the matters considered in the investigation are the following:

(1) The Celilo Village site in issue was acquired pursuant to the Interior Department 1948 Appropriations Act of July 25, 1947 authorization<sup>26</sup>.

“[S]uch sum as may be necessary to purchase in the name of the United States in trust thirty-four and one-half acres of land at Celilo Falls, Oregon, for the use of the Yakima Indian Tribes, the Umatilla Indian Tribes, the Confederated Tribes of the Warm Springs Reservation, and other Columbia River Indians affiliated with the aforementioned tribes and entitled to enjoy fishing rights at their old and accustomed fishing sites at or in the vicinity of Celilo Falls on the Columbia River.”

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<sup>25</sup> Sohappy held that the treaty right to maintain structures at usual and accustomed fishing areas applies at the Cook’s in-lieu site purchased pursuant to the Rivers and Harbors Act of March 2, 1945., 58 Stat. 22. Until the Dalles Dam flooded them out, over 1000 Native Americans resided permanently at the Celilo Falls site alone under the 1855 treaties. The June 13, 1950 Congressional Report #30, Compilation of Material relating to Indians of the United States, went so far as to characterize the Celilo Falls tribal residential area as “Celilo Reservation, Oregon” under the Yakima Indians listing on page 550. Following the flooding of the Celilo fishery by the Dalles Dam’s operational start in 1958, the number of tribal fishers at Celilo dwindled. At the present time only about 14 households reside at Celilo Village.

<sup>26</sup> The earliest statutory recognition and authorization for tribal residency at Celilo Village was in 1929. Congress in 1929 returned the use of the 1894 portage railway lands in the “old” Celilo Village (Celilo Park CRFTAS site) by the Act of Feb. 9, 1929, Public Law 713, in which Congress authorized the Secretary of War (Army):

“to transfer to the control of the Secretary of the Interior, for the use and benefit of certain Indians now using and occupying the land as a fishing camp site, two irregular shaped parcels of land containing in the aggregate approximately seven and four-tenths acres . . . .”

In the Public Works Appropriations Act, July 15, 1955, these lands were taken back for The Dalles Dam in exchange for other relocation benefits:

“*Provided further*, That not to exceed \$210,000 of funds appropriated herein may be transferred to the Secretary of the Interior for the relocation of those permanent resident Indian families in The Dalles project who were domiciled within the project area on May 17, 1950, and to acquire such lands as may be necessary therefor on the condition that the Secretary of the Interior transfer to the control of the Secretary of the Army for use in connection with The Dalles Dam project, Oregon, an irregular shaped parcel of land containing in the aggregate approximately five and five-tenths acres located in lot 1 of section 17 and in lots 1 and 2 of section 20, township 2 north, range 15 east. Willamette meridian, Oregon, being a portion of the land previously transferred to the Secretary of the Interior by the Secretary of the Army pursuant to the Act approved February 9, 1929 (45 Stat. 1158). Title to the lands acquired by the Secretary of the Interior for the above stated purpose shall be taken in the name of the United States in trust for the individual Indian for whose benefit it is acquired;”

Although not explicit, the authorization was for residential use by permanent residents, unlike the 1945 in-lieu sites. BIA worked with the Corps to provide permanent housing at the site. (See discussion below.)

(2) Designation of the Celilo Village site as a CRTFAS site will formally add the Nez Perce Tribe to the list of trust beneficiaries at the Celilo Village site, as the Nez Perce is a specifically listed tribal beneficiary of the CRTFAS Act. This is not a significant change, as this change only recognizes their temporary fish camp rights at the site. No permanent residential rights for the Nez Perce Tribe or any other current non-permanent-resident at Celilo Village are being created by the proposed project. The Portland District Engineer, after having the rights of the Nez Perce reviewed in connection with compensation studies for the impacts of The Dalles Dam in the late 1940's and early 1950's, recommended inclusion of the Nez Perce tribe in Celilo Falls treaty fishing compensation. Congress agreed and appropriated money for the Corps' financial settlements with all four treaty tribes under the 1955 Public Works Appropriation Act and other appropriation acts for The Dalles Dam. Thus there is nothing new for the Corps in recognizing Nez Perce treaty fishing rights at Celilo Village. The Corps and Congress in the July 19, 1956 Celilo Falls Nez Perce compensation agreement recognized the Nez Perce Tribe as being effectively included in the 1948 Act as

“other Columbia River Indians affiliated with the aforementioned tribes and entitled to enjoy fishing rights . . . in the vicinity of Celilo Falls.”

Nez Perce Tribe members have similarly been recognized in other Corps treaty fishing activities as having equal rights with the other three listed tribes at The Dalles Dam. The official recognition of the Nez Perce Tribe's treaty fishing rights in the CRTFAS Act was just a confirmation by Congress of the status quo of many centuries.

Historically treaty fishing rights were always considered separate and apart from ceded lands issues. Seufert Bros., supra, specifically affirmed that Yakama tribal treaty fishing rights existed on the Oregon shore on ceded lands of the Warm Springs and Umatilla tribes.

(3) In 1947, the Corps provided the original Celilo Village housing from war-surplus stockpiles in the Pacific Theater. This housing had sat through rainy tropical weather too long and was badly warped and rusted. As a result, the houses leaked badly.

In 1955 better quality housing was provided, but it was grossly inadequate for the numbers of Native American families living at Celilo Village. The 1952 Supplemental Report prepared by the district showed that 1000 Native Americans permanently resided in the pre-flooding Celilo area and another 4000 spent up to six months a year around the Celilo area fishing. Yet only about 5 homes were provided on the Celilo Village site, with about 40 other Native Americans relocated off site. For the rest, other than compensation for lost commercial fishing rights and pittances for their existing structures, no relocation benefits or payments were ever made. The Eisenhower Administration Indian policy was one of assimilation – abolishing Indian reservations and derecognizing

Oregon Indian tribes. The Administration was not interested in keeping any permanent settlements of 1000 Indians in and around Celilo Falls.

(4) While this minimal effort met the existing standard relocation legal requirements (this was before the 1970 Relocation Assistance Act), it did not realistically deal with the problem. The situation today, as for the last thousands of years, is that many of the tribal members who exercise treaty fishing rights depend upon the fish for their subsistence and do not have other sources of employment or income. As a result they live at Celilo Village in grossly substandard housing and medically unsafe conditions.

(5) The 1950 replacement Indian Village authorization under the Flood Control Act of 1950 and House Document 531 was never carried out, and no replacement Village ever provided.

(6) With regard to the authority of the tribal councils to speak for all of the affected Indians, it is noted that federal case law supports the authority of the officially recognized tribal governments to represent and bind not just their members but also affiliated members of unrecognized tribes and bands, Joseph's Band of the Nez Perce v. United States, 95 Ct. Cl. 11 (1941) and in Pottawatomie Nation of Indians v. United States, 205 Ct. Cl. 765, 507 F2d 582 (1974). Although some of the Celilo Village Native American residents claim to be unaffiliated members of an unrecognized band known as the "River People", the fact is that treaty tribes have consistently been the official representatives of their interests for many decades in dealings with others.

The results of this investigation are that the tribes, BIA, and Corps personnel both in Portland District and in Northwestern Division seek to proceed with using the CRTFAS program to improve the Celilo Village situation generally along the lines proposed in the CTUIR proposal and endorsed by all four tribes and BIA. The legal issue that has been raised is under what authority to proceed. Several different alternatives have been proposed for consideration and recommendation.

### **3.1 The Existing Legal Situation**

The existing situation is legally complex. The Village land is already in federal trust status, pursuant to the 1948 Interior Appropriations Act. The housing at the site is in three different types of status. The original 1947 homes were government-owned structures in which particular Native American families were permitted to dwell under written BIA permits. Due to the deterioration and/or destruction of these original homes, a number of Native Americans have brought on to the site their own personal trailers or modular homes. Another five homes were provided under the Public Works Appropriation Act of 1955 that conferred individual trust rights to specific homes<sup>27</sup>.

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<sup>27</sup> "That not to exceed \$210,000 of funds appropriated herein maybe transferred to the Secretary of the Interior for the relocation of those permanent resident Indian families in The Dalles project who were domiciled within the project area on May 17, 1950, and to acquire such lands as may be necessary therefor on the condition that the Secretary of the Interior transfer to the control of the Secretary of the Army for use in connection with The Dalles Dam project, Oregon, an irregular shaped parcel of land containing in the aggregate approximately five and five-tenths acres located in lot 1 of section 17 and in lots 1 and 2 of section 20, township 2 north, range 15 east. Willamette meridian, Oregon, being a portion of the land

BIA investigation of the current situation discloses that all of the original trust beneficiaries have died or abandoned their individual trust homes, and that the only present claimants are heirs, none of whom has more than a 50% interest in a particular home. Of these partial heirs, only one is currently residing at the site.

### **3.2 Consideration Of Alternative CRTFAS Act Authorities**

Key to recognizing authority to carry out the proposed Celilo Village project is recognition of agency authority to broadly interpret the CRTFAS Act to accomplish its intended purposes. In discovering the boundaries of agency discretion to interpret an agency's statutes, one looks to the appellate case law from the Supreme Court and the 9<sup>th</sup> Circuit Court of Appeals, in whose jurisdiction Portland District is situated. In United States v. Shaughnessy, 347 US 260, 98 L ed 681, 74 S Ct 499 (1954), the Court defined "discretion" in terms of delegated power to mean "that the recipient must exercise his authority according to his own understanding and conscience." (at 98 L ed 686). In United States v. Alpers, 338 US 680, 94 L ed 457 (1950), the Court was reviewing the interpretation of an obscenity statute – a criminal statute normally construed extremely strictly. Yet, the Court, in dealing with a statute that clearly listed only printed and motion-picture film obscene matter, construed it to include phonograph records as well. In going beyond the class of items listed (the ejusdem generis rule), the Court stated that it did so because of the general intent of Congress to proscribe mailing of all obscene matter. The Court stated that the rule "may not be used to defeat the obvious purpose of the legislation." (94 L ed 461). In Johansen v. United States, 343 US 427, 96 L ed 1051, 72 S Ct 849 (1952), the Court was interpreting how to apply the Federal Employees Compensation Act of 1916 (FECA) to the Public Vessels Act of 1925 (PVA). Clearly the PVA covered private commercial seamen. The question was whether it covered government-employee seamen. The general language of the PVA was broad enough to cover government employees under FECA who were seamen. What the Court did next was to analyze the overall federal scheme for compensation, and determine that Congress had intended to cover federal employees exclusively under FECA. Thus the language of PVA, even though literally including federal employee claims, was construed as barring federal employee claims. The Court's rationale was stated as "Under these circumstances, it is the duty of this Court to attempt to fit the Public Vessels Act, as intelligently and fairly as possible, 'into the entire statutory system of remedies against the Government to make a workable, consistent, and equitable whole.' Feres v. United States, 340 US 135, 139, 95 L ed 152, 157, 71 S Ct 153." (at 96 L ed 1056) Feres, of course, is the Supreme Court decision that excluded military servicemen from the protection of the Federal Tort Claims Act. Cox v. Roth, 348 US 207, 99 L ed 260, 75 S

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previously transferred to the Secretary of the Interior by the Secretary of the Army pursuant to the Act approved February 9, 1929 (45 Stat. 1158). Title to the lands acquired by the Secretary of the Interior for the above stated purpose shall be taken in the name of the United States in trust for the individual Indian for whose benefit it is acquired; any such trust may be terminated by the Secretary of the Interior by conveyance of a fee simple title to the Indian or his heirs or devisees, without application therefor, when in the judgment of the Secretary of the Interior the Indian or his heirs or devisees are capable of managing their own affairs."

BIA has advised the Corps that no lands under this statute were conveyed in fee to any individual Indians.

Ct 242 (1955), was a decision in which the Court construed how to apply the referenced Federal Employers' Liability Act (FELA) to seamen under the Jones Act, in which Congress had incorporated FELA generally. In this case, the Court found that the Jones Act had an implied survivor's provision, even though FELA had none, because FELA did not have the same needs as the Jones Act. The spoken rationale was that "welfare legislation . . . is entitled to a liberal construction to accomplish its beneficent purposes." (at 99 L ed 263).

What characterizes all three Supreme Court decisions is the Court's interpreting statutes other than according to their literal "plain meaning" interpretation, in order to effectuate the intent of Congress. In one decision, exclusion of federal employees was made because of the Court's holdings making FECA the exclusive remedy for federal employees. In the other two cases, subject matter was added to statutes in order to provide whole remedies, including one case dealing with a criminal statute where the rule is normally strict construction. The 9<sup>th</sup> Circuit has done the same thing, much more recently, for the same reason. In re Century Cleaning Services Inc., 195 F. 3d 1053 (9<sup>th</sup> Cir. 1999), involved the issue of paying attorney fees. Congress in amending the bankruptcy statutes, omitted language providing for the payment of attorney fees for legal services to the debtor in bankruptcy. After scrutinizing the legislative history, the 9<sup>th</sup> Circuit concluded the omission was inadvertent (at 1059-1060) and then proceeded to write the missing language back into the statute. The dissent argued the plain language rule as well as a contrary decision from another circuit court. However, among bankruptcy professionals, the 9<sup>th</sup> Circuit decision is deemed the correct solution, because debtors in bankruptcy need attorneys, and attorneys need to be paid for the system to work.

The same principles are applicable to the instant situation. The factual premise is much stronger here. In the other cases, the courts had to work hard to demonstrate Congressional inadvertent mistakes. In the case of the CRTFAS Act, Congress itself recognized its large quantity of unintended errors when it provided both relief for some of them in the original legislative history and then in WRDA 1996. In the latter, Congress amended the entire list of designated sites to be constructed as recommended by the District. Congress also granted the District requested authority to make further changes without resorting to Congress. The fundamental principles learned from the cases above are that Congressional intent controls, and remedial statutes are to be construed broadly to accomplish their intent.

The CRTFAS Act is such a broad remedial statute, enacted in 1988 after almost 50 years of agency inaction in carrying out treaty fishing compensation for the flooding impacts of a series of District reservoirs on the Mid-Columbia River. Thirty years had passed since The Dalles Dam flooded out the most significant site, Celilo Falls.

In the instant case, we also know why Congress put out a poor legislative product. The Corps was not ready to give the Congress a good list of prospective sites, because the Corps had not produced such a list over the long decades since the original 1939 promise. The Corps had not even remembered past Village replacement authorizations until very

recent research into old Corps, BIA, and tribal files. And while the agency failed to act, the courts were moving forward. The treaty fishing decisions involved in the Boldt litigation and the finale Supreme Court Fishing Passenger Vessel decision took giant steps forward, converting the treaty fishing rights' language about fishing "in common with the other citizens of the territory" to include a guaranteed 50% of the designated treaty fisheries – language never even hinted at in the treaties.

The proposed interpretations are rational extensions of poorly crafted legislative language to accomplish the purposes and intent of Congress, at the specific request of the statutory beneficiaries, the four treaty tribes. None of the requested extensions of the CRTFAS Act exceed or even come close to the statutory extensions and interpretations taken by the courts in the decisions cited above. The agencies charged with carrying out the Congressional will need to be flexible in doing so.

### 3.2.1 The Section 401 (b)(3) Existing Site Alternative:

Section 401(b)(3) of the CRTFAS Act directs improvements at "existing sites". Examination of the legislative history indicates that the "existing sites" discussed by and with Congress were the original five in lieu sites, two of which are specifically mentioned in Section 401(b)(3). Nothing in the limited written legislative history indicates that Celilo Village was mentioned specifically<sup>28</sup>.

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<sup>28</sup> The final legislation simply used the term "existing sites" as follows at Sec. 401(b)(3):  
"make improvements at existing sites, including but not limited to dredging at the site at Wind River, Washington, and constructing a boat ramp on or near the site at Cascade Locks, Oregon."

The only detailed legislative history is Senate Report 100-577, Sep. 30, 1988. It's relevant portions are as follows:

Title page: under "Purpose": "Title IV [the CRTFAS part of the statute] provides for increased access to usual and accustomed fishing sites for Columbia River treaty fishing tribes."

Page 21, under "Background":

"Title IV of HR 2677 was added by the Committee in markup. Offered by Senator Evans, it provides for the administrative transfer of Federal lands at certain sites along the Columbia River to the Department of the Interior for the use of Indian treaty fishermen to attain equitable satisfaction of the United States' commitment to provide lands for Indian treaty fishing in lieu of those inundated by flooding caused by the construction of the Bonneville Dam."

"To date, the United States has provided five sites totaling approximately 40 acres. These sites are currently referred to as 'in lieu' sites. Subsequently, more dams were built on the Columbia, including Dalles, John Day, and McNary, causing the inundation of more fishing areas."

Page 22 cont'd: "Presently, all five existing in-lieu sites are within the Bonneville Pool, the demography of which forces access to these sites and those upriver in the John Day, Dalles, and McNary Pool through private lands and public parks, increasing tensions between the Indians and the general public and taxing public park facilities which are not equipped for Indian treaty fishing activities."

Factually, the Celilo Village site is substantially identical to the five in lieu sites except for its separate 1947 authorization (the in lieu sites were authorized by the 1945 Rivers and Harbors Act). Otherwise, all 6 sites are traditional treaty fishing sites, used by the same four tribes, under the same 1855 treaties, for the same off-reservation fishing rights, protected by the same seven Supreme Court decisions, in the same regulated tribal fisheries.

Other facts support inclusion. The original in-lieu site legislation also contemplated a sixth in-lieu site. The proposed “Tenino” in-lieu site is the same general Celilo Falls area. The 1929 statute (Footnote 25 in opinion) specifically referred to Celilo as a “fishing camp site”. The 1947 statute further described the site as at “Celilo Falls” for Indians with “old and accustomed fishing sites at or in the vicinity of Celilo Falls on the

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Highways, railroads, and fences further hinder access. Also, a phenomenal recent influx of windsurfing or boardsailing in the Columbia Gorge has increased overcrowding and tensions. Finally, facilities at the existing in-lieu sites are in dire need of repair.

Title IV of HR 2677 provides a vehicle for the United States to satisfy its commitment to the Indian tribes . . . . The provision designates certain sites and authorizes the acquisition of additional sites from willing sellers . . . .”

The Senate report also included a letter from Senator Hatfield, which stated at p. 23 in part:

“At the very least, because all of the sites are currently used as fishing sites by the treaty fishermen, the transfer should constitute no significant change in land use or environmental impact.”

The Section by Section Analysis at p. 31 offered only the following short statement:

“Paragraph (3) of subsection (b) requires the Secretary of the Army to make certain improvements at two named sites.”

At p. 43, in a statement included in the record by Morgan Rees of the Office of the Assistant Secretary of the Army for Civil Works, the following statements are made:

“The agreement called for the Government to acquire more than 400 acres of land at six described sites to serve as ‘in-lieu’ fishing sites. The Corps was to make certain improvements thereon, and thereafter turn the sites over to the Department of Interior, Bureau of Indian Affairs, to be administered for the permanent use and enjoyment of the Indian tribes. . . . the Act [1945 Rivers and Harbors Act] did not specify the number, location, or size of the sites to be acquired.

. . . In all, five tracts, totaling 40 acres, were purchased for the use and benefit of the Indians. . . . In acquiring 5 sites, and expending the total amount of funds appropriated by Congress, the Corps is not permitted by law to acquire any additional in-lieu sites. However, as will be discussed later, there are administrative options which could be used to establish in-lieu fish sites on Federal land.”

The statement concluded with comments that the Corps was preparing a report on the matter and lacked authority to acquire additional sites. Such is the extent of the legislative history related to Section 401(b)(3).

Columbia River.” In the tribal responses that were part of the Technical Appendices to the April 1995 PAC on boundary adjustments, the tribes further linked Celilo Falls fishery with the entirety of the CRTFAS program. The conclusion is that Celilo Village is factually an “existing site” but was not specifically identified to Congress as such. However, it is clear from the legislative process that, had Congress been requested to include the site, it would have been explicitly included. Sen. Evans and his senator colleagues were trying to give the tribes what they asked for. The proof of this is how the site list authorized was provided (tribal tour site list), the inclusion specifically of in-lieu sites, the authority to purchase new sites, and the authority to transfer any other surplus federal lands in riparian areas.

Given the prior legislative history of the Celilo Village site, including this site as an “existing site” to be improved under Sec. 401(b)(3) is a direct and logical solution to the problem of Celilo Village, consistent with the Congressional intent to improve similar, related treaty fishing in-lieu sites. Using this authority, the District improves the site without any adjustment to its current trust status except as required under the Snyder Act by the BIA regional director to improve the privately-owned residential housing at the site. No change in statutory language is required – only a broader interpretation of the existing language “existing sites”. The Supreme Court cases and the 9<sup>th</sup> Circuit case on statutory interpretation above went far beyond this minor broadening of the interpretation of statutory language. The proposed action is also consistent with the practical interpretations of tribal rights encouraged by Judge Nichols of the Federal Circuit in his majority opinion in United States v. Goshute Tribe, 206 Ct. Cl. 401, 412, 512 F.2d 1398 (1975):

“We cannot demand a theoretically perfect award. These ancient wrongs must be settled within our lifetimes.”

and in his concurring opinion in Gila River Pima-Maricopa Indian Community v. United States, 204 Ct. Cl. 137, 152, 494 F.2d 1386 (1974):

“We must approach our tasks of judicial review with our minds wary of legalisms and tolerant of the compromises legalisms must make if these ancient wrongs are to be settled in any of our lifetimes.”

### 3.2.2 The Section 401(e) Alternative:

Section 401(e) of the CRTFAS Act permits the Secretary of Interior and her delegate, the Regional Director of BIA, to designate otherwise available federal riparian lands within the reservoirs of the Bonneville, The Dalles, and John Day dams as CRTFAS sites, and to request the Corps to make appropriate improvements to such designated sites. The statute leaves the discretion to make the designation entirely with the Secretary of Interior and her delegates. For the Corps, this greatly simplifies the legal matter as the Corps simply responds to the decision of the Interior Department. This is the method that the BIA regional director is leaning toward at this time, although his attorneys have not agreed to it yet. All that the Corps has to do is to carry out a mutually-agreed upon improvement plan for the designated site.

The basis for this alternative is again a broad interpretation of the statutory language. The statute addresses itself to “any lands”. The broad interpretation is in reading “excess lands or otherwise offered for sale or lease” to mean “available for CRTFAS use”. This is clearly the Congressional intent, and once used as such, would allow the addition of CRTFAS status to the Celilo Village site to provide the Celilo Village site the same benefits given to other treaty fishing sites and clearly intended for all treaty fishing sites. There is not a shred of legislative history or other Congressional intent to support leaving the Celilo Village site out of the same improvements given to every other treaty fishing site in every category of fishing treaty site – existing, newly designated, newly acquired, or newly transferred.

### 3.2.3 The Section 401(a)(2) Boundary Adjustment Alternative:

Section 401(a)(2) of the CRTFAS Act, as amended by Section 512 of WRDA 1996, authorizes the Secretary of the Army to make “minor boundary adjustments” in the amended list of specifically-designated CRTFAS sites. The term “minor” was adopted during markup of the WRDA 1996 Act, as the result of oral discussions among representatives of the Senate committee, the tribes, and Corps personnel. The Corps project manager George Miller was a party to these discussions and has stated that the intent of the word “minor” was to avoid any significant political impacts by taking any more public parks or other similarly politically sensitive sites into the CRTFAS program. Congress did not object to adding fairly large tracts of land to existing sites, as long as the lands were not being used for something else of significance. In light of this legislative history, and in light of the fact that the Celilo Village is adjacent to the Celilo CRTFAS site and both were a single historical, pre-dam, Indian treaty-fishing Village, it is believed that Section 401(a)(2) authorizes the Secretary of the Army to expand the boundaries of the present Celilo CRTFAS site to include the Celilo Village upon the unanimous request of BIA and the four beneficiary tribes. The controlling factor under this authority is that BIA and the four treaty tribes unanimously support such an action. Under CRTFAS, Congress designated BIA and the four treaty tribes as “the customer” whose wishes were to largely guide the program. An expansive reading of Sec. 401(a)(2) is also necessary to achieve the CRTFAS program goal of providing the full 400 acres of replacement treaty fishing sites<sup>29</sup>. All of these factors support the conclusion that such a boundary adjustment would be consistent with the Congressional intent.

When compared to the Supreme Court and 9<sup>th</sup> Circuit interpretation cases cited above, this alternative is also a minor matter. It involves no change of legislative language and a broad interpretation of the term “minor” consistent with the oral legislative history of this statute. Under the primary jurisdiction administrative law doctrine, agencies clearly have the legal authority to make statutory interpretations of this type to effectuate Congressional intent. The breadth of interpretation required is minuscule compared to the cases cited above, where words and phrases were written out of or into statutes by the courts.

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<sup>29</sup> Sec. 401(e) references 360 acres, because the original 5 in-lieu sites provided the first 40 acres.

Moreover, whatever alternative is selected is supported by the 1950 Flood Control Act authorizing and encouraging the District to construct a replacement Celilo and Spearfish Village.

### 3.3 The Snyder Act Role

A key legal issue under Sec. 401(e) is the authority of the BIA Regional Director as the delegate of the Secretary of the Interior to adjust the trust status of the Celilo Village in order to exercise Section 401(e) discretion. The Snyder Act, 25 USC 465<sup>30</sup>, supplies such authority:

“The Secretary of the Interior is hereby authorized, in his discretion, to acquire, through purchase, relinquishment, gift, exchange, or assignment, any interest in lands, water rights, or surface rights to lands, within or without existing reservations, including trust or otherwise restricted allotments, whether the allottee be living or deceased, for the purpose of providing land for Indians.

\* \* \* \* \*

Title to any lands or rights acquired pursuant to sections . . . 465 . . . of this title shall be taken in the name of the United States in trust for the Indian tribe or individual Indian for which the land is acquired, and such lands or rights shall be exempt from State and local taxation.”

The broad authority in the Snyder Act to adjust the legal status of land to provide land for Indians was part of the overall scheme of the 1934 Indian Reorganization Act to undo the segmentation and loss of Indian lands due to decades of allotments and other alienations and partial alienations of Indian lands. Because of the huge variety of title interests and defects affecting Indian lands, broad authority is required in the Snyder Act to convert

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<sup>30</sup>The Snyder Act, 25 USC 465, c. 576, Sec. 5, 48 Stat. 985, was originally enacted on June 18, 1934, and amended on Nov. 1, 1988, P.L. 100-581, Title II, Sec. 214, 102 Stat. 2941. Title IV of PL 100-581 is the CRTFAS program at issue, so there is statutory linkage between the Snyder Act and CRTFAS Act.

Senate Report 100-577, 100th Congress, 2nd Session, in the section analysis part, states the purpose of the 1988 Snyder Act amendment as follows:

“Section 214 makes technical amendments to the 1934 Indian Reorganization Act to apply certain provisions of Section 5 of the Act to purchases of land for the Yakima Indian Nation under the Act of July 28, 1955 (69 Stat. 392; 25 USC 608 et seq.).”

Section 214 was also related to Section 213 of PL 100-581 which authorized the Secretary of the Interior to transfer land acquired under the 1964 Yakima Land Act into trust status.

Although the various titles and parts of PL 100-581 covered a variety of unrelated Native American legal matters, it is significant that Congress was aware of and supporting a wide range of remedial measures. Several of the measures benefited some or all of the beneficiary tribes of the Title IV CRTFAS Act. Congress was most certainly aware of the Snyder Act when it authorized Sec. 401(e) of the CRTFAS Act.

A challenge to the constitutionality of the Snyder Act, on account of a perceived lack of judicial review of the discretion of the Secretary of the Interior, was rejected by the Supreme Court in No. 95-1956. Department of the Interior, et al., Petitioners v. South Dakota, et al., 519 US 919, 136 L Ed 2d 205, 1996 LEXIS 6117, 117 S Ct 286 (October 15, 1996) in an order, with a dissent by Justices Scalia, O’Connor, and Thomas. The basis for vacating a lower court opinion of unconstitutionality was an agreement by the Attorney General that aggrieved parties could use a new 30-day pending period in the Quiet Title Act regulatory process for an appeal period.

and/or adjust various parcels and interests in Indian land back into standard Indian trust lands. Both the Snyder Act and the CRTFAS Act have a common goal – the provision of trust lands for the benefit of Native American people. From a common legislative history and for a common purpose, it is necessary and appropriate that the two acts be used in concert to benefit Native American people.<sup>31</sup>

### **3.4 The Types of Improvements**

The CRTFAS Act stated at Sec. 401(b)(2) that improvements should

“include, but not be limited to, camping and park facilities to the same standards as those provided in the National Park system; all weather access roads and boat ramps; docks; sanitation; fish cleaning, curing, and ancillary fishing facilities; and landscaping.”

SR 100-577 also discussed the types of improvements to be made to the CRTFAS sites. The testimony of Morgan Rees, on behalf of the Assistant Secretary of the Army for Civil Works, was included in the Senate report at p. 42-45. At p. 44 his testimony included the statement regarding site improvements:

“[T]he agencies were recommending to OMB legislation for the acquisition of additional in-lieu fishing sites in the lower Columbia River and for construction of improvement on the existing sites. Such facilities would include access roads, boat ramps, sanitary fish cleaning, curing, and other ancillary facilities with electrical service and landscaping.”

In the section by section part of SR 100-577, the Committee wrote:

“Paragraph (2) of subsection (b) requires the Secretary of the Army to improve as defined the lands under subsection (a) [new sites list] and lands acquired under Paragraph (1) of subsection (b) [new lands purchased from willing sellers] at least to the level provided the existing in-lieu sites and to the standards of improvements provided in the National Park System for modern camping facilities. “ (At p. 31)

The Committee report at p. 31 also directed that lands acquired under Subsection 401(e) [new lands provided by any federal agency] should be “improved by the Department of the Army, and transferred to and maintained by the Department of the Interior” as in the case of other lands provided or acquired under the CRTFAS program.

#### **3.4.1 Housing Improvements**

Celilo Village is unique when it comes to housing requirements. None of the other in lieu or CRTFAS sites has any authorization for government-furnished housing. Celilo

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<sup>31</sup> The current regulations under the Snyder Act, 25 CFR Part 151, cover only lands not already in trust status and the process for converting them to trust status. The situation in the present case whereby, under the Snyder and CRTFAS Acts, land already in trust status pursuant to earlier statutes has its trust status modified by a subsequent statute, is not within the purview of the regulations. However, the proposed adjustment of trust status is still within the statutory authorizations, although no regulations cover the process. Both statutes give the Secretary of Interior broad discretion to make trust land decisions for the benefit of Native Americans. As will be discussed below, the proposed action is not only supported by all of the beneficiaries acting through their official tribal representatives, but is entirely consistent with the applicable laws and treaties.

Village, in contrast, has multiple such authorizations (1948 Interior Appropriations Act; 1950 Flood Control Act; 1955 Public Works Appropriation Act). In addition, Sec. 401(f) saves and protects the tribal rights under these prior statutes.

The proposed solution, to match CRTFAS improvements with statutory residence rights, is to replace the various existing houses and trailers with modular homes of a character consistent with the National Park Service standards stated in Sec. 401(b)(2). This solution complies with GAO direction its Principles of Federal Appropriations, 2<sup>nd</sup> Edition, Vol. I, p. 2-48, that the preferred solution to interpreting potentially conflicting statutes is to reconcile them in a reasonable manner. Modular homes of the type used in National Parks meets the Sec. 401(b)(2) requirements, while also meeting prior statutes and case law recognizing tribal residential rights at Celilo Village. This solution also fulfills tribal trust responsibilities and gives the CRTFAS Act the liberal, remedial interpretation called for by the Supreme Court cases above.

### **3.5 Operations and Maintenance**

Sections 401(b)(2) and 401(e) direct that sites with completed construction be transferred to BIA for operation and maintenance. Section 401(g) (added in 1996) authorizes the transfer of Corps funding to BIA for use in paying for operations and maintenance. The legislative history also repeats this direction. With regard to Section 401(b)(2), the legislative history stated:

“This section also provides that the Federal agency currently owning the lands may negotiate an agreement concerning operation and maintenance costs with the Department of the Interior to transfer the sites, after improvements have been made, to the Department of Interior for maintenance and Management purposes.” (SR 100-577 at p. 31)

With regard to Section 401(e), after the Corps has improved such sites, the sites are to be “transferred to and maintained by the Department of the Interior.” In light of these statutes and legislative history, there is no question that the Corps makes the CRTFAS improvements and BIA operates and maintains them.

### **3.6 The Federal Trust Responsibility**

The case law under the Snyder Act and under the 1855 treaty is fully supportive of the proposed Celilo Village project, as is Indian law in general. The body of statutory and case law that constitutes “Indian law” requires a broad interpretation of Indian laws and treaties. This rule has been stated in virtually all significant Supreme Court and lower court opinions on tribal and Native American rights. The Supreme Court has repeatedly, but not without limitation, cited the canon of construction that “legal ambiguities are resolved to the benefit of the Indians.” DeCoteau v. District County Court, 420 US 425, 447, 43 L Ed 2d 300, 315, 95 S Ct 1082 (1975); Andrus v. Glover Construction Co., 446 US 608, 619, 64 L Ed 2d 548, 558, 100 S Ct 1905 (1980). This principle of interpretation has been followed in the Supreme Court and 9<sup>th</sup> Circuit cases interpreting the 1855 treaties, whose tribal fishing rights are the ultimate issue and the reason for the CRTFAS program. In United States v. Winans, 198 US 371 (1905) and Seufert Bros. V. United States, 294 US 194 (1918), the Supreme Court crafted an equitable real estate servitude to give force to the tribal treaty fishing rights. In doing so, the Supreme Court

created something that was not stated in the treaties. In Washington v. Washington State Commercial Passenger Fishing Vessel Assn., 443 US 658, 687, 61 L ed 2d 823, 99 S Ct 3055 (1979), the Supreme Court approved a lower court's conversion of a right to fish in common with other citizens of the territory into a 50% share of the fishery. Again the courts fashioned a remedy not stated in the treaty. These are clearly cases of very liberal construction of treaty language in order to enforce a Native American treaty right. This 1979 case was also the seventh time the Supreme Court interpreted this treaty fishing language. Congress was aware of this treaty fish litigation history when it enacted CRTFAS.

The related, recent treaty shellfish adjudication case, United States v. Washington, 157 F 3d 630 (9<sup>th</sup> Cir. 1998), interpreting the same 1855 treaty fishing language, repeated the same rule:

“Courts have uniformly held that treaties must be liberally construed in favor of establishing Indian rights.” “Any ambiguities in construction must be resolved in favor of the Indians.”

In this case, the courts again fashioned a broad remedy not found in the treaty in order to carry out the purpose of the treaty. Broad construction of the 1855 fishing treaty rights at Celilo Falls and Celilo Village, under the CRTFAS program, is consistent with the unique case law on treaty fishing rights under these 1855 treaties.

The principle of interpretation flows from the federal trust responsibility. Loudner v. USA, 108 F3d 896 (8<sup>th</sup> Cir. 1997), summarized the trust responsibility as follows:

“There is a presumption that absent explicit language to the contrary, all funds held by the United States for Indian tribes are held in trust. *Rogers v. United States*, 697 F.2d 886, 890 (9<sup>th</sup> Cir. 1983); see also *United States v. Mitchell*, 463 US 206, 225, 77 L Ed 2d 580, 103 S Ct 2961 (1983). This obligation derives from a ‘a humane and self-imposed policy which has found expression in many acts of Congress and numerous decisions of [the Supreme] Court’ under which the Government ‘has charged itself with moral obligations of the highest responsibility and trust’ in carrying out its treaty obligations with the Indian tribes. *Seminole Nation v. United States*, 316 US 286, 296-297, 86 L Ed 1480, 62 S Ct 1049 (1942) (footnote omitted). This ‘trust relationship extends not only to Indian Tribes as governmental units, but to tribal members living collectively or individually, on or off the reservation.’ *Little Earth of United Tribes, Inc. v. HUD*, 675 F. Supp. 497, 535 (D Minn. 1987), amended, 691 F. Supp. 1215 (D Minn. 1988), aff’d 878 F. 2d 236 (8<sup>th</sup> Cir. 1989), cert. Denied, 494 US 1078, 110 S Ct 1805, 108 L Ed 2d 936 (1990).”

The Supreme Court has on numerous occasions repeated this principle of federal trust responsibility. In United States v. Mitchell, 463 US 206, 77 L Ed 2d 580, 103 S Ct 2961 (1983), the Supreme Court cited multiple cases going all the way back to 1831, including the tax sovereignty case, White Mountain Apache Tribe. V. Bracker, 448 US 136, 65 L Ed 2d 665, 100 S Ct 2578 (1980).

Related to the federal trust responsibility is a line of cases requiring fair and honorable dealings with the tribes. Closely akin to the federal trust standard, this statutory fair and honorable dealing standard was enacted as part of the August 13, 1946 Indian Claims Commission Act (ICCA), 25 USC 70 ff. , c. 959, 60 Stat. 1049. Ote and Missouriia Tribe of Indians v. United States, 131 Ct. Cl. 593 (1955), was the first case to explain the

ICCA's new remedies and standards at length. Two cases illustrate the scope of the "fair and honorable dealings" standard created by the ICCA. Gila River Pima-Maricop Indian Community v. United States, 231 Ct. Cl. 193, 684 F. 2d 852 (1982) held that the United States was obligated to provide the tribe an adequate water supply and had failed to do so for an extensive period of history. Northern Paiute Nation v. United States, 225 Ct. Cl. 275, 634 F.2d 594 (1980), held that the United States was liable to the tribe for taking back reservation lands granted under an executive order reservation. The substance of both cases is that the United States had failed to act like a proper trustee in dealing with the Native Americans.

The standard is still followed today. The Supreme Court in State of Arizona v. State of California, 530 US 392, 147 L Ed 2d 374, 120 S Ct 2304 (2000), favorably cited earlier Claims Court decisions following the fair and honorable dealing standard, and directed relief to provide water for the tribes consistent with the standard. In Cherokee Nation of Oklahoma v. United States, 937 F. 2d 1539 (10<sup>th</sup> Cir. 1991), the court stated that Congress had copied the standard into more recent remedial legislation, PL 97-835, 96 Stat. 1944-45 (1982), to remedy tribal harms on the Arkansas River due to Corps civil works lock and dam construction. Cherokee is nearly identical to the Celilo Village situation in terms of the legal standard. In both cases, the tribes allege that Corps civil works dam projects have damaged (and taken by flooding) their traditional lands and homes. In both cases trust principles create liability for the Corps and justify a broad reading of the remedial legislation. In Cherokee, the tribe lost – not on the legal standard – but on its failure to prove that the Corps had a special relationship with the tribe. In the instant case, the 1950 and 1955 Corps authorizations to fix Celilo Village establish the necessary special relationship.

In Confederated Tribes of the Colville Reservation v. USA, 964 F.2d 1102 (Fed. Cir. 1992), the court analyzed the case law under the fair and honorable dealing standard and listed 4 elements to a "fair and honorable dealings" claim, citing Aleut Community v. United States, 202 Ct. Cl. 182, 480 F. 2d 831 (Ct. Cl. 1973). Celilo Village meets all 4 requirements for relief under CRTFAS. The first requirement is that the Government undertook an obligation. This requirement is met by many circumstances, including the 1929, 1947, 1950, and 1955 statutes that form the legal heritage of the Celilo Village site. The second requirement is that there be a special relationship. Again the long dealings between the Government, including specifically the BIA and the Corps of Engineers, and the tribes and "River People" at issue satisfy this requirement easily. The third requirement is that the obligation be to the tribal members and tribes seeking relief. This requirement is also met. The fourth requirement is that the United States failed to carry out its obligations and that the beneficiary Tribes and tribal members suffered damages as a result. The listing of failures on the part of the United States includes (a) the provision of the original damaged war surplus housing in 1947; (b) the failure to carry out the 1950 authorization for replacement Village for Celilo and Spearfish; (c) the provision in 1955 of replacement housing for only 14 families out of 900 permanent residents; and (d) the failure to fix the Village problems after 1955. The damages to the tribes and River People include the fact that they live in substandard, government-furnished housing, with

serious health and public safety issues connected with their water supply and sewer systems. .

Although the “fair and honorable dealings” claim standard was only specifically included as part of the Indian Claims Commission Act (ICCA) of 1946, it was applicable to all tribal claims arising on or before August 13, 1946, the date of the ICCA. It has been copied into subsequent legislation as well (see Cherokee, supra.)

The most recent case involving the BIA and the Corps with regard to the in-lieu sites, Sohappy v. Hodel, 911 F.2d 1312, 1320 (9<sup>th</sup> Cir. 1990) followed a similar broad treaty interpretation when interpreting tribal residential rights under the treaties at the in-lieu sites. In connection with some of the original in-lieu sites, the Government argued that there was no right of permanent, individual Native American residence at the sites. The 9<sup>th</sup> Circuit, looking at the long history of the original fishing sites and at the purpose and uses of the in-lieu sites, ruled otherwise. The court traced a centuries-long tradition of individual permanent residence along the river, and held that the 1855 treaties preserved such fishing uses and customs.

Similarly, the Snyder Act, 25 USC 465, has been broadly interpreted by the courts, in line with Interior Department legal positions that the statute’s goal is to provide Native Americans with land. Its grant of discretion to the Secretary of Interior and BIA is broad. In drawing parallels to the Snyder Act, it must be noted that the CRTFAS statute and the Snyder Act have a similar focus and purpose: the acquisition and transfer of land to Indians for their benefit. In both statutes, BIA has the ultimate say in whether a site will be acquired and transferred (the Corps’ amendments to the CRTFAS statutory list of sites were approved by Congress because the amendments had tribal and Interior consent and agreement.) The very recent case of Sac and Fox Nation of Missouri v. Norton, 240 F.2d 1250 (10<sup>th</sup> Cir. 2001), affirmed the very broad authority of the BIA under this statute to acquire and accept almost any interest in land for the benefit of Indians.

### **3.7 The Recommended Alternative and Conclusion**

Based upon the foregoing, it is believed that there is adequate legal authority to carry out the proposed Celilo Village project improvements under any of three CRTFAS authorities: (1) the Sec. 401(a)(2) boundary adjustment authority; (2) the Sec. 401 (b)(3) “existing site” authority; or (3) by the BIA regional director invoking the Sec. 401(e) DOI authority to designate other available federal lands to the project. However, because the Department of Interior Regional Solicitor and the Regional Director of the BIA desire specific legislative authority for the Celilo Village Project, the recommended alternative is to seek the simplest acceptable legislative solution, namely, specifically adding “Celilo Village” as a named site for improvement under Sec. 401(b)(3) as follows:

“(3) make improvements at existing sites, including but not limited to *rehabilitating Celilo Village as proposed by the 2002 Post-Authorization Change Report*, to dredging at the site at Wind River, Washington, and constructing a boat ramp on or near the site in Cascade Locks, Oregon.”

John Breiling  
Assistant District Counsel

#### 4. LIST OF LEGAL CITATIONS

##### PAGE CITATIONS

##### Statutes, Treaties, Regulations, and Reports

- 107 Columbia River Treaty Fishing Access Sites (CRTFAS) Act, PL 100-581, Nov. 1, 1988  
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# APPENDIX F: ENVIRONMENTAL ASSESSMENT

## CELILO VILLAGE REDEVELOPMENT

### ENVIRONMENTAL ASSESSMENT

FINDING OF NO SIGNIFICANT IMPACT  
CELILO VILLAGE REDEVELOPMENT  
WASCO COUNTY, OREGON

The proposed action is to provide infrastructure and residential redevelopment of Celilo Village in Wasco County, Oregon. The proposed action is to redevelop Celilo Village by removing existing structures and replacing with manufactured housing; adding roads and other needed infrastructure; and relocating the sewage lagoons. The Confederated Tribes of the Umatilla Indian Reservation completed a "Celilo Village Redevelopment Study" that has served as the starting point to make improvements to the Village. The preferred design is based on numerous scoping meetings with the residents of Celilo Village. I have reviewed the Environmental Assessment and determined that the proposed action would not significantly affect the quality of the human environment and that an Environmental Impact Statement is not required.

Date: 14 MAY 03

  
RICHARD W. HOBERNIGHT  
Colonel, EN  
Commanding

## **1. INTRODUCTION**

This environmental assessment considers the effects of improving the infrastructure and replacement of substandard residential housing at Celilo Village. Celilo Village consists of approximately 34 acres of land, held in trust for three tribes and the other Columbia River Indians by the United States of America, and is currently under jurisdiction of the Bureau of Indian Affairs. The Village currently supports 14 dwellings and approximately 50 people, all of whom live at or below poverty levels. The primary, if not only, source of subsistence for the residents is derived from the Treaty fishery. The long history of fishing for subsistence and trade at the ancient Celilo Village was severely impacted by the Federal Government with the construction of The Dalles-Celilo Canal, the Bonneville Dam, and the elimination of the Celilo Falls with the completion and filling of The Dalles Dam and reservoir in 1957. As mitigation, authorized under the Flood Control Act of 1950, the Corps of Engineers built the existing Celilo Village. In its current state, the Village lacks adequate sanitary and water systems, which result in public health and safety problems that concern Federal, state and local health officials.

This project was originally part of the Columbia River Treaty Fishing Access Sites Project (CRTFAS) that consists of acquisition, improvement, rehabilitation or transfer of thirty-one sites to the Department of the Interior, Bureau of Indian Affairs (BIA). The authorization is Section 401, Public Law 100-581, Title IV-Columbia River Treaty Fishing Access Sites, signed into law on November 1, 1988. These sites are located in Oregon and Washington on the Bonneville, The Dalles, and John Day pools.

The CRTFAS legislation does not specifically include redevelopment of the Celilo Village site itself as an authorized project; the legislation authorized developing fishing access sites on the Columbia River for the Nez Perce Tribe, Confederated Tribes of the Umatilla Indian Reservation, Confederated Tribes of the Warm Springs, and Confederated Tribes and Bands of the Yakama Indian Nation.

The current recommended action for project authorization is for the Tribes and Corps to seek the simplest legislative solution, specifically adding Celilo Village as a named site for improvement under Section 401(b)(3) of the CRTFAS legislation.

## **2. PURPOSE AND NEED FOR ACTION**

The purpose and need for this action is to provide infrastructure and residential redevelopment of Celilo Village in Wasco County, Oregon. Public Law 100-581, which authorized CRTFAS and the Flood Control Act of 1950 that authorized mitigation for the construction of The Dalles Project, together, do not provide sufficient authority to redevelop Celilo Village; the Tribes and Corps are currently seeking Congressional authorization to specifically name Celilo Village as a site for improvement.

As required by the National Environmental Policy Act (NEPA) of 1969 and subsequent implementing regulations promulgated by the Council on Environmental Quality, this environmental assessment is prepared to determine whether the action proposed by the

Corps constitutes a “...major Federal action significantly affecting the quality of the human environment...” and whether an environmental impact statement is required.

### 3. ALTERNATIVE ACTIONS

#### 3.1 Proposed Action – Village Redevelopment

The proposed action is to redevelop Celilo Village by removing existing structures and replacing with manufactured housing; adding roads and other needed infrastructure; and relocating the sewage lagoons. Table 1 shows an estimate of the types and quantities of infrastructure and common area improvements for the Village.

Table 1: Estimated Village Improvements

Sewer System Improvement
Potable Water System Improvement
Replacement Homes (14)
Water Well and Pump house
Restroom and Showers (2)
Fish Cleaning Station (2)
Net Repair Area (2)
Longhouse Repair
Parking Area
Roadway
Drying Shed (2)
Fencing
Irrigation System
Signage
Camp Sites (8 to 12)
Dump Station
Electrical and Telephone Upgrade

The preferred alternative is to replace the current substandard 14 residential units with manufactured homes of sufficient size to accommodate the legal residents of Celilo Village. The current residential homes present health hazards with asbestos and lead-based paint concerns along with substandard plumbing and electrical facilities. The Confederated Tribes of the Umatilla Indian Reservation completed a “Celilo Village Redevelopment Study” that has served as the starting point to make improvements to the Village. The preferred design is based on numerous meetings with the residents, Tribes, and the BIA. The residents were asked to provide their views on what Village improvements were necessary, and how they would be configured.

#### 3.2 No Action

The no action alternative traditionally describes what would happen if the proposed action were not to occur. It is being addressed in the EA as required by Council on Environmental Quality (CEQ) regulations (40 CFR 1502.14) and to provide a baseline against which to measure impacts of the project. Under the No Action alternative, Celilo Village would not be redeveloped. The Village would continue to fall into a state of disrepair and living conditions at the Village would continue to decline. The Corps will not have fully mitigated the effects of the construction of The Dalles Project.

### **3.3 Other Alternatives Considered**

Two other redevelopment alternatives were considered. Both of the alternatives have the same basic elements of Village redevelopment: Replacement housing, improved roads, associated infrastructure, and other improvements such as relocating the sewage lagoons and renovating the Long House. The differences between the alternatives are how the improvements are configured within and around the Village.

## **4. AFFECTED ENVIRONMENT AND ENVIRONMENTAL CONSEQUENCES**

### **4.1 Reservoir Water Quality**

The Celilo pool backs up behind The Dalles Dam (RM 191.5) at the head of lake Bonneville, 90 miles east of Portland and 3 miles east of The Dalles, Oregon. The Celilo pool is almost 24 miles long, with a shoreline of approximately 55 miles and a pool surface area of 9,400 acres. The states of Washington and Oregon include all of the Columbia River on their 303(d) lists of impaired water bodies for total dissolved gas. The rebuilding of Celilo Village should not impact the water quality in the project area because all work will be upland of the Columbia River.

### **4.2 Aquatic Species**

Fisheries resources in the project area include anadromous salmonids (including 10 species or stocks listed under the Endangered Species Act), wild and hatchery, sturgeon, and several warm water species. The Columbia River is particularly important as a migratory pathway to the upriver spawning and rearing grounds in the upper Columbia and Snake Rivers. Peak movements of juvenile salmonids occur during the months of April, May, June, and July. Since the redevelopment project consists entirely of upland work, there will be no effect on aquatic species in the project area.

### **4.3 Wildlife**

In or near the project area, the representative wildlife species that use the shrub-steppe/upland grassland cover type include sage thrashers, black-tailed jackrabbits, mule deer, badgers, and coyotes. In grassland areas grasshopper sparrows, long-billed curlews, and burrowing owls are commonly found. Where the shrub-steppe/upland grassland is near or adjacent to croplands, ring-necked pheasants are common. Waterfowl will nest in shrub-steppe/upland grasslands where it is adjacent to suitable brood rearing habitat. Game species include ring-necked pheasants, Canada geese, and a variety of ducks.

There are a variety of wildlife species that specifically use the shrub-steppe habitats. Birds that use sagebrush for nesting are sage sparrow (*Amphispiza belli*), sage thrasher (*Oreoscoptes montanus*), and loggerhead shrikes (*Lanius ludovicianus*). Burrowing owls (*Athene cunicularia*), and long-billed curlews (*Numenius americanus*) often nest on the ground within the shrub stands. This habitat community also supports a wide variety of small mammals, reptiles, and insects, as well as upland game bird species. Since the redevelopment project consists of essentially rebuilding the existing Village, any impacts to wildlife should be minimal.

#### **4.4 Endangered Species**

A species list from the U.S. Fish and Wildlife Service (USFWS) was obtained that identifies federally listed and proposed endangered and threatened species, candidate species and species of concern that may occur within the area of the Celilo Village residential improvements project. A Biological Assessment has been prepared to address the potential impacts to Endangered Species Act (ESA) listed species resulting from the proposed redevelopment of Celilo Village.

#### **4.5 Cultural Resources**

Under section 106 of the National Historic Preservation Act (NHPA), federal agencies are required to take into consideration the affects of their undertakings on historic properties that are included in, or eligible for, the National Register of Historic Places (Register). Consultation regarding cultural resources in the proposed project area with affected Indian tribes and interested parties will continue throughout the compliance process. A cultural resources survey of the Area of Potential Effect will be conducted prior to any land altering activities and the results will be coordinated with the Oregon State Historic Preservation Officer (SHPO) and Tribal Historic Preservation Officer (THPO) as appropriate. It is known from previous studies that locations within the APE contain some cultural resources, and the proximity to the Columbia River and areas of prehistoric and historic occupation makes it probable that there are more present. It is also known that there are human remains located within the APE. Therefore, a Memorandum of Understanding (MOU) covering cultural resources will need to be developed and signed between the U.S. Army Corps of Engineers (USACE), the Bureau of Indian Affairs (BIA), the Oregon SHPO, tribal THPO, and the Advisory Council on Historic Preservation (ACHP). The MOU should contain clauses addressing all cultural resources related matters for the project, including, avoidance of impacts to eligible properties through design changes, principles to be followed in formulating any impact mitigation plans, and inadvertent discovery protocols.

#### **4.6 Recreation**

Redevelopment of Celilo Village will have no effect on the current public recreation use in the area. The Village is adjacent to the Celilo Treaty Fishing Access Site, separated from the site by the railroad and interstate highway. The Village and Treaty Fishing Access Site are not public recreation sites; nearby Celilo Park is a popular day-use recreation site open to the general public. Once the improvements to the Village are made, the Celilo Treaty Fishing Access Site might be used even more than it currently is, but the recreation aspect of Celilo Park and the surrounding area will not be impacted.

#### **4.7 Socio-Economics**

Currently, the substandard housing and lack of infrastructure does not contribute positively to the socio-economic state of the Village and surrounding area. The socio-economic state of the Village and surrounding area will benefit when the improvements have been made.

#### **4.8 Cumulative Effects**

The Celilo Village Redevelopment Project would not contribute significantly to cumulative effects on the environment. The only other projects near the Celilo Village Redevelopment Project are Celilo Park and the Celilo Treaty Fishing Access Site; both of these are Corps of Engineers projects. The replacement housing and associated infrastructure for the Village would essentially replace the existing housing and infrastructure, thereby not contributing negatively to the cumulative impacts on the environment.

### **5. CONSULTATION REQUIREMENTS**

#### **5.1 Federal Statutes**

##### 5.1.1 Cultural Resources Acts

A cultural resources investigation will be conducted. The Oregon State Historic Preservation Officer has been contacted regarding literature searches for known sites at Celilo Village. Field investigations will be necessary prior to construction and monitoring will likely be required during construction.

##### 5.1.2 Clean Air Act, As Amended

The proposed project complies with the Clean Air Act, as amended.

##### 5.1.3 Clean Water Act, As Amended

The proposed project complies with the Clean Water Act, as amended.

##### 5.1.4 Endangered Species Act of 1973, As Amended

The Corps prepared a Biological Assessment that evaluates effects of this project to species listed on the Endangered Species List by the U.S. Fish and Wildlife Service. The Corps has determined that the project will have no effect on listed species in the project area. The Biological Assessment has been coordinated with the U.S. Fish and Wildlife Service and National Marine Fisheries Service. Both agencies concurred with the determination.

##### 5.1.5 National Environmental Policy Act (NEPA)

This EA has been prepared pursuant to the requirements of NEPA. No significant impacts have been identified. An environmental impact statement is not required.

##### 5.1.6 Wild and Scenic Rivers Act

The Columbia River is not included on the Wild and Scenic Rivers inventory, according to the National Wild and Scenic Rivers System, December 1, 1992 and its 1998 updates, published by the Department of Interior and the Department of Agriculture, Forest Service. The project is in compliance with the Wild and Scenic Rivers Act.

##### 5.1.7 Migratory Bird Treaty Act

The proposed project would not harm or harass migratory birds.

#### 5.1.8 Fish and Wildlife Coordination Act

A Coordination Act Report performed by the U.S. Fish and Wildlife Service is not required for this project.

#### 5.1.9 Coastal Zone Management Act

The proposed project is outside the coastal zone on the state of Oregon. No effect on the coastal zone is expected.

#### 5.1.10 Marine Protection, Research, and Sanctuaries Act of 1972, as amended:

No marine resources would be affected by the proposed action.

#### 5.1.11 Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and Resource Conservation and Recovery Act (RCRA).

The proposed project area will be investigated for hazardous, toxic, and radioactive waste (HTRW). Presence of HTRW will be responded to within the requirements of the law and Bureau of Indian Affairs (BIA) regulations and guidance.

#### 5.1.12 Columbia River Gorge National Scenic Area Act

Land use designation within the Columbia River Gorge National Scenic Area Act for this site is Indian Trust Lands. Section 17(a)(7) of the savings provisions of the act exempts lands held in trust by the Secretary of the Interior and other land acquired by the Corps of Engineers for benefit of Indian Tribes from provisions of the act.

### **5.2 Executive Orders**

#### 5.2.1 Executive Order 11988, Floodplain Management, May 24, 1977

The objective of Executive Order 11988 is to insure that to the best of our ability we avoid any adverse impacts, short and long term, with relation to the occupancy and modification of the base floodplain whenever there is a proposed alternative. This project would not result in or support additional development in the floodplain; therefore the project is in compliance with the Executive Order.

#### 5.2.2 Executive Order 11990, Protection of Wetlands, May 24, 1977

No wetlands will be impacted by this project.

### **5.3 Executive Memorandums**

#### 5.3.1 CEQ Memorandum dated August 11, 1980, Analysis of Impacts on Prime and Unique Agriculture Lands in Implementing NEPA.

No Prime or unique farmland would be impacted by this project.

### **5.4 State and Local Permits**

There are no state and local permits from resource agencies required for this project. Building permits required for the sewage lagoon construction and the Village buildings and infrastructure will be obtained prior to construction.

## 6. CONSULTATION & COORDINATION

This action will be coordinated with applicable agencies including the Bureau of Indian Affairs, U.S. Fish and Wildlife Service, National Marine Fisheries Service, Environmental Protection Agency, U.S. Forest Service, Oregon Division of State Lands, Oregon Department of Environmental Quality, and the Oregon State Office of Archaeology & Historic Preservation. Additionally, the Environmental Assessment was circulated to interested Federal and State agencies, groups, and the public for review and comment, concurrent with the release of the PAC report. Comments on both the Environmental Assessment and the PAC report were requested from pertinent Federal, State and local agencies; Treaty Tribes; Celilo Village residents; and interested groups and members of the public. Groups contacted included:

- Confederated Tribes of the Umatilla Indian Reservation
- Confederated Tribes of the Warm Springs Reservation
- Confederated Tribes and Bands of the Yakama Indian Reservation
- Nez Perce Tribe
- Mid-Columbia Council of Governments
- Mid-Columbia Housing Agency
- National Marine Fisheries Service
- U.S. Fish and Wildlife Service
- U.S. Forest Service, Columbia River Gorge National Scenic Area
- U.S. Environmental Protection Agency
- U.S. Bureau of Indian Affairs
- Indian Health Service
- The Columbia River Gorge Commission
- Oregon State Historic Preservation Office
- Oregon Division of State Lands
- Oregon Department of Fish and Wildlife
- Oregon State Police
- Wasco County (Oreg.) Board of Commissioners
- Wasco County (Oreg.) Sheriff's Office
- Wasco County (Oreg.) Family Services
- Wasco County (Oreg.) Health Department
- Dufur School District
- Region 9 Educational Services District
- City of The Dalles
- City of The Dalles, Community Planning Department

Several comments were received, and are summarized below.

Indian Health Service. Comment: Are there provisions for identifying adequate and sustained funding to the BIA to ensure improvements are operated and maintained properly through their service life? Response: The Corps will transfer capitalized operations and maintenance funds to the BIA, in accordance with the 23 June 1995 Memorandum of Understanding signed between the Department of the Army and the

Department of the Interior. Additional discussions regarding Village operations and maintenance will take place during governance planning prior to construction. Comment: Indian Health Service should be added as an Advisory & Support Team Member for O&M of water and sewer facilities, and also be included in Planning and Development, Advisory Committees, Site Cleanup and Construction. Response: The Corps will solicit input from Indian Health Services in these areas.

Friends of the Columbia Gorge. Comment: The development is not required to blend in with the surrounding landscape, but Friends requests that the Corps voluntarily comply with the spirit of the Columbia River Gorge National Scenic Area Act to minimize the project's impacts on scenic resources. Response: While developing plans and specification for the project, the Corps will consider measures that may include using landscaping to screen structures from I-84; ensuring structure exteriors are dark, non-reflective, and composed of colors that blend in with the surrounding landscape; and ensuring that outdoor lighting is directed downward, hooded, and shielded.

Mid-Columbia Fire and Rescue Service. Comment: There should be clear addresses on the buildings to aid in emergency rescue service. Response: Addresses clearly readable from the road will be placed on all the replacement housing. Comment: Streets and roadways should be wide enough to allow access for fire apparatus without lengthy dead ends unless turnarounds are provided. Response: The current plan provides for a turnaround in the Village. Comment: Fire hydrants should be located in the Village. Response: The Corps plans to site to fire hydrants at the Village. Comment: Replacement houses should be constructed with fire sprinklers to lessen the chance of catastrophic loss at the Village. Response: The PAC report includes a rebuilt water system, which will alleviate some of the fire concerns at the Village. Including fire sprinklers in the modular homes will be considered during the development of plans and specifications for construction. If this cannot be accomplished, the Corps will consider other methods of providing the houses fire protection.

Confederated Tribes of the Umatilla Indian Reservation. Comment: The Corps needs to place more emphasis on developing a "Management Code" and enforcement framework to sustain improvements and operations at the Village once construction is complete. This work should be done before construction begins. Response: The Corps has altered the PAC report to place more emphasis on developing a governance plan for Celilo Village. Additionally, the Corps proposes to transfer a portion of the capitalized operations and maintenance amount up front to the BIA. The intent is to facilitate completion of governance planning concurrent with design, and prior to construction, of Village improvements.

In addition to the public review and comment on the PAC report and Environmental Assessment, the Corps conducted a public meeting to address Celilo Village redevelopment. Nearly everyone present was in favor of the project. All comments made by agencies and individuals at the meeting are addressed here. The transcript of the meeting is included, as a separately bound appendix to the PAC report.

Ms. Ella Jim. Comment: What will be done about Village healthcare, and who will oversee it? Response: Issues regarding Village healthcare will be addressed by the BIA, Tribes and Wyam Board in the governance plan developed prior to construction. Comment: People were moved fraudulently from communities when the Dalles and Bonneville dams were built. Response: The status of individuals who were moved to locations other than Celilo Village is beyond the scope of the project. Comment: The Residents need technical assistance to move the project forward. Response: A number of groups have come forward to offer assistance on issues such as education and governance. The Corps will pursue relations with these groups and put them into contact with the Residents.

Mr. Donald Ortloff. Comment: Will the longhouse and the dance shed be moved? Response: No. Comment: Who's going to manage the Operation and Maintenance money? Response: The Corps will transfer capitalized operation and maintenance funds to the BIA. The BIA will be responsible for administration of O&M program in accordance with the 23 June 1995 Memorandum of Understanding signed between the Department of the Army and the Department of the Interior.

Chief Leo Alec. Comment: Grant County PUD's construction of homes for the Wanapum Indians could serve as a model for Celilo. Response: The Corps has contacted Grant County PUD regarding their Tribal housing. The two projects present differing histories, legal requirements, and governance issues, which prevent the Grant County PUD housing from being a model for Celilo Village redevelopment. The Corps may attempt to incorporate some elements of the Grant County PUD Tribal housing, however.

Ms. Jean Vercouteren, Region 9 Education Services District. Comment: All houses should have running water, a bathroom, a place to sleep, and a place to cook or eat. Students should have a place to study, and parents should have a place for privacy. Response: All houses will have running water, a bathroom, cooking and eating space. The level of privacy will depend upon number of occupants. Comment: Living conditions have deteriorated and not enough attention is placed on upkeep and maintenance. Response: Conditions have deteriorated. Upkeep and maintenance of infrastructure, housing, and other buildings will be addressed in governance planning prior to construction. Comment: Residents should be involved in governance decisions. Response: The Residents have been included during PAC report development, including governance. They will be involved both informally, and through the Village positions on the Wyam Board. Comment: The maintenance worker should be a villager, a full-time employee, and have a budget to do repairs. Response: The Corps concurs. Comment: Residents need to have jobs. Response: Creating employment opportunities for Residents will be considered during the economic development portion of governance planning. Comment: People currently living at Celilo should be the ones receiving the replacement housing. Response: The BIA, in consultation with the Tribes, the Residents and the Corps, will make residency and heirship determinations based on applicable Federal and state laws.

Mr. Jack Henderson, Dufur School District. Comment: Celilo students are uncomfortable with the appearance of their houses. Response: The replacement housing will address this concern. Comment: The railroad crossing, and its blockage for significant periods of time, is unacceptable. Response: The Corps is exploring several options regarding the railroad-crossing blockage. Possibilities include seeking funding from the Burlington Northern – Santa Fe railroad for constructing an underpass east of the grade crossing, improving the current crossing, and applying to the Coast Guard for a change in the operation of the nearby drawbridge that causes the train backups that block the Village entrance. The Tribes and Residents also have the option of seeking legal enforcement of their superior right of ingress and egress at the Village, which supersedes the railroad’s right to use the crossing. The Corps will continue to coordinate with the Tribes, Oregon Department of Transportation, the Burlington Northern – Santa Fe railway, the Residents, and all other applicable agencies such as the Coast Guard to resolve the issue. Comment: Supporting Celilo students, and maintaining the educational center need to be addressed in the PAC report. Response: The funded Resident maintenance worker position will be responsible for the educational center building upkeep. Providing additional educational materials and resources will be addressed in governance planning.

Ms. Kathy Schwartz, Wasco and Sherman County Public Health Department. Comment: Housing, sanitation, and clean water are the basic elements of public health, and must be provided. Response: The PAC report includes these three elements. Comment: The health department has many services available to the Residents, and desires to be included in any planning. Response: The Corps will include the health department as it proceeds with the project.

Chief Wilbur Slockish Jr. Comment: Quality materials and insulation need to be used in the replacement housing. Response: Quality, new materials and insulation will be used in construction. Comment: Are the other fishing sites promised on the lower river going to be addressed? Response: The provision of fishing sites is addressed under the basic CRTFAS project authorization. Comment: Is the war in Iraq going to impede Celilo Village redevelopment like World War II affected earlier projects? Response: Celilo Village redevelopment, even with Congressional authorization, is subject to national priorities. It is conceivable that the war could impede the project. Comment: Are there going to be Tribal contractors. Response: Tribal contractors will be used for the Celilo Village Redevelopment project, as they have been used for CRTFAS site construction.

Chief Johnny Jackson. Comment: When there’s an Indian housing project, the cheapest materials are always used, and something goes wrong. Response: See response to Chief Wilbur Slockish Jr., above. Comment: Past promises have not been fulfilled, in part because of World War II. Response: See response to Chief Wilbur Slockish, Jr., above.

Ms. Marlene White. Comment: The current homes do not have safe drinking water and are not hooked up to sewage disposal. Response: Both issues are addressed in the PAC report. Comment: Everyone needs to work as a team on the project. Response: The Corps will continue to work with the Residents, the BIA, the Tribes, and all other interested parties on Celilo Village redevelopment. Comment: The Tribes and the

Residents need to take responsibility for operations and maintenance at the Village. Response: The Tribes, Residents, and BIA will share to some extent the responsibility to operate and maintain the Village. Comment: More work has to be done on governance issues such as health and economic development. Response: Governance issues will be addressed prior to construction. Comment: The Residents should be included in resolving inheritance issues and made aware of restrictions. Response: See response to Ms. Jean Vercouteren, above.

Chief Leo Alec. Comment: Grant County PUD built homes for Indians by Priest Rapids Dam in cooperation with them, and provided jobs and electricity. Response: Celilo Village residents have been involved in the development of the PAC report from the beginning and will continue to be so. The PAC report suggests that a Resident be employed as the Village maintenance worker. Further job opportunities and economic development will be addressed during the governance discussions prior to construction.

Mr. Alan Crawford, reading a letter on behalf of the Confederated Tribes of the Umatilla Indian Reservation. Comment: The Corps needs to continue to assist with development of organizational structure, management tools, and financing to sustain the long-term maintenance, operation, and economic viability of the Village. Response: The Corps will continue to be involved in governance discussions prior to construction. The Corps will transfer capitalized operations and maintenance funds to the BIA in accordance with the 23 June 1995 Memorandum of Understanding signed between the Department of the Army and the Department of the Interior, that will be used to address governance issues.

Ms. Anna Wahtomy. Comment: House “D” at Celilo Village was not “abandoned,” and there are several people on the Warm Springs list of Village residents and heirs that should not be. Response: See response to Ms. Jean Vercouteren above.

Mr. Bobby Begay. Comment: The plan should allow Celilo Village to grow over time. Response: The PAC report only addresses the replacement of the fourteen original homes. The construction of any additional housing could be addressed through BIA, HUD, or Tribal housing programs, though there is limited space available at the site.

Ms. Cecilia Wesley. Comment: There is black mold in the houses, causing health problems. Response: The houses will be completely demolished and disposed of off-site, removing the threat of exposure to contaminants. Comment: There are problems with the bathrooms: the toilets won’t flush and the shower water smells. Response: Quality, new sewage and water systems, with appropriate fixtures and hardware will be constructed, removing these concerns. Comment: The project should happen soon, before all the elders pass on. Response: If Congress authorizes the project, construction would likely begin one and a half to two years later. Comment: Decisionmakers should approach the Residents directly regarding decisions that affect them. Response: See response to Ms. Jean Vercouteren, above. Comment: Neither the dams nor employers in the Dalles hire Native Americans. Response: These issues are beyond the scope of the project. Comment: Some of the electrical boxes shock people. Response: Quality, new electrical systems will be constructed in the Village, removing this problem.

Mr. Randy Settler. Comment: Will the status of Celilo land change as a result of the PAC report? Response: No. Comment: Has the PAC report been authorized? Response: No. Comment: Redevelopment of Celilo Village should be included in the Senate Committee on Indian Affairs' technical amendments bill. Response: Congressional staff have stated that the Celilo Village Redevelopment Project's inclusion in the Senate Committee on Indian Affairs technical amendments bill is likely. Comment: If congressional authorization is secured in June, how long will it take to design and construct the facilities? Response: Design would likely begin late this year, with construction in the year afterward. It would take about a year and a half to two and a half years for the whole process, subject to funding. Comment: Governance issues could be ironed out faster if Tribal residents or Tribal community members or Tribal representatives actively participated in the process. Response: All three groups have been and will continue to be invited to participate in developing a governance plan.

Ms. Bernice R. Mitchell. Comment: The people at Celilo need good water. Response: See response to Ms. Marlene White, above.

Ms. Aleta Sohapp. Comment: More dry sheds should be built along the river with different construction, especially with tables, running water and fans. Response: The PAC report includes dry sheds, and designs will be chosen in consultation with the Tribes and the Residents. The construction of additional dry sheds along the river is beyond the scope of this project. Comment: There should be water purification plans put up and down the river. Response: The placement of purification plans up and down the Columbia is beyond the scope of this project.

Ms. Karen Jim Whitford. Comment: The trains sometimes block emergency medical care from getting to the Village. Response: See response Mr. Jack Henderson, above. Comment: The Tribes need to contact the Residents physically, in person, before making decisions about voter and position eligibility for the Wyam Board. Response: the Corps agrees that the Tribes should actively engage the Residents in making voter and position eligibility determination regarding the Wyam Board. Comment: The Residents asked that temporary pads for seasonal residents not be included in the redevelopment plan, due to noise pollution, health hazards, and security concerns. Response: The Corps understands the Residents' position, but included the temporary pads because the Treaty Tribes have a legal right to reside on the site during fishing seasons. Comment: A cultural committee including Residents and Village elders should be created to deal with archaeological discoveries. Response: The Corps will develop and sign a Memorandum of Understanding (MOU) covering cultural resources with the BIA, the Oregon State Historic Preservation Officer (SHPO), the Tribal Historic Preservation Officer (THPO), and the Advisory Council on Historic Preservation (ACHP). The MOU will contain clauses addressing all cultural resources related matters for the project, including, avoidance of impacts to eligible properties through design changes, principles to be followed in formulating any impact mitigation plans, and inadvertent discovery protocols. The Residents will be invited to participate in matters regarding cultural artifacts at the site, and will have the opportunity to provide input in how discovered artifacts should be

dealt with. Comment: Stanley Speaks should attend meetings at Celilo Village. Response: The Corps supports participation by all levels of the BIA in the Celilo Village Redevelopment project. Comment: There were monies available from Dalles Dam negotiations, but none of it came to the Villagers. Response: This is beyond the scope of the project. Comment: More land should be involved in the project, including Celilo Park. Response: The Corps does not plan to purchase any additional lands for the project to site additional housing beyond the fourteen replacement houses. The Celilo Park will not be included in the project.

Ms. Yvonne Colefax. Comment: If a family has honored an occupancy permit, and the BIA has not, can the Residents take legal action against the BIA? Response: This is beyond the scope of the project. Comment: Can heirs receive a house outside of Celilo? Response: Housing heirship and relocation benefits decisions will be determined prior to the beginning of construction. Comment: The BIA is pushing responsibility for Celilo upon the Corps. Response: The Federal government has a trust responsibility for Celilo Village. The BIA and the Corps will work together to meet this responsibility and redevelop the Village.

Ms. Delilah Begay Heemsah. Comment: Problems with the railroad crossing need to be addressed. Response: See response to Mr. Jack Henderson, above.

Ms. Susan Hess. Comment: What can be done to help authorization happen? Response: Express views to the Northwest Congressional Delegation, through letters to Senator Gordon Smith, on the Senate Committee on Indian Affairs.

Ms. Jean Vercouteren. Comment: Is the money there because it's already been appropriated? Response: No. There is currently a cost estimate for an authorized project built into the Office of Management and Budget's multi-year program. If Celilo Village redevelopment is authorized, the Corps will make adjustments in its annual budget submissions to address dollars for Celilo redevelopment. Comment: There is no additional money available? Response: No funding is available now. If the project is authorized by Congress, the Corps will submit budget requests to support the project. As with any work, future appropriations will be required.

Mr. Alan Slickpoo, Jr. Comment: Has the Corps been meeting with the railroad about the present safety issue at Celilo. Response: See the response to Mr. Jack Henderson, above.

Wasco-Sherman Public Health Department. Comment: Will the 12 campsites the PAC report proposes be enough? Response: The PAC report proposes campsites in recognition of the Treaty Tribes' right to temporarily reside at the site during fishing seasons. The number of campsites is constrained by the property available at the site. Comment: How will the Corps provide a 30-minute disinfection contact time for ground water? Response: The well water is now being disinfected using a chlorinator and the chlorine residual is maintained in the range of 1.5 to 2.0 mg/L. All upgrades to the system will meet all Federal, State and local codes. Comment: Will a reservoir be used in the water system? Response: There will be a new water storage (enclosed) reservoir near

where the old one was on the cliff behind the Village. Comment: Will the proposed sewage lagoons be located over the former solid waste site, and if so, will the solid waste be relocated onsite or taken offsite to a DEQ permitted landfill? Response: The proposed sewage lagoons will be located over the former solid waste site, and any solid waste at the site will be taken to a DEQ permitted landfill. Comment: Cultural items in the soil cover could be affected if waste is taken offsite. Response: The Corps will develop and sign a Memorandum of Understanding (MOU) covering cultural resources with the BIA, Oregon State Historic Preservation Officer, Tribal Historic Preservation Officer, and the Advisory Council on Historic Preservation. The MOU will address this issue.

Ms. Anne Berblinger, U.S. Department of Commerce, Economic Development Administration. Comment: Workshops are necessary to insure that the community and Wyam Board members understand the outcome of the redevelopment process. Response: It is essential that the Residents and Wyam Board members understand their roles and responsibilities in the redevelopment of Celilo. Comment: A governance structure is an essential first step, which can be followed by determining responsibilities for utilities, law enforcement, land-use regulation, emergency services, and all the other functions of local government, as well as a community economic development plan including a detailed one-two year economic development work program. Response: Creating a governance structure for the Village is an essential first step, which will enable the delegation and assignment of responsibilities.

Mr. Hector Valdepena, Burlington Northern Santa Fe Railway. Comment: A grade separation, involving the construction of an underpass east of the grade crossing will eliminate the risk of the grade crossing at Celilo Village Road. Response: Constructing an underpass east of the grade crossing, rather than improving the current crossing, is a feasible, yet costly, solution for eliminating the risk. The Corps proposes to improve the at-grade crossing and recommends that BNSF works to minimize or reduce trains stopping and blocking the railroad crossing for extended periods of time.

Mr. Sanders George. Comment: The water pumps should be stronger, and the fire hydrants should have more pressure. Response: The PAC report calls for a completely rebuilt water system at the Village, which will insure higher water pressure throughout the system. Comment: People drive too fast through the Village. Response: Village regulations and law enforcement will be addressed in governance planning prior to construction. Comment: There should be routes to the 2 hilltop cemeteries. Response: This is beyond the scope of the project. Comment: Raymond Slockish should be a representative on the Wyam Board, with Sanders George as another representative. Response: The Tribes and the BIA, in consultation with the Residents, have formulated procedures for voter eligibility and elections. The two Residents who will be members of the reconstituted Wyam Board have been elected through this process.

**WASCO - SHERMAN  
PUBLIC HEALTH DEPARTMENT**

TEL: (541) 296-4636 • FAX: (541) 296-4697  
419 E. SEVENTH ST., ROOM 100  
THE DALLES, OR 97058-2676

March 6, 2003

George Miller  
Project Manager  
US Army Corps  
P.O. Box 2946  
Portland, OR 97208-2946

Dear Mr. Miller:

This letter is in regards to the Celilo Village redevelopment project and represents written comment. The questions and general information are as follows:

1. The draft plan stated the 10 to 12 campsites to be developed would accommodate the "large seasonal increase from treaty fisherman" (page 26). Will 12 campsites be enough? Are the sanitary facilities large enough to handle this large seasonal increase? History has it that if there are not enough campsites, then multiple camps at individual campsites will occur.
2. Page 27 of the draft plan states that there is a lack of contact time for drinking water disinfection. How will the Corps provide a 30 minute disinfection contact time for ground water? Will a reservoir be used in the water system?
3. Celilo Village had a solid waste open dump in the 1980s at the east end of the current sewage lagoon. In the late 1980s this dump was buried with fill. The new location of the proposed sewage lagoons appears to be located over this solid waste site. Will the solid waste be relocated onsite or taken offsite to a DEQ permitted landfill? Cultural items in the soil cover could be affected if waste is taken offsite. This, of course, is just an observation.

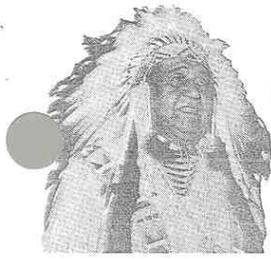
If you have any questions, please call me at 541-296-4636, extension 310.

Sincerely,



Glenn Pierce, RS  
Environmental Health Specialist

cp



CONFEDERATED TRIBES  
of the  
*Umatilla Indian Reservation*

P.O. Box 638  
PENDLETON, OREGON 97801  
Phone: (541) 276-3099  
Fax: (541) 278-5393



July 22, 2002

Mr. George Miller, Project Manager  
Celilo Redevelopment Project  
USACOE / Portland District  
PO BOX 2946  
Portland, OR 97208-2946

RE: Celilo Village Redevelopment Post Authorization Change report

Dear George:

Find attached a marked up copy of the report that contains my comments. In general you will find my comments focus on the lack of emphasis on Corps development of a "Management Code" and enforcement framework to sustain improvements and operations at the Village once construction has been completed. This task must be the most important element of the Corps work program and be adequately supported by Corps resources and commitment to assure history does not repeat itself at Celilo. This is not to suggest the Corps actually manage the Village and enforce regulations but to incorporate in the Village's redevelopment process preparation of documents that can be adopted and administered by the responsible entities and programs.

Since no single entity will likely have regulatory or program authority over all aspects of the Village and some of the operating functions may not even be created yet, the Corps funded management planning process will serve to provide a coordinated approach to product development. In practical terms neither the BIA nor the Tribes have the resources, horsepower or initiative to get the job done. In fact since this code preparation work is typically the function of a municipal corporation, the Corps may want to contract out for services as with other specialized elements of the redevelopment. I have attached for your consideration and edification general statements about the substance of this work and the process, time and budget involved in completing such a task.

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TREATY JUNE 9, 1855 ♦ CAYUSE, UMATILLA AND WALLA WALLA TRIBES

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The real key to getting this done in a timely manner will be to get started now so it will be completed prior to the start of construction. Delaying construction until completion and agreement on the Management Code is considered essential to diligent and productive resolution of issues and completion of the work.

I look forward to discussing my comments at your earliest convenience and I can be reached at 541-966-2599 or by e-mail at [jimbeard@ctuir.com](mailto:jimbeard@ctuir.com).

Sincerely,



Jim Beard, AICP  
Comprehensive Planning Manager

Pc letter only  
Alvina Huesties, Wy-Am Board Member  
Phil Sanchez, Superintendent Umatilla Agency  
Louie Pitt, Governmental Affairs Director  
Christine Ganuelas, YIN

enclosures

MID-COLUMBIA

FIRE &  
RESCUE



FIRE CHIEF Joe Richardson  
1400 West Eighth Street  
The Dalles, Oregon 97058  
541-296-9445 • Fax: 541-296-8656

February 14, 2003

George Miller, Project Manager  
Portland District, Army Corps of Engineers  
P.O. Box 2946  
Portland, Oregon 97208-2946

Dear Mr. Miller,

I regret that I am unable to attend the meeting at the Discovery Center on February 28, 2003 regarding Celilo Village redevelopment. The Mid-Columbia Fire & Rescue (MCF&R) provides fire protection for the village per an existing contract, and as Fire Marshal I have been asked to submit my thoughts regarding this project.

Celilo Village is located outside of the boundaries of the MCF&R jurisdiction, and we will not address any fire code issues that would otherwise be in effect. We will however, be happy to address fire and life safety issues and concerns as we are the emergency response agency directly involved. Please understand that our concerns regarding these issues are recommendations only, based on standards of good practice, they should in no way be perceived as requirements.

The two primary concerns that the MCF&R has for the village are an appropriate address system and an adequate water supply for fire protection. Any systematic addressing that provides for proper identification that is clearly visible from the street, can greatly reduce response time and thus increase survival rates. Streets and roadways should also be wide enough to allow access for fire apparatus without lengthy dead ends unless turnarounds or hammer heads are provided.

Fire hydrants can be located at nominal costs during the construction of the water supply systems. Required fire flow is dependant upon the type of building construction, the size of the structures, and the proximity of exposures. Within the MCF&R, we utilize Appendix III-A of the Oregon Uniform Fire Code (OUFC). This standard is optimal, but any increase in the availability of water for fire protection, over that already existing, is a benefit. I would recommend a system that allows for fire hydrants capable of delivering a minimum of 500 gallons per minute to be located within 500 feet of every single-family-dwelling. Fire flow needs for larger structures are certainly increased, and additional water supply requirements should therefore be considered during planning.

A final point that should be considered for this project is the installation of residential fire sprinkler systems. The response time for the MCF&R to a reported structure fire in Celilo Village greatly reduces the probability of saving much of the structure. Residential fire sprinkler systems have made a tremendous impact on new developments where they were installed. Current data indicates that these systems not only save lives, they reduce property loss due to fire by 92%. These systems have also been shown to reduce water supply needs, fire insurance costs, and markedly reduce the

environmental damage due to run-off. Many plumbers advise that these systems can be added for about \$1.00 per square foot if installed during initial construction. The only negative aspect of these systems that I am aware of, aside from the initial cost, is that they may not be suitable for use in buildings that are left unoccupied and unheated for extended periods during the winter.

Please feel free to contact me with any additional concerns, or if I can be of service in providing specific information.

Sincerely,

A handwritten signature in cursive script that reads "Stuart Z. Nagel". The signature is written in black ink and is positioned below the word "Sincerely,".

Stu Nagel, Fire Marshal

**BNSF**



HECTOR VALDEPEÑA

*Manager Public Projects*

The Burlington Northern  
and Santa Fe Railway Company

740 E. CARNEGIE DR.  
SAN BERNARDINO, CA 92408

Office: 909-386-4472  
Cell: 909-226-2799  
Fax: 909-386-4479  
E-mail [hector.valdepena@bnsf.com](mailto:hector.valdepena@bnsf.com)

File No. 066702E

March 18, 2003

**Jeremy Weber**

Project Manager  
US Army Corps of Engineers  
333 S. W. First Avenue  
Portland, OR 97204-3495

**RE: Celilo Village Redevelopment**

Dear Mr. Weber:

The Burlington Northern Santa Fe Railway has reviewed the Celilo Village Redevelopment Plan. We also reviewed the proposed upgrades of gates and flashers at the grade crossing of Celilo Village Road and BNSF main track, milepost 1.80, Dot #066702E, ODOT # 28T-001.80.

BNSF also attended the public hearing on February 28, 2003 at the Discovery Center. After listening to the concerns of the Celilo Village community with regards to the grade crossing being blocked by trains and BNSF projections of increased train traffic, BNSF believes the best solution is a grade separation.

Craig Reiley (ODOT Mgr. Rail Division) and I reviewed the location of the existing grade crossing. We both agree that it is possible to construct an underpass east of the grade crossing. I asked BNSF Structures Supervisor to provide an estimate of cost for a BNSF standard bridge that will accommodate two twelve foot roadway lanes. BNSF Structures designed a bridge (attached) that can be constructed for approximately \$760,000. The roadway grading and paving will have to be completed by others.

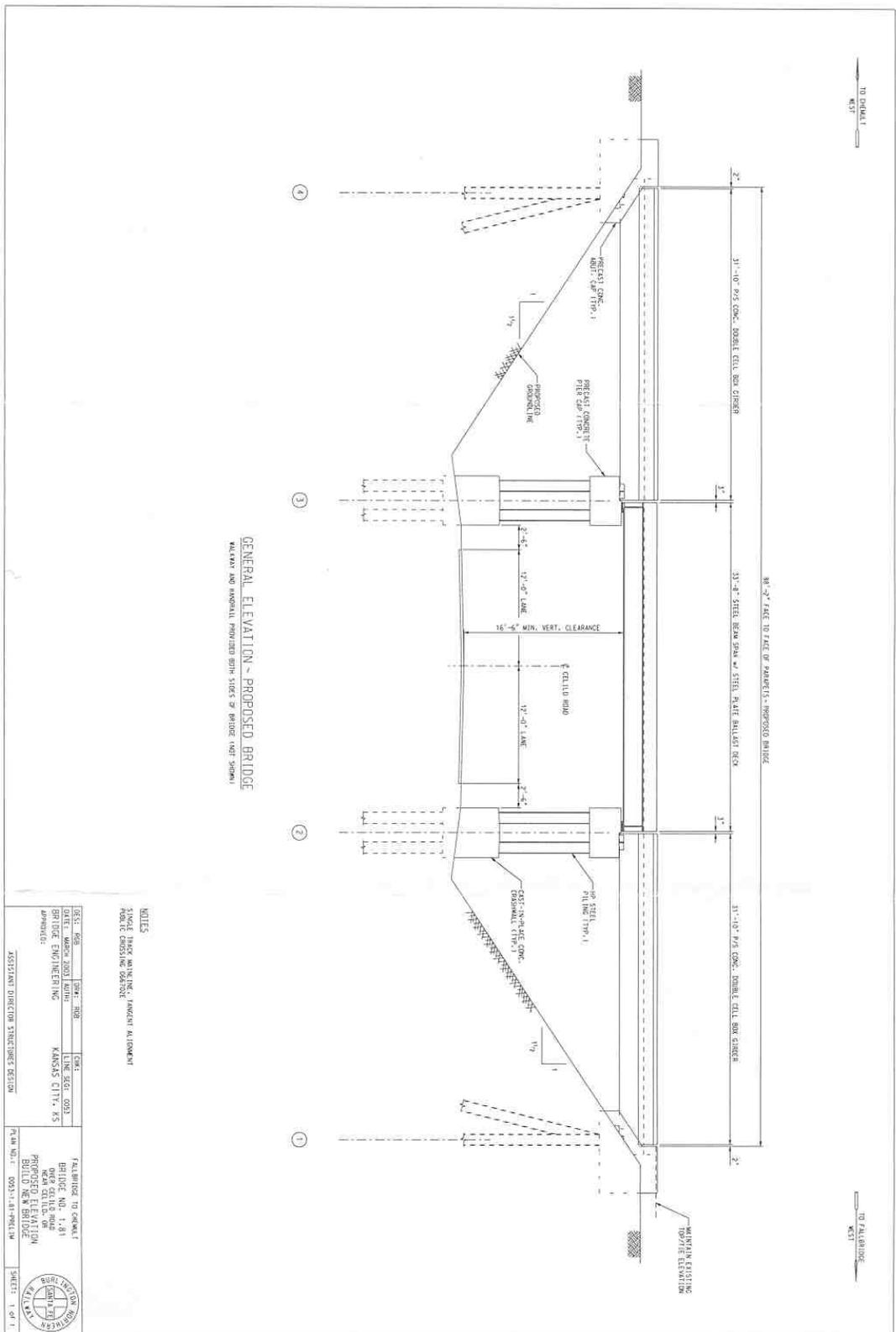
BNSF is asking the USACE to consider funding the underpass and eliminate the risk of the grade crossing at Celilo Village Road. If you have any questions or I may be of any assistance please telephone me. I look forward to hearing from you.

Sincerely,



Hector Valdepeña

Cc: Craig Reiley; ODOT Rail Division



**NOTES**  
 1. BRIDGE TO BE CONSTRUCTED IN ACCORDANCE WITH THE LATEST EDITIONS OF THE KANSAS BRIDGE DESIGN SPECIFICATIONS.

DESIGNER	DATE	PROJECT NO.	BRIDGE NO.
ENGINEER	10/1/03	103-1-103	103-1-103
APPROVED		KANSAS CITY, KS	
ASSISTANT DIRECTOR STRUCTURES SECTION		FALL BRIDGE TO OKLAHOMA	
		BRIDGE NO. 103-1-103	
		NEAR GLENDALE, MO	
		PROPOSED ELEVATION	
		PROJECT NO. 103-1-103	
		PLAN NO. 103-1-103	
		SHEET 1 OF 1	

**Weber, Jeremy J NWP**

---

**From:** Anne Berblinger [aberblin@OregonVOS.net]  
**Sent:** Friday, April 04, 2003 2:41 PM  
**To:** Jeremy Weber; AlvinaHuestes@ctuir.com; Jimbeard@ctuir.com  
**Subject:** Celilo Village Economic Adjustment and Governance Strategy

I appreciate being brought up to speed on the thinking that has already taken place on the governance at Celilo. I have had a chance to look at the draft from last year. It is very inclusive and represents some good thinking.

I would like to suggest some minor adjustments in the proposed scope of work.

It seems to me that the very first step should be a short series of workshops which would result in a clear understanding on the part of the community and the Wy-Am board members of what the outcome of this process will be: a vision of a vibrant and functional community where governance responsibilities, resources, and authorities are properly structured, and where the residents are economically self-sufficient and contributing to the regional economy.

Second, adoption of a governance structure, and consensus on about what kind of an entity or group of entities it (they) should be. This is the crucial step that will give the rest of the process legitimacy.

Once this had been accomplished, the "governance entity" or "governance team" would take the lead responsibility for the balance of the process.

Then, the nuts and bolts of who is responsible for the utilities, law enforcement, land-use regulation, emergency services, and all the other functions of local government, and well as a community economic development plan including a detailed one-two year economic development work program.

**From:** Craney, Patrick W. [mailto:pcraney@pao.Portland.ihs.gov]  
<mailto:[mailto:pcraney@pao.Portland.ihs.gov]>  
**Sent:** Wednesday, July 31, 2002 2:46 PM  
**To:** 'davis.g.moriuchi@usace.army.mil'  
**Cc:** Titensor, Kelly R.  
**Subject:** Celilo Vilage Redevelopment PAC - COMMENTS

A number of Indian Health Service, Portland Area Staff have reviewed the PAC and their comments are summarized in the following:

The O&M recommendations are good, but very brief. Are there provisions for or identifying adequate and sustained funding to the BIA to ensure improvements are operated and maintained properly through the service life of them? IHS struggles daily with the provision of sustained O&M for the facilities provided. The O&M situation is exacerbated at Celilo with multiple tribal interests and remoteness of the site. For these reasons, identifying a long-term O&M management plan is critical for this project to be successful.

Table A-2 Construction estimates exceed IHS provided costs which is conservative.

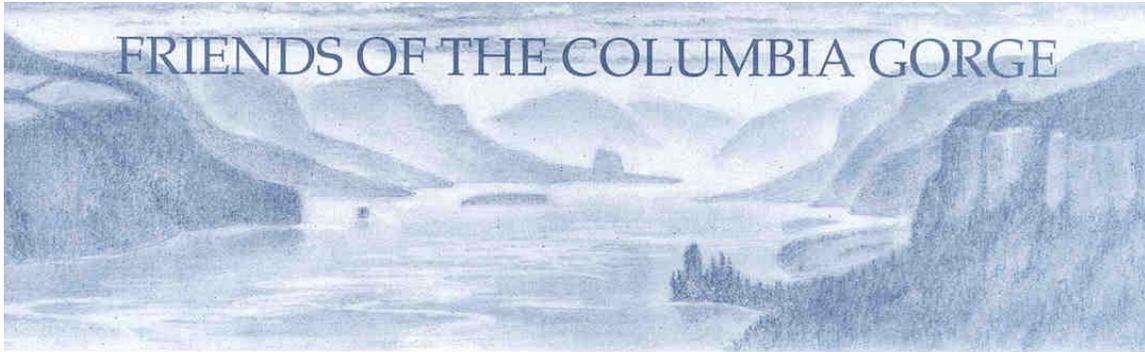
Tables D1-D3

At a minimum, IHS should be added as an Advisory & Support Team Member for O&M of water and sewer facilities. Other categories for consideration of IHS inclusion are: Planning and Development, Advisory Committees, Site Cleanup and Construction.

Thank you for the opportunity to comment upon the PAC and we look forward to a positive result of the PAC request. Do you have an estimated date when a decision will be made on the request?

Patrick Craney, PE  
Indian Health Service  
Sanitation Facilities Construction

Ph 503.326.3122



October 22, 2002

George Miller  
District Engineer  
U.S. Army Corps of Engineers, Portland District  
P.O. Box 2946  
Portland, OR 97208-2946

**Re: U.S. Army Corps of Engineer's Celilo Village Redevelopment Plan**

Dear Mr. Miller:

Friends of the Columbia Gorge has reviewed and would like to comment on the Celilo Village Redevelopment Plan. Friends is a non-profit organization with members in more than 3,000 households dedicated to protecting and enhancing the resources of the Columbia River Gorge through the effective implementation of the Columbia River Gorge National Scenic Area Act. Our membership includes hundreds of citizens who reside in the six counties within the Columbia River Gorge National Scenic Area.

The Corps correctly points out in the Draft Environmental Assessment that the tribal trust land is exempt from regulation under the Columbia River Gorge National Scenic Area Act. Therefore, the Corps's development proposal is not required to blend in with the surrounding landscape. Nevertheless, Friends respectfully requests that the Corps voluntarily comply with the spirit of the Act. Measures the Corps should take to minimize project's impacts on scenic resources include using landscaping to screen structures from Interstate 84; ensuring that the exteriors of structures are dark, non-reflective, and composed of colors that blend in with the surrounding landscape; and ensuring that outdoor lighting is directed downward, hooded, and shielded. If the Corps implements these measures, the proposal will likely protect the scenic resources of the National Scenic Area.

Thank you for providing Friends with this opportunity to comment.

Sincerely,

Glenn Fullilove  
Land Use Legal Assistant



# Oregon

Theodore R. Kulongoski, Governor

## Department of Transportation

Rail Division  
555-13<sup>th</sup> Street NE-Suite 3  
Salem, OR 97301-4179  
Telephone 503-986-4321  
FAX 503-986-3183  
TTY 503-986-3416

March 14, 2003

JEREMY J WEBER  
USACE  
PO BOX 2946  
PORTLAND OR 97208-2946

File Code:

RE: Celilo Village Redevelopment (Crossing No. 28T-001.80)

The Oregon Department of Transportation, Rail Division, supports the concept of constructing a separated crossing (underpass) from I-84 into the Celilo Village area. During the Celilo Village Redevelopment Public Meeting on February 23, 2003, a school district representative stated that a school bus had been delayed at the current crossing by a train stopped on the crossing. Without specifics about the incident (date, time, etc.), we can only speculate that the train must have been delayed waiting for the drawbridge over the Columbia River. Rail traffic is increasing, so we expect to see more rail traffic in the Celilo Village area and hence, a greater potential for blockage of the grade crossing caused by the train delays.

Hector Valdepena, Burlington Northern Santa Fe Railroad and I had an opportunity to review the Celilo Village area prior to the meeting. We both agree that by relocating the existing crossing easterly, an underpass could be constructed. The potential site for the new underpass would be at the I-84 interchange. Vehicle traffic could exit I-84 and proceed southerly into the Celilo Village area. If the underpass were to be constructed, we would expect the existing at-grade crossing to be closed.

Again, the ODOT Rail Division supports the conceptual idea to construct an underpass and eliminate the at-grade crossing to the Celilo Village. With the proposed redevelopment, the village would likely see a substantial increase in traffic. The current at-grade crossing is not adequate to accommodate the potential increase in use. The installation of automatic warning devices, while helpful, would not address the access issue if a train is delayed and blocking the crossing.

If you have any questions regarding our position in this matter, please call.

Craig J. Reiley  
Manager  
Crossing Safety  
503.986.4273 Fax: 503.986.3183  
[craig.j.reiley@state.or.us](mailto:craig.j.reiley@state.or.us)

cc: Hector Valdepena, BNSF  
28T-001.80  
h:\wg\_rail\cjr\Celilo Village 28T-1.80.doc

FAX TRANSMITTAL

# of pages 1

To: <i>Jeremy</i>	From: <i>Leona Hatcher</i>
Dist Agency: <i>BIA NE</i>	Phone #: <i>572-2874</i>
Fax #: <i>503-808-4736</i>	FAX #



IN REPLY REFER TO:  
Northwest Regional Director

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS  
Northwest Regional Office  
911 NE 11<sup>th</sup> Avenue  
Portland, Oregon 97232-4169

MAY 23 2003

Colonel Richard W. Hobernicht  
District Engineer  
United States Army Corps of Engineers  
Post Office Box 294  
Portland, Oregon 97208-2946

Dear Colonel Hobernicht:

We have reviewed the May 2002 Draft Celilo Village Redevelopment Plan, Post Authorization Change report. The Bureau of Indian Affairs supports the Celilo village redevelopment, and the recommendations of the FAC report in general. We will continue to coordinate and work with the Corps of Engineers, Treaty Tribes, Celilo Village residents and other interested groups in the anticipation that this worthy project will be approved and implemented in a way that provides both the necessary housing, and support to non-resident treaty fishers who seasonally require access and camping facilities provided under P.L. 100-581's Columbia River Treaty Fishing Access Site project. This project should be a good step towards mitigation due from the effects of Bonneville and The Dalles Dam inundations.

Should you need additional information call Charles James, (503) 231-6229.

Sincerely,

  
Northwest Regional Director

# **CELILO VILLAGE REDEVELOPMENT PROJECT**

## **BIOLOGICAL ASSESSMENT**

**March 18, 2002**

### **LOCATION**

Celilo Village is located at River Mile (RM) 201 to 202 on the Columbia River about 14 miles east of The Dalles, Wasco County, Oregon. The site is immediately adjacent to the Celilo Treaty Fishing Access Site on the south shore of the Columbia River, separated from the site only by the railroad and U.S. interstate highway I-84. Celilo Village resides in the NE corner of Township 2 North, Range 15 East. Rock and other material for road surfacing will be obtained from established quarries or commercial stockpiles nearby: either owned by the Corps of Engineers (Corps), by the Oregon Department of Transportation (ODOT), or private.

### **INTRODUCTION**

The goal of the project is to provide adequate living conditions for the residents of Celilo Village whose families were relocated to the current upland site as consequence of Federal construction of the Dalles dam on the Columbia River. Celilo Village consists of approximately 34 acres of land, held in trust under jurisdiction of the Bureau of Indian Affairs for three tribes and other Columbia River Indians who utilize the site for traditional fishing. Celilo Village currently supports 13 dwellings and approximately 50 people who live at or below the poverty level. The primary source of subsistence for the residents is derived from the Treaty fishery. Celilo Village supports a large seasonal increase in use by Treaty fishers during each spring and fall fishing season. The Corps of Engineers built the existing Celilo Village between 1948 and 1955. In its current state the Village lacks adequate sanitary and water systems, resulting in public health and safety problems which are of concern to Federal, state and local health officials.

The Facility Maintenance staff of Confederated Tribes of the Umatilla Indian Reservation thoroughly inspected the 13 residential structures and concluded that all except two newer modular dwellings should be removed and replaced. There are 8 privately owned dwellings and 5 federally owned facilities currently occupied. There are 2 privately owned dwellings and 2 federally owned facilities that are uninhabitable and consequently have been abandoned. The residences presented health hazards with substandard electrical, many testing positive for asbestos and lead paint, and some without water or sewer service due to substandard plumbing. The community facilities were also in major disrepair. The Longhouse has structural damage, electrical system problems, and no smoke alarms, sprinkler systems, or restroom facilities. The Indian Health Service (HIS) completed a needs assessment of the water and sewer facilities in October 1997. HIS concluded that there is no storage system for fire protection or contact time for chlorine disinfecting of well water, and inadequate metering. HIS also found problems with the

gravity collection sewer system, lift station and force main, and two-cell lagoon. Other problems exist with the roads and railroad crossing, sanitation with stacks of garbage in several locations, and no parks or playgrounds for the children living in Celilo Village.

## PROJECT DESCRIPTION

The “footprint” of the project encompasses the main work area and all of the material source areas. The main work area is located just south of Interstate Route 84 at Celilo Village. Oregon Department of Transportation (ODOT) and Corps quarries are nearby.

Materials such as the bioengineering materials, fine-grained fill material, and fuel may be obtained and transported from outside of the project footprint. The bioengineering material could come from various vendors throughout the region. Fuel hauling routes would follow existing improved roads.

### **Infrastructure and Common Areas:**

- New water well and pumphouse of sufficient size to provide all residential and fire protection needs.
- New relocated sewage lagoon facilities to be designed by the Indian Health Services (HIS).
- Two restroom and shower facilities.
- Two fish cleaning facilities.
- Two net repair areas with sufficient off-season storage space.
- Two drying sheds.
- New garbage dumpster pads with recyclable material stations.
- Perimeter fencing around site, along railroad, and new relocated sewage lagoons.
- Irrigation system for landscaping in limited areas.
- Minor landscaping around longhouse.
- All weather roadway around the two main Village loops for residential and camping and their access route areas.
- Parking areas with some overflow areas for peak use times.
- Longhouse repairs to bring it to current health and safety standards.
- Camping sites (8 to 12) constructed to National Park Service standards.
- A small number of picnic shelters would be constructed at the group camping area. These shelters would be open-sided and sized to accommodate diners seated at standard 6-foot picnic tables. One shelter would accommodate 1-2 families of diners. One of the shelters would provide a kitchen/serving facility at one end. The kitchen would have food preparation counter space, serving counters, and built-in storage cabinets.
- The entry control point upgrade for Celilo Village would include one vehicle entry lane and one vehicle exit lane, and a turn-around lane located just past the entry station.
- In addition to entry, main access roads within the Village would be added to and revised in order to simplify traffic circulation. The current day-use parking would have a single entry/exit and single direction arrangement, and the camping loops

would provide one-way traffic circulation. New signage for directional, traffic, recreation, and safety would be added.

- Construction of two new recreational vehicle (RV) camping loops with water and electrical hook-ups added to all RV pads and most including sewage hook-ups. A new rustic tent camping loop. A group camping area with picnic shelters.
- Improved railroad crossing with the parking lot expanded. The roadway would be built around centralized landscaped areas bermed in a manner to help ease the traffic flow into the area. The parking lot would involve the repavement of the existing lot.
- Pollution carried from the roads would be controlled by a grass swale buffering the parking lot designed to absorb run-off. The grass swale will filter out the run-off preventing stormwater and oil from getting into open or running water.
- Equipment would be staged/stored overnight in the existing parking lot at the Sand Station Site. The parking lot is approximately 150 feet from the river. Containment berms capable of containing 110% of the on-board fuel/oil will be utilized under each piece of equipment stored unattended. Similar containment berms would also be utilized for equipment at the Martindale and Burbank material sites if equipment is left there unattended.

#### **Housing Improvements:**

- Modular home units of appropriate size to be temporarily located while demolition of existing structures and infrastructure improvements are made. Then the modular units will be placed permanently on the improved sites.
- After demolition of existing homes new mainline and secondary water and sewer lines will be constructed.
- Foundations for modular units will be placed.
- Electrical and telephone upgrade, line and pole placements.

### **Redeveloped Sewage Treatment for Celilo Village**

A small number of alternatives for sewage treatment at Celilo Village were evaluated:

- septic tank and subsurface trench drainfield;
- evaporative lagoon;
- mechanical methods.

The preferred alternative for treating the additional sewage flows at Celilo Village is by septic tank and subsurface trench drainfield. This is the lowest cost alternative, provides the quickest and simplest permitting and monitoring compliance (through Washington Department of Health), is familiar to maintenance staff, and is easily expandable. Although the drainfields/ponds require a few acres of parkland, adequate space is available, which could also be used as horse corrals since the ponds will be fenced. Plate 1 shows the Proposed Celilo Village redevelopment project.

A septic tank and drainfield system is the most commonly used on-site sewage treatment alternative for small systems with adequate land area for the drainfield. Shallow subsurface trenches (approximately 3-ft deep) are the recommended absorption system because of favorable soil conditions and available land. A trench would be required. The best area for locating the new drainfields/ponds is the undeveloped area to the northeast of the existing site. The elevation at this site is 200 m.s.l. and the drainfield is approximately 1000 feet horizontally distant and 40 feet vertical from the Columbia River waters edge in the boat basin.

### **Timing of Work**

Construction would take place between July 15, 2002, and November 1, 2002, in order to avoid bald eagle winter use of the area for roosting and perching. The Corps estimates it would take about 4 months to do the work. No in-water work should be necessary.

### **LISTED SPECIES AND EFFECTS**

The following species list was obtained from the National Marine Fisheries Service (NMFS) per a phone call to Dale Bambrick on December 16, 2001, and the United States Fish and Wildlife Service (USFWS Reference 1-7-02-SP-212, letter dated January 15, 2002. We have determined a “No Effect” on ESA-listed species. Therefore, we are not requesting consultation with NMFS for ESA-listed anadromous salmonid stocks and with USFWS for bald eagle.

#### Endangered:

Upper Columbia Spring Chinook (*Oncorhynchus tshawytscha*)  
Upper Columbia Steelhead (*Oncorhynchus mykiss*)  
Snake River Sockeye Salmon (*Oncorhynchus nerka*), Critical Habitat designated.

#### Threatened:

Snake River Fall Chinook (*Oncorhynchus tshawytscha*), Critical Habitat designated.  
Snake River Spring/Summer Chinook (*Oncorhynchus tshawytscha*), Critical Habitat designated.  
Middle Columbia River Steelhead (*Oncorhynchus mykiss*), Critical Habitat designated.  
Snake River Basin Steelhead (*Oncorhynchus mykiss*), Critical Habitat designated.  
Bald eagle (*Haliaeetus leucocephalus*)

#### Proposed:

None

### **Summary Table of Effects Determinations for ESA listed Species**

Upper Columbia River Spring Chinook (E)	No Effect
Upper Columbia River Steelhead (E)	No Effect
Snake River Sockeye Salmon (E)	No Effect
Snake River Fall Chinook (T)	No Effect
Snake River Spring/Summer Chinook (T)	No Effect
Middle Columbia River Steelhead (T)	No Effect
Snake River Basin Steelhead (T)	No Effect
Bald eagle (T)	No Effect

## **Aquatic Species**

### **Chinook Salmon (*Oncorhynchus tshawytscha*)**

#### **Description of Species**

##### Snake River and Columbia River Spring Chinook Salmon

Several different strains of chinook salmon can be found in this reach of the Columbia River during part of the year. Unlisted hatchery and upper Columbia River fall chinook are the most common. However, endangered upper Columbia spring chinook and threatened Snake River spring/summer and fall chinook are also present. Migration timing and lifestage development can be different between the strains as they migrate through and use the area near the proposed project. However, the various strains migrate and use nearshore habitat at overlapping times. Most of the available juvenile salmon habitat use information is based on hatchery and upper Columbia sub-yearling fall chinook. This biological assessment of the proposed project assumes that known information about fall chinook habitat use can also be used to evaluate the impacts to the listed strains of chinook salmon.

Critical habitat for the listed strains of chinook salmon includes all waterways, substrate, and adjacent riparian zones that can be or have been accessed by the specific strain (65 FR 7764). The Columbia River adjacent to the proposed project is designated as critical habitat for several listed salmonids.

Construction of dams, roads, railroads, and levees/shoreline protection, as well as irrigation withdraws has altered the rearing habitat of juvenile salmon and the migratory habitat of juveniles and adults. Increased predation on juvenile salmonids due to the habitat changes is also a contributor to the declining salmonid population (Lichatowich and Moberg 1995, Rondorf 1994, Rondorf 1997, Burge et.al. 1999). Prior to the construction of McNary Dam, a large percentage of the shoreline consisted of shallow water with a small particle size substrate. Today, much of the shoreline consists of deeper water bordered by riprap. This change in habitat type is likely a factor in the decline of the Columbia Basin salmonid populations.

Juvenile salmonids frequently use shallow, low-velocity, small particle size, near-shore habitat during the spring (Key et. al. 1994, Venditti et. al. 1997, Key et. al. 1999, Venditti and Garland 1999). Much of the area consists of this type of habitat. Adjacent habitat is deeper, has a higher gradient, higher velocity, and banks lined with riprap. This adjacent type of habitat has been shown to harbor predatory fish species that prey on juvenile salmonids. Key et. al. (1999) found juvenile chinook predominately over substrate less than 32 mm (1.25 inches) in diameter. Most piscivorous fish were found over substrate in excess of 256 mm (10 inches). Gradient away from the shoreline could also be a factor affecting the quality of habitat, however, the higher gradient areas were generally associated with riprapped shorelines. Thus, the importance of gradient is difficult to determine. Velocity is another important habitat variable. Higher numbers of juvenile chinook were observed in areas of low velocity. Predatory fish were found in a wide range of velocities, often close to velocity breaks such as riprap.

As water temperatures increase in the late spring, food intake requirements of predatory fish increase. Electroshocking studies in 1994 and 1995 by Key et. al. (1999) were only performed during the spring period of known sub-yearling chinook use, not during periods of possible spring chinook use. The association of predatory fish with riprap and their effect on juvenile salmonids later in the summer is unknown.

The construction of the project involves no in-water work or shoreline work within the Columbia River. Direct take from construction is not expected.

Adult spring run chinook salmon begin entering the Columbia River in February. By late June, most have passed the Corps dams on the lower Columbia and Snake rivers. Most spring chinook salmon migrate upstream from early April through mid-June and spawn in tributaries far upstream from the proposed work at Celilo Village. Peak spawning occurs from August through October.

Juveniles typically rear in the tributary streams for more than a year, migrating downstream their second spring as yearlings from about March to June. The majority pass the dams during April and May. Fish then rear in the ocean mostly for two years before returning to the river as adults. However, a significant number spend three years in the ocean, some spend four to five years, and a few return after one year as “jacks” (early maturing fish) (USACE 1999).

### ***Snake River Summer Chinook Salmon***

Adult summer chinook salmon begin entering the Columbia River in May and pass the mainstem dams by September. The majority pass from mid-June through mid-August. Summer chinook salmon generally spawn and rear upstream of the influence of the mainstem river dams. In the Snake River System, spawning regions are typically in tributaries, but often downstream of spring chinook salmon. Spawning typically occurs from August through October, peaking in the Snake River System in September.

Juvenile summer chinook salmon out-migrate mostly as subyearlings in the upper Columbia River and yearlings in the Snake River. The yearlings out-migrate from the Snake River during March through June, with the majority passing in April and May. Most Snake River adults spend two to three years in the ocean before returning, while upper Columbia stocks may spend up to five years (USACE 1999).

### ***Snake River Fall Chinook Salmon***

Adult fall chinook salmon begin entering the Columbia River in July and pass mainstem dams by the end of November. Fall chinook in the Columbia River System consist of two distinct groups: “tules” which are confined primarily to the lower Columbia River tributaries (below Bonneville Pool), and “upriver brights” which mainly spawn in the mainstem Columbia in the Hanford reach (downstream of Priest Rapids Dam) and in the Snake River System. The majority of upriver bright fall chinook salmon pass the dams from mid-August to November. The tules returning to the Bonneville pool area are primarily hatchery fish. Tules spawn typically from mid-September to mid-October, while upriver brights spawn during October and November (USACE 1999).

The current spawning area for Snake River fall chinook salmon is limited to the 103 miles of the Snake River below Hells Canyon Dam, and to parts of the lower reaches of the Clearwater, Grande Ronde, Imnaha, Tucannon, and Salmon Rivers. Additionally, incidental deep water spawning has been observed below Lower Granite, Little Goose, and Ice Harbor Dams (Dauble et al., 1999).

Juvenile upriver bright fall chinook rear primarily in the mainstem river and reservoir reaches of the Columbia and Snake Rivers. Those in the Snake River rear in the flowing water areas below Hells Canyon Dam and in the reservoirs. Juvenile fall chinook salmon predominately migrate as subyearlings, leaving in their first spring or summer of fresh water residence. Subpopulations of subyearling chinook may rear and over-winter in the lower Snake River or McNary Reservoir and finish their out-migration the following spring as yearlings (USACE 1999).

Juvenile Snake River fall chinook salmon use shallow, open water, fine substrate, backwater-type habitat areas for both rearing and migration. These fish tend to out-migrate as subyearlings during the year of emergence over a period of weeks or months, feeding and growing as they progress downriver (Bennett et al. 1997). Many of the juvenile fall chinook salmon outmigrating from the Clearwater and Snake River spend time in shoreline areas (<3 meters in depth) in Lower Granite and downriver reservoirs, where they prefer sand-substrate areas (Curet 1994, Bennett et al. 1997). When water temperatures reach about 18 degrees Centigrade, these fish appear to leave shoreline areas and continue rearing and migration in the cooler pelagic zone of the reservoirs (Bennett et al. 1997).

As water temperatures increase in the late spring, food intake requirements of predatory fish increase. However, Key et. al. (1994) found few sub-yearling chinook in the nearshore area. Electroshocking studies in 1994 and 1995 by Key et. al. (1999) were only

performed during the spring period of known sub-yearling chinook use. Therefore, the association of predatory fish with riprap and their effect on juvenile salmonids later in the summer is unknown.

Lower river, hatchery, and wild tules migrate from March through October; the majority pass the dams in July and August. Those from the Snake River pass the upper dam primarily in June and July with some passing as late as November. However, most leave before late-July due to warming temperatures that are not suitable for chinook salmon in the Snake River.

Tules stocks typically rear in the ocean for two to three years. The Snake River fall chinook salmon typically return after one to four years in the ocean; most return after three years (USACE 1999).

### **Analysis of Effects**

The construction of the project will occur during the late summer through fall when few anadromous salmonids would be present in the nearshore area, except fall chinook salmon. Direct take from construction is not expected.

The wild adult chinook salmon runs consist of overlapping migrations of spring, summer, and fall races in the project area during the April through December period, with wild spring chinook occurring April through mid-June, wild summer chinook occurring mid-June through mid-August, and wild fall chinook occurring mid-August to December. Chinook use the mainstem Columbia River for migration almost exclusively, with the exception of fall chinook subyearlings that may have a size related affinity for shallow water shoreline habitat areas for growth during rearing.

The proposed actions should have “No Effect” on either juvenile or adult wild Snake and Columbia River spring/summer or fall chinook salmon stocks. No in-water or shoreline work is necessary although few individuals of these stocks may be present in the Columbia River during the work window of July 15 through November 1.

The Celilo Village redevelopment area is located within the portion of the Columbia River designated as critical habitat for passage of all Snake and Columbia River salmon evolutionarily significant unit (ESU) stocks (Federal Register 1993). The Corps believes that the Celilo Village redevelopment construction should not affect the suitability of that habitat for wild Columbia or Snake River spring/summer or fall chinook salmon stocks, because this reach of The Dalles reservoir is used primarily as a migration corridor for all lifestages of listed wild chinook salmon excluding the potential for areas of shoreline sand/gravel bar rearing for juvenile of fall chinook salmon.

Wild juvenile chinook salmon migrate downriver through the project area primarily between late March and the end of August. Juvenile Snake River fall chinook salmon are spawned and reared in the Snake River above Lower Granite reservoir (Connor et al. 1994). The proposed Celilo Village work would have no impact on potential fall chinook

spawning, because spawning habitat is not available. Based on the typical Snake River fall chinook salmon out-migration pattern passing Ice Harbor Dam, few or no juvenile chinook salmon should be present, in an open water juvenile rearing lifestage, during the work window of July 15 through November 1, 2002.

### **Cumulative and Indirect Effects**

The additional asphalt due to the parking lot expansion and additional roads and camping pads added to the park would cause increased stormwater runoff. However, the areas where the additional asphalt is being placed is greater than 250 to 1000 feet away from the boat basin. This distance allows sufficient vegetated area to absorb the runoff therefore preventing it from entering the boat basin area across the Highway on the south shore of the Columbia River.

The sewage treatment drainfields/ponds are over 1000 feet horizontal from the boat basin and at the same upland elevation of about 200 m.s.l. as the Village, which is about 40 feet vertical above the Columbia River shoreline at the boat basin. The distance and slight elevation change should prevent any sewage from entering the boat basin. There is a possibility of sewage entering the boat basin during flooding. However this would be temporary and would dissipate by the time it reached the Columbia River due to the distance between the sewage drainfields and the Columbia River.

Best Management Practices would be implemented during all phases of the construction to minimize any sediment entering the boat basin. The construction area closest to the boat basin and the Columbia River would be the parking lot addition and upgrades to the Camping loop.

### **Management Actions**

To reduce potential direct impacts to bald eagles, construction can be performed during April through November, which is outside of the designated winter in-water work window for the conservation of salmonids. A July 15 through November 1 work window would be adequate for avoiding indirect effects to in-water salmonid stocks since all construction is upland in an established impacted footprint that is buffered from the Columbia River mainstem shoreline. It will be necessary to include such measures as erosion monitoring and watering the plants during the first summer to ensure the long term stability of this method.

The following measures would be taken during construction. To minimize adverse impacts to the Columbia and Snake River chinook salmon ESUs, the Contractor and his subcontractors would comply with all applicable Federal, State, and local laws, and regulations concerning environmental pollution control and abatement. Fueling and lubrication of construction equipment and motor vehicles would be conducted in a manner that affords the maximum protection against spills. Construction equipment would be kept in good repair, without leaks of fuel, hydraulic, or lubricating fluids. If such leaks or drips occur, they would be cleaned up immediately. Drip pans would be

utilized when vehicles are parked. The equipment fueling, maintenance, and/or repair would be confined to one location. Runoff would be controlled to prevent contamination of soils and water. Special measure shall be taken to prevent chemicals, fuels, oils, greases, bituminous materials, waste washings, sewage, chlorinated solutions, herbicides and insecticides, and cement and concrete drainage from entering surface land and substrate soils.

Equipment left unattended overnight will be parked in the existing parking area within Celilo Village. Fuel containment berms will be utilized for all equipment parked unattended at the site. Field refueling and any field maintenance activity will occur within this designated staging area.

### **Conclusion**

We have determined that the proposed parking lot addition, sewage drainfield/ponds, and camping loop improvements should have “*No Effect*” on individuals of adult and/or juvenile wild Snake River summer, spring, or fall and/or wild upper Columbia River spring chinook salmon, nor act to jeopardize their survival and recovery, nor adversely modify their critical habitat or ecological functions of their Essential Fish Habitat (EFH). This is because the Columbia River portion of the project area should be sufficiently isolated and buffered from the upland construction sites and the mainstem river is used primarily for migration by each of these stocks. This reach of the mainstem Columbia River does not have spawning habitat for any of the Snake River or Columbia River chinook salmon stocks and few individuals would likely be exposed to activities or their residual effects during the proposed construction activity, except for activities required for the acquirement and transport and placement of fill material from their sources.

### ***Steelhead (Oncorhynchus mykiss)***

#### **Description of Species**

##### ***Snake River And Columbia River Basin Steelhead***

Snake River Basin and Mid-Columbia River Steelhead were listed as threatened and Upper Columbia River Steelhead were listed as endangered under the Endangered Species Act in March 1999 by the NMFS. Adult steelhead return to their natal streams from December through April to spawn. After spending one or two years rearing in the area, juveniles begin their outmigration to the ocean in April and May when flows are usually higher than average. Optimal steelhead habitat is characterized by clear, cold water with complex cover including large woody debris and boulders. Periodic low flows, flood control measures, irrigation diversions, and habitat destruction limit both adult and juvenile steelhead survival. The upper incipient lethal temperature for adult rainbow/steelhead is 25°C (77°F) (Raleigh et. al. 1984).

Threatened Mid-Columbia River and Snake River steelhead, Endangered upper Columbia River steelhead, as well as unlisted hatchery strains, use the river adjacent to the project

site as a migration corridor. Habitat use in the mainstem Columbia River by steelhead is not well known. Unlike other salmonids, which tend to use a smaller portion of the available habitat at a higher density, steelhead tend to disperse widely throughout the available habitat.

Critical habitat for steelhead includes all waterways, substrate, and adjacent riparian zones that can be or have been accessed (65 FR 7764). The Columbia River adjacent to the proposed project is designated as critical habitat for steelhead as well as other listed salmonids.

Very little information is documented on nearshore habitat use by juvenile steelhead in the mainstem Columbia River. Juvenile steelhead are thought to utilize the deeper, higher velocity areas away from the shoreline to migrate through the reach.

The Columbia River serves as a migration corridor as well as an important estuary for all of the listed or proposed steelhead ESUs in Washington, Oregon, and Idaho. Major tributaries known to support steelhead in the Upper Columbia river ESU include the Entiat, Methow, Okanogan, and Wenatchee Rivers. In the Middle Columbia River ESU, major tributaries include the Deschutes, John Day, Klickitat, Umatilla, and Yakima Rivers. In the Snake River Basin ESU, major tributaries include the Clearwater, Grande Ronde, Salmon, Selway, and Tucannon Rivers (Federal Register 1999).

Adult ESU Snake River Basin steelhead, Mid-Columbia steelhead, and Upper-Columbia steelhead enter the Columbia River year-round as winter or summer races. Most winter race fish are restricted to the Bonneville pool downstream. Winter steelhead are considered those passing dams from November through March. The summer race is found in most areas and is the only one present in the upriver areas.

The upriver summer steelhead are divided into two groups (A-run and B-run), based on migration timing, ocean age, and adult size (USACE 1999). A-run fish originate in production areas throughout the Columbia-Snake River System, while B-run fish are only found in the Clearwater and Salmon River drainages. A-run fish enter the Columbia mainly in June to early August and B-run enter from late August into October (USACE 1999). Although most steelhead enter in the summer months, they do not spawn until the following late winter or spring period. Some summer steelhead over-winter in reservoirs before advancing upstream the next spring to spawn. Not all steelhead die following spawning, but may reside or out-migrate as “kelts” to return to spawn a second time in following years.

Juvenile steelhead rear primarily in rivers upstream of mainstem project areas. Most steelhead migrate as smolts at age two or three years primarily from March through June, with the majority passing in April and May. Most adults spend two years in the ocean before returning, although some return after one year or after longer than two years.

### **Analysis of Effects**

Wild adult steelhead migrate through the reach between March and May and between late August and November. Wild juvenile steelhead migrate downriver through the project areas primarily between late March and the end of August. Most adult steelhead during the period could likely be A-run kelts out-migrating, residual forms searching for overwintering habitat, or B-run spawners holding before moving up-stream for spawning above Lower Granite reservoir later in the winter. Adult steelhead counts at Ice Harbor Dam for 1999 had steelhead in the passage starting March 15 and ending November 15. This indicated that wild adult Snake River steelhead could be present in the mainstem channel adjacent to the proposed project area during the work window period of December 15 to March 1. These fish would likely be sufficiently aware and agile to avoid the area and to move away from low concentration turbidity plumes caused by any suspension of sediment (Newcomb and Jensen 1996).

The Celilo Village redevelopment area is located within the portion of the Columbia River designated as critical habitat for all ESA-listed Columbia and Snake River steelhead stocks. Critical Habitat was designated March 17, 2000. (Fed. Reg. Vol. 65 No. 32, Feb. 16, 2000). The Corps believes that the work during smolt migration would not affect the suitability of that habitat for Snake River steelhead. This is because the area is used primarily as a migration corridor for all lifestages of each steelhead ESU.

### **Cumulative and Indirect Effects**

Direct impacts to steelhead from the project are unlikely. Indirect impacts could be related to increased opportunity for both tribal subsistence/ceremonial and/or commercial fishing pressure due to expanded sanitary camping and temporary seasonal housing. Fishing pressure would remain regulated by NMFS, CRITFC, and the States of Oregon and Washington.

The additional asphalt due to the parking lot expansion and additional roads and camping pads added to the park would cause increased stormwater runoff. However, the areas where the additional asphalt is being placed is greater than 250 to 1000 feet away from the boat basin. This distance allows sufficient vegetated area to absorb the runoff therefore preventing it from entering the boat basin area across the Highway on the south shore of the Columbia River.

The sewage treatment drainfields/ponds are over 1000 feet horizontal from the boat basin and at the same upland elevation of about 200 m.s.l. as the Village, which is about 40 feet vertical above the Columbia River shoreline at the boat basin. The distance and slight elevation change should prevent any sewage from entering the boat basin.

Best Management Practices would be implemented during the all phases of the construction to minimize any sediment entering the boat basin. The construction area closest to the boat basin and the Snake River would be the parking lot addition and upgrades to the Camping loop.

### **Management Actions**

This project is designed to avoid impacts to river and riparian habitat. No in-water work is necessary and upland site work would take place during the summer when water temperatures are at their highest. Much of the area would revegetate naturally, but willows could be planted between the retaining wall and the bankfull elevation to provide some riparian buffer to the stream. The in-water work window is July 15 to September 30. Potential indirect or interrelated impacts from construction will be minimized by following established best management practices. The contractor will be required to collect all debris from demolition. Most of the large debris will be removed from above using excavation equipment.

The disturbed area will be revegetated following removal of debris and equipment. A staging area at least 50 meters from the Columbia River will be utilized. All heavy equipment refueling, maintenance, and overnight storage will be done in the staging area. Overnight containment berms will be utilized to limit impacts from potential petroleum product spills.

The following measures would be taken in the construction. To minimize impacts to the Snake River Basin and mid-Columbia River steelhead, the Contractor and his subcontractors would comply with all applicable Federal, State, and local laws and regulations concerning environmental pollution control and abatement. Fueling and lubrication of construction equipment and motor vehicles would be conducted in a manner that affords a high level of protection against spills. Construction equipment would be kept in good repair, without leaks of fuel, hydraulic, or lubricating fluids. If such leaks or drips occur, they would be cleaned up immediately. Drip pans would be utilized when vehicles are parked. The equipment fueling, maintenance, and/or repair would be confined to one location. Runoff would be controlled to prevent contamination of soils and water. Special measures shall be taken to prevent chemicals, fuels, oils, greases, bituminous materials, waste washings, sewage, chlorinated solutions, herbicides and insecticides, and cement and concrete drainage from entering surface land and substrate soils.

To reduce potential direct impacts to bald eagles, construction can be performed during April through November, which is outside of the designated winter in-water work window for the conservation of salmonids. A July 15 through November 1 work window would be adequate for avoiding indirect effects to in-water salmonid stocks since all construction is upland in an established impacted footprint that is buffered from the Columbia River mainstem shoreline. It will be necessary to include such measures as erosion monitoring and watering the plants during the first summer to ensure the long term stability of this method.

Equipment left unattended overnight will be parked in the existing parking area within Celilo Village. Fuel containment berms will be utilized for all equipment parked unattended at the site. Field refueling and any field maintenance activity will occur within this designated staging area.

## **Conclusion**

Although overlapping stocks of wild steelhead can be found in the shallower shoreline area of the Columbia river throughout the entire year, we conclude that this project should not effect steelhead or their habitat. Any potential indirect or interrelated effects should be short term. Negative effects would be reduced as vegetation reestablishes, providing increased shade and filtering of runoff.

There would be no direct impacts to steelhead from construction of this project. We have determined that the proposed parking lot addition, sewage drainfield/ponds, and camping loop improvements should have “*No Effect*” on individuals of adult and/or juvenile wild Snake River Basin or mid-Columbia River steelhead and/or wild upper Columbia River steelhead, nor act to jeopardize their survival and recovery, nor adversely modify their critical habitat or ecological functions of their Essential Fish Habitat (EFH). This is because the Columbia River portion of the project area should be sufficiently isolated and buffered from the upland construction sites and the mainstem river is used primarily for migration by each of these stocks. This reach of the mainstem Columbia River does not have spawning habitat for any of the Snake River or Columbia River steelhead stocks and few individuals would likely be exposed to activities or their residual effects during the proposed construction activity, except for activities required for the acquirement and transport and placement of fill material from their sources.

### **Snake River Sockeye Salmon (*Oncorhynchus nerka*)**

#### **Description of Species**

Adult sockeye salmon begin entering the Columbia River in April and continue to pass by dams through October. The majority of passage occurs from June through early August. Sockeye are unique among salmonids in their requirement of lakes for spawning and juvenile rearing areas. Because of this requirement, sockeye distribution in the Columbia and Snake Rivers is currently limited to primarily the Wenatchee and Okanogan River areas of the upper Columbia region and the upper Salmon River, a tributary to the Snake River, except for the few weeks the mainstem Columbia River is used by individual fish composing runs for passage either upriver or downriver.

Juveniles rear in lakes in these systems for typically one to two years before migrating to the ocean, typically from April into July. In the Snake River, some out-migration of wild juveniles occurs into November. Most adults spend two years in the ocean before returning to spawn, although some Okanogan River fish return after one year (USACE 1999).

#### **Analysis of Effect**

The proposed actions should not effect either juvenile or adult wild Snake River sockeye because no in-water or shoreline work is necessary and few individuals of this stock should be present in the Columbia River during the work window of approximately July

15 through November 1, 2002. These fish migrate through the lower Columbia River from late summer to early winter.

Best Management Practices would be used to avoid spillage into standing or flowing waters.

### **Cumulative and Indirect Effects**

Direct impacts to juvenile or adult wild Snake River sockeye salmon from the project are unlikely. Indirect impacts could be related to increased opportunity for incidental take due to both tribal subsistence/ceremonial and/or commercial fishing pressure for chinook salmon and steelhead due to expanded sanitary camping and temporary seasonal housing. Incidental take due to fishing pressure for chinook salmon and steelhead would remain regulated by NMFS, CRITFC, and the States of Oregon and Washington.

The additional asphalt due to the parking lot expansion and additional roads and camping pads added to the park would cause increased stormwater runoff. However, the areas where the additional asphalt is being placed is greater than 250 to 1000 feet away from the boat basin. This distance allows sufficient vegetated area to absorb the runoff therefore preventing it from entering the boat basin area across the Highway on the south shore of the Columbia River.

The sewage treatment drainfields/ponds are over 1000 feet horizontal from the boat basin and at the same upland elevation of about 200 m.s.l. as the Village, which is about 40 feet vertical above the Columbia River shoreline at the boat basin. The distance and slight elevation change should prevent any sewage from entering the boat basin.

Best Management Practices would be implemented during all phases of the redevelopment construction to minimize any sediment entering the boat basin. The redevelopment construction area closest to the boat basin and the Columbia River would be the parking lot addition to Camping/temporary residential loop.

Celilo Village is located within the portion of the Columbia River designated as critical habitat for the Snake River sockeye salmon (Federal Register 1993). The Corps believes that the proposed work would not affect the suitability of the habitat or migration behavior of the wild Snake River sockeye salmon. This is because the area is used primarily as a migration corridor for all lifestages of this stock. Utilization of backwater habitat typically used by juvenile salmonids for rearing in larger rivers has not been well documented in the mainstem of the lower Columbia River for races other than fall chinook.

### **Management Actions**

The following measures would be taken to minimize effects the Snake River sockeye salmon, the Contractor and his subcontractors would comply with all applicable Federal, State, and local laws, and regulations concerning environmental pollution control and

abatement. Fueling and lubrication of construction equipment and motor vehicles would be conducted in a manner that affords a high level of protection against spills. Construction equipment would be kept in good repair, without leaks of fuel, hydraulic, or lubricating fluids. If such leaks or drips occur, they would be cleaned up immediately. Drip pans would be utilized when vehicles are parked. The equipment fueling, maintenance, and/or repair would be confined to one location. Runoff would be controlled to prevent contamination of soils and water. Special measure shall be taken to prevent chemicals, fuels, oils, greases, bituminous materials, waste washings, sewage, chlorinated solutions, herbicides and insecticides, and cement and concrete drainage from entering surface land and substrate soils.

### **Conclusion**

We have determined that the proposed parking lot addition, sewage drainfield/ponds, and camping/temporary residential loop improvements should have “*No Effect*” on individuals of adult and/or juvenile Snake River sockeye salmon, nor act to jeopardize their survival and recovery, nor adversely modify their critical habitat or ecological functions of their Essential Fish Habitat (EFH). None to few individuals of the Snake River sockeye salmon would likely be in the area during the proposed construction activity. Because the sockeye salmon are migratory in this area and do not need the shoreline habitat for juvenile rearing, potential indirect changes to important critical habitat due to short periods of locally increased turbidity should not likely impact the ESU.

### **SUMMARY CONCLUSION FOR AQUATIC SPECIES**

This project is designed to avoid impacts to river and riparian habitat in that it requires no in-water work. Measures will be taken to minimize impacts to the environment including potential indirect or interrelated effects due to increased stormwater runoff and the relocation of new sewage pond system.

1. Use of standard erosion control techniques during construction.
2. Leaving as much native vegetation as possible to provide a buffer.
3. Minimizing the clearing of trees. Re-planting suitable native trees would mitigate unavoidable clearing.

The proposed project should have “*No Effect*” on federally endangered and threatened aquatic species because most life stages of the Columbia and Snake River salmon and steelhead stocks primarily use the adjacent shoreline to Celilo Village as a migration corridor and all construction activity would occur in a well buffered upland site that has been impacted since the 1950s. Furthermore, migration requirements and critical habitat of either juvenile or adult listed spring/summer and fall chinook and sockeye salmon and steelhead should not be affected by the proposed project. No in-water work is proposed as necessary for this project. Direct impacts to listed salmon and steelhead stocks from the project are not anticipated in any manner. Indirect, interrelated, and cumulative effects could include: 1) potential for slight increase in incidental take of wild ESU

individuals due to increased opportunity for both tribal subsistence/ceremonial and/or commercial fishing pressure due to expanded sanitary camping and temporary seasonal housing. Fishing pressure would remain regulated by NMFS, CRITFC, and the States of Oregon and Washington. 2) increased runoff of new located sewage pond system during extreme flooding (predicted frequency extremely low, near zero).

## **TERRESTRIAL SPECIES**

### **Bald eagle (*Haliaeetus leucocephalus*)**

#### **Description of Species**

Bald eagles were listed as threatened under the Endangered Species Act on February 14, 1978 by the U.S. Fish and Wildlife Service. The bald eagle is an uncommon winter resident in the area. Records of sightings within the geographic area have occurred between November and April. Several factors determine whether bald eagles are attracted to a riparian area. One factor is food supply. The second factor is large trees for perching, roosting, and nesting. The primary wintering season for bald eagles is November 1<sup>st</sup> through March 15<sup>th</sup>. Bald eagles are primarily piscivorous, but will scavenge for any readily available food source including carrion. In the Columbia River basin, bald eagles feed primarily on fish and waterfowl.

Bald eagles winter throughout this area. They are likely attracted to the large numbers of waterfowl that raft on the open water of the Columbia River and various small mammals or carrion that inhabit the upland cliffs. Few trees for use as bald eagle perches exist along this stretch of the Columbia River. Some sycamore trees that could be used as perches are located less than 100 meters downstream of Celilo Village. The trees within the area are not used very much because of the continual use of the Village and surrounding lands by residents and visitors for seasonal fishing access and camping. However, the trees along the shoreline of the Columbia River get more regular seasonal use.

#### **Inventories and Surveys**

Eagles frequent many of the large trees along this stretch of river during the winter months (November through March). There is known use of a few trees along the river shoreline along the highway. The eagle count during the winter has shown 2 or 3 eagles in the area on a consistent basis. These eagles routinely perch within 50 meters of passing traffic.

No nesting attempts or nest building is presently known to occur in or adjacent to the proposed project construction footprint.

#### **Analysis of Effects**

This analysis assumes that no trees would be removed within the Celilo Village construction footprint. The work would take place during the July 15 (summer) through November 1 (fall) work window established for bald eagle winter roosting and perching. Bald eagles should not be directly impacted. This area is very fair to good bald eagle roosting/perching habitat and marginal nesting habitat.

Construction activities at Celilo Village could disturb bald eagles if they chose to perch in the sycamore trees along the Columbia River or within Celilo Village. Because of the public use of the restrooms located within the Celilo Fishing Access site, eagles generally do not consistently use these trees. The proposed construction could last up to four months in duration.

Waterfowl important to bald eagle hunting and feeding raft in large numbers on the mainstem Columbia River and would not be disturbed by the work. They generally raft well away from the shoreline. With the proper monitoring and work delays if eagles are within ¼ mile of the work site, the potential for impacts to eagles would be minimized. No indirect or interrelated effects due to construction should occur.

Obtaining material such as rock or gravel from the source sites could have an equal or higher potential to disturb eagles for those sites located at near shoreline of the Columbia River where eagles are more common during the winter months. Effects attributable to excavation and transport of materials would be independently consulted upon considering their routine activities.

### **Management Actions Related to the Species**

The proposed work should be completed by November 1. This would minimize impacts if any bald eagles chose to winter in the area. Disturbed areas will be revegetated with native species. No other special management actions related bald eagles are required.

### **SUMMARY CONCLUSION FOR TERRESTRIAL SPECIES**

By implementing Management Actions designed to reduce impacts to bald eagles, the proposed construction should have “*No Effect*” on bald eagle or act to modify their critical habitat. There would be no direct effects on bald eagles from the proposed work. If bald eagles begin to use the area, it would likely be during the winter. The proposed project should be completed by November 1.

Any work delayed due to unforeseen or unanticipated reasons would be reconsulted if the Effects determination changes because such work activities completed during the bald eagle wintering timeframe (November 1 thru March 15) could potentially impact bald eagles. If such work is required to complete certain temperature dependent tasks, adequate Monitoring for the presence of eagles will occur daily prior to the beginning of work. If an eagle is seen perching in the trees adjacent to or close to the work area (within a one-half mile radius), work will be delayed until the eagle leaves on its own to minimize impacts. Alternatives with the shortest construction timeframes would likely have the least overall impact.

To minimize impacts to wintering and nesting bald eagles near quarry or stockpile sites, the following mitigation measures will be implemented.

1. Remove the necessary material from the respective site prior to 1 February. This will minimize disturbance to eagles that may attempt to nest later in February. If any phase of construction requiring material is delayed, material should be removed from the quarry site and stockpiled within the Celilo Village construction area footprint or in a nearby impacted area previously cleared for ESA compliance after any eagles attempting to nest in the area leave for the season and prior to next season's wintering period.
2. Access and perform work at any quarry or stockpile site only between about 9:30 a.m. and 2 p.m. This will give eagles a couple hours in the morning and evening of minimal disturbance.
3. Perform as much work as possible using the rock stockpile as a shield from line-of-sight with any occupied eagle nest or known roosting/perching site.
4. Perform the work in as few days as possible.

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## United States Department of the Interior

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(503) 231-6179 FAX: (503) 231-6195

Reply To: 8330.1211(02)  
File Name: ~9793655.wpd  
TR Number: 02-1416

January 15, 2002

Peter F. Poolman  
U.S. Army Corps of Engineers  
201 North Third Avenue  
Walla Walla, WA 99362-1876

Subject: Celilo Village Residential Improvements Project (1-7-02-SP-212).

Dear Mr. Poolman:

This is in response to your letter, dated December 18, 2001, requesting information on listed and proposed endangered and threatened species that may be present within the area of the Celilo Village Residential Improvements Project in Wasco County. The U.S. Fish and Wildlife Service (Service) received your correspondence on December 18, 2001.

We have attached a list (Attachment A) of threatened and endangered species that may occur within the area of the Celilo Village Residential Improvements Project. The list fulfills the requirement of the Service under section 7(c) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*). U.S. Army Corps of Engineers (COE) requirements under the Act are outlined in Attachment B.

The purpose of the Act is to provide a means whereby threatened and endangered species and the ecosystems on which they depend may be conserved. Under section 7(a)(1) and 7(a)(2) of the Act and pursuant to 50 CFR 402 *et seq.*, COE is required to utilize their authorities to carry out programs which further species conservation and to determine whether projects may affect threatened and endangered species, and/or critical habitat. A Biological Assessment is required for construction projects (or other undertakings having similar physical impacts) which are major Federal actions significantly affecting the quality of the human environment as defined in National Environmental Policy Act (NEPA) (42 U.S.C. 4332 (2)(c)). For projects other than major construction activities, the Service suggests that a biological evaluation similar to the Biological Assessment be prepared to determine whether they may affect listed and proposed species. Recommended contents of a Biological Assessment are described in Attachment B, as well as 50 CFR 402.12.

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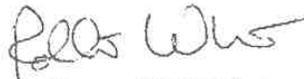
If COE determines, based on the Biological Assessment or evaluation, that threatened and endangered species and/or critical habitat may be affected by the project, COE is required to consult with the Service following the requirements of 50 CFR 402 which implement the Act.

Attachment A includes a list of candidate species under review for listing. The list reflects changes to the candidate species list published October 30, 2001, in the Federal Register (Vol. 66, No. 210, 54808) and the addition of "species of concern." Candidate species have no protection under the Act but are included for consideration as it is possible candidates could be listed prior to project completion. Species of concern are those taxa whose conservation status is of concern to the Service (many previously known as Category 2 candidates), but for which further information is still needed.

If a proposed project may affect only candidate species or species of concern, COE is not required to perform a Biological Assessment or evaluation or consult with the Service. However, the Service recommends addressing potential impacts to these species in order to prevent future conflicts. Therefore, if early evaluation of the project indicates that it is likely to adversely impact a candidate species or species of concern, COE may wish to request technical assistance from this office.

Your interest in endangered species is appreciated. The Service encourages COE to investigate opportunities for incorporating conservation of threatened and endangered species into project planning processes as a means of complying with the Act. If you have questions regarding your responsibilities under the Act, please contact Stacy Sroufe at (503) 231-6179 or Cindy Bright at (541) 957-3479. All correspondence should include the above referenced file number. For questions regarding salmon and steelhead trout, please contact National Marine Fisheries Service, 525 NE Oregon Street, Suite 500, Portland, Oregon 97232, (503) 230-5400.

Sincerely,

  
 for Kemper M. McMaster  
 State Supervisor

Attachments  
 1-7-02-SP-212

cc: OFWO-ES  
 ODFW (nongame)  
 cc: Bob Willis ACOE

ADDITIONALLY LISTED AND PROPOSED ENDANGERED AND THREATENED SPECIES,  
 CANDIDATE SPECIES AND SPECIES OF CONCERN THAT MAY OCCUR WITHIN THE  
 AREA OF THE CELILO VILLAGE RESIDENTIAL IMPROVEMENTS PROJECT  
 1-7-02-SP-212

ADDITIONALLY LISTED SPECIES<sup>1/</sup>Birds

Bald eagle <sup>2/</sup>	<i>Haliaeetus leucocephalus</i>	T
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Fish

Steelhead (Middle Columbia River) <sup>3/</sup>	<i>Oncorhynchus mykiss</i>	**T
Steelhead (Upper Columbia River) <sup>4/</sup>	<i>Oncorhynchus mykiss</i>	**E
Steelhead (Snake River Basin) <sup>5/</sup>	<i>Oncorhynchus mykiss</i>	**T
Sockeye salmon	<i>Oncorhynchus nerka</i>	CH **E
Salmon River tributary to the Snake River, Idaho		
Chinook salmon (Upper Columbia River) <sup>6/</sup>	<i>Oncorhynchus tshawytscha</i>	**E
Chinook salmon	<i>Oncorhynchus tshawytscha</i>	CH **T
Snake River spring/summer runs		
Chinook salmon	<i>Oncorhynchus tshawytscha</i>	CH **T
Snake River fall runs		

PROPOSED SPECIES

None

CANDIDATE SPECIES<sup>9/</sup>Birds

Yellow-billed cuckoo <sup>7/</sup>	<i>Coccyzus americanus</i>
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Amphibians and Reptiles

Oregon spotted frog	<i>Rana pretiosa</i>
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Plants

Northern wormwood	<i>Artemisia campestris</i> ssp. <i>wormskioldii</i>
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SPECIES OF CONCERNMammals

Pale western big-eared bat	<i>Corynorhinus (=Plecotus) townsendii pallescens</i>
Silver-haired bat	<i>Lasiorycteris noctivagans</i>
Small-footed myotis (bat)	<i>Myotis ciliolabrum</i>
Long-eared myotis (bat)	<i>Myotis evotis</i>

*Yuma myotis (bat)*  
*Yuma myotis (bat)*

*Myotis volans*  
*Myotis yumanensis*

Birds

Tricolored blackbird  
 Western burrowing owl  
 Ferruginous hawk  
 Willow flycatcher  
 Yellow-breasted chat  
 Lewis' woodpecker  
 Mountain quail

*Agelaius tricolor*  
*Athene cunicularia hypugea*  
*Buteo regalis*  
*Empidonax trailli adastus*  
*Icteria virens*  
*Melanerpes lewis*  
*Oreortyx pictus*

Amphibians and Reptiles

Northern sagebrush lizard

*Sceloporus graciosus graciosus*

Fish

Pacific lamprey  
 Interior redband trout

*Lampetra tridentata*  
*Oncorhynchus mykiss gibbsi*

Invertebrates

California floater (mussel)  
 Great Columbia River spire snail  
 Minor Pacific sideband (snail)

*Anodonta californiensis*  
*Fluminicola columbianus*  
*Monadenia fidelis minor*

Plants

White meconella  
 Disappearing monkeyflower  
 Little mousetail  
 Obscure buttercup

*Meconella oregana*  
*Mimulus evanescens*  
*Myosurus minimus ssp. apus* (= var. *sessiliflorus*)  
*Ranunculus reconditus*

(E) - Listed Endangered

(T) - Listed Threatened

(CH) - Critical Habitat has been designated for this species

(PE) - Proposed Endangered

(PT) - Proposed Threatened

(PCH) - Critical Habitat has been proposed for this species

Species of Concern - Taxa whose conservation status is of concern to the Service (many previously known as Category 2 candidates), but for which further information is still needed.

\*\* Consultation with National Marine Fisheries Service may be required.

<sup>1</sup> U. S. Department of Interior, Fish and Wildlife Service, October 31, 2000. *Endangered and Threatened Wildlife and Plants*, 50 CFR 17.11 and 17.12

<sup>2</sup> Federal Register Vol. 60, No. 133, July 12, 1995 - Final Rule - Bald Eagle

<sup>3</sup> Federal Register Vol. 64, No. 57, March 25, 1999, Final Rule - Middle Columbia and Upper Willamette River Steelhead

<sup>4</sup> Federal Register Vol. 62, No. 159, August 18, 1997, Final Rule - Upper Columbia and Snake River Steelhead

<sup>5</sup> Federal Register Vol. 64, No. 56, March 24, 1999, Final Rule - West Coast Chinook Salmon

<sup>6</sup> Federal Register Vol. 66, No. 210, October 30, 2001, Notice of Review - Candidate or Proposed Animals and Plants

<sup>7</sup> Federal Register Vol. 66, No. 143, July 25, 2001, 12-Month Finding for a Petition To List the Yellow-billed Cuckoo



REPLY TO  
ATTENTION OF

DEPARTMENT OF THE ARMY  
WALLA WALLA DISTRICT, CORPS OF ENGINEERS  
201 NORTH THIRD AVENUE  
WALLA WALLA, WASHINGTON 99362-1876

April 8, 2002

Planning, Programs, and Project  
Management Division

Subject: Celilo Village Residential Improvements- Biological Assessment - No Effect  
Determination

Mr. Michael Tehan  
Branch Chief, Oregon Habitat Branch  
National Marine Fisheries Service  
525 NE Oregon Street, Suite 500  
Portland, Oregon 97232

Dear Mr. Tehan:

Pursuant to Section 7(c) of the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 *et seq.*), find enclosed for your information is the Corps of Engineers, Portland District's Biological Assessment for Celilo Village Residential Improvements project at Celilo, Oregon. We have determined that the project would have "no effect" on fish species listed under the ESA, nor their Critical Habitat under ESA or Essential Fish Habitat (EFH) under the Magnuson-Stevens Fishery Conservation Act.

U.S. Fish and Wildlife Service (USFWS) listed species have also been addressed in this Biological Assessment (Ref. File No. 1-7-02-SP-212). These species include bald eagle. We have determined that this project would have "no effect" on bald eagles or on any proposed species for listing. We are consulting with the Oregon State Office of the USFWS in Portland on these species.

If changes are made that could potentially change the effect determinations, we will initiate consultation pursuant to section 7(c) of the Endangered Species Act. If you have any questions or would like additional information about the proposed action, please contact Mr. George Miller (Project Manager) at 503-808-4704.

Sincerely,

A handwritten signature in cursive script that reads "Peter F. Poolman".

Peter F. Poolman  
Chief, Environmental Compliance Section

Enclosure

Copy Furnished w/ Enclosure to the following:

George Miller (CENWP-PM-PM)



REPLY TO  
ATTENTION OF

DEPARTMENT OF THE ARMY  
WALLA WALLA DISTRICT, CORPS OF ENGINEERS  
201 NORTH THIRD AVENUE  
WALLA WALLA, WASHINGTON 99362-1876

April 8, 2002

Planning, Programs, and Project  
Management Division

Subject: Celilo Village Residential Improvements – Biological Assessment – No Effect  
Determination

Mr. Kemper McMaster  
U.S. Fish and Wildlife Service  
Oregon State Office  
2600 SE 98<sup>th</sup> Avenue, Suite 100  
Portland, Oregon 97266

Dear Mr. McMaster:

Pursuant to Section 7(c) of the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 *et seq.*), find enclosed for your information is the Corps of Engineers, Portland District's Biological Assessment for Celilo Village Residential Improvements project at Celilo, Oregon (Ref. File No. 1-7-02-SP-212). We have determined that the project would have "no effect" on bald eagle listed under the ESA or other proposed species.

National Marine Fisheries Service (NMFS) listed species have also been addressed in this Biological Assessment. These species include Columbia and Snake River salmon and steelhead stocks. We have determined that this project would have "no effect" on these listed stocks or on any proposed species for listing, nor their Critical Habitat under ESA or Essential Fish Habitat (EFH) under the Magnuson-Stevens Fishery Conservation Act. We are consulting with the Oregon Habitat Branch of the NMFS in Portland on these species.

If changes are made that could potentially change the effect determinations, we will initiate consultation pursuant to section 7(c) of the Endangered Species Act. If you have any questions or would like additional information about the proposed action, please contact Mr. George Miller (Project Manager) at 503-808-4704.

Sincerely,

Peter F. Poolman  
Chief, Environmental Compliance Section

Enclosure

Printed on  Recycled Paper

Copy Furnished w/ Enclosure to the following:

George Miller (CENWP-PM-PM)



## United States Department of the Interior

FISH AND WILDLIFE SERVICE  
Oregon Fish and Wildlife Office  
2600 S.E. 98th Avenue, Suite 100  
Portland, Oregon 97266  
(503) 231-6179 FAX: (503) 231-6195

Reply To: 8330.6022  
File Name: Celilo Village.wpd  
TS Number: 02-4775

April 22, 2002

Mr. Peter F. Poolman  
Chief, Environmental Compliance Section  
Department of the Army  
Walla Walla District, Corps of Engineers  
201 North Third Avenue  
Walla Walla, Washington 99362-1876

Attn: Mr. George Miller, Project Manager

Re: Celilo Village Residential Improvements Biological Assessment

Dear Mr. Poolman:

This is in response to your April 8, 2002, letter transmitting your evaluation of the impacts on bald eagle (*Haliaeetus leucocephalus*) from the proposed Celilo Village Residential Improvements Project. Your correspondence was received in this office on April 15, 2002. Although we typically do not provide a written response for "no effect" determinations, this letter has been prepared, per your request, in order to document our review of the Biological Assessment (BA) for the proposed action in accordance with section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Celilo Village is located at River Mile 201 to 202 on the Columbia River about 14 miles east of the Dalles, Wasco County, Oregon. The Village consists of approximately 34 acres of land and currently lacks adequate sanitary and water systems, resulting in public health and safety problems. The goal of the proposed project is to provide adequate living conditions for the residents of Celilo Village.

No known bald eagle nests or nesting attempts occur in or adjacent to the proposed project construction footprint. Bald eagles are known to frequent many of the large trees along this stretch of river during winter months. Potential suitable bald eagle roosting/perching habitat does occur within the project area. The proposed action does not include the removal of any trees within the Celilo Village construction footprint. Additionally, construction is scheduled to take place between July 15, 2002 and November 1, 2002, in order to avoid bald eagle winter use

of the area for roosting and perching. Based on our review of the Biological Assessment for the proposed project, we do not object to your no effect determination for the bald eagle.

This concludes section 7 consultation on the Celilo Village Residential Improvements project. Should project plans change, or if additional information on the distribution of listed or proposed species becomes available, this determination may be reconsidered. If you have any questions or concerns about this consultation or the consultation process in general, please feel free to contact Mikki Collins or Laura Todd of my staff at (503) 231-6179.

Sincerely,

  
for Kemper M. McMaster  
State Supervisor



UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
NATIONAL MARINE FISHERIES SERVICE  
525 NE Oregon Street  
PORTLAND, OREGON 97232-2737

Refer to:  
OHB2002-00380

July 25, 2002

Mr. George Miller  
U.S. Army Corps of Engineers  
CENWP-PM-PM  
P.O. Box 2946  
Portland, OR 97208-2946

Re: Endangered Species Act Section 7 Consultation and Magnuson-Stevens Fishery  
Conservation and Management Act Essential Fish Habitat Consultation for the Celilo  
Village Residential Improvements Project at Celilo, Oregon.

Dear Mr. Miller:

This correspondence is in response to your request for consultation under the Endangered  
Species Act (ESA). Additionally, this letter serves to meet the requirements for consultation  
under the Magnuson-Stevens Fishery Conservation and Management Act (MSA).

#### ENDANGERED SPECIES ACT

The Corps of Engineers (COE) proposes to fund the upgrades and improvements to housing and  
infrastructure (sewage treatment and parking) at Celilo Village in order to improve living  
conditions for residents that were relocated to the site as a consequence of construction of the  
Dalles Dam. The proposed action is located near the Columbia River at Celilo, Oregon.

On April 15, 2002, the National Marine Fisheries Service (NOAA Fisheries) received a complete  
biological assessment (BA) and other project information from COE, as well as a written request  
for concurrence with a finding that the proposed action will have "no effect" on Columbia River  
chum salmon (*Oncorhynchus keta*), Lower Columbia River steelhead (*O. mykiss*), Middle  
Columbia River steelhead (*O. mykiss*), Upper Columbia River steelhead (*O. mykiss*), Snake River  
steelhead (*O. mykiss*), Snake River sockeye salmon (*O. nerka*), Lower Columbia River chinook  
salmon (*O. tshawytscha*), Upper Columbia River spring-run chinook salmon (*O. tshawytscha*),  
Snake River spring/summer-run chinook salmon (*O. tshawytscha*), Snake River fall chinook  
salmon (*O. tshawytscha*), or their designated critical habitats in the project area. This  
consultation is undertaken pursuant to section 7(a)(2) of the Endangered Species Act (ESA) and  
its implementing regulations, 50 CFR Part 402.



Based on information provided by COE, NOAA Fisheries concurs with COE's determination that the proposed project will have no effect on the listed species because: (1) The project involves no in-water or shoreline work; (2) the project is located from 250 to 1,000 feet away from the top of bank; (3) all runoff from the parking lot would be absorbed within the vegetated buffer zone; and (4) the contractor will be required to implement an extensive list of proposed conservation measures as listed on page 10 of the biological assessment will avoid or minimize any potential adverse effects to designated critical habitat such as pollution or chemical contamination.

The COE must reinitiate this consultation if: (1) New information reveals that effects of the action may affect listed species in a way not previously considered; (2) the action is modified in a way that causes an effect on listed species that was not previously considered; or (3) a new species is listed or critical habitat is designated that may be affected by the action (50 CFR 402.16).

### **MAGNUSON-STEVENSON ACT**

Federal agencies are required under §305(b)(2) of the MSA and its implementing regulations (50 CFR 600 Subpart K), to consult with NOAA Fisheries regarding actions that are authorized, funded, or undertaken by that agency that may adversely affect essential fish habitat (EFH). The MSA (§3) defines EFH as "those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity." If an action would adversely affect EFH, NOAA Fisheries is required to provide the Federal action agency with EFH conservation recommendations (MSA §305(b)(4)(A)). This consultation is based, in part, on information provided by the Federal action agency and descriptions of EFH for Pacific salmon contained in Appendix A to Amendment 14 to the Pacific Coast Salmon Plan (August 1999) developed by the Pacific Fishery Management Council and approved by the Secretary of Commerce (September 27, 2000).

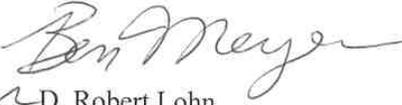
The proposed action and action area are described in section 1.0 of the BA. The project area includes habitat which has been designated as EFH for various life stages of chinook salmon (*O. tshawytscha*) and coho salmon (*O. kisutch*).

Because the COE has determined that the proposed project would have no adverse effect to designated EFH, conservation recommendations pursuant to MSA (§305(b)(4)(A)) are not necessary.

This concludes consultation under the MSA. If the proposed action is modified in a manner that may adversely affect EFH, or if new information becomes available that affects the basis for NOAA Fisheries' EFH conservation recommendations, the COE will need to reinitiate EFH consultation with NOAA Fisheries in accordance with NOAA Fisheries implementing regulations for EFH at 50 CFR 600.920(k).

Please direct questions regarding this letter to Ben Meyer of my staff in the Oregon Habitat Branch at 503.230.5425.

Sincerely,

  
for D. Robert Lohn  
Regional Administrator



## United States Department of the Interior

**FISH AND WILDLIFE SERVICE**  
**Oregon Fish and Wildlife Office**  
**2600 S.E. 98th Avenue, Suite 100**  
**Portland, Oregon 97266**  
**(503) 231-6179 FAX: (503) 231-6195**

Reply To: 7315.0271  
File Name: PN PM-E-02-09, Celilo Village Redvelpmt. Proj., Treaty Fishng. Access Site, Wasco County near Col. River  
TS#:02-7964

October 23, 2002

Colonel Richard W. Hobernicht, District Engineer  
Portland District, Corps of Engineers  
ATTN: CENWW-PM-PM (George Miller)  
P.O. Box 2946  
Portland, Oregon 97208-2946

Dear Colonel Hobernicht:

The U. S. Fish and Wildlife Service has reviewed the environmental assessment for the proposed redevelopment of Celilo Village in Wasco County near the Columbia River as advertised by the following public notice. This proposed redevelopment project is a post authorization change to the development of treaty fishing access sites authorized under Public Law 100-581. No significant adverse effects on fish and wildlife, their habitats, or human uses thereof are expected to result from the proposed work or activity. Therefore, the Service has no objection from the standpoint of fish and wildlife to the construction of this project as described in the public notice/ environmental assessment below provided the applicant adheres to all conditions and requirements specified by the Oregon Division of State Lands and NOAA/Fisheries.

Notice No./Date	Applicant Name	Due Date
PN PM-E-02-09/Sept. 23, 2002	Corps of Engineers	October 23, 2002

Other Bureaus of the Department of the Interior do not expect to submit comments on this notice at this time.

Sincerely yours,

for Kemper M. McMaster

State Supervisor  
Acting for U.S. Department of  
the Interior Coordinator

## **APPENDIX G: LIST OF ACRONYMS USED**

**APE:** Area of Potential Effect

**ASA (CW):** Assistant Secretary of the Army, Civil Works.

**BIA:** The Bureau of Indian Affairs.

**CAR:** Coordination Act Report.

**CORPS:** United States Army Corps of Engineers.

**CRTFAS:** Columbia River Treaty Fishing Access Sites.

**CTUIR:** The Confederated Tribes of the Umatilla Indian Reservation.

**Demob:** Demobilization.

**DOI:** The Department of the Interior.

**DOI-BIA:** The Department of the Interior, Bureau of Indian Affairs.

**EA:** Environmental Assessment.

**FOOH:** Field Office Overhead.

**FONSI:** Finding of No Significant Impact.

**GAO:** General Accounting Office.

**HOOH:** Home Office Overhead.

**HQUSACE:** Headquarters, United States Army Corps of Engineers.

**HTRW:** Hazardous, Toxic, and Radioactive Wastes.

**IHS:** Indian Health Services

**MCACES:** Microcomputer Assisted Cost Estimating System.

**Mob:** Mobilization.

**MOU:** Memorandum of Understanding.

**NEPA:** National Environmental Policy Act.

**O&M:** Operations and Maintenance.

**OMRRR:** Operations, Maintenance, Rehabilitation, Repair, and Replacement.

**PAC:** Post Authorization Change.

**REP:** Real Estate Plan.

**RM:** River Mile

**USFWS:** United States Fish and Wildlife Service.