

## **2003 Winter Conference Portland, Oregon**

### **RESOLUTION #03 - 31**

#### **"IMPROVING THE IMPLEMENTATION AND FUNDING OF THE BONNEVILLE POWER ADMINISTRATION'S CONTRIBUTIONS TO FISH AND WILDLIFE MITIGATION"**

### **PREAMBLE**

We, the members of the Affiliated Tribes of Northwest Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants rights secured under Indian Treaties and benefits to which we are entitled under the laws and constitution of the United States and several states, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the welfare of the Indian people, do hereby establish and submit the following resolution:

**WHEREAS**, the Affiliated Tribes of Northwest Indians (ATNI) are representatives of and advocates for national, regional, and specific Tribal concerns; and

**WHEREAS**, the Affiliated Tribes of Northwest Indians is a regional organization comprised of American Indians in the states of Washington, Idaho, Oregon, Montana, Nevada, Northern California, and Alaska; and

**WHEREAS**, the health, safety, welfare, education, economic and employment opportunity, and preservation of cultural and natural resources are primary goals and objectives of Affiliated Tribes of Northwest Indians; and

**WHEREAS**, since time immemorial, our tradition, culture, religion and way of life have been centered around our fishing, hunting and gathering resources, and the lands and waters on which they depend, and yet their health and well-being continue to suffer as a result of anthropogenic activities and actions to such an extent that numerous anadromous and resident fish and wildlife species are compromised for present and future generations; and

**WHEREAS**, the loss and diminishment of many of these resources has in turn caused substantial harm to tribal people and communities and has impacted our inherent tribal sovereignty, which is based in part on the free exercise of our rights to fish, hunt and gather, and the United States has a duty, based on treaties, executive orders, the federal trust responsibility and numerous statutes and court opinions, to ensure that those rights are honored; and

**WHEREAS**, in order to safeguard our rights and preserve and enhance the resources on which they are based in the Pacific Northwest, the United States is obligated to fund and implement actions that will protect cultural resources and improve habitat and other conditions necessary to sustain healthy, self-perpetuating populations of fish, wildlife, plants and other resources; and

**WHEREAS**, the Bonneville Power Administration (BPA) is the primary funding source for fish and wildlife rebuilding efforts in the Columbia River Basin, which are required by tribal treaties, the federal trust responsibility, the ESA, the National Historic Preservation Act (NHPA), the Northwest Power Planning and Conservation Act, and other mandates; and

**WHEREAS**, BPA has entered into previous MOUs since 1976 assuring tribes that efforts to protect and enhance the natural and cultural resources would have financial stability, and has failed to honor previous financial commitments to fund fish and wildlife rebuilding efforts, by underspending funds that had been promised, by failing to carry forward unexpended funds as promised, and by devoting fish recovery funds from ratepayers to non-fish recovery purposes; and

**WHEREAS**, BPA, by underfunding, is not fully implementing the National Marine Fisheries Service's (NMFS's) 2000 Biological Opinion on the Federal Columbia River Power System and the Northwest Power Planning Council's (NWPPC's) Fish and Wildlife Program, despite its commitment in its Rate Case to provide full funding, and has instead sought to cut fish and wildlife funding and cultural resource management responsibilities; and

**WHEREAS**, BPA has required culture, fish and wildlife managers to reduce their budgets drastically, while BPA has increased its own budget to pay for non-essential personnel, property and services; contrary to a stated objective in the 1976 MOU to minimize BPA staff and defer decision making to the tribes; and BPA has failed to reveal a truthful and accurate accounting of its expenditures; and

**WHEREAS**, by threatening to reduce funding for culture, fish and wildlife mitigation, BPA risks setting back recovery and restoration efforts undertaken by tribes, states, local governments and other stakeholders such as irrigation districts and private land owners for years to come; and

**WHEREAS**, rural economies will be negatively impacted by the loss of economic activity associated with implementing restoration contracts and reduced opportunities for recreational fishing, hunting and wildlife viewing; and

**WHEREAS**, tribal cultural resource's could be left vulnerable to vandalism and looting through a reduction in funding. Without adequate funding river operations could erode cultural resources without the opportunity to take preventive actions; and

**WHEREAS**, BPA is breaching contracts with Columbia Basin tribes by unilaterally abrogating contracts with tribes and by now insisting on contract language that would terminate contracts at "BPA's convenience," based on BPA's response to the actions of third parties not privy to the contracts; and

**WHEREAS**, BPA's contracting process causes unnecessary duplication, inefficiency, delay and expense, requiring BPA to do site visits, reviews, and further documentation that compromises the year-long process followed by resource managers, science review panels and the NWPPC, after which BPA may then require changes in scope of work and tasks;

**WHEREAS**, all fifty-four tribes represented in the Affiliated Tribes of Northwest Indians have sovereign and treaty rights affected by energy development projects, such as the hydroelectric generation projects operating under renewable licenses administered by the Federal Energy Regulatory Commission; now

**THEREFORE BE IT RESOLVED**, that the Affiliated Tribes of Northwest Indians calls for a complete financial and management audit of BPA's implementation of the Fish and Wildlife Program to increase transparency and accountability; and

**THEREFORE BE IT FURTHER RESOLVED**, that the Affiliated Tribes of Northwest Indians calls for full implementation and funding by BPA of the NMFS's 2000 Biological Opinion on the Federal Columbia River Power System and the NWPPC's Fish and Wildlife Program, by, among other things, triggering Cost Recovery Adjustment Clauses if necessary and appropriate; and

**THEREFORE BE IT FURTHER RESOLVED**, that the Affiliated Tribes of Northwest Indians supports increasing BPA's borrowing authority, subject to the requirement that a portion of funds obtained under that authority be devoted to fish and wildlife mitigation adequate to implement the NMFS's 2000 Biological Opinion on the Federal Columbia River Power System and the NWPPC's Fish and Wildlife Program; and

**THEREFORE BE IT FURTHER RESOLVED**, that the Affiliated Tribes of Northwest Indians calls for BPA to use its capital budget for land and water acquisitions and remove BPA's self-imposed prohibition on carrying over funds to future years; and

**THEREFORE BE IT FURTHER RESOLVED**, that the Affiliated Tribes of Northwest Indians calls on BPA and all other federal agencies to immediately begin working with the cultural, fish and wildlife managers to determine what tasks are needed in Fiscal Years 2003-06 to fully implement the NMFS's 2000 Biological Opinion on the Federal Columbia River Power System and the NWPPC's Fish and Wildlife Program, and to determine how much these tasks will cost. These costs should then be allocated among the agencies, funding sources for paying for these costs clarified (either appropriations or BPA funds), and funding made available immediately for work in Fiscal Year 2003; and

**THEREFORE BE IT FURTHER RESOLVED**, that the Affiliated Tribes of Northwest Indians calls for BPA to immediately retract its newly-imposed contract language in culture, fish and wildlife project contracts, and allow project managers to proceed under the longstanding termination provisions of standard BPA contracts; and

**THEREFORE BE IT FURTHER RESOLVED**, that a clear, well-defined process should be developed and followed by BPA and the other federal agencies in working with the culture, fish and wildlife managers to establish adequate funding levels to meet tribal Treaty obligations and the federal trust responsibility, and the mandates of the Northwest Power Planning and Conservation Act, the ESA, the NHPA and the Clean Water Act prior to any new BPA Rate Case and the signing of new power sales contracts; and

**THEREFORE BE IT FURTHER RESOLVED**, BPA, in carrying out its trust responsibility is obligated to assist tribes in the FERC re-licensing process to actively participate in the development of standards and guidelines which are protective of trust resources and tribal rights; and

**THEREFORE BE IT FURTHER RESOLVED**, that the Affiliated Tribes of Northwest Indians supports reforming the BPA contracting process in the short term, and ultimately transferring BPA's fish and wildlife program implementation responsibilities to another agency to reduce administrative costs and delays in the longer term; and

**THEREFORE BE IT FINALLY RESOLVED**, that the Affiliated Tribes of Northwest Indians calls on BPA and all other federal agencies to commit to immediately addressing the problem of longer-term cultural, fish and wildlife funding to meet tribal Treaty obligations and the federal trust responsibility, and to fully implement ESA recovery and the NWPPC's Fish and Wildlife Program, and to identify how much BPA will fund. Failure to address this problem (for Fiscal Years 2006 through at least Fiscal Year 2011) will result in tribal opposition to any BPA efforts to begin a new Rate Case or sign new power sales contracts.

**CERTIFICATION**

The foregoing resolution was adopted at the 2003 Winter Conference of the Affiliated Tribes of Northwest Indians, held at the Embassy Suites Portland Airport Hotel in Portland, Oregon on February 13, 2003 with a quorum present.

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Ernest L. Stensgar, President

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Norma Jean Louie, Secretary