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Modernizing the Columbia River Treaty

Border Policy Research Institute

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**Introduction.** In February of 2017, Western Washington University (WWU) and Northwest Indian College (NWIC) hosted a two-day symposium titled, “The Changing Environment and the Columbia River Treaty.” The purpose of the symposium was to develop public awareness and inform treaty negotiators from the U.S. and diplomats from Canada on key issues to address when modernizing the Treaty. This event brought together tribal and First Nations leaders, representatives from government and private industry, non-governmental organizations and academics to discuss the modernization of the Columbia River Treaty (CRT). The CRT negotiation team from the U.S. Department of State and a key representative from Global Affairs Canada were present. The symposium explored issues related to hydrology, electric energy, flood risk/management, and environmental and ecosystem services. Underscored by the goal of moving the negotiations forward in an era of climate change, panels explored the overarching question ‘how is the future going to be unlike the past?’ This Border Policy Brief highlights some of the discussions from the symposium, as well as some key messages to inform the CRT negotiations. Full conference proceedings, including recorded panel discussions, are available at [https://wp.wwu.edu/crt/](https://wp.wwu.edu/crt/).

**Background on the Columbia River Treaty.** In 1964, the CRT between Canada and the U.S. entered into force, establishing an agreement designed to share water resources, including the costs and benefits, between the two countries. The Treaty enabled the construction of four dams, three in Canada and one in the U.S., as well as joint management of the Canadian projects (see map on next page). These dams increased reservoir storage and, as a result, hydropower generation and flood control benefits throughout the Columbia River Basin. The agreement also entitled Canada to half of the downstream power benefit that was gained from joint management, referred to as the Canadian Entitlement. From a governance perspective, the CRT has largely been regarded as a successful example of an international water agreement between upstream and downstream countries. However, notably absent from the original agreement are ecological considerations, specifically regarding salmon, and input from many tribes, First Nations, and local communities living in the Columbia Basin.

Although the overarching framework of the Treaty is open-ended, the flood control provision is set to expire in September of 2024. Numerous actors on both sides of the border have signaled this as an opportunity to modernize the CRT in order to better reflect the cultural, environmental, and economic concerns of the present day.

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**Some Facts about the Columbia River Treaty**

- The Treaty entered into force in 1964, and its primary purposes were flood control and power generation.
- The Treaty grants Canada half of the downstream power benefit that exists because of Canadian storage. Known as the Canadian Entitlement, this power is sold annually to U.S. utilities by British Columbia.
- Under the terms of the Treaty, unilateral termination is possible after the first 60 years.
- 10 years’ notice is required prior to termination, making 2014 the first year that either party could give notice to terminate the Treaty in 2024.
- Because there is no fixed termination date, if neither country takes action the Treaty will continue indefinitely, although certain flood control provisions are due to expire in 2024.
- The possibility of termination prompted both countries to undertake a review process (see inset on regional recommendations).
Shaping a Modernized Treaty. In 2008, university faculty from around the Columbia Basin formed the **Universities Consortium on Columbia River Governance** to facilitate dialogue between decision makers, key interests, and sovereign entities. In total, the Consortium organized four symposia, the last in 2012. More recently, entities on both sides of the border have conducted extensive reviews of the CRT, with significant public input. Both entities have issued sets of regional recommendations for a modernized treaty: the U.S. Entity Regional Recommendation (2013) and the B.C. Decision (2014) (see inset, next page).

There are multiple challenges that remain for modernizing the CRT, including the disagreement over the size of the Canadian Entitlement and the relevance of fish passage to the CRT. Salmon were blocked in the Upper Columbia Basin with the completion of Grand Coulee dam in 1942. The B.C. Decision specifically says that fish passage in the Upper Columbia Basin "is not a Treaty issue." However, multiple speakers at the symposium argued that fish passage is directly related to the Treaty. Meanwhile, the U.S. Entity Regional Recommendation says that the U.S. and Canada should jointly investigate and, if "warranted," implement fish passage into the Upper Columbia. Currently, tribes, First Nations, and government agencies are exploring the scientific and policy issues surrounding fish passage. In 2015, the Columbia Basin Tribes and First Nations published the document titled *Fish Passage and Reintroduction into the U.S. & Canadian Upper Columbia Basin* that suggested fish passage could be achieved through policy mechanisms both within and beyond the CRT.

There are also many points of agreement between both sets of recommendations. Of special significance is the inclusion of ecosystem function as a third critical component of the Treaty, in addition to flood control and hydropower. Despite these reviews and consultations, federal negotiations between the U.S. and Canada have yet to begin.

**Governance.** In recent decades, the federal role in Canadian-American water management has diminished while other sovereign entities have taken on increasingly important roles, including states, provinces, tribes, First Nations, and municipal governments. There are many reasons for this. A key shift occurred in Canada with the adoption of the Canadian Constitution (Constitution Act of 1982), which embedded Aboriginal rights and title into law. Furthermore, the 2014 *Tsilhqot’in Decision* in Canada gave broad interpretation to lands subject to Aboriginal title and recognized that Aboriginal title is "real and meaningful." Tribes and First Nations are widely recognized as some of the Basin’s leaders in scientific research, salmon restoration, and environmental policy. In 2010, the fifteen Columbia Basin tribes published a document titled *Common Views on the Future of the Columbia River Treaty*, which was described at the symposium as “a highly sophisticated act of diplomacy.” Their environmental and diplomatic leadership underscore the need for a more systems-level approach to governance and attention to ecological considerations in modernizing the Treaty.
There are also multiple regional institutions that did not exist when the Treaty entered into force in 1964 and that are now heavily involved in the governance process (examples include the Northwest Power and Conservation Council and the Columbia Basin Trust). Despite these trends, the federal governments are still critically important because ultimately they will negotiate and sign the CRT.

**Symposium Highlights.** Listed below are some key takeaways from the symposium that are intended to help inform the modernization of the CRT:

* One of the goals of the current CRT is to share costs and benefits on both sides of the border. It is evident that the geographical distribution of benefits throughout the Basin must be addressed and given precedence, not just the sum totals or cost/benefit percentages. For example, are people in the interior of B.C. paying a disproportionate share of costs while the benefits are distributed to all of B.C.? Or, are the Mid-Columbia Utilities and rate payers in Chelan County paying for the benefits that are distributed in the Portland metro area? Reimagining the geography of costs and benefits may be one way to overcome some disagreements regarding the Canadian Entitlement.

* There are disagreements regarding the size of the Canadian Entitlement. However, numerous panelists from a variety of organizations suggested that Treaty negotiators should begin talks by addressing the needs of the region, how to best meet those needs, and then address compensation and the Entitlement.

* Both the U.S. Regional Recommendation and the B.C. Decision (see inset below) stated that ecosystem considerations should be incorporated into future planning processes. During the symposium, both

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**Regional Recommendations**

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<td>One of the purposes of the Treaty Review was to consult with First Nations to avoid “further impacts to Aboriginal rights and title,” which are recognized in the Canadian Constitution.</td>
<td>The region hopes to formalize in a modernized Treaty many of the ecosystem actions already adopted in non-treaty agreements.</td>
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<td>The B.C. Decision is to “continue the Columbia River Treaty and seek improvements within the existing Treaty framework.”</td>
<td>The power benefit should be rebalanced and the Canadian Entitlement lowered in order to better reflect coordinated operations.</td>
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<td>The objective is to maximize benefits to both countries.</td>
<td>The Treaty should facilitate and maximize the shared benefits between both countries.</td>
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<td>The Canadian Entity will continue to consult with First Nations and engage local communities.</td>
<td>Ecosystem function should be a third major part of the treaty, in addition to hydropower and flood risk management.</td>
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<td>The Canadian Entitlement does not adequately compensate Canada for the range of benefits received by the U.S.</td>
<td>The health of ecosystems should be a shared benefit and cost for both countries.</td>
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<td>A post-2024 Treaty should include a mechanism to address significant changes while providing clarity.</td>
<td>A modernized treaty should be long enough to allow for stable planning, management, and budgeting, yet adaptable to new information and shifting conditions.</td>
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<td>Ecosystem values are important in the planning and implementation of the CRT.</td>
<td>Canada and the U.S should pursue a more coordinated approach to management as a way of increasing flexibility.</td>
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<td>Climate change adaptations should be part of the planning and implementation of the CRT.</td>
<td>Climate change is a significant concern and a modernized treaty should adopt a framework that is “adaptable, flexible and timely as conditions warrant.”</td>
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<td>Issues not related to the Treaty will be addressed through other means. Salmon migration is “not a Treaty issue.”</td>
<td>The U.S. and Canada should investigate and potentially implement fish passage in the Upper Columbia.</td>
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Indigenous and non-Indigenous speakers made it clear that the term ecology is not simply a synonym for biology or natural environmental concerns, but includes a cultural component as well.

• Speakers at the symposium expressed a deep concern that fish passage in the Upper Columbia is a critical social issue and is directly related to the Treaty. Many speakers highlighted that the dams that blocked fish passage created ongoing cultural and economic injustices.

• There was a repeated focus on the need for a flexible governance model that could adjust to physical changes in the river system (hydrology, climate, power demand, etc.). It was also clear, though made less explicit, that a flexible system would help planners adapt to shifting cultural and social values.

• Multiple speakers, including both academics and representatives from federal agencies, recognized that tribes and First Nations are leaders in governance and scientific innovation throughout the basin. There was widespread agreement that a modernized Treaty should contain a governance structure that includes multiple sovereign entities in the planning process.

Policy Implications and Observations. Cross-border relations between the U.S. and Canada are currently facing renewed challenges as well as uncertainty. The disagreement over softwood lumber and the renegotiation of NAFTA are heightening the need for collaboration and coordination between the U.S. and Canada on issues critical to both countries. The Columbia River Treaty is no exception. However, it is an arrangement that benefits from a considerable amount of mutual agreement on both sides of the border. This is evident both at the scale of the regional recommendations, as well as the recognition by both federal governments that the Treaty has been beneficial. A renewed Columbia River Treaty is in the best interests of both the U.S. and Canada, as well as the numerous communities that inhabit the Columbia Basin. With an accumulating list of bilateral negotiations on the table, modernizing the Columbia River Treaty should be a top priority for the U.S. and Canada. In the words of BPRI Emeritus Professor Don Alper, “When you think of the common values across the border, the history of cooperation in this region... if we can’t do it together here, nobody in the world can do it, and that’s the same message I would give with regard to modernizing the Columbia River Treaty.”

Endnotes
3. The symposium was supported by BPRI, WWU’s Huxley College of the Environment, WWU’s Institute for Energy Studies, and the Native Environmental Science program at Northwest Indian College. Conference proceedings, resources, and recordings are available at https://wp.wwu.edu/crt/. We’d like to thank U.S. Senator Maria Cantwell, who planted the seed for this symposium in a conversation with WWU leaders, who then partnered with Northwest Indian College. Special thanks to the Consulate General of Canada in Seattle for their financial support.
4. Indigenous groups and governments are referred to as tribes in the U.S. and as First Nations and/or Aboriginal in Canada.
5. Canada has not yet identified their lead negotiator for the CRT. The Deputy Director for Energy and Environment Issues from the U.S. Transboundary Affairs division of Global Affairs Canada attended the symposium on behalf of the Canadian federal government.
11. As stated at the symposium by Barbara Cosens, law professor at the University of Idaho. Video available at https://wp.wwu.edu/crt/.
12. Both sets of recommendations are available at https://wp.wwu.edu/crt/crt-resources/.
15. As stated at the symposium, video available at https://wp.wwu.edu/crt/.