

Jenkins, Kris

From: George Waters [REDACTED]
Sent: Friday, December 09, 2005 2:10 PM
To: Eden, Melinda; Dukes, Joan; Cassidy, Larry; Karier, Tom; Measure, Bruce; Whiting, Rhonda; Kempton, Jim; Danielson, Judi
Cc: Crow, Steve; Marker, Doug; Walker, Mark; Tim Weaver; Steve Parker
Subject: Fish Passage Center

Memorandum

To: Melinda Eden, Chairman and
 Members of the Northwest Power and Conservation Council

From: George Waters (On Behalf of the Yakama Nation)

Re: Fish Passage Center

Date: December 9, 2005

Thank you for taking the time in your schedules to hold the hearing on the Fish Passage Center and allowing the public an opportunity to comment on the how the duties and tasks of the Fish Passage Center should be reconstituted in the future. I think it was very beneficial to all involved that you reached out to those affected by the interplay between hydropower production in the Columbia Basin and salmon habitat and migration as well as the impact of the FCRPS on non-anadromous resident fish.

I appreciated the opportunity to offer comments telephonically at the end of your hearing. There were two points I made that I will briefly reiterate and I am attaching, per Chairman Eden's request, relevant information on those two matters.

The first point is that regardless of whether BPA eventually issues an RFP or responds to a consensus-based sole source proposal, it is essential that you not limit the functions of the successor entity to the smolt monitoring tasks mentioned in the Congressional report language. Those were not exclusive and if they were the language would have had to specifically supersede both the Council's Fish and Wildlife Program and the Northwest Power Act. Not only did the language not supersede either of those acts but Senator Domenici's floor state specifically indicated that the language was not intended to supersede either act. It would be illegal to issue an RFP for the successor to the FPC that would be limited only to smolt monitoring tasks without first officially amending the Council's present Fish and Wildlife Program (a document that was adopted after two years of public input) and perhaps the NW Power Act itself. The NW Power Act clearly directs the Administrator of the BPA to use the BPA Fund to protect, mitigate and enhance fish and wildlife in a manner consistent with Fish and Wildlife Program adopted by the Council. I don't believe this issue is being contested as all parties involved seem to fully realize the importance of the information that has been provided to the fishery managers and to the public at large. I point this out only to ensure that you or BPA do not unintentionally limit the data and analysis that the region has come to rely on and which will be essential for the collaboration needed in dealing with the BiOp.

I am attaching some documents that describe in detail the extensive amount of work the Fish Passage Center provides to the region. One of these was provided by the US Fish and Wildlife Service and another by the Center itself.

The other point I made on Wednesday was that a word search of the Council's 1994-1995 Fish and Wildlife Program results in the phrase "Fish Passage Center" appearing 31 times and the phrase "fish passage manager" appears 21 times! (Some are merely headers and some merely reference the Center in the section responding to comments received.) This is important because it is clear that the FPC was in fact doing the job that the Council

directed it to do. I am attaching a document I prepared that repeats some, but not all, of the references to the Fish Passage Center and the fish passage manager found in 1994-1995, 2000 and 2003 Fish and Wildlife Programs of your Council. I have highlighted the words "Fish Passage Center" and "fish passage manager" to facilitate your finding the direction that you (or your predecessors) gave the Center. The Council did not intend the FPC to simply act as a computer benignly spitting out the numbers of fish between one dam and another; it clearly intended the FPC to be a robust player in preparing reports and analyses that the fishery managers needed to make important decisions and it authorized the Center to respond to requests from the fishery managers. The more extensive direction to the FPC was given by the Council in its 1994-1995 Fish and Wildlife Program and was continued and confirmed in the subsequent 2000 and 2003 amendments, hence there are fewer references in the later two Programs. In these Programs the Council continued to direct the BPA to fund the activities of the Fish Passage Center.

After reviewing the attachment entitled *Examples of Reference to the "Fish Passage Center" and the "fish passage manager" in the Fish and Wildlife Programs of the NPCC*, it will be clear that the direction from the Council anticipated the Fish Passage Center having far more involvement in fishery matters than simply doing the dry data analysis that a few in the hydropower industry wish it would do. Allegations that the FPC strayed beyond what the Council directed and what fishery managers requested are wrong. This is further demonstrated by the fact that the FPC prepared a detailed Work Statement that they have submitted every year to the BPA and which were posted on BPA's web site. At no point did BPA - or the NPCC - object to that Work Statement and suggest that it be pared down.

Finally, I am enclosing a document that details the extent to which the work of the FPC has in fact been reviewed and audited that you may find of interest.

Feel free to call me at (202) 544-3044 or email with any questions you may have. Thank you again for listening to the public on this matter.

Enclosures