



Department of Energy

Bonneville Power Administration
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ENVIRONMENT, FISH AND WILDLIFE

April 4, 2008

In reply refer to: KE-4

Mr. Bill Booth, Council Chair
Northwest Power & Conservation Council
851 SW Sixth Avenue, Suite 1100
Portland, Oregon 97204-1348

Dear Chairman Booth:

Enclosed are the recommendations of the Bonneville Power Administration (BPA) for amending the *Columbia River Basin Fish and Wildlife Program* (Program). BPA appreciates the opportunity to provide proposed Program amendments to the Northwest Power and Conservation Council (Council).

This recommendation package includes four parts. First, both this cover letter and our enclosed December 31, 2007, letter to the Council regarding the Amendment process, highlight key issues. Next, the enclosed memorandum (and its appendix) provides extensive documentation that supports BPA's recommendations and explains how they comply with the statutory requirements for program measures contained in the Northwest Power Act (Act). Third, we included an October 6, 2006, letter to the Council outlining our thoughts on a long-term strategic path for the Program. Lastly, we will shortly forward under separate cover a red-lined version of the *2000 Program*. This will illustrate what the Program would look like with BPA's recommendations adopted.

In developing these recommendations, BPA followed the Council's guidance to focus on the elements identified in your October 2007 letter that initiated the amendment process. We agree that the existing program framework continues to be serviceable and that many provisions retain their validity. As suggested in more detail in our accompanying documents, however, we believe that adjusting the Basinwide Vision statement, the associated Planning Assumptions, and the Scientific Principles – as advised by the Independent Scientific Advisory Board – would strengthen the organizational structure and scientific integrity of the Program.

As the Council prepares amendments to carry the Program through its third decade, BPA encourages a look back to the Program's origins and what Congress envisioned when it included fish and wildlife mitigation in the Northwest Power Act. In amending the Program, we think the Council can provide a guide for system-wide mitigation that covers the entire Columbia River Basin; and that such a broadly-conceived program would have at least the following attributes:

- Off-site mitigation measures funded by BPA should have a clear nexus to BPA mitigation responsibilities that remain after taking into account the benefits of on-site mitigation.
- BPA's responsibility to implement off-site mitigation which addresses off-site impacts unrelated to the development and operation of the Federal Columbia River Power System (FCRPS) should be shared in partnership with the parties responsible for those impacts.
- The Program should expect electric power ratepayers to bear only the cost of measures to mitigate for hydroelectric facilities.
- The focus of off-site mitigation efforts in the Program should be changed to involve new program partners and innovative, market-based alternatives to broaden ecosystem restoration activities and to also create a greater base of program support and participation.
- Fish and wildlife mitigation should primarily be comprised of on-the-ground projects that mitigate impacts directly.
- Where independent scientific reviews recommended improvements to the Program – such as with the ISRP Retrospective Report's recommendations for landscape-based biological objectives as compared to abundance objectives – the amendments should reflect that guidance as the best available science.
- Strategies and measures should be looked at from an ecosystem-based perspective, since many habitat initiatives often provide benefits to both fish and wildlife. This perspective would be in contrast to categorizing and crediting mitigation actions as solely fish or wildlife oriented.
- The Program should reflect a system-wide mitigation planning approach for all hydroelectric facilities in the Columbia River basin, by taking FERC license requirements into account, thereby providing for potentially enhanced biological synergies resulting from greater coordination between the region's hydroelectric facility owners and operators.

Scope of the Program

Degraded tributary habitat adversely affects many anadromous and resident fish and wildlife populations. The Program, especially through its subbasin plans, begins to address these impacts. For environmental stewardship reasons, BPA wishes to support broad and ambitious mitigation and recovery objectives, such as those in subbasin plans; but to do so it needs the Council to clarify that the Program does not equate these broad program objectives with implementation and funding responsibilities that are solely BPA's. Not only do the purposes of the Act extend beyond calling for BPA to help mitigate the FCRPS' impacts, but the subbasin plans identify and largely seek to address non-hydro impacts.¹ If, however, the amended program relies solely on BPA for implementation, then BPA asks that the Council narrow and reduce the Program's goals to mirror the reduced scope associated with BPA responsibilities.

¹ In its retrospective report, the ISRP noted that tributary habitat degradation is a major cause of the decline in resident and anadromous fish and that that degradation is caused by a range of human activities including forestry, agriculture, grazing, development and hydropower. ISRP 2005-14, at p. 60.

Scope of the Ratepayer Obligation

An underlying principle guiding the Program is that the region's electric utility ratepayers should pay the costs for mitigating the impacts to fish and wildlife from the hydroelectric system only.² This means that program objectives should first address, as a highest priority, direct mitigation actions for federal and non-federal hydroelectric system impacts.³ Direct mitigation includes actions that improve survival at and between the dams through passage improvements and mainstem predator control.

Indirect mitigation—enhancement or off-site mitigation—becomes appropriate only to address remaining, reasonably mitigatable, effects from the hydroelectric dams on fish and wildlife that direct mitigation actions do not resolve.⁴ Off-site mitigation comes in many forms, but the Program chiefly relies on habitat protection and improvements as well as other mitigation actions like artificial (hatchery) production. This emphasis is evident in the Program's sub-basin plans which offer a menu of actions that would address most human impacts on fish and wildlife populations. While it is useful to know the breadth of such potential actions, as noted earlier, sub-basin plans do not in themselves link projects to either specific hydro impacts or hydro mitigation responsibilities. Moreover, we also believe that measures in the Program should complement and account for mitigation activities undertaken both prior and subsequent to the Act.⁵

Partnerships and Shared Responsibilities

Because a multitude of human-caused effects have adversely affected fish and wildlife populations, and many parties share responsibilities for those impacts, the Program should institutionalize partnerships and incentives as the cornerstone of its off-site mitigation guidance. Where the Program emphasized the role of its mitigation partners in helping to implement shared responsibilities, these partnerships should continue and be broadened. To further the Program's ambitious goals that encompass broadly-shared mitigation responsibilities, and to fully implement subbasin plans where FCRPS dams are often one of several limiting factors, the Program should more explicitly endorse the partnerships and agreements contemplated in the Act. Pragmatically, these partnerships are the most effective means to engage the entities that have caused the off-site impacts, or are responsible for mitigating them,⁶ in implementation that is truly comprehensive.

Program Flexibility

Early Council Programs included specific and precisely detailed measures; but the *2000 Program* provided for broader, more flexible approaches to mitigation that transcended the needs of any one species or geographic area. It struck a workable balance by identifying objectives and

² 16 U.S.C. § 839b(h)(8)(B).

³ 16 U.S.C. §§ 839(6), b(h)(2)(A), b(6)E(i).

⁴ 16 U.S.C. §§ 839b(h)(5); (8)(A).

⁵ 16 U.S.C. § 839b(h)(6)(A).

⁶ 16 U.S.C. § 839b(h)(8)(C).

strategies at an appropriate scale, without compromising inherent federal agency decision-making and budgeting authorities. Given this flexibility and balance, the approach reflected in the *2000 Program* is desirable and should be continued.

Higher-level strategies and measures that avoid the finer details regarding budget and contract administration are also appropriate and important so as to remain close to the Act's prescription about what constitutes a measure.⁷ BPA believes this is what the Council (and the states it represents) meant in recent litigation when it told the court:

“The legal obligation on Bonneville [to mitigate “consistent with” the program] does not mean there must be absolute correspondence between the Council’s program and Bonneville’s actions at the level of detail of the hundreds of measures and projects, especially not in the implementation details that are largely committed to Bonneville in terms of the how and the who and the detail of the contracts. . . . Bonneville retains independent authority to decide how to use its fund so long as it does so consistently with the Council’s program.”⁸

Similarly, given that the Council and BPA have a long history of working collaboratively together on program management issues such as project solicitations and project budgets, we believe that these management matters do not fall under the Act’s definition of a “measure.” Many implementation issues are also matters over which federal law traditionally gives federal agencies authority—such as accounting or capitalization policies, contractor selection, and budget proposals. Consequently, entities interested in such matters should work on them with BPA and the Council outside of the statutory framework required for amending the Program.

NOAA Fisheries FCRPS Biological Opinion and Related Agreements

The Council has been very helpful over the years in integrating both BPA’s Northwest Power Act and Endangered Species Act (ESA) responsibilities into the Program. We encourage the Council to continue that approach. In the 2003 Mainstem Amendments, for example, the Council recognized how actions pertinent to FCRPS biological opinions built upon the Program’s foundation to protect, mitigate, and enhance listed and unlisted fish. The forthcoming NOAA Fisheries FCRPS biological opinion (BiOp) will be largely informed and constructed through the remand collaboration that Judge Redden ordered in *National Wildlife Federation v. National Marine Fisheries Service*. A regional coalition, including all four Northwest states, tribes, and federal agencies has worked through a lengthy and transparent public process to find the right mix of operations and improvements for the FCRPS to mitigate and recover listed anadromous fish. The resulting biological opinion will adopt a standard that requires these

⁷ As noted in *Northwest Resource Information Center v. Northwest Power and Conservation Council*, the statutory provisions regarding program amendments are “mandatory.” The Act “set out specific criteria such recommendations must meet in order to be included in the program.” BPA remains mindful of the need to adhere closely to the provisions in the Act that establish the “substantive criteria for measures included in the program” to avoid unnecessary controversy and conflict in the region if the Program adopted a more prescriptive posture.

⁸ Council, *Northwest Environmental Defense Center v. BPA*, opening brief at 33 (June 16, 2006).

actions result in a “trend toward recovery.” This standard goes beyond simply avoiding jeopardy and keeping listed species from going extinct. It protects, mitigates, and enhances listed fish—and those ecosystems that they and many other species rely on.

Both the forthcoming opinion and recovery plans use a leading edge scientific framework as described in the NOAA report *Viable Salmonid Populations (VSP) and the Recovery of Evolutionarily Significant Units* (McElhany et al. 2000). This hierarchical framework analyzes listed fish at the level of independent populations and aggregates population characteristics to the major population group and ESU levels. The VSP report has been further refined and expanded upon in reports from the Technical Recovery Teams created to advise NOAA Fisheries on biological criteria that could be used to inform future de-listing decisions. Given that this approach reflects the best available science for recovery planning, BPA suggests that all anadromous fish-related program amendments and objectives explicitly use this same scientific framework.

The FCRPS Action Agencies and certain states and tribes are also close to completing ten-year agreements based on actions that support the agencies’ obligations both generally under the Northwest Power Act, as well as specifically for anadromous species listed under the ESA. These agreements bind the parties, and complement the resource managers’ existing and future activities.⁹ These agreements also expressly note their consistency with the Act, the Program, and its subbasin plans, and dovetail with the Council’s and BPA’s ongoing efforts to integrate Northwest Power Act and ESA responsibilities. We recommend that the Council adopt these agreements into the amended Program.¹⁰

In summary, we believe the amended Program should have a strong connection to pertinent recovery plans and biological opinions, including their goals, objectives, analytical frameworks, metrics and prioritizing strategies, as well as memorandums of agreement currently under discussion. These will sharpen and enhance the Program’s integration of ESA-related actions.

Mainstem Issues

While the amendment process will undoubtedly include recommendations for additional measures concerning FCRPS configuration and operation, BPA believes any additional guidance should carefully consider the current hydrosystem environment. As documented in a recent paper titled *Structural and Operational Changes at FCRPS Dams to Improve Fish Survival*,¹¹ the FCRPS Action Agencies changed the system dramatically in the last 14 years. The changes include improvements and additions to fish passage facilities, operational changes in flow, spill and the juvenile transportation program, and aggressive predator management. The Corps’ has spent over \$1 billion during this time through the Columbia River Fish Mitigation Project

⁹ 16 U.S.C. § 839b(h)(6)(A).

¹⁰ 16 U.S.C. § 839b(h)(6).

¹¹ FCRPS Action Agencies, *Biological Assessment for Effects of FCRPS and Mainstem Effects of Other Tributary Actions on Anadromous Salmonid Species Listed Under the ESA*, Appdx. A (Aug. 2007).

providing fish passage facilities resulting in significant survival improvements. Today, 98% of adult salmon survive the hydrosystem. Juvenile survival rates in many instances rival those found in un-dammed river systems.

BPA believes that few biologically significant and cost-effective opportunities remain on the FCRPS to improve survival for listed or unlisted anadromous or resident fish, beyond those reflected in the current Program and forthcoming biological opinions. We ask the Council to consider the successes over the last decade, and the significant mainstem mitigation actions either in place or in the forthcoming BiOp, before adopting into the Program new or additional measures affecting the mainstem.

Research, Monitoring and Evaluation

Research, Monitoring and Evaluation (RM&E) has grown rapidly to become a major component of the Fish and Wildlife Program, and now encompasses nearly 40%¹² of the Program's expense budget. The tremendous amount of RM&E since Program's inception over 25 years ago has also given the region a sufficient understanding of the limiting factors affecting fish and wildlife, and the appropriate strategies for addressing those limiting factors. We therefore urge the Council to ensure that BPA-funded RM&E efforts are clearly linked to FCRPS mitigation responsibilities only, and that the Program focus be primarily on on-the-ground mitigation as opposed to the collection and evaluation of information. Through development of the FCRPS BiOp, NOAA Fisheries' salmon recovery planning efforts,¹³ and the Council's research and monitoring plans,¹⁴ the region has also made significant progress in developing the components of a regional framework for RM&E in recent years.

The amendment process allows us to take deliberate steps to align these regional planning efforts and products,¹⁵ and to apply them in the development of future Program direction as appropriate. There undoubtedly will be resistance to such reform activities, as there will always be a yearning for more scientific monitoring and evaluation than there are available resources. Through more structured, standardized, and coordinated approaches, however, efficiencies can be realized that will serve to promote more on-the-ground mitigation.

¹² At the project level, BPA currently spends about 39% of its F&W Program expense budget on RM&E (based on a 3-year average of planning budgets and categories in our FY'07-'09 project funding decision document).

¹³ Several key elements of the regional RM&E framework include: 1) a Strategy for Fish Population Status and Trend Monitoring, 2) a Strategy for Habitat Status and Trend Monitoring; 3) an Action Plan for Tagging and Marking to support Hydro performance assessments integrated with assessment needs of the other Hs; 4) an Information Management Strategy for Fish and Habitat Data; and, 5) Standard Metrics for Project Implementation Tracking.

¹⁴ Northwest Power and Conservation Council. (2006-3) "Columbia River Basin Research Plan." (Feb. 2006). Available online at: <http://www.nwcouncil.org/library/2006/2006-3.pdf>

¹⁵ E.g., standard metrics, monitoring approaches, data dictionary and metadata templates, protocol manager software, and web-based posting and access to tools for distributed data system capabilities.

Conclusion

These comments and BPA's proposed amendments convey our full support for the Northwest Power Act's mitigation vision, and for the Council in fashioning amendments to the Program that guides the Columbia Basin's comprehensive fish and wildlife restoration endeavor.

Sincerely,



Gregory K. Delwiche
Vice President, Environment, Fish & Wildlife

Enclosures