

Northwest Power and Conservation Council Columbia River Basin Fish and Wildlife Program

Subbasin Plan Amendments Findings and Responses to Comments September 2005 (document 2005-13)

Introduction

On August 12, 2002, pursuant to Section 4(h) of the Northwest Power Act, the Northwest Power and Conservation Council¹ requested in writing that state and federal fish and wildlife agencies, Indian tribes and others submit recommendations for amendments to the Council's *Columbia River Basin Fish and Wildlife Program*. The Council requested recommendations for objectives and measures for the program at the subbasin level, to be submitted in the form of a subbasin plan for each subbasin or as possible elements for a subbasin plan.

On May 28, 2004, the Council received proposed subbasin plans for 59 subbasins of the Columbia River, formally recommended for amendment into the Council's fish and wildlife program. Following a lengthy public review process required by the Power Act and described in more detail below, the Council formally adopted as amendments into the program subbasin plans for 57 subbasins, based on the recommendations submitted.

In this section of the fish and wildlife program, the Council provides written findings explaining its disposition of the subbasin plan recommendations, as required by Section 4(h)(7) of the Power Act. When the Council rejected all or part of a recommendation, these findings explain how the Council's decision comports with the standards in that section of the act for rejecting recommendations. This document also explains how the Council responded to the public comments it received on the recommendations and on draft program amendments. In doing so, this document also serves as the "statement of basis and purpose" called for in Section 553 of the federal Administrative Procedures Act to accompany agency decisions on final rules. Along with the requirements in the Power Act, the Council follows the notice and comment rulemaking procedures of the APA in developing and adopting amendments to fish and wildlife program.

More detail on the legal framework for amending the Fish and Wildlife Program

As noted above, the Council develops and adopts amendments to its Columbia River Basin Fish and Wildlife Program using a process and subject to standards established in Section 4(h)(1)-(8) of the Northwest Power Act. The Council followed these procedures and standards in the subbasin plan amendment process.

¹ When the Council issued the call for recommendations, it was known by the name Northwest Power Planning Council. In mid-2003, the Council changed the name by which it is known to the Northwest Power and Conservation Council. Both names are short forms of the Council's official legal name, the Pacific Northwest Electric Power and Conservation Planning Council.

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A program amendment process formally begins with the Council soliciting, in writing, “recommendations” for amendments from state and federal fish and wildlife agencies, Indian tribes and others. (As will be seen below, the Council engaged with others in a substantial amount of preparation for subbasin planning before it released the formal call for recommendations). The request for recommendations sets a time period by which recommendations are to be submitted to the Council, which must be at least 90 days but may be more.

The Power Act then requires that the Council make any recommendations submitted within the specified time period available to the public for review and comment. The Council consults with interested parties and receives oral and written comment on those formal recommendations. The Council evaluates the recommendations received and any comment provided on them relative to standards that program amendments must meet under the act.

After this review of recommendations and comments, the Council then develops and releases for public review a set of *draft* program amendments based on the recommendations. The Council conducts public hearings in each of the four states of the Council, and provides an opportunity for written comment on the draft program amendments.

The Council then adopts final program amendments based on the recommendations, any supporting documents submitted with the recommendations, and the views and information obtained by the Council in public comments on the recommendations and draft amendments and in consultations with the fish and wildlife agencies, tribes and others. The Council’s decisions as to what to adopt in terms of program amendments, and how those amendments are based on the recommendations, are made consistent with the substantive standards that program amendments must meet under the act. The key substantive standards for program measures are found in Sections 4(h)(5)-(6) of the act. An overarching requirement is that the program consist of measures that protect, mitigate and enhance fish and wildlife affected by the development, operation and management of the hydroelectric facilities on the river while assuring the region an adequate, efficient, economical and reliable power supply. More specific requirements include, for example, that measures amended into the program complement the existing and future activities of fish and wildlife agencies and tribes, be consistent with the legal rights of Indian tribes, be based on the best scientific knowledge available, and utilize least-cost alternatives where various alternatives would achieve the same biological objective.

A program amendment process is not completely finished until the Council explains its disposition of the recommendations in written findings. The Council also uses this document to explain how it responded to comments on the recommendations and on key issues. More precisely:

The Council must adopt formal “findings” when it does not adopt “recommendations” for program amendments. Section 4(h)(7) of the Power Act requires that the Council adopt written “findings” as part of the fish and wildlife program itself when the Council does not adopt all or part of the formal *recommendations* for amendments that it received. The Council may reject recommendations in certain specified instances set forth in this section of the act --

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essentially in those instances in which the Council finds that the recommendations would be inconsistent with the act's substantive standards for program measures as detailed in sections 4(h)(5) or 4(h)(6), or when the Council decides that a recommendation would be less effective than the adopted recommendations for the protection, mitigation and enhancement of fish and wildlife.

At the same time, the Council explains how it responded to two sets of public "comments." As noted above, after receiving the formal recommendations for amendments, the Council must provide an opportunity for interested entities and the public to "comment" on the recommendations. The Council considers these comments in making its ultimate decision on program amendments, and the comments become part of the administrative record of the program amendment process. The Power Act does not require the Council to adopt formal findings or any other written explanation (as part of the program or separate) as to how it has responded to these comments on the recommendations. However, the Council traditionally has provided a written explanation as to how it responded to comments on the recommendations, as one aspect of following the federal APA notice and comment rulemaking procedures to the extent appropriate and so as to provide complete public notice of the breadth of information considered by the Council in making its final program amendment decisions.

Also, in this amendment process, as in the past, the Council shaped the formal recommendations it received into *draft* fish and wildlife program amendments and then conducted public hearings and accepted comment, views, advice and information on those draft amendments. Again, the Council considers these comments in making its final decisions on program amendments, and the comments are part of the formal administrative record. And again, the Act does not require the Council to adopt formal "findings" or any other written explanation as to how it responded to the comments on draft amendments in making its decisions. But for the same reasons noted above, the Council traditionally does explain in writing, with the findings and response to comments on recommendations, how it took the comments on draft amendments into account in its final amendment decisions.

How the rest of this document is organized

Section I of the Findings and Responses to Comments describes the subbasin-level program amendment process. The purpose is to establish the context for the Council's explanation as to how it handled the recommended subbasin plans, for the Council's formal Section 4(h)(7) findings on recommendations, and for the responses to comments on recommendations and draft amendments.

Section II then outlines the steps the Council took to review particular recommendations for subbasin-level program amendments. This section includes a summary of the comments submitted on each of these formal recommendations, and how the Council responded to these comments. To keep all of the comments related to each recommendation together, Section II also includes a response to relevant comments made in the second public comment period discussed above – on the draft program amendments crafted by the Council out of the recommendations. Because many comments addressed the same issue or set of issues, rather

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than providing a response to each individual comment, the more commonly expressed issues are described and grouped by subject, and identified as “General Comments.” The Council’s responses to these General Comments are also provided in Section II. Finally, Section II includes the Council’s statutorily required “findings” on the recommendations it received in this amendment process, in those instances in which findings are required by the act.

Section III describes a set of issues that were raised in the public comment periods that did not apply to specific recommendations or draft amendments, but rather, to the Council’s amendment process and the subbasin planning exercise generally. This last section describes the process used by the Council to develop and consider these more general matters, and provides a response to those comments.

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Section I: Description of the Subbasin-Level Program Amendment Process

The Council's 2000 program amendments called for a complete restructuring of the fish and wildlife program through a framework of vision, objectives and strategies at different geographic levels (basinwide, ecological province, subbasin), tied together with a consistent scientific foundation. In the amendment process that led to the 2000 Program, the Council adopted the basinwide provisions, and described the means and schedule for how it would add more specific objectives and measures to the fish and wildlife program for the mainstem Columbia and Snake rivers and at the subbasin and province levels. The Council committed to future amendment processes to develop program provisions at those levels. The Council initiated an amendment process for mainstem and system operations measures and objectives in 2001, finalizing the Mainstem Amendments in 2003. Even as the Council worked on the mainstem amendments, it began its preparation for the subbasin planning effort, the next step in the program revision.

Preparatory Actions for the Subbasin-Level Program Amendment Process

The 2000 Program established the fundamental structure and requirements for subbasin planning and subbasin plans. Based on those provisions, and prior to calling for subbasin plan recommendations, the Council worked with a broad range of interests in the region and developed a non-binding Technical Guide for Subbasin Planners in 2001 to help ensure that plans had a consistent format and content. The Technical Guide provided detailed information on what should be included in the assessment, inventory, and management plan elements of the subbasin plan. The Technical Guide may be found on the Council's website at www.nwcouncil.org/library/2001/2001-20.htm.

At the same time as it developed the guidance document, the Council consulted with the state, tribal and federal entities about a planning structure to coordinate the development of subbasin plan amendment recommendations. The Council worked with these entities for this purpose because the Council recognized the many planning initiatives already underway in parts of the basin (by states, by federal agencies, by local governments, by tribes, and so forth) to address fish and wildlife needs, efforts that the Council needed to consider and coordinate with in its basinwide subbasin planning and amendment process. Existing initiatives included salmon recovery and water resources planning; watershed assessments; focus watersheds; and other programs related to habitat, fish and wildlife protection and restoration.

The product of these consultations was a three-tier subbasin planning support structure. The structure was designed to be flexible enough to work with the various ongoing processes. The three-tier structure also reflected the three-tier structure of the 2000 Program -- subbasin, state/provincial and basin levels. The following briefly describes the role of each tier of the subbasin planning structure:

Subbasin Level

The Council organized Subbasin Planning Groups, which were formal or informal groups of representatives of states, tribes, local governments, and others in one or more subbasins participating in subbasin planning. The subbasin-level groups often contained a number of

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subgroups, such as a technical assistance committee, a citizen involvement or citizen advisory committee, a planning team, and so forth. In most cases, the subbasin planning group was coordinated by an individual or entity(s) selected by the state/provincial coordinating body (see below) to “lead” the planning effort in that subbasin. A key role of the coordinator was to help ensure broad participation by local stakeholders. The “lead entity”(sometimes more than one) held contracts and was ultimately responsible for delivering the technical assessment and then the subbasin plan as a whole.

State or Province Level

The Council also established state/provincial level coordination groups (also called Level 2 groups) that consisted largely of tribal and state representatives. These groups sought to provide a measure of consistency and coordination between and among the subbasin planning groups on both policy and technical issues, and to be a more direct interface with the Council. Representatives of this group would also communicate with the Regional Oversight Committee (see below) as appropriate. The Council also designated certain individuals as coordinators for subbasin planning in each state or region, charged with working with the Council, the regional oversight group, the state/provincial coordination groups, and the subbasin planning groups to ensure that the work proceeded in appropriate and efficient fashion.

Basin Level

Finally, the Council helped organize and chaired a Regional Oversight Committee for subbasin planning. The group met approximately every six weeks to coordinate macro-level issues related to budgets, standards for planning, schedules, and coordination with overlapping planning efforts related to the federal Endangered Species Act. There were several technical issues coordinated at this level as well by a regional technical assistance group.

Once this planning structure was generally in place, the Council worked with the Bonneville Power Administration to secure funding support for the subbasin planning. Bonneville provided \$15.2 million out of its regular fish and wildlife program budget to support the planning groups to develop subbasin plan recommendations that could be considered for amendments to the Council’s fish and wildlife program. This was the first time in the history of the Council’s program that funding has been made available to the public to help develop recommendations for fish and wildlife program amendments.

The Council Initiates the Subbasin-Level Program Amendment Process with a Call for Recommendations

On August 12, 2002, the Council broadly distributed a request for recommendations for amendments to the program at the subbasin level. The Council notified in writing the fish and wildlife agencies and tribes and others that the Council sought recommendations for program objectives and measures in the form of subbasin plans or subbasin plan elements as described in the 2000 Program. That solicitation provided notice that the Council sought recommendations in the form of subbasin plans as generally presented in the adopted 2000 Program. That is, the subbasin recommendations should have an assessment of conditions in the subbasin for relevant fish and wildlife, an inventory of on-going efforts to address adverse conditions, and a management plan of objectives and strategies to address these problems (*see* 2000 Program,

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“Subbasins” section A.1). The request for recommendations directed the public to the guidance documents that the Council had developed -- the *Technical Guide for Subbasin Planners* and the *Subbasin Planning Overview*. The 2002 request for subbasin plan amendment recommendations may be found on the Council’s website at www.subbasins.org/admin/recommendations.htm.

Consistent with the 2000 Program, the August 12 request for recommendations also provided notice that the Council sought recommendations for subbasin plan amendments that were the product of a local and collaborative effort involving fish and wildlife agencies, Indian tribes, interested state and local government, policy and technical experts, landowners, public interest groups, and other stakeholders. Because funding would be made available to assist with the local planning effort, the request for recommendations also asked interested individuals and groups in the subbasins to help in the identification of the “lead entities” that could facilitate the collaborative planning effort described and act as the fiscal agent for the planning monies that would be made available.

While the 2000 Program called for subbasin-level recommendations in the form of complete subbasin plans that were the product of a broadly representative and collaborative planning process, the program and the request for recommendations also recognized that any person or entity had the legal right to offer program amendment recommendations that were not a complete subbasin plan, or that were not developed in the collaborative planning effort. The Council advised that if it did receive such recommendations, it would evaluate those along with any other recommendations it received for the subject subbasin against the standards of the act.

Finally, the August 12, 2002 request for recommendations notice set the deadline for submitting recommendations for subbasin-level amendments as May 28, 2004.

The Council Receives Recommendations for Subbasin Amendments and Takes Public Comment on the Recommendations

On May 28, 2004 the Council received proposed subbasin plans for 59 subbasins of the Columbia basin, submitted as formal recommendations for amendments to the Council’s fish and wildlife program. In the first week of June, 2004, the Council released these proposed subbasin plan recommendations for public review and comment. This included seeking review and comment by an independent scientific panel made up of members of the Independent Scientific Review Panel and Independent Scientific Advisory Board.

The Council received the comments on the recommendations through August 12, 2004. The Council staff simultaneously reviewed the recommended subbasin plans for consistency with the requirements of the act and the various elements of the 2000 Program.

Summary of the Issues Raised in the Comments on the Recommendations

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The Council found that most of the significant substantive issues identified in public comment on the recommendations or in its own review of the recommendations could be grouped into a handful of categories. These issues cut across or were found alike in many of the proposed plans, and so could be treated similarly. The following issues predominated:

- 1. Linkage of assessment conclusions to management plan.** A significant number of the recommended plans lacked the proper “linkage” between the limiting factors identified in the technical assessments and the strategies proposed in the management plans -- what the independent science reviewers called the “logic-path.” Comments or concerns about a lack of prioritization of strategies in the management plan component were a sub-category of the “linkage” problem, in that the prioritization problem identified could often be traced back to a weakness in making explicit links as to how proposed strategies would address key limiting factors.
- 2. Artificial production strategy integration.** In a number of the recommended subbasin plans, artificial production strategies in or affecting the subbasin were not sufficiently defined or sufficiently integrated with other elements of the subbasin plan.
- 3. Monitoring and evaluation.** The comments from the independent science reviewers particularly noted inadequate or incomplete provisions for monitoring and evaluation.
- 4. Assessments.** Review comments identified that some of the technical assessments were not sufficiently developed to guide the development of a management plan that conformed to the requirements of the Power Act and the 2000 Program.
- 5. Mainstem habitat.** The list of subbasins included reaches of the mainstem Columbia and Snake. Some of the recommended mainstem reach plans focused on habitat in small tributaries, not on habitat in the mainstem itself.
- 6. Terrestrial/wildlife element.** On the whole, the Council review and public comment noted that terrestrial/wildlife elements of the plans were weaker and less developed than the aquatic/riparian elements, with obvious exceptions.
- 7. USFWS comments on Bull Trout.** The U.S. Fish and Wildlife Service commented that several plans needed a more direct assimilation of specific provisions of the Service’s draft Bull Trout Recovery Plan.
- 8. Organization.** Council review and public comment noted various problems of organization, writing, length, formatting, attachments, and so forth that interfered with the ability to review certain plans.
- 9. Process.** A number of the comments, especially from the tribes, included concerns about the meaning of the subbasin plan process for the program and questions about additional planning or implementation planning needs.

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The Council Reviewed the Recommendations in Light of the Issues Raised by Public Comment, the Power Act's Standards for Program Amendments and the Guidelines in the 2000 Program -- The Council's Response to these Initial Comments

In late August of 2004 the Council considered the recommended plans and the issues raised in the public comment against a consistent set of standards from the Power Act and the 2000 Program. The Council made two key decisions at this point as a product of this review. The first key decision was to redirect how and where most of the additional work regarding artificial production integration (Issue 2 above) and monitoring and evaluation program development (Issue 3 above) would occur. The second key decision was to divide the subbasin plan recommendations into three categories based on varying states of readiness to be proposed as draft program amendments. These two key Council decisions are discussed in turn below.

The Council's response to those comments on the recommendations questioning the treatment of artificial production was to focus most of the additional work needed on artificial production integration through the ongoing Artificial Production Review and Evaluation Process (APRE).

The public comments and staff review revealed that a number of the plans did not account for the effects of artificial production in and affecting their subbasins as completely as anticipated by the 2000 Program guidance and the Technical Guide for Subbasin Planners. Many plan recommendations that included artificial production strategies did not fully describe how that strategy would be integrated with habitat-related strategies to meet integrated biological objectives for a focal species. Similarly, plan recommendations did not always clearly describe the artificial production strategy within the ecological context of the subbasin.

The Council concluded that a number of reasons contributed to the planners being unable to complete this particular aspect of the planning work. One was the lack of information forthcoming from federal recovery planning and hatchery-planning processes as expected. There were also ongoing legal proceedings where these issues were being discussed, and in some cases, it appeared that planners decided that the decisions in those proceedings needed to be made before further detail could be put into plan recommendations.

In light of those challenges, as well as others, the Council did not recommend returning the subbasin plans to the planning groups/recommending entities to do more work on this element. Rather, the Council concluded that the primary treatment for this problem would flow from its on-going Artificial Production Review and Evaluation (APRE) and related initiatives outside of subbasin planning, as described below. Improvements should be integrated back into subbasin plans when those plans are next revised at some later date. The Council made limited exceptions to this recommendation when it believed that additional work on the artificial production element could be made in conjunction with other improvements that the Council requested in order to find the plans adequate for being adopted into the program.

Nearly all of the subbasin plan recommendations saw some measure of criticism in the comment period regarding their artificial production elements. However, the Council did see

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distinctions in the magnitude of the problems, distinctions important in deciding how to treat the issue. The severity of the problem from a program adoptability standpoint, and the possible treatments, were dependent on the nature, location and role of artificial production in the recommended plan. In descending order of seriousness, the different categories were as follows:

- (1) In some subbasins, artificial production is a central population rebuilding strategy in the Council's current program, in conjunction with habitat improvements, and thus a central strategy in the proposed subbasin plan recommendation. In some of these subbasins, the recommended plans presented one of the two following situations:
 - a. The artificial production strategy was presented as a "stand alone" strategy, with little or no integration into the habitat or natural production strategies, or into the assessments and objectives, even though artificial production is intended to help rebuild naturally spawning runs. The Council concluded that this was one situation in which the lack of adequate treatment of artificial production presented a problem of sufficient magnitude so as to prevent adoption of the plan into the program without correction, not a defect for which treatment could be deferred to other processes.
 - b. The role of the artificial production strategy was relatively well described and integrated into the plan's habitat/natural production strategies, but only in a qualitative or narrative sense, without quantified objectives or a sophisticated analysis of the ecological context. A number of plan recommendations fell into this category.
- (2) In other cases, artificial production exists in the subbasin -- or exists out of the subbasin but nearby and its effects are strongly felt in the subbasins -- but artificial production in the subbasin was not a central strategy of *this* Council program or the proposed subbasin plan recommendation. In some of these subbasins, the recommended plan presented one of the two following situations:
 - a. The proposed subbasin plan included little discussion of the role and effects of artificial production, in the assessment or the management plan or both. In some cases, this was a significant problem in understanding the viability of and effects on natural production/habitat objectives and strategies.
 - b. The recommended subbasin plan recognized the existence and effects of artificial production in the subbasin, especially in the assessment, but the next step of incorporating or evaluating those effects as in the objectives and strategies for the subbasin had not been done.

With the exception of the situation identified in 1(a) above, the Council concluded that the APRE process would be the best vehicle to make advancements on these questions, rather than returning to the subbasin planning groups that struggled with this component. Future APRE work will assist subbasin planning by better integrating artificial production with local conditions, as well as out-of-subbasin impacts. As part of a process to clarify basinwide artificial production objectives, the Council anticipated that the APRE process will include a series of provincial meetings with hatchery operators and harvest managers to clarify harvest and

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production objectives. In those meetings, the Council, with others, will work with the assessment information from subbasin plans and production, harvest and recovery goals described in other plans, to attempt to ensure that hatchery production, habitat conditions and restoration efforts, and natural population status is accounted for and integrated. In general, participants in the APRE exercise will be supplied the information on habitat conditions, hatchery restoration/protection strategies, and natural population status from subbasin plans and be asked to determine the appropriate role for hatchery production in the subbasin. This work is underway at the time of this writing.

From the APRE activities described above, the Council and others will work to develop numeric biological objectives for hatchery returns, natural escapement and harvest needs in and out of the subbasin. These numeric subbasin objectives can then be aggregated into provincial objectives and provincial objectives into basinwide objectives. The products from these workshops will likely inform future iterations of subbasin plans. The APRE will work with NOAA Fisheries and the U.S. Fish and Wildlife Service to coordinate with ongoing NEPA and ESA processes.

With regard to the recommended subbasin plans that failed to integrate the artificial production strategies that are key to the Council's own program with other elements of the plan (those in category 1a above), this delayed the Council ability to propose the plans as draft program amendments. The planners were asked to make revisions to the plan in the form of a supplement before consideration of the recommended plan as a draft amendment, described later in this section.

The Council's response to those comments on the recommendations criticizing the research, monitoring and evaluation provisions as deficient was to reevaluate the efficacy of pursuing this work at a subbasin scale at this time. The Council decided that additional research, monitoring and evaluation (RME) design should be pursued first at a regional scale through other ongoing initiatives.

The independent scientists' comments submitted as part of the public comment on the recommendations noted that adequate RME sections were lacking in nearly all subbasin plan recommendations. These comments, and the Council's own review, noted that a key challenge in this area is how to evaluate resource management efforts at different scales in a way that is scientifically defensible and ecologically meaningful, e.g., how to link monitoring efforts at the watershed or subbasin scale with efforts at the larger scale of evolutionarily significant units.

The Council, with the support of others, concluded that addressing the RME needs for the Columbia River Basin in any practical sense requires a shift from work at the project and subbasin scales to a regional or programmatic approach. Momentum in the region for taking this different approach built significantly after the time when subbasin planners were asked to begin developing recommendations, and when those recommendations came due in May 2004. The Council considered the fact that individual subbasins cannot be expected to have or hire the specialized expertise, secure long range funding commitments, or command the ability to mount and sustain long-term RME efforts. Yet because the issues of interest to subbasin planners/recommendation sponsors in RME were also of interest to entities with responsibilities

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over a broader geographic scale, it is possible for efforts at the smaller scale to benefit from the overlay of efforts at a broader scale. Therefore, rather than try to design a complete and comprehensive monitoring program in each subbasin, which the program probably cannot afford, the Council decided it should redirect, at least for the time being, this effort to a full regional discussion about how much and what type of monitoring is needed and can be afforded for managing an effective fish and wildlife program. The result was that the Council decided that subbasin plan recommendations would not be rejected where the only substantive deficiency was failure to provide a complete RME component.

At the same time, the Council decided to continue to support the efforts of the Pacific Northwest Aquatic monitoring Program (PNAMP) to develop a regional approach to monitoring. PNAMP is a voluntary, non-directive, self-organizing forum committed to developing a unified approach to monitoring in the Pacific Northwest. PNAMP provides a forum for collaboration of the members as they work toward developing a coordinated approach to monitoring by providing a durable structure for facilitating the development of cross-party linkages. The products of the PNAMP group and others can be fed back into future iterations of subbasin plans, and thus, into the program, as they develop over the next few years.

The Council responded to the other comments on the recommendations by placing each of the proposed subbasin plan recommendations into one of three “tracks” depending on the severity of the issues raised in public comment and its own evaluation of the recommendations’ consistency with the standards in the act for program amendments and the requirements for subbasin plans in the 2000 Program. The process used to further consider subbasin plan recommendations varied for each of those three tracks.

As a product of the review of the recommendations and comments provided on them summarized above, and after deciding to treat the artificial production and research, monitoring and evaluation issues as detailed above, the Council found that one set of plan recommendations met the standards of the act for program amendments, a second set likely could meet the standards for adoption with a discrete set of modifications and improvements by the recommendation sponsors, and that a third, very small set of plan recommendations was not likely meet the act’s standards without significant additional modification. These were the three tracks for considering the recommendations as program amendments:

Track 1: Plan recommendations that had no issues, as identified above or otherwise, that would prevent their being adopted as amendments to the program were in the first track. This did not mean that these plan recommendations were entirely free of substantive issues, just that what issues did exist would be more effectively addressed outside of the subbasin planning group (local, state, and regional) structure that was used through May 28th. The plans in this category were, however, fundamentally sound and ready to serve their primary purpose -- to guide program funding/implementation processes. These recommendations were packaged as soon as identified as draft program amendments to circulate for public review as candidate amendments to the program.

Track 2: Into the second track went plan recommendations that needed significant substantive improvement within the management plan component (the objectives and

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strategies) before the plan could meet the standards for adoption into the program. The severity of the problems varied widely, but the plan recommendations in this track generally had adequate technical assessments, and thus, an adequate foundation for the needed revision of the management plan. For the plans in this track, it was determined, after talking with those offering the recommendations, that it would take no more than 12 weeks, and in many cases less, to bring these plans to an adoptable state. The Council relied primarily on the subbasin planning groups that offered the original plan recommendations to make these improvements. After the Council received the response/improvements from the subbasin planners, the next step was to review those and shape the revised plan recommendations into proposed draft program amendments.

Track 3: The third track was for those few plan recommendations that were incomplete or inadequate in both assessment and management plan and required substantially more work to develop a plan that could meet the adoptability standards of the act and be used to guide funding and implementation processes. The Council developed particularized guidance and schedules for completing these plans and moving them toward program adoption.

The table on the following page displays how the Council divided the recommended subbasin plans into the three tracks and the schedules for the plans in each track:

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Track 1: potentially adoptable		Track 2: additional work needed		Track 3: substantial work needed
<p>Schedule: Oct 2004 -- draft amendments released for public comment and hearings Dec 2004 -- Council adopted plans</p>		<p>Schedule: Dec 2004 -- draft amendments released for public comment Jan 2005 -- public hearings Feb 2005 - Council adopted plans</p>		<p>Schedule: Mar 2005 --draft amendments released for public comment Apr/May 2005 -- public hearings Apr 2005 -- release John Day for public comment/hearings May 2005 -- Council adopted Grande Ronde, Upper Snake plans June 2005 -- Council adopted John Day plan</p>
GREEN		BLUE		RED
Asotin Bruneau Coeur d'Alene Columbia Gorge Fifteenmile Creek Flathead Hood Kootenai Lake Chelan Lake Rufus Woods Lower Snake	Malheur Owyhee Pend Oreille Salmon San Poil Spokane Tucannon Umatilla Upper Columbia Upper Mid-Columbia White Salmon Willamette	Boise Burnt Clearwater Columbia Estuary Cowlitz* Deschutes Elochoman* Entiat Grays* Imnaha Kalama* Klickitat Lewis* Little White Salmon Lower Columbia	Lower Mid-Columbia Lower Mid-Snake Methow Okanogan Payette Powder Snake Hells Canyon Upper Mid-Snake Walla Walla Washougal* Weiser Wenatchee Wind Yakima *moved from Track 1	Crab Creek Grande Ronde John Day Palouse Snake Headwaters Upper Snake Closed Basin Upper Snake

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Section II: How the Council Processed the Recommendations in Each Track, and the Findings and Responses to Comments on the Subbasin Plan Recommendations and Draft Amendments

As described above, the Council divided the recommended subbasin plans into three tracks, with different requirements and time lines for considering and releasing them as draft program amendments. This section of the document describes for each track how the Council handled the recommendations, how and when they were released for public review and comment, the nature of the comments received, how the Council responded to the comments, and the date and nature of the Council's final decision on program amendments. This section also includes the formal written findings on recommendations in circumstances required by the Northwest Power Act.

Subbasin Recommendations in Track 1

The table at the end of the last section lists 23 subbasin plan recommendations that the Council provisionally concluded met the act's standards for inclusion in the program. (The Council actually began with 29 recommended plans in Track 1, but then moved six of the plans in the Lower Columbia province to Track 2, for reasons noted below.) The record developed through the conclusion of the first comment period (August 12, 2004) demonstrated that these recommended subbasin plans were consistent with the purposes of the act and the specific standards of Section 4(h)(6), and were supported by fish and wildlife managers with jurisdiction within the geographic and subject matter scope of the recommendations, as well as other interested private and governmental interests. With this determination, the Council released this set of recommendations as draft program amendments for public review and comment on October 13, 2004.

The Council received written comments on these draft program amendments, and held public hearings in all four states of the Columbia basin. The comment period on these draft amendments ended November 22, 2004. The Council reviewed the public comments on the draft amendments, together with the draft amendments, the original recommendations, and the comments on the recommendations to make final adoption determinations. The Council made its final program amendment decisions on these recommended subbasin plans at the Council meeting in December 2004.

The Council did not receive extensive comments on the draft program amendments themselves. The comments the Council did receive on specific plans were largely favorable to the proposed amendments and recommended Council adoption with a few or no changes. What follows first is a summary of the comments specific to each subbasin plan recommendation and draft amendment, the Council's responses to these comments, and formal Section 4(h)(7) findings on recommendations where appropriate.

Most of the comments the Council received during the comment period on the Track 1 draft program amendments dealt with the plans collectively, or raised general issues about the process and about the relationship of subbasin plans to the program as a whole or to separate processes ongoing in the region. Where these comments raised general issues directly relevant to the

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adoption of the Track 1 plans, these comments are summarized and responded to at the end of the following discussion of the Track 1 plan recommendations. For comments that raised broader issues about the role of subbasin plans in the program and future processes, the Council developed an issue paper and began a separate but parallel public discussion. This is the subject of Section III below.

(1) Specific subbasin plan recommendations/draft amendments in Track 1: comments, responses and findings

Asotin

The Asotin plan was developed with the oversight of the Snake River Salmon Recovery Board (Snake River Board), guided by informational materials provided by the Council, such as the Technical Guide for Subbasin Planners. In addition to recommending the plan for adoption as part of the Council's fish and wildlife program, the Snake River Board commented that it also intends to use the subbasin plan in ongoing work on developing a draft ESA recovery plan. The Council review of the Asotin plan and related administrative record demonstrated that both its substance and public involvement aspects were consistent with the act and the Council's 2000 Program.

Summary of public comment on the Asotin subbasin plan as a draft program amendment:

Public Utility District No. 1 of Asotin County

- Encouraged Council adoption of the subbasin plan as well as funding for implementation. The Watershed Planning Unit for the Middle Snake-WRIA 35 supported plan. Recognized the need over time for additional refinements and scientific understanding, which will be addressed through ongoing planning discussions associated with the development of the WRIA 35 Watershed Plan and a regional salmon recovery plan.

Council Findings: No need for a formal finding. The Council adopted the subbasin plan recommended in May 2004 and released for comment as a draft program amendment in October 2004.

Bruneau

The Shoshone-Paiute Tribes led the development of the subbasin plan, guided by informational materials provided by the Council, such as the Technical Guide for Subbasin Planners, and the tribe contracted with the Idaho Industry on Council and Environment to conduct the public outreach and participation elements of the planning process. The Council review of the Bruneau plan and related administrative record demonstrated that both its substance and public involvement aspects were consistent with the act and the Council's 2000 Program.

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Summary of public comment on the Bruneau subbasin plan as a draft program amendment:

Lisa Jim and Tim Dykstra of the Shoshone-Paiute Tribe (discussion following public hearing)

- Nevada portion of the subbasin, in which Bonneville has historically not provided funding, is an area of strength for the Bruneau and Owyhee subbasins. The QHA assessments models identify the strength in Nevada.

Response to Comments: These comments do not question the adequacy of the draft amendment. Decisions about funding projects are made in separate, future project selection processes, and proposals for funding actions anywhere within the subbasin will be considered.

Council Findings: No need for a formal finding. The Council adopted the subbasin plan recommended in May 2004 and released for public review as a draft program amendment in October 2004.

Columbia Gorge

The Columbia Gorge Mainstem plan lead was the Oregon Department of Fish and Wildlife, guided by informational materials provided by the Council such as the Technical Guide for Subbasin Planners, and with assistance from the Lower Columbia Fish Recovery Board, the Lower Columbia River Estuary Partnership, the Confederated Tribes of the Warm Springs Reservation of Oregon, the Oregon Department of Environmental Quality, the U.S. Fish and Wildlife Service, NOAA Fisheries, USGS, the U.S. Forest Service, the Washington Department of Ecology and the Washington Department of Fish and Wildlife. The Council's review of the Columbia Gorge plan and related administrative record demonstrated that both its substance and public involvement aspects were consistent with the act and the Council's 2000 Program.

Summary of public comment on the Columbia Gorge subbasin plan as a draft program amendment:

Washington Department of Fish and Wildlife:

- Comment sought to update bull trout research currently being implemented in Bonneville Reservoir by WDFW and the Confederated Tribes and Bands of the Yakama Nation. Comment makes reference to Bonneville research projects 200306500 and 19902400. The comment states that this project information should be included in section 4.4 of the plan.

Response to Comments: The sponsors of the original recommendation (May 2004) submitted a document characterized as an "addendum" that acknowledged the comments from the independent scientists, the Council and public reviews, identifying errata, and discussing prospective planning work. This addendum was added to the original recommendation as part of the draft amendments released by the Council for public review and comment.

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Council Findings: No need for a formal finding. The Council adopted the subbasin plan recommended in May 2004 with the addendum subsequently submitted by the recommendation sponsors, as released for public review as a draft program amendment in October 2004.

Fifteenmile Creek

The Fifteenmile Coordination Group, headed by the Wasco Soil and Water Conservation District and including the Confederated Tribes of the Warm Springs Reservation of Oregon, NRCS, the U.S. Fish and Wildlife Service, the Oregon Department of Fish and Wildlife, the Oregon Department of Agriculture, the Oregon Department of Environmental Quality, NOAA Fisheries and Wy'East RC&D as members of the various planning teams, developed the subbasin plan guided by informational materials provided by the Council, such as the Technical Guide for Subbasin Planners. The Council's review of the Fifteenmile Creek plan and related administrative record demonstrated that both its substance and public involvement aspects were consistent with the act and the Council's 2000 Program.

No public comment on the Fifteenmile Creek subbasin plan as a draft program amendment

Council Findings: No need for a formal finding. The Council adopted the subbasin plan recommended in May 2004 and released for public review as a draft program amendment in October 2004.

Flathead

The Salish and Kootenai Tribes coordinated the development of the plan with Montana Fish, Wildlife & Parks assisting as co-coordinator. A number of agencies, entities and interested individuals participated in the development of the plan, including a diverse Technical Team. The Council review of the Kootenai plan and related administrative record demonstrated that both its substance and public involvement aspects are consistent with the Council's 2000 Program, and was guided by informational materials provided by the Council, such as the Technical Guide for Subbasin Planners.

Summary of public comment on the Flathead subbasin plan as a draft program amendment:

Flathead Lakers

- The Flathead subbasin plan lists impoundment and hydropower operations as a primary limiting factor. Flathead Lakers encouraged the Council and Bonneville to acknowledge the Kerr Dam license requirements, including the requirement for a drought management plan.
- Reiterated comment regarding the need for workshops for interested stakeholders to help them understand the assessment and plan and to highlight priority strategies and areas identified by the plan.
- Reiterated concern that it was difficult to understand the recommendations in the plan, where they apply and what the priority actions are. Cited specific recommendations for increasing clarity.

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Bob Jamieson, BioQuest International Consulting

- An ecologist involved in design of the terrestrial portion of the assessment for both the Kootenai and Flathead subbasin plans. Kootenai and Flathead plans have received kudos, but no one had enough time to do the final segment justice.
- Need to think through the plans and implications in the long term. There needs to be follow up with planners and stakeholders to look at various aspects of the plan.
- Need to allow for inputs and proposals based on analysis that is independent of the process used in each plan. Essential elements in the plan may have been missed.
- Mapping of alluvial floodplains is a serious data gap in the plan.
- Need a province or even a basinwide process for addressing data gaps such as this.
- Provided a series of recommendations for addressing gaps.
- Supported a funding mechanism outside the subbasin funding process to address these types of projects.

F.H. Stoltze Land & Lumber Co

- It would be helpful to have an overview of each individual project and the funding involved. This information was not available at the meetings and does not appear on the Council's website.

The Gallatin Group on behalf of the National Organization to Save Flathead Lake

- Comments are provided to encourage the Council to adopt and implement the Flathead subbasin plan.
- Plan acknowledges other existing plans and management programs. However, it does not acknowledge the Flathead Lake Drought Management Plan. Once complete it will be important to integrate the operations of Hungry Horse and Kerr Dams, which control the elevations of Flathead Lake.
- Cited limiting factors from the plan. A primary external factor affecting the Flathead subbasin resources comes from the Columbia River federal hydropower operations that "affect environmental conditions in the reservoirs upstream and river downstream of Hungry Horse and Kerr dams." Given this background, encouraged the Council and federal agencies to seek a fair and balanced operation of the entire hydro system. Only way to achieve the vision of this subbasin plan and to achieve the long-term mitigation goals of the Council's program is to carefully review hydropower operations in the context of fish, flood control, recreation and power needs. The drought management plan is working in that direction.
- Hungry Horse and Kerr should be integrated and coordinated in a way that results in efficient and effective releases of drafts from Hungry Horse. Coordinated operations would help achieve the human community aspects of the vision statement.

Response to Comments: The comments on the substance of the document relate primarily to operation of Hungry Horse and Kerr dams, and Columbia basin hydropower operations more generally. These issues were addressed in the Council's 2000 Program and then in its 2003 Mainstem Amendments to the 2000 Program. While these issues are beyond the scope of the subbasin planning exercise, the Council does believe that its 2003 Mainstem Amendments sought to address operational issues comprehensively and in a balanced manner. As for the drought management plan under development, the Council expects future versions of the

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subbasin plans will address this and any other new information. With regard to the comments suggesting additional technical information or detail and additional review, these details can be addressed in future versions of the plan, and none of the issues raised is significant enough to call into question the technical soundness of the plan. In fact, the independent scientists rated the plan as one of the best.

Council Findings: No need for a formal finding. The Council adopted the subbasin plan recommended to the Council in May 2004 and released for public review as a draft program amendment in October 2004. The plan adopted by the Council had been modified by those offering the original recommendation, but only for editorial and organizational matters.

Hood

The Hood River Soil and Water Conservation District took the lead in the basin, guided by informational materials provided by the Council, such as the Technical Guide for Subbasin Planners, and used the Hood River Watershed Group as its planning team, consisting of the Warm Springs Tribe, the Oregon Department of Fish and Wildlife, the U.S. Forest Service, the U.S. Fish and Wildlife Service, Hood River County, Port of Hood River, three irrigation districts, three city governments, the Hood River Growers and Shippers Association, Longview Fiber Co. and Union Pacific RR. The Council review of the Hood plan and related administrative record demonstrated that both its substance and public involvement aspects were consistent with the act and Council's 2000 Program.

No public comment on the Hood subbasin plan as a draft program amendment

Council Findings: No need for a formal finding. The Council adopted the subbasin plan recommended in May 2004 and released for public review as a draft program amendment in October 2004.

Intermountain Province Subbasins (Coeur d'Alene, Spokane, Pend Oreille, Upper Columbia Mainstem, Lake Rufus Woods and San Poil)

The bi-state Intermountain Province Coordinating Committee was formed in 2001 to provide oversight and direction for the development of the subbasin plans in the Intermountain Province, and to organize those as an overall Intermountain province plan. Early in the process, the Intermountain Committee decided to split the Upper Columbia subbasin into two subbasins -- Lake Rufus Woods and the Upper Columbia. The Coordinating Committee developed and submitted the recommended subbasin plan, guided by informational materials provided by the Council, such as the Technical Guide for Subbasin Planners. At the same time as the recommended subbasin plan, the Upper Columbia United Tribes submitted an additional related document entitled "Recommended Measures for the Intermountain Province Plan." This additional UCUT document was provided to the independent scientists and public during the review of the recommendations. The Council review of the Intermountain Province subbasin plans and related administrative record demonstrated that both their substance and public involvement aspects were consistent with the act and the Council's 2000 Program.

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Summary of public comment on the Intermountain subbasin plans as draft program amendments:

(i) Comments that related to the entire set of plans:

Inland Power and Light Company

- Expressed concern with the language in the plan objectives that calls for “full mitigation” for impacts due to the construction and operations of the hydropower system as well as language that calls for testing the feasibility of reintroducing anadromous fish above Chief Joseph and Grand Coulee dams. Believes these objectives go beyond Power Act requirements.
- Asked if Council adopting plans means that the Council is endorsing each and every aspect of the plans.
- Greater accountability and attention to cost effectiveness regarding fish and wildlife is critical.
- Portions of the plans that do not relate to impacts of the FCRPS should not be adopted.
- Council should examine potential for cost sharing from other parties for project capital expenditures and operations and maintenance costs.
- It is unreasonable and unnecessary to call for actions that “fully mitigate” and “completely replace all losses” related to federal projects.
- Urges Council not to adopt plans containing unrealistic expectations or open-ended obligations.
- There should be a place for non-ESA mitigation actions, but priority should be given to ESA objectives and projects as well as those most cost effective.
- Further prioritization of projects is needed.
- Subbasin plans are extensive and warrant a process that provides sufficient time for the Council and others to conduct a thorough review and examine implications.

Kalispel Tribe

- Supported adoption of plans; supported adoption of the UCUT and Kalispel tribe recommendations submitted in the “Recommended Measures” document submitted with the Intermountain Province plans.

Upper Columbia United Tribes

- Strongly recommended that the Council consider and adopt the “measures” submitted by UCUT Tribes with the plans. These “measures” and ten-year budget describe appropriate levels of effort for the Intermountain Province and Kootenai and Okanogan subbasins. UCUTs support for the Intermountain Province plan is contingent upon adoption of accompanying measures.

(ii) Comments that applied to the Spokane and Coeur d’Alene subbasin plans as draft amendments:

Avista Utilities

- Avista is concerned with the goals and objectives that reference the federally licensed hydropower projects. It is concerned that including federally licensed projects in the plan

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could create conflicts with the FERC relicensing project. Planners responded that FERC projects were included to meet stakeholder interests in attracting federal funding and further clarified that it was not the intent of the planning process to establish commitments for these non-federal hydropower systems.

- Avista is currently involved in a relicensing process for the Spokane River Hydroelectric Project. The relicensing identifies and evaluates resource interests associated with the operation of Avista's hydroelectric developments on the Spokane River. Therefore, objectives and strategies identified in the Intermountain Province plan that reference the Spokane River projects or its operations as limiting factors, assumes impacts of the projects, suggests mitigation for losses, or suggests changes to the operation of the projects, are inappropriate and do not create an obligation for Avista.

(iii) Comments that applied to Pend Oreille subbasin plan as a draft amendment:

EES Consulting on behalf of Pend Oreille Public Utility District

- Studies conducted for the Box Canyon Hydroelectric Project contain a significant amount of information about the resources in the river and its tributary streams between Boundary and Albeni Falls dams. The District suggests these studies be considered before finalizing the subbasin plan.
- Comments contained 13 pages of fact checking, technical and editorial comments.

Jim Carney

- Served on the Pend Oreille subbasin plan planning team representing agriculture interests.
- Believed that inviting participation from some stakeholders was an afterthought. Plan was written by the Washington Department of Fish and Wildlife, the Idaho Department of Fish and Game and the Kalispel Tribe, while other stakeholders were expected to rubberstamp the plan.
- The Council sought citizen participation, but the citizens were often ignored and did not have an equal voice in decisionmaking due to their lack of technical education or background.
- The consultants were not always impartial. Agencies are potential future customers with financial backing, whereas farmers and citizens do not have this advantage.
- Landowners feel they were being used in order to "check the box" where landowner participation was called for. Meetings should be held in the evenings and weekends because landowners and citizens have jobs that preclude them from participating.
- Conservation Districts could have played a bigger role in the development of the subbasin plans.

Response to Comments: The comments that relate to the relationship of the subbasin plans to the non-federal hydroprojects and the FERC relicensing processes, and the comments that relate to Bonneville's authority or responsibility to fund activities called for in subbasin plans, were raised in several other instances. The Council provides a general response to these comments later in this Section II and also in Section III below.

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Mr. Carney's comments, while a concern, were not broadly shared and seem to be the exception rather than the norm. The Council closely monitored the conduct of the planning process in the Intermountain Province and was consistently impressed with the diligence with which the planning coordinators sought to provide notice and opportunity for broad public participation. Additionally, while the Council is disappointed that the commenter had such a perception about the conduct of the process, the comments do not call into question the soundness of any substantive element of the final subbasin plan product. Given the strong and broad support for the substance of that final subbasin plan recommendation product, and the Council's determination that the recommendations substantively meet the act's requirements for adoption into the Program, the comments do not warrant a rejection of the subbasin plan recommendations.

With regard to the comment that there are additional studies that might have been included or considered in the plans, or that editorial improvements would benefit the plan recommendations, as in many other cases, the Council believes that these can be added in future versions of the subbasin plans. The information, data and analyses included in the plans, particularly in the assessment component, were reviewed and found to adequately support the measures in the management plans. There is no suggestion in the comment that consideration of other studies would have altered the measures recommended in the management plan elements of the recommendations.

Council Findings: No need for formal findings. The Council adopted the subbasin plan recommended to the Council in May 2004 and released for public review as a draft program amendment in October 2004.

The Council adopted the recommendations submitted independently by the Upper Columbia United Tribes as an appendix to the management plans, with this understanding: The Council considers what the tribes submitted to be in the nature of specific project labels and funding recommendations. The Council accepts the UCUT Tribes' judgment that these specific actions are consistent with the subbasin plans they relate to, and that they represent how the UCUT managers view the priorities and further define the elements of the plans. Adopting these recommendations as an appendix or companion piece to the subbasin plans does not, however, commit the Council to recommend funding for the corresponding project proposals that may be submitted to implement these provisions at any specific time. No such commitment can be made at this time because matters such as funding availability, competing basinwide priorities, independent scientific review, consistency review with the subbasin plans, cost-effectiveness, and the need to consider alternative proposals by others must be considered in a separate and distinct project selection process mandated by Section 4(h)(10)(D) of the Power Act.

The subject raised by the UCUT recommendations is related to several general comments the Council received on the Track 1 plans calling for more specific "measures" to be added to the plans or included in the program. The Council addresses this subject in its response to the general comments later in this section.

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Kootenai

The Montana Fish Wildlife and Parks and the Kootenai Tribe of Idaho led the development of the plan with assistance from other state, Canadian provincial and tribal fish and wildlife managers and guided by informational materials provided by the Council, such as the Technical Guide for Subbasin Planners. The Kootenai Valley Resource Initiative (KVRI) provided the public outreach component in the lower Kootenai portion of the subbasin. The Council review of the Kootenai plan and related administrative record demonstrated that both its substance and public involvement aspects were consistent with the act and the Council's 2000 Program.

Summary of public comment on the Kootenai subbasin plan as a draft program amendment:

Bob Jamieson, BioQuest International Consulting

- An ecologist involved in design of the terrestrial portion of the assessment for both the Kootenai and Flathead subbasin plans. Kootenai and Flathead plans have received kudos, but no one had enough time to do the final segment justice.
- Need to think through the plans and implications in the long term. There needs to be follow up with planners and stakeholders to look at various aspects of the plan.
- Need to allow for inputs and proposals based on analysis that is independent of the process used in each plan. Essential elements in the plan may have been missed.
- Mapping of alluvial floodplains is a serious data gap in the plan.
- Need a province or even a basinwide process for addressing data gaps such as this.
- Provided a series of recommendations for addressing gaps.
- Supported a funding mechanism outside the subbasin funding process to address these types of projects.

F.H. Stoltze Land & Lumber Co

- It would be helpful to have an overview of each individual project and the funding involved. This information was not available at the meetings and does not appear on the Council's website.
- Extremely disappointed to learn that only two of the five Montana Columbia subbasins submitted recommendations for plan amendments.

Response to Comments: With regard to the comments suggesting additional technical information or detail and additional review, these details can be addressed in future versions of the plan, and none of the issues raised is significant enough to call into question the technical soundness of the plan. In fact, the independent scientists rated the plan as one of the best. Information about projects that relate to and implement the subbasin plan will be provided in the separate and distinct project selection process required by Section 4(h)(10)(D) of the Act.

The decision to focus on two of the five Montana subbasins in this first subbasin planning exercise was made by the State of Montana and the tribal co-managers, largely because there is little to no history of Bonneville funding in the other basins. The Council deferred to this decision. The Council understands that Montana and the tribes intend to develop recommendations for the other subbasins in future program amendment proceedings.

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Council Findings: No need for a formal finding. The Council adopted the subbasin plan recommended to the Council in May 2004 and released for public review as a draft program amendment in October 2004. The plan adopted by the Council was modified by those offering the original recommendation, but only for editorial and organizational matters.

Lake Chelan

The Lake Chelan subbasin plan as well as the Wenatchee, Entiat, Upper Mid-Columbia Mainstem, Methow and Okanogan subbasin plans were drafted under the oversight of the Upper Columbia Salmon Recovery Board, guided by informational materials provided by the Council, such as the Technical Guide for Subbasin Planners. The lead entities for subbasin planning in Lake Chelan were Chelan County and the Washington Department of Fish and Wildlife. The plan relied heavily on research and analysis done by Chelan PUD to write an Environmental Impact Statement for the FERC relicensing effort for Lake Chelan. The Council's review of the Lake Chelan subbasin plan and related administrative record demonstrated that both its substance and public involvement aspects were consistent with the act and the Council's 2000 Program

No public comment on the Lake Chelan subbasin plan as a draft program amendment

Council Findings: No need for a formal finding. The Council adopted the subbasin plan recommended in May 2004 and released for public review as a draft program amendment in October 2004.

Lower Snake River

The Lower Snake subbasin plan was developed with the oversight of the Washington State Snake River Salmon Recovery Board (Snake River Board), guided by informational materials provided by the Council, such as the Technical Guide for Subbasin Planners. The Council's review of the Lower Snake plan and related administrative record demonstrates that both its substance and public involvement aspects were consistent with the act and the Council's 2000 Program.

Summary of public comment on the Lower Snake River subbasin plan as a draft program amendment:

Public Utility District No. 1 of Asotin County

- Encouraged Council adoption of the subbasin plan as well as funding for implementation. The Watershed Planning Unit for the Middle Snake-WRIA 35 supported plan. Recognized the need over time for additional refinements and scientific understanding, which will be addressed through ongoing planning discussions associated with the development of the WRIA 35 Watershed Plan and a regional salmon recovery plan.

Council Findings: No need for a formal finding. The Council adopted the subbasin plan recommended in May 2004 and released for public review as a draft program amendment in October 2004.

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Malheur

The Malheur subbasin plan was developed through the joint administration of the Malheur Watershed Coalition, consisting of the Burns-Paiute Tribe and the Malheur Watershed Council, guided by informational materials provided by the Council, such as the Technical Guide for Subbasin Planners. The Council's review of the Malheur plan and related administrative record demonstrated that both its substance and public involvement aspects were consistent with the act and the Council's 2000 Program.

Summary of public comment on the subbasin plan as a draft program amendment:

Burns Paiute Tribe:

- Participated in the development of this plan. The Malheur plan was developed in a relatively short time frame and issues may have been overlooked. Suggested three specific language changes regarding the reintroduction of anadromous fish, asserting the changes are consistent with project number 200302900 approved by the ISRP, CBFWA and the Council.

Response to Comments: The Council sought confirmation with the other parties that took part in developing the plan that the omissions noted by the Tribe should be included. The Watershed Council agreed with correcting this oversight. The Council added the language suggested by the Tribe.

Council Findings: No need for a formal finding. The Council adopted the subbasin plan recommended in May 2004 and released for public review as a draft program amendment in October 2004, with the correction noted above.

Owyhee

The Owyhee Subbasin is located in three states, Oregon, Idaho and Nevada. Planning meetings were held in each of those states, and individuals representing the state and tribal fish and wildlife managers of all three states as well as local citizens participated in the development of the plan. The Owyhee Watershed Council and the Shoshone Paiute Tribes worked together to produce the plan recommendation, guided by informational materials provided by the Council, such as the Technical Guide for Subbasin Planners. However, the Watershed Council and the Tribe disagreed regarding the final product submitted by the Tribe to the Council, primarily related to concerns the Watershed Council has about some of the data and information used in the planning process. The Watershed Council submitted as public comment a dissenting opinion document that included alternatives to the plan presented to the Council by the Tribe. The Council's review of the Owyhee plan and related administrative record demonstrated that both its substance and public involvement aspects were consistent with the act and the Council's 2000 Program.

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Summary of public comment on the Owyhee subbasin plan as a draft program amendment:

Owyhee Watershed Council

- Requested that the Council take into account their resolution and their “dissenting opinion” document as comments.
- Drafted resolutions in consultation with the Shoshone-Paiute Tribes and/or Council staff attempting to address rights, licenses, grazing permits, water rights, etc. Requested the addition of “disclaimer language” regarding the validity of the data included in the plan.
- Several other points in the comments remarked upon the lack of or poor data quality and the need for sound science.
- Terrestrial species should be given greater consideration in the plan.
- QHA assessment tool has limitations and this should be considered when viewing the results of the model.
- Attempted to work cooperatively with all parties, but still stands by its written dissent to the plan based on its lack of sound science. The Owyhee Watershed Council also disagreed with the ISRP about the quality of scientific data in the plan.
- Given the dissension on the plan, any Bonneville funds allotted to implement the Owyhee should not focus on capital projects. More scientifically sound data are necessary to implement effective fish and wildlife restoration projects within the subbasin. An increase in sound science will lead to increased support for restoration efforts by local stakeholders.

Response to Comments: There was a significant dispute and difference of opinion between the Tribe and the Watershed Council on the plan, particularly focused on the quality and the accuracy of certain data and analyses in the assessment component. Under the Power Act, the Council must act on the best available scientific knowledge. While the Council is confident that the data and analyses in the plan are adequate to meet standards for adopting the plan, the Council does not represent or claim that each piece of data or analysis is definitive or should be accepted as such in any other legal or regulatory contexts, which has been a concern of the Watershed Council. Moreover nothing in this subbasin plan or in the Council’s fish and wildlife program can be used or construed to affect the validity of any right, license, permit or privilege held under federal or state law, including grazing permits, water rights or any other privately held property right, license, permit, privilege or interest. The Council understands that there may be disputes or differences of opinion as to the validity of some of the data or information underlying the technical assessment of conditions in this subbasin. The Council’s subbasin plan review process reviewed the quality and validity of the conclusions drawn in the assessment and the management plan, assuming the validity of the underlying data and information; the Council did not investigate or make an independent determination of the validity of any of the data or information underlying the assessment.

Council Findings: No need for a formal finding. The Council adopted the subbasin plan recommended in May 2004 and released for public review as a draft program amendment in October 2004.

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Salmon

The Salmon subbasin plan was the product of a complicated planning structure. The Idaho Department of Fish and Game did the technical assessment work for the entire subbasin. A planning team in the upper Salmon was under the direction of the Shoshone-Bannock Tribes working closely with the upper Salmon watershed group. A planning team under the direction of the Nez Perce Tribe was organized in the lower Salmon. Teams in the upper and lower reaches and the technical team then coordinated production of the final product. Federal, state and tribal fish and wildlife managers along with other agency and local representatives participated in the development of the recommended plan, all of this guided by informational materials provided by the Council, such as the Technical Guide for Subbasin Planners. The Council review of the Salmon plan and related administrative record demonstrates that both its substance and public involvement aspects were consistent with the act and the Council's 2000 Program.

No public comment on the Salmon subbasin plan as a draft program amendment

Council Findings: No need for a formal finding. The Council adopted the subbasin plan recommended in May 2004 and released for public review as a draft program amendment in October 2004.

Tucannon

The Tucannon plan was developed with the oversight of the Washington State Snake River Salmon Recovery Board, guided by informational materials provided by the Council, such as the Technical Guide for Subbasin Planners. The Council's review of the Tucannon plan and related administrative record demonstrates that both its substance and public involvement aspects were consistent with the act and the Council's 2000 Program.

Summary of public comment on the Tucannon subbasin plan as a draft program amendment:

Public Utility District No. 1 of Asotin County

- Encouraged Council adoption of the subbasin plan as well as funding for implementation. The Watershed Planning Unit for the Middle Snake-WRIA 35 supported plan. Recognized the need over time for additional refinements and scientific understanding, which will be addressed through ongoing planning discussions associated with the development of the WRIA 35 Watershed Plan and a regional salmon recovery plan.

Council Findings: No need for a formal finding. The Council adopted the subbasin plan recommended in May 2004 and released for public review as a draft program amendment in October 2004.

Umatilla

The Umatilla/Willow Subbasin Plan encompasses both the Umatilla River and Willow Creek, a tributary to the Columbia. Guided by informational materials provided by the Council, such as the Technical Guide for Subbasin Planners, the plan was developed by the Umatilla/Willow Core Partnership, which included the Confederated Tribes of the Umatilla

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Indian Reservation, the Oregon Department of Fish and Wildlife, Morrow SWCD, Umatilla SWCD, Umatilla Irrigation Districts, and the Umatilla Watershed Council. The Council's review of the Umatilla plan and related administrative record demonstrated that both its substance and public involvement aspects were consistent with the act and the Council's 2000 Program.

Summary of public comment on the Umatilla subbasin plan as a draft program amendment:

Confederated Tribes of the Umatilla Indian Reservation

- Submitted a revised plan accompanied by an errata sheet indicating specific changes made in October 2004 to the original plan submitted in May 2004. The full Partnership that developed the original recommendations submitted in May 2004 agreed to the revisions.

Council Findings: No need for a formal finding. The Council adopted the subbasin plan recommended in May 2004 and released for public review as a draft amendment in October 2004, with the modifications described above by the Tribes that were ratified by the Umatilla/Willow Core Partnership that made the original recommendation. *See* the November 19, 2004 memo from CTUIR on behalf of the Partnership.

Upper Mid-Columbia Mainstem

The Upper Mid-Columbia Mainstem subbasin plan as well as the Wenatchee, Entiat, Lake Chelan, Methow and Okanogan subbasin plans were drafted under the oversight of the Upper Columbia Salmon Recovery Board. Douglas County and the Washington Department of Fish and Wildlife partnered as lead entities to develop the Upper Mid-Columbia plan, guided by informational materials provided by the Council, such as the Technical Guide for Subbasin Planners. The Council's review of the Upper Mid-Columbia subbasin plan and related administrative record demonstrated that both its substance and public involvement aspects were consistent with the act and the Council's 2000 Program.

No public comment on the Upper Mid-Columbia Mainstem subbasin plan as a draft program amendment

Council Findings: No need for a formal finding. The Council adopted the subbasin plan recommended in May 2004 and released for public review as a draft program amendment in October 2004.

White Salmon

The White Salmon subbasin plan was prepared by the Washington Department of Fish and Wildlife, with assistance from the Yakama Nation and opportunity for input from Klickitat and Skamania counties and guided by informational materials provided by the Council, such as the Technical Guide for Subbasin Planners. The Council review of the White Salmon plan and related administrative record demonstrated that both its substance and public involvement aspects were consistent with the act and the Council's 2000 Program.

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Summary of public comment on the White Salmon subbasin plan as a draft program amendment:

Klickitat County Planning Department

- Agreed with ISRP's finding that the management plan was incomplete. Plan required more thorough rationale for the biological objectives. The biological objectives were generated by the WDFW without input from Klickitat County or other parties to the planning effort.
- Plan was produced without adequate public involvement or adequate participation by all members of the subbasin planning team. There is no agreement among the subbasin planning team members on the plan.
- None of the comments submitted by ISRP, Klickitat County, others have been addressed.
- Council should return the plan to the subbasin planning team to address the comments and provide planning team with the time needed to broaden participation.

Response to Comments: The Council staff and individual Council members met with officials from Klickitat County several times in the course of preparing for the initiation of the amendment process and during the course of the process as well to address the County's concerns about the ability to participate in the development of subbasin plan program recommendations. Klickitat County received funding to participate and perform public outreach in the amendment process. In these discussions, and with review of the record, the Council is fully satisfied that the County and the public had meaningful opportunity to participate in the amendment process. With regard to the critique of the subbasin plan recommendations submitted by the independent scientists as part of the initial comment period, the Council dealt with those comments (e.g., quality of the description and integration of non-program artificial production, the monitoring and evaluation provisions, etc.), which applied to many plans, as discussed above. The comments provided by the independent scientists were not of the nature that called into question the basic scientific or technical efficacy of the proposed amendments.

Council Findings: No need for a formal finding. The Council adopted the subbasin plan recommended in May 2004 and released for public review as a draft program amendment in October 2004.

Willamette

The plan was developed by the Willamette Restoration Initiative, with an extensive network of supporters and stakeholders involved in developing the strategies and reviewing the analysis, and guided by informational materials provided by the Council, such as the Technical Guide for Subbasin Planners. The Council's review of the Willamette plan and related administrative record demonstrated that both its substance and public involvement aspects were consistent with the act and the Council's 2000 Program.

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Summary of public comment on the Willamette subbasin plan as a draft program amendment:

City of Portland

- City struggled with how to identify specific actions, and it became more difficult closer to the ground. The city is comfortable proceeding with the level of specificity in the plan now; gives us time to digest the plan and share it with stakeholders.

Bruce Newhouse

- With regard to terrestrial technical appendix, *Festuca rubra* is not native to the Willamette Valley.

Response to Comments: The City of Portland's comment relates to the degree of specificity of the measures proposed in the subbasin plan recommendation. *See* the Council's discussion of this issue in the responses to general comments below and in Section III; the City's conclusions are consistent with the Council's. The comment related to an inaccuracy in the technical appendix is noted, and as the Council determined in many instances, this is an item that can be addressed in future versions of the plan.

Council Findings: No need for a formal finding. The Council adopted the subbasin plan recommended in May 2004 and released for public review as a draft program amendment in October 2004.

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(2) Responses to general comments and general issues raised in the public comment period for the subbasin plan recommendations in Track 1.

Many of the public comments submitted on the first set of draft subbasin plan program amendments spoke to general issues related to the subbasin planning and program amendment process in general, interpretations of the act, or future implementation of the adopted fish and wildlife program. While these comments did not relate to any particular draft fish and wildlife program amendment, the Council's consideration and treatment of these issues did influence how it judged the adequacy of the recommendations and draft program amendments relative to the standards in the act and the 2000 program. What follows is a summary of the general issues presented in the comments, and the Council's responses.

General Comment 1: What is the correct level of specificity in the subbasin plans? Some comments encouraged the addition of more specific implementation plans or implementation actions to the subbasin plans. The "measures" issue. The Columbia River Inter-Tribal Fish Commission (Commission) commented that these draft program amendments were legally deficient for not including "measures" as required by the Northwest Power Act, and that the Council must not adopt the subbasin plans without first calling for recommendations for more specific "measures" to add to the subbasin plans. The Commission raised this issue in its August 2004 comments, and renewed its position in comments submitted on the first set of draft plan amendments. The Commission did not raise this issue, it must be noted, at the time of submission of subbasin plan recommendations themselves (May 2004), nor at any time in the more than a year and half following the Council's call for subbasin plan recommendations, a time of significant interactions between the Council and others, including Commission and other tribal representatives, over the course of subbasin planning. Nor did the Commission or any of its member tribes submit recommendations of this type during the period for submitting recommendations or at any other time after.

Council Response: This is an issue about the level of specificity of the actions included in the subbasin plans and the program. The Commission couched the issue in a legal argument about the definition of the term "measures" as used in Section 4(h) of the Power Act.

Yet the Council understood this issue to be more important than a legal debate of definitions. The Council understood the issue to derive from a desire to ensure that subbasin plans serve their fundamental function of guiding the allocation of Bonneville resources to the most biologically and cost-effective activities -- a critical and fundamental issue. In order to get the perspective of others on this issue, on October 22, 2004, the Council released a paper initiating a special, additional public comment process for a set of five broad process and planning topics that had developed in the course of its fish and wildlife program subbasin plan amendment process (See Section III below for a full discussion of the other issues). This issue about specificity and "measures" was one of the issues raised. The Council took written comment for 30 days, and continued discussions with interested persons and entities through February 2005.

The October 2004 issue paper invited comment on whether the strategies in draft subbasin plan amendments were sufficiently specific to guide the development of project proposals and then the review and selection of projects for Bonneville funding. The Council requested that if a

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commenter was of the opinion that the draft amendment plans cannot guide a project development and review process, that they then suggest the appropriate process to employ to obtain this greater level of specificity for the plans. A number of alternatives were presented in the Council's October 2004 letter, including:

- After the subbasin plans are adopted into the program, the Council could call for more specific implementation plans *outside* of a statutory program amendment process, but prior to or as part of the 4(h)(10)(D) project review process.
- The Council could use the period of public review and comment on draft subbasin plan amendments in the *current amendment process* to receive lists of more specific actions or implementation plans from interested parties that the Council would add to the subbasin plans before their final adoption into the program.
- The Council could adopt a decisionmaking structure or management framework and the subbasin plans as "reference documents," explaining how the plans will be used, and then prescribe a process and schedule for adding specificity to the subbasin plans (outside of an amendment process) over the next few years.
- The Council could follow the subbasin plan amendment process with *another program amendment* process specifically calling for recommendations for program amendments to add specific implementation plans consistent with the adopted subbasin plans.

In response to the special comment process initiated with the October issue paper, a number of commenters *did* state that the Council had work to do before making the transition from adopted subbasin plans to project definition and selection processes. However, the additional work suggested was in a substantially different direction than the Commission's request to add more detail at the subbasin level. For example, many of the suggestions for next steps or additional work urged the Council to engage in a process to *aggregate* the subbasin plan objectives at a regional and basinwide level and evaluate whether what they add up to is appropriate. Other comments urged the Council to define further the program priorities at a level *above* the subbasin plans to guide the allocation of Bonneville funding to the different provinces, and more clearly define the next project selection process. (See the discussion of the "roll-up" concept in Section III.) And some commenters, such as NOAA Fisheries, agreed that there would *eventually* be a need to "step down" from the subbasin plan strategies to more specific implementation actions or projects, but that work at a province or ESU scale first was most pressing. In sum, the vast majority of the response on this matter advised the Council that work at a broader scale -- at the province or ESU level -- should be pursued as a priority and that this should precede adding detail at the subbasin or finer scales.

No entity other than the Commission argued that the subbasin plans lacked such specificity in the strategies as to be not functional. Nor did other commenters argue that the Council should or must hold up adoption of the subbasin plans while adding more specific measures, or that such a thing was legally required, such that the next action the Council should take, whether it adopted the subbasin plans or not, would be to call for recommendations for more specific measures to add to the plans. And most of the commenters on this particular issue said exactly the *opposite* -- that the strategies in the plans were sufficiently specific to guide implementation decisions in the subbasins, and the Council should *not* take the time next to obtain further specificity in the subbasin plan strategies when there is so much other valuable work to be doing.

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The comments on this issue were enlightening and of great assistance to the Council. They were not definitive under the act, of course -- what was definitive was the nature of the strategies in the proposed subbasin plans. The Power Act does require the Council to call for recommendations and adopt a fish and wildlife program consisting of “measures.” The term “measure” is not defined in the act, nor does the act require a certain level of specificity before something is a “measure.” A common dictionary definition of measure is “an action planned or taken toward the accomplishment of a purpose: a means to an end.” *See Webster’s Third New International Dictionary*. The dictionary definition is consistent with the way the term “measure” is in fact used in the Power Act -- those provisions in the program that Bonneville and others are to implement to protect, mitigate and enhance fish and wildlife affected by the Columbia hydrosystem. This is precisely what the strategies in the subbasin plans are. As described in the program, “[a]t the subbasin level, ‘strategies’ will include the particular measures to be implemented within a given subbasin”; they are to be the “plans of action to accomplish the biological objectives” of the plan, thus contributing to satisfying the objectives of the program and the act. The Council’s call for subbasin plan recommendations similarly called for the management plan to include “implementation strategies, which will guide or describe the actions needed to achieve the desired conditions.”

A review of the recommended subbasin plans and draft amendments indicated that the strategies recommended in these plans precisely fit this description -- they are actions proposed for implementation to meet the objectives of the plan, program and act. Moreover, a comparative review indicates that these strategies describe proposed actions at a level of specificity that is at least the equivalent of, and in most cases far more specific than, the measures in past versions of the fish and wildlife program, most notably the 1994-95 program measures that will be replaced by the measures in the subbasin plans.

With the assistance of the comments and advice on this issue, and with careful consideration of the act and of how the next project review and recommendation process will be structured, the Council concluded that the draft subbasin plans had sufficiently detailed measures (primarily their “strategies”) to guide a future Section 4(h)(10)(D) project selection process. That is, a Section 4(h)(10)(D) process would call for proposals for particular projects that are demonstrably linked to the objectives and strategies (that is, the measures) in a subbasin plan. The comments supported the Council’s conclusion that the strategies in the proposed subbasin plans were sufficient to serve as the “measures” for program implementation, and that the Council need neither hold up adoption of the subbasin plans to add more specific measures to the plans, nor immediately follow subbasin plan adoption with a program amendment process calling for more specific subbasin measures.

General Comment 2: Delay adoption of final amendments pending resolution of additional issues about the amendment process and next steps for program. As noted above, there were several broad process issues raised in the public comment on the recommendations concerning the role and use of subbasin plans, the “roll-up” of subbasin plan objectives and strategies to broader, provincial- and basinwide-scale objectives, the “measures” issue discussed above, questions about the shape of future project selection processes, the

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relationship of subbasin plans and the program to recovery planning under the federal Endangered Species Act, and how the Council might go about adopting the management plan components of subbasin plans into the programs yet allow for their periodic updating to allow the plans to be “living documents.” And as also noted above, the Council released an issue paper in October 2004 on these broad process issues, seeking comments and suggestions on how best to explain further the role of subbasin plans to clarify any remaining confusion and what steps to take next with regard to planning and implementation. This parallel comment process ran concurrently with the public comment opportunity on the first set (Track 1) of draft subbasin plan amendments and, subsequently, the second set (Track 2).

A few commenters on this first set of subbasin plans, of particular note the Nez Perce Tribe and the Confederated Tribes of the Umatilla Indian Reservation, recommended that the Council delay its decision to adopt any draft amendments as subbasin plans into the program until the Council addressed and resolved these broader process issues. These commenters focused particularly on the need to assess what the subbasins plans add up to from a collective vantage point at broader provincial- and basin- or program-wide scale. On the other hand, most of the commenters -- the great majority -- including a number of fish and wildlife managers and Bonneville, encouraged the Council to continue on the schedule it had set for considering and adopting the subbasin plans into the program while working on these broad process issues.

Council Response: As noted above, the Council created a special comment opportunity in October 2004 on this set of broad process-oriented issues raised on the recommendations, with a commitment to resolve the issues before completing the final adoption of the very last of the recommended subbasin plans. The Council met this commitment, coming to a resolution on these issues in the spring of 2005, after adoption of the Track 1 and 2 plans, but before final adoption of the other plans. The substance of these broad process issues, and the Council’s treatment and disposition of them, are presented in Section III below.

The Council concluded that there was nothing about the resolution of these broader issues that would require changing the recommended subbasin plans *before* program adoption or changing the schedule to consider the plans for adoption. These broader questions went to how to aggregate, assess and make use of the subbasin plans once adopted, and did not suggest any required changes in the plans themselves. On the point about aggregating or “rolling up” subbasin objectives to broader-scale province or program objectives, it is worth noting that the 2000 Program explicitly states that development of broader provincial objectives would take place *after* the development and adoption of subbasin-scale amendments to the fish and wildlife program. The Council decided in the 2000 Program to call for province-level planning and the setting of objectives, and to do so *after* the development of subbasin assessments and plans, based on the comments and advice from many, including fish and wildlife managers, that planning at these different levels would obviously be an iterative process. On the other issues, the Council saw the relationship of the subbasin plan amendments and program implementation to ESA-based planning as an ongoing coordination challenge, not one that would be resolved definitively at any one point in time, and that additional structure or design of the project selection process required by Section 4(h)(10)(D) of the Act beyond that established in the 2000 Program could and should be developed over a longer period of time. The Council decided to

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adopt the draft amendments as final program amendments without having resolved all of the broader issues to the complete satisfaction of all commenters.

General Comment 3: Comments offering corrections to assessments and inventories. A number of the comments received on the recommendations and then on the Track 1 draft subbasin plan amendments pointed out errors in the technical assessments or inventories for one or more of the subbasin plans. These were errors of the nature of a mis-labeled stream reach or the absence of an existing project from an inventory of projects in a table.

Council Response: None of the commenters asserted that the errors were of a nature to undermine the conclusions in the assessments or the reliance on the assessments in the management plans. The plans were developed and reviewed by those with local knowledge, and then by independent scientists.

The Council decided not to require that all the corrections offered in these comments be made before adopting the recommended Track 1 plans into the program. First, the Council was incapable of judging whether the technical errors identified in these comments were accurate. It did not seem an efficient use of resources to delay adoption of the subbasin plans for a month or more and reconvene the planning groups that developed the original recommendations to evaluate these suggested corrections, given that they were not of a material nature. Second, such an editorial exercise seemed inefficient given that the Council did *not* adopt the assessments and inventories formally into the program -- only the management plan element is adopted formally as part of the Program. One of the reasons not to adopt the assessment and inventory pieces is so that the technical assessments may be more easily updated and improved as new information is received or developed.

For the plans in Tracks 2 and 3, for which the Council asked the subbasin planners to correct certain substantive deficiencies, the Council made all the comments on the recommendations available to the planners to review and, if appropriate, correct any errors of this nature. Any such non-material corrections then offered in comments on the Track 2 and 3 plans as draft amendments were treated as explained above.

General Issue 4: The relationship of subbasin plan amendments to hydroproject relicensing. Comments from Avista Utilities on the Spokane and Coeur d'Alene plans and from a consultant on behalf of the Pend Oreille Public Utility District on the Pend Oreille plan raised an issue about the relationship of the subbasin plans and the Council's program to non-federal hydroprojects on the Columbia and its tributaries and especially to re-licensing proceedings for these projects pending before the Federal Energy Regulatory Commission.

Council Response: To the extent the comments stated that the objectives and strategies in the subbasin plans do not or should not apply to the non-federal hydroprojects or to conditions for fish and wildlife affected by these hydroprojects, this is not correct as a matter of law. The Power Act calls on the Council to adopt a program to protect, mitigate and enhance fish and wildlife affected by the development and operation of any hydroelectric program on the

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Columbia and its tributaries, without distinguishing between federal and non-federal projects. And then Section 4(h)(11) of the Power Act provides that the federal agencies responsible for “managing, operating, *or regulating* Federal *or non-Federal* hydroelectric facilities” must exercise those responsibilities taking into account the Council’s program to the fullest extent practicable at each relevant stage of decision-making. This provision clearly applies to FERC licensing and re-licensing of non-federal hydroprojects. The Council’s program has always included measures to address the effects of non-federal hydroprojects, and FERC has faithfully taken into account the Council’s program as it exercises its responsibilities. The subbasin plans, once adopted into the program, will be no different. FERC will have an obligation to consider these plans as they apply to any project undergoing relicensing.

The Council recognizes that as part of the FERC re-licensing process, a project license holder and FERC will have to assess the affect of the project on fish and wildlife, an assessment that will be one basis for the license holder to propose and FERC to decide on mitigation obligations. The commenters here are concerned of the implications if their assessments differ from the subbasin assessments, or the mitigation planning to address the project assessments reaches different conclusions on objectives and mitigation strategies than did the subbasin planners.

These comments raise a fair concern, but not an insurmountable problem. In preparing and evaluating any project assessment, and engaging in mitigation planning, FERC and the license holder will have to seriously consider the relevant subbasin assessment and management plan. But, the subbasin assessments and management plans are not binding on the agency. If differences emerge between the Council program’s approach and the conclusions developing in the FERC process, involving either the assessments or the proposed strategies to address the assessments, FERC and the license holders logically should consult with the Council and the relevant participants in the subbasin plan to try to resolve these differences, as an obvious aspect of taking the Council’s program into account to the fullest extent practicable. Ultimately, of course, FERC will have to reach its own independent conclusion, based on all the information before it and its multiple legal responsibilities.

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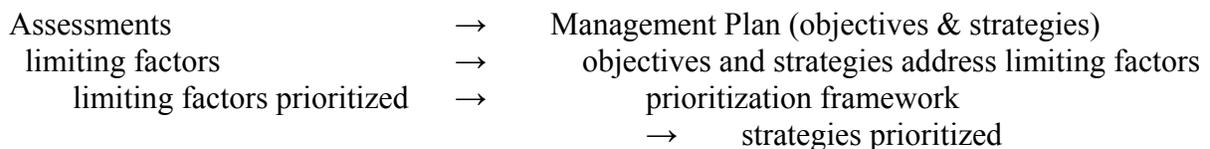
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Subbasin Recommendations in Track 2

As discussed in Section 1, after a review of the recommended subbasin plans and the comments on the recommendations, the Council identified a second set of plans that required additional work before they could be released by the Council for public review as draft amendments to the program. That is, the Council found each of these recommended plans -- and there were 23 of them in this Track 2 to begin with -- to be significantly deficient with respect to one or more of the nine issues identified in Section I above under the heading "Summary of the Issues Raised in the Public Comment on the Recommendations."

By far the most common and pervasive problem identified by the Council and public comment with this set of recommended plans related to what became known as the "linkage" issue. This is the logical connection and progression (or "linkage") that an acceptable plan must have from the key findings in the assessments to the objectives and strategies in the management plan sections of the plan recommendations, and further, how that "linkage" leads to an identification of priorities among the strategies in the plans.

Perhaps the key concept underlying the Council's call for subbasin plans consistent with the 2000 Program framework was to develop the objectives and strategies in the plans in such a way that they were driven by the biological problems identified first in the technical assessments. So the central question asked of every recommended subbasin plan was whether the objectives and strategies in the management plan had been linked to -- based in and driven by -- the biological problems and limiting factors identified in technically adequate assessments. A schematic that illustrates this concept is:



In a few instances, the plans in Track 2 were also deficient in explaining how artificial production strategies key to the program were related to other activities in the recommended plans. Even though, as discussed in Section I, the Council decided to route most of the near-term development of artificial production integration to the ongoing Artificial Production Review and Evaluation process, in a few instances in which the artificial production activities were found to be so key and closely connected to the Bonneville-funded program, the Council sought revisions to the recommended plans for that purpose.

The Council's response to the defects identified in the recommended plans through the comments and the Council's own review was to ask the recommending planners to improve their recommended plans. The planning groups that offered the plan recommendations to begin with were guided by the Council as to what improvements would allow the Council to find that the recommendations provisionally met the standards in the act and the 2000 Program and thus were eligible for release for public review and comment as draft program amendments.

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The Council asked the planners to make the improvements needed for the Track 2 plans in the form of a “supplement” to the original subbasin plan recommendations that would better explain and summarize: (1) the key factors limiting biological potential of the selected focal species in the subbasin (referencing the existing assessments); (2) which limiting factors were of priority to address first (if possible, and again referencing the existing assessments); (3) the description of the objectives and strategies, with an explanation and direct link as to how particular strategies addressed the limiting factors identified; (4) either a prioritizing of the strategies (related to the priority limiting factors) or a description of a “prioritization framework,” i.e., the criteria/considerations and procedures that would be used to develop and prioritize proposed actions in future project selection processes consistent with the assessment and linked strategies; and (5) how artificial production actions would integrate with the habitat objectives and strategies and help surmount problems identified in the assessments. The Council believed that responding to these concerns in this supplement fashion -- rather than trying to revise or edit or replace the original management plan recommendation -- would make for a more manageable effort and user-friendlier plan.

With regard to the issue of the prioritization of strategies within the recommended plan, in some cases the Council, with the advice gathered in the comment period, found the assessment portion of a plan recommendation adequate, as well as the basic linkage of strategies in the management plan to the assessment, but then found the management plan lacking in its development of strategy prioritization. If a plan recommendation lacked an explicit prioritization of strategies, but was otherwise sufficient in demonstrating how strategies linked to limiting factors in the assessments, the Council did not recommend that the plan be returned to the subbasin planners for further work *solely* on prioritization. This was because the Council expected that this type of additional detail could and would be prepared at the time of first implementation of the plan in the separate project selection process. However, where the Council sought revisions to the recommended plan for some *other* reason -- such as an assessment/strategies linkage problem or a failure to integrate artificial production adequately -- the planners were also asked to add a “prioritization framework” to the plan supplement.

The Council and Bonneville, coordinating with the planning groups, developed individualized statements of work and contracts for specific improvements for the Track 2 subbasin plan recommendations. Contracts for this purpose were executed in September 2004. By late November 2004, the subbasin planners submitted all of the revisions requested. The Council staff and state coordinators met and systematically reviewed the revisions to ensure each improved subbasin plan recommendation addressed the previously noted deficiencies. The staff, and then the Council, determined that overall the improvements were on point and of high quality and, when added to the plans, provisionally satisfied the standards in the act and 2000 Program for draft program amendments.

In addition to the 23 subbasin plan recommendations that the Council identified as needing additional work, the Council, with the support of the planners offering the recommendations, placed six additional subbasin plan recommendations from subbasins in the Lower Columbia province region in this Track 2 group. The Council did not do so because of a conclusion that the original plan recommendations were deficient, but rather, because the recommendations had been revised by the original planners after May 28, 2004, as part of a coordinated and related

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effort in Washington to produce a draft ESA recovery plan. Given that changes had been made, the Council and the recommending entities wanted to provide an opportunity for public review and comment on the most current version of the plan recommendations, and that meant moving them into Track 2.

With these improved plan recommendations in hand, the Council at its December 2004 meeting released for public review and comment this second set of what was now 29 improved subbasin plan recommendations as draft fish and wildlife program amendments. The Council received written comments on the draft program amendments, and held public hearings in all four states of the Columbia basin.

The Council did not receive extensive comments on these draft program amendments. What comments the Council did receive were largely favorable to the proposed amendments and urged Council adoption, with few or no changes. At its February 2005 meeting, the Council adopted 25 of the 29 recommended subbasin plans, as improved, into the program. Four subbasin plan recommendations -- for the Okanogan, Methow, Klickitat, and Lower Middle Mainstem subbasins -- were held over for additional consideration and comment and were adopted by the Council into the program at its March 2005 meeting. What follows is a description of each plan in Track 2, with a summary of any public comment on the draft amendments and then the Council's response to those comments and any required findings.

Boise, Payette and Weiser

The Boise, Payette and Weiser subbasin plans were submitted under one cover. The planning team for these plans was composed of staff from Ecovista, the Idaho Department of Fish and Game and the Idaho Council on Industry and the Environment. They were tasked with pulling the parts of the plan together under a single cover under the guidance of larger planning and technical teams, guided as well by informational materials provided by the Council, such as the Technical Guide for Subbasin Planners, and later the statement of work seeking improvements to the recommended plan. The Shoshone-Paiute Tribe then submitted the Boise, Payette, and Weiser subbasin plan package to the Council. The Council's review of the three recommended subbasin plans as improved through the subbasin plan supplement and the related administrative record demonstrated that both their substance and public involvement aspects were consistent with the act and the Council's 2000 Program.

Summary of public comment on the Boise, Payette and Weiser subbasin plans as draft program amendments:

US Bureau of Reclamation

- Suggested technical and editorial changes to the assessment, management plan and supplement.

Pat Barclay, Idaho Council on Industry and the Environment

- Concerned that planners were not given enough time to review plan and provide meaningful input.
- References to timber harvest and grazing were particularly negative.

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- Document had typos, outdated data and misinterpreted data.

Response to Comments: Technical and editorial changes can be made in future versions of the plans. The comments did not suggest problems that called into question the technical or scientific soundness of the plans or of their suitability for adoption into the program under the standards of the act or the 2000 Program.

Council Findings: No need for a formal finding. The Council did not reject the Boise, Payette and Weiser subbasin plan recommendations. Rather, the Council adopted the subbasin plan recommendations submitted in May 2004, after incorporating the supplements with the improvements to the plans prepared by the original planners and releasing the plans for public review in that form as draft program amendments.

Burnt and Powder

The Baker County Association of Conservation Districts, an organization composed of the various Soil and Water Conservation Districts in Baker County, led the planning team for the Burnt and Powder subbasin plans, guided by informational materials provided by the Council, such as the Technical Guide for Subbasin Planners, and later the statements of work seeking improvements to the recommended plans. The planning team included members from the U.S. Fish and Wildlife Service, the Oregon Department of Fish and Wildlife and the Bureau of Land Management.

The supplements prepared in November 2004 provided additional detail on key limiting factors for redband and bull trout, including the effect of fine sediment and high water temperatures relating to low flow and loss of riparian cover on spawning and incubation habitat, the impact of water quantity and quality on summer rearing and winter rearing, and physical obstructions from passage barriers for migration. The responses identified low flow as the primary factor for depressed populations and prioritized that factor in management actions, although the planners also recognized a need to deal holistically with the problems confronting focal species. The Council's review of the Burnt and Powder plans as improved through the subbasin plan supplements and the related administrative record demonstrated that both their substance and public involvement aspects were consistent with the standards in the act and the Council's 2000 Program.

Summary of public comment on the Burnt and Powder subbasin plans as draft program amendments:

US Bureau of Reclamation

- Suggested one and three editorial changes to the plans, respectively.

Response to Comments: Technical and editorial changes can be made in future versions of the plans. The comments did not suggest problems that called into question the technical or scientific soundness of the of the plans or of their suitability for adoption into the program under the standards of the act or the 2000 Program.

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Council Findings: No need for a formal finding. The Council adopted the Burnt and Powder subbasin plan recommendations submitted in May 2004, after incorporating the supplements with the improvements submitted by the recommending parties and releasing the recommended plans for public review in that form as a draft program amendment.

Clearwater

The Nez Perce Tribe, working with and through the Clearwater Policy Advisory Committee, led the development of the Clearwater subbasin plan, guided by informational materials provided by the Council, such as the Technical Guide for Subbasin Planners, and later the statement of work seeking improvements to the recommended plan. The planning process and structure built upon prior planning efforts as part of the Focus Watershed program that involved the Tribe and Idaho Soil Conservation Commission. The supplement prepared by the planners improved the recommended plan by clarifying plan structure and the prioritization. The Council's review of the Clearwater plan as improved through the subbasin plan supplement and the related administrative record demonstrated that both its substance and public involvement aspects were consistent with the standards in the act and the Council's 2000 Program.

Summary of public comment on the Clearwater subbasin plan as a draft program amendment:

Nez Perce Tribe

- The subbasin plan generally provided for, but did not provide *explicit* context for the Tribe's Resident Fish Substitution Program, conservation enforcement activities or harvest monitoring, and so the Tribe recommended specific language to address these matters.

Response to Comments: The Council finds that the objectives and strategies in the recommended plan include within their scope the implementation activities related to resident fish substitution, harvest monitoring, and conservation enforcement that concerned the Tribe. The plan is sufficient to support the Tribe if it desires to pursue these activities in future project selection processes. Given that finding, the Council did not believe that it would be equitable to further highlight or emphasize these particular activities without providing an opportunity to all planners and the public to emphasize other strategies or activities within the scope of the management plan.

Council Findings: No need for a formal finding. The Council adopted the subbasin plan recommendation submitted in May 2004, after incorporating the supplement with the improvements submitted by the recommending parties and releasing the recommended plan for public review in that form as a draft program amendment.

Deschutes

The Deschutes Coordinating Group led in the development of the plan, guided by informational materials provided by the Council, such as the Technical Guide for Subbasin Planners, and later the statement of work seeking improvements to the recommended plan. The

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Group encompassed a large and varied contingent of interests in the Deschutes Basin, including among others the Deschutes Resources Conservancy, Wy'East RC&D, the Oregon Department of Fish and Wildlife, Confederated Tribes of the Warm Springs Reservation, the City of Bend, Oregon Water Resources Department, U.S. Fish and Wildlife Service, all Deschutes watershed councils, and the Deschutes Land Trust. The Council's review of the recommended Deschutes plan as improved through the supplement and the related administrative record demonstrated that both its substance and public involvement aspects were consistent with the act and the Council's 2000 Program.

Summary of public comment on the Deschutes subbasin plan as a draft program amendment:

US Bureau of Reclamation

- Offered minor technical corrections to the plan.

Response to Comments: Technical and editorial changes can be made in future versions of the plans. The comments did not suggest problems that called into question the technical or scientific soundness of the plan or of its suitability for adoption into the program under the standards of the act or the 2000 Program.

Council Findings: No need for a formal finding. The Council adopted the subbasin plan recommendation submitted in May 2004, after incorporating the supplement with the improvements submitted by the recommending parties and releasing the recommended plan for public review in that form as a draft program amendment.

Entiat

The Yakama Nation and Chelan County prepared the Entiat subbasin plan, guided by informational materials provided by the Council, such as the Technical Guide for Subbasin Planners, and later the statement of work seeking improvements to the recommended plan. They developed the Entiat subbasin plan in coordination with five other subbasin plans in the upper Columbia region under the oversight of the Upper Columbia Salmon Recovery Board. The planners developed the subbasin plan simultaneously and in coordination with a draft ESA recovery plan for the area including the subbasin. The planners worked in coordination and consultation with the Washington Department of Fish and Wildlife, NOAA Fisheries, the U.S. Fish and Wildlife Service, and other state and local governmental entities. The Council's review of the recommended Entiat plan as improved through the subbasin plan supplement and the related administrative record demonstrated that both its substance and public involvement aspects were consistent with the act and the Council's 2000 Program.

Summary of public comment on the Entiat subbasin plan as a draft program amendment:

Chelan County Conservation District on behalf of the Entiat Watershed Planning Unit

- Recommended adopting the plan into the program
- Even though there are some deficiencies in the plan the document provided a good representation of the existing conditions and has provided reasonable conclusions in the key findings and management plan

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- The plan incorporated by reference the WRIA 46 management plan for the Entiat
- Subbasin plan is a living document intended to change over time, and thus the commenter looked forward to opportunities to periodically update the subbasin plan

Response to Comments: *See* the Council's discussion concerning the issue of how to update plans in Section III below.

Council Finding: No need for a formal finding. The Council adopted the subbasin plan recommendation submitted in May 2004, after incorporating the supplement with the improvements submitted by the recommending parties and releasing the recommended plan for public review in that form as a draft program amendment.

Imnaha

The Nez Perce Tribe led the planning for the Imnaha subbasin plan, with the Wallowa County Natural Resources Advisory Committee forming the planning team. The Committee included representatives from the Tribe, the County, the Oregon Department of Fish and Wildlife, and various federal land managers and local landowners. Work on the plan was guided by informational materials provided by the Council, such as the Technical Guide for Subbasin Planners, and later the statement of work seeking improvements to the recommended plan. The Council's review of the recommended Imnaha plan as improved through the subbasin plan supplement and the related administrative record demonstrated that both its substance and public involvement aspects were consistent with the act and the Council's 2000 Program.

Summary of public comment on the Imnaha subbasin plan as a draft program amendment:

Oregon Department of Fish and Wildlife

- Comments submitted by ODFW were not incorporated into the revised plan or the draft program amendment.
- Plan did not recognize many on-going monitoring and evaluation or habitat restoration efforts in the subbasin.
- Problems with focal species have not been fully described.
- Some habitat factors have been overstated.
- Plan does not provide an adequate basis for setting all future priorities.

Response to Comments: The collaborative nature of the planning exercise sought to develop recommendations that could be supported broadly while also meeting the act's standards. It is almost certainly the case that no one entity involved in subbasin planning in any area had all of its suggestions incorporated into the recommended plan. The fish and wildlife agency's comments did not go so far as to call into question the scientific soundness of the plan, nor did the comments suggest a lack of policy-level acceptance of the plan or that the plan was not suitable for adoption into the program under the standards of the act and the 2000 Program. The Council expects that the suggestions and comments not incorporated in this version of the plan, and the specific technical issues noted, can be revisited in future revisions of the plan. The plan's priorities were enhanced in the revisions, and can be further defined in the distinct future project selection processes.

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Council Findings: No need for a formal finding. The Council adopted the subbasin plan recommendation submitted in May 2004, after incorporating the supplement with the improvements submitted by the recommending parties and releasing the recommended plan for public review in that form as a draft program amendment.

Klickitat

The Yakama Nation prepared the Klickitat subbasin plan, with assistance from the Washington Department of Fish and Wildlife and opportunity for input from Klickitat County. Planning was guided by informational materials provided by the Council, such as the Technical Guide for Subbasin Planners, and later the statement of work seeking improvements to the recommended plan. The Council's review of the recommended Klickitat plan as improved through the subbasin plan supplement and the related administrative record demonstrated that both its substance and public involvement aspects were consistent with the act and the Council's 2000 Program.

Summary of public comment on the Klickitat subbasin plan as a draft program amendment:

Klickitat County Planning Department

- Klickitat County did not support the subbasin plan.
- Plan was produced without adequate participation by Klickitat County.
- None of the comments submitted by Klickitat County were addressed.
- Council should return the plan to the 'lead entities' and provide adequate time to organize a planning process to develop a plan that is consistent with the vision statement.
- Other comments from Klickitat County Board of Commissioners, landowners, Glenwood Community Council and the Conservation District each expressed the same concerns as the County (came in after the comment period on the draft amendments ended on January 31, 2004).

Response to Comments: Council members and staff met with Klickitat County representatives many times to try to address the concerns expressed in the comments. The Council provided funding resources to Klickitat County to participate in the development of the recommended subbasin plan. The Council delayed adopting the plan into the program for a month after the ordinary Track 2 schedule because of the concerns expressed in the comments, in order to have enough time to meet with state and local government officials and interested public to address these concerns. Throughout the course of the planning process, including in the late meetings with local and state officials, it appeared that the county's concerns focused more on process than on the substance or provisions of the plan itself. The county did not identify any particular substantive deficiency with the recommended subbasin plan.

The Council recognizes that some that some of the data or analyses in the plan may turn out not to be complete or accurate. Under the Power Act, the Council must act to develop its program on the best available scientific knowledge. While the Council is confident that the data and analyses in the plan are adequate to meet the standards in the act and the 2000 Program for developing, considering and adopting a subbasin plan, the Council does not represent or claim

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that each piece of data or analysis is definitive in other legal or regulatory contexts, which has been one concern of this and other commenters. That is, while it is true that the information in the plan may be an important starting point in other regulatory, planning, or legal processes, the standards for data and information in those other settings will control the force and effect of the information in those settings, and any party will be able to augment, contradict, or rely upon information in the plan as those other processes permit. Nothing about the Council adopting the subbasin plan recommended here will change how this underlying information is perceived in another context. Similarly, the Council's program is not regulatory in nature, and the mere fact that the plan suggests that the pursuit of a certain strategy, activity or objective in a tributary would benefit fish and wildlife, the Council's act of adopting the plan does not and cannot impose on any party the obligation to undertake those actions. Rather, adopting the plan as part of the program makes it possible for others to access Bonneville funding for the offsite mitigation activities outlined in the plan, provided that these actions or Bonneville funding for them are not foreclosed by specific limitations in the act (e.g. the prohibition on Bonneville funding replacing funding required from other parties) or other local, state or federal laws.

Finally, the fish and wildlife managers with jurisdiction in the subbasin supported this recommended plan as a program amendment. The act directs the Council to give significant weight to the recommendations of those parties. The continued support of those parties for the Klickitat plan is significant and weighed heavily in the plan's favor for adoption against the county's objections.

Council Findings: No need for a formal finding. The Council adopted the subbasin plan recommendation submitted in May 2004, after incorporating the supplement with the improvements submitted by the recommending parties and releasing the recommended plan for public review in that form as a draft program amendment. The act does not require a formal finding in response to the county's comments objecting to the recommend plan and draft amendment.

Lower Middle Mainstem Columbia

The Yakama Nation prepared the Lower Middle Mainstem subbasin plan, with assistance from the Washington Department of Fish and Wildlife and opportunity for input from Klickitat County. During the time the planners worked on the supplement to improve the plan, the Oregon Department of Fish and Wildlife added information about Oregon and the mainstem Columbia. Planning was guided by informational materials provided by the Council, such as the Technical Guide for Subbasin Planners, and later the statement of work seeking improvements to the recommended plan. The Council's review of the recommended Lower Middle Mainstem plan as improved through the supplement and the related administrative record demonstrated that both its substance and public involvement aspects were consistent with the act and the Council's 2000 Program.

Summary of public comment on the Lower Middle Mainstem subbasin plan as a draft program amendment:

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Klickitat County Planning Department

- Inadequate time for review.
- Klickitat County disagreed with numerous findings, objectives, and strategies found in the subbasin plan, such as the proposal to enact a moratorium on mainstem water withdrawals.
- Council should return the plan to the ‘lead entities’ with adequate time to organize a satisfactory planning process

Daniel H. Lichtenwald

- Consider including discussion of three industrial wind energy projects that are in the permitting/appeal stage: Bighorn, White Creek and Windricity Projects.
- Include notation that many shorebird species have been observed using wetlands during their migrations through the subbasin.

Letter from Attorney James Buchal (not submitted as comment) stating that the strategy dealing with a water withdrawal moratorium was not consistent with the Power Act.

Response to Comments: The county raised the same or similar comments with regard to the recommended Klickitat plan and draft amendment. The Council’s response above to the Klickitat plan comments responds to the county’s comments here, too, and is incorporated here by that reference. The suggestions from Mr. Lichtenwald do not call into question the soundness of the plan, and can be addressed in future versions of the plan. With regard to Mr. Buchal’s comment, the Council notes that the simple act of adopting a plan that contains a strategy dealing with water withdrawal limitations does not in any way modify, affect, or abridge any water rights or laws and thus is not inconsistent with the Power Act. Other legal processes or actions that actually govern water rights would be required to effect an actual change in any recognized or claimed water right.

Council Findings: No need for a formal finding. The Council adopted the subbasin plan recommendation submitted in May 2004, after incorporating the supplement with the improvements submitted by the recommending parties and releasing the recommended plan for public review in that form as a draft program amendment. The act does not require a formal finding in response to the county’s comments objecting to the recommend plan and draft amendment.

Lower Middle and Upper Middle Snake

The Shoshone-Paiute Tribes was the lead entity for the development of these plans. The tribes hired two contractors to help organize the planning teams and to help write plan documents: Ecovista and the Idaho Council on Industry and the Environment (ICIE). The Idaho Department of Fish and Game (IDFG) helped develop the assessment and inventory for the subbasins. Planning was guided by informational materials provided by the Council, such as the Technical Guide for Subbasin Planners, and later the statement of work seeking improvements to the recommended plans. The Council’s review of the recommended Lower Middle Snake and Upper Middle Snake plans as improved through the supplement and the related administrative

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record demonstrated that both substance and public involvement aspects were consistent with the act and the Council's 2000 Program.

The same group that completed the Burnt and Powder subbasin plans recommended to the Council a separate plan for the Brownlee Reservoir area in the middle Snake. This other plan largely concerned wildlife species on a few streams that feed into the Brownlee Reservoir. The Council included that Brownlee area plan as an element of the Burnt and Powder plans.

Summary of public comment on the Lower Middle and Upper Middle Snake subbasin plans as draft program amendments:

Owyhee Cattlemen's Association, Idaho Farm Bureau Federation, and Jerry Hoagland

- All were concerned with the characterization of livestock grazing in the subbasin assessment and in the supplement implying that all grazing causes habitat degradation. Urged that the plan distinguish between improper grazing and properly managed grazing of livestock.

Response to Comments: The Council concluded that it would be appropriate to make the language change suggested by the commenters, inserting the word "improper" where grazing impacts are characterized.

Council Findings: No need for a formal finding. The Council adopted the subbasin plan recommendation submitted in May 2004, after incorporating the supplement with the improvements submitted by the recommending parties and releasing the recommended plan for public review in that form as a draft program amendment.

Lower Columbia tributary subbasin plans (Cowlitz, Elochoman, Grays, Kalama, Lewis, Little White Salmon, Washougal and Wind subbasins)

The Lower Columbia Fish Recovery Board prepared subbasin plans for eight tributaries of the Columbia on the Washington side of the Columbia Gorge, lower Columbia and estuary provinces -- the Cowlitz, Elochoman, Grays, Kalama, Lewis, Little White Salmon, Washougal and Wind subbasins. The Recovery Board developed the plans simultaneously and in coordination with the plans for the Lower Columbia and the Estuary (see below), with state watershed plans for many of the subbasins, and with an integrated draft ESA recovery plan for the Washington side of this part of the river. Planning was also guided by informational materials provided by the Council, such as the Technical Guide for Subbasin Planners. All of these plans were developed in coordination and consultation with relevant tribes, the Washington Department of Fish and Wildlife, the Oregon Department of Fish and Wildlife, the Lower Columbia River Estuary Partnership, NOAA Fisheries, the U.S. Fish and Wildlife Service, the U.S. Army Corps of Engineers, EPA and other state and local governmental entities. The Council's review of these recommended plans developed by the Recovery Board and the related administrative record demonstrated that both their substance and public involvement aspects were consistent with the act and the Council's 2000 Program.

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No public comment on the Lower Columbia tributary subbasin plans as draft program amendments

Council Findings: No need for a formal finding. The Council adopted the subbasin plan recommendations submitted in May 2004, after incorporating revisions submitted by the recommending entity (the Recovery Board) and releasing the recommended plans for public review in that form as draft program amendments.

Lower Columbia River and Columbia Estuary

The plans were developed through a bi-state effort of Washington and Oregon. The Lower Columbia River Estuary Partnership, a bi-state organization, led the planning effort with assistance from Washington's Lower Columbia Fish Recovery Board. Planning was guided by informational materials provided by the Council, such as the Technical Guide for Subbasin Planners, and later the statements of work seeking improvements to the recommended plans. The Council's review of the recommended Lower Columbia and Estuary plans as revised and the related administrative record demonstrated that both substance and public involvement aspects were consistent with the act and the Council's 2000 Program.

No public comment on the Lower Columbia River and Columbia Estuary subbasin plans as draft program amendments

Council Findings: No need for a formal finding. The Council adopted the subbasin plan recommendations submitted in May 2004, after incorporating revisions submitted by the recommending entity (the Estuary Partnership) and releasing the recommended plans for public review in that form as draft program amendments.

Methow

Okanogan County and Washington Department of Fish and Wildlife (WDFW) prepared the Methow subbasin plan, guided by informational materials provided by the Council, such as the Technical Guide for Subbasin Planners, and later the statement of work seeking improvements to the recommended plan. The planners developed the Methow subbasin plan in coordination with five other subbasin plans in the Upper Columbia region under the oversight of the Upper Columbia Salmon Recovery Board, developing the plan simultaneously and in coordination with a draft ESA recovery plan for the area. The plan was developed in coordination and consultation with the Colville Tribe, NOAA Fisheries, the U.S. Fish and Wildlife Service, and other state, tribal and local governmental entities. In preparing the supplement, the planners responded as much as possible also to numerous comments of both a general and specific nature that the Council received on the recommended plan. The Council's review of the recommended Methow plan as improved through the subbasin plan supplement and the related administrative record demonstrated that both its substance and public involvement aspects were consistent with the act and the Council's 2000 Program.

No public comment on the Methow subbasin plan as a draft program amendment

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Council Findings: The Council adopted the subbasin plan recommendations submitted to the Council in May 2004, after incorporating the supplement with the improvements submitted by the recommending entities and releasing the recommended plan for public review in that form as a draft program amendment. During the work on the subbasin plan supplement, the county (one of the lead planning entities that recommended the subbasin plan) proposed that a particular project prioritization framework be added to the plan and submitted to the Council. The Council could not include these provisions in a subbasin plan adopted into the program because they would restrict the Power Act and the Council's actions under the act in a way the text of the act does not support and Congress did not intend. The county is free to use this prioritization framework for its own local decisionmaking purposes. During this same period the other planning participants did develop and propose a different, revised prioritization framework for the subbasin plan supplement and submitted it to the Council. The Colville Tribe, the Washington Department of Fish and Wildlife, and the Recovery Board supported this revision, which the Council adopted into the program as part of the Methow subbasin plan.

Okanogan

The Colville Confederated Tribes and Okanogan County prepared the Okanogan subbasin plan, guided by informational materials provided by the Council, such as the Technical Guide for Subbasin Planners, and later the statement of work seeking improvements to the recommended plan. The planners developed the Okanogan subbasin plan in coordination with five other subbasin plans in the Upper Columbia region under the oversight of the Upper Columbia Salmon Recovery Board, developing the plan simultaneously and in coordination with a draft ESA recovery plan for the area. The plan was developed in coordination and consultation with the Washington Department of Fish and Wildlife, NOAA Fisheries, the U.S. Fish and Wildlife Service, and other state and local governmental entities. The Council's review of the recommended Okanogan plan as improved through the subbasin plan supplement and the related administrative record demonstrated that both its substance and public involvement aspects were consistent with the act and the Council's 2000 Program.

Summary of public comment on the Okanogan subbasin plan as a draft program amendment:

Okanogan County

- Recommended a local process for making decisions about which projects to recommend for Bonneville funding under the Northwest Power Act.
- In a meeting with Council members and staff during a one-month delay in the Council's schedule for considering the adoption of the draft amendments into the program, county representatives indicated the county could not support the plan.

Response to Comments: The prioritization framework recommended by the county could not be included within the subbasin plan because it would restrict the Power Act and the actions of the Council under the Power Act in a way the text of the act does not support and Congress did not intend. The county is free to use this framework for local decisionmaking purposes. As part of the effort to prepare the subbasin plan supplement, the rest of the planning group included a prioritization framework that significantly improved that element of the original recommendation. The Council is disappointed that it could not secure the express support of the

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county for adopting the plan. But given the support for the plan from others, including the fish and wildlife managers with jurisdiction in the area, the Council concluded that the plan should be adopted. The Council will continue to work with the county to gain support for implementation of the adopted plan and for future versions of the Okanogan subbasin plan.

Council Findings: No need for a formal finding. The Council adopted the subbasin plan recommendation submitted in May 2004, after incorporating the supplement with the improvements submitted by the recommending parties and releasing the recommended plan for public review in that form as a draft program amendment. The act does not require a formal finding in response to the county's comments expressing a lack of support for the plan.

Snake Hells Canyon

The Nez Perce Tribe served as lead entity for subbasin planning for the Snake Hells Canyon subbasin. The Tribe's contractor, Ecovista, organized and facilitated the planning and technical teams. Planning was guided by informational materials provided by the Council, such as the Technical Guide for Subbasin Planners, and later the statement of work seeking improvements to the recommended plan. The Council's review of the recommended Snake Hells Canyon plan as revised and the related administrative record demonstrated that both its substance and public involvement aspects were consistent with the act and the Council's 2000 Program.

No public comment on the Snake Hells Canyon subbasin plan as a draft program amendment

Council Findings: No need for a formal finding. The Council adopted the subbasin plan recommendation submitted in May 2004, after incorporating the supplement with the improvements submitted by the recommending parties and releasing the recommended plan for public review in that form as a draft program amendment.

Walla Walla

The Walla Walla subbasin plan was a bi-state effort of Washington and Oregon. Walla Walla County for the Walla Walla Watershed Planning Unit (Washington) and the Walla Walla Basin Watershed Council (Oregon) led the planning effort in their respective states, with technical support from the Confederated Tribes of the Umatilla Indian Reservation, Washington Department of Fish and Wildlife and Oregon Department of Fish and Wildlife. Planning was guided by informational materials provided by the Council, such as the Technical Guide for Subbasin Planners, and later the statement of work seeking improvements to the recommended plan.

The subbasin plan as originally recommended in May 2004 incorporated an EDT assessment. During the effort to prepare a supplement to the subbasin plan, the planners had the opportunity to run eight additional EDT scenarios and use the resulting information in preparing the supplement. Those scenarios include variations in flow (2 scenarios), passage (1) and habitat changes (5). The originally recommended plan prioritized geographic areas for necessary habitat work; the supplement added a more comprehensive prioritization framework for aquatic habitat and species, terrestrial habitat and species and process steps and additional considerations. All

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priority geographic areas incorporated EDT assessments results, the focal species affected, limiting factors and affected life stages, and habitat objectives. The supplement also provided additional detail on information in the Oregon portion of the subbasin, allowing the Walla Walla Watershed Council to be able to endorse the plan. The Council's review of the recommended Walla Walla subbasin plan as improved through the supplement and related administrative record demonstrated that both its substance and public involvement aspects were consistent with the act and the Council's 2000 Program.

Summary of public comment on the Walla Walla subbasin plan as a draft program amendment:

Garden Farms Irrigation District No. 13, Columbia County Board of Commissioners, City of Walla Walla and County of Walla Walla

- Supported the Walla Walla subbasin plan and supplement submitted in November 2004. Each also recognized the need for further refinements, improved scientific understanding, and ongoing discussion for noted areas of disagreement.

Council Findings: No need for a formal finding. The Council adopted the subbasin plan recommendation submitted in May 2004, after incorporating the supplement with the improvements submitted by the recommending parties and releasing the recommended plan for public review in that form as a draft program amendment.

Wenatchee

The Yakama Nation and Chelan County prepared the Wenatchee subbasin plan, guided by informational materials provided by the Council, such as the Technical Guide for Subbasin Planners, and later the statement of work seeking improvements to the recommended plan. The planners developed the Wenatchee subbasin plan in coordination with five other subbasin plans in the Upper Columbia region under the oversight of the Upper Columbia Salmon Recovery Board, developing the plan simultaneously and in coordination with a draft ESA recovery plan for the area. The plan was developed in coordination and consultation with the Washington Department of Fish and Wildlife, NOAA Fisheries, the U.S. Fish and Wildlife Service, and other state and local governmental entities. The Council's review of the recommended Wenatchee plan as improved through the subbasin plan supplement and the related administrative record demonstrated that both its substance and public involvement aspects were consistent with the act and the Council's 2000 Program.

No public comment on the Wenatchee subbasin plan as a draft program amendment

Council Findings: No need for a formal finding. The Council adopted the subbasin plan recommendation submitted in May 2004, after incorporating the supplement with the improvements submitted by the recommending parties and releasing the recommended plan for public review in that form as a draft program amendment.

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Yakima

The Yakima Subbasin Fish and Wildlife Planning Board prepared the Yakima subbasin plan, guided by informational materials provided by the Council, such as the Technical Guide for Subbasin Planners, and later the statement of work seeking improvements to the recommended plan. This Planning Board developed the Yakima subbasin plan simultaneously and in coordination with a draft ESA recovery plan for the subbasin. The plan was developed in coordination and consultation with Yakima County, Benton County, the Yakama Nation, the Washington Department of Fish and Wildlife, NOAA Fisheries, the U.S. Fish and Wildlife Service, the U.S. Bureau of Reclamation and other state and local governmental entities. The Council's review of the Yakima plan as improved through the subbasin plan supplement and the related administrative record demonstrated that both its substance and public involvement aspects were consistent with the act and the Council's 2000 Program.

Summary of public comment on the Yakima subbasin plan as a draft program amendment:

U.S. Fish and Wildlife Service (Wenatchee Field Office)

- USFWS suggested 25 modifications to the plan that ranged from technical and editorial corrections to more substantive language changes. The changes covered a range of issues including bull trout, artificial production, and reintroduction sections of the plan.

Response to Comments: The editorial and substantive changes suggested by the Service came well after the planning process ran its course and the plans and supplements had been submitted to the Council. The Council understands that all plans may be improved in future versions along the lines suggested by the commenters, and that not all participants saw everything they proposed included in this version of the plans. But in this case, as in many others, the issues raised in the comments did not call into question the overall technical or scientific soundness of the plan or its suitability for adoption into the program under the standards of the act and the 2000 Program. The Council will make non-substantive corrections identified by the commenter in the publication process.

Council Findings: No need for a formal finding. The Council adopted the subbasin plan recommendation submitted in May 2004, after incorporating the supplement with the improvements submitted by the recommending parties and releasing the recommended plan for public review in that form as a draft program amendment. The comments of the Service did not go so far as to call into question the overall soundness of the plan, nor did they evidence a policy-level objection to adopting the plan.

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Subbasin Recommendations in Track 3

A third set of subbasin plan recommendations submitted to the Council in May 2004 had significant deficiencies. This included the three Upper Snake subbasin plan recommendations and the subbasin plan recommendations for the Grande Ronde, John Day, Palouse and Crab Creek subbasins. Generally speaking, the public comment on these recommendations and the Council's own review revealed that the assessment elements were so inadequate or incomplete as to fail as the basis for a management plan that could be used to define the Council's program and guide Bonneville funding of fish and wildlife activities. After consultation with representatives of the recommending entities and of the relevant states and tribes, the Council decided to ask for revisions for each of the recommended subbasin plans by December 31, 2004, *except* for the Crab Creek and Palouse subbasins.

The Council decided not to ask for revisions to those two plans for several reasons. First, the recommendations were substantially deficient in meeting the standards in the act and 2000 Program for subbasin plans to be included into the program. Second, these subbasins do not currently participate in any significant way in the Bonneville-funded fish and wildlife program, and, given existing and competing priorities, the Council did not foresee increased participation in the near future. Finally, the remaining funding available for the planning exercise was limited, and it was determined that remaining resources should be dedicated to improving the recommended plans in Track 2 and the other subbasin plans in this last group, which cover critical areas in the Council's on-going program.

The Council, with the advice of those planning entities offering the original recommendations for the Upper Snake, Grande Ronde, and John Day subbasins approved a response period through the end of the Master Contract period of December 31, 2004, for these Track 3 plans. As it did with the Track 2 plans discussed above, the Council developed detailed, task-based statements of work for the required revisions, and the coordinators and planners developed proposed budgets against those statements.

The recommending entities for the three Upper Snake subbasin plans and the Grande Ronde subbasin plan submitted revised subbasin plans prior to the December 31, 2004 deadline. The central and state Council staff, with the assistance of the state coordinators, reviewed the revised plans against the statements of work. The general conclusion of the staff and ultimately of the Council was that the revisions were of high quality, addressing the deficiencies noted in the original reviews, and significantly enhancing the recommended subbasin plans that they related to. The Council released for public review and comment these revised subbasin plan recommendations as draft program amendments at the Council's March 2005 meeting. The comment period on these draft program amendments was open through April 22, 2005, and the Council conducted public hearings in each of the four states. The Council then adopted final program amendments for these subbasin plans at its May 2005 meeting.

Revisions in the John Day continued past December 31, 2004, but the work occurring after that date was paid for by the State of Oregon. The planners submitted the revised John Day subbasin plan to the Council in March 2005, and the Council released it for public review and comment at its April 2005 meeting. The Council included the John Day plan in the public

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hearings on the Track 3 plans in each of the four states. The Council then adopted the John Day subbasin plan as a final program amendment at its June 2005 meeting.

Public comments on these five subbasin plan draft amendments was extremely limited. This public comment, the Council's responses and applicable findings are presented below.

Grande Ronde

The Grande Ronde Model Watershed developed the original subbasin plan recommendation and prepared the revisions. The Model Watershed has a fourteen-member board representing the various federal, state and tribal governments and private interests in the Grande Ronde.

The Model Watershed responded to several problems identified with the initial Grande Ronde subbasin plan recommendation. The Grande Ronde plan, as initially presented, lacked sufficient detail and linkage to artificial production strategies under consideration within the program and the basin. Planners also had to complete the initial loading of subbasin data into the Ecosystem Diagnosis and Treatment assessment model, and then take the complete assessment information and analysis and link the strategies in the management plan to that completed assessment. The planners responded to each of these concerns in the revised plan submitted to the Council.

No public comment on the Grande Ronde subbasin plan as a draft program amendment

Council Findings: No need for a formal finding. The Council did not reject the Grande Ronde subbasin plan recommendation. Rather, the Council adopted the subbasin plan recommendation submitted in May 2004 after incorporating the subsequent revisions by the original planners and submitted by the recommending entity, the Grande Ronde Model Watershed, and then released for public review in that form as a draft program amendment.

Upper Snake, Upper Snake Closed and Snake Headwaters

The Upper Snake plan was submitted as one document that covers the entire Upper Snake province -- three subbasins. The Upper Snake plan is the uppermost province of the Snake River system and includes areas within Idaho, Wyoming, Utah, and Nevada. The Shoshone Bannock Tribes worked with CH2M Hill, the Idaho Department of Fish and Game and many other state, federal and local interests to develop the plan.

The Council asked the planners to respond to several problems with the initial Upper Snake plan recommendation identified during the review of the recommendation. The Upper Snake plan as initially presented lacked a complete assessment, leaving reviewers unable to review adequately the management plan. Within the response period, the planners adequately addressed the limiting factors, the biological objectives and the linkages between the two and also provided a framework for which they could later prioritize projects in the implementation phase.

Summary of public comment on the Upper Snake subbasin plans as draft program amendments:

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- Several private citizens attended a public hearing in Pocatello, Idaho on the draft amendments, and there was a general question and answer-type conversation. They did not offer comments on the specific plans.

Council Findings: No need for a formal finding. The Council adopted the subbasin plan recommendation submitted in May 2004 after incorporating the subsequent revisions offered by the original planners and recommending entity and then released for public review in that form as a draft program amendment.

John Day

The John Day Subbasin Coordination Team, led by the Columbia Blue Mountain RC&D, developed the John Day subbasin plan. A large group of stakeholders including state and federal agencies, tribal governments, local Soil and Water Conservation districts, watershed councils and non-governmental entities contributed to the development of the John Day plan.

The use of the EDT assessment tool posed a significant challenge for the subbasin planners in the John Day. The team identified more than 1,200 individual reaches for rating on EDT parameters. By May 2004, the team had rated about 800 of the reaches, insufficient for a complete EDT analysis and thus for a complete technical assessment upon which to base a management plan. The results of the original EDT runs also turned up some anomalous results. Thus, the original plan submitted had flaws that the Council asked planners to rectify. Supplemented with funding from the Oregon Watershed Enhancement Board, the revised John Day plan includes a complete EDT analysis, a completed technical assessment, and a significantly improved and well-linked management plan that addressed the Council's concerns.

Summary of public comment on the John Day subbasin plan as a draft program amendment:

Steve Anderson (landowner)

- Offered testimony that he would like to have seen the plan encourage the Bureau of Land Management to adopt stronger fire suppression policies to protect habitat work done in small watersheds.

Linda Brown (Warm Springs Tribe, John Day Office)

- Supported the subbasin plan.

Response to Comments: Mr. Anderson's comment is noted, and this is an issue that he or others should pursue in future versions of the plan. The comment was presented as a point of information and not as an objection to the Council adopting the draft amendment into the program.

Council Findings: No need for a formal finding. The Council adopted the subbasin plan recommendation submitted in May 2004 after incorporating the subsequent revisions offered by the original planners and recommending entity (the Columbia Blue Mountain RC&D) entitled

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John Day Subbasin Revised Draft Plan (March 15, 2005), and then released for public review as a draft program amendment.

Crab Creek

The Washington Department of Fish and Wildlife developed and submitted the Crab Creek subbasin plan recommendation. For the reasons explained above, the Council, after consultations with various participants in subbasin planning, chose not to seek revisions to the Crab Creek plan after the original review of the recommended plan uncovered a number of deficiencies. WDFW did not object to this decision, nor did any other entity or person.

Council Findings: The Council did not adopt the subbasin plan recommendation for Crab Creek. The Council's decision was heavily influenced by the comments provided by the independent scientists that the technical and scientific foundation in the assessment was seriously deficient and not an adequate basis for developing a management plan, that the inventory required more work, and that the management plan was unusable for guiding fish and wildlife actions. The Council's own review concurred with that offered by the scientists. While not repeated here, the entirety of the comment offered by the independent scientists is incorporated herein by reference as explanation for the Council's decision to not adopt this recommendation.

The Council consulted with WDFW about the desirability of undertaking the significant revisions required to remedy deficiencies identified in the plan, and it was agreed that this would not be done in this amendment cycle. The Council will work to secure recommendations for a Crab Creek subbasin plan that meets the act's standards in future amendment processes.

The Council decided not adopt the recommendation as the record demonstrated that including this recommendation into the program would not advance the protection, mitigation, and enhancement of fish and wildlife affected by the hydroelectric facilities (Power Act Sections 4(h)(5), 7(A)) and also because the Council could not conclude that the recommendation was supported by the best available scientific knowledge (Sections 4(h)(6)(B), (7)(B)).

Palouse

The Palouse-Rock Lake Conservation District developed and submitted the Palouse subbasin plan recommendation. For the reasons explained above, the Council, after consultations with various participants in subbasin planning, chose not to seek revisions to the Palouse plan after the original review of the recommended plan uncovered a number of deficiencies. The Conservation District did not object to this decision, nor did any other entity or person.

Council Findings: The Council did not adopt the subbasin plan recommendation for the Palouse subbasin. The Council's decision was heavily influenced by the comments provided by the independent scientists that the technical and scientific foundation in the assessment was seriously deficient, and that overall, the recommendation failed to meet many standards for the program. The Council's own review concurred with that offered by the scientists. While not repeated here, the entirety of the comment offered by the independent scientists is incorporated herein by reference as explanation for the Council's decision to not adopt this recommendation.

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The Council consulted with the Conservation District about the desirability of undertaking the significant revisions required to remedy deficiencies identified in the plan, and it was agreed that this would not be done in this amendment cycle. The Council will work to secure recommendations for a Palouse subbasin plan that meets the act's standards in future amendment processes.

The Council decided not adopt the recommendation as the record demonstrated that including this recommendation into the program would not advance the protection, mitigation, and enhancement of fish and wildlife affected by the hydroelectric facilities (Power Act Sections 4(h)(5), 7(A)) and also because the Council could not conclude that the recommendation was supported by the best available scientific knowledge (Sections 4(h)(6)(B), (7)(B)).

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Section III Broad Process Issues Raised in the Two Public Comment Periods and the Council's Responses

As the amendment process record developed through the middle of October 2004, comments submitted on the subbasin plan recommendations came in two very different categories -- comments related directly to the adequacy of particular proposed subbasin plans, and comments about the subbasin planning and fish and wildlife program amendment processes generally. This second group of comments was collateral to the question of whether or not the recommended subbasin plans met the standards for adoption into the program. But the Council considered that second group of broad process-related comments worthy of further consideration, as raising important matters regarding future or additional fish and wildlife program development and program implementation.

So, on October 22, 2004, the Council released a paper seeking public comment on a set of five broad process and planning topics that had arisen during the comment period on the subbasin plan recommendations: 1) subbasin plan level of specificity and implementation; 2) subbasin plan "roll-up" as related to basinwide fish and wildlife objectives; 3) project selection/prioritization; 4) recovery planning under the federal Endangered Species Act; and 5) whether and how to update the management plan components of subbasin plans to be adopted into the program. The Council initiated a regional dialogue on these issues as part of this fish and wildlife program amendment process with the release of the October 2004 issue paper, taking written comments for thirty days. The Council also directed its staff to engage in discussions with interested parties on these matters. Meetings and discussions with interested persons and entities were conducted through February 2005.

The comment period on the five topics identified in the October 2004 letter ran concurrently with the public comment period on the first set (Track 1) of recommendations released by the Council as draft program amendments. Comments submitted on those draft amendments identified two more broad issues -- the relationship of subbasin plans adopted into the program to private entities, especially non-federal hydropower licensees on the Columbia, and Bonneville's "responsibility" to fund activities identified in the adopted plans.

In March of 2005, after much discussion and consideration, the Council released a letter advising the public how it viewed the five original broad process issues and the two additional issues presented in comment on the Track 1 plans. That March 2005 notice letter continues to be the Council's response to these issues, and the following material draws directly from that original notice.

Process Issue 1: Level of specificity in the subbasin plans -- comments that encouraged the addition of more specific implementation plans or implementation actions to the subbasin plans. This is an issue about the level of specificity of the actions included in the subbasin plans and thus the program. Several of the comments couched the issue in a legal argument about the definition of the term "measures" as used in section 4(h) of the Power Act, a term not defined in the act or in the adopted fish and wildlife program. Some comments questioned whether the objectives, strategies and other provisions in the subbasin plans were adequate to serve as the

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“measures” for the fish and wildlife program as envisioned in the act, and if not, what further process might be needed to add more specificity to the subbasin plans.

This issue includes the “measures” issue presented and responded to as General Comment 1 in Section II of this document.

Council Response: The Council’s response presented for General Issue 1 in Section II is adopted here as well. That response is augmented with the following:

The adopted subbasin plans contain “measures” that the act calls for to constitute the Program. “Measure” is not defined in the Act. The common definition is “a step planned or taken as a means to an end.” That is what the strategies in the subbasin plans are -- the actions or steps or “measures” proposed for implementation as means to protect, mitigate and enhance fish and wildlife, consistent with the provisions of the act and program and with the goals and objectives in the subbasin plan. The subbasin plan strategies are similar to, if even more elaborate and specific than, the measures the Council’s program has *always* contained for this purpose.

The Council’s 2000 Program amendments envisioned that the mainstem plan and the subbasin plan amendments would contain the more specific objectives and measures for the revised program. Consistent with that guidance, the Council’s May 2002 call for recommendations stated explicitly that the Council was requesting recommendations in the form of subbasin plans, and that these plans were to contain the specific objectives and *measures* for the tributary subbasins.

If that plain meaning of the term “measure” needs elaboration, it can only be in light of the fundamental function of the Council’s adopted fish and wildlife program. The function of the adopted program (a composite of “measures”) is to guide the actions and expenditures by Bonneville (and the actions of other federal agencies) as Bonneville endeavors to meet its own legal obligation to protect, mitigate and enhance fish and wildlife affected by the development and operation of the hydrosystem in a manner consistent with the Council’s program. Most of the commenters concluded, and the Council agreed, that the subbasin plans as presented can and should direct Bonneville spending in furtherance of the act’s fish and wildlife mandate without more detail or specificity being required. The subbasin plan management plans -- particularly in the “strategies” they present -- provide more detail about *what* should be done, *where* it should be done, and to what *ends* it is done than any previously adopted program.

The Council did not invite the public to submit as amendment recommendations what have been considered *projects*. Over the 20+-year history of the Council’s program, a project has meant a particular activity proposed for Bonneville funding *to implement a measure in the program*, with a defined sponsor, budget, tasks, technical details, and short-term timeline. If the parties recommending the subbasin plans had chosen to include details of that sort along with the subbasin plan measures, including those project-type details in the program would not violate the act, although these details would have no practical effect. But there is no support in the act for the position that a “measure” means a “project” or requires “project” details of this type, and especially no support for the point of view that *only* a project of this type *could* be a “measure.”

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Rather, the history of program implementation is that projects are defined and proposed for funding *after* the adoption of program amendments, and that measures in the program are implemented by projects. Congress recognized this fact and made it law when it added section 4(h)(10)(D) of the Act in 1996, making clear that projects are developed and evaluated after the program measures are in place. The Council will continue to use a process that meets the requirements of 4(h)(10)(D) to invite entities to propose projects for Bonneville funding to implement the measures in the adopted program. For most habitat and production projects that means the adopted subbasin plans.

Process Issue 2: The relationship of subbasin plans to provincial or ESU biological objectives, to the basinwide biological objectives in the Council’s program, and to related matters of prioritization/allocation between subbasin plans -- “Roll-Up.” Comments and consultations generally acknowledged that if each of the 57 subbasin plans is independently sound, each certainly will improve our ability to guide implementation actions within the respective subbasins, particularly habitat-related actions. However, commenters asked a set of questions about the plans as a *collective* body of work: 1) What do the plans add up to in terms of benefiting populations that are usually viewed collectively at a scale above the subbasin, such as at the ESU or provincial levels? Should the program set biological objectives at that higher level? (2) Do the plans “add up” to meet the objectives established at the basin level in the 2000 Fish and Wildlife Program? 3) Because resources always are limited, can the plans inform decisions about dedicating resources to one subbasin or to one province or to one type of strategy over others?

The Council recognized in the 2000 Program that working with subbasin plans as a collective body of work -- what became known as a “roll-up”-- could strengthen the relationship of the plans to broader fish and wildlife program objectives and help inform resource allocation issues. Therefore, in the October 22, 2004, issue letter the Council invited the public to offer views and information on the best way to accomplish a “roll up” of the subbasin plans. In providing advice, the Council noted that it would be important to carefully explain what purpose or purposes this exercise would serve. And the Council invited perspectives on what might be the preferred process -- e.g., should the Council initiate a follow-on program amendment process; should the Council undertake technical or scoping work before starting a formal amendment process; and should a subbasin “roll-up” effort should precede adding more specific implementation details to subbasin plans (Process Issue 1 above)?

Council Response: The issue of “roll-up”-- generally described as an evaluation of the subbasin plans as a collective body of work and the setting of program objectives at this broader scale -- drew far more interest and input than any of the other topics in the October issue paper. A large majority of the commenters were pleased with the subbasin planning process, but urged that a next step in the development of the program was critical and must be completed soon -- a review of the subbasin plans as a collective body of work to establish larger-scale objectives. To do so would be consistent with the Council’s 2000 Program, which called for the development of province-scale biological objectives once the Council adopted the subbasin plans.

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The 2000 Program and the commenters generally agreed that adopting biological objectives for population and habitat improvements at the level of the ecological provinces will function to:

- provide benchmarks for measuring fish and wildlife program performance
- provide a framework for a more efficient monitoring and evaluation program
- provide insights and context to resource allocation decisions

In addition to completing the comprehensive revision of the fish and wildlife program started in 2000, this province-level amendment process could also allow the Council and interested parties to address two of the issues that were not satisfactorily treated in the subbasin planning: (1) the integration of habitat plans and artificial production activities, and; (2) the design and conduct of monitoring and evaluation. The province-level amendment process would be designed to address these issues and, if not completely treat them, to make as much progress as possible.

For this reason the Council decided early in 2005 to work with others to begin a technical effort to integrate the subbasin plan information with other information and activities underway in the basin (hydro operations, harvest, information on ocean survival, etc.) and assess what this planned condition might achieve in a collective or aggregated sense for populations of anadromous and resident fish. Informed by these technical results, the Council is likely to initiate a formal amendment process later in 2005 to establish province-level biological objectives for the program to serve the purposes identified in the three bullets above.

From the same technical effort, the Council will evaluate whether the collective planned work of the revised program is consistent with the basinwide biological objectives adopted in the 2000 Program. The Council is confident from its own review and from the amendment process comments that the mainstem and subbasin plans are consistent with the broad, qualitative population and habitat objectives in the 2000 Program, and perhaps the quantitative objectives, too, at least in certain cases. Whether the plans are fully consistent with the quantitative population abundance numbers for anadromous fish in the 2000 Program is not yet known.

Moving forward with this province objective amendment process will not postpone any necessary allocation decisions for the upcoming project selection processes. That is, the work to set province-level biological objectives discussed here will not be formally completed in time to inform allocations for program funding in Fiscal Years 2006 or 2007, nor is it obvious how it would be useful for this effort, even if completed in time. Allocation decisions needed for Fiscal Year 2006 and to begin a comprehensive provincial project review for Fiscal Year 2007 are being made using the best information available, and with the central objective of implementing the adopted subbasin plans.

Process Issue 3: Project review and recommendation process. Some commenters asked questions and stated concerns about the design of future project review processes under Section 4(h)(10)(D) of the act. The questions included how subbasin plans will be used in project selection processes; what will be the timing and elements of that process; how will available resources be allocated among the provinces and subbasins; how will proposed projects be reviewed for consistency with subbasin plans and by whom; and will the planning groups or

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other subbasin-level groups formed to develop and recommend subbasin plans also have a role in project selection? Some commenters were reluctant to support adoption and use of subbasin plans without more information on such questions.

The Council set forth several of the fundamental project review particulars in the 2000 Program. For example, once adopted into the program, subbasin plans indeed will be the program's cornerstone for project definition and review. That is, projects proposed for funding will be evaluated for consistency with the relevant subbasin plans, and not recommended for funding if inconsistent. The Council has made this information available to the region over the last few years in guidance and informational materials. Additionally, it should be recognized that the subbasin planning initiative did not, and cannot, change the act itself. The provisions of Section 4(h)(10)(D) will continue to supply the basic legal requirements and procedures for project review, including independent scientific, public and Council review of projects proposed for funding.

Within these limits, commenters had the opportunity in the October 2004 issue paper to provide advice on how the Council should conduct the project review process to implement subbasin plans. The Council also advised the commenters that it may be more appropriate and timely for interested parties to be involved in shaping these issues in other places, such as the Regional Coordinating Group meeting scheduled for November 1, 2004, and then in coordination with the Council's development of this process in its normal course of business over the next year.

Council Response: As outlined in the October issue paper, the 2000 Program established the fundamental elements of the project selection design (*See* the "Implementation Provisions" section of the program). That is, fish and wildlife needs to be addressed in subbasin areas would be determined from subbasin plans adopted by the Council; the solicitation form and process would be designed to, among other things, draw out the detail of how proposals are consistent with subbasin plan objectives and strategies; and local, Council, and independent science reviews would be conducted to shape three-year implementation packages that address the priorities in the subbasin plans. The basic design of the process would be like the Council's last project review process -- a provincial format -- to allow for in-depth reviews and multi-year recommendations. Finally, and as stated in the October paper, the procedural requirements and review standards of Section 4(h)(10)(D) would be applied (ISRP review, Council recommendations and findings and explanations for recommendations where necessary). Most of the subsequent comment seemed to understand and support this basic description of how subbasin plans would be used in a project selection process. All commenters who spoke to the issue supported the continuation of the province-based format for the process.

Some commenters sought to emphasize that while subbasin plans can be used for the purposes described above, there are other program areas or issues that they cannot be used for, such as:

- developing priorities for projects that are mainstem/systemwide in focus (as opposed to subbasin)
- making decisions about artificial production activities

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- allocating the annual direct fund budget among provinces, subbasins and other program areas such as the mainstem/systemwide projects group

Taking the points in the bullets in turn, it is accurate that the subbasin plans cannot be used to establish priorities for projects that are mainstem/systemwide in focus or do not have a direct subbasin-specific implementation focus. The Council anticipated this in the 2000 Program, explaining that projects without a subbasin orientation would be considered in a separate part of the project review and selection process. The Council has been working with Bonneville and others over the past year to identify those projects that do not have a subbasin-specific orientation, organize them together, and calculate their costs. This is being done to position them for the same type of in-depth rigorous review that the subbasin-specific projects will receive. Other planning documents, such as the Mainstem Amendments, biological opinions on the hydrosystem, research plans and so forth will provide the guidance for these projects that subbasin plans bring to subbasin habitat and production projects.

On the second point, while it is true that many of the subbasin plans were deficient in integrating artificial production activities, the Council required the subbasin plan for any subbasin that included artificial production *funded out of the Council's program* to describe and integrate that artificial production to an adequate degree. Any general weakness in how artificial production was handled does not mean that the adopted plans are not useful for guiding artificial production project funding. Nor does it mean that a separate process or product is needed to deal with artificial production projects funded by Bonneville. Rather, just as is the case with all projects, those who propose Bonneville funding for artificial production activities will, as part of the proposal development and presentation steps, have to explain how that work relates to the subbasin objectives and habitat activities. In this way, the project selection process will begin to remedy some of the shortcomings in some of the plans on this issue.

The third point has to do with allocating the annual Bonneville direct program budget among the subbasins and other program areas. It is entirely accurate that the subbasin plans, as they exist now, do not give rise to an obvious funding allocation at a level *above* the subbasins. It is also right to acknowledge that subbasin plans and the planning process were not expected to yield an allocation scheme. At this point in time, the program's 70 percent anadromous fish, 15 percent resident fish, and 15 percent wildlife funding split is the only formal allocation of the fund. The last province review used historical funding patterns as an allocation scheme, and most found that reasonable, even if not acceptable for the long-term. There are ongoing regional discussions about how to make allocation decisions in preparation for a provincial project review for Fiscal Year 2007 funding decisions. Any allocation scheme for the fund is going to have policy, legal and scientific elements and alternative perspectives and positions.

The Council shares the objective of many commenters to develop an equitable and cost-effective allocation scheme focused on fish and wildlife results. One central purpose of the province planning amendment process described above is to provide biological objectives against which to measure project and subbasin performance. This effort eventually will yield precisely the kind of information about results at a regional scale that can be factored into discussions about funding allocations among the provinces and subbasins.

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Process Issue 4: Relationship to recovery planning under the federal Endangered Species Act.

A concern expressed in some of the comments stemmed from statements in Council documents and from NOAA Fisheries that subbasin plans might be the “foundation” for recovery plans or “interim local recovery plans” under Section 4 of the ESA for listed salmon and steelhead ESUs. Some commenters indicated that their level of concern about the subbasin plans would be much higher if the Council were in fact to offer the subbasin plans as completed and fully adequate ESA recovery plans, or if NOAA Fisheries were to accept them as such.

Council Response: The Council has consistently made clear that it is pursuing the development of subbasin plans to meet the statutory obligation under the Power Act to protect, mitigate and enhance fish and wildlife affected by the development and operation of the hydroelectric facilities on the Columbia and its tributaries. If those plans also prove useful in the effort to address the legal survival and recovery requirements of ESA for those same populations, all the better. The Council believes the technical and planning work represented by the subbasin plans is of such a caliber and at such a depth that NOAA Fisheries would be remiss not to make use of that work in developing recovery plans. The products of subbasin planning are realistic “foundations” to build upon by those working on ESA recovery plans. And if NOAA were to find its recovery plan assessments or actions coming to very different conclusions about a subbasin than found in the Council’s subbasin plans, NOAA should consult with the Council before releasing the draft recovery plans for public review. But the ultimate point is that the Council has no legal obligation, nor does it have any commitment from NOAA Fisheries, to automatically make subbasin plans final ESA recovery plans. The same comments are true for recovery plans developed by the U.S. Fish and Wildlife Service for listed bull trout and Kootenai River white sturgeon.

In short, the Council believes that the Services ought to use the subbasin plans -- both the technical assessments and the management plans -- in recovery planning. But the Council engaged in subbasin planning in order to provide the sufficient foundation in the Council’s program for offsite mitigation under the Northwest Power Act, not to satisfy, in a legal sense, all requirements of the Endangered Species Act for recovery planning. In adopting the subbasin plans into the program, the Council did not make, and need not make, a determination at the same time that the subbasin plans, singularly or collectively, constitute complete or final recovery plans under the ESA. This is a determination that the federal agencies must make.

Process Issue 5: Improving subbasin plans -- the “living document.” The Council proposed to adopt the management plan portions of subbasin plans into the fish and wildlife program, not the technical assessments or inventories. Part of the reason for this was simply to ease the burden of managing the program. But another reason was that the assessments are technical documents -- information and analysis -- that underlie the objectives and measures. The assessments ought to be in a posture that they can be modified relatively easily if and when new information arises.

Some commentators were concerned that adopting the management plans into the program would mean they would not be subject to modification or improvement, even if partially flawed

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or easily improved, without a major program amendment process. Commenters suggested that the Council may want to establish a mechanism or procedure (short of the full program amendment process) for considering and approving modifications to any portion of a subbasin plan when appropriate, including modifications to the management plan portions that have been adopted into the program.

Council Response: The commenters that addressed this matter in response to the October 2004 issue paper stayed at a very general level -- some periodic updating of plans should be done, and the modification process should be as simple as possible while meeting legal requirements. None of the comments addressed the more specific questions in the issue paper as to what might trigger the need for modification or how those proposed modifications should be handled.

The Council agrees that there would be benefits to developing an adaptive management process for considering and approving “minor” amendments to adopted subbasin plans that is more streamlined and expeditious than the full fish and wildlife program amendment process. However, the Council would like to consider the precise details and process more completely, and consult with others about those specifics. Because the plans have just been adopted, there is time to do this work in the future. Moreover, the Council believes that it and other interested parties may gain insights on how plans may be improved or modified as they are used for the first time in the project selection process, and also as the amendment process to add province-level biological objectives develops.

Process Issue 6: Relationship of subbasin plans to non-federal hydroproject relicensing.

As noted in the introduction to this section, comments received by the Council on the first set of recommended plans released as draft program amendments generated another issue--the relationship of adopted plans to the relicensing of non-federal hydroelectric projects.

Council Response: The Council’s response is provided in Section II, for General Issue 4.

Process Issue 7: Bonneville’s funding of activities in adopted subbasin plans. Several comments received during the public review periods on proposed program amendments raised the issue of Bonneville’s obligation to fund activities detailed in the subbasin plans. The particular perspective offered was that the Council should make clear that Bonneville has the responsibility to fund only those things that are directly tied to addressing the adverse effects of the federal hydrosystem. Bonneville itself commented that the Council should more clearly apportion responsibility for implementing or funding the actions in the subbasin plans.

Council Response: Bonneville’s obligations are limited by the Power Act to protecting from and mitigating for the impacts of the hydrosystem on fish and wildlife. Neither the Council nor the plans it has adopted claim otherwise. Such a claim, even if it were embedded undiscovered in an adopted subbasin plan or some other part of the program, would be legally irrelevant. While that statement should dispose of the matter, the following additional discussion of this topic may be timely.

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At this time, the Council, Bonneville and others should not reach into the subbasin plans and declare some parts within the Bonneville mitigation obligation (or “responsibility”) and some parts not. This is so because the real issue is Bonneville’s *authority* to meet its statutory obligations, rather than black and white divisions of responsibility. That is, Bonneville has a legal obligation to mitigate for hydrosystem impacts under the Power Act. To meet that duty, Bonneville has the *authority* to fund on-site protection and mitigation actions as well as offsite habitat and production actions. The latter is the offsite mitigation work now catalogued in the subbasin plans. Therefore, as long as an offsite mitigation measure funded by Bonneville addresses a species identified as adversely affected by the hydrosystem, that strategy/action is potentially within the authority of Bonneville to fund as part of its effort to satisfy its Power Act mitigation obligation. The Power Act precludes Bonneville from funding this work if it were to replace or be “in lieu” of funding provided by another responsible party.

On this basis, subbasin planners sought to identify focal species that are adversely affected by the hydrosystem and that use that subbasin during some part of their life cycle. They then identified factors in the subbasin that limit the survival or productivity of those species, and proposed corresponding strategies to address those limiting factors. All such strategies are within Bonneville’s authority to fund as offsite mitigation to address Bonneville’s mitigation obligation, whatever the immediate cause of the limiting factor in the subbasin. The Council did not ask the subbasin planners to determine at what aggregate point implementing the strategies in the subbasin plan would or could exceed Bonneville’s mitigation obligation for hydrosystem effects. This cannot be assessed at the subbasin level, at least not at first, as it is instead a programmatic matter in the hands of the Council and Bonneville.

Again, the Council acknowledges that Bonneville’s obligation vis-à-vis the subbasin plans is limited to funding actions that ultimately satisfy its Power Act mitigation obligation and authority. This is simply a restatement of existing law, but the Council offers it as a reminder to interested parties.

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c:\z-js\subbasin plans\findings for sb planning amendments final sept 2005.doc (John Shurts)