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August 5, 2003

MEMORANDUM

TO: Council Members

FROM: John Shurts

SUBJECT: Montana resident fish habitat acquisition projects -- briefing on status of agreement to implement/draft Council letter in support

As part of the project review process, the Council recommended the funding of two habitat acquisition projects in Montana to benefit resident fish (conservation easements on the Fisher River, Proposal No. 24033, and on Weaver and McWinegar Sloughs, Proposal No. 24042). As you know, habitat acquisitions in general have been on hold due to issues concerning available funds, Bonneville's ability to capitalize acquisitions, the right way to credit the benefits from acquisitions, and so forth.

Bonneville has been working with the Montana Department of Fish, Wildlife and Parks and the Flathead Land Trust, with the assistance of Ed Bartlett, Kerry Berg and central staff, on a Memorandum of Agreement that would allow these two projects to go forward to address resident fish losses at Hungry Horse and Libby dams. Also assisting in recent weeks have been policy and legal representatives of the Salish-Kootenai Tribes and the Kootenai Tribe of Idaho, two tribes affected by the development and operation of Hungry Horse and Libby dams and who became concerned with how early drafts of the MOA might have affected them adversely. The parties and participants are close to finalizing the MOA that would allow Bonneville to capitalize the acquisitions. Staff and some of the project sponsors and MOA participants will be at the Fairmont meeting to brief you on the status and details of the agreement or to answer questions, including Alan Wood of MDFWP, Lynn DuCharme of the Confederated Salish and Kootenai Tribes, and possibly Susan How representing the Flathead Land Trust.

At the insistence of Bonneville, the parties have included in the draft MOA a provision requiring the Council to state its support for the way in which Bonneville has handled the matter of capitalizing the land acquisitions in this instance. So, on the page following this memo you will find a draft (by me) of a possible letter from the Council to Bonneville expressing the Council's support for the MOA that would allow these two resident fish habitat acquisition projects to move forward and be capitalized by Bonneville.

In the packet for the July Council meeting at Kah-Nee-Ta, I included a similar memo and an earlier version of a draft letter concerning this matter. The discussions concerning the proposed MOA have evolved significantly since that time, and so this draft letter is quite different from the first version you saw. The MOA parties, with the help of the tribal and Council representatives, have carefully crafted the latest version of the MOA so that it will allow these acquisitions to go forward but will not bind other regions to this particular approach to capitalization and crediting, nor bind the Hungry Horse and Libby areas to anything much more than the fact that these two acquisitions will score against the Hungry Horse and Libby resident fish habitat losses caused by the construction of the dams and inundation of the lands behind them, using a particular crediting method developed for these two projects. The current MOA does not say anything about population and productivity losses or about operational losses associated with these two dams; does not bind people to this particular crediting methodology in the future at Hungry Horse and Libby if people have a better idea about how to credit; and does not bind anyone outside these two projects to a particular approach to capitalizing acquisitions.

In this carefully negotiated posture -- especially where the tribes had become concerned about the original version of the MOA and letter, which had the potential to bind them and others to the loss/crediting/capitalization approach taken to implement these two projects, and which we all worked hard to avoid in the revised draft -- I would be wary of a letter of support from the Council that does anything but be quite subordinate to and supportive of the provisions of the MOA. Otherwise we risk doing things in the letter that the parties have carefully avoided doing or negotiated around. So, John Ogan and I decided to try the following brief letter from the Council that does just two things: (1) supports the implementation of these projects and the provisions of the MOA; and (2) in particular, notes that while the Council has not formally adopted the Libby loss statements into the program, we see this as an appropriate way to make use of the construction and inundation habitat loss assessment.

We are still talking with Bonneville people to see whether this draft will satisfy them, or if they even still need a Council letter of support and for what reasons. We will report to you on any developments at the meeting.

DRAFT LETTER FOR MONTANA RESIDENT FISH LAND ACQUISITIONS

Therese Lamb
Bonneville Power Administration

RE: Fiscal Year 2003 Montana Resident Fish Habitat Acquisitions

Dear Therese,

The Council has been following the efforts of representatives of Bonneville, the Montana Department of Fish, Wildlife and Parks, and the Flathead Land Trust to develop a Memorandum of Agreement that would allow Bonneville to proceed with capitalizing the resident fish habitat conservation easements on the Fisher River, Proposal No. 24033, and on Weaver and McWinegar Sloughs, Proposal No. 24042, as recommended to you for funding and implementation by the Council. We understand that member and staff representatives of the Council and of two tribes affected by the construction of Hungry Horse and Libby -- the Confederated Salish-Kootenai Tribes and the Kootenai Tribe of Idaho -- have taken part in the discussions crafting the MOA, although neither the Council nor the tribes are party to that agreement.

We very much appreciate your efforts to come to an agreement that allows for the acquisition of these interests in land to address resident fish habitat losses in Montana, even as Bonneville and the Council and others continue their discussions to establish a general set of policies and requirements regarding the capitalization of land acquisitions by Bonneville to apply across the program. The Council endorses the provisions in the draft Memorandum of Agreement as *one* appropriate way to identify an obligation Bonneville is trying to address with its capitalized expenditure and to credit the acquisition against that obligation, without setting precedents for the rest of the program.

The Council also accepts that, for the purposes of this MOA and the two projects it relates to, that the parties have defined Bonneville's obligation based on the resident fish habitat losses resulting from the construction of Hungry Horse and Libby dams and the inundation of lands behind the dams, as assessed by the Montana Department of Fish, Wildlife and Parks. Unlike the Hungry Horse loss assessment, the Council has not yet incorporated the Libby loss assessment into the fish and wildlife program. This was because the Libby loss assessments came to the Council in the late 1990s, when we were already in the early planning stages of subbasin planning, and we decided to wait to address the Libby loss assessment as part of that process. We know of no problem with the portion of the Libby loss assessment relevant here -- the assessment of resident fish habitat lost due to construction and inundation -- and we do not expect subbasin planning to result in significant changes to this portion of the loss assessment. So while the Council cannot embrace the Libby loss assessment as though amended into the program, we do support the way it has been used in the draft MOA to implement these two projects.

Thank you again for your extensive efforts to implement these projects. I appreciate the courtesy you extended in allowing Member Bartlett and Council staff to assist in these delicate negotiations.

Sincerely,

Judi Danielson, Chair

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