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Montana

February 10, 2004

MEMORANDUM

TO: Fish and Wildlife Committee Member and Council Members

FROM: Patty O'Toole

SUBJECT: Recommendation for revisions to Fiscal Year 2004 fish and wildlife implementation budget

Action and Staff Recommendation

Council staff has met with project sponsors, Bonneville, and Columbia Basin Fish and Wildlife Authority (CBFWA) staff at Program Status Review meetings held in November 2003 and January 2004. At those meetings project sponsors submitted requests of three types: (1) project budget corrections where errors or corrections were made in the initial provincial review budgeting exercise; (2) requests for "rescheduling" of 2003 approved work and funds from 2003 to 2004, and; (3) requests for "within-year" funding adjustments.

Staff reviewed the projects under consideration in the first two categories -- requests for budget corrections and request for "rescheduling". Council staff recommends that the Council forward the following project budget corrections to Bonneville for adjustments in the amount of \$1,260,874. The staff also recommends that the Council support the requests for rescheduling to allow work to proceed in a manner consistent with prior its prior project funding recommendations. The total of the rescheduled work is approximately \$1,412,381. The staff is not recommending any action at this time on the third category of project requests - within-year funding adjustments.

Council staff seek a recommendation from the Fish and Wildlife Committee at this meeting, and then Council action at this meeting the next day.

Background

Council staff will address two groups of projects. First, projects where sponsors requested adjustments that Council staff views as corrections to the baseline project budget established by previous Council decisions. The second group includes projects which sponsors have requested to “reschedule” previously approved work and associated funds from FY 2003 to FY 2004. The Council staff reviewed these projects with using the budget and accounting tools available to us.

As discussed in previous presentations to the Council, when we developed our FY 04 budget we anticipated that the Council’s FY 2003 project recommendations and the slow rate of project spending would limit actual spending to less than \$124,000,000 in FY 03, and that there would be a balance that would be available for rescheduling to catch up on deferred work and to possibly manage FY 04 within year requests. However, the Councils FY 2003 project spending caps were exceeded by approximately \$8 million, mostly due to bills from FY2002 that were paid in 2003 that the Council could not have anticipated. This spending reduced the available FY 2002 balance available for FY 2004. Further, last September Bonneville declared that approximately \$3 million in projects that were capital in May must be expensed. Finally, in September we were advised that approximately \$2 million in work that the Council did not recommend in the 2003 recommendations would be funded. In FY 2003, Council recommendations for funding 320 projects totaled \$ 134.4 million (includes all mid year adjustments). As reported by Bonneville, these same projects only spent \$123.3 million in FY 2003. Although the amount accrued for the overall program by Bonneville in FY 2003 was approximately \$140.5 million, the Council recommended projects accrued far less. With this history, we do not believe that the work approved by the Council should bear the risk. This is the basis for the following recommendations.

Corrections to budget baselines

In a number of cases project sponsors asked us to review the baseline budgets used by Council staff to recommend an FY 2004 project budget. The staff built budget recommendations for FY 2004 based on the most recent Council review and recommendation for each project -- in most cases the applicable Provincial Review decision. Our review of those requests revealed that there are some budget corrections required to support Council approved and recommended work. Some examples of the reasons that our FY 2004 project budget recommendations require correction are: separate projects had been combined by Bonneville for administrative and management purposes, but Council staff was unaware of this and did not combine those budgets in its recommendation; the baseline budget for some projects was had been altered by within-year adjustments in previous years, and those adjustments were not evident in the materials the Council had during the project recommendation exercises, and; some projects that had been approved primarily as capital projects had not fully separated their expense components, and further review shows that there are expense items within the Council recommended work.

Considering and recommending project specific budget corrections for FY 04 requires an identification of a baseline or reference for the project in terms of both approved scope and approved budget. Reviewing the Council’s original project recommendations requires reconstruction the project budget records of several years. The best information for this would be Bonneville’s actual spending on the Council approved work for the project over the last several fiscal years prior to FY 04. Where the approved project scope for FY 04 remained

consistent with that in prior years, and provided that Bonneville was managing the project consistent with the Council recommended, the project funding requirement could be readily established. Alternatively, if Bonneville cannot provide project specific project spending records or is unable to substantiate that actual spending was aligned closely to Council recommended work, the staff must re-establish a baseline project budget based on an estimate (what was requested by the sponsor in the provincial review). Bonneville was not able to provide this, and we were required to consider corrections relative to the estimate that the project sponsor gave us in the provincial review.

Correction Recommendations:

- Albeni Falls Wildlife O&M (1992-061-00)

This large land acquisition program was originally recommended for \$6,178,795 in 2002, \$6,431,031 in FY 2003 and \$6,721,807 in FY 2004. We believe that most of this work should be capitalized. However, the original proposal did identify operation and maintenance and monitoring and evaluation components, which would be expensed. To separate expense from capital for the 2004 recommendation, the Council staff used the original O&M estimate for 2004. The sponsors of the project asked for reconsideration because their actual expense needs are almost twice the Council staff's recommendation.

The sponsors and Bonneville found the difference to be the monitoring and evaluation tasks of the project and components of acquisition costs that Bonneville will not capitalize. This project is implemented through five contracts, with four entities (IDFG, Kalispel Tribe, Kootenai Tribe, Coeur d'Alene Tribe). Total expense needs are \$369,100 for construction and engineering, \$498,238 for operation and management, and \$188,821 for monitoring and evaluation. The total need is \$1,056,159. The project proposal identified operations and maintenance needs of \$547,000 and monitoring and evaluation needs of \$183,026. The Council recommended \$595,090 for FY 2004. The Council staff recommends a project budget increase of \$461,069 for FY 2004.

There are other costs in the sponsors' request that are for the planning and completing the acquisitions that can be capitalized as part of the acquisition costs and should remain accounted for as capital.

- Smolt Monitoring Program (#1987-127-00)

This project funds the annual monitoring of smolt passage at the dams and is a key component of tracking juvenile migration. The sponsor has sought a review of the appropriate baseline budget since the Mainstem/Systemwide decision, contending that the Council staff's use of a \$1.9 million baseline is not accurate. The sponsor says that the \$1.9 million budget was based on a year when the annual budget was reduced to account for unspent funds from a prior year. The sponsor says that the \$1.9 million budget in FY 2004 will eliminate several monitoring sites. The sponsor proposes a budget of \$2,239,743.

The staff can identify where the annual budget for the project was reduced because of the availability of previously committed but unspent funds. The staff believes that its review of the Mainstem/Systemwide budget exercise took this into account but also that the actual spending in

subsequent years continued to justify the \$1,910,000 million. However, in setting the FY 2003 budget, the staff did not align fiscal year and contract period which is an additional step required by Bonneville's new accrual accounting. The Council staff recommends a project budget increase of \$329,743 for FY 2004.

- Lake Billy Shaw operations and maintenance (#1995-015-00 and #1988-156-00)

Bonneville consolidated two projects into one and we failed to note that when we recommended the 2004 budget. The budgets for both projects should be preserved. Combined Lake Bill Shaw O&M, #199501500,(152,000) in the 2004 budget, need to add 304, 899 from Duck Valley Resident Fish Stocking project 198815600. The total need for the project is \$456,899 According to Bonneville, the project is proceeding on pace and will utilize its entire budget. We recommend that Bonneville look for efficiencies from combining projects and contracts. The Council staff recommends a project budget increase of \$304,899 for FY 2004.

- Yakima Side Channels (#1997-051-00)

This acquisition project has purchased approximately 1000 acres of fish habitat in the Yakima subbasin. The 2004 budget contains the capital portion of the budget for this project but the O&M portion was omitted. The sponsor has requested a within year request to cover operations and maintenance costs, and additional tasks in the amount of \$194, 492, but the amount identified in the project proposal for operations and maintenance is \$25,713. Council staff recommends a project budget increase of \$25,000 for FY 2004.

- Data Management Projects (#2003-113-00, #1989-062-01, #1988-108-04)

In July 2003, Council recommended that several projects proceed under the remaining \$232,000 of the 2003 Data Management Placeholder. These projects were not contracted until October 1, 2004. Bonneville opted to fund two of these projects with 2004 data management placeholder funds rather than submit requests for rescheduling. This work has been completed and invoiced. As a result, the projects accrued expenses in FY 2004 that were planned for FY 2003. This action reduces the amount of funding available in the 2004 placeholder to fund data management projects targeted for FY 2004. The Council staff recommends that the following project budget increases: project 200311300-(Fish Counting Protocols) at \$57,362, project 198906201-(Data Management workplan, CBFWA) at \$65,472 and project 198810804-(Streamnet) at \$17,329.

Rescheduling Recommendations

The staff is recommending that the Council approve rescheduling approved work from FY 03 to FY 04. We currently have identified approximately \$1,412,381 in rescheduled work. In making this recommendation, we want to candidly admit that we do not see available uncontracted funds available for supporting this approved work, and we also understand that this will add to the Council's recommended FY 04 budget recommendation of approximately \$154 million in expense. We make this recommendation because our experience over the last two years demonstrates that the Council is positioned to prioritize projects and define approved work, establish project and program budgets within Bonneville's funding commitments, and make implementation adjustments relative to project and program budgets and the approved scope of work. This recommendation for supporting rescheduling is based on the principle that the

Council continues to support the project work it has previously approved within the budget set by Bonneville. Under the current system, we believe that the Council must focus on the approved work, and Bonneville must assume the responsibility of managing its cash flow to meet its objectives. We understand that rescheduling this work will increase the risk that Bonneville may exceed its FY 04 spending target, and that the availability of funds for work in FY 05 and FY 06 will have to be revisited.

The Council staff recommends reaffirming the Council's support for all project work recommended in the Provincial Reviews and supports Bonneville proceeding to implement rescheduling requests. The Council recommends that prior to rescheduling the work and funds, Bonneville project managers verify that the work is still possible to achieve in 2004, without impacting the 2004 scope of work and that the work being rescheduled remains consistent with the scope of the project outlined in the project proposal as reviewed and approved by the Council during the rolling provincial review. We have presently identified approximately \$1,412,381 in rescheduling, and will work with Bonneville to verify the project specific requirements and to consider new rescheduling requests that may be presented.

Additional considerations

We also understand that there are projects in the program that continue to wrestle with their contract timing being offset from the federal fiscal year and the effects of accrual based accounting. An example of this is project #200202700 (Numerically simulating the Hydrodynamic and Water Quality Environment for migrating Salmon in the Lower Snake River) that has lost a year of implementation due to the contract period not being aligned to the fiscal year. These projects do not meet the criteria for rescheduling but indicate the need for realignment of the reviewed and approved budget recommendation. Council staff is concerned about these projects and their associated budget requests and request that Bonneville identify and review these projects. The Council staff suggests that Council reaffirm that all projects be funded in full, at the level reviewed and approved as part of the provincial reviews.

Projects Shifted from Capital to Expense

We continue to struggle to accommodate projects that were understood to have access to capital funds in our recommendations and that Bonneville subsequently determines do not. The general issue of how Bonneville informs the Council of its decisions on access to capital will be discussed later. However, for the following projects the Council must decide if they should be added to the FY 04 expense budget now that Bonneville has announced that the projects cannot use capital funds.

- Parkdale Facility (#1988-053-07): The Council's July, 2003 within-year recommendation of funding to purchase a temporary residence at the facility was informed by Bonneville's determination then that the purchase could use capital funds in FY 2003. The actual purchase was delayed past the end of FY 2003, and Bonneville recently informed us that the purchase does not, in fact, qualify for capital funding. The reasoning is that the residence cost is less than \$1 million by itself and would be added to the Parkdale Facility several years after the completion of the facility. The requirement for expense funding changes part of the basis for the Council's recommendation last summer.

The staff does not believe that Bonneville's discretion is constrained such that it cannot provide capital funds for facilities that do not exceed \$1 million. We understand that to be a policy choice and not a legal or accounting standards requirement. Moreover, Bonneville's new determination creates a difficult precedent. If additions, expansions and retrofits of existing facilities cannot be capitalized unless by themselves they cost more than \$1 million dollars, the use of capital funds would be foreclosed for hatchery reform, one of the significant forecasted future funding requirements of the Program. Finally, the staff is aware of situations where this sort of believes that this policy is not being implemented uniformly or consistently. Separately, the staff proposes the Council seek review of this issue with Bonneville's financial managers. In the meantime, the staff does not recommend reprioritizing expense budgets to fund the purchase of the residence.

The staff recommendation is that if Bonneville seeks to implement the Council's project recommendation, this project must receive capital funding, and not be expensed.

- Amazon Basin Eugene Wetland (#1992-059-00): This portion of the Amazon Basin acquisition project was originally proposed and recommended by the Council in the fiscal year 2000 budget. Bonneville has been reviewing the project as part of a series of mitigation projects/acquisition to determine if it will meet the capital definition

The staff recommendation is that if Bonneville seeks to implement the Council's project recommendation, this project must receive capital funding, and not be expensed.

- Johnson Creek Artificial Propagation Enhancement Project (#1996-043-00): This project was proposed as a capital supplementation facility, pending step review. Last year Bonneville concluded that the project would not proceed into a facility construction phase, and therefore, revised its accounting for the project to expense. The project budget was incorporated into the staff's recommendation as expense as was reflected in our budget for 2004. The project budget was incorporated into the staff's recommendation as expense but Bonneville's decision requires a status review. Bonneville anticipated a letter from NOAA fisheries confirming that the Nez Perce Tribe will not be permitted to release more fish beyond the 100,000 fish currently reared at the McCall National Fish Hatchery.

In addition, the Council recommended in FY 2002 Programmatic Issues for the Mountain Snake and Blue Mountain provinces regarding Johnson Creek Artificial Propagation Enhancement Project (Salmon Issue 8) that this project be funded at levels consistent with past Council decisions in FY 1998 and FY 2001. The Independent Scientific Review Panel's recommended not to fund the project because of impacts to the original study design of the Idaho Supplementation Studies

If facility planning is not an appropriate task given the permitting decisions, and the scope of the project is greatly reduced, and the conditions as outlined in the provincial review have not been acknowledged or addressed by the sponsor or Bonneville, a determination is needed as to the validity of the project as originally proposed and to determine the appropriate level of funding. Council staff will convene such a discussion with Bonneville and report back to the Council.

The Council staff must review the status of this project with the sponsor and Bonneville to determine if facts have changed since the provincial review recommendations that make

the Council's provincial review recommendations invalid. We recommend that no budget action be taken by the Council at this time.

Other Project Specific Issues Outstanding

CBFWA budget: The Council's Mainstem/Systemwide budget recommended funding CBFWA at \$1.2 million annually. CBFWA requested \$2.2 annually. The Council's discussion considered the tasks for which CBFWA proposed funding and concluded that \$1.2 million was appropriate based on active regional efforts supported by the time and resources of CBFWA staff and members.

In August 2003, CBFWA proposed a revised set of tasks and a budget of \$1.7 million. In October, the Council agreed to support an increase in its recommended budget pending the November Program Status Review to determine what unallocated funds may be available in 2004. The Council emphasized increasing the CBFWA budget as a high priority. Subsequently, Bonneville determined that its FY 2003 expense costs were higher than previously estimated and no unallocated funds were available for any project.

CBFWA's FY 04 budget remains reflected as \$1.2 million in the FY 04 budget.

- **Mainstem/Systemwide decisions:** A number of parties are still confused about how the Council's recommendations for the Mainstem/Systemwide and Bonneville subsequent funding decision should be implemented. The staff believes that it may be useful to recount the budgeting exercise for this project groups. As you recall, the Council developed a set of "Tier One" priority recommendations within the approximate \$30.5 million allocation. At the end of the Council prioritization exercise, Bonneville was clear that, notwithstanding the Council's recommendations, it concluded that the Biological Opinion required it to fund some projects the Council did not recommend and increase the budgets of others above what the Council had recommended. Bonneville worked to reconcile these differences within the overall allocation. To do so, Bonneville reduced the proposed budgets of several projects and decided not to fund others. Bonneville openly and fully discussed the areas where it decided it must deviate from the Council project recommendations, hosting a series of meetings attended by Council and CBFWA staff. Bonneville documented its decisions in writing as it completed this work. Bonneville concluded its response to the Council's recommendations by letter on October 2, 2003.

Two projects are being funding by Bonneville in 2004 that were not part of the Mainstem/systemwide discussion with Bonneville and CBFWA staff include funding of the Technical Recovery Team (2002-075-00) at \$260,000 and funding of continued work on the Hatchery and Genetics Management Plans (2003-005-00) at \$259,604. The Council staff will continue to discuss these projects with Bonneville.

The staff do not believe there is reason to revisit the Mainstem/Systemwide process and that Bonneville's revisions to the Council recommendations should be reflected in Bonneville's working budget for 2004.

1. Projects Bonneville decided to fund that the Council did not recommend

Bonneville decided to fund six projects that the Council did not recommend, for a total of \$1,555,000 (see decision letter, Oct 2, 2003). In addition, Bonneville decided to increase one project by \$765,000 over the Council recommended budget (Northern Pike Minnow project). Also in the Mainstem/Systemwide decision Bonneville decided to reduce funding for 5 Council recommended projects by 1,462,121 and decided not to fund 3 Council recommended projects for a total of \$596,000. Bonneville's funding decision resulted in a total budget for the Mainstem/systemwide projects of \$31.4 million.

2. Projects that will require funding to closeout

Bonneville's "accrual" accounting leads to a budget impact in 2004 for projects that the Council recommended be closed in 2003. Bonneville is allowing most such projects to complete their current contracts in 2004 with a total additional cost of \$1,228,213.

3, "Phase Three" projects that Bonneville contends are not FCRPS responsibilities

Bonneville has contracted for eight "Phase three" projects to date. Bonneville supports two additional projects, but no contract is in place as one of the projects is no longer feasible due to the long delay (2003-020-00, Hanan-Detwiler Passage Improvements), and the other is a land acquisition project (2002-010-00 Acquire and Conserve High Priority Bull and Westslope Cutthroat Trout Habitat in Trestle Creek). Bonneville has not made any decisions to fund the remaining "phase three" projects, totaling \$550,011.



Department of Energy

Bonneville Power Administration
P.O. Box 3621
Portland, Oregon 97208-3621

ENVIRONMENT, FISH AND WILDLIFE

February 10, 2004

MEMORANDUM

TO: Northwest Power & Conservation Council Members

FROM: Therese Lamb, Vice President, Environment Fish & Wildlife
Scott Hampton, Business Operations Support Manager

SUBJECT: Approach to FY 2004-2006 Fish and Wildlife Program Expense Budget

Over the last few months, Bonneville and the Council have been discussing various aspects of the FY 2004 budget situation. Bonneville has a working budget of \$154 million. As identified at last month's meeting, there are corrections and requests that put upward pressure on that budget. At the same time we have Budgeting Rules that have us managing to an average of \$139 million for FYs 2003-2006, and staying within the range of \$125 million to \$153 million per year. Rather than rushing to decisions on how to manage the budget within these parameters, Bonneville and the Council have been waiting for two things. First, our staffs have been researching and "scrubbing" rescheduling and other requests, to understand them fully and make recommendations on them. Second, we were waiting for data on the amount of actual invoices that came in, billing for FY 2003 work, compared to the \$28 million accrual that sponsors provided at the end of FY 2003.

We now have both pieces of information. Unfortunately, the information does not provide any easy solutions for how to approach FY 2004-2006 budgets. However, given where we are in the fiscal year, I believe it is important to confirm a budget strategy that allows effective management of the Program and demonstrates consistency with the Budgeting Rules. Attached are a few pages for discussion and confirmation at the meeting, that give background to the situation, and describe two alternatives and their pros and cons.

Approach to FY 2004-2006 Budget

BACKGROUND

- The Council recommended FY 2004 budget of \$154 million was based on an assumption of underspending in FY 2003.
- FY 2003 actuals were \$140.5 million. They included some previously incurred liabilities, billings that exceeded Council recommended spending limits, and \$28 million in estimated but not submitted outstanding invoices for FY 2003 work.
- Of the estimated accruals, \$23 million have been received to date.
- Therefore, the unspent funds from 2003 are not available to provide the flexibility that was hoped for the FY 2004 budget.
- Nonetheless, Bonneville has continued to contract consistent with the Council's 2004 recommendations.
- However, we are left needing to demonstrate that the 2004 budget will fit the available budget, consistent with the Budget Rules, for the remainder of the rate period.

Approach to FY 2004-2006 Budget

Background cont'd:

- Transparency Issue
 - BPA's official financial information indicates FY 2004 spending of \$139 million.
 - BPA financial information policy requires all supporting financial information to tie to official financial numbers.
- BPA's commitment to the region for strict budget management emphasizes the need to manage consistent with our agreed-to Budgeting Rules (October 3, 2003, letter from Steve Wright)
- With each passing month, we are losing our ability to manage the actuals in FY 2004
 - We are losing time to affect change to FY 2004 spending
 - Delays in decisions (either positive or negative) are increasingly impacting the ability to plan for work during the field season
- Delays in decisions as to how we manage the program result in inefficiency and increased costs in contracting.

Issue:

We seek confirmation from the Council regarding FY 2004-2006 budget levels at this meeting in order to be more effective in managing the program and to be consistent with the Budget Rules.

Approach to FY 2004-2006 Budget

There are two possible scenarios:

1. Officially make the budget for FY 2003-2006:

FY 2003	FY 2004	FY 2005	FY 2006
\$140.5 m	\$153 m	\$131.25 m	\$131.25 m

In order to effectively manage the out-years, an 05-06 budget is needed by May, 2004.

Pros:

1. This preserves the integrity of the Council's recommendations.
2. It allows us the flexibility to work together to methodically develop reduced program expenses budgets for 2005 and 2006.
3. It provides sufficient notice to sponsors regarding changes in budget levels.
4. We believe there is sufficient flexibility to manage actuals to \$153m in FY 2004

Cons:

1. We have a higher risk in managing contracts that spill into FY 2005
2. There will be a significant transition in funding levels between 2004 and 2005.

Approach to FY 2004-2006 Budget

2. Officially make the budget for FY 2003-2006:

FY 2003	FY 2004	FY 2005	FY 2006
\$140.5 m	\$138.5 m	\$138.5 m	\$138.5 m

Pros:

1. Provides more money for the program in the out years.

Cons:

1. Makes it difficult to preserve the integrity of the Council's recommendations
2. It will be expensive to get contract budgets down to \$139m in FY 2004
 - Renegotiating and revising SOW takes time and money
3. There is not much time to genuinely affect change in 2004
4. We need to be taking near-term action to minimize impacts on FY 2005-2006
5. To affect the change with the remaining months will be painful for everyone



Nez Perce

TRIBAL EXECUTIVE COMMITTEE

P.O. BOX 305 • LAPWAI, IDAHO 83540 • (208) 843-2253

4 February 2004

Steven Wright (*via facsimile*)
Bonneville Power Administration
1002 N.E. Holladay Street
P. O. Box 3621
Portland, OR 97208

B. G. William Grisoli (*via facsimile*)
U. S. Army Corps of Engineers
P. O. Box 2870
Portland, OR 97208-2870

Bob Lohn, Director (*via facsimile*)
National Marine Fisheries Service
Northwest Regional Office
7600 Sand Point
Seattle, WA 98115-0700

Re: Nez Perce Tribe's Opposition to Elimination/Reduction in Summer Spill

We are appalled by the continuing efforts of Bonneville Power Administration, the Corps of Engineers and NOAA Fisheries to eliminate or reduce summer spill.

The Nez Perce Tribe has long supported the spill and flow to vital measures to provide passage conditions for juvenile salmon. Absent breaching the four lower Snake River dams and investing in affected local communities, these measures are even more critical to salmon survival.

These proposals directly impair the United States' ability to comply with the Endangered Species Act, which is the currently the subject of the National Wildlife Federation v. National Marine Fisheries Service litigation in the United States District Court in Portland. These proposals also contain measures that represent a direct infringement on the Nez Perce Tribe's treaty-reserved fishing rights, which are the under the United States District Court's continuing jurisdiction in United States v. Oregon. Finally, as the State of Alaska has expressed, these proposals are inconsistent with the Pacific Salmon Treaty.

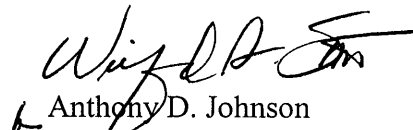
The federal government's "Summer Spill Update and Analysis" is woefully short of actual analysis, and the information that is presented is flawed and inaccurate. This document grossly understates the impacts to salmon (as documented by the analysis conducted by the fish and wildlife co-managers). This document also includes numerous flaws in even the most basic of information, such as considering Nez Perce and Big Canyon releases to be releases of "unlisted" fish.

The "Offsets" contained in the "Summer Spill Update and Analysis" and in the "Alternative Mitigation Actions" document are particularly disturbing. In contrast to the actual documented benefits that spill provides, the United States proposes a handful of "potential biological offsets" consisting of the following:

- things such the United States previously committed to in the 2000 FCRPS BiOp ("Law Enforcement");
- things that are of unspecified benefit to salmon (the vague reference to "Habitat Improvements" with no indication of where, when or what benefit they would provide which is similar to the deficiencies which led the United States District Court in the NWF v. NMFS case to rule that NOAA's reliance on such measures was "arbitrary and capricious");
- things that admittedly have no direct benefit to outmigration ("Avian Predation Research"); and,
- things that would violate the Nez Perce Tribe's treaty-reserved rights ("Commercial Harvest Reductions").

As you have previously acknowledged at the Regional Executives Meeting last August, any change in summer spill would affect the NWF v. NMFS litigation, and we trust you will advise the Court accordingly.

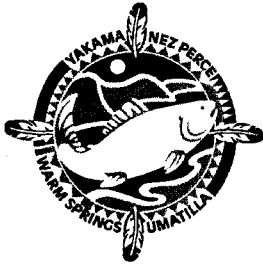
Sincerely,


Anthony D. Johnson
Chairman

February 4, 2004

Page #3

cc: Governor Frank H. Murkowski
Senator Ted Stevens
Senator Lisa Murkowski
Representative Don Young
James Connaughton, Chairman, Council on Environmental Quality
Governor Ted Kulongoski
Governor Gary Locke
Governor Judy Martz
Governor Dirk Kempthorne
IT/TMT
Stan Speaks, BIA
J. William McDonald, Northwest Regional Director, U.S. Bureau of Reclamation
Alaska Trollers Association
Fred Disheroon, DOJ, Counsel in NWF v. NMFS and U.S. v. Oregon



COLUMBIA RIVER INTER-TRIBAL FISH COMMISSION

729 NE Oregon, Suite 200, Portland, Oregon 97232

Telephone 503 238 0667

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February 3, 2004

Jim Ruff, Chair
Implementation Team
NOAA Fisheries
Portland, OR 97232

Dear Mr. Ruff,

I understand that the Implementation Team at its meeting this Thursday will discuss the Bonneville Power Administration's and others' proposal to curtail summer spill. It does not appear that representatives from the Commission's member tribes will be able to attend this meeting due in part to an overlapping commitment to meet with General Grisoli, ACOE-NWD, to discuss this topic and related issues.

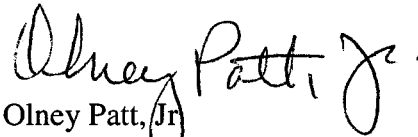
I would like to offer the following points for your consideration:

1. The operations described in summer spill option 4 and the study methodology developed by CBFWA to support summer spill options 3 and 4 would provide sound biological data to assess and quantify the benefits of summer spill. Summer spill options 3 and 4 refer to proposals developed to assess existing Biological Opinion spill operations (option 3) and expanded spill operations intended to increase salmon protection (option 4).
2. The Skalski-Beeman study method for summer spill option 2 would not allow for the development of data addressing the range of stocks affected by spill curtailment nor would it provide information on project effects at any dams other than Bonneville. Summer spill option 2 refers to the proposal(s) to reduce summer spill.
3. The projections of benefits estimated to accrue from those actions described in the federal postings on the TMT web page are unreasonably high and do not meet the test that the survival benefits should be equal to or greater than the benefits of summer spill.
4. The offset exercise actions contain elements of "double-counting." For example, Bonneville's support for the "Vernita Bar plus" operation, which has been ongoing for the last several years, was recently made contingent on reduction of summer spill. Likewise, continuation of Bonneville funding for tribal law enforcement appears to be contingent on reductions in summer spill. These "offsets" are inconsistent with the notion that offset actions should result in survival improvement above current conditions.

5. The impacts to salmon resulting from the loss of summer spill appear to be low. A more conservative estimate of loss would be approximately double the losses presented in the federal materials posted on the TMT web page. Actual assessment of summer spill effects should be undertaken by studying option 4, with the associated methods for options 3/4.
6. The notion that federally imposed unilateral reduction in tribal salmon harvest may be considered an offset to additional hydropower impacts is contrary to our understanding of the law and antithetical to tribal proposals for salmon conservation.

Additional comments addressing this subject matter will be forthcoming in response to NOAA's white papers and in response to Judge Redden's remand of the FCRPS BiOp. We will address this matter in additional forums as appropriate.

Sincerely

A handwritten signature in cursive script that reads "Olney Patt, Jr." with a stylized flourish at the end.

Olney Patt, Jr.
Executive Director