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February 9, 2006

## MEMORANDUM

**TO:** Fish and Wildlife Committee

**FROM:** Patty O'Toole, Program Implementation Manager

**SUBJECT:** Discussion of the FY 2007-2009 project selection process

At the February Fish and Wildlife Committee meeting staff will continue its monthly updates to the Committee regarding the FY 2007-2009 Project Selection Process. Staff will 1) remind the Committee of the current proposal review schedule, 2) review the concept and content of the draft issue memo and 3) address a miscellaneous topic regarding the proposal solicitation process.

### 1. Current Schedule for proposal review and project selection

- October 20, 2005: Request for proposals
- January 10, 2006: Deadline for proposals
- **January 17 - June 16, 2006: Science review and local and basinwide prioritization**
- June 1, 2006: Preliminary science review report and mid June: local provincial priorities to the Council
- July 14, 2006: Responses for prioritized projects in the "fix it loop" are due
- August 31, 2006: Final science review report to the Council
- October 18, 2006: Council recommendations for funding to Bonneville

### 2. Rolling issue memo

Attached to this cover memo is the current draft of the rolling issue memo. We would like to spend some time discussing how the rolling issue memo will help the Council manage and resolve programmatic and project specific issues. The goal is to update and revise the memo each month as issues are raised, discussed and resolved with the ultimate target being the final decision memo in October that will transmit the Council's final work plan and budget to Bonneville for funding.

For the February meeting, three programmatic issues are described in the issue paper. These are Bonneville's funding commitment and allocation targets and principles, BPA/FCRPS obligations and "in lieu", and the integration of off-site mitigation requirements of FCRPS Biological opinions.

### **3. Miscellaneous topic**

We have been asked by the USFWS to consider allowing the submission of a proposal for project number 200306300 - Natural Reproductive Success and Demographic Effects of Hatchery-Origin Steelhead. A proposal for this project was not submitted during the solicitation period. Staff will continue look into this and will discuss the events that lead to this request and may seek Committee direction.



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## MEMORANDUM

**TO:** Council Members

**FROM:** Staff

**SUBJECT:** Fiscal Year 2007 through 2009 Fish and Wildlife Project Review and Recommendations -- **"Rolling Issue Memo" Version 1**

### Background

The Northwest Power Act directs the Council to make recommendations to Bonneville for funding fish and wildlife projects. The Council has approved a project review and selection process that will yield funding recommendations for project funding for Fiscal Years 2007 through 2009 in October this year.

As the Council leads the region through this process, numerous issues will develop that require public notice, consideration, and resolution. This document is the first iteration of the "rolling issue memo" that will be used to identify and provide public notice of issues that bear upon the Council's funding recommendations. The memo is "rolling" because as the project selection process moves forward over time, the both the resolution currently identified issues will be "rolled" into and preserved in the document, and newly emerging issues will be "rolled" into the document and positioned for resolution. At the end of the project selection process, this rolling issue memo will become the Council's decision document that it will forward to Bonneville, including its project funding recommendations along with a record of the related issues considered throughout the process and their disposition.

All who are interested in the Council's project funding recommendation process need to appreciate the critical role that this rolling issue memo will play. This document is the vehicle to provide notice of the issues that the Council staff believes influence the Council's final project funding recommendations. Likewise, this document will include the Council staff proposals for Council treatment or resolution of those issues. When those participating or having an interest in this process share a perspective or opinion on the issues in the memo, those need to be communicated to Council staff through the Fish and Wildlife Division Director, Doug Marker so that they can be included in the memo for Council consideration and public notice.

While this rolling memo will play a critical role in issue identification, development, and resolution, it must be made clear that there is a limit to the subject matter that can be developed in this way. The Council will not establish or amend significant fish and wildlife policy in this process -- those significant policy issues, that are at or close to the core of the adopted Fish and Wildlife Program -- must be addressed in a formal Fish and Wildlife Program amendment process. For example, later in this document the distribution of the Bonneville fund among anadromous fish, wildlife, and resident fish (the “70/15/15” rule) is explained for context to help interested parties understand the province funding targets approved by the Council. It is possible that an interested party may believe that a different distribution policy would be favorable, or that this one be completely eliminated. However, because this “70/15/15” distribution policy is specifically called for in the adopted Fish and Wildlife Program, and could not be altered or eliminated by the Council in this project selection process. The most the Council could do is to explore alternative ways to achieve the “70/15/15” policy. Again, this is only an example.

In summary, this rolling memo plays a key role in focusing the Council and interested parties on important issues and Council decisions relating to project funding recommendations for Fiscal Years 2007 through 2009. Suggestions to add to the suite of issues presented herein, and comment on issues presented need to be routed through the Council staff so that they can be included in the next iteration of the issue memo. As issues become ripe for Council resolution over the next several months, the staff will make recommendations to the Council and it will make decisions. This will help keep the number of decisions made at the end of the process more manageable and focused on the actual project funding recommendations.

## **I. Schedule**

On October 21, 2005, the Council and Bonneville issued a solicitation for project proposals to implement the Columbia Basin Fish and Wildlife Program. Proposals were submitted through January 10, 2006. The proposals are being reviewed by the Council’s Independent Scientific Review Panel (ISRP report due no later than June 16<sup>th</sup>) and prioritized by provincial work groups and a basinwide work group convened by Council staff. The Council will consider the ISRP report and the recommendations received by the local groups. Some proposals will be asked to respond to issues raised by the ISRP and the report for this second review will be provided to the Council by August 31<sup>st</sup>. The Council will make funding recommendations at its October meeting.

## **II. Programmatic Issues**

*A “**programmatic issue**” transcends a single project or proposal -- it bears upon how the Council understands and implements its project review and recommendation process and/or it colors its funding recommendations broadly for all projects or a significant set of projects.*

### **1. Bonneville’s funding commitment during the 2007-2009 rate period; Council allocation targets and principles.**

Last fall Bonneville and the Council agreed that it would use an annual average planning budget of \$153 million for Fiscal Years 2007 through 2009. In addition to that “expense” funding, Bonneville will also make available up to an annual average of \$36 million in funds borrowed

from the U.S. Treasury. This latter amount often referred to as “capital” funding, is subject to particular rules and standards prescribed by Bonneville in its “Capital Funding Policy for Fish and Wildlife Projects”.

In order to ensure the ability for all areas of the Columbia Basin to participate, planning target allocations have been established for each Province. Similarly, for research, monitoring and evaluation, and coordination activities that are not linked to a particular province, a “basinwide” planning target was established. The allocations for each Province were based on historical Council recommendations and start from the average of the Council recommendations for Fiscal Years 2004 through 2006. That is, the Council surveyed how it, along with Bonneville, fish and wildlife managers, and others have traditionally committed funding under the Program. These patterns are the legacy of management emphasis and legal and policy considerations, and are not to be considered perfect or those that will be used in future years.

The Council’s 2000 Program carries forward the goal of ensuring that Bonneville funds are committed to all three of these Program areas. The Council made adjustments to the historical recommendations based allocation to reflect the 70/15/15 distribution. The Council notes that while in recent years the resident fish distribution has come close to 15% of the program, it appears that it is the wildlife component that has lagged behind. Therefore, where both resident fish and wildlife projects occur, the Council’s intent is to have both of these program areas approach their 15% allocation goal.

Bonneville articulated a goal in its Power Function Review of committing at least 70% of its annual fish and wildlife funding to “on the ground work”, and no more than 25% to research and monitoring and evaluation activities, and 5% to coordination actions. The Council considered these goals but decided **not** to use these targets to allocate funding for Fiscal Years 2007 through 2009. Nonetheless, the Council and Bonneville will work together in this project selection process, and into the future, to focus resources on activities that provide direct benefits to fish and wildlife while maintaining an efficient accountability framework of monitoring and evaluation, research directed at key priorities, and to streamline necessary coordination.

**Preliminary Staff Recommendations:** Most of this issue and description is provided primarily as background, and no near-term Council action is required. The staff notes that it would be helpful if Bonneville can work as quickly as possible to review the proposals that were submitted and identify those that may be eligible for capital funding. This would be important information for the local groups as they work to prioritize the expense targets allocations. As the project selection process moves forward over the next several months, if there are issues that develop with regard to the province allocations they will be identified here and brought to the Committee and Council for discussion.

## **2. Ensuring projects recommended respond to BPA/FCRPS obligations without “in lieu” funding problems.**

Bonneville has a legal obligation to protect, mitigate, and enhance fish and wildlife impacted by hydrosystem development and operation. This is Bonneville’s “responsibility.” To meet that duty, Bonneville has the *authority* to fund on-site protection and mitigation actions as well as offsite habitat and production actions--that offsite work now catalogued in subbasin plans.

As the Council stated in its public letter resolving broader process issues in the subbasin planning process, as long as an offsite mitigation project proposal funded by Bonneville addresses a species identified as adversely affected by the hydrosystem, that action is potentially within the authority of Bonneville to fund as part of its effort to satisfy its Power Act mitigation obligation -- in doing so, Bonneville is responding to its legal *responsibility* to protect, mitigate, and enhance fish and wildlife. The possible exceptions are those cases where Bonneville funding for a project replaces funding of another entity that is required or in place. The Act precludes Bonneville from funding this work “in lieu” of funding provided by another responsible party.

**Preliminary Staff Recommendations:** Determining which project proposals may run afoul of the Act’s in lieu funding prohibition has always been done by Bonneville. It would be extremely helpful to both the Council and the local groups developing project funding prioritization recommendations if Bonneville would quickly review the proposals and provide notice to the Council of the particular proposals that may present an in lieu funding problem. The staff suggests a date of March 6<sup>th</sup> for notice of which (if any) proposals may have in lieu funding issues.

### **3. Integration of off-site mitigation requirements of FCRPS Biological Opinions**

In past project selection processes the Council has sought to deliver recommendations to Bonneville that satisfied its ESA-based objectives balanced with its broader Northwest Power Act obligation to protect, mitigate and enhance any fish and wildlife affected by the hydrosystem. A consistent message from the Council has been that Bonneville needs to make its ESA-based requirements known as early in the project selection process as possible so that those could be considered as part of the overall and broader fish and wildlife project recommendation package the Council develops.

Further, the Council has consistently stated that BPA’s ESA-based actions need to be held to the same level of scientific, public, and Council review as all other fish and wildlife actions funded by Bonneville, and that the best way to ensure this is to develop any specific ESA-based actions as part of the general project selection process. The Council believes that it has been very successful in delivering the ESA-based projects sought by Bonneville in its project selection and within-year funding processes (the RPAs from the 2000 BiOP primarily).

The current project selection process began with substantial uncertainty attending Bonneville’s ESA-based needs. The 2000 and 2004 Biological Opinions and the Action Agency Updated Proposed Action had been declared not legally sufficient by the Federal Court. Just as the Council and Bonneville released the call for proposals to be funded by Bonneville in this next cycle, Bonneville and the other Action Agencies were ramping up their work to respond to the Court’s rulings, which may include securing needed survival improvements from off-site actions. The staff understands that the Action Agencies and NOAA seek to have a draft FCRPS Biological Opinion completed around June 1, and a final in October. It is unclear to staff when in the course of that work off-site actions (habitat, hatchery, etc) if any, may be identified as part of the Agencies’ proposed action or the NOAA draft Biological Opinion.

**Preliminary Staff Recommendations:** The staff recommends that the Council adhere to its consistent position that Bonneville's ESA-based off-site mitigation projects be developed, as much as possible, within the general project selection process. Again, the benefits are substantial -- scientific rigor, public notice and comment, and budget scrutiny are products of this process. Moreover, once a project proposal is selected in this process, it will have secured scientific and public support, have a specific entity assigned to do the work and an implementation budget associated with it -- a strong case that the action is "reasonably certain to occur" can be made. In that light, the staff recommends that the Council continue to advise Bonneville and others working on the FCRPS Biological Opinion and Proposed Action that there are over 500 proposals that were submitted on January 10<sup>th</sup> that are candidates for consideration of any off-site mitigation element that may be part of the those ESA products being developed. These proposals are being reviewed by the ISRP and also local groups familiar with subbasin plans, and in many cases, recovery plans that have been built upon subbasin plans.

It is possible that Bonneville may make its best efforts to utilize the project selection process for meeting any off-site ESA requirements that are developed, but that there remain "gaps" that it believes it needs to address. Should this become a reality, the staff recommends that the Council ask Bonneville to fully coordinate its response to filling those gaps with the Council, and that any additional or modified process for filling "gaps" be designed to have the same high standards for scientific review and public review that attends the Council's general project selection process.

### **III. Potential Programmatic Issues for Council Consideration in Future Iterations**

The staff anticipates that the following programmatic issues will require some Council consideration and direction in the coming months. They are not critical at this point in the project selection process. However, the staff wants the Council and the public to see this list so that it may anticipate where the staff and Council will be going next.

- **Transition to integrated regional monitoring and evaluation framework**

The Council recognizes the varied and significant efforts presently underway in the region to better integrate and direct these activities. Although significant progress is being made, more work needs to be done to develop programmatic frameworks and priorities for research and monitoring evaluation activities before proposals for them can be specifically directed or the appropriate overall funding level for these areas can be determined. The Council will endeavor to support and accelerate the development of integrated and efficient research and monitoring and evaluation programs. If progress on these matters can be made expeditiously, the products may be used to inform the Council's proposal funding recommendations to Bonneville for these proposal types as this project selection process concludes.

- **Status and use of the Council's Research Plan in establishing research sequence and priorities**
- **Assumptions for use of Bonneville's capital borrowing authority to finance certain recommended proposals**



- **Purpose of identifying funding and implementation partnerships in recommended proposals**
- **Recognition and use of cost-sharing MOU between USDA Forest Service and the Bonneville Power Administration**
- **Process for annual review and renewal of recommendations in Fiscal Years 2008 and 2009.**

Each year the Council will conduct a process to review and confirm the annual budgets recommended here. As part of that process, the Council asks Bonneville to present a summary from contractor performance reports, the accomplishments of each project relative to the proposal that was recommended by the Council. The report should explain any variances in actual performance from what was proposed.

- **Within-year budget adjustment process**
- **Step review process revision to reflect the recently adopted subbasin plans, and to take into account ISRP comments.**
- **Coordinated review of other direct funded programs**

The LSRCP program is not part of what is considered the traditional “direct program” funded by Bonneville. Historically, the program (U.S. Fish and Wildlife Service) received annual congressional appropriations, and Bonneville reimbursed the Treasury for those appropriations. This “reimbursable” program was not originally specifically subject to ISRP and Council review under the 1996 Gorton amendment to the Act. However, in 1998, the U.S. Congress’ Senate-House conference report on the fiscal year 1999 Energy and Water Development Appropriations bill directed the Council to have the ISRP to annually review all fish and wildlife projects, programs, or measures included in federal agency budgets that are reimbursed by Bonneville using the same standards and criteria of the 1996 amendment, and to report to Congress on those reviews. The LSRCP is no longer a true “reimbursable” project, and as part of the FY 2007 - 2009 process we have not initiated a review of the program.

- **Timing and Design of the Project Selection Process to Select FY 2010 and Beyond Projects**

[Excerpt from Memo to the Council explaining proposed FY 08-09 Process]:

The Council intends to renew a sequenced review of its program in the near future -- a format similar to the last provincial review process. This process will divide the program into several “tracks”. If the Council decides to initiate this sequenced review soon, it is possible that it could be completed in time to revise or replace some Fiscal Year 2009 funding recommendations -- the third and final year of the recommendations-- that will be made in this current project review. The Council has not established a schedule for the follow-on sequenced review process. The Council simply wants to note here that it is possible that the third and final year of the

recommendations may be revised/replaced if the Council, in the future, decides to start the next review process very soon.”

#### **IV. Project Specific Issues**

*The staff anticipates that most project specific issues will start to emerge as the local groups and the ISRP complete their work in early to mid-June 2006. We include this section as a placeholder so that the Council and public can see the full framework of this rolling memorandum.*

##### **Basinwide Projects**

##### **Blue Mountain Province**

##### **Columbia Cascade Province**

##### **Columbia Gorge Province**

##### **Columbia Plateau Province**

##### **Lower Columbia Province**

##### **Estuary Province**

##### **Middle Snake Province**

##### **Mountain Columbia Province**

##### **Mountain Snake Province**

##### **Intermountain Province**

##### **Upper Snake Province**

**IV. [Placeholder for Council determinations/findings that address 4(h)(10)(D)]**

**How the Council fully considered the recommendations of the ISRP**

**How the Council implemented other requirements of the 1996 Amendment to the Northwest Power Act.**

**Cost effectiveness**

**Taking into consideration effects of ocean conditions**

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