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March 10, 2020

MEMORANDUM

TO: Council Members

FROM: John Shurts

SUBJECT: Council decision on adoption of findings on recommendations and responses to comments for Part II of the 2020 Program Addendum

We have scheduled for the March Council meeting a Council decision to adopt the findings on program amendment recommendations and responses to comments to support and complete the adoption of Part II of the 2020 Addendum to the 2014 Fish and Wildlife Program. The Legal Division sent you by email a draft of the proposed findings/responses in late February. That draft is not a public document, and will not be public until after you approve a final version.

A reminder that the document serves two separate but related purposes. One is that Section 4(h)(7) of the Northwest Power Act requires the Council, if it does *not* adopt any recommendation as part of the program, to explain in writing *as part of the program* the basis for the Council's finding that the adoption of such recommendation would be inconsistent with certain requirements of Section 4(h). The other stems from more general principles of administrative law and the federal Administrative Procedures Act requiring the Council to approve a broader explanation as to how it addressed all the inputs and issues involved in deciding on the final provisions of Part II, including how it handled recommendations it did not necessarily reject but recognized in some other way than precisely as recommended and how the Council responded to comments on the recommendations and the draft program. In theory we could segment out the two different parts of the document – the very specific findings on rejected recommendations and the broader response to all other recommendations and comments – and we will if we ever have to, but everything is so related that it is easier and more efficient to integrate both into one coordinated explanation.

One other reminder is that the amendment process continues with regard to the final provisions of Part I, to be followed by additional findings and responses once the Council settles on the final provisions of Part I.