



Department of Energy

Bonneville Power Administration
P.O. Box 3621
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ENVIRONMENT, FISH AND WILDLIFE

February 9, 2007

In reply refer to: KE-4

Dr. Tom Karier, Chair
Northwest Power & Conservation Council
851 SW Sixth Avenue, Suite 1100
Portland, OR 97204-1348

Dear Dr. Karier:

I am pleased to provide the Bonneville Power Administration's (BPA) decision for the fish and wildlife protection, mitigation, and enhancement project proposals recommended by the Northwest Power and Conservation Council's (Council) for implementation of the *Columbia Basin Fish and Wildlife Program* (Program) during Fiscal Years (FY) 2007-2009. Our programmatic decision is the final step in the regional solicitation we jointly initiated on October 21, 2005. It relies upon and incorporates the project recommendations adopted by the Council at its October and November meetings, and forwarded to BPA on November 20, 2006. BPA appreciates all the hard work by the Council in formulating its recommendation, including the consideration of comments from Program participants and other interested parties. This decision benefits from the individual and collective input from across the region, facilitated by the regional process conducted by the Council.

In evaluating the Council's project recommendations and making BPA's implementation decision, BPA has endeavored to give substance to several inter-related objectives: consistency with the Council's Fish and Wildlife Program; progress toward a shared goal of improved Program delivery, effectiveness, and reporting that we have characterized as "reinvention;" integration of Endangered Species Act responsibilities and the commitments that are likely to be reflected in a revised "proposed action" and a newly crafted Biological Opinion for the federal hydropower system; and management of Program spending within a budget of \$143 million per year in expense and \$36 million per year in capital. In addition, we believe BPA's implementation choices over the next three years advance the principal overarching goal articulated by both BPA and the Council at the outset of the solicitation: to continue moving Program implementation towards project choices and funding priorities that are driven by clear biological objectives and explicit performance outcomes.¹

As with prior solicitations, project-specific funding amounts will be established in contracts based on negotiations between BPA and project contractors using these estimated individual project planning

¹ As the Council and BPA stated in a joint cover letter at the onset of the solicitation: "We are jointly endeavoring to develop and implement a performance-based fish and wildlife program, with biological, environmental or population performance measures clearly set forth in proposals" October 21, 2005, letter to the Region, from Mr. Delwiche and Mr. Marker.

budgets as a guide. As needed, we will rely on the within-year process in coordination with the Budget Oversight Group (BOG) for potential subsequent budget adjustments that may be proposed.

Consistency with the Council's Program – The Northwest Power Act (Act)² charges the Council with developing a program consisting of measures (sometimes also referred to as strategies) to protect, mitigate, and enhance fish and wildlife, and requires BPA to implement activities in a manner consistent with that Program, the Council's Power Plan, and the purposes of the Act. As detailed in the enclosed documents, BPA's implementation decision is consistent with the Council's Plan, Program, the purposes of the Act, and the other authorities and obligations of BPA. In particular, BPA's project selections reflect careful attention to the solicitation guidance and instructions, embody the Independent Scientific Review Panel project reviews, reflect public comments to the Council and BPA, and generally follow and incorporate the Council's project-specific recommendations.

Specifically, BPA will fund 260 of the approximately 285 projects recommended for funding by the Council via BPA's \$143 million/yr Fish and Wildlife Program *expense* budget. We also are choosing to fund 41 additional projects; nearly all of these additional projects are either reflective of commitments in the Interim 2007 Operations Agreement or reflect additional BiOp-related habitat work in the so-called high priority subbasins. In those limited circumstances where BPA is not adhering to particular project-specific recommendations, we describe the differences and explain our rationale in the tables that accompany our decision. Admittedly, BPA's choices place a premium on the implementation of projects with explicit biological or environmental performance benefits, and that have a clear nexus to the impacts on fish and wildlife of the Federal Columbia River Power System (FCRPS). Of necessity, in the absence of uniformly well-developed biological objectives, BPA has begun to emphasize on-the-ground projects that directly benefit fish and wildlife as a surrogate, during a period of transition, for the performance-basis in Program implementation underscored by the Council and BPA in the solicitation instructions.

Progress on program reinvention initiatives – BPA continues to encourage a view of FY07-09 as a critical period of transition – one in which BPA and the Council together re-set the broad programmatic parameters of project design and implementation to meet our mutually endorsed objectives. In comments to the Council last fall,³ BPA summarized some of the key attributes of the “re invention” that we seek to implement. These initiatives include a greater focus on activities with clearly defined biological objectives,⁴ project evaluation and performance reporting based on a currency of common metrics, and increased focus on the implementation of projects with direct, on-the-ground benefits for fish and wildlife. Although we acknowledge that a Program of this magnitude requires a certain level of investment in “infrastructure” support and maintenance (e.g., coordination, education, monitoring), these administrative support functions have grown significantly in scale (and perhaps beyond the scope of BPA's responsibilities addressed solely to the effects of the FCRPS). It also warrants emphasis here that given our mutual commitment to project accomplishments reporting evaluation for *all* Program spending, the outcomes of infrastructure spending do not lend themselves to accomplishments

² Northwest Power Act, §4(h)(5)-(h)(10), 16 U.S.C. § 839b(h)(5)-839b(h)(10), 94 Stat. 2709-10.

³ October 6, 2006, letter and attachments from Mr. Delwiche to Dr. Karier.

⁴ As part of its agency-wide strategic direction for 2007-2011, BPA seeks to provide “*cost-effective solutions for meeting fish, wildlife and environmental responsibilities, measured against clearly defined performance objectives.*” BPA Agency Strategy Map: 2007-2011, S4.

reporting grounded in the biologically-based objectives and performance metrics we have both envisioned.

Expanding administrative costs, the escalating expectations of Program participants, and the embedded presumption that BPA will continue to serve as the primary funding source for the region's research, monitoring, and evaluation (RM&E) agenda – whatever its statutory origins – have coalesced to compromise the delivery of Program performance as measured by biological benefits provided to fish and wildlife. As we have noted previously: BPA's fish and wildlife obligations and commitments – including our Program and Northwest Power Act implementation responsibilities – ultimately are only met by protecting, mitigating and enhancing fish and wildlife populations affected by the FCRPS and not simply by increasing our knowledge about them, coordinating one another's authorities or perspectives, or administering a program. Active management of total Program spending, within budgets organized among categories, is one step toward addressing the persistent challenge of assuring the effective application of funds, the prioritization of actions, and the orderly accomplishment of Program goals across a broad range of programmatic effort and investment.

Consequently, while BPA is and will continue to be an active participant in regional RM&E efforts, our project decisions during this implementation period have begun to shift a greater percentage of our spending to fish and wildlife production efforts through habitat, hatchery and other actions that directly benefit fish and wildlife. Incrementally, through modest reductions or projected contract renewals held to FY06 levels, we are encouraging our implementation partners, as Program participants (and not merely recipients), to shoulder an increasing share of the administration and RM&E expenses that can be fairly allocated to them – encompassed within their agency statutory or organic management responsibilities. While BPA's decision is generally reflective of an initial shift in the latter direction, our decisions are very broadly consistent with the Council's recommendations. Additional change in the total allocations across programmatic spending categories will be evolutionary and incremental. For example, in FY06, using Columbia Basin Fish & Wildlife Authority project characterizations, the programmatic distribution of spending among categories for on-the-ground, RM&E, and Program administration (principally coordination) was about 55-40-5%, respectively; BPA's FY07-09 implementation decision results in an allocation of approximately 57-35-8% by the end of the 3-year period, based on the same project-level categorization method.⁵

Integration of Endangered Species Act – The Council and BPA have a long history of integrating projects addressing Northwest Power Act and ESA responsibilities into a single integrated Program. During the FY07-09 solicitation process, identifying and integrating projects that best meet the needs of ESA-listed anadromous fish has been particularly challenging, given that the FCRPS Biological Opinion currently under remand to NOAA Fisheries has not been completed. Although some uncertainty remains regarding the outcome of the remand collaboration, it has progressed to a point where a new draft Proposed Action (PA) will soon be released. This PA will incorporate an increased number of habitat actions benefiting ESA-listed stocks that have major population groups with relatively low productivity levels. Consequently, in addition to the Council's project

⁵ Note: This distribution is at a project level. As projects often contain a mix of on-the-ground implementation efforts, research, monitoring, or evaluation work, and coordination activities at the same time, we made a judgment as to the best category to describe the project as a whole. Once projects are contracted for and the work elements identified in PISCES, Bonneville will analyze the distribution of work elements for a more accurate categorization.

recommendations, our implementation decision also includes additional habitat projects that were proposed in the solicitation process and will benefit these stocks with relatively low productivity.

We will soon begin the initial steps for implementing these additional projects, so as to be ready to provide initial additional benefits to listed and non-listed species, and because they have already undergone Council and independent scientific review. In the interest of our implementation decision also being supportive of the thrust of a new Proposed Action, we have sought to fully coordinate these choices with the parties to the remand litigation – particularly the states and tribes represented through the Council – and, within the collaborative process ordered by the Court, integrate them into our Program implementation efforts. Following consultation with the Council in February, we plan to begin pre-implementation project activities, in order to be able to initiate contracting as soon as possible following a final remand outcome and a new court-supported Biological Opinion. This is important because our past experience suggests that it can take several months to develop contracts and complete permitting and other regulatory work prior to implementing projects on-the-ground.

Managing spending within the \$143 million expense and \$36 million capital budgets – As an outcome of the agency’s Power Function Reviews, and as communicated in BPA’s correspondence with the Council, our decision reflects the goal of managing annual average Program spending to \$143 million/yr (expense) and \$36 million/yr (capital) in FYs 2007-2009, plus the unspent carryover from FYs 2003-2006. BPA will also add approximately \$3 million dollars to the FY07 implementation budget (from power revenues) to reflect commitments in the recently announced 2007 Interim Operations Agreement, as discussed with the Council at its January 2007 meeting.

To minimize confusion and allow for straightforward comparison, BPA’s decision describes projected project budgets in dollar terms that mirror the Council’s project-level annual budget recommendations. However, it is important to note that BPA manages all of the agency’s programs based on fiscal year spending, not on the obligations basis or project year budgets the Council used in its recommendations. This distinction is important because our estimated fiscal year expenditures also include the cost of completing projects that were not re-proposed in the solicitation, but that have contract periods that span fiscal years and include spending that continues into FY07. Conversely, and equally important, only a portion of the budgets for new projects beginning in FY07 will actually impact FY07 spending; the spending impact of a three-year implementation decision for these projects will roll over into FY10. In addition to the project year versus fiscal year distinction, BPA’s decision also specifically accounts for the costs of closing projects, although these costs were not reflected in the Council’s recommendation.

In the course of incorporating these budget-related factors into an overall Program implementation budget, we have sought to match increases in spending for newly proposed on-the-ground work with pragmatic, principled, and explainable reductions in some spending for other ongoing projects. In some cases, we signal our intentions to close out certain projects by budgeting on a trajectory that diminishes, or eliminates, spending for them by the end of the implementation period. For others, we have held budgets either to FY06 levels, or have held increases at or below the rate of inflation. Some projects with persistent and ongoing *in lieu* concerns, while not targeted for closure, have been ramped-down to 85 percent of historic funding levels beginning in FY09, both as an impetus to address funding responsibilities that may have been inappropriately borne by BPA, and as a stimulus to promote more

robust cost-sharing that enables BPA to support additional on-the-ground work toward the end of FY09 and beyond.

BPA acknowledges that upward pressures on the cost of implementing projects will continue. Examples include rising costs for fuel and energy, health care benefits, and construction materials and supplies. Often, these pressures cannot be anticipated by proponents at the time proposals were developed, nor can they be fully taken into account even at the time of contract execution. We acknowledge that our efforts to manage finances systematically – across a spectrum of Program implementation activities and influencing factors, and over three years – may prove to be imperfect in some cases and there may be oversights in others. Consequently, BPA will carefully review budgets during contract negotiations and make the best possible assessment of appropriate costs (those necessary to achieve project purposes); and we will continue to work with the Council through the established steps of the within-year process and the BOG for any consideration of budget increases requested after contract execution.

It is also important to note that, as a result of our decision on project-specific budgets, the estimated aggregate spending level in some provinces is less than that budgeted and recommended by the Council. BPA's decision does not overtly reflect moving these dollars to other provinces; instead, these dollars are not reflected as being spent, most notably in FY08-09. As such, BPA asks the Council for its recommendation on how to approach this issue.

BPA's decision is more fully described in the enclosed supplementary materials and decision tables. We have organized the discussion of our decision around overarching categories of spending and investment. Part one describes those categories and the underlying rationale(s) for BPA's implementation decisions and project specific budget estimates. Part two consists of programmatic themes, overarching financial management considerations, and recurring policy issues that are, for the most part, not project specific, such as our treatment of placeholders. Part three contains BPA's final *in lieu* assessment.⁶ Lastly, BPA will post on its website an expanded legal analysis and discussion of the policy issues underpinning BPA's decision-making, and a record of decision under the National Environmental Policy Act covering this program implementation decision.

As always, please contact me if you have questions about this letter or the enclosed documents, and if you wish to discuss any of the issues associated with BPA's final programmatic decision. I appreciate your continued support of BPA's reinvention initiatives – aimed at our mutual goal of integrating all of BPA's obligations and commitments within a single Program that serves the broad resource protection, mitigation, and enhancement purposes of the Northwest Power Act.

Sincerely,

/s/ G.K. Delwiche

Gregory K. Delwiche
Vice President, Environment, Fish and Wildlife

Enclosures

⁶ The final *in lieu* ratings table is posted separately to BPA's website.

cc:

Mr. Bill Booth, Northwest Power & Conservation Council
Mr. Jim Kempton, Northwest Power & Conservation Council
Ms. Joan Dukes, Northwest Power & Conservation Council
Mr. Bruce Measure, Northwest Power & Conservation Council
Ms. Rhonda Whiting, Northwest Power & Conservation Council
Mr. Larry Cassidy, Northwest Power & Conservation Council
Ms. Melinda Eden, Northwest Power & Conservation Council
Mr. Doug Marker, Northwest Power & Conservation Council
Mr. Brian Lipscomb, Columbia Basin Fish & Wildlife Authority
Chairman Dean Adams, Burns Paiute Tribe
Chairman Chief Allen, Coeur d'Alene Tribe
Chairman Michael Marchand, Confederated Tribes of the Colville Reservation
Chairman Glen Nenema, Kalispel Tribe
Chairperson Jennifer Porter, Kootenai Tribe of Idaho
Chairperson Rebecca Miles, Nez Perce Tribe
Chairman James Steele Jr., Confederated Salish & Kootenai Tribes
Chairperson Alonzo Coby, Shoshone Bannock Tribes of Fort Hall
Chairman Terry Gibson, Shoshone Paiute Tribes of the Duck Valley Reservation
Chairman Richard Sherwood, Spokane Tribe of Indians
Chairman Antone Minthorn, Confederated Tribes of the Umatilla Indian Reservation
Chairman Ron Suppah, Confederated Tribes of the Warm Springs Reservation
Chairman Lavina Washines, Yakama Indian Nation
Ms. Mary Verner, Upper Columbia United Tribes
Mr. Olney Patt Jr., Columbia River Intertribal Fish Commission

**Bonneville Power Administration (BPA)
Fish and Wildlife Program Implementation
Fiscal Years 2007- 2009**

February 26, 2007

This four-part enclosure to the accompanying cover letter comprises BPA's decision and provides the supporting rationale(s) for projects (both ongoing and new) that will be implemented beginning in Fiscal Year 2007 (FY07), as well as projects that will be closed out by the end of FY07. Part 1 describes BPA's project-specific comments, implementation decisions, and planning budget estimates. Part 2 provides a programmatic discussion of overarching policy and financial management issues. Part 3 describes *in lieu*, tribal resource, and trust and treaty considerations. Part 4 details BPA's findings regarding the consistency of this decision with the Northwest Power and Conservation Council's (Council) *Columbia Basin Fish and Wildlife Program* (Program), the Power Plan, and the purposes of the Northwest Power Act (Act); it also provides BPA's rationale for diverging from the Council's recommendations for a very limited set of projects.¹

The components of BPA's decision build upon and incorporate BPA management and policy directions previously discussed beginning with the agency-wide strategic direction established in 2004, the Power Function Reviews (PFR), the power rate case, BPA and Council guidelines provided in the initial proposal instructions and over the course of the solicitation process. These include BPA's correspondence with the Council on August 3 and October 6, 2006, reflecting the draft *in lieu* review; the July 29, 2005, and October 30, 2006, letters regarding biological objectives; the October 28, 2005, letter regarding BPA initiatives to "reinvent" Program implementation practices and protocols;² the December 2, 2005, letter providing Supplemental Information for FY07-09 Solicitation Participants; and the October 6, 2006, comment letter to the Council on its draft recommendations.

Part 1: Project-Specific Implementation

Introduction

Part 1 of this document describes BPA's decision regarding the specific projects the Council recommended to BPA. Of the 285 "expense" projects recommended by the Council as an outcome of the joint FY07-09 Solicitation Process, BPA will fund 260 projects. Among these projects, 212 are a continuation or expansion of existing work and 46 projects are new. We will also fund 41 additional projects; nearly all of these additional projects are either reflective of commitments in the Interim 2007 Operations Agreement or additional BiOp-related habitat work in high-priority subbasins identified in the remand collaboration. Finally, this document reflects the expected costs of closing some ongoing projects recommended for closure by the Council,³ as well as the costs associated with BPA's decision to close three additional projects that the Council had recommended for continued funding. The costs of

¹ Bonneville is also posting to its website a final *in lieu* ratings spreadsheet, and a history and synopsis paper summarizing where the agency has been and where it is going in terms of its fish and wildlife program implementation, which provides support and context for BPA's FY07-09 decision.

² For example, allocating about 70 percent of the effort to on-the-ground projects such as habitat protection and enhancement, 25 percent to research, monitoring, and evaluation, 5 percent to coordination and data management; and accounting for spending and reporting accomplishments categorically, through standardized metrics.

³ Most of the projects BPA has chosen to continue funding in FY07, despite Council recommendation for close-out, are projects included in the 2007 Interim Operations Agreement.

closing out ongoing projects were not reflected in the Council's recommendation and are, therefore, in addition to the budgets recommended by the Council.

Planning budgets associated with project implementation are estimates, and are expressed in project-year terms (generally the one-year duration of a project contract) rather than as fiscal-year expenditures, because project contracts often span consecutive fiscal years. This distinction is particularly important for newly implemented projects that will not likely receive contracts until late in FY07. There is little difference for ongoing projects that will continue at relatively constant budgets, and projects set to close will have similar project-year and fiscal-year costs. BPA will manage spending on an FY basis to average approximately \$143 million per year for expense,⁴ and not to exceed approximately \$36 million per year for capital, as explained in more detail below.

This decision is organized around six basic work categories: artificial production; habitat protection and restoration; research, monitoring, and evaluation; data management; coordination; and program support. However, in recognition that the Council organized their recommendation by geographic location, BPA's tables also include the project's provincial designation.

Artificial Production: Construction, Operation, and Maintenance

In this decision, BPA continues to support the operation of existing production facilities as well as the further design and review of those well along in their development through the Program, such as Chief Joseph Hatchery. In total, BPA's decision reflects funding for 38 artificial production related projects. BPA will also continue to support the ongoing process of evaluation for the Walla Walla Hatchery, Kootenai Hatchery sturgeon and burbot expansion, and the Lake Roosevelt White Sturgeon Hatchery, all of which are currently under review within the Council-managed Three-Step Major Project Review Process (Three-Step Process).

A primary objective under the Council's Program, past Federal Columbia River Power System (FCRPS) Endangered Species Act (ESA) biological opinions (BiOp), and the ongoing remand collaboration is to increase abundance, distribution, and diversity of anadromous and resident fish affected by the federal hydrosystem. In addition to on-site actions at the dams and within the mainstem hydro corridor, BPA and the Council have pursued hatchery supplementation as one strategy to improve abundance and productivity. BPA has committed substantial resources to the design, construction, and operation of several significant anadromous fish hatcheries, and to a number of smaller satellite production, rearing, and release facilities that benefit both anadromous and resident fish. Throughout the Columbia River Basin (Basin), supplementation programs supported by these production facilities have provided valuable conservation benefits for ESA-listed populations, including reduced risk of extinction (safety-net programs), and have also improved abundance, spatial structure, and diversity for both listed and unlisted anadromous and resident fish.

As an overlay on these Program efforts, the region is now undertaking a substantial review of basin-wide hatchery programs as directed by Congress and funded through an appropriation to NOAA Fisheries. During this hatchery review process, the Columbia River Hatchery Scientific Review Group (HSRG) will collaboratively review how hatchery practices and production levels (particularly those of federal hatcheries that BPA does not fund), and related harvest management agreements and protocols, are affecting the recovery of listed salmon and steelhead in the Basin. In the future, review

⁴ BPA has added additional funds in the FY07 expense budget to cover the approximately \$3M in incremental additional costs for the 2007 Interim Operations Agreement projects; and has carried-over into FY07-09 projected expense spending the estimated \$8.8M unspent during FY03-06. These funds are additive to the \$143 million expense budget.

recommendations (and the subsequent interpretation and application of the findings by NOAA Fisheries, fishery co-managers, and others) may lead to shifts in strategies for the development and use of hatcheries throughout the Basin.⁵ Consequently, BPA remains mindful about the risk of uncertainty now inherent in making large-scale Program investments in new hatcheries. The development of hatchery facilities is a multi-million dollar endeavor, with long-term commitments over the life-cycle of project planning, design, construction, operation, and maintenance. As such, BPA believes it will be important to understand the consequences stemming from this review as decisions are made through the Three-Step Process regarding future investments in these hatcheries.

Having completed the Three-Step Process – and given earlier Council approval, considerable BPA investment in development and design, and our mutual commitment to the Nez Perce Tribe – BPA will continue preparatory activities in anticipation of constructing the Northeast Oregon Hatchery (NEOH). BPA remains confident that NEOH can provide significant recovery benefits to ESA-listed fish, as other limiting factors are addressed. In light of the Council’s recommendation in May 2006, that BPA receive confirmation and verification of the benefits for ESA recovery purposes from NOAA Fisheries, BPA is working closely with NOAA and the Nez Perce Tribe through the remand collaboration process. Our purpose is to ensure that the NEOH program is acknowledged, from a regulatory perspective, to appropriately account for the abundance and productivity benefits to ESA-listed stocks from both an extinction-avoidance and contribution-to-recovery perspective. The final decision to implement construction activities is anticipated prior to the summer of 2007, pending assurances on the appropriate use and “crediting” for this facility under the ESA.

A more durable and predictable long-term path can result from BPA’s efforts to work with the Council and the region’s fish and wildlife managers to better refine the hatchery portion of the Program and manage it as one of the important tools in an integrated mitigation and resource management “investment portfolio.” Unlike most other projects, hatcheries undergo a staged and systematic Three-Step Process that takes several years and significant resources to complete. Given the substantial review to which hatcheries are subjected, the risk that development and design costs can become a “stranded” investment, the significant capital costs of construction, and a recognition that artificial production is a multi-year strategy generally linked to other mitigation strategies, future/subsequent hatchery operation and maintenance (O&M) funding should not be contingent on periodic solicitation and review processes in the same way that other, more dynamic and changing categories of the Program’s project portfolio should be reviewed. Rather, the Council and BPA should develop a mechanism for adaptively managing these projects to longer, pre-determined implementation periods, based in part on existing agreements for O&M that BPA already has in place and any commitments BPA makes to help settle current litigation over FCRPS operations.

For the FY07-09 solicitation timeframe, the Council’s recommendations and BPA’s decision provides for three years of stable and predictable hatchery funding for existing facilities. In addition, as discussed several times at Council meetings over the last year or longer, BPA looks to the Three-Step Process to deeply engage the mitigation strategy associated with proposed artificial production initiatives, resolving any outstanding questions relative to biological uncertainty (including ESA implications), ensuring the integration of artificial production with the other H’s (particularly habitat and harvest), addressing regulatory constraints that may influence implementation, and promoting planning and subsequent implementation that is undertaken in a timely and cost effective manner. These outcomes become increasingly important as cost pressures continue to increase and the relationships among mitigation strategies are questioned. Our decisions now and into the future also rely on rigorous treatment during

⁵ These issues are also under consideration in the *National Wildlife Federation v. NOAA Fisheries* biological opinion remand process.

the Three-Step Process to inform the scope of our environmental compliance and subsequent records of decision. As such, many outstanding issues remain before some of these actions associated with this decision will be undertaken.

See attached Table 1 - Artificial Production Projects

Habitat

The Council's Program relies "heavily on protection of, and improvements to, inland habitat as the most effective means of restoration and sustaining fish and wildlife populations."⁶ In response, BPA continues to implement a wide array of offsite habitat protection and improvement activities that directly benefit anadromous fish, resident fish, and wildlife throughout the Basin. While BPA undertakes these actions to mitigate for the effects of the federal hydrosystem, its efforts largely protect and improve habitat conditions and function that are negatively affected by the land and water use practices of entities other than BPA, and are therefore unrelated to the direct impacts of the FCRPS.

As noted in the Council Program, these "off-site" mitigation projects may provide better opportunities for improving habitat than areas inside the immediate vicinity of the federal hydropower projects, though as the Council's Program indicates, it is important to direct investments to their most productive applications. BPA's general approach then is to implement habitat projects that benefit species most affected by the operation of the federal hydrosystem, and that promote effectiveness through project investments that produce the most biological benefit per rate-payer dollar invested, or that leverage additional benefits through the synergistic effects of actions funded in tandem with those of other entities, and by supporting incentives for landowners to undertake beneficial actions on their lands.

Anadromous and Resident Fish Habitat Projects

In addition to the extensive investment in hatcheries, improving habitat for ESA-listed and non-listed anadromous fish is a major focus of BPA's off-site mitigation project implementation. We will continue to look to the Subbasin Plans recently adopted into the Council's Program and their assessment of limiting factors to guide investments that best support fish and wildlife populations in both the immediate near-term as well as for the longer-term. Here as in past years, BPA's decision implements projects that protect productive habitat and improve degraded habitat, with a dual focus on both protecting healthy fish populations and improving conditions for weak stocks affected by the FCRPS, particularly those listed under ESA. With this decision, BPA will implement about 94 on-the-ground habitat action projects addressing factors limiting the survival of salmon and steelhead affected by the FCRPS.⁷

Based on the BiOp remand collaboration process, and as noted in our cover letter, our decision also reflects a commitment to fund an additional 17 habitat projects beyond those recommended by the

⁶ *Fish and Wildlife Program* (2000), Habitat Strategies.

⁷ This number includes projects with both "new" and "ongoing" project numbers. However, all habitat projects are expected to complete implementation objectives – defined in terms of scope and budget – by the end of each funding period. While projects with old numbers may be undertaking similar types of work and with a similar staff, they are in effect "new" projects. In future solicitations, BPA will work with project proponents to differentiate new implementation activities from the ongoing costs necessary to preserve past investment or to continue to perform a project's function (generally referred to as "O&M"). New implementation (e.g., construction) activities, as distinct from continuing O&M commitments, may be assigned new project numbers.

Council, totaling approximately \$12.5 million.⁸ These additional habitat projects are in subbasins that are a priority for BPA because they include ESA-listed anadromous fish with some of the lowest productivity and abundance levels in the Basin. These additional projects were reviewed by the Independent Scientific Review Panel (ISRP) and the Council, and are needed to help support BPA's anticipated ESA obligations, as coordinated through discussions in the Habitat Workgroup and Policy Working Group of the remand collaboration. Actions implemented through these habitat projects are focused on the achievement of environmental objectives, such as increasing streamflows, providing passage to additional fish habitat, improving instream fish habitat, and protecting and enhancing riparian habitat. As such, they are consistent with measures and strategies in both the Council's Program and subbasin plans.

In the near-term, the funds for these projects will come from the unallocated placeholder line-items reflected in the Council's recommended budget estimate, and from the approximately \$8.8 million in unspent funds carried over from the FY03-06 implementation period. BPA's decision reflects budgets for these projects that are approximately 80 percent of requested levels; the basis for this is that as contracts are negotiated, BPA expects to be able to reduce implementation costs by removing work elements that do not directly contribute to on-the-ground performance. Looking further ahead, the participants in the FCRPS BiOp remand collaboration process anticipate a more programmatic approach to ESA habitat projects and priorities after 2009. BPA intends to continue working with the Council and the remand collaboration parties to better define the criteria and approach for determining how to focus future habitat work to meet these ESA needs in 2010 and beyond. BPA seeks to provide predictability and certainty of implementation for projects in the future while still allowing some flexibility in recognition of the challenges inherent in evaluating and selecting appropriate projects for implementation up to ten years into the future.

BPA also supports resident fish habitat actions both as mitigation for the direct impacts to resident fish affected by the FCRPS, and as mitigation for the loss of anadromous fish in geographic areas blocked by federal hydropower development. It should also be noted that many habitat projects (such as those for the anadromous fish or wildlife) can fairly be presumed to have overlapping mitigation outcomes, including a dual benefit for resident fish. In some instances, the Council recommended projects in geographic areas where there has been little effect on species by the federal hydrosystem. In these instances, BPA will begin shifting its implementation of the program to projects that bring significant co-funding from those entities that are more directly responsible for the adverse effects to fish in these areas.

Bull Trout – BPA will fund several activities that directly mitigate for adverse effects of the FCRPS on bull trout, often through projects that address and benefit multiple focal species. Consideration has been given to responsibilities defined in the 2000 U.S. Fish and Wildlife Service BiOp for the FCRPS, including recent efforts and future plans of all Action Agencies. However, much of the regionwide impact to bull trout productivity, abundance, and distribution is unrelated to the construction and operation of the federal hydropower system, and several of the projects proposed and subsequently recommended for implementation (now and in prior solicitations) are addressed to the effects of mining, logging, grazing, crop-production, and other land and water-use management practices as human-caused sources of mortality. Adopting the rationale presented elsewhere in this decision document regarding research, monitoring, and evaluation and *in lieu* funding, BPA will invest less than before in monitoring bull trout populations that are not as directly affected by the FCRPS.

⁸ As noted in our February 9, 2007, cover letter regarding BPA's decision, we plan to begin pre-implementation project activities following consultation with the Council in February/March, in order to be able to initiate contracting as soon as possible following a final remand outcome and completion of a new FCRPS Biological Opinion.

Habitat Spending Emphasis: Programmatic Allocation

In the implementation of a Program of this scale, budget allocation is essential to the tasks of tracking and managing projects, in order to assure that sufficient funds are being allocated to actually increase the abundance, productivity, distribution, and diversity of fish and wildlife. BPA continues to encourage the Council to consider the allocation of implementation costs among spending categories that include the collection and dissemination of information (RM&E, data management), implementation of fish and wildlife production and protection (habitat, hatchery, and harvest actions), and administration of the Program (planning, review, and coordination). Although administration and research, monitoring, and evaluation (RM&E) are vital Program functions and need to be adequately supported, ultimately, the purposes of the Act and the Program are only met through protection, mitigation, and enhancement actions that deliver direct on-the-ground benefits to fish and wildlife.

Accordingly, as we have communicated over the past 18 months, BPA is striving to move the programmatic allocation of the available budget toward more on-the-ground mitigation activity – over time – in the direction of an ultimate goal of approximately 70 percent of total BPA Program spending. This has particular relevance to the Program’s portfolio of habitat projects, as it creates further opportunity to initiate new on-the-ground work proposed and reviewed in the Solicitation that was not otherwise able to be recommended by the Council within the existing overall budget. In addition, BPA’s decision reflects some adjustments to proposed and/or recommended project budgets, to primarily reflect funding needed for the on-the-ground work elements of projects, and consistent with the expected implementation time frame or completion date. BPA believes there is also additional work to be done, through contracting, to refine the habitat portfolio and to maximize the biological benefit of habitat actions as a category of spending. Although we recognize that on-the-ground work cannot be implemented in a vacuum without associated infrastructure maintenance and support costs, many ongoing and newly proposed projects incorporate both escalating overhead costs as well as substantial coordination, education, and RM&E work elements. (See coordination and RM&E discussions.)

Budget estimates provided with this decision also reflect the actual adjustments made in contract actions since the start of the fiscal year. For the future, BPA and the Council should continue to work toward mutual agreement on the relative allocations of funding for the discrete categories of projects that BPA implements under the Program – including further analysis of on-the-ground spending to more clearly describe the types of work necessary to support the implementation of habitat actions. This analysis could include a review of past Program allocations within these budget categories, and a literature search or benchmarking of other similarly-scaled regional, national, or international programs similar to the Independent Economic Advisory Board’s current review of wildlife O&M.

See attached Table 2 - Habitat Projects

Wildlife Habitat Projects

As with fish habitat projects, BPA undertakes wildlife habitat projects to mitigate for the losses associated with the construction and operation of the FCRPS. For wildlife, these losses, and the outcomes associated with project implementation, are currently expressed in terms of habitat units (HUs), based upon both the quantity and quality of acres lost for identified target wildlife species.

BPA’s wildlife projects fall into two phases or kinds of implementation effort: protection and improvement; and operation and maintenance. In this funding cycle BPA will use capital dollars to

purchase additional HUs associated with either fee title or conservation easement acquisitions.⁹ BPA's decision also commits expense dollars to support pre-acquisition costs, to improve wildlife habitat, and to maintain the benefits of previous habitat improvement actions (i.e., costs that cannot be capitalized).

Wildlife O&M Review

The Council indicated that its recommendations for wildlife enhancement, operations and maintenance activities be treated as tentative, pending a subsequent review. BPA agrees with the importance of further reviewing this category of work and that such a review could yield changes in the future scopes of projects. Given the time necessary to complete such a review, and following the Council recommendation, BPA's decision for wildlife O&M is firm for the FY07 project-year only. If an outcome of this review is an alteration of the budgets or project decisions in this category BPA would expect to amend budgets for the next relevant project-year at the time of contracting.¹⁰ It is important to note, however, that there may be either implicit or explicit commitments for certain activities to either maintain or enhance HUs associated with previous investments in wildlife mitigation projects (see project-specific comments).

While a review focused on cost-benchmarking is an appropriate starting point to help define the range of reasonable costs for specific activities, BPA also believes that the review should be broadened in scope. As such, BPA would like to work with the Council and the fish and wildlife managers to undertake a review that: (1) addresses the continuum of the wildlife project lifecycle, from acquisition, to active improvement, to more passive maintenance (including appropriate activities, duration etc.); (2) establishes a range of reasonable costs for various O&M activities; (3) identifies strategies for reducing the lifecycle costs of new acquisitions (e.g., obtain high quality habitat v. restore low quality habitat); and (4) identifies creative and fairly-shared funding mechanisms for long-term O&M activities. While such a review may not be complete for several years, it should yield long-term value. Further, a review of this scope would support a future targeted wildlife solicitation process and more strategic wildlife O&M funding commitments targeted to the phase of the project, its expected duration, and the benefits that should accrue.

Embedded Wildlife Monitoring and Evaluation

In addition to the two phases of wildlife projects described above, the ISRP recommends that each project contain a monitoring and evaluation (M&E) component. BPA agrees with the Council that each wildlife habitat project does not necessarily need population-level M&E, yet also acknowledges the desire of project sponsors and the ISRP to include M&E as a management activity. Like the Council, however, BPA is concerned that a myriad of factors influence the population dynamics of target species (such as harvest regulations, weather conditions, disease and predators, adjacent land practices, etc.). As a result, M&E of wildlife populations in BPA-funded habitat projects does not provide, by itself, direct feedback as to mitigation benefits, and relative to the FCRPS impacts on target species that a project is intended to benefit.¹¹ Instead, the Council's Program strategy is correctly focused, in BPA's view, on habitat protection and restoration as the means to support wildlife populations.

⁹ As noted in the tables, and at the end of this Part 1, BPA is still evaluating capital projects and will identify projects for implementation shortly.

¹⁰ Due to the complexities and time frames inherent in the contracting process, if changes in funding decisions are desired to be effective at the start of the next fiscal year, such changes would need to be decided upon by July 1 of the previous fiscal year.

¹¹ See also, the status and population monitoring discussion in the Research, Monitoring, and Evaluation section below.

Consequently, and consistent with BPA's perspective on other project-specific research, monitoring and enhancement activities, BPA supports a more limited scale of M&E for habitat projects, and also favors a programmatic approach, such as the pilot "intensively monitored" watershed projects, to collect and analyze data about Program strategies. To the extent that project-specific population status monitoring is a priority to those managing these projects, BPA supports the Council's maximum 5 percent soft cap for project-specific monitoring, including population status monitoring.

See attached Table 3 - Wildlife Projects (O&M)

Predation/Harvest

In addition to habitat actions, BPA agrees to implement two projects to improve juvenile salmonid survival by reducing predation. Our decision also includes one project to develop selective fishing gear. Diminishing the level of predation by birds and other fish on both non-listed and ESA-listed species and harvesting fish with more selective gear is a key element of both the Program and our ESA commitments, as we have confirmed in the course of the BiOp remand collaboration process. Removing predators and selective harvest directly improves fish survival and supports opportunities for increased harvest, both of which are consistent with strategies reflected in the Council's Program.

In addition to those projects included in this solicitation process, BPA has agreed to provide funding in FY07 for three harvest enforcement projects¹² in the mainstem Columbia River, as part of the FY07 Interim Operations Agreement for the hydropower system.¹³

See attached Table 4 - Predation/Harvest Projects Proposed in the 07-09 Solicitation

Research, Monitoring, and Evaluation

BPA appreciates the Council's ongoing effort and considerable attention during the current solicitation to the collaborative development of a comprehensive plan to guide the region's investments in research, monitoring, and evaluation (RM&E). Once completed, a programmatic framework that connects needed RM&E to key management and policy decision-making and integrates monitoring associated with ESA recovery planning will be a significant contribution to supporting the goals of the Fish and Wildlife Program.

BPA's funding decision in the RM&E category reflects a primary focus on projects that directly inform: (a) key uncertainties in operation or impacts of the FCRPS; and (b) the selection and evaluation of on-the-ground efforts intended to mitigate FCRPS impacts, while attempting to be both consistent with the Council's Program, and within the structure of the emerging regional programmatic framework.¹⁴ We believe this targeted focus is critical given that the tremendous amount of RM&E that has occurred since the Program's inception over the past 25 years has provided a sufficient understanding of the off-site limiting factors affecting fish and wildlife and the appropriate strategies for addressing them. Therefore, we believe that direct, on-the-ground actions that implement strategies for addressing limiting factors

¹² Extrapolating from an analysis that the Nez Perce Tribe provided for its conservation enforcement proposal, BPA believes that all three enforcement projects will directly protect fish and wildlife populations by reducing unlawful harvest.

¹³ These projects, and the dollars added to the \$143 million expense budget to fund them, are discussed in more detail in Part 2 of this document.

¹⁴ See the Council Program's RM&E Strategy. BPA will continue status monitoring that is an integral component of habitat effectiveness evaluation in the "Intensively Monitored Watershed" pilot projects initiated under the FCRPS Biological Opinions.

should generally be given a higher priority (and accompanying greater share of the budget) as compared to RM&E activities outside of the primary focus associated with BPA's decision in the RM&E category.

Additionally, some ongoing and proposed RM&E projects are more appropriately a requirement or a shared responsibility of federal or state agencies other than BPA, under statutory mandates other than the Northwest Power Act, and encompassed within their organic agency management responsibilities (Federal and state agencies alike have multiple authorities to gather information, conduct research, and provide for management of fish and wildlife in the region). Especially in terms of monitoring and analysis for purposes of recovery planning under the ESA, responsibilities are jointly shared by several agencies. Nonetheless, spending requests and expectations in the RM&E category have grown – at times significantly – and may no longer be precisely tailored to the effects of the FCRPS, nor sized to BPA's responsibilities. In particular, BPA does not view status or trend monitoring as a singular need or sole responsibility of the agency. Rather, we believe it is an inherent responsibility of natural resource managers. Additionally, some ongoing data gathering and evaluation efforts are long-standing projects, appear to be indefinite in their expected duration, and do not appear to be germane to key information needs or management decision-making.

For the off-site portion of the Program, where BPA has the authority to implement particular activities but where the impacts addressed result from the land use or water management practices of other entities and individuals, BPA funding of research and monitoring to determine what mitigation needs to be done is generally not appropriate, at least not for BPA alone. Rather, it is the responsibility of those who cause the impacts, or are responsible for managing the affected resources. BPA funding of these activities should be limited to the programmatic approach of intensively monitoring watersheds or action effectiveness monitoring. We see these approaches as compatible, supporting both Program and ESA needs. This information can, in turn, be applied throughout the Basin in places where BPA implements offsite mitigation activities, for example, where BPA is proposing particular actions to close ESA "gaps" as part of an ESA strategy for avoiding jeopardy.

While RM&E projects can enhance Program effectiveness by providing feedback and insights that inform management choices, RM&E projects do not, of themselves, directly improve Program performance through benefits to fish and wildlife in the short-term. As such, BPA's implementation strategy is to redirect *some* Program funding, as a matter of programmatic emphasis, to expanded on-the-ground activities which directly provide biological or environmental benefits to fish and wildlife.

In summary, in the RM&E category, the Council recommended 87 projects for funding; BPA's decision reflects funding for 72 of these recommended projects; 11 of the 15 projects that BPA chose to not fund were new projects. The primary reasons behind BPA's decision to not fund these latter 15 projects are an unclear FCRPS mitigation nexus, a primary focus on population status monitoring, or a significant in lieu issue. BPA's decision also reflects funding for 9 projects not recommended by the Council; these projects are primarily FY07 Operations Agreement projects or M&E projects reflected in the 2004 Updated Proposed Action. Finally, BPA's decision also reflects close-out funding for 6 projects that the Council had not recommended for any post-FY06 funding.

Hatchery RM&E

In addition to hatchery development, operation, and maintenance, the Program also funds a significant quantity of hatchery RM&E, often performed through multiple entities. Given the significance of artificial production as a mitigation strategy, BPA will continue to support RM&E that informs its hatchery production and supplementation activities. However, BPA agrees with the Council that hatchery RM&E commitments must be examined with heightened scrutiny to "right-size" the costs of

activities, such as those that do not produce direct fisheries benefits, or that may address general issues unrelated to the operation of BPA's facilities or not unique to Program-supported production initiatives. Therefore, it is appropriate that several high-budget projects which monitor and evaluate the effectiveness of supplementation be reviewed during the FY07-09 period. Relationships among projects (hatchery specific and stand-alone research), expected durations, and protocols for the analysis and reporting of results require a systematic assessment to ensure that critical Program-wide and project-specific information needs are being addressed efficiently and effectively. We agree with the ISRP that a more programmatic approach to these outstanding uncertainties may provide opportunity to address these important questions, and better relate research findings and analytical results to the need for management recommendations that inform and improve decision-making.

Lamprey Research – Several lamprey research projects were proposed in the FY07-09 solicitation process. Of these, only one was recommended by the Council for funding. As a mitigation Program that is based on the “best available scientific knowledge,” and as the FCRPS has little direct impact in the tributaries, BPA generally agrees with the Council that lamprey research proposals – particularly if focused on tributary assessments – are not a FCRPS priority at this time.¹⁵ Nonetheless, the FCRPS impacts lamprey, and in the future, BPA would like to be a part of a well-developed lamprey research project that has strong regional buy-in and broad-scale financial support among all responsible parties.

As a result, BPA is providing one year of funding for three lamprey research projects (including two within the 2007 Interim Operations Agreement), and hereby asks these contract partners, the regional Lamprey Working Group, and other entities engaged in lamprey evaluation to develop a comprehensive research plan that will identify the effects of the hydrosystem on lamprey and identify potential mitigation measures for future implementation, with future funding dependent upon timely completion of such a plan. We expect that once this plan is completed BPA would focus its expenditures on direct mitigation activities with an explicit nexus to the FCRPS.

See attached Table 5 - Research, Monitoring, and Evaluation Projects

Data Management

As with RM&E, BPA is a substantial source of funding support for the region's data management activities. These activities are important both internally for BPA's project management responsibilities, and externally in a much broader regional sense. Consequently, BPA participates in these activities at two levels.

First, it is entirely appropriate for BPA to be responsible for managing the data and information associated with the life-cycle of its projects (i.e., cradle-to-grave investment history). To that end, BPA will continue to advance its internal data management framework and will continue to work with the region's other data managers to make sure the research projects it funds use all regionally agreed upon or adopted environmental data collection and dissemination protocols, where they exist, and that the data are publicly available.

Second, given the importance of using existing research and data to manage the Program, we share the Council's interest in expanding access to consistent data (data that is collected, stored, and disseminated using agreed upon standards). On that basis, BPA will also continue to participate in and support the

¹⁵ It is important to note U.S. Army Corps of Engineers support both for actions to improve passage of lamprey at FCRPS dams, and for research needed to assess the effect of the FCRPS on lamprey passage and of the strategies to mitigate.

regional initiatives that are developing a common regionwide data management framework – one that is likely to encompass data and information management needs well beyond those associated with the projects BPA funds. Since these regional initiatives have a scope much broader than BPA’s narrower responsibilities, they should be supported and co-funded by all the entities that have an interest in using regional data.

In the interest of BPA’s continuing support for regionwide data management initiatives, BPA’s decision reflects the continued funding for all five data management projects recommended by the Council in 2007, with potential adjustment in 2008-09 based on regional discussion and subsequent recommendation from the Council.

See attached Table 6 - Data Management Projects

Coordination

BPA supports three types of coordination: (1) coordination embedded as a component of a larger project; (2) watershed coordination; and (3) regional coordination. While some of this work is critical to directing and implementing on-the-ground projects, much of it does not directly benefit fish and wildlife, or further the coordination priorities highlighted in the Northwest Power Act (to assist anadromous fish mitigation at and between FCRPS dams). Therefore, BPA is moving to redirect its funding toward a target of no more than 5 percent of direct Program funding allocated programmatically to these coordination functions.

Embedded Coordination

Many of the habitat and other projects discussed in previous sections contain coordination work elements. While these elements can serve a function that is vital to the performance of project objectives (e.g., enlisting landowner support for habitat actions), other times they may not (e.g., meeting attendance unrelated to project purposes). Even when coordination costs reflect necessary Program administration requirements (e.g., Statement of Work and Annual Report preparation), they are not, ultimately, on-the-ground actions that convey direct biological or environmental benefits to fish and wildlife. Since BPA and the Council have focused on programmatic categorizations that we derived from project-level characterizations (i.e., the principal thrust of project purposes viewed in its entirety), this type of coordination spending is generally not included in our 5 percent programmatic goal for coordination and data management. Over time, however, these costs will be increasingly visible in work element format, through management, tracking, and reporting in PISCES. As such, it will be important to use this information to ensure that embedded coordination tasks are primarily limited to those activities which are clearly linked to project implementation success.

Watershed Coordination

In addition to embedded coordination, BPA supports several watershed-based coordination functions through projects that are included in the 5 percent goal. The purposes of these projects vary; however, several were originally initiated as pilot demonstrations or “models” 10 or more years ago at a time when few resources were available to facilitate in the development, or demonstrate the merits, of watershed-based planning and implementation. In the intervening years, each state has developed management structures and a network of support and resources for watershed-based action and investment.

This area of Program implementation may also be due for a principled revisiting of efficiency and effectiveness. While these functions and structures are valuable in marshalling local support for mitigation activities and leveraging non-BPA funding to bring habitat and other direct actions to fruition, it is also important to note that the more the Program spends to “coordinate” the activities of others, the less funding is available for mitigation efforts. Consequently, while we believe that this work is important, and the additional activities leveraged by it bring about a greater biological benefit to fish and wildlife, BPA also believes that these costs should be managed to be no larger than absolutely necessary given that they, alone, do not go to direct on-the-ground actions – particularly where other sources of funding support exist through local, state, and national programs.

Regional Coordination

In the past, BPA has funded some broad regional coordination projects, the intent of which was to support a forum through which fish and wildlife managers could build consensus recommendations to the Council regarding the development of the Program. BPA agrees with the Council that it is time to review this portion of the Program to narrow and clarify the range of activities that BPA will fund. Following the Council’s recommendation, BPA will provide for the regional coordination projects for one project year only in FY07, to allow the fish and wildlife managers to assist BPA and the Council in a review of coordination work and the development of a comprehensive coordination framework, under which BPA funds would contribute to coordination activities necessary to support its FCRPS mitigation activities. For the out years (2008-09), BPA is creating a placeholder fund that is equal to the level of funding associated with regional coordination in FY06. Regional coordination activities, projects, and “delivery mechanisms” that result in recommendations from this FY07 coordination review would be funded by this placeholder and limited to the total level of FY06 spending. As such, it will be critical for the fish and wildlife managers to determine the best delivery mechanism for their collective input toward FCRPS mitigation, in the most efficient and effective way possible.

See attached Table 7 - Coordination Projects

Subbasin Plans

Beginning in 2002, BPA funded the Council to undertake a regionwide subbasin planning process. By 2005, the Council had received 59 (and adopted 57) completed plans for the 62 subbasins and mainstem reaches of the Columbia River. Three additional plans were proposed as part of this solicitation process and the Council recommended that BPA fund two of those plans (i.e., for the Bitterroot and Blackfoot subbasins of Montana). However, there is little nexus between the environmental conditions in these particular subbasins and the effects of the FCRPS. Consequently, while BPA will fund the development of these two plans to facilitate both prioritizing fish and wildlife restoration activities and in leveraging other mitigation funding, subsequent BPA funding of mitigation activities in these subbasins should be limited to projects providing resident fish benefits that can be applied against defined and outstanding FCRPS obligations, and that also include the mutual concurrence of the sovereigns in Montana.

See attached Table 8 - Subbasin Plan Proposals

Budget and Contract Administration: Summary of Project-Specific Decisions

Expense spending

Overall, BPA's decision described above is intended to fit within the overall \$441 million expense spending budget¹⁵ for FY07-09, including the cost of closing projects in FY07 that were not included in the budget recommendations from the Council. "New" projects will likely begin late in FY07 and extend into FY10. Contract modifications for ongoing projects will be timed to coincide with their current contract anniversary date. For projects with contracts that expired early in the fiscal year and were extended pending a Council recommendation, BPA's project-year budgets account for the interim costs of "bridge-funding." Given that the overall FY08-09 planning budgets associated with BPA's decision are less than the FY07 planning budget, there may be flexibility after 2007 to either adjust some individual project budgets upward and/or to add additional projects – such as to address situations where BPA's decision reflects provincial spending levels that are less than the Council's provincial budget allocations, or in response to remand collaboration outcomes – while still remaining within the overall 3-year expense budget.

Capital spending

BPA agrees with the Council about the importance of showing a similar discipline and rigor in managing the implementation of the capital project portfolio budget as with the expense; that is, projects should be prioritized relative to available funds and should represent the best biological benefit for the dollar invested. It remains important that spending is appropriately prioritized relative to the mitigation value of the project, and that spending be managed within the available \$36 million annual capital budget.

The Council recommended capital projects totaling approximately \$53 million, \$45 million, and \$36 million in FY07, FY08, and FY09, respectively. BPA's decision includes the projects recommended by the Council for capital spending, contingent on: (1) confirmation that the proposed project meets BPA's capitalization criteria, including any crediting against our mitigation obligation as appropriate; (2) coordination through BOG and directly with project contractors relative to scheduling; and (3) proactive management of capital spending relative to the available \$36 million annual capital budget (not to exceed \$39 million in any given year). In the future, we anticipate working with the Council and other regional interests to develop a longer-term plan for capital projects that provides increased certainty and predictability of implementation for those projects of highest priority, within the established budget.

Implementation Summary

The FY07-09 solicitation resulted in approximately 540 proposals, of which 369 were considered fundable or fundable in part by the ISRP. The ISRP noted in its review that: "Overall, the ISRP continues to see a general improvement in the quality of the proposals and the scientific basis of the Fish and Wildlife Program. However, further directed effort is needed in certain areas especially prioritization of habitat actions, monitoring and evaluation, and reporting of results." We agree with the ISRP, and believe that future solicitations that are guided by clearer prioritization will result in proposals that are better focused on the region's most pressing mitigation needs, and will diminish expectations for

¹⁵ The \$441M spending budget for FY07-09 is based on a \$143M/yr, plus an additional \$3M for the 07 Agreement and \$8.8M in unspent funds carried forward from the last rate period. In addition, historically, actual spending has averaged \$12M less than the historical planning budgets; BPA decision assumes this historical difference will persist in the future.

the support of projects that may not necessarily represent BPA's mitigation priorities for the impacts of the FCRPS on fish and wildlife resources of the Columbia River Basin.

BPA's decision includes implementation of approximately 260 of 285 projects recommended by the Council. Of the 25 projects recommended by the Council but not included in BPA's decision, 22 were new proposals. The reasons for not including these 25 proposals in our decision fall into the general categories of: (1) lower priority RM&E, including RM&E not linked to determining and/or evaluating FCRPS mitigation strategies (11 projects); (2) in lieu issues (primarily above the Hells Canyon complex) (4 projects); and (3) unclear nexus to FCRPS mitigation responsibility (10 projects). These proposals are identified in the attached spreadsheet.

In addition, BPA's decision includes approximately 41 projects that were not recommended by the Council. These projects are largely those associated with the *Agreement on 2007 FCRPS Fish Operations and Transition Funding*, UPA projects from the 2004 FCRPS BiOp, and other BiOp-related projects that help support BPA's expected additional ESA obligations, as coordinated through discussions in the Habitat Workgroup and Policy Working Group of the remand collaboration process (such as those that address habitat-related limiting factors in those areas where salmonid productivity is low).

Part 2: Programmatic Management and Policy Issues

Other Program Costs

In addition to the costs of projects described in Part 1, BPA must manage its rate period average \$143 million/year expense budget to include other Program costs, some of which were reflected in the Council's decision document.

BPA Overhead – As was communicated to the Council at its August 2006 meeting in Spokane, the growing scope and complexity of the Fish and Wildlife Program, as well as other external drivers, will result in a greater overhead cost for BPA's management of it. As such, BPA's funding decision reflects a BPA overhead (for Program management, project direction, contract administration, National Environmental Policy Act (NEPA) compliance, cultural and environmental resource support, etc.) of \$11.5 million in FY07 and \$12 million in FY08 and FY09.

Fish Passage Data Gathering, Storage, and Analysis – BPA is renewing its financial assistance agreement with Pacific States Marine Fisheries Commission to continue funding the Fish Passage Center (FPC) through November 30, 2007, to comply with the Ninth Circuit Court of Appeals order issued on January 24, 2007, for BPA to “continue its existing contractual arrangement to fund and support the FPC unless and until it has established a proper basis for displacing the FPC.”¹⁶ BPA may implement further renewals or adjustments as necessary or appropriate, consistent with all legal rights and arguments it has with regard to how it interprets the order and the Northwest Power Act and how it implements its mitigation responsibilities. BPA also looks forward to the Council's re-engagement of the FPC Oversight Board in providing policy guidance to the FPC and ensuring that the FPC carries out its functions in a way that provides for regional accountability, peer review of analysis and compatibility with the regional data management system.

¹⁶ *Northwest Env'tl Defense Ctr. v. BPA* (9th Cir No. 06-70430) and *Yakama Indian Nation v. BPA* (9th Cir. No. 06-71182) Slip op. at 977 (Jan. 24, 2007).

Within-year and Reschedules – The Council indicated one use, among others, for a recommended *unallocated placeholder* is for within-year requests and re-schedules through the Budget Oversight Group (BOG) process. BPA recognizes that unforeseen circumstances may create the need to adjust individual project and contract budgets from the levels projected in this document. Therefore, BPA’s decision reflects a line item budget of \$2 million/year for the specific purpose of within-year adjustments. BPA project managers and COTRs will coordinate closely with the project contractors through the BOG process to evaluate any requests for budget or project scope adjustments.

Innovative Solicitation – In our November 17, 2006, letter to the Council, BPA acknowledged that it will work in collaboration with the Council on a solicitation for innovative on-the-ground work focused on mitigating the effects of the FCRPS. However, having just completed a solicitation process that has demanded much of the agency’s staff resources over the past year, BPA notes that undertaking another solicitation at this time carries the risk of diverting attention from other important activities, such as seeing the regional collaboration process on the remanded BiOp through to positive closure, the Council-initiated process for developing province-scale biological objectives, potential Program amendments, and the important work of further refining and improving implementation of the fish and wildlife program. Notwithstanding this risk, BPA’s decision reflects a commitment to a total of \$2 million for an innovative solicitation in FY08 and FY09. This funding is contingent on the development of a targeted solicitation for proposals narrowly focused on FCRPS mitigation priorities identified in Subbasin Plans. Guidance provided to the region through a targeted solicitation will help ensure an adequate number of proposals that focus on high priority objectives in innovative ways.

ESA Placeholder – As was noted in Council recommendations, priorities for ESA-listed species affected by the FCRPS are currently being developed through the remand collaboration process that includes participation by all four states. To create flexibility for addressing these needs, the Council recommended a \$2 million per year unallocated placeholder that it suggested could be used for these and other purposes. In addition, the Council left approximately \$2.3 million per year unallocated in its recommendations for the mainstem-systemwide and multi-province categories in FY07-09.

Since actions in addition to those recommended by the Council will be reflected in the upcoming draft Proposed Action (PA) developed within the remand collaboration process, BPA’s decision reflects spending much of these placeholders on additional specific ESA projects in the PA. Given that a new BiOp will not be completed until summer, these additional ESA-related funding decisions should be considered interim, to allow BPA to revisit its spending priorities to ensure compliance with the final BiOp.

In addition, BPA agreed to carryover the approximately \$8.8 million of unspent expense budget funds from the previous rate period into FY07-09. While BPA’s overall decision may also result in some spending of this carryover, the remainder of this funding flexibility is available for future ESA needs or for additional work in provinces where BPA’s decision results in a lesser level of effort than that reflected in the Council’s provincial budget allocations.

FY07 Interim Operations Agreement – In addition to BPA’s \$143 million expense budget for the Fish and Wildlife Program, BPA will add approximately \$3 million in FY07¹⁷ for projects that it is funding as part of a collaborative short-term agreement focused on the operation of the hydrosystem in 2007. In estimating how much funding to add to the Program, BPA made a rough assessment of what it would have spent in close-out costs on these projects in the absence of an agreement and added funding to

¹⁷ This is explicitly a fiscal year and not a project-year budget.

cover the difference between the cost of close-out and the cost of continuing these projects through FY07. Therefore, BPA expects that any projects previously set to receive less funding as part of a planned project closure, will continue work in FY07 as part of the expanded funding. While the overall collaboration regarding the FCRPS BiOp is not complete, the agreement demonstrates that the parties are working together toward a long-term comprehensive agreement (10 years or longer) that will provide increased certainty for both hydro operations and project funding.

As BPA works with the region on a proposed action and long-term agreement, it intends that any agreement made in the remand also meets Northwest Power Act standards and helps fulfill BPA's Program implementation responsibilities. At a minimum, this means the actions that BPA plans to take to fulfill ESA commitments will be coordinated with the Council. BPA also anticipates that project implementation commitments made through agreements related to the FCRPS BiOp remand will go through a solicitation process coordinated with the Council, including ISRP review. Project reporting will be accomplished through PISCES, annual reports, and other regional data repositories. BPA will work closely with both the remand parties and the Council to jointly determine the best course of action for integration of ESA commitments into the Program.

See attached Table 9 - 2007 Interim Operations Agreement

Next Solicitation Process

For the most part, this decision document has focused on issues related to this three-year solicitation. However, in its recommendations to BPA, the Council also used its "rolling decision document" to discuss the next solicitation process. As previously indicated, BPA believes that it is time to design and undertake future solicitation processes via focusing on categories of work, and targeting solicitations accordingly.

Distributing the Program budget by category will allow solicitation guidance that corresponds to Program objectives within each category of spending, and enable a principled prioritization of effort and funding within, rather than across, types of work. Such a process would also allow for more detailed evaluations of the Program categories of artificial production, habitat, wildlife, RM&E, and other categories. It could also allow for more time to focus on solicitation and review of projects in those areas of the Program where the project portfolio may be more dynamic and in need of periodic reprioritization or adjustment, such as in the habitat restoration category.

Provincial Allocations

While BPA has structured this decision document to allow a focus on various types of work, BPA recognizes that the Council focused on spending within provincial allocations. In particular, the Council set provincial allocations based on historic spending with adjustments to increase the percentage of expense spending on resident fish and wildlife. To allow for a comparison with the Council's recommendations, Table 10 summarizes the Council's recommendations and BPA's decision organized by provinces, and a spreadsheet with proposals organized by Province has also been provided to the Council.

In general, BPA's decision is closely aligned with the Council's provincial allocations and the resulting state allocations of the available budget, but it does entail some modest differences. Criteria used by BPA in its review of proposals include but are not limited to the following elements: (1) Council's recommendation; (2) BPA's in lieu assessment; (3) BPA's reinvention principles which emphasize

projects that are on-the-ground and projects with a clear FCRPS mitigation nexus; (4) integration of ESA priorities; and (5) consideration of federal trust and treaty responsibilities and the impacts to tribal communities and affected resources. Our decision is consistent with the Program, and largely consonant with the Council’s project-level recommendations in terms of spending within provinces and states¹⁸, with the exception that in some provinces, the aggregate spending level is less than that recommended by the Council, due largely to either in lieu issues and unclear FCRPS nexus with particular projects. BPA’s decision does not overtly reflect moving these dollars to other provinces; instead, these dollars remain available for additional spending beyond the level reflected in BPA’s overall decision, most notably in FY08-09.

See attached Table 10: Program Budget Summary

Part 3: In Lieu Matters, and Tribal Trust

In lieu

The Northwest Power Act obligates BPA to use its authorities to fund fish and wildlife measures in a manner consistent with the Council’s Fish and Wildlife Program and other purposes of the Act. BPA’s expenditures, however, “shall be in addition to, not in lieu of, other expenditures authorized or required from other entities under other agreements or provisions of law.”¹⁹ In an August 3, 2006, letter, BPA summarized its long-term interpretation of the *in lieu* provision, including how it interprets the “authorized and/or required” language, how it was reviewing and rating projects, and how entities could remedy *in lieu* problems identified.²⁰ BPA reviewed and preliminarily rated all of the project proposals, and made these available to the Council and region in the August 3, 2006, letter (new proposals) and in an October 6, 2006, follow-up letter (proposals for continuation of ongoing projects).

As explained in those letters, BPA applied the same review and rating system to all proposals. A “1” rating indicates no in lieu concerns, a “2” rating indicates *in lieu* concerns, and a “3” rating indicates *in lieu* problems. As noted in our August letter, the ratings would be binding on new proposals, but would not be binding for recommended ongoing projects, at least for 2007. If a new proposal were found to present a significant *in lieu* problem, that is, the proposal was rated a “3” in the ratings system, then BPA would not fund the proposal, at least until the *in lieu* condition was remedied. If an ongoing project was rated as having *in lieu* concerns (including but not limited to the “3” rated projects—could also include “2” rated projects), then BPA concluded it would fund the proposal for 2007, but would expect to have the *in lieu* issues addressed in the 2007-2009 period, or else the proposal would no longer be funded by BPA.

Following public release, BPA undertook a review of the preliminary ratings, including checks with BPA project managers, a review of the Council’s comments on BPA’s *in lieu* interpretation, comments made in response to the Council’s draft recommendations addressing *in lieu* matters, discussion with project proponents, and review of any other comments made or other information received regarding the *in lieu* ratings. In some cases, this additional “scrubbing” resulted in BPA changing the ratings based on new or corrected information. Among these, the Council recommended eight new proposals for funding that BPA had given a preliminary rating of “3.” The eight proposals are:

¹⁸ The exception, as detailed above, is that our decision also accounts for spending of the Council’s *unallocated placeholder*, which was not distributed to either provinces or states.

¹⁹ 16 U.S.C. § 839b(h)(10)(A).

²⁰ See “*BPA In lieu Interpretive Key and Ratings System*” enclosed with the August 3, 2006, letter.

200703200	Potential effects of the invasive New Zealand mudsnail
200703700	North Fork Toutle River passage
200712000	Malheur Subbasin Habitat Restoration [Stanbro Ranch]
200716500	Relative abundance, distribution and population structure of lampreys
200717100	Malheur Subbasin Habitat Restoration [Stinkingwater Project]
200721000	Mores Creek watershed floodplain and habitat restoration
200723300	Distribution and abundance monitoring of <i>Oncorhynchus mykiss</i> in the Lower Clearwater subbasin
200733200	Mitigation of marine-derived nutrient loss in the Boise-Payette-Weiser

Following BPA’s subsequent review, five of the proposals had their ratings changed from “3” to “2.3” due to cost-share identified by the project proponent after the time of the preliminary rating (projects 200703200, 20073700, 20072100, 20072330 and 200733200). Though there remain *in lieu* concerns for these newly proposed projects, significant cost-sharing (as with ongoing projects) can serve as a remedy in prioritizing implementation funding decisions for FY07. Nonetheless, *in lieu* constraints remedied on an interim basis through increased cost-sharing is not in itself determinative of BPA implementation spending. These projects were also evaluated on the basis of their priority relative to BPA’s responsibilities and the impacts of the FCRPS.

The final ratings for the project proposals are enclosed as a separate document.²¹ A check-mark in the first column indicates that the rating for the proposal changed from preliminary to final, and the “notes” section of the table provides an explanation as to why the rating changed.

For ongoing proposals with *in lieu* problems (rated “3”) or *in lieu* concerns (rated “2”) noted in this final rating table, BPA expects to work with the Council and region to refine the remedies (in addition to project-specific cost-share) that can be used to address them. It should not be assumed that ongoing projects BPA has decided to continue to fund despite having a “2” or a “3” rating will continue to be funded after FY07. In addition, BPA’s decision for FY09 generally shows a budget that is 85 percent of the FY07-08 budgets for “3”-rated projects, in order to underscore the need for an increase in cost-share contribution by others. Sponsors of such proposals should expect to work with BPA to identify appropriate cost-share or identify another way of confirming that BPA’s funding is in addition to and not *in lieu* of funding authorized or required of another entity, in order to continue receiving BPA funding after FY07. While the exact amounts will be developed in coordination with the project proponents depending on the cost-share they provide, any post-FY07 budget changes from BPA’s initial determination will also be coordinated through the BOG process.

In its discussion of its project recommendations, the Council indicated it did not have significant concerns with BPA’s interpretation of the *in lieu* provision. In the Council’s view, however, BPA overemphasized per-project cost-sharing as the primary or preferred way to demonstrate the absence of an *in lieu* problem. BPA agrees that there are means other than per-project cost-share to confirm that our funding is in addition to and not *in lieu* of another’s. As indicated in our correspondence last fall, BPA recognizes that other kinds of programmatic commitments, such as the agreement between BPA and the U.S. Forest Service regarding BPA-funded projects on National Forest System lands, may be appropriate. The Council suggests that there is also a mid-level range, something between the project-specific and the programmatic, that could be used to demonstrate that other entities are doing parallel or complementary work, and that such a demonstration would not require a specific agreement between BPA and the other entity.

²¹ The final *in lieu* ratings document is also posted to BPA’s website.

So long as the Council makes recommendations to BPA on a project-specific basis, the per-project cost-share will likely be BPA's preferred method for assuring there is no *in lieu* problem. Per-project cost-share is easy to apply and understand, and it is relatively easy to confirm and track (e.g., via PISCES). In addition, cost-sharing is an existing practice in the Program, so utilizing it as the preferred means of confirming the absence of an *in lieu* problem should pose few difficulties.

BPA is willing to explore alternative means of assuring compliance with the *in lieu* limitation, such as the "parallel" or "complementary" funding by other entities suggested by the Council. Such alternatives, however, will require additional effort to identify and document the parallel or larger project to which BPA is adding. Without such parameters, the *in lieu* limit could be rendered superfluous, a result Congress clearly did not intend.

Following the funding decision, BPA will initiate a broader collaborative dialogue with the Council and the region regarding a set of strategies, including per-project cost-sharing and the alternatives, as well as the associated project budgets reflected in BPA's decision, for these *in lieu* issues.

Tribal Resources: Trust and Treaty Responsibilities

The relationship between the federal government and the tribes of the Columbia River Basin is governed by a series of treaties, statutes, regulations, executive orders, and judicial decisions. Many tribes in the Basin reserved rights to hunt, fish, and gather traditional foods and medicines, not only on the lands now within their established reservations but on the lands of the territory considered to be open and unclaimed by non-Indians at the time as well. In addition, tribes in several treaties (the "Stevens treaties") reserved the right to take fish in usual and accustomed areas in recognition of the spiritual, cultural, and economic primacy of salmon in their communities and daily lives.

In addition to the recognition of treaty and other reserved rights, the federal government also has a trust responsibility to Indian tribes. A specific enforceable trust responsibility may arise when a federal agency receives statutory direction to manage tribal resources. Absent a specific responsibility, agencies have a general responsibility influenced by the treaties and internal policies and guidance.²² BPA fulfills its treaty and trust responsibilities with tribes by meeting the statutory obligations prescribed in general statutes applicable to all federal agencies, such as NEPA, and in statutes tailored specifically to BPA's activities, such as section 4(h)(10)(A) of the Northwest Power Act. BPA seeks to give special consideration to tribal views and concerns pursuant to BPA's Tribal Policy,²³ through government-to-government consultation, and careful consideration of tribal interests and concerns when making decisions that have the potential to affect tribal resources.²⁴ And while the states do not share the Federal Government's trust responsibility, the Northwest Power Act places obligations on the Council regarding tribes, in addition to BPA.

BPA consults with or confers with tribes and their designated representatives on an ongoing basis. In the context of this decision, this included meetings with tribes individually on a government-to-government basis, as well as meetings and interactions with tribal organizations that coordinate tribal interests, such as CRITFC and the UCUT, and attendance at coordinated tribal forums. In addition,

²² For example, internal agency direction and commitments, such as BPA's *Tribal Policy* (1996), and executive orders such as *Executive Order 13175* (2000), regarding consultation and coordination with Indian tribal governments.

²³ [http://www.bpa.gov/corporate/About_BPA/tribes/link]

²⁴ For a detailed discussion of BPA's trust responsibility, see section 2.8 of the Administrator's Record of Decision for the 2003 Safety-Net Cost Recovery Adjustment Clause Final Proposal; see also the NEPA Record of Decision for BPA's Fish & Wildlife Implementation Plan Final EIS, http://www.efw.bpa.gov/environmental_services/nepadocs.aspx.

following the Council's draft recommendations for funding, numerous tribes provided comments and expressed concerns to the Council and to BPA about the recommendations and their potential impacts to tribal interests. In many cases, BPA consulted directly with tribes regarding the Council's recommendations and factors affecting whether BPA should support the recommendation, or make a different decision, in evaluating its impact upon an affected tribe. These consultations are ongoing.

In a very broad sense both the Council's recommendations and BPA's decision regarding funding of fish and wildlife mitigation projects supports tribal resources and tribal communities. The Council's recommendations and BPA's implementation decision include a wide variety of hatchery, habitat, research, monitoring, and evaluation, and coordination proposals that help protect and restore anadromous and other stocks that support tribal subsistence, ceremonial, and commercial harvest. In addition, the Program's longstanding financial and technical support of tribal resource management expertise has built capacity in tribal organizations to better enable participation in Program mitigation activities. Tribal resource managers collectively are now one of the largest segments of the fish and wildlife contractors that BPA employs to implement the projects addressed to its fish and wildlife responsibilities, and which provides economic opportunities and support for tribal sovereignty and self-governance. BPA has used its judgment about how to meet its statutory responsibilities by developing a project portfolio that makes the best use of available funds to protect, mitigate and enhance fish and wildlife affected by the FCRPS in a manner consistent with the Council's Program, as called for by the Act. Although BPA gave special consideration to tribal interests and values as an important consideration in our funding decision, BPA also sought to fund the most biologically sound and cost-effective projects within our available budget.

BPA's decision reflects funding of several tribal-proposed projects that were not recommended by the Council for funding. In particular, the 2007 Interim Operations Agreement reflects continued funding for 23 projects that had not been recommended by the Council. In contrast, BPA chose to not fund one tribal proposal recommended by the Council; this was a difficult decision, but we found that the proposal had a significant in lieu problem (a "3" rating).

Part 4 – Findings Regarding Consistency with the Fish and Wildlife Program, the Power Plan, and the Purposes of the Act

Under section 4(h)(10)(A) of the Northwest Power Act, BPA must use the BPA Fund and BPA's other authorities to protect, mitigate, and enhance fish and wildlife to the extent affected by the development and operation of the hydrosystem in a manner consistent with not only the Council's Fish and Wildlife Program, but also with the Council's Power Plan, and the purposes of the Act, (which include implementing the Act consistent with other laws applicable to the FCRPS, such as the ESA). In this Part, BPA explains how its programmatic implementation decision for the FY07-09 period meets these standards. This section also further explains how BPA considered the Council's point-of-view and the choices embodied in the recommendations; and particularly describes the limited circumstances in which BPA's decision diverges from the Council's recommendation. BPA is explaining the reasons for its divergence from the Council's recommendation, both to promote transparent agency decision-making and, where applicable, to demonstrate its consideration of the Council's views.

Consistency with the Council's Fish & Wildlife Program

Section 4(h)10(A) of the Power Act provides guidance to BPA to confirm that it is mitigating in a manner consistent with the Council's Program. Because Congress chose general language requiring BPA to mitigate and did not specify how consistency was to be obtained, BPA's longstanding

interpretation of this provision is that section 4(h)10(A) applies at a programmatic level. Thus, when considering whether its decision is consistent with the Program, BPA first looks at all the mitigation actions it intends to take under section 4(h)10(A).

Given that Program goals and objectives do not altogether lend themselves to quantification, allocation, or verification, demonstrating consistency with them cannot be done with measured certainty. In addition, the objectives and goals are for the Program as a whole, and all the entities that must implement them, not just for BPA. Because the goals and objectives are not allocated among BPA and other federal agencies, it is not possible to assign a specific portion of mitigation to BPA. However, it is important to note in a practical sense that many Program implementation actions certainly create a biological response in fish and wildlife that *is* reflected in a Program goal or objective.

Because the Program's goals and objectives are difficult to quantify, allocate, and verify, BPA believes that to implement mitigation measures in a manner consistent with them, BPA should demonstrate how its actions are consistent with the Program's strategies. The Program's measures or strategies are designed to support the attainment of the Program's goals and objectives, and are at a descriptive level that provides a useful way to demonstrate consistency.

Having performed its own project reviews, studied the ISRP review and recommendations, the Council recommendations, and considered comments from resource managers and others, BPA believes that all the projects in its 2007-2009 mitigation portfolio follow the Program's scientific principles and help implement one or more of its strategies. Moreover, with the exception of the harvest strategies that the Program directs to other entities, the mitigation portfolio reflected in BPA's decision includes projects that adopt every strategy the Program identifies that applies directly to FCRPS impacts or is otherwise a BPA responsibility.

As documented in the preceding sections, BPA is making available \$143 million annually in expense funding (plus an additional \$3 million for the 2007 Interim Operations Agreement commitments, and an additional \$8.8 million in carryover funds from the last rate period) and \$36 million in capital annually for a total of \$549 million over the FY07-09 rate period. BPA has committed to a mitigation portfolio that closely follows the Council's project funding recommendations made under section 4(h)(10)(D) as well as its Program guidance. And, notwithstanding the very general consistency language in section 4(h)(10)(A) of the Act, as a practical matter the specific projects BPA intends to implement closely track the projects recommended by the Council.

Finally, the Council's Program includes a budget allocation of 70 percent of total funding for anadromous fish, 15 percent for resident fish, and 15 percent for wildlife, as a means to prioritize among fish and wildlife mitigation efforts throughout the Basin. BPA carefully considered this budget allocation with the end result being that our decision reflects a 73/17/7 allocation of the FY07 expense budget as compared to the 70/21/7 allocation reflected in the Council recommendations for FY07. For the combined FY07 capital and expense budget, BPA's decision reflects a 66/16/16 allocation as compared to the 61/21/16 allocation reflected in the Council recommendations. The drivers behind these differences are primarily a combination of the FY07 Interim Operations Agreement commitments, additional Biop remand-related projects, and the application of BPA's *in lieu* criteria.

Divergence from the Council's Project-Specific Recommendations

The projects that the ISRP reviewed favorably have a strong basis in science, and the projects the Council recommended for funding have broad support and are presumed by BPA to be consistent with

the Program. However, as noted in the tables for each major work category in Part 1, BPA did not adopt the Council's recommendations for few specific projects. The following describes BPA's general approach to the selection of projects developed in the solicitation process and recommended by the Council, and the rationale for its divergence from the Council's project-specific recommendations in the limited circumstances such divergence occurred.

Initially, a project favorably reviewed by the ISRP and recommended by the Council would mean a strong likelihood of selection by BPA. BPA then applied additional criteria in making its project selections. On this point, the Council and other entities have expressed some concern, but the process BPA has used to make its selections is the same one the Council used to make its recommendations—the 2007-2009 project solicitation. BPA co-sponsored the process, and at the outset provided guidance documents that listed several factors that it would consider in making its project selections, and encouraged sponsors to address these factors in their proposals.

In short, BPA endeavored to supplement the Council's recommendations whenever possible, and not to supplant them. That BPA has *some* additional criteria springs naturally from the different legal obligations the agencies have, such as BPA's requirements to comply with the *in lieu* prohibition and the ESA. The result of this is that in some cases BPA independently exercised its discretion in choosing different projects for fulfilling its mitigation and recovery responsibilities.

In making its decision, BPA considered the Program, the Council's project recommendations, and the most current thinking about off-site mitigation needs that may be incorporated into a new FCRPS Proposed Action for ESA Section 7 compliance. In the limited instances that BPA did not adopt a Council-recommended project, it did so on the basis of biological effect, implementation priority and mitigation responsibility. Among the reasons that BPA diverged in part from Council project recommendations are: the recommended project did not appear to address the effects of the FCRPS; the project raised a statutory *in lieu* prohibition on BPA's ability to fund; or the recommended project was counter to BPA's reinvention initiatives associated with its implementation of the Program. In some cases, all of these factors weighed together in BPA's evaluation of Council recommendations.

Additionally, as noted in the tables in Part 1, in some instances BPA has decided to fund a specific project identified in the solicitation process, reviewed by the ISRP, but not recommended by the Council. In these cases, the primary reason for the divergence from the Council is BPA's determination that it needs the project in order to meet its obligations under the ESA and/or under the 2007 Interim Operations Agreement. BPA greatly appreciates the Council's support for integrating the agency's ESA needs into its project recommendations, and sought to utilize the Council's recommendations in this regard whenever possible. Ultimately however, the burden of integration falls to BPA, inasmuch as the Council is not a federal entity subject to the consultation requirements of section 7 of the ESA. In a limited few instances, BPA determined it needed projects to fulfill its obligations that the Council did not recommend. Still, in all cases, the selected projects fulfill one or more of the Program strategies.

Lastly, for a number of projects recommended by the Council and implemented by BPA, our decision on planning budget amounts does not always precisely match the budget recommended by the Council. This outcome results in part because the Council made recommendations on a fiscal year planning basis, which is different from the accrual-based accounting, and project-year implementation budgets (that span fiscal year spending), that BPA employs in managing the Program. BPA does not consider these budgetary differences, particularly on a planning basis, to be significant, legally or otherwise. First, the funding identified in this decision for each project is not final, because BPA must still negotiate the scope of work and develop appropriate contracts with each of the selected project proponents. Second,

if a budget identified in the tables in Part 1 is insufficient for the work committed to in the contract, the established Program implementation process accommodates the need for within-year adjustments through the BOG process.

Consistency with the Council's Power Plan

In its most recent Power Plan the Council recommended in relation to fish and wildlife that “Bonneville should continue to fulfill its obligations for fish and wildlife.”²⁵ As the Council noted in describing this recommendation:

These obligations will be determined in a manner consistent with the requirements of the Northwest Power Act and the Council's Columbia River Basin Fish and Wildlife Program, and are not affected by the recommended changes in Bonneville's role [referring to recommended changes in Bonneville's role regarding the regional power supply].

BPA's decision demonstrates its continuing efforts to meet its obligations to address the impacts to fish and wildlife from the construction and operation of the FCRPS consistent with the Council's Program. As such, BPA's decision is consistent with the Council's specific fish and wildlife recommendation to BPA in the Council's Power Plan.

The Council also provided some additional suggestions in the Power Plan, focused primarily on hydropower operations and impacts to fish and wildlife. This included a recommendation (to multiple entities) that there be better integration of power interests and fish interests in operational decision-making—“to improve and broaden the focus of the forums created to address issues surrounding fish and wildlife operations, especially those related to long-term planning.” Vol 2, Chapter 10 at page 10-3.

As noted above, the plan's guidance here addresses other entities as well as BPA. Generally, BPA contributes its views on these operational issues through a variety of forums, including the process to determine the appropriate operations of the FCRPS pursuant to the ESA and the remand of the FCRPS BiOp, the System Configuration Team, the Implementation Team, the Technical Management Team, and through comments on the Council's draft program amendments that address hydrosystem operations. In continuing to implement projects²⁶ that support regional analysis of hydrosystem operations, effects, and species response, as well as in the coordinated forums to discuss and refine alternative management strategies, this fish and wildlife program implementation decision furthers the integration of power operations and fish and wildlife protection, mitigation, and enhancement in agency and regional decision-making.

Consistency with the Purposes of the Act

Congress enumerated several purposes of the Northwest Power Act, including three directly applicable to this fish and wildlife implementation decision:

- the purpose of the protection, mitigation and enhancement of fish and wildlife (section 2(6) of the Act)
- to assure the Pacific Northwest of an adequate, efficient, economical and reliable power supply (section 2(2))

²⁵ Action BPA-4 at page 63.

²⁶ See “Systemwide” category of projects.

- to provide for the participation and consultation of the states, local governments, consumers, customers, users of the Columbia River system (including federal, state, and tribal fish and wildlife agencies), and the public at large in the development of plans and programs to protect, mitigate, and enhance fish and wildlife resources (section 2(3)(A))

Congress identified other purposes as well, but BPA has reviewed these and determined that they address other sectors of BPA's activities such as the development of renewable energy sources, and support for energy efficiency and conservation. These purposes are not directly implicated by BPA's fish and wildlife decision here.

In general, the purposes of the Act must be fulfilled by both BPA and the Council, each reflecting their respective roles in the process. Thus, the purpose of protection, mitigation, and enhancement is planned by the Council under section 4(h), and BPA is to use its fund and authorities to protect, mitigate and enhance consistent with that Plan under 4(h)(10)(A). Both the Council in planning, and BPA in implementing, must seek to assure the region an adequate, efficient, economical and reliable power supply and to appropriately provide for public participation and consultation.

As discussed above, BPA's decision and its consistency with the purpose of the protection, mitigation, and enhancement of fish and wildlife affected by development of the hydrosystem is discussed throughout the decision, and will not be repeated here.

BPA's decision supports AEERPS

BPA provides for an adequate, efficient, economical and reliable power supply (AEERPS) in multiple ways, the overarching ones being by seeking to keep rates as low as possible given sound business principles and managing the power aspects of the FCRPS to meet reliability standards and the other purposes of the system. BPA's fish and wildlife decision is consistent with this purpose for at least three reasons.

First, BPA's decision comes within the budgetary range BPA established (in a public process) for those purposes (see discussion of the Power Function Review in the next section). BPA established power rates for the 2007-2009 period, including what it expected to spend on fish and wildlife mitigation during that period. By keeping within the budget proposed and vetted in the public process and consistent with the rates structure, BPA's decision is consistent with providing the region AEERPS.

Second, as discussed in our solicitation guidance and referenced elsewhere, BPA's decision is seeking to implement some program reinvention initiatives. The purpose of these initiatives is to help BPA meet agency-wide strategic goals for system reliability, low rates, environmental stewardship, and regional accountability. See *Agency Strategy Map 2007-2011*, where "cost-effective solutions for meeting fish, wildlife and environmental responsibilities measured against clearly defined performance objectives" is an explicit strategy.²⁷ Thus, the funding decision links directly to agency-wide strategies in support of AEERPS.

Third, BPA has carefully reviewed each proposal recommended by the Council and evaluated the proposed implementation budgets. As the entity that negotiates the contract for work with the project

²⁷ This Agency Strategy Map was itself developed with extensive regional input, including revisions following a public comment period, see http://www.bpa.gov/corporate/about_BPA/Strategy.cfm.

proponents, BPA is in a unique position to review and evaluate whether the proposed budgets will achieve the desired outcomes. As discussed in this decision, BPA adjusted some project budgets based on BPA's experience with project implementation – in some cases decreasing the recommended budget, and in other cases increasing it – in recognition of the fact that budgets must be adequate and accurately matched to the achievement of project objectives. In this regard, the adjustments to some project budgets reflected in BPA's decision have occurred ahead of the contracting process in a more transparent manner, which is another BPA strategic objective. Notwithstanding these transparent budget adjustments, final levels of funding are determined in the contracting process between BPA and the contractor, during which project-specific budgets are developed in relation to project deliverables and schedules. And, as always, following the establishment of budgets in the contracting process, subsequent adjustments in project funding can be made in coordination with the Council through the BOG within-year process.

This independent review and evaluation of the recommended funding provides additional assurance that the projects are both achievable and cost effective. Further, as described in the synopsis paper accompanying this decision, by actively engaging in and managing its mitigation and recovery responsibilities, BPA strives to make sure fish and wildlife are on par with the power purpose of the FCRPS so the hydrosystem can operate predictably and reliably without concern that needed but unanticipated mitigation actions will affect the cost, supply, or reliability of the region's power.

BPA's decision supports and reflects public participation

BPA's decision is the culmination of several years of processes that involved consultation with and the participation of states, tribes, local governments, customers, consumers, constituents (including fish and wildlife agencies), and the public in the development of the funding and projects and measures to be implemented. Although the Act prescribes no public processes for BPA as it determines its mitigation responsibilities, BPA addresses the public participation purposes intended by the Act (addressed to development of plans and programs) partly through processes sponsored by the agency (e.g., PFRs), largely by co-sponsoring processes with the Council (e.g., subbasin planning), and especially by closely collaborating with and considering the Council's recommendations and perspective, since the Council's process elicits extensive agency, tribal, and public participation throughout the basin.²⁸

In October 2005, BPA and the Council jointly issued a public solicitation for project proposals to implement the fish and wildlife program. By January 2006, 541 proposals had been submitted to the Council for recommendation to BPA for funding. The proposals were submitted by a wide range of entities in the region, including federal, state, and tribal agencies, local governments, universities, private companies, and individuals. Such diversity and breadth of participation is one gauge of the degree of engagement by the interests of the public throughout the Basin, as envisioned by Congress in enacting the Northwest Power Act.

²⁸ The additional issue paper accompanying this decision document and posted to BPA's website provides more discussion about how BPA solicited and incorporated public input into this decision and the processes leading up to it.