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June 26, 2003

Ms. Therese Lamb
Acting Vice President
Bonneville Power Administration
P.O. Box 3621; EFW
Portland, Oregon 97208

Dear Ms. Lamb:

On June 11th, at its Boise meeting, the Council adopted funding recommendations for the Mainstem/Systemwide projects group. The Council's project funding recommendations cover the Fiscal Year 2004 through 2006 period. The attached Table 1 identifies the projects that are recommended for Bonneville funding, and their associated phased budgets are provided. The projects identified in "Tier 1" of the table are recommended for funding at this time. The projects in "Tier 2" are projects that should be considered for funding on equal basis with other basinwide proposals if additional funding becomes available in the future.

I am also attaching to this letter the memorandum that the staff provided to the Fish and Wildlife Committee and Council at the Boise meetings. That memorandum explains the basis for the funding allocation developed for the Mainstem/Systemwide projects, the process used to prioritize candidate proposals, the criteria used in the prioritization, and project-specific discussions for the treatment of many of the candidate proposals.

The Council is well aware that shortly after the Council decision, some Bonneville staff, you included, expressed concern that an alternative package of project proposals forwarded by Bonneville was not adopted. However, before discussing the differences between the Council's funding decisions, and the Bonneville alternative proposal, I want to generally discuss the substantial agreement first.

The alternative package advanced by Bonneville is consistent with much of what the Council recommends in its Tier 1 recommendation. For example, there are only seven projects recommended for funding by the Council that would not be funded in Bonneville's

alternative. Those seven projects total approximately \$2.74 million dollars in Fiscal Year 2004. So, out of a \$31 million dollar Council funding recommendation, less than 9% was not identified as supported for funding in Bonneville's alternative.

Further, the Council and Bonneville agree on the importance of balancing critical biological opinion needs in the Mainstem/Systemwide group with maintaining support for the broader core program. Bonneville's Phase 1 criteria and the Council's prioritization considerations (see the Section II B. of the attached memo) match up very well. The Council's Tier 1 funding recommendation includes 35 projects. Of those, BPA and NOAA rated 27 of as "critical" to Biological Opinion implementation through 2005. The Council has also reserved \$1.8 million in its Tier 1 recommendations to fund projects responding to critical Biological Opinion "gaps" (Request for Studies Proposals) that are now completing ISRP review. The Council recommendation also supports key projects and programs for other non-listed species such as white sturgeon and lamprey in the Columbia River, and Hanford Reach fall chinook, and important program support projects such as Streamnet and the Columbia Fish and Wildlife Authority. The Council is confident that it struck the appropriate balance in consider ESA needs and the broader goals of the Northwest Power Act.

The Council hopes that Bonneville will acknowledge the great amount of consistency its decision enjoys with Bonneville's comments and proposals. The Council also expects Bonneville and others to carefully and objectively consider the reasons that not all of the proposals advocated for by Bonneville could be supported as this process moves to the next steps.

There are areas of disagreement between the Council decision and Bonneville's alternative. As was discussed in both the Fish and Wildlife Committee and Council meetings in Boise, the Council did not adopt the Bonneville alternative for two equally important, but distinct reasons that were discussed at length during the meetings. First, the Council considered each project proposal supported by Bonneville that was not included in the "Tier 1" group that was recommended by the staff, and then Fish and Wildlife Committee to the Council, and determined that it should not be recommended for funding for one or more of the following reasons:

- Redundancy -- the new project proposal is for work or investigations to address RPA's that are already being addressed with ongoing projects recommended in prior provincial reviews or new projects that are recommended in Tier 1.

The Council believes that Bonneville's Biological Opinion requirements can and should be integrated with its fish and wildlife program obligations for many reasons, not the least of which is to achieve cost-effectiveness and to foster efficiency. This has been a fundamental theme of the Council through all of the provincial reviews. At a project level, the application of the principle is to see if a Biological Opinion requirement (or RPA) is or can be addressed by an existing fish and wildlife program project -- *only if the answer is "no" would a new additional project be initiated.*

Throughout the Mainstem/Systemwide provincial review the Council staff emphasized this point in the many meetings and discussions with Bonneville, NOAA, and proposal sponsors. On May 27th, the Council staff advised Bonneville, NOAA and project sponsors of the specific project proposals that would not be recommended for funding by the staff because they related to RPAs already addressed by other projects. Even with this project-specific list and notice, we have not had specific information or analysis contesting the staff “redundancy” findings. The Council and its staff are available to meet and discuss how this issue influenced the Council’s decision on a project-specific basis. The memorandum attached discusses this in some measure at the project level, but it was intended to be illustrative. We would be available to explain how the redundancy issue impacted each of the projects in the Bonneville alternative if that would be helpful.

- Not scientifically sound/minimal benefit likely -- the Independent Scientific Review Panel’s findings find that the proposals do not meet the minimum standards that all project proposals in the program must meet, or that while meeting those minimum standards, the proposal is unlikely to yield meaningful benefits.

This issue is critical to the Council. Projects that are declared by Action Agencies, NOAA or the USFWS to be necessary for ESA requirements must meet the same standards for scientific rigor as all other projects. The Council will not recommend a project simply because there is a “BiOp” designation made by someone participating in the process. Moreover, the Council is very concerned about an appearance that once a proposal is deemed as important for ESA purposes that it can have a different, more lenient scientific review process built for it, including expectations for multiple reviews of less formality than available to all other projects. The ISRP itself has raised this issue as a serious challenge to the integrity of the review process. Allowing projects to have multiple reviews with the ISRP, or requiring expedited review, or review with a limited information base raises serious equity and accountability questions.

This consideration had a large impact on that part of the Bonneville proposal that it identified as “Phase II”. Bonneville’s alternative included eight projects in Phase II at an approximate cost of \$39 million for the three-year period. Four of those projects were new, and declared as “critical” to meet the FCRPS Biological Opinion RPAs, but were rated as “Do Not Fund” by the ISRP (35048, 35016, 35020, and 35024). Three of these projects (35048, 35016, and 35020) *were subject to three reviews by the ISRP and were rated “Do Not Fund” in each case.* Even with the poor performance in the independent scientific reviews, the Bonneville alternative still proposes that these projects be prioritized for funding with funds that would be redirected from the other provinces. The Council could not recommend these projects.

Bonneville’s Phase II element also supported funding an ongoing NATURES study (199105500) did receive a “Fundable” rating from the ISRP, but was the subject of an extensive programmatic recommendation of the ISRP (ISRP 2002-14, pages 8-9). The ISRP advised the Council that NATURES applications will yield “relatively small” benefits, and

that it was questionable if the continuation of this project was warranted “given issues of best use of funds, the expected modest gains from this investment, and the information that will be available in the near term from other applications within and outside the program.” The Council’s decision would not have Bonneville make further investments here for the reasons clearly stated by the ISRP.

- Project should be funded by another entity -- the Council is not willing to have failed appropriations of other agencies be a ratepayer responsibility.

The Biological Opinion is vague in many instances about which Action Agency has the primary funding responsibility for an RPA. The Council criticized this infirmity and sought definition in its comments upon the first Action Agency Implementation Plan.

Unfortunately, this problem has not been corrected, and the result is that Bonneville and the ratepayers are asked to shoulder the costs of all RPAs where the other Action Agencies and/or NOAA fail in securing appropriations requests. Perhaps even worse, Action Agencies and NOAA are not prioritizing the funding that they do receive to these RPAs, leaving Bonneville to pick up the bill.

Bonneville and the Council share the objective of not using ratepayer funding to make up for the lack of appropriations for the responsibilities of other federal agencies. The approach in this particular provincial review seems inconsistent with the approach in past provincial reviews, such as in the Mountain Snake and Upper Snake River provinces, where Bonneville argued that other federal agencies (the Forest Service or Bureau of Land Management) should be funding work proposed in many of the candidate proposals, and that the inability of those agencies to secure appropriations and/or unwillingness to make the work a priority was not a sufficient basis for asking Bonneville to fund the projects. We disagreed with the application of Bonneville’s concern in those cases because those projects were proposed by fish and wildlife managers to conduct work associated with production objectives over and above the responsibilities of the land management agencies. The principle, however, remains and the case to be made for funding from others for these projects is even stronger in many ways. For example, Bonneville’s Phase I alternative would launch three new studies (35046, 35064, and 35065) that investigate the plume or near-shore ocean at a combined cost of over \$3 million in Fiscal Year 2004 only (with expanding budgets in the next two fiscal years). These new proposals are aimed at addressing RPAs 194, 196, and 197, each of which begins with the following language regarding the funding entity:

The Action Agencies and NMFS shall work within the annual planning and congressional appropriations processes to establish and provide the appropriate level of FCRPS funding for studies . . . (FCRPS 9-177, 179).

These RPAs clearly envision a broad and joint Action Agency and NMFS funding response, and *do not* make Bonneville the primary funding entity. Moreover, this language makes clear that NMFS (NOAA) is also to contribute to funding these types of investigations. The Council is aware that NOAA’s Fiscal Year 2003 request for Columbia River Biological

Opinion Implementation was \$12 million, and that it failed to secure any of that amount in the enacted budget. The failure to secure this funding is unfortunate, but it cannot simply lead to an expectation that Bonneville must fund work that this funding would have contributed to. NOAA is seeking \$11.6 million in Fiscal Year 2004 for Columbia River Biological Opinion implementation, and the disposition of that request and the prioritization of funds appropriated should be known before dedicating Bonneville funding to these projects.

The same situation applies to the work required by the FCRPS Biological Opinion regarding avian predation. RPAs 102, 103, and 104 call upon the *Action Agencies* to conduct (fund) this work. The Council believes that Bonneville funding has been robust and well-spent up to date on this work, but it is time for the Corps of Engineers and/or the Fish and Wildlife Service to take on the primary funding responsibility for these RPAs. Corps activities related to navigation created the habitat that has enabled the explosion of the Caspian tern population in the estuary, and the Fish and Wildlife Service is responsible for managing the terns. Future Bonneville funding should not be aimed at research, but at actual management actions to reduce predation as a form of off-site mitigation for hydrosystem impacts to anadromous fish.

The Council believes that it is time to call the question on this issue, and require the other Action Agencies and NOAA to fund some of the studies proposed in Bonneville's alternative package. If the Corps, NOAA or others are not in a position to fund the required work, ratepayer funds should not be thought of as a safety net. Rather, NOAA and the Action Agencies need to evaluate how not conducting these research initiatives does or does not materially alter the fundamental findings made by NOAA in issuing its FCRPS Biological Opinion.

The second reason that the Council could not accept Bonneville's alternative project proposal is because it was over-budget. Bonneville's alternative included a "Phase 1" set of projects that totaled approximately \$31 million -- the full allocation available for the Mainstem/Systemwide group. However, the alternative also included a "Phase 2" group that would require funding at an average additional \$12.9 million/fiscal year -- \$39 million more than the amount available for this three-year period. When the Committee and Council asked Bonneville representatives where an additional \$39 million would come from to fund its alternative, the responses were a stated hope that "efficiencies" could be found in the tributary projects that have already completed provincial reviews and been recommended by the Council. The Council's clear concern is that further reductions in already reviewed and approved tributary projects will be required and be rededicated to funding Bonneville's Mainstem/Systemwide projects package. In the end, the Council could not support an alternative that did not have a clear plan to augment the funding allocation available, and seemed to rely upon shifting funds from tributary projects in other provinces.

In conclusion, I know that the Council is pleased to have completed the first full provincial review cycle, and that it believes that its recommendations for the Mainstem/Systemwide group is a strong and cost-effective package. The Council encourages Bonneville to accept

Therese Lamb
June 25, 2003
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these recommendations as presented, and has asked that I request that if Bonneville believes any element of these recommendations cannot be accepted, that you will contact me in advance of a final decision with the objective of resolving any such difference. As mentioned above my staff and I, as well as Council members, are available to discuss our recommendations further with you or NOAA.

Sincerely,

Signed DM 6/26

Doug Marker
Director
Fish and Wildlife Division

Enclosures (5)

cc: Brian Brown, NOAA
Witt Anderson, CORPS
Bill Shake, USFWS
Rod Sando, CBFWA
Joseph Sharpe, BPA
Olney Patt Jr., CRITFC
Mary Verner, UCUT

