

Tom Karier
Chair
Washington

Frank L. Cassidy Jr.
"Larry"
Washington

Jim Kempton
Idaho

Judi Danielson
Idaho



Joan M. Dukes
Vice-Chair
Oregon

Melinda S. Eden
Oregon

Bruce A. Measure
Montana

Rhonda Whiting
Montana

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September 15, 2006

DECISION MEMORANDUM

TO: Council Members

FROM: John Shurts
Patty O'Toole

SUBJECT: Fiscal Year 2007 through 2009 Fish and Wildlife Project Review and Recommendations -- the Council's September 2006 draft recommendations

At its September Council meeting in Astoria, Oregon, the Council agreed to release for public review and comment a set of draft fish and wildlife project funding recommendations to Bonneville for Fiscal Years 2007 through 2009. The Council will seek public comment on the draft project funding recommendations for a brief period, to Friday, October 6. The Council then plans to make its final project funding recommendations for FY07-09 at its October meeting in Helena, Montana, October 17-19.

The purpose of this memorandum is to describe the process, the proposed projects and the issues that the Council needs to resolve on the way to making its draft funding recommendations to Bonneville. It is based on and incorporates what has been called the "rolling issue memorandum," although reorganized into a decision memorandum focused on the projects, with an updated set of key issues. Once the Council decides on its final project funding recommendations, this will be revised into the Council's formal decision document for transmission to Bonneville.

Please pay particular attention to Section 3 (at pp 10-17). This is a brief discussion of a number of broader policy and programmatic issues, along with the Council's proposed recommendations for resolving these issues. These programmatic recommendations will underlie or affect the entire set of project funding recommendations.

The other sections are as follows:

Section 1 describes the legal framework for the Council's project review and recommendations and the process the Council has followed to date for the FY07-09 review. It

also describes Bonneville's funding commitment for the 2007-2009 rate period and the Council's funding allocation targets and principles leading into the review.

Section 2 will describe the fish and wildlife projects proposed and recommended, organized first by Province; followed by the Basinwide research, monitoring and evaluation and coordination; and finishing with the Mainstem/Multi-province projects grouped into one final set. This part of the memorandum consists of the project/budget tables and a list of issues with each grouping that the Council needs to resolve on the way to deciding on its project funding recommendations.

Section 4 will contain the formal determinations and findings that the Council needs to make to address certain requirements of Section 4(h)(10)(D) of the Northwest Power Act.

Section 1: Legal Framework, FY07-09 Review Process, Bonneville Budget Commitment, and Council Budget Allocation Targets

Northwest Power Act legal framework

Pursuant to Section 4h of the Northwest Power Act, the Council has adopted a program to protect, mitigate and enhance the fish and wildlife of the Columbia River basin adversely affected by the development and operation of the hydroelectric projects on the Columbia River. The current version of the Council's program is the *2000 Columbia River Basin Fish and Wildlife Program*, as supplemented by the 2003 Mainstem Amendments and the subbasin plans for 57 subbasins of the Columbia adopted in 2004-05. See <http://www.nwcouncil.org/fw/program/>. The fish and wildlife program consists of measures and objectives that directly address the effects of the mainstem Columbia and Snake river hydroelectric dams on fish and wildlife. The program also includes habitat and production enhancement objectives and measures for the Columbia's many tributaries and for the estuary, intended as off-site mitigation for effects of the hydrosystem that cannot be protected against or mitigated in the mainstem. And the program includes provisions for monitoring and evaluation, research and coordination to help in implementation and review of the program.

Section 4h(10)(A) of the Power Act then calls on the Bonneville Power Administration to use its funds and other authorities to protect, mitigate and enhance these same fish and wildlife "in a manner consistent with" the Council's fish and wildlife program. Bonneville directly spends millions of dollars every year to fund hundreds of mainstem and off-site mitigation projects to implement measures in the Council's program.

In a 1996 amendment to the Northwest Power Act, adding Section 4(h)(10)(D), Congress added to the Council's responsibilities a review of the projects annually proposed for funding by Bonneville to implement the Council's program. The Council is to conduct this review with the assistance of an Independent Scientific Review Panel appointed by the Council. The panel is to "review a sufficient number of projects to adequately ensure that the list of prioritized projects recommended is consistent with the Council's program," and then to make project recommendations to the Council "based on a determination that projects: are based on sound scientific principles; benefit fish and wildlife; and have a clearly defined objective and outcome with provisions for monitoring and evaluation of results."

After releasing the panel's findings for public review and comment, and after fully considering the panel's recommendations, the Council completes the review process by deciding on project-funding recommendations to Bonneville to implement the program. If the Council deviates from a recommendation of the panel, the Council must also explain in writing its reasons. The Council is also to "consider the impact of ocean conditions on fish and wildlife populations" and "determine whether the projects employ cost-effective measures to achieve program objectives." At bottom, "[t]he Council, after consideration of the recommendations of the Panel and other appropriate entities, shall be responsible for making the final recommendations of projects to be funded through BPA's annual fish and wildlife budget."

FY07-09 project review process

The Council is nearing the conclusion of a project review process aimed at providing Bonneville with recommendations for projects to fund in Fiscal Years 2007 to 2009 to

implement the Council's program. The process began on October 21, 2005, when the Council and Bonneville issued a solicitation for project proposals to implement the fish and wildlife for these fiscal years, to begin in October 2006. With the solicitation, the Council also released a guidance document for potential project sponsors and other titled "Information and Instructions for the Development and Review of Proposed Projects to Implement the Council's Columbia Basin Fish and Wildlife Program, Fiscal Years 2007 through 2009."

<http://www.nwcouncil.org/fw/budget/2007/intro.pdf>;

<http://www.nwcouncil.org/fw/budget/2007/guide.pdf>.

By the deadline of January 10, 2006, project proponents submitted XXX proposals requesting a total of \$xxx million in funding. The ISRP reviewed all the proposals, issuing its *Preliminary Review of FY 2007-09 Proposals for the Columbia River Basin Fish and Wildlife Program* (ISRP Report No. 2006-4) on June 2, 2006. Among other things, the ISRP rated each project as fundable, fundable in part, not fundable or requiring a further response, based on the panel's application of the statutory criteria. All project proposals may be seen at <http://www.cbfwa.org/solicitation/components/forms/AllProposals.cfm?all=yes>; the ISRP preliminary report is at <http://www.nwcouncil.org/library/isrp/isrp2006-4.htm>.

The Council also organized a set of review groups to review the proposed projects for reasons other than scientific soundness, especially including for purposes of determining consistency with the priority objectives and strategies in the program's subbasin plans and other key planning documents. For projects proposed to implement the subbasin plans in the tributary subbasins and the estuary, the Council identified local review groups by ecological province and state, and in a Review Guidance document issued in February 2006, explained the charge to the local groups in this way:

"Building on the local input that was captured in the subbasin plans adopted over the last year, the Council now seeks the input and advice from local groups throughout the Columbia basin on what proposals are of highest priority to begin implementing each subbasin plan over this three-year period. That is, the Council would like local groups throughout the basin to review the fish and wildlife proposals that have been submitted against the adopted subbasin plans they relate to, and provide the Council a proposed three-year suite of projects that represent the highest priorities of the subbasin plan for the next three years.

http://www.nwcouncil.org/fw/budget/2007/guide_review.htm *see also*

<http://www.nwcouncil.org/fw/budget/2007/province/Default.htm>.

These state-led local review groups delivered priority project recommendations to the Council throughout the summer of 2006. The project recommendations came accompanied by lists of review participants and descriptions of the procedures, methods and criteria used to review projects and arrive at recommendations. These may be found at

<http://www.nwcouncil.org/fw/budget/2007/Default.asp>;

<http://www.nwcouncil.org/fw/budget/2007/reviews.asp>;

<http://www.nwcouncil.org/fw/budget/2007/province/stateprovdocs.htm>;

<http://www.nwcouncil.org/fw/budget/2007/id/Default.asp> (Idaho);

<http://www.nwcouncil.org/fw/budget/2007/mt/default.asp> (Montana);

<http://www.nwcouncil.org/fw/budget/2007/or/Default.htm> (Oregon);

<http://www.nwcouncil.org/fw/budget/2007/wa/default.htm> (Washington)

Working with the Columbia Basin Fish and Wildlife Authority, the Council also identified a review group called the Mainstem Systemwide Review Team (or MSRT) to review projects proposed for research, monitoring and evaluation and coordination that did not fit into any particular province -- called the "Basinwide" projects. For a description of this review team and the criteria and procedures it used to review these projects, *see* <http://www.nwcouncil.org/fw/budget/2007/ms/process.pdf>. The MSRT delivered its recommendations for these projects to the Council on July 27, 2006. <http://www.nwcouncil.org/fw/budget/2007/ms/0727.pdf>; <http://www.nwcouncil.org/fw/budget/2007/ms/0727.xls>; *see* <http://www.nwcouncil.org/fw/budget/2007/ms/Default.htm> for all the documents relevant to this review group.

Finally, the Council grouped together a set of projects proposals that fit neither into the Basinwide research, coordination and m&e group nor into a specific province into what became known as the Mainstem on-the-Ground/Multi-Province projects. The Council staff organized a staff-led review of these proposals. *See* the Staff memorandum to the Council of August 3, 2006, "FY 2007-2009 project review, Mainstem on the ground/multi-province category (Strawman project list with logic path, revised July 27, 2006)." The MSRT chose to review these projects as well.

The Council provided other types of guidance for particular situations, topics and reviews. For a list and links to all of the guidance provided by the Council to project sponsors, project reviewers and others for the FY07-09 project review process, *see* <http://www.nwcouncil.org/fw/budget/2007/guides.htm>.

The priority project recommendations from the review groups included project proposals that the ISRP had concerns about in its preliminary report. These concerns ranged from the panel requesting further information before being able to reach a conclusion to judgments by the panel that certain proposals were not fundable in whole or in part on the current information. For any such project proposal, the Council requested that the project sponsor respond to the issues raised by the ISRP. The Council then asked the panel to review the responses. The ISRP will report to the Council with its final recommendations on these proposals on August 31.

The Council made the project proposals, the ISRP's preliminary report and the information and priority recommendations from the review available to the public for review and comment. The Council has been considering these comments as received, and has been accumulating the comments in an administrative record for the upcoming final decision on the project funding recommendations for FY07-09.

Upon fully considering the ISRP recommendations and other information in the record, the Council will decide on draft funding recommendations at its September meeting in Astoria, Oregon. The Council will then release these draft funding recommendations for public review and comment for a brief period, until October 6, 2006. The Council will decide at its October meeting in Helena, Montana, on the Council's final project funding recommendations to Bonneville for FY07-09.

Bonneville budget commitment

In the fall of 2005, Bonneville informed the Council that Bonneville will make available to the program for direct expenditures an annual average of \$143 million for Fiscal Years 2007 through 2009. Bonneville and the Council then agreed that the Council should use an annual average planning budget of \$153 million for these years in formulating the project funding recommendations. For a discussion of the difference between the Council's use of a planning budget and Bonneville's actual spending targets, and how the two may be managed together, *see* Section II(1) of the Council's "Recommendations for Fiscal Year 2005 Fish and Wildlife Program start-of-year planning budget," <http://www.nwcouncil.org/fw/budget/2005/fy05rec.pdf>.

Bonneville has also committed to add to that expense budget commitment any funds that Bonneville made available for the expense portion of the fish and wildlife program during Fiscal Years 2003 to 2006 but then did not spend. Precisely how much additional will be available is not certain, but the range of the possible amount and recommendations for what to do with those additional funds are discussed below, at [xx].

In addition to the amount of "expense" funding noted above, Bonneville will also make up to \$36 million available per year during FY07-09 for capital investments, borrowed from the U.S. Treasury. This latter amount, often referred to as "capital" funding, is subject to particular rules and standards prescribed by Bonneville in its "Fish and Wildlife Capitalization Policy," last reviewed in August 2005 and found at http://www.efw.bpa.gov/Integrated_Fish_and_Wildlife_Program/FW%20Capitalization%20Policy%2011-4-04.pdf. Bonneville recently clarified its policy and then reviewed the FY07-09 project proposals against the policy, communicated in a letter to the Council dated August 24, 2006.

Council's budget allocation targets

In order to review The Council established planning target budget allocations for each of the ecological provinces. Similarly, for those research, monitoring and evaluation, and coordination activities not linked to a particular province, the Council established a "Basinwide" projects planning target. The Council also established a planning budget target for that group of projects left over, consisting of the few mainstem on-the-ground projects and projects of a multi-province nature. The Council also recognized that the total budget commitment would have to include the cost of Bonneville's internal program support and the cost of the independent science panels, and these were subtracted from the total up front. Finally, the Council reserved a \$2 million unallocated placeholder, an issue discussed below at [xxx].

The tables below display how the Council recommends allocating the expense funding commitment across the program. (Note: Not factored into the allocation tables are any amounts unspent from FY2003-06 that may be added into FY2007-09; *see* the discussion above.)

Table 1. Annual Program Planning Budget for FY 2007-09

Budget Step	\$ Amount/step	Balance
Program planning target	\$153,000,000	-
Bonneville Program Support	\$11,000,000	\$142,000,000
ISRP/ISAB	\$1,050,000	\$140,950,000
Placeholders (planning estimate)	\$2,000,000	\$138,950,000
Province allocation	\$92,894,502	\$46,055,498
Mainstem OTG/Multi-Province allocation	\$13,411,338	\$32,644,160
Total (Province + Mainstem OTG/MP)	\$106,305,840	\$32,644,160
Basinwide allocation	\$32,644,160	\$0

Table 2. Province and mainstem/multi-province allocation

Province	Percent of Allocation	\$ Allocation
Blue Mountain	6.7	\$7,127,528
Columbia Cascade	2.8	\$3,001,663
Columbia Gorge	5.0	\$5,312,554
Columbia Plateau	20.5	\$21,748,203
Intermountain	14.3	\$15,248,105
Lower Columbia	2.3	\$2,492,862
Estuary	3.4	\$3,662,490
Middle Snake	3.2	\$3,374,079
Mountain Columbia	11.8	\$12,590,537
Mountain Snake	15.8	\$16,761,459
Upper Snake	1.5	\$1,575,022
Mainstem/Multi-Province	Percent of Allocation	\$ Allocation
Multi-province	6.3	\$6,709,515
Mainstem	6.4	\$6,701,823
Total:	100	\$106,305,840

The Council based the allocations on historical Council funding recommendations, starting from the average of the Council recommendations for Fiscal Years 2004 through 2006. That is, the Council surveyed how it, along with Bonneville, fish and wildlife managers, and others have traditionally committed funding under the Program. These patterns are the legacy of management emphasis and legal and policy considerations, and are not to be considered perfect or necessarily used in future years.

The Council also premised the allocations on consistency with the provisions of the Council's 2000 fish and wildlife program intended to assure that Bonneville funds are committed to all areas of a basinwide mitigation and protection program. The Council thus made certain adjustments to the historically derived allocations to reflect the program provisions that call for distributing Bonneville funding so that 70% is spent on projects benefiting anadromous fish,

15% resident fish and 15% wildlife. The Council notes that while in recent years the resident fish distribution has come close to 15% of the program funding, the wildlife component has lagged behind. The Council's intent is to have both of these program areas approach their 15% allocation goal.

Bonneville stated a goal during its "Power Function Review" (the process leading to Bonneville's determination of projected program funding levels for the FY2007-09 rate period) of committing at least 70% of its annual fish and wildlife funding to "on the ground work," and no more than 25% to research and monitoring and evaluation activities and 5% to coordination actions. The Council considered these goals but decided **not** to use these targets to allocate funding for Fiscal Years 2007 through 2009. Nonetheless, the Council and Bonneville have worked together in this project review process, and will continue to do so, to focus resources on activities that provide direct benefits to fish and wildlife while maintaining an efficient accountability framework of monitoring and evaluation, research directed at key priorities, and streamlined coordination activities. These issues are discussed further below.

Section 2: Project Recommendations and Project-Specific Issues

Section 2 describes the fish and wildlife projects proposed and recommended, organized first by province; followed by the basinwide research, monitoring and evaluation and coordination projects; and finishing with the mainstem and multi-province projects grouped into one final set. This section also contains the Council's recommendations for use of the unallocated placeholder and for any amounts carried over in the FY2007-09 from unspent funds in FY2003-06. This part of the decision memorandum consists of the project/budget tables and a list of issues with each grouping that the Council needs to resolve on the way to deciding on its project funding recommendations.

[sent separately -- to be inserted in final document]

Provinces

Mountain Columbia

Intermountain

Columbia Cascade

Upper Snake

Middle Snake

Mountain Snake

Blue Mountain

Columbia Plateau

Columbia Gorge

Lower Columbia

Estuary

Basinwide research, monitoring and evaluation, and coordination projects

Mainstem on-the-ground/multi-province projects

Unallocated placeholder

Amount unspent in FY2003-06 available in FY07-09

Section 3: Programmatic and Broad Policy Issues

Section 3 contains the Council's recommendations for resolving a number of broader policy and programmatic issues that underlie or affect the project funding recommendations. These programmatic recommendations should be considered conditions that accompany the specific project funding recommendations.

1. Integration of projects implementing the FCRPS Biological Opinions

Section 4(h)(10)(A) of the Northwest Power Act authorizes and obligates Bonneville to use its fund to protect, mitigate and enhance fish and wildlife affected by the Columbia hydrosystem, and to do so in manner that is consistent with the Council's program. This includes the activities to benefit fish and wildlife listed under the Endangered Species Act that have been the focus of the FCRPS Biological Opinions. This is what is known as integrating the ESA-based obligations into the broader Northwest Power Act program -- it is precisely the fact that Bonneville has funding authority for on-site and off-site mitigation under Section 4(h)(10)(A) that the biological opinions review and include actions directed at Bonneville to fund.

Recognizing this situation, the Council in this project review process, as in the recent past, has endeavored to deliver funding recommendations to Bonneville that satisfy Bonneville's ESA-based objectives balanced with its broader Northwest Power Act obligation to protect, mitigate and enhance any fish and wildlife affected by the hydrosystem. The Council believes that it has been quite successful in delivering the ESA-based project funding recommendations needed by Bonneville in the Council's past project review and within-year funding processes. A consistent message from the Council over the years has been that Bonneville needs to make its ESA-based requirements known as early as possible in the project selection process as possible so that those needs may be considered as part of the overall and broader fish and wildlife project recommendation package the Council develops. Also, the Council has consistently noted that Bonneville's ESA-based actions need to be held to the same level of scientific, public, and Council review under Section 4(h)(10)(D) of the Power Act as all other fish and wildlife actions funded by Bonneville, and that the best way to ensure this is to develop any specific ESA-based actions as part of the general project selection process. The benefits are substantial -- scientific rigor, public notice and comment, and budget scrutiny are products of this process. Once a project proposal is selected in this process, it will have secured scientific and public support, have a specific entity assigned to do the work, and an implementation budget associated with it -- presenting a strong case that the action is "reasonably certain to occur."

The Council's FY07-09 project solicitation and review process has moved forward under substantial uncertainty as to what Bonneville's ESA-based needs will be in this period. The 2000 and 2004 salmon Biological Opinions and the actions agencies' Final Updated Proposed Action reviewed in the 2004 BiOp have been declared to be legally invalid by the federal court. The latest decision is under appeal; the federal agencies are simultaneously engaged in a long collaborative process to develop a replacement BiOp. That BiOp may (or may not) call for more actions and greater survival improvements than in the past BiOps. The schedule as of fall 2006 is to produce a final revised BiOp by February of 2007 (well after the Council must deliver its funding recommendations for FY2007), and that schedule may well slip. Bonneville has been able to provide the Council with an indication of what projects it seeks funding for to be

consistent with the UPA/2004 BiOp, which is still in place pending the revised BiOp, but obviously cannot know now what the new proposed action and BiOp will require of the agency.

Even given this uncertain situation, the Council concludes that it is recommending for Bonneville funding a suite of mainstem, offsite mitigation, and monitoring and evaluation projects that (a) are consistent with the activities assigned to Bonneville's responsibility in the UPA reviewed under the 2004 BiOp, and (b) will form at least the backbone of any foreseeable set of actions required of Bonneville in the revised BiOp. As for what more might be required of Bonneville funding in the revised BiOp, if anything, the Council expects Bonneville, NOAA and the participants in the BiOp remand process to coordinate those needs with the Council as they develop the proposed action and the new BiOp. And the Council expects that Bonneville will not commit funding to projects to implement those new BiOp requirements without first engaging with the Council in review designed to be consistent with Section 4(h)(10)(D) and to have the same high standards for scientific review and public review that attends the Council's general project selection process. **[NOTE: If the Council decides to reserve a certain amount as a placeholder to address future ESA needs, I would add a sentence to that effect here.]**

2. Monitoring and evaluation

Regional monitoring plan/interim funding recommendations for regional and hatchery and supplementation m&e projects

The Fish and Wildlife Program calls for a monitoring program to evaluate whether the individual actions in the mainstem and subbasins are achieving the objectives of the program stated at the basin and province level. In developing its project funding recommendations here, the Council has sought to prioritize monitoring activities and methods to evaluate the effectiveness of program activities and trends in fish and wildlife populations and habitat conditions. The Council has simultaneously pursued a regional discussion of the appropriate monitoring and evaluation framework for the program, an effort that will continue.

The difficulty is that the region does not yet have a regional monitoring and evaluation plan which, when implemented, will allow the Council to produce an annual evaluation report of the success of the program in meeting its objectives. The plan should also identify specific funding priorities. In particular, the Council needs to develop a coordinated monitoring and evaluation effort for the supplementation experiments taking place in the region. Consequently the Council recommends that all monitoring and evaluation project funding recommendations be considered interim until a science-based, regional monitoring and evaluation plan is adopted by the Council. At that time the Council will make final funding recommendations for monitoring and evaluation for the remainder of the FY07-09 period consistent with the plan.

Habitat improvement projects and monitoring and evaluation

Going into this project review process, the Council settled on a particular approach to monitoring and evaluation for habitat projects and provided guidance to project sponsors accordingly. The approach has been to de-emphasize the need to monitor and evaluate the effectiveness of every individual habitat project, on the grounds that this has proven to be expensive and yet not yield satisfactory results. The Council instructed project sponsors to limit

the m&e elements of habitat projects to no more than 5% of the project budget as a general rule, and to focus project specific m&e to ensuring project completion and maintenance. The Council intends instead to focus program efforts for the at least the near term on a set of broader regional projects to evaluate the effectiveness of on-the-ground habitat activities, improvements in habitat attributes and trends in fish and wildlife populations and habitat conditions.

The ISRP is concerned about this approach, criticizing a number of habitat projects for deficiencies in the monitoring and evaluation elements (deficiencies largely the result of the Council guidance). The ISRP's views culminated in a programmatic comment to the Council to rethink the entire approach, including the 5% budget proportion target for individual habitat projects.

The Council understands the ISRP's concerns, but the Council is also not persuaded that investing more heavily in project-specific m&e for the program's habitat work is a wise priority use of funds in the next rate period. Thus the Council recommends not changing the approach it has started on for the FY07-09 project funding recommendations. Except where noted in the comments on specific projects in the budget tables, the Council has not accepted the project-specific recommendations from the ISRP for different m&e elements for habitat projects, or for reduced funding of habitat projects on the grounds of a defective m&e plan. However, the Council will take a hard look at the merits and problems with this approach as it works with its regional partners to develop the m&e framework plan described above and, assuming the Council does not change course immediately, the Council will revisit this issue in the next project review process.

Project reporting

The Council recommends that Bonneville ensure that all projects adequately report their accomplishments and the results of their monitoring and evaluation. The ISRP identified a number of on-going projects that did not adequately report results in their proposals for renewed funding, and identified a general weakness in the reporting of results as a programmatic issue.

Bonneville, in its role of developing and enforcing contracts, should ensure that project sponsors are given every opportunity to report results. If adequate reporting still does not occur, Bonneville should consider suspending, terminating or not renewing contracts and notifying the Council of this intended action.

3. Data management

The Council and its regional partners are currently working to resolve a number of outstanding problems with data management in the region. Establishing a coordinated data management system with clearly described standards is the goal of these ongoing efforts. The Council considers its project funding recommendations regarding all data management projects to be interim until these data management issues are resolved and the Council can issue final, comprehensive recommendations in this area.

4. Coordination funding

The Council will conduct a review of historical spending and current obligations by Bonneville to support coordination activity. The review will also include an outline of regional tasks that are appropriate for Bonneville funding for agency and tribal participation. Recommendations by the Council for coordination funding should be considered interim until such a review is completed and the Council renders final recommendations for the remainder of the FY07-09 period. The Council hopes to complete these recommendations at its October 2006 meeting along with the other final project funding recommendations.

5. In lieu provision

Bonneville has a legal obligation under the Northwest Power Act to protect, mitigate, and enhance fish and wildlife adversely affected by development and operation of the Columbia hydrosystem. This is Bonneville's *responsibility*. To help meet this obligation, Bonneville has the *authority* to fund on-site protection and mitigation actions, offsite habitat and production enhancements, and associated monitoring, evaluation and coordination activities. Section 4(h)(10)(A) of the act then *limits* that authority in one particular way, in what is called the "in lieu" provision: "Expenditures of the Administrator pursuant to this paragraph shall be in addition to, not in lieu of, other expenditures authorized or required from other entities under other agreements or provisions of law."

The Council has encouraged Bonneville over the years to develop a policy to help guide Bonneville, the Council and project sponsors through in lieu situations. Bonneville has been working to develop such a policy, the most recent version communicated to the Council in an August 3, 2006, letter from Greg Delwiche, Vice President for Environment, Fish and Wildlife. While there is still work to do before the policy is final, it is a satisfactory place to start. The policy is particularly sound by emphasizing that in situations in which an entity other than Bonneville has overlapping authority to do the type of work represented by a project proposed for Bonneville funding, the key inquiry will be one of proof about expenditures -- that is, whether it can be shown that Bonneville's funds would be coming in addition to the expenditures of the other entity and not in lieu of or supplanting the funds of the other.

The Bonneville in lieu policy is also sound in recognizing that "[r]easonable cost-sharing (where Bonneville funding is a portion of the overall proposed budget for a proposal) can demonstrate that Bonneville's funding is not supplanting that of another entity already authorized or required to undertake the activity." On the other hand, the Council believes the policy is not yet sound in the way it overemphasizes per-project cost sharing as the primary or preferred or default way of proving the absence of an in lieu problem. There are other ways of equal legal validity to prove that Bonneville's funds are in addition to and not in lieu of the funds of another entity with overlapping authority. The most obvious, and likely the most common, would be at a scale or level above individual projects, situations in which Bonneville and the other entity are funding activities in parallel or in complement (such as different riparian improvement projects in the same area, or different aspects of a monitoring program), even if no particular project is cost shared. Bonneville has developed just such an approach in a recent Memorandum of Understanding with the Forest Service; there is no reason the approach cannot work elsewhere, and it need not be implemented only by agreement. The Bonneville letter does recognize the

need to consider other “remedies” besides per-project cost sharing for an in lieu concern, and the Bonneville staff are committed to working with the Council staff to develop these concepts further for consideration by the Council and Bonneville management. The Council expects further to be able to consider a further policy proposal early in FY07.

Bonneville’s August 3 in lieu letter also provided preliminary in lieu ratings for all new project proposals. A small number of the projects prioritized for funding by the local review groups are on the list of projects with serious in lieu concerns. To the extent the Council’s final funding recommendations include any of these projects, the Council will work with Bonneville and the project sponsors to try to address these concerns, as it appears that funding will not begin until that happens.

The Council also understands that Bonneville staff are reviewing all on-going projects for in lieu concerns, with an expectation of a preliminary rating for each sometime in October 2006. The Council also understands that Bonneville is not planning to use these ratings to decide not to fund an on-going project in this rate period, but will identify concerns that must be addressed in the future. That is also the Council’s recommendation.

6. Use of Bonneville’s capital borrowing authority

As described above, Bonneville will make up to \$36 million available per year during FY07-09 for capital investments. This latter amount, often referred to as “capital” funding, is subject to particular rules and standards prescribed by Bonneville in its “Fish and Wildlife Capitalization Policy.” Bonneville recently clarified its policy and then reviewed the FY07-09 project proposals against the policy, communicated in a letter to the Council dated August 24, 2006. The Council based its capital and expense funding recommendations for FY07-09 on the policy as clarified.

The Council has differed with Bonneville in the recent past over aspects of the capital policy. Those differences have narrowed substantially, with thanks to Bonneville personnel for continuing to work on these issues with the Council. One remaining difference of significance remains the issue of whether a “crediting” mechanism must be in place before a land acquisition to protect habitat for fish may be eligible for capital funding and, if so, of what type. Outside of the context of the Hungry Horse and Libby mitigation programs, Bonneville has not been willing to capitalize land acquisitions to protect habitat for fish on the grounds that the program lacks a quantitative crediting mechanism for these acquisitions. The Council continues to believe what Bonneville requires in the way of a crediting mechanism may be more strict than the law or accounting standards or sound policy require. The Council has instructed the staff to continue to work with Bonneville on this matter.

7. Step review

The Council first developed the three-step review in response to recommendations in the first report of the Independent Science Review Panel in 1997. The Council originally conceived of the three-step review as an interim process pending the completion of a comprehensive review of artificial production policy across the basin. The Council conducted that Artificial Production

Review, adopted the final report, and embedded the recommendations from the review in the 2000 Fish and Wildlife Program. Following that, the Council decided (in 2001) that it made sense to continue the three-step review sequence for all new production proposed, and for other large, complex implementation projects under the program. Any three-step review is now guided as well by the subbasin plans recently adopted into the program, which provide a broader local context of subbasin objectives and habitat and production strategies. And future three-step reviews will also be informed by the results of ongoing efforts to develop quantitative biological objectives for key species at the ecological province scale and to develop a comprehensive reformed monitoring and evaluation framework for the basin.

The staff recommends the Council continue to employ the three-step review process for new artificial production and other major projects. The staff also recommends that a new and heightened emphasis be put on timely delivery of step products -- deadlines and performance reporting will be required in an effort to put an end to projects languishing within the process. Discussions with the Council indicate a need to encourage and hold accountable the projects that are placed into the step review process. The Council recommends that each of the three steps have standardized milestones informing the Council and Bonneville of progress being made. Performance must be a criterion for justifying future funding; no project should be allowed to indefinitely strive to get to the next step.

8. Water conservation projects

The Council has recommended funding for several projects during the FY07-09 period that will conserve water for the purpose of enhancing flows in tributaries for fish. In order to ensure that these projects provide long-term benefits to fish it is essential that Bonneville verify that these projects will result in a legally protected increase in instream water flows. We encourage Bonneville to utilize the experience developed by the National Fish and Wildlife Foundation's Northwest office to verify the permanence of in-stream flows before beginning these projects.

9. Funding for operations and maintenance

O&m for wildlife acquisitions/interim funding recommendations

Neither the Council nor Bonneville have conducted a detailed review to determine appropriate funding levels for past acquisitions to mitigate for the loss of wildlife. Consequently the Council recommends that all wildlife o&m funding recommendations be considered interim until this analysis can be conducted. At that time the Council will make final funding recommendations for wildlife o&m for the remainder of the FY07-09 period.

Funding the operating and maintenance costs of a maturing program

The fish and wildlife program is in its third decade of implementation. Over the years, program implementation has included the development of infrastructure that is durable, providing ongoing fish and wildlife benefits. The Council and Bonneville have overseen investments in hatcheries, riparian improvements, fish-friendly structures and screens, interests in land, and so forth on the expectation and even commitment that Bonneville would provide

funding to operate and maintain these facilities to continue the flow of fish and wildlife benefits over a long period of time. Because the Council and Bonneville have legal obligations to achieve fish and wildlife protection, mitigation and enhancement, and those obligations extend over time, this program has always sought to ensure that the flow of benefits from initial investments in infrastructure continue over time as well.

The costs to operate and maintain the infrastructure built up under the fish and wildlife program are growing, consuming a larger share of the available expense budget each year. If this trend continues without a significantly expanding expense budget, there will be diminishing flexibility in the program to start new projects directed at emerging or shifting priorities.

It is time for the Council, Bonneville and others to consider alternative approaches for developing and funding the continued operation and maintenance costs of the infrastructure built as part of the program. Trust funds, capitalization, benchmarking costs, explicit maintenance plans and other vehicles should be explored as part of an effort to develop a cohesive and comprehensive maintenance plan for a maturing program, with more creative and efficient ways to fund that maintenance plan. This would be in contrast to the way o&m has been handled so far -- developed on a project-by-project basis, with each project identifying its requirements but without really presenting a long-term maintenance plan and without any form of uniform or standard operations activities and costs guidelines.

The Council directs the staff to work with Bonneville and others on this issue as a priority before the next project review process, and present alternatives to the Council and Bonneville management for consideration. The Council's Fish and Wildlife Committee tentatively endorsed a proposal by the staff to tackle this matter in three steps, and is to oversee the staff's work on this matter:

- Step 1 : Develop a common definition for what activities within the program are considered operations and maintenance.
- Step 2: Identify o&m activities that the program should support and benchmark the costs of those actions.
- Step 3: Develop a range alternative vehicles or approaches for delivering the actual long-term o&m funds.

At each stage the staff is to report to the Committee and then the Council with the results of its inquiry and a recommendation for consideration and approval. The Council will also need to decide as the review progresses how best to engage the public perhaps through a series of issue papers for public review and comment.

The staff should initiate this review soon after the Council finalizes its FY07-09 recommendations. The goal is to have a long-term o&m plan as described here in place before beginning the next project review process for FY 2010.

10. Within-year program budget tracking and adjustment process during FY07-09

Late in FY2004 Bonneville, the Council and the Columbia Basin Fish and Wildlife Authority formed a Budget Oversight Group (BOG) to conduct a budget-tracking process and recommend for Council and Bonneville considerations within-year adjustments as needed. The Council expects that during FY07-09 there will continue to be a within-year process led by the BOG group, and that this process will remain largely as it has in the recent past. The Council also recognizes that the Bonneville and Council staffs are discussing possible refinements to the process that they will bring to the Council at the October meeting for consideration and approval.

11. Future project selection

[The staff has been discussing with the Fish and Wildlife Committee and the full Council possible changes to the project solicitation and review process in the future, as documented in the staff's rolling issue memorandum. How much to capture in the final decision document accompanying the FY07-09 project funding recommendations is a topic for further discussion with the Council.]

[12. ISRP programmatic comments not otherwise picked up]

[xxx -- still to come]

Section 4: Council determinations and findings addressing formal requirements of Section 4h(10)(D) of the Northwest Power Act

Section 4 contains the formal determinations and findings that the Council needs to make to address certain requirements of Section 4(h)(10)(D) of the Northwest Power Act.

4h(10)(D) implementation in general

ISRP explanations

ocean considerations

cost effectiveness

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