

JUDI DANIELSON
CHAIR
Idaho

Jim Kempton
Idaho

Gene Derfler
Oregon

Melinda S. Eden
Oregon

Steve Crow
Executive Director



TOM KARIER
VICE-CHAIR
Washington

Frank L. Cassidy Jr.
"Larry"
Washington

Ed Bartlett
Montana

John Hines
Montana

Council Meeting **Coeur d'Alene, Idaho**

November 18-20, 2003

Minutes

All Council Members were present. The meeting was called to order by chair Judi Danielson at 4 p.m. on November 18th.

1. Public comment on Artificial Production Review and Evaluation (APRE) report (Council document 2003-17).

No public comments were received.

Reports from Fish and Wildlife, Power and Public Affairs committee chairs

Ed Bartlett, chair, fish and wildlife committee; Jim Kempton, chair, power committee; and Larry Cassidy, chair, public affairs committee.

Larry Cassidy, chair of the Public Affairs Committee, said the committee had reviewed and approved the 20-year progress report on Council accomplishments and a new guide to the major dams. They made some changes to the draft annual report to Congress, which will be brought to the full Council for approval, he said. The committee also okayed production of a monthly e-mail newsletter to a small, but key audience, including state legislators and members of the Congressional delegation, Cassidy reported.

Ed Bartlett, chair of the fish and wildlife committee, reported that the committee discussed the 2003 fish and wildlife project budget closeout, and that while things are "much more in control," the closeout numbers still "create some anxiety" for 2004, 2005, and 2006. The end-of-the-year number for 2003 was much higher than we anticipated in August, and we will report more about this to the Council in January, he said. The committee also saw a draft fish and wildlife capital program, discussed Bonneville's fish and wildlife contracting and finance improvement plan, and heard an update on the regional research and monitoring strategy, noted Bartlett. Gene Derfler said there has to be more discussion about the effect of carryover costs on the amount of

money needed for subbasin planning. The fish and wildlife Committee is working hard to define what's been spent so far, but there are still 2001-2002 bills coming in, said Melinda Eden. "It's not being ignored," she said. Tom Karier asked about the schedule for the development of the research plan. We'll have a draft research plan done by the end of the year, and there has been a lot of progress in bringing the federal monitoring program into concert with state programs, which we'll discuss in December, said staffer Doug Marker.

Jim Kempton, chair of the power committee, urged other Council members to read the 37 pages of minutes produced from the committee's last meeting, which dealt with issues such as transmission, the future of Bonneville, the Joint Customer Proposal, and the responsibilities of the Council. He said the direction taken in the Council's draft Transmission Issue Paper has changed in light of the activities of the Regional Representatives Group (RRG). The committee heard a presentation on the new portfolio analysis for the next power plan and a briefing from staff on regional load/resource balance, Kempton reported. Staffer John Fazio presented an idea he is working on that would tie fish and wildlife spending to the power plan in a new way, Kempton noted.

2. Update on implementation of 2004 summer mainstem spill evaluation

Doug Marker, director, fish and wildlife division; Bruce Suzumoto, manager, special projects; and John Fazio, senior power systems analyst.

"We are working at a frantic pace to investigate options for implementing a summer spill evaluation for 2004," staffer Doug Marker reported. The deadline we are working against is the Corps of Engineers' need to purchase a monitoring (tagging) infrastructure by December, he said. The Council's mainstem amendments called for immediate tests to examine the benefits of the current summer spill program for juvenile fall chinook and determine whether the biological benefits can be achieved in a more effective and less costly manner.

Working groups have been looking at four alternatives, staffer Bruce Suzumoto explained. The options and the entity that prepared it are as follows:

1. Status quo -- current Biological Opinion (BiOp) spill levels and planned studies, with no additional studies -- Corps of Engineers.
2. Reduced summer spill, with new studies -- Bonneville.
3. Status quo, with current planned studies, plus new studies -- NOAA Fisheries.
4. Additional summer spill, with new spill and transportation studies -- Columbia River Inter-Tribal Fish Commission (CRITFC).

The science working group is discussing logistical deadlines, the precision of results for various spill test options, the length of time and costs to do the studies, and where to do them -- at certain dams or throughout the entire system, Suzumoto reported. In addition, there is not very much information on fall chinook in the lower river, he said. A baseline will have to be developed so that we understand existing survival rates; without such a baseline, it's hard to determine what the effect of reducing spill would be, Suzumoto noted.

Other issues involve what type of fish to use in the studies; for example, whether Hanford Reach fish can be used as a surrogate for other fish, he explained. Also at issue are how many fish are

needed for the studies, and how to deal with the fact the tagging procedure causes stress to the fish, which could bias the results, Suzumoto said. It's a broad undertaking with many considerations involved, he added.

The status quo is the only option in which the Corps would not need to purchase the monitoring equipment, said John Hines. We don't have to make a final decision on an alternative before recommending that the Corps acquire the equipment that would be needed for the other three options, he stated. The issue is whether you take the risk to spend the money for the equipment, responded Marker. The Council has asked the federal agencies to do a spill evaluation, but we don't know if they will or not, he said.

The Council's program asks for an evaluation of the impacts of spill reduction, and you are saying we don't even know the baseline, stated Tom Karier. You've identified a shortcoming that already exists -- you've identified a need for the evaluation regardless of what operation we end up with, he said. We should know how many fish are benefiting from the current spill arrangement, and that evaluation should be part of all the options, Karier added.

We need information for the tributaries below McNary, said Larry Cassidy. We need to know what stocks are affected and how to evaluate the effects, he stated. Why aren't we going to the federal agencies and saying the Council passed a plan and asked you to implement it -- why aren't we asking the feds to decide what they want to do in 2004, what evaluations go along with that decision, and get on with it? Ed Bartlett said. That's what we are doing, replied Cassidy. The Council is saying to the federal agencies "we want an answer," Council chair Judi Danielson affirmed.

I don't think that we have baseline data in the Upper Snake, said Jim Kempton. There is reach survival information being collected, but whether it is applicable, we don't know, replied Suzumoto. One could ask why some actions have been implemented if we didn't have that information, and the answer would be that the actions were based on assumptions, he added.

I would hope that the Council would formally request that the federal agencies come before us at our December meeting with a formal statement on what they plan to do on this issue in 2004, Hines stated.

Staffer Mark Fritsch reported on the work of the spill offset committee, which has been discussing possible mitigation actions if a summer spill test takes place. He went over a set of draft offset measures and principles, such as "offset measures should be designed to provide equal or greater survival, as measured or estimated, than provided by current BiOp spill requirements." Fritsch acknowledged the principles are controversial and that agreement on them hasn't been reached.

In general, these principles are trying to find measures that add to fish populations in the river if you change spill operations, Marker said. I would hope the Council would look for principles that work, not for principles "that are so limiting you don't get the greater goal done," commented Bartlett.

If you maintain all these principles, you can't get the spill test done, observed Gene Derfler. Is the goal to stall doing the spill test? he asked. That is not our goal, replied Marker. We are

trying to work through issues that have been brought up before on spill and do that now, instead of next May, he added.

So you think the offset principles may be too limiting and you want to hear from the federal agencies about what they plan to do at your next meeting, Marker summarized. I'd also like the federal agencies to present information on the flow experiments at Libby and Hungry Horse, Hines stated.

The Council is anxious to get a decision on these options -- can you help us? Danielson said to Rob Walton of NOAA Fisheries. I heard that you want the federal agencies to decide sooner, rather than later, about spill in 2004 and to pick an option, Walton responded. I assume that decision would include funding and also the question of flow experiments at Libby and Hungry Horse, he said.

Walton indicated he would take these questions to the federal executives' meeting on Monday (11/24) and get an answer back to the Council. That's exactly what we're after -- a decision, Danielson said. I'll call you next week and let you know how they responded, Walton promised.

3. Presentation on status and implications of recent adult salmon returns

Bruce Suzumoto, manager, special projects.

Recently, people in the region have been talking a lot about the historically large adult salmon returns to the Columbia Basin, and because of this interest, I've been asked to discuss the magnitude of the returns and what might be causing it, Suzumoto said. Hatcheries now produce the majority of the fish returning to the basin; as many as 80 percent of the fish coming back are from hatcheries, he pointed out.

Suzumoto went through numbers on chinook salmon and steelhead passage at Bonneville Dam from 1938 to 2003, showing large increases in the last three years. We've also seen a tremendous change for the better for chinook and steelhead passage at Lower Granite and McNary, he said. The numbers for both wild and hatchery steelhead have gone up in recent years, Suzumoto noted.

We have had almost four times the average number of spring chinook adults coming back past Bonneville Dam in 2001-2003, compared to 1991-2000, and almost 10 times more than the average in the three worst years (1994-96), he said. There was a 7.1 percent increase in the average number of adult spring chinook past Lower Granite in 2001-03, compared to 1991-2000, and a 31.7 percent increase over the worst years, according to Suzumoto. "So things are getting better in these reaches, it appears," he commented.

Why is this happening? There's been a change in the Pacific Decadal Oscillation (PDO) index, which identifies warmer and cooler trends in the ocean and correlates with zooplankton volumes that indicate productivity, he told the Council. In the ocean and near-shore environment, we're seeing cooler temperatures, Suzumoto said. "We're seeing something dramatic and important," he added. We are seeing good jack counts at Lower Granite Dam, and jacks are good indicators of what's coming next, so it bodes well for future returns, Suzumoto stated.

This is good trend information, but in specific subbasin areas, things weren't that good in 2001; for example, the Yakima River "got killed," said Cassidy. You have to dig into the numbers to see what's really happening, he stated.

In Alaska, fish managers try to time the release of fish to the zooplankton blooms, noted Suzumoto. That isn't done in the Northwest, but maybe it should be considered, he said.

Suzumoto summed up by saying that good ocean conditions are creating strong adult returns, but past activities, such as harvest reductions and hydro system changes, probably helped fish populations survive the period of poor ocean conditions. Ocean conditions will change, he noted, but we need to do what we can to ensure fish reach the ocean and return to good freshwater habitat, he said. We should consider being more flexible in fish and wildlife actions in freshwater to respond to changing ocean regimes, and we need to try to take advantage of the large returns and "bank" some of these fish, Suzumoto stated. We need to improve habitat so fish have somewhere to go, he added.

Pete Hassemer of the Idaho Department of Fish & Game (IDFG) said there is more detail that needs to be added to what Suzumoto presented. He asked the Council to put on its February meeting agenda a presentation by the Columbia Basin Fish & Wildlife Authority (CBFWA) on the status of the runs, including more detail on the status of wild stocks and the hatchery component of the runs. We'll work with you to schedule a presentation, but I'm not sure it will be in February, replied Danielson.

4. Panel of customer representatives to report on the status of the Joint Customer Proposal

Scott Brattebo, PacificCorp; Jeff Schlect, Avista; John Saven, Northwest Requirements Utilities; and Terry Mundorf, Western Public Agency Group.

"I feel like I'm in the movie 'Groundhog Day' -- we've been here before," commented Scott Brattebo of PacificCorp, helping kick off a panel of power industry speakers to present the "joint customers' proposed principles for the future role of Bonneville in power supply." I want to express frustration that we are still talking about this, said Jeff Schlect of Avista. "Shame on us as customers and shame on Bonneville for not resolving this a year ago," he added.

Schlect thanked the Council for "exhorting customers and Bonneville to deal with these issues effectively and completely," and he expressed "unequivocal support" for the principles the group was presenting. Brattebo said he hopes the region will go forward with the "near-term" litigation settlement proposal now being circulated for signatures, but that the Joint Customer Proposal principles deal with the longer-term issues. He noted that participation in the discussion of the future role of Bonneville has "broadened" from what it was in the past, and that the customers are engaging with Bonneville and the Council earlier than in the past. It's imperative that we move quickly so we each know our respective roles for meeting future load growth, Brattebo said.

Ken Canon of the Industrial Customers of Northwest Utilities said we need to create a different framework in which customers and Bonneville can operate "so we're all on the same side as we go forward," and we need to get on with doing it. He went over the goals and objectives for the

JCP principles, starting with “assure that the region’s federal base system (FBS) resources are preserved for the use of the Northwest.”

Jack Speer of ALCOA Inc. continued the presentation, noting the principles seek to “clearly establish and define Bonneville’s obligation to serve loads placed on it by the region’s utilities and DSIs.” “The sooner, the better,” he commented. Speer also explained the principles dealing with the allocation of the FBS, which he called “the most important issue that’s keeping the Northwest from having a united front.” There’s a lot of squabbling going on, and we’ll continue to face uncertainties unless we resolve this, he said.

Loren Baker of Power Resource Managers was up next, to describe the JCP principles dealing with “equity and fairness of a new Bonneville role.” One thing I’m convinced of is that “there can be no special deals for one party or interest group,” he said. The Council can play a role as a mediator in “getting Bonneville to the table in a genuine way” to talk about these issues, Baker suggested. He said the customers may need to hire a facilitator.

Steve Marshall of Snohomish PUD said he appreciated the Council’s leadership on this issue, and that “if we can get the general principles agreed to by people in the region, I think we’re on the road.” He went over the principles covering new Bonneville power contract provisions, starting with “the goal should be long-term contracts that will protect the system from interventions from outside the region and reduce uncertainty for customers and for Bonneville.” If we had had this principle in effect after the Comprehensive Review, we wouldn’t have had the problems we’ve had, he commented. Another principle says “all contract terms must include fully enforceable non-judicial dispute resolution to deal with contract disputes.” This principle would keep us from “having to go to the Ninth Circuit every time we turn around,” Marshall said.

Scott Corwin of Pacific Northwest Generating Cooperative said the Council “has asked the right questions on these issues all the way along.” He explained the principles for conservation and renewables and for “customer oversight of Bonneville’s strategic decisions and cost control.” Having a better-defined cost-control mechanism is key to creating trust, Corwin said. There needs to be involvement upfront in getting consistent cost information, he added.

Brattebo explained the principles for “future stability and reduced litigation,” starting with maintaining Bonneville’s ability to make its Treasury payments in full and on time, and ending with “preparing any legislation if necessary or required to achieve these objectives.” We haven’t taken off the table the possibility of needing some sort of legislation, he noted.

When you talk about legislation, are you talking about the Northwest Power Act? Danielson asked. There isn’t a uniform position in the customer group on legislation, replied Speer. I believe we need federal legislation to provide stability and equity for the system, he added.

One solution being talked about involves taking an agreed-upon set of long-term contracts to Congress and asking for a one-sentence approval from Congress, said Marshall. That way you don’t open anything up to “John Dingell and other regions,” he stated. We should explore that, Marshall added, noting it could be like an automatic sunset clause where after 20 years or whatever the time period is, everything would revert back. I do have concerns about opening up a large package of legislation, Danielson responded.

Hines noted that no representatives of the full-requirements customers were on hand and asked if they disagree with the principles. They are participating, but their schedules didn't permit them to come, replied Brattebo.

Hines asked whether existing mechanisms for customer oversight of Bonneville costs are sufficient. We have a new start on that issue with the Bonneville-Customer Collaborative, which aims to get a better dialogue going with Bonneville staff on costs, replied Corwin. It's too early to know what the fruits of that labor will be, he added. Speer said he thinks Bonneville and the customers are sincerely trying to make the new relationship work through the Collaborative. But we have a ways to go to re-establish trust and go forward, he acknowledged.

If need be, would you support going into a binding arbitration among yourselves? Derfler asked. At this point, we'd support having a facilitator, rather than an arbitrator, Brattebo replied. I hope we can agree without binding arbitration, he added. We need some time to try to figure this out voluntarily, agreed Canon. We've found it's hard to do binding arbitration with Bonneville, and in this case, there would be 115 to 120 groups involved, he said.

Why aren't you using a facilitator? Derfler asked. It's a good idea, and we talked about it last week, replied Marshall. We all have a lot to lose if you don't come to agreement, responded Derfler.

The Council is ready to help, said Karier, adding, "remember that as the movie 'Groundhog Day' goes along, each day gets better and better, and that it has a happy ending." What's your schedule and how will you address each of the principles? he asked. The principles "are just words on paper," but nevertheless it was an accomplishment to do them, replied Brattebo. We have a list of 20 to 25 issues that require deliberation by the customers, he said. We'll start meeting more regularly as we get deeper into the issues, Brattebo noted.

The best role for the Council in this process would be to serve as a "helpful forcing mechanism" by asking the customers for updates and progress reports, Canon suggested. The Council can help with that, responded Kempton. We'll start holding workshops on the issues you bring to us after the litigation settlement time period is over, he said. We have been down this path before, but now we have new intents and new obligations, Kempton stated. We're ready to engage, and "it's enjoyable to see all of you sitting together in one place," he added.

Cassidy asked about "a new institutional role for customers in controlling Bonneville's costs." It's similar to the Collaborative -- the idea is to have a more formal process where customers get information sooner and across all categories, replied Corwin. We need greater openness on costs and strategic factors driving the costs, he added. We don't have a formal proposal right now, Corwin said. Do you see a board being created? Cassidy asked. A board is possible, or something could be done using the 7(i) process, replied Brattebo. We are open to suggestions, he added.

Bonneville's costs are one issue, but customers also have to be aware of the costs that they impose on the system, Canon stated. Customers often come to Bonneville with conflicting demands, and part of this is to set up an improved process for Bonneville to get better information from customers, as well as vice versa, Corwin said.

We have been making headway on having more transparency for Bonneville's fish and wildlife costs, noted Danielson. But the transparency that was requested of Bonneville has "rippled through other organizations that receive Bonneville funds," and "it's been an eye-opener," she said.

The costs for future load growth should be met by customers receiving the service, stated Karier. Is that a resolved issue?, he asked. Most entities in the region have come to that decision, replied Baker. It is now a question of timing and "how that might roll out," he said.

We encourage the Council to keep asking us to come before you on these matters, said Brattebo. We'd like to invite you to come back and talk to us after the litigation settlement sign-up period expires, Melinda Eden said. We strongly encourage you to work toward agreement and to move quickly, said Danielson.

Rob Gala of the Northwest Energy Coalition (NWECC) asked to make some comments. He explained what his organization does and said the Council's fifth power plan and regional dialogue on the future of Bonneville are the NWECC's top priorities. The NWECC wants to see power plan issues aired and discussed by more than just utilities, Gala stated.

He praised the Council for reminding Bonneville of its authority to develop conservation and encouraging Bonneville to do it to the fullest extent possible. We want the power plan to include the true potential of renewable energy resources, and we want to help implement the plan and create the political will in the region to do that, Gala said.

5. Presentation on submission of revised Clearwater subbasin plan

Janet Hohle and Ira Jones, focus program co-coordinators, Clearwater subbasin.

Ira Jones and Janet Hohle, Clearwater Focus Program co-coordinators, presented the revised Clearwater subbasin plan to the Council and requested the plan be considered for amendment into the Council's fish and wildlife program. Hohle explained how the subbasin group analyzed the 137 comments the Independent Scientific Review Panel had submitted on the draft plan and how each was dealt with in the plan's revision.

Cassidy asked about the hatchery component of the plan. The plan assumes that artificial production can provide assistance in leading to recovery of listed fish, replied Hohle. She noted the plan is now about 600 pages long. Karier asked if it has an executive summary. Hohle said no, but she said that its tables of contents are clear and that each volume is summarized. Danielson complimented the group on a job well done.

6. Presentation by NOAA Fisheries on 2000 Biological Opinion remand

Rob Walton, NOAA Fisheries.

NOAA Fisheries has to submit a revised BiOp to the U.S. District Court by June 2, 2004, Walton told the Council. My basic message to you is that we intend to support and promote subbasin planning, and we want to assure you we want subbasin planning to succeed, he stated. Walton recounted the background to the court's remand of the 2000 BiOp and told the Council that

NOAA Fisheries will revise the BiOp on time, fix its flaws, and use the best available science, the latest fish run numbers, and the latest on mainstem survival in doing so. Once we complete the new BiOp, we'll make a decision on a jeopardy or no-jeopardy finding, he said.

Walton explained some of the things NOAA Fisheries is doing; for example, the agency's Science Center is preparing a "white paper" series on issues like the effectiveness of hatchery fish spawning in the wild, and is planning to hold a workshop in December on new analytical tools. In our goal of using best available science, we will only rely on federal actions that are completed or have undergone Section 7 consultation, he said. For non-federal actions, we'll use only those that have been implemented or that meet the "reasonably certain to occur" test, and we plan to do this in concert with ongoing subbasin planning, Walton explained.

What is "reasonably certain to occur?" asked Karier. NOAA Fisheries and U.S. Fish and Wildlife Service (USFWS) regulations have a definition, and it will come out soon, Walton replied.

We need to have subbasin summaries for the revised BiOp, and we are working on a letter requesting information from other federal agencies on recovery actions that have been completed, he said. With respect to non-federal actions, we don't want subbasin planners to have to stop what they are doing to help us meet our responsibilities, Walton stated. We'll volunteer to sit down with the non-federal parties to try to work out the best way for them to submit habitat data to us, he said. We won't insist or require they do this, Walton added. We put a priority on not interrupting the subbasin planning process, and we don't want to write competing subbasin assessments, he said.

We've heard concerns from people in the region about duplication and conflicting analysis, Walton continued. It's not our intent to come in at the last minute to the subbasins and say "sorry, our science disagrees," he stated. And we've taken a number of steps to keep from having possible duplication, Walton said. I hope that our science outreach effort will be constructive and complementary, he added. We think we can meet our responsibilities to the court without disrupting local efforts, Walton said.

It's the perception of duplication of efforts once people receive your letter asking for information, Cassidy said. I suggest you coordinate in person with state subbasin coordinators and explain what you are requesting, he stated. "Don't just send a letter -- call on the customer and talk to them," Cassidy urged.

We have a lot of communicating to do to make sure it goes as smoothly as possible, Walton said. I appreciate your assurances, but it's still a mystery to me what NOAA Fisheries will do with this data that is different from what the subbasin planning groups will do with it, Karier stated. Why shouldn't it all be the same process? he asked.

The scale and timing are different between our approach and yours, replied Walton. We want to be sure to have a defensible BiOp revision by June 2, he said. Our subbasin summaries should be supportive of work that has been done by local planners, and if there are differences, we expect NOAA Fisheries will sit down with local people and work them out, Walton added.

7. Briefing on the recent litigation settlement proposal

Steve Oliver, Bonneville Power Administration.

Steve Oliver and Larry Kitchen of Bonneville walked the Council through the intricacies of the proposed residential exchange litigation settlement agreements, including agreements for each Northwest IOU and a Slice settlement agreement. Derfler asked for an explanation of the \$200 million in litigation contingency payments. Oliver explained how Bonneville had, instead of buying power in an expensive market, decided to try to buy out of its obligation to serve aluminum companies as well as PacifiCorp and Puget. He said the IOUs negotiated a price with Bonneville, but then asked Bonneville to ask public power utilities if they would drop their lawsuits challenging the contracts.

Public power said no, so “Bonneville went to Plan B,” according to Oliver. We asked the IOUs if they would take on the risk of entering into the agreement with Bonneville if Bonneville offered extra money in the form of a “litigation contingency payment,” which would be eliminated if the litigation was settled, he said. Some people have called that “a poison pill,” Oliver noted. At the time we were competing with California for long-term contracts, and it appeared that if we didn’t do the contracts with the IOUs, “we were looking at 100 percent rate increases,” Kitchen pointed out.

Oliver explained that Bonneville felt the 2004-06 Cost Recovery Adjustment Clauses (CRACs) were “causing pain in the region,” and so after cutting its costs, Bonneville sought to get rid of the \$200 million costs involved in the settlement. We wanted to be sure all customers got the benefits and provide a positive impetus to the regional economy, he said. Those were our motivations for trying to do this settlement, Oliver stated.

Oliver said the terms of the settlement require that all public power litigants sign dismissals of their lawsuits within 90 days, and he noted that Snohomish PUD had voted the day before not to approve the settlement. Our hope is that Snohomish will reconsider its decision, Oliver stated. Having this settlement behind us would free the region to work on the question of the future of Bonneville and allocation of federal benefits, he said.

Derfler asked why Bonneville would defer payments to the IOUs out to the FY 2007-2011 period in order to provide an immediate rate reduction. That doesn’t seem like good business policy to me, he said. There’s been a lot of debate about that, Oliver acknowledged. The IOUs were looking for some increases in benefits out to the future, and in the end, public power said we’d rather have deferrals and deal with risk exposure in the second five years, he explained. So it was through “the winding avenue of negotiation” that we decided to do the deferrals, Oliver said.

Without the settlement, people will be “pitted against each other in court,” and under those circumstances, we believe it would be difficult to have a discussion about the future of Bonneville, he told the Council. We’ve worked long and hard on this settlement, said Brattebo. The IOUs stepped up, and the agreement “is not without pain to the IOUs,” he stated. I recommended this to our customers because “it’s the right thing to do,” and we hope the settlement happens, Brattebo added.

Kempton expressed hope that Snohomish PUD would reverse its decision, but he said he questions the approach of requiring everyone to sign or the deal goes away, likening it to having

“one rivet in the bridge being able to collapse the bridge.” He asked if only a small group of utilities withholds signatures, whether the settlement could be reconfigured, leaving the few to continue with litigation. Even if all but one were willing to drop the litigation, Bonneville would still have to go to the courts to define the positions, Oliver replied. “It seems crazy to have designed it the way we did, but we couldn’t find a better way to do it,” he added.

I encourage you to continue your efforts to try to settle, said Karier. If this is successful, it would be a big benefit to the Northwest, he stated. But if the worst-case scenario should occur, how long would the court cases take? Karier asked. The topics are extremely complex and contentious, and I’d guess two to three years, replied Oliver. The lawsuits could be briefed and argued in a year, but we don’t know how long the court would take to decide, and after that, whether parties would appeal, said Kitchen.

Even if the court rules after one or two years, it could simply remand the matter back to Bonneville to redo, Brattebo suggested. There would be “some significant political fallout,” and the fight would end up in Washington, DC, he said. And it would be very hard to go forward with the long-term talks about Bonneville, Brattebo added.

If the discussions about the future of Bonneville cannot go forward, it would be detrimental to the whole region, said Hines. “It isn’t a tenable position” that there could be that kind of uncertainty about who is responsible for fulfilling future load, he stated. I’d urge people to at least start working on the allocation question, Hines said. It’s not impossible to move forward, but it would be more difficult, Brattebo stated. But if people want to talk, we’ll be at the table, he said.

We also have to report back to Congress, said Kempton. If we can’t get this done, it could up the ante on the surrender of federal benefits and subject us to processes in Washington, DC that could get out of hand, he stated. Even if the settlement does fail, the Regional Dialogue has to go forward, Kempton said. I hope PacifiCorp’s attitude to keep working extends to the other utility representatives, he added. Eden thanked the panelists for “the most comprehensive and cogent discussion” of this topic she said she had heard in the last year.

8. Briefing and update on a long-term Bonneville fish and wildlife funding agreement

Doug Marker, director, fish and wildlife division.

Marker led a discussion about a new long-term fish and wildlife funding memorandum of agreement (MOA), noting that a major issue is Bonneville’s interest in first defining its overall fish and wildlife obligation. Other issues include the scope of the agreement, the schedule for its completion, and the role of the Council, he said.

MOA scope questions, according to Marker, involve whether: BiOp implementation costs should be encompassed within overall program costs; the MOA should be confined to current “direct” funding or include Corps, Bureau of Reclamation, or USFWS costs; the MOA should be separate from river operations costs, such as flow augmentation and spill; and the MOA should include capital borrowing for program implementation.

As for the schedule, he said parties have been talking about this in terms of the 2007-2011 rate case, but some people want to get it done sooner. Late 2004 seems the most likely due date for defining revenue requirements, and even if Bonneville decides to have a shorter rate case (two years vs. six years), a revenue requirement study that includes potential fish and wildlife costs is still needed, Marker explained. Then there really isn't very much time, commented Danielson.

Don't we have to get to a number? Cassidy asked. Yes, and deal with other management issues, replied Marker. We need more than a number, said Therese Lamb of Bonneville. Marker said Bonneville wants its obligations to be defined before negotiating an MOA. Also, subbasin plan implementation needs haven't been defined, NOAA Fisheries and USFWS have not updated BiOp requirements, and fisheries managers think funding needs are much greater than current budgets provide, he said.

The tribes are consulting with their leaders on objectives and what should be included in an MOA, Marker noted. Bonneville has defined broad objectives, he said, reading this statement of Bonneville's current position on the MOA:

"Bonneville is willing to explore the possibility of a broader, long-term MOA on fish and wildlife costs for the post-2006 period, providing it provides a clear definition of Bonneville's obligations, outcomes to be achieved, cost-effectiveness tests, and contemplates the ability to tie funding to Bonneville's financial health so that funding adjusts in correlation to good and bad times."

If Bonneville is suggesting that we'd subject recovery of fish to its financial situation, I don't see how that works, said Cassidy. We recognize that there are parts of the fish and wildlife program that can move; for example, in good times, people have talked about putting something aside for bad times, responded Lamb. We've recognized that we have to figure out a structure that can deal with the volatility of our revenues, she added.

Predictability is an important part of this, but the statement about "obligations" baffles me, said Karier. The Power Act states that the obligation is to "protect, mitigate, and enhance" fish and wildlife affected by hydro development, he stated. "Obligation" may not have been the best choice of words, said Lamb. As long as there's a power system, we'll have mitigation responsibilities, but we're looking to a way of defining mitigation strategies so you can measure over time where you are going, she stated.

If that's the concept, that's different from saying "once you've met the obligation, you're done" - you should be clearer, Karier said. It's the word "obligations" that put the wrench in the works, commented Danielson. Defining targets is good, but the obligation is in the Power Act -- you can't redefine what Congress stated, Karier said.

"Protect, mitigate, and enhance" is vague, responded Lamb. We are talking specifically about questions like: what are the effects of the hydro system, what are the strategies, and how can we measure what we do so we can demonstrate success, she said.

Protect, mitigate, and enhance refers to construction, not operations, in the Act, stated Hines. The "tougher egg to scramble" is creating a long-term obligation on the operations side, he said.

You can't tie "reasonably certain" under the BiOp to fluctuating financial obligations, observed Kempton. Tying funding to Bonneville's financial health isn't as important as creating clearer standards, said Lamb.

One could argue that the "obligation" is defined in the Council's fish and wildlife program, said Eden. You could argue that the results of subbasin planning will provide further definition of targets and strategies, she added. In terms of the ups and downs of Bonneville's financial health, a bank account could be a protection -- you could put dollars aside in it for bad times, Eden suggested. We're willing to explore other ways to pursue this idea of flexible funding, Lamb said.

What if Bonneville overcommits -- how do we explain that to the Yakamas or the Nez Perce? Cassidy asked. There has to be a minimum floor so these programs can continue to operate, he said. We weren't suggesting there isn't a critical level of support needed to continue the program, responded Lamb. We just wanted a good, creative discussion of "how do we manage through periods of revenue volatility?" she said.

Marker suggested an alternative approach that would define Bonneville's obligations for the rate case only. It would try to define specific implementation goals for strategies in the fish and wildlife program and try to incorporate offsite BiOp requirements within the scope of implementing subbasin plans, he said. It would also set regional-scale goals to be accomplished within the rate case period, such as "how much riparian habitat in miles do we want to protect" or "how much hatchery reform or resident fish substitution do we want to accomplish," rather than focusing on dollars, Marker explained.

Trying to insert measurable standards and move away from dollars is a good first step, commented Hines. Have you considered an incentive to get subbasins to develop loss statements so that projects could be prioritized through links with specific kinds of losses? he asked. Not in terms of losses, but there could be measurable objectives so instead of counting what was lost in the Klickitat, you could ask "what could the Klickitat be compared to what it is today?" Marker replied.

Subbasin plans can define mitigation strategies, but they are "holistic" -- they are not specific to the hydro system, Lamb stated. We want to talk about doing a construct to define hydro system effects and developing mitigation strategies, standards, and targets, she said.

If we quantify measurable targets, and then NOAA Fisheries has different numbers, what have we got? Cassidy asked. We're not comfortable with seeing this in terms of numbers of fish, replied Lamb. We're looking at measures like habitat lost and replacing habitat, she said. We want to focus on things we have control over, Lamb stated.

We are coming at it this way, she continued. A dam was constructed and inundation occurred -- what was the effect, and what is the mitigation strategy for the loss of spawning and rearing habitat -- how do you mitigate for that? Lamb said.

Derfler asked how the Council's 1987 program came up with an estimate that the hydro system was responsible for the loss of 8 million fish, and Marker explained how the number was determined. If there were no dams, there would be 8 million more fish? Derfler asked. Yes, replied Marker. We don't think 8 million fish is an appropriate measure of success, said Lamb.

It's not just a question of habitat loss – “it's the mere presence of concrete in the river obstructing the way,” said Eden. If Bonneville is looking for causation before it enters into the MOA, we're never going to get there, she stated. If you are uncomfortable with the 8-million figure, show us an alternative, Eden suggested.

Kempton asked how the Slice contract process could be coordinated with discussions about the cost of the hydro system and whether Slice customers might say, using Bonneville's thinking on the MOA, our responsibility for payment under the contract varies with good and bad financial years. There's a debate about whether the Slice contract will motivate customers to do more or less for fish and wildlife, but the Slice customers' financial responsibilities won't change the MOA discussion, Lamb replied. It won't change the MOA, but it will be a sticking point later in the discussions, said Kempton.

We should acknowledge that Bonneville and the Council recognize it will take us a while to get the MOA done -- it will be “more than a month and less than two years,” Bartlett stated. I suggest we direct staff to come up with a plan that lays out the prerequisites for doing the MOA, he said.

This threshold issue that Bonneville has put before us is impeding us from work aimed at setting a revenue requirement for the next rate case, Marker told the Council. “This is a big deal that Bonneville has put on the table,” he added. Ultimately, the Council will have to endorse the fish and wildlife cost number that Bonneville puts in the rate case, Marker said. Bonneville doesn't agree with our approach, but it comes from our fish and wildlife program, he stated.

Marker said staff would consult with Bonneville and others on defining goals and objectives and on how to set up a construct useful to arriving at a revenue requirement and report back to the Council. Danielson instructed staff to “get a strategy going” and work more with Bonneville. The states and tribal fish managers are part of this too, she noted, recommending the MOA issue be taken up again at the Council's next meeting.

9. Council decision to release draft transmission issue paper

Dick Watson, director, power division.

Staffer Dick Watson told the Council that staff had been planning to present a draft Transmission Issue Paper for its approval and release for comment, but has now decided it is not appropriate to put out the paper as currently drafted. There are a lot of thorny transmission-related issues facing the region, he noted. Watson made a presentation on how transmission issues have evolved over the last 30 years. He explained the technical and policy problems the region's transmission system faces and summed up how the initial objectives of the draft Issue Paper have changed. Watson said the region has been working for years on “variations of a homegrown Regional Transmission Organization (RTO),” noting “it's been extremely controversial.”

There is no regional consensus at the moment, and the RRG, which includes representatives of filing and non-filing utilities, interest groups, and regulators, has been formed to assess the problems facing the transmission system and develop a “platform” proposal for an RTO West, he explained. Wally Gibson is helping draft the RRG proposal, Watson noted. The Power

Committee wants to make sure that the Council's issue paper matches up and helps further what the RRG is doing, and that's why staff recommends a delay in release of the paper, he said.

10. Public comment on future role of Bonneville issue paper (Council document 2003-18)

Howard Funke, whose Coeur d'Alene law firm represents Indian tribes, including the Spokane and Coeur d'Alene Tribes, said that Bonneville is becoming more and more focused on the distribution of benefits in the form of cash and power, and that as that happens, the region's ability to hold onto those benefits will diminish. Bonneville can't just distribute cash and power -- it has to do something to benefit the whole region, he said. If Bonneville's only role is to be "a pass-through agency for power and cash," maybe we can do without it, Funke stated. There needs to be a better system developed with more focus on the long-term proper sharing of benefits, he told the Council.

There needs to be more involvement of people in the region -- things are becoming "too closed-door," Funke said. River governance has never been addressed in the basin, he continued. Even though Bonneville told the tribes in the 2000 rate case that it would "guarantee" to meet its fish and wildlife obligations, "the record is replete" with Bonneville not meeting its obligations, Funke said. After the rate case came the IOU settlement, which is "a major subsidy on top of subsidy for IOUs," he said. "It's another deal cut behind closed doors without the region being at the table," according to Funke.

The settlement sets up cost-containment mechanisms whereby the power industry starts taking control of the river system, he stated. The tribes want equitable distribution of the benefits in the basin, and they see a shifting of the benefits in favor of the power side, Funke said. Bonneville hasn't done a good job of managing the Columbia River power system in the last five years, and the Council should balance Bonneville by ensuring people in the region that more is going on than just distributing cash and power, he concluded.

11. Briefing on the blocked areas and resident fish substitution issues

Warren Seyler, Upper Columbia United Tribes.

Ray Entz of the Kalispel Tribe kicked off a panel presentation on blocked areas and resident fish substitution issues by describing hydropower development in the Upper Columbia and the impacts on fish and wildlife that resulted. Grand Coulee and Chief Joseph dams account for 37 percent of all salmon and steelhead losses, he said. The loss of resources means the loss of culture to us, and the blockage by the two dams meant that the five Upper Columbia United Tribes (UCUTs) lost their access to fish, Entz stated. Resident fish important to the tribes were also eliminated, he noted.

Entz reviewed previous policies, programs, and funding, pointing out that the Council had authorized funding at certain levels, but that Bonneville had provided less than the Council specified. In one instance, the amount of money the tribes actually got was less than 29 percent of what the Council authorized, he said.

Entz explained the UCUT management framework, noting it is based on the idea that “habitat dictates management.” There’s been a huge disparity between the amount of fish and wildlife mitigation funding and the impacts the hydro projects have caused, he said. The Upper Columbia blocked areas haven’t been a priority, according to Entz. We recommend that the Council maintain and prioritize resident fish substitution implementation, provide adequate funding, and diligently implement its fish and wildlife program, he said.

Warren Seyler of the Spokane Tribes said the Upper Columbia is the area that has suffered the most harm from hydropower development. The dams there provide Bonneville its greatest power production, he stated, adding that Lake Roosevelt is “key to the power system,” and that Lake Roosevelt controls flood control and barging. “It’s a work horse that helps salmon when you need the water,” Seyler said. “It’s where the largest cash benefits pour into Bonneville,” but it’s “the least and last” to be recognized for the benefits it provides to the region or for the need for mitigation, he added.

The Council is selected by the governors to follow the intent of Congress, not of each state, and I ask the Council to “find it in your heart” to do, not what the attorneys and accountants say, but what you feel is the best for the region,” Seyler said. The Council should reaffirm the authority it has under the Power Act, he urged. I’ve seen the Council become less powerful -- don’t let yourself be dictated to by Bonneville, Seyler said.

D.R. Michel of the Colvilles asked the Council to balance power and fish and wildlife, to hold Bonneville accountable for its actions, and to use the power of the Act to do what’s right for the blocked areas. Karier asked whether there has been progress in getting wildlife acquisitions funded and whether there are unmet fisheries needs. There has been some headway made with respect to wildlife mitigation, but only after the attorneys had to make things happen because the accountants at Bonneville said no, replied Seyler. After the Colvilles joined in a lawsuit, Bonneville did seem to have some interest in this, and so there have been some improvements, he said. But it had to be through lawsuits, and the UCUTs never wanted to deal with the issue that way, Seyler added. Entz pointed out that not all of the Council’s funding recommendations in the last provincial review got implemented, and that the unmet funding needs will come up in the next provincial review.

What’s most troubling is that the UCUTs came up with fish and wildlife projects, went through all the scientific and other reviews, said Seyler. The Council approved the projects and put them in its program, but when the projects went to Bonneville, it said “we won’t fund them,” he stated. After we filed a lawsuit, Bonneville said “we’ll give you a little bit,” Seyler said. Our biggest concern is that Bonneville seems to be ignoring the Council’s recommendations and direction -- the Council is supposed to make the decisions, he continued. It has not been established that the Council has a trust responsibility to the tribes, but we feel “you are the folks we have to rely on,” Seyler stated. We ask you to stand up for what Congress created you to do, he said. Michel volunteered to have the UCUTs meet with Councilmembers to provide more education and information about the tribes’ rivers and interests.

12.Update on Columbia Basin Trust

Tom Karier, Washington Council Member.

Karier said at the Council's last meeting, the Columbia Basin Trust made a presentation and extended several offers to the Council. In an effort to respond, Karier said he had put together a memo that follows up on the Trust's presentation and the issues raised.

The Trust invited the Council to meet again to talk about areas of mutual interest, and it looks like the best time for that meeting would be in Cranbrook, BC on July 16 and 17, Karier noted. He went over the issues listed in the memo, such as the Columbia River Treaty, subbasin planning, dissolved gas, and reintroducing anadromous fish into blocked areas where feasible. We'll continue to work on these issues and possibly more, Karier said. He thanked staffer John Harrison for all the work he has done to move the relationship with the Trust forward.

13.Discussion about NOAA Community-based Restoration Program grants

Doug Marker.

Danielson explained that she had asked staff to look into the feasibility of the Council submitting an application for funding to the NOAA Community-Based Restoration Program grants program, which supports grants for regional-scale watershed programs addressing multiple species. It's very important for the Council to look into other fish and wildlife funding sources, she noted.

Marker said staff met with NOAA Fisheries personnel and found that there would be a number of hurdles to applying and qualifying for the funding. As a result, the recommendation is not to pursue this at this time, he stated. But the fish and wildlife Committee is interested in following up on this and looking at other funding sources and programs, Marker said. We'll look into other federal and foundation grants that might be able to support the implementation of subbasin plans, he told the Council. It didn't work out this time, Danielson said of the NOAA program, but "we did learn a lot, and we should be looking for other funding opportunities."

14.Council business

– Second-year renewal of Oregon Technical Outreach Assessment Support Team contract

Staffer Karl Weist presented information on the renewal of four contracts for technical support of subbasin planning in Oregon. Cassidy recommended that the Council strive to move to a uniform rate for cost add-ons to contracts. Eden moved that the Council authorize the Executive Director to negotiate renewal of four contracts to continue State/Tribal Level II technical support for Oregon subbasin planning through May 28, 2004 with the following entities and in the amounts noted:

- with Cogan Owens Cogan for project management in an amount not to exceed \$25,731;
- with the Columbia River Inter-Tribal Fish Commission in an amount not to exceed \$256,062;

- with the Confederated Tribes of the Umatilla Indian Reservation in an amount not to exceed \$63,021; and
- with the Oregon Department of Fish and Wildlife in an amount not to exceed \$76,172.

Derfler seconded, and the motion passed unanimously.

– **Approval of minutes**

Karier moved that the Council approve the minutes for the October 14-15, 2003 meeting. Eden seconded, and the motion passed unanimously.

– **Approval of 2004 Council Meeting schedule**

The Council discussed a proposed 2004 meeting schedule and decided to finalize the schedule at its December meeting.

The meeting was adjourned at 10:45 a.m. on November 20th.

Approved December 11, 2003

/s/ Tom Karier
Vice-Chair

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