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Idaho

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Oregon

Steve Crow
Executive Director



TOM KARIER
VICE-CHAIR
Washington

Frank L. Cassidy Jr.
"Larry"
Washington

Ed Bartlett
Montana

John Hines
Montana

Council Meeting Portland Oregon

December 9-11, 2003

Minutes

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.

Fish and Wildlife Committee chair Ed Bartlett reported that the committee received a status report on the water brokerage initiative and recommends that issue come before the full Council at some point. We also had a briefing on the research plan, which will come before the Council in January, he said. We're making progress on implementing the mainstem amendments, with most attention focused on two areas, Bartlett continued: reservoir operations in Montana and 2004 spill. As for the Bonneville budget for the fish and wildlife direct program, it doesn't look like we'll have a firm grasp on where we stand until at least January, he concluded.

Public Affairs Committee chair Larry Cassidy said the first edition of an electronic newsletter will be going out from the Council to key policy leaders and lawmakers. He pointed out that the newsletter is a succinct summary of major issues. Both the 20-year progress report and the annual report are in the final stages of production, and the hydro guide has been sent to the printer, Cassidy said. Our video will be out in January, he concluded.

Power Committee chair Jim Kempton explained that his committee is learning about the risk analysis approach staff is planning to take in analyzing resources for the Fifth Power Plan. Staff will be making a presentation to the full Council on that topic, he said. We had a presentation on market price forecasts, and we reviewed the draft transmission paper, which will be recommended for release to the public, Kempton continued. He noted that staff is developing a power and fish analysis to be used for the power plan. We were briefed on the status of the power plan, Kempton said, adding that the plan is scheduled for release in September 2004. We have a draft letter to Snohomish PUD regarding the IOU settlement that we hope to offer to the Council for its approval, he concluded.

Council chair Judi Danielson asked that a presentation on the staff's power and fish analysis be added to a future fish and wildlife committee agenda.

Kempton made a motion that the Council add to the agenda of the December meeting consideration of a letter for the chairman's signature to Snohomish PUD regarding the IOU settlement, and that the Council finds that its business requires consideration of this item and no earlier notice was possible. Cassidy seconded the motion. The motion passed unanimously on a roll call vote.

1. Presentation on the Pacific Salmon Commission

Don Kowal, executive secretary.

Don Kowal, executive secretary of the Pacific Salmon Commission (PSC), briefed the Council on the makeup of the Pacific Salmon Commission, its responsibilities, and issues. He said people often associate the commission with the fish wars of the past decade, during which tensions between Canada and the United States over Pacific salmon harvest made headlines. The commission was formed to implement the Pacific Salmon Treaty, which was signed in 1985 and revised in 1999, Kowal explained. The treaty is necessary because salmon produced by one country are intercepted by fishermen of the other country, he continued. These interceptions encourage over-harvest and discourage investment in conservation and management; for that reason, coordinated management of salmon stocks coast wide is required, Kowal said.

The commission has 16 members, eight from each country, and each country has one vote, he explained. Members are appointed by the President and the State Department in the United States and by the Minister of Fisheries and Oceans in Canada, Kowal said. He went on to describe the four regional panels that provide technical and regulatory advice to the commission, noting that members to the Transboundary, Northern, Southern, and Fraser panels represent both government entities and interest groups. There are also a number of standing and technical committees that provide support to the commission, and all of the committees have representatives from both countries, Kowal said.

The commission staff is headquartered in Vancouver, British Columbia, he went on. The staff has a number of administrative responsibilities, including day-to-day regulation of sockeye and pink salmon fisheries throughout the Fraser River panel's area of jurisdiction, Kowal pointed out. That management covers in-season stock assessment, including estimating the run size and arrival timing, he explained. Kowal described the new techniques and methods the commission is working on to improve its assessments, including hydro-acoustic monitoring.

He listed several changes that went into the revised 1999 agreement, including the following: fisheries are now based on abundance as opposed to a negotiated ceiling; a Committee on Scientific Cooperation was established; rules for dispute resolution were put in place; habitat provisions were made part of the agreement; a \$140 million restoration and enhancement fund was established; the sharing agreement on Fraser River sockeye and pink salmon was revised; and a Transboundary Panel was created.

Among the current issues, Kowal listed, the parties need to finalize rules for technical dispute resolution; develop an agreement on a Southern coho abundance management plan; and implement habitat provisions of the treaty. In addition, the commission will be discussing the \$140 million habitat and restoration fund, and ways to determine the reason for pre-spawn mortality of late-run Fraser River sockeye, he said.

Karier asked about harvest tradeoffs between the United States and Canada. Kowal explained that at one time, U.S. fisheries were overharvesting Fraser River salmon, and in response,

Canadian fisheries were fishing heavily on southbound coho and chinook. Canada has since abandoned that fishery in return for the United States giving up its harvest of Fraser River sockeye, he explained.

Danielson asked about how the \$140 million in restoration funds would be structured, and Kowal responded that the money could be spent in either the United States or Canada and that there will be a structured call for proposals to distribute the funds. Danielson noted that the commission and the Council ought to coordinate their work on ocean conditions.

2. Public comment on APRE Report (Council document 2003-17)

The Council took public comment on the draft Artificial Production Review and Evaluation (APRE) report. The following summarizes the comments of four speakers.

Pete Hassmer, Idaho Department of Fish and Game (IDF&G): The APRE has resulted in an extensive database, a laudable achievement. But we hope the Council gives careful review to this draft before it becomes final. It is not the best possible product the Council could produce, and there are interpretations made that are not warranted. Some information is misconstrued in the analysis, including a statement on p. 38 regarding habitat. This document needed management review before it was released to the public. IDF&G staff sent in comments that were not incorporated into the document; some were treated as simply comments and not corrections. Guidelines should not be presented as recommendations, e.g., p. 43.

There is a conclusion that on the basis of APRE, hatchery reform is needed. That conclusion is not valid. The whole system does not need reform even if individual hatcheries do. There are problems in the discussion of harvest (p. 20) and with valuing the recreational fishery (p. 22). The sum of the problems cited leads to possible inaccuracies in this report overall.

John Smets, private citizen from Aurora, Oregon: If public agencies make investments on private lands, the landowner gives up control. I am concerned for private property interests. Sport fishing seeks to control the river, yet it jeopardizes the health of the river.

Keith Kutchins, Shoshone-Bannock Tribes: Hatchery reform was not part of the Congressional language for the APRE, and the effort should not go beyond what was authorized. APRE does not have the support of the fish and wildlife managers. The APRE database is not accurate. The Shoshone-Bannock Tribes support hatchery reform, but our proposal for reform was not funded. We support the comments offered by CBFWA. APRE does not take into account out-of-basin effects. *U.S. v. Oregon* is the primary way for anadromous-fish hatcheries to be reformed; APRE does not include the Shoshone-Bannocks as a party. There is a high degree of frustration with APRE. The Shoshone Bannocks want to use hatcheries to rebuild the wild runs.

Bill Tweit, Washington Dept. of Fish and Wildlife: The APRE picked up a lot of the HSRG tools used in Washington, but not all of them. The HSRG took longer, but the end product increased public confidence that hatchery changes would be made from the best scientific data. APRE lacks the fishery manager's objectives, and it will not inspire public confidence.

3. The Executive Committee will meet to discuss federal laws applicable to the Council in the areas of political activity, open meetings, freedom of information and ethics in government

Steve Crow, executive director; Jim Tanner, administrative officer; and Bill Hannaford, senior counsel.

Randy Hardy Comments

The Council heard comments from Randy Hardy on summer spill for salmon.

It is time to stop summer spill and eliminate the 1 percent turbine efficiency requirement during the salmon migration season, according to former Bonneville Administrator Randy Hardy. Speaking for about half of Bonneville's customers, including one IOU, he told the Council these actions would save about \$100 million a year, which is roughly equal to a 5 percent impact on Bonneville rates. In addition, Hardy said the actions would help eliminate voltage support problems Bonneville faces during the migration season.

Summer spill costs Bonneville about \$80 million and saves about 15 ESA-listed fish, he said. From the customers' viewpoint, that is not a good balance between power and fish and wildlife (fish and wildlife), Hardy stated. The region could use more efficient measures to produce the same biological benefit for fish, he contended.

The 1995 BiOp for salmon required that turbines at federal dams be operated within 1 percent of their peak efficiency during migration to increase survival when smolts pass through the powerhouse, Hardy explained. The requirement was based on a study that showed there is less turbulence for the migrants when turbines run at peak efficiency, he said. "It sounded good, but it's not true," Hardy stated. A more recent study demonstrated no relationship between the 1 percent peak efficiency operation and increased survival, and there is some evidence that running the turbines harder is actually better for the migrants, he said. Eliminating this efficiency requirement would mean a \$20 million annual savings for the power system, Hardy added.

Saving \$100 million would give customers rate relief at a time when it is sorely needed, he continued. High Bonneville rates have been bad for the region's economy, and Bonneville has lost the advantage of being a low-cost provider of electricity, Hardy indicated.

He acknowledged that non-ESA listed fish would also be affected by elimination of summer spill. The Hanford Reach stocks are the healthiest in the region, and you could lose 6,800 fish out of a run of 200,000, Hardy said. But there is cost-effective mitigation that could be implemented, including predator control and harvest buyouts, he said, adding that such measures could mitigate for both listed and non-listed fish losses.

Hardy urged the Council, as it works to implement its mainstem amendments in 2004, to support the elimination of summer spill and the turbine efficiency requirements. In the longer term, he suggested that in the NOAA Fisheries' court-ordered BiOp rewrite, the current "rigid set of prescriptive recovery measures" be replaced with a more flexible system of biological performance standards.

The federal hydro system is "tremendously constrained" by the current BiOp, which gives the action agencies no flexibility in meeting recovery goals, Hardy stated. "Management 101" would tell you to give the action agencies flexibility to achieve the established goals and then hold them accountable for doing so, he said. "We have it bass ackwards," Hardy quipped.

As you look for a larger set of mitigation offsets, “put everything on the table and rebalance the system” to get greater biological results and more accountability, he advised. Hardy suggested that a system of performance standards could help eliminate Bonneville’s fish and wildlife budget problem and stabilize funding for the Council’s fish and wildlife program.

We have mounted an initiative on these proposals here and in Washington, D.C., he reported. With the approach we’re advocating, I guarantee you will have greater results and a better balance between power and fish and wildlife, Hardy concluded.

You indicated these actions could lower rates at Bonneville, but do you have a commitment that would happen? Larry Cassidy asked. “I’d say the odds are 99 to one” that Steve Wright would lower rates if these actions were taken, Hardy responded.

We’ve looked at performance standards, and it appears you’d have to spill through September to get 95 percent survival through the hydro system, Cassidy said. Obviously, success depends on the standards set, Hardy replied. But there is other mitigation, he pointed out, adding that a big recovery impact could be achieved by decreasing the Alaska chinook harvest. Let the action agencies have the flexibility to achieve the goals, Hardy urged. “Distrust” of the agencies has kept the region from trying things that could bring about better results for less cost, he indicated. For example, focus on the returning adults, and try a few of these things, Hardy said. You have the opportunity in the BiOp remand to do something that would give you more fish at less cost, he stated.

We have looked at these issues – summer spill and turbine efficiency requirements – but we see more uncertainty with regard to the impacts of eliminating them, Tom Karier said. These measures “may be an inefficient use of Bonneville resources,” but we think there are some steps in between, and we asked the agencies to come up with a proposal to look further at summer spill and the efficiency requirement, he said. There is also the question of “a legal strategy” that would work to convince Judge Redden that performance-based standards are the best approach in the BiOp, Karier added.

“It’s a jump ball” with Judge Redden, Hardy acknowledged. But success is possible if “you come in with a credible strategy” that eliminates summer spill and the 1 percent efficiency requirement and proposes recovery programs that would result in more fish and give more control to the action agencies, he said. We can have it all – more fish and lower rates – but it involves “a departure from rhetoric and dogma,” Hardy stated. “When religion gets in the way of facts, decisions are made that aren’t right,” he said. That’s true with both fish and power, Hardy added.

When you present this story to the region, you need to emphasize “no net impacts to fish” and the commitment from Bonneville on rates, John Hines counseled. Hardy agreed. “We will work politically and biologically,” he said. We need to have courage – to step out and get away from the prescriptive approach of a BiOp with 200 reasonable and prudent actions, Hardy concluded.

4. Council decision to release draft transmission issue paper for public comment

Terry Morlan, manager, economic analysis; and Wally Gibson, manager, system analysis and generation.

Staffer Terry Morlan described the evolution of the Council's transmission issue paper, saying it was shortened and has a different objective than the original version. This new paper is more of an educational piece, introducing how the transmission system operates and explaining why it is not working as well in the current environment, he explained. We think this paper will become part of the power plan, Morlan said. It lays out key characteristics needed for a transmission system, including reliability, economy, planning for capacity expansions, and monitoring the operation of power markets, he said. The staff thinks the paper is ready to go out to the region for review, Morlan said. Kempton made a motion that the Council release for public comment the Transmission Issue paper as presented by the staff, with changes adopted by the members. Gene Derfler seconded the motion and it passed unanimously.

5. Update on implementation of 2004 summer spill and Montana operations

Doug Marker; and Bruce Suzumoto, manager, special projects.

Staffer Doug Marker gave a status report on discussions to implement summer spill experiments and change Montana reservoir operations, as called for in the Council's mainstem amendments. A large-scale, systemwide study on spill does not appear to be feasible in 2004, he said. We are continuing to investigate monitoring methods, pilot studies, and what *can* be put into place for 2004, Marker added. We're also continuing discussions about potential offsets to spill and are participating in a work group that is looking at a full range of options, including predator control and harvest, he reported.

As for changing summer operations at Libby and Hungry Horse, it does not look feasible next year to evaluate the effects of such changes in the lower river, Marker said. The Montana Department of Fish, Wildlife and Parks has come up with a proposal for a \$600,000 study in 2004-2006, which will be reviewed by the Independent Scientific Review Panel (ISRP), he said. If the Corps or Bureau changes operations at these projects, it has to be done in consultation with NOAA Fisheries and the U.S. Fish and Wildlife Service, and there has been good progress in those discussions, Marker explained. He also said the Corps wants to brief the Council in January about the status of the removable spillway weir (RSW) at Ice Harbor.

Staffer Bruce Suzumoto explained that the RSW debate is taking place in the Regional Forum process, with some parties contending there is enough information to go forward with it, and others saying more information is needed. The question hasn't been resolved, and it will be addressed by the federal executives, he said.

With regard to the summer spill test, it's important to confirm the results of the model and how many ESA-listed and other fish would be affected, Karier pointed out. If we confirm the model results, we know what kind of offset efforts we should look at, he said. Are you designing something to do that? Karier asked. Suzumoto said there are ways to update the numbers, but there are limited options to test spill survival in-season.

It seems like a good idea to pursue all of the studies, Hines stated. As information comes in, you could design further offsets, he suggested. Suzumoto said studies are planned at a number of the federal projects in 2004. Cassidy suggested that more must be known about the impacts to

tributary fish below the Corps' transportation sites before changes are made to spill. These tributaries are key to salmon survival long term, he stated.

Terry Courtney Jr., of the Warm Springs Confederated Tribes offered a statement on behalf of the Treaty tribes opposing the proposal to reduce spill. The tribes' own scientists and biologists should be involved in any of these discussions, he said. Controlled spill at dams has proven to be the safest way of passage for migrating salmon, but Bonneville customers want to eliminate it because it is too expensive, Courtney said. Bonneville ended fiscal year 2003 with hundreds of millions of dollars in reserve, and the agency does not need financial relief, he said. Mitigating the impacts on some stocks would be difficult, if not impossible, and the studies on the impacts are unproven, Courtney stated.

6. Panels to comment on the future role of Bonneville; and public comment on the future role of Bonneville issue paper (Council document 2003-18)

Dick Watson, director, power division.

Discussions on the future role of Bonneville continue, but the uncertain status of the IOU settlement continues to weigh down progress, a panel of industry leaders told the Council. Our discussion on Bonneville's future role in the region is a synthesis of several past efforts – the Regional Review, Bonneville's lessons-learned paper, and the Joint Customer Proposal and responses to it – and we have agreement on some big issues, according to Pat Reiten of PNGC Power. All of these efforts “moved the ball forward,” he said, but a decision has to be made soon if we are going to be able to affect the next rate period.

A broad group of participants continues to meet, both with and without Bonneville's participation, Reiten said. The Council's timeline is a good thing and “keeps the pressure on” for making progress, he added. But, Reiten acknowledged, there are difficulties. The question from the IOUs is, if the issues will be decided in court, why should we continue to work in this collaborative process? he explained. And there is the question of where Bonneville stands on the issues, Reiten said.

He listed several topics the customer group is working to nail down, including: the basis for allocating the federal base system (FBS); IOU benefits; DSI contracts; disposition of the “headroom” in the FBS; and meaningful cost control input in advance of Bonneville spending decisions. Another key issue is determining the vehicle for setting out the rules, Reiten continued, and whether that vehicle going to be contracts, as suggested in the Joint Customer Proposal, or something else. A rate construct is another possibility, he pointed out, but customers are concerned about the durability of that arrangement since rates can change. Other issues persist with regard to contracts, Reiten noted, including contract enforceability and dispute resolution.

There is a meaningful role for the Council in this, and we appreciate your efforts, he stated. A Council load/resource analysis could clearly be part of that role, Reiten indicated. That analysis is at the heart of the FBS allocation question, he concluded.

One area we are grappling with is how to bridge the gap from the existing 10-year agreements to 20-year agreements, and “we are struggling mightily” with that issue, according to Scott Brattebo of PacifiCorp. The energy environment changes radically and quickly, and if we resolve issues now, but wait until 2012 to start new contracts, the issues may have changed, he pointed out.

The issues regarding the existing contracts are large, Brattebo acknowledged. If the lawsuits over the IOU contracts go forward, it changes things, he said. It has been suggested that we need legislation to clarify things for the IOUs, Brattebo said. "It's a big question mark," he stated.

John Saven of the Northwest Requirements Utilities (NRU) said the customer proposal should be the starting point for determining Bonneville's future role in the region. Absent a settlement of the IOU litigation, the parties in the region "will gravitate to fragmented solutions," he stated. We urge parties to support the settlement proposal, Saven said. "Our chief and primary focus is to get this settlement done, and absent that, to do an alternative settlement," according to Saven. "That is the first order of business," he concluded.

We agree there is a real urgency to resolving the issue of Bonneville's future role in the region's power supply, Rob Sirvaitis of Power Resource Managers (PRM) stated. It's critical that we clarify Bonneville's role so parties can make power-supply decisions in the near future, and we want the Council to facilitate rapid movement of this process, he said. Servaitis recommended that the Council set a fast-paced schedule with clear deadlines, help get Bonneville to the table with the customers, and mediate difficult divisive issues. He referred the Council to a list of 10 key principles for determining Bonneville's future role submitted earlier by PNGC Power and PRM. According to those principles, Bonneville should allocate the FBS fairly and acquire other resources only in response to specific customers who agree to pay full costs; allocations should be implemented in long-term contracts; conservation/renewables should be acquired through local programs; customers must have a role in controlling Bonneville costs; and trust that Bonneville is "a reliable business partner" needs to be rebuilt.

Brattebo provided an update on the IOU settlement. The Oregon Public Utility Commission (OPUC) has ordered PGE and PacifiCorp to execute the IOU-settlement agreement and is supportive of it, he stated. Grays Harbor PUD has filed a lawsuit to preclude PacifiCorp from collecting money from Bonneville if the lawsuit is not settled, and Columbia River PUD has filed a similar lawsuit naming Puget, Brattebo reported. We have not been served yet, but needless to say, a number of parties apparently think the issues need to be decided in court rather than in collaboration, he said.

We view the clock on this settlement as going to January 22, 2004, Saven said. It will be close to that date before utilities decide on the settlement proposal, he predicted. In the technical workshop we had with Bonneville yesterday, it was clear Columbia River PUD is still looking very seriously at the settlement, Saven said. If they decide to sign, the lawsuit would be withdrawn, he said. I agree; you can't gauge the support for the settlement proposal by who has signed to date, Reiten stated.

"What's Plan B?" Derfler asked. There are multiple answers to that question, Saven responded. We could have a revised proposal, try to implement the proposal without everyone's agreement, or have no proposal and just go forward, he suggested. It depends on the extent of the support for the proposal between now and January 22, Saven added.

Is not doing anything acceptable? Derfler asked. Some issues don't go away with the settlement, Reiten responded, citing cost reductions at Bonneville as an example. In addition, Bonneville has to define its load-serving obligations, he stated. The urgency for a long-term answer to that question does not go away with the settlement, Reiten said. But it will be more difficult to resolve if some issues are in court, he acknowledged. At the end of the day, Bonneville has to decide who it is going to serve and do it in a timely way, Reiten continued. "We are at the end of our rope in terms of time to resolve this," he said.

I agree about defining Bonneville's load obligations, Steve Marshall of Snohomish PUD stated, noting that some people think if Bonneville makes short-term arrangements, it will be more difficult to get to that point. It is imperative we get together on long-term contracts to protect against out-of-region interests and to bring about stability, he said.

Plan A was the long-term Joint Customer Proposal, but Bonneville rejected it, it was redone, and then Bonneville suspended consideration due to a financial emergency, Marshall continued. That emergency did not occur, but Bonneville has continued to postpone discussion of its supply obligations, he said.

I would characterize the current situation as "a hazy hiatus" – we are waiting until after January 22 to get back into the Regional Dialogue, Kempton said. In his December 9 letter, Steve Wright said Bonneville wants to resolve the load responsibility questions, he continued. And while Bonneville wants to limit its load serving responsibility to the resources of the FBS, the statute says something else; we have to work within that or risk going to Congress, Kempton indicated. He said the Council needs the help and cooperation of the customers to meet its Regional Dialogue timeline. This hiatus isn't helping, but we need to have you working among yourselves so when we resume our effort, we can move quickly, Kempton added.

You are hearing from the Council a commitment to proceed on the Regional Dialogue regardless of the settlement, Hines said. The governors have been clear that we need that, he stated.

There are two possible futures after January 22, Karier commented. If the settlement doesn't work out, can we separate out the IOU part of this? he asked.

That's a really good question, Brattebo responded. The obvious answer is that we won't decide this in the region; it will be decided in Washington, D.C., he said. We are more and more inclined to think it will be resolved through legislation, Brattebo said. But things can't move forward for the customers until all the pieces are in place, Brattebo said, noting that the publics won't know what Bonneville's costs are without the IOU piece. Our utility is not inclined to go to Washington, D.C., but we're being pushed in that direction, Brattebo stated.

On January 22, we'll have to take stock of what's possible, Saven said. We'll have to consider whether it's possible to put the settlement in place without total agreement or go to something else that can bring about a quick resolution, he added.

We will still face the same issue on January 22, Marshall said: what is Bonneville's role in power supply. The settlement does not go out very far, just to 2011, and utilities have to plan further out than that, he said. I see the short-term issue as separate from the long term, and melding the two together is not serving us well, Marshall added. The settlement substitutes a different view than what is in the law on IOU benefits, and the question is whether we go to Congress to resolve the benefits question, he stated. The big issue is how to plan long term – "the other things will sort themselves out," and I don't think we ought to delay planning for the future, Marshall indicated.

If the settlement goes down, we lose the benefits of the Bonneville deferral of payments to the IOUs, Reiten said. We either pick up the pieces and get to a new settlement, solve this through the courts, or wait for a legislative response, he said.

A settlement "establishes regional harmony," reduces Bonneville rates, and "it's a nice platform" from which to go forward, Brattebo stated. We've made it clear that what is in the law does not

work, he said. If there is no settlement, this issue will be decided by someone we have no control over, Brattebo added.

Marshall outlined the decisions Bonneville must make for the long term. Bonneville should not be building resources, so we need to allocate the FBS, he said. If there is a shortfall, we decide how to meet it – either each utility is on its own, or it associates with others for resources, Marshall continued. The real question is what allocation is made for the IOU customers, and “that question is power versus money,” he said. With any formula, we need to align the interests, Marshall said. We care about the IOU residential and small farm customers, but preference customers need certainty, he stated. We made a good start on this with the Joint Customer Proposal, Marshall added.

Would you prefer legislation or litigation? Derfler asked. I think we need to agree to long-term contracts – maybe as long as 30 years – then ask Congress to ratify them, Marshall responded. You take “a rifle-shot approach” and offer a limited proposal to Congress, he said. If you have agreement in the region, I think you could get this through Congress, Marshall said. I agree with Scott, he continued. Some things adopted in 1980 don’t work now, and they need to be changed, Marshall stated. The only way to protect our regional resource is with very long-term contracts, he said.

Is that Plan B? Derfler asked. “Before you shoot the rifle, you’d better know why you are doing it and what you are hoping to accomplish,” Saven responded. I sense a high level of skepticism toward achieving a broad legislative solution, Reiten said. I couldn’t say whether we would support legislation, he added. I’d be very careful with the legislative process, Council chair Judi Danielson advised.

What will it take to have you agree? Derfler asked Marshall. The Safety Net cost adjustment recovery clause (SN CRAC) should be dealt with outside the settlement, and the “poison pill” [Bonneville would pay \$200 million to two IOUs if there is no settlement] should be withdrawn, Marshall replied. It is bad public policy, he added. We also have serious concerns about cost control and Bonneville’s ability to interpret contracts the way it wants to, Marshall said. We provided cost-control solutions, but Bonneville did not implement them, he stated. This settlement borrows money from one set of customers to pay others, and it does not resolve things like the need to protect the hydro system, Marshall said.

I think you are unrealistic about a legislative fix without more agreement in the region, Hines said. If the region goes to Congress for legislation “with all of this angst,” the outcome is even more susceptible to manipulation, he stated. We have enough problems with legislation when there is agreement, let alone when there is not, Karier agreed. The timing seems to be a bigger issue for you than the issues themselves, he commented. The settlement rolls back the poison pill, the SN CRAC is being withdrawn, and cost control is being addressed, Karier said.

The CRAC does not go away, and nothing forces Bonneville to cut costs, Marshall responded. We are concerned about the long term, he said. We are on record with the issues – if this settlement had more of the things we have been talking about, it would be easier to sign, Marshall stated.

I’d like to point out that the statements being made are not on behalf of the panel, Saven said. Everyone should understand that nothing in the settlement precludes anyone from pursuing Bonneville over the SN CRAC trigger, he added.

The problem is the way the SN CRAC triggered, Marshall responded. Three years into the contract, the CRACs have triggered repeatedly, he said. “That’s a stunning development,” Marshall stated. We are arguing that we need arbitration in the contract that is enforceable, he added. It takes too long to resolve these things through the courts, Marshall said.

Paul Norman of Bonneville said the settlement proposal was developed over the last six months by the region’s “best minds.” It will lower rates, clarify the IOU benefits for eight years, and clear the decks for the Regional Dialogue, he stated. Absent a settlement on January 22, there will be “a briar patch to navigate in a fog bank,” Norman said. Settlement “is the boardwalk through that briar patch,” he added. Norman pointed out that there is much agreement on many issues, but without the settlement, it will be difficult to move forward and capture those agreements. We’re at risk of losing this opportunity, he stated.

In his December 9 letter, Steve Wright said Bonneville agrees that limiting firm power sales to the size of the FBS is a good idea, Norman explained. It would keep rates down, costs predictable, and it clears away the uncertainty about who has the load-serving responsibility, he said. It frees up the question of Bonneville’s obligation for utilities that want to move forward on resource development, Norman stated.

And we agree on 20-year contracts, he continued. We think there is great urgency to resolve financial and rate issue and the long-term role for Bonneville, Norman said. As for changing the law, we think going after new legislation would be time-consuming and unpredictable, and we don’t support that, he stated.

Norman suggested two paths for getting to the goal of long-term contracts. We could write new contracts effective in 2007, or we could proceed on a two-stage path, he explained. On this path, Bonneville would make a policy decision this fall on the contractual and rate fixes that would carry us through 2011, Norman said. Then we would turn to developing a 20-year-contract solution, he said. The downside to the two-stage process is that we don’t get to the 20-year contracts as fast, Norman stated.

We need to get Bonneville’s load-serving responsibility defined, Jason Eisdorfer of the Oregon Citizens Utility Board told the Council. He pointed out that utilities are starting to come to the PUCs with long-term integrated resource plans. If the Bonneville role is unclear, IOU customers could end up underwriting the expense of new resources and creating a surplus “that others could live off” for a period of time, Eisdorfer said. “We desperately need to know the Bonneville role,” he stated.

The Joint Customer Proposal was a good start and opened the issues up to the region, but it was put on hold to discuss the settlement, Eisdorfer said. The IOU customers are giving up something substantial, but “the policy issues were discussed behind closed doors,” he said. The OPUC supported the settlement, but “they struggled with it” and finally said, “it’s the best of several ugly options,” according to Eisdorfer.

“The rhetoric over the settlement is heating up again,” he pointed out. A legal battle in the Ninth Circuit is the first step toward turning this over to Congress, Eisdorfer added. I don’t believe there is such a thing as “a rifle shot” with Congress, and that is not a good strategy, he stated.

“We need to turn the rhetoric down and roll the sleeves up,” Eisdorfer advised, and we need “extreme statesmanship” to get through this. If we don’t do this in the region, it will be done for us elsewhere, “and we won’t like the outcome,” he concluded.

We have always made the point that when Bonneville gets into trouble, fish operations are delayed or attacked, according to Steve Weiss of the Northwest Energy Coalition. He called the Council staff's work to develop a metric for analyzing power and fish together "a very positive step." We think the Council's analysis of conservation and renewables was incomplete because it missed Bonneville's stewardship obligations, and we think the Regional Dialogue has to address how those obligations will be met, Weiss said. We've had failures with regard to acquiring all cost-effective conservation, and we haven't implemented the Regional Review's recommendations, he stated.

We support a more limited role for Bonneville in developing resources, Weiss continued. Bonneville has done a good job on conservation and renewables, but not so good on other resources, he said. The conservation role should meet provisions of the Northwest Power Act, Weiss said.

As for Bonneville's future, uncertainty causes all players "to go short," he said. Utilities can't go forward with their plans, and the uncertainty is having an effect on conservation and renewable investments, Weiss pointed out.

Does Bonneville have the ability to impose tiered rates in 2006? Karier asked. I think we could implement them in 2007, Norman said. Once we decide how to allocate resources, tiered rates is a mechanism to implement the allocation; there is "a high likelihood" we'll choose to do that, he added.

There is concern about the durability of the approach, but what you're suggesting doesn't provide that, Hines pointed out. Is there another avenue? he asked. Durability would be achieved in 20-year contracts, Norman replied. The choice is between getting to those as soon as possible or getting there in two steps, he said.

Hines asked Weiss to clarify his comments on Bonneville continuing its conservation and renewables obligation. When Bonneville acquires new resources, there is an obligation in the law with regard to conservation and renewables, Weiss replied. If Bonneville turns resource acquisition over to customers, we don't want to lose that advantage for conservation and renewables, he said. We would want to see a contract provision that sustains that effort, with Bonneville having "a backstop or crediting role," Weiss explained.

Kempton asked about Bonneville's lessons-learned paper, in which it supports 20-year contracts but wants to go back later to address variability and make changes. I don't think we are saying we can change the contracts, Norman replied. We're talking about a situation 10 years in the future when the contract provisions don't make sense for anyone, he said. We need to acknowledge that things happen that cause problems, Norman said. We agree that 20-year contracts should be our goal, but in his letter, Steve Wright raises the question of the best way to get there, he added. We need to work out the balance between flexibility and certainty, Kempton commented.

7. Briefing on Data Management workplan

Peter Paquet, manager, wildlife and resident fish.

Staff has developed a workplan for data management activities and is proposing to move forward to establish a memorandum of agreement (MOA) for participation by other parties, Peter Paquet reported. He noted that the work would be funded with a \$250,000 placeholder in the 2004 fish

and wildlife program budget. We believe we have agreement that others are willing to engage in this process, and we propose to go out and talk to them and come up with a cooperative system that will be cost shared, Paquet explained. "This management system will be expensive – several million dollars a year," he acknowledged, and we will need to have a cost-share arrangement.

Karier pointed out that NOAA Fisheries signed an MOA with the Council some years ago on developing a comprehensive data management system. Real progress has been made on developing protocols for collecting data and also on places to process and store data, he said. The next step is to fill in the administrative functions that are needed, Karier added.

Our purpose has been to coordinate what is already out there, not create a new organization, Paquet said. As we go forward with research, monitoring, and evaluation (RME), we want usable, comparable data, so "it's not apples and oranges," he said. Next year, we will come back with a budget and information about cost sharing so we know how much needs to come from Bonneville, Paquet explained. Will you know by 2004 what people will pony up? Melinda Eden asked. Yes, we'll know by next October, Paquet replied.

Karier made a motion that the Council approve the regional data management workplan and related budget, as reserved in the Council 2004 fish and wildlife project recommendations, as presented by the staff. Eden seconded the motion, which passed on a unanimous vote.

8. Presentation on Fifth Power Plan outline and time line

Dick Watson.

Staffer Dick Watson offered a draft outline and schedule for the fifth power plan. [The outline is available on the Council's web site at www.nwccouncil.org] He explained what the outline covers and said that work is well under way on some sections of the plan. Establishing "the information base" has already begun, with issue papers out on demand and fuel-price forecasts, and several others scheduled for completion in December, including generating resource characterization, electricity market price forecast, conservation assessment, and demand response, Watson reported.

The resource portfolio analysis model is close to being complete, he said, noting that the analysis will begin in January. The portfolio recommendations are due to be out around the end of April, and some introductory parts of the plan are already being drafted, according to the schedule. A draft power plan is set for release to the public in May, and public meetings would begin in June, Watson indicated. A final plan should be out in August or September, he concluded.

Danielson noted that fish and wildlife committee members need to be kept apprised of any "red flags" that come up in the course of developing the plan. We'll need a briefing on the plan at each of our upcoming meetings, she said. All draft papers related to the plan will be distributed to Council members, and there will be a large volume of material to review and potentially short timeframes for decisions, Kempton noted.

How good are the forecasts? Melinda Eden asked. We track forecasts to see how they measure up, but any forecast is going to be wrong, Watson responded. The important thing is laying out strategies to cope with the uncertainty, he said. There is an extremely high correlation between the staff work and actuals, Hines pointed out. If you do backcasts, you see a very high correlation, he added.

9. Update on 2004-2006 Bonneville fish and wildlife program budget

Doug Marker, director, fish and wildlife division; and Patty O'Toole, manager, program implementation.

Staffer Patty O'Toole reported that Bonneville closed its 2003 books with \$140.5 million in fish and wildlife direct program expenses. The reason the figure was higher than expected is three-fold, she said: some work from 2002 was not billed until 2003; spending caps recommended by the Council could not be put into place; and items the Council thought would be capitalized were expensed.

O'Toole reported that only 68 of 326 projects will have spending caps in place by the end of 2003. Karier questioned why Bonneville had failed to get the caps into its contract renewals. We found we could not do unilateral spending caps, but had to implement them in bilateral contract renewals, Therese Lamb of Bonneville responded. You should have put spending caps in place in contracts you renewed in fall 2002, Karier contended. Lamb said Bonneville was waiting for the Council's recommendations at that time. But you renewed contracts without our recommendations, Karier replied.

Is there a backlog of open-ended projects and debts that need to be accrued? Kempton asked. Lamb said Bonneville and Council staffs are working on that information, and Marker said \$3.3 million in federal agency billings are still outstanding. We anticipate getting the information we need from Bonneville in January, O'Toole added. The fish and wildlife committee is working on this, and we think Bonneville is getting a grasp on the problem, Cassidy said. We're defining the problem, and "it isn't pretty" looking 22 years back, he added.

O'Toole recapped the current spending situation and indicated that requests for upward adjustments on 2004 projects total \$14.5 million. What we do in 2004 will affect the budgets in 2005 and 2006, she pointed out.

Eden asked about Bonneville's ability to include clauses in project contracts that put constraints on when sponsors must bill for their work. It's imperative some constraints be put in place – Bonneville needs to find an answer to that, she said.

Hines asked about Bonneville's use of capitalization for funding fish and wildlife projects, and Marker indicated it has been limited. During this rate period, Bonneville is underusing capitalization for policy reasons, he said, acknowledging frustration with the situation. We had "high-level discussions" about that, but still items we thought would be capitalized have been expensed, Marker said. We've also worked hard on principles for capitalizing land acquisitions, so we can move forward on wildlife projects, he added.

Is there any discussion of Bonneville coming up with money to cover the errors made? Derfler asked. Bonneville is firm about managing the fish and wildlife direct program to \$139 million annually for the rest of the rate period, Marker responded. We'd recommend having all of the information about project expenses, "bad as it may be," before we make the next set of project selections, he indicated.

I want an update on this in 2004, Hines said. In January, it will be 12 months since we sent our letter on the fish and wildlife budget to Steve Wright, and I'm re-evaluating what that letter said, Danielson stated.

10. Fish and wildlife contract and finance improvement plan

Scott Hampton, Bonneville Power Administration

Scott Hampton of Bonneville went over the agency's plan for improving its fish and wildlife contracting and finances. He listed several problems, including lack of consistent budget data and the lack of active project management, and he spelled out how those would be remedied in 2004. Hampton said Bonneville developed a vision statement for managing its fish and wildlife contracts that includes delivering clearly defined results, providing exceptional execution of contract management, and seeking a collaborative approach with regional partners. The schedule he laid out targets improvements in project management, budgets, and contracting through 2004 and into 2005.

Karier asked when the Council could expect to see project performance reports. "It won't be real soon," Hampton conceded. Contracting personnel will need to be trained to evaluate projects, and we need to have performance milestones in the contracts, he explained. Karier urged Bonneville to use contract management systems that have already been developed in the region and not to invent something new, if it is not needed.

11. Council strategic planning session

Judi Danielson, chair.

The Council held a strategic planning session, a follow up to discussions at its November retreat. Danielson said the Council had discussed ways to do a better job of giving guidance to central and state staffs by looking at upcoming issues overall and seeing how to integrate and prioritize efforts within the divisions.

Steve Crow said he met with division directors and compiled a list of issues related to efforts that will be going on over the next 12 to 18 months. In terms of the allocation of resources, the two largest efforts will be developing the power plan and completing subbasin plans, he reported.

Each division director reported on major work projects in the upcoming year:

Doug Marker: Completing subbasin plans, including the ISRP review, responding to comments, and resolving conflicts between co-managers will be a large effort for the fish and wildlife Division. We could need another set of hands, someone with policy and legal background, to assist in writing up issues for the Council's consideration. After the subbasin plans are complete, we will need to adopt them into the fish and wildlife program. We face a strategic issue with how to continue to be a catalyst for local efforts. Hatchery reform is another area in which we will play a key role, as well as with the fish and wildlife funding MOA.

Dick Watson: With regard to shaping the future of Bonneville, there are a number of paths that might take. In any event, it will require a lot of effort from the Power Division. We may have to be prepared to be involved in Bonneville's next rate case, which means substantial time from the power and the legal staffs. There is a lot of effort involved in preparing the power plan, and it will require calling on public affairs staff. The action plan portion of the power plan will require extensive outreach by staff and Council members. It depends on selling it to those who can implement it. We'll continue to have a substantial effort on transmission issues.

John Shurts: Subbasin planning and amending the fish and wildlife program with 62 subbasin plans will be a massive effort. The fish and wildlife funding MOA could also drain a huge

amount of resources. The implications of the BiOp and dealing with that could take a great deal of time, and we will need to be on top of rate case issues. We may need another person to help analyze and tee up subbasin issues.

Jim Tanner: The biggest issue for us is stabilization of funding. If Bonneville's future role is limited to the FBS resources, that translates to a Council budget of about \$7.5 million, and that would put us a couple of million dollars short of what we need. This needs to be resolved before the next rate period.

Mark Walker: Our work keys off of what comes from other divisions. We'll have the usual projects, plus major work related to the future role of Bonneville, APRE, subbasin plans, and the power plan.

12. Presentation by NOAA Fisheries on 2000 Bi-Op remand

Bob Lohn, regional director, NOAA Fisheries.

Bob Lohn, regional director of NOAA Fisheries, said the federal agencies view the Council's push for spill experiments as a desire to see if there are less costly alternatives available for fish passage. Spill has biological value – we wouldn't have undertaken it if it didn't – and “we don't see a future with no spill,” he stated. But the inquiry is focused on whether “at the margins,” spill could be reduced, Lohn said. He listed three questions important to the inquiry: What biological offsets are available for listed stocks in the absence of spill? What would they yield? And how are they vetted, funded, and fit into the regional recovery plan?

The next question is, what will we learn and what can we measure in these spill experiments, Lohn continued. We can measure system survival, but it would take considerable investment to measure a small increment of change, he indicated. Lohn said it would be expensive – PIT tagging 1 to 2 million fish at a cost of up to \$5 million – to detect a 3 percent change in survival. And to reach an 80 percent confidence level, it would take a 500 to 600 year test, he explained.

Another study option is to radio-tag fish that are released above a project to measure survival, but that also has drawbacks, including expense and the applicability of the results to non-tagged and smaller fish, Lohn said. With this type of experiment, you also have to assume that the sum of the numbers from individual reaches gives you a true picture of survival through the system, he explained. In addition, the warmer the water, the more mortality there is from handling the fish, so you would have to assume data from July and earlier holds true for August, Lohn pointed out. And of course, you have to assume that radio tags themselves don't affect fish behavior or survival, he added.

Another issue with reducing spill is the effect on fish other than the ESA-listed stocks, such as the Hanford Reach chinook, Lohn continued. There is concern about other losses and what we would do about them, he said. If there are dollar savings from spill changes, there would be questions about how to divide these equitably, Lohn said.

Beyond those cautions, the next step is to determine if there is enough interest to explore the experiments further, he went on. My sense is, yes, there is, Lohn stated. Were we to do this, we would be affecting tribal Treaty rights, he said. We will honor the request we have had for consultation, and we won't make a decision before that, Lohn added. We are updating the

SIMPAS model – it’s good, but could be made better – and we are making sure radio tags will be available if we decide to conduct the studies, he said.

With regard to how these experiments fit with the BiOp, it would be consistent if the results would be equal to or better than the current measures, Lohn said. But the experiments would not be likely to occur until after the court-ordered deadline for the new BiOp, he pointed out. The new BiOp would provide the same accommodation for the experiments, Lohn said. A draft of the new BiOp is due out in March, with a final in June, and “we will meet that schedule,” he stated.

I applaud your statement that the total elimination of spill is not in our future, Cassidy said. There may be an expectation it could happen, so I’m glad to hear you say that, he stated. Cassidy suggested studies should focus on what happens below McNary Dam, where there is no transportation. “We know we are hurting fish” without spill, and we need to know how many fish are in the lower river at that time, he said. That is important information before we enter into this, Lohn agreed, saying NOAA Fisheries would look for “a tool” capable of providing that data.

The other issue we are considering is summer operations at Libby and Hungry Horse, Ed Bartlett pointed out. That turns on one issue, Lohn said: the effects of flow augmentation on migrating fish. The NMFS Science Center is preparing a white paper on the flow/survival relationship that is due out this month, he said. We have two or three years of data sets that tell us about these effects, and they will inform our decision, Lohn said. The Council’s proposal on summer operations in Montana is active, and we are obligated to respond, he added.

We’re assuming you won’t overlook the impacts in and near the reservoirs, Bartlett said. “The Number One thing in the NOAA Fisheries review is ecosystem integrity,” Lohn responded. It makes no sense to destroy one ecosystem to get benefits in another, he said. That is part of our larger agency mission, Lohn added.

Jim Kempton asked if the federal executives would open their sessions to others. Lohn said when the agencies are addressing the BiOp remand, there are legal issues being discussed that require a closed session. When you are not talking about the BiOp, could you open the meetings? Kempton asked. I’m concerned about the openness of the federal executives in implementing the mainstem amendments, he added.

With all of the disclaimers you would put on a spill study, it seems that those who aren’t happy with the outcome could just say it is not a good study, Gene Derfler commented. Lohn reiterated that on the river as a whole, there are no techniques to measure the effects of small changes in the amount of spill. As decisionmakers, we want very accurate information, but we have to use the tools we’ve got as effectively as possible to narrow the uncertainty and then offer the best judgment we can, he stated.

Karier said a comprehensive summary of the results of various spill, turbine efficiency, and other studies would be helpful, and Lohn said he would take that suggestion to heart.

Cassidy asked about NOAA Fisheries’ commitment to subbasin planning given recent efforts by the Technical Recovery Teams to gather similar information ahead of the plans. I am strongly committed to subbasin planning as a part of recovery planning, Lohn responded. “I see no substitute for it,” and we don’t want to interfere with or slow down subbasin planning, he continued.

With regard to developing a new BiOp, essentially we have “a debit and a credit column,” Lohn explained. Part of our job with the court is to convince them there are enough things in the credit column that will be funded and completed to match the debit column, he said. It is legitimate to ask whether there is enough opportunity in the credit column – enough room for improvement in the watersheds – to offset the effects of the hydro system, Lohn said. The Council has taken this question to the level of the subbasins, he indicated. Thank you again for subbasin planning, Lohn stated.

13. Presentation by U.S. Army Corps of Engineers on oil spills at dams

Dale Mazar, assistant director of the operations division, U.S. Army Corps of Engineers, Portland District.

Dale Mazar of the Corps gave an overview of oil/water issues at dams on the Columbia River. Powerhouses need oil to operate, he said, and there have been instances of equipment failure when oil was released. “I can’t deny that some oil has been discharged,” but most releases are very small and all are reported to state and federal regulatory agencies, Mazar said. He detailed how the Corps deals with oil at its plants; including efforts to retrofit facilities and install oil/water separators, which were not included in the original powerhouse designs.

News coverage of oil-pollution problems at the dams lacked details, confused and selectively reported facts, and was driven by a media agenda, according to Mazar. The fact we could not release copies of plant blueprints “was greatly overplayed,” he said.

14. Council decision on appointments to Independent Scientific Advisory Board and Independent Scientific Review Panel

Erik Merrill, ISAB/ISRP coordinator; and Steve Waste, manager, program analysis and evaluation.

Erik Merrill briefed the Council on the status of membership on the ISRP and explained the process by which members are appointed. Merrill said the staff recommends the following actions: appointing Dr. John Epifanio to fill a vacancy on the ISRP, extending the terms of current ISRP members through May 2005, and replenishing the pool of potential candidates to the two entities.

Karier expressed concern about having so many members of the ISRP reaching the end of their terms at the same time. We need to think about staggering terms, he stated. Merrill said there was a plan to do that. Cassidy pointed out that the ISRP and ISAB influence policy, and it is worth considering the process and the appointees carefully. “It’s a big deal,” he added.

Steve Waste briefed the Council on the status of membership on the Independent Scientific Advisory Board (ISAB) and explained the process by which members are appointed. He noted the challenge in finding candidates without a conflict of interest and who are available to serve on the ISRP or the ISAB. Rebuilding the pool of candidates gives us an opportunity “to do some headhunting” for candidates, Waste said.

He reported that there are two vacancies on the ISAB, and that two candidates from the National Research Council (NRC) pool of nominees are interested in serving: Drs. Nancy Huntley and

Ramson Myers. There are also three ISAB members whose terms are up for renewal, and four members eligible for reappointment, Waste said, but further discussions will be held with NOAA Fisheries and the Columbia Basin tribes before these actions are brought before the Council.

Karier made a motion that the Council appoint Dr. John Epifanio, Illinois Natural History Survey, as a member of the ISRP; extend the term limits for the current ISRP members through May 2005; and begin to rebuild the pool of potential ISRP and ISAB members for future appointments by reconvening the NRC nomination committee and by sending a joint letter with NOAA Fisheries and the Columbia River Indian Tribes to the region requesting nominations for consideration by the NRC nomination committee. Cassidy seconded the motion, and it passed on a unanimous vote.

15. Update on long-term Bonneville fish and wildlife funding agreement

John Ogan, senior counsel and Doug Marker.

Bonneville's ratemaking schedule is a big determinant in the pace for pursuing an MOA on fish funding, according to staffer John Ogan. In June 2004, Bonneville will begin program-level discussions about rates, and the following February, Bonneville will start to schedule rate workshops, he reported. We'll need preliminary numbers for the MOA by then, and by June 2005, we'll need a figure that has had review, Ogan said. I expect the Council will ask Bonneville to document the steps so everyone understands where this is going, he added.

Ogan said he and Bonneville had discussed Steve Wright's statement about defining the agency's obligations for fish and wildlife mitigation. I'm focused on developing a performance-based construct that lends itself to estimating costs, tracking implementation, and providing accountability, he said. Bonneville seeks "a construct to frame our responsibilities under the Northwest Power Act," Lamb explained. We want measurable performance standards and a commitment to get to "an ultimate standard" – we want something that says, once you've met this standard, that is all you have to do, she added.

I see that as a complicated process and worry that it is an obstacle to getting this agreement accomplished, Cassidy stated. Our goal is not to increase or decrease costs, but rather this is part of the agency's overall effort to define objectives, Lamb stated. It sets up the goal before the dollars, she said. We have people looking at all areas of our operation wanting to know what they're getting for their dollars, Lamb explained.

A biological performance standard would be ideal, but a reasonable standard for us might be taking specific actions, such as removing a certain number of culverts, she said. You have to tie in some biological signals, Cassidy responded. It isn't complete until you tie in biological performance, Karier agreed. Eden said the funding agreement has to be more than an estimate of dollars, but must also address issues such as capitalization.

Mary Verner of the Upper Columbia United Tribes said a number of tribal organizations have passed resolutions in favor of an MOA, and there is a consensus among the tribes about getting a commitment on fish and wildlife funding. We're concerned about the idea of defining Bonneville's fish and wildlife mitigation obligations as part of this – these obligations have been defined in the Council's fish and wildlife program, she said. That's an open process, and "we don't want this to be taken behind closed doors," Verner added. She said there are many success stories on fish and wildlife, and they are not being reported. We want people to see what we are doing and to see the accomplishments, Verner said. She urged the Council to continue to

look at expenses within the current rate period. The fish and wildlife program is not being made whole for the hits it has taken in 2002 and 2003, Verner concluded.

16. Council Business

– Approval of minutes

Karier made a motion that the Council approve for the signature of the Vice-Chair the minutes for the November 18-20, 2003 meeting held in Coeur d'Alene, Idaho. Eden seconded the motion, and it passed on a unanimous vote

– Klickitat Subbasin Plan contract approval

Karier made a motion that the Council authorize the Executive Director to negotiate a contract with Klickitat County in an amount not to exceed \$67,975 to assist in developing subbasin plans for the Klickitat, White Salmon, Lower Middle Mainstem Columbia River (including Rock Creek) subbasins, pursuant to the Council's Master Contract for subbasin planning with Bonneville. Cassidy seconded the motion, and it passed on a unanimous vote.

– Possible consideration of participation in California Appliance Efficiency Litigation

Bill Hannaford explained that a court in California had agreed with appliance manufacturers and refused to reverse an action that keeps the manufacturers from having to release appliance-efficiency information to the California Energy Commission (CEC). The CEC is appealing the court's decision, and a number of parties have asked to file amicus briefs on the issues, he said.

If the California statute is pre-empted, we could lose the best, and in some cases the only, source of data that underlies reporting on conservation, Hannaford said. The Northwest is planning to submit a joint amicus brief, which Oregon is now drafting, and if the Council agrees, we would plan to review and sign it, he said.

Karier made a motion that the Council authorize the staff to seek amicus curiae status for the Council in an appeal in litigation brought in California that would foreclose the CEC from gathering energy and water-use efficiency data from the manufacturers of a variety of appliances, either by joining with another amicus party or by sending an independent letter to the court. Eden seconded the motion, and it passed on a unanimous vote.

Snohomish County PUD Letter

This agenda item was added at the meeting.

Kempton offered a motion that the Council approve, for the signature of the chair, a letter to be sent to Snohomish PUD regarding the IOU settlement, and Karier seconded. The motion passed on a unanimous vote. An excerpt from the letter states:

The Council is aware of the concerns that Snohomish PUD and other utilities have raised about the settlement. Nonetheless, the Council endorses the proposed settlement framework. A reduction in rates, settlement of litigation, and the ability of the region to focus on the future of Bonneville dialogue are all very important outcomes. This settlement was not intended to, nor could it, compensate for all of the hardships resulting from the 2000-2001

West Coast energy crisis. It is, however, an important step on the road to resolving the issue of Bonneville's future role. Failing to resolve this issue could have serious long-term consequences for the entire region.

Approved January 22, 2004

/s/ Thomas Karier
Vice-Chair

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