

Tom Karier  
Chair  
Washington

Frank L. Cassidy Jr.  
"Larry"  
Washington

Jim Kempton  
Idaho

W. Bill Booth  
Idaho



Joan M. Dukes  
Vice-Chair  
Oregon

Melinda S. Eden  
Oregon

Bruce A. Measure  
Montana

Rhonda Whiting  
Montana

## **Council Meeting Portland, OR February 13-14, 2007**

### **Minutes**

Bruce Measure made a motion that the Council meet in executive session at the close of the Council meeting on Tuesday, February 13, to discuss participation in civil litigation and internal personnel matters. Larry Cassidy seconded the motion, which passed unanimously on a roll call vote.

**Reports from Fish and Wildlife, Power and Public Affairs committee chair: Rhonda Whiting chair, fish and wildlife committee; Jim Kempton, chair, power committee; and Larry Cassidy, chair, public affairs committee.**

Power Committee chair Jim Kempton said the committee had a "very interesting" briefing on prospects for locating new nuclear reactors in the Northwest. He went on to report that staff is testing its short-term forecasting model, and preliminary results indicate it is tracking fairly well in terms of the real world. The committee heard a report on the work plan for the Resource Adequacy Forum and a presentation by Paul Norman of BPA on the Regional Dialogue Record of Decision, Kempton continued. We also heard a status report on the demand response process, for which more funding may soon be available, and a briefing on the wind integration action plan.

Rhonda Whiting, Fish and Wildlife Committee chair, reported that BPA's decision document on project selection had arrived just before the meeting, and staff has not had adequate time to review it. We need time to discuss how we are going to respond, she said. Staff presented the within-year budget adjustment requests for the first quarter, and we talked at length about the science policy conference proposed for the fall, Whiting said. She noted that if the Council is to use the results of the conference in amending its F&W program, the date may need to be moved forward.

We had a briefing on the NOAA Hatchery Reform Project and on the fish tagging in the Columbia Basin, Whiting continued. Bonneville made a presentation on PISCES and past fish and wildlife costs, and the presenters asked what the Council wants to see in the data output from the program, she said.

Cassidy noted that the Public Affairs Committee would meet at 5 p.m. that afternoon.

### **1. Recommendations of the Wind Integration Action Plan:**

Jeff King, senior resource analyst.

Staffer Jeff King brought the Council up to date on the Wind Integration Action Plan, a draft of which was completed in January. We are reaching a milestone in this process, with release of a final draft of the plan slated for next week, he said. This plan presents 16 proposed actions, the lead organizations for them, and a schedule, King elaborated.

We are seeing significant wind development in the Northwest, he continued. We have gone from near zero in 1998 to 1,200 MW as of December 2006, and there are a number of additional projects being completed, King said. We expect to have 2,700 to 3,800 MW in service by the end of 2009, which is about 6 percent of the total installed generating capacity in the Northwest, he added.

### **2. Demonstration of Northwest Environmental Data Network (NED) Portal:**

Peter Paquet, manager, wildlife and resident fish; Stewart Toshach, NOAA Fisheries; and Tom Pansky, Bonneville Power Administration.

Staffer Peter Paquet explained that the Northwest Environmental Data (NED) network portal is a tool for accessing an extensive amount of data in the region. The data remains on its original database, but the portal allows it to be “harvested” and used by others, he said.

Tom Pansky of Bonneville demonstrated the portal, noting that a workshop is planned for May or June to acquaint potential users with the NED portal.

This is a tool that helps us find out where we can go to locate particular data, according to Stewart Toshach of NOAA Fisheries.

### **3. Panel discussion and Council decision on availability of study fish for a 2007 Snake River fall Chinook transportation evaluation:**

Jim Ruff, manager, mainstem passage and river operations.

Council chair Tom Karier said reports of the Corps of Engineers’ difficulty in procuring fish for its 2007 transport/in-river study prompted him to call for a briefing from the Corps and parties to *US v. OR*. That study is a high priority in the Council’s fish and wildlife program, he added.

The presentations began with Witt Anderson of the Corps. The Corps’ goal in carrying out the transport/in-river study is to determine the best hydrosystem operating strategy for Snake River fall chinook, he said.

Stuart Ellis of the Columbia River Inter-Tribal Fish Commission (CRITFC) said a letter to the Corps from CRITFC executive director Olney Patt, Jr. is clear. The main reason we weren’t able to provide the fish is that we didn’t get all of the broodstock necessary to meet all parties’ needs for Snake River fall chinook production in 2007, he explained. Ellis said the *US v. OR* parties made significant compromises to get to a production agreement for 2007, and the tribes felt it was inappropriate to try to modify the agreement further.

Guy Norman of the Washington Department of Fish and Wildlife explained how the sampling procedure works to reconstruct the run for various studies. He indicated that the numbers of fish came up short, and given the priorities and problems this presented, parties to *US v. OR* could not reach consensus on whether to amend their agreement.

#### **4. Discussion of Bonneville decision on Council Fiscal Year 2007-2009 recommendations:**

Doug Marker, director, fish and wildlife division; Patty O'Toole, program implementation manager; and Greg Delwiche, Bonneville Power Administration.

Greg Delwiche of Bonneville gave an overview of his agency's decision document on funding the Council's recommended fish and wildlife projects for 2007-2009. He said the Council built flexibility into its package of recommendations, and Bonneville was able to use the flexibility to come up with a solid program of measures to fund.

In its funding decisions, Delwiche said BPA aimed to be consistent with the Council's fish and wildlife program in terms of the province-level budget allocations and the Northwest Power Act directive to protect, mitigate, and enhance fish and wildlife affected by development of the hydrosystem. Bonneville also tried to do "some educating" in the document about its strategies for carrying out the in-lieu provisions of the Act, he said.

In addition, we have integrated objectives of the new BiOp and incorporated projects associated with our 2007 settlement agreement with the tribes, as well as other projects that are primarily habitat measures, Delwiche reported. BPA has delivered its decision within the budget of \$146 million in 2007 and \$143 million in 2008 and 2009, he said.

The Council recommended funding 285 projects for 2007-2009, and we've chosen to fund 260, Delwiche continued. Of the 260, 212 are ongoing and 46 are new projects, he said. In addition, we chose to fund 41 others, most of which are part of the 2007 agreement with the tribes, Delwiche noted. The funds for these came from an additional \$3 million we allocated to the program and unspent carryover from the previous period, he said.

Did you fund the 260 projects to the level we recommended? Cassidy asked. Not in all cases, Delwiche responded. But I think we are in the same zone in that regard as in 2006, he added. We need to know the policy implications of the changes you have made, Cassidy replied. My quick review indicates that there were changes on 60 to 65 percent of the project budgets, Eden pointed out.

Of the 25 projects we did not fund, it was primarily for three reasons, Delwiche said: research, monitoring, and evaluation (RME) that was not clearly tied to mitigating for the FCRPS; other measures with an unclear nexus with the FCRPS mitigation obligation; and in-lieu projects that did not meet that standard. We have a high degree of consistency with the past in terms of the percentage of projects funded and the level of funding, he reiterated.

Our three-year planning budget of \$458 million is exactly the same as the Council's, but the shape of the spending is different, Delwiche stated. "Our budget is front-loaded," he explained.

How could your planning budget be exactly the same as ours if you have added money to cover the 2007 settlement agreement with the tribes? Karier asked. Is the settlement being paid for by

the unallocated amount in our recommendations? he asked. It was our understanding that the settlement funds were committed in addition to the Council's recommendations, Karier said.

I have asked Bonneville to delineate which projects are being funded with the "new" money and which projects are being funded with money that was already part of the program, Eden stated. That's information we should have, she said.

For 2007, our planning budget is \$160 million, and there is more flexibility in 2008 and 2009 for budget adjustments or new starts, Delwiche said. With 2007 already well under way, you should have a large carryover in 2008 and 2009, Cassidy pointed out.

Delwiche explained that as a response to the 2001 power crisis, Bonneville imposed a 10 percent "dead band" around the F&W budget to limit spending. But he indicated that would not necessarily apply in the current period. Overall, we both attempted to make recommendations that are consistent with the budget, and we both achieved that, Delwiche told the Council. "We didn't get this 100 percent right," and we would be willing to entertain adjustments, he stated.

Kempton questioned language in BPA's decision document, indicating that the agency was creating a new category of projects that deviates from the Council's recommendations. I don't see how BPA can put things in another category that we didn't recommend, he commented. I see this as a weakness in BPA's analysis of its responsibility under our F&W program, Kempton stated.

Your letter makes reference to the Council's 70-15-15 allocation for anadromous fish, resident fish, and wildlife, Cassidy said. It indicates BPA considered this policy and sought to be consistent, but that the agency isn't required to do so, he added. Cassidy questioned the basis for that conclusion.

Delwiche went on to explain BPA's view of the in-lieu provisions of the Act and the obligations of others with regard to fish runs that were extirpated by non-federal hydro projects. He pointed out that salmon historically migrated above the Hells Canyon complex and Avista-owned dams. These are not FCRPS projects, so we considered what role BPA should play with regard to mitigating for them, Delwiche explained.

One approach to mitigation in these areas is resident fish substitution in lieu of replacing salmon runs, he said. It seems totally appropriate that parties with a role in salmon extirpation have "a heavy responsibility" for mitigation, Delwiche went on. We did not fund projects in the areas of these non-federal dams without a big cost-share component, he stated. Delwiche explained that some projects were funded with an expectation that a 25 to 30 percent cost-share would be ramped in over the funding period.

With regard to other issues, BPA had expressed its desire to see 70 percent of the funds spent on the ground, 25 percent spent on RME, and 5 percent on infrastructure, he said. The Columbia Basin Fish & Wildlife Authority (CBFWA) suggested 55-40-5, and your recommendations were in about that same range, Delwiche reported. While we've raised the issue many times, we agreed to fund in about that zone, he said.

There is a difference of opinion about what belongs in those funding categories, Cassidy pointed out. "We don't have a vendetta against RME," Delwiche responded. But it is a rare scientist

who says we have gathered enough information, he added. Delwiche pointed out that on other dammed river systems, you don't have these elaborate programs, yet fish and wildlife agencies manage to do their work.

We went with the Council's recommendation for coordination in 2007, but for 2008 and 2009, we did not take a position on how coordination should occur, he said. We just said the level of the budget should be equal to what CBFWA received in 2006, according to Delwiche.

With regard to capital, our decision is incomplete, he reported. There is much uncertainty about capital project schedules and the timing on land acquisitions, Delwiche pointed out. We did not prioritize your capital recommendations, but they are considerably above the \$36 million annual planning budget, he noted.

For the next project solicitation, we hope we can break things into pieces, rather than having to decide on half a billion dollars in projects all at once, Delwiche said. Maybe we could work on new and ongoing projects separately next time or work by geographic areas, he suggested.

Rhonda Whiting said the Council would be responding to Bonneville's decisions. She pointed out that the Columbia River system is unique, and the RME efforts on other river systems don't provide a good comparison. Whiting also contended that the Council is in a good position to gauge social, political, and economic issues in the region, as well as to do scientific analysis, and has done much to bring the public into the project selection process. The Council has met with CBFWA to come up with a consensus model for coordination activities, and more work is being done to define products that should come from coordination activities, she said.

Cassidy said the Council may need another meeting to consider its response to Bonneville. I see two issues, he said: how much the project budgets have changed from the Council's recommendations and a legal review of "the interesting verbiage" in the document relative to BPA's obligation to be consistent with the Council's program. The language may be geared to the Ninth Circuit, Cassidy added.

We expect substantial alignment with our program, Karier agreed. There is "some unfortunate language" in this letter, which seems inconsistent with the recent Ninth Circuit ruling, he stated.

## **5. Council decision on first quarter within-year funding adjustment requests:**

Mark Fritsch, manager, project implementation.

Staffer Mark Fritsch reported that the Budget Oversight Group (BOG) received 12 requests for F&W budget adjustments during the first quarter of fiscal year 2007. BOG recommends funding four of the requests for a total of \$70,907 in expense and \$123,034 in capital, he said. In addition, we recommend referring a study related to hatchery steelhead in Abernathy Creek, Washington, to the ISRP for review, Fritsch said.

Whiting made a motion that the Council recommend that Bonneville make the within-year funding adjustments proposed by Bonneville and as defined and conditioned by the staff and recommended by the Fish and Wildlife Committee with changes adopted by the members at today's meeting. Cassidy seconded the motion, which passed 7-0; Joan Dukes was absent for the vote.

## **6. Update on 2007 runoff forecast and power supply outlooks:**

Jim Ruff; and John Fazio, senior power systems analyst.

We reported in January that the early season snowpack levels looked good in the Columbia Basin, but we've been in "a mini-drought" since then, according to staffer Jim Ruff. We are now losing snowpack as a result of sublimation, he said. Graphs show overall snowpack in the basin to be tracking just below average as of the first of February, Ruff noted.

Despite the drop in the runoff forecast, staffer John Fazio said the region would still have an adequate power supply. We have a 95 percent confidence level that the final runoff will be somewhere between 78 and 123 million acre-feet (MAF), he said. The lowest runoff on record is 54 MAF and the highest is 159 MAF, Fazio pointed out.

## **7. Briefing on adult salmon return forecasts:**

Pete Hassemer, Idaho Department of Fish and Game.

Pete Hassemer of the Idaho Department of Fish and Game recapped the 2006 spring chinook salmon return to the Snake River and presented the forecast for 2007. He described the chinook salmon counting and management periods, noting that the first commercial test fishery may take place February 27 in the lower river.

My last point is that every number used in this presentation is collected without BPA funding – the dam, hatchery, and index counts, Hassemer said. There is a lot of data collected and many databases that are funded by other sources, he commented.

## **8. Possible Bonneville budget update:**

Mark Walker, director, public affairs division.

The most onerous provision in the President's 2007 budget proposal for Bonneville does not show up again in 2008, but the second most onerous does, according to staffer Mark Walker. In 2007, the federal budget proposed including third-party debt in the calculation of Bonneville's capital borrowing authority, he explained. That was an extremely onerous provision since it would have affected BPA's ability to borrow for transmission projects, Walker noted. But, he indicated, that proposal was eventually dropped. The "truly good news" is that the Administration did an "about-face" on third-party financing for 2008 and is actually encouraging such deals, Walker reported.

On the downside, a second onerous 2007 proposal is back on the table, he said. The President's budget proposes to take Bonneville's secondary revenue above \$500,000 and use it to make advance payments on bonded debt, according to Walker. A Bonneville analysis shows this would increase debt amortization by \$646 million over five years, he said.

The Council analyzed the effect of the proposal and estimated it could raise rates to BPA's customers by about 7 percent, Walker reported. He asked the Council to take a look at a staff analysis of the impacts and approve it for release. None of the members objected to the release.

## **9. Briefing on Council external financing:**

Steve Crow, executive director, and Sharon Ossmann, administrative officer; Tom Eckman, conservation resources manager; and Erik Merrill, ISRP/ISAB coordinator.

Staffers Sharon Ossmann, Erik Merrill and Terry Morlan briefed the Council on the administration of contracts that are funded with supplemental funds outside the Council's regular operating budget. In fiscal year 2006, the Council administered contracts worth about \$1.5 million that were covered with supplemental funding from Bonneville, Ossmann said. Staff noted that all contracts follow the Council's standard contracting procedures and are included in outside audits, along with other Council financial transactions.

Merrill explained administration of the contracts for the ISAB and the ISRP. The ISAB has a budget of about \$550,000 annually and the ISRP budget is about 500,000 annually; they are funded through Bonneville's fish and wildlife program, he reported. There are about 40 contracts let for both entities each year, and members bill on a time and task basis for work that is outlined in statements of work, Merrill said.

Morlan reported that the Power Division staff administers contracts worth about \$700,000 annually, most of them related to conservation activities. There are three major activities, he said: conservation reporting and tracking; the Regional Technical Forum (RTF), and large-scope projects such as analysis of efficiency opportunities that are beyond those addressed by the RTF.

## **10. Update on Fish Passage Center Litigation:**

John Shurts, general counsel.

Staffer John Shurts briefed the Council on a ruling by a panel of the Ninth Circuit Court of Appeals regarding Bonneville's decision to de-fund the Fish Passage Center (FPC). The Northwest Environment Defense Center filed a petition challenging Bonneville's actions in de-obligating funds for the FPC, and the court ruled in favor of the petitioners, he explained.

The court addressed the issue of whether Bonneville's action was consistent with the Council's program, Shurts said. Bonneville has an obligation to explain its rationale for actions that are inconsistent with the program, and its actions cannot be arbitrary and capricious, he said.

Bonneville had justified the de-funding by saying it was obligated to follow that course as a result of language in the Congressional Record and committee reports, Shurts explained. The court declined to look at the other reasons Bonneville offered and said the Congressional committee language did not obligate Bonneville to take the action it took, he said. The court granted the Center's petition and directed Bonneville to continue to fund the FPC, Shurts said.

Of the most interest to the Council is the court's language on consistency with the fish and wildlife program and the statement that Bonneville must provide its rationale to move away from the program, he continued. According to Shurts, Bonneville has 45 days to appeal the court's decision, and if it does so, one of the issues will likely be the relationship between federal agencies and the court. In its budget, Bonneville has said it will continue to fund the FPC through November 2007, Shurts said.

Karier suggested that in light of the decision, the time is at hand to act on the FPC Oversight Board, which has been on hold pending the outcome of the litigation. It's time to re-energize the board, and Bruce Measure has agreed to serve on the board for the Council, he reported. We should take nominations for new members and re-appointment members, Karier said.

#### **11. Discussion of agenda for Fish and Wildlife Program science policy conference and staff-led evaluations:**

Doug Marker; and Lynn Palensky, program planning and special projects coordinator.

Marker brought the Council up to date on discussions of a two-to-three-day fish science policy conference to be held in late summer or early fall. The objective would be to bring the latest science to bear on upcoming fish and wildlife program amendments, he said.

Staff discussed potential topics with the fish and wildlife committee, Marker noted, including Snake River fall chinook over-wintering behavior; mainstem adult and juvenile survival with RSWs; ocean conditions; estuary and plume; and habitat strategies. The committee recommended broadening the discussion to involve others outside of the staff and to set an earlier target date for the conference, he said. There was also a suggestion that we narrow the topics to no more than three, Marker stated.

It is important that the presenters represent a range of views, Eden stated, and Whiting concurred. The Council agreed staff should move ahead with planning.

#### **12. Request to comment on Council ocean paper**

Measure made a motion that the Council approve for the signature of the Vice-Chair the minutes for the January 16-17 Council meeting held in Vancouver, Washington. Cassidy seconded the motion, which passed on a 7-0 vote. Dukes was absent for the vote.

Meeting adjourned at 12:10 p.m.

Approved March 14, 2007.

/s/ Joan Dukes  
Vice-Chair

---

x:\jh\ww\minutes\feb07short version.doc