Henry Lorenzen
Chair
Oregon

Bill Bradbury
Oregon

Phil Rockefeller
Washington

Tom Karier
Washington

Northwest **Power** and **Conservation** Council

W. Bill Booth
Vice Chair
Idaho

James Yost
Idaho

Pat Smith
Montana

Jennifer Anders
Montana

Council Meeting
Redmond, Oregon
June 14 and 15, 2016

June 14, 2016

Council Chair Henry Lorenzen called the meeting to order at 1:30 p.m. All Council members were in attendance.

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

Fish and Wildlife

Council Member Jennifer Anders, Fish and Wildlife Committee Chair, reported that the committee had six agenda items on its plate, starting with an update on the research plan. Patty O'Toole presented a categorized list of critical uncertainties. The committee will work with the workgroup to prioritize those uncertainties after the group analyzes how many research dollars have been spent to date.

Second was wildlife project review update by Lynn Palensky, program development manager. She provided an overview of the last review, which was completed in 2009. Representatives from BPA discussed what happened since the last review, and discussed the new Lands desk books. They talked about land management planned stewardship funding and asset management, and the next wildlife review will begin sometime this next winter.

They heard about the Regional Coordination Forum, which met in Boise last month. They heard from representatives from the Klamath Basin in California, and how they respond to conditions that cause fish mortality, similar to what was seen in 2015. There were questions if a similar fish warning system was warranted. The fish managers presented an update on actions to reduce fish mortality due to high-water temperatures in the Basin.

They received an update on emerging priorities — including an assessment on BPA-funded hatcheries. Nancy Leonard, fish, wildlife and ecosystem M&E report manager, discussed a work session on natural origin salmon and steelhead objectives, and the next steps for those

refining objectives. She gave an update on the artificial production map, which is live on the Council's website.

Laura Robinson, program implementation and liaison specialist, discussed the status of the staff white paper evaluating fish passage studies at high head dams.

The cost-savings workgroup had an update on the process to explore cost savings on initial projects, focused on relative reproductive success.

Last, NOAA's regional partnership workshop was held in Portland June 7. The meeting focused on harvest, hatcheries and hydropower. Further work will be done in the fall.

Power Committee

Council Member Tom Karier, Power Committee Chair, reported that the committee discussed the tour of the Newberry geothermal crater, which was led by Pacific Northwest National Laboratories. It's an innovative, enhanced engineered geothermal project, he said. It's not a conventional geothermal project. With a conventional geothermal, you need to drill, find water, faults, and it has to be the right temperature and depth. Enhanced geothermal just needs hot rocks at a reasonable depth. The faults can be created through a fracturing process. It's similar to gas, but more benign. The water supply can be taken from aquifer, and it doesn't use a lot of water, if any. They're trying to get a DOE grant to finance it. If it does work, it could serve as low-cost, renewable, baseload generation. Look at the Council's website for more on this technology.

A paper was released proposing to start a demand response advisory committee and a system integration forum. It proposed that demand response is an undersold resource. How do we develop it? Will see a proposal for the Council to consider next month. There IS a difference between demand response and blackouts.

Staff has committed to work on IRPs and help utilities work on their IRPs. All the IOUs and large publics do this. The Council is looking for additional information that's not traditionally from IRPs.

There is a new adequacy assessment that the Council conducts every year, which will come back to the Council. The conclusion looking five years out sees a 10 percent loss of load probability rather than the 5 percent standard. That's too high a probability. We have five years and resources can be developed in time to resolve it, Karier said. We need 1,000–2,000 MW. It could be demand response, gas plants or other options.

The committee heard an analysis of comparing power bills. We see analysis of costs and markets, but we don't see what's happening with bills. They did a comprehensive look at why public and private bills are different, and this will be shared at the Council meeting later today.

Public Affairs

Council Member Jim Yost, Public Affairs Committee Chair, reported that the committee discussed three issues at their meeting in Boise. They agreed to sponsor a sturgeon conference in Hood River for $500.

The selected OMBU for the redevelopment of the Regional Technical Forum website.

They had a demand response conversation on the webpages. Staff distributed an explanation of demand response and the committee liked the draft pages. But they want more time to review them and will let the staff know about any revisions.

There will be public affairs meeting after today's meeting to discuss the congressional tour in Washington State.

1. Welcome and presentation by the Warm Springs Tribe

Bobby Brunoe, general manager of natural resources and tribal historic preservation officer; and Brad Houslet, fisheries manager for the Confederated Tribes of the Warm Springs Reservation of Oregon, greeted the Council with a presentation on Warm Springs' culture and history.

Houslet and Brunoe discussed the various projects that the Tribe is engaged in, most of them developed through the accords. The projects are focused on improving Chinook production, habitat restoration, passage and access, wildlife mitigation, natural production monitoring and Pacific lamprey monitoring.

2. Council decision to release for public comment an issue paper on the comparison of residential power bills.

Massoud Jourabchi, economic analysis manager, and Tom Eckman, senior advisor, briefed Council members on their findings comparing residential power bills between customers of public utilities and investor-owned utilities.

Last March, staff was asked to evaluate average energy costs on an annual basis and an average bill. They wanted to see if there was a correlation between bills people pay and different variables: urban versus rural density, access to natural gas, heating system efficiency, home vintage, housing type mix, historical energy efficiency by the utility, household income and the level of poverty.

Eckman said there are regional differentials in rates between the investor-owned utilities and amongst the public utilities. Staff is asking to release the paper, and will be making additional edits to make portions more clear.

Eckman explained that when he refers to rates, it is the average revenue collected per kilowatt or megawatt hour. It assumes we're collecting both fixed and commodity costs all in one piece, he said.

Some of their key findings include:

- Over the past decade, the average residential customer paid about $84 per kWh for electricity, although the average cost per MWh has increased by 18 percent over this period. For publics and IOUs, there has been a gradual increase in real costs per unit of electricity since 2005. But terms of consumption, it has declined slightly, with the average consumption per household declining by about a megawatt per year.

- Over the past decade, the average residential customer in the region paid an average of $1,000 dollars per customer per year for electricity. It's changed from just under $1,000 to just over. "We've seen a 7 percent growth in the bill, but an 18 percent increase in the price," Eckman said. The bulk of the residential bills are between $700 and $1,500 per year.

- Only two factors contributed to a difference in the average annual electricity use between publicly utilities and IOUs:

    - Access to natural gas (where bills were lower, mostly in urban areas); and
    - Historical energy efficiency – They looked at investments and resulting savings for energy efficiency from 2005 to 2014, and how that related to annual consumption and a change in overall bills.

Jourabchi said staff also examined the level of poverty and found that it was not a critical factor in comparing publics to IOUs.

Member Anders asked how staff intended to use the report. Eckman replied that they just want the information available. It's good for public discourse.

Member Bill Booth asked if they looked at the impact of new construction. "I've learned that basing decision on averages is often not very wise," Booth said. "But it's what we have as a tool." Booth added that we've had changing demographics, and we have all these new homes, which will have an advantage over older homes. Plus, there's been an apartment boom, and there have been consistent rate increases, probably 7 percent over 10 years.

Eckman replied that that's in real dollars, and it's even more than that in nominal dollars. He said they looked at home vintage and housing-type mix. They didn't see much differentiation between IOUs and the public utilities. There was a difference in home vintage. In some areas, such as Seattle, there are more multifamily homes in the area served by Puget. There's more difference between the publics themselves than between the publics and the IOUs.

Council Member Phil Rockefeller asked what's the difference between the IOUs' and publics' bills? Eckman replied that the IOUs have an average annual bill $60 higher than the publics.

"That's after considering the residential exchange?" Member Rockefeller asked. Eckman said yes, the difference would be bigger without the exchange. Also, there's no good data source that isolates territories with natural gas service. You have multiple gas service areas, served by multiple electric utilities.

Member Rockefeller asked for a state-by-state breakdown of the share between publics and IOUs and Eckman said that they would provide that information.

Member Bill Bradbury asked if Eckman could restate the issue of significant investments in conservation and the impact it seemed to have. “Because I was expecting a different answer,” he said.

Eckman said that staff investigated the fraction of each utility’s regional sales, and the fraction of the conservation they had done. Utilities that did more conservation had lower increases (and some decreases in average bills), than those who didn't spend as much. IOUs represent 55 percent of residential sector sales, but they did 63 percent of the conservation over that decade. As a consequence, those overall bills didn't grow as fast.

Member Karier recommend that the paper be released for comments, and be revised as needed for clarity.

Member Lorenzen said it is the consensus of the power committee is that the paper be released for comment, but staff would have the authority to make a structural reorganization of the document.

Northwest Power and Conservation Council Motion that the Council Release the Issue Paper on “Northwest Residential Electric Bills” for Public Comment

Member Booth moved that the Council release for public comment the issue paper on “Northwest Residential Electric Bills” for a period of 30 days, as presented by staff and recommended by the Power Committee [with the changes made by the Members at today’s meeting].

Member Karier second.
Motion passes without objection.

3. Update on Mitchell Act hatcheries and other activities

NOAA Fisheries’ Rob Jones updated Council members on Mitchell Act hatchery funding. While the funding hasn’t increased, it has remained steady. The Mitchell Act was passed in 1938 to mitigate the impacts to fish from water diversions, dams, pollution and logging.

Jones serves as the anadromous production and inland fisheries branch chief for the sustainable fisheries division of NOAA Fisheries, West Coast Region. He said that the region’s 330 hatchery programs offer risks and rewards. The hatcheries are funded for a reason, as more than one species likely would be extinct without artificial propagation from hatcheries. He said that 28 of the remaining 52 distinct populations of salmon and steelhead on the West Coast are protected under the ESA. In addition, the hatcheries help meet trust obligations to the tribes and mitigation agreements. He added that nontribal fishing opportunities would go unfulfilled but for artificial propagation. The region is reliant on artificial

propagation as hatchery fish now make up between 60 and 95 percent of all salmon and steelhead recruits, and ocean and inland fisheries rely almost entirely on hatchery fish.

Some of the risks associated with hatcheries are that the gene flow between hatchery and natural fish can erode diversity and resilience to variable and changing environmental conditions. Other risks include competition and predation between the hatchery and natural fish, the impacts of weirs and water intakes, removing fish from the natural population for hatchery broodstock purposes, and reduced flows.

Funding: Congress appropriates Mitchell Act funding one year at a time. “It’s been a problem for us, because we never know what we could get in a subsequent year,” Jones said. In the last 10 years, funding has been static at an average $15–$20 million annually. More than $3 million goes to screens and fishways; $1 million for monitoring, evaluation and research; and the balance ($10 to $15 million) funds hatchery programs in Idaho, Oregon, the U.S. Fish and Wildlife Service and Yakima Tribe. The Nez Perce also receives some funding.

Under National Environmental Policy Act and ESA, NOAA has completed an EIS for dispersing Mitchell Act funds across the Columbia River Basin. Under ESA, NOAA is preparing a BiOp for 63 hatchery programs proposing to receive Mitchell Act funding this year.

The health and viability of natural populations is the benchmark for NOAA determinations. The primary goal of the ESA is to preserve the ability of natural populations to survive in the wild, Jones said.

NOAA has added staff to accelerate ESA and NEPA compliance reviews for 172 Hatchery Genetic Management Plans (HGMP): 82 on the Columbia, 42 on the Oregon Coast, 45 in Puget Sound and three in California.

Jones said that hatchery programs could accomplish their purpose by including certain reforms. The National Marine Fisheries Service (NMFS) has been working with hatchery operators to identify and tailor reforms for hatchery programs that propose to receive Mitchell Act funding.

Reforms include:

- Refuges free from hatchery intervention
- Phase out stock transfers
- Limits on straying and gene flow
- Intake screens that meet criteria
- Evaluate methods to mitigate the effects of climate change

Member Karier asked why there aren’t HSRG standards. What are the impacts of hatchery fish on wild fish and harvest? Why aren’t those on the list?

They should be on the list, Jones said. Limits on straying and gene flow are short for the HRSG metrics. What those metrics look like varies from place to place. But for these

programs, there wouldn't be certain fisheries. The HGMP is used to apply for an exemption to the ESA's take prohibitions. Jones said they're working to accelerate their review process.

Hatchery programs also need an exemption to take ESA listed species under USFWS jurisdiction. Under such circumstances, NOAA must complete a consultation with USFWS before it can issue an exemption.

Member Karier asked if Jones could give an example of a fish and hatchery where's that's working. Jones answered the salmon in the Puget Sound on the Dungeness River in the Strait of Juan de Fuca.

Jones wrapped up his presentation listing NOAA's experience with hatchery litigation:
Its first litigation in 2011-12 was over the Sandy River in Oregon. "The good news is that we won," he said. "We better explained our position, the judge deferred to us on most of the claims, and the hatchery operates to this date."

There was ESA coverage, but the plaintiffs didn't agree it was sufficient, he said. There was a similar situation on the Elwha River. The plaintiffs have appealed to the Ninth Circuit and they are still waiting for a decision on that case. "So far, we've won on about every issue," he said.

There was litigation that prevented Washington from releasing steelhead in the Puget Sound. We issued an exemption for five steelhead operations there, he said. That litigation is still being waited upon.

Regarding the McKenzie program in Oregon, the Department of Fish and Wildlife and the U.S. Army Corps of Engineers agreed on a hatchery plan. It seems to have quelled the complaint.

The Leavenworth National Fish Hatchery is relatively new, he said. They issued a take exemption and plaintiffs have filed litigation. It's in its initial phase. The issue is over operations and dewatering the creek. The claim is that the hatchery has changed the creek's nature.

"We're better today than we were five-to-six years ago," Jones said. "We're getting more experience in court. I'm sure we'll be back in a year or two to say the same thing."

Member Booth asked if Jones could recap the funding situation for screens. "What's been happening and where do you see it headed?"

Screens in fishways have shrunk as a total program, Jones said. They used to go to build screens. Now the money is used to maintain existing screens. "I can't see us getting back into the construction business."

Member Booth asked what's been the change in funding levels? Jones believes it's been static at $3 million. It took a hit in the five-year period from $4 million. The program hasn't kept up with inflation. Still, the states have done very well with less and less.

Jones said that they have been working on and off with Lower Columbia hatchery managers for some time. But their priority has been upriver as of 2008. Now they're moving downriver.

“These programs go back to the 30s and 40s, and now they’re being held together with bailing wire and duct tape,” Jones said. “Owners put very little money into maintenance or improvements, so when you’re looking at a Mitchell Act facility… it looks very little like todays newer hatcheries.”

Member Karier observed that looking at the number of hatcheries they have to review, what is the consequence of that time frame, of taking four years to do a review?

Jones replied that there are a lot of exemptions, such as Puget Sound steelhead, which doesn't expire unless something changes. “We’re doing more and more of those,” he said. “Idaho has been very patient with NOAA. We finished Snake River sockeye and fall Chinook. We know how to do this and have an agreed-to process for eliminating the backlog.”

In Puget Sound, they gathered the 20-plus tribes, states and feds, to determine the priority for moving through the 104 programs. They are doing that in the Columbia as well.

4. Comments on retiring from the Council

Tom Eckman, senior advisor, and former director of the Power Division, reflected on the history of the formation of the Council and what’s happened over the past four decades. He said it began 40 years ago this month, when Administrator Don Hodell issued the notice of insufficiency to public utilities, saying that after 1983, they couldn’t meet load growth.

That set in motion activity among the public utilities for the first time. The IOUs had been cut off from Bonneville. Publics still hoped there would be sufficient resources to carry on. Less than a month later, support for WPPS failed. The region’s utilities huddled to figure out what to do about it. The legislation introduced ended up being the Power Act. There were 37 field hearings. Today it’s unimaginable that you’d get four to five house and senate members asking how to solve the problem. Over three years, multiple bills were introduced and finally one passed in the waning hours of the 1980 session that became the Power Statute.

The first drafts had the PNUCC board being the Council members, the BPA administrator was an ex-officio member, and they would decide the region’s energy future. That original structure didn’t set well. Instead, the utilities asked BPA to be the risk bearer to spread the cost and finance thermal plant development. In that original proposal, there was no public involvement, no fish and wildlife, no state government involvement at all, no cost-effective determination, and no least-cost planning. But when the legislation came out three years later, all those things were in there.

Eckman said that it’s a testament to this organization and the regional utilities that we’ve built an architecture that has sustained itself as well as it has. “I spent three years opposing that legislation and now have lived with it for 35 years,” he said.

Eckman said he had 3.5 lessons to share:

“Be patient. As a trained forester, I’m patient. This agency needs to be patient. We’re operating a big power system that’s like a supertanker. It’s a good thing it doesn’t turn very fast. We don’t want to make quick decisions, such as abandoning energy efficiency in the 90s, thinking that the market would take care of it. Let’s not do that again. Those are short-term corrections that are hard to recover from. It’s taken 35 years for this region to grasp that energy efficiency is a resource. No one imagined that when the Act was passed that more than half our load growth would be met with energy efficiency. It’s a testament to the agency pushing and being patient.

“Be persistent. We do the least-cost thing. The proclivity is to do what’s convenient or politically expedient. That’s why we have a statute that directs us to buy the cheapest thing first. Our goal has been to make that happen.

“Stay objective. We don’t have regulatory authority. We’ve succeeded because we do objective and unbiased analysis. That’s how we get things done.”

Eckman concluded by sharing a question he was asked by a Portland State University student: “What should be written into the Council’s statute to make it work better?”

Eckman replied, “The statute has two definitions: one for consumers (end users) and one for customers (customers of BPA). It splits the region into two pieces that really shouldn’t be separate. The statute directs us to look at that the consumers’ costs. The intermediary, customers of BPA, look at rates rather than bills, because they have to be the arbitrator on how to reallocate costs when revenue they collect doesn’t meet the costs they have. They feel all the pain and none of the benefit.”

“If we didn’t differentiate between customers and consumers, we wouldn't have that problem. Until then, it will be rates versus bills, and we’ll high center on that discussion until we change that.”

Member Lorenzen expressed how much he’ll miss Eckman’s intellect and humor. He said it has been a pure joy to work with him in developing the Seventh Power Plan.

Member Karier observed that he had worked with Eckman longer than any other member, finding him always upbeat and enjoyable. He’s touched so many lives and has left a great legacy, he said.

Member Bradbury shared that he has always been so appreciative of Eckman’s contribution. “For me, it’s a belief in the value of conservation, but for you, it’s the facts,” he said. “We’re a model in this country for how you can do this and I give you a great deal of credit for that.”

Member Pat Smith said that his happiest day was when Eckman became the head of the Power Division. The mark of a good leader is to lead by example, and Eckman’s leadership and achievements are reflected in the Seventh Power Plan and policy.

Member Lorenzen said, “Whenever I had a brilliant idea, you said, ‘been there, done that, and it doesn’t work.’”

Member Anders said that we work in such a dynamic system and said Eckman made no enemies, and is well respected by all. “I want to remind you that retirement is switching bosses, from the one who employed you to the one who married you,” she said.

Member Rockefeller said that as chair during much of Seventh Northwest Power Plan, he thought it would be a big challenge. But Eckman explained it in such a way that he could understand it. “There was never a doubt in my mind that it would be adopted by all of us,” Rockefeller said. “It’s a tribute to your persuasive logic, fairness, and ability to integrate all our thoughts and feedback. It’s been an honor for me.”

Member Yost said he knew that Eckman would be an advocate for energy efficiency, and that the Seventh Plan would be stamped out of aluminum. He answered the questions and didn’t provide favors for any side. “I’ve treated him fairly but not easily,” he said. “I appreciate what he’s done and the contributions he’s made.”

Member Booth said good luck, Tom!

Jim Yost announced the cancellation of Public Affairs Committee meeting, which was scheduled for that evening.

Member Lorenzen adjourned the meeting at 4:37 p.m.

June 15, 2016

Member Lorenzen brought the meeting to order at 8:32 a.m.

5. Briefing on Federal District Court decision on 2014 FCRPS Biological Opinion

The decision on the BiOp by Judge Michael Simon has been out for a month, and the Council received an on-the-record briefing on the opinion by John Shurts, staff general counsel. The BiOp is the federal government's framework for protecting endangered salmon in the Columbia River Basin.

“It’s a federal district court judge who has found fault with the BiOp … so what else is new?” Shurts said. “It’s the fourth time in the in last 16 years, and it’s an event we’re used to having happen. But some things about this one are new and a little different.”

Judge Simon ruled that NOAA Fisheries violated the Endangered Species Act. The jeopardy analysis with regard to effects on listed salmon and steelhead was ruled to be an arbitrary and capricious review standard.

However, on whether the critical habitat of ESA fish was modified, the federal government prevailed — the judge ruled that hydro actions themselves in the migration corridor did not violate the standard. The court said that there is a solid body of evidence that actions have brought survival benefits.

The judge also challenged the record of decision from two of the three action agencies: Army Corp of Engineers and the Bureau of Reclamation. BPA is not a party of this particular litigation. There's a separate piece of litigation against BPA that's stayed in the Ninth Circuit pending the outcome of this case. Judge Simon ruled that the Corps and the Bureau failed to comply with the National Environmental Policy Act (NEPA) by not preparing and considering an environmental impact statement before approving the records of decisions for operating the FCRPS.

Shurts explained that the prior judge, Judge Redden, had a habit of taking a bunch of issues, ruling on one and sending it back. Judge Simon ruled on a whole bunch of issues. Here, we have a BiOp tossed out that people had to follow anyway.

The specific issues ruled upon include:

The **Recovery Prong** of the jeopardy standard is you can't reduce the likelihood of survival in recovery. Judge Simon ruled it wasn't the correct recovery standard. They have to go back and rethink how they reword the analysis.

The **jeopardy analysis** with regard to effects on listed salmon and steelhead was ruled to be an arbitrary and capricious review standard.

A lot of the **offsite mitigation analysis** was arbitrary and capricious. A record of where the benefits were was highly uncertain. "There's a broad range of benefits that could be suspected, but the judge didn't buy it," Shurts said. "He concluded that there was a lack of a reasoned link between the uncertain benefits and the conclusions."

Council Member Tom Karier remarked that this is the area he found most challenging to the Council's program: "We're heavily based on habitat," he said. "Over a 20-year period, we've spent $200–$300 million monitoring and doing research on the effectiveness of all this. Reading the judge, I didn't get a sense he was familiar with that body of research, and made decisions on biological effectiveness that seemed unusual for a federal judge. I didn't see some of the positive results reflected in his comments."

Member Karier asked if it was a legal or biological issue on whether there's uncertainty.

Shurts replied that some other judge might have deferred to the agencies' view, but this one didn't. He didn't find the uncertainty troubling, he found that converting that into evidence of survival was a problem. It's one of the big challenges going forward: how to rely on these actions, how to fund and implement them, and how to use them in ESA analysis to offset the impact of FSCRS operations is going to be a challenge.

On the issue of **climate change**, Judge Simon faulted way federal agencies analyzed the impacts and how they factored into the jeopardy analysis. They understand that climate change is coming, but in his view, there's a record of scientists who say the range is unknown. He said that the agency didn't take into account uncertainty of the environment and the effect of the actions being implemented.

This judge looked into work being done in the Central Valley. He looked at an agency that did more with analyzing the effects climate change. Judge Simon got deep into what he regarded as the arbitrary and capricious analysis.

Member Yost said, “In summary, you’re saying that the judge was critical of agencies using uncertainty in some actions, but he didn’t have a problem with the uncertainty of climate change.”

Shurts replied that the judge thought uncertainties were okay, but his problem was that conclusions were made based on the uncertainties we had. We’re pretty good with grappling with uncertainties in power planning modeling, but applying it to jeopardy analysis is going to be a challenge going forward.

References to “uncertainties” appeared more than 60 times in the opinion, Shurts said.

On the **critical habitat** ruling, the federal government prevailed. In here, the federal government had a set of actions. The court said there is a solid body of evidence that actions have brought survival benefits.

On the NEPA ruling, Shurts summarized the decision by saying that what was comprehensive enough was too old, and what was old was not comprehensive enough. Federal agencies have been riding on that coverage for some time, Shurts said, and the judge said it’s not fresh enough for the analysis needed. The judge realized that at this stage, he couldn't tell agencies what to do, but he wants a comprehensive EIS. Therefore, the challenge going forward is how the federal government looks at the NEPA piece.

Judge Simon ordered the federal defendants to file their NEPA compliance plan by June 3, which was accomplished. Then, the judge asked for a new FCRPS BiOp in two years (due March 2018), which has to be done anyway. The problem, Shurts said, is that coordinating a five-year NEPA process with the need to produce a new BiOp is going to be a puzzle.

The plaintiffs were to file a response by June 17. Feds would reply after that. There presumably will be a court order regarding the NEPA ruling after that, Shurts said.

Will there be an appeal? Shurts said he didn’t know. They needed to produce a new BiOp anyway. Plans were gearing up for how they were going to do that. Rather than stall and go to an appeal, maybe just get on with working on a new one. Or they could appeal.

Will the plaintiffs request any interim injunctive relief regarding spill, flows or other actions as they did following the 2004 BiOp remand, which resulted in Judge Redden’s spill order? Shurts said he’s heard no indications that it will happen. We’re outside the spring migration anyway.

There’s a concern that this will take precedence over all the other work that has to be done. Scoping meetings for this NEPA process are going to be wild. It will look at flow and spill issues we’ve seen before. It will be the most critical aspect of what happens next.

Shurts discussed other decisions and litigation. There were two other decisions riding on the jeopardy analysis: BiOp for Upper Snake, which continues to 2036. It rode on top of comprehensive analysis that the judge has found some fault with. How that will affect the Upper Snake BiOp is uncertain.

Jeopardy analysis also covers the implementation of the *U.S. vs. Oregon Harvest Management Agreement*. It's tied together with the U.S. Fish and Wildlife BiOp regarding the effects on bull trout, and on the Libby Dam regarding the effects on Kootenai River white sturgeon.

The Council's 2014 F&W program is under litigation. Shurts said it is being challenged in the Ninth Circuit by Northwest Resource Information Center. One issue raised is how the Council's actions recognized the issues raised in the BiOp. How it affects the Council is yet to be determined.

We filed a page and a half supplement to our brief to let the court know it shouldn't affect how our issues are analyzed, Shurts said.

"We have a 2019 Fish and Wildlife program coming," he said. "How the Council's program links up with a bunch of alternatives falls in the lap of the Council."

Member Yost asked for a comment on the Columbia River Treaty and NOAA's recovery plans that they recently issued. Shurts replied that the judge wouldn't reach out to Canada. One piece that people will be interested is how flows come out of Canada. It could be a part of the negotiations, and it should be part of the NEPA analysis.

Member Smith noted the timeframe for the federal government to decide on an appeal. Are there any other comparisons of this judge to Redden? Shurts said that Redden didn't want to rule on all the issues. Two BiOps were tossed on remands for a set of tributary actions not certain enough to occur, leaving the others on the table. This judge tried to rule on all of them before him. If Judge Simon remains in ongoing litigation, you won't wait eight years to get a ruling, Shurts said. Regarding a time frame, Shurts will get back with the answer. It won't happen soon.

Member Lorenzen asked what the implications are for harvest and hatchery management.

Shurts said that this rode on the U*.S. v. Oregon agreement*. They're going to have to go back and rethink it. I think the agencies will want to have their own take. This is about the uncertainties of habitat work. There are no specific rulings on hatcheries or harvests. We face uncertainties on everything we do.

Member Karier asked, do you take the harvest rates as given and then analyze the hydrosystem to see what's required to prevent jeopardy? Or take the hydro operations as a given and then analyze the harvest rates? Should they analyze that?

Shurts said that we're making a decision on the *U.S. v. Oregon agreement* and BiOp at the same time, and trying to analyze a set of proposed action items and a set of gains going forward. They are not tied together for any particular reason.

Shurts finished by saying that the lawyers will try to contain this. But there will be people who will want to see alternatives that look at what happens if you shut down harvest rates and other measures. It will be a donnybrook.

6. Presentation of Regional Technical Forum Annual Report

Jennifer Light, Regional Technical Forum manager, said that there is a need for the RTF to ensure consistency and to help meet targets. That's the core of its mission. But how will the RTF meet these goals while continuing to evolve as efficiencies change?

Report highlights from 2015:

Light reported that the status of all units of energy savings measures shows that they're all in compliance. They help ensure transparency. The RTF is enhancing its engagement with the research community and program implementers, particularly Bonneville, and Washington and Idaho utilities, which rely heavily on BPA numbers. There's a need to redefine measures.

Light provided an overview of RTF's year-end financials: It had a $1.63 million budget. They underspent a bit, and they met their work plans with one fewer employee and fewer contracts. They did pretty well tracking their spending, and they achieved all of their work plan objectives.

Report highlights to date in 2016:

The report introduces new members. The RTF has 30 voting members,15 of whom are new. It has brought some new expertise and new energy. The RTF added a new market analysis subcommittee. It's critical for baseline development, tracking market changes over time, load forecasting and program planning.

The work plan status for 2016 is on track. They have allocated most of its budget for this year. They have some set aside for small, rural projects should they be identified.

Member Yost expressed interested in the market analysis. When will they get a report on what they're finding? Light replied that the end of year is realistic. They just had their first meeting. They are looking at BPA activities and are diving in to the lighting model.

Member Yost asked if they provided a list of things to look at. Light replied that they are driven by markets that BPA is researching, such as lighting, residential HVAC and some standards. They're asking how broadly they are covering the market. Are there big gaps? What assumptions do they have to make?

Member Rockefeller said that the Seventh Plan adoption brought up the capacity benefits of energy efficiency. How would it affect the thinking going forward? There are a lot of Plan action items impacting RTF's work, Light said. Do they meet our standards? They are looking at non-energy impacts a little more, and they've started to tackle the capacity piece.

Charlie Grist, conservation resources manager, said the RTF does a regional conservation tracking report, which is asking utilities to report capacity as well as energy savings for measures.

Rockefeller asked if they have to retool personnel. Light replied they brought in people with good expertise, including four technologies that have a demand response benefit. We have some expertise on the RTF that look at that.

Council business

Northwest Power and Conservation Council Motion to Approve the Minutes of the May 10-11, 2016, Council Meeting

Member Booth moved that the Council approve for the signature of the Vice-Chair the minutes of the May 10-11, 2016, Council Meeting held in Boise, Idaho.

Member Anders second.
Approved without objection.

Northwest Power and Conservation Council Motion to Approve the Charter of the Demand Forecasting Advisory Committee

Ben Kujala, interim Power Division director, said he wanted to get this charter approved because they're going to have a meeting to talk about having a comprehensive set of charters. There are no significant changes to the language.

Member Booth moved that the Council approve the charter of the Demand Forecasting Advisory Committee for a period of two years as presented by staff and recommended by the Power Committee.

Member Karier second.
Approved without objection.

Northwest Power and Conservation Council Motion to Release the Fiscal Year 2015 Report to the Governors on Bonneville's Fish and Wildlife Costs for a Period of 30 Days

John Harrison, staff information officer, said there were only two comments this year. One of them came from a reporter who noticed that the total amount of BPA's expenditures was $500 million higher. The difference was the transmission business line. There is no Fish and Wildlife included in transmission, so that's not included. So we're okay. Another was a footnote that was $23 million short. So that was amended to be consistent with the chart. There are a few typos in other areas. Tom Iverson, a consultant for the Yakima Tribe and the NW Energy Coalition, said that program revenue isn't a real cost and that we shouldn't report it. We split that hair as best we can, and we responded to all those comments. Asking for approval for release to send to the governors' offices.

Member Karier pointed out that we're doing something different by not printing tables. We're posting the entire report on our website, which significantly reduces the amount of paper, he said.

Member Booth moved that the Council release the Fiscal Year 2015 Report to the Governors on Bonneville's Fish and Wildlife Costs as presented by staff [with the changes made by the Members at today's meeting].

Member Smith second.
Approved w/out objection.

Public comment on budget:

Sharon Ossmann, Administrative Division director, said that each year we allow people to come in with comments. The close for written comments is July 1. There have been no requests thus far. If they get any, they will summarize them and bring them back at the July meeting.

Public comment

Council Member Phil Rockefeller, appointed to the Council in 2011 by Washington State Governor Christine Gregoire, announced his retirement, effective this July 15. He noted that this year's publication of the Seventh Northwest Power Plan while Council Chair was his proudest accomplishment.

Member Lorenzen said it was sad for him to hear and was happy that there was a month ahead to say farewell.

Bo Downen, senior analyst with the Public Power Council, thanked Member Rockefeller for his service. "He's always been thoughtful of issues even when we disagreed. I remember when the issue on including foregone revenues came up again. I commended him for trying to get us to a place where that didn't have to be brought up every year. Thank you for all of your work."

Approved July _____, 2016

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Vice-Chair

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