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Council Meeting Boise Idaho

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Minutes

Ed Bartlett made a motion that the Council meet, at the call of the Chair, in executive session to consider participation in civil litigation and Council organization, structure, procedure, or personnel. Cassidy seconded. The motion passed unanimously.

Ed Bartlett reported on the Fish and Wildlife Committee meeting. We had a serious, detailed discussion on the mainstem projects, with a lot of participation, he said. He said the committee would recommend approving the staff's Tier 1 mainstem/systemwide projects. We need to have further discussion on a few issues, including the tangle-net research project, the budget for the pike minnow project, and CBFWA funding, Bartlett reported. We also discussed research, monitoring, and evaluation projects with CBFWA, he said.

Jim Kempton said the Power Committee discussed the future of Bonneville and how the issue could be incorporated in the next power plan. We also talked about global climate change and its effect on the hydrosystem, he said. The committee considered the discount rate that will be used in analyses for the power plan and got into discussions with various interest groups about how to assure power supply adequacy in the region, Kempton said.

Ed Bartlett introduced Olney Patt, Jr. of the Warm Springs Tribes, who was recently appointed executive director of the Columbia River Inter-Tribal Fish Commission (CRITFC). Despite passage of the Northwest Power Act, the region continues to prioritize energy over fish and wildlife (fish and wildlife), with important recovery projects still going unfunded, Patt told the Council. The decisions the Council makes are important to the tribes, and we must maintain close and frequent communication, he said.

1. Presentation on water acquisitions for habitat improvement

William G. Graham, director, Idaho Department of Water Resources.

Bill Graham of the Idaho Department of Water Resources (IDWR) briefed the Council on the Idaho Water Transactions Program. The 2000 BiOp's RPA 151 calls on Bonneville to

experiment with innovative ways to increase tributary flows, and the Council recommends in its fish and wildlife program that Bonneville establish a funding agreement for land and water acquisitions, he said. All four Northwest states are involved in efforts, like Idaho's water transactions program, to implement RPA 151 and the Council's recommendation, Graham explained.

Idaho is focusing its program in four areas, he said: developing outreach strategies, establishing watershed priorities, developing a "toolbox" of flow enhancement alternatives, and preparing monitoring protocols. Graham described work going on in each of these areas, and he said the state is making use of satellite technology, known as the Surface Energy Balance Algorithm for Land, or SEBAL, to document and verify consumptive and non-consumptive uses of water. The department has worked out several transactions for 2003, including leasing flows in Otter Creek and the Salmon River, and "saved water" and water donation agreements with landowners in Fourth of July Creek, according to Graham. He detailed proposed transactions for 2004, which involve a lease of flows in the Pahsimeroi River and developing flow agreements in Little Morgan and Bohannon creeks.

The water transactions program meets provisions of the BiOp and the Council's fish and wildlife program, Graham summed up. It provides a way for IDWR and the Water Resources Board to be involved in the ESA and water management issues, and it offers a source of funding for critical flow enhancement projects in Idaho, he concluded.

– Clearwater Planning Advisory Committee

Ira Jones of the Clearwater Planning Advisory Committee (PAC) described the several-year history of subbasin planning in the Clearwater. In January 2002, after early efforts and Council approval to shift project funds toward planning, the Clearwater PAC began developing a plan according to the subbasin guidelines and template provided by the Council, he said. The PAC completed and submitted the region's first comprehensive subbasin plan to the ISRP in 2002, Jones said. The ISRP came back in February 2003 with a 48-page response, he continued. We are currently revising the subbasin plan based on the ISRP's critique and will submit the revised plan in September, Jones indicated.

Janet Hohle of the Clearwater PAC said several issues have arisen as the Clearwater planners rework their plan. Our mission is to incorporate so many elements, from the ESA to the Council's fish and wildlife program – it's a huge process, she said. It takes many iterations to get everything in, Hohle added. One question that has arisen is, what is a sufficient plan, she stated. We can get closer to "the perfect world" the ISRP is looking for, but the Clearwater is a large and varied watershed, Hohle said. We are not developing a fish plan, we're developing an ecosystem plan, she added.

Karier acknowledged that the Clearwater PAC was "the guinea pig" for the region's subbasin planning. Hines asked if the PAC is putting together its "lessons learned." Jones said there had been discussion about that, but nothing formal has been prepared.

What was your reaction to the ISRP report? Derfler asked. We knew we would be heavily scrutinized because this was new to the basin, and we tried to be positive about it, Jones replied. But there were a lot of negative reactions, he acknowledged. We're taking a positive approach

and moving ahead, Jones stated. The ISRP now says it will do a preliminary review and a final, he said, adding that he'd like clarification on the purpose of the second review.

We've given the subbasins the opportunity to have a voluntary ISRP review early on before they submit their plan, Marker explained. In the Clearwater, the planners thought there would be one review, so we've created some confusion for them, Kempton commented. He pointed out that the template provided to the subbasin planners is not "a recovery template" and that subbasin planners should be "protected" from the policy issues. With their limited funding, the subbasin planners can't do it all, and the ISRP review should recognize that, Kempton said.

Cassidy said he heard Rob Walton of NOAA Fisheries clarify that if a subbasin plan meets the Council's template requirements, it meets the NOAA Fisheries expectations. We want subbasin plans that give us direction on the funding priorities in a basin, Cassidy indicated.

Getting public participation in the plan development is another issue for planners, Hohle reported. There is agency participation, but it is difficult to get others involved, she added. We all live with that problem, Cassidy responded, adding that if local agencies are coming to the table, "you have gotten the local participation you need." We are trying to get local endorsement of the plans and weave them into the fabric of the local communities, he said.

2. Council decision on subbasin planning workplans

Peter Paquet, manager, wildlife and resident fish; and Lynn Palensky, subbasin planning coordinator.

Staffers Peter Paquet and Lynn Palensky presented the Council with several contract renewals related to subbasin planning. The Council approved the following motions to renew contracts:

Tom Karier made a motion that the Council authorize the Executive Director to negotiate a contract with the Palouse-Rock Lake Conservation District in the amount not to exceed \$29,635 to develop a subbasin plan for the Palouse Subbasin, observing the terms and conditions of the Council's Master Contract with Bonneville for subbasin planning and the Council's standard contracting policies and procedures. Larry Cassidy seconded. The motion passed unanimously.

Jim Kempton made a motion that the Council authorize the Executive Director to negotiate a contract with the Shoshone-Paiute Tribes in an amount not to exceed \$175,000 to develop a subbasin plan for the Owyhee Subbasin, observing the terms and conditions of the Council's Master Contract with Bonneville for subbasin planning and the Council's standard contracting policies and procedures. Melinda Eden seconded. The motion passed unanimously.

Eden made a motion that the Council authorize the Executive Director to negotiate a contract with the Oregon Department of Fish and Wildlife in an amount not to exceed \$82,544 to develop a subbasin plan for the Columbia Gorge Subbasin and for support in developing the Lower Mid-Columbia, Snake-Hells Canyon, Upper Middle and Lower Middle Snake Subbasins, observing the terms and conditions of the Council's Master Contract with Bonneville for subbasin planning and the Council's standard contracting policies and procedures. Gene Derfler seconded. The motion passed unanimously.

Kempton made a motion that the Council authorize the Executive Director to negotiate an amendment to its contract with the Nez Perce Tribe in an amount not to exceed \$64,273 for Phase II of the subbasin planning process, to respond to comments received in the Council's review of the Clearwater Subbasin Plan, observing the terms and conditions of the Council's Master Contract with Bonneville for subbasin planning and the Council's standard contracting policies and procedures. Cassidy seconded. The motion passed unanimously.

Karier made a motion that the Council recommend that Bonneville continue funding the position of statewide project manager and coordinator for subbasin planning in Washington State in an amount not to exceed \$142,218 for the period July 1, 2003 through June 30, 2004. Cassidy seconded. The motion passed unanimously.

Eden made a motion that the Council authorize the Executive Director to negotiate a contract with Cogan Owens Cogan in an amount not to exceed \$199,310 for continued Level II coordination of subbasin planning in Oregon for the period July 17, 2003 through June 9, 2004, observing the terms and conditions of the Council's Master Contract with Bonneville for subbasin planning and the Council's standard contracting policies and procedures. Derfler seconded. The motion passed unanimously.

Hines made a motion that the Council authorize the Executive Director to negotiate a contract with Montana State University in an amount not to exceed \$112,774 to develop a monitoring and evaluation protocol for use in subbasin planning assessment efforts in Montana, observing the terms and conditions of the Council's Master Contract with Bonneville for subbasin planning and the Council's standard contracting policies and procedures. Bartlett seconded. The motion passed unanimously.

Kempton made a motion that the Council authorize the Executive Director to negotiate an amendment to its contract with Mobrand Biometrics, Inc. in an amount not to exceed \$94,219 to continue providing technical support to subbasin planners in the development of anadromous and resident fish biological assessments throughout the Columbia Basin, observing the terms and conditions of the Council's Master Contract with Bonneville for subbasin planning and the Council's standard contracting policies and procedures. Karier seconded. The motion passed unanimously.

Kempton made a motion that the Council authorize the Executive Director to negotiate an amendment to its contract with Drew Parkin in an amount not to exceed \$128,820 to continue providing regional technical support to subbasin planners, observing the terms and conditions of the Council's Master Contract with Bonneville for subbasin planning and the Council's standard contracting policies and procedures. Karier seconded. The motion passed unanimously.

3. Presentation of Artificial Production Review and Evaluation draft results

Bruce Suzumoto, manager, special projects; and Lars Mobrand, Mobrand Biometrics, Inc.

In 1997, Congress directed the Council to review artificial production in the Columbia Basin, according to Suzumoto. The Council undertook a review, completed in 1999, which resulted in policies and recommendations for the region's artificial production programs, he said. A second

phase of the review is now under way, with staff analyzing 300 anadromous and resident fish programs to evaluate their effectiveness in meeting the region's artificial production needs, Suzumoto said. The current Artificial Production Review and Evaluation (APRE) is being done with Mobrand Biometrics as the primary contractor, he explained.

Suzumoto laid out several objectives for the APRE, including gathering data from program managers; determining if a program meets its stated purpose; evaluating each program for consistency with legal, policy and scientific criteria; outlining the benefits and risks of each program; distributing results to other processes in the region; and assisting with NOAA Fisheries' hatchery and genetic management plans. He gave a brief history of the process, which began with a workshop in 2002 and subsequent contractor visits to each hatchery to collect operational data.

We have since compiled a database that is being used to create a benefit/risk analysis of each program, Suzumoto continued. There has also been a second workshop to instruct program managers on using the database and to identify any errors and omissions in our analysis, he said. We are now writing program, province, and basin reports, and by July, we will have draft reports out to program managers, Suzumoto said. The feedback we get will be incorporated into a final report that goes to Congress, he stated.

One of the "deliverables" from the APRE is a comprehensive artificial production database for the region to use, Suzumoto said. We will have 120 draft hatchery and genetic management plans, 300 hatchery program reports, and 11 province reports, he said. We will also produce an overall Columbia River Basin report to set the stage for reforming artificial production in the region and implementing recommendations, Suzumoto reported.

Lars Mobrand explained that the evaluation is of hatchery "programs" as opposed to individual hatcheries. He said the evaluation relies heavily on work that has been done in Washington over the past four years to reform hatcheries, as well as on past efforts of the Integrated Hatchery Operations Team (IHOT). We have three major principles around which we have built the program reviews and evaluations, Mobrand said: artificial production goals and whether a hatchery program is contributing to them; scientific accountability; and monitoring – whether it is adequate to evaluate the benefits and risks of a program and to determine whether it is meeting goals.

Mobrand demonstrated how the APRE database and Web site could be used to generate reports on individual hatchery programs, including their purpose, regional context, and the risks and benefits. With the information available on the database, we can evaluate whether a program is consistent with the region's artificial production goals, is operated to scientific standards, and whether it is meeting its purpose, he explained.

Mobrand acknowledged that in the APRE, "we came across programs that are operated out of habit," making little contribution to harvest or regional goals. There are other programs about which little is known, he said. Some hatchery programs may need "radical change," and others we need to know more about, Mobrand indicated. The database provides "a tool for accountability," he added.

APRE is filling a major “data gap” in the region, Karier pointed out. How will you sustain and update the database? he asked. Suzumoto said the issue will be addressed in a paper on implementing hatchery reform. “We’ve taken a snapshot” of the hatchery programs, but you have to keep the data up to date for it to be useful, he agreed. Some hatchery programs were started 50 years ago, but things have changed, and one of the APRE findings will be the need to re-examine the purposes and goals of hatcheries in the basin, Suzumoto added.

In other words, the Council can look forward to some hard questions as a result of this report, Danielson commented.

4. Council decision on mainstem/systemwide projects and research monitoring and evaluation budget

Patty O’Toole, program implementation manager; Mark Fritsch, fish production coordinator; and John Ogan, senior counsel.

Ogan ran through the staff’s rationale for selecting the mainstem/systemwide projects in its 2004-06 funding recommendation. Once the recommendation is adopted for this group of projects, all ongoing projects and new proposals will have gone through the modified review process the Council adopted in its 2000 fish and wildlife program, he noted.

Using Bonneville’s annual \$139 million spending cap for fish and wildlife, we determined there is \$31 million per year to allocate to this group of projects, Ogan said, adding that the figure is subject to “a relook” later on. The mainstem/systemwide project proposals went through Columbia Basin Fish and Wildlife Authority (CBFWA) and Independent Scientific Review Panel (ISRP) reviews, and there were many more projects approved than could be funded under the \$31 million, he continued. In the prioritization process that followed, we considered projects needed to implement the BiOp on an equal footing with projects needed to retain our existing program investments, Ogan explained. Retaining investments has in the past been a higher priority, but we would have put Bonneville at risk of not meeting the BiOp requirements, so the priorities changed, he said.

Using comments from Bonneville, NOAA Fisheries, CBFWA, and the ISRP, staff organized the projects into three tiers, with Tier 1 projects having the highest priority, Ogan continued. Staff presented its Tier 1 recommendations to the fish and wildlife committee in May, and committee members said there were critical projects that weren’t included in Tier 1, “so staff scrambled harder” to get them in, he said. Ogan explained the give-and-take that went on over the past month with sponsors and federal agencies to drop some projects out of Tier 1 and add others. It was not an easy exercise, and not everyone agreed with the changes, he acknowledged.

There is more work to be done to establish an annual budget for CBFWA, Marker pointed out. Staff recommended a budget of \$1.7 million annually, but the fish and wildlife committee asked for a task-based budget for CBFWA, with a \$1.245 million starting point, he said. Marker said CBFWA would come up with a task-based budget, and CBFWA executive director Rod Sando assured the Council CBFWA is “okay with it.”

Kempton questioned funding for a project that gives CBFWA a role in coordinating the region's ESA-related research, monitoring, and evaluation (RM&E) effort. Is CBFWA to be the focal point of regional coordination for states trying to meet their responsibilities to NOAA Fisheries? he asked. Other Council members indicated a need to be clear about the roles and how RM&E projects fit together so "we're not laying one set of funding on top of another" and overlapping activities and money.

Ogan said a question also remains about whether to continue funding the northern pike minnow project. The committee said it would recommend the project if it can be effective and deliver biological benefits at 50 percent funding; but if not, the committee would recommend dropping it entirely, he explained. Cassidy requested specific information on where the \$600,000 overrun in the northern pike minnow project went.

Staff also included a couple of capital projects in the mainstem/systemwide Tier 1 group, although Bonneville has not agreed that one of these projects should be treated as capital, Ogan said.

The Tier 1 projects add up to \$31.3 million for FY 2004, although some numbers are "still in play," he continued. In addition, \$3 million in Tier 2 projects are ready for potential funding, Ogan said. He went on to explain the differences that had arisen between staff and Bonneville proposals for project funding, and how the issues were resolved.

Why does it take two agencies to look at the projects? Derfler asked. It sounds like there is duplication of effort, he continued. We have always sought Bonneville's comment on our recommendations, Marker responded. After the staff had done its review, Bonneville still had projects it felt were imperative for its BiOp work, he said. But the fish and wildlife committee went with the staff recommendations, Marker added.

The Council voted unanimously to recommend that Bonneville fund the mainstem/systemwide projects that staff identified as Tier 1. I'm still troubled by the RM&E overlap, Cassidy indicated. Shouldn't we make our approval contingent on knowing the specifics of how these projects fit together? he asked. We will cover that issue in our memo to Bonneville, Marker said.

Staffer Steve Waste reported on resolution of the conflict of interest between NOAA Fisheries' role in setting guidelines for BiOp-related work and the NOAA Fisheries Science Center seeking funds to carry out that work. NOAA Fisheries management alone will develop the requests for proposals, he said. Waste also noted that an executive-level group is being formed to track regional RM&E efforts. The Council should endorse this partnership, Bartlett urged.

Bartlett made a motion that the Council recommend that Bonneville fund the projects for FY 2004, 2005, and 2006 identified by staff as "Tier 1" Mainstem/Systemwide projects, to include the capital projects, at the budget levels indicated in today's briefing and as approved by the Fish and Wildlife Committee. Eden seconded. The motion passed unanimously.

5. Council decision on within-year reallocations

Mark Fritsch.

– Nez Perce Tribal Hatchery

Mark Fritsch described two budget modifications requested by the Nez Perce Tribe for its tribal hatchery. He explained that the modifications would cover changes to the water supply system and the addition of two intermediate rearing channels. Staff supports the requested modification to the water supply system, which would cost \$80,430, Fritsch said. Bartlett reported that the fish and wildlife Committee deferred a recommendation on funding the two additional rearing channels at the hatchery facility until it received further information.

Bartlett made a motion that the Council recommend that Bonneville fund modification of the water supply system for the Nez Perce Tribal Hatchery, Project 1983-350-00, in an amount not to exceed \$80,430. Eden seconded. The motion passed unanimously.

6. Council decision on reallocations for Fiscal Year 2003 fish and wildlife project annual limits

Doug Marker, director, fish and wildlife division; Patty O'Toole, Mark Fritsch.

Marker reported that staff reviewed 155 project funding adjustments for FY 2003 that netted out to \$4.4 million. When the Council approved funding recommendations that cap 2003 fish and wildlife spending at \$139 million, we acknowledged we would need to make adjustments as we went along, staffer Patty O'Toole said. There are a number of reasons for the current adjustments, including late bills or work delayed from 2002, scope changes, project capitalization, and increases in BiOp critical projects, she said. When we "recrunch the numbers" associated with these adjustments, we are still within \$139 million, O'Toole added.

I'm starting to be concerned about the number of projects that are not billing, Marker said. Bonneville is now able to give us contract-by-contract data, and many projects are below where they should be with spending, he said. We are on track to come in well below \$139 million, which begs the issue of carryover of funds into the next fiscal year, Marker stated.

At what point should we start getting new projects into the mix to assure we reach \$139 million? Hines asked. There are only three months left in the fiscal year, he pointed out. O'Toole said staff has been trying to keep on top of why project sponsors aren't billing.

There is no good way to track expenditures, Karier pointed out. We do not know exactly where we'll end up, and there should be a way to handle the uncertainty with carryovers, he said. We should figure out a simple carryover plan, Karier stated.

Bonneville's concept paper on carryovers doesn't address 2003, only 2004 to 2006, Cassidy commented. Couldn't you cover 2003 to 2006? he asked. Therese Lamb of Bonneville acknowledged "an outstanding issue" with the transition from 2003 to 2004. We want to figure out 2004 to 2006 first, and that will inform us about what to do with 2003, she said. I don't want to make a commitment to include 2003 now, Lamb added.

How do we work the program to exactly \$139 million? Derfler asked. How do we address the under spending? he inquired, adding that Bonneville controls the contracts. I'm perplexed about why the spending trend is plateauing, Lamb responded. Based on the information we have, people still expect to spend \$137 million to \$138 million, she said.

There are always unforeseen project delays, Karier said. He suggested Bonneville come up with a rule on carryovers before the end of FY 2003, rather than wait until after the fact. We need to know why there is under spending, Lamb responded.

"The region still views dollars spent as a surrogate for program success," Hines pointed out. Given "the angst" that went into getting to the \$139 million and Judge Redden's ruling, I'd suggest we figure this out, he advised.

The Administrator offered \$139 million in annual spending, so doesn't it make sense to include 2003 in your carryover proposal? Cassidy asked. If we have \$139 million, why can't we spend it? he asked. I've heard the issue, but I can't commit today, Lamb responded.

Have project sponsors been duly notified of the need to get their billings in? Melinda Eden asked. What is the contract billing deadline for FY 2003 work, and do we have a commitment from Bonneville to do real-time accounting? she inquired. Lamb said nothing had gone out to project sponsors in writing. We have been clear about the end-of-the-year accruals, and we will ask for them in August, she said. I don't know if a billing deadline is set, Lamb added. We have real-time accounting, but the piece that is not there is a way to track why billing isn't occurring, she said.

Can't you get on the phone or send an e-mail and find out what's going on? Eden asked. The system may not be automated, but it is possible to do, she added. Can you commit to doing that? Eden asked. We'd likely set a threshold and notify sponsors whose billings are below a certain percentage of their total, Lamb responded.

You need to get the Bonneville contract representatives to talk to the project financial people, Marker suggested. We get project people calling us to tell us what they've heard from their Bonneville contract representative when there are going to be cuts, so we know there is communication, Cassidy commented.

Bartlett made a motion that the Council approve FY 2003 funding reallocations as specified in the staff memorandum, with a total reallocation recommendation of \$4,622,148. Karier seconded. The motion passed unanimously.

7. Discussion of workplan for implementation of the mainstem amendments

Doug Marker; Bruce Suzumoto; and John Shurts, general counsel.

Suzumoto described the work plan for implementing the Council's mainstem amendments, presenting a matrix of 44 specific tasks and actions. In addition to describing each task, the matrix includes the status, lead agencies, and schedule, he pointed out. The federal agencies are

currently reviewing the information, Suzumoto said, adding that staff is working on a narrative document to go along with the matrix.

Staffer Doug Marker said the Council intends to work through the Regional Forum process to implement its mainstem amendments. We will provide an explicit plan for what we can get done and when, he said.

Karier pointed out that the Council has already recommended funding for some of the tasks on the matrix. “Let’s catalogue any that we’re already doing,” he suggested. Hines asked staff to flag the areas where Bonneville’s involvement is needed to assure that anything that should be addressed in the current SN CRAC rate proceeding is addressed.

Danielson reported on a meeting she and Bartlett had with the federal agencies regarding mainstem implementation. They were much more ambitious about implementing the actions before the court ruling on the BiOp occurred, she said. Now, the implementation discussion always comes back around to the lawsuit, Danielson indicated.

We wanted to impress on the agencies the importance of implementing our fish and wildlife program – “we don’t want our program to be a written plan that sits on a shelf,” Bartlett said. We asked whether there is funding available to implement the actions, and in some cases, they said no, he reported. But they said the Council may be able to help with appropriations when the time comes, Bartlett added. The federal agencies were very responsive and would have been much more responsive if they were not concerned about the lawsuit, he said.

Summer spill is an issue of large significance that is raised wherever I go in the region, Hines stated. He suggested the Council put out a paper that outlines “where we are from an analytical perspective,” and reports the economic data and research about the numbers of fish in the river when summer spill occurs. I am not talking about new research, but a compilation of what’s available on the topic, Hines clarified.

8. Council decision on Mid-Columbia, Habitat Conservation Plan endorsement letter

Bruce Suzumoto.

The Habitat Conservation Plans (HCPs) Chelan and Douglas PUDs developed for their mid-Columbia dams commit the utilities to a set of hydro project and habitat actions to restore fish runs in the mid-Columbia River, staffer Bruce Suzumoto explained. The Council considered a draft letter endorsing the HCPs in May and decided to ask for public comment, he said. We received two comments, one from Grant PUD, and the other from Puget Sound Energy, both in favor of the Council’s endorsement, according to Suzumoto.

A question also arose last month about what our endorsement means, he continued. Our legal counsel said that with this endorsement, the Council is saying the HCPs are generally consistent with the Council’s fish and wildlife strategies and objectives, Suzumoto said. The staff recommends the Council approve the letter, he stated.

Shaun Seaman of Chelan PUD said the utility is already implementing measures set out in the HCPs and has formed a committee to oversee putting the plans into action. The juvenile bypass system is complete at Rocky Reach and operating successfully, he reported. Operators at Chelan's mid-Columbia dams have been following the spill provisions in the HCPs this spring, spilling between 15 and 25 percent of the flow at Rocky Reach and 20 percent at Rock Island, Seaman said. The HCPs include actions to protect and restore tributary habitat, and that activity will get under way once the Federal Energy Regulatory Commission provides needed amendments to the dams' operating licenses, he added.

Chelan and Douglas have worked for years on these plans, Karier stated. They look similar to and will be a complement to what we are doing for fish and wildlife in the basin, he said. Cassidy made a motion that the Council approve for the signature of the Chair the letter presented by the staff endorsing the Mid-Columbia Habitat Conservation Plans for Rocky Reach, Rock Island, and Wells Dams. Hines seconded. The motion passed unanimously.

9. Briefing on the Biological Opinion lawsuit

John Shurts.

This is the first time we've met since Judge Redden remanded the 2000 Biological Opinion (BiOp) back to NOAA Fisheries, and this decision and its implications will be with us for some time, staffer John Shurts began. He offered the Council "a baseline set of information" about what the ruling did and what it means.

The judge's ruling said NOAA Fisheries relied on "unreliable factors" in making its jeopardy determination and thus made an arbitrary decision, Shurts explained. The judge remanded the BiOp, and the plaintiffs and CRITFC subsequently filed a motion to set the BiOp aside, he said. The judge called for briefing on that issue, Shurts added. The government's deadline for filing its response to "the motion to vacate" is June 13, and the plaintiffs have until June 20 to respond, he said. The judge hasn't indicated whether he will take oral argument on the motion, Shurts reported.

In addition, the plaintiff coalition has filed a 60-day notice with the federal action agencies, saying the agencies are acting on reasonable and prudent alternatives (RPAs) from an illegal BiOp and are out of compliance with the Section 7 consultation requirement of the Endangered Species Act (ESA), he continued. The plaintiffs are giving the agencies "a chance to cure," but they could file a lawsuit, Shurts said.

He explained the judge's ruling as follows: The 2000 BiOp had RPAs on the hydro system itself, but NOAA Fisheries said these alone weren't enough to meet the no-jeopardy standard, and that offsite-mitigation RPAs were also needed. All of the RPAs are assigned to federal agencies to make sure they happen. At the same time the federal agencies were working on the 2000 BiOp, they were also developing the Basin Salmon Recovery Strategy (BSRS) or All-H paper. The BSRS had its own catalogue of actions, and there was a lot of "cross-pollination" going on between the two efforts. To determine jeopardy, NOAA Fisheries analyzed the RPAs in the BiOp on top of a baseline of the BSRS actions.

If the baseline includes non-federal actions that are aiding in recovery, the law says you have to be reasonably certain those actions will occur. In his ruling, Judge Redden said the baseline that NOAA Fisheries analyzed included the BSRS actions, many of which are not assigned to federal agencies and will not necessarily get implemented. The judge ruled that NOAA Fisheries' reliance on the BSRS actions to reach its no-jeopardy conclusion was improper.

The ruling comes to "a fairly specific legal statement" about the BSRS actions, but a lot of people interpreted the ruling to say that the offsite mitigation is not robust enough, Shurts explained, indicating that is not what the judge ruled. There were other issues of law in the case that were not litigated to conclusion, including the plaintiffs' challenge to NOAA Fisheries' extinction analysis, he said.

NOAA Fisheries has several options for responding to the ruling, Shurts continued. The agency could pull the BSRS actions out of the baseline and rerun its jeopardy analysis; it could try to firm up the off-site actions to assure they are implemented; or it could start over completely, he said. That debate is no doubt going on within NOAA Fisheries now, and we have asked for an answer soon on what approach they plan to take, Shurts stated. The BiOp is very complicated and multi-layered, and the judge acknowledged the complexity of NOAA Fisheries' task, he added.

If the judge vacates the BiOp, will he take the management of the river into the court? Larry Cassidy asked. I don't know that that would follow from this ruling, Shurts responded. NOAA Fisheries is the defendant, and the Corps of Engineers and Bonneville aren't named, so the judge couldn't just pull those agencies into the lawsuit, he explained. I think, "it is quite a stretch" to think that could happen, Shurts said.

John Hines asked about the 90-day reports the judge asked NOAA Fisheries to provide the court. There was not a lot said about them in the ruling, and there wasn't any schedule set, Shurts replied. The judge just said he wanted NOAA Fisheries to let the court know how things were going as it deals with the remand, he indicated.

If the BiOp is illegal and is vacated, what is the status of "the incremental take protection" the federal agencies have? Tom Karier asked. Is it open to third-party lawsuits? he inquired. That's what the plaintiffs' 60-day notice is about, Shurts responded. The judge has ruled that the BiOp is unlawful due to "an arbitrary and capricious" jeopardy analysis, but the action agencies are not part of the lawsuit, he said. The plaintiffs would have to show that the agencies are operating outside the ESA, Shurts explained. If the parties decide to file a lawsuit after 60 days, it would be assigned to Judge Redden, he added.

If the BiOp is vacated, parties could say the BiOp actions we funded are in error, Cassidy suggested. The hydro system measures are at risk, Shurts responded. There is an assumption that if the judge does not vacate the BiOp, the hydro operations are not at risk, but I'm not sure that's true, he added.

What is the effect of the ruling on our fish and wildlife program? Bartlett asked. We didn't incorporate the BiOp or its analysis in our program, but we adopted a set of hydro actions that are in the BiOp, Shurts replied. As a practical matter, the action agencies might be less

interested in working with us to use the flexibility in the BiOp to help non-ESA-listed species, he said.

10. Public comment on Draft Fiscal Year 2005 and Revised Fiscal Year 2004 Council Budget (Council document 2003-05).

No one appeared to comment.

11. Public comment/testimony on the Coeur d'Alene Trout Production Facility Issue Paper (Council document 2003-03).

Three people offered testimony on the Coeur d'Alene Trout Production Facility Issue Paper. Chip Coursey and Virgil Moore of the Idaho Department of Fish and Game (IDFG) said they supported the goal of the hatchery: to restore cutthroat trout in the Coeur d'Alene Lake basin on the Coeur d'Alene Reservation. We are in discussions with the tribes about how they go about the restoration, Coursey said. We had concerns about the activities relative to benefits and costs, but we have no quarrel with the goal, Moore stated.

Ron Peters of the Coeur d'Alene Tribe said developing the production facility has been an ongoing collaborative effort. We have discussed the alternatives with the IDFG and are taking the issues back to the tribal council for further work; in the end, this collaboration will generate a better project, he said. Peters said he had requested an extension of the comment period. We would like an additional 30 days to respond to comments that have been made, he said. The Council had no objections to extending the comment period.

12. Council business

– Approval of minutes

Karier made a motion that the Council approve for the signature of the Vice-Chair the minutes for the May 6-7, 2003 meeting held in Walla Walla, Washington. Eden seconded. The motion passed unanimously.

– RTF funding and contract approval

The Council unanimously approved a \$50,000 extension to the Council's contract with Ecotope, Inc., to provide support to the Regional Technical Forum. Staffer Dick Watson laid out several technical tasks involving standards and specifications for space conditioning that would be covered by the contract. Ecotope is uniquely qualified to do the work, and this is an appropriate sole-source contract, he stated.

Karier made a motion that the Council authorize the Executive Director to negotiate an extension to the Council's contract with Ecotope, Inc. in an amount not to exceed \$50,000 to provide

technical support services to the Regional Technical Forum. Cassidy seconded. The motion passed unanimously.

13. Presentation on future role of Bonneville and Lessons Learned report

Paul Norman, Bonneville Power Administration.

Paul Norman of Bonneville briefed the Council on the agency's "lessons learned" report. "Things have not gone as we'd hoped" with our finances, rates, and customer relationships, and we have looked for the root causes of how we got to where we are, he said. Norman went through a brief history of what Bonneville has gone through in recent years, noting that in the mid-1990s, power marketers "hit the scene," and Bonneville's product began to look uncompetitive. During the 1996 Comprehensive Review and the subsequent Cost Review, we thought Bonneville would be struggling to be competitive, he explained. The Cost Review recommended a Subscription process to get customers signed on to buy federal power, Norman said.

There was "a slow sea change from 1998 to 2000, and the conventional wisdom began to change," he continued. Bonneville started to be perceived as "a very good buy," and in Subscription, everyone wanted to maximize what they purchased from us, Norman said. As a result, the agency committed to serve 3,000 megawatts (MW) more than it had in federal resources, and the additional resources were purchased in a high-priced market during a drought, which led to the high rates we're experiencing today, he explained. In 2002, market prices collapsed, and rather than selling into the secondary market at \$55 per MW, we ended up selling in the low \$20s, which led to a big revenue loss, Norman stated. He summarized the "root causes" of Bonneville's problems as: load obligations met in a power crisis at high costs; droughts; revenue shortfalls due to unrealistic expectations about secondary revenue; and cost overruns.

From these causes, Bonneville distilled several lessons, which "while they may seem obvious," are no less valuable to acknowledge, Norman went on. First, our costs and risk are driven heavily by the load obligations we assume, he said. Our costs are \$1 billion higher than we expected in the rate case, and most of that is due to load buy downs and purchases to serve load, Norman stated. Second, the delay in defining and meeting load obligations has greatly increased our costs and financial risk, he said. We relied too much on highly variable secondary revenues to cover largely fixed costs, which was inappropriate, Norman acknowledged. Other lessons include needing to do a better job of establishing and managing to internal cost targets, and avoiding long-term contracts that can lead to inequitable results among customers, he said.

We also need to change our approach to decisionmaking, Norman said. "Our culture at Bonneville encourages saying 'yes' to keep everyone happy," and "we need to be more hard-nosed" when we should be, he explained. We also need to limit the risk Bonneville can assume and make changes in internal management, Norman said. With regard to the latter, he indicated Bonneville needs to be more forthcoming with people outside the agency about its costs and financial situation. We have undertaken a series of internal action plans based on these lessons, so we can behave differently in the future, Norman stated.

Has your assessment of the market changed in recent weeks given the higher gas prices? Gene Derfler asked. We are being conservative about gas prices, Norman responded. We don't want to build an unrealistic expectation into the rate case; if gas prices are high and our revenues are high, then so be it, but we don't want to count on it, he stated.

Despite the inequities that you mentioned, I assume you think long-term contracts are a good thing, Bartlett commented. What are you doing at Bonneville to encourage customers to get into long-term contracts and to avoid the inequities? he asked. Some customers are saying they are loath to sign up with Bonneville because of their recent bad experience, Norman acknowledged. We are taking steps to remedy that, he stated. People have asked about our cost structure, so we are trying to clarify what that cost structure looks like long term, Norman said.

Can you implement the Council's fish and wildlife program with funds available in the current rate case? Bartlett asked. That is a contested issue in the case, so I have to be aware of the ex parte rule in discussing it, Norman responded. But I would say the answer is yes – "we think we are positioning ourselves appropriately," he added. And you are taking care of the issue around capitalization of fish and wildlife projects? Bartlett asked. Yes, Norman replied.

"The first time out of the box" after the Comprehensive Review, Bonneville made resource decisions that were contrary to the recommendations from the review, Jim Kempton pointed out. The customers also had a role in this, he added. Did you see that you were deviating at that time? Kempton asked. Coming out of the Comprehensive Review and in pre-Subscription, we worked closely with the Transition Board, Norman replied. Later in the Subscription process, we worked less with the Council and got heavily into "a back-and-forth" dialogue with customers over the contract, he acknowledged. But there was "a sea change" in thinking, Norman stated. We went from "how do we get the power sold at full cost and avoid stranded costs?" to people wanting as much power as they could get from us, he explained. We need to work more closely with the Council, and we are committed to doing that, Norman added.

How do we have a better interface with Bonneville in the contracting process? Kempton asked. We have that opportunity now, Norman replied. The four Northwest governors have asked us to reopen a regional dialogue as a joint process, he pointed out. Our response to that mandate poses an opportunity for us to do that, Norman said.

It's important to give your customers more confidence in your ability to control costs, Kempton stated. I agree with your point, Norman said. We've been working with customers on that, and Steve Wright convened work groups to focus on four areas of our cost structure and cost management, he stated.

It would help if Bonneville were more up-front with us, Derfler stated. It seems we get people from Bonneville "talking in circles" to us instead of being up-front, he said. For example, Steve Wright told us his position on wildlife crediting is one-to-one, but that isn't what we have heard from the staff who testified to us, Derfler added. "The testimony from Bonneville is ambiguous," and I'd appreciate more directness, he said.

Danielson asked how much Bonneville is cutting its costs. We've cut our budgets by 25 percent, but as our customers pointed out, what counts is how much we're cutting costs relative to where

they were, Norman responded. We've brought our costs down to 2001 actuals, with no allowance for inflation, he stated. "I think that is pretty good," since we've also taken on new obligations, but I know it is not enough, Norman added.

He listed several initiatives that are getting under way at Bonneville, some that respond to the four governors' recommendations, including: benchmarking internal costs; undertaking a "Priorities of Government" exercise, as was done in the state of Washington; increasing openness about the agency's costs, including a group that is forming under the auspices of PNUCC; and capping the categories of costs that are recoverable under the Safety Net Cost Recovery Adjustment Clause (SN CRAC). We want to consult with the Council on how we go about this, Norman said.

The governors called for an MOA on fish and wildlife spending, Danielson said. I understand we're moving forward on that, Norman replied. Danielson also asked about the improved snowpack forecast and what effect that has had on Bonneville. Things are a lot better, Norman said. We've sold more power as a result, and the improved water conditions have meant about \$100 million in additional secondary revenues, he said. We've also settled the Enron situation, which has meant about \$100 million, and we're now talking about a much smaller SN CRAC rate increase, Norman stated. A settlement over IOU benefits could mean there would be no increase, he said. "We've plugged some of the \$1 billion hole in our revenues" for the rate period, Norman added.

He went over a history of events leading up to Bonneville's recent regional dialogue, including the Joint Customer Proposal and a series of public meetings in the fall and winter of 2002. The next step for Bonneville was to be a formal proposal in response to the customers, but in February of this year, we delayed the process in order to focus on the SN CRAC rate case, Norman explained. We said we'd resume the dialogue in June, he added.

When we left off in February, we had a number of topics under discussion, from IOU residential benefits to cost control and resource allocation, Norman continued. Since then, he said, other events have transpired and many issues are in play, including: customer concerns over cost management; settlement efforts on IOU residential benefits; difficulties for the Direct Service Industries; meetings with utility general managers on cost structure and internal operations; clarifying load-serving obligations; and the Northwest governors' directive to reinstate a regional dialogue.

"Two shoes will drop soon," Norman noted: the SN CRAC rate order will come out, and the IOU settlement effort may conclude. We still need to get under way with the dialogue under joint Bonneville/Council auspices, he said, followed by a formal Bonneville decision process. The Bonneville decision should be "a low-key step" that results from the consensus reached earlier, Norman clarified. We want to lay out a road map to bring clarity to the future of Bonneville, he concluded.

July would be a good time to start the dialogue, Karier suggested. It's key to clarifying the load-serving obligation of Bonneville, he said. Karier asked what would happen if the IOU benefits issue is not settled. We should set a meeting in early July and stick with it no matter what happens, Norman responded.

14. Presentation from the Independent Science Advisory Board on supplementation report

Dr. Eric J. Loudenslager, chair, ISAB; Dr. Daniel Goodman, ISAB; and Dr. Richard Williams, ISAB

Dr. Eric Loudenslager, chair of the Independent Scientific Advisory Board (ISAB), presented findings from a review of supplementation, an artificial production strategy that integrates hatchery fish with fish of natural origin. Supplementation is an “untested” strategy that needs to be carefully evaluated, he said. NOAA Fisheries and the Council asked the ISAB to review the benefits and risks of supplementation, Loudenslager said.

Supplementation is very different from conventional hatchery production, and its purpose is to increase the total numbers in a fish population and to increase the number of natural-origin fish, he explained. In conventional hatchery production, hatchery fish are segregated from the natural population, but supplementation “creates an integrated population” of hatchery and natural-origin fish, Loudenslager said. You have natural and hatchery fish spawning together, he clarified.

Loudenslager described the major genetic uncertainties associated with supplementation, and how the ISAB evaluated the benefits and risks. Along with the genetic issues, there are policy constraints and management control variables to consider in evaluating supplementation, he indicated.

The ISAB came to several conclusions, Loudenslager continued: supplementation can be expected to increase the number of naturally spawning salmon, but the increase will not continue once supplementation stops; supplementation can reduce natural spawning fitness for some number of generations; and supplementation can decrease natural spawning. Based on these conclusions, the ISAB developed recommendations that would aid future evaluations, including the need to establish appropriate performance indicators, such as the abundance of adult returns, and the use of “reference streams” to compare the effects of supplementation against a background of “high natural variability,” he reported.

Loudenslager offered highlights from the ISAB’s summary of what is known about supplementation in the basin and concluded with the following recommendations: use supplementation “sparingly” and only where unharvested natural populations are not reproducing themselves; use only natural-origin adults as parents in hatchery spawning; establish and monitor performance standards; conduct all supplementation projects with an explicit experimental design; and coordinate supplementation projects across the basin so they constitute a basinwide adaptive management experiment.

15. Status report on findings for mainstem document

John Shurts.

Shurts reported that he is working on the findings document for the mainstem program amendments and has “a very rough draft.” The findings have to be consistent with the amendments and match up with certain legal standards, he explained. Shurts asked if each state

could designate a staff member to work on iterations of the draft that will go back and forth. I might also ask for a subset of Council members to participate in a conference call on the findings, he added. There were no objections to Shurts' request.

16. Briefing on mainstem implementation

J. William McDonald, regional director, Bureau of Reclamation.

Appearing on behalf of the federal action agencies, Bill McDonald, regional director of the Bureau of Reclamation, said "uncertainty" is the word of the day with regard to mainstem operations. The court's remand of the BiOp has cast uncertainty around hydro system operations, and the federal executives will meet tomorrow to discuss their alternatives, he indicated. The uncertainty is even greater now with a motion filed to vacate the BiOp, and a decision on that motion could be two or three months away, "depending on the legal maneuverings," McDonald said.

Despite the uncertainties, we're working on how to implement the Council's mainstem amendments, he continued. Spring and summer spill operations are under way, and we're looking at how to meet the Council's objectives, McDonald stated. We are looking at ways to improve performance on the mainstem, and we're moving ahead with the removable spillway weir at Lower Granite and with other studies at McNary and John Day, he said. The federal agencies are designing their 2004 research projects, and we want Council involvement with that, McDonald added.

The legislation that would enable Reclamation to fund offsite mitigation is needed as much now as before the court's ruling, he stated. We've continued to encourage Senator Smith to submit a rewritten bill that encompasses comments received from the region, McDonald said. I'd ask the Council to lend official support to the legislation, he urged.

Are there things other than the lawsuit that would keep you and the other agencies from implementing the Council's program? Bartlett asked. The mainstem operations are subject to the BiOp framework, but if it weren't for the lawsuit, we would have worked the amendments into that framework as best we could, McDonald responded. Are there things you need that the Council could help with? Bartlett asked. Appropriations are critical, McDonald responded. I'd say, support the Administration's budget – we need at least that level of funding, he said. I'd hope the Council would communicate with the Appropriations Committee in support, McDonald added.

17. Briefing on the recent meeting of the four Northwest Governors

John Ogan, senior counsel.

Staffer John Ogan gave the Council an overview of the June 5 agreement between the governors of the Northwest states on fish and wildlife restoration and preserving the benefits of the Federal

Columbia River Power System (FCRPS). He noted that in their agreement, the governors assigned the Council a number of tasks between now and the end of the year.

The governors continue to endorse the All-H approach to fish and wildlife recovery, Ogan stated. The agreement does not focus on salmon, but applies to all fish and wildlife in the basin, he added. It endorses “a broadly inclusive, bottoms-up approach” to subbasin planning, and there is strong encouragement for the federal agencies “to stay the course” on the approach that is being taken, Ogan reported. The governors have asked NOAA Fisheries, U.S. Fish and Wildlife Service, the Council, and others to resolve the issue of what types of “ESA assurances” will be provided for approved subbasin plans, he stated.

The governors asked the Council to convene meetings to design an integrated and scientifically sound system for counting fish, Ogan said. Karier pointed out that one of the assignments, developing a system wide research plan, is part of the Council’s 2000 fish and wildlife program and has a schedule consistent with the governors’ request.

The “top assignment” in the document is for the Council and Bonneville to come up with a new funding agreement for fish and wildlife, Ogan stated. The governors want a framework to provide more predictability and certainty over the next few years, he said, noting that coming up with the previous memorandum of agreement (MOA) involved a significant investment of time and effort. The governors have also called on the Council to provide a status report on implementing the Council’s fish and wildlife program and the BiOp in each of the four states, Ogan said.

The governors recognize the FCRPS as a valuable resource for the region, and they encourage parties to resolve issues around the sharing of benefits, he stated. The document highlights the difficulties Bonneville has faced and calls on Bonneville to consult with the Council to establish priorities in its operations and focus its resources on areas critical to its mission, Ogan said. The governors have asked for a report on those issues by the end of the year, he said. The governors also encourage Bonneville and the Council to jointly reinstate a regional dialogue on Bonneville’s future role in the region, Ogan pointed out.

The document concludes with a policy statement that rejects the idea we can’t have both healthy fish and wildlife and affordable power, he said. The governors do not support revisiting the dam breaching issue, Ogan stated.

The governors want an MOA by October, and it seems to be one of the more urgent assignments, Council chair Judi Danielson said. A response back to the governors on the assignments would be appropriate, she stated.

We could write and acknowledge the assignments and describe how we propose to accomplish them, Ogan suggested. We should include an action plan from the executive director with a schedule for how we’ll proceed, Cassidy added.

Continuation of Council business

– Contracts for data management work

Peter Paquet updated the Council on efforts to improve the region's data management. We are seeking comment on recommendations we came up with as a result of the Science Applications International Corporation report, he said, adding that FY 2003 expenses would be about \$20,000. Even though dollars are earmarked in the budget for this purpose, we haven't gone through "the normal channels" on this project, so we want to take the proposal to CBFWA for its endorsement, he stated. This is a small amount of money to continue the data management work, Karier pointed out. The fish and wildlife data being collected in the region "has to go somewhere," and this project will be a discussion on how best to proceed with managing it, he said. The Council expressed no objections to staff taking the issue up with CBFWA.

– IEAB funding

Executive director Steve Crow said the Independent Economic Advisory Board (IEAB) is in the 2004 draft budget for \$75,000, half the level of funding it has had for the last several years. We had a proposal in the mainstem/systemwide projects to fund the IEAB at \$175,000, but it was not included in the Tier 1 projects, so was not adopted, he reported. Because of the importance of the IEAB, we thought the Council should make an explicit decision about it, Crow said.

At \$75,000, the IEAB could meet six or seven times a year, but would have no funding for analytical products, according to staffer Terry Morlan. "That's tantamount to doing away with it," he added.

Crow proposed increasing the IEAB budget allocation to \$100,000 and seeking additional funds as part of Tier 2 in the mainstem/systemwide project selection. I am thinking we should fund the IEAB like we do the ISAB and the ISRP, from sources other than the Council budget, he added. The Council agreed Crow should proceed on that basis to get funding for the IEAB.

Approved July 16, 2003

Tom Karier

Vice Chairman

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