



Department of Energy

Bonneville Power Administration
P.O. Box 3621
Portland, Oregon 97208-3621

ENVIRONMENT, FISH AND WILDLIFE

October 6, 2006

In reply refer to: KE-4

Mr. Tom Karier, Chairman
Northwest Power and Conservation Council
851 S.W. Sixth Ave., Suite 1100
Portland, OR 97204-1348

Dear Chair Karier:

Thank you for the opportunity to comment on the Northwest Power and Conservation Council's (Council) draft fish and wildlife project recommendations for the Columbia Basin Fish and Wildlife Program in fiscal years 2007-09. Our comment letter focuses on the integration of Endangered Species Act (ESA) objectives and our thoughts on a desired long-term strategic path for the Program. In addition, some specific comments are attached in response to issues that the Council grappled with throughout the solicitation process.

First, I would like to commend the Council for its responsiveness in addressing some important issues as it developed its draft recommendations. In particular, we appreciate that the Council worked to size its recommendations within Bonneville's established fish and wildlife Program budget and held the line on pressures for escalating budgets in the context of many competing and sometimes conflicting constituent expectations. We also applaud the Council for its work to anticipate and incorporate ESA objectives from the ongoing sovereign collaboration process under the NWF v NMFS litigation into many of the recommendations for the Integrated Program including the creation of an approximately \$2M per year unallocated placeholder as a tool for managing uncertainties. Finally, we acknowledge the persistence and determination of the Council's central and state staffs in bringing the region to this point in the decision process within a very demanding schedule.

The Council and Bonneville's shared objective is to identify projects for funding that address the impacts of construction and operation of the Federal Columbia Basin hydropower system on fish and wildlife. In particular, our mutual commitment has been to identify and implement projects that are of the highest priority for enhancing natural ecological functions that increase the abundance, distribution, and diversity of fish and wildlife populations affected by the Federal Columbia River Power System (FCRPS), and for improving the survival of Endangered Species Act (ESA) listed fish. To meet this mutual purpose, we have continued our commitment to a comprehensive program implementation approach we have described as "integrated," that incorporates the ESA requirements of the FCRPS biological opinions with projects that target the highest priorities identified in sub-basin plans consistent with the Northwest Power Act.

Bonneville applauds the Council's efforts to deliver an integrated set of funding recommendations, within the established \$143M expense and \$36M capital budgets for FY07-09. This integration has been particularly challenging given that the ongoing sovereign collaboration process for developing a new Biological Opinion (BiOp) for the FCRPS has not yet reached closure. While we have indicated the types of projects we expect to be a priority under the new BiOp, uncertainty will remain until the BiOp is concluded. Nevertheless, we anticipate that projects that implement habitat protection and improvement actions to address key limiting factors will be an important part of a new Proposed Action and BiOp. This is especially true in sub-basins where the Interior Columbia River Technical Recovery Team has identified populations of ESA-listed stocks with low productivity levels. We have currently identified the Wenatchee, Entiat, Methow, Okanagon, Grande Ronde, Imnaha, portions of the Salmon and John Day, and the Columbia River estuary sub-basins as areas where habitat improvement actions should receive a high priority for ESA listed stocks. In addition, we anticipate that important habitat efforts will continue in other sub-basins in which ESA listed species are present.

In reviewing the Council's draft project recommendations, we believe that many of the region's anticipated ESA objectives are addressed, though there may be some locations where additional on-the-ground work may be anticipated, such as in the sub-basins of the Columbia Cascade Province and the Columbia River Estuary. It will be important to develop and implement strategies for addressing these outstanding and yet undefined gaps within the \$143M budget. During the first year of implementation of the new BiOp, we see three primary tools for integrating these ESA priorities: (1) the unspent carryover funds from the FY03-06 period, which is currently estimated between approximately \$8-10M,¹ (2) the \$2M/yr unallocated placeholder included in the draft recommendations, and (3) the un-recommended balance in the basinwide category. Therefore, it is critically important that the Council's final recommendation continues to support the unallocated placeholder and retains funding flexibility in the basinwide category. In fiscal years 2008-09, additional actions/projects prioritized in the remand could be incorporated by pursuing efficiencies in implementation of the ongoing Program through the subsequent review and refinement of work in particular categories (e.g., regional research, monitoring and evaluation (RM&E), data management, coordination, wildlife operation and maintenance (O&M), etc.). Another future tool could be to further reprioritize project funding recommendations as needed to shift additional effort to addressing remaining ESA objectives that may not be met using the approaches described above.

With respect to the desired long-term strategic path for the Program, we continue to believe that benefits to fish and wildlife populations affected by the hydrosystem can be further enhanced by managing to clearly identified and prioritized biological objectives. We also believe the tremendous amount of RM&E that has occurred since the Program's inception over the past 25 years, has given the region a sufficient understanding of the limiting factors affecting fish and wildlife and the appropriate strategies for addressing these limiting factors. In fact, these latter issues were clearly highlighted in the recently completed sub-basin plans. As such, we believe

¹ Unaudited financial data

that direct, on-the-ground actions that implement strategies for addressing limiting factors should generally be given a much higher priority as compared to ongoing (or additional) RM&E, data collection and coordination activities.

As a step toward this outcome, we agree with the Council that it is highly important to further analyze and refine the projects that we fund within specific categories of work. Toward that end, the Council's draft recommendation suggests that we treat RM&E, data management, wildlife O&M, and coordination recommendations as interim pending a regional review and re-invention of activities and delivery mechanisms in these program areas. We fully support this outcome and stand poised to prioritize these initiatives as a means to shift more program funding to on-the-ground activities that directly mitigate for the hydrosystem's effects on fish and wildlife.

Having endorsed the interim treatment of recommendations in these four program categories, we recommend that the Council and Bonneville agree on how to stage these reviews following Bonneville's project-funding decisions. Embarking on these initiatives simultaneously, or while undertaking other major Program initiatives, will decrease the likelihood of a successful outcome. In developing a work-plan, we believe the highest priority should be to address the program area that has the potential to shift the most Bonneville expenditures towards on-the-ground work and to deliver that shift as quickly as possible.

A related issue is when and how to undertake further solicitation activities. Bonneville does not support launching into another broad programmatic solicitation process. We concur with the Council that the Program has reached a level of maturity in many respects, and that continuous improvement in Program delivery would be better served by first refining categories of work (i.e., RM&E, data management) and then targeting solicitations to address those areas which have been identified as highest priority. We should also improve our ability to complete ongoing work and develop processes for making periodic assessments of the biological needs that may require shifting our investment of resources within the basin.

We also recognize that certain categories of work, such as habitat projects in particular, lend themselves to a regional prioritization effort. For these types of projects, a rolling provincial review may be appropriate later in the rate period, but it should be based on a more programmatic approach based on location and biological criteria. Within a budget for this category of work, we believe that the Council should develop a province-scale level of effort based on clearly identified biological, environmental and/or physical objectives for each province that is scaled to the overall established budget via a cross-province prioritization effort. A geographic solicitation could then be launched to modify the Program's portfolio in this category, as needed. The development of a longer-term strategic plan to guide the program could be one way to advance and flesh out these issues.

In conclusion, we look forward to working with you and your staff in the final stages of this year-long solicitation process, to the effective implementation of projects identified in our decision, and to working with the region in future efforts to further the biological benefits of the

Integrated Program to fish and wildlife populations affected by Columbia Basin hydropower dams.

Sincerely,



Gregory K. Delwiche
Vice President, Environment, Fish and Wildlife

1 Enclosure

cc:

Ms. Judi Danielson, Northwest Power & Conservation Council
Mr. Jim Kempton, Northwest Power & Conservation Council
Ms. Joan Dukes, Northwest Power & Conservation Council
Mr. Bruce Measure, Northwest Power & Conservation Council
Ms. Rhonda Whiting, Northwest Power & Conservation Council
Mr. Larry Cassidy, Northwest Power & Conservation Council
Ms. Melinda Eden, Northwest Power & Conservation Council
Mr. Doug Marker, Northwest Power & Conservation Council
Mr. Brian Lipscomb, Columbia Basin Fish & Wildlife Authority
Chairman Dean Adams, Burns Paiute Tribe
Chairman Chief Allen, Coeur d'Alene Tribe
Chairman Michael Marchand, Confederated Tribes of the Colville Reservation
Chairman Glen Nenema, Kalispel Tribe
Chairperson Jennifer Porter, Kootenai Tribe of Idaho
Chairperson Rebecca Miles, Nez Perce Tribe
Chairman James Steele Jr., Confederated Salish & Kootenai Tribes
Chairperson Alonzo Coby, Shoshone Bannock Tribes of Fort Hall
Chairman Terry Gibson, Shoshone Paiute Tribes of the Duck Valley Reservation
Chairman Richard Sherwood, Spokane Tribe of Indians
Chairman Antone Minthorn, Confederated Tribes of the Umatilla Indian Reservation
Chairman Ron Suppah, Confederated Tribes of the Warm Springs Reservation
Chairman Lavina Washines, Yakama Indian Nation
Ms. Mary Verner, Upper Columbia United Tribes
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bcc:

K. Hunt – DKR-7

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Official File – KEW (EX-15-18)

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BPA Comment
on the
Draft FY07-09 Council Project and Funding-level Recommendations

October 6, 2006

The following are the Bonneville Power Administration's (BPA) issue-specific comments to the Northwest Power and Conservation Council (Council) regarding the draft recommendation of the fish and wildlife projects proposed for implementation of the *Columbia River Basin Fish and Wildlife Program* (Program) during FY 07-09.

Purpose

We intend our comments to assist the Council in evaluating and managing the expected broad scope of comment from regional interests and program participants. We also hope that our assessment of the draft recommendations can help the Council sharpen its consideration and resolution of the broader programmatic issues and policy choices identified in the draft decision document. In addition, we wish to convey, as early as possible, a sense of BPA's own evaluation of the choices faced in implementing the suite of projects, their associated budgets, and the resolution of issues recommended by the Council.

Programmatic Comments

We believe our point-of-view is of particular significance to the Council because through BPA's direct program spending, agency revenues provide the single most significant source of project funding support for the region's Program. We are singularly accountable for the effectiveness of BPA spending in support of Program objectives, and BPA's perspective is one of *ownership of and responsibility for achievement of* Program performance objectives.

As we did for participants at the start of the solicitation process, we are again signaling the considerations BPA underscored during project development and review as the solicitation unfolded, and that we will ultimately use in making BPA spending decisions in a manner consistent with the Council Program. These considerations are summarized below.

Goals

As stated in our letter, the Council and BPA's shared objective throughout this solicitation process has been to identify projects for funding that:

- address the impacts of construction and operation of the federal projects of the Columbia basin hydropower system, and
- are consistent with the Program vision of protecting, mitigating and enhancing the natural ecological functions, habitats, and biological diversity of the Columbia River basin, and improving the survival of ESA listed species.

To meet this mutual purpose, we have continued our commitment to a comprehensive program implementation approach we have described as "integrated," that incorporates the Endangered Species Act (ESA) requirements of the Federal Columbia River Power System (FCRPS)

biological opinions with the broad fish and wildlife protection, mitigation and enhancement objectives of the Program, adopted by the Council pursuant to the Northwest Power Act (Act).

Outcomes

Together, BPA and the Council are trying to move implementation of the Program in the direction of performance that is based on measured progress toward stated objectives. To do this we have emphasized several activities.

- At the project level, we asked that project sponsors be very specific about the objectives that projects are intended to meet, with an emphasis on discrete biological, environmental, or population performance measures, guided by priorities that are based on strategies that address the key limiting factors identified in the Council-adopted subbasin plans.
- At the program level, we have emphasized that explicit objectives are needed to evaluate and document how the outcomes of current projects, and the expected results of new work undertaken by existing projects and future projects newly proposed in this solicitation, contribute to the achievement of biological (e.g., population) or environmental (e.g., streamflows, temperature) performance objectives.

Our purpose has been to promote the evaluation and prioritization of project recommendations, and to enable the robust reporting of results.

We see marked improvement in this respect (see e.g., the ISRP 2005-14: *Retrospective Report*). However, our efforts must also relate project outcomes to performance objectives that address the impacts of the FCRPS on fish and wildlife. We again caution that although subbasin plans have served to improve the focus of project-level objectives, this does not mean that all projects prioritized at the subbasin scale can be characterized as having a nexus to BPA funding under the Northwest Power Act. The sub-basin plans address limiting factors incurred from a wide variety of sources of human influence; BPA funding must be linked to addressing the impacts of the FCRPS.

Implementation Management

BPA's overarching management objective from the completion of the current solicitation is a Council recommendation that leaves the agency well-positioned to support the fundamental work of the Program through:

- improved design, integration, delivery, and measurable performance of projects,
- an implementation process structure guided by mutually defined priorities, and
- work that is supported by a sustainable level of investment.

We appreciate your attention to BPA's management needs and the challenges we have identified in sustaining effective project implementation, in making your suite of project recommendations to BPA. We continue to believe these overarching objectives are essential to delivering the highest value to the resources affected by the FCRPS, through our mutual efforts in shaping Program implementation.

BPA has previously identified the management and policy initiatives that support these broad purposes. These initiatives enable BPA to produce good, quantifiable Program outcomes that

foster a reinvention of Program implementation during this three-year period we have characterized as “transitional.” These initiatives include:

- 70/15/15 guidance to assure a robust level of effort for resident fish and wildlife
- Improved project design, administration, and the reporting of results organized around metrics, milestones, and explicit contract deliverables
- Managed spending to specific categories of effort and investment; in particular, our strategy is to continue an emphasis on maximizing, within an overall level of spending, the delivery of on-the-ground benefits to fish and wildlife resources.
- A broader base of financial support for project implementation – recognizing the shared responsibilities inherent in many of the projects proposed for the Program – through cost-sharing, allocation of expected effort, and using current spending to leverage alternative sources of funding.
- Emphasizing cost-effectiveness through increased efficiency and accountability in implementation.
- Preserving budget flexibility to allow adjustments within frequently changing circumstances; including the careful evaluation of new commitments that, if open-ended (in terms of scale or duration), can confound predictable financial planning in the face of unknown future expectations.
- Demonstrated spending effectiveness through improved results, measurement, and performance reporting.

Programmatic Issues

I. Further Program Review and Refinement

Overview

The Council's issue memo highlighted five program areas that the Council would like to return to following this solicitation process (e.g., project reporting, data management, monitoring and evaluation, operation and maintenance for wildlife acquisitions, and coordination funding). We concur in the need to revisit these programmatic categories within the FY07-09 period. We acknowledge and appreciate your support of our concerns that certain programmatic areas of spending warrant reconsideration and perhaps a refocusing of spending.

It is important to return to some key program areas following this solicitation process, and we strongly agree that the Program would benefit from further review of the scope and scale of investment in these program areas, the purposes served, the complementary roles and shared responsibilities of others, and the objectives or outcomes to be achieved as contract deliverables through BPA's implementation management. We believe that further refinement of the existing Program offers an opportunity to derive greater value from the suite of projects recommended for implementation, and is consistent with the Independent Scientific Review Panel's (ISRP) process management recommendations, and programmatic emphasis on explicit project-level biological objectives.

- Our strategy is to examine categories of work, clarify our objectives for funding work in these categories, and target the work that we are funding to more effectively deliver those objectives.
- However, we suggest that our success in refining these Program areas will be a function of our ability to focus on one or two initiatives at a time. We have begun to identify priorities for taking on this important and timely work. Following this solicitation process, we would like to sit down with you and your staff to develop a work plan that can meet both Council and BPA workloads over the period of program implementation.
- Given that some program priorities may continue to evolve, and that we have acknowledged FY2007 as a period of transition, BPA will act on the Council's FY07-09 project recommendations only with one-year contracting and funding decisions. While we realize that this will likely create some discomfort in the near-term, we will work to ensure that as any changes from initial FY2007 recommendations emerge, they are carefully managed and communicated sufficiently early to enable a smooth transition into FY2008.

Research, Monitoring, and Evaluation

BPA appreciates the Council's ongoing efforts, and considerable attention during the current solicitation, to the collaborative development of a comprehensive plan to guide the region's investments in research, monitoring, and evaluation. A programmatic framework that connects needed research to management decision-making and integrates the research associated with

ESA recovery planning, will be a significant contribution to supporting the goals of the Fish and Wildlife Program.

Some currently implemented research and monitoring initiatives, and some identified future needs, are or should be more appropriately a requirement or shared responsibility of federal or state agencies other than BPA, under mandates other than the Northwest Power Act. This point is particularly relevant to ESA recovery planning and implementation research needs that are a composite of the requirements jointly managed by several agencies. Currently, BPA is often the only source of funding for these research endeavors. BPA will increasingly emphasize only those RM&E projects that directly inform the selection or performance of on-the-ground efforts addressing FCRPS impacts. Other research – in particular, status or trend monitoring – is more appropriately the responsibility of other federal and state regulatory and land management agencies. Accordingly, BPA may begin phasing out these projects over the next two years.

While research projects can provide information that is critical to improving Program effectiveness, it does not directly benefit fish and wildlife in the short-term. Therefore, it is important that we review longstanding research projects with renewed scrutiny. Developing a research plan for the program is a good first step, but despite the concerted efforts of BPA and Council staff and others, it remains unfinished. In the interim, it is essential to come to closure regarding the components of that research that are appropriate for BPA funding.

Discrete elements of the research and monitoring identified as needed will present differing degrees of opportunities for regional coordination and cost-sharing. We believe BPA's primary RM&E responsibility is on the FCRPS, its impacts, and the effects of the mitigation we perform in the mainstem. For the off-site portion of the program where we have authority but no statutory requirement to implement any particular strategy or measure, and where the impacts we address result from the activities of others, BPA should not be expected to fund research to determine what mitigation needs to be done. That should be the responsibility of those who cause the impacts, or are responsible for managing the affected resources.

We remain cognizant of the "political" difficulty inherent in reprogramming existing Program implementation funds to support additional research initiatives, within the available direct program budget. We do have concerns about the costs, and the availability of adequate funding, for the research proposals that may be identified through the remand collaboration, and that some parties hope may be implemented through the Council's Program recommendations. This is not a question of how much investment in additional research BPA can afford, or the Program can absorb on behalf of the region; but rather, how is a comprehensive, regional research agenda to be devised, cost-shared, sustained and managed to mutually-endorsed outcomes.

We need the Council's continued assistance and support in the mutual undertaking of managing the region's agenda for research, monitoring, and effectiveness evaluation. Principled and collaborative integration of BPA's ESA and Northwest Power Act obligations remains crucial to the region's success. Given the significance of relating investments in RM&E to needed management information, and the complexity inherent in sustaining and managing a basin-wide program that is greater in scope than the scale of Bonneville's investment in it, a more systematic and strategic approach to cost-sharing and leveraging investment by other parties is warranted. We think it is important that, together with the Council, BPA works to define the appropriate

balance and priority among competing research and monitoring efforts, and requests for project funding support.

- **“Soft-cap:”** We concur in the Council’s judgment that investing more heavily in project-specific M&E is not a wise priority use of implementation funds. We believe that the five-percent soft cap identified by the Council as a guide for project-specific M&E work elements is appropriate despite the ISRP’s anxieties. As a science body, it is natural for the ISRP to be mindful about the science value of monitoring and evaluation; but as a policy issue, we believe it is appropriate for the Council to render its own independent judgment about the relative importance of M&E versus on-the-ground activities given that the greater the amount of M&E spending, the lesser budget available for direct mitigation.
- **Relevance and responsibility:** Substantial, ongoing M&E projects should be critically evaluated to ensure that they are 1) clearly focused on producing results that improve resource management decisions and 2) supported with appropriate funding by the entities responsible for managing the fish and wildlife populations.
- **Priority considerations:** Irrespective of conclusions that M&E is an important task or a requisite element of a larger project, or that research is “needed,” requests for funding must include evaluation of the project as a priority for Program spending, in light of the responsibilities, commitments, and contributions fairly expected from the resource management entities who are our implementation partners. A connection to Program management needs, BPA’s responsibilities, or FCRPS impacts must exist as an explicit basis sufficient to warrant funding among competing alternative priorities for BPA project spending.
- **Supplementation M&E:** Several high-budget projects that monitor and evaluate the effectiveness of supplementation need a thorough programmatic review. Relationships among projects (hatchery-specific and stand-alone research), expected durations, and protocols for the analysis and reporting of results require a systematic assessment to eliminate unnecessary redundancy and to ensure that critical program-wide and project-specific information needs are being addressed efficiently and effectively.
- **Genetic analysis:** It is not clear that all of the genetic analysis proposed is necessary for making better resource management decisions, or that BPA should be responsible for funding the analysis.
- **Population Monitoring (wildlife):** Mitigation delivery, evaluation, and crediting should continue to be expressed in terms of habitat units and not population response.
- **Population Monitoring (fish):** If connected to habitat action effectiveness, few evaluations have experimental designs sufficiently robust to relate population change to habitat action. Given the myriad of other factors influencing population dynamics, we do not believe it is wise to broaden such experimental designs for action-effectiveness monitoring to determine the population response resulting from particular actions.

Data Management

As the Council has continued to note, the region could benefit from more consistent and available data. BPA has and will continue to support projects that will improve the region's data management efforts. However, BPA is only one component of the region and it is not appropriate for rate-payer dollars to fund the region's entire data management needs. However, we do agree that our ongoing projects need further review and refinement to avoid duplication of efforts and to more effectively engage in regional initiatives. We agree that this effort should be completed prior to another solicitation for data-management projects.

Coordination

BPA has historically chosen to fund coordination projects for several entities. The original intent of much of this coordination was to provide a forum in which several entities could collaborate to provide collective input regarding the work of the Program. While regional input into an integrated Program is key for developing the most biologically effective program, the work funded does not directly benefit fish and wildlife. Therefore, it is important that we are especially careful about how we spend coordination dollars. Some aspects of coordination are inherent in a fish and wildlife manager's responsibilities and are not funding responsibilities of BPA.

Over the last several meetings, the Council has continued to discuss the role and funding levels for the Columbia Basin Fish and Wildlife Authority (CBFWA) and other coordination bodies at a time when two tribes have left the organization. Bonneville is indeed concerned by this trend and by the diminishing returns that coordination funding may be providing the Program. Therefore, we agree with the Council that we need to return to this category of funding and take a closer look before beginning another solicitation process. In particular, we must be careful that the coordination work funded is critical to the Program, would not be undertaken otherwise, is not duplicative of other work, and is an appropriate BPA responsibility under the Power Act.

In the near-term, however, we hope we will engage these issues in a systematic way, as one very manageable and positive contribution to program reform:

- as a category, "coordination" is defined too narrowly if it only includes project proposals for individual tribal and membership organization support (which aren't exactly "projects"), and ignores watershed-level coordination, etc.;
- these efforts are more accurately characterized as request for participation support funding, in regard to many of the tasks anticipated or described; and
- the content and scopes-of-work resolved through BPA contracting should be driven by what the Program needs from coordination, consistent with the Act, and not by the self-described definitions of project purpose driven by what the project proponents wish to do.

Wildlife Habitat Operations and Maintenance (O&M)

As with fish habitat projects, BPA undertakes wildlife habitat projects to mitigate for the losses associated with the construction and operation of the FCRPS. For wildlife, these losses, and the outcomes associated with project implementation, are expressed in terms of habitat units. In particular, BPA's wildlife projects fall into two phases or kinds of implementation effort:

- protection and enhancement, and
- operation and maintenance.

As the Council has acknowledged, most of the wildlife benefits are associated with land acquisition and the enhancement phase. Long-term O&M maintains those benefits, but the escalation in spending necessary to sustain the delivery of durable and longstanding habitat unit values, and meet the expectations of project management staff, has significant implications for managing overall Program finances into the future.

In the near-term, BPA is committed to funding O&M for its wildlife projects. We do not, however, agree with the ISRP in the need for a commensurate amount of wildlife M&E and will not fund this work. BPA does agree with the Council that we should take a closer look at wildlife O&M before beginning another solicitation for these projects. In particular, we think it is important to be more explicit about the type of O&M activities that Bonneville supports, improve consistency about the treatment of long-term O&M expenses, and convey predictable expectations about funding levels to our implementation partners.

II. Spending (Budgeting) Issues:

Unallocated Placeholder

We applaud the budget placeholder that allows us to retain some funding flexibility within the FY 2007-09 implementation period, to accommodate additional projects that may be deemed compelling as a result of new information or additional requirements that come from remand collaboration.

- We will continue to coordinate the allocation of implementation funding for fish and wildlife projects – including those that implement additional ESA measures – through the Council-led review process and in partnership with the region's tribal, state, and federal fish and wildlife managers.²
- In order to make the best use of limited placeholder dollars, the Council and BPA have a common interest in implementing projects that reflect the ISRP review emphasis on solid project design. Newly proposed projects must incorporate fully developed biological objectives and required progress-reporting based on metrics.

² BPA agrees that as a matter of policy, not law, it intends to submit ESA-based actions to the ISRP for review under section 4(h)(10)(D). Because 4(h)(10)(D) only requires review of "a sufficient number of projects..." and because BPA isn't limited to the program when fulfilling its mitigation requirements, ISRP and Council review is not necessary for all projects BPA implements to fulfill either 4(h)(10)(A) or ESA requirements. As a matter of policy and comity, BPA in its discretion will commit to the Council that it will work to ensure those projects that address any new requirements under forthcoming biological opinions during this rate period will receive scientific and public review through the Council and its ISRP process.

- BPA will seek to focus funding on those projects that provide the greatest biological benefit addressed to specific needs. We are working to assure that the factors for selecting projects through the remand collaboration – including general and specific prioritization criteria focused on the needs of listed-stocks – are developed and implemented in collaboration with state, federal and tribal resource managers, consistent with the subbasin-derived implementation strategy that is the basis for the Council’s recommendations.

Additional Flexibility

In addition to the placeholder, some future reallocation of spending within an overall program budget could be necessary to meet a negotiated outcome from the Remand process. We appreciate your attention to BPA’s management needs, and the challenges we have identified in sustaining effective implementation of mitigation measures consistent with the Fish and Wildlife Program. We are grateful for your continued commitment to meaningful and pragmatic program “integration,” in making your suite of project recommendations to BPA.

As you have noted, priorities for ESA-listed species affected by the FCRPS are currently being developed through a collaborative process. Since it often takes a year to begin the on-the-ground implementation of habitat projects, and this process is not set to yield priority actions until February, project decisions in-total for ESA-listed species must be considered interim. Once a new Biological Opinion has been completed, BPA may need to revisit its spending priorities to ensure compliance within the framework we have articulated above – through project spending targeted to the needs of listed-fish, but solidly within the broad resource protection, mitigation, and enhancement provisions of the Northwest Power Act.

Capitalization and Merit-based Implementation

As you recall, BPA recently provided further clarification regarding how its capitalization policy can be applied to fish projects. In response to this clarification, we note that the draft recommendations reflect differing approaches between Oregon and Washington – with Oregon taking a very liberal approach and Washington a more conservative approach – in how this policy is applied to fish habitat projects. We suggest that a measured, and consistent, approach is in order, given that expected FY07-09 capital spending is likely to be close to the \$36M budget, capital spending may need to be prioritized, and that an inconsistent application of its capitalization policy is untenable, from an accounting perspective, for BPA.

We are pleased that our capital policy clarification has helped to remove some uncertainty around project eligibility requirements, as one consideration in the Council’s funding recommendations to BPA. However, we do caution about the implications of an over-reliance on the capital component of BPA program funding, as a means of relieving expense spending constraints. A fully allocated capital budget leaves no room to respond to emerging needs. In addition, capital commitments in FY07 can quickly become additional expense spending needs, further straining the budget in the out-years, in order to sustain the benefits of prior capital investment.

We continue to advocate that the Council prioritize activities across the program based on the merits of projects and project components, rather than on a project's eligibility for capitalization. Ideally, a capital determination should be made by BPA following the prioritization process, such that Bonneville funds projects on a priority basis, and solely for the purpose of optimizing overall program investment. Otherwise, considerations of project "priority" can be skewed merely on the basis of whether a project "fits" within capitalization criteria, rather than on its merits relative to other projects that must, of necessity, be expensed.

For these reasons, the Council's draft recommendation includes a capital project list that does cause some concern. It appears that any potentially-eligible project was added to this list and removed from undergoing the review and scrutiny associated with the more competitive expense budget processes. Once on a capital list, the Council process did not appear to include evaluation of the merits of this work. Rather, the Council appeared to consider that while these projects, in total, exceed BPA's capital budget allocation, it concluded that this was not a concern because previously recommended projects have had difficulty spending their capital budgets.

While this is sometimes the case, BPA's available "headroom" in the capital budget is declining given that the amount actually expended is trending upward. Given this reality, and the potential for a several large capital projects to come online during this rate period, we need to make sure that we are not initiating projects we will be unable to complete in the out-years. Therefore, we request that at least the work on this capital projects list be prioritized as part of your final funding recommendation, if you would like us to treat it as more than a menu of recommended work.

Allocation Guidelines

Regarding the application of the Council Program's 70/15/15 allocation guidelines for anadromous fish, resident fish and wildlife, our internal analysis indicates the draft recommendations have a rough 73/22/5 allocation of effort within the \$143M expense budget. While wildlife spending is much more capital-intensive (and as such the expense allocation to wildlife would naturally be expected to be proportionally low as compared to the portion of the capital budget dedicated to wildlife), we believe that it is important to ensure that resident fish spending, and associated new projects, are consistent with the Council's expected outcomes, as driven by subbasin plans, for a balanced distribution of spending across the direct program budget.

Differential treatment of inflationary pressures

In terms of BPA actions following finalization of Council recommendations, it will be important for us, and the Program, to be consistent across like projects and across the region in developing appropriate budgets for contracting purposes.

III. Other Programmatic Issues

In Lieu

Another potential source of budget flexibility can be derived from a more systematic and deliberate application of the *in lieu* funding prohibition. We are encouraging a view of *in lieu* requirements as a positive opportunity that can assist in the management of program finances, rather than as an impediment to be overcome.

Instilling a more principled application of cost-share expectations within the evaluation of projects that present *in lieu* constraints, can accomplish two purposes. We can expand the base of financial support for a program that is broader in scope and purpose than the level of BPA funding. A truly regional program, that goes beyond mitigating for the impacts of the Federal hydro system and instead is based on restoring ecosystem function and improving the environmental conditions necessary to rebuild populations of fish and wildlife, must have funding sources that are broader than regional ratepayer funding alone. Applying *in lieu* considerations to project approvals and funding decisions can prompt cost-sharing – creating additional “headroom” for new project starts, and buffering the negative effects of escalating fixed-costs within BPA’s level of spending, through the rate-period.

We appreciate the assistance of Council legal staff in refining the most recent statement of BPA’s interpretation of the *in lieu* provision. We look forward to on-going coordination with the Council regarding *in lieu* issues, such as working with project sponsors to address *in lieu* issues for recommended projects. However, we do caution that the *in lieu* review by itself is not necessarily determinative of BPA’s project funding decisions. BPA also considers programmatic priorities, crediting availability, cost-effectiveness, Endangered Species Act requirements, and trust responsibility when making its final project selections.

Innovative Placeholder

We endorse the creation of the Innovative Projects placeholder identified in the draft recommendations, though we note that further work will be needed in developing definitions for, and criteria and processes for selection of, such projects. In particular, there are currently cutting edge research findings in the area of the effects of ocean conditions on salmon, and nutrient depletion of freshwater habitat as a result of depressed salmon populations – both of which may lend themselves to a need for funding future work under this placeholder.

While we disfavor a broad solicitation process during a period of “transition” for the Program, we would support a solicitation process targeting innovative projects funded through a placeholder. We agree with the Council and the Independent Science Review Panel (ISRP) that this is an important method for encouraging new and innovative mechanisms for directly benefiting fish and wildlife. We would be happy to work with the Council to carefully craft a Request for Proposals (RFP) that will encourage innovative on-the-ground work.

The Next Solicitation Process

Changes that may be proposed for the project solicitation, review, and selection process in the future require careful evaluation and discussion. Given the abbreviated treatment of this issue in the draft document, it seems more appropriate to consider it following a fuller disclosure and analysis, after the completion of the current process.

Bonneville agrees with the Council that the Program has matured to a level of stability in some respects. In light of this stability, and the need to return to a number of program areas, we do believe that beginning another open-ended solicitation process would produce diminished Program benefits at substantial process costs. Rather, the Program would be better served by our mutual efforts to refine the definition and delivery of project purposes, and to resolve the programmatic management and policy issues, within the current Program recommendations.

As we continue to evaluate and refine program areas, we could undertake targeted solicitations as specific needs arise. In addition, for certain categories of work (e.g., habitat projects) it may be appropriate to return to a rolling provincial review process. Before beginning such a process, however, the region should embark on a strategic planning exercise that helps the Council to develop province-scale priorities based on clearly identified biological, environmental and/or physical objectives; and then scale this level of effort within the overall established budget via a cross-province prioritization effort.

Contract Requirements

BPA continues to encourage the Council to please be cautious about “programmatically” singling out specific contractors and projects.³ We believe that following the Council’s wholesale revisions to a framework – beginning with the 2000 Program Amendments – the Program now provides programmatic goals, objectives, and measures appropriate for BPA, and the other agencies that implement the Act, to fulfill their responsibilities.⁴ Within a Program framework explicitly organized around objectives, it should *not* address specific projects or contractors as measures.

- **Fish Passage Center:** Accordingly, BPA shares the Council’s reluctance not to provide a recommendation on how to fulfill this program measure until after the Ninth Circuit Court of Appeals issues its opinion in *Northwest Environmental Defense Center/Yakama Nation v. BPA*. Until then, BPA encourages the Council to base its forthcoming recommendation on the functions it identified for fish passage services in the 2003 Mainstem Amendments.

³ “We encourage Bonneville to utilize the experience developed by the National Fish and Wildlife Foundation’s Northwest office to verify the permanence of in-stream flows before beginning these projects.” (Draft Recommendations at p.15)

⁴ As the Council acknowledged in its brief in the recent litigation over BPA’s contracting for services related to fish passage data and analysis, BPA believes we both agree that: “The legal obligation on Bonneville [to mitigate under the Act] does not mean there must be absolute correspondence between the Council’s program and Bonneville’s actions at the level of detail of the hundreds of measures and projects, especially in the implementation details that are largely committed to Bonneville in terms of the how and who and the detail of the contracts. ... Bonneville retains independent authority to decide how to use its fund so long as it does so consistently with the Council’s program.” (Council’s opening brief at p.33)

In whatever recommendation the Council makes to BPA, we believe the contractor or contractors should possess the following characteristics in order to meet the region's needs:⁵

- Serve the public as well as agencies and tribes.
- Address both up-river and down-river biological issues.
- Be responsive to the fisheries managers' needs as identified in the program.
- Ensure easy access to data and routine, basic analysis.
- Provide real-time data.
- Ensure any transfer of functions is as seamless as possible.
- Be widely regarded as scientifically competent, independent, and neutral.
- Include a governance structure to ensure scientific objectivity.
- Incorporate independent peer review of the broader, complex or non-routine technical analysis.
- Keep the broader analytical and coordination tasks separate from basic data collection and warehousing.

IV. Conclusion

Looking forward, managing project implementation from the current solicitation to an outcome that furthers a performance-basis in program implementation – one that better describes and quantifies project purposes, the outcomes produced, and the measured progress toward shared objectives – as we have continued to describe, will require your careful consideration and assistance.

Apart from individual project biological performance, the need to exhibit “spending effectiveness” programmatically is an equally imperative performance consideration – in terms of continued stakeholder support for the Program and for BPA and Council decision-making, public confidence in the role of government, and demonstrated stewardship of both natural and financial resources managed in the public interest.

The outcomes BPA needs as we work through this period of transition in Program implementation, are the basis upon which we will evaluate and consider the recommendations for investment in fish and wildlife made to us by the region, through the Council.

⁵ At this time, the process BPA conducted to solicit contractors for fish passage functions, as well as this current solicitation process, have served to validate several attributes that a successful fish passage data and analysis contractor must possess. We believe a project recommendation based on these characteristics will help the region move past the divisive issues surrounding the fish passage program measure, while continuing to provide the data and analysis needed to implement the program and related biological opinions.