



June 12, 2008

Mr. Bill Booth, Chairman
Northwest Power and Conservation Council
851 S.W. Sixth Avenue
Portland, Oregon 97204-1348

Re: Comments on Fish and Wildlife Program Recommendations – Modifications to the Project Selection and Three-Step Review processes

Dear Mr. Booth:

The Confederated Tribes of Warm Springs (Warm Springs Tribes) submitted recommendations for Program an amendment in two blocks - the first component is the Columbia Basin Fish Accord (MOA) that it developed with the Action Agencies. The second component or our recommendations was the Columbia Basin Fish and Wildlife Authority (CBFW A) package. We offer this comment to clarify one particular point of our recommendations regarding the Council's project review process and Three-Step review process.¹

The core reasons for developing the MOA are set out in its Introduction (Section I) and at least one of those has direct implications for the design of the project selection and three-step review processes. Specifically, the MOA was developed to:

Address the Parties' mutual concerns for certainty and stability in the funding and implementation of projects for the benefit of fish affected by the FCRPS and the Upper Snake Projects

The MOA includes binding bilateral commitments, including ten-year Bonneville funding commitments to a suite of particular projects, as a primary remedy for certainty and stability.² As the Council understands, firm and long-term funding commitments are not entirely without precedent in the Program, but with the MOAs a much larger portion of the Bonneville fish and wildlife program funding is now prioritized and committed for the next decade. With the Tribes/CRITFC MOA, and with those developed by Idaho, Montana, and the Colville Tribe, we believe that the major implementation processes - the "project selection process" and the Three-Step review process should be reviewed and adjusted in light of the MOA commitments and those also made in the BiOps.

¹ The Confederated Tribes of the Umatilla Indian Reservation, the Yakama Nation and the Columbia River Inter-Tribal Fish Commission (CRITFC) have entered into the same MOA and made the same recommendations for program amendments.

² MOA Section III A.

The MOA component of our recommendation called for "streamlining" the project selection process and the Three-Step Review, but the finer details were not provided. Similarly, the CBW A package (Section 5.2) did not address our recommendation for modifying and streamlining these processes. We refrained from adding too much detail in our MOA provisions because we believed that it would be more appropriate to engage the Council and its staff directly on this topic to craft the needed changes. On that score, we have had some productive discussions already and are very encouraged that we can re-work these implementation processes to be more efficient, accommodate the MOAs, and meet the legal standards of the Act.

However, even without having all of the modifications of these processes detailed at this point, it would be appropriate for the Council to recognize in new amendments that changes in these two processes are forthcoming. Further, it could generally direct that those changes will be made to take into account the following issues:

Project Selection Process

- Bonneville has made a significant funding commitment for MOA projects (and for BiOp commitments as well). Features of the existing project selection process and Three-Step Review that were aimed at informing funding priority and a decision whether or not to actually fund a project should be reexamined and modified or eliminated.
- Bonneville and their MOA partners have determined that the MOA projects are consistent with the Program, particularly the applicable subbasin plans, and that they do not implicate in lieu funding issues. Features of the current project selection process aimed at determining Program consistency and evaluating in lieu funding concerns can be eliminated or minimized.
- Future reviews should be done more holistically, at a subbasin or larger scale. The review focus should move away from individual project design/methods, and to a subbasin (or larger) programmatic evaluation with an emphasis on reporting results.
- Minimize and/or abbreviate re-reviews of on-going projects or those projects where meaningful results will take longer to manifest.

We believe that the Council and its staff have already started to consider changes such as these, but it may be that their efforts have not yet taken into account the firm funding commitment and consistency and in lieu determinations that Bonneville has made in the MOAs. We look forward to working with you and your staff on the details, and encourage you to provide this direction in the amended Program.

Three-Step Review Process for Major Capital Construction

Our focus here is on how this process applies to artificial production initiatives funded by Bonneville. Again, our comments are aimed at clarifying our recommendation that this process also be "streamlined" in light of the MOAs and based on experiences with the process. We believe that the Three-Step Review needs to be restructured in light of the MOAs and for efficiency. We would like to engage you and your staff in developing this detail. Ideally, we could develop a streamlined Three-Step review process in detail and have that included in the amended program. However, if timing does not allow for that, the amended program should, at the very least, acknowledge that a review and streamlining of the Three-Step Review will be undertaken with the following considerations:

- For MOA projects, Bonneville has made a firm funding commitment for all phases of the project - planning and design, capital construction costs, and post-construction operations and maintenance costs (See MOA Section III B.). Features of the current process that are aimed at informing decisions on whether or not to fund the tasks at each step and then ultimately, operations and maintenance, should be eliminated for MOA projects.
- The expertise and advice of the Council and ISRP is most useful at "Step 1" -- Master Plan review. This is the phase of the project where program consistency, research monitoring and evaluation, design, biological objectives, are scoped. The Council and ISRP input should be completed in Step 1, with Bonneville and the sponsor assuming the sole responsibility for more detailed design, engineering, and cost refinements. For projects *not* within MOAs, beyond its Step 1 input, the Council may consider reserving a role at a final "step" where it ensures that the sponsor and Bonneville have in fact conducted environmental reviews, secured necessary permits, and have or will develop quality cost estimates for construction and operations.
- Combine all or most of Step 1 and Step 2
 - o The Master Plan should be the primary document to facilitate environmental and cultural resource reviews (NEP A, ESA, NAGPRA). The Council and ISRP reviews should take place simultaneously (rather than the current sequential format) with the environmental reviews. In the case of MOA projects, this will allow Bonneville and the sponsor to have all technical/scientific, policy, legal, and public input before it more quickly and in one block for consideration as make choices on final construction and implementation plans.
 - o To facilitate the above, more engineering and design work will likely be required in the Master Plan (essentially what is done in Step 2 now). For

MOA projects there is little to no risk that the additional cost of this detail in the master plan will be stranded since Bonneville has committed to fund the projects unless they are proven to be unsustainable on ESA grounds. In order to accomplish this "combination streamlining" for Step I Master Plans that are currently being submitted (e.g. Walla Walla Hatchery; Hood River), Step I-only plans should not be held up until Step 2 design information is completed and added. Instead, Step 2 design detail should be developed concurrent with Step I review and then added to the combined Step I product later.

- Focus ISRP review on key areas. Our observation is that the most useful and relevant comments from the ISRP reviews have been their input on the design of the monitoring and evaluation features of these facilities, and in helping to ensure that the purposes and objectives of the program are clearly established. We believe that this is the value added element of the review, and that the much broader considerations (e.g. "relationship to 8 scientific principles"; cost estimates; etc) have done little to improve the design of the facilities or inform Council, Bonneville, or sponsor decisions.
- Facilitate and encourage the use of more efficient contracting strategies. The current process typically has a design firm involved early in the process that will not be involved in actual construction of the facility. Further, the current process is implemented such that sponsors do not even begin to solicit construction bids until after final designs have been developed. The product of this approach is delay in actual construction and in firm cost estimates. The private sector does not operate this way - there are other strategies that combine the designer and builder input much earlier in the process. This allows the builder to work directly in the design phase and to deliver more accurate cost estimates early in the process. It also dispenses with the lengthy contractor bid process in those cases where the designer/builder can be selected as the actual contractor.

The Warm Springs Tribes appreciate the opportunity to clarify our expectations regarding our recommendation for streamlining the Council's project selection and Three-Step Review processes. Ideally, we will be able to work with you and your staffs to re-tool these processes to work with the new MOAs and BiOps before you complete the amendment process, and have those specific changes included in the amended Program. However, if timing does not permit this, we request that you adopt our previously submitted recommendations that these processes be streamlined by including language in the amended program calling for such an effort and acknowledging that it will be completed taking into account the points set forth in these comments. We continue to be available to discuss any element of our recommendations, those submitted by others, or comments that you have received, and thank you for your work in this important endeavor.

cc: Robert C. Brunoe
Off Reservation Fish and Wildlife Committee
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