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February 20, 2004

MEMORANDUM

TO: Fish and Wildlife Committee and Council Members

FROM: John Ogan and Lynn Palensky

SUBJECT: Report on Subbasin Planning Retreat with State Coordinators -- Response Loop proposal

The Level II coordinators met in Portland on January 27 to develop consensus on issues that were raised at the January 13 RCG meeting. These concerned the process and schedule for receiving, distributing, reviewing and responding to subbasin plans after the May 28 deadline for submittal. State representatives at the meeting included Tony Grover, Jim Owens, Karl Weist, Tom Dayley and Kerry Berg. Council staff included, Peter Paquet, Eric Merrill, John Ogan, Bill Hannaford, Sharon Ossman, Patty O'Toole John Harrison, and Lynn Palensky. Bob Austin represented Bonneville. We have the following recommendations:

Response to public comments on subbasin plans ("amendment recommendations")

Schedule

We agreed it is important to provide an opportunity for planners to respond to comments from the ISRP and others. We also agreed there is little time within the current schedule, but that the schedule could be adjusted to accommodate a "response loop".

Importantly, we do not recommend extending the May 28 deadline. We also sought to work within the December 31, 2004 subbasin plan adoption date identified in the master contract. It is agreed that we may need to revisit the December 31 adoption date as this process moves forward.

To build in a "response loop", we propose that the public comment period on the submitted plans end August 15. This is a change from the current proposed ending date of September 30 (the ISRP review ends August 12). With that modification, the response to comment period would run from August 16 through November 1. (See revised schedule attached.)

Accordingly, the Council would begin adopting the plans as draft amendments to the 2000 Fish and Wildlife program at its November meeting, currently scheduled for November 16-18 in

Idaho. Public comments on draft amendments would be through early December, with a brief *ex parte* period running to the Council's December meeting, currently scheduled for December 14-16 in Portland. The Council then would vote on whether to adopt the amendments. The Council could decide to extend the comment period on the draft amendments into 2005, but that decision has not been made. This is an aggressive schedule for the Council amendment actions. We may find that we need an extra meeting for adopting both draft amendments (November *and* December) and final amendments (December *and* January).

Implementing the response loop

We recommend that the responses to public comment, and specifically the ISRP comments, be developed by the state subbasin planning coordinators, working closely with Council staff. The state coordinators may elect to enlist the services of lead entities and/or a small number of contractors to assist them with their discussions with the Level 1 subbasin planners and Council staff. This approach relies heavily on the ability of state project managers and their selected few contractors' to contact and work with subbasin planners who will have completed their planning assignments and no longer have contracts in place (expired May 28, 2004). This proposal *does not* rely upon keeping the subbasin planning Level 1 lead entities and/or their subcontractors under contract beyond May 28.

ISRP and public comments will be scoped for response, with state coordinators and Council staff playing the primary role in that effort. This scoping will be done immediately after the release of the ISRP reports at the close of the comment period. The Council staff will be focused on issues that bear upon the adoptability of plans based on the Power Act's standards. Even though Council staff and state program managers will do this initial scoping exercise, we will need to confirm our opinions with subbasin planners. We do not prescribe a formal or one-size-fits-all process for working our scoping decisions with subbasin planners. Rather, we will rely upon the state subbasin planning coordinators to employ strategies that their experiences suggest will be most successful within the limited time provided by our schedule.

The response period would allow for consideration of comments from any state-level reviews that were completed by the August 15 deadline, as well as ISRP comments. Oregon, for example, plans to review the plans at the same time as the ISRP. It is critical to understand that this "response loop" is not an extended subbasin planning period -- the planning period ceases on May 28.

Funding

While there is currently no identified task associated with responding to comments, there is some flexibility within the subbasin planning master contract to assist in developing responses as described above under Implementation. In some cases, the Council may ask that a priority issue in a plan be revised beyond the response period in order for that plan to be adopted. We would recommend that Council staff work with Bonneville staff to develop an expedited, innovative funding and contracting process to facilitate the response or revisions needed.

Second ISRP review possibility

We recognize that the Council may ask the ISRP to re-review elements of some plans in light of the comments and/or responses to comments. Because that is a Council decision, we did not discuss such a re-review or a time period for it.

Initial contract compliance review

We recommend that the state subbasin planning project managers be given a brief period of time following submission of the plans to perform an initial review of them in light of contract requirements. We envision this initial review as a check-off of required items (are all chapters included, tables referenced included, all pages, etc), and not a review for the adequacy or quality of the plans. We recommend that the seven days from May 29 through June 4 be set aside for this review. During this time period, the Council staff will organize the submitted plans, post them on the Council's website and then submit them to the ISRP.

Incomplete or unsubmitted plans

We recommend that the May 28 deadline remain firm. All parts of all plans are due on that date, with no exceptions. We expect that the ISRP, states and other public commentators would advise the Council on the significance of the missing plan pieces or elements. This advice would have to be taken into account by the Council as it determines if the standards in the Act and Program have been met that would allow the proposed plan to be adopted. Further, because subbasin plans are intended to direct project funding in the future, missing or incomplete plans would likely affect future funding decisions within those subbasins. Any additional plan information or parts submitted after May 28 would be accepted, but those would be considered only *public comments* on the fish and wildlife program amendment process. As such, they have a different legal status than amendment "*recommendations*". We also recognize there may be contract performance issues regarding incomplete or unsubmitted plans. We recommend that the state coordinators negotiate payment issues on a case-by-case basis with the contractors and that the Council staff be consulted in these cases.

Unexpended budget

While it is not clear at the moment, it appears that the subbasin planning process will be completed under the \$15.2 million budget. Unspent funds will be pooled and may be applied to the response process. We recommend that Council staff work with Bonneville staff to monitor expenditures and, if appropriate, prepare a statement of work for tasks necessary to take plans through to final adoption. In this regard, it will be important that contractors submit their billings in a timely manner (by the end of August) so that the Council and Bonneville understand, after May 28, how much of the budget remains.

Subbasins without plans

Subbasin plans are not being developed in four subbasins, either because there are no Council-program projects in them or because watershed planning is underway through other processes. We have known this to be the case for some time, and do not believe the current lack of subbasin plans should not disadvantage those subbasins for plan development in the future. We recommend the Council develop a policy for reviewing future project proposals that may be submitted for these subbasins.

Review and adoption process for subbasin plans

