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January 4, 2008

MEMORANDUM

TO: Council Members

FROM: John Shurts

SUBJECT: Briefing and retrospective on 2007 litigation

On the agenda for the January Council meeting is a briefing and retrospective on significant litigation that occurred during 2007. I have been out of the office and not able to prepare the presentation outline in time for the packet. I will send you something early next week.

The main focus of the briefing will be the Ninth Circuit decisions concerning the Northwest Power Act: *NEDC v. Bonneville*; *Portland General Electric v. Bonneville*; and *Golden Northwest v. Bonneville*. We will also draw from the key developments in the Biological Opinion litigation, in the litigation over NOAA's salmon and steelhead listings and hatchery policy, and perhaps a few others.

While this is billed as a retrospective, my intent is not to focus on a bare summary of the opinions. I intend instead to draw from the holdings an outline of the legal relationships that have resulted now that the dust has cleared, and to emphasize the opportunities and challenges thus presented.