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Tom Karier
Washington

Bill Bradbury
Oregon

Joan M. Dukes
Oregon

January 27, 2011

DECISION MEMORANDUM

TO: Council Members

FROM: Mark Fritsch, project implementation manager

SUBJECT: Quarterly Review of Within-year Project Funding Adjustments for Implementation.

PROPOSED ACTION: For the following two requests:

- Project 1995-057-00, *Southern Idaho Wildlife Mitigation*, no action is necessary.
- Project 2008-003-00, *Removal of Sea Lions at Bonneville Dam*, do not recommend.

BUDGETARY/ECONOMIC IMPACTS

The total requested amount associated with the two requests is \$533,433 in expense Fiscal Year 2011 funds.

BACKGROUND

In 2004, Bonneville and the Council formed a budget oversight group (BOG) to conduct a budget tracking process. A principal role of the BOG is to validate whether the requests are a reschedule or within-year request (i.e., scope change, budget change, scope/budget change, and new request) and to place the within-year requests into one or more of the sorting categories (1-5). Reschedules are forwarded to Bonneville for assessment and funding as funds become available, and within-year requests are also forwarded to Bonneville for recommendation on the availability of funds as identified at the quarterly reviews.

The BOG uses the quarterly reviews to initiate a prioritization process to establish which budget adjustment requests can be met with the available funding in the current fiscal year project budget. The requests are categorized by category (Emergency, Urgent, Threshold, Categorical Review, and Quarterly) per the BOG review. This process also includes a public comment period.

On January 11, 2011, the Council staff presented to the Fish and Wildlife Committee the requests and reviewed the schedule for the within-year budget adjustment requests for the first quarter of Fiscal Year 2011.

The comment period associated with these requests closed on January 26th. No comments were received.

ANALYSIS

The following addresses the two project requests and the Council staff's recommendations associated with the two requests seeking a recommendation (see Attachment 1, page 5). In addition, on January 26, 2011, the Council received a letter from Bonneville summarizing these within-year requests being considered during the first quarter of Fiscal Year 2011 (see Attachment 2, page 6).

- **Project 1995-057-00, *Southern Idaho Wildlife Mitigation***

The Idaho Department of Fish and Game (IDFG) has requested \$457,576 in expense funds to address a new monitoring plan, replacement of a maintenance facility, additional operation and maintenance funds, and receive replacement funds associated with realty type services. The Southern Idaho Wildlife Mitigation project (SIWM) implements wildlife mitigation projects in the Middle and Upper Snake River in coordination with the Shoshone Bannock Tribes and the Shoshone Paiute Tribes. The SIWM project is divided between the Mid¹ and Upper Snake² Provinces and secures habitat protection through purchase and conservation easements. In addition, project funds are provided for operation and maintenance activities that protect and enhance habitat values associated with the acquisitions.

As part of Wildlife Category Review the IDFG Southern Idaho Wildlife mitigation projects did not meet scientific criteria as originally proposed and therefore were not recommended for funding with the other 34 wildlife projects in July 2009, but were recommended to Bonneville as a follow-up recommendation by the Council on September 9, 2009 after they had meet scientific review criteria with qualifications³ (ISRP document 2009-31).

... Council recommends funding the Idaho Department of Fish Game (IDFG) Southern Idaho Wildlife mitigation projects under the following planning budgets and conditions⁴.

¹ Project #1995-057-01, Southern Idaho Wildlife Mitigation - Middle Snake

² Project #1995-057-00, Southern Idaho Wildlife Mitigation - Upper Snake

³ The qualifications from the ISRP are directed at future scientific reviews for these projects to ensure that they include reviews of recent literature and monitoring data supporting proposed biological O&M activities (e.g., weed treatments, plantings, not fences). In addition, the future proposals also should provide more information on weed-control methods on the different parcels associated with these projects as well as presentation of results to date from ongoing weed-control activities and some proof that the information is incorporated into the weed-control programs.

⁴ 1) Council staff concurs with Bonneville's FY 2010 capital budget for this project for one year based on ongoing discussions that may influence future actions. A one-year recommendation will not preclude future capital funding recommendations for the out-years (FY2011-2014), 2) Programmatic Issues No. 7 – Equipment/facilities purchase and replacement; No. 8 – Regional Coordination Funding; and No. 10 – Cost of Living and other funding request increases, 3) The “possible programmatic cost savings” addressed in Table 1. Include Regional Coordination

The recommendation is a not-to-exceed the planning budget and does not assume any cost savings that Bonneville achieves in contracting. All expectations associated with funding recommendation and programmatic wildlife issues identified and described in the Council decision document to Bonneville dated July 15, 2009 apply to the two projects as part of the recommendation.

The request received from IDFG contains different categories of requests. The additional operation and maintenance (O&M) funds (\$20,000), replacement of a maintenance facility (\$200,000), and replacement of funds for realty type services⁵ (\$20,000) can be addressed through the Council's Wildlife Category Review recommendations (i.e., \$651,122 expense planning per year for 5 yrs. - please see recommendations outlined above). The remaining category (i.e., new monitoring plan at \$217,576) of this request is outside the recommendations and scope of the reviewed project and is not appropriate for any actions at this time.

Staff Recommendation: The staff recommends that the Council take no action on this request at this time. The requests associated with the categorical review (i.e., O&M, facility and replacement) are appropriately being addressed by Bonneville and the Council understands that the integrity of the project is being appropriately managed as per Council's Wildlife Category Review recommendation. The request associated with the new monitoring plan would more appropriately be addressed as part of the expectations that the Council had as part of the Wildlife Category Review that anticipates performance check-ins with sponsors by July 2013⁶.

- **Project 2008-003-00, Removal of Sea Lions at Bonneville Dam**

The Idaho Department of Fish and Game (IDFG), Pacific States Marine Fisheries Commission (PSMFC), Washington Department of Fish and Wildlife (WDFW), Oregon Department of Fish and Wildlife (ODFW) have requested \$75,857 in expense funds to build and deploy three additional floating traps for sea lions below Bonneville Dam. The sponsors feel that adding additional traps to their efforts below Bonneville is likely to be the best approach for increasing the removal rate of predatory sea lions. In addition, the Council received a letter of support on behalf of some members of the NMFS Pinniped-fishery Interaction Task Force for the construction of these new traps.

The last action taken by the Council addressing this project was February 12, 2008 as follows.

For Project 2008-004-00, Sea lion Predation Rate Estimation and Non-lethal Hazing, the Council recommends that Bonneville fund, not to exceed \$75,000, to address the non-

Funding and a one-time cost associated with a maintenance/shop/office facility, and 4) Sponsor to address ISRP qualification in next review cycle and should be noted in Bonneville's performance tracking processes.

⁵ As part of all project budgets, sponsors and Bonneville PM's must include non-contract costs such as costs associated with land acquisition and realty type services, and etc. The request for replacement funds should have been rejected by BOG since this type costs associated with realty services is normally secured through the particular project's budget.

⁶ This performance check-in process will be developed and described in the summer of 2012.

lethal hazing elements of the request to support existing activities on the river and to build upon the Council actions last year. These funds are for Fiscal Year 2008.

For Project 2008-003-00, Capture, marking, hazing and removal of California sea lions at Bonneville Dam, the Council recommends that Bonneville fund, not to exceed \$130,000, a portion of the request so that the sponsors can purchase the necessary equipment only to conduct capture and marking operations near Bonneville Dam for Fiscal Year 2008.

These recommendations were made with the understanding that further Council consideration of actions associated with the requests would be defined by a workgroup (i.e., Bonneville Power Administration, US Army Corps of Engineers, NOAA Fisheries, CRITFC, ODFW, WDFW and IDFG) and presented for scientific review in their entirety so that all aspects of the proposed action are fully understood.

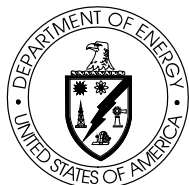
However, in November 2010 the Ninth Circuit Court of Appeals in San Francisco ruled that NOAA Fisheries failed to adequately explain how the lethal removal of California sea lions that prey on salmon below Bonneville Dam is consistent with the Marine Mammal Protection Act. The Ninth Circuit opinion ordered that the lawsuit brought by the Humane Society and the Wild Fish Conservancy be remanded to the federal district court *with instructions to vacate the decision of NMFS and remand to NMFS*. In effect, the Court decision stopped any further removals of California sea lions until NOAA developed a new program to address the sea lion problem below Bonneville Dam. On January 20, 2011, the Council received notice that NOAA is not going to appeal this Ninth Circuit Court ruling.

Staff Recommendation: Based on the lack of science review (e.g., as a condition to the initial funding recommend by the Council in 2008) of this project and the recent Court activities, the Council staff recommends that the Council not support this request.

Attachment 1: Within-year project funding adjustments received as part of the first quarter of Fiscal Year 2011.

Category	Project #	Project Title	Sponsor	FY 2011 Budget (BPA)	Request	Status
Category Review and Quarterly	1995-057-00	Southern Idaho Wildlife Mitigation	IDFG	\$440,148	\$457,576	No Action
Quarterly	2008-003-00	Removal of Sea Lions at Bonneville Dam	ODFW, WDFW, PSEMC	NA	\$75,857	Do Not Recommend

Attachment 2: Letter received on January 26, 2011 from Bonneville regarding within-year budget adjustments associated with the Quarterly Review.



Department of Energy

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

ENVIRONMENT, FISH AND WILDLIFE

January 26, 2011

In reply refer to: KEW-4

Mr. Tony Grover
Fish and Wildlife Division Director
Northwest Power and Conservation Council
851 SW Sixth Avenue, Suite 1100
Portland, OR 97204-1348

Dear Mr. Grover:

In accordance with the Budget Oversight Group (BOG) process, the BOG conducted the first quarter review of within-year budget and/or scope modification requests for Fiscal Year 2011 [submissions reviewed by BOG in October, November and December]. These requests were presented at the January Fish and Wildlife Committee Meeting, and a 14-day public comment period was opened. As a result of the BOG review, consideration of any comments, and Council recommendations, the Bonneville Power Administration (BPA) has arrived at the following draft decisions.

Project Requests

Project Number: 2008-003-00

Project Name: Removal of Sea Lions at Bonneville Dam

Contractor: Idaho Department of Fish and Game (IDFG), Pacific States Marine Fisheries Commission (PSMFC), Washington Department of Fish and Wildlife (WDFW), Oregon Department of Fish and Wildlife (ODFW)

BPA Project Manager: Anne Creason

BPA Manager: Rosy Mazaika

Budget Year/Amount Requested: FY11 / \$75,857

Funding Type: Expense

How does this project support a Biological Opinion? This project does not support a Bi-Op.

Explanation of need: The Removal of Sea Lions at Bonneville Dam project is requesting funding to construct and deploy three additional traps for use at Bonneville Dam. In 2008, funds were provided by BPA under project 2008-003-00 to build and deploy floating traps at Bonneville Dam for the capture and removal of predatory California sea lions to reduce the loss of adult salmonids in this area. Over the past three seasons, 40 sea lions have been permanently removed; however the goal was to take double that number. It has become clear to project sponsors conducting this work (and as recommended by the NMFS Pinniped Task Force) that adding traps is likely to be the best approach for increasing the predatory sea lion removal rate. If approved, funding would be issued PSMFC who would, under the direction of ODFW and WDFW, expend the funds on the construction of the new traps and the purchase of the related supplies. Breakdown of costs: Trap float & cage: \$51,000 (3@\$17,000); Transfer cage: \$12,000 (3@\$4,000); Anchoring systems: \$1,500 (3@\$500); Remote magnetic trap releases: \$3,000 (3@\$1,000); Overhead: \$8,357.

BPA Recommendation: BPA does not support the request to fund additional traps at Bonneville Dam. Although BPA recognizes the importance of managing predation on ESA-listed salmon, agency policy does not support BPA funding for the lethal removal of California sea lions from the Columbia River system. This policy was established in 2008, after BPA funded the original request for more traps. BPA's rationale for this position is based upon ongoing litigation regarding lethal removal of sea lions and recognition of NOAA Fisheries as the lead Federal entity responsible for this type of action (e.g., management of California sea lions).

Under the Marine Mammal Protection Act (MMPA), NOAA is the lead agency for managing and overseeing California sea lion populations. The states are delegated authority by NOAA to undertake lethal removal. There is no clear nexus between sea lion predation and the FCRPS below Bonneville Dam. Given the circumstances, BPA funding for additional traps would raise significant concerns relative to the Northwest Power Act's *in lieu* prohibition, and as well raise questions regarding potential augmentation of NOAA appropriations.

Because the additional traps will be used to directly lethally remove sea lions, BPA cannot support the request. BPA will continue to support activities that monitor and address pinniped predation (e.g., hazing and monitoring), but BPA will not fund actions that directly support lethal removal.

Project Number: 1995-057-00

Project Name: Southern Idaho Wildlife Mitigation

Contractor: Idaho Department of Fish and Game (IDFG)

BPA Project Manager: David Byrnes

BPA Manager: Paul Krueger

Budget Year/Amount Requested: 2011/\$457,576; 2012-2014/\$257,576 per year

Funding Type: Expense

How does this project support a Biological Opinion? This project does not support a Bi-Op.

Explanation of need: The Southern Idaho Wildlife Mitigation (SWIM) project is requesting additional funding for several purposes: (1) IDFG is requesting \$217,576 each year to implement the Unnasch et al (2003) Monitoring and Evaluation program on all BPA properties in Southern Idaho; (2) IDFG is requesting \$20,000 each year for operation & maintenance

activities associated with the 1,801 acre addition in 2008 to Centennial Marsh; (3) IDFG is requesting \$20,000 each year to replace funding allocated to BPA for realty services/internal reviews; and (4) IDFG is requesting ~\$200,000 for construction of a replacement maintenance/office facility at Centennial Marsh which the sponsor suggests is beyond repair.

BPA Recommendation: BPA does not support three of the four of these requests and has deferred the fourth as follows:

(1) The request to expand monitoring and evaluation under the project utilizing the Unnasch et al. design is beyond the scope of the original proposal. BPA continues to support a programmatic approach to M&E under the wildlife program as guided by the “soft cap” of not to exceed five percent of the project’s budget. BPA does not support this request for additional funding. However, we would support pooling of existing funds from the SIWM partners to advance this change in scope.

(2) BPA recognizes the increased operations and maintenance needs at Centennial Marsh, given the expanded acreage incorporated into the wildlife management area in 2008. BPA believes, however, that this funding should come from a “re-prioritization” of other tasks under the project. For example, the sponsor should consider adjusting work elements for new vegetation planting to increase HUs, pre-acquisition actions, or other work to reallocate funds for this activity, or consider seeking additional cost-share outside the Program. BPA’s expectation upon completion of the Wildlife Review in 2009 was that sponsors prioritize their work within the available project budget, including any additional O&M deemed a priority.

(3) BPA has consistently required that funding for all internal services for real property services are included in a project’s budget. These expenses are necessarily an incident of all real property services under the Program and as such, are retained outside the contract, but within the project’s budget, to support BPA’s review and approval of real property interest. BPA does not support the request for adding funds.

(4) BPA supports availability of appropriate structures to house equipment associated with maintaining acquired properties for fish and wildlife mitigation. In this case, we recognize that the existing facility may require substantial repairs or potentially replacement. We will continue to work to establish a common understanding/agreement on facility needs with IDFG for the Centennial March Management Area properties which BPA is willing to support. As such, BPA is deferring a decision on this request at this time and anticipates resolving this issue with IDFG later this spring.

Summary

In summary, the total of expense funding requested in this letter is \$533,433 in FY2011 and \$257,576 in each 2012, 2013 and 2014.

BPA does not support these requests for budget adjustment in FY2011 or outyears. We will work with IDFG on the portion of the request for the replacement facility.

Please feel free to contact either Greg Dondlinger at 503-230-5065 or me at 503-230-5549 for further information or if you have any questions.

Sincerely,

/s/

William C. Maslen
Director for Fish and Wildlife