Northwest Power and Conservation Council

September 1, 2011

MEMORANDUM

TO: Chairman Measure and Council members

FROM: Tony Grover

SUBJECT: Council approach to habitat projects under the Federal Columbia River Power System remanded Biological Opinion

In a recent decision, Federal District Court Judge Redden remanded the Federal Columbia River Power System Biological Opinion (BiOP) to NOAA for additional work; particularly to develop additional habitat mitigation plans with specific actions. Developing and implementing these is a Section 4(h)(10)(A) event under the Northwest Power Act at Bonneville. That is, Bonneville will be using its fund to protect, mitigate and enhance fish and wildlife as authorized by that section, and so it must also do so in a manner consistent with the Council's F&W Program, as well as meet the ESA requirements.

Staff met with BPA and Bureau of Reclamation staff August 31 to better understand how these Action Agencies (AAs) are responding to the remand. The AAs are developing habitat projects under BiOp Reasonable and Prudent Alternative (RPA) Action 35 which requires the AAs to: 1) convene an expert panel to evaluate the change in overall habitat quality at the population scale from projects implemented previously and projects proposed for implementation, and 2) use methods consistent with the Remand Collaboration Habitat Workgroup process to estimate changes in habitat quality. The AAs convened the expert panels in 2009 and are scheduled to convene them again in 2012. Projects (actions) to address limiting factors within each priority population's area come to the expert panels through the existing infrastructure in the area such as fish & wildlife managers, watershed planning groups, Salmon Recovery Boards or other local groups. Through a fairly in-depth and complex process, the expert panels focus their efforts on assessing the likely change in a habitat limiting factor that would, or did, result from the projects. They also re-assess the 'current state' and potential for restoration to 'properly functioning condition' of each limiting factor. The expert panels do not estimate changes in survival of the ESA listed fish population. The AAs do the survival benefit calculations.

851 S.W. Sixth Avenue, Suite 1100
Portland, Oregon 97204-1348
www.nwcouncil.org

Steve Crow
Executive Director

503-222-5161
800-452-5161
Fax: 503-820-2370

Two opportunities appear to exist where the Council could substantively assist the AAs in developing habitat projects, and thereby further the Council's Fish and Wildlife Program goals at the same time:

1. Up until now the AAs have relied on projects being developed as local groups choose to develop them. This often results in too few projects for some priority limiting factors and too many projects, or projects focused on low priority limiting factors, in other areas. The Council has substantial expertise with encouraging and developing local involvement to engage in fish habitat projects. We may be able to assist the AAs in getting more projects proposed and developed in the areas where they will do the most good.

2. The Federal Judge is skeptical of the AAs assertion that future habitat work will be 'reasonably certain to occur' and seeks additional detail and planning to increase the level of certainty. The Council's Fish and Wildlife Program and project review process adds independent science review and a Council recommendation to a project proposal, which inherently does give a higher level of assurance of 'certainty to occur'. An independent science review of the expert panel process, along with an adaptive management response to that review by the AAs, would likely increase the credibility of the AAs project development process.

The Council and the ISRP remain skeptical of the method to assess survival benefits resulting from habitat projects. Staff does not recommend the Council participate in survival benefit calculations or estimates.

Attached are four of many possible alternatives the Committee and Council may want to consider for involvement in the BiOp habitat project development efforts under the remand. These alternatives were developed through discussions with state and central fish and wildlife and legal staff. The current wording in the alternatives is solely the responsibility of the author of this memorandum. However, most staff preferred the "Council Partner Role".

Staff is not seeking a decision by the Committee or the Council, though a clear preference by the Council would empower staff to begin talks in earnest with the AAs.

Alternatives for engaging in habitat project identification for the BiOp Remand. **(9/01/11 version)**

Minimum Council Role	Status Quo	Council Partner Role (Preferred)	Council Leads
AA's lead prioritization process	Continue to develop MERR and all sub components.	Accelerate geographic review process to coincide with AA's timeline. Blend with multi-year action plans & objectives. Continue to develop MERR and implementation strategies.	Compile critical information from recovery plans and subbasin plans to develop an overall strategic plan for each subbasin with ESA salmon & steelhead. Where needed, support sponsors efforts to update EDT scenarios.
	Review and request updates to multi-year action plans for anadromous areas	Use subbasin plans, recovery plans and updated EDT (where available) to identify priority stream reaches and limiting factors important to salmon and steelhead.	Identify priority stream reaches and limiting factors and ensure they are likely to help ESA listed salmon & steelhead focal species, as well as other fish and wildlife.
Notify sponsors that new proposals may be needed.	Notify sponsors that new BiOp proposals are needed.	Co-sponsor workshops in priority areas with BPA & and other Action Agencies, invite a wide range of current and potential BiOp project sponsors. Focus on developing "willing landowner" incentives to participate.	Convene broad based panels similar to the subbasin planning groups. Partner with these groups to hold workshops in priority areas, invite a wide range of current and potential sponsors. Focus on developing "willing landowner" incentives to participate.
	Focused solicitation	Focused, open solicitation	Focused, open solicitation
	Work with BPA to do a "fast track" review & Council recommendation process	Gather project information, by subbasin, from entities doing similar habitat work to provide 'context' for ISRP review.	Work with all potential sponsors to develop good proposals. Gather project information, by subbasin, from entities doing similar habitat work to provide 'context' for ISRP review.
	Monitor progress of CHaMP.	Ensure CHaMP is performing as needed. Work with AAs and NOAA to adapt monitoring as needed.	Additional outreach if poor response to solicitation. Ensure CHaMP is performing as needed. Ensure adequate BPA funding is provided for projects.
ISRP Review of projects	ISRP Review of projects	ISRP Review of projects and expert panel assessment process	ISRP Review of projects

Response if Requested	Response if Requested	Response if Requested	Response if Requested
			Assist sponsors in developing a good response to the ISRP.
ISRP Review	ISRP Review	ISRP Review	ISRP Review
Council recommendation	Council recommendation	Council recommendation	Council recommendation
Continue to encourage development of integrated data management systems	Continue to encourage development of integrated data management systems	Work with BPA and sponsors to ensure data systems are in place beforehand to support the following step.	Ensure funding is available to enable sponsors to 1) update data systems to support the following review process and 2) provide for sponsor participation to update and maintain data contained in the data systems.
Follow-up during routine project review for all F&W Program fish & wildlife.	Follow-up with "Umatilla style" subbasin-wide geographic reviews for all F&W Program fish & wildlife. Update some subbasin plans.	Follow-up in 3 years with a science & staff review of BiOp habitat projects - focus on limiting factor improvements and integration of efforts at the watershed scale. Update some subbasin plans.	Work with BPA to provide funds to contract with a third party to conduct implementation follow-up review of sponsors' effectiveness in changing priority limiting factors in priority stream reaches to benefit salmon & steelhead -- coupled with in-depth science & staff review. Update subbasin plans.
Incorporate changes in the next Program Amendment	Prepare to repeat the above steps for the next round of future habitat projects. Repeat every few years. Incorporate the process into the F&W Program.	Prepare to repeat the above steps for the next round of future habitat projects. Repeat every few years. Incorporate the projects and process into the F&W Program.	Prepare to repeat the above steps for the next round of future habitat projects. Repeat every few years. Incorporate the process and the projects into the F&W Program.