



Department of Energy

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

ENVIRONMENT, FISH AND WILDLIFE

December 31, 2007

In reply refer to: KE-4

Brian Lipscomb, Executive Director
Columbia Basin Fish and Wildlife Authority
851 SW Sixth Avenue, Suite 260
Portland, Oregon 97204-1339

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CBFWA

Dear Mr. Lipscomb:

Thank you for the letter of November 21, 2007, enclosing a staff memo dated October 31, 2007. As I understand it, the members of the Columbia Basin Fish and Wildlife Authority (CBFWA) want to express their views regarding Bonneville Power Administration's (BPA) fish and wildlife funding levels for fiscal years 2008 and 2009 in BPA's upcoming rate proceeding. This letter describes BPA's anticipated process for that proceeding, and explains why a rate proceeding is not the appropriate forum for addressing requests for increased funding levels for fish and wildlife.

As was discussed with CBFWA members in a Members Advisory Group (MAG) meeting with Deputy Fish and Wildlife Program Manager Bob Austin and attorney Philip Key on October 23, BPA expects to initiate a supplemental wholesale power rate proceeding soon. The primary purpose of this supplemental proceeding is to address the rulings of the Ninth Circuit Court of Appeals in *Portland General Electric v. BPA*, and *Golden Northwest Aluminum v. BPA*. BPA intends to establish a new wholesale power rate, consistent with the Court's opinions, for fiscal year 2009. Additional details will be available when this WP-07 Supplemental proceeding begins, which is now anticipated to start in late January.

BPA will include its most up-to-date projection of expected fish and wildlife costs for this proceeding. Thus far, actual fish and wildlife costs to date approximate the forecasts established through the Power Function Review (PFR) and used for the original WP-07 rate proceeding. For the direct program, the forecast was for an annual average of \$143 million in expense and \$36 million in capital for fiscal years 2007-2009. BPA's implementation funding decision in response to the Northwest Power and Conservation Council's (Council) recommendations for projects for the fiscal years 2007-2009 was consistent with this forecast. As a result, at least for the initial stage of the Supplemental proposal, we are not planning on changing the forecast. Having said that, however, we recognize BPA will incur fish and wildlife costs above the current \$143 million expense/\$36 million capital determined annually for the current rate period. Additional costs, for example, will result from implementing the final Federal Columbia River Power System (FCRPS) Biological Opinion and other activities that may be included in the long-term Memoranda of Agreement (MOA) currently under discussion with several regional sovereigns. However, the processes for concluding these efforts and issuing related decisions

(which could be used as a basis for an updated forecast) are on-going and not completed. We therefore believe it would be prudent to update fish and wildlife forecasts for the supplemental rate *after* MOAs are executed and the final BiOp is issued.

As a result, BPA expects to hold a public workshop apart from the rate proceeding. The workshop, like the Power Function Review processes I and II utilized to inform the first WP-07 proceeding, will gather relevant information regarding BPA's likely fish and wildlife costs to ensure that its final forecasts in the supplemental WP-07 rate proceeding are as accurate as possible consistent with sound business principles. This review would include the known and/or expected costs of implementing BPA's share of the Columbia Basin Fish and Wildlife Program, any long-term MOAs, the FCRPS BiOp, and relevant new information about other expected costs or previously unanticipated costs. BPA would incorporate the data in updated forecasts and final studies in accordance with BPA's established rate-making processes.

However, neither the supplemental rate proceeding nor the public workshop is the forum where BPA makes final decisions as to spending levels for fish and wildlife. Final decisions occur when BPA decides what projects it will be contracting for and what funding it expects to provide. For FY 2007-2009, programmatic funding levels—the \$143 million expense and \$36 million capital—were memorialized in the implementation and funding decision letters issued earlier this year in response to the Council's project funding recommendations. The public workshop will aid BPA's forecasting of costs and the rate proceeding addresses how BPA will recover those forecasted costs; but neither process determines as a final matter what BPA will spend on fish and wildlife for the remainder of the rate period.

As I read the October 31 staff memo accompanying your November 21 letter, CBFWA members are essentially asking that BPA provide additional funding to the direct program—an additional \$28 million in expense—based on prior proposals made by CBFWA members to the Council and reviewed by the Independent Science Review Panel. As noted, BPA responded to the Council's recommendations earlier this year in its implementation and funding decision letters, which are posted on our website ("FY 07-09 Fish and Wildlife Project Selection Decision Letter"), <http://www.efw.bpa.gov/IntegratedFWP/policyframework.aspx>.

I saw no new information in the staff memo that suggests additional factors or justification sufficient for BPA to revisit implementation decisions made in February (and reconfirmed at the start of the current fiscal year), in regards to the identified projects. The memo and accompanying spreadsheet primarily serve as a restatement of the same project funding requests made to the Council and BPA during the last solicitation – previously evaluated and either modified or declined for funding. While BPA's implementation choices are not static and rigid, CBFWA's resubmittal of earlier funding requests, without apparent change, perpetuates a pattern in which BPA decisions are not considered to be final unless they are exactly consistent with what is proposed or requested. In the absence of new information, I see no basis to revisit my prior decisions about the merits of these individual projects.

To the extent that CBFWA members are asking BPA to amend its funding decisions for the 2007-2009 period, I encourage the members to instead focus on identifying new factors or additional information that may not have been presented and considered previously, rather than on revisiting past decisions. To be helpful, this focus should include new information, such as results regarding mitigation strategies or species response, or new or unexpected impacts from the FCRPS. Such information could be a basis for BPA to evaluate whether it would need to revisit its programmatic project decision letters and the associated funding commitments through FY 2009. Such information is welcome at any time, including at the public workshop external to the rate proceeding. I encourage you to present any new information to me as soon as possible, however, to allow sufficient time for evaluation and consideration. Any new decision by me about adjusting BPA's programmatic funding decision could then be included in the information for the public workshop and updated forecast.

If you have any questions, please contact Bill Maslen at (503) 230-5549.

Sincerely,



Gregory K. Delwiche
Vice President, Environment, Fish and Wildlife

cc:

Mr. Tom Karier, Northwest Power & Conservation Council
Mr. Bill Booth, Northwest Power & Conservation Council
Mr. Jim Yost, Northwest Power & Conservation Council
Ms. Joan Dukes, Northwest Power & Conservation Council
Mr. Bruce Measure, Northwest Power & Conservation Council
Ms. Rhonda Whiting, Northwest Power & Conservation Council
Mr. Larry Cassidy, Northwest Power & Conservation Council
Ms. Melinda Eden, Northwest Power & Conservation Council
Mr. Tony Grover, Northwest Power & Conservation Council