March 12, 2002

Larry Cassidy, Chair,
Northwest Power Planning Council
P.O. Box 2187
Vancouver, WA 98668

Re: Lower Columbia Province Project 31029

Dear Mr. Cassidy,

This is to request your continued consideration for funding of Project 31029, Clark County ESA Outreach Program. It received a "Not Fundable" recommendation from the Independent Science Review Panel (ISRP). Based on the supporting comments of the ISRP (attached), we believe the recommendation resulted from misunderstandings of legal and political capacity rather than scientific review. There was also apparent inconsistency in the application of review standards.

This proposal is accurately described in the first two paragraphs of the ISRP Preliminary Recommendation and Comments (ISRP 2002-2 Preliminary Province Review, p 132, attached). In response to the ISRP comment in paragraph 2, since the project identifies subject parcels under the described protocols, we will not be able to determine adequacy of connectivity until the project is underway. Please note that the project, once established, will continue beyond the grant period since it is codified in Clark County Code 13.51.030.

The final two paragraphs of the comments reflect that we were unable to effectively communicate the legal bounds of land use regulation in Washington. Under RCW 36.70A, counties have the responsibility to designate and regulate land uses. However, these regulations only apply when an application for development is made. Ongoing regulation *requiring enhancement* of riparian areas on parcels not proposed for development has not been generally accepted as legally defensible in this state. To propose such regulation would invite protracted and expensive court battles that would delay implementation of effective protections for fish. Clark County *is* reviewing its development ordinances to determine their effectiveness in protecting habitat. These ordinances will be upgraded to address identified deficiencies (application packet, Section 9, page 9, 4(d) Compliance Workplan). This outreach project, #31029, addresses riparian areas that fall outside the control of ordinances. Any recovery plan that anticipates success must do so.

We were also unable to effectively communicate to the ISRP the political processes necessary to design and implement an incentive package. Objective 4 is deliberately vague so as to retain the ability to evaluate and adopt as broad a set of incentives as possible. Rather than restrict incentives through premature designation, objective 4 outlines a process to be used during the project that will lead to an effective set of incentives. In short, objective 4 will produce a set of incentives that work.

Finally, a question of consistency arises in reviewing ISRP comments about other projects. Projects 32002, 33007, 29044, 31012 and 31018 all relate to riparian protections on private lands, yet the issue of regulation versus outreach is only raised in the Clark County project review.

We have included a copy of our February 21st oral presentation to the ISRP for your additional review. We request your continuing consideration of Project 31029, Clark County ESA Outreach Program for recommendation to the Bonneville Power Administration for funding. Thank you.

Sincerely,

Joel Rupley
ESA Program Coordinator

cc: Steve Crow