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Northwest **Power** and **Conservation** Council

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November 7, 2023

MEMORANDUM

TO: Fish and Wildlife Committee Members

FROM: Council staff

SUBJECT: Discussion on the implementation of the Fish and Wildlife Program

BACKGROUND:

Presenter: Council Staff

Summary: Council staff are increasingly challenged by the inability to track and confirm implementation of the Fish and Wildlife Program (Program). Transparent communication and timely information on the implementation of the Program are important to the Council. Council staff will provide a brief overview of the situation and outline a possible solution to provide transparency and accountability for tracking the implementation of the Program.

Relevance: For the Council and its Fish and Wildlife Program to be effective and accountable, reporting and tracking processes are necessary to ensure scientific soundness of Bonneville-funded projects, track implementation and results to guide future decision making, coordinate with other projects and programs, and to prioritize new work as funds become available.

Workplan: This effort is consistent with Fish and Wildlife Division work plan 2023; Program Implementation.

Background:

Project review and recommendations

As directed in the Northwest Power Act (Act), the Council conducts a Project review process and makes funding recommendations to Bonneville Power Administration (Bonneville) periodically for mitigation projects that are directly funded by Bonneville. This review incorporates the work of the project sponsors to develop clear project proposals that reflects the intended work. The review also incorporates scientific review, with explicit criteria stated in the Act, by the Independent Scientific Review Panel (ISRP). It also includes public review and finally Council review and development of funding recommendations to Bonneville.

Tracking the implementation of Council recommendations involves formal communication and documentation of project information that includes: 1) the Council recommendations to Bonneville from the project review process, and 2) Bonneville's funding decisions in response to Council recommendations.

Tracking how Council recommendations are implemented is important for several reasons. First, Congress described the review steps and requirements clearly and specifically in the Act, intending that they are of significance and will be followed by the Council and Bonneville. Bonneville is to use its fund in a manner consistent with the Council's Fish and Wildlife Program. This work requires time and effort for project sponsors, for the Independent Scientific Review Panel (ISRP), for Bonneville and Council staff and the Council members. Currently, there are approximately 310 direct funded projects, for a total of nearly \$300 M (expense and capital) expended as mitigation per year. The Council's Fish and Wildlife Program notes that *the program represents a substantial investment by the ratepayers of the Northwest and the nation's citizens*. For these reasons, the Council has consistently tracked implementation of recommendations through time.

Tracking changes over time following review and recommendations

After the initial review and decision on projects, over time projects can change in various ways. Each year, Bonneville and project sponsors reconsider the work that can be done the next year and update their contract accordingly. The contract changes can reflect changes in implementation, delays due to field conditions, permits, weather, etc. It is possible that tasks are rearranged or changed, although the basic objectives described in the project should not change much. This is an important time for the Council to receive information about changes to projects and expectations for the next year of work.

While some of these changes might be small, they can sometimes be significant if entire objectives are dropped, methodologies change significantly, new work is added, or even whole projects might end, or brand-new projects can come into the Program.

It is particularly important to document and track significant changes to projects, as they may require a fresh look by the ISRP and an updated recommendation from the Council.

Finally, within a fiscal year – after the Start of Year budget is developed for projects, projects might undergo additional changes. These are typically of an emergency or urgent nature and will result in a contract modification that adjusts the budget and work in a project according to the need.

How does communication occur?

Once the Council completes a project review cycle, those recommendations are sent formally by letter to Bonneville. Ideally, Bonneville formally responds by letter to the Council with their funding decisions.

Subsequently, once a review is complete, Bonneville generally captures changes to project work and funding for the start of each fiscal year in Bonneville's Start of Year budget.

At times in our history, project changes (either at the start of a fiscal year or within a fiscal year) were shared and discussed directly with Council members at Committee and Council meetings. The Council would consider the need for change and make a determination on if additional review and recommendation were required.

In 2004, Bonneville, Council and Columbia Basin Fish and Wildlife Authority formed a Budget Oversight Group (BOG) to conduct a budget tracking process. The principal role of the BOG was and continues to be to validate whether a project change request by a fish and wildlife Program project sponsor is a budget and/or scope change, and to determine further action. This group worked generally on within-year type changes once the start of year budget was communicated.

Typical requests to the BOG include a request to change the type or scope of work being done under a project, which may include a one-time budget increase, and additional review by the ISRP and the Council. Another type of request might be the need for a one-time increase to a project's budget to cover an unforeseen emergency.

The formality of the BOG and at one point the Cost Savings Workgroup¹ processes created value for the region. Over the years regular BOG meeting dates, commitment

¹ The 2014 Fish and Wildlife Program identified a set of emerging program priorities and called for Bonneville to implement these priorities and to fund any new fish and wildlife objectives first from identifying savings within the current program. With this directive, the Council and Bonneville worked together to develop a mechanistic approach and policy review process for identifying savings within the Program, both of which yielded savings that were used to advance work in the emerging program priority areas. These savings were used up into 2021 (e.g., sturgeon, O&M, lamprey, predation (pike and sealions) and habitat assessment), but since 2018 the CSW has not been functioning,

to a defined process with a common set of rules and criteria, a venue for trust-building and communication between Bonneville and Council staffs, and fish and wildlife managers, provided transparency and a documented record of the changes that benefited the region.

Challenges today

As Bonneville has developed different implementation agreements (e.g., Fish Accords) and implementation tools (e.g., Portfolio management by entity), the Council has received a reduced level of information regarding project implementation in the direct Program. This has made tracking implementation of Council recommendations very challenging.

For a period prior to 2019, the Council no longer received the formal response letter from Bonneville regarding funding decisions for projects as part of the project review process. While Bonneville recently reinstated the process of responding in writing to the Council's formal Project Review recommendations for the last two category reviews in 2020 and 2021, the detail and tracking of specific recommendations and conditions in the Bonneville decision information are not consistent and detailed in a transparent manner for all projects. In addition, when new projects are identified for funding under the Fish and Wildlife Program, a determination on the need for science review is required.

The other key decision moment in project implementation – communicating changes to projects each fiscal year or within a year remain challenging for the staff to track due to the lack of consistent, timely information communicated from Bonneville. For example, we recently learned of significant project changes to long standing, key projects that have occurred without notification to the Council (Project #2000-021-00, *Ladd Marsh Wildlife Mitigation* and Project #1990-005-00, *Umatilla Hatchery Monitoring and Evaluation*). In addition, there are new start projects that have been contracted without any correspondence with the Council and determination of science review; 1) Project #2023-004-00, *Pacific Northwest Aquatic Restoration Partnership in the John Day River Basin* contracted with USFS at \$813,600, contract request in January 2024 at \$2,000,000; 2) Project #2023-005-00, *Tribal Conservation Enforcement-Warm Springs Tribe* contracted at \$397,210; and 3) Project #2023-006-00, *Cultural and Educational Anadromous Fish Trap and Haul* contracted with Spokane Tribe at \$321,000. Also, as part of the recently received FY2024 Start-of-Year there is uncertainty regarding projects that have merged outside of review: 1) Project #2023-002-00, *Survival & Migration of Natural Origin Chinook* with the Shoshone-Bannock Tribes; and 2) Project #2023-007-00, *ODFW East Region Salmonid Life Cycle Monitoring* with ODFW.

Information regarding new projects and existing project closeouts are not provided to the Council, and we are learning of them well after the fact. We are uncertain what principles are being used to prioritize implementation with regards to managing the Council recommendations and priorities and to ensure Program investments and priorities are being appropriately addressed.

Since 2018, the Council staff have been attempting to revise annual processes (e.g., BOG) with Bonneville to coordinate implementation associated with the Fish and Wildlife Program, Endangered Species Act and other internal considerations. To date those discussions have not produced working solutions, making it difficult to track and coordinate 1) Funding decisions for projects that are closing and new projects that come into the Program, and 2) Whether changes to existing project are significant enough to warrant additional science and Council review.

Bonneville does, however, bring project information into a web tool called CBfish.org and has indicated this tool is a way of finding project information along with changes. This tool has a considerable amount of project information including project proposals, assessments, statements of work, contracts, contract modifications, reports and more. It is a helpful tool for some tasks however, the staff finds it to be difficult to obtain adequate information in a timely manner. With over 300 projects in the Program, there are a multitude of related contracts and modifications, and the Council is not staffed to check all of these contracts for changes on a regular basis.

The Council staff, in regular coordination meetings with Bonneville has been clear about the need for consistent and timely information and has proposed some options. The Council even addressed this need in the last amendment of the Fish and Wildlife Program with the following language:

“Bonneville shall provide regular public information to the Council on project implementation, so that the Council can understand whether and how implementation differs from the work recommended after project review. In particular, Bonneville shall provide timely notice to the Council when Bonneville implementation decisions result in a material change in the scope, desired outcomes or budget of a project. The Council will review this information and assess whether further Council recommendations are warranted, including further ISRP review. The Council will develop with Bonneville a written agreement for sharing this information, to assist the Council in its project review, program development and program performance efforts”

An attempt to develop an agreement was not successful. The staff notes that the Northwest Power Act includes a provision for information sharing, noting that Bonneville shall furnish the Council all information requests by the Council as necessary for performance of its functions.²

Possible Solution for consideration and discussion

To improve transparency and understanding of implementation of the projects in the Fish and Wildlife Program the staff has been considering options to address the issues.

² 4(c)(9) - *The Administrator and other Federal agencies, to the extent authorized by other provisions of law, shall furnish the Council all information requested by the Council as necessary for performance of its functions, subject to such requirements of law concerning trade secrets and proprietary data as may be applicable.*

Our goal is for the Council to be better informed, in a timely manner, on project changes to ensure that Council recommendations are met and to better understand and document the rationale if they are not met.

Reestablish Quarterly Reviews

One option is to re-establish a quarterly review of budget changes at the Council’s Fish and Wildlife Committee meetings. The staff suggests that the Start of Year budget could be utilized as an initial starting point. The staff would bring any issues and concerns forward to the Committee as they relate to past Council decisions and recommendations. If project sponsors have concerns regarding the implementation of projects, they would be invited to share those with the staff. Based on the staff review and presentation to the F&W Committee, the Council would send a letter to Bonneville requesting further detail and justification regarding the project changes. The letter would request a response by Bonneville in letter form and as a presentation to the Council at the January meeting after the end of the first quarter. The staff proposes that to ensure communication and transparency is maintained, Bonneville will be requested to continue quarterly updates to the Fish and Wildlife Committee as outlined in Table 1 to describe changes to the project budgets, project scope or project intent, including the addition of new projects and the close out of existing projects.

Table 1: Quarterly process schedule:

Fiscal Year Quarter	Presentation by Bonneville to Council’s F&W Committee
1st	January
2nd	April
3rd	July
4th	Addressed as part of upcoming SOY

This process would allow the Council to track and document changes through the fiscal year and provide opportunities for discussion and correspondence if issues and concerns arise. This would provide a mechanism to track project implementation through time and ensure the integrity of the Fish and Wildlife Program and Project recommendations are maintained. An important strength that the Northwest Power Act and the Council brings to the region is that its work is conducted in public, thereby improving transparency and accountability of Program implementation.

Moving forward with this option would require consideration of current processes, such as the BOG. It’s possible that this process could replace the need for a separate BOG or it’s possible that BOG could continue as a means to address urgent and emergency needs in a timelier manner. If the Committee is interested in further exploration of the proposed solution above, the staff will prepare a more detailed process description.

Discussion on the implementation of the Fish and Wildlife Program

Fish and Wildlife Committee

November 2023



Northwest **Power** and
Conservation Council

Presentation Outline

- Provisions of the Northwest Power Act relevant to the flow of information that the Council needs to perform its fish and wildlife functions under the Act (amending the program, engaging in project review, assessing program performance)
 - Bottom line: The Council needs solid timely information on what Bonneville is actually implementing in order for the Council to do its work well under the Act.
- Overview of past efforts and abilities to track Program implementation
- Challenges since 2008
- Possible solutions

Northwest Power Act provisions - amending the Council's Fish and Wildlife Program and engaging in project review

- 4(h)(2) [The Council shall request recommendations for] **measures which can be expected to be implemented** by the Administrator, using authorities under this Act and other laws, and other Federal agencies to protect, mitigate, and enhance fish and wildlife, including related spawning grounds and habitat, affected by the development and operation of any hydroelectric project on the Columbia River and its tributaries
- 4(h)(5). The Council shall develop a **program** on the basis of such **recommendations**, supporting documents, and views and information **obtained through public comment and participation, and consultation with the agencies, tribes, and customers** referred to in subparagraph (A) of paragraph (4).,
- 4(h)(10)(D) [The ISRP] shall review projects proposed to be funded through BPA's annual fish and wildlife budget and make recommendations on matters related to such projects to the Council.... The Panel, with assistance from the Peer Review Groups, shall review, on an annual basis, **the results of prior year expenditures based upon these criteria and submit its findings to the Council for review.** ... The Council, after consideration of the **recommendations of the [ISRP] and other appropriate entities, shall be responsible for making the final recommendations of projects to be funded through BPA's annual fish and wildlife budget**
 - How can the Council appropriately enter into one an amendment processes or a project review process and adequately perform its functions without clear public information from Bonneville on what has been implemented? Even if the Act was silent the responsibility of Bonneville to provide implementation information to the Council, the responsibility would be there implicitly. But the Act is not silent...

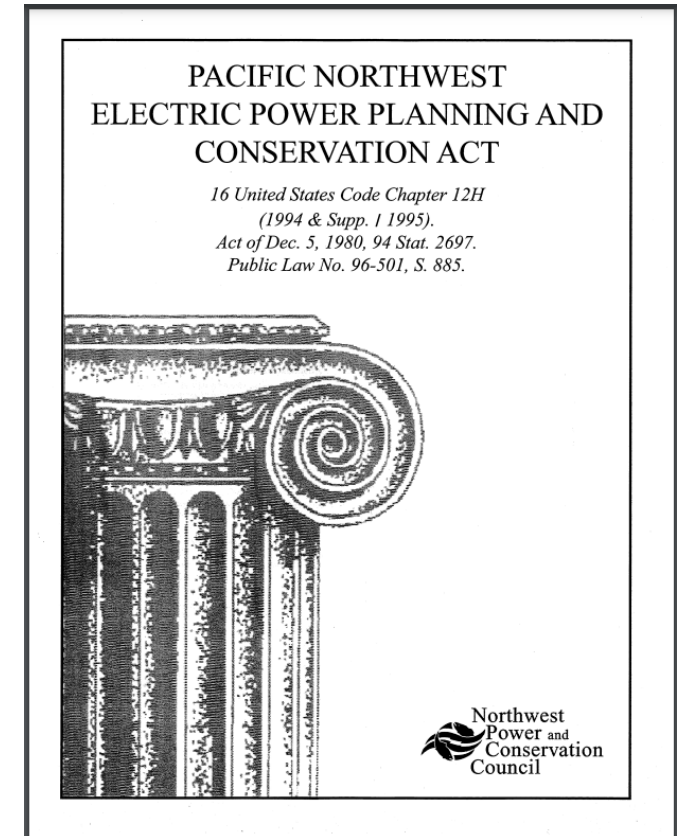
Northwest Power Act provisions relevant to information from Bonneville on implementation

- **4(c)(9)** The Administrator and other Federal agencies, to the extent authorized by other provisions of law, shall furnish the Council all information requested by the Council as necessary for performance of its functions, subject to such requirements of law concerning trade secrets and proprietary data as may be applicable.
- **4(g)(3)** In the preparation, adoption, and implementation of the plan [including the fish and wildlife program], the Council and the Administrator shall encourage the cooperation, participation, and assistance of appropriate Federal agencies, State entities, State political subdivisions, and Indian tribes.
- **4(i)** The Council may from time to time review the actions of the Administrator pursuant to sections 4 and 6 of this Act to determine whether such actions are consistent with the plan and programs, the extent to which the plan and programs is being implemented, and to assist the Council in preparing amendments to the plan and programs

Project Review and Recommendations

Public Coordination and Review

- Northwest Power Act: Section 4h10D: Council role in review and Independent Scientific Review Panel review (1996 amendment to NPA)
 - Consistency to Program
 - Provides transparency and accountability
 - Identifies contribution of projects to the Program and region



Project Review and Recommendations

Tracking the projects through time



- 309 projects in the direct Program
- Check-in and tracking of implementation as reviewed and recommended
- Opportunity to review new work and changes
- Address within year adjustments - emergencies and urgent needs

Why do we track?

- Congress described the review steps and expectations clearly and specifically in the Act, indicating that they are of significance and are to be followed.
- Reviews requires time and effort for project sponsors, for the Independent Scientific Review Panel (ISRP), for Bonneville and Council staff and the Council members.
- Ratepayer funding - accountability and transparency
 - Investments in mitigation projects total of nearly \$300M (expense and capital) per year.
 - The Council's Fish and Wildlife Program notes: *the program represents a substantial investment by the ratepayers of the Northwest and the nation's citizens.* For these reasons, the Council has consistently tracked implementation of its recommendations through time.

Challenges today

- Implementation Processes have changed, making it difficult to track Council recommendations.
 - Implementation agreements and settlements (e.g., accords) and tools (e.g., portfolio management)
- Lack of consistent, timely and detailed implementation information.
 - Response to reviews
 - Funding decisions related to within year adjustments, and new and/or closed projects
- No current working process to monitor the implementation of the Program's projects between reviews and recommendations.
 - Changes to existing projects - significant enough to warrant additional science and Council review?

Challenges today

- 2020 Addendum to the 2014 Fish and Wildlife Program:

*“Bonneville **shall provide** regular public information to the Council on project implementation, so that the **Council can understand** whether and how implementation differs from the work recommended after project review. In particular, Bonneville shall provide timely notice to the Council when Bonneville implementation decisions result in a material change in the scope, desired outcomes or budget of a project. The Council will review this information and assess whether further Council recommendations are warranted, including further ISRP review. The Council will develop with Bonneville a written agreement for sharing this information, to assist the Council in its project review, program development and program performance efforts”*

No agreement yet.

Possible solutions to improve tracking Program implementation

- Reestablish a Quarterly review Process
 - Based on Start of Year budget
 - Presented by Bonneville quarterly
 - Provided documentation in writing and presentations to Council

Fiscal Year Quarter	Presentation by Bonneville to Council's F&W Committee
1st	January
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- Other Options?