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July 2, 2009

DECISION MEMORANDUM

TO: Council Members

FROM: Peter Paquet, Manager Wildlife & Resident Fish

SUBJECT: Wildlife Mitigation Crediting Forum

PROPOSED ACTION: Approve the Framework for the Wildlife Crediting Forum

SIGNIFICANCE: Approval of the proposed framework will allow initiation of the wildlife crediting forum as called for in the Council's 2009 Fish and Wildlife Program.

Budgetary Economic Impacts

Staff estimates that contracting for facilitation of the Wildlife Crediting forum will cost between \$25,000 and \$30,000.

Background

In the 2009 Fish and Wildlife Program, the Council called for the initiation of a Wildlife Mitigation Crediting Forum to: "1) recommend a commonly accepted ledger of habitat units acquired; 2) recommend to the Council ways to resolve issues about accounting for habitat units; and 3) develop a common data base for tracking, assigning and recording habitat units." In addition, "[a]s part of the crediting forum, the Council will work with Bonneville and the managers to develop a comprehensive agreement on the proper crediting method for construction and inundation losses or strategies that will allow parties to reach long-term settlement agreements. Once completed, the Council will consider adopting the comprehensive agreement into the Program." Staff intends to initiate the crediting forum in the next several weeks.

The issue of crediting has been debated since 1989, when the Council first endorsed the use of the Habitat Evaluation Procedure (HEP) as the method to determine Bonneville's wildlife mitigation responsibility. Attachment 1 provides a detailed history of how the issue has evolved over the last 20 plus years. Several attempts have been made to resolve the crediting issues, the most recent being in 2003 when the Council's Wildlife Crediting Subcommittee took on the task but fell short of a consensus resolution.

Discussion

In order to achieve the objectives described in the Council's Program, staff recommends the following steps for starting and proceeding with the forum.

1. Membership, Charter and Schedule

Staff recommends that the forum membership be open to fish and wildlife managers, Bonneville, and other regional stakeholders such as Bonneville customers. The forum members should develop a charter that contains a work plan that provides meeting rules, a schedule for meetings and a process for resolving disputes. Because of the contentious nature of the crediting issue staff further recommends that the forum meetings be facilitated by an independent neutral party.

2. Crediting Ledger

The first priority for the forum should be to develop an agreed upon crediting ledger that provides the current status of wildlife mitigation (habitat units credited to Bonneville) by facility and defines the remaining Bonneville mitigation obligation (habitat units) by facility. The forum will recommend the ledger to the Council and Bonneville senior management for approval.

3. Crediting Process

Once the mitigation obligation has been identified the forum will address issues that potentially affect the crediting of habitat units. Examples of such issues include but are not limited to, credit for fish habitat projects, loss assessment irregularities, protection vs. enhancement credits, wildlife species gains, etc. The Crediting Forum should develop recommendations for clear criteria for crediting the remaining habitat units consistent with the Program. The forum's recommendations will be submitted to the Council and Bonneville senior management for approval. In this effort, the Council will not be asking the forum to decide whether the 2:1 crediting ratio for the remaining units is appropriate, or to negotiate any particular crediting ratio, as the Council already addressed that matter in the Program. Rather, the Council will be asking the forum to explore mechanisms that can resolve HU accounting and wildlife crediting issues given Bonneville's concern with a blanket application of a regional 2:1 crediting ratio.

4. Other Issues

If the crediting forum is successful in completing the tasks described above, the Council could ask it to address other issues related to wildlife crediting, such as the frequency and use of the Habitat Evaluation Procedure following the initial baseline evaluation. The forum could also provide recommendations on acceptable alternative evaluation procedures.

ATTACHMENT 1

Wildlife Crediting History

I. Northwest Power Act of 1980

The Northwest Power Act recognizes the development and operation of the hydroelectric dams of the Columbia River and its tributaries have impacted fish and wildlife resources. The Act calls upon the Council to promptly develop a program to protect, mitigate, and enhance fish and wildlife, including related spawning grounds and habitat, on the Columbia River and its tributaries¹ while also assuring the Pacific Northwest an adequate, efficient, economical, and reliable power supply.²

The legislative history of the Act and the Act itself are silent on the issues of how wildlife losses should be measured and how habitat acquired for wildlife mitigation purposes should be credited. In authorizing the Council to develop a program that protects, mitigates and enhances fish and wildlife affected by the “development, operation, and management” of the Columbia River Basin hydropower facilities³, Congress essentially requires the Council to determine the hydroelectric facilities’ positive and negative impacts on fish and wildlife and to develop an appropriate mitigation response.

Assessing the construction and operation impacts of the Basin’s hydropower facilities through impact assessments and development of mitigation crediting guidelines enables the Council to track whether or not it is fulfilling its obligation to develop a program that protects, mitigates and enhances fish and wildlife affected by the development and operation of the Basin’s hydroelectric facilities.

II. Habitat Evaluation Procedures (HEP)

In the 1970’s, the U.S. Fish and Wildlife Service developed Habitat Evaluation Procedures (HEP) to quantify the impacts of changes made through land and water development projects.⁴ HEP is an accounting procedure used not only to assess impacts of a project on wildlife habitat but also to assess the success of mitigation activities undertaken to offset the negative effects of a

¹ Northwest Power Act, § 4(h)(1)(A).

² Northwest Power Act, § 4(h)(5).

³ The Act distinguishes between two types of impacts: 1) Development impacts caused by dam construction and subsequent inundation of land; and 2) Operational impacts caused by fluctuating levels of the river due to flood control operations, etc. The Act expressly requires mitigation for both impacts.

⁴ U.S. Fish and Wildlife Service. 1977. A Handbook for Habitat Evaluation Procedures. Citing manual distributed by the U.S. Fish and Wildlife Service (Division of Ecological Services 1976).

project on wildlife.⁵ HEP was widely used throughout the country including the region's fish and wildlife agencies and tribes as the preferred scientific method for assessing wildlife mitigation efforts.⁶

Instead of using an acre for acre replacement as a standard for mitigation (under which an acre of high quality wetlands could be replaced with an acre of low quality wetland), HEP uses two measures in determining impacts, acres impacted and habitat value⁷. By multiplying area (usually acres) times the habitat value, a standardized unit (Habitat Unit) is determined for comparison of alternatives. One Habitat Unit equals one acre of optimum habitat. Under HEP, the acres and their habitat value are assessed before the project and at different time periods following completion of the project. A determination of the number of habitat units that would have accumulated over the life of the project⁸ is made. In the same manner, a determination of the number of Habitat Units that would have accumulated for the same time period had the project not been built is also made.

Habitat Unit gains or losses (with and without the proposed action) are then annualized by summing the Habitat Units across all years in the period of analysis⁹ and dividing that amount by the number of years in the life of the project. In this manner, pre-operational habitat changes can be considered in the analysis. This calculation results in Average Annual Habitat Units (AAHUs). The difference in Habitat Units (between the analysis with the project and the analysis without the project) represents the project's net impacts on wildlife and also represents the number of habitat units necessary to offset the impact of construction and/or operation of the hydroelectric project. So, for example, a net impact of negative 361 AAHUs means an average of 361 fewer HUs will be available every year during the life of the project than would be available if the proposed action was not implemented.¹⁰

A true HEP analysis thus includes an estimate of "annualized losses" or the number of habitat units which would have been present in each of the previous years had the project not been constructed.

III. History of Wildlife Mitigation in the Council's Fish and Wildlife Program

A. 1982 Program

⁵ Northwest Power Planning Council. 1994. Draft Wildlife Plan, version 5. The Wildlife Working Group. Midcontinent Ecological Science Center. 1999. Habitat Evaluation Procedures Workbook.

⁶ Northwest Power Planning Council, 1995. Findings on the Recommendations for Amendments to the Resident Fish and Wildlife Portions of the 1994 Fish and Wildlife Program and Response to Comments, p. 16-209.

⁷ The habitat value is known as the Habitat Suitability Index--an indexed value based on the life requirements of a species or community. Midcontinent Ecological Science Center. 1999. Habitat Evaluation Procedures Workbook. Except where noted, the remaining references to HEP procedure in Section II come from this manual.

⁸ The "life of the project" starts from the time the project becomes operational. The end of the project life is determined by the construction, or lead, agency.

⁹ The "period of analysis" includes the life of the project plus gains and losses in wildlife habitat that occur before the project becomes operational.

¹⁰ U.S. Fish and Wildlife Service. 1980. HEP Annualization, Chapter 5. Attached as Appendix B.2 to Audit of Wildlife Loss Assessments for Federal Dams on the Columbia River and its Tributaries prepared by Beak Consultants Incorporated, 1993.

The 1982 Program noted the development and operations of the hydroelectric power system in the Columbia River Basin had both beneficial as well as adverse effects on wildlife.

The Council called on Bonneville to (1) fund a review and analysis of the status of past, present, and proposed future wildlife planning and mitigation programs at each hydroelectric project in the Basin; (2) fund studies to measure the losses of wildlife and wildlife habitat and establish mitigation levels at specific projects and (3) submit a mitigation and enhancement plan for each facility to the Council.

If parties could agree on a level of mitigation for a particular project, then the program called for elimination of any further planning.

B. 1984 Program

The 1984 Program outlined a specific process for addressing the impacts of the development and operation of the Columbia River Basin hydroelectric system on wildlife.

The process included:

1. Development of mitigation status reports by each state to assess the extent to which wildlife populations have been positively and negatively impacted by the construction of hydroelectric projects and the extent to which previous programs have succeeded in mitigating wildlife losses;
2. Development of wildlife loss assessments for each hydroelectric facility in need of further mitigation as identified by the mitigation status reports; [loss assessments then took place over the next half decade]
 - The program did not specify what method parties were to use to complete loss assessments instead leaving it to Bonneville in consultation with appropriate fish and wildlife agencies, tribes, federal project operators and regulators, and Bonneville customers.
3. Development of mitigation plans to address the impacts identified in the loss statements;
4. Subsequent incorporation of approved mitigation plans or appropriate alternatives into the Council's program.

The 1984 program continued to emphasize that if parties agree that a satisfactory level of protection, mitigation or enhancement for a particular facility has been achieved, then the need for further planning is eliminated.

The 1984 Program also established a process for wildlife habitat land acquisitions including:

1. Determining the need for and level of mitigation at specific hydroelectric projects based on documentation or agreed upon by the appropriate agencies, tribes and project operators
2. Developing a plan for implementing the mitigation project based on the best available scientific knowledge, cost-effectiveness, etc.
3. Documentation that consultation and coordination activities have been done

4. A detailed management plan outlining responsibilities of all involved and describing a plan for monitoring.

C. 1987 Program

The Council incorporated wildlife mitigation plans for Montana's Hungry Horse and Libby dams into the Fish and Wildlife Program.

The Council decided ratepayers should not be held accountable for funding 100 percent of wildlife mitigation at Hungry Horse and Libby facilities. So, to determine ratepayer obligation, the Council selected the Congressional repayment allocation (percent of invested dollars returnable to the Federal Treasury to repay borrowed funds) as a method to determine Bonneville's fiscal responsibility. Using this method, the ratepayers' share was reduced to approximately 77 percent of total mitigation costs for both facilities. The Council made clear that this allocation method was not to be construed as precedent for future mitigation plan decisions because the Council did not think there had been sufficient discussion and analyses of the allocation issue to adopt one method for all future wildlife mitigation plans.

The Council also decided all future wildlife mitigation plans should be considered in program amendment proceedings before inclusion in the program.

Since 1987, the Council has accepted into the program other mitigation proposals allocating ratepayer responsibility differently.¹¹

D. 1989 Adoption of Wildlife Mitigation Rule

In 1989, the Council formally adopted the Wildlife Mitigation Rule as an amendment to the 1987 Fish and Wildlife Program.

The Wildlife Mitigation Rule:

- Set an interim goal to protect, mitigate and enhance 35% of the lost Habitat Units over the next 10 years.¹²

¹¹ For example, instead of basing mitigation on a detailed loss assessment, the Grand Coulee mitigation proposal was based on a "conceptual" goal of acquiring 70,000 acres, or the right to improve and maintain 70,000 acres for the purpose of increasing wildlife carrying capacity (maximum number of animals an area can sustain without suffering habitat damage). The Washington Department of Wildlife performed an estimate of habitat losses based on interpretation of pre-project aerial photos. Losses in terms of habitat were determined for the indicator species using a modification of the U.S. Fish and Wildlife Service's Habitat Evaluation Procedure (HEP). Rather than pursue full redress for losses, the Washington Department of Wildlife proposed to protect the same number of habitat units as were lost due to inundation behind Grand Coulee dam, or approximately 70,000 acres. This was less than one-third of the estimated wildlife and habitat losses caused by Grand Coulee inundation per Washington Department of Wildlife's own estimates. The Grand Coulee mitigation proposal was developed under the supervision of an oversight committee which included representatives of wildlife agencies, tribes, the Bureau of Reclamation, Council staff, Bonneville and utilities.

¹² The Council did not require that the interim goal be tied to each project. Rather, the 35 percent represented an interim goal for basinwide losses.

- The number of lost Habitat Units was determined by the loss statements previously prepared. The Council accepted the loss statements as starting points for mitigation and established an advisory committee to set wildlife priorities and review mitigation plans.¹³ The Council agreed there was sufficient evidence of wildlife losses due to construction and inundation to begin on-the-ground mitigation activities even without achieving consensus on the exact amount of mitigation required to satisfy Bonneville's mitigation obligation under the Northwest Power Act.¹⁴
- Based on HEP, the Wildlife Rule expressed wildlife losses in terms of Habitat Units and did not designate a specific crediting ratio for habitat acquisitions. Instead, the Wildlife Rule called on Bonneville, in consultation with other parties, to develop a monitoring and evaluation program. This was never done.
- Called for Council determination of a long-term mitigation goal after all the mitigation plans for hydroelectric facilities were submitted to the Council. Thus, the debate over the power system's ultimate wildlife responsibility was left for the future.
- Called for an independent audit of the loss assessments prior to their final acceptance. The Council recognized disagreement existed over the magnitude of losses presented by the wildlife agencies and tribes. The Council noted that while the final loss numbers could change post-audit, the assessments did contain sufficient evidence of losses to begin mitigation efforts.

E. 1993 Beak Report and Program Amendments

In February 1993, Beak Consultants reported the results of the independent review of the wildlife loss assessments the Council had called for in the 1989 Wildlife Rule. At the Council's request, Beak looked for systematic bias in the way the loss reports were prepared, i.e., did the reports systematically overestimate or underestimate losses. Beak looked at four representative loss assessments (Grand Coulee, McNary, Dworshak, and Lookout Point). The report's major conclusions concerned the omissions that occurred in preparing the loss assessments and the inconsistencies in application of HEP between projects.

Beak noted the loss assessments were less rigorous than typical HEP analysis due to time and money restrictions (i.e., the loss assessments did not assess operational losses, irrigation impacts, cumulative impacts, or annualization¹⁵).

The lack of annualization presented the greatest potential for bias in terms of estimating wildlife losses. The older hydroelectric projects accumulated more impacts than the younger projects yet no mechanism in the loss assessment procedure accounted for the increased impacts. None of the HEP studies assessed the value of habitat before the projects were built despite available

¹³ Northwest Power Planning Council. 1989. Wildlife Mitigation Rule and Response to Comments (89-35).

¹⁴ Northwest Power Planning Council. 1989. Wildlife Mitigation Rule and Response to Comments (89-35).

¹⁵ Annualization is a concept related to estimating wildlife losses. Annualization is a process which takes into account annual losses which have occurred from the time of inundation at each project and subtracts from that, habitat units which otherwise would have been lost to other purposes (i.e. losses which would have been caused by turning the habitat into farmland if the project had not been built).

information and Beak found that failure to assess this fundamental issue was a potential source of bias.

After the Beak report, the Council amended the 1987 Fish and Wildlife Program replacing the interim 35 percent mitigation goal with a new goal of full mitigation. The Council again called for the development of a wildlife crediting methodology. The program called on Bonneville to develop and recommend to the Council a process to address operational losses. Bonneville did not pursue this so the Wildlife Working Group comprised of representatives from state and federal fish, wildlife, and land management agencies; tribes; Bonneville; and the PNUCC, developed the plan (see below).

F. Draft Wildlife Plan

Following the 1993 Beak report, the Council decided to issue an RFP for an independent contractor to develop a method to correct the deficiencies that were identified in the Beak report. This resulted in the Draft Wildlife Plan that was included as an appendix to the 1995 program. Developed by the Wildlife Working Group, the goal of the Wildlife Plan was to define consistent procedures for: (1) standardizing and completing the loss assessments; (2) developing and implementing mitigation plans that will fully mitigate for wildlife losses; and (3) monitoring and evaluating mitigation activities to ensure mitigation actually occurs.

The Wildlife Plan defined “mitigation” as achieving and sustaining the levels of habitat and species productivity for the Habitat Units lost as a result of the construction and operation of the federal and non-federal hydropower system. Habitat Units gained as a result of implementing Bonneville-funded mitigation activities were to be tracked on a mitigation scorecard. In this way, Habitat Units gained due to mitigation efforts, will offset losses.

G. 1995 Program

The Council called for finalizing the Draft Wildlife Plan by March 1, 1996 and funding implementation of the plan.

The Council recognized the completed loss assessments in the program as unannualized losses attributable to the construction of the hydroelectric projects. The Council recommended continued use of the loss assessments to identify wildlife measures to protect, mitigate and enhance fish and wildlife and to continue development of short-term and long-term mitigation agreements.

The Council did not agree to accept the results of the loss assessments, when completed, as full mitigation but indicated it would utilize the assessments to establish a range of total losses caused by the construction and operation of the hydroelectric projects.

The Council called for a consistent system wide method for crediting new wildlife mitigation actions. The Council specifically called on Bonneville and wildlife managers to develop a method for crediting wildlife benefits from fish projects where the Council recognized some fish habitat projects provided benefits to wildlife as well as to fish.

As for past mitigation, the Council decided to address crediting for past actions as part of the operational loss assessments yet to be completed. Any past benefit resulting from habitat improvement projects on project land or benefits from past dam operation expected to occur in the future would be accounted for in the operational loss assessment along with any negative impacts. Past and future credits would therefore be reflected in the Habitat Suitability Index and, as such, would be fully considered in the calculation of Habitat Units. In this way, Bonneville will receive credit for existing value on any land acquired through the program (by virtue of showing a smaller net impact in terms of Habitat Units).

The Council indicated that the yet to be completed operational impact assessments would not account for benefits to wildlife resources that occurred on project lands with existing funded mitigation plans. Those benefits would be accounted for on the mitigation scorecard and not in the operational loss assessment. So although there was a difference in how mitigation is accounted for on lands with existing funded mitigation plans and those without, in both cases, past and present mitigation effects are taken into account.

H. 2000 Program

The 2000 Fish and Wildlife Program calls for (1) completion of mitigation agreements between Bonneville and fish and wildlife managers for *construction and inundation* losses utilizing a 2:1 crediting ratio¹⁶ and (2) completion of *operational* loss assessments.

The 2000 Program recognized habitat *enhancement* credits on a 1:1 basis -- 1 HU credited for every HU gained when habitat management activities funded by Bonneville lead to a net increase in habitat value.

1. 2:1 crediting

During the 2000 Program amendment process, fish and wildlife managers called for mitigation of all construction and inundation and direct operational losses on a 3:1 basis. The managers called for 3:1 crediting for past as well as future mitigation. Bonneville called for 1:1 crediting on the grounds that anything greater was technically and legally inappropriate.

The Council, analyzing the crediting issue, decided 1:1 crediting was insufficient based on the following:

1. An appropriate crediting ratio must take into account the fact that lands acquired and protected as mitigation have pre-existing wildlife habitat values that are, in most cases, not in immediate danger of complete loss. The act of purchasing and preserving property, without anything more, does not increase the wildlife value of the acquired property. Without any actual increase in habitat value, there are no gains against which losses can be credited.

Crediting preserved acres or HUs on a 1:1 basis implies these preserved acres would necessarily have gone to zero absent preservation. While this could happen (i.e. when land is slated to be paved over for a strip-mall), Bonneville usually does not face this

¹⁶ Under a 2:1 crediting ration, Bonneville is responsible for acquiring two Habitat Units for every one Habitat Unit lost.

imminent threat at the time the land is purchased for mitigation. This threat of imminent development is also not present in enough cases to support an across-the-board crediting ratio of 1:1. Instead, it is reasonable to presume that acquired and preserved acres have a pre-existing value for wildlife that purchase alone does not increase. If purchase does not increase the habitat value of the land, then there should be no credit for the purchase without something more done to increase the habitat value.

Under true HEP analysis, credit is given only for newly-created habitat units. For example, if a parcel of land is acquired for mitigation and 10 Habitat Units are present at the time of acquisition, a HEP analysis gives no credit for those 10 existing HUs unless they otherwise would have been lost to development unrelated to the hydroelectric project. If the acquired habitat would otherwise have been undisturbed but it is improved by projects after acquisition so that 15 habitat units are now present, strict application of HEP results in a credit of 5 units of mitigation.

2. 1:1 crediting is also insufficient because the loss assessments on which mitigation agreements are based do not annualize which means the loss assessments generally represent the low end of the range of legitimate ways to conceptualize the losses. As indicated, the Council's conclusion on this is based on Beak's independent review of the loss assessments.