Department of Energy

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

ENVIRONMENT, FISH AND WILDLIFE

April 22, 2005

In reply refer to: KE-4

Mr. Tony Nigro, Chair
Columbia Basin Fish and Wildlife Authority
851 SW Sixth Avenue, Suite 260
Portland, Oregon 97204

Dear Mr. Nigro:

Thank you for your letter of March 16, 2005, regarding future fish and wildlife program implementation cost estimates for the next rate period and requesting an increase in Bonneville Power Administration's (BPA) current integrated program budget. In responding for the Administrator, I want to provide the broadest possible context for BPA's perspective about estimating project implementation costs, and their relationship to establishing appropriate program levels as an input to setting wholesale power rates.

Let me first acknowledge the considerable effort invested by Columbia Basin Fish & Wildlife Authority (CBFWA) members and staff to develop an estimate of future program implementation costs based on subbasin plans. Your input will be among the many comments BPA will receive during the Power Function Review (PFR), convened by the Power Business Line, to examine BPA's program levels and discuss the policy choices that will influence future agency program costs. However, in order to serve as a useful influence on program levels in the PFR, funding estimates that project BPA's future costs must be more appropriately matched and accurately sized to BPA's protection, mitigation, enhancement and recovery responsibilities.

First, it is important to note that subbasin planning is designed to guide Council evaluation and recommendation of projects for the region to implement, and not just by way of funding by BPA. Consequently, an additive summing-up of a list of preferred management actions – implemented as projects addressed to a broad and historic range of impacts from human use and development of the Columbia River – is simply not an appropriate indication of an aggregate funding level that should be shouldered by BPA ratepayers alone. Although subbasin plans serve to guide the enhancement or offsite component of a comprehensive program under the Northwest Power Act, not all of the mitigation and recovery needs of fish and wildlife are attributable to impacts of the development and operation of the Federal Columbia River Power System (see Enclosure). To be complete, funding estimates to implement individual subbasin plans must include the costs of action and investment expected of others in the region who are also responsible for affecting the health of fish and wildlife populations and their habitat.

Like CBFWA, BPA has been encouraging the Council to take the time necessary to meaningfully "roll-up" the biological goals and objectives found in individual subbasin plans into broader provincial, geographic or population level biological objectives. Articulating biological objectives and clear performance expectations through roll-up will provide a solid foundation for Council project funding recommendations to BPA, and for better integration, allocation and pace of needed effort and associated funding responsibility to others.

However, a roll-up limited to the development of habitat or population-level biological objectives would still be incomplete absent the important additional component of prioritization. Prioritizing effort and investment at a provincial and basin-wide scale means more than a rigid or rank order of the importance of measures. In our view, prioritization entails determining:

- which actions address priority objectives or outcomes;
- priority in time or in the order in which actions need to occur (sequencing);
- what actions are outside the capacity of BPA to undertake, or that are within the scope of the responsibility of others; and
- pacing implementation to coincide with what those implementing the program, particularly BPA, can sustain through time.

We strongly believe subbasin plans represent a significant opportunity for improving the allocation of resources through prioritization, with better integration of effort and a shared responsibility for taking action and delivering results. Because the causes of fish and wildlife decline within individual subbasins go well beyond the impacts of the existence and operation of the federal hydrosystem, it is inappropriate to sum-up all future potential subbasin mitigation strategy costs and attribute these to a category of potential BPA "offsite mitigation" responsibilities. Consequently, we believe the funding estimates you have provided perpetuate a point-of-view: that the fundamental function of subbasin plans is to guide only BPA spending.

This limited outcome for subbasin planning is inconsistent with the system-wide emphasis of the Northwest Power Act. Plans are intended to identify action and who is to act, and to provide the information necessary to prioritize the efforts and investment choices of all subbasin participants. To be meaningful, cost estimates based on the plans need to articulate an unambiguous rationale not just for Council evaluation and prioritization of project funding recommendations to BPA, but also for a principled allocation of needed effort and associated funding responsibility to others besides BPA. We funded subbasin planning with the understanding that the plans would contribute to the foundation of Endangered Species Act recovery planning as well as help integrate the funding (and therefore responsibilities) of other entities.

As one of our principles in the MOU workgroup discussions, we have consistently called for a more explicit description of how to better leverage future fish and wildlife mitigation funding. BPA believes greater cost sharing is one strategy to leverage additional mitigation investment, particularly in cases where responsibilities are unclear or shared among several entities, and to create broader regional buy-in and commitment to fish and wildlife recovery strategies. Other MOU principles we have stressed include clarity about the roles and responsibilities of BPA, the Council, CBFWA and other participants in project solicitation, evaluation and selection. We have also proposed to manage overall program funding within allocations to specific categories,

in order to focus a greater proportion of actual spending to on-the-ground efforts that actually increase the abundance, distribution and diversity of fish and wildlife populations and their habitats.

We seek to maximize an effective application of shared investment in meeting Fish and Wildlife Program objectives. Our purpose in emphasizing cost-sharing is to enable the initiation of new work by broadening the base of financial support for implementation of a program that is truly regional in character. We are determined to promote and structure future project cost-sharing that supports opportunities to undertake important or priority mitigation initiatives, but that fairly allocates the cost of implementing projects that meet goals common to both BPA and its mitigation and recovery partners. Given the magnitude of the mitigation and recovery challenge before the entire region, we need a shared approach that maximizes the effective application of our collective resources.

I acknowledge the challenges inherent in fully engaging the commitment of the region to this broader perspective and purpose, and I look forward to continuing to work collaboratively on the issue of funding levels for the integrated program in the near-term. However, in terms of informing BPA on Integrated Program funding levels for the next rate period, the draft subbasin plan costs developed by CBFWA are unrealistically broad in scope since the basis of the cost estimate seems to reflect a presumption that all of the costs of meeting the collective responsibility of the region to meet the needs of fish and wildlife populations, are assignable in total to BPA.

I hope this letter provides additional insight into BPA's perspective about managing the implementation needs of the program into the future as well as feedback on CBFWA's approach to subbasin plan implementation costs. Thank you for your continued commitment to the success of the region's fish and wildlife mitigation and ESA recovery efforts.

Sincerely,

Signed by G. K. Delwiche

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

Enclosure

cc:
Ms. Melinda Eden, Northwest Power & Conservation Council
Mr. Doug Marker, Northwest Power & Conservation Council
Mr. Olney Patt, Jr., Columbia River Inter-Tribal Fish Commission
Mr. Warren Seyler, Upper Columbia United Tribes

Enclosure:
Bonneville Power Administration's Review of the Columbia Basin Fish and Wildlife Authority's Draft Fish and Wildlife Funding Proposal
April 25, 2005

This enclosure reflects detailed comments of the Bonneville Power Administration (BPA) on the Columbia Basin Fish and Wildlife Authority's various drafts of its paper "Future Fish and Wildlife Costs for the BPA Rate Case" (CBFWA proposal). These comments should be considered as applicable to all drafts, since all drafts raised similar issues.

BPA's Obligations

The CBFWA proposal is based upon a particularly expansive view of BPA's fish and wildlife obligations under the Northwest Power Act. While BPA is guided by the Council's efforts and appreciates them, the Council has not and legally cannot establish BPA's fish and wildlife obligations. Congress has already done so.

The CBFWA proposal goes beyond the basic tenets of the Act, which direct BPA to protect, mitigate, and enhance fish and wildlife, and in addition infers a restoration requirement. Congress, however, knew fish and wildlife and their habitats could never be restored to their pre-dam era levels.[1] Despite the Act's directive, the proposal appears to assume that BPA must restore all of the fish and wildlife affected by the development of any hydroelectric project.[2] Until CBFWA bases its proposals on a legally supportable understanding of BPA's responsibilities, the recommendations will continue to exaggerate what BPA is authorized and required to fund and challenge the proscription that the program "should not be a burden on the [electric power] consumers of the region."[3]

Doubling Anadromous Fish Runs

The Council has recommended a level of returning adult salmon and steelhead that it believes is appropriate to consider as an objective: "Increase total adult salmon and steelhead runs above Bonneville Dam by 2025 to an average of 5 million annually in a manner that supports tribal and non-tribal harvest."[4] The Council appropriately "recognize[d] that achieving these broad objectives is not the sole responsibility of this fish and wildlife program nor the Bonneville Power Administration."[5]

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[1] 126 Cong. Rec. 31,434 (1980) (statement of Representative Dingell, sponsor of the fish and wildlife provisions of the Act).
[2] After BPA explained the draft proposal went beyond the FCRPS responsibility, CBFWA representatives have sought to mollify this concern by noting that the subbasin plans do indeed call for actions by entities other than BPA, and that BPA should not shoulder all the subbasin plan implementation costs. Briefing by Tom Giese (CBFWA) and Ed Sheets (Yakama Nation and Columbia River Inter Tribal Fish Commission consultant) on March 3, 2005. Nevertheless, the proposal has retained dramatic funding increases on the same scale it had prior to that acknowledgement.
[3] *Northwest Resource Information Center v. Northwest Power Planning Council*, 35 F.3d 1371, 1394 (9th Cir. 1994) (quoting H.R. No. Rep. 132.5-976, pt. I, 132.5th Cong., 2d Sess., at 57.)
[4] Council, 2000 Columbia River Basin Fish and Widllife Program at 17.
[5] 2000 Columbia River Basin Fish and Wildlife Program at 16.

The CBFWA proposal assigns the entire doubling goal as an FCRPS responsibility. The doubling goal, however, is based on a 1986 study of anadromous fish losses, the "Compilation of Information on Salmon and Steelhead Losses in the Columbia River Basin." This document was "not formally adopted as part of the program" and "may be changed without amending the program."[6] Where the study looked at hydropower impacts, it considered 136 dams in the region—including ten in Canada—not just the FCRPS.[7] The study used for its baseline a single year in which fish returns were very good—and 87 years before Bonneville Dam was built. The study "describes salmon and steelhead losses attributable to all causes. . . . It does not reach conclusions on relative responsibilities for losses or specifically identify hydropower's contribution to those losses."[8] On its face, by its own express terms, the 1986 study did not define FCRPS responsibilities.[9]

BPA Mitigates For the FCRPS Only

Another underlying premise of the CBFWA proposal appears to be that BPA must mitigate for "any hydroelectric project" in the Columbia Basin. In contrast, the Northwest Power Act defines BPA's responsibility as being limited to mitigating the impacts of the development and operation of the FCRPS only.

Section 4(h)(10)(A) of the Act authorizes BPA to "protect, mitigate, and enhance fish and wildlife to the extent affected by the development and operation of any hydroelectric project of the Columbia River and its tributaries. . . ."[10] The very next sentence, though, qualifies and limits the applicability of that provision considerably by directing that BPA's mitigation expenditures "shall be in addition to, not in lieu of, other expenditures authorized or required from other entities under other agreements or provisions of law."[11] Consequently, BPA should not be called upon to mitigate where others are required to do so.

For instance, most of the non-federal hydroelectric projects in the Basin are governed by licenses issued by the Federal Energy Regulatory Commission (FERC) under authority of the Federal Power Act.[12] That act requires that FERC evaluate and include appropriate measures for the protection, mitigation, and enhancement of fish and wildlife affected by those hydroelectric projects.[13] In addition, FERC is required to include mitigation measures requested by federal fish

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[6] Id. at 61.
[7] Council, Compilation of Information on Salmon and Steelhead Losses in the Columbia River Basin at 137 (Mar. 1986).
[8] Id. at 3.
[9] Id., Appendix E, Numerical Estimates of Hydropower-Related Losses at 1. Council staff in the introduction noted that "The focus of the [estimates of hydropower contribution is] to loses of salmon and steelhead and their habitat and not on the precise contribution of each individual hydropower project in that system. In several parts of the discussion, there are references to the approximate contributions of groups of projects to salmon and steelhead losses. These are included only for the purpose of estimating system hydropower-related losses, not to determine particular responsibilities within that system for mitigating the losses."
[10] 16 U.S.C. § 839b(h)(10)(A).
[11] 16 U.S.C. § 839b(h)(10)(A).
[12] Some hydroelectric facilities, like Little Falls Dam on the Spokane River built in 1911, predated the Federal Power Act and are regulated by state agencies.
[13] 16 U.S.C. § 803(j)(1).

and wildlife managers in some instances, and federal land managers in others.[14] FERC is also required to protect, mitigate, and enhance fish and wildlife by taking the Council's program into account "at each relevant stage of decisionmaking to the fullest extent practicable."[15] Because FERC is authorized and required to address most non-federal hydroelectric project impacts to fish and wildlife, the Northwest Power Act indicates FERC and its licensees should be undertaking such mitigation measures.

BPA Responsibility for Implementing Subbasin Plans

The proposal notes that the subbasin plans address 150 years of development in the West. It then indicates the premise of its proposal is that BPA should fully implement each and every subbasin plan. We disagree. BPA has spent $15 million to have subbasin plans developed for 58 subbasins in the Basin to "serve as the future template for Council recommendations of projects for funding by BPA *and others* in the Region who are responsible for actions affecting the health of fish and wildlife populations and habitat."[16] In its March 22, 2004, letter to the Council on the Clearwater Subbasin Plan, BPA restated its views on subbasin planning:

> "The following project goals for the subbasin planning effort across the Columbia River Basin were stated in the Master Contract Agreements between the Council and BPA. We reiterate these here since it is our expectation that to be a usable plan for both BPA and the Council, all subbasin plans need to meet these goals:
>
> "Subbasin planning will facilitate, through a collaborative process, the development of scientifically credible, locally implementable subbasin scale plans to serve the following purposes:
>
> 1. Protect, mitigate and enhance fish and wildlife and related spawning grounds and habitat impacted by the development and operation of the Federal Columbia River Power System (FCRPS);
> 2. Guide BPA's expenditures by giving priority to strategies for ESA recovery activities as Bonneville implements the Council's 2000 Program through subbasin plans;
> 3. Provide a context for scientific review of program measures;
> 4. Provide the foundation for NOAA/USFWS ESA recovery planning efforts;
> 5. Provide stability and certainty for local planning efforts during federal recovery planning;
> 6. Improve coordination of other state, Tribal, federal, and private fish and wildlife mitigation efforts within the Columbia River Basin; and
> 7. Integrate BPA funding with funding from other sources such as the Federal Energy Regulatory Commission (FERC), U.S. Forest Service (USFS), Bureau of Reclamation (BOR), and Bureau of Land Management (BLM).

[14] Id. at §§ 797(e) and 811.
[15] 16 U.S.C. § 839b(h)(11)(A)(ii).
[16] Letter from Terry Larson, BPA Acting Director for Fish and Wildlife, to Judi Danielson, Chair, NPCC (Mar. 22, 2004) (discussing subbasin planning and commenting on the Clearwater Subbasin Plan).

. . .

> "It was further described in these master contracts that the Council recognized that achieving these broad objectives is not the sole responsibility of the 2000 Fish and Wildlife Program or BPA alone and that the focus of the 2000 Program is limited to fish and wildlife affected by the development, operation, and management of the FCRPS. Finally, once subbasin plans are approved, the Council, in consultation with BPA, fish and wildlife agencies, Tribes, and the ISRP [Independent Scientific Review Panel] will be able to review projects proposed for BPA funding to determine if they are consistent with the Northwest Power Act, the 2000 Program, and particularly the elements of the applicable subbasin plan that have been adopted as part of the 2000 Program."

Despite this background and intent, the proposal presumes that BPA should bear the entire cost of implementing subbasin plans (with the exception of five subbasins in the Intermountain Province in which the Upper Columbia United Tribes have separated costs which they believe are BPA's responsibilities from others). The proposal acknowledges it "did not employ any overriding rationale for what BPA's obligations are."[17] This proposal misstates the purpose and intent of subbasin planning noted above, as well as the breadth of BPA's responsibilities and the likely range of costs BPA will incur to implement that portion of the Council's program appropriately tied to the impacts of the FCRPS.[18]

In Lieu Funding Prohibition

The Northwest Power Act limits what mitigation the Administrator is authorized to fund by requiring that such expenditures are "in addition to, not in lieu of, other expenditures authorized or required from other entities under other agreements or provisions of law."[19] The in lieu prohibition may be triggered when another entity is responsible or required to undertake mitigation; the entity does not have to be currently funding the mitigation to trigger the prohibition. The proposal does not appear to be based on the costs of mitigation projects that address direct or indirect effects of the development and operation of the FCRPS. Instead, most projects in the subbasin plans mitigate the direct effects of road construction, mining, grazing, timber harvest, over-fishing, irrigation, tributary habitat degradation, urbanization and development. BPA's expenditures under section 4(h)(10)(A) may not displace expenditures by "other entities under other agreements or provisions of law"—whether those expenditures are planned, underway, or being compelled. There are numerous state and federal laws and regulations authorizing, if not requiring, others to mitigate many of the impacts addressed in the subbasin plans. There are likely also situations where other entities are separately funding mitigation while trying to shift their costs to BPA. While BPA may sometimes become a partner and provide cost-sharing to expand, improve, or expedite the work of others and not run afoul of

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[17] Giese and Sheets (Mar. 3, 2005). CBFWA staff has indicated the cost estimates from the Upper Columbia Tribes United considered everything in the subbasin plans a BPA responsibility if the work was not on federal land. The Nez Perce Tribe, staff said, did not discriminate between the responsibilities of BPA or others.

[18] The language regarding BPA's responsibility for implementing the entirety of the subbasin plans as originally envisioned in the CBFWA proposal may possibly be less expansive now than in earlier drafts, but this appears to reflect only semantic changes; BPA is unaware of any substantive changes in the assumptions, extrapolations, or methodologies CBFWA used to develop the proposal.

[19] 16 U.S.C. § 839b(h)(10)(A).

the in lieu prohibition, such financial assistance does not obviate the need to account for funding that should be provided by others who are, in the first instance, authorized or required to mitigate these activities.

Reliance on Offsite Enhancement

Under the Northwest Power Act, BPA has a duty to protect, mitigate, and enhance fish and wildlife affected by the development and operation of the FCRPS. The Ninth Circuit has noted that "the Act shifted focus in wildlife mitigation from merely creating substitute resources, such as salmon hatcheries, to emphasizing changes in hydro project operations."[20] In other words, Congress wanted "a system-wide remedial program to cover the entire Basin, rather than the more traditional approach of focusing on individual [hydroelectric] projects."[21] While the focus of the Act is on mitigating federal and non-federal hydrosystem operations throughout the Basin, and the mitigation objectives were to be achieved largely through hydrosystem changes, the Act also allowed that "[e]nhancement measures shall be included in the program to the extent such measures are designed to achieve improved protection and mitigation."[22] But the inclusion of enhancement measures in the program was intended to be limited. "Enhancement measures may be used, *in appropriate circumstances*, as a means of achieving offsite protection and mitigation with respect to compensation for losses arising from the [FCRPS]."[23] The CBFWA proposal, however, is made up almost entirely of offsite mitigation and protection strategies, measures, and projects. To be in accord with BPA's obligations, the proposal should more appropriately limit the use of enhancements it estimates are BPA's responsibility to "appropriate circumstances"—i.e., offsetting impacts to fish and wildlife that cannot be addressed through improvements to the FCRPS.

Mitigating Areas Not Affected by the FCRPS

There are numerous areas in the Columbia River Basin historically accessible to anadromous fish but now blocked by hydroelectric projects. BPA helps mitigate where the dam blocking the habitat is an FCRPS project. When the blocking dam is not an FCRPS project, it is the responsibility of others to mitigate the losses.

Many subbasin plans cover areas of the Basin blocked by non-federal hydroelectric projects. The Spokane River lost its anadromous fish runs in 1911, a generation before the construction of Grand Coulee Dam, when Avista's predecessors built Little Falls Dam. While Idaho Power Company's Hells Canyon Complex blocked the middle-Snake River permanently in 1959, that was just the final project in a list of private power projects blocking the Snake River beginning with Swan Falls in 1901. Above Hells Canyon, tributary production was largely eliminated by non-FCRPS dams beginning with the damming of the Bruneau River in 1860. To the extent BPA has responsibilities above Hells Canyon, for instance, it will honor them; however, it is unreasonable to expect BPA to lead mitigation efforts, much less "fully mitigate" the century-old non-FCRPS-caused losses, in such areas.

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[20] *NW Resource Info. Center v. NW Power Planning Council*, 35 F.3d at 1378.
[21] Id.
[22] 16 U.S.C. § 839b(h)(5).
[23] 16 U.S.C. § 839b(h)(8)(A) (emphasis added).

In a similar vein, the proposal overestimates BPA costs by looking to the FCRPS to mitigate extensively in subbasins below Bonneville Dam. The bulk of FCRPS impacts below Bonneville Dam are from hydrosystem operations and are generally mitigated with system operations. BPA's obligations do not run to extensive offsite mitigation addressed to the impacts of over-fishing and land management practices that have degraded habitat in these subbasins.

The Uncertainties CBFWA References

The wording of the CBFWA proposal is equivocal, raising questions about the nature and intent of the proposal itself, and the reliability or utility of the cost estimates it contains. It purports to identify "future costs BPA *may* need to include in its upcoming rate case."[24] Considering these costs, though, presents a problem because "[t]he fish and wildlife managers recognize the considerable uncertainty in these estimates."[25] There is also no "consensus regarding the specific actions or locations implied in the subbasin cost estimates." [26] This suggests the proposal was developed not knowing the extent of the mitigation it presupposes.

The methodology of the proposal is also particularly troublesome in that its estimates cover about one-half of the area of the entire Columbia River Basin.[28] The costs of the other half of the basin were then "extrapolated" using, in the words of CBFWA staff, "SWAGs—scientific wild ass guesses."[29] This method of apportionment perpetuates a *status quo* approach to the allocation of financial and human resources that does not systematically address regional priorities or otherwise target regional or provincial biological objectives.[30]

Completed Mitigation

The proposal seeks to quantify a level of funding for investment in habitat mitigation to meet three different needs: resident fish, anadromous fish, and wildlife. But when the FCRPS was built, ecosystems were inundated, and those ecosystems supported all three kinds of fish and wildlife. This proposal advocates what amounts to mitigating three times for habitat that was lost once. A more pragmatic accounting for past investment is overdue and should be completed before increasing spending levels substantially for habitat mitigation.

Hatcheries have been built (with BPA funding) to mitigate for lost anadromous fish and their habitat as well as for resident fish and their habitat. Thousands of acres of wildlife habitat have been mitigated by purchase, protected with easements, and improved. But even though much of

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[24] CBFWA, Future Fish and Wildlife Costs for the BPA Rate Case (Feb. 9, 2005) Draft at 1 (emphasis added).
[25] Id. at 2
[26] See letter from Tony Nigro, Oregon Department of Fish and Wildlife Program Manager, to Warren Seyler, Chairman CBFWA (Feb. 10, 2005) (noting subbasin plans include actions not supported by all co-managers).
[28] CBFWA, Future Fish and Wildlife Costs for the BPA Rate Case (Feb. 9, 2005) Draft at 2 (noting 27 subbasin plan cost estimates used, along with a Council staff estimates).
[29] Giese and Sheets (Mar. 3, 2005).
[30] *See also* letter from Warren Seyler, UCUT Chairman and CBFWA Chairman, to Rod Sando, CBFWA Executive Director (Jan. 13, 2005).

that wildlife habitat had value to fish, none of it has as yet been credited toward BPA's fish obligations. Conversely, BPA has also secured tens of thousands of acres of fish habitat, but none of it has been credited toward BPA's wildlife obligations. CBFWA's current approach to estimating the costs of BPA's obligations does not consider that hatcheries were used to replace lost habitat, and does not account for the fish value of wildlife habitat and the wildlife value of fish habitat, which has the effect of expanding BPA's responsibilities to include mitigating three times for ecosystems lost once.

Wildlife Mitigation

BPA thinks the proposal's wildlife mitigation cost estimates are overstated. A review of a small sample of subbasin plans strongly suggests CBFWA's proposal errs in trying to assign BPA responsibility for additional mitigation where mitigation is already complete. The Yakima Subbasin Plan, for instance, begins by explaining that its "contractually stated purpose . . .is to guide the selection and funding of projects by the Bonneville Power Administration for protection, restoration, and enhancement of fish and wildlife affected by the federal hydrosystem."[31] There is no indication that the plan was written to address the responsibilities of others, yet it calls for additional wildlife mitigation to address "high road density", "inappropriate livestock grazing", "anthropogenic disturbances", "in- appropriate silvicultural practices", and "habitat fragmentation."[32] These are not FCRPS impacts.

BPA expects these shortcomings are symptomatic. First, the proposal plans for additional wildlife mitigation where BPA has already met its mitigation goals. BPA believes it has, for instance, completed wildlife mitigation for the construction of the lower four Snake River dams as well as John Day, The Dalles, McNary, and Bonneville dams. As a consequence, the CBFWA proposal overstates BPA's need to fund wildlife mitigation by including estimated costs from plans that cover areas where mitigation for construction impacts is complete.

Second, the proposal does not appear to be cost-effective. The proposed additional $300 million for wildlife habitat is twice what was spent since 1989 to secure over half the habitat units BPA has been targeting for completion. CBFWA's proposal needs to explain (1) why the costs of wildlife habitat mitigation is projected to be so much greater in the future than past experience suggests, particularly given the cost advantage habitat improvements have over fee title acquisitions, and (2) why mitigating ecosystems on behalf of both fish and wildlife is not a more cost-effective approach to meeting BPA's obligations.

Third, it is unclear why there is a stated need to immediately increase the wildlife habitat budget when the extent of the need for additional wildlife mitigation is considerably less than assumed in the proposal. BPA is already working with CBFWA through the Regional HEP (Habitat Evaluation Procedure) Team to begin determining the wildlife habitat value of fish habitat projects. There remain, however, additional sources of uncounted habitat units, secured with BPA funding, that need to be considered as part of any assessment of the remaining mitigation needed to address the construction impacts of the FCRPS on wildlife and their habitat. The region should consider the habitat unit changes that have occurred since initial habitat evaluation

[31] Nov. 26, 2004 Supplement. http://www.nwppc.org/fw/subbasinplanning/yakima/plan/Supplement.pdf at v.
[32] http://www.nwppc.org/fw/subbasinplanning/yakima/plan/Supplement.pdf (table 3)

procedures were done on existing wildlife projects, measure the effects of habitat improvement projects, and include the habitat values secured by other Federal agencies and paid for by BPA prior to passage of the Act. This information is a necessary precursor to developing strategies for meeting remaining wildlife mitigation obligations.

Measures of Biological Success

The CBFWA proposal's total cost is as stated between $4.6 billion and $3.4 billion over ten years, depending upon how capital costs are treated, plus BPA's costs of hydrosystem operations and maintenance.[33] This is far short of the entire rate effect of BPA's fish and wildlife activities related to the hydrosystem. Adding the proposal's direct program estimates of between $460 million and $340 million to BPA's current $692 million estimate, CBFWA proposes BPA should incur a fish and wildlife rate effect of between $977 million and $857 million annually.[34] BPA's total expected annual expenses during the same period are $2.5-$2.7 billion.[35] Given BPA's underlying obligation to employ sound business principles in its decisions, and to ensure the Pacific Northwest an adequate, efficient, economic, and reliable power supply, incurring fish and wildlife costs equivalent to nearly a third of the agency's annual revenues—for unquantified biological results that cannot be documented by the proponents—would not fulfill BPA's responsibilities as a regional steward of power, transmission, and fish and wildlife resources.

At the end of 10 years of nearly $1,000,000,000 a year in overall fish and wildlife costs, CBFWA modestly expects to achieve "a good start to the long-term habitat work that is likely to be needed to meet our goals."[36] With both the National Oceanic and Atmospheric Administration (NOAA) Fisheries and the Council tightening their focus on performance standards and metrics to verify progress toward biological objectives, the CBFWA proposal needs to show with considerably more scientific rigor what results the region can expect for $1,000,000,000 annually.

Ultimately, the proposal does not articulate what will be achieved besides implementation of subbasin plans.[37] There is one indication "that *some* BPA obligations will sunset if requested levels of funding is provided."[38] But the extent of this "sunset" is not stated and it is limited to the proposal of the Upper Columbia United Tribes (which covers six subbasins) and is not applied to over 50 other subbasins. To be more persuasive, the proposal would need to explain: whether achievements would include recovery of ESA listed species; whether biological objectives would be met at a regional scale as adopted by the Council in the 2000 program; if the

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[33] Handouts from March 2005 CBFWA proposal presentation by Mr. Sheets to the Federal Caucus, Table 5 (tables dated February 28, 2005). CBFWA's staff and consultant indicated these figures are subject to ongoing refinement and will probably change. Giese and Sheets (Mar. 3, 2003).

[34] These annual figures represent the CBFWA proposal added to BPA's $692 million estimate of all fish costs, with the $139 million expense and $36 million capital for the integrated program placeholder subtracted because CBFWA already included those figures. BPA uses the $977 million figure for discussion purposes because borrowing authority limits preclude the $857 million option.

[35] http://www.bpa.gov/power/pl/review/01-25-2005_workshop_handout.pdf at 15.

[36] CBFWA, Issue Memo Fish and Wildlife Costs for the BPA Rate Case at 4 (Feb. 9, 2005) Draft.

[37] Later drafts of the proposal have begun to include a table that attempts to document the amount of work that will be done for the proposed funding level, but they do not show what biological goals and objectives will be achieved.

[38] CBFWA, Issue Memo at 3 (Feb. 9, 2005).

extent to which returning adult salmon numbers would increase; and which BPA obligations, if any, will be reduced.

Regional Review

The CBFWA proposal also does not account for the budget reducing effect that will occur with ISRP review. In 1996 section 4(h)(10)(D) was added to the Northwest Power Act because Congress thought an "independent scientific review would remove any suggestion of conflict of interest" and "add an important element of independent scientific review" to the measures recommended for BPA funding. Additionally, Congress wanted the Council to focus on both the ocean conditions that affected fish and wildlife and on the "cost-effectiveness" of the mitigation before recommending projects to BPA.[39] ISRP and Council review should shrink the list of projects extrapolated in the proposal by removing conflicts of interest, instilling cost-effectiveness, taking ocean conditions into account, and prioritizing projects.

When asked at a public meeting on February 11, 2005, how this proposal considered cost-effectiveness, BPA understood CBFWA representatives to explain that it did not. CBFWA's spokesman offered that given the overwhelming amount of work needed to recover fish and wildlife, the $3.6-$4.6 billion proposal (as it was written then) was not going to be enough to get the job done, so there was no need to prioritize one project against another because all—plus more—were needed. Under this proposal cost-effectiveness need not be a consideration until BPA has fulfilled its mitigation obligations.

BPA will not read the cost-effectiveness requirement out of the Northwest Power Act. The Council must "determine whether the projects [recommended to BPA] employ cost-effective measures to achieve program objectives."[40] Where there is a need to prioritize among strategies within subbasins (and subbasins within provinces, and provinces within the basin), selecting the least cost strategy where two or more will achieve the same biological objective promotes efficiency and effectiveness in the application of resources, maximizes the number of mitigation projects that can be initiated, and is a sound business management practice—as well as the law governing Council recommendations to BPA.

Generally, the proposal's extrapolations assume without substantiation that all the strategies, measures, and projects derived from the subbasin plans will meet cost-effectiveness criteria. Specifically, the proposal does not demonstrate any consideration of alternatives for how the subbasin plans could be implemented to reduce extrapolated costs, regardless of the total budget amount. Nor does the proposal consider the positive potential of tools BPA and the Council could use to achieve greater benefits at no additional cost. For instance, available alternatives and tools include:

- Prioritizing efforts to target projects in areas of greatest need and with highest likelihood of success.
- Increasing funding allocations to on-the-ground projects with more direct results for fish and wildlife.

[39] 142 Cong. Rec. S10623 (daily ed. Sept. 17, 1996) (statement of Sen. Slade Gorton).
[40] 16 U.S.C. § 839b(h)(10)(D)(vi).

- Using science-based performance standards to measure progress toward biological objectives.
- Selecting projects that meet performance standards and achieve biological objectives most cost-effectively.
- Forming new partnerships and instituting cost sharing requirements.
- Soliciting competitive bids where feasible when contracting for project implementation.
- Benchmarking operations of certain similar activities, such as hatchery or habitat management.
- Improving habitat on lands already in public ownership instead of focusing on fee title acquisitions and conservation easements for habitat enhancement projects.

Each of these examples has the potential to reduce revenue requirements substantially and should be examined thoroughly before doubling or tripling the direct program budget as proposed by CBFWA.

Even where a strategy and project are clearly the least cost alternatives of achieving a biological objective, there is still the opportunity to reduce costs considerably through independent scientific and economic review of the project. BPA believes this would be particularly true of fish production facilities. The proposal estimates an additional $330 million will be needed for fish production. Based on past experience with ISRP and Council review, the amount would probably decrease substantially. When the Nez Perce Tribe proposed its tribal hatchery, for instance, it sought approximately $32 million. When BPA finished construction of the hatchery, costs were about half of the proposal—or $16 million. If similar savings occurred with the hatchery facilities in the CBFWA proposal, that alone would reduce the purported need by more than $150 million. Over a decade, across the program, BPA would expect to see independent scientific review substantially reduce the costs in the proposal.

Overall CBFWA's budget proposal appears to be an extrapolation of costs for projects that have not yet been prioritized from a provincial or population level perspective. Additionally, most of the subbasin plans lack specific measures and prioritization of their proposed strategies. The measures and projects needed to implement the plans have generally not been proposed to the Council[41] nor have they undergone ISRP or Independent Economic Analysis Board review. And there is not a Council recommendation or other regionally acceptable guidance on how to roll-up the plans; that is, the goals, objectives, and strategies of the 58 individual plans have not yet been prioritized or related to those goals and objectives of the 13 provinces or the basin as a whole. Moreover, recovery plans—and allocation of responsibility to implement them—under the ESA are still in process.

[41] The Upper Columbia United Tribes and Columbia River Inter-Tribal Fish Commission have characterized the subbasin plans they contributed to as having "measures."

BPA's Capital Borrowing Authority

The proposal indicates that its "cost estimates, including the current program costs, equate to about $460 million annually if the subbasin plans were implemented over a ten year period. . . . If BPA were to use its borrowing authority, it might reduce these annual costs to $340 million."[42]

BPA manages its capital as a single portfolio serving all business lines and programs. At the end of FY 2004, BPA had $1.55 billion available borrowing authority remaining (from a total of $4.45 billion). Even with aggressive capital management BPA currently projects its borrowing authority will be exhausted in FY 2010.[43]

The CBFWA proposal calls for an increase in fish and wildlife direct program capital spending from $36 million (available) to $132.5 million (actually accrued).[44] The proposal does not depict all of the economic consequences of this level of borrowing. The proposal indicates that $132.5 million a year in borrowing will only cost $13.3 million annually. Even if this may be the annual depreciation and interest or the annual debt service payment (--and BPA is not sure which is intended), it does not account for all the financial impacts of that borrowing level.

Power rates have to be set to recover the higher of the debt service on the investment or the depreciation and interest on it. With approximately $132.5 million in capital invested each year, if in the first year the cost (as the proposal indicates) is $13.5 million, in the second year the depreciation and interest amount would double as an additional $132.5 million is invested, and would continue to increase each year—not remain at the lower, flat level the proposal appears to portray. At a steady rate of capitalization, annual commitments required for recovery in rates will not levelize until the first year's investments are fully repaid. There will be a continuing requirement that will remain until capital reductions are implemented and initial investments are retired.

The CBFWA proposal also assumes, apparently, a significant change in BPA's capitalization policy for fish and wildlife investments or a substantial increase in projects that comply with the capital policy. The proposal does not address this issue clearly, and does not explain what changes CBFWA believes should be made to the policy or the effects of those changes: what projects should be specifically eligible for capital funding; would capitalization of such projects be financially prudent; would capitalization of such projects fit within Generally Accepted Accounting Principles.

BPA will also incur the full amount of debt and associated reduction in borrowing authority annually when financing for each project is completed. Thus, the remaining Treasury borrowing authority amount, which is $1.55 billion at the end of FY 2004, would be reduced $1.325 billion after 10 years under the proposal (assuming no repayment occurs during that period). This would be impossible because, even using the current annual $36 million level of available capital

[42] Handouts from March 2005 presentation to the Federal Caucus.
[43] BPA's FY 2006 Budget Submission for Congress, February 2005, http://www.bpa.gov/corporate/About_BPA/Finance/Budget/05/10_BP4.pdf at page 4.
[44] CBFWA's February 28, 2005, Table 5 indicates that under its proposed 10 year schedule, their estimate of capital costs would be $1,325 million over ten years, $132.5 million annually, without using borrowing authority.

funding for fish and wildlife, BPA may exhaust borrowing authority in 2010. BPA is actively striving to reduce capital costs in its other program areas, while maintaining system reliability, and cannot sustain CBFWA's proposed borrowing increases.[45]

The Proposal's Effect on Rates

The proposal does not examine the impact adopting it would have on rates and BPA's customers. BPA's rates are set for its customers, most of whom are retail electric utilities. The customers serve tens or even hundreds of thousands of individual consumers.

BPA's initial assessment of the impact of CBFWA's proposal on rates is that it would require an increase of between three and four mils over rates currently needed to recover the fish and wildlife direct program (including capital) costs. We determined this by first taking the annual funding level CBFWA recommends in its 10 year scenario—using $460 million because of the borrowing authority issues noted above.[46] From that we subtract the currently available program levels that are $175 million ($139 million expense and $36 million capital). Each mil in rates reflects roughly $85 million in revenue. To cover the $285 million in additional costs under the CBFWA proposal would require a rate increase of over 3 mils.[47] When this is added to the costs BPA is already planning to incur for fish and wildlife, the total is approximately $977 million annually. CBFWA's proposal would raise BPA's fish and wildlife costs from $692 million to $977 million, increasing the fish and wildlife share of BPA's overall costs from 24% to 38%.[48] CBFWA should explain why annual fish and wildlife costs of nearly $1,000,000,000 are not, in the words of Congress and the courts, a burden on ratepayers.

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[45] In its close-out letter for the Transmission Business Line's Programs in Review process—TBL's analog to the Power Function Review—, BPA proposed capital borrowing from the Treasury totaling $251 million for FY 2006 and $262 for FY 2007. http://www.transmission.bpa.gov/Business/Customer_Forums_and_Feedback/Programs_in_Review/documents/PIR_LetterAppendix_FINAL.pdf at Appendix 6. This capital borrowing is $122 million less than TBL's initial proposal for the same period. TBL also implemented a total of over $81 million in reductions to its expense programs for just FY 2003 through FY 2004 and has committed to the Region to remain vigilant in identifying new opportunities for cost and resource efficiencies and reductions. Id. at 2.

[46] Handouts from March, 2005, presentation to the Federal Caucus.

[47] This is the difference between CBFWA's $460 million and BPA's $175 million ($139 million expense and $36 million capital) PFR placeholder for the integrated program.

[48] To determine these percentages BPA divided the expected annual expense average for FY07-09 of $2.5-$2.7 billion into the total fish and wildlife costs (which include foregone revenues) with and without CBFWA's $460 million proposal.