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Comments On
Public Review Draft
Columbia River Basin Fish and Wildlife Program 2013/2014
Northwest Power and Conservation Council
Document 2014-03 / May 7, 2013

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“You have done enough. Have you no sense of decency?”²

These comments on the draft amendments are submitted under protest.

The proposed amendments attempt to use the ruse of endless process and the mascara of perpetual studies to tart up the Council’s sham 2009 Fish and Wildlife Program ³

The 2009 Program and its predecessors have produced an ecological, economic and social disaster of epic proportions and, by extension into the Council’s 6th Power Plan as required by law, produced the most economically costly and ecologically and socially destructive energy portfolio in the Nation. In short, the draft amendments propose no change in the destructive status quo, as expected.

The Council conspired with Bonneville Power Administration in using federal funds to subvert the salmon and salmon restoration mandate of the Northwest Power Act.⁴ Snake River salmon were cravenly driven onto the List of Endangered Species.

As the baseline for its 2009 Fish and Wildlife Program/2010 Sixth Power Plan the Council substituted the corrupt Biological Opinion prepared pursuant to the Endangered Species Act—and serially rejected by the federal courts—for the salmon and salmon fisheries restoration mandate of the Northwest Power Act.

The Council also conspired with Bonneville to use federal funds to buy state and tribal government support for the preposterous assertion (i.e. to lie and deceive the public and political decision makers) that the BiOp not only satisfies the ESA and the Clean Water Act, but also satisfies the much greater salmon and salmon fisheries restoration requirements of the Northwest Power Act—or risk losing hundreds of millions of dollars in bribe money.

¹ NRIC is a scientific, educational organization incorporated in 1976 under section 501 (c)(3) of the Internal Revenue Code specifically to address the then-critical threat to the survival of Snake River salmon posed by four dysfunctional Army Corps of Engineers’ dams on the lower Snake River in southeastern Washington.

² Attorney Joseph Welch, representing the U.S. Army, rebuking Senator Joseph McCarthy during June 9, 1954 Senate investigative hearing.

³ These comments apply to the 2009 Program as it would be amended by the draft proposed amendments.

⁴ *Pacific Northwest Electric Power Planning and Conservation Act*, Pub. L. No. 96-501. (1980)

Thus, the Fish and Wildlife Program amendment process is a rigged game; the fix is in. The amendment process is a costly hoax perpetrated on the people of the Northwest and the Nation asking them to participate in a process for which a conclusion the Council, BPA, and others already made in 2008/2009.

General Comments

Legislation authorizing construction of the four lower Snake River dams in southeastern Washington required that the dams be designed to provide safe passage for juvenile salmon migrating from the vast pristine headwaters of the Snake River Basin.⁵ The Army Corps of Engineers ignored that requirement; its design negligently made no provision whatsoever for juvenile fish passage. Disaster happened. This was the “urgent priority” that drove Congress to embed strong salmon restoration measures in what is commonly called the Northwest Power Act.⁶

The Act created the Council and gave it *one year*, using *existing information* and with *due consideration* to recommendations of fish agencies and tribes, to develop a plan to restore salmon and fisheries devastated by the Federal Columbia River Power System while maintaining a reliable and economical regional power supply. In passing the Act Congress was focused on the impact of the Corps’ four dysfunctional dams on the lower Snake River, but included the entire Columbia River Basin impacted by the FCRPS in its salmon restoration mandate.

People appointed to the Council by the governors of Idaho, Oregon, Washington and Montana took the money, but generally with the notable exception of the Oregon members, simply refused to do their job for more than three decades. Instead, over time they degenerated into doing the opposite of what they were being paid to do—they collaborated with Bonneville to subvert the salmon restoration mandate of the Act and drove Snake River salmon onto the List of Endangered Species. Now the Council collaborates with Bonneville to keep them on the List in perpetuity and pay the bill (and make payments on Bonneville’s nuclear power plant and energy futures gambling debts) by stealing the salmon’s water at the four lower Snake River dams to generate electricity surplus to the region’s needs and selling it largely to California.

The history of the Council’s sordid betrayal of the public trust over the past three decades is reported at length elsewhere,⁷ the resulting damage for the most part has been ignored. The following overview of the

⁵ The Council may recall that The Snake River Basin contains the largest contiguous wilderness and roadless land complex in the coterminous United States. This 14 million-acre area includes more than 4.4 million acres in 6 Wilderness Areas, more than 700 miles in 12 Wild and Scenic Rivers, and nearly 1 million acres within 2 National Recreation Areas. All of these statutorily protected areas share protecting wild salmon as a primary purpose.

⁶ “. . . conservation and enhancement of the great migratory fish and wildlife populations of the Pacific Northwest, something of great concern to the sportsmen and conservationists of this Nation, are for the first time, a matter of urgent priority under this legislation. They are placed on a par with other purposes for Federal facilities in this area. If the fish populations of the Pacific Northwest are to be restored to the sportsmen, the Indians and the commercial fishermen, this is the mechanism which will do it.” *126 Cong. Rec. H10680 (Rep. Dingell)*.

⁷ For a brief Bowdlerized history of the Council’s 30-year refusal to do its job, see http://www.nwric.org/documents/NRIC_director_declaration_001.pdf items D and E, pp 10-20, incorporated into these comments by reference. For plain talk see <http://www.lastsalmonceremony.blogspot.com>.

damage—of epic proportions—provides instructive context for the current Fish and Wildlife Program amendment process and NRIC’s comments. All these items should be added to the Council’s list of “accomplishments” contained in the draft amendments.

- Snake River salmon, a unique-in-the-world genetic heritage millions of years in the making—and the Council’s *raison d’être*—were driven onto the List of Endangered Species.
- A 6th generation illegal Biological Opinion (2014) represents what may be the most elaborate, costly and destructive government-funded scientific hoax in United States history. The Council is a (so-far unindicted) co-conspirator.
- Ecological and economic damage throughout the migratory range of Snake River salmon extends 700 miles inland and thousands of miles along the Pacific Coast.

The collateral ecological damage ranges the gamut from depriving ESA-listed bull trout and a multitude of other freshwater organisms of critical marine-derived nutrients 700 miles inland, to impoverishing ESA-listed killer whales by denying them a critical food resource.

ESA-listed sea lions preying on inconsequential numbers of ESA-listed salmon are killed in a grotesque “salmon protection” public relations scam while Bonneville and the Corps of Engineers slaughter ESA-listed salmon by the millions at the four dysfunctional lower Snake River dams with the Council’s blessing and support.

The adverse economic impacts are equally widespread. Untold billions of dollars have been lost to local, state, regional, and national economies; untold billions more in future economic benefits are at risk.

- The U.S. and Canada, states, Native American Indian tribes, local communities, and neighbors have been pitted against each other in internecine conflict over drastically reduced supplies of fish.
- Treaties with Native American Indian tribes and Canada have in practical effect been abrogated. The intent of laws and social contracts with all people of the Northwest and the Nation has been thwarted.
- The rule of law has been made a mockery.
- The Council’s regional energy plan/portfolio (Sixth Power Plan) produces what is arguably the most ecologically and socially destructive and economically costly energy in the Nation by virtually destroying Snake River salmon and continuing to rely on power the region can easily replace—indeed, already has replaced many times over—from the four lower Snake River dams.
- The region is wracked with interminable litigation in the federal courts and concomitant civic and political turmoil that hemorrhages enormous amounts of human and economic capital and diverts attention from pragmatic solutions that would produce substantial national and Northwest economic benefits.
- The regional energy system is in turmoil and at risk of draconian intervention by the federal courts.
- Governance, notably fish and wildlife management, has been politically corrupted at federal, regional, state, and tribal levels of government.
- The role of science in public decision-making has been egregiously debased.

- Billions of federal dollars have been deliberately wasted on no- to low-priority “salmon habitat enhancement projects” to create a smokescreen for the scofflaw Snake River salmon killing behavior of Bonneville, Corps and NOAA Fisheries upper management.⁸
- Untold tens of thousands of human lives have been irreparably damaged.

There’s more. Much more.

The Council cravenly reports and disingenuously disavows Bonneville’s outrageous claims of the opportunity cost of power forgone when it is forced by the courts to quit stealing the salmon’s water (a.k.a. spill water and juvenile fish past the killer dams), but steadfastly refuses to account for and report the opportunity cost of the theft.

In fact, the compounding cost in wasted federal funds and related damage to date pales in comparison to the astronomical cost to society of opportunity foregone resulting from Bonneville’s and the Council’s scofflaw obsession with preserving the destructive status quo at the four dysfunctional lower Snake River dams instead of championing business-like joint production of electrical energy and salmon as definitively required by law more than three decades ago.

All this ecological, economic and social damage comes at a cost of hundreds of millions of public dollars for Council salaries and expenses and a purported total cost of \$13.75 billion in federal funds to date.⁹ This is a truly breathtaking negative return on investment and incompetence.

Furthermore, there is no end in sight. Bonneville upper management, NOAA Fisheries and the Council continue to double down on their obsession to defend the illegal status quo at the four lower Snake River dams, no matter what the cost to society now and in the future.¹⁰

And now, when it does not seem possible the Council could sink any lower, the Council adds insult to injury with the current rigged amendment process—the end result of which is already in the bag, bought and paid for with Columbia Basin Fish Accord/MOA bribes using another \$billion-plus in public funds.¹¹

⁸ For discussion of this deliberate waste of federal funds for political purposes and to deceive the federal court, see Item 6 on pp 32-35 of *Request for U.S. Department of Energy Inspector General Investigation of Waste of Federal Funds and Violations of Other Federal Laws by Scofflaw Culture in Upper Management of Bonneville Power Administration*, 42 pp. NRIC, March 4, 2013.

http://www.nwric.org/documents/DOE_IG_petition.pdf. This document is incorporated by reference into these comments.

⁹ *Northwest Power and Conservation Council Draft 2013 Columbia River Basin Fish and Wildlife Program Costs Report, 13th Annual Report to the Northwest Governors*.

¹⁰ Protecting these costly dysfunctional pork barrel dams is the primary objective of the federal salmon killers and the Council. You try to hide these dams in the forest of the entire Columbia River Basin Federal Columbia River Power System and behind an endless smokescreen of studies of the studies designed to create the false impression of uncertainty about the role of the dams in driving Snake River salmon to the brink of extinction.

¹¹ See an overview of the Council’s complicity in the MOAs on pp 27-29 of NRIC’s request for Department of Energy investigation @ http://www.nwric.org/documents/DOE_IG_petition.pdf incorporated in these comments by reference.

Specific Comments

***"No matter how cynical you get, it's almost impossible to keep up."*¹²**

As noted in the above general comments, it is incontrovertible that the Council's 2009 Program, and the Sixth Power Plan which is based on the 2009 Program, have produced results opposite to the salmon and salmon restoration and power planning intent and letter of the 1980 Northwest Power Act. The Council's draft document commented on here doesn't propose any substantive amendments to the 2009 Program. It necessarily follows that these cosmetic sham "proposed amendments" to the 2009 Program are also legally (and morally and ethically) fatally flawed and would result in indefinitely compounding the ongoing damage. This is of a piece with the Council's decades-long pattern of deceiving the public and decision makers and betraying the public trust.

The information presented under the subhead *Legal and social context of the program* is instructive of the Council's practiced effort to recast the salmon and salmon fisheries restoration intent and letter of the Act to fit the Council's thus-far-successful effort to subvert the law.

It correctly states that the Northwest Power Act called for the Council " . . . to prepare a program to protect, mitigate and enhance fish and wildlife, and related spawning grounds and habitat, of the Columbia River Basin that have been affected by hydroelectric development." It neglects to mention that given the then ongoing disaster at the four lower Snake River dams, the Council was given *one year* to prepare such a program. And, that after more than 30 years and spending hundreds of millions of dollars on itself, *the Council still refuses to prepare such a program*. Instead it collaborated with Bonneville to subvert the salmon restoration mandate of the Act, drive the salmon onto the List of Endangered Species and strive to keep them there indefinitely, no matter what the cost to society now and in the future.

The Council should adopt an amendment which belatedly (30 years so) states how the Federal Columbia River Power System must be changed to comport with the Snake River salmon and salmon fisheries restoration intent of the Power Act.

The Council has long known the principal elements of such a plan: i.e., sequentially breach or otherwise fundamentally modify the four lower Snake River dams and operate John Day pool at design level. The amendment should include a requirement that the Corps produce within 180 days for public review a conceptual plan and implementation schedule to be fully completed in not more than 10 years. And if the Corps fails to do so, the Council should contract with a third party to produce such a plan.

The amendment should include a provision providing funding for a plan to mitigate the effects of these changes on all stakeholders.

As noted, the Council for more than 30 years has refused to acknowledge how the FCRPS must be changed to comport with the salmon and salmon fisheries restoration mandate of the Northwest Power Act. It should not take the Council more than 30 minutes to remedy that abdication of duty with an amendment to the 2009 Program.

The lower Snake River dams negligently were not designed in accordance with the legislation authorizing their construction which specifically provided for safe fish passage. Disaster happened. The Corps spent

¹² Comedienne Lily Tomlin.

untold hundreds of millions of federal dollars in failed post-construction efforts to overcome the basic design flaw. Snake River salmon and steelhead were driven onto the List of Endangered Species. Bonneville, the Corps and NOAA Fisheries have spent more untold hundreds of millions of federal dollars protecting the four dysfunctional lower Snake River dams from the rule of law while Snake River salmon survive on ESA life support from the federal courts. The Council has cravenly conspired in that effort.

Not even the congenitally corrupt Corps of Engineers publicly pretends that the salmon and salmon fisheries restoration intent of the Northwest Power Act can be met with the dams in place or without being substantially reconfigured. The Council *does* pretend that is the case, which should be instructive to anyone paying attention.

Operating John Day pool at design level and extending irrigation pump intakes is a no-brainer no-loser that NOAA Fisheries (then National Marine Fisheries Service) called for in the 1995 BiOp.

The Council has tacitly acknowledged that breaching the four lower Snake River dams would not have significant effect on the regional energy supply and the rates paid for electricity. That acknowledgement is buried in a few charts in the Power Plan – the best summary of those and the data is available at <http://www.nwenergy.org/news/032210/>.

NRIC cited the following parts of the 6th plan in its briefs to the 9th Circuit (cites are to the page numbers stamped at the bottom of the Sixth Power Plan.)

Moreover, the Council's actual analysis demonstrated that removal of the four Lower Snake River dams would not jeopardize an adequate, efficient, economical, and reliable power supply. See ER:115-118. Indeed, the analysis showed that while the cost-per-unit rate of power would increase with dam removal (as with many other modeled scenarios), customers' actual bills would decrease from today's levels. See ER:198-199 (Tables O-3 to O-4) (showing overall and year-to-year reductions from 2010 bills even with dam removal); ER:118 (Figure 10-19) (same).

This is the *Council's analysis*. So it obviously is the worst possible case. In fact, it greatly overstates the rate effects of breaching the four lower Snake River dams. Doing so would eliminate the cost to ratepayers of perpetually wasting hundreds of millions of dollars on projects that cannot possibly get Snake River salmon off the List of Endangered Species or fulfill the salmon restoration mandate of the Northwest Power Act. To say nothing of the enormous net social benefits that would accrue from breaching or otherwise fundamentally structurally modifying the dams. Conservation—given priority as a new resource—has already produced many times over the amount of energy generated by the four lower Snake River dams.

Bonneville and the Council have wasted far more money protecting the lower Snake River dams from the rule of law (and produced an ecological, economic and social disaster of epic proportions) than it would cost to breach them. Based on the sham draft proposed amendments to the Council's 2009 Program, there is no end in sight.

In any event, The 9th Circuit Court of Appeals held in NRIC's 1995 suit against the Council that the Power Act prevents ". . . power losses and economic costs . . . from precluding biologically sound restoration of anadromous fish in the Columbia River Basin . . . so long as an adequate, efficient, economical, and reliable power supply is assured."¹³

¹³ *Northwest Resource Information Center, Inc. v. Northwest Power Planning Council*, 35 F.3d 1371 (9th Cir. 1994), cert. Denied, 116 S.Ct. 50 (1995). This decision and all pleadings are incorporated into these comments by reference.

This is the Court decision that admonished the Council to get on with doing its job *nineteen years ago*.

The Council's approach seems largely to have been from the premise that only small steps are possible, in light of entrenched river user claims of economic hardship. Rather than asserting its role as a regional leader, the Council has assumed the role of a consensus builder, sometimes sacrificing the Act's fish and wildlife goals for what is, in essence, the lowest common denominator acceptable to power interests. . .

The Council feinted as if it intended to comply with the court's findings and do what the Act required. It tasked the Corps of Engineers to study breaching the four lower Snake River dams—which was like asking a surgeon to study the effects of cutting off his own leg—then the Council dumped the court's order in the memory hole and went back to corrupt business as usual.

The Council has known for decades what changes in the FCRPS are necessary to fulfill the Snake River salmon and salmon fisheries mandate of the Northwest Power Act. The Council has devolved from an organization established to restore the salmon to being a politically corrupt accomplice in their virtual destruction. The Council uses the transparent rhetorical device of saying the main stem measures of the BiOp—which offer less protection for salmon than currently ordered by the federal court—are the “baseline” of its Program, implying that the Council could always do more in the future, just not now, but maybe someday. In plain fact, *that “baseline” is the Council's program* and the draft amendments propose to perpetuate it.

It will be interesting to see how long the Council can persuade the federal courts to gag down this “baseline” con which is the functional equivalent of the BiOp's linchpin con of “adaptive management” a.k.a. “we will study the salmon to death and there is nothing you can do to stop us.”

The Council should adopt an amendment which formally recants Council support for the provisions of the NOAA Fisheries (Bonneville) Biological Opinion that do not comport with the salmon and fisheries restoration mandate of the NW Power Act and with federal court orders.

To redress the damage of years of Council deception, the amendment should unequivocally state that even in the highly unlikely event main stem and habitat measures in the BiOp were deemed to meet the ESA test of avoiding jeopardizing the future existence of Snake River salmon, those BiOp measures cannot possibly meet the Snake River salmon and salmon fisheries restoration intent of the Northwest Power Act.

In addition, and crucially, this amendment should eliminate BiOp main stem-related measures as the “baseline” of the Program. The salmon and salmon fisheries restoration mandate of the Northwest Power Act should be substituted as the only appropriate baseline for the Program and the Power Plan the Program by law is supposed to drive.

Although it pathetically pretends otherwise, the Council has the *independent legal duty* to produce a program to restore salmon and salmon fisheries decimated by the FCRPS while maintaining an economical and reliable regional energy supply. It must solicit and give “due consideration to” the recommendations of the agencies and tribes, but in the end the Council must produce a combined Fish and Wildlife Program/Power Plan that delivers the salmon and salmon restoration intent result mandated by the Northwest Power Act.

In its proposed amendments the Council continues to ignore its primary duty under the law and pretend it is little more than the recording secretary for a program that is dictated by recommendations of the agencies and tribes. As noted below, the Council conspired with Bonneville to use federal funds to suborn many of those same state and tribal governments to provide recommendations to and council votes on proposed amendments in a transparent effort to fix the outcome of the amendment process, flouting the law and the public trust.

In its 2009 Fish and Wildlife Program the Council by majority vote of its Idaho, Montana and Washington members formally abdicated its independent legal duty, adopted the corrupt BiOp—serially rejected by the federal courts—as the “baseline” for the pivotal main stem measures of the 2009 Program (tellingly minus the federal court’s required spill at the dams), and voted to turn the fate of Snake River salmon over to the federal agencies responsible for driving them onto the List of Endangered Species.¹⁴ Thus the Council formally became accomplice to what may well be the most costly and destructive U.S. Government-funded scientific hoax in U.S. History. As noted, NRIC petitioned the Department of Energy Inspector General to investigate the scofflaw culture of corruption in Bonneville upper management and the Council’s complicity in that corruption.¹⁵

The Council knows the BiOp measures and the Council’s Bonneville-dictated reliance on “habitat improvement measures” in an attempt to mitigate the harm from the Snake River dams do not and cannot “satisfy” the separate salmon and salmon fisheries restoration intent of the Northwest Power Act.

Hint: the federal courts repeatedly have expressed great skepticism that tributary habitat improvements can offset the disastrous mortality of salmon at the dams sufficiently even to avoid jeopardizing their existence.

The Western Division of the American Fisheries Society is less equivocal.

. . . based on the best scientific information available, it is the position of the Western Division of the American Fisheries Society that the four lower Snake River dams and reservoirs are a significant threat to the continued existence of remaining Snake River salmon, steelhead, Pacific lamprey, and white sturgeon; and that if society-at-large wishes to restore Snake River salmon, steelhead, Pacific lamprey, and white sturgeon to sustainable, fishable levels, then a significant portion of the lower Snake River must be returned to a free-flowing condition by breaching the four lower Snake River dams. . .¹⁶

¹⁴ “At one time the Council’s Fish and Wildlife Program included detailed hydrosystem operations for fish and wildlife. This is no longer necessary. The federal agencies that manage, operate, and regulate the federal dams on the Columbia and Snake rivers now have detailed plans for system operations and for each hydroelectric facility intended to improve conditions for fish and wildlife affected by the hydrosystem. These federal agency plans are described and reviewed largely in biological opinions issued by NOAA Fisheries (formerly the National Marine Fisheries Service) and the U.S. Fish and Wildlife Service for the operation of the Federal Columbia River Power System and the Bureau’s projects in the Upper Snake.” *Columbia River Basin Fish and Wildlife Program, 2009 Amendments*. Northwest Power and Conservation Council, Council document 2009-09, p 34. October 2009.

¹⁵ *Request for U.S. Department of Energy Inspector General Investigation of Waste of Federal Funds and Violations of Other Federal Laws by Scofflaw Culture in Upper Management of Bonneville Power Administration*, 42 pp. NRIC, March 4, 2013. http://www.nwric.org/documents/DOE_IG_petition.pdf.

¹⁶ <http://www.wdafs.org/>, June 27, 2011 resolution of the Western Division American Fisheries Society.

Even the Council's Independent Scientific Advisory Board confirmed the obvious futility of offsetting the disastrous mortality of salmon at the four lower Snake River dams with relatively pin point-size habitat improvement projects within the vast pristine and near-pristine habitat of the upper Snake River Basin—although it takes enormous effort to distill it from the Board's academic scientific homilies.

“A primary conclusion of the ISAB review of the 2009 Program is that continuing to implement the program on its existing trajectory is highly uncertain to achieve the Council's biological objectives for the Basin.”¹⁷

[Golly Opie. Who would'a thought? So it might not be coincidence Snake River salmon have been on the List of Endangered Species for decades? Wouldn't everything work out if we just had better science and more studies of the studies?]

Only the most cognitively impaired would be surprised that in these draft amendments the Council transmogrifies the ISAB's negative findings into this bizarre “blackwhite”¹⁸ statement: “. . . habitat work to date has been largely successful.” (Hey, you couldn't make this stuff up.)

The ISAB is not the only entity to conclude that the current system of pinpoint habitat improvements is unlikely to mitigate for the harm caused by the dams, let alone protect or enhance anadromous fish runs. Other independent scientists and fisheries managers (even those employed by NOAA) have found it is unlikely to ever know if these kinds of actions actually produce the benefits advertised. Given the shaky foundation of this endeavor, it not a surprise that the courts, too, have rejected the all-habitat-all-the-time approach because it lacks scientific support and is based on vague promises and pure speculation not backed by the considerable body of research or by common sense.¹⁹

Even Bonneville's own research does not support the BiOp and the Council Program emphasis on tributary habitat enhancement as a substitute for the required changes in the FCRPS projects, i.e., the four lower Snake River dams. The following quote is telling.

During the period 1983-1987 I personally conducted and supervised research funded by Bonneville Power Administration evaluating the effect of salmon and steelhead habitat improvement projects in Snake River tributaries in Idaho. For purposes of this statement I reviewed the published results of that work and of similar work conducted by others. . . In summary, the habitat evaluation and research basically found the following:

¹⁷ *Review of the 2009 Columbia River Basin Fish and Wildlife Program*, Independent Scientific Advisory Board, ISAB 1013-1 / March 7, 2013, incorporated into these comments by reference.

¹⁸ **blackwhite** “. . . this word has two mutually contradictory meanings. Applied to an opponent, it means the habit of impudently claiming that black is white, in contradiction of the plain facts. Applied to a Party member, it means a loyal willingness to say that black is white when Party discipline demands this. But it means also the ability to believe that **black** is **white**, and more, to know that **black** is **white**, and to forget that one has ever believed the contrary. This demands a continuous alteration of the past, made possible by the system of thought which really embraces all the rest, and which is known in Newspeak as doublethink.” George Orwell, 1984

¹⁹ *National Wildlife Federation v. National Marine Fisheries Service*, 839 F.Supp.2d 1117 (D. Or. 2011) NRIC adopts and incorporates in these comments by reference the Court's decision and the pleadings and record on which it is based.

- Poor survival of downstream migrants due to the four lower Snake River dams did not allow fish populations to respond to tributary rearing habitat enhancement.
- Removing tributary migration barriers increased available rearing habitat, but the potential was not realized due to the low survival rates of downstream migrants.

In conclusion, the BiOp's claim that Snake River Basin tributary habitat improvements would offset the mortality of juvenile fish that would result from maintaining devastating juvenile passage conditions at and between the four lower Snake River dams—which would be worsened by decreasing spill, by not providing adequate migration flows through the reservoirs, and by increasing collection and transportation—is not supported by the empirical evidence.²⁰

Of course, the Council knows all that. And of course it doesn't matter.

The Council's descent into utter betrayal of the public trust while taking the public's money didn't end with turning the fate of Snake River salmon over to the federal agencies that drove them onto the List of Endangered Species with the Council's strong support. The Council also conspired with Bonneville to use more than a billion dollars in federal funds to buy Montana, Idaho, Washington and tribal government support for the BiOp in a blatant and potentially unlawful attempt to influence the federal judge in the BiOp litigation.

To cover all its bets Bonneville also required the Accords/MOA signatories to agree to support the preposterous assertion (i.e. to lie and deceive the public and political decision makers) that the BiOp not only satisfies the ESA, but also satisfies the requirements of the Northwest Power Act and Clean Water Act.

The parties agree that the federal government's requirements under the Endangered Species Act, Clean Water Act, and Northwest Power Act are satisfied for the next 10 years and that they will work together to support these agreements in all appropriate venues.

In the Idaho, Montana and tribal Accords/MOAs Bonneville also bought commitments—prior to the public process—to vote Bonneville's line in adopting amendments to the Council's Fish and Wildlife Program/Power Plan. To ensure that the fix was in and would stick, as in the Montana example, the MOAs provide that “...in the event that the Council takes action inconsistent with Montana's commitments under this Agreement...” Bonneville can withdraw the federal funds.

These MOAs were intended to preemptively rig the results (and thereby make a mockery of the public process) of amending the Council's 2009 Fish and Wildlife Program and subsequently its 2010 Power Plan which together by law are supposed to produce a plan for restoring salmon and fisheries while maintaining a reliable and economical power supply. These proposed amendments are another manifestation of that effort.

In addition, the Idaho, Montana and tribal Accords specifically proscribe supporting breaching the four lower Snake River dams as in the Kalispel example below. The fact that the Kalispels have no connection with the

²⁰ *Statement of Terry B. Holubetz, Submitted June 7, 2010 to National Marine Fisheries Service, Bonneville Power Administration, U.S. Army Corps of Engineers and Bureau of Reclamation, In Regards to 2008 FCRPS Biological Opinion as Supplemented May 20, 2010, incorporated into these comments by reference.*

lower Snake River or its salmon illustrates Bonneville's and the Council's thinly disguised obsession with protecting the dams from the rule of law, no matter what the cost to society now and in the future.

The Tribe will not directly or indirectly advocate or support the implementation of FCRPS dam breaching as part of this Agreement or for the duration of this Agreement.

<http://www.salmonrecovery.gov/Files/Newsroom/KalispelMOAFinal06252012.pdf>.

Idaho citizens are among the most severely damaged victims of the dysfunctional lower Snake River dams and Bonneville's and the Council's subverting multiple laws intended to protect Snake River salmon. The administration of Idaho Governor Butch Otter figured that damage is a small price for the victims to pay in exchange for a bribe of \$65 million in federal funds from Bonneville.²¹

The Parties agree that the spill and fish transportation measures proposed in the draft BiOps, subject to adaptive management as provided in the FCRPS BA, *satisfy ESA and NPA requirements with respect to salmon and steelhead affected by the FCRPS and Upper Snake Projects*. [Emphasis supplied.]

....

Idaho supports the adequacy of the combined package of the BiOps and this Agreement, and therefore *agrees that breaching some or all of the Snake River FCRPS dams is not necessary to satisfy the ESA, NPA or CWA*. [Emphasis supplied.]

Council members played active roles in negotiating, ratifying and facilitating funding the betrayal of the public trust manifest in the Accords/MOAs.

At minimum these Accords/MOAs fatally taint the signatories' and their representatives' participation in these pending amendments to the Council's 2009 Program which, in turn, will preemptively poison pending amendments to the Council's 2010 Power Plan.

NRIC petitioned the Governors of Idaho, Montana and Washington to order their appointees to the Council to recuse themselves from participating in the instant pending amendments to the 2009 Program. NRIC similarly petitioned the Council members themselves, and the Council Chair.²² These requests were ignored.

NRIC subsequently petitioned the Council to ". . . at the very least make full public disclosure that the fix is in vis-à-vis pending amendments to the Program and Plan. Specifically, that the Council has collaborated with Bonneville Power Administration to: 1] limit the Program's pivotal main stem measures and associated changes in the Federal Columbia Power System to whatever Bonneville Power Administration will allow; 2] use federal funds to buy state and tribal government opposition to fulfilling the salmon restoration mandate of the Northwest Power Act of 1980."²³ Ignored.

The Council should adopt an amendment formally recanting its support for the *Columbia Basin Fish Accords/MOAs*.²⁴

²¹ http://www.salmonrecovery.gov/Files/BiologicalOpinions/ID_MOA_Final.pdf.

²² All of these requests were in NRIC letters dated July 12, 2013 and are incorporated by reference into these comments.

²³ March 21, 2014 NRIC letter to Council Chair Bill Bradbury, incorporated into these comments by reference.

²⁴ The so-called "Action Agencies"—Bonneville, Corps of Engineers and Bureau of Reclamation—are signatories to the MOAs. Bonneville was the instigator and ringleader. Overview of state and tribal MOAs in

This amendment should include a requirement that Bonneville pay the Accord/MOA-promised funds but declare null and void requirements that recipients support the corrupt BiOp and support subverting the salmon restoration provisions of Northwest Power Act and subverting the Clean Water Act.

Under the subhead *Applicable federal laws* the Council notes that agencies that participate in and implement the Council's Program must also comply with a variety of other laws. Named are The ESA, the Clean Water Act, the National Environmental Policy Act, authorizing legislation for Federal Columbia River Power System projects and Federal Power Act. "The Council designs the program with the intent to complement these authorities and legal requirements and even assist other entities in their compliance through opportunities presented under the program".

Oh my. Where to begin?

Previously it was noted that the Council for 30 years conspired with Bonneville to subvert the salmon restoration intent of the Northwest Power Act (and many specific salmon restoration-related provisions of the Act²⁵)—and so far has succeeded. The Council also is a co-conspirator with Bonneville in attempting to subvert the Endangered Species Act.

In so doing, the Council also aids and abets subverting a host of other laws with a primary purpose of protecting Snake River salmon, including laws establishing Wilderness Areas, National Recreation Areas and Wild and Scenic Rivers.²⁶

For example, the Central Idaho Wilderness Act of 1980 states:

...these wildlands and a segment of the Salmon River should be incorporated within the National Wilderness Preservation System and the National Wild and Scenic Rivers System in order to provide statutory protection for the lands and waters and the wilderness-dependent wildlife and the resident and anadromous fish which thrive within this undisturbed ecosystem...²⁷

Legislation establishing the Sawtooth National Recreation Area in 1972 has as its first purpose "the protection and conservation of the salmon and other fisheries."²⁸

IG request item 3, pp 24-27 incorporated in these comments by reference. MOAs @ <http://www.salmonrecovery.gov/Partners/FishAccords.aspx> incorporated into these comments by reference. A snapshot of the Council's complicity in the MOAs is available on pp 27-29 of *IG Request* @ http://www.nwric.org/documents/DOE_IG_petition.pdf incorporated in these comments by reference.

²⁵ Including the requirement that federal operating agencies give salmon "equitable treatment" with all other uses of the hydrosystem; that the Council's program is to be based on "best available information" (as opposed to decades of studies of the studies under the sham pretext of uncertainty about the devastating effect of the lower Snake River dams and how to redress that harm); that the Council's program to restore Snake River salmon must "... utilize, where equally effective alternative means of achieving the same sound biological objective exist, the alternative with the minimum economic cost."

²⁶ The Snake River Basin contains the largest contiguous wilderness and roadless land complex in the coterminous United States. This 14 million-acre area includes more than 4.4 million acres in 6 Wilderness Areas, more than 700 miles in 12 Wild and Scenic Rivers, and nearly 1 million acres within 2 National Recreation Areas.

²⁷ Central Idaho Wilderness Act of 1980, PL 96-312, sec. 2(a)(2).

²⁸ Sawtooth National Recreation Area Act. 86 Statute 612. PL 92-400. August 22, 1972.

The Council also aids and abets subverting the Clean Water Act; see previous discussion on Accords/MOAs.

The Council also aids and abets subverting the authorizing legislation for the four lower Snake River dams which requires “safe passage” for salmon and which only authorizes Bonneville to generate power revenues with water “surplus” to other authorized project purposes (including protecting salmon).²⁹

According to the Council, “As provided by the Act, nothing in this program shall affect the rights or jurisdictions of the United States, the states, the Indian tribes, or other entities over waters of any river or stream or any groundwater resources.” Oh my.

See Rivers and Harbors Act of 1945 and the Northwest Power Act of 1980, Fish and Wildlife Coordination Act, among other federal laws, which deny Bonneville exclusive ownership of the unappropriated waters of the Snake and Columbia Rivers, and thereby, foreclose the legal basis for claiming opportunity cost of power foregone or for charging against salmon the cost of purchasing power to offset hydro operations essential to protect salmon. The Council elsewhere has tacitly acknowledged this, but to date has ignored NRIC’s repeated requests to stop propagating these bogus costs and to explicate the legal basis for debunking them.

In these sham draft program amendments—as in its draft 2013 program costs report to the Northwest Governors³⁰—the Council persists in propagating this deception of the public and political decision makers in defiance of the 2013 Ninth Circuit Court ruling to the contrary in NRIC’s suit against the Council’s Six Power Plan.³¹

The Court recognized that the use of these costs (including opportunity cost of power foregone) “. . . will quite likely affect where that balance is struck when the Council and the region’s stakeholders develop future fish and wildlife programs and power plans. . . .”³² On remand, the Court directed that “. . . the Council must reconsider the parts of the Plan that contain the BPA’s cost estimate.” And, that “. . . a decision to include or exclude that estimate must be grounded in reasoning reflected in a record that this court may review.”³³ To date the Council has taken no discernible action to comply with that remand and in the program costs (sic) report to the governors and in the draft proposed amendments blatantly ignores it.³⁴

Figure 1A: Total Costs 1978-2013 By Major Spending Area in the Council’s draft cost report to the governors shows that half the reported costs were Bonneville power purchases and foregone revenue fraudulently charged against salmon because Bonneville had to comply with laws and court orders to protect salmon.

²⁹ Rivers and Harbors Act of 1945.

³⁰ See *Comments On Northwest Power and Conservation Council Draft 2013 Columbia River Basin Fish and Wildlife Program Costs Report 13th Annual Report to the Northwest Governors Submitted By Northwest Resource Information Center, July 11, 2014*, incorporated in these comments by reference.

³¹ *NRIC v. NW Power and Conservation Council*, 730 F.3d 1008, 1021 (9th Cir. 2013). The decision and all NRIC briefs and the record in this litigation are incorporated into these comments by reference.

³² It is not a coincidence that the Council reports that comments on its current draft amendments to the Fish and Wildlife Program are predominately related to the cost of that program.

³³ *NRIC*, 730 F.3d at 1021.

³⁴ NRIC on April 1, 2014 wrote Council Chair Bill Bradbury urging the Council to respond to the BPA cost estimate remand prior to releasing proposed amendments to its Fish and Wildlife Program (incorporated by reference into these comments). The request was ignored.

In plain fact, for decades Bonneville, in collaboration with the Corps of Engineers and the support of the Council, has been stealing Snake River salmon's water at the lower Snake River dams to generate power surplus to the region's needs—but essential to the salmon's survival—and selling it largely to California to help pay Bonneville's nuclear power plant and other energy-related gambling debts while keeping energy rates low.

The Council should adopt an amendment to the 2009 Program that would have the Council's Independent Economic Analysis Board develop and submit for public comment a methodology for determining the present value of the water Bonneville has stolen to date from salmon at the four lower Snake River dams.

The IEAB should also be directed to develop and submit for public comment a methodology for determining the present value of the net social benefits lost as the result of the Council subverting the salmon restoration intent of the Northwest Power Act. See the overview of the ecological, economic and social damage at the beginning of these comments for costs to include in this evaluation.

The discussion under the heading *Assuring the Pacific Northwest an adequate, efficient, economical and reliable power supply* perpetuates the Council's persistent blatant refusal to produce a Program that would restore salmon and salmon fisheries decimated by the FCRPS and then to use that Program to drive the development of a regional energy plan to assure an adequate, efficient, economical and reliable power supply.

In the present proposed amendments the Council basically asserts that it intends to keep doing what it has been doing for decades—subvert the salmon and fisheries restoration intent of the Act and keep Snake River salmon on the List of Endangered Species (via the BiOp and Accords/MOAs). Thus the Council concludes, “. . .that the region's power supply can remain adequate, reliable, economical and efficient...”

Stop. That is not what the Act requires of the Council.

Congress passed the Power Act to address the devastating effort on salmon and fisheries caused by the existing hydrosystem—notably the four lower Snake River dams—and directed the Council and the federal agencies to modify the hydrosystem as necessary to restore impacted salmon and fisheries. The Act “emphasiz[es] changes in hydro project operations,” *NRIC v. NW Power Planning Council*, 35 F.3d 1371, 1378 (9th Cir. 1994) and Congress “expected increased costs and lost profits to the hydropower system to the extent the system was responsible for damaging fish and wildlife in the region,” *id.* at 1395. Recognizing that these changes would reduce the generating capacity of the existing system, Congress provided new authority to acquire resources as needed to ensure a reliable and economical power supply. 16 U.S.C. § 839d(a)(4) (allowing acquisition of resources “to replace Federal base system resources”); *id.* at §§ 839a(10)(A), (C) (defining “Federal base system resources” in part to mean “the Federal Columbia River Power System hydroelectric projects”).

Instead, in its draft amendments the Council refuses to produce the required program to restore salmon and salmon fisheries decimated by the FCRPS, and instead asserts it will continue to base its Power Plan on the

corrupt BiOp which cannot conceivably restore salmon and salmon fisheries decimated by the FCRPS. Voila! The Council concludes the region's power supply can remain adequate, reliable, economical and efficient. This is a quintessential example of George Orwell's term “blackwhite”.

If there was anyone left who was not aware of how the Council is unhinged from reality, this should set them straight. The Council (gag alert) asserts that “[f]or more than 30 years, the program measures have altered system operations for the benefit of improved habitat conditions and fish passage survival. As relevant to listed species, these measures have largely been incorporated into FCRPS biological opinions and *are well accepted in the region.*” (Emphasis supplied.)

The Council’s refusal to comply with the salmon restoration mandate of the Act is, of course, unlawful, unethical and immoral (among other things). The Council’s conclusion about the effects of the Program on the regional power supply is transparently false. There is nothing “adequate”, “economical”, “efficient”, or “least-cost”, about the Council’s Program or region’s current power supply produced by the FCRPS and manifest in the Council’s Sixth Power Plan.

The Council cites Section 4(h)(6)(C) of the Northwest Power Act which requires the Council to “. . . utilize, where equally effective alternative means of achieving the same sound biological objective exist, the alternative with the minimum economic cost.” The Council refuses to acknowledge the Act’s overarching biological objective of restoring Snake River salmon decimated by the four lower Snake River dams. The Council’s 2009 program and the draft proposed amendments do not have a “sound biological objective” for Snake River salmon; the Council’s objective is the fulfillment of the BiOp and Accords/MOAs which cannot conceivably fulfill the salmon restoration intent of the Act.

The Council states that “A quantitative cost-effectiveness comparison of alternative energy resources is a cornerstone of the Council’s power plan. . .” It is a rotten cornerstone set on a foundation of corruption. As noted in NRIC’s Ninth Circuit suit against the Council’s Six Power Plan, the Council relentlessly strives to detach its responsibility to develop a program to restore salmon from its duty to use that program to drive development of a plan to ensure a reliable and economical energy supply. The Council simply refuses to develop such a program. Absent a sound biological objective in the Program that comports with the law, the Council then develops a power plan, but refuses to account for the enormous direct cost and even greater negative net social benefits of an energy portfolio that causes the virtual destruction of Snake River salmon the Council is charged with restoring. It is incredible that the Council has gotten away with this grotesque perversion of the law for so long.

Let us be clear. Because the regional energy supply manifest in the Council’s Power Plan is based on virtual destruction of Snake River salmon manifest in the Council’s Program, it is arguably the most ecologically and socially destructive and economically costly energy supply in the Nation.

The Council knows this is true. That’s why it works so hard to avoid accounting for the real cost of its betrayal of the public trust³⁵ and hides behind a smokescreen of obfuscation, process, redundant studies and lies, notably including its propagation of Bonneville’s bogus claims of opportunity cost of energy foregone when forced to comply with salmon protection laws.

The craven deception perpetrated by the Council is systemic. E.g., “Implementation of these operations to benefit fish reduced hydroelectric generation on average by about 1,200 average megawatts *relative to an operation without any constraints for fish and wildlife*”. Translation: “Hey, if we (Bonneville and the Council) didn’t have to comply with any laws, Bonneville could generate a whole lot more power. But for propaganda

³⁵ This applies not only to the Council’s Program, but also to its Power Plan. See, e.g., *Comments on Appendix P to the Sixth Northwest Power Plan, “Methodology for Determining Quantifiable Environmental Costs and Benefits”* Submitted by Northwest Resource Information Center, March 5, 2014, incorporated into these comments by reference.

purposes let's ignore the law [only when it applies to salmon], dupe the proles that pay us and suffer the consequences of our betrayal of their trust, give the politicians phony costs to use as political cover to continue giving us political cover to keep taking the public's money. What is it about this sweetheart cycle you find so hard to understand?"

Council behavior challenges the most hardened gag reflex.

There's more, and it is worse. Just when you think the Council has hit bottom—can't get any lower—you discover there is no bottom, just the next level down.

The Council also knows that if it did the job it is getting paid to do, i.e., develop a program to modify the FCRPS as necessary to restore Snake River salmon and fisheries while maintaining an adequate, efficient, economical and reliable power supply,³⁶ that program would stop the enormous ecological, economic and social damage and produce enormous net social benefits for the region and Nation. Repeat: *the Council knows this is true*. The Council is simply too organically corrupt to do the economical, efficient, least-cost, profitable, legal, ethical job that is in the region's and Nation's best interests.

The Council should adopt an amendment that a] directs the ISAB to within 90 days define what changes in the FCRPS are necessary to expeditiously fulfill the Snake River salmon restoration intent of the Act, and b] directs the IEAB to within 90 days use those ISAB-defined required changes to define the least-cost energy-related measures/resources necessary to provide an adequate, reliable and economical regional power supply.

"You have done enough. Have you no sense of decency?"³⁷

Within context of the ecological, economic and social wreckage wrought by the Council's epic betrayal of the public trust, it is an understatement that the Council has degenerated into a cruel joke on the people of the Northwest and the Nation.

For more than 30 years the Council has incontrovertibly demonstrated it is incapable of doing the job for which it was created. Indeed, in its 2009 Program/2010 Plan the Council formally abdicated that duty and blatantly conspired with the federal agencies to subvert the Snake River salmon and salmon fisheries restoration intent of the Northwest Power Act. Those and other actions drove them onto the List of Endangered Species. Now these sham proposed amendments promise to keep them there.

It is indecently long past time for the Council to commit the legislative equivalent of Hara-Kiri.

The Council should adopt an amendment formally petitioning the U.S. Congress to amend the Northwest Power Act to:

- a. Summarily eliminate the Council;

³⁶ See previous reference to operating John Day Dam at design level, sequentially breaching or otherwise substantially structurally modifying the four lower Snake River dams and mitigating the effects on all stakeholders.

³⁷ Attorney Joseph Welch, representing the U.S. Army, rebuking Senator Joseph McCarthy during June 9, 1954 Senate investigative hearing.

- b. Have the Secretary of the Interior appoint a panel of independent experts vested with fiduciary duty and accountability to develop within 180 days a strategy and milestones for achieving the salmon and salmon fisheries restoration intent of the Power Act within a period not to exceed 10 years;

- c. Strip Bonneville of its power of the purse over the Fish and Wildlife Program which it has used with devastating effect to corrupt the Council and everything it does, subvert the law, corrupt the public decision making process, suborn state and tribal governments, debase the role of science, waste billions of dollars in federal funds extracted from taxpayers and ratepayers and perpetrate an ecological, economic and social disaster of epic proportions.

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