

Stephen J. Wright  
Administrator and Chief Executive Officer  
Bonneville Power Administration  
DKC-7, P.O. Box 14428  
Portland, OR 97293-4428

April 22, 2008

**Re: MOAs Between Action Agencies and Parties Regarding FCRPS and Upper Snake  
Projects Compliance with the Endangered Species Act**

Dear Steve,

I am writing on behalf of Northwest Requirements Utilities (NRU), a trade association of 53 utility customers of BPA. Our members use nearly 25% of the firm power generated by the FCRPS and sold to public power. Because BPA is our primary or exclusive supplier of energy, we have a material interest in the cost of the FCRPS, and the manner in which it is operated to meet environmental stewardship responsibilities. The Memorandums of Agreement (MOAs) represent major decisions that will affect BPA costs and stewardship responsibilities for the next 10 years and beyond.

We appreciate the opportunity to comment, but also recognize that BPA customers have had no opportunity to be directly involved in these negotiations as it relates to the projects to be implemented, the overall size of the financial commitment, or the performance goals and monitoring mechanisms that will be used to judge relative progress in sustaining or improving ESA listed stocks. As a result, our comments will not focus primarily on cumulative costs of the package or individual funding commitments, but more on how to provide meaningful opportunities for BPA customers to be directly involved in key future decisions that may materially influence whether this billion dollar expenditure achieves the expected results. **Therefore, our primary objective in this response is to convince BPA and the other Action Agencies to immediately negotiate a MOA with Northwest RiverPartners (our representative in the Bi-Op judicial review) that recognizes major customer concerns stemming from the MOAs, and establishes a meaningful process to address them.**

These comments have been circulated in advance to the NRU members, and we believe they reflect their views. However, individual utilities are encouraged to submit their own comments. NRU also supports the comments submitted by Northwest River Partners (NRP).

**Balancing of Overall Risk**

While it is not clear from the MOAs, based on statements from BPA staff, and our own analysis, we conclude that the additional cost of the MOAs reflected in BPA rates will be about 2%, and when combined with other measures tied to the new Bi-Op, the overall rate increase will be close to 4%

compared to what is in PF 2008 rates. Such costs when combined with the higher than expected costs of Columbia Generating Station will eliminate most if not all of the savings public power customers expected to achieve beginning in FY 2009 as a result of changes in IOU residential and small farm customer benefit levels.

As a result of these agreements, customers and taxpayers will end up shouldering a \$983 million 10 year program, with 61% representing new money. However, these agreements do not achieve “closure” because 1) BPA may pursue additional agreements, 2) there are potential opportunities for parties to seek BPA funding in other venues, and 3) there is the overarching risk that in court the Judge may propose other measures that further increase BPA’s costs (direct program) or reduce its revenues (spill and flow modifications.) These costs will be added to the hundreds of million dollars that are annually funded by BPA customers as part of the existing ESA and NWP salmon recovery effort in the Northwest.

From a long term perspective, there is potentially great value in having stability in the FCRPS “Tier 1” base, particularly if the price is within reasonable parameters. There is also great value in having a strong working relationship with the Tribes that have signed the MOAs, and we look forward to working together to accomplish common objectives.

#### **NRU Proposed Items for a BPA MOA with Customers**

Northwest RiverPartners, and previously NRU and PPC have been defendant intervenors on behalf of the government in the FCRPS Bi-Op litigation and the Clean Water Act case. BPA is asking us to accept increased wholesale power rates that the Agency deems necessary to achieve the objective of stable FCRPS operations over a ten year period.

We appreciate the efforts of BPA staff in negotiating these agreements, and respect and value the Tribes, as sovereigns, for entering into a long term cooperative relationship with the Action Agencies. But as customers we need assurances that the MOAs are not simply a floor for new spending, and that decisions will be made in open processes using the best scientific information.

NRU does not oppose the MOAs, and supports reaching closure with the Tribes and States on Bi-Op related issues, even if it involves a higher level of spending for programs that will have a demonstrated benefit for ESA listed stocks. We lack sufficient information to come to a firm conclusion as to whether the overall costs and benefits are roughly aligned. As BPA forges regional partnerships it needs to keep in mind how its customer base fits into these alliances. The MOAs leave unresolved too many issues of importance to customers. Therefore our recommendation is for BPA to agree to negotiate a MOA with the customers that would be an agreement as to how some of our key interests will be preserved, including opportunities we will have to participate in future decision making.

While I am not speaking on behalf of the Board or staff of NRP, a MOA with Northwest RiverPartners, which represents BPA customers, makes sense because we rely upon NRP for legal representation in the Bi-Op. An initial list of topics to address in a MOA with customers should include at least the following:

### **Use of Best Scientific Information**

The MOAs basically commit BPA to fund the Fish Passage Center (FPC) for “monitoring and verification” of the performance of the FCRPS. Presumably this will give the Tribes the technical ability to participate in the MOA. The FPC is viewed by BPA customers as an advocacy group rather than a source of objective data gathering and best scientific analysis. If BPA is committing to fund the FPC, the Agency needs to have an agreement with customers that would give us confidence that the data gathering, analysis, and Action Agency decision making will be based on the best scientific information. Also, such information needs to be available for broad public review in advance of Action Agency decision making for those major items that impact the overall anticipated costs of these agreements. We want a written commitment ensuring the use of the best scientific information and the timely access to this information. Absent such a formal understanding, it will be difficult for the customers to know what the basis will be for future decision making by the Action Agencies.

### **Relationship to the Harvest Bi-Op**

While FCRPS operations have been modified extensively (and expensively) to provide for fish passage, it is not clear that the ESA related stocks will necessarily be progressing toward recovery as a result of these actions alone. Harvest rates, as well as ocean conditions and the impact of hatcheries are important variables. The FCRPS Bi-Op was developed in an open collaborative process under judicial supervision. In contrast, the harvest targets are developed behind closed doors (U.S. v Oregon), and continue to produce what we believe are unrealistically high harvesting allowances for some of the ESA stocks.

The MOAs have two “check in” dates for a comprehensive review of hydraulic and biological information regarding FCRPS performance. This allows for potential additional changes in FRCPS operations or changes in program costs during the 10 year period.

In our view, lack of progress toward improvement in ESA listed runs is going to be largely a function of harvest rates, hatchery operations to support harvest, and overall ocean conditions. An MOA with customers needs to address the opportunities we have to challenge future harvest levels, without compromising the continued operation of FCRPS facilities if the FCRPS is meeting performance targets.

### **Material Change in Conditions**

These MOAs basically compel BPA to pay the full costs of the measures in the MOAs, regardless of the Agency’s overall financial position. From a customer perspective, the MOAs create a spending floor, but no cap. As a result, BPA is locked in to a spending floor unless there is a change to the agreement that is financially or operationally “material.” It is reasonable to assume that the Agency may be subject to judicial direction, or pressures from other parties seeking additional funding or wanting further changes to FCRPS operations that will add additional costs on top of the requirements of the MOA. The issue for us becomes the Administrator’s determination as to whether individual or cumulative events constitute a material change such that BPA would consider a renegotiation of financial parameters or possible termination of the MOAs.

A MOA with the customers should describe parameters under which BPA will consult with the customers in advance of Agency decision making on whether possible changes to the MOA individually or cumulatively have what could be reasonably argued as a material impact. The Administrator would remain the final decision maker. However, we think it would be poor practice, without adequate checks and balances, for BPA to agree to additional potential costs above a given threshold level without full and timely customer consultation.

### **John Day Pool Operations**

Customers are concerned that John Day Pool operations continue to be part of an aggressive non breaching strategy of some regional parties. We have seen no compelling information from BPA or NOAA Fisheries that would support a change in John Day reservoir operations. All of the information we have seen from the Action Agencies leads us to a conclusion that drawing down John Day to MOP will actually be harmful to ESA listed species. Advocates for changes in John Day pool operations, such as the State of Oregon and other parties, have not produced any quantitative well modeled analysis in support of drawdown that has been affirmed by independent peer review. The NRU membership includes irrigation customers that draw water from the John Day pool to support agricultural production. Thus our interests extend beyond the rate impact of this issue.

The MOAs list John Day Minimum Operating Pool as a “contingency” that will be decided as part of a 2015 comprehensive review. In a MOA with the customers, the Action Agencies should commit that we will have full and timely access to any information associated with John Day reservoir operations, and that the Agencies will meet with us in advance of, and during any comprehensive reviews, rather than at the end of the process.

### **Commitment to Cost Control**

The MOAs have a projected cost for programs and hydraulic operations over a ten year period that BPA has quantified at nearly one billion dollars. It is unclear from the agreements where the funds will go, what the role of the Northwest Power and Conservation Council as well as the ISRP will be, and the extent to which other parties or surrogates for the MOA parties may have the latitude to press for additional funding.

Again, for purposes of reasonable checks and balances, we believe it would be important for BPA to sign an MOA with the customers basically saying this is the agreement in totality (with the possible modification of any additional MOAs being signed.) To the extent other parties chose to pursue supplemental funding in other venues, we need BPA’s commitment that the Agency will be diligent and aggressive in keeping control on the overall costs of the fish and wildlife program while maintaining a focus on funding scientifically beneficial projects that will support recovery of ESA listed species. While we will do what we can to control costs in all forums and decision making processes, BPA customers on their own do not have the final say.

### **Summer Spill**

From a customer perspective we are disappointed that the curtailment of summer spill has been reduced from fish counts falling below 1,000 fish per day for three consecutive days in the draft

FCRPS Bi-Op to 300 fish for three consecutive days in the MOAs. Over the years customers have fought to curtail or eliminate summer spill because the biological benefits (if any) are not at all aligned with the opportunity costs of foregone revenue to the Agency. BPA should provide an analysis of what this change from the draft Bi-Op will cost customers given various market price scenarios and hydro conditions. With these MOAs, what net result savings have we achieved in summer spill?

While the MOAs contain a very specific trigger point, and we cannot insist on redoing what has been negotiated and agreed to by the parties, we believe that during the periodic “comprehensive review” of the MOAs, the Action Agencies should press for a thorough examination of summer spill. This should include reconsideration of an adjustment to the 1,000 fish per day standard contained in the draft Bi-Op. We would like to see a commitment to review summer spill in a MOA with the customers.

### **Conclusion**

In summary the NRU members have a continuing interest in relying upon lowest possible cost resources from the FCRPS. NRU also wants the FCRPS to be operated in a manner that fully addresses ESA, CWA, and NWPA environmental stewardship obligations and also meets Tribal commitments. For the Action Agencies to proceed with the MOAs of this order of magnitude, we believe you are compelled to simultaneously enter into agreements with your customers, represented by Northwest RiverPartners, to provide reasonable assurances that expectations attributed to the MOAs will be met, and that we have a reasonable say in future decision making processes that are material to our interests.

We look forward to your response at your earliest convenience.

Best Regards,

John D. Saven, CEO  
Northwest Requirements Utilities

CC: Federal Action Agencies  
NOAA Fisheries  
Members of Northwest Requirements Utilities  
Northwest RiverPartners Board Members  
Northwest Power and Conservation Council Members  
Dick Adams, PNUCC  
Scott Corwin, PPC  
Greg Delwiche, Bonneville Power Administration  
Lori Bodi, Bonneville Power Administration