

October 12, 2010

Steve Wright, Administrator
Bonneville Power Administration
PO Box 3621
Portland, OR 97208

Submitted electronically at: comments@bpa.gov

Dear Mr. Wright,

Thank you for the opportunity to provide public comments regarding the Draft Willamette River Basin Memorandum of Agreement (MOA). Northwest Requirements Utilities (NRU) has been deeply involved in BPA's Integrated Program Review process (IPR), which sets the stage for the overall size of the wholesale power rate increase pending for October of 2011. NRU also actively participates in those major policy issues related to BPA's responsibility for environmental mitigation tied to the operation of the FCRPS facilities. In this overall context, NRU has a keen interest in both fully understanding and providing comment concerning the draft MOA.

While we appreciate the briefings from your staff concerning both the costs and the reported fulfillment of environmental mitigation responsibilities by BPA for wildlife in the Willamette River Basin, it is fair to say that this proposed MOA is a recent development that, to our knowledge, has not included any meaningful degree of past customer involvement. For example, while we have participated in the IPR process to analyze BPA's future spending, including fish and wildlife mitigation, the Willamette MOA was not discussed during that process.

In briefings with your staff we have been told that 1) changes in the State of Oregon's negotiating position greatly improved the likelihood of reaching a settlement, and 2) from an economic perspective the cost of the settlement, as measured by the impact on wholesale power rates, is lower over time than what BPA has forecast absent a settlement. NRU and other BPA customer representatives are not a party to the negotiations, and have not received much information concerning the negotiations in the past, particularly what standards would be used to judge whether the outcome of the negotiations were successful. Absent this context, it falls upon us to develop our own customer benchmarks for measurement and then apply them to this MOA.

With this background, it is very difficult to draw a conclusion that the financial responsibilities BPA, is taking in the Willamette Basin MOA are required at the proposed level to reach a mutually satisfactory agreement. Not being a part of the negotiations, we cannot assert with conviction that the MOA is too generous, but it does raise issues that require additional scrutiny and discussion. In other words, we feel that a general defense of the MOA financial commitments based largely on them costing less than general budget projections in an overall BPA revenue requirement is in itself insufficient to justify the MOA. BPA needs to demonstrate that there is a compelling need to move forward, and that the underlying economics of the proposal of this magnitude makes sense compared to the degree of certainty of environmental mitigation achieved.

NRU directly in the past, and now through Northwest RiverPartners, has participated in ongoing litigation regarding the FCRPS Bi-Ops. In that context we perceive that the administration of the State of Oregon has been an unfortunate stumbling block to resolving river operation and environmental mitigation issues based on the best available science and a demonstrated willingness to work with the Federal Action Agencies and other three States on a comprehensive plan that would operate the FCRPS clean and renewable hydro resources in the region's best interests. While the litigation and the MOA may not be directly linked, NRU members ask us why such a major financial commitment is being made to the State of Oregon, while the protracted litigation relationship with Oregon remains contentious. This is a difficult question for us to answer, unless the case for moving forward with the Willamette Basin Bi-Op is compelling.

There are additional questions we have or suggested modifications that would potentially improve the document from NRU's perspective. However, we are not in a position to project whether any or all of these can be achieved, nor what the short term or longer term impacts would be in the event that adjustments were not acceptable to BPA or the State of Oregon. If the issues we raise were relatively small in scope, we would tend to set them aside and extend deference to the parties that negotiated the MOA. That is not the case here given the size of the financial commitments.

Cost of the Land Acquisition

We begin by noting that this is a very expensive proposition. In constant dollars the cost of this agreement totals \$157 million from 2010 to 2025. After the proposed inflation adders we calculate a total nominal dollar cost of \$174 million. (Both of these dollar amounts are prior to consideration of the estimated \$16.5 million in savings that would occur related to the Willamette Bi-Op as a result of the MOA.) This reflects a total of both expense and capital dollars. It is important to ask the question, what are we getting for this expenditure? We have been told that our exposure could have been far greater than this amount. However, it is not easy to assess what that exposure actually could have been. We have heard of various bargaining positions that may or may not have held. It is always difficult to comment on the results of a negotiated settlement without knowing what the bookends really were.

Specifically we question the cost of the Wildish acquisition. Our analysis of the data provided by BPA indicates the following:

- The cost of the Wildish acquisition is nearly \$21 million for 1,271 acres. It is the most expensive wildlife project ever undertaken by BPA and the second most expensive on a cost per acre basis until this point in time.
- Wildish's cost is \$16,399 per acre, the average cost of acquisition for Willamette mitigation prior to this has been less than a fourth of this at \$3,833 per acre.
- Trappist is relatively expensive too, but only half that of Wildish at \$7,405 per acre.
- The Wildish acquisition would raise BPA's cost per acre of acquisition from under \$4 k per acre to over \$11 k per acre for the entire Willamette program.
- The biggest acquisitions to date have been the Zena complex and the Coburg Ridge for a total of 1,520 acres at an average cost of \$3,774 per acre.

This leads us to question the cost of the Wildish acquisition compared to the values gained for wildlife by the acquisition. Why is this acquisition so expensive compared to other recent acquisitions, especially in light of the depressed real estate markets in the region? Does this acquisition bring that much more mitigation value for wildlife compared to other recent acquisitions? BPA and Oregon should demonstrate the unique value of this particular purchase and the reasons for its high cost.

Relationship with the State of Oregon

As highlighted above, it has been very challenging dealing with the State of Oregon over the years as we try to achieve a balance between the efficient operation of the hydroelectric system and the cost effective mitigation of the effects of those operations on fish and wildlife. On many occasions Oregon has stood in the way of achieving resolution on this topic. Now Oregon and BPA come forward with an expensive proposed agreement for land acquisition and conservation easements to resolve the wildlife issue for a period of time. Providing over \$174 million to the State of Oregon under these circumstances causes us to pause, especially at this time of economic downturn.

It is our expectation that if this agreement is signed, relationships with Oregon in the courtroom will improve, and we can move on towards developing a broadly supported fish and wildlife program for BPA. We would like to know that if this MOA goes into effect, that there would be prohibitions on the affected parties from filing other new litigation on different but related subjects, such as lamprey survival as an example.

Section III C. states that "Oregon agrees that after fulfilling its total wildlife obligations under this Agreement, BPA will have satisfied the federal mitigation duties for the Willamette dams under applicable law." The question is how long will BPA's wildlife obligations have been fulfilled for? Is this an agreement in perpetuity or simply an agreement through 2025? That is, will BPA's wildlife obligations for the acreage purchased under this agreement be extinguished in perpetuity? In section G. 4. the agreement discusses funding obligations for 2025 to 2043 and urges the development of a long term funding plan. It needs to be made very clear before any final agreements are reached that

this agreement is in perpetuity. We would not support a future reopener regarding BPA financial obligations.

Positive Attributes of the MOA

NRU staff supports BPA agreeing to a 1:1 ratio for settlement, and using this as a precedent for other environmental mitigation agreements in the region. Also, the measurement of acquiring a hard physical asset, in this case acres of land, is easy to understand as opposed to more complex measurements, such as habitat units. If an agreement is reached, it will go a long way to resolving BPA's remaining wildlife mitigation responsibilities within the region.

Specific Comments:

- In Section G. 7. the fixed inflation adder of 2.5% per year is questionable. A simple inflation adder such as this does not reflect the rationale for the underlying costs nor does it reflect the actual effect of inflation from year to year. The argument can be made that this approach provides funding certainty. On the other hand, this approach does not tether the funding level to the projects actually being funded.
- The agreement in Section III. A. attempts to require BPA to set these costs as a given and not subject to any reductions. Such language puts BPA in a box with regard to any flexibility in light of commercial pressures and should not be in this agreement. In other words, BPA must have the flexibility to make periodic changes in funding levels to respond to financial problems, rather than holding commitments fixed and relying disproportionately on other programs, or ultimately rates charged to customers to accommodate these pressures.
- There are many Attachments referenced in this document but not attached. That is a concern. These NRU comments do not support language that we have not had the opportunity to review.

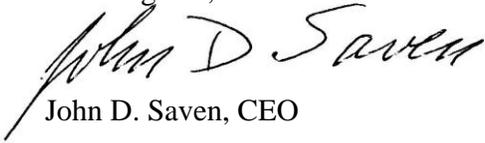
Concluding Comments

We commend BPA for trying to resolve issues surrounding wildlife mitigation, and believe that the overall framework of the Willamette Basin MOA is a constructive model. However, in isolation the raw costs of the land acquisitions, particularly the Wildish property, leads to questions as to whether BPA may have been too generous to the State of Oregon. A rationale that is based on costs of the MOA being lower than Agency internal financial forecasts of future costs absent a settlement is not sufficient to resolve the question.

We appreciate the opportunity to provide comments and know that your staff has worked hard over many months concerning these negotiations. But we still have concerns that just because the State of Oregon's current administration showed a recent willingness to move to an agreement, does that provide a rationale for the specific outcome? While we have expressed concerns about overall cost,

and the pace at which this is moving, a public comment period is always useful for everyone. Please let us know if you have any questions regarding these comments.

Best Regards,

A handwritten signature in black ink that reads "John D. Saven". The signature is written in a cursive style with a large, sweeping initial "J".

John D. Saven, CEO

CC: Members of NRU
Terry Flores, Executive Director, Northwest RiverPartners
Scott Corwin, Executive Director, Public Power Council