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November 28, 2006

Bill Maslen, Director  
Fish and Wildlife Division  
Bonneville Power Administration  
P.O. Box 3621  
Portland, OR 97208

Dear Mr. Maslen:

Re: Fish and Wildlife Project Funding Recommendations for Fiscal Years 2007-09 -- Oregon minority report

On November 20, 2006, in a letter from Doug Marker, Director of the Fish and Wildlife Division, we transmitted to Bonneville the Council's final decision document concluding the fish and wildlife project review process for Fiscal Years 2007-09. The Oregon members of the Council subsequently submitted a minority report to the Council's decision. Section 4(c)(3) of the Northwest Power Act provides that "[i]f any member of the Council disagrees with respect to any matter transmitted to any Federal or State official or any other person or wishes to express additional views concerning such matter, such member may submit a statement to accompany such matter setting forth the reasons for such disagreement or views." On that basis, here is the Oregon members' minority report to accompany the Council's final FY2007-09 project funding recommendations.

Please call if you have any questions.

Sincerely,

John Shurts  
General Counsel

NORTHWEST POWER AND CONSERVATION COUNCIL  
OREGON OFFICE

# MINORITY REPORT

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NORTHWEST POWER AND COUNSERVATION  
COUNCIL PROJECT FUNDING  
RECOMMENDATIONS FOR FISCAL YEARS  
2007-2009

# MINORITY REPORT OF THE OREGON OFFICE OF THE NORTHWEST POWER AND CONSERVATION COUNCIL

## PROJECT FUNDING RECOMMENDATIONS FOR FISCAL YEARS 2007-2009

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### JUSTIFICATION FOR FILING A MINORITY REPORT

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At its October 2006 meeting in Helena, Montana the Northwest Power and Conservation Council (Council) voted to adopt recommendations for Bonneville Power Administration (Bonneville) funding of projects solicited by the Council and Bonneville to implement the Council's Fish and Wildlife Program (Program). Those projects covered fiscal years 2007- 2009.

The Council unanimously passed recommendations on a series of projects covering the various ecological provinces defined in the Council Program. The Council also adopted recommendations for two sets of projects referred to as the "Basinwide" and the "Mainstem/Multi-province." The Oregon members of the Council voted against adopting the Basinwide and Mainstem/Multi-province recommendations and reserved the right to file a minority report detailing their reasons for objecting to the Council recommendations.

This report will cover both programmatic and project-specific reasons for Oregon's disagreement with the majority of the Council on its Basinwide and Mainstem/Multi-province recommendations to Bonneville.

## PROGRAMMATIC ISSUES

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### AMOUNT OF THE FISCAL YEARS 2007-09 DIRECT PROGRAM BUDGET

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In its June 24, 2005, Power Function Review Final Report, Bonneville proposed Direct Program funding levels for both the expense and capital portions of the Council's Fish and Wildlife Program (Program) implementation. The Power Function Review (PFR) modeled four different funding scenarios, ranging from \$126 million to \$174 million based upon a series of differing cost drivers. The PFR concluded:

"BPA believes that its proposed \$143 million Fish and Wildlife Program funding level allows for significant additional funding of high priority habitat improvement efforts

reflected in the recently completed subbasin planning effort, through the proposed 70/25/5 funding allocations between on-the-ground work, RM&E and coordination, through increased application of cost sharing and partnering where there are shared mitigation obligations, and through more strategic, efficient and better coordinated RM&E.”

An analysis provided to the PFR by the Yakama Nation and the Columbia River Inter-Tribal Fish Commission (April 28, 2005) concluded that to implement subbasin plans and Biological Opinion responsibilities adequately under the Endangered Species Act (ESA), Bonneville should commit \$200 million in Program funding in Fiscal Year 2007 and increase its commitment in subsequent years. The Affiliated Tribes of Northwest Indians adopted Resolution 05-057 on May 19, 2005, supporting the CRITFC analysis.

Throughout its project selection process the Council received comments on the sufficiency of the FY 2007-09 funding level. Comments the Council received during the Council’s Draft Recommendations comment period, particularly those from the Confederated Tribes of the Umatilla Indian Reservation (October 3, 2006) take issue with the funding level provided during the FY 2007-09 period. The Upper Columbia United Tribes comments (October 6, 2006) noted that funding targets were established through the PFR, but acknowledge “additional funding is needed to meet all the basin’s fish and wildlife needs.” Comments received from several of the Bonneville customer groups (Public Power Council, Pacific Northwest Generating Cooperative, Lewis County PUD, et al) supported the \$143 million funding level, but cautioned against using a \$153 million planning level for the FY 2007-09 period.

The Council opted to work with the Bonneville spending figure of \$143 million in expense funding, without agreeing that the Bonneville figure adequately funded Program implementation, particularly in light of the Council’s recently adopted subbasin plans. The Council also specifically rejected the Bonneville call to allocate the program along the lines of 70 percent spending for “on-the-ground” work, 25 percent for monitoring and evaluation and 5 percent for coordination projects.

Oregon acknowledges that Bonneville’s commitment of \$143 million per year, coupled with an extension of Bonneville’s treasury borrowing authority of \$36 million per year, constitutes a substantial devotion of ratepayer dollars toward implementation of Program priorities. We do not take that commitment lightly. However, we maintain that the money allocated to the Program from the PFR remains inadequate to implement the priorities established in the Council’s subbasin plans, its Mainstem Amendments to the 2000 Fish and Wildlife Program and Bonneville’s obligations to address federal hydropower system responsibilities imposed upon it by the 2004 NOAA Fisheries Federal Columbia River Power System (FCRPS) Biological Opinion (BiOp) and future actions that may arise from ongoing litigation challenging the 2004 FCRPS Biological Opinion.

Subbasin plans, while not imposing new Federal Columbia River Power System funding obligations, clarify Program priorities and, as we found in conducting project reviews in the various Oregon subbasins, increase the quality and number of projects designed to address

those priorities. To fit within the Council's budget for several of the ecological provinces, however, Oregon had to eliminate or reduce funding for existing projects important to successful implementation of the Program. For most existing projects contained in Oregon's recommendations we had to reduce funding commitments to FY 2006 levels. We funded few new Oregon projects. Though we believe the subbasin planning process provided valuable coherence and clarity to the Program, we question the ability to implement those plans adequately at the current funding level.

Some of the existing projects that we were unable to fund at current Program funding levels include:

1. Four possible Biological Opinion monitoring and evaluation projects (199701501 - Imnaha Smolt to Adult Return, 199801004 - Monitor and Evaluate Juvenile Fall Chinook, 198902401 - Umatilla Juvenile Salmonid Outmigration, 200300600 - Effectiveness Monitoring in the Grays and Chinook River Estuary);
2. Four existing riparian buffer program implementing the Conservation Reserve Enhancement Program (200201500 - Sherman County, 200203400 - Wheeler County, 200203500 - Gilliam County, 200202600 - Morrow and Umatilla Counties);
3. A longstanding habitat restoration project (199902500 - Sandy River Delta).

Other projects held to FY 2006 funding levels will not implement critical proposed work elements. We have attached a summary submitted by the Columbia Basin Fish and Wildlife Authority (CBFWA) of some projects that fish and wildlife managers deemed critical but never received a funding recommendation or projects that will be unable to perform certain key tasks at FY 2007-09 recommended funding levels (Attachment A - Columbia Basin Fish and Wildlife Authority, October 6, 2006).

The majority notes that the Power Act does not promise unlimited resources and that the Council never asked subbasin planners to size the Bonneville commitment of resources to address the limiting factors of subbasin plans. The Council did ask subbasin planners to develop both short- and long-term budgets as part of the subbasin plan process. Few planning teams actually had the time or the funding to develop those budgets. But two subbasins that did develop budgets, the Owyhee and the Hood, show a substantial funding commitment even in the short term to address the objectives of the subbasin plans. Though not all of the funding needs represent commitments of Bonneville dollars, the budgets present a compelling picture of potential funding requirements. We think that these examples, coupled with the number of projects proposed in this solicitation and the associated budgets of those proposals more than doubling the amount of money made available by Bonneville in FY 2007-09 demonstrate a need for a greater Program funding commitment.

Oregon believes that inflation, driven by material and health care costs, potentially outstrips the PFR commitment of an additional \$4 million for the Direct Program from the rate case for fiscal years 2002-06. Oregon also believes that Bonneville's PFR assumptions of reductions in monitoring and evaluation expenses ignore very real possibilities that new Biological Opinion requirements will increase the level of Program commitment to monitoring and evaluation, not decrease that commitment. To that end, we feel the majority's recommendations on the Basinwide and Mainstem/Multi-province projects will

exacerbate the possible conflicts with Biological Opinion monitoring and evaluation requirements by under-funding existing work that carries out necessary BiOp functions.

While we have no definitive monetary commitment to recommend to address the cost drivers of inflation, ESA BiOp requirements and subbasin plan priorities, Bonneville should consider increasing Program funding toward the upper end of the PFR range of scenarios, between \$160 million and \$170 million per year for the FY 2007-09 period.

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### **USE OF THE MAINSTEM SYSTEMWIDE REVIEW TEAM RECOMMENDATIONS**

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Described as an “ad hoc group...facilitated by CBFWA staff and is comprised of Council, Bonneville, fish and wildlife managers, NOAA, USFWS and the Corps staff,” (Marker memorandum, June 29, 2006) the Mainstem Systemwide Review Team (MSRT) reviewed and evaluated the Basinwide and Mainstem/Multi-province sets of projects. These staff members possess expertise and experience with the issues surrounding the projects in these two sets of recommendations. Additions to the team were Action Agency BiOp implementers (Bonneville and the Corps) who assisted in identifying projects critical to Biological Opinion requirements.

From April 13 through April 18, 2006, the MSRT conducted an initial review of a total of 161 proposals. The MSRT draft recommendations were provided to the Council staff on May 5, 2006. CBFWA provided final recommendations from the MSRT on July 27, 2006. The MSRT prioritized projects in the \$32.6 million Basinwide budget and the \$13.4 million Mainstem/Multi-province budget. Those recommendations and the MSRT process description are attached (Attachment B - Mainstem Systemwide Review Team (MSRT) Project Review Summary, July 27, 2006).

Both Council central and state office staff met June 22 and June 29 to discuss and prioritize the Mainstem/Multi-province projects. Staff summarized their recommendation to the Council at the July 11-12, 2006, meeting held in Missoula, Montana.

At the Spokane meeting of the Council, held August 15 and 16, 2006, the Washington members of the Council provided a set of recommendations for both the Basinwide and Mainstem/Multi-province projects. Of the 71 proposed projects in these two categories, Washington’s initial recommendations deviated from the MSRT recommendations 26 times (36.6percent) (Attachment C - Table). Washington used a formula that averaged a project’s expenditures over the course of fiscal years 2004, 2005 and 2006 (projecting expenditures in 2006, since the fiscal year was not complete until September 30, 2006) and adding 15 percent to the spending average of the FY 04-06 period to account for inflation. Washington then compared that total to the MSRT recommendation and used the lower figure of the two numbers as its base funding recommendation. However, rather than apply the formula in a consistent fashion, the Washington proposal then deviated from that formula in many instances. The underlying philosophy for using spending averages involved creating a potential reserve within the Basinwide and Mainstem/Multi-province categories that

Washington would use to fund ESA requirements arising out of ongoing Biological Opinion negotiations. (See discussion below)

At the August 31, 2006, meeting of the Council's fish and wildlife committee in Portland and at the September 12, 2006, meeting in Astoria, OR, staff used both the MSRT and the Washington recommendations as proposed methods of prioritizing the budgets of the Basinwide category, and Washington and the Council staff recommendations as prioritization methods for the Mainstem/Multi-province projects. During the August 31 meeting, Oregon objected to using Washington's method as an alternative scheme. Oregon believed the MSRT had the expertise and breadth of experience with the issues and projects associated with the Basinwide projects to grant those recommendations primacy as Council recommendations, and if Washington had objections to any of the recommendations, it could raise them on equal footing with any other state. We continue to believe in the expertise of the MSRT.

The majority notes that review groups such as the MSRT have no particular legal status in the implementation of the Program and that the Council prioritization decisions rest with the Council alone. Though MSRT never received a formal, voted sanction from the Council to review projects in the Basinwide and Mainstem/Multi-province categories, the Council was certainly aware of the existence of the group when it conducted its deliberations in April. Council staff encouraged the formation of the group and hoped to rely on the MSRT's expertise in these program areas in forming a prioritization recommendation to the Council. Council staffs from the various states were present (either in person or by telephone) for the MSRT deliberations. If any of the states had objection to the MSRT proceedings or favored different budgeting schemes, ample opportunity existed to raise those objections at Council meetings conducted from May through July, before the MSRT finalized its recommendations. Raising those objections in a timely fashion might have allowed the MSRT to take Council suggestions into account in developing its final set of recommendations.

The Council has the right and the ability to, for policy reasons, correct errors or change recommendations it receives from review bodies such as the MSRT. The Council would perform a disservice to the region if it failed to use its familiarity with its Program and its policies as a basis for forming the Council's recommendations to Bonneville. Acknowledging that Council authority, however, Oregon finds that Washington and ultimately the majority appeared to disregard many MSRT recommendations. In its final recommendations to Bonneville, the majority disagreed with the MSRT 26 times in the Basinwide recommendations alone (Attachment D - Basinwide recommendations (Oregon) - Projects highlighted in green). The majority recommendations conflict with the MSRT six times out of 15 projects receiving a recommendation from either the MSRT or the Council in the Mainstem/Multi-province projects (Attachment E - Mainstem/Multi-province Recommendations (Oregon) - Projects highlighted in green). Thus, out of 73 project recommendations, including placeholders, the majority disagreed with the MSRT 32 times (43.8 percent). The random application of the Washington formula for budget reductions results in inconsistent treatment for several projects and much of the majority's reasoning underlying their disagreements with the MSRT appears cloudy at best.

Oregon found the MSRT work well reasoned and reflective of management priorities in the Basinwide categories of Coordination, Research and Monitoring and Evaluation. We would use the MSRT as the basis for Oregon's recommendations on project budgets, with certain deviations noted. We will discuss most of those recommendations in the Project Specific section of this report.

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### CREATION OF AN UNALLOCATED "ESA" RESERVE

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Creation of a reserve fund underlies the majority's approach to its departure from the MSRT recommendations in the Basinwide group of projects. Although never receiving official Council sanction through a formal motion and vote, and the Council maintains it as an unallocated reserve within the FY 2007-09 budget, ostensibly the reserve would serve to support potential requirements placed upon Bonneville through negotiations or final disposition of the lawsuit resulting from the 2004 NOAA Fisheries FCRPS Biological Opinion.

In developing the FY 2007-09 budget before soliciting for projects, the Council created a \$2 million unallocated placeholder. That placeholder was designed to cover contingencies arising from program implementation during the FY 2007-09 period. Oregon presumes that some of those contingencies would include required actions arising from a new Biological Opinion on the FCRPS.

A second potential source of funding Biological Opinion obligations arises from the unspent reserve of funds, called carryover funds, from the FY 2003-06 rate period. Council staff estimated the unspent carryover funds from FY 2003-06 at \$10.8 million. (Attachment F - Patty O'Toole E-mail, October 5, 2006). Recent estimates from Bonneville place the unspent FY 2003-06 carryover at approximately \$8.8 million. Oregon has always maintained that the previous rate case involved fiscal years 2002-06 and that unspent funds from FY 2002 should be included in any carryover calculation. Bonneville spent approximately \$136 million in FY 2002, thus the amount of the carryover funds should potentially include that \$3 million in under-spending. (Attachment G - Table)

Finally, the majority would create an additional reserve from the Basinwide projects budget. Ostensibly for ESA purposes, this reserve in the Council's final Basinwide recommendations to Bonneville totals \$8.73 million for the three-year period. (However, the Council reserve also includes \$3.9 million for functions of the Fish Passage Center, money that probably should be debited from the \$8.73 million.)

The Council and Bonneville in prior fiscal years had an ESA placeholder to cover contingencies from previous Biological Opinions. The Direct Program budget tracked ESA projects in FY 1996, and the Council had an ESA placeholder in its FY 1997 budget of \$5 million.



The Council and Bonneville abandoned the tracking of ESA projects and the creation of ESA-related placeholder in the FY 1998 budget, opting to address ESA concerns through regular project solicitations. After development of the 2000 NMFS FCRPS Biological Opinion, the Council addressed ESA implementation through its recommendations on funding projects that implemented Biological Opinion actions in the various ecological provinces. The Council also solicited the opinions of NOAA Fisheries and the Action Agencies for ESA implementation in creating its recommendations for the Mainstem/Systemwide group of projects in FY 2003.

In comments received during the comment period for the FY 2007-09 Draft Recommendations, many parties opined on the Council's development of a budget placeholder for ESA purposes. Bonneville noted the three potential sources of ESA contingency funding and urged the Council to maintain those funding sources, including the Basinwide projects reserve. Support for funding flexibility to meet ESA needs came from comments from Public Power Council, PNGC and Emerald PUD among others. PNUCC specifically sited the creation of the ESA reserve as beneficial. None of those commenters mentioned the carryover from FY 2003-06.

Comments against creation of the ESA reserve in the Basinwide projects came from CTUIR, the Nez Perce Tribe, ODFW, US Fish and Wildlife Service, the Yakama Nation and CBFWA, among others. Those commenters noted that creation of an ESA reserve appeared unjustified given other unfunded priority projects within the Basinwide and provincial allocations.

Oregon agrees with the fish and wildlife managers about the priority of creating an additional reserve for undefined priorities given the pressing needs of projects already implementing key Program and Biological Opinion functions. Under-funding, or in some instances de-funding, core or priority projects to create a reserve for possible ESA implementation needs does not appear prudent at this time. Biological Opinion negotiations have failed to develop those ESA requirements, though negotiations have continued for nearly two years. We fail to see how the BiOp negotiations will develop defined ESA requirements for implementation in Fiscal Year 2007, while projects that could address critical uncertainties for fish and wildlife go under-funded in creating the Council's reserve.

We believe that the Council could prioritize projects to the budget levels in the Basinwide and Mainstem/Multi-province groups, using the prioritized MSRT recommendations as the basis for Council recommendations, and still have an "ESA" placeholder of around \$8.8 million (not counting FY 2002 carryover funds) if the Council decided to utilize the FY 2003-06 carryover as the basis for an ESA reserve. Coupling the carryover funds with the already designated unallocated \$2 million per fiscal year placeholder in the Council budget would provide an ample \$14.8 million reserve for currently undefined ESA implementation arising from a new Biological Opinion. Add to that potential reserve money that Oregon would leave unallocated from its Basinwide projects recommendations and Oregon would still create an FY 2007-09 unallocated placeholder of \$15.33 million for "ESA" or other project implementation purposes. (Attachment D - Basinwide Recommendations (Oregon)).

We are uncertain whether the majority was aware of the potential amount of carryover from the FY 2003-06 period. At both the August 2006 Council meeting and the August 31 fish and wildlife committee meeting during which the Council encountered and then used the Washington recommendations, Council staff had still not sized the potential carryover funds. At that point, it would have been a difficult task for staff. Fiscal Year 2006 had yet to come to a close, so staff was unaware whether any unspent funds would remain from FY 2006. Not having that information perhaps led to the majority's creation of a reserve within the Basinwide budget.

Given the amount of carryover funds available, we find the Council's creation of a reserve within the Basinwide budget flawed, but potentially correctable and we urge Bonneville to reconsider the Basinwide recommendations to align more closely to the MSRT recommendations to the Council.

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#### CREATION OF AN INNOVATIVE-PROJECTS PLACEHOLDER BUDGET

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The Council's Research Plan (Council document 2006-3) defines "innovation" as:

*"Innovation* - Innovation is a critical element of any large management or research program and should be encouraged. The Innovative Project category was suggested by the ISRP in past annual program reviews and was designed to improve knowledge, encourage creative thinking, and provide an opportunity for project sponsors to test new methods and technologies. Innovative projects were funded in fiscal years 1998, 2000, 2001, and 2002. Although innovative project solicitations were not pursued in FY 2003-2005, Council members have expressed continued support for an innovative-project category."

The majority decided to create an innovative-project placeholder budget within the Basinwide projects allocation. As noted in the Council's programmatic issues document for the FY 2007-09 project recommendations, the Council has yet to define the criteria or the method for soliciting innovative projects, but will work with Bonneville to develop those criteria and method of solicitation. The Council reserved \$1 million dollars per year for the innovative-projects placeholder.

The innovative-project category initially resulted from a suggestion by the Independent Scientific Review Panel in 1997. The Council conducted solicitations, some of which resulted in the ISRP delivering to the Council a ranked list of the best and most innovative of the projects proposed. For several reasons, the Council deviated from the ISRP rankings. The final solicitation in 2002 resulted in only two projects receiving Bonneville funding, despite the ISRP endorsement of 17 proposals meeting the Council criteria and Council support for funding 10 of those proposals. Differing expectations of the ISRP, the Council and Bonneville about what qualifies as innovation could account for some of the problems the innovative-projects category has experienced in the past.

Bonneville supported the creation of an innovative category for FY 2007-09 at the same time it discouraged a broad solicitation process. Other commenters objected to the concept with some labeling it a “million dollar ‘pet-projects fund’” (Letter from the Tribal Chairs of the Nez Perce, Yakama Nation, Confederated Tribes of the Warm Springs, and the Confederated Tribes of the Umatilla, October 6, 2006).

Oregon finds it curious that the majority chose to create an innovative-projects placeholder when the FY 2007-09 solicitation process yielded several projects the ISRP deemed innovative in nature. A “key word” search of the Final Review of Proposals (ISRP 2006-6, August 31, 2006) yields 33 instances of the use of “innovative” in the report. Of those 33 instances, the ISRP comments on the FY 2007-09 solicitation deem either some aspect of a project or the entire project as “innovative” 19 times. If one discounts the five ongoing projects the ISRP labels as innovative and removes two projects the Panel deemed not fundable, 12 new projects received by the Council have ISRP support as innovative. The majority agreed to fund one such innovative designee, the American shad study (project 200727500).

If the majority wanted to fund innovative work, do any of the other projects found innovative by the ISRP offer the Council an ability to meet some undefined innovative criteria? Does the majority have to set aside a placeholder and conduct yet another solicitation for projects to fund an innovative category?

With the potential demands of ESA implementation and the potential de-funding of several projects that would implement those ESA responsibilities, we find the majority’s creation of an innovative-placeholder unhelpful and unrealistic. Oregon doubts that “innovative” projects will be required under a new Biological Opinion. Though we want to encourage innovation in fish and wildlife restoration, we propose waiting for the definition of Biological Opinion responsibilities and the potential demands those responsibilities would place upon the unallocated placeholder and carryover funds from FY 2003-06 before launching a solicitation of innovative projects to meet the unspecified criteria of the Council. If funds remain, the Council could conduct a limited solicitation in FY 2008 or 2009. We would not create a separate placeholder within the Basinwide category for innovative projects.

## PROJECT-SPECIFIC ISSUES

On October 5, 2006, Oregon put forth recommendations to the Council based upon comments received during the project selection process. Oregon provided recommendations (Attachment D - Basinwide recommendations (Oregon) and Attachment E - Mainstem/Multi-province recommendations (Oregon)) to “improve our product and minimize conflict with sponsors and BPA over implementation of the Council’s recommendations.” (E-mail from Melinda Eden and Joan Dukes, October 5, 2006, Attachment H).

As we have explained in the Programmatic Issues section of this report, Oregon disagreed with the reasoning underlying the Council's draft and final funding recommendations: the creation of a sizeable reserve of money from the Basinwide projects potentially to fund additional requirements arising from negotiations over a new FCRPS Biological Opinion. Oregon believes that a potential ESA reserve existed within the Council Draft budget and unspent funds from the FY 2002-06 rate period to obviate the need to reduce budgets below suggested MSRT levels as had occurred in the Council Draft Recommendations.

What follows are Oregon's project specific recommendations that it shared with the Council on October 5, 2006, and our disagreements with the reasoning of the majority of the Council over its final action.

## BASINWIDE PROJECTS

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### **PROJECT 200303600 - CBFWA COLLABORATIVE SYSTEMWIDE M&E PROGRAM**

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The MSRT supported three years of funding for the Collaborative Systemwide Monitoring and Evaluation Program (CSMEP) reasoning that it was "likely the best program to coordinate and standardize RME and its partnership with PNAMP will assist in 'marketing' standardization and agency acceptance." The MSRT reduced the budget from sponsor-proposed levels to the FY 2006 level.

The majority slightly reduced the budget for FY 2007 and FY 2008, but totally eliminated the FY 2009 budget. The majority stated that the project should accomplish its tasks of regional coordination of monitoring and evaluation plan development within two years and conclude its tasks. In developing the project budget, the majority departed from its formula of holding the project to FY 2004-06 spending plus 15percent to arrive at the proposed budget, largely by eliminating the third year of project funding.

Oregon would restore the CSMEP budget to levels proposed by the MSRT. There is no reason to believe that this project should conclude in two years as the Council recommendation suggests. Oregon agrees with the majority to require a defined monitoring and evaluation plan for the region in a two-year time frame, similar to the Council recommendation. However, the CSMEP project provides regional monitoring and evaluation coordination allowing state and tribal managers to participate with their federal agency counterparts in developing and implementing a regional monitoring and evaluation framework.

The CSMEP project should continue to implement any monitoring and evaluation plan developed in the majority's two-year schedule. Thus, Oregon would include FY 2009 funding for the CSMEP project, but condition that funding on review and approval of the regional monitoring and evaluation plan. Oregon anticipates that the CSMEP project would

continue to perform basinwide monitoring and evaluation coordination and implementation beyond the FY 2007-09 funding cycle.

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**PROJECT 199602000 - PIT TAGGING SPRING/SUMMER CHINOOK (CSS)**

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The Council deferred the Comparative Survival Study (CSS) project to the November Council meeting for final resolution. At the November Council meeting, the Council slightly increased the budget of the CSS over its proposed draft level for FY 2007. The Council proposed budget stands at \$915,444 for FY 2007 only, to revisit the following year.

Oregon would disagree with the majority treatment of the CSS project. The MSRT recommended the project at \$1,365,000 per year to allow the project to mark steelhead according to an ISRP and ISAB recommendation, but reduced the budget from proposed levels based upon a presumption that CBFWA management of the former Fish Passage Center proposal would lead to administrative efficiencies.

The majority reduced the budget from the MSRT level to \$750,000 per year in its draft recommendations. The majority reasoned that, despite the ISAB and ISRP recommendation to tag additional steelhead and downriver stocks, tagging of additional steelhead was unnecessary and tagging of spring/summer Chinook could take place at budget levels below FY 2006.

The Council received no comments supporting the majority approach on the CSS. Comment from some Bonneville customer groups (PNGC, PNUCC) supported the overhaul of the CSS project proposed by some of the majority. Comment from several fish and wildlife managers (US Fish and Wildlife Service, ODFW, IDFG, CBFWA) cautioned that the potential budget reductions to CSS would have an adverse impact on the strength and robustness of the study and likely reduce the numbers of tagged fish for analysis of key management actions. US Fish and Wildlife Service noted that at the Council proposed draft budget “[w]e would not be able to maintain the long time series of marking for the Snake and down river Chinook hatchery programs, or implement the Snake River hatchery steelhead program (recommended by the ISRP and the MSRT). The loss of these hatchery groups would have a large impact on a myriad of management issues concerning the listed and non-listed populations.”

The project received support from both the ISRP and the ISAB. In its March 16, 2006, review of the CSS the ISAB stated: “The ISAB believes the Council should view the CSS as a good, long-term monitoring program, the results of which should be viewed with increasing confidence as years pass. Under scrutiny from periodic peer reviews and agency comments, the methods should improve and the results become ever more valuable. The project is definitely worthy of Council support.” (ISAB 2006-3) ISRP supported the project for funding and noted that additional downriver tagging sites are important to add, but stated that: “If additional downriver tagging sites are to be added to the CSS, the project sponsors indicate that more funding must be made available, and the ISRP agrees that the budget will need to be adjusted accordingly.” (ISRP 2006-6, pg.109)

Few projects appear to have undergone the scientific scrutiny of the CSS. Yet the majority action appears counterintuitive to the various scientific reviews and the fish and wildlife manager responses to those reviews, calling for additional tagged groups of fish to provide more scientific validity to the CSS approach. By decreasing the budget from the MSRT-proposed level, the majority robs the CSS of the ability to respond to valid independent scientific reviews and critiques of the overall study approach. Oregon finds the MSRT reasoning compelling on these points and supports restoring the CSS budget to the MSRT proposed level.

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**PROJECT 2003017000 - INTEGRATED STATUS AND EFFECTIVENESS  
MONITORING PROGRAM**

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The MSRT recommended a reduced funding level from the sponsor proposal, essentially funding the project at FY 2006 levels. Though sponsors had proposed a sizeable expansion of the scope of the project, MSRT believed that expansion was not warranted and held the project at its current funding level and scope.

The majority held to its spending formula of FY 2004-06 average spending plus 15 percent to arrive at its proposed budget. The majority, however, failed to recognize that this project had a late contract start and had not accomplished its proposed scope of monitoring in three basins in FY 2004, only expanding to its full scope in 2005 and 2006. Thus, FY 2006 represents a truer picture of the project workload than an average of spending through a three-year period.

Artificially reducing the budget of the project to fit the majority's formula affects the ability of the project to complete its work. In this instance, a project that appears to provide critical Biological Opinion monitoring and evaluation of habitat effectiveness would have to reduce its work substantially to keep within the majority's recommended budget. And to what end? The majority wants to save money to put toward Biological Opinion purposes, while apparently diminishing the effectiveness of a current project that implements those very purposes.

During its deliberations, the majority cited a lack of project reporting as a reason to reduce the project's budget. Because the project has only two years of data, sponsors lack the ability to report results about project effectiveness of habitat actions. Those actions will take at least a full life-cycle of salmon to demonstrate any type of project effectiveness, and likely will take longer than one life-cycle. The majority's rationale rings hollow and only points to the preferred treatment given to some projects.

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**PROJECT 200203000 - DEVELOP PROGENY MARKER FOR SALMONIDS TO  
EVALUATE SUPPLEMENTATION**

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MSRT recommended \$273,000 per year for this research project sponsored by the Confederated Tribes of the Umatilla Indian Reservation (CTUIR) to take the project from its lab work to implementation in the field. The majority disagreed with the MSRT in the draft Council recommendation, applying its formula of FY 2004-06 spending average plus 15 percent to arrive at its proposed budget.

Despite comments from the CTUIR that the project could not perform its on-the-ground implementation without the MSRT-recommended funding level, the majority's final recommendation held the budget at the Draft recommendation level. CTUIR noted that the additional cost for engaging in field deployment of the progeny mark would be \$96,000 annually, and the tribe had deferred some genetics work to accommodate the MSRT recommended budget. (Letter from Antone Minthorn, Chairman, Board of Trustees, Confederated Tribes of the Umatilla Indian Reservation, October 3, 2006)

Oregon would support the MSRT funding recommendation. Oregon believes the project could add value to the region and notes the ISRP cited it as "an innovative project with potential applicability and benefit to other projects and situations requiring estimation of reproductive success." (ISRP 2006-6, pg.52) The majority apparently favors innovation through the development of the Innovative Projects placeholder, yet disfavors allowing this "innovative" project to receive the funding that would enable it to test its concept in the field. We find it illogical that the majority treated this project and project 200311400 Acoustic Tracking for Ocean Survival in such a diametrically opposite fashion, despite comments from the both sponsors stating that they would have difficulty accomplishing the scope of the project if the budget remained at the draft recommended level. The Acoustic Tracking project benefited. This project did not.

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**PROJECT 200306200 - EVALUATE THE RELATIVE REPRODUCTIVE SUCCESS  
OF RECONDITIONED STEELHEAD KELT**

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Oregon believes the majority's formula for determining project budgets unfairly affected this project. The MSRT recommended a budget that held the project to FY 2006 levels, keeping in line with its rejection of an expansion in scope of this project and the companion steelhead kelt project in the Mainstem/Multi-province project group. The majority held the project to its formula FY 2004-06 spending average plus 15 percent.

By strictly adhering to their formula, the majority fails to recognize that this project, developed as part of a Request for Proposals to implement the Biological Opinion, got a late start, not getting a contract until midway through FY 2004. Thus, its spending pattern in 2004 was artificially low compared with the work the project needed to perform in evaluating the success of steelhead kelt reconditioning.

Rather than abandon its formulaic approach to recognize the proper scope of the project, the majority adhered to its rigid application and decreased the project's budget

below the FY 2006 funding level. Oregon supports funding the project at the MSRT-recommended level. We believe the MSRT level reflects a better grasp of the scope of a project implementing a Biological Opinion requirement. Again, we find it contradictory that the majority would attempt to save money to implement actions arising from a new Biological Opinion while reducing funding for projects implementing actions already required by the Biological Opinion.

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**PROJECT 200300900 - CANADA /USA SHELF SALMON SURVIVAL STUDY**

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The MSRT recommended not funding this project stating “knowing specific locations of fish movement in the ocean will not contribute significantly to the life cycle studies necessary for hydro operations.” The ISRP gave the project a Fundable In Part recommendation, supporting the overall scope and approach of the project, but recommending deletion of some specific tasks. The majority recommended funding the project below its FY 2006 starting budget and at about a third of its proposed budget. The majority also reasoned that funding this effort and project 200311400 (see below) help the Council comply with the obligations of Section 4(h)(10)(D) of the Northwest Power Act for the consideration of ocean conditions in development of project recommendations.

Oregon remains unsure exactly what tasks or work objectives the majority would fund for this project at their proposed funding level. Arrayed against other potential priorities, we believe this project will not help implement proposed management actions to offset the effects of the FCRPS on fish and wildlife populations.

We also find suspicious and bootstrapped the majority’s reasoning that this project and project 200311400 support the Council’s charge to “consider the impact of ocean conditions on fish and wildlife populations” from Section 4(h)(10)(D). As we read Section 4(h)(10)(D), the Council has the ability to “consider the impact of ocean conditions” without having to fund two projects that when arrayed against many other immediate potential mitigation actions within the Columbia Basin, amount to lesser priorities based upon available funding. We agree with the recommendation of the MSRT.

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**PROJECT 200311400 - ACOUSTIC TRACKING FOR OCEAN SURVIVAL**

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Project 200311400 entered the project funding process as a within-year request in FY 2006. It received approval from the Council and Bonneville in March 2006, at its requested funding level of \$1.5 million. At the time of Council and Bonneville approval, the project had garnered ISRP support only to implement a “proof of concept” on a limited scale. Council approved funding three arrays - two north and one south of the mouth of the Columbia.



In its deliberations over this project, the MSRT recommended not funding the project, reasoning that knowing the movements of fish in the ocean had no bearing upon management actions taken to mitigate for fish and wildlife impacts from the FCRPS. The Council draft recommendation funded the project at \$750,000 per year or half the budget the Council approved six months earlier.

The project sponsor communicated to the Council during the comment period that he would be unable to perform the project at the draft recommended budget. The majority approved adding \$450,000 per year to the project.

Oregon supported funding the project at the Council draft proposed level. Though we are uncertain of the value and use of the information the project supposedly will provide, the Council had made a funding commitment to the project in March that would be difficult to walk away from six months later. We never fully understood why the majority appeared ready to reduce the funding for the project if it remained supportive of the sponsor's work. If the project were really providing important management information, why would the Council reduce its budget after only six months of implementation? Why would the majority add money to the project that still held the project below a level approved six-months previously? Why the difference in the treatment of this project compared with other projects whose sponsors stated in the comment period that they were also unable to perform their work at the Council's draft recommended level? (See project 200306200).

Although we disagree with the priority of this project in relation to other important unfunded work in the Basinwide allocation, we find the majority's recommendation reflects neither the commitment made by the Council to the project in March 2006, nor a consistent treatment of project sponsors performing research in the Program.

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**PROJECT 200727500 - IMPACT OF AMERICAN SHAD IN THE COLUMBIA RIVER**

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Project sponsors proposed this study start in the FY 2007-09 period at a cost exceeding \$300,000 per year on average. The study is a long-term investigation of the impacts of American shad on native salmon species in the Columbia. The ISRP deemed the project "could be of great significance in the management of salmon, steelhead, sturgeon and other fishes" and noted the same project had received a high rank from ISRP in the last Innovative Projects solicitation, got Council recommendation in that solicitation, but received no funding from BPA. (ISRP 2006-6, pg. 153)

The MSRT recommended not funding the project. Though it noted the potential value of a study of shad impacts, the MSRT stated other priorities militated against funding this project. The majority recommended the project conclude in three years and at a funding level of less than half the proposed amount.

Oregon does not dispute that large numbers of shad could have an impact on salmon survival, perhaps meriting an investigation into the effects shad populations have on listed and non-listed salmon stocks. The current Biological Opinion, which places great reliance

on eliminating salmonid predators as a means of bridging survival gaps created by the FCRPS, does not appear to place shad in the same position, however, that terns, cormorants, northern pikeminnow and even sea lions occupy as stressors to salmon populations, perhaps because shad are not known predators of salmon, but compete for the same types of food or space within the ecosystem of the salmon life-cycle.

Given the majority's desire to create a future Biological Opinion funding mechanism within the Basinwide allocation, the majority's action to fund this non-ESA- focused project strikes us as anathema to its purposes. If the majority believes the project to be innovative, then perhaps it should fund the project out of the innovative-projects placeholder they created, thus allowing more room for potential BiOp implementation.

Even more curious is the belief that a study of this nature could conclude in three years, at less than half its proposed budget, and still have any meaningful result or potential management application. Oregon would support the MSRT recommendation. If a future Biological Opinion directs management actions necessary for shad impacts, we would revisit the project at that time.

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**PROJECT 200301000 - HISTORIC HABITAT OPPORTUNITIES AND FOOD-WEB LINKAGES FOR JUVENILE SALMON IN THE COLUMBIA RIVER ESTUARY**

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The NOAA Fisheries research project provides important information on a Biological Opinion focal area - the Columbia River estuary. Reviewed in two distinct project reviews - the Basinwide and the Estuary - project 200301000 received a Core Program designation in the Basinwide review by the MSRT. However, the MSRT recommended no funding for the project, believing that the work would receive a funding recommendation in the Estuary ecological province review. The project was not prioritized in the Estuary review, despite receiving high marks in that review process.

The majority rejected funding the project in the Basinwide allocation, though it noted the valuable nature of the work. The majority reasoned that they would not want to move a project from one review, the Estuary, into another review, the Basinwide, since that might invite a flood of projects seeking to move from one area to another. However, the Council supported doing exactly that in moving a project recommended in the Mainstem/Multi-province (project 200105300 Duncan Creek) into the Lower Columbia province, where the Duncan Creek project had also been reviewed. Thus, the Council's reasoning for project 200301000 appears inconsistent and inequitable.

Oregon believes project 200301000 should receive funding from the Basinwide projects allocation. Again, the majority attempts to create an allocation for projects that will implement actions from a future Biological Opinion, while not funding a project that provides valuable information on both listed and non-listed species in the estuary and has direct links to Biological Opinion actions for the estuary. We see no reason to withhold

money for future actions and ignore those present actions that require Council and ESA attention.

## BASINWIDE PROJECTS DEFERRED BY THE COUNCIL

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### REGIONAL COORDINATION PROJECTS

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The Council deferred action on coordination projects (199606201 - CBFWA Annual Work Plan; 199803100 - Implement Wy-Kan-Ush-Mi Wa-Kish-Wit; 200701600 - Spokane Tribe; 200701800 - Regional Coordination for UCUT; 200716200 - Kalispel Tribe) preferring to place the proposed project budgets in a placeholder until the November 14-15, 2006 Council meeting in Coeur d'Alene. At the November meeting, the Council agreed to fund projects 199606201, 199803100 and 200701800 at MSRT-recommended levels. The Council increased the budgets of project 200701600 and 200716200 above the MSRT level of \$30,000 for FY 2007. The Council would also review these projects during each quarter of FY 2007 and review all coordination projects before funding any project in FY 2008, to determine what constitutes "coordination" in the Columbia Basin.

Oregon supports a further Council review of these coordination projects and one member supported the Council-recommended treatment of these projects for FY 2007. Despite that limited support, Oregon continues to believe that the Council treatment of these projects portends the demise of real coordination between the fish and wildlife managers in the region.

Both the Spokane and Kalispel Tribes have formally withdrawn from membership in the Columbia Basin Fish and Wildlife Authority. The Council decision funded the Spokane and Kalispel Tribes' coordination proposals.

Oregon remains apprehensive of an approach that provides coordination funds for individual fish and wildlife managers separate from the CBFWA collective, and particularly if they work on tasks that do not drive toward regional coordination needs. The fish and wildlife managers established CBFWA to coordinate the managers' efforts on the variety of issues confronting them in implementation of the Council's Fish and Wildlife Program. CBFWA noted in the comments to the Council:

"Funding for individual fish and wildlife manager participation in each of these elements of management coordination has been provided under the guiding principle that dollars are provided to participate in processes that are pursuing a *coordinated* position. That is not to say that individual fish and wildlife managers do not provide their own sovereign positions when needed, they do; rather it is to say that the current program does not pay for this as part of the larger regional program." (Letter from Ron Trahan, CBFWA Chair, October 6, 2006)

Though it is difficult to attain, Oregon believes the fundamental goal of achieving regional fish and wildlife manager consensus on positions pertaining to program

implementation will benefit the region as a whole. To attempt to achieve that consensus, the region should pay for a set of regionally supported tasks that allow the managers to concentrate their efforts in those areas most beneficial to the region in the implementation and development of the Program. But the region should be expected to pay for that coordinated effort from one source of funds geared toward completing one set of tasks, so that the tasks associated with manager coordination conform to the tasks the region supports.

Funding individual manager coordination outside the managerial collective or for tasks beyond the bounds of regional coordination is anathema to the goal. Though we recognize the right of sovereigns to belong or not belong to an organization, we still believe in the need for the collective to support the regional coordination goal by being the one source of funding for regionally supported coordination activities.

We fear the cascading effect of funding an individual manager's coordination. We expect that we will see each entity submit its own coordination proposal and the Council left to choose among the individual proposals or forced to fund each for consistent treatment. Left to those alternatives, the demise of the CBFWA collective follows closely behind, because each manager would have no real incentive to reach a collective, coordinated position, but rather just simply arrive at a meeting and state the position of his or her entity.

Oregon supports keeping the managerial body intact while respecting the rights of the parts. We support the Spokane and Kalispel Tribes proposals to coordinate regionally agreed-upon activities, but would hope that those funds would exist under one contract from one source, preferably CBFWA. In the coming year, we encourage the fish and wildlife managers, both individually and collectively, to re-envision the goals and objectives of CBFWA, to help the Council determine the tasks and objectives of regional coordination, and to mend their differences to return CBFWA to the regionally effective body the managers envisioned from its creation.

## MAINSTEM/MULTI-PROVINCE PROJECTS

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### **PROJECT 198606000 - WHITE STURGEON MITIGATION AND RESTORATION**

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The MSRT-recommended project 198606000 at \$1.431 million per year, holding the project below proposed levels but recognizing its coordinated work. The ISRP cited the project as one of the exemplary projects for reporting its results and provided a Fundable recommendation. Council staff reviewed the project and recommended reducing the budget to \$1.15 million per year, reasoning that reporting elements were too costly and holding the project to its original scope of work and removing management planning elements and stock assessments in the Snake River. The Council adopted the staff recommendation as its draft recommended budget.

Comments from WDFW, ODFW, CRITFC and the US Fish and Wildlife Service noted the collaborative nature of the project and recommended the MSRT-proposed budget level

so the project could implement some important monitoring work and its trap-and-haul program of juvenile sturgeon. Staff appeared to agree that conducting those work elements was critical to the project and recommended increasing the budget to \$1.312 million per year.

The majority held the project at the draft recommended level despite noting the significance of the sturgeon project. It reasoned that it did not want to exceed the budget in the Mainstem/Multi-province project group for one year (2007) that would occur if they increased this project's budget. The majority could have agreed to the staff recommended level and not exceeded the Mainstem/Multi-province budget if it viewed the budget on a three-year average. Even by increasing the sturgeon budget to staff-recommended levels, the average would have been \$5,000 per year below the budget for the Mainstem/Multi-province projects.

The majority's treatment of the target budget as sacrosanct and not to be violated flies in the face of the way those same Council members treated budgets in the ecological provinces. The Columbia Cascade serves as a notable example in which Washington treated the budget as a three-year average, while exceeding the provincial budget in FY 2007. It is inconsistent and inequitable to use a three-year average to make recommendations in one area while reasoning that the Council could not use the same three-year average to support a modest increase in a project budget because it exceeded one year of a three-year budget.

Oregon would support increasing the budget for project 198606000 and treating the Mainstem/Multi-province projects in a manner similar to the method used in some of the ecological provinces.

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**PROJECT 199703800 - LISTED STOCK CHINOOK SALMON GAMETE  
PRESERVATION**

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The MSRT recommended funding the Listed Stock Gamete Preservation project at the FY 2006 (\$308,000) level, noting that the project supported the safety net program initiated in previous biological opinions. Council staff recommended reducing the project budget to \$65,000 per year to cease gamete collection and simply to preserve the stock of gametes currently on hand. Staff appeared to base its recommendation on a comment from the Preliminary ISRP report of June 2006. Despite giving the project a Fundable (Qualified) recommendation, ISRP opined: "Another important issue, not apparently addressed in the proposal, is when is active collection of sperm completed, and thus when is it appropriate for the proposal to shift to a lower budget maintenance mode." Staff's apparent answer to that ISRP dictum was "now."

The way Council staff structured the response loop to the ISRP Preliminary report, projects that received a Fundable (Qualified) recommendation were not allowed to generate a response to the qualification provided by the ISRP provided in their analysis. Had sponsors been allowed to respond, the Nez Perce would have attempted to address the ISRP observation of collection versus maintenance. Sponsors provided the Council a draft

management plan on the gamete project, with stated goals for each population and reasons for the need to acquire 500 samples per population.

Both the Council draft and final recommendation held the project to the staff-proposed level of \$65,000. The Nez Perce, in comments received during the Council draft recommendation comment period, though supporting the MSRT-recommended funding, provided two other possible funding alternatives to the Council draft that would have allowed reduced gamete collection or the ability of the project to coordinate collections with cost-share opportunities. (Letter from David B Johnson, October 2, 2006.) The majority opted for neither of these alternatives, despite room in the Mainstem/Multi-province budget that would have allowed use of one of the proposed alternatives.

Oregon believes staff misread the ISRP recommendation and treated this project as if ISRP recommended Fundable in Part rather than Fundable (Qualified). The ISRP comment appears to be just that - a comment. It might be an issue the sponsors should address with the ISRP in the near future, but the Panel never opined that we had attained some propitious moment to transition the project to a maintenance-only mode. Thus, the majority's recommendation reflects that same misreading of the ISRP recommendation.

We would support the MSRT-recommended funding level for the project. As an alternative, we would also support the option that would allow the Nez Perce to seek cost-share to support the gamete collection.

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#### **PROJECT 200201301 - COLUMBIA BASIN WATER TRANSACTIONS PROGRAM**

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Oregon believes the Columbia Basin Water Transactions Program has successfully promoted innovative methods for acquiring water in various subbasins. The project has not, however, spent its entire allocated budget in any of the years of its existence. Normally, that would be grounds for the majority to reduce the budget of a project, if it pressed forward their formulaic approach on average spending from FY 2004-06 plus 15 percent. In this instance, as among many other instances, the majority does not base its recommendation on that formula. If the majority had based its budget on its formula, the CBWTP budget should be approximately \$4.25 million per year.

The Water Transactions Program also included a pilot program for land acquisition of \$1 million per year for FY2006 associated with the 2004 Biological Opinion. Oregon believes that the land acquisition pilot is just that – a pilot program. That pilot program has run its course. Oregon would support eliminating that aspect of the project, reducing the funding level to our proposed budget of \$4.75 million per year, and focusing the project on water acquisition. Thus we propose a modest reduction from the sponsor-proposed budget, but an increase from the MSRT recommendation of \$3.5 million.

## CONCLUSION

Oregon urges Bonneville to review our programmatic and project-specific issues contained within this report. We believe it makes no tactical or practical sense to reduce funding to projects already implementing Program and Biological Opinion requirements in order to create a possible spending reserve for undefined, future projects. We believe the majority fails to recognize the value of the work already ongoing within the Program to address the ESA requirements of Bonneville and the other Action Agencies.

We support continued implementation of this work at the MSRT recommended level, while still maintaining an adequate reserve for other needs. This can be done through carryover funds and the Council's unallocated \$2 million reserve.

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