



April 23, 2008

Steve Wright, Administrator and CEO  
Bonneville Power Administration  
DKC-7, P.O. Box 14428  
Portland, OR 97293-4428

Re: Comments on State and Tribal Memorandums of Agreement (“MOA’s”).

RiverPartners represents an alliance of Northwest utilities, businesses, farmers and navigation interests who promote science-based salmon mitigation and recovery efforts. Our members’ customers and businesses as well as Northwest families are directly affected by the costs of Bonneville Power Administration’s fish and wildlife expenditures, in particular the costs of salmon protection under the Endangered Species Act (ESA). RiverPartners also is a defendant intervenor in the Federal Columbia River Power System (“FCRPS”) Biological Opinion (“BiOp”).

The Memorandum of Agreements (“MOAs”) recently reached by BPA with four tribes, CRITFC, Idaho and Montana will dramatically affect the region’s ability to protect and recover salmon and steelhead listed under the Endangered Species Act, for better or for worse, hopefully for the better. The MOA investments, which total over \$1 billion, certainly represent a major additional financial investment by Northwest citizens in salmon recovery, and overlap commitments already being made in the FCRPS BiOp and through the Northwest Power and Conservation Council’s Fish and Wildlife Program.

Therefore, it is critical that the programs and projects included in the Agreements undergo independent science review to ensure real benefits to the listed stocks. These funding agreements reach far beyond ESA listed species and address resident fish and other natural resources important to the tribes and states. It is critical that actions taken as a result of these Agreements are reached in a transparent and scientifically accountable manner.

RiverPartners is concerned that over \$9 billion has already been invested for regional fish and wildlife mitigation over the past twenty years, based largely on the recommendations of states and tribes, yet in spite of scientific evidence that there are many factors contributing to the weak returns of many Columbia River stocks, the hydropower system continues to fund the vast majority of mitigation. Regional interests are being asked to take a major leap of faith that the MOAs will work to benefit listed fish and other species.

The region needs some reassurance that this latest investment will, in actuality, provide the benefits purported. We support the role of the tribes and states in fish and wildlife protection and support the federal agencies efforts in reaching closure with them in the BiOp litigation.

However, because the MOAs leave too many issues of great import to customers unresolved, and we have had no opportunity to be involved in the discussions, we request that *BPA negotiate a MOA with RiverPartners to identify how our key interests will be preserved and identifying opportunities to participate in future decision making.*

We also expect there to be processes put in place by the parties to the MOAs that will ensure accountability and transparency for interests involved in salmon recovery in the region, especially those who are paying the costs. To that end, we request that there be an annual, open, public “science symposium” that describes how new and emerging science, available from a variety of sources (including the NOAA Science Center, the Hatchery Science Review Group, ongoing Army Corps research, etc.), will be relied upon and incorporated into the ongoing implementation of the MOAs.

It also is clear that a number of important implementation issues and details still need to be addressed, in particular the role and responsibilities of the Northwest Power and Conservation Council (Council) and the Independent Science Review Panel (ISRP). We strongly urge the Action Agencies and MOA signatories to embrace the Council’s process as a means to ensure rigorous science review of proposals, take into account other interests’ views, and provide greater accountability on benefits and costs.

We are concerned that the MOAs conclude that specific projects “are consistent with the Council’s program” absent any review. They also propose an abbreviated ISRP review of ongoing projects and an expedited review on new projects. The Council’s process and ISRP review should not get short-shrift: regional input and peer-review is an important means to gain broader regional understanding and support for the MOAs and to ensure benefits to listed salmon and steelhead.

In fact, many of the MOA proposals appear to be aimed not at listed stocks, but at implementing projects in Council sub-basin plans which go beyond ESA requirements and are not necessarily the responsibility of the federal hydropower system. Yet, it is unclear whether these projects then fully satisfy regional obligations with respect to the Council’s program, or whether additional projects and funds will be expected as the Council continues its fish and wildlife amendment process. It is even possible that some of the proposals will actually harm the recovery of listed species, such as several the expanded or new hatcheries proposed, thereby requiring additional mitigation from the hydroelectric system.

It also is important for the Action Agencies to provide more information on how the MOAs will fit into a governance structure for operation of the federal hydrosystem and how the “comprehensive reviews” contained in the MOAs in 2012 and 2015 will be conducted. Who and how will the necessary data and information be collected to inform

the check-ins? How will other parties be involved in the comprehensive reviews? In sum, how will others dramatically affected by the Agreements have an opportunity to participate in their implementation?

Finally, of great concern, is the promise that all commitments made in the Agreements move forward, irrespective of what might be imposed by the court in the ongoing litigation: “If any court, regardless of appeal, finds that the BiOp or agency action is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law, and subsequently remands the BiOp to NOAA Fisheries this Agreement shall remain in force”. And, if the Agreements are found to be in conflict with a court order or amended BiOp, the parties negotiate and simply amend or substitute provisions.

This begs the obvious question of what is the region truly gaining from a litigation perspective if the Agreements remain in force while the court can impose further additional operational or financial obligations? Further clarification and understanding of how commitments in the Agreements relate to actions or decisions in the courtroom need to be forthcoming from the Action Agencies and Parties in the Agreements.

In conclusion, our fundamental concerns surround the following issues:

- What are the incremental benefits for listed fish accruing from the MOAs?
- What is the relationship of the MOAs to the Council Fish and Wildlife Program (including the ISRP) and other regional processes, including the courts?
- How will use of the best available science, openness, accountability and transparency occur, especially in the comprehensive reviews?
- What additional value is gained from the MOAs if the court imposes further significant obligations on the FCRPS?
- How can the MOA parties assure the region that the Agreements meet the goals of collaboration and cooperation when they are binding commitments not subject to review?

We understand that the MOAs, once signed, are binding agreements between the Action Agencies and signatories. We urge you to seriously consider our request for an MOA with RiverPartners, an annual “science symposium” and the specific comments and requested clarifications that follow. Thank you for your consideration.

Sincerely,



Terry Flores, Executive Director

Cc's: U.S. Army Corps of Engineers  
U.S. Bureau of Reclamation  
Northwest Power and Conservation Council  
Congressional Offices