

FEDERAL EXECUTIVE MEETING WITH STATES AND TRIBES
Friday, April 27, 2001
Embassy Suites Airport Hotel, Portland, Oregon

[Notes by William W. Kinsey]

The Federal Executives held a meeting with the states and tribes on April 27 for the purpose of sharing comments received on the draft 2001 Operating Plan. The meeting was held at the Embassy Suites at the airport.

Governor Kitzhaber made a presentation to the group. He asked that the Federal Executives consider approving more spill for fish, recommended that BPA purchase power from outside the region to relieve the pressure on the hydro system, and asked BPA to defer its payments to the US Treasury. He told the group that his staff is working on a draft plan and will make it available June 1.

Steve Wright asked Governor Kitzhaber if he supported the Council's modified recommendation for river operations. The Governor said that he didn't believe the Feds or the Council has gone far enough, but he supported the Council's recommendation as far as it goes. Wright asked the Governor if he supported the Council's recommendation on spill, which he pointed out, was less than the spill recommended in the Biological Opinion. The Governor said he agrees with the Council; it is a step in the right direction.

Wright asked if he supported the Federal criteria for hydro reliability. The Governor said that until the Feds explore Treasury payment deferral and purchase power outside the region he could not make a conclusion on reliability. Wright questioned whether some level of reliability is important. The Governor said yes, but that every opportunity needed to be exhausted to save fish.

Wright clarified that BPA has not said it would not purchase power. The Agency is trying to ensure its credit viability, he added, but purchase power beyond that. It is extremely important for the Agency to ensure its financial integrity or it can not buy power.

The Governor asked for more detail on how BPA is balancing fish and its finances. He would like to see as much detail on fish as for how the agency is guaranteeing reliability. Ten million dollars for fish is ridiculous he cautioned

The Governor asked about BPA's willingness to pursue the 4h10c credit. Wright said that the agency is still working with the Administration to obtain the credit and if successful would mean the agency would send very little if any money to the Treasury because the credit would be over ½ billion dollars.

Governor Kitzhaber asked Wright to seek out a variety of ways and exhaust all alternatives to ensure the viability of fish. The agencies have a Tribal obligation.

In addition they have responsibilities under ESA, CWA, and the Power Act. The Feds are not stepping up, he concluded.

Wright asked if the Governor supported BPA's load reduction campaigning to avoid triple digit rate increases. The Governor said he did, but he wants more detail. What does it mean for the residential citizens of Oregon? What benefits will they receive?

Council Presented Modified Recommendation on Operations

*Go to Website: www.nwcouncil.org See "Council Documents" Document 2001-6B

Bob Nichols. Should BPA purchase water for in-stream flows?

Cassidy. Not a BPA responsibility specifically.

Col. Mogren. What about reliability Vs refill. What is the Council's position? Council is clearly saying August 1st refill should be met. And balance needs, but is not saying how to balance the needs.

Lohn. Council is asking for an orderly process and wants to be involved. Purchase power with prudent finance standards. Don't know what the prices might be. The Council endorses exchanges. Can you meet refill and fish objectives – that is the question.

Cassidy – If there is spill use it as wisely as possible. If we spill is it just for ESA fish or should it be used for healthy non-listed fish also??

Lohn. BPA should seek available instream rights. Acquire rights on a willing seller basis consistent with state law.

Col. Mogren. We lack good forecast data.

Bloch. The NW Power Council has said refilling reservoirs has priority. But question is whether we are doing what we can to help fish, too. E.g., purchase power, water. The question is one of risk.

Lohn. Council hopes to give collective advice early next week.

Col. Mogren asks about conservation.

Cassidy. The Council and the Governors have called for conservation.

Darm. Can the governors of Oregon and Washington impose mandatory conservation measures?

Bloch thinks the Oregon's governor has some authority. The legislature has a bill that would provide some authority.

Litchfield. In 1977, the Governors of WA and OR curtailed Christmas lights.

Cassidy said he would later answer Darm's question.

S. Wright. Wants to confirm that the priority is to maintain electrical reliability and that we have and will continue to maintain the reliability described in the criteria for declaring emergencies.

Bloch. We can provide the desired reliability and also help fish if we pursue all tools.

S. Wright. What I hear is an emphasis on reliability. Don't relax the standards for reliability.

Don Sampson. If states do not have authority to impose conservation, they should seek such authority.

Col. Mogren. Has questions about he suggested mitigation fund. How should it be constructed, and how should it be managed?

Cassidy. A mitigation fund needs to address diverse situations and impacts on future generations. Will need to address future effects as well.

Cassidy or Bloch. We will want to figure how to engage all relevant agencies. E.g., all those involved in water rights.

CRITFC Statement

Sampson, CRITFC. BPA does not own the river. The right to fish is paramount. See CRITFC handout. Sampson then reads aloud the "CRITFC Member Tribes' Position Statement."

Bob Heinith. We want to use 1997 "Operation Fish Flow" as a paradigm.

Heinith. Looks to BPA to buy power to maintain reliability. Although we do have uncertainties for next year if we don't achieve refill, we have fish in river now.

Comments on 2000 Operations Plan

Delwiche: Re: comments on 2001 Ops Plan

BPA not presenting final plan today. "Final" won't be ready for a few weeks. But will make some decisions over next few days.

Summary from slides.

Reliability: general support for additional 1500 mw-months. BPA will plan for this. Therefore needs 53 MAF plus 1 ½ MAF.

Financial:

Won't defer Treasury payment. Making planned payments is important to maintaining cost-based benefits of the FCRPS.

Interim rate case not possible.

Will buy power as appropriate.

Forecast buffer. Some support larger buffer. Oregon suggests reduced buffer in May.

BPA thinks this is a fair comment. But wants to discern what to do if we spill and then water year deteriorates. Result would be increased subsequent use of reservoirs and potential loss of load reliability. Therefore Delwiche open to discussing contingency plans. One idea is reducing Mid-C spill and shifting to other projects. Result is same amount of energy from power system but shift in spill to downstream projects.

Spill. There was general agreement with priorities in Operations Plan. But we will need to cogitate on CRITFC's proposal.

Now Jim Ruff presents bio info on spill. Ruff reviews a bar graph of fish migrating from below McNary to below BPA. Full BO spills would entail 5000 MW-mths of energy. A little spill can significantly reduce the reduction in survival relative to full BO spill.

Clarification in answer to question by Litchfield. E.g., if survival with BO spill is 30%, then not spill causing a 10% reduction means survival is only 30%-3%=27%.

Mike Field, COE: what would be effect of spilling some but less than 4000 MW-mths.

Ruff: We feel 400 MW-mths is "absolute minimum" needed to benefit fish. 400 MW-mths ~ 5 ft at Grand Coulee.

Darm. We need to compare NMFS proposal with CRITFC proposal.

Heinith: What were your assumptions at Bonneville and The Dalles Dams?

Ruff gave answers. The proposal entails only spill at Bonneville and The Dalles. Spill at 30% at additional projects for 12 hours at night ~ 130 mw-mths.

Field: What would storage implication be?

Delwiche: We need 54 MAF to meet load. Another 1 ½ MAF for the 1500 MW-this. This reaches 56 MAF. BUT, there is 40% chance of runoff being actually below 55 MAF. If we provide spill, we seek a viable contingency plan.

Darm: Can BPA reserves be part of a contingency plan?

Delwiche. If we lack reserves, then use of reserves is jot option.

Darm. But recent information indicates that BPA reserves are above the minimum level.

S. Wright. We think we are at ~ 630 reserves at end of year. Our criteria were at 80% probability of meeting cash flows. We have some flexibility. Questions are available energy to buy, and the cost, and timing.

S. Wright. Also load reduction helps.

Darm. So were looking at reliability through 2002. (Yes)

Darm. What's the most important question? What should drive the financial analysis? Should we look through Oct 2001?

S. Wright. We want to look at a 12 month rolling basis. We've always known that first quarter of next fiscal year will be a cash flow problem.

Dam. So rate case is a potentially important part of the reliability?

Wright. The rate case does affect revenue. Most important is when to purchase power and cost. We can discuss, but we have much uncertainty.

Darm. A 2000 M dollar power purchase program. S. Wright: test is whether there is more than a 20% probability of zero cash reserves in any month over the next 12 mths. Refers to a graph on page 9 of operations plan.

Darm. Re decision on spill in May, we need information quickly. How can those at meeting respond to invitation to develop a contingency plan in short time frame involved?

S. Wright. We also want to talk about number of fish in river.

Lothrop. Financial issues will also arise in offset policy. IT depends upon BPA's financial conditions.

Delwiche. If we have \$200 million and use this for, e.g., an offset program, then we have zero dollars for spill.

Delwiche continues presentation. Transportation.
Comments generally supported transportation. Federal agencies will begin Snake River transport and summer transport at McNary. Will transport no more than 1/2 arrivals at McNary.

RE Lower Granite Surging
Comments supported, but use Brownlee, not Dworshak.

Purpose will be to guide fish for collection.

Heinith: does not support surging instead use water to aid spring migrants.

Soscia. EPA analysis of temperature supported value of Dworshak for temperature.

Umatilla Statement

J. Minthorn, Umatilla, chairman of tribes' F&W Committee, reads a statement. The Umatilla tribes. Fed agencies and NAOW Planning Council have given priority to power. Have not spread risk. Kitzhaber has reminded us of responsibilities to fish. Proposed operations fail equitable treatment, tribes, region and treaties. This is unnecessary. More can be done to protect salmon and energy. We can provide energy needs and to protect salmon. End statement.

Return to Delwiche re Operations.

Vernita Bar. The Federal agencies place value on protecting the redds at Vernita Bar, and will try to avoid a reduction in flows until emergence, unless a significant impact on Grand Coulee refill is identified. Currently, we do not see a significant impact to Coulee. Therefore we do not propose reduction in flows over Vernita Bar. This may, however, place BPA in surplus situation, in which case BPA will sell power.

Operations – Grand Coulee.

We have changed Coulee target elevation to 1280 or higher. Prioritize summer flows over spring flows.

Mitigation, Offsets Acton Plan to Reduce Impacts to Fish.

Feds are developing an Offset Policy to address adverse effects of power system emergency operations, not drought. We will solicit proposals for offset actions from states, tribes, and others, in coordination with the NPPC.

Comments?

Bloch. Re Mitigation. Re drought. Oregon does not want BPA to offset everything.

S. Wright. Feds not responsible for less water in river due to drought. BPA distinguish between the less water that BPA caused by e.g. drafting water that would otherwise be stored or for not spilling.

Bloch. Says a bright line between low water and emergency ops does not exist. Does not think this is the best focus for our energies.

Lothrop. Shares Oregon's view. BPA not responsible for less water in river. But you are responsible for existence of dams and their effects in all years, particularly this year. This is addressed to a certain extent in the operations v. existence argument. But J. Marsh rejected this argument.

Joe Penne, Colvilles asks about Coulee Operations.

Delwiche. 1280 is the target.

Re May flows. We are looking for input on May flows. 56 MAF does not = absolute test. Instead = maintenance of reliability.

BREAK

Reconvened, participants now address Key issues over the Next Two Weeks

Ruff. Status of fish. Run is starting. Delayed relative to previous years. But steelhead, 20% run passed. 60% Chinook and 90% steelhead will pass McNary by June..

What is travel time from McNary to John Day.

Ruff. About 5 days but with low flow levels is about 10 days.

Additional populations entering below McNary dam. This info is available on web.

S. Wright. So decision on spill needs to be made over next week or so. We have proposed criteria. We need to figure how much spill we can provide consistent with our criteria and then delegate to TMT to decide how to use available spill. TMT can consider CRITFC's proposals. Can we make it a TMT decision?

Litchfield. Favors using biologists in field instead of just TMT members.
Steve Crowe. Supports targeting spill on daily basis. A biologist on site could influence this decision.

Litchfield. As member of TMT, I don't think we can deal with limited amount of spill. We only decide whether to turn full amount of spill on or off. Thinks COE and BOR biologists at projects have different views.

S. Wright. 60 MAF was proxy for having minimum water for power. We're willing to back off this if we can buy power or have other contingency in event we need water for power after spill. S. Wright seeks process for deciding how to use spill to extent available rafter meeting the criteria. BPA needs to ascertain criteria by early next week.

Sampsel,

S. Wright. E need to work concurrently.

Bloch: given exigent circumstances, we need to work on both things at same time: BPA determining water available for spill, and others determining how to use spill.

Sampsel: cautions against creating new processes.

Ruff. Supports existing processes, but expanding existing table.

S. Crowe. When is Ops Plan due for adoption?

S. Wright. Recommends S. Crow for states, Lothrop for tribes, Joe Penne for upriver tribes, and Jim Ruff NMFS to figure how to allocate available water for spill: time of day, and which projects. Can invite Mid C PUDs also, ESP Grant County PUD. The identified individuals should be sure the appropriate state tribe fed, PUD reps attend.

Vernita Bar. We recommend continuing flows for Vernita Bar.
Subject to change if changed conditions.

S. Crowe. Represents Council but must say it is somewhat different from representing states.

Litchfield. Determining amount is important. If we spill, we need to buy energy to restore reservoir elevations.

Litchfield. IF BPA says it has water available for spill, Montana wants to be comfortable re impact on reservoirs.

S. Wright: Delwiche will arrange a meeting with states and tribes re determining amount of water available for spill. **Litchfield and Lothrop willing to sign confidentiality agreements.**

Lothrop. We'll work together, but we cannot agree that it satisfies treaty interests.

S. Wright: we think you have developed a constructive proposal, and we want to work with you.

Surging at McNary (Lower Granite?). This is subject to discussion with IPC. Delwiche. We presented a proposal to Idaho Gov Office. For volume of 180 kaf. Hasn't heard response. Delwiche hopeful of reaching resolution at end of week. Next TMT meeting is Wed. 9-12 telephone conference.

Ruff. We would like to encourage guiding fish to collection facilities. Favors a reverse load factoring operation within normal project operations. Can be discussed in TMT. If reverse factoring is effective in moving fish, then NMFS is open to going above/below MOP.

McNary Barging

S. Wright. Level of barging.

Ruff. We characterize McNary barging as up to 50% fish. Will barge every other day.

Litchfield. Ok if reduce barging when there is spill. However, this should support barging of all fish when there is not spill.

Litchfield recognizes that can't physically collect more than 70% fish. But does not want, as Ruff indicated, that if a fish guided, then the fish is placed back in river. Instead, Litchfield advises to transport any guided fish.

Ruff. Because of uncertainties, we want diversify benefits.

Ruff. We don't have time to revisit whether to transport more than 50% fish stated in a permit, and have to issue a new permit.

Litchfield. We don't need to violate permit. Thinks that if transport all fish going through bypass system, won't exceed 50%. Does not want to return fish to river when you know that river conditions are not good.

Decide. S. Wright. Barging must be consistent with permit. Question is whether to barge all collected fish up to 50%, or leave more fish in river for Mid-C testing purposes. Also, if we spill, less will be barged.

Action Plan for reducing impacts to fish.

S. Wright distributes a "Discussion Draft 2001 Power Emergency Offset Policy".

S. Wright interested in moving forward. Understands Council dissatisfied with criteria. Therefore faced with whether to wait or go forward. Inclined to move forward.

Comments?

Lothrop. Has a concern that BPA move forward with an effort of larger magnitude beyond this year. Effects on these fish will ripple through three generations. There are things we can do in future years to help these fish. Focusing just on first year will artificially constrain how to offset adverse impacts.

Lothrop. Thinks adverse impact. A lot of projects are in process of moving forward. If we limit mitigation to just projects that one can implement this year, then we talking about ~ 15 million. Instead need to think bigger. Thinks of 400 million. Refers to CRITFC comments already submitted. Concerned about saving money now and giving money back to customers two years into the future.

S. Crowe. Tends to agree with Lothrop's comments. Should treat it as offset mitigation program. Does not object to seeking more water. But thinks proposal should be for longer than one year. Council recommends a mitigation fund and sharing of benefits from reduced spill. Sees opportunity to create way to create benefits out of a current crisis.

S. Wright. Our thinking is not to create a process on top of Council's F&W Program. How does it compare to F&W Program?

S. Crow. We have shown how Council can respond quickly.

S. Wright. Our thinking on focusing on first year is to avoid interference with F&W Program.

Crow: does not see conflict.

Shake: Does not see creating a trust account.

S. Wright. Idea of a fund and debating amount of the fund is troublesome.

Curtis: would extend financial criteria for reliability.

Sampson. Tribes do not believe BO actions are sufficient to meet tribal obligations. Mitigation fund definitely too small. We should instead talk about measures presented by CRITFC.

E.g., BPA should calculate monetary value of saved spill, recoup from customers, and use these funds for fish mitigation measures.

Tribes want to deal directly with BPA. Does not want to go through hoops of NW Power Council process.

Bloch. Voted against this yesterday at Council mtg. One of Bloch's concerns was level of funding BPA willing to commit. Steve said question of mitigation is how big a hole we are creating. We won't know until we can see what the operations are. E.g. spill would reduce hole.

Bloch. One way to reconcile possible conflict with Council Program is to have one-year piece for immediate benefits and to have additional measures as will be developed in Council's program.

Bloch. Lawsuit price = how to pay for it.

Shake. Suggests bifurcation. Needs to focus on immediate efforts. Then discuss further efforts. Can we do this?

S. Wright. But we already have a Council Program.

Wright: I want to do things. I'm asking Alex Smith to solicit proposals.

Sampsel. Bigger issue than costs and process is what does it take to meet interests of ESA, treaties, and other laws? We are talking about hundreds of millions, billions of dollars to improve conditions for these fish. To plan, Sampsel needs to know funds available over long haul. Does not want to look at crisis today. Wants to focus on the overall objective and the next decade.

Sampsel. BPA needs borrowing authority.

Alex will form a subgroup. Probably Block, Crowe, Lothrop, Sampsel, and Joe Penne. Bob Nichols (Wash.)

Heinith. Re last bullet on page 6. We now COE has inadequate money on some measures. This needs to be on fast tract.

Bloch. Fish go out this year. Return in years 3-5. So could bifurcate. Measures now. Then measures in years 3-5.

Sampsel. Most focus has been on listed and some unlisted stocks. But we are ignoring lamprey. We don't want to list lamprey. But we need to take serious look.

New Subject. Blackout plan. Separate one on one meetings. Proposed by Heinith.

Delwiche. Purpose of meeting is to discuss how rolling blackouts would be implemented. Mtg. will be week of May 6. BPA is trying to respond to Heinith's questions..

Heinith: question asks what plan is.
S. Wright

Meetings on Finances. WE had a meeting with CRITFC after issuing notice to rate parties to rate case. As result of meeting, we understood CRITFC's concerns better. Summarized various subjects discussed. Open to another meeting.

Lothrop. We have addressed these issues in prior testimony. Will press issues in rate case.

Acute Emergencies. In response to Heinith's request about how to address acute emergencies. A Fish Passage Operation and Maintenance Workgroup has an emergency response procedure. Feds can reconvene FPOM group to have process for responding to acute emergencies.

We are not getting anywhere with FPOM. We need to elevate. E.g., how fare to open gates.

S. Wright. Can CRITFC present list of policy level issues?
Heinith. Yes.

S. Wright. Would be helpful if FPOM can meet and identify the policy issues to be raised. Sees a spill group Therefore. Convene FPOM ASAP. Look at framing policy level questions.

Soscia asks to include state water quality reps to the FPOM meeting.

Other issues.

Delwiche. We' will have an operating plan on May 17.

Delwiche. We hope to have a draft final plan before next Fed exec mtg. with states on tribes on May 11.

Agenda for May 11?

Draft final Ops Plan
Reports from subgroup w/written summary in advance
Potential for additional \$ to other federal agencies.