

**American Rivers \* Friends of the Columbia Gorge \* Idaho Rivers United \* Institute for Fisheries Resources \* National Wildlife Federation \* Northwest Sportfishing Industry Association \* NW Energy Coalition \* Oregon State Public Interest Research Group \* Pacific Coast Federation of Fishermen's Associations \* Salmon For All \* Save Our Wild Salmon\* Sierra Club**

June 14, 2004

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***Re: Amended Summer Spill Proposal Comments***

Dear Sirs:

We are writing on behalf of the Save Our *Wild* Salmon Coalition and the undersigned individual organizations to comment on the *Amended Proposal for Federal Columbia River Power System Summer Juvenile Bypass Operations* (June 8, 2004). We appreciate this opportunity and hope that our comments provide your agency with useful guidance to ensure the recovery of salmon and steelhead in the Columbia River Basin.

With a combined membership of over six million, Save Our *Wild* Salmon (SOS) is a diverse nationwide coalition of commercial and sport fishing associations, conservation organizations, taxpayer advocates, clean energy proponents, businesses and others joined in a single unifying mission: restoring self-sustaining, harvestable populations of wild salmon to the rivers and streams of the Pacific Northwest. As such, our organizations have a keen interest in efforts to mitigate the harmful effects of the Federal Columbia River Power System (FCRPS) on both listed and non-listed salmon and steelhead populations.

In short, the newly amended summer spill reduction proposal continues to suffer from the same fundamental and inherently fatal flaws as the previous edition: the proposal risks long-term salmon recovery for minimal, if any, near-term economic gain. The amended proposal flies in the face of sound science, public policy, and the law. SOS has provided extensive comments on the scientific, policy, and legal flaws of the initial analysis that serves as the foundation on which

this proposal is based, as well as on the preliminary proposal released earlier this year (hereby incorporated by reference).<sup>1</sup> After review, it is evident that our concerns – and the extensive technical concerns and comments raised by state, federal, and tribal salmon biologists, and members of the public and media – still have not been heeded or adequately addressed. Moreover, it is equally important to note that the amended spill proposal fails to meet the standard put forth by the four Northwest governors in recent communications to your agencies that any reduction in spill must successfully mitigate for harm to listed and non-listed salmon and steelhead.<sup>2</sup>

Second, it is critical that the summer spill reduction proposal be viewed within a broader context. In its recent review of the Action Agencies' 3-year BiOp implementation, NOAA stated that "expectations are not being met" due to the delay of "key actions" for implementing survival improvements as well as critical planning, research and monitoring actions, among others.<sup>3</sup> When viewed within the context of a much larger federal failure to implement the so-called "aggressive non-breach" FCRPS Biological Opinion, the amended proposal to reduce summer spill – part of the backbone of the BiOp's hydro strategy and one of the few actions that has been successfully implemented (with several significant exceptions) – is particularly startling.

Rather than repeat our previous comments and objections to a summer spill reduction in detail, we would like to take this opportunity simply to discuss certain new aspects of the amended proposal:

#### **I. Amended summer spill proposal provides negligible economic gain at a significant cost**

The amended summer spill proposal would reduce the BiOp's summer spill program by nearly 40 percent, resulting in anywhere from \$21 to \$30 million in new revenue for BPA. According to a revised analysis by the NW Energy Coalition (NWEC), this significant reduction in spill would save the average Northwest residential ratepayer only around 0.08 to 0.36 cents on monthly electricity bills (assuming 100% of the proceeds are passed on to ratepayers, a generous assumption in and of itself).<sup>4</sup> We believe that this conservative estimate actually overstates the economic benefit of a spill reduction. BPA has yet to provide any assurances that the new revenue will actually be applied to a reduction in rates.

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<sup>1</sup> Save Our Wild Salmon et al., Letter to NOAA, BPA and the Corps, *Re: Summer Spill Analysis Comments*, February 20, 2004; Save Our Wild Salmon et al., Letter to NOAA, BPA and the Corps, *Re: Summer Spill Proposal Comments*, April 7, 2004. In addition to our comments on the proposal to cut spill in August, we have equal concern about the efficacy and timing of the test at Bonneville Dam scheduled to begin on June 20, 2004.

<sup>2</sup> Letter from Governors Dirk Kempthorne, Judy Martz, Ted Kulongoski, and Gary Locke to BPA Administrator Stephen Wright and Brigadier General William T. Grisoli, March 29, 2004.

<sup>3</sup> National Marine Fisheries Service, *Transmittal of NOAA Fisheries' 2003 Implementation Progress Evaluation Report*, December 23, 2003.

<sup>4</sup> NW Energy Coalition/Save Our Wild Salmon, *Putting the Power System Benefits of Reduced Spill Into Perspective*, June 8, 2004 (hereby incorporated by reference).

In all likelihood, the overall ratepayer savings will be significantly lower than indicated in the NWECA analysis. This minimal gain comes at the expense of salmon-dependent businesses, jobs, and communities, not to mention significant biological harm to listed and unlisted salmon and steelhead.

In previous comments, SOS and the undersigned organizations outlined a proposal that would allow the continuation of summer spill while providing ratepayers with equal or greater economic relief through modest investment in energy efficiency. We continue to stand behind this proposal: The Northwest Power Council has identified more than 2800 average megawatts (aMW) of achievable conservation activities costing less than 2.5 cents per kilowatt hour (kwh) (current power prices are averaging around 4 cents/kwh).<sup>5</sup> A 2-3 year accelerated conservation effort could easily acquire 300 MWs that would not otherwise be captured. Given the 1.5 cent "profit" that is generated per kwh – the difference between its cost and market value – 300 MWs would produce savings to the region of \$39.4 million/year.<sup>6</sup> This benefit eclipses the net revenue impact of the amended spill proposal.

While we recognize that capturing new cost-effective conservation may not impact BPA's near-term economic bottom line, it would improve upon the original intentions of the proposed spill reduction by providing significant relief to Northwest ratepayers while allowing the summer spill to continue.

## **II. Amended summer spill proposal fails to incorporate the best available science**

State, federal, and tribal salmon biologists have commented extensively on the fundamental flaws in the science behind the various spill reduction proposals.<sup>7</sup> Those comments all center on a common theme: the best available biological data shows that reducing summer spill significantly increases the risk to salmon and steelhead, while the so-called offsets are highly speculative, at best, and fail to mitigate for the biological impacts. Scientific experts have also called into question the underlying analyses that BPA and the Corps used to justify their

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<sup>5</sup> Northwest Power and Conservation Council, *Draft Conservation Resources Chapter, 5<sup>th</sup> Power Plan*, March 4, 2004.

<sup>6</sup> 300 MWs x 8,760,000 kwhs/MW x 1.5 cents/kwh

<sup>7</sup> *See, e.g.*: Columbia River Inter-Tribal Fish Commission, Letter to Stephen Wright *Re: Summer Spill at Federal Columbia River Power System Dams*, July 23, 2003; Nick Bouwes, Eco Logical Research (prepared for the Columbia Basin Fish and Wildlife Authority), *Review of the BPA's analysis and the biological impacts of alternative summer spill operations*, January 29, 2004; Oregon Department of Fish and Wildlife, *ODFW Comments on the Federal Agencies' Proposal and Analyses to Evaluate Summer Spill Reductions and Mitigation Actions to Offset Impacts*, February 20, 2004; Washington Department of Fish and Wildlife, *Letter from Jeff Koenings, Director to Steve Wright, BPA, Re: Summer Spill Analysis*, February 20, 2004; Alaska Department of Fish and Game, *Letter from Kevin Duffy, Commissioner, to BPA, Re: Summer Spill Analysis*, February 20, 2004; State, Federal and Tribal Fishery Agencies, Joint Technical Staff (CRITFC, IDFG, Nez Perce Tribe, ODFW, Shoshone Bannock Tribe, USFWS, WDFW), *Agencies and tribes review comments – BPA Summer Spill Analysis*, February 20, 2004; State, Federal and Tribal Fishery Agencies, Joint Technical Staff (CRITFC, IDFG, Shoshone Bannock Tribe, USFWS, WDFW), *Comments on the "Preliminary Proposal for Federal Columbia River Power System Summer Juvenile Bypass Spill Operation"*, April 9, 2004; Columbia River Inter-Tribal Fish Commission, *Letter to Hon. John Paul Woodley, Jr., Army Corps of Engineers, Re: Concerns with BPA Financing Summer Spill Offsets*, April 12, 2004.

proposal. The new amended proposal simply fails to properly address those critical scientific flaws.<sup>8</sup>

Since the release of the preliminary proposal, new scientific data has come out on the efficacy of trucking and barging fall chinook that bolsters support for the biological importance of summer spill, and in fact, strongly supports a policy decision to *increase* summer spill. According to the Fish Passage Center, preliminary calculations of smolt-to-adult returns (SAR) for transported and in-river fall chinook from the Snake and Columbia rivers show that the best returns occurred when spill occurred at McNary dam throughout the summer. The SARs of trucked and barged fish were significantly lower than in-river migrants, and may not achieve the interim recovery goals assumed in the BiOp.<sup>9</sup> This data strongly suggests that trucking and barging fall chinook is a harmful practice, and that a “spread-the-risk” policy that allows more fish to migrate in-river during the summer (as opposed to maximum transportation) would be appropriate. Therefore, the BiOp’s summer spill program should be maintained on the lower Columbia River and *increased* on the lower Snake River to maximize survival for in-river migrants.

In an evaluation of the effects of the FCRPS on salmon populations (prepared as part of the ongoing court-ordered remand of the 2000 Biological Opinion), NOAA Fisheries recently came to a similar conclusion on the benefits of transportation: “Transportation is not a panacea. When comparing annual indices of transported versus in-river fish, in many cases, transportation appears to confer little benefit... .Strategies such as “spread the risk” and promotion of diversity suggest we should allow more fish to migrate in the river whenever possible.”<sup>10</sup> Given that reducing summer spill on the lower Columbia River largely precludes any improvements to in-river migrating conditions and thus confines Snake River fall chinook to trucks and barges, this data is extremely relevant and should be vetted thoroughly and considered *before* any further discussion on reducing summer spill.

In addition, new scientific information is coming to bear which suggests that eliminating spill in August could have a greater impact on returning adults than was previously considered. A recent preliminary analysis by the Idaho Department of Fish and Game (IDFG) suggests different SARs for early and late summer Snake River fall chinook migrants, i.e. the later (August) migrants appear to have better return rates as adults than the migrants detected in July.<sup>11</sup> This observation lends further support to the importance of August spill and should be thoroughly considered before any further consideration of a spill reduction.

### **III. Proposed “offsets” are speculative at best, and patently fail to mitigate the impact of a spill reduction.**

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<sup>8</sup> For example, the amended proposal attempts to address its erroneous application of the SIMPAS model in the biological impacts analysis by validating its SIMPAS results with an application of the Columbia River Salmon Passage (CRiSP) model, despite a significant and equal lack of confidence in the CRiSP model among federal, state, and tribal salmon biologists.

<sup>9</sup> Fish Passage Center, *Memo to Rob Lothrop, CRITFC, and Bill Tweit, WDFW, Re: Transportation of fall chinook smolts and related fall chinook migration and tag data concerning summer spill for fish passage*, April 6, 2004.

<sup>10</sup> National Marine Fisheries Service, Northwest Science Center, *Effects of the Federal Columbia River Power System on Salmon Populations*, Final Draft for Collaboration, May 6, 2004.

<sup>11</sup> Personal communications with Idaho Department of Fish and Game staff.

SOS and the undersigned organizations have provided extensive comment on the offsets proposed thus far. The amended proposal does nothing to change our conclusion that impacts of reducing spill will not be mitigated, and in fact, adds new concerns to bolster that conclusion.

#### **A. Brownlee water to augment flows in July**

The amended proposal contains a new offset for listed Snake River fall chinook (and incidentally the *only* offset stipulated for the ESU) not previously considered: the release of 100,000 acre-feet (100 kaf) of water from the Idaho Power Company's (IPC) Brownlee Dam reservoir between July 7 and July 28. While SOS supports the notion of flow augmentation, in the context of this spill reduction, the Brownlee "offset" is rife with problems and is not sufficient to offset the harm to listed Snake River fall chinook.

The Brownlee proposal does not appear to constitute any new action that either would not already occur irrespective of this spill reduction proposal, or was not already anticipated in the 2000 BiOp. First, several concerns have been raised about whether IPC would be drafting this water in the course of its normal operations irrespective of the reduction in spill. In other words, it appears that BPA may simply be paying IPC for something that it would be doing anyway. The amended proposal attempts to address that concern by suggesting that IPC's internal operations plan for July was to pass inflow, and thus the 100 kaf would be above and beyond normal operations for that month. However, the amended proposal stipulates a suspicious caveat: "IPC has noted that actual operations could vary depending on customer demand, water conditions, markets and other planned events."<sup>12</sup>

According to Brownlee operations data reviewed by the Oregon Department of Fish and Wildlife, Idaho Power has passed more than inflow at the project in July for the past five years. In fact, IPC has drafted close to, if not more than, 100 kaf in July in each of the last five years.<sup>13</sup> Therefore, it is highly probable that IPC will have customer and market demands in July that will require drafting water from Brownlee reservoir. In light of this, it is difficult to come to the conclusion that the IPC agreement for Brownlee water is a valid offset.

Perhaps more importantly, the proposed Brownlee offset double-counts actions that were already anticipated or intended by the 2000 BiOp. In addition to the requirement that Action Agencies operate FCRPS dams with the intent of meeting flow objectives on a seasonal and weekly average basis, the BiOp explicitly obligates the agencies to provide "additional water from other sources," including from reservoirs on the Snake River, and to "[i]ncrease flow augmentation for summer migrants, particularly in low water years."<sup>14</sup> Since the 2000 BiOp was issued, the Action Agencies have routinely failed to meet the BiOp's summer flow objectives, and a number of actions to acquire water from "other sources" have fallen short. In fact, the BiOp's summer

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<sup>12</sup> U.S. Army Corps of Engineers, Bonneville Power Administration, *Amended Proposal for FCRPS Summer Juvenile Bypass Operations*, June 8, 2004, pg. 6.

<sup>13</sup> Personal communications with Oregon Department of Fish and Wildlife staff.

<sup>14</sup> National Marine Fisheries Service, *Federal Columbia River Power System Biological Opinion*, December 21, 2000, sec. 9-53, 9-54.

flow objective on the lower Snake River has not been achieved since 1999, more than a year before the current BiOp was issued.<sup>15</sup>

The BiOp also noted that the issue of providing water from Idaho Power Company's Hells Canyon projects to help meet flow objectives would largely be addressed in separate, ongoing section 7 consultations under the Endangered Species Act. To date, that consultation has not occurred, and is, in fact, the subject of separate litigation.<sup>16</sup>

Therefore, this proposed Brownlee operation is only a step toward meeting the flow requirements of the existing BiOp (which still will not be met even if the 100 kaf Brownlee water is provided); and there is no basis in fact for viewing it as a new measure not called for in the BiOp that could justify reducing summer spill, which is also mandated in the BiOp.

Finally, the relationship of the Brownlee July draft to the Bureau of Reclamation's (BOR) responsibility to acquire and release 427 kaf from the upper Snake River Basin for flow augmentation is ill defined. As such, there is no way to discern whether the 100 kaf release in July is actually "new water," or whether it is simply shaping the upstream release. Given the high likelihood that BOR will fail to meet the 427 kaf mark this year, this is a particularly troubling aspect of the proposal.

Aside from these concerns, there are equally compelling concerns about the purported benefits of this Brownlee offset. In recent comments, state, federal, and tribal fishery agencies suggested that increasing summer flows on the lower Columbia River to at least 220,000 cubic feet/second (cfs) – above the BiOp's recommended summer flow target at McNary Dam (200 kcfs) – will help accelerate passage through that reach, thus reducing the adverse impact of a late summer reduction in spill.<sup>17</sup> Since 1995, the summer flow target on the lower Columbia River has been met in only three years (1996, 1997, and 1999).<sup>18</sup> With poor flows projected this season, it appears highly unlikely that the Brownlee proposal will be enough to affect passage distribution (much less meet the BiOp's flow objective) as was recommended.

In addition, several parties have raised concerns that a July reservoir draft at Brownlee will have little to no impact for August migrants and in fact could do additional harm to those fish. Given that the majority of the spill reduction in the proposal would be implemented in August, there is significant doubt raised about the usefulness of augmenting July flows. It appears likely that whatever minor benefits might accrue through the Brownlee operation – if any – in July would do little to alleviate the harm caused by elimination of spill downstream in August. August migrants would not see the benefit (if any) of this action. Additionally, the action could in fact *harm* listed August migrants. If IPC intends to refill the reservoir in August to ensure further

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<sup>15</sup> Fish Passage Center, *Memo to Rod Sando, CBFWA, Re: 1995-2003 Biological Opinion Operations*, April 29, 2004.

<sup>16</sup> *In Re American Rivers, et al.*, Civ. No 03-1122 (DC D. Ct. 2003).

<sup>17</sup> Federal and Tribal Fishery Agencies, Joint Technical Staff (CRITFC, IDFG, Nez Perce Tribe, ODFW, Shoshone Bannock Tribe, USFWS, WDFW), *Agencies and tribes review comments – BPA Summer Spill Analysis*, February 20, 2004, pgs. 21-22.

<sup>18</sup> Fish Passage Center, *Memo to Rod Sando, CBFWA, Re: 1995-2003 Biological Opinion Operations*, April 29, 2004.

power production in the summer, such an action could worsen river conditions for August migrants from what they would have experienced without this proposal. As BPA and the Corps note, the predicted biological benefits of this offset are highly speculative and rife with uncertainty.<sup>19</sup> We therefore conclude that the Brownlee offset is not valid, and regardless, is insufficient to mitigate the impact to listed Snake River fall chinook.

### **B. Lyons Ferry hatchery actions**

The amended proposal contains a new action to rear an addition 200,000 subyearling hatchery fall chinook to the yearling stage at the Lyon's Ferry hatchery on the Snake River in Washington state. Columbia Basin treaty tribes have raised significant concerns about the consistency of this proposal with management of chinook fisheries under the Pacific Salmon Treaty between the United States and Canada, as well as with a court-ordered agreement (in U.S. v. Oregon) among three western states, the United States, and the four Columbia Basin treaty tribes.<sup>20</sup>

### **C. Other offsets**

As noted, SOS and the undersigned organizations have commented extensively on the other offsets included in the amended proposal, including the pikeminnow removal program, the Hanford Reach Protection Program, undefined habitat improvements, undefined hatchery production increases, and partially restored funding for the Northwest Power and Conservation Council's Fish and Wildlife Program. We have also commented on other proposed offsets for future years, such as accelerated installation of Removable Spillway Weirs, and harvest reductions. In each and every case, we have found the offsets invalid or otherwise insufficient. Instead of reiterating our detailed comments on each and every one of these flawed offsets, we refer you to our previous comments for more information.<sup>21</sup>

## **IV. Conclusion**

In conclusion, absent stronger measures to recover salmon and steelhead, the spill requirements of the 2000 BiOp are essential and irreplaceable to prevent further salmon extinctions and to improve the prospects for recovery.

With the analyses to date, we see no indication that the harmful impacts of a 40 percent reduction in summer spill could be successfully and sufficiently mitigated. The BPA/Corps amended

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<sup>19</sup> U.S. Army Corps of Engineers, Bonneville Power Administration, *Amended Proposal for FCRPS Summer Juvenile Bypass Operations*, June 8, 2004, page 3, footnote 2.

<sup>20</sup> *See*: Columbia River Inter-Tribal Fish Commission, *News Release: Strike 2 for BPA's summer-spill proposal Amended plan to cut salmon protections violates federal court order*, June 10, 2004; Confederated Tribes of the Umatilla Indian Reservation, *News Release: Latest federal spill reduction proposal still flawed and may violate existing court orders*, June 10, 2004.

<sup>21</sup> *See*: Save Our Wild Salmon et al., Letter to NOAA, BPA and the Corps, *Re: Summer Spill Analysis Comments*, February 20, 2004; Save Our Wild Salmon et al., Letter to NOAA, BPA and the Corps, *Re: Summer Spill Proposal Comments*, April 7, 2004.

proposal contains serious scientific, policy, and legal flaws, as detailed in our previous comments. The ill-conceived proposal trades long-term biological benefits for minimal short-term economic gain. As such, we urge the federal agencies to withdraw this summer spill reduction proposal and instead continue to implement the summer spill requirements in the 2000 BiOp while seeking ratepayer relief through the acquisition of cost-effective energy conservation measures.

Sincerely,

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