Exhibit D.1
Attachment 1
June 2003

STATE OF CALIFORNIA
resources
AGENCY

GRAY DAVIS, Governor
MARY D. NICHOLS, Secretary

May 19, 2003

The Honorable Gale Norton, Secretary
United States Department of the Interior
1849 C Street NW
Washington, D.C. 20240

Dear Secretary Norton:

In light of the loss of over 30,000 salmon last year on the Klamath River, I strongly urge the U.S. Bureau of Reclamation (USBR) to revisit their approach to operations of the Klamath River Project. Unfortunately, the 2003 Klamath Project Operations Plan – released on April 10th - does not reflect any change to the 10-year plan and flow schedules put in place last year.

While we commend your effort to balance competing environmental and economic interests, California strongly feels that the current flow schedule is inadequate to protect the Klamath River's Coho and Chinook salmon and steelhead trout. As California suggested in October 2002, we again request you to direct the USBR to reinitiate consultation with NOAA Fisheries to minimize further loss and work towards recovery of the Klamath River's native fish. In addition, we request that you direct the USBR to also work closely with the California Department of Fish and Game (CDFG)[1] and tribal interests to develop a revised 2003 Operations Plan that will protect the Klamath River's ecosystem and the native fish it supports.

As the State and federal agencies work closely together with the tribal interests in the development of a revised 2003 Operations Plan, I ask that the following issues also be addressed.

Use All Available Information and Data

The 2003 Operations Plan needs to be based on the sum of the best available information – not on a portion of one report that supports implementation of the current operations plan put in place last year. USBR staff have repeatedly made the comment that the current 10-year operations plan is based on the National Research Council (NRC) Interim Report. However, the NRC Panel was not asked to develop a river flow

[1] *The California Department of Fish and Game (CDFG) has reviewed the 2003 Operations Plan, and provided technical comments to USBR

schedule to avoid jeopardy of the Coho salmon – that responsibility falls to NOAA Fisheries – nor was it intended to support any project operations plan.
The NRC Interim Report did raise questions about the evidence to support higher flows downstream of the Klamath Project for Coho salmon, but it found an equal lack of evidence to support changing the then existing project operations. Specifically, the NRC Interim Report described the proposed operations plan as "unjustified ... because [it] would leave open the possibility that water levels...in the Klamath River main stem could be lower that those occurring over the past 10 years." Despite this clear assessment, the USBR continues to use the NRC Interim Report to justify the current operations plan.

New information provided during the last year also needs to be considered, for example, the January 2003 CDFG Preliminary Report on the fish kill. There is also a wealth of other information that needs to be made available and considered, specifically the USBR Hardy Phase 2 Report and the U.S. Fish and Wildlife Service (USFWS) Report on the September 2003 fish kill.

The CDFG Report is available to the public, and they will be responding to comments and producing a final report soon. Given that the fish kill happened more than six months ago, I hope the USFWS will report soon on their findings.

The USBR Hardy Phase 2 Report, which contains important site-specific information used to develop instream flow recommendations necessary to protect the aquatic resources within the main stem Klamath River between Iron Gate Dam and the estuary, has been in preparation for years. I urge you to direct the USBR to provide a final version that incorporates peer review comments and can be used during the development of a revised 2003 Operations Plan.

California believes that all these reports, along with any additional new information that may become available, will serve as solid foundation when the State and federal agencies work together with the tribal interests to develop a revised 2003 Operations Plan.

<u>Consider the entire Klamath River Ecosystem</u>

The revised 2003 Operations Plan should focus on the recovery and sustainability of the Klamath River ecosystem – not just the Coho salmon. While the Endangered Species Act (ESA) does provide for the protection of individual species, our previous collective efforts (such as the CALFED Bay-Delta Program) have led the State and federal agencies to focus on the recovery of river ecosystems to support native fishes. In addition, the Klamath River Fall run Chinook salmon – while not protected under the ESA – do require "Essential Fish Habitat" consultation under the Magnuson-Stevens Fishery Conservation and Management Act, as amended in 1996 by the Sustainable Fisheries Act (Public Law 104-267).

California Coho and Chinook salmon and steelhead trout are very significant economic, recreational, cultural, and biological resources for our State, and the Klamath Basin is an important watershed for these native fish and Northern California communities. These resources are also central to the history, tradition, culture, and future of California's Native American communities along the river.

Consult with California

California was not consulted in the development of the current 2003 Operation Plan despite federal policies that encourage, and in some cases require, coordination with State agencies having fish and wildlife management responsibilities. State agencies are prepared to invest time and resources in long-term comprehensive planning for management of the Klamath River Project. Before that occurs, however, these challenging fiscal times and prudent stewardship require that immediate action be taken to address these and earlier comments to ensure the protection of the Klamath River Coho and Chinook salmon and steelhead this year.

In this important effort, California stands ready to work with the tribal communities, local communities throughout the watershed, the State of Oregon, all interest groups, and the federal agencies to resolve the issues within the Klamath watershed. Thank you for your careful consideration of these comments.

Yours sincerely,

Mary D. Nichols
Secretary for Resources

Cc: Bennett Raley, Assistant Secretary for Water and Science
U.S. Department of Interior

Craig Manson, Assistant Secretary for Fish and Wildlife and Parks
U.S. Department of Interior

William T. Hogarth, Assistant Administrator
NOAA Fisheries

Rod McInnis, Southwest Region Administrator
NOAA Fisheries

CURRENT HABITAT ISSUES

Situation: The Habitat Committee (HC) will meet Monday, June 16, 2003 to develop recommendations on the following agenda items:

B.11 Status of the Groundfish Essential Fish Habitat Environmental Impact Statement
B.12 Programmatic Environmental Impact Statement Update
G.1 Planning for Federal Waters Portion of the Channel Islands National Marine Sanctuary (CINMS)
G.2 Central California Sanctuary Processes Including Krill Ban

The HC will also be discussing Federal Energy Regulatory Commission (FERC) relicensing issues specific to Priest Rapids Dam, Hanford Reach stranding issues, Klamath River flows (see related letter from the California Resources Agency to the Department of Interior, Attachment 1), and other matters. In addition, the HC will hear a report from Dr. Richard Parrish, National Marine Fisheries Service, on his proposal for Phase II of the Council's process in considering marine reserves.

The HC has prepared two letters for Council consideration:
1. A letter to the Bureau of Reclamation on 2003 Klamath River flows (Supplemental Attachment 2)
2. A letter on the FERC relicensing of Priest Rapids dam (Attachment 3).

The HC's complete agenda is provided in Ancillary D.

Council Action:

1. Consider comments and recommendations developed by the HC at the June meeting.

Reference Materials:

1. Letter from California Resources Agency to Secretary of the Interior (Exhibit D.1, Attachment 1)
2. Letter to the Bureau of Reclamation on Klamath River flows (Exhibit D.1, Supplemental Attachment 2).
3. Letter to FERC on Priest Rapids dam relicensing (Exhibit D.1, Attachment 3)

Agenda Order:

a. Agendum Overview — Jennifer Gilden
b. Report of the HC — Stuart Ellis
c. Reports and Comments of Advisory Bodies
d. Public Comment
e. **Council Action:** Consider HC Recommendations

PFMC
05/28/03

REPORT OF THE HABITAT COMMITTEE

The Habitat Committee (HC) met on Monday, June 16 and discussed the following topics. Comments on marine reserves and the Groundfish Essential Fish Habitat Environmental Impact Statement (EIS) will be made during those agenda items.

Klamath Update

The HC discussed a draft letter to the Bureau of Reclamation (Exhibit D.1, Supplemental Attachment 3) regarding the Draft EIS for the Klamath River project. While this letter was not completed in time to be included in your briefing materials, the HC believes it is consistent with prior letters the Council has submitted on this issue as well as the letter from the California Resources Agency contained in Exhibit D.1, Attachment 1. In order to submit comments by the early September deadline, the Council would need to take action at this meeting.

Federal Energy Regulatory Commission/Hanford Reach Update

The HC discussed flows and stranding issues for fall chinook in the Hanford Reach. A study of stranding issues associated with ramping flows in the Hanford Reach is ongoing. There are no specific results to report at this time, but the HC continues to monitor the issue, and will update the Council as necessary.

A massive draft license application has been submitted for Priest Rapids and Wanapum Dams on the Columbia River. Juvenile passage and stranding in the Hanford Reach are important issues associated with these projects. The HC recommends the Council provide comments to the Federal Energy Regulatory Commission (FERC) during the current public comment period. A letter to that effect is included in your briefing book (Exhibit D.1, Attachment 2). The HC reviewed the letter and proposed the modifications suggested in Exhibit D.1, Supplemental Revised Attachment 2. The proposed modifications do not significantly change the content of the letter, but attempt to provide additional clarity. Because of the size and complexity of this application, the HC recommends focusing current comments on Hanford Reach flows, since this issue can be linked directly to Council fisheries. In order to provide comments to FERC by the mid-August deadline, the Council would need to take action at this meeting.

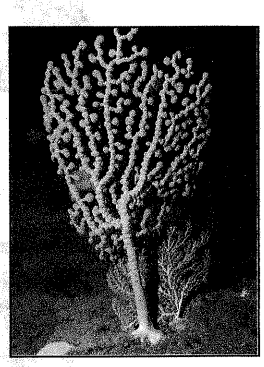
Other Issues

The HC also heard a report on the NEPTUNE project, which will be a permanent network of undersea research stations connected by fiber-optic cables. This is an international effort that would enhance data collection and research for fisheries management and many other purposes. The stations anticipated would be at a variety of depths and locations off the West Coast and Canada. The HC will keep the Council updated on this project, which is slated for implementation during the next decade.

We also heard an update on new black rockfish research that uses otolith chemistry to track juvenile fish movement. This research may provide useful information on early life history migration of black rockfish and may be applied to other species as well.

PFMC
06/17/03

Coral and Sponge Habitat Protection in the Pacific



Corals and sponges are found in significant aggregations from the Bering Sea in Alaska to Southern California. These living seafloor structures are crucial to the functioning of the marine ecosystems and rich commercial fisheries they support.

What are corals?

Corals and sponges are some of the oldest living creatures on Earth. Living for hundreds to thousands of years, these animals congregate in colonies that can tower more than ten feet tall, yet they grow only fractions of an inch a year.

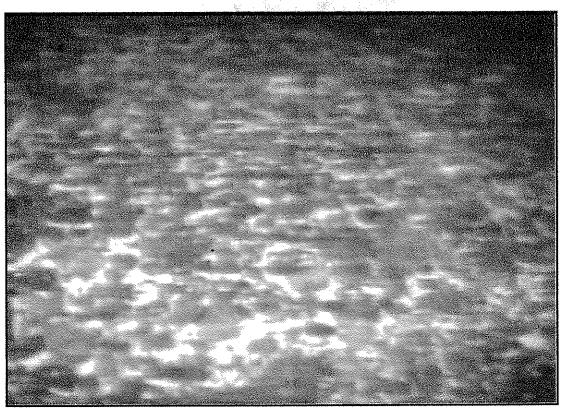
Why are corals important?

Deep sea corals and sponges are home to many species of commercial fish such as rockfish, sablefish, flatfish, and crabs as well as non-commercial species of starfish, shrimp, and octopuses among others. For these and other species, corals provide essential habitat by providing shelter, protection from currents and predators, breeding areas, spawning areas, nurseries, food, and resting areas. When coral and sponge habitat is destroyed, the many species it supports also disappear.

What is the threat?

Bottom trawling destroys far more ocean habitat than any other fishing practice on the West Coast. In this fishing method, large weighted nets are dragged across the ocean floor, clear-cutting a swath of habitat in their wake. These scars will take centuries to heal. According to the National Academy of Sciences, bottom trawling reduces the complexity, productivity, and biodiversity of benthic habitats--damage is most severe in areas of corals and sponges. When disturbed by bottom trawling, as much as 90 percent of a coral colony perishes, and up to two-thirds of sponges are damaged. Allowing reckless fishing practices to continue on the Pacific Coast is causing irreparable damage to the foundation of its vibrant ecosystems.

Pristine Coral Seafloor with Rockfish (Oregon)



Trawled Seafloor

What can the Pacific Fishery Management Council do?

- Request NMFS report on corals and sponges
- Incorporate coral/sponge data into EFH EIS
- Implement measures to protect coral and sponge habitats immediately
- Develop and implement long-term coral and sponge protection strategy

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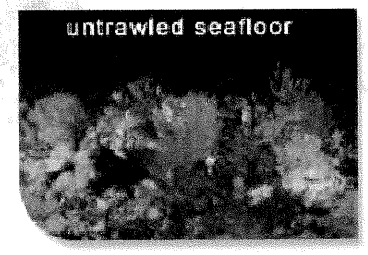
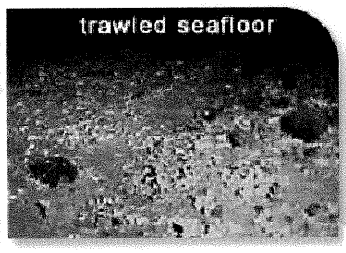
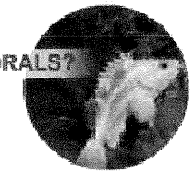
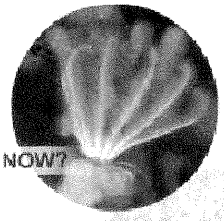
From the Bering Sea in Alaska to the southern tip of California, the Pacific Ocean seafloor coral and sponge habitat is threatened by collapse from irresponsible, destructive bottom trawling.





REGIONS AT RISK





NEWS ON CORALS

(click here for more news)

OCEANA IN THE NEWS

5/12/03: United States Seeks New Riches with Claims to Ocean Floor (Boston Globe)

PRESS RELEASES

05/28/03: Oceana Applauds New England Fishery Management Council for Taking Steps to Protect Corals

CORAL RESOURCES

SaveCorals.com

Exhibit D.1
Supplemental Attachment 3
June 2003

Stuart Ellis

HABITAT STEERING GROUP PROPOSED ACTION FORM

HC Sponsor: Mr. Michael Rode

Title of Issue: Supplemental Notice of Intent (NOI) to prepare a Draft Environmental Impact Statement for operation Of the U.S. Bureau of Reclamation Klamath Project

Deadline (if any): September 2, 2003

Proposed Action: Comment letter

Addressed To: Mr. Dave Sabo, Area Manager
Klamath Basin Area Office
U.S. Bureau of Reclamation
6600 Washburn Way
Klamath Falls, OR 97603

Description of Issue: The U.S. Bureau of Reclamation (USBR) filed a supplemental NOI on May 5, 2003 to prepare a draft environmental impact statement (EIS) on the operation of the Klamath Project and is soliciting comments during a 120-day scoping period that ends on September 2, 2003. The preparation of an EIS for the Klamath Project has been a much delayed process that was initiated in November 1997. The supplemental NOI is intended to reflect the findings contained in a February 2002 interim report of the National Academy of Sciences Committee on Endangered and Threatened Fishes in the Klamath River Basin. According to the USBR, one of the key conclusions of the Committee was that regarding Klamath River flows: "On the whole there is no convincing scientific justification at present for deviating from flows derived from operational practices in place between 1990 and 2000." Based on this conclusion, the USBR is proposing substantial changes in the proposed action alternatives that were originally developed with the participation of cooperating agencies between 1999 and 2001. The new proposed action would implement an operations plan through March 2012 that would be consistent with historic Project operations during water years 1990 through 1999 and would include development and use of a water bank and development and participation in a basin-wide Conservation Implementation Program. The historically low flows that were encountered in the Klamath River during 1991, 1992, and 1994 could occur again if the proposed action is implemented.

Description of Regional Significance: Operation of the Klamath Project during the 1990 through 1999 period has had a major detrimental influence on the anadromous fish habitat of the Klamath River by severely reducing water quantity and quality. During this period, Southern Oregon/Northern California coastal coho salmon have been listed as threatened by the federal government and found to be warranted as threatened by the state of California. Klamath Chinook salmon stocks declined during the early to mid-1990s to historically low levels. The depressed status of Klamath River salmon stocks has been a major factor in constraining ocean fishing opportunities from San Francisco to Cape Falcon, Oregon.

Potential Adverse Impacts to EFH? ✠ Yes ☐ No

For Which Species? Chinook and coho salmon

Potential Benefits of Proposed Action: The letter will provide Council recommendations and concerns regarding the scope of the EIS and request that the Council be provided opportunity to review the draft EIS.

DRAFT

Mr. Dave Sabo, Area Manager
Klamath Basin Area Office
U.S. Bureau of Reclamation
6600 Washburn Way
Klamath Falls, OR 97603

Attention: KO-150

Dear Mr. Sabo:

Re: Supplemental Notice of Intent (SNOI) to Prepare a Draft Environmental Impact Statement (DEIS) for the Operation of the Klamath Project (Project)

The Pacific Fishery Management Council (Council)[1] is writing to comment on the May 5, 2003 SNOI[2] and Scoping Document for the U.S. Bureau of Reclamation (USBR) Klamath Project DEIS. The Council is concerned that the Proposed Action, as described in the SNOI and the scoping document, will adversely impact the essential fish habitat (EFH) of Klamath River coho and Chinook salmon which are managed by the Council.

Background

The future operational plans of the Project, which will be determined by the preferred alternative in the DEIS, will have a direct influence on the EFH of coho and Chinook salmon and will directly influence the viability of these salmon stocks. EFH in the Klamath River includes the water quantity and quality conditions necessary for successful adult migration and holding, spawning, egg-to-fry survival, fry rearing, smolt migration and estuarine rearing of juvenile coho and Chinook salmon.

Proposed Action

The USBR proposes to implement an operations plan through March 2012 that is based on flows during the 1990-1999 water years. While these flows may be technically consistent with the 2002 NOAA Fisheries coho salmon and U.S. Fish and Wildlife Service endangered suckers biological opinions (BOs), they are inadequate. The Council has stated[3] it believes that the 2002 prescribed flows are too low to conserve coho and chinook salmon EFH and has asked that the USBR initiate consultation with

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[1]The Council was created by the Magnuson-Stevens Fishery Conservation and Management Act in 1976 with the primary role of developing, monitoring, and revising management plans for fisheries conducted within federal waters off Washington, Oregon, and California. Subsequent congressional amendments added emphasis to the Council's role in fish habitat protection. Amendments in 1996 directed NOAA Fisheries and the regional fishery management councils to develop conservation recommendations for agency activities that may affect the EFH of the fish they manage. In 1999 the Council identified and described EFH for Chinook and coho salmon under Amendment 14 of the Pacific Coast Salmon Fishery Management Plan. In the Klamath Basin, EFH for coho and Chinook salmon has been designated for the mainstem of the Klamath River and its tributaries from the mouth to Iron Gate Dam and upstream to Lewiston Dam on the Trinity River.

[2]*Federal Register*, May 5, 2003 (Volume 68, Number 86, Page 23761-23764)

[3]December 4, 2002 letter from Radtke to Norton and Evans; April 2, 2003 letter from Radtke to Norton.

NOAA Fisheries on the effects of Project operations on EFH and reinitiate Endangered Species Act (ESA) consultation for coho salmon.

From 1990 through 1998, there were no conservation measures in place to protect coho salmon or its habitat. This period also represents some of the lowest flows on record, and is not an adequate baseline. These factors strongly suggest that it would be imprudent to mimic Project operations in the 1990s to meet current ESA and EFH mandates. The inadequacy of the flows contained in the 2002 coho BO (which was similar to the operation plan for 1990-1998) was highlighted when low flows were implicated as a major cause of the September 2002 Klamath River fish kill.

Therefore, the Council recommends that the flow provisions of the 2002 BO and the 1990-1999 period flow management record NOT BE USED as criteria for managing, protecting, and recovering Klamath River basin anadromous salmonids when developing the DEIS.

DEIS Development

The USBR initiated development of a DEIS for operation of the Project in November, 1997 and formulated five draft alternatives in January, 2001 after numerous scoping sessions involving a broad array of stakeholders. The USBR is now rejecting those five alternatives and considering only two alternatives that were developed without stakeholder input. The SNOI proposes that the DEIS will only consider the proposed action and a "no action" alternative, which is essentially Project operations prior to the 2002 BOs. Both of the alternatives are very similar, since the proposed action aims to mimic 1990-1999 Project operations. The Council believes that these two alternatives do not constitute an adequately broad range of alternatives that would lead to a rigorous examination of the relative effects of different Project operations scenarios.

The Council believes that a broad range of alternatives must be developed for the DEIS and should emphasize the best available science. We have repeatedly emphasized the importance of completing the Hardy Phase II Report. The report's conclusions and recommendations should form the basis for Project management of flows in the Klamath River, and be a major component of the DEIS. **Therefore, the Council now formally requests that the Department of Interior fund completion of that report and use it to develop alternatives for the DEIS.**

The Council does not believe that the NAS interim report should negate the large body of scientific information developed on the Klamath River over the past fifteen years. The report was a quick, very narrowly focused review of only the 2001 Biological Assessment and BOs and only covered coho. Other studies have consistently shown a strong correlation between increased flows and improved habitat conditions for salmonids.

Cumulative Effects

In evaluating the proposed action and the range of alternatives, **the DEIS needs to consider the cumulative environmental effects of non-Project water diversions above, within, and below the Project, including the USBR Trinity Diversion of the Central Valley Project.**

Geographic Scope

The DEIS should include areas and resources affected by Project water diversion, storage and delivery and include the mainstem Klamath River and all tributaries below Iron Gate Dam, including the Trinity River, and the ocean [4].

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[4] Klamath River basin salmon stocks are important contributors to ocean fisheries. Impacts of the project on these fish influence Council managed fisheries, fishers, and coastal communities.

Scoping and Cooperating Agencies

During the early stages of DEIS development, when there were still five draft alternatives, numerous scoping sessions were held with cooperating agencies and other stakeholders. However, according to the SNOI, no scoping meetings are planned for the next two years, even though the alternatives have been significantly changed. **To adequately consider stakeholder concerns, the Council requests that a series of public and cooperating agency meetings be made a part of the formal DEIS schedule.**

Please keep the Council informed of additional opportunities to provide input as the Klamath Project DEIS process progresses.

Sincerely,

Hans Radtke, Ph.D.
Chairman

cc: Dr. Don McIsaac
Dr. John Coon
Ms. Jennifer Gilden
Habitat Committee

Exhibit D.1
Supplemental Revised 2 Attachment 2
June 2003

PACIFIC FISHERY MANAGEMENT COUNCIL

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phil anderson

Draft

Ms. Magalie Roman Salas, Esq.
Office of the Secretary
Federal Energy Regulatory Commission
888 First Street NE
Washington, DC 20426

Dear Secretary Roman Salas:

Re: Priest Rapids Hydroelectric Project Draft License Application FERC No. 2114

The Pacific Fishery Management Council (Council) is writing to comment on the Draft License Application for the Priest Rapids Hydroelectric Project (FERC no. 2114).

Essential Fish Habitat Consultation Mandate

The Council is concerned that in making hydropower project relicensing decisions, FERC must meet its responsibilities regarding conservation of essential fish habitat (EFH). Such responsibilities include consultation with the National Marine Fisheries Service (NMFS) to assure minimization of acute and cumulative impacts on salmon and other anadromous fish from hydropower operations and structural configurations as well as provide a detailed response to Council comments on FERC actions.

This EFH mandate will also help FERC assure consistency with its obligations under the 1986 Electric Consumers' Act and the 1980 Northwest Power Act, which require FERC to take a balanced approach to hydropower project licensing. These Acts require that when deciding whether to issue a license, FERC consider not only the power generation potential of a river, but *give equal consideration to energy conservation, protection of fish and wildlife, and general environmental quality*. This mandate requires FERC to consult with federal, state, and local resource agencies and Indian tribes, including fish, wildlife, recreation, and land management agencies, in order to assess the impact of a hydropower project on the environment.

While the Priest Rapids and Wanapum dams have a variety of impacts to different stocks of fishes, the Council is specifically concerned with the fall chinook salmon spawning in the Hanford Reach section of the Columbia River. These fish contribute to ocean fisheries from Alaska to California as well as support Columbia basin in-river fisheries.

~~One of the significant impacts to the Hanford Reach fall chinook from the Preist/Wanapum projects is on redds and newly emerged fry from ramping flows for power production. One previous estimate of juvenile fish mortality (resulting from ramping flows) in a 17 mile section of the 56 mile Hanford Reach was well over one million fish.~~

As stated in the draft license application, the 1988 Vernita Bar Agreement has been beneficial to protect redds and incubating eggs. ~~It is not a perfect agreement though. The State of~~

~~Washington and the tribes have requested higher minimum flows (55Kcfs to 60Kcfs) and the U.S. Fish and Wildlife Service has proposed a mechanism to allow higher flows to allow additional spawning areas.~~ The Council is supportive of efforts by the **state, tribal and federal fisheries managers** ~~these entities~~ to refine **and expand** the Vernita Bar Agreement in a way that offers more protection for fish.

Additionally, the Vernita Bar Agreement does not cover flows needed to protect newly emerged fry which can be stranded in shallow pools along the river edge. When flows fluctuate quickly thousands of fish can become stranded and often die. The licensee has proposed ramping/flow targets to reduce mortalities. **The fishery managers believe that these proposls should be further refined and broadened to include the operations of the upstream federal and PUD projects.** ~~These targets are inadequate to protect fish, but even so, the lisensee has not been able to meet even those targets. They can only do so much with the flows they are provided from the federal projects above, but they should be doing more than they are.~~

FERC should strengthen the Vernita Bar Agreement during relicensing to protect spawners. Additionally the Council requests that the that ramping/flow targets identified in the system operation requests (SOR 2003-7 and 2003-8) made by the Technical Managment Team be met in the relicensing agreement to adequately protect juvenile rearing.

Finally, the Council has attached a letter outlining its concerns for all FERC relicensing projects. He reiterate these previous comments by this attachement for incorporation in the Priest/Wanapum relisencing process.

The Council appreciates this opportunity to comment. We appreciate your attention to our concerns and suggestions.

Sincerely,

Draft

Hans Radtke, Ph.D.
Chairman

JDG:kla