

REQUEST FOR U.S. DEPARTMENT OF ENERGY INSPECTOR GENERAL INVESTIGATION
OF WASTE OF FEDERAL FUNDS AND VIOLATIONS OF OTHER FEDERAL LAWS BY SCOFFLAW CULTURE
IN UPPER MANAGEMENT OF BONNEVILLE POWER ADMINISTRATION -

Submitted by Northwest Resource Information Center

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NRIC is a nonprofit organization incorporated in 1976 under Section 501(c)(3) of the Internal Revenue Code specifically to address devastation of Snake River Basin salmon and dependent economies by operations of the Federal Columbia River Power System.

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- 27]
 - The Northwest Power and Conservation Council collaborated with Bonneville upper management’s use of the Accords (federal funds) to subvert the Endangered Species Act and Northwest Power Act.
- 29] Bonneville upper management systematically uses federal funds to suppress science that does not support its efforts to subvert the Endangered Species Act and Northwest Power Act.
- 31] Bonneville upper management illegally conspired with a United States Senator in a backdoor maneuver to withhold federal funds and thereby kill an independent science organization that it could not silence with bribes or political intimidation.
- 32] Bonneville upper management for political purposes and to deceive the federal court deliberately wastes hundreds of millions of dollars in federal funds on low- to no-priority salmon enhancement projects that it knows cannot possibly fulfill the legal requirements of either the Endangered Species Act or its additional affirmative legal duties under the Northwest Power Act.
- 35] Bonneville upper management knowingly and systematically subverts the wild salmon protection purposes of laws establishing Snake River Basin Wilderness Areas, Wild and Scenic Rivers, National Recreation Areas and federal land management policies.

- 36]** Bonneville upper management systematically fights against spilling water at the Corps of Engineers' four negligently ill-designed dams on the Lower Snake River—the action it knows is essential to preventing extinction of Snake River salmon.
- 37]**
- Bonneville upper management attempted to cover up its deliberate illegal violation of court-ordered spill designed to reduce mortality of ESA-listed Snake River salmon.
- 37]**
- Bonneville upper management lobbied the State of Washington to refuse fish scientists' request to change (lower) dissolved nitrogen standards to comport with the State of Oregon and thereby allow more spill to improve juvenile salmon survival.
- 38]**
- Bonneville upper management refused fish scientists' request to *modify existing spill* to improve salmon survival even when the requested modifications would not violate the parameters dictated by the quid pro quo Accords/MOAs, and would not exceed WDOE nitrogen standards.
- 38]** While resisting fish scientists' efforts to *increase spill*, Bonneville upper management attempted to cover up its negligent failure to effectively integrate wind energy into the FCRPS by falsely claiming it was shutting down wind generators *to limit spill* in order protect salmon from spill-induced nitrogen at the dams.

INTRODUCTION

This document provides documentation of Bonneville Power Administration upper management's calculated profligate waste of federal funds and scofflaw behavior vis-à-vis operations of the Federal Columbia River Power System which, contrary to law, decimated Snake River Basin anadromous fish (herein "salmon"), drove them onto the List of Endangered Species and threatens them with extinction.

At stake is survival of one of the world's unique, perpetually renewable natural resources. A genetic heritage millions of years in the making which Bonneville upper management and its scofflaw collaborators willfully drove to the brink of extinction in 50 years.

The baseline and context for this information is the Pacific Northwest Electric Power Planning and Conservation Act of 1980. Bonneville's scofflaw behavior predates the Act. However, the Act definitively imposed on Bonneville the independent duty to acquire resources and to take other measures as necessary to mitigate the adverse effects of the FCRPS on Snake River salmon and to ensure that henceforth salmon would receive equitable treatment with all other uses of the FCRPS.

Following the December 1980 passage of the Northwest Power Act, it is incontrovertible that Bonneville upper management has knowingly wasted and otherwise misused federal funds to systematically subvert the salmon restoration provisions of the Act and drove Snake River salmon onto the List of Endangered Species.

The devastating effect on Snake River salmon of four negligently ill-designed Army Corps of Engineers dams on the lower Snake River was the impetus for the salmon restoration provisions of the Act.

Bonneville upper management's scofflaw behavior and profligate waste and misuse of federal funds is focused on defending the four lower Snake River dams no matter what the cost to society now and in the future.¹

This is the essential context within which to view the systemic nature of the scofflaw behavior metastasized in the culture of Bonneville's upper management in the more than three decades since the Act's passage.

To date Bonneville upper management has avoided accountability for its scofflaw behavior by exploiting its extraordinary authority to write checks at public expense, by the virtually total lack of government oversight of its activities, by the political protection provided by powerful members of the Northwest congressional delegation, and by Bonneville upper management's utter contempt for the rule of law and the public trust.

Bonneville upper management spends billions of federal dollars on no- to low-priority salmon enhancement projects for the purpose of covering up and buying political support for its scofflaw behavior; on lobbying pork barrel economic interests, state and tribal governments and members of congress to provide political cover for subverting the law; on transparently sham Biological Opinions serially declared illegal by the

¹ Nine other Columbia River Basin salmon populations outside the Snake River Basin also are on the List of Endangered Species. Preventing extinction of these populations poses no significant effect on operations of the Federal Columbia River Power System. Ironically, they actually help Bonneville camouflage its obsession with protecting the four lower Snake River dams by providing a forest of listings within which to hide the four lower Snake River dams.

federal courts; on propaganda based on the tobacco industry model to create fake “scientific” uncertainty and foment civic and political discord; on bribing state and Native American Indian governments to support the illegal BiOps and thereby, to influence federal judges; on suppressing science; on paying wind generators to shut down during times of regional energy surplus; on giving away surplus federal power for free.

What did this waste and illegal use of billions of federal dollars produce? An ecological, economic and social disaster of epic proportions.

- Snake River salmon driven onto the List of Endangered Species.
- A 5th generation illegal Biological Opinion (2008/10) that represents what may be the most elaborate, costly and destructive government-funded scientific hoax in United States history.
- Ecological, economic and social damage throughout the migratory range of Snake River salmon extending 700 miles inland and thousands of miles along the Pacific Coast.
- A region wracked by civic and political discord and interminable costly litigation in the federal courts.
- A regional energy system in turmoil and at risk of draconian intervention by the federal courts.
- Untold thousands of human lives damaged.

Furthermore, there is no end in sight. Bonneville upper management continues to double down on its obsession to defend the illegal status quo, no matter what the cost to society now and in the future.

The compounding cost in wasted federal funds and related damage to date pales in comparison to the astronomical cost to society of opportunity foregone resulting from Bonneville upper management’s scofflaw obsession with preserving the destructive status quo instead of championing business-like joint production of electrical energy and salmon as definitively required by law more than three decades ago.

“We were proud today to underscore how much this region has done for salmon.”

...

“We’re on the right path. We will continue to depend on science, focus on the fish and take pride in how far we’ve come.”²

² From joint statement (scripted by Bonneville upper management) of Will Stelle, Northwest Region Administrator, NOAA Fisheries; Brigadier General John R. McMahon, Northwestern Division Commander, U.S., Army Corps of Engineers; Karl Wirkus, Pacific Northwest Regional Director, U.S. Bureau of Reclamation; and Steve Wright, Administrator of the Bonneville Power Administration, released to news media May, 9, 2011.

ALLEGATIONS—ACTIONS REPRESENTATIVE OF BONNEVILLE POWER ADMINISTRATION UPPER MANAGEMENT’S WASTE AND MISUSE OF FEDERAL FUNDS AND SYSTEMIC SCOFFLAW BEHAVIOR WHICH COMPEL INSPECTOR GENERAL INVESTIGATION

NRIC has been professionally immersed in the conflict between the Federal Columbia River Power System and Snake River salmon for four decades.³ NRIC has long experienced the typical federal agency dodging and weaving around the intent of law and exploitation of the legal “deference doctrine.” NRIC knows the difference between that behavior and the craven, blatant subverting of the law in the instant case, which after more than 30 years and the misuse of billions of federal dollars, produced a result opposite from what the law requires.

Bonneville upper management’s scofflaw behavior is not merely the result of incompetence, nor merely the product of abused agency discretion, although much of both are on display. It is the product of naked contempt for the rule of law and the public trust and a virtually total lack of government oversight and accountability.

The time-worn Mob Lawyer and Nuremberg defenses do not apply in this instance. Bonneville upper management through deception, lobbying, bribes and other unethical and corrupt practices fostered the federal policies which it uses as cover for deliberately wasting and otherwise misusing federal funds to subvert the law and betray the public trust.

The most cursory IG investigation will immediately confront incontrovertible evidence of Bonneville upper management’s systemic waste and misuse of federal funds and other scofflaw behavior. In large part it has occurred in plain sight. It has been repeatedly memorialized in numerous federal court decisions, in books, law review articles and other media.⁴ IG interviews with perpetrators, accomplices, victims and knowledgeable observers will produce a cascade of corroboration for these allegations.

“Nowhere else in the world has the mandate to protect and restore a species been so well buttressed by federal laws, international treaties, and high court directives. And nowhere has that mandate been as successfully evaded through a skillfully directed symphony of public-relations scams, filthy politics, and crooked science..”

--Stephen Hawley, *Recovering A Lost River*, Beacon Press, 2011

Upon request NRIC will assist the IG in identifying perpetrators, witnesses and otherwise knowledgeable people, and provide leads to documentation in addition to the citations provided. Bonneville upper management is practiced at covering up its incompetence and scofflaw behavior with confidentiality agreements, economic threats and political intimidation. The IG’s legal investigative powers will be necessary to compel testimony from the perpetrators and to protect witnesses from retribution. The following overview and representative examples of Bonneville upper management’s scofflaw behavior are provided as a starting point for the requested IG investigation.

³ Details posted in the password accessible directory on the NRIC website.

⁴ E.g., *Practiced At the Art of Deception: The Failure of Columbia Basin Salmon Recovery Under the Endangered Species Act*, Michael C. Blumm, Erica J. Thorson, and Joshua D. Smith. *Environmental Law*, Vol. 36:709, 2006. *Recovering a Lost River, Removing Dams, Rewilding Salmon, Revitalizing Communities*, Steven Hawley. Beacon Press. 2011. <http://lastsalmonceremony.blogspot.com>.

DESCRIPTION OF THE ALLEGED IMPROPRIETY

BONNEVILLE POWER ADMINISTRATION'S UPPER MANAGEMENT FOR MORE THAN THREE DECADES HAS REJECTED ITS LEGAL DUTY AND KNOWINGLY AND SYSTEMATICALLY WASTED AND OTHERWISE MISUSED FEDERAL FUNDS TO SUBVERT THE SALMON RESTORATION MANDATE OF THE 1980 NORTHWEST POWER ACT.

Notwithstanding multiple laws to the contrary, Bonneville asserts exclusive ownership of the unappropriated flows of the main stem Columbia and lower Snake Rivers. Bonneville uses this canard to claim as a "cost" any diminution of energy production required to comply with salmon protection laws which extend at least as far back as the 1945 Rivers and Harbors Act authorizing construction of the four Army Corps of Engineers dams on the lower Snake River. In 1958 Congress amended the Fish and Wildlife Coordination Act to ensure that "wildlife [including salmon] conservation shall receive equal consideration and be coordinated with other features of water-resource development programs."⁵ As discussed subsequently, the Northwest Power Act of 1980 mandated salmon be restored and given "equitable treatment" with all other uses of the Federal Columbia River Power System.

Bonneville upper management ignores these provisions of law and relentlessly claims phony "opportunity cost" of power foregone to protect salmon in order to subvert the law by deceiving the public, elected officials and the federal courts. NRIC confronts this issue in NRIC v. NPCC briefs currently before the Ninth Circuit Court of Appeals.⁶

The devastating effect on Snake River salmon of four negligently ill-designed dysfunctional Army Corps of Engineers dams on the lower Snake River was the impetus for the salmon restoration provisions of the Act.**Bonneville upper management's scofflaw behavior and profligate waste and misuse of federal funds is focused on defending the four lower Snake River dams no matter what the cost to society now and in the future.**

A succession of administrators and other upper management personnel for a half-century zealously subverted multiple laws designed to protect salmon produced in the vast pristine headwaters of the Snake River. Consequently, Snake River salmon and dependent economies were decimated by four dysfunctional federal dams on the lower Snake River in southeastern Washington.

The Snake River Basin contains the largest contiguous wilderness and roadless land complex in the coterminous United States. This 14 million-acre area includes more than 4.4 million acres in 6 Wilderness Areas, more than 700 miles in 12 Wild and Scenic Rivers, and nearly 1 million acres within 2 National Recreation Areas.

Contrary to congressional intent in authorizing these dams, the Army Corps of Engineers' design negligently made no provision for juvenile salmon to migrate from the headwaters of the Snake River to the Pacific Ocean. Untold hundreds of millions of federal dollars were spent retrofitting the dams in unsuccessful attempts to overcome the fatal design flaw. Bonneville upper management fought every effort to improve salmon survival by spilling water at the dams, long known to be the most effective of the poor options

⁵ 16 USC § 661.

⁶ Northwest Resource Information Center v. Northwest Power and Conservation Council, Ninth Circuit No. 10-72104. September 21, 2012. Posted at <http://www.nwrhc.org/reports.html>.

available with the dams in place. This resulted in an ongoing chain reaction of ecological, economic and social damage over the many thousand-mile freshwater and marine range of Snake River salmon.

The Impacts

- The adverse ecological impacts range the gamut from depriving ESA-listed bull trout and a multitude of other freshwater organisms of critical marine-derived nutrients 700 miles inland, to impoverishing ESA-listed killer whales by denying them a critical food resource.

ESA-listed sea lions preying on inconsequential numbers of ESA-listed salmon are killed in a “salmon protection” public relations scam while Bonneville and the Corps of Engineers slaughter ESA-listed salmon by the millions at the four dysfunctional lower Snake River dams.

- The adverse economic impacts are widespread. Untold hundreds of millions of dollars have been lost to local, state, regional, and national economies; untold billions more in future economic benefits are at risk.
- The U.S. and Canada, states, Native American Indian tribes, local communities, and neighbors have been pitted against each other in internecine conflict over drastically reduced supplies of fish.
- Treaties with Native American Indian tribes and Canada have in practical effect been abrogated. The intent of laws and social contracts with all people of the Northwest and the Nation has been thwarted.
- The rule of law has been made a mockery.
- The region is wracked with legal, civic and political turmoil that hemorrhages enormous amounts of human and economic capital and diverts attention from pragmatic solutions that would produce substantial national and Northwest economic benefits.
- Governance, notably fish and wildlife management, has been politically corrupted at federal, regional, state, and tribal levels of government; the role of science in public decision making has been debased.
- Many hundreds of millions of federal dollars have been deliberately wasted on no- to low-priority salmon enhancement projects to create a smokescreen for the scofflaw behavior of Bonneville, Corps and NOAA Fisheries upper management.
- Untold thousands of human lives have been damaged.

The Northwest Power Act

Congress responded to the plight of Snake River salmon with a sweeping salmon restoration mandate in the Pacific Northwest Electric Power Planning and Conservation Act of 1980.⁷

...conservation and enhancement of the great migratory fish and wildlife populations of the Pacific Northwest, something of great concern to the sportsmen and conservationists of this Nation, are for the first time, a matter of urgent priority under this legislation. They are placed on a par with other purposes for Federal facilities in this area. If the fish populations of the Pacific Northwest are to be

⁷ Pacific Northwest Electric Power Planning and Conservation Act, Pub. L. No. 96-501. (1980)

restored to the sportsmen, the Indians and the commercial fishermen, this is the mechanism which will do it.⁸

The Act established a regional council comprised of representatives of the states of Oregon, Washington, Idaho and Montana. It was charged with the duty to quickly develop a regional plan to restore salmon decimated by the FCRPS while ensuring an economical and reliable regional power supply. Federal operating agencies—Bonneville, Corps and Bureau of Reclamation—were charged with acting in ways consistent with the Council’s plan.

To decisively end Bonneville’s long-standing, self-imposed hegemony over the main stem Columbia and Snake Rivers, Congress held that thereafter salmon were to be treated “on a par” with, as a “co-equal partner” with, and receive “equitable treatment” with other uses of the Federal Columbia River Power System.

It is not the Committee's intention to make fish and wildlife superior to power or other recognized needs. But it is the intention of the Committee to treat fish and wildlife as a co-equal partner with other uses in the management and operation of hydro projects of this region.⁹

The Act decisively countermanded Bonneville’s transparently false long-standing claim it did not have the legal authority to change the FCRPS as necessary to protect salmon and dependent economies. Bonneville was definitively charged with the duty—*independent of the regional council*—to acquire resources and take other measures as necessary to mitigate the adverse effects of the FCRPS on salmon.

Bonneville upper management supported the salmon restoration provisions of the Act in order to get the energy-related provisions it wanted from it. It was a bait and switch. When the Act became law, Bonneville immediately doubled down on its traditional scofflaw behavior. It used federal funds to aggressively lobby, organize, script and orchestrate political and legal opposition to the salmon restoration provisions of the Act. The salmon were not restored; Bonneville and its collaborators eventually drove them onto the List of Endangered Species and continue to collaborate to keep them there.

In a suit against Bonneville initiated by NRIC, the Ninth Circuit Court of Appeals affirmed Bonneville’s independent duty to make changes in the Federal Columbia River Power System as necessary to comport with the salmon restoration provisions of the Act.

In Public Utility Dist. No. 1 of Douglas County we explained one additional element of BPA's responsibilities under paragraph (i). We explained for the first time that a federal agency could not satisfy its equitable treatment responsibilities under paragraph (i) simply by adopting the Council's program under paragraph (ii). 947 F.2d at 392. *We recognized that if the Council's Program fails to ensure adequate fish survival, BPA would be required to take additional measures under paragraph (ii). Id.*¹⁰ [Emphasis supplied.]

The court also held that Bonneville’s obligation is not procedural, but substantive. It requires results. Results opposite from those produced by Bonneville upper management’s 30-year refusal to do its duty and by its aggressive actions to subvert the Act.

⁸ 126 Cong. Rec. H10680 (Rep. Dingell).

⁹ Representative John Dingell in *Congressional Record* December 1, 1980, Extension of Remarks.

¹⁰ *N.W. Env'tl. Def. Ctr. v. Bonneville Power Ass'n*, 117 F.3d 1520 (9th Cir. 1997).

These federal court decisions fell on deaf ears in the Department of Energy. Bonneville upper management used DOE's deafness as license to keep doubling down on its scofflaw behavior.

THE DOE PROGRAM AFFECTED BY ALLEGED MISCONDUCT

DOE programs affected include: operations of the Bonneville Power Administration per se; operations of and sale of power from the Federal Columbia River Power System; legal requirements for equitable treatment and joint production of hydropower and salmon; integration of hydropower, wind, conservation and other energy resources.

Collateral Damage

While Bonneville upper management was preoccupied with defending its hegemony over the Snake River commons and protecting four dysfunctional federal dams from the law, it neglected its core business and wasted hundreds of millions of federal dollars. Representative examples:

- Bonneville upper management negligently failed to plan for integrating hydropower operations and the large amount of new wind generation coming on line in response to federal policy initiatives. It had to be forced by the Federal Energy Regulatory Commission to honor transmission contracts with wind generators.¹¹
- Bonneville upper management failed to do due diligence in contracting to provide energy to a privately owned aluminum smelter and stuck the public with a \$226 million loss and a devastated economy in Longview, Washington.¹² A Freedom of Information Act request revealed that Bonneville's internal audit of its own negligent behavior had been compromised by prior Bonneville deals with the perpetrator of the fraud. Characteristically, no one in Bonneville upper management was ever held accountable.
- Upper management paid insufficient attention to implementing the residential exchange provided for in the Northwest Power Act. Characteristically, it sought to bribe and intimidate intended beneficiaries with federal funds and call it a "settlement". (See Columbia River Fish Accords "settlement" in item 3 following.) When challenged in court, Bonneville characteristically argued the court must defer to Bonneville's discretionary authority. The Ninth Circuit Court of Appeals didn't buy that argument.

BPA cannot acquire an NBA franchise just because it can be accomplished by contract; BPA has broad authority to settle claims, but it cannot buy timeshares in the Bahamas by calling it a "settlement."¹³

Bonneville was belatedly forced into a \$3.3 billion settlement which in turn forced a 7.8 percent increase in its wholesale power rate.¹⁴

¹¹ Federal Energy Regulatory Commission, Docket No. EL11-44-001, Order Denying Rehearing. December 20, 2012.

¹² For details on this costly Bonneville upper management fiasco and the characteristic attempted cover-up, see <http://www.bpawatch.com/newsletters/BPANewsletter2-11-2-07.pdf>.

¹³ Portland General Electric et al v. BPA, F.3d, WL 1288786 (9th Cir. 2007); see also Golden Northwest Aluminum et al. v. BPA, F.3d, WL 1289539 (9th Cir. 2007); Public Utility District No. 1 of Snohomish County, et al. v. BPA, F.3d (9th Cir. 2007).

- On February 15, 2013, an administrative law judge for the Federal Energy Regulatory Commission found Bonneville guilty of illegally manipulating the market by limiting electricity supplies and overcharging California utilities in the summer of 2000. This resulted in high prices and rolling brownouts and blackouts. Pacific Gas & Electric was driven into bankruptcy. If the five-member Commission adopts the judge's decision, Bonneville and its co-manipulators may be forced to pay California consumers almost \$1 billion in refunds and an additional \$600 million in interest.¹⁵

DATES OF ALLEGED WRONGDOING

December 30, 1980 enactment of the Northwest Power Act—to date.

HOW NRIC IS AWARE OF ALLEGED IMPROPRIETY

The consequences of Bonneville upper management's scofflaw behavior and waste of federal funds are in plain view.

Three decades after Congress declared salmon restoration a "matter of urgent priority" and the Act was signed into law, Snake River salmon have not been restored as required by the Northwest Power Act of 1980. Instead, they were driven onto the List of Endangered Species through the scofflaw actions of Bonneville upper management and its collaborators.

The resulting ecological, economic and social damage extends throughout the salmon's migratory range extending 700 miles inland and thousands of miles along the Pacific Coast.

The Northwest Region is wracked with civic and political discord and interminable costly litigation in the federal courts.

The regional energy system is at risk of draconian intervention by the federal courts which repeatedly have declared illegal Biological Opinions prepared under aegis of NOAA Fisheries but which were largely scripted by Bonneville upper management and its shills within NOAA Fisheries.

Avoidable/Profitably Repairable Disaster

It is incontrovertible that Bonneville upper management could have fulfilled its legal duty to restore salmon decimated by the FCRPS while maintaining a reliable and economical power supply and, thereby, produce enormous net social benefits instead of the enormous net social costs its scofflaw behavior is imposing on the region and the Nation.

Bonneville upper management simply lies when it claims/implies breaching the four dysfunctional dams on the lower Snake River would cause onerous increases in rates paid for electricity or otherwise jeopardize an economical and reliable regional power supply.

¹⁴ See e.g., <http://www.bpawatch.com/newsletters/BPANewsletter1-10-30-07.pdf> and <http://www.sustainablebusinessoregon.com/articles/2011/07/bpa-settles-residential-exchange-dispute.html?page=all>.

¹⁵ <http://www.bloomberg.com/news/2013-02-20/enron-era-ruling-signals-1-6-billion-california-refunds.html>.

Even the Northwest Power and Conservation Council, which decades in the past abdicated its duty and collaborated with Bonneville to subvert the salmon restoration provisions of the Northwest Power Act, grudgingly acknowledged that breaching the four dysfunctional dams on the lower Snake River would not jeopardize the regional power supply. Indeed, that future rates paid for electricity from the federal hydrosystem would be lower than at present.¹⁶

The region has a seasonal surfeit of power at the time of peak juvenile Snake River salmon migration through the lower Snake River. There is enormous untapped potential for regional energy conservation and improved energy efficiency, estimated at 5000-6000 MW in the Northwest Power and Conservation Council's Sixth Power Plan.¹⁷ Other estimates are even higher.¹⁸ Nearly 5,000 MW of wind power recently has come on line.

Properly integrated into the regional energy system the combination of conservation and wind energy is far more than required to replace the 1100 aMWs of energy (most occurring when the region is in surplus and salmon most need a free-flowing river) than would be lost from sequentially deconstructing the four dysfunctional federal dams on the lower Snake River. More wind generation is in the works. Conservation and cogeneration opportunities abound. Solar energy potential, notably in the Intermountain West, is enormous and virtually untapped.

In passing the Northwest Power Act, Congress recognized its salmon restoration mandate would require significant changes in the FCRPS. The Act gave Bonneville new authority to acquire resources as necessary to ensure an economical and reliable power supply while meeting its salmon restoration mandate.

In its obsession with protecting the four dysfunctional dams of the lower Snake River, no matter what the cost to society, Bonneville upper management ignores business-like entrepreneurial opportunities to fulfill its legal duty under the Northwest Power Act, stop the ongoing profligate waste of federal funds, stem the compounding damage, and generate substantial net social benefits for the region.

BONNEVILLE UPPER MANAGEMENT'S WASTE AND MISUSE OF FEDERAL FUNDS AND OTHER SCOFFLAW BEHAVIOR IS SYSTEMIC

As noted, the Northwest Power Act of 1980 definitively imposed on Bonneville—independent of the Northwest Power and Conservation Council's duty to *prepare a plan*—the duty to *take action* to acquire resources and to take other measures as necessary to mitigate the adverse effects of the FCRPS on Snake River salmon and to ensure that salmon receive equitable treatment with all other uses of the FCRPS.

This is the essential context within which to view the following examples of the systemic nature of the scofflaw behavior metastasized in the culture of Bonneville's upper management in the more than three

¹⁶ NRIC's opening brief, pp 34-35, Northwest Resource Information Center v. Northwest Power and Conservation Council, Ninth Circuit No. 10-72104. September 21, 2012. Posted at <http://www.nwric.org/reports.html>.

¹⁷ *Sixth Northwest Conservation and Electric Power Plan*, Northwest Power and Conservation Council, February 2010.

¹⁸ *Bright Future*, NW Energy Coalition, March 2009 at 27, @ <http://www.nwenergy.org/data/Bright-Future.pdf>.

decades since the Act's passage. This is the essential context Bonneville upper management ignores and seeks to disappear from view in its ongoing effort to subvert the Endangered Species Act.

The scofflaw behavior metastasized in Bonneville upper management is systemic. The following examples individually and collectively merit Inspector General investigation.

1. Bonneville upper management blatantly deceived the Obama Administration into adopting the scofflaw Northwest Power Act and Endangered Species Act policies of the G.W. Bush Administration.

During the G.W. Bush Administration, Bonneville and NOAA Fisheries' Northwest Regional Office were headed by political appointees practiced in subverting the salmon restoration provisions of the Northwest Power Act and dedicated to doing the same to the Endangered Species Act. The political influence of powerful members of the Northwest congressional delegation persuaded the incoming Obama Administration to retain Bush appointee Steve Wright as Bonneville Administrator and to appoint reliably politically compliant Will Stelle to head NOAA Fisheries' northwest regional office.

The remaining challenge was to deceive the incoming Obama Administration into buying into the scofflaw policies of the outgoing G.W. Bush Administration.

Setting Up the Con

Bonneville upper management scripted and orchestrated a full-court press with collaborating regional bureaucrats, members of the Northwest congressional delegation, lobbyists for economic interests, WA, MT, and ID representatives on the Northwest Power Council and governors of WA, ID and MT long allied with Bonneville's effort to subvert the Northwest Power Act and Endangered Species Act.

Bonneville upper management notoriously makes a mockery of the federal Anti-lobbying Act. It does not stop at lobbying to generate political support for its legitimate programs; it blatantly uses federal funds to lobby, script and orchestrate political and legal support—including state and tribal governments—to subvert the salmon restoration provisions of the Northwest Power Act and the Endangered Species Act.¹⁹

[it is illegal to use federal funds] . . . to influence in any manner...and official of any government, to favor, adopt, or oppose, by vote or otherwise, any legislation, law, ratification, policy or appropriation.²⁰

In addition to using federal funds to "influence" state and tribal governments to subvert the law, Bonneville upper management uses federal funds to lobby lobbies to lobby in support of subverting the Northwest Power Act and Endangered Species Act. E.g., Northwest River Partners and Public Power Council. The region is awash with evidence.

For example, in December 2009, about seven months after Bonneville upper management orchestrated duping the Obama Administration's Council on Environmental Quality as discussed below, Bonneville

¹⁹ This lobbying for the most part is conducted by Bonneville upper management. In at least one instance Bonneville hired a private lobbying firm to peddle its dirty laundry. See <http://www.bpawatch.com/newsletters/BPANewsletter4-11-05-08.pdf>.

²⁰ 18 USC § 1913.

Administrator Steve Wright was the keynote speaker at the annual banquet of Northwest River Partners. NRP is a lobbying organization that works in close collaboration with Bonneville upper management to politically and legally subvert the Northwest Power Act and Endangered Species Act.

Wright waxed eloquent on the close relationship of the Obama Administration and NRP. He thanked NRP for [in effect] helping dupe the clueless academic Dr. Jane Lubchenco, head of NOAA, into supporting the corrupt BiOp and for their general support. “Thank you for your support, advice, counsel. You got us to where we are.”²¹

Executing the Deception of the President’s Advisors

In April 2009, representatives of Bonneville upper management, NOAA Fisheries, Army Corps of Engineers and Bureau of Reclamation briefed the Obama Administration’s Council on Environmental Quality on the ESA litigation. A Freedom of Information Act request from salmon advocates revealed egregious false statements, distortions and omissions designed to dupe the Administration to adopt as its own the scofflaw Northwest Power Act and Endangered Species Act policies of the G.W. Bush Administration.²²

The federal agencies’ PowerPoint presentation to CEQ encapsulates the systemic nature of the scofflaw behavior orchestrated by Bonneville upper management which has wreaked ecological, economic and social damage of epic proportions.²³

Of course, the PowerPoint presentation is silent on Bonneville Power Administration’s over-arching legal duty under the Northwest Power Act to restore salmon decimated by the Federal Columbia River Power System. It also is silent on the fact that Bonneville upper management used federal funds to orchestrate the collaborative effort that subverted the salmon restoration intent of the Power Act and drove Snake River salmon onto the List of Endangered Species.

Not even Bonneville upper management dares publicly claim actions proposed in the BiOp could fulfill its legal duty under the Northwest Power Act to *restore* Snake River salmon populations and dependent economies devastated by the four lower Snake River dams.²⁴ To do so, of course, would be inconsistent with “disappearing” its legal duty under the Act for more than 30 years. Now it focuses its attention on subverting the Endangered Species Act by spending hundreds of millions of

²¹ See *Recovering a Lost River*, Chapter 9. Upon request NRIC will make available to the IG a video of Wright’s performance before NRP.

²² *Earth Justice, Freedom of Information Act Request*, May 22, 2009. Submitted to Freedom of Information Act Compliance Officer, National Marine Fisheries Service. A subsequent August 11, 2009 Joint Request for a Status Conference filed with the U.S. District Court hearing the ESA litigation—Civ. No. 01-0640-RE (Lead Case), CV 05-0023-RE (consolidated Cases)—details the deception of Obama Administration officials by Bonneville upper management and its regional federal agency collaborators in NOAA Fisheries, Army Corps of Engineers and Bureau of Reclamation. This document is posted in the password accessible directory on the NRIC website. Also posted are memoranda exchanged among the participating federal agencies provided in response to the FOIA request which contain the names of participants and collaborators.

²³ Columbia Basin ESA Litigation Briefing, Council on Environmental Quality, April 28, 2009. IG investigators will have access to the redacted material which no doubt will provide many productive leads in addition to those presented here. The redacted PowerPoint presentation is posted in the password accessible directory on the NRIC website.

²⁴ Bonneville does make that preposterous assertion out of public view in the Accords/MOAs which bribed state and tribal governments to agree to and act on it. See item 3 following.

federal dollars on pseudo-scientific smoke and mirrors in a blatant attempt to exploit the legal deference doctrine.

Representative lowlights from the heavily redacted PowerPoint print-out follow.

- **The presentation highlights the widespread state and tribal support for the BiOp. It neglects to mention that “support” was bought with bribes totaling more than \$1 billion in federal funds.**
- **The PowerPoint presentation contains a litany of patently false doomsday consequences of breaching the four lower Snake River dams. Thus starkly revealing the dams as the focus of Bonneville upper management’s obsession which it seeks to hide from public/political view in the forest of ESA listings throughout the Columbia River Basin.**

It asserts the hydropower lost by breaching the dams would be replaced by thermal generation which would produce large quantities of CO₂. It is silent on the Northwest Power and Conservation Council regional power plan’s priority on conservation to meet new load growth.

It implies wind generation is a threat to hydrosystem flexibility and reliability rather than a private sector resource—encouraged by national policy—that could be creatively integrated into the regional energy system to achieve Bonneville’s dual duty to restore salmon and ensure an economical and reliable energy supply.

The duplicity of the presentation on reliability issues associated with breaching the dams [**verbatim in bold bullets**] is jaw-dropping in its audacity.

- **The Plaintiff’s proposal would reduce generation by 2000 to 3000 MW on average in most fall and winter months during critical water periods.**²⁵

The total installed *capacity* of the four lower Snake River dams is about 3000 MW. Actual energy produced is about 1100 aMW. According to Bonneville’s 2003 White Book, the four lower Snake River dams produce less than 500 aMW of energy during fall and winter months.²⁶

		1-Aug	16-Aug	Sep	Oct	Nov	Dec
Ice Harbor		94	65	127	145	101	108
LoMo		237	176	132	147	101	108
Little Goose		235	174	138	145	102	106
Lower Granite		241	178	145	143	103	108
Total Lower Snake		807	593	542	580	407	430

Source: Bonneville Power Administration 2003 White Book.

²⁵ Verbatim from the PowerPoint presentation to CEQ.

²⁶ 2003 Pacific Northwest Loads and Resources Study, Technical Appendix, Volume 1, Energy Analysis, December 2003. Bonneville Power Administration. Note that here and elsewhere herein we use energy-related data from a variety of easily available sources of different dates, recognizing that not all are fully compatible or necessarily current. The object here is to characterize in order to provide perspective, not to quantify with precision.

- **It is unlikely this magnitude of additional resource could be acquired through market purchases, posing an unacceptable risk to power system reliability or, alternatively, to meeting fish obligations.**²⁷

False, false and false. Trades of this magnitude—500 MW in critical water periods—are common. In any event, sequentially breaching the four lower Snake River dams likely would take more than a decade. Over that period of time replacing 500 aMW during critical water periods would get lost in the regional energy supply rounding errors. Replacing the entire 1100 aMW would have no effect on system reliability or on meeting fish obligations; the effect on rates would be indiscernible; the production of CO₂ would be nil.²⁸

Pose “an unacceptable risk to . . . meeting fish obligations”? In other words, if Bonneville can’t continue to illegally slaughter Snake River salmon at the four dysfunctional lower Snake River dams in order to generate power, it won’t be able to afford to pay for restoring Snake River salmon.

Of course, if the dams were breached, Bonneville would not have to waste hundreds of millions of federal dollars on tributary habitat improvement projects and hatcheries to provide a legal and political smokescreen for its scofflaw activities.

- **It would take three nuclear power plants to replace this capacity.**²⁹

Bonneville’s audacity is also boundless—and obviously matched by CEQ’s credulity. Of course, no one in his or her right mind would propose building 3 nuclear power plants producing about 2600 MW of *firm energy* (3000 MW at 85% efficiency) at a cost of say, \$20 billion, to replace 3000 MW of hydropower *capacity* which produces 1100 aMW of *energy*, only about 500 aMW of which is produced in critical water periods, and most of which is produced when the region has a seasonal surplus of energy.

- **The four lower Snake River dams produce almost as many aMWs as BPA’s conservation programs achieved in 27 years – at an investment of \$2.3 billion.**³⁰

Assume *arguendo* this information is uncharacteristically accurate. It is instructive in ways Bonneville upper management did not intend.

The presented information is an admission that by 2009—28 years after the Northwest Power Act was signed into law—Bonneville’s alleged investment of \$2.3 billion in conservation produced almost as much *energy* (1100 aMW) as the four lower Snake River dams. This compares to \$20 billion, give or take, to replace it with 3 nuclear power plants. It should be obvious why Bonneville would imply the lower Snake River dams, if breached, would be replaced with nuclear power plants. Not that it matters, but in addition to being insane to do so, it would conflict with the Northwest Power and Conservation Council’s regional energy plan which prioritizes conservation to meet future load.

In addition to the purported “reliability issues”, the presentation provided other false and misleading information on the effects of breaching the four lower Snake River dams[**verbatim in bold bullets**], citing

²⁷ Verbatim from the PowerPoint presentation to CEQ.

²⁸ The accuracy of these assertions as characterizations can be verified by any knowledgeable independent energy expert.

²⁹ Verbatim from the PowerPoint presentation to CEQ.

³⁰ Verbatim from the PowerPoint presentation to CEQ.

the 2000 study by the Army Corps of Engineers.³¹ This study was done at the behest of the Northwest Power Council after NRIC sued the Council in the Ninth Circuit Court of Appeals for dereliction of duty in 1994 and won.³²

The Corps of Engineers is the agency responsible for negligently failing to give any consideration whatsoever to migrating juvenile salmon—or to congressional intent—in its design for the four lower Snake River dams. Indeed it is difficult to conceive of a design more deadly to migrating juvenile salmon. Untold hundreds of millions of federal dollars have been spent in unsuccessful efforts to overcome the inherent design flaw.

- **Would only help 4 of the now 13 listed salmon and steelhead species in the Columbia River Basin.**³³

At first blush, this point appears to have the uncharacteristic virtue of being true. It also neatly illustrates the disdain Bonneville upper management has for the intelligence of the people it seeks to deceive.

Given that the four lower Snake River dams are, well, located on the lower Snake River, it would seem to follow that breaching them would not affect, for example, listed salmon produced in upper Columbia River tributaries hundreds of miles away which never encounter the Snake River dams.

At second blush, what appears to be true turns out to be characteristically false. Breaching the four lower Snake River dams would, in fact, benefit other listed salmon. Eliminating the reservoirs on the lower Snake River would reduce huge populations of warm-water fish which bleed downstream into the Columbia River and prey on juvenile salmon produced outside the Snake River Basin. Eliminating the dams and reservoirs would eliminate the dam-induced dissolved nitrogen content and reservoir-induced elevated temperature of the water that flows from the Snake into the Columbia River, thereby benefiting ESA-listed salmon produced outside the Snake River Basin.

Bonneville's intent, of course, is to suggest to the credulous that breaching would *only help a small fraction* of the 13 listed salmon populations. Bonneville neglects to mention that those 4 populations are *100 percent* of the listed salmon produced in the Snake River Basin which contains the largest contiguous wilderness and roadless land complex in the coterminous U.S.

- **Significant impacts on transportation, navigation, power production, air quality and region's economy.**³⁴

This is quintessential Chicken Little doomsday rhetoric from Bonneville's upper management. It is so obsessed with preserving the four dysfunctional dams it is unable to conceive of a business-like approach to converting these ecologically, economically and socially destructive lemons into regional economic development lemonade as required by the Northwest Power Act.

³¹ U.S. Army Corps of Engineers. *Lower Snake River Juvenile Salmon Migration Feasibility Study*, 2000. <http://www.nww.usace.army.mil/lsrc/>. See also @ <http://www.nwric.org/reports/Bearing.pdf> *Duping the Northwest and the Nation, The U.S. Army Corps of Engineers' Economics of Restoring Endangered Snake River Salmon*, Northwest Resource Information Center, December 2000, which debunks the Corps' costs estimates.

³² Northwest Resource Information Center, Inc. v. Northwest Power Planning Council, 35 F.3d 1394 (9th Cir. 1994), cert. denied, 116 S.Ct. 50 (1995).

³³ Verbatim from the PowerPoint presentation to CEQ.

³⁴ Verbatim from the PowerPoint presentation to CEQ.

The Ninth Circuit Court of Appeals held that the Northwest Power Act prevents power losses and economic costs . . . from precluding biologically sound restoration of anadromous fish in the Columbia River Basin . . . so long as an adequate, efficient, economical, and reliable power supply is assured."³⁵

Contrary to Bonneville management's false doomsday rhetoric, the nation and region obviously would not stand paralyzed during the many years required to sequentially breach the dams. Businesslike investments in improved port, transportation and irrigation facilities would prevent adverse impacts on those sectors of the regional economy. The effect on the price paid for energy would be indiscernible and the effect on air quality (CO₂) nil.

In short, the cost of mitigating the effects of breaching the four dysfunctional lower Snake River dams would be modest, and if approached as an investment in the legally required joint production of salmon and hydroelectric energy, it would stop the ongoing profligate waste of federal dollars, stem the enormous ongoing ecological, economic and social damage and produce substantial net social benefits to the region and Nation.

The point here is not to debunk Bonneville's demonstrably false doomsday claims, but to note them as characteristic of Bonneville upper management's obdurate unbusiness-like not-invented-here approach to its legal duty under the Northwest Power Act to make changes in the FCRPS as necessary to restore Snake River salmon. *And, to emphasize the attendant deliberate waste of federal funds for ideological purposes contrary to the law and the public interest.*

• **NOAA Fisheries found, based on the best scientific information available, it is not biologically necessary to include dam breaching as an action or contingency to achieve the survival and recovery of listed stocks.**³⁶

NOAA Fisheries' northwest regional office for decades notoriously has made a mockery of science and of the public trust.

NOAA Fisheries' "best scientific information available" is oxymoronic. NOAA Fisheries found that the four lower Snake River dams were part of the environmental baseline and, thereby, legally immune to the Endangered Species Act (2004 BiOp). That hatchery salmon are the same as wild salmon (the former are abundant and not threatened with extinction, problem solved!). That the ESA does not require ESA-listed salmon to actually be recovered, only that a recovery plan must be produced. That relatively pinpoint-size habitat improvement projects within the millions of acres of pristine Snake River Basin habitats can offset the devastating effects of the four lower Snake River dams.

2004 BiOp Redux

In the 2004 BiOp, NOAA Fisheries, in collaboration with Bonneville upper management, attempted to disappear the four dysfunctional lower Snake River dams into the environmental baseline and out of the purview of the ESA. The federal courts didn't fall for it. But corruption never dies; it just hides out waiting for the coast to clear.

³⁵ Northwest Resource Information Center, Inc. v. Northwest Power Planning Council, 35 F.3d 1394 (9th Cir. 1994), cert. denied, 116 S.Ct. 50 (1995).

³⁶ Verbatim from the PowerPoint presentation to CEQ.

NOAA Fisheries figured the coast was clear on August 15, 2011. It posted on its web site the results of its five-year review of the status of the listed species of salmon. A summary for each species was provided to facilitate public access to the bottom line. The summary for Snake River spring/summer chinook starkly revealed the political rot at the top of NOAA Fisheries.

Under the heading “What threats does this species face?” the existential threat of the four dysfunctional lower Snake River dams—the reason unique-in-the-world Snake River salmon are on the List of Endangered Species—is conspicuously absent.

Repeat for emphasis. NOAA Fisheries, the agency charged with the duty to protect Snake River salmon—which it obviously failed to do—has the duty under the Endangered Species Act to ensure the salmon are not put in jeopardy of extinction. In its August 2011 5-year status review NOAA Fisheries once again disappeared the four lower Snake River dams.

The summary went on to truthfully state:

None of the populations are viable and all are at high risk.
None of the 5 major population groups are currently viable.
The species is not currently viable.

....

The status of Snake River spring/summer chinook salmon has not improved significantly since it was last reviewed in 2005. . .

....

...the biological benefits of habitat restoration and protection efforts have yet to be fully expressed. These benefits may take decades to result in measurable improvements to population viability.

The Snake River salmon killers reacted quickly when they saw the truth in print, although it is really quite amazing they can still recognize it. The summaries were immediately purged from the NOAA web page—according to a NOAA Fisheries spokesperson, “Because some of our constituents objected to the way the information was stated”. But not before NRIC downloaded the summaries.³⁷

“Best Scientific Information Available” Canard

NOAA Fisheries’ “best scientific information available” purports to underpin the BiOp’s five principal elements:

1] A jeopardy standard so low (and lacking in scientific basis) it puts Snake River salmon at high risk of extinction.

In short, NOAA Fisheries, in collaboration with Bonneville upper management, established a population baseline based on years of record low adult returns. Then asserted that if there is a “trend” of one or more adult fish returning over the baseline number, the salmon are not in jeopardy of going extinct (and the four lower Snake River dams are off the ESA hook). Federal District Court Judge James Redden characterized this anti-science as follows:

Federal Defendants argue that if there is any positive growth in abundance or productivity

³⁷ http://www.nwric.org/documents/lastsalmonceremony_2011esa5yearreview.

(i. e. a greater than 1 to 1 ratio of adult returns per spawner), a species is "trending toward recovery" and thus not likely to be 'Jeopardized.'" Does this mean that an incremental survival improvement is sufficient to avoid jeopardy regardless of the already vulnerable status of the species?³⁸

2] Reducing or eliminating court-ordered spill during periods of key downstream migration of juvenile salmon; straining more juvenile salmon from the river at the dams and hauling them in barges hundreds of miles downstream for release in the Columbia River estuary.³⁹

This is the scenario that drove Snake River salmon onto the List of Endangered Species. Results over the past 30 years are irrationally presumed by Bonneville and NOAA Fisheries not to be predictive of the future.

3] Hypothetical increases in salmon production from hypothetical, relatively pinpoint-size, improvements in degraded tributary habitats within the millions of acres of pristine habitat in the Snake River Basin.

As noted previously, the Snake River Basin contains the largest contiguous area of pristine and near pristine salmon habitat in the coterminous United States. There is no lack of quality habitat, only a lack of returning adult fish to utilize that vacant habitat—which is the result of devastating mortality of juvenile fish attempting to pass through the reservoirs and past the four dysfunctional lower Snake River dams.

4] Hypothetical increases in salmon production from relatively pinpoint-size habitat improvement projects within the Columbia River estuary.

Federal Defendants' own scientists have concluded that many of the proposed estuary mitigation measures (and the assumed benefits) are unsupported by scientific literature;⁴⁰

The architects of the BiOp simply determined what hypothetical survival improvement number was needed to meet their faux jeopardy standard, then determined what hypothetical percentage increase in survival they needed to attribute to hypothetical estuary habitat improvements. The number chosen is arbitrary, and for Snake River salmon considered to be preposterous by real scientists.

5] Promises to do other hypothetical stuff in the event all of the above hypothetical stuff doesn't work out as NOAA fisheries confidently predicts (a.k.a. "adaptive management" discussed below).

This is not a joke. It is Bonneville upper management at work with federal dollars in collaboration with NOAA Fisheries. At stake is survival of one of the world's unique, perpetually renewable natural resources. A genetic heritage millions of years in the making, which Bonneville upper management and its collaborators drove to the brink of extinction in 50 years.

³⁸ Letter from U.S. District Court Judge James A. Redden to Counsel of Record, Nat'l Wildlife Fed'n v. Nat'l Marine Fisheries Serv., CV 01-640 RE Case 3:01-cv-00640-RE Document 1844 Filed 05/03/11.

³⁹ The 2008 BiOp proposes to reduce or eliminate spill during key periods of juvenile salmon migration. The court-ordered spill remains in effect while NOAA Fisheries works on the redo of the 2008/2010 BiOp.

⁴⁰ U.S. District Court Judge James Redden letter to Counsel of Record, National Wildlife Federation v. NMFS, CV 01-640 RE, May 18, 2009.

Adaptive Corruption

Bonneville and NOAA upper management saw the legal wind was not blowing in their favor vis-a-vis the 2008 BiOp. In 2010 they cooked up the *Adaptive Management Implementation Plan*, a.k.a. the “adaptive corruption magic shield” and tacked it onto the BiOp.

By wrapping the corrupt BiOp in an elaborate cloak of promises to monitor its promised results, and to adapt as necessary based on the outcome, they seek to make it difficult for the federal court to prove the hypothetical BiOp measures won’t produce the projected hypothetical benefits—i.e., hold that they are arbitrary and capricious—and will be forced to defer to the agencies’ “expertise”. Voila! Another decade or two of delay—which has always been the agencies’ default objective. It was worked very well for them for more than three decades.

They’re betting the court is not up to striking them with a lightning Bolt by refusing to accept more hypotheticals and more decades of studies of the studies and concomitant societal damage as a substitute for *certainty of the results* required by the law.

The BiOp measures cannot reasonably be construed to be based on “science.” This did not escape Federal District Court Judge James Redden in his August 2011 remand of the 2008/2010 Biological opinion.

Defendants do not know exactly what will be needed to avoid jeopardy beyond 2013, or whether those unknown actions are feasible and effective, but they promise to identify and implement something. This is neither a reasonable, nor a prudent, course of action

. . . .

. . . the lack of scientific support for NOAA Fisheries' specific survival predictions is troubling. Although the BiOp concludes that these specific survival improvements are necessary to avoid jeopardy, NOAA Fisheries' own scientists, the independent scientists who reviewed the 2008 BiOp, and the Independent Scientific Advisory Board ("ISAB") have expressed skepticism about whether those benefits will be realized.

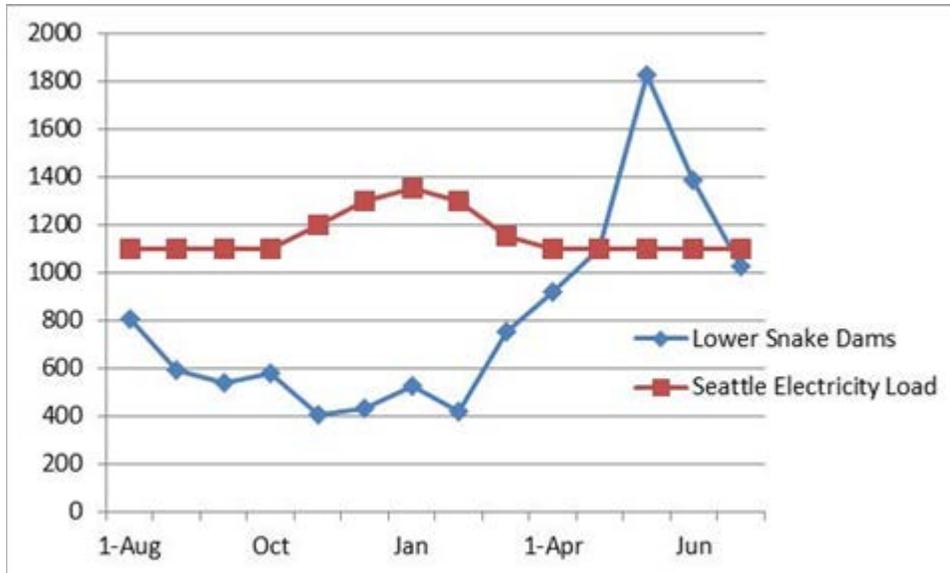
• **These dams produce no carbon emissions, provide enough electricity to power a city about the size of Seattle.**⁴¹

Contrary to the implication, breaching the four lower Snake River dams and replacing the energy with conservation (the priority established in the Northwest Power and Conservation Council’s regional power plan) or a combination of conservation and wind power would produce no carbon emissions.

The most egregious and shopworn deception in the above statement is that the dams “provide enough electricity to power a city about the size of Seattle”. They don’t. Here Bonneville upper management characteristically sought to deceive the credulous CEQ with statistical smoke and mirrors. It succeeded.

The amount of energy produced by the four lower Snake River dams fluctuates dramatically over the course of a year. The average annual output roughly approximates the Seattle’s average annual load—a totally meaningless comparison except for propaganda purposes. As shown in the following graphic, the dams’ energy output fluctuates dramatically throughout the year and is only sufficient “to power a city about the size of Seattle” *a few months per year*.

⁴¹ Verbatim from the PowerPoint presentation to CEQ.



Source: adapted from graphic in Seattle City Light's 2010 Integrated Resource Plan.

The preceding excerpts from the presentation to CEQ are characteristic of Bonneville upper management's ethically challenged, cannot-be-invented-here, unbusiness-like approach to its legal duty under the Northwest Power Act to make changes in the FCRPS as necessary to restore Snake River salmon. With informed third-party guidance, IG investigators will find that many other statements in the presentation and related information were deliberately designed to deceive the Obama Administration. And did so.

Context: Bonneville for >30 years has had legal duty under the NW Power Act to change the hydrosystem as necessary to restore—not just prevent extinction of—Snake River salmon and dependent economies.

2. Bonneville upper management uses federal funds to script and orchestrate sham biological opinions serially rejected as being illegal by the federal courts, and which constitute what may be the most costly and destructive government-funded scientific hoax in United States history.

“... today I've signed a memorandum that will help restore the scientific process to its rightful place at the heart of the Endangered Species Act, a process undermined by past administrations. For more than three decades, the Endangered Species Act has successfully protected our nation's most threatened wildlife, and we should be looking for ways to improve it -- not weaken it.”

--Remarks of President Obama to Commemorate the 160th Anniversary of the Department of Interior, March 3, 2009.⁴²

NOAA Fisheries has the duty to produce the Biological Opinion required by the Endangered Species Act. In its 1993 BiOp what was then National Marine Fisheries Service punted its duty under the Endangered Species Act in a blatant attempt to shield the four lower Snake River dams from the law. NRIC persuaded then-Idaho Governor Cecil Andrus to bring suit and NRIC also filed suit on its own.⁴³ Federal District Court

⁴²http://www.whitehouse.gov/the_press_office/Remarks-of-the-President-to-Commemorate-the-160th-Anniversary-of-the-Department-of-Interior/

⁴³ Nw. Res. Info. Ctr. v. NMFS, 818 F. Supp. 1339, 1441 (W.D. Wash. 1994).

Judge Malcolm Marsh found the BiOp was insufficient to avoid jeopardizing the existence of Snake River salmon.

[T]he process is seriously, “significantly,” flawed because it is too heavily geared towards a status quo that has allowed all forms of river activity to proceed in a deficit situation—that is relatively small steps, minor improvements and adjustments—when the situation literally cries out for a major overhaul.⁴⁴

In its 1995 BiOp and its 2000 BiOp—the latter prepared before the G.W. Bush Administration took office—National Marine Fisheries Service dutifully stated the obvious: the four dysfunctional federal dams on the lower Snake River jeopardized the continued existence of Snake River salmon.

In an effort to protect the dams (and itself from political heat) the agency proposed in the 2000 BiOp to palliate the dams’ destructive effects by tinkering with other comparatively minor sources of salmon mortality, e.g., habitat enhancements, harvest management and improved hatchery operations.

Salmon advocates sued and the federal district court ordered a redo of the BiOp.⁴⁵

The 2004 BiOp—upon which the 2008 version was built—was scripted by G.W. Bush Administration-appointed Bonneville Administrator Steve Wright and NOAA Fisheries Northwest Region Administrator (and former Bonneville VP for Environment and Fish and Wildlife) Bob Lohn. The 2004 BiOp argued that the ESA did not apply to the four lower Snake River dams because they were part of the “environmental baseline”. The federal district court judge was not amused and remanded the BiOp.⁴⁶ NOAA fisheries appealed; the district court remand was upheld by the Ninth Circuit Court of Appeals.

At its core, the 2004 BiOp amounted to little more than an analytical sleight of hand, manipulating the variables to achieve a “no jeopardy” finding. Statistically speaking, using the 2004 BiOp’s analytical framework, the dead fish were really alive. The ESA requires a more realistic, common sense examination. For these reasons, the district court’s rejection of the 2004 BiOp’s jeopardy analysis was entirely correct.⁴⁷

The 2008 BiOp

In the 2008 BiOp (cosmetically amended in 2010 to buy more decades of delay by studying the salmon to death—a.k.a. “adaptive management”) Bonneville and NOAA Fisheries upper management thumbed their collective noses at the court and doubled down on the 2004 BiOp.

They dropped the attempt to disappear the dams into the natural environment and from legal scrutiny. However, they ramped up their preposterous claim that *hypothetical* benefits of relatively pinpoint-size *hypothetical* improvements in degraded tributary habitats within the vast multi-million acre pristine habitats of the Snake River Basin would offset the devastating annual mortality of juvenile salmon at the dams. Ergo,

⁴⁴ Idaho Dep’t of Fish & Game v. Nat’l Marine Fisheries Serv., 850 F.Supp. 886, 900 (D. Or. 1994).

⁴⁵ NWF v. NMFS, 254 F. Supp.2d 1196, U.S. District Court, D. Oregon, May 7, 2003.

⁴⁶ 2005 WL 1278878 (D.Or.)

⁴⁷ 524 F.3d 917 Ninth Circuit Court of Appeals.

the dams would not jeopardize the existence of Snake River salmon *through 2018* (irrationally, before most ongoing habitat improvement projects could produce benefits, if any, but let it go).⁴⁸

In August 2011 Federal District Court Judge James Redden remanded the 2008/2010 BiOp for yet another redo—due no later than January 1, 2014.⁴⁹

The following statement by the judge should disabuse the Inspector General of any instinctive reflex to think that Bonneville and NOAA Fisheries upper management really do not have utter contempt for the will of Congress, the rule of law and the public trust.

In remanding the 2000 BiOp, I instructed NOAA Fisheries to ensure that a similarly ambitious but flawed mitigation plan was certain to occur. Instead of following this court's instructions, NOAA Fisheries abandoned the 2000 BiOp and altered its analytical framework to avoid the need for any RPA. As the parties are well aware, *the resulting BiOp was a cynical and transparent attempt to avoid responsibility for the decline of listed Columbia and Snake River salmon and steelhead*. NOAA Fisheries wasted several precious years interpreting and reinterpreting the ESA's regulations. Also during that remand period, NOAA Fisheries abruptly attempted to abandon summer spill, despite the 2000 BiOp's conclusion that it was necessary to avoid jeopardy. Even now, NOAA Fisheries resists ISAB's recommendation to continue recent spill operations. Given Federal Defendants' history of abruptly changing course, abandoning previous BiOps, and failing to follow through with their commitments to hydropower modifications proven to increase survival (such as spill) this court will retain jurisdiction over this matter to ensure that Federal Defendants develop and implement the mitigation measures required to avoid jeopardy. [Emphasis supplied]

The judge based his remand on impermissible *hypothetical* habitat improvement projects with *hypothetical* benefits. This was the low-hanging legal fruit. He pointedly deferred ruling on the big ticket legal issues of the BiOp's politically driven, high-risk jeopardy standard and faux scientific methodologies until NOAA Fisheries produces the new BiOp.

Because I find that the BiOp impermissibly relies on mitigation measures that are not reasonably certain to occur, *I need not address Plaintiffs' remaining arguments*. I continue to have serious concerns about the specific, numerical survival benefits NOAA Fisheries attributes to habitat mitigation. [Emphasis supplied.]

.....

No later than January 1, 2014, NOAA Fisheries shall produce a new biological opinion that reevaluates the efficacy of the RPAs in avoiding jeopardy, identifies reasonably specific mitigation plans for the life of the biological opinion, *and considers whether more aggressive action, such as dam removal and/or additional flow augmentation and reservoir modifications are necessary to avoid jeopardy*. [Emphasis supplied.]

NOAA Fisheries northwest director Will Stelle publicly responded true to character “. . . the court's order *directs us to focus on habitat*. . . “ [Emphasis supplied.] Thus providing a quintessential example of George

⁴⁸ It is difficult not to notice the corrupt strategy behind assessing the likelihood of jeopardy in 10-year increments—*prior adopting and implementing a long range recovery plan and related actions*. Many have made the necessary effort.

⁴⁹ NWF v. NMFS 839 F.Supp.2d 1117, U.S. District Court, D. Oregon, August 2, 2011.

Orwell's term *blackwhite*, ". . . the habit of impudently claiming that black is white, in contradiction of the plain facts." (1984).

The Con Deepens

NOAA Fisheries and Bonneville are at pains to keep the yawning legal threat to their blatant scofflaw behavior in the BiOp hidden from public and political view. Behind the scenes they are working frantically to further politically derail/corrupt the legal process. The most recent public manifestation of this effort is NOAA Fisheries' recently announced "situation assessment".

As the late comedienne Lily Tomlin once said, "No matter how cynical you get, it's impossible to keep up."

According to Barry Thom, Deputy Regional Administrator, NOAA Fisheries (the odor is distinctly Bonneville upper management) commissioned third party polling organizations ". . . to conduct a 'situation assessment' of regional views about salmon recovery planning in the Columbia Basin in the long term." The responses will be summarized in a public report, not attributable to any source. "We want to ensure our existing and future recovery plans are comprehensive and integrated."⁵⁰

It is inscrutable (at least) how an opinion survey—even if scientifically conducted, unlike this one—could possibly be relevant to NOAA Fisheries' recovery plans or to any other aspect of its legal duty under the Endangered Species Act. Nonetheless, some creative thinkers were able to divine from the quoted nonsensical statement a hidden message that NOAA Fisheries is secretly thinking about responding positively to calls for a collaborative approach to resolving the conflict between the Federal Columbia River Power System and the Endangered Species Act.

A "collaborative approach" to NOAA Fisheries doing its legal duty—which it has obdurately refused to do for decades? It was just four months previous to Thom's emails seeking participation in the "situation assessment" that NOAA Fisheries in its five-year status review for the second time disappeared the four lower Snake River dams as a threat to Snake River salmon.

NOAA Fisheries and Bonneville know what is necessary vis-à-vis Snake River salmon: breach the four lower Snake River dams; operate the reservoir behind John Day Dam at the level it was designed to operate. Once a recovery plan is in place to do those things, it becomes possible to collaborate on a mitigation plan that ensures all stakeholders are kept whole as the region takes action to clean up the disaster created by the Army Corps of Engineers and Bonneville Power Administration and restore Snake River salmon and dependent economies while maintaining an economical and reliable energy supply as required by law. Otherwise, "situation assessments" and calls for open-ended "collaboration" are pure posturing and dangerous to the survival of Snake River salmon.

Following the model employed by the tobacco lobby, Bonneville and NOAA Fisheries for decades have spent hundreds of millions of federal dollars fomenting fake scientific uncertainty and very real civic and political discord; now they seek to collect rent on that investment. If true to form, the results of the "situation assessment" will be used for craven political purposes and to provide a flimsy pretext to seek a delay in court review of the new BiOp due prior to January 1, 2014.

⁵⁰ Email from Barry A. Thom, Deputy Regional Administrator, to Ed Chaney (NRIC) December 11, 2012.

Representative Hastings (R. WA) Reacts

U.S. Representative Doc Hastings (R. WA), Chairman of the powerful House Committee on Natural Resources, took umbrage at NOAA Fisheries' "situation assessment". On February 4, 2013, Hastings wrote NOAA Administrator Jane Lubchenco complaining about its cost to the taxpayers, which is a legitimate complaint. He expressed concern it could "undermine the successful and unprecedented collaboration of federal agencies with the states of Washington, Idaho, Montana and several Columbia River tribes to develop a legally-sound ESA salmon Biological Opinion..."⁵¹

That "successful...collaboration" would be the one produced with bribes totaling more than \$1 billion in federal dollars. That "legally-sound" Biological Opinion would be the one that was rejected by the federal district court (for the fifth time).

Representative Hastings is a one-note demagogue against breaching the dams, even though doing so would be a no-downside economic bonanza for many of his constituents, produce enormous net social benefits for the region, and put an end to the profligate waste of federal funds and the concomitant ecological, economic and social damage.

Hastings said that instead of the situation assessment, "NOAA should be more clearly explaining what is necessary to remove Columbia and Snake River salmon from the Endangered Species List."

Ahem. It is difficult not to notice that NOAA Fisheries and Bonneville upper management have spent decades and hundreds of millions of federal dollars avoiding explaining what is necessary to get Snake River salmon off the List of Endangered Species. The cockamamie "situation assessment" is evidence of how desperate the agencies are to divert attention from the yawning legal threat hanging over their scofflaw behavior.

When the federal court finally forces NOAA Fisheries to clearly explain what is necessary to get Snake River salmon off the List of Endangered Species, i.e., breach the four lower Snake River dams, lower the reservoir behind John Day Dam, Representative Hastings is not going to like it.

Tributary Habitat Improvement Scam

Judge Redden repeatedly warned that he was on to the degraded tributary habitat improvement scam. Here is how he characterized the "best scientific information available" that NOAA and Bonneville could buy with more than \$1 billion of federal funds.

[f]ederal [d]efendants assign implausible and arbitrary survival improvements to tributary habitat actions. . .

. . .
Federal Defendants acknowledge, however, that they are unable to identify any specific projects that will occur between 2013 and 2018, and it is unclear whether they will be able to identify feasible and effective mitigation measures during that period. Indeed Federal Defendants do not know exactly what will be needed to avoid jeopardy beyond 2013, or whether those unknown actions are feasible and effective, but they promise to identify and implement something. This is neither a reasonable, nor a prudent, course of action.⁵²

⁵¹ Hastings to Lubchenco, February 4, 2013.

⁵² NWF v. NMFS 839 F.Supp.2d 1117, U.S. District Court, D. Oregon, August 2, 2011.

The following excerpt from that same order strongly implies Bonneville’s and NOAA Fisheries’ upper management—who to date have no fear of being held accountable for their betrayal of the public trust and the adverse consequences for society—are in effect daring the federal court to enforce the law, and betting it won’t because of the potentially draconian adverse consequences—of which they are, of course, fully aware.

Vacating the 2008/2010 BiOp [the usual judicial response] would remove beneficial measures which even Plaintiffs acknowledge provide some protection for the species. Vacatur could also compel NOAA Fisheries to halt FCRPS operations or face severe penalties under Section 9. *Because such consequences would be disastrous for the listed species, NOAA Fisheries, defendant intervenors, amici, and the region, I decline to vacate the 2008/2010 BiOp.* [Emphasis supplied.]

Bottom Line

To date the Department of Energy has turned a blind eye to Bonneville upper management’s scofflaw behavior manifest in the BiOps repeatedly rejected by the federal court. Leads to documentation of this serial flaunting of the law can be found in the August 2011 Opinion and Order of the federal district court quoted below and in the comprehensive litigation history in the cited documents.⁵³

[the 2004 BiOp was] a cynical and transparent attempt to avoid responsibility for the decline of listed Columbia and Snake River salmon and steelhead.

...

The history of Federal Defendant's lack of, or at best, marginal compliance with the procedural and substantive requirements of the ESA as to FCRPS operations has been laid out in prior Opinions and Orders in this case and is repeated here only where relevant.

Context: Bonneville for >30 years has had legal duty under the NW Power Act to change the hydrosystem as necessary to restore—not just prevent extinction of—Snake River salmon and dependent economies.

3. Bonneville upper management uses federal funds to bribe Native American Indian and state governments in an effort to influence the federal judge in the ESA litigation and to subvert the salmon restoration provisions of the Northwest Power Act and other federal laws.

Bonneville is blatantly attempting to influence the U.S. district court by bribing tribal and state governments with more than \$1 billion in federal funds, a.k.a. the “Columbia Basin Fish Accords”.

- **Economically stressed Native American Indian governments were presented “Godfather bribes” to withdraw their support for plaintiffs’ suit against NOAA Fisheries’ Biological Opinion and to support it in**

⁵³ *The Role of the Judge in Endangered Species Act Implementation: District Judge James Redden and the Columbia Basin Salmon Saga*, Michael C. Blumm and Aurora Paulsen. Lewis & Clark Law School Legal Research Papers, No. 2012.12 www.ssrn.com/abstract=2051638. See also *Practiced At the Art of Deception: The Failure of Columbia Basin Salmon Recovery Under the Endangered Species Act*, Michael C. Blumm, Erica J. Thorson, and Joshua D. Smith. *Environmental Law*, Vol. 36:709, 2006.

public, political and legal venues.⁵⁴

Bonneville upper management reportedly claimed the money was payment to “settle a lawsuit”. Of course, it could *settle* nothing. Bonneville is not a defendant and the recipients of the bribes were not plaintiffs, they were *amici curiae* or other intervenor-defendants (like the States of Idaho, Washington, and Montana) who were already aligned with the federal agencies. Furthermore, the parties that accepted the bribe are required to support the 2008 BiOp in litigation—which contradicts the whole pretense of “settlement”.

In short, the bribe was a blatant propaganda tactic attempting to influence the federal district court judge, political decision makers and the public. In the process, Bonneville also bought from the economically stressed tribes and from the states protection against lawsuits under other federal laws not in play in the ESA litigation, i.e., Clean Water Act⁵⁵ and Northwest Power Act.

The parties agree that the federal government’s requirements under the Endangered Species Act, Clean Water Act, and Northwest Power Act are satisfied for the next 10 years and that they will work together to support these agreements in all appropriate venues.⁵⁶

The Accord signed with the Kalispel Tribe, in common with all Accords, specifically proscribes tribal support for breaching the four lower Snake River dams. This is only noteworthy because the Kalispel Tribe is headquartered about 50 miles north of Spokane, Washington near the U.S./Canada border and has no connection to the four lower Snake River dams. The Kalispel Accord proscription against supporting breaching is not incongruous—it is consistent with Bonneville upper management’s obsession with protecting the four lower Snake River dams and its propaganda strategy aimed at the federal court, elected officials and the public, i.e., “Look at all our support!” (See e.g., the federal agencies’ deception of the Obama Administration’s Council on Environmental Quality discussed previously.)

The Tribe will not directly or indirectly advocate or support the implementation of FCRPS dam breaching as part of this Agreement or for the duration of this Agreement.⁵⁷

The importance Bonneville upper management places on this propaganda strategy, and the hubris of its perpetrators, are illustrated in the following quote from a Bonneville press release quoting Lori Bodi, proud architect of the Accords.

⁵⁴ <http://www.salmonrecovery.gov/Partners/FishAccords.aspx>. Tribal MOAs at <http://www.salmonrecovery.gov/Files/BiologicalOpinions/3-tribe-AA-MOA-Final.pdf>; <http://www.salmonrecovery.gov/Files/Newsroom/KalispelMOAFinal06252012.pdf>.

⁵⁵ As previously noted, the four dysfunctional dams on the lower Snake River negligently were not designed to allow juvenile salmon to migrate downstream as Congress intended in authorizing their construction. In addition, the dysfunctional design makes it impossible to comply with Clean Water Act standards for dissolved nitrogen and temperature. For purposes of the ESA, the Corps of Engineers has been able to hide behind its negligent design, claiming it prevents the Corps from operating the dams in ways that would meet CWA standards. As noted, Bonneville hides behind the fatally flawed design to fight against spill. However, Bonneville upper management is leaving nothing to chance vis-à-vis the CWA in its bribes of the states and tribes.

⁵⁶ Bonneville Power Administration press release on draft “Accord” with Kalispel Tribe, July 11, 2011.

⁵⁷ <http://www.salmonrecovery.gov/Files/Newsroom/KalispelMOAFinal06252012.pdf>.

BPA is pleased to add the Kalispel Tribe to the growing list of Columbia Basin tribes and states that are working together, in partnership, to provide on-the-ground benefits for fish and wildlife, said Lorri Bodi, vice president, BPA Environment, Fish and Wildlife. “These agreements show that the collaboration encouraged by Judge James Redden is the most effective way to leverage results.”

It is very difficult to imagine that Judge Redden, now retired, would agree that bribing economically stressed Native American Indian tribes to switch from opposing the BiOp in court to supporting it, is the kind of “collaboration” he had in mind. Also doubtful the Judge would think kindly of Bodi for associating his name with the way she used the Accords (federal funds) to “leverage results” that include forcing the tribes to agree to and act on preposterous assertions deliberately designed to subvert the Endangered Species Act and Northwest Power Act.

In addition to reviewing the Accords for possible violations of the Anti-Lobbying Act and other federal laws, the IG should investigate rumors that members of Bonneville upper management personally or through agents either implicitly or explicitly threatened tribal governments with withholding federal funds for ongoing and/or proposed tribal programs if they refused the bribes.

- **The Accords/MOAs signed with states, while marginally less odious than those that preyed on economically stressed tribal governments, served the same purposes.**

The MOA with Idaho is a close second. Idaho citizens are among the most severely damaged victims of Bonneville upper management’s subverting of multiple laws intended to protect Snake River salmon. The administration of Idaho Governor Butch Otter figured that damage is a small price for the victims to pay in exchange for a bribe of \$65 million in federal funds from Bonneville.⁵⁸

The Parties agree that the spill and fish transportation measures proposed in the draft BiOps, subject to adaptive management as provided in the FCRPS BA, *satisfy ESA and NPA requirements with respect to salmon and steelhead affected by the FCRPS and Upper Snake Projects.* [Emphasis supplied.]

....

Idaho supports the adequacy of the combined package of the BiOps and this Agreement, and therefore *agrees that breaching some or all of the Snake River FCRPS dams is not necessary to satisfy the ESA, NPA or CWA.* [Emphasis supplied.]

In short, Bonneville upper management used federal funds to pay the states and tribes to enter into contracts to knowingly agree to preposterous assertions and to collaboratively *act on those assertions to subvert the law.*

All parties to these contracts know the spill and transportation measures in the 2008 BiOp cannot satisfy ESA requirements.

Furthermore, they all also know that spill called for in the BiOp, the greater amount of court-ordered spill, or even yet greater amounts of spill, cannot restore Snake River salmon and dependent economies as required by the Northwest Power Act. Indeed, they all know nothing less than breaching the four dysfunctional lower

⁵⁸ http://www.salmonrecovery.gov/Files/BiologicalOpinions/ID_MOA_Final.pdf.

Snake River dams can do that. That knowledge, of course, is the impetus behind Bonneville upper management's profligate waste and misuse of federal funds to create a legal, political and public smokescreen for its scofflaw activities.

The IG should provide the perpetrators in Bonneville upper management the opportunity to rationalize the Columbia River Fish Accords under oath.

In a retrospective interview with Idaho Public Television, retired District Court Judge Redden said, "I think we need to take those dams down".

Judge Redden, who struck down the 2000 BiOp, the 2004 BiOp and the 2008/2011 BiOp, echoed the view of the Western Division of American Fisheries Society.

" . . . based on the best scientific information available, it is the position of the Western Division of the American Fisheries Society that the four lower Snake River dams and reservoirs are a significant threat to the continued existence of remaining Snake River salmon, steelhead, Pacific lamprey, and white sturgeon; and that if society-at-large wishes to restore Snake River salmon, steelhead, Pacific lamprey, and white sturgeon to sustainable, fishable levels, then a significant portion of the lower Snake River must be returned to a free-flowing condition by breaching the four lower Snake River dams. . ." ⁵⁹

• The Northwest Power and Conservation Council collaborated with Bonneville upper management's use of the Accords (federal funds) to subvert the Endangered Species Act and Northwest Power Act.

The Northwest Power and Conservation Council is complicit in using federal funds to bribe tribal governments and to pay off Idaho, Montana and Washington state governments for their political and legal support in subverting the salmon restoration provisions of the Northwest Power Act and in subverting the Endangered Species Act.

In addition to corrupting the BiOp legal proceedings, the Accords bribes also subverted the public process and scientific vetting of projects funded through the Northwest Power Planning Council's Fish and Wildlife Program.

This did not escape the attention or complaints of numerous commenters, including notorious anti-salmon economic interests which closely collaborate with Bonneville upper management to subvert the Endangered Species Act and the salmon restoration provisions of the Northwest Power Act. ⁶⁰

The Council helpfully set the stage for Bonneville's bribes by denying, threatening to deny or implying it would deny funding for ongoing and/or proposed tribal projects. Bonneville stepped in with its blank check on federal funds. When the tribes couldn't refuse the \$1 billion "Godfather" bribe, the Council had a change of heart and helpfully gave the covered projects priority for funding over others in its fish and wildlife program, in some cases without bothering with the normal scientific scrutiny.

⁵⁹ <http://www.wdafs.org/>, June 27, 2011 resolution of the Western Division American Fisheries Society.

⁶⁰ <http://www.bpa.gov/applications/publiccomments/CommentList.aspx?ID=24>. For a cross-section of comments on the Accords' effects on the Council's program and scientific review in general, see [MOA0029](#) Flores/NW River Partners, [MOA0016](#) Gayeski/Wild Fish Conservancy, [MOA0038](#) Buchal and [MOA0027](#) Morrison/Pacific Biodiversity Institute.

All of this activity was actually aimed at the main prize, which was to corrupt the heart of the Council's Fish and Wildlife Program—and the *raison d'être* of the salmon restoration provisions of the Northwest Power Act—i.e., measures dealing with the devastating effects of the four dysfunctional federal dams on the lower main stem Snake River. The Council helpfully adopted the main stem measures of the BiOp as the new “baseline” for the heart of its Fish and Wildlife Program.

At one time the Council's Fish and Wildlife Program included detailed hydrosystem operations for fish and wildlife. This is no longer necessary. The federal agencies that manage, operate, and regulate the federal dams on the Columbia and Snake rivers now have detailed plans for system operations and for each hydroelectric facility intended to improve conditions for fish and wildlife affected by the hydrosystem. These federal agency plans are described and reviewed largely in biological opinions issued by NOAA Fisheries (formerly the National Marine Fisheries Service) and the U.S. Fish and Wildlife Service for the operation of the Federal Columbia River Power System and the Bureau's projects in the Upper Snake.

Thus the circle of scofflaw behavior and betrayal of the public trust was complete. Bonneville upper management, with the Council's support,⁶¹ systematically subverted the salmon restoration provisions of the Northwest Power Act and drove Snake River salmon onto the List of Endangered Species.

The Council then dutifully turned the fate of Snake River salmon over to the federal agencies responsible for driving them to the cusp of extinction. The Council formalized its long-term betrayal of the public trust by basing its 2009 Fish and Wildlife Program's pivotal hydrosystem measures on the BiOp. This paved the way for Bonneville upper management to claim it is acting in a manner “consistent with” the Council's Fish and Wildlife Program as required by the Northwest Power Act.

This collaborative mutually assured destruction of Snake River salmon and betrayal the public trust was difficult not to notice. Almost everyone made the required effort. NRIC noticed and brought suit against the Council's 2010 Sixth Northwest Conservation and Electric Power Plan Power Plan.⁶²

In summary, the Council—in collaboration with Bonneville upper management—for more than 30 years flatly refused its duty to merely develop *a plan* broadly demonstrating how Snake River salmon could be restored while maintaining an economical and reliable energy supply.

This simple task could have been quickly accomplished as prescribed by the Northwest Power Act. The Council knew the devastating effect on salmon of the four dysfunctional dams on the lower Snake River was the reason for the Council's existence. Thirty years after the Act became law, the Council in its 2010 Sixth Power Plan grudgingly acknowledged that breaching the four dysfunctional dams on the lower Snake River would not jeopardize the regional power supply; as noted, future rates would be lower than at present. The Council characteristically refused to act on that knowledge. Instead, the majority vote of the Council was to default to the BiOp, thereby turning the fate of Snake River salmon and dependent economies over to Bonneville and the Corps, the federal agencies responsible for driving them to the brink of extinction.

All this scofflaw behavior and concomitant damage was financed with federal dollars.

⁶¹ For the most part with the notable exception of its Oregon members.

⁶² Northwest Resource Information Center v. Northwest Power and Conservation Council, Ninth Circuit No. 10-72104. September 21, 2012.

Council members who so egregiously betrayed the public trust and collaborated with Bonneville upper management to drive Snake River salmon to the brink of extinction did so with the federal dollars they were being paid to develop a plan restore the salmon.

The Inspector General should determine if it is a violation of law to take federal funds dedicated to restoring the salmon, instead use those funds to subvert the law and drive the salmon to the brink of extinction, then abdicate legal duty—but continue to take the federal dollars.

Context: Bonneville for >30 years has had legal duty under the NW Power Act to change the hydrosystem as necessary to restore—not just prevent extinction of—Snake River salmon and dependent economies.

4. Bonneville upper management systematically uses federal funds to suppress science that does not support its efforts to subvert the Northwest Power Act and Endangered Species Act.

“Under my administration, the days of science taking a back seat to ideology are over. Our progress as a nation — and our values as a nation — are rooted in free and open inquiry. To undermine scientific integrity is to undermine our democracy. . . . I want to be sure that facts are driving scientific decisions — and not the other way around.”

Remarks of President Obama at the National Academy of Sciences Annual Meeting, April 27, 2009,⁶³

- **The Accords/MOAs discussed previously used federal dollars to contractually commit tribal and state governments to agree to blatant scientifically untenable propositions, and to act on those propositions to subvert the Endangered Species Act and the salmon restoration provisions of the Northwest Power Act.**

Scientists within tribal and state agencies are pressured to confine themselves to “science” that supports the scientifically untenable propositions of the BiOp. One of many examples available to the IG investigation is on display in a series of internal memoranda exchanged between Jason Sweet, a Bonneville biologist and Lori Bodi, Bonneville’s Vice President for Environment, Fish and Wildlife,⁶⁴ which were obtained through a FOIA request.⁶⁵

Bodi to Sweet on June 30, 2008:

“...if IDFG is recommending actions for more spill based on, say, delayed mortality and not performance standards, they are not complying with the agreement. If they sign onto a tech report that makes such a recommendation, they are not complying with the agreement.”

Sweet to Bodi on July 16, 2008:

⁶³ http://www.whitehouse.gov/the_press_office/Remarks-by-the-President-at-the-National-Academy-of-Sciences-Annual-Meeting/

⁶⁴ Posted in the password accessible directory on NRIC’s website.

⁶⁵ Hawley v. the United States Department of Commerce, filed February 8th, 2010.

“Hi Lori, as I mentioned on the phone, I’ve reached an impasse with the IDFG rep on how to incorporate the 08 BiOp with its performance standards into the SCT [System Configuration Team]⁶⁶ ranking criteria.”

....

“IDFG does not see that the turbine improvements, estuary work, along with other actions in the BiOp should be ranked as high priority. IDFG does not want to be forced to rank these actions as a high priority in the SCT when compared against other actions that may increase adult returns.”

Sweet to internal BPA mailing list on July 25, 2008:

“The first [of attached emails] is how to handle IDFG’s SCT rep who did not want to recognize the role of the BiOp or the new performance standards in formal SCT criteria. His position was inconsistent with the Accord we signed with the state of Idaho. He has recently had ‘updated guidance and clarification’ from his policy leads and should be ready to play nicely now...we’ll see how long that lasts.”

• Federal scientists are politically muzzled under cover of “administration policy”—as previously noted, policy that is the product of deception—and risk disciplinary action for deviating from the script of Bonneville’s “scientific” hoax.⁶⁷

The ubiquitous scofflaw lawyer Bob Lohn joined the Snake River salmon-killing/lower Snake River dam protection culture in 1986 as general counsel for the Northwest Power Council. Like a bad gene he moved to Bonneville, then back to the Council, all key positions from which to subvert the Snake River salmon restoration provisions of the Northwest Power Act.

In 2001 the G.W. Bush Administration appointed Lohn Northwest Regional Administrator for NOAA Fisheries. From this position Lohn collaborated with Bonneville Administrator Steve Wright to produce the 2004 BiOp which made the four lower Snake River dams part of the natural environment, hatchery fish the same as wild fish, and politically corrupted and debased what constitutes “the best available science”.

To pass on his Snake River salmon-killing genes, Lohn put people from notorious anti-Snake River salmon/pro lower Snake River dams organizations on the federal payroll in positions of authority within NOAA Fisheries.

For example, Bruce Suzumoto, alumnus of the anti-Snake River salmon/pro-lower Snake River dam lobby Public Power Council, was tutored by Bob Lohn when he was at the Northwest Power and Conservation Council. In 2005 Lohn inserted Suzumoto into NOAA Fisheries in charge of the pivotal hydropower measures in the BiOp. Suzumoto serves as policy enforcer over NOAA Fisheries scientists who seek to do their job in service to the public, but who dare not buck “policy” that was created by duping the Obama Administration into adopting G.W. Bush policies and by contempt for the rule of law and the public trust.

⁶⁶ Interagency team that provides recommendations to the Corps of Engineers on expenditures from the Columbia River Fish Mitigation Fund.

⁶⁷ Several notable examples and leads to others are in *Recovering a Lost River, Removing Dams, Rewilding Salmon, Revitalizing Communities*. Steven Hawley, 2011. See especially the chapter Lies, Dam Lies and Statistics. Names that recur in the administrative record of the ESA litigation are Jeff Steir (Bonneville attorney), Bruce Suzumoto and Rob Walton (NOAA Fisheries and alumni of lobbying organizations long dedicated to subverting the salmon restoration provisions of the Northwest Power Act).

A July 10, 2010 article in the Los Angeles Times reported that a representative of the Public Employees for Environmental Responsibility had “. . . heard in the past 16 months from multiple federal fisheries scientists who report that they are under pressure to downplay the impact of dams on wild salmon.”⁶⁸

Of course, Lohn was handsomely paid with federal funds for his years of scofflaw service and betrayal of the public trust. Suzumoto also is paid handsomely with federal funds for his service in furthering the G.W. Bush Administration—now Obama Administration—policy of subverting the Northwest Power Act and Endangered Species Act.

Context: Bonneville for >30 years has had legal duty under the NW Power Act to change the hydrosystem as necessary to restore—not just prevent extinction of—Snake River salmon and dependent economies.

5. Bonneville upper management illegally conspired with a United States Senator in a backdoor maneuver to withhold federal funds and thereby kill an independent science organization that it could not silence with bribes or political intimidation.

In addition to suppressing state, tribal and federal agency scientists, Bonneville upper management also went to extraordinary illegal lengths to silence independent scientists.

Bonneville’s upper management conspired with then Idaho U.S. Senator Larry Craig to defund the Fish Passage Center, an independent group of scientists established to provide data on the interactions of salmon and the FCRPS.⁶⁹

Bonneville upper management did not like science that contradicted its claims in the BiOp, notably regarding the efficacy of spilling water to increase survival of juvenile salmon. Unable to buy off or politically intimidate FPC scientists, Bonneville upper management sought to kill the organization by a backdoor congressional maneuver to withhold federal funding. The Ninth Circuit Court of Appeals found Bonneville’s actions to be illegal.

The apparent point man for Bonneville upper management on this issue was Greg Delwiche, predecessor of Lori Bodi, Bonneville’s current Vice President for Environment, Fish and Wildlife and the proud architect of the scofflaw Accord bribes.

The Ninth Circuit opinion refers to emails from Delwiche responding to a question from Michelle DeHart, Manager of the FPC, about what his (Bonneville’s) thinking was on the future of the FPC given that Senator Craig had inserted language into an appropriations committee report language to the effect that Bonneville couldn’t continue to fund FPC operations. Delwiche responded:

. . . what my thinking is on the Fish Passage Center really isn’t relevant, what’s relevant is what the direction from Washington DC [sic] is. We are merely the implementer of guidance from back there.

⁶⁸ <http://articles.latimes.com/print/2010/jul/10/nation/la-na-science-obama-20100711>.

⁶⁹ The IG should investigate if Bonneville upper management enlisted the help of agents from the private sector, including private consultants to energy interests who collaborate with Bonneville to shield the four lower Snake River dams from the Endangered Species Act and Northwest Power Act.

Bonneville's Delwiche would have you believe that Idaho Senator Larry Craig woke up one morning and thought, in effect, "Without speaking to anyone at Bonneville, I really should try to figure out a back door way to kill the Fish Passage Center that's producing too much science about the juvenile salmon survival benefits of spill that Bonneville doesn't like."

Delwiche submitted a declaration to the court stating Bonneville "had no choice but to follow the committee report language," characterizing it as "unambiguous Congressional direction".

The court disagreed: "slavish adherence to a sentence in a legislative committee report", untied to legislation and contrary to the Northwest Power Act, was not within Bonneville's discretion and was, therefore, illegal.

The United States Supreme Court has declared that we must require that an agency "cogently explain why it has exercised its discretion in a given manner." *State Farm*, 463 U.S. at 48. The only explanation shown in BPA's record for why it transferred the functions of the FPC was that it was responding to congressional committee report language that BPA believed created a binding obligation on it. That is not a cogent explanation because BPA acted contrary to law in concluding that congressional committee report language carried the force of law and bound BPA to transfer the functions of the FPC. Because BPA has not shown a rational basis for its decision to transfer the functions of the FPC to Pacific States and Battelle, we grant the petition for review. We hold that BPA's decision to transfer the functions of the FPC to Pacific States and Battelle was arbitrary, capricious, and contrary to law. We set aside BPA's decision to transfer the functions of the FPC to Pacific States and Battelle and order that BPA continue its existing contractual arrangement to fund and support the FPC unless and until it has established a proper basis for displacing the FPC.⁷⁰

Context: Bonneville for >30 years has had legal duty under the NW Power Act to change the hydrosystem as necessary to restore—not just prevent extinction of—Snake River salmon and dependent economies.

6. Bonneville upper management for political purposes and to deceive the federal court deliberately wastes hundreds of millions of dollars in federal funds on low- to no-priority salmon enhancement projects that it knows cannot possibly fulfill the legal requirements either of the Endangered Species Act or its additional affirmative legal duties under the Northwest Power Act.

The centerpiece of the 2008 BiOp for Snake River salmon is hypothetical benefits of relatively pinpoint-sized hypothetical improvements in degraded tributary habitats in the Snake River Basin which contains more than 14 million acres of largely pristine habitat that require no "improvement", only more adult fish. It is the fish produced in these vast pristine habitats that have been driven onto the List of Endangered Species by the four dysfunctional dams on the lower Snake River.⁷¹

⁷⁰ United States Court of Appeals for the Ninth Circuit. No. 06-70430 <http://www.ca9.uscourts.gov/>

⁷¹ The Snake River Basin contains the largest contiguous wilderness and roadless land complex in the coterminous United States. This 14 million acre area includes more than 4.4 million acres in 6 Wilderness Areas, more than 700 miles in 12 Wild and Scenic Rivers, and nearly 1 million acres within 2 National Recreation Areas.

NOAA Fisheries/Bonneville's upper management claims these hypothetical benefits and new hatcheries funded through the Accords/MOAs, along with further tinkering with the dams and hypothetical benefits of improvements in habitat within the Columbia River estuary, will offset the disastrous mortality of wild salmon produced in pristine habitats that is imposed by the four lower Snake River dams. This, of course, is preposterous on its face and opposite the voluminous scientific knowledge.

Of course, NOAA Fisheries/Bonneville don't have to prove these preposterous claims will result in preventing the dams from jeopardizing Snake River salmon with extinction. The judge is, in effect, required to prove they won't.⁷²

Given the intent and expectation that federal agencies willingly implement laws, Congress grants them broad authority and the courts necessarily give them wide discretion in how they do so. When the agencies go rogue, as in the present instance, they must only create sufficient pseudo-scientific controversy and thereby, uncertainty, so that the court is reluctant to declare their decisions literally "arbitrary and capricious"—a very high bar. This often results in judges having to hold their noses and defer to the agencies' "expertise" under the legal deference doctrine. That, of course, is NOAA Fisheries' and Bonneville upper management's corrupt objective. Their strategy is the magic bullet of "adaptive management" discussed in item 1 under the subhead Adaptive Corruption.

These claims are so preposterous on their face they don't warrant critique. However, to raise the IG's comfort level with that assertion, following are two broadly representative samples of the voluminous scientific knowledge debunking NOAA Fisheries/Bonneville claims about hypothetical benefits of hypothetical, relatively pinpoint-size improvements in degraded habitats.

Even if restoration efforts are large scale (i.e., restoration of many tributary streams) and feasible, if the animal of concern is far ranging with a complex life cycle, factors in other life stages (e.g., passage through mainstem dams) may provide a bottleneck and limit the overall effectiveness of restoration actions.⁷³

...

During the period 1983 to 1987 I personally conducted and supervised research funded by Bonneville Power Administration evaluating the effect salmon and steelhead habitat improvements in Snake River tributaries in Idaho. For purposes of this statement I reviewed the published results of that work and of similar work conducted by others. A list of these documents and related pertinent documents is attached [omitted here] to this statement. In summary, the habitat evaluation and research basically found the following:

Downstream migrant survival did not allow fish populations to respond to rearing habitat enhancement.

⁷² The IG, of course, is well versed in the problem characterized here; others reading this document perhaps less so.

⁷³ Phaedra Budy and Howard Schaller. *Evaluating Tributary Restoration Potential for Pacific Salmon Recovery*. Ecological Applications, 17(4), 2007, pp. 1068-1086. Referring specifically to ESA-listed Snake River spring/summer chinook.

Migration barrier removal increased the rearing potential but the potential was not realized due to the low survival rates of downstream migrants.⁷⁴

• **BiOp Proposals Cannot Possibly Comply with Endangered Species Act**

Bonneville upper management knows that spending hundreds of millions of federal dollars on relatively pinpoint-size projects to improve degraded tributary habitat—within millions of acres of pristine habitat—and on hatcheries, combined with reducing or eliminating court-ordered spill, cannot produce the projected result, i.e., averting jeopardy of extinction vis-à-vis the Endangered Species Act.

Without the court-ordered (or more) spill, the dams and reservoirs and barges would kill most of the hypothetical salmon that would be produced in the hypothetical, relatively pin point-size, tributary habitat improvement projects (while continuing to devastate salmon produced in pristine habitats). Therefore, for purposes of meeting the legal requirements of the Endangered Species Act, the federal funds expended on those projects would be wasted.

With more spill than provided by court order, the empirical evidence suggests sufficient numbers of juvenile salmon produced in the vast pristine tributary habitats *might* survive to avert the threat of extinction and allow recovery of the populations to sustainable levels. However, it is doubtful that anything less than breaching the four lower Snake River dams could *assure* that outcome. In any event, the hypothetical increase in juvenile salmon NOAA Fisheries projects for hypothetical improvements in degraded tributary habitats would be irrelevant. Therefore, for purposes of meeting the legal requirements of the Endangered Species Act, the federal funds expended on those projects would be wasted.

• **BiOp Proposals Cannot Possibly Comply with Northwest Power Act**

Regardless of the effect of maximizing spill (above court-ordered levels) on ESA compliance, the salmon/salmon fisheries restoration mandate of the Northwest Power Act—a much higher standard than under the ESA, requiring affirmative restoration actions from Bonneville and other federal agencies—would not be met.

Bonneville upper management assumes it has successfully relegated its salmon restoration mandate under the Northwest Power Act to the dustbin of history. It will learn otherwise. When it is eventually hauled before the Ninth Circuit Court of Appeals for gross dereliction of its legal duty and betrayal of the public trust, there will be much political wailing and rending of feigned disbelief by those who worked so hard for so many years and spent profligate amounts of federal funds to subvert the salmon restoration provisions of the Act and make them disappear behind the smokescreen generated in pursuit of subverting the Endangered Species Act.

Even with the maximum effective levels of spill, the four lower Snake River dams, their reservoirs and the Corps barges would continue to kill a large percentage of the salmon produced in the vast pristine tributary habitats. As noted above, the legal requirements of the ESA could perhaps, but not certainly, be met through maximizing spill. However, the salmon/salmon fisheries restoration mandate of the Northwest Power Act—a much higher standard than under the ESA—would not be met. The hypothetical increase in

⁷⁴ Statement of former Idaho Department of Fish and Game senior fish biologist Terry B. Holubetz, submitted June 7, 2010 to NOAA Fisheries, Bonneville, Corps of Engineers and Bureau of Reclamation re the 2008 Biological Opinion as supplemented May 20, 2010. Posted in password accessible directory on the NRIC website.

juvenile salmon NOAA Fisheries projects for hypothetical improvements in degraded tributary habitats would be irrelevant. Therefore, for purposes of meeting the legal requirements of the Northwest Power Act, the federal funds expended on those projects would be wasted.

All evidence points to the inescapable conclusion that Snake River salmon/salmon fisheries cannot be restored as required by the Northwest Power Act without breaching the four dysfunctional lower Snake River dams. If the dams are breached, the hypothetical increase in juvenile salmon NOAA Fisheries projects for hypothetical tributary habitat improvement projects would be irrelevant. Therefore, for purposes of meeting the legal requirements of the Northwest Power Act, the hundreds of millions of federal dollars expended on those projects would be wasted.

Bonneville upper management is, of course, fully aware of these facts. No matter. The perpetrators are confident no one will be held accountable—they are only “following policy”. Policy they created by deceiving the clueless Obama Administration into adopting as its own the corrupt scofflaw Northwest Power Act and Endangered Species Act policies of the G.W. Bush Administration.

Context: Bonneville for >30 years has had legal duty under the NW Power Act to change the hydrosystem as necessary to restore—not just prevent extinction of—Snake River salmon and dependent economies.

7. Bonneville upper management knowingly and systematically subverts the wild salmon protection purposes of laws establishing Snake River Basin Wilderness Areas, Wild and Scenic Rivers, National Recreation Areas and federal land management policies.

Salmon protection is a purpose of numerous laws establishing Wilderness Areas, Wild and Scenic Rivers and National Recreation Areas in the Snake River Basin. Other federal land management policies on native species protection flow from numerous statutes such as The National Forest Management Act, The Multiple Use and Sustained Yield Act and Federal Land Management Policy Act.

For example, the Central Idaho Wilderness Act of 1980 states:

...these wildlands and a segment of the Salmon River should be incorporated within the National Wilderness Preservation System and the National Wild and Scenic Rivers System in order to provide statutory protection for the lands and waters and the wilderness-dependent wildlife and the resident and anadromous fish which thrive within this undisturbed ecosystem...⁷⁵

Legislation establishing the Sawtooth National Recreation Area in 1972 has as its first purpose "the protection and conservation of the salmon and other fisheries."⁷⁶

The 2008 BiOp projects a hypothetical bump in Snake River salmon total population size largely via hypothetical, relatively pinpoint-size, improvements in degraded tributary habitats. This is purported to offset the devastating mortality of juvenile salmon at and between the four lower Snake River dams and the delayed mortality of those strained out of the river and transported in barges to the Columbia River estuary.

⁷⁵ Central Idaho Wilderness Act of 1980, PL 96-312, sec. 2(a)(2).

⁷⁶ Sawtooth National Recreation Area Act. 86 Statute 612. PL 92-400. August 22, 1972.

As noted, this is prima facie preposterous. It also reveals another dark side of the BiOp's hollow jeopardy standard.

As noted previously, NOAA Fisheries (guided by Bonneville upper management) established a population baseline based on years of record low adult returns. Then asserted that if there is a "trend" of one or more adult fish returning over the baseline number, the salmon are not in jeopardy of going extinct and, therefore, the four lower Snake River dams are off the Endangered Species Act hook. Federal District Court Judge James Redden characterized this anti-science as follows:

Federal Defendants argue that if there is any positive growth in abundance or productivity (i. e. a greater than 1 to 1 ratio of adult returns per spawner), a species is "trending toward recovery" and thus not likely to be 'Jeopardized.'" Does this mean that an incremental survival improvement is sufficient to avoid jeopardy regardless of the already vulnerable status of the species?⁷⁷

However impossible in the absence of court-ordered or more spill, assume *arguendo* that relatively pinpoint-size improvements in degraded tributary habitats actually produce an increasing trend in the number of adult returning salmon over the BiOp's jeopardy baseline number. Salmon produced in vast pristine habitats within Wilderness, National Recreation Areas, Wild and Scenic Rivers and other undeveloped federal lands would continue to be subjected to devastating levels of mortality imposed by the four lower Snake River dams.

Allowing the four lower Snake River dams and the Corps of Engineers' barges to continue killing a high percentage of the fish produced in these statutorily protected areas while Bonneville/NOAA hypothetically improve degraded fish habitat with hypothetical results, plainly violates with the intent of these federal laws and policies of similar intent, to say nothing of doing violence to common sense.

Context: Bonneville for >30 years has had legal duty under the NW Power Act to change the hydrosystem as necessary to restore—not just prevent extinction of—Snake River salmon and dependent economies.

8. Bonneville upper management systematically fights against spilling water at the lower Snake River dams—the action it knows is essential to preventing extinction of Snake River salmon.

Here we address Bonneville upper management's attempt to subvert the Endangered Species Act by resisting spill at the dams. The bigger picture is that Bonneville upper management knows that due to the dams' inherent fatal design flaw, even spilling water at the four lower Snake River dams to the maximum possible extent cannot improve juvenile salmon survival enough to meet the much higher salmon/fisheries restoration intent of the Northwest Power Act.

Bonneville upper management's obdurate opposition to spilling water at the four lower Snake River dams to improve survival of ESA-listed salmon provides a quintessential example of the systemic nature of its scofflaw behavior.

⁷⁷ Letter from U.S. District Court Judge James A. Redden to Counsel of Record, Nat'l Wildlife Fed'n v. Nat'l Marine Fisheries Serv., CV 01-640 RE Case 3:01-cv-00640-RE Document 1844. Filed 05/03/11.

As noted, the four federal dams on the lower Snake River were not designed to allow juvenile salmon to migrate downstream as Congress intended in authorizing their construction. Despite spending untold hundreds of millions of federal dollars, the dams' fatal design flaw could not be overcome—Snake River salmon were driven onto the List of Endangered Species.

Spilling water and juvenile salmon is the most effective of the poor available alternatives for improving survival so long as the dams are in place. Bonneville upper management knows this. It knows that spill is crucial to prevent extinction of Snake River salmon, but tenaciously fights against spilling water and has to be forced to do so by federal court order.

Despite court orders, Bonneville upper management fanatically persists in fighting against spill. It uses federal funds to suppress spill-related science, to defy court orders on spill, to add costly appurtenances to reduce spill and increase power generation under the pretext of improving juvenile fish survival (removable spillway weirs), to lobby against science-based requests for additional spill, to reject scientists' request to modify existing spill.

- **Bonneville upper management attempted to cover up its deliberate illegal violation of court-ordered spill designed to reduce mortality of ESA-listed Snake River salmon.**

A whistle-blower reported to the federal district court that Bonneville upper management and its accomplices at the Corps of Engineers had covertly violated an agreement to spill water to improve the survival of ESA-listed Snake River salmon.

On April 10, 2007 the court received an anonymous phone message alleging that Bonneville Power Administration (BPA) intentionally violated biological fish restrictions during "the first part of April, end of March" to satisfy its hydro-power commitments, and sought to declare an emergency to conceal the variance.⁷⁸

Caught red-handed, Bonneville tried to cover up the cover-up by claiming there was a "system emergency." Federal District Judge James Redden was not amused.

This was not a system emergency. It was a marketing error, and ESA-listed salmon and steelhead paid the price. This, the law does not permit.

...

Apparently, BPA's sales commitments to customers always trumps its obligation to protect ESA-listed Species.

- **Bonneville upper management lobbied the State of Washington to refuse fish scientists' request to change (lower) dissolved nitrogen standards to comport with the State of Oregon and thereby allow more spill to improve juvenile salmon survival.**

In 2007 salmon advocates petitioned the Washington Department of Ecology to lower its standard for dissolved nitrogen below dams on the main stem Columbia and Snake Rivers to comport with the Oregon standard. The purpose of the request was to act on new information which demonstrated the Oregon

⁷⁸ Opening sentence of May 23, 2007 Opinion and Order, CV 01-640-RE, United States District Court, District of Oregon, Judge James A. Redden.

standard—which allows more spill/nitrogen at the dams—would increase survival of ESA-listed juvenile salmon attempting to migrate downstream.

Bonneville lobbied WDOE to refuse the salmon advocates' request. Bonneville collaborated with Northwest River Partners, a pork barrel lobbying organization that works closely with Bonneville to subvert the Endangered Species Act and The Northwest Power Act. River Partners apparently discovered a heretofore unknown concern about the effects of nitrogen supersaturation on non-salmonid species and intervened in the case in opposition to changing the standard.

Despite the heavy weight of scientific evidence supporting the salmon advocates' request, WDOE ruled against adopting the Oregon standard. Salmon advocates brought suit. The court upheld the state's decision.⁷⁹ The court basically held that salmon advocates had not definitively proved that non-salmonid species would not be harmed by increased nitrogen levels, i.e., that they would move to unaffected parts of the river. Therefore, the court said it must give WDOE "wide discretion", and held the agency "did not act arbitrarily and capriciously" in denying the petition.

• **Bonneville upper management refused fish scientists' request to *modify existing spill* to improve salmon survival even when the requested modifications would not violate the parameters dictated by the quid pro quo Accords/MOAs, and would not exceed WDOE nitrogen standards.**

As noted elsewhere, Bonneville upper management obligated the expenditure of more than \$1 billion dollars in federal funds in Accords/MOAs with Northwest states and Native American Indian Tribes with the blatant quid pro quo that their scientists participating in technical forums dealing with operations of the FCRPS would not press for spill in addition to that contained in the 2008 BiOp (which is less than currently ordered by the court).

Subsequently, fish scientists discovered that *modifying the existing spill pattern* at some dams could improve juvenile Snake River salmon survival without violating the prohibition on discussing *additional spill* or exceeding Washington's dissolved nitrogen standard. They petitioned Bonneville and the Corps to do so.⁸⁰ The agencies did not deign to respond.

This is yet another example of Bonneville's scofflaw obsession with maintaining its hegemony over the Snake River commons. No matter what the cost in wasted federal funds, no matter what the cost to society, and no matter what its legal obligations under the Northwest Power Act to protect and restore salmon decimated by the FCRPS, spill is per se taboo *even when it does not reduce the agency's revenue*.

Context: Bonneville for >30 years has had legal duty under the NW Power Act to change the hydrosystem as necessary to restore—not just prevent extinction of—Snake River salmon and dependent economies.

9. While resisting fish scientists' efforts to *increase spill*, Bonneville upper management attempted to cover up its negligent failure to effectively integrate wind energy into the FCRPS

⁷⁹ Northwest Sport Fishing Industry Association, et al. v. Washington Department of Ecology, Court of Appeals for the State of Washington, Division II, Opinion, case No. 42364-2-II.

⁸⁰ FPP Change Forms, Change Request Number: Lower Monumental, 12-15-11 and McNary, October 30, 2009 posted in the password accessible directory on NRIC's website.

by falsely claiming it was shutting down wind generators to limit spill in order protect salmon from spill-induced nitrogen at the dams. [See previous items 5 and 8 for context.]

Approximately 5000 MW of wind-generated energy has been developed within the Columbia River Basin with more in the offing. This enormous new resource, developed by the private sector with the encouragement of national policy, escaped the attention of Bonneville upper management preoccupied with subverting the Northwest Power Act and Endangered Species Act.

The vast majority of juvenile Snake River salmon migrate through the lower Snake River during peak spring runoff when the region typically has a surplus of energy. During high flow years, the dams are unable to use the entire flow for energy production and large volumes of water are uncontrollably spilled through the dams. As previously noted, because the dams were not designed to pass juvenile salmon as Congress intended in authorizing their construction, and despite untold hundreds of millions of federal dollars spent in unsuccessful efforts to overcome the fatal design flaw, this uncontrollable spill can create high levels of dissolved nitrogen which can be hazardous to juvenile salmon.

During the high spring runoff in 2011, Bonneville's negligent failure to integrate wind energy into the regional power supply created a particularly large energy oversupply problem. Bonneville decided it would ignore contracts to provide access to its transmission lines and sought to curtail wind generators so it didn't have to transmit their power and, thereby, make more money selling federal power.

Characteristically, Bonneville upper management attempted to cover up its behavior by blaming its favorite scapegoat, salmon. Actually, Bonneville cast itself as shutting down wind generators *in order to protect salmon* against high dissolved nitrogen levels below the dams. The scientific evidence gathered during the shut-down period contradicted that claim.⁸¹ As noted previously, the Federal Energy Regulatory Commission intervened and forced Bonneville to honor contracts with the wind generators.

• **Connecting the dots on spill. What's wrong with this picture?**

Concurrent with illegally violating court-ordered spill, suppressing and ignoring spill-related science, attempting to kill an independent science organization that produced science on spill Bonneville didn't like, and systematically fighting fish scientists' efforts to *increase spill*, Bonneville upper management baldly used the potential effects of spill-induced nitrogen on salmon as the false pretext for *limiting spill* and shutting down wind generators so it could sell more energy from the federal dams.

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⁸¹ For a concise lay summary of this issue see *Learning from the Fish, The Biological Effects of Bonneville Power Administration River Management, Including Its Wind Power Curtailments, on Ocean-bound Columbia and Snake River Salmon in 2011*. The Save Our Wild Salmon Coalition, September 2011. <http://www.wildsalmon.org/images/stories/PDFs/TDG/final.GBT.report%209-21-11.pdf>.