



Northwest Resource Information Center

Box 427, Eagle, Idaho 83616 USA ■ VOICE & FAX 208.939.0714 ■ edchaney@nwrlic.org

Governor Jay Inslee
Office of the Governor
PO Box 40002
Olympia, WA 98504-0002

April 2, 2014

Governor Inslee:

In a letter dated July 12, 2013 NRIC appealed to you to use the power of your office to help bring an end to the decades-long betrayal of the public trust and subverting of the rule of law by Bonneville Power Administration and the Northwest Power and Conservation Council.

NRIC asked that you take the following actions:

1. Ask for an Attorney General opinion on the legality of the *2008 Columbia Basin Fish Accords* agreements between state governments and Native American Indian tribes and Federal Columbia River Power System "Action Agencies". [Is it legal to use federal funds to suborn state and tribal governments to support subverting federal laws?]
2. Instruct Washington's Council member Tom Karier to recuse himself from participating in pending amendments to the Council's 2009 Fish and Wildlife Program/2010 Sixth Power Plan due to conflict of interest. [Karier was instrumental in negotiating the Accords agreements which subvert the law he is taking public funds to implement.]
3. Initiate collaboration with Montana Governor Bullock and Oregon Governor Kitzhaber to: a] Reform the Council and end its decades-long betrayal of the public trust and concomitant ecological, economic and social damage to the region and nation; b] Petition President Obama to collaborate in a joint state/federal initiative to stop the ongoing misuse of federal funds by federal agencies (led by Bonneville Power Administration) to subvert the salmon restoration provisions of Northwest Power Act of 1980 and the Endangered Species Act. [NRIC believes that if the President finds out what these federal agencies are doing in his administration's name he would immediately put a stop to it.]

The decades-long betrayal of the public trust that is causing enormous ecological, economic and social damage in the region is taking place in real time in plain view.

The Council currently is formulating proposed amendments to its 2009 Fish and Wildlife Program. The fix is in. As discussed in NRIC's July 12, 2013 letter, the Council collaborated with Bonneville to: 1] limit the Program's pivotal main stem measures and associated changes in the Federal Columbia Power System to whatever Bonneville Power Administration will allow¹; 2] use federal funds to suborn state and tribal government to support subverting the salmon restoration mandate of the Northwest Power Act.²

¹ In its 2009 Program the Council, with Karier's support, adopted as its baseline the main stem hydrosystem measures of the Endangered Species Act Biological Opinion. The BiOp has been serially rejected by the federal courts. The Council does not even bother pretending that the BiOp's main-stem hydrosystem measures would restore Snake River salmon and fisheries as required by the Northwest Power Act.

² Via the Accords.

The attached documents will bring you up to date on related actions NRIC has taken since the July 12, 2013 letter which provide additional insight into the depth of the ongoing costly betrayal of the public trust.

Attachment 1 is a letter to Council Chair Bill Bradbury asking for full public disclosure of how Council decision-making on pending proposed amendments to its 2009 Program has been fatally compromised. It references the recent “smoking gun” public statement of Idaho council member Bill Booth that due to the terms of Idaho’s Accord contract, he could not vote for anything that was not in the BiOp.³

Attachment 2 is NRIC’s comments on the Council’s *Methodology for Determining Quantifiable Environmental Costs and Benefits* contained in Appendix P to the *Sixth Northwest Power Plan*.⁴ As noted in NRIC’s comments, the proposed methodology reflects the Council’s systematic—and so far successful—effort to hide from the public and from decision makers the enormous ecological, economic and social costs of the Council’s three decade-long effort to subvert the salmon and fisheries restoration mandate of the Northwest Power Act of 1980.⁵

Attachment 3 is a letter to Council Chair Bradbury that speaks to a second remand in the Ninth Circuit decision vis-à-vis the Council’s use of Bonneville’s estimate of costs associated with the Council’s Program. NRIC had challenged the methodology used to derive those costs, notably the inclusion of purported opportunity cost of power forgone to protect salmon. The Court said “. . . the Council must reconsider the parts of the Plan that contain BPA’s cost estimate”. NRIC’s letter expresses concern about the lack of Council action on the remand while proceeding apace with developing proposed amendments to its 2009 Program. NRIC urges the Council to comply with the remand prior to public release of proposed amendments, and to definitively disavow Bonneville’s bogus “opportunity cost of power foregone” to protect salmon which for decades has been used to deceive the public and the Congress about the real cost of restoring salmon and fisheries decimated by the federal hydrosystem.⁶

Sincerely,

Ed Chaney
Director

cc: Attorney General Bob Ferguson

³ See e.g., minutes of December 10-11 meeting of Northwest Power and Conservation Council.

⁴ NRIC challenged this methodology in the Ninth Circuit Court of Appeals. The Court remanded the methodology to the Council “. . . for the limited purpose of adopting a methodology through the appropriate notice-and-comment process.” *NRIC v. NW Power and Conservation Council*, 730 F.3d 1008, 1019 (9th Cir. 2013). The Council promptly submitted the same methodology verbatim for public comment.

⁵ Note that the 1980 Act was passed in response to devastating mortalities of Snake River salmon at and between the four dysfunctional lower Snake River dams. The Act gave the Council one year, using the best available information, to develop a plan for modifying the federal hydrosystem as necessary to restore salmon and fisheries. After more than 30 years and expenditure of hundreds of millions of dollars, the Council to date has not deigned to identify those necessary changes in the hydrosystem. Indeed, the Council has tenaciously refused to do so.

⁶ Congress authorized construction with the explicit intent that salmon would be allowed “safe passage”. BPA is legally permitted to market only the “surplus” power produced by the dams. See, e.g., Rivers and Harbors Act of 1945, 59 Stat. 10, 22 (Mar. 2, 1945). Nearly two decades ago the Ninth Circuit Court of Appeals ruled that the 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.” *Northwest Resource Information Center, Inc. v. Northwest Power Planning Council*, 35 F.3d 1371 (9th Cir. 1994), cert. Denied, 116 S.Ct. 50 (1995).