wbb/5/31/12

Talking Points: Idaho-BPA Agreement regarding Albeni Falls Operations

* The State of Idaho has entered into a five-year agreement with the Bonneville Power Administration (BPA) to monitor and evaluate the effects of operations at Albeni Falls Dam, including a new Flexible Winter Power Operation. The new power operation may result in greater fluctuation of the surface elevation of Lake Pend Oreille during the winter months.

* An independent 3rd party consultant acceptable to both parties will be retained to evaluate shoreline erosion impacts. A study evaluating shoreline gravel placement to enhance kokanee spawning will also be completed. A new ice management and monitoring plan has already been implemented. Funding for the erosion study ($150,000) will come from BPA.

* A major component of the agreement provides $3 million in BPA funds over the next three years to initiate an extensive river delta erosion mitigation project where ongoing bank erosion is a concern.

* During the five-year test period, Idaho will not make any legal challenges to current operations of Albeni Falls Dam. Instead of seeking court involvement, Idaho and BPA have committed to work together cooperatively to resolve any concerns or disputes.

* In the agreement, the State of Idaho and BPA committed to work closely with other parties in the region, including local elected officials, affected tribes, the Pend Oreille Basin Commission and the public.

Background info: BPA is reallocating funds from its land acquisition budget over the next three years to support Idaho's higher priority for erosion management.

OFFICE OF ENERGY RESOURCES

C.L. "BUTCH" OTTER
Governor

JOHN CHATBURN
Interim Administrator

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June 1, 2012

Ms. F. Lorraine Bodi
Vice President, Environment, Fish and Wildlife
Bonneville Power Administration
P.O. Box 3621
Portland, OR 97208-3621

Dear Ms. Bodi:

Idaho reaffirms its support for the concept of using the existing hydroelectric system to generate additional energy for the region. The Columbia Basin's economy and families need the low-cost, clean, renewable power hydroelectric provides. Idaho also remains committed to protecting Lake Pend Oreille and rebuilding the lake's fishery. To date, BPA and the State have collaborated on numerous monitoring and mitigation efforts that have benefited natural resources of the Pend Oreille basin. This letter of agreement is intended to further our mutual commitment to addressing monitoring and mitigation efforts in the Lake Pend Oreille basin associated with the operation of Albeni Falls Dam consistent with BPA's legal authorities under the Northwest Power Act.

On behalf of the State of Idaho, we concur with the terms of agreement, as described in your October 28th, 2011 letter and subsequent discussions, restated as follows.

BPA makes the following commitments pertaining to the effect of the existing operations of Albeni Falls Dam:

- Through federal fiscal year 2014, BPA will provide IDFG a total of $3,000,000 in funding ($1,000,000 per year for 3 years) for erosion management actions. This funding would use $1,000,000 per year for 3 years of the approximately $1,500,000 BPA currently provides to IDFG for mitigation of wildlife impacts from the construction and inundation (C/I) of Albeni Falls Dam, but this $3,000,000 would not "count" or be credited against wildlife mitigation. The remaining $500k/year will remain available for continued mitigation of C/I losses, or upon mutual agreement between BPA and IDFG, applied to erosion control and habitat restoration without being credited against mitigation for C/I losses. The shape and timing of this spending will be negotiated and mutually agreed upon by BPA and IDFG.

- BPA will provide IDFG an additional $150,000 ($50,000 per year, for three years) to the existing monitoring efforts by IDFG. This funding will be used to hire an independent third party to examine erosion impacts and study gravel placement for spawning at lower elevation. BPA and Idaho will work together to ensure coordination with parties in the Basin, including the Kalispel Tribe.

- BPA agrees to negotiate in good faith to reach a mutually agreed upon long-term settlement for mitigation of construction, inundation, and any operational impacts on fish and wildlife resources attributed to the Albeni Falls project.

In consideration of these commitments, Idaho agrees to the following:

- Idaho will recommend and support drafting Lake Pend Oreille to elevation 2,051 in fall 2011 (already recommended); to 2,055 feet in the fall of 2012; and to elevation 2,051 in the fall of 2013. BPA and IDFG will work cooperatively on lake-level management during these three winter operation periods to implement erosion control and habitat restoration actions as outlined in BPA bullet 1, above. After 2013, Idaho's recommendation for the appropriate elevation management of Lake Pend Oreille will be determined, after mutual discussion, based on the latest information available on the needs of kokanee, the fishery, and other resources. Additional information governing appropriate lake levels may also come from the provisions of any new bull trout Biological Opinions.

- Idaho agrees that dollars spent on erosion control and restoration will be counted against mitigation for operational losses if a loss assessment determines mitigation needs exist (consistent with BPA mitigation responsibilities under the Northwest Power Act).

- Idaho supports using the existing hydroelectric system to meet regional power needs, including Flexible Winter Power Operations (FWPO). Based on discussions with you and Administrator Wright after your October 28 letter, Idaho and BPA have agreed to meet as necessary to discuss any significant new information from this monitoring or significant changed circumstances related to Albeni Falls operations. BPA will determine the appropriate next steps in coordination with Idaho and other interested entities, which could include adjustments in monitoring or mitigation.

- Through May 31, 2017, Idaho will not initiate or participate in a capacity as plaintiff or petitioner in any administrative or legal challenges to the EA, the FWPO, or current operations of Albeni Falls, and will not object to the filing of this letter of agreement in any such proceedings initiated by other entities.

  Prior to expiration of this commitment, Idaho and BPA will discuss appropriate extension of this commitment.

- In addition, it is Idaho's intent, consistent with our past practice and the provisions of Idaho's various mitigation agreements and accords with BPA, to seek resolution of any disputes that may arise through good faith and candid discussion without resorting to administrative, judicial, or other formal dispute resolution procedures. Should such discussion not resolve a dispute on this issue, Idaho would propose non-binding mediation before initiating any legal or administrative proceeding.

- Idaho agrees to negotiate in good faith to reach a mutually agreed upon long-term settlement for mitigation of construction, inundation, and any operational impacts on fish and wildlife resources attributed to the Albeni Falls project.

As a separate matter, regarding issues of icing under FWPO, Idaho appreciates the fact that the Corps and BPA are implementing a new standard operating procedure (SOP) to help minimize the risk of damage to structures around Lake Pend Oreille. We understand that the SOP entails monitoring ice conditions around structures on Lake Pend Oreille and actively fluctuating the lake during the winter when power operations are not occurring, and that the purpose of the SOP is to maintain some minimum lake fluctuation sufficient to maintain the active cracks around structures (e.g., piles) and a hinge crack along the shoreline of the lake. This was an important concern for citizens of Idaho who live and recreate on the lake, and we are encouraged that the SOP may over the long term decrease the overall risk of damage to structures.

Finally, we affirm that nothing in this letter of agreement is intended to change the respective legal authorities of BPA, the state of Idaho, the Kalispel Tribe, or other sovereigns involved in the Pend Oreille Basin.

We look forward to working with BPA to carry out the mutual commitments described in this exchange of letters.

Sincerely,

John Chatburn
Interim Administrator