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Northwest Power and Conservation Council

Submitted via electronic filing: www.nwcouncil.org/fw/program/2013amend/comment-form

Re: Comments on Recommendations Received by the Northwest Power and Conservation Council on Amending the 2009 Columbia River Basin Fish and Wildlife Program.

Dear Council Chair Bradbury, and Council members Anders, Booth, Karier, Lorenzen, Rockefeller, Smith and Yost:

American Whitewater appreciates having the opportunity to comment on the recommendations made to the Northwest Power and Conservation Council regarding amendments to the Fish and Wildlife Program. We have reviewed recommendations to the Council relating to Protected Areas, and we support the overwhelming majority of recommendations to strengthen this important part of the Program. Further, we write to express our concern with recommendations to weaken Protected Areas.

American Whitewater is a national non-profit 501(c)(3) river conservation organization founded in 1954. With over 5,500 members and 100 locally-based affiliate clubs, we represent the conservation interests of tens of thousands of whitewater enthusiasts across the nation. American Whitewater's mission is to conserve and restore America's whitewater resources and to enhance opportunities to enjoy them safely. We are the primary advocate for the preservation and protection of whitewater rivers throughout the United States, connecting the interests of human-powered recreational river users with ecological and science-based data to achieve the goals within our mission. A significant number of our members reside in the Pacific Northwest, recreate on rivers and value the fish and wildlife resources that are affected by the Council's decisions. For these reasons, we have a direct interest in amendments to the program.

I. General Assertions Regarding Hydropower by Hydropower Proponents

We support the Council's long-standing effort to protect the most sensitive fish and wildlife habitat through protecting rivers and streams from future impacts of hydropower development through the Protected Areas program. Hydropower projects disrupt flow, sediment and temperature regimes, and destroy riparian habitat. Despite the suggestion by developers that hydropower is "environmentally benign,"¹ and that new dams can "contribute to the recovery of

¹ Snohomish PUD recommendations at p. 2.

the region's fish and wildlife populations,"² the impacts of hydropower still remain, regardless of the size of the project, technology upgrades or improvements in development and mitigation. Studies, reports, and articles continue to document this fact. They conclude:

- "Although hydropower has no air quality impacts, construction and operation of hydropower dams can significantly affect natural river systems as well as fish and wildlife populations."³
- "[...] widespread use of SHS [Small Hydropower Systems] is likely to cause, per kilowatt of power generated, no less significantly adverse environmental impacts than large hydropower systems..."⁴
- "In general, of all the renewable-electric, power-supply systems, hydropower has the largest environmental footprint not only spatially, but also ecologically because freshwater ecosystems are usually the areas of greatest biodiversity and productivity."⁵
- "[...] water-flow fluctuations caused by run-of-river hydro projects are killing fish..."⁶
- "Results reveal that biophysical impacts of small hydropower may exceed those of large hydropower, particularly with regard to habitat and hydrologic change."⁷
- "Small dams (< 50 MW) return greater impacts, per megawatt of power generated, with respect to the length of river channel affected, diversity of habitats affected, influence to lands designated as conservation and biodiversity priorities, and potential for modification of hydrologic regimes and water quality."⁸

The Council has long recognized the impact of hydropower on rivers and streams. It created the Protected Areas program to address the larger impacts of the regional hydropower system, and protect 20% of the region's rivers and streams with high fish and wildlife values from future impacts. We support the Council's continued efforts to protect those streams and rivers where hydropower development would have major negative impacts that could not be reversed, recognizing that in these areas, mitigation techniques cannot assure that all adverse impacts will be mitigated.⁹

We also support the Council in continuing to maintain the intent of the Protected Areas program as one that clearly lets hydropower developers know which areas are inappropriate for development, directing them instead to less sensitive and less controversial locations. Currently, there are numerous dams in the region that either do not generate electricity or that are not

² *Id.*

³ US Environmental Protection Agency, Clean Energy. <http://www.epa.gov/cleanenergy/energy-and-you/affect/hydro.html>

⁴ See Tasneem Abbasi, S.A. Abbasi, "Small hydro and the environmental implications of its extensive utilization," *Renewable and Sustainable Energy Review*, 15 (2011) 2134-2143, November 2010.

⁵ See Jan Konigsberg, "The Case for a Sustina River Dam: Does it Hold Water", December 2012. In reference to Mark Z. Jacobson, "Review of solutions to global warming, air pollution, and energy security," *Energy & Environmental Science*, October 31, 2008.

⁶ See Larry Pynn, "Run-of-river power projects kill fish," *Vancouver Sun*, March 13, 2012. Available at: https://wildernesscommittee.org/news/exclusive_run_of_river_power_projects_kill_fish (last visited November 20, 2013).

⁷ See Kibler, K.M., Tullis, D.D. 2013. Cumulative biophysical impact of small and large hydropower development, Nu River, China. Oregon State University. Page 2

⁸ *Ibid.* Page 26 Conclusions.

⁹ Northwest Power and Conservation Council, "Protected Areas Amendments and Response to Comments," Document 88-22, p. 2.

operating at peak efficiency.¹⁰ We encourage the Council to direct efforts for developing new hydropower capacity towards maximizing the use of existing dams and hydropower projects before allowing the construction of new dams.

We also strongly disagree with recommendations that suggest that it is time to question whether the Protected Areas program is still necessary.¹¹ To the contrary, the program remains vitally important not only for continuing to protect, mitigate and enhance the fish and wildlife in the region that are affected by the impacts of the Columbia River Hydropower System, but also for providing a refuge for species in the face of climate change and increasing toxins in the mainstem Columbia River. And finally, as is evidenced by the recommendations of the hydropower proponents, rivers throughout the region are likely to continue to experience increasing pressure for development due to a growing emphasis on low-carbon energy. In the face of these threats, the subset of our region's most important rivers for fish and wildlife resources provide the most value when they are freely flowing.

Black Canyon Hydro raises the question about whether the Protected Areas program is necessary today in reference to the regulatory process for new hydropower projects. While the process for obtaining a hydropower license involves numerous permits, the Council's Protected Areas program takes a broader view of the importance of protecting these rivers and streams in the context of the impact of the Columbia River hydropower system. The Council's perspective and programs continue to play an important and necessary role in the broader picture of hydropower development.

Finally, we support the Council's finding that working outside of the Columbia Basin is in alignment with its mission, and encourage the Council to reject assertions by the BPA Customer Group¹² that protecting habitat outside of the Columbia River Basin is not within the scope of the Council's program. In 1988, the Council determined that designating Protected Areas outside of the Columbia River Basin helps to "minimize the expense and controversy involved in [hydropower] development, [...] guide development toward environmentally benign projects, and protect critical fish and wildlife resources."¹³ Additionally, the Council concluded that Protected Areas outside of the Columbia Basin helped to meet U.S.-Canada treaty commitments to rebuild salmon and steelhead stocks, and avoided disproportionate harvest pressure on fish and wildlife in the Basin.¹⁴ We believe that these conclusions are still relevant today.

¹⁰ The U.S. Hydropower Resource Assessment for Washington, prepared in 1997 by Idaho National Engineering and Environmental Laboratory, lists 249 existing dams in Washington that do not produce power (such as flood control or storage dams) or where the total power has not yet been fully developed (efficiency upgrades). The report models potential development of 2,652 MW that could be added simply by improving efficiencies or adding hydro to non-power dams. (Developing all the state's potential hydro sites through construction of new dams would only add 762MW).

¹¹ Recommendations of Black Canyon Hydro at p. 2.

¹² The "BPA Customer Group" is the Public Power Council, Northwest RiverPartners, PCGC Power and Northwest Requirement Utilities.

¹³ Northwest Power and Conservation Council, "Protected Areas Amendments and Response to Comments," Document 88-22 at pp. 18-19.

¹⁴ *Id.*

II. Exemptions in Protected Areas

a. Keeping Protected Areas Free from an Exemption Process

We continue to strongly recommend that the Council keep exemptions for hydropower projects out of the Protected Areas program. Hydropower does not have a place in areas that are determined to be sensitive and important to the Fish and Wildlife Program's mission of protecting, mitigating and enhancing fish and wildlife. The program was established to provide clear boundaries for where new hydropower is allowed and where it is not. An exemption process for specific projects weakens this intent and opens the door for the very controversy, ecological harm and uncertainty for hydropower developers the program was created to avoid.

We note that the vast majority of the submissions on the issue of exemptions support this approach. Notably, the recommendation to keep exemptions out of the Protected Areas program comes from the U.S. Fish and Wildlife Service, the Snoqualmie Tribe, and numerous additional public interest organizations. The sentiment to keep exemptions out of Protected Areas was also echoed by hundreds of members of the general public. Of the few recommendations that advocate for reinstating the exemption process, two come from hydropower developers that currently have proposals to construct hydropower projects in Protected Areas and stand to benefit financially from the change. We encourage the Council to take these points into consideration as it weighs the future of the program.

In the recommendations we submitted in September, American Whitewater proposed language for an exemption process if one is reinstated. In the event that the Council re-instates exemption language, despite the overwhelming support for keeping it out, we recommend that there be a robust and strong standard and public participation process. We also welcome the opportunity to be involved defining those standards, should the opportunity arise.

b. Response to Hydropower Proponents' Recommendations for an Exemption Process

Black Canyon Hydro ("BCH") also provided recommendations to the Council for an exemption process. We agree with BCH's call for a public process when an exemption is being considered, and agree that the Council should make the final decision. However, we disagree with BCH's specific recommendations under which the "restrictive [exemption] provision does not apply."¹⁵ As described below, these recommendations disable the Protected Areas program and the Council's authority to the point of being meaningless, and open the door for virtually any hydropower project to automatically receive an exemption. The Council should reject BCH's recommendations.

BCH Exemption Standard #1: The proposed project is exempt from FERC licensing.

Hydropower projects that produce less than 10 MW are eligible to apply for an exemption from the requirement to obtain a license from FERC.¹⁶ Such an means that the project is exempt from the agency's regular licensing process, but not exempt that project from FERC's oversight. Notably, the exemption process is only available for proposed projects that will be built at

¹⁵ Black Canyon Hydro recommendation, p. 6.

¹⁶ 16 USC § 2705(d).

existing dams (which would not apply to the Protected Areas program) or those that are sited at a natural water feature, such as a waterfall.¹⁷

No matter the size of the project or the amount of energy it produces, hydropower projects adversely impact fish and wildlife habitat. These impacts are not consistent with the goal and intent of the Protected Areas program to protect the most sensitive fish and wildlife habitat in the region and preserve those rivers and streams where hydropower development would have major, irreversible negative impacts.¹⁸

BCH Exemption Standard #2: *The proposed project is permitted by a local regulatory agency.* Hydropower projects are licensed by FERC under the Federal Power Act, not by local regulatory agencies. Under the Act, FERC makes decisions based on a comprehensive plan for the waterway that considers power and non-power values that include fish and wildlife, recreation, and other purposes.¹⁹ In addition to the federal license requirement, it is standard for hydropower projects to have at least one permit from a local regulatory agency. For example, FERC requires a shoreline permit, which is issued by the County, and additional local permits are typically required for construction activities. If BCH is suggesting that any project where some facility permitting is done by a local regulatory agency, should be allowed as an exemption in Protected Areas, this would remove the exemption criteria from virtually every hydropower project.

BCH Exemption Standard #3: *The proposed project has a water right and 401 Certification issued by the state.* Similar to the previous exemption standard, our current understanding of this recommendation is that it would completely invalidate the Protected Areas program. A 401 Water Quality Certification is required from the state for any federal action (i.e. permit or a license), and all hydropower projects involve a federal action. Therefore, all hydropower projects require a 401 Certification from the state. Similarly, all hydropower projects require a water right, which will also be issued by the state. As a result, this recommendation is equivalent to saying that the Council will issue an exemption for nearly all hydropower projects.

The Protected Areas Program covers a broader set of standards than a 401 Water Quality Certification or a water right. The Protected Areas program is in place to protect the most sensitive species and habitat and mitigate the impacts of hydropower on the Columbia River system, while a 401 Certification takes a narrower approach, looking at whether the project will meet the state's water quality standards. A water right simply grants the holder the right to use the water. It generally does not address the broader ecological impacts associated with a hydropower project or with the affected river reach.

BCH Exemption Standard #4: *The proposed project has received LIHI certification.* LIHI does not certify proposed or new hydropower projects, making it impossible for this criterion to apply.

BCH's recommendations make any proposed hydropower project eligible to bypass the Protected Areas program, and in effect, completely invalidate it. By adopting these recommendations, the Council would in essence be delegating all of its statutory responsibilities to the decisions of

¹⁷ 18 CFR §4.30(b)(29).

¹⁸ Northwest Power and Conservation Council, "Protected Areas Amendments and Response to Comments," Document 88-22, p. i and 2.

¹⁹ 16 USC § 803 (a)(1).

other state and federal agencies. If exemption language is reinstated into the Protected Areas program, we encourage the Council to ensure that it meets a strong and robust standard that preserves the Council's authority.

American Whitewater has reviewed the remaining recommendations of Black Canyon Hydro (BCH) and we do not believe that they appear to benefit the Fish and Wildlife Program.

III. Amending Protected Areas Designations

American Whitewater supports reinstating a process to amend a Protected Areas designation. The Council should ensure that this process relies on an objective scientific determination about the values of the river or stream reach in question, rather than being based on politics or economic gain. We recommend that the Council have enough information to make a well-informed, scientifically objective decision about whether an amendment is warranted, and encourage the Council to gather information from the ISAB, local, state and federal agencies, tribes, and the public. We recommend that there be a robust public notice and participation process, consistent with the Council's mission to ensure public participation.

We recommend that the Council deny requests to amend a designation from protected to unprotected when the river reach in question 1) is listed in the Nationwide River Inventory,²⁰ or 2) is designated as critical habitat for species listed as threatened or endangered under the Endangered Species Act.

IV. Expanding Protected Areas to Include New Habitat Above Barrier and Dam Removals

In our initial recommendations, we recommended that the Council expand Protected Areas to include river miles that have been opened up due to dam and barrier removals throughout the region. We specifically referenced the White Salmon River in Washington and the new habitat that has opened up since the removal of Condit Dam. Dozens of dams have been removed throughout the region over the last decade, and American Whitewater will be working with American Rivers, Trout Unlimited, and our other colleagues in the Hydropower Reform Coalition to develop a list of specific reaches that fit this criterion. We look forward to working with the Council in the future on this process.

V. Work Groups

American Whitewater understands that the Council is working with a wide range of topic areas and numerous conflicting recommendations, and we recognize that developing a draft program will be a complex task. We support the creation of workgroups to develop specific language relating to important changes such as bull trout habitat, exemptions (if reinstated), and amendments to Protected Areas. All workgroups should consist of a diverse and balanced representation of stakeholders. We are interested in participating in these activities if they are developed.

²⁰ <http://www.nps.gov/nrcr/programs/rtca/nri/index.html>, last visited November 20, 2013.

VI. Clarifying New Hydropower Legislation

In their recommendations, the BPA Customer Group recommends that “[t]he Council should revisit Protected Areas designations in the Program in [...] support of federal legislation recently passed to streamline the licensing of new hydropower projects.”²¹ Black Canyon Hydro references this same issue in Exhibit B of their recommendations by providing copies of the Hydropower Regulatory Efficiency Act of 2013 (HR 267) and the Bureau of Reclamation Small Conduit Hydropower Development and Rural Jobs Act (HR 678), and news clips relating to them.

We would like to clarify for the Council that the legislation that was recently passed is intentionally limited in scope to encouraging the development of new hydropower that can reuse existing water infrastructure, including pipes, canals, existing non-powered dams, and closed-loop pumped storage projects.²² HR 267 expedites the permitting process for conduit hydropower and directs FERC to study the feasibility of a streamlined two-year permitting process for adding power to existing non-powered dams and for closed-loop pumped storage projects. HR 678 will streamline small conduit hydropower development at dams owned by the Bureau of Reclamation. The term conduit means any Bureau of Reclamation tunnel, canal, pipeline, aqueduct, flume, ditch, or similar manmade water conveyance that is operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for the generation of electricity.²³

Congress’ intent to limit the scope of these bills to such projects was explicit, and was critical to HR 267’s unanimous vote in the House and support from environmental groups. This intent is also clearly captured in a statement in the Congressional Record made by one of HR 267’s authors, Rep. Cathy McMorris Rodgers (R-WA): “There was a recent study by the National Hydropower Association that showed we could double hydropower production in this country without building a new dam, simply by investing in new technologies, new turbines. Actually, only 3 percent of the dams in the country produce electricity.”²⁴

There is no reason for the Council to consider the language of either one of these bills in relationship to the future of the Fish and Wildlife Program, as neither the text or the legislative history of HR 267 or HR 678 imply Congressional support for the construction of new hydropower dams or for the removal of stream reaches from the Council’s Protected Areas Program. Neither one of these bills relates to building new dams, addresses the Northwest Power Act, or overlaps with the types of projects that would be considered in Protected Areas if such protections were removed or weakened—including the proposed Black Canyon and Sunset Falls projects in Washington. If the Council does consider either piece of legislation, it should do so in the context in which they were enacted—that there is broad Congressional support for new hydropower capacity that reuses existing water infrastructure, but there is no such support for the construction of new dams on protected river reaches.

²¹ BPA Customer Comments, p. 2.

²² Senate Report 113-38. June 3, 2013. <http://beta.congress.gov/congressional-report/113th-congress/senate-report/38/1>

²³ Signed into law, August 9, 2013. <http://beta.congress.gov/113/plaws/publ24/PLAW-113publ24.pdf>

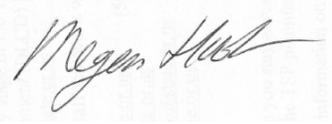
²⁴ Congressional Record – U.S. House of Representatives. February 12, 2013.

<http://www.gpo.gov/fdsys/pkg/CREC-2013-02-12/pdf/CREC-2013-02-12-pt1-PgH439-2.pdf#page=1>

VII. Conclusion

Thank you for considering our comments on Protected Areas and the Fish and Wildlife Program amendments. We welcome the opportunity to work with the Council and interested stakeholders over the coming months, and look forward to seeing the Draft Program in 2014.

Sincerely,

A handwritten signature in black ink, appearing to read "Megan Hooker". The signature is written in a cursive style and is positioned above the printed name and title.

Megan Hooker
Associate Stewardship Director

A handwritten signature in black ink, appearing to read "T. O'Keefe". The signature is written in a cursive style and is positioned above the printed name and title.

Thomas O'Keefe, PhD
Pacific Northwest Stewardship