

in Oregon and Washington. The Columbia River is a very complex and heavily utilized resource, with a series of major federal dams that was developed as part of a comprehensive regional plan to provide for a number of uses including navigation, flood control, hydroelectric power, fish and wildlife conservation, irrigation, recreation, water quality, and municipal and industrial water supply. ¹ The Corps was authorized to construct, operate and maintain 12 of the 14 Federal Columbia River Power System (FCRPS) projects in the Columbia River basins.

4. The Corps' FCRPS projects are operated in a coordinated manner for flood control and hydro-power with the two U.S. Bureau of Reclamation (BoR) FCRPS² projects, with certain Canadian reservoir projects pursuant to the Columbia River Treaty between the U.S. and Canada³, and with several Public Utility District projects on the mid-Columbia. The Bonneville Power Administration (BPA) is responsible for marketing and transmitting power generated from these FCRPS projects.

5. I am charged with the management and operation of the Corps' FCRPS projects in the basin and must take into account many diverse regional interests when making decisions on project operations and modifications. Among the responsibilities I must consider in my decision-making are a multitude of statutory responsibilities, tribal trust and treaty responsibilities, Columbia River Treaty obligations, multiple authorized project purposes, and the interests of those impacted by project operations. Most pertinent to the issues before the court are my responsibilities for providing for these authorized project purposes while meeting my

¹ This comprehensive development plan found in House Document No. 531 authorized Libby, Albeni Falls, John Day, The Dalles dams, and discusses what later became Dworshak as a potential project in the comprehensive system. Bonneville was authorized by P.L. 74-409; McNary, Ice Harbor, Lower Monumental, Little Goose, and Lower Granite were authorized in 1938, H.D. 704; Chief Joseph was authorized in 1946, H.D. 693; and Dworshak was authorized in 1962, H.D. 403.

² Grand Coulee Dam located in Washington, and Hungry Horse Dam, located in Montana.

³ The Treaty Between the United States of America and Canada Relating to Cooperative Development of the Water Resources of the Columbia River Basin, 1964. The Canadian Entity (B.C. Hydro) and the U.S. Entity (represented by the Corps of Engineers and Bonneville Power Administration) carry out the Columbia River Treaty.

responsibilities pursuant to the Endangered Species Act (ESA), as well as the Clean Water Act (CWA), the National Environmental Policy Act (NEPA), the Columbia River Treaty between Canada and the United States, and the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act).

6. Accordingly, on behalf of the Action Agencies (the Corps, Reclamation, and BPA), I will address this Court's request for a proposal for moving forward with a process to complete a new biological opinion consistent with the Court's May 2003 and May 2005 decisions. The Action Agencies, together with NOAA Fisheries, propose to work with the 13 Columbia Basin Tribes and the States of Idaho, Montana, Oregon, and Washington through a series of roundtable discussions. These collaborative discussions would provide an opportunity for participants to exchange views regarding the development of a long-term proposed operation of the FCRPS, a biological opinion, and additional actions to support protection and recovery of the 13 listed salmon and steelhead species in the basin.

7. This process would encompass three overlapping phases, or components, that address: 1) the proposed action for FCRPS hydro-system operations; 2) collection of the best available science to inform fish passage and life-cycle biological analysis; and 3) habitat, hatchery and harvest actions that address biological requirements of salmon and steelhead throughout their life cycle. These phases would not be sequentially carried out, but would overlap. Work done in one phase would inform the analysis for other phases.

8. In the first phase - development of a new proposed action, the Action Agencies would employ a public process that will discuss the relevant building blocks of the hydro-system operation, including actions to improve conditions for listed salmonids consistent with actions for other listed fish species such as the Kootenai River white sturgeon and bull trout (which are subject to § 7(a)(2) consultation obligations with the United States Fish and Wildlife Service). These include actions that affect flow, spill for juvenile salmonid fish passage, transportation of juvenile salmonids, management of predators, and system configuration such as removable

spillway weirs; and, potentially, off-site measures concerning habitat improvements, hatchery production, and harvest practices. The discussions would consist of regional roundtable meetings of the states, tribes and interested parties. The Action Agencies anticipate approximately four such meetings would be held throughout the region in the first months of the process.

9. One objective for this phase is to reach a common understanding of the trade-offs and consequences associated with the implementation of various actions or scenarios consistent with providing for the congressionally authorized project purposes while achieving compliance with §7 (a)(2) of the ESA and potentially identifying alternative operation scenarios. The outcomes of these collaborative discussions would assist the Action Agencies in developing, during the spring of 2006, a Proposed Action for the operation of the FCRPS.

10. The second phase of the collaborative process would be an exchange of views on biological analyses related to fish passage survival and lifecycle analysis. The details of this phase are described in the Declaration of D. Robert Lohn (*See* Second Declaration of D. Robert Lohn (Lohn Dec.) at ¶ 9).

11. The third phase of the collaborative process would involve discussion of the “other Hs” – habitat, hatchery and harvest actions. Once the preliminary biological analysis is available, NOAA Fisheries, with input from the Action Agencies, may have to consider “off site mitigation” in connection with the development of a Reasonable and Prudent Alternative (RPA). The Federal agencies would also employ regional roundtables to discuss development of the RPA. These discussions would include information, actions and priorities developed as part of the Northwest Power Planning and Conservation Council’s sub-basin planning process, and NOAA Fisheries’ recovery plans during the winter of 2006/2007. This planning information will enable NOAA Fisheries and the Action Agencies to ensure any offsite actions necessary to support a no-jeopardy finding or an RPA will be based on the best available information contained in, or associated with, the sub-basin plans and recovery plans, including priorities and limitations that may be noted therein.

12. I and the other Action Agencies concur with the Regional Administrator's assessment that 24 months is an appropriate timeframe to complete the biological opinion. (See Lohn Dec. ¶¶ 3, 7, 10). Our experience with prior consultations regarding the FCRPS confirms our judgment that this time will be necessary, particularly in view of the concerted effort to engage the region's sovereign entities on development of the proposed action. We believe this effort will lead to a comprehensive action that addresses the needs of fish, and will be transparent and understood by the region.

13. The Action Agencies recognize there is long-standing controversy concerning the operation of the FCRPS in compliance with the ESA. As stewards of the Columbia Basin resources and uses, and given the complexity of the issues involved, the Action Agencies and NOAA Fisheries believe it is very important to have sufficient time to implement the proposed collaborative process. I strongly believe this approach is appropriate and will produce a sound and sustainable plan consistent with statutory requirements and regional goals.

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing is true and correct. Executed this September 19, 2005.

A handwritten signature in black ink, appearing to read "Gregg F. Martin", written over a horizontal line.

Gregg F. Martin
Colonel, US Army
Division Engineer