Department of Energy

Bonneville Power Administration
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EXECUTIVE OFFICE

In reply refer to: F-2

December 22, 2023

Subject: Fiscal Year 2023 Power Reserves Distribution Clause Final Decision

The Bonneville Power Administration (BPA) has concluded its decision process on the application of the fiscal year 2023 Power Reserves Distribution Clause (RDC). After careful consideration of the feedback received during the comment period, I am adopting the staff recommendation, released on Nov. 16, 2023.

The Power RDC amount of $285.4 million will be applied as follows: (1) $165.4 million for a dividend distribution to reduce FY 2024 power rates; (2) $90 million for debt reduction or revenue financing, with BPA retaining the flexibility to forego some or all of the planned debt reduction to preserve BPA's liquidity; and (3) $30 million to address, on an accelerated, one-time basis, certain non-recurring maintenance needs of existing fish and wildlife mitigation assets that (i) Bonneville anticipates would otherwise need to be addressed during future rate periods and (ii) will result in avoidance of those costs in future rate periods. As used here, the term "mitigation assets" are those that Bonneville determines (a) have resulted in tangible and measurable benefits or improvements for fish and wildlife, and (b) are directly related to mitigating for the effects of the construction or ongoing operation of the Federal Columbia River Power System projects.

Due to the volume of comments received, I have included additional background information on the RDC and the rationale for my decision in Attachment A: BPA's Response to Comments. While not required by the rate schedule, BPA is providing this response in the vein of transparency and completeness.

Thank you to everyone who took time to provide feedback on staff's proposal.

Sincerely,

John L. Hairston
Administrator and Chief Executive Officer

ATTACHMENT A

FY 2023 POWER RDC
BONNEVILLE POWER ADMINISTRATION RESPONSE TO COMMENTS

FY 2023 POWER RDC
BONNEVILLE POWER ADMINISTRATION RESPONSE TO COMMENTS

1. INTRODUCTION

The Bonneville Power Administration (BPA) is issuing this attachment to respond to comments submitted by interested parties and customers following BPA's publication of its proposed use of the Power Reserves Distribution Clause (Power RDC) for FY 2023.[1] The Power RDC is a rate mechanism that permits repurposing a portion of the agency's financial reserves for other "high-value Power purposes" when BPA's financial reserves exceed certain pre-defined levels.[2]

On November 16, 2023, BPA notified regional interested parties that the Power RDC had triggered for FY 2023, and the calculated Power RDC Amount was $285.4 million.[3] BPA's rate schedule dictates that $129 million of that amount be distributed as rate relief to power customers.[4] BPA Staff proposed applying the remaining $156.4 million for three different uses: $90 million as flexible debt reduction or revenue financing, $30 million as Reserves Not For Risk for Fish and Wildlife mitigation costs on an accelerated basis, and $36.4 million as additional rate relief.[5] Comments on the proposal were due by December 1, 2023, and BPA received a significant number of comments raising many complex issues. While a decision on the Power RDC was supposed to be issued by December 15, 2023, because of the volume and complexity of the comments, BPA notified regional parties that it would delay the FY 2023 Power RDC decision until December 22, 2023.[6]

As described in the Administrator's letter accompanying this document, BPA adopts Staff's proposed use of the FY 2023 Power RDC Amount. Many of the legal arguments and objections raised by commenters against Staff's FY 2023 Power RDC proposal are similar to, and in some instances the same as, those addressed by BPA in a response to comments accompanying last year's FY 2022 Power RDC.[7] To avoid repetition, BPA incorporates by reference its FY 2022 Power RDC Response to Comments into this document and will refer to its prior responses where appropriate.

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[1] Bonneville Power Administration, Q4 Quarterly Business Review Technical Workshop at 17 (Nov. 16, 2023), *available at* https://www.bpa.gov/-/media/Aep/finance/quarterly-business-review/qbr-2023/2023-q4-qbrtw-presentation.pdf ("Q4 QBRT").
[2] 2024 Power Rate Schedules and General Rate Schedule Provisions, BP-24-A-02-AP01, GRSP II.P.3.b ("BP-24 Power GRSP").
[3] Q4 QBRT at 17.
[4] *Id.*; *see also* BP-24 Power GRSP II.P.1.a.
[5] Q4 QBRT at 17.
[6] Tech Forum email, Bonneville Power Administration, Final Decision About RDC is Delayed Until Dec. 22, (Dec. 15, 2023) (on file with author).
[7] *See* FY 2022 Power Reserves Distribution Clause Final Decision, Attachment A, Bonneville Power Administration's Response to Comments (Jan. 9, 2023), *available at* bp-22-rate-case - Bonneville Power Administration (bpa.gov) ("FY 2022 Response to Comments").

2. BACKGROUND

2.1 Overview of the Power RDC

As described more fully in the FY 2022 Response to Comments, BPA is a federal power marketing administration with significant power and transmission assets and a specialized statutory mandate to recover its costs through its rates.[8] BPA rates are set through a rate process that is governed by BPA's statutes.[9] Rates are set using forecasts of BPA's costs, revenues, water conditions, and other projections that cover the applicable rate period. Because these forecasts are imperfect, BPA rates contain mechanisms that address risk and uncertainty.[10] Among other mechanisms, BPA developed rate provisions that allow BPA to recover additional revenue from its power customers when BPA's financial reserves[11] drop below certain predefined levels as established in BPA's Financial Reserves Policy.[12] These mechanisms also provide a process for BPA to consider repurposing financial reserves when they exceed certain thresholds.[13] Over the years, BPA's risk mechanisms have been activated to both increase power financial reserves (*e.g.,* through power rate surcharges or cost adders in rates) and to repurpose financial reserves (*e.g.,* through Power RDCs) consistent with the thresholds set forth in the Financial Reserves Policy.[14]

The Power RDC is the rate mechanism BPA uses to consider repurposing power financial reserves when they exceed pre-defined thresholds. The terms of the Power RDC are laid out in the General Rate Schedule Provisions (GRSPs) for BPA's power rates. These terms include the calculation, process, and decision criteria for repurposing the financial reserves eligible for Power RDC distributions (if any). The parameters for the Power RDC are subject to change in each BPA rate case.[15]

The Power RDC calculation process is conducted following the close of each fiscal year.[16] BPA Staff review the financial reserves associated with each of BPA's business units (Power and Transmission) as well as the totality of the agency's financial reserves. For the Power RDC to trigger and produce a Power RDC Amount, BPA's Power financial reserves must exceed an upper threshold and total agency financial reserves must also exceed the agency upper threshold.[17] If both conditions are met, financial reserves above the upper threshold are considered for repurposing as "debt reduction, incremental capital investment, rate reduction

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[8] FY 2022 Response to Comments at 1-2.
[9] *Id.* at 2.
[10] *Id.* at 2-5.
[11] Financial reserves (or reserves) refer to "reserves available for risk," a BPA term representing the amount of unobligated cash, short-term market-based investments, and deferred borrowing. This is distinct from "reserves not for risk" which is a BPA term for obligated or committed cash and investments, generally dedicated to be used for a specific future purpose, *e.g.,* customer deposits for transmission studies.
[12] *Id.* at 5.
[13] *Id.* at 6.
[14] *Id.* at 6-7.
[15] *See, e.g.,* BP-24 Power GRSP II.P.
[16] *Id.* at II.P.3.b.
[17] *See Id.* at II.P.1.a (Table D.1 and Table D.2).

through a Power Dividend Distribution (Power DD), distribution to customers, or any other Power-specific purposes determined by the Administrator."[18]

The process for determining the Power RDC Amount and deciding its use is described in the Power GRSPs.[19] This process consists of issuing a notice informing interested parties of the initial Power RDC Amount no later than November 30 of the applicable year.[20] This notice is followed by at least one workshop and a comment period.[21] The final decision on the Power RDC Amount is issued by December 15, to ensure BPA billing department can prepare bills for any rate reductions (Power Dividend Distributions).[22] As explained below, BPA has extended this date to respond to exigent circumstances.[23]

2.2 Past Implementation of the Power RDC

The Power RDC triggered for the first time in FY 2021 for $13.7 million. The resulting Power RDC Amount was used solely for power rate reduction and was unopposed.[24]

In FY 2022, historically high market prices and timely river runoff resulted in BPA experiencing a significant increase in its net secondary (surplus) revenue.[25] As a result, the Power RDC was expected to trigger for an unprecedented $500 million, which was the maximum amount permitted by the Power RDC parameters stated in the BP-22 rate GRSPs.[26] Discussions ensued in August and September of 2022 between BPA, prospective rate case participants, and interested parties over a packaged settlement proposal that encompassed the upcoming BP-24 rate proceeding (FY 2024-2025), BPA's establishment of the Average System Cost rates for investor owned utility customers, and BPA's proposed use of the projected $500 million FY 2022 Power RDC. A tentative settlement was reached in October 2022, in which BPA Staff agreed to propose in each applicable proceeding an initial position consistent with the settlement's terms.

On November 16, 2022, BPA Staff provided its preliminary calculation of the FY 2022 Power RDC Amount ($500 million) and proposed the following use of that amount: (1) $350 million for rate reduction; (2) $100 million for "flexible" debt repayment:[27] and (3) $50 million set aside for accelerated fish and wildlife (subject to various parameters).[28] Comments on Staff's proposal were due December 1, 2022. BPA received 58 comments on Staff's proposal.[29] Because of the

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[18] *Id.* at II.P.
[19] *See id.* at II.P.3.
[20] *Id.* at II.P.3.b.
[21] *Id.*
[22] *Id.*
[23] *See* FY 2022 Response to Comments at 10.
[24] *Id.* at 7, n.24.
[25] *Id.* at 30.
[26] *See* 2022 Power Rate Schedules and General Rate Schedule Provisions, BP-22-A-02-AP01, GRSP II.P1.a, Table D.1.
[27] The $100 million was flexible in that BPA retained the discretion to forego some or all of the $100 million planned debt repayment to preserve agency liquidity.
[28] FY 2022 Response to Comments at 9.
[29] *Id.* at 10.

nature and complexity of the comments, BPA delayed issuing its decision on the Power RDC until January 6, 2023. Though not required by the Power RDC GRSPs, BPA accompanied its Power RDC decision with a Response to Comments, explaining the basis for its decision and responding to arguments and concerns raised by interested parties.[30] BPA's FY 2022 Power RDC decision was subsequently challenged in the U.S. Court of Appeals for the Ninth Circuit, where the case remains administratively stayed.[31]

2.3 BP-24 Power RDC Parameters

As noted above, BPA Staff's initial rate proposal for the BP-24 rate case was the subject of a package settlement. On November 18, 2022, BPA commenced the BP-24 rate proceeding to set power and transmission rates for FY 2024-2025 (BP-24 rate proceeding).[32] BPA Staff proposed adopting the BP-24 rate settlement terms, which contained a multitude of provisions and changes to the power rates and GRSPs, two of which are relevant here.[33]

One key term of the BP-24 rate settlement was a proposal to hold power rates flat for FY 2024-2025, as compared to the prior rate period.[34] Projections of power prices and forecasts revenues at the time of Staff's initial rate proposal indicated that the BP-24 power rates would likely decline. BPA Staff, however, wanted to hold BP-24 power rates to the higher BP-22 level to support agency liquidity and minimize risk. To maintain the rates at existing levels, power customers agreed to allow BPA to add risk mitigation costs (known as Planned Net Revenue for Risk (PNRR)) to the Power revenue requirement in an amount equal to the delta between the lower rates projected for BP-24 and the higher BP-22 rates.[35] Ultimately, BPA added $129 million per year—$258 million for the two-year rate period—in PNRR to the power rates to achieve a flat rate for the FY 2024-2025 rate period. PNRR is not associated with a particular cost, and as such, adding it to BPA's power rates would increase BPA's financial reserves on a forecast basis. These reserves would be available to offset the risk of actual costs being higher than forecast, such as market price risk, hydrological variability, and programmatic cost uncertainty.

The BP-24 settlement also revised the parameters for the Power RDC applicable for FY 2023 and FY 2024. First, it removed the $500 million cap on the Power RDC Amount.[36] The FY 2022 Power RDC Amount was capped at $500 million, which meant that financial reserves above that amount were automatically retained by BPA. For the FY 2023 and FY 2024 Power RDCs, the cap was removed, thereby ensuring all financial reserves above the upper threshold would be considered for repurposing.[37] Second, the distribution parameters of the Power RDC were modified. Under the FY 2022 Power RDC, the Administrator retained discretion to

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[30] *See id.*
[31] *See Idaho Conservation League v. Bonneville Power Admin.*, No. 23-593, April 5, 2023 (9th Cir.).
[32] *Fiscal Year (FY) 2024-2025 Proposed Power and Transmission Rate Adjustments Public Hearing and Opportunities for Public Review and Comment*, 87 Fed. Reg. 69,259 (Nov. 18, 2022).
[33] *See* Fredrickson *et al.*, BP-24-E-BPA-09, Appendix A.
[34] *Id.* at 3; *id.* at Attachment 3, II.A (Power Rates).
[35] *See* Fredrickson *et al.*, BP-24-E-BPA-09, at 7.
[36] *Id.*
[37] *Id.*

determine the amount of Power RDC to be repurposed for any "high value Power purpose," including rate relief.[38] This discretion was removed for the FY 2023 and FY 2024 Power RDC Amounts. Specifically, because BPA's power customers agreed to increase their power rates by $129 million per year in additional risk mitigation cost, BPA agreed that the first $129 million of any Power RDC Amount be returned to power customers as rate relief.[39] If the Power RDC Amount exceeded $129 million, then any amounts above that would be subject to the Administrator's discretion and the normal parameters for repurposing, *i.e., "*debt reduction, incremental capital investment, rate reduction through a Power Dividend Distribution (Power DD), distribution to customers, or any other Power-specific purposes determined by the Administrator."[40]

The BP-24 rate proceeding concluded on July 28, 2023, with the publication of the final record of decision, wherein the Administrator adopted the BP-24 settlement terms.[41]

2.4. Processes Leading Up to the FY 2023 Power RDC

BPA is required by the Power GRSPs to keep interested parties and customers apprised of its financial performance through quarterly notices.[42] BPA provides this information through public quarterly briefings on the state of its business and financial performance called the Quarterly Business Review (QBR) and the Quarterly Business Review Technical (QBRT) workshop. Among other information provided at the QBR, BPA includes its estimate of end-of-year financial reserves and the likelihood of the Power RDC triggering.

On February 14, 2023, BPA held the first QBRT for FY 2023.[43] There, BPA stated that—despite the Power purchases forecast (a cost to BPA) increasing by $542 million due to higher prices, low stream flows, and increased loads—end-of-year financial reserves for Power were forecast to be $733 million, exceeding the Financial Reserves Policy upper threshold.[44] At that time, BPA estimated a 64 percent chance of an FY 2023 Power RDC, with an expected value of $137 million.[45] Three months later, at the second QBRT (May 2023), the financial picture had worsened. High market prices and low stream flows had continued to dampen the end-of-year financial reserves outlook, with the Power purchases forecast now $708 million higher than the target.[46] The end-of-year financial reserves for Power were forecast to drop to just at the upper

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[38] *Id.*
[39] *Id.* at 7.
[40] *Id.*; BP-24 Power GRSP II.P.1.a.
[41] Administrator's Final Record of Decision, BP-24-A-02, at 9-13 (July 28, 2023) ("BP-24 ROD").
[42] BP-24 Power GRSP II.P.3.a.
[43] Bonneville Power Administration, Q1 Quarterly Business Review Technical Workshop (Feb. 14, 2023), *available at* https://www.bpa.gov/-/media/Aep/finance/quarterly-business-review/qbr-2023/fy23-q1-qbrtw-final.pdf ("Q1 QBRT").
[44] *Id.* at 10, 31.
[45] *Id.* at 32.
[46] Bonneville Power Administration, Q2 Quarterly Business Review Technical Workshop at 7 (May 11, 2023), *available at* https://www.bpa.gov/-/media/Aep/finance/quarterly-business-review/qbr-2023/fy23-q2-qbrtw-final.pdf ("Q2 QBRT").

threshold of $638 million.[47] The chances of a FY 2023 Power RDC also diminished to 34 percent, with an expected value of $64.4 million.[48]

The third QBRT in August 2023 BPA reported on the worsening financial forecast based on actuals through June. Persistent high prices coupled with low stream flows increased BPA's expenses by almost $700 million above rate case forecasts, with the Power purchases forecast now $877 million higher than target.[49] Anticipating that its Power business unit would end the fiscal year with fewer financial reserves than it started with, BPA decided to take steps to preserve liquidity. BPA had planned to take actions that would result in an additional $140 million of debt reduction for Power at the end of FY 2023, through a combination of debt payment and revenue financing built into rates.[50] These actions were "flexible," meaning BPA retained the discretion to forgo some or all the payments and unwind the revenue financing if the cash was needed to retain agency liquidity. Fearing that Power financial reserves would continue to decline, BPA decided to forgo $90 million of the planned $140 million to attempt to keep Power's end-of-year financial reserves at the upper threshold of $638 million.[51]

The 2023 fiscal year closed on September 30, 2023. Thereafter, BPA held the fourth, and final QBRT, for FY 2023 on November 16, 2023.[52] At the November 2023 QBRT, BPA Staff provided end-of-fiscal year results, which are based on actuals, not forecast. This showed ending Power financial reserves were $923.4 million, $285.4 million above the upper threshold, triggering an FY 2023 Power RDC.[53] At the meeting, BPA Staff went over the results of end-of-year financial reserves and the calculation of the FY 2023 Power RDC. The factors that led to the FY 2023 Power RDC included the following:

First, BPA received a substantially larger U.S. Treasury credit than anticipated under section 4(h)(10)(C) of the Northwest Power Act.[54] Briefly, under section 4(h)(10)(C), BPA receives a

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[47] *Id.* at 12.
[48] *Id.* at 13.
[49] Bonneville Power Administration, Q3 Quarterly Business Review Technical Workshop at 7 (Aug. 10, 2023), *available at* https://www.bpa.gov/-/media/Aep/finance/quarterly-business-review/qbr-2023/qbr-tw-q3-fy23-presentation-final.pdf ("Q3 QBRT").
[50] $100 million of these payments came from the FY 2022 Power RDC decision, while the remaining $40 million was included as revenue financing for Power rates in FY 2023. *Id.* at 14.
[51] *Id.* at 14.
[52] Q4 QBRT at 1.
[53] *Id.* at 15.
[54] *Id.* at 6. The Northwest Power Act expressly authorized the Administrator to make expenditures for fish and wildlife protection, mitigation, and enhancement from the Bonneville Fund, for both power and non-power purposes, on a reimbursement basis. 16 U.S.C. § 839b(h)(10)(A) (2022). Section 4(h)(10)(C) of the Northwest Power Act ensures that the costs of mitigating these impacts are properly accounted for among the various purposes of the hydroelectric projects by making sure that when Bonneville funds mitigation on behalf of both power and non-power project purposes ratepayers can recoup the non-power share. 16 U.S.C. § 839b(h)(10)(C) (2022). Since the 1990s, Bonneville, Treasury, and the Office of Management and Budget (OMB) agreed to a crediting mechanism against Bonneville's Treasury payments to reimburse the BPA for expenditures made on behalf of mitigation for non-power purposes. Currently, BPA takes a 22.3 percent credit for expenditures associated with direct fish and wildlife programmatic spending, capital costs for habitat acquisition and construction activities, and replacement power purchase costs associated with lost firm hydroelectric generation due to fish mitigation measures.

credit from the Treasury for a portion of the cost BPA incurs for mitigating the impacts of the federal hydroelectric projects on fish and wildlife. Costs eligible for this credit include acquisitions of power by BPA to meet BPA's load obligations when the federal dams are unable to generate due to constraints from fish operations. Because of low water conditions in FY 2023, BPA acquired substantially larger quantities of power, at significantly higher prices, than it forecast when setting rates for FY 2023.[55] Consequently, when BPA made its Treasury payment in the fourth quarter of FY2023, BPA received a 4(h)(10)(C) credit that was 2.5 times higher than was forecast when setting rates. This larger credit meant that BPA's Treasury payment was smaller than expected, resulting in a higher than anticipated remaining balance in its financial reserves.

Second, BPA also experienced higher secondary (surplus) revenue than anticipated for August and September. This increase was largely due to receiving higher prices for power that BPA sold during the latter half of August, which were fueled by a heat wave that was affecting the region.

Third, generally for revenues earned in the final month of a fiscal year, the associated cash flow is collected in the following fiscal year. FY 2022 September revenues were very high and resulted in significant cash flow in October and November FY 2023.

Fourth, $90 million of the $285.4 million Power RDC was directly attributable to BPA's decision in August 2023 to forgo additional planned debt payments. As described above, BPA had planned on making $140 million in additional debt payments at the end of FY 2023, but stopped $90 million of the planned payment to preserve Power liquidity. The forgone debt payments led to an additional $90 million being present in Power's financial reserves, which now appeared as part of the $285.4 million FY 2023 Power RDC.

3. BPA STAFF'S PROPOSED USE OF THE FY 2023 POWER RDC

At the November 16, 2023, QBR, BPA Staff held a public workshop to discuss the proposed use of the FY 2023 Power RDC.[56] Guiding Staff's recommendation were the parameters set forth in the BP-24 Power Rate and General Rate Schedule Provisions. These state:

> If the Power RDC quantitative criteria (below) are met, the Administrator will calculate the Power RDC Amount, and determine what part, if any, will be applied to debt reduction, incremental capital investment, rate reduction through a Power Dividend Distribution (Power DD), distribution to customers, or any other Power-specific purposes determined by the Administrator.[57]
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For additional discussion on the section 4(h)(10)(C) credit, see *infra* section 4.2.3 (Requests for Increased Fish and Wildlife Funding).

[55] *See* Q4 QBRT at 6.

[56] The materials for the QBRT were posted on BPA's website November 14, 2023.

[57] BP-24 Power GRSP II.P.

If the Power RDC triggers, BPA will notify customers of the preliminary Power RDC Amount and whether the amount will be used to reduce debt, incrementally fund capital projects or other high-value Power purposes, or reduce rates, as soon as practicable, but in no case later than November 30 of each applicable year. BPA will make available to customers the preliminary data relied upon to calculate the Power RDC Amount.[58]

Additionally, the Power RDC states that the "Administrator shall apply the Power RDC Amount to decrease rates through a Power DD in an amount that is the lesser of 1) the Power RDC Amount, or 2) the Planned Net Revenues for Risk (PNRR) [*i.e.,* $129 million] included in rates for the same year in which the RDC is applied."[59]

Consistent with these provisions, Staff proposed to use the $285.4 million FY 2023 Power RDC Amount as follows:

- **$129 Million for Power Rate Relief.**
  This amount directly follows the terms in the Power RDC GRSP. The rate relief would be provided pursuant to the Power Dividend Distribution (Power DD) terms. Because of this provision, only $156.4 million of the $285.4 million FY 2023 Power RDC Amount is subject to the Administrator's discretion.

- **$90 Million for Flexible Debt Reduction.**
  Additional debt repayment is an expressly identified use of the Power RDC.[60] Importantly here, this proposal reflects Staff's view that had "BPA known Q4 results, [BPA] would have paid off [this additional amount of] debt as planned, making the RDC Amount smaller."[61] This part of Staff's proposal restores a portion of the forgone debt payments associated with last year's RDC decision and the revenue financing from the BP-22 power rates that were expected to occur in FY 2023. The $90 million would be held as "flexible" debt payments and available for other uses should BPA's financial situation deteriorate.[62] The benefits to BPA of paying down additional debt are numerous, including lower overall interest payments, less rate pressure in future rate periods, preservation of borrowing capacity, lower leverage, and overall benefits to a BPA's credit rating.

- **$30 Million for Fish and Wildlife.** Specifically, $30 million "designated as Reserves Not for Risk to address, on an accelerated basis, fish and wildlife mitigation that (i) Bonneville anticipates would otherwise need to be addressed during future rate periods and (ii) will result in avoidance of those costs in future rate periods. For purposes of this

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[58] *Id.* at II.P.3.b.
[59] *Id.* at II.P.1.a.
[60] *Id.* at II.P, II.P.1.a, II.P.3.b; *see also* FY 2022 Response to Comments at 16.
[61] Q4 QBRT at 17.
[62] For simplicity BPA refers to this as additional "debt payments" but the funds could be used to either pay down existing debt or avoid incurring new debt on project costs, *i.e.,* "revenue financing."

section, mitigation is that which Bonneville determines (a) would result in tangible and measurable benefits or improvements for fish and wildlife, and (b) is directly related to mitigating for the effects of the construction or ongoing operation of the FCRPS projects."[63] These funds will be held in "reserves not for risk," meaning they will be set aside for the express above-described purpose and not used or made available for other purposes.[64]

As BPA explained in the FY 2022 Power RDC decision, setting aside funds to offset future fish and wildlife costs is a "Power-specific purpose" and permissible under the terms of the Power RDC.[65] This portion of Staff's proposal allows BPA to take certain fish and wildlife mitigation actions sooner than later, and consequently move the costs of such actions forward to a time when BPA can address them with a portion of available RDC funds. Ultimately, using these funds to support BPA's future fish and wildlife mitigation has the two-fold benefit of executing more fish and wildlife projects sooner while also paying for the costs of such actions now rather than with rates collected later, when those same mitigation actions could be more expensive.

- **$36.4 Million for Additional Rate Relief.** The remaining Power RDC Amount would be returned to Power customers as an additional Power DD.[66]

  The FY 2022 Power RDC Response to Comments extensively discusses the basis for returning funds to power customers through the Power RDC.[67] Those factors supported Staff's proposal for additional rate reductions under the FY 2023 Power RDC. Specifically, because power customers are the primary source of the funds that make up the financial reserves for the FY 2023 Power RDC and bear the risk of recovering the costs of the federal power system, and considering Power was on track with other financial metrics important for that business unit's overall long-term financial health, BPA Staff concluded it was reasonable to use a portion of the discretionary Power RDC funds for direct rate relief to those customers. Staff thus proposed that a little more than half of the discretionary portion of the Power RDC be returned to power customers. This proposal was balanced against achieving other long-term benefits, such as taking steps now to prudently mitigate future fish and wildlife costs obligations and reduce the agency's long-term debt.

Comments on BPA Staff's calculation of the FY 2023 Power RDC Amount and their proposed use were due on December 1, 2023. BPA received 24 comments from a wide range of interested parties, including Power customers, state agencies, tribal entities, environmental groups, and individual citizens. After reviewing the comments, BPA concluded that an additional week would be needed to consider the views and perspectives discussed in the comments. BPA views this delay as reasonable and measured under the circumstances because it allows for a more

[63] Q4 QBRT at 17.
[64] *See id*.
[65] FY 2022 Response to Comments at 19.
[66] Q4 QBRT at 17, 19-20.
[67] FY 2022 Response to Comments at 16-18.

complete consideration of public input and would not impact BPA's billing schedule for the Power Dividend Distribution or harm other interests.[68] Also, though not required by the Power RDC GRSP, BPA has decided to prepare this attachment to respond to comments and to explain the basis for its decision.

4. RESPONSE TO COMMENTS

4.1 Supportive Comments

Several commenters commend BPA for its fiscal discipline and financial management that led to a Power RDC for a second year in a row.[69] In addition, Salmon River expressed support for the BPA Staff proposal in its entirety.[70]

Other commenters supported parts of BPA Staff's proposal. Most commenters acknowledged that BPA was required to assign at least $129 million of the FY 2023 Power RDC as rate relief pursuant to the terms of the BP-24 Power rate schedule.[71] Several commenters also supported BPA's decision to add $36.4 million in additional refunds to this amount.[72] Several commenters also supported BPA's decision to use $90 million of the FY 2023 Power RDC Amount for flexible debt repayment, noting that the source of this $90 million was the forgone debt payments from FY 2023.[73] Additionally, no party directly challenged BPA's proposal to implement the BP-24 Power RDC GRSP requirement that the first $129 million be used for rate relief.

4.2 Comments in Opposition and Requests to Modify Proposal

Several comments opposed some or all of Staff's proposal for the remaining $156.4 million of the FY 2023 Power RDC that was subject to the Administrator discretion under the terms of the Power RDC GRSP. In general, these requests fell into four broad groups: (1) requests to increase the amount of funds used for rate relief (by reducing funds for debt reduction and/or fish and wildlife); (2) requests to set aside funds for energy efficiency (by reducing funds for rate relief); (3) requests to increase the amount of funds used for fish and wildlife (by reducing funds

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[68] *See, e.g., Portland Gen. Elec. Co. v. Johnson*, 754 F.2d 1475, 1482 (9th Cir. 1985) (noting "[a] certain latitude must be allowed within which BPA can exercise a degree of business judgment with respect to temporary situations . . ." and permitting BPA "to mold its procedures to the exigencies of the particular case.") (internal citation omitted).

[69] City of Cheney Comment at 1, Big Bend Electric Cooperative Comment at 1, Central Lincoln Public Utility District Comment at 1, Inland Power and Light Comment at 1, Glacier Electric Cooperative Comment at 1, Public Utility District No. 1 of Klickitat County Comment at 1, and Northwest Requirements Utilities Comment at 1 (these commenters all filed comments that were substantially the same, and will be referred to as "City of Cheney *et al.* Comments"); *see also* Surprise Valley Electric Cooperative (SVEC) Comment at 1.

[70] Salmon River Electric Coop Comment at 1.

[71] *See* City of Cheney *et al*. Comments at 1; Alliance of Western Energy Consumers (AWEC) Comment at 1; Public Power Council (PPC) Comment at 2; SVEC Comment at 1.

[72] *See* PPC Comment at 2; City of Cheney *et al.* Comments at 1; AWEC Comment at 2; Western Power Agencies Group (WPAG) Comment at 1.

[73] *See* AWEC Comment at 1-2; PPC Comment at 2; Snohomish County Public Utility District No. 1 (Snohomish) Comment at 1; WPAG Comment at 2.

for rate relief and/or debt reduction); and (4) requests for breach of the Lower Snake River Dams.

4.2.1. Requests for Increased Rate Relief

4.2.1.1. Reduce $90 Million in Extra Debt Repayment

Public Comments

A few commenters expressed opposition to BPA's proposal to pay down debt with $90 million from the FY 2023 Power RDC. The City of Cheney *et al.*, recognize that the $90 million came from a "planned debt reduction from . . . FY 2022" but contends that "given current rate and cost pressures" BPA should use the $90 million for additional immediate rate relief.[74] Surprise Valley raises a similar point in its comment.[75]

Evaluation of Comments and Response

BPA understands the views expressed by the City of Cheney *et al.,* and Surprise Valley, in prioritizing immediate rate relief rather than paying for additional debt reductions.[76] Nevertheless, BPA finds that using $90 million from the FY 2023 Power RDC for additional debt repayment is consistent with the terms of the Power RDC GRSP and eminently reasonable.

First, there is no question that using the Power RDC for debt repayment is a permissible use for the Power RDC Amount. The Power GRSPs are clear that the Power RDC Amount may be used for "debt reduction."[77]

Second, BPA's decision to apply $90 million of the FY 2023 Power RDC is reasonable because this $90 million was previously earmarked for this very purpose. As explained above, up until August 2023, BPA had intended to make an extra $140 million in debt payments during FY 2023. However, BPA decided to hold off on $90 million of this payment in August because then-existing market and water conditions threatened to degrade BPA's financial reserves by year's end. At the time, BPA made the prudent business choice to not pay down debt in order to preserve available liquidity. Now that it is clear that this action was unnecessary, it is reasonable to reinstate the forgone debt payment through the FY 2023 Power RDC. Simply put, "[h]ad BPA known [the] Q4 results, [BPA] would have paid off debt as planned, making the RDC Amount smaller."[78]

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[74] City of Cheney *et al.* Comments at 1.
[75] SVEC Comment at 1.
[76] *See* SVEC Comment at 1; City of Cheney *et al.* Comments at 1.
[77] BP-24 Power GRSP II.P; *see also id.* at P.1.a (noting that any amounts above the mandatory rate reduction may be applied to "reduce debt . . . ."; *id.* at P.3.b. (noting BPA would notify parties of the Power RDC Amount "and whether the amount will be used to reduce debt . . . .").
[78] Q4 QBRT at 17.

Finally, BPA notes that using the FY 2023 Power RDC to pay down debt ultimately benefits Power customers' rates in the long run. While it may not appear in customer power bills as an immediate rate reduction, paying down debt provides long-term benefits by reducing BPA's overall interest cost, as well as the amount of principle needed to be collected in future rates. Applying the Power RDC Amount to reduce debt is, then, precisely the type of "high-value Power purpose[]"[79] that meets both the letter as well as the spirit of the Power RDC GRSP.

For the foregoing reasons, $90 million of the FY 2023 Power RDC will be set aside to complete additional debt payments that were originally planned for FY 2023. This funding will retain the "flexible" option to redirect some or all of this amount for liquidity needs that might emerge in FY 2024.

4.2.1.2. Eliminate $30 million for Fish and Wildlife

<u>Public Comments</u>

Several commenters expressed opposition to BPA Staff's proposal to set aside $30 million to pay for fish and wildlife mitigation costs that would otherwise be incurred by BPA in a future year. These commenters ask BPA to return these funds to Power customers as rate relief. City of Cheney *et al.*, for instance, "strongly objects" to BPA Staff's proposal, noting that BPA already incurs over $600 million in mitigation costs annually, and Staff's proposal appears to be an "unacceptable and unjustified program expansion."[80] AWEC makes a similar argument in its comment and adds that BPA is setting a concerning pattern of committing additional funds for fish and wildlife mitigation after rates are set.[81] Commenters also view the existence of the Power RDC as evidence that BPA set rates higher than necessary.[82] Many commenters also noted that setting aside Power RDC funds for additional future fish and wildlife costs puts Power customers in the "lose-lose" position of paying for BPA's costs in bad financial years and not receiving additional rate relief in good financial years.[83] Other commenters contend that section 7(g) of the Northwest Power Act and the Tiered Rates Methodology, Cost Allocation Principle No. 8, require BPA to use the Power RDC for rate relief.[84] Finally, if BPA proceeds with its proposal for fish and wildlife, several commenters proposed modification to that proposal.[85]

<u>Evaluation of Comments and Response</u>

BPA generally agrees with commenters that BPA is not *required* to set aside funds from the Power RDC to offset future fish and wildlife mitigation. BPA also agrees that the base Power rates are designed to recover required fish and wildlife mitigation costs, and that those costs have

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[79] BP-24 Power GRSP II.P.3.b.
[80] City of Cheney *et al.* Comments at 2.
[81] AWEC Comment at 2.
[82] *Id.* at 1-2; PPC Comment at 1.
[83] PPC Comment at 2; AWEC Comment at 2.
[84] City of Cheney *et al.* Comments at 1; SVEC Comment at 2; WPAG Comment at 1.
[85] Seattle City Light Comment at 1; Snohomish Comment at 1; WPAG Comment at 2.

been developed using reasonable forecasts of BPA's obligations at the time rates are set.[86] Additionally, BPA agrees that it has robust risk mechanisms to address cost uncertainty associated with its fish and wildlife program.[87] Nevertheless, for the reasons described below, BPA finds that setting aside $30 million of the FY 2023 Power RDC for fish and wildlife mitigation is a reasonable exercise of the Administrator's discretion and, ultimately, supports a "high-value" Power purpose.[88]

First, as discussed in the FY 2022 Power RDC Response to Comments, using the Power RDC funds for fish and wildlife mitigation costs that would otherwise be incurred in a future rate period is a "Power-specific purpose" and permissible under the terms of the Power RDC.[89] This is because Staff's proposal provides long-term rate benefits to Power customers. Staff's proposal retains criteria similar to the criteria used in the FY 2022 Power RDC set aside for fish and wildlife.[90] Specifically, the $30 million will be held as "reserves not for risk" and disbursed to fund fish and wildlife mitigation actions that "(i) Bonneville anticipates would otherwise need to be addressed during future rate periods and (ii) will result in avoidance of those costs in future rate periods."[91] These criteria provide important direction to the type of projects the Power RDC funds may be used to support. In simple terms, these funds may be spent only on actions that would otherwise be funded by BPA in a future rate period. In this way, Staff's proposal benefits power rates in the long run by avoiding those mitigation costs in future rate periods. Lessening the impact of fish and wildlife mitigation costs on future rates (when BPA has the funds to do so) is a prudent and sound business practice that will ultimately inure to the benefit of BPA's power customers.

Some commenters suggest that BPA is using the Power RDC to expand its fish and wildlife program. [92] This concern should be allayed by reviewing the criteria accompanying the use of the $30 million. As noted above, those criteria clearly state that the funds will be used on mitigation projects that would otherwise be recovered in a future rate period. Thus, BPA's proposal is not expanding its fish and wildlife program. Indeed, as BPA explained in the FY 2022 Power RDC Response to Comment, BPA concurs that using Power RDC funds to fund new programs would not be "prudent" because of the unpredictability of the RDC.[93]

PPC notes that setting aside funds for fish and wildlife places customers in a "lose-lose" situation where they bear the risk of paying more for power when market conditions leave BPA short of cash, but then do not receive the upside when conditions improve.[94] Other commenters make similar arguments.[95]

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[86] *See* BP-24 ROD § 3.
[87] *Id.* at § 3.4.
[88] BP-24 Power GRSP II.P.3.b.
[89] FY 2022 Response to Comments at 19.
[90] *Compare* Q4 QBRT at 17 *with* FY 2022 Response to Comments at 9.
[91] Q4 QBRT at 17.
[92] *See* SVEC Comment at 1; City of Cheney *et al.* Comments at 2.
[93] FY 2022 Response to Comments at 36.
[94] PPC Comment at 2.
[95] AWEC Comment at 2.

BPA agrees that rate relief is an important consideration when determining what to do with Power RDC Amounts when viewed in connection to the business unit's overall performance and future financial needs. For that reason, BPA proposed that a part of the discretionary portion of the FY 2023 Power RDC be used for rate relief. Rate relief, however, is not the only acceptable use for Power RDC funds. The Power RDC GRSP permits BPA to use the funds for any "Power-specific purpose", including paying down debt and, as described here, funding fish and wildlife actions that would otherwise occur in future rate period. The reason the Power RDC includes these options is to give BPA flexibility to consider short- and long-term benefits and determine how to balance the many competing objectives BPA faces each fiscal year. In consideration of the facts and circumstances of this fiscal year, BPA finds it has struck the proper balance by using $30 million for fish and wildlife and $36.4 million for additional rate relief, and that each component of that decision benefits power customers.

WPAG, City of Cheney *et al.*, and AWEC express concern that BPA is setting a bad precedent by continually using a portion of the Power RDC for fish and wildlife.[96] WPAG contends Staff's proposal "belies" BPA's commitment in the FY 2022 Power RDC to set aside funds for fish and wildlife on a "one time basis."[97] AWEC raised a similar point in its comment.[98] City of Cheney *et al.*, adds BPA is setting an "unacceptable precedent" for its ongoing Provider of Choice contracts and future Power RDCs.[99]

BPA does not agree that its FY 2023 Power RDC decision is inconsistent with any past commitments or sets any sort of precedent between fiscal years. In response to WPAG and AWEC, BPA did not commit in the FY 2022 Power RDC to only apply Power RDC funds to fish and wildlife once. The terms of the FY 2022 Power RDC state: "Ten (10) percent designated as Reserves Not for Risk to address, on an accelerated, <u>**one-time basis**</u>, certain <u>**non-recurring maintenance needs**</u> of existing fish and wildlife mitigation assets."[100] The phrase "one-time basis" related to the type of projects eligible for the FY 2022 Power RDC. The FY 2022 Response to Comments explains this in more detail, noting that these funds would be used "towards non-recurring, one-time fish and wildlife infrastructure and maintenance that would otherwise need to be addressed in future rate periods."[101] In other words, the phrase was intended to reflect the nature of the fish and wildlife work that would be eligible under BPA's FY 2022 Power RDC decision. The funding would be for asset management needs that could use a single infusion from those funds. But this phrase did not stand for the idea that it would *limit* BPA's discretion in future Power RDC decision or otherwise alter the terms of the Power RDC GRSP. That idea has been introduced for the first time by commenters, and BPA finds no support for it.

Additionally, and more generally, BPA disagrees that it is setting precedent with its Power RDC decisions. Each year's Power RDC is determined based on the facts and circumstances facing BPA at that time. To that point, the FY 2023 Power RDC is constructed from a different factual backdrop when compared to the FY 2022 Power RDC. For instance, different terms apply to the

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[96] WPAG Comment at 2; City of Cheney *et al.* Comments at 2; AWEC Comment at 2.
[97] WPAG Comment at 2.
[98] AWEC Comment at 2.
[99] City of Cheney *et al.* Comments at 2.
[100] FY 2022 Response to Comments at 9 (emphasis added).
[101] *Id.* at 16-17.

FY 2023 Power RDC, the amount of the FY 2023 Power RDC is smaller, the way the FY 2023 Power RDC accumulated is different, and there is no settlement guiding Staff's initial direction on how BPA should apply the Power RDC Amounts. Those differences fueled a different proposal for the FY 2023 Power RDC Amount, one that started with a larger percentage for debt repayments, and splitting the remainder, almost equally, between accelerated fish and wildlife mitigation and rate relief.

BPA is also facing different actions and mitigation needs than it did in the FY 2022 Power RDC. For instance, the FY 2022 Power RDC presented an opportunity to take proactive steps to tackle expensive maintenance needs on aging fish and wildlife facilities – such as hatcheries.[102] Having addressed a substantial range of those needs, this year's Power RDC presented an opening for BPA to address other fish and wildlife needs, such as maintenance of irrigation fish screens, habitat restoration actions; land acquisitions or conservation stewardship payments; acquisition of water rights for in-stream use protection." For example, with the FY 2023 Power RDC funds, BPA could address this needed fish screen maintenance, likely at lower overall costs, and before the screens fail or require more extensive and expensive repairs. This example demonstrates the individual factors that go into determining the Power RDC use each year. Simply put, the individual facts and needs facing BPA at that time will control, and just because BPA included one type of use in one year does not mean that BPA will automatically continue that use in future years.

WPAG argues that setting aside funds for fish and wildlife (rather than returning these funds as rate relief) is inconsistent with section 7(g) of the Northwest Power Act and Cost Allocation Principle No. 8 in the Tiered Rates Methodology (TRM).[103] Surprise Valley makes a similar point, noting that BPA is obligated to return funds to customers under these provisions.[104]

BPA disagrees that either section 7(g) of the Northwest Power Act or Principle No. 8 of the TRM controls BPA actions in implementing the Power RDC. Section 7(g) is a ratemaking directive that applies when BPA is setting rates. In that context, BPA is required to

> equitably allocate to power rates, in accordance with generally accepted ratemaking principles and the provisions of this chapter, all costs and benefits not otherwise allocated under this section, including . . . the cost of credits granted pursuant to section 839d of this title, operating services, and the sale of or inability to sell excess electric power.[105]

Here, BPA is not setting a power rate through its implementation of the Power RDC GRSP. Rather, BPA is implementing the Power RDC, and as such, the terms of the Power RDC GRSP govern its application in this process. Those terms provide that BPA may repurpose a portion of the agency's financial reserves for "high-value" and "Power-specific" purposes, which BPA finds includes paying for fish and wildlife mitigation activities that result in future cost savings.

[102] *Id.* at 38-39.
[103] WPAG Comment at 2.
[104] SVEC Comment at 2.
[105] 16 U.S.C. § 839e(g) (2022).

The same reasoning applies to commenters' reference to TRM Principle No. 8. That principle states:

> As a consequence of the customers' contractual take-or-pay obligation to pay for power at rates established by BPA pursuant to Northwest Power Act section 7 to recover, in accordance with sound business principles, BPA's costs of acquiring, conserving, and transmitting electric power . . . (1) all **revenues forecast** by BPA from its sale of secondary energy produced by Federal Base System and other resources acquired by the Administrator will continue to be credited by BPA **in the ratemaking process** pursuant to Northwest Power Act section 7(g) against costs that are **properly allocated to rates for recovery** from sales of power for use within the region; and (2) costs and benefits of the sale of or inability to sell excess electric power allocated under section 7(g) of the Northwest Power Act will be allocated to the Cost Pools to which the costs of the resources that generate such excess electric power are allocated.[106]

As the bolded terms above make clear, Principle No. 8 applies to "revenue forecasts" for "secondary energy" that BPA develops for its "ratemaking processes." BPA complied with these terms by developing a reasonable forecast of its secondary revenue in the BP-24 rate process and properly allocating those revenues to rates consistent with section 7(g). Commenters do not contend otherwise. Moreover, the issues in this process do not involve allocating "secondary revenue" among rate pools. Rather, it is determining what to do with *financial reserves* that exceed a pre-determined threshold. To this point, as described earlier in this letter, the primary reasons that the Power RDC triggered at the end of the fiscal year had as much to do with unprecedented section 4(h)(10)(C) credits and canceling planned debt payments as it did with additional, unexpected secondary revenue. Financial reserves are accumulated or depleted based on differences between forecasts and actuals for *all* costs and revenues, not only secondary revenue. Commenters' reliance on section 7(g) and TRM Principle No. 8 is misplaced in that neither provision introduces binding restrictions on BPA's ability to implement the plain terms of the Power RDC GRSP.

To be clear, BPA is not suggesting that section 7(g) and TRM principles are *irrelevant* to BPA's Power RDC decision. BPA views the principles from these provisions as additional factors to consider when exercising its discretion in implementing the Power RDC. Previously, in the FY 2022 Power RDC, BPA did point to both section 7(g) and the TRM as supportive of BPA's decision to return most of the FY 2022 Power RDC as rate relief.[107] But those references were used to explain the nature of the Power customers' position as ratepayers who are responsible for paying all the federal system costs and, consequently, should, in general, receive the benefits of the that system when it produces excess revenues in the form of a Power RDC. BPA explained that returning funds to Power customers as rate relief in that context was "both reasonable and consistent with BPA's statutory ratemaking directives."[108] In making this observation, BPA was careful not to suggest that such a distribution was *required* by these provisions. Rather,

[106] Tiered Rates Methodology, BP-12-A-03, § 2.1, (July 2011), (emphasis added) *available at* https://www.bpa.gov/-/media/Aep/rates-tariff/historic-rate-cases/bp-12/final-proposal/BP-12-A-03.pdf ("TRM").
[107] FY 2022 Response to Comments at 17-18.
[108] *Id.* at 18.

providing Power customers the benefits of the federal system through Power RDCs can come in various ways, from immediate rate relief or longer-term benefits of paying down debt, paying future costs, or even holding financial reserves to offset future risks or costs.

In summary, BPA concludes that neither section 7(g) nor TRM Principle No. 8 constrain the Administrator's discretion to implement the Power RDC GRSP consistent with its terms. As described throughout this section, the Administrator has concluded that using a portion of the Power RDC Amount to reduce BPA's future fish and wildlife costs is both a prudent and sound business action to take at this time.

Finally, several commenters also suggest modifications to BPA's proposals. WPAG suggests BPA use the $30 million to pay off costs coming from various settlement BPA has reached[109], while PPC suggests BPA hold the $30 million in "reserves not for risk" and treat it as flexible debt.[110] Seattle City Light requests BPA to provide a spending plan for the $30 million.[111] Snohomish PUD suggests BPA scale the FY 2023 Power RDC fish and wildlife funding to the amount of fish and wildlife funding that was actually executed from the FY 2022 Power RDC.[112]

BPA appreciates the alternative proposals submitted by participants. BPA, however, believes Staff's proposal strikes the proper balance between rate relief and meeting BPA's objectives, including addressing future fish and wildlife mitigation actions earlier than it might otherwise. Commenters' proposal to hold these funds as flexible debt or as "reserves for risk" would also dilute BPA's proposal because the funds could be used for other, non-fish and wildlife purposes, including distribution through a future Power RDC. BPA believes holding Power RDC funds in "reserves not for risk" protects these funds for their intended use—addressing future fish and wildlife costs—and ensures they are spent to mitigate the costs of fish and wildlife project in future rate periods consistent with the Administrator's decision in this process. BPA also declines to speculate on what specific costs or actions will ultimately be selected for funds set aside by the FY 2023 Power RDC. Retaining the flexibility to determine this based on real-time inputs, on-the-ground needs, and appropriate input from fish and wildlife project sponsors, including state and tribal fish and wildlife managers, will be far more effective at achieving productive mitigation than committing to a rigid list of actions during this brief public comment period.

4.2.2 Requests for Increased Energy Efficiency Funding

Public Comments

The Northwest Energy Coalition (NWEC) recommends that BPA reduce the amount proposed for rate reduction to apply $50 million to increased energy efficiency investment.[113] NWEC agrees "it is reasonable for BPA to return the majority of the benefits of these investments to

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109 WPAG Comment at 2.
110 PPC Comment at 2.
111 Seattle City Light Comment at 1.
112 Snohomish Comment at 1.
113 NWEC Comment at 3.

customers, in the form of a power dividend distribution, as established in the current rate settlement."[114] However, NWEC argues the proposed RDC application is inconsistent with the Northwest Power Act, that BPA's funding of energy efficiency is insufficient, and that state and federal energy policies favor a greater effort to acquire energy efficiency.[115] The Save Our Wild Salmon Coalition describes the benefits of energy efficiency and states BPA should apply a portion of the RDC Amount to energy efficiency.[116]

Evaluation of Comments and Response

As explained in Section 4.2.3 of BPA's FY 2022 Power Response to Comments, BPA agrees that conservation is valuable, and that additional investments in conservation could be a "high-value" purpose to utilize the Power RDC Amount. The Administrator, however, has discretion in how to apply the RDC Amount. BPA finds that its implementation of the RDC is reasonable and appropriate.

Staff's RDC Proposal Does Not Violate the Northwest Power Act

NWEC argues their proposal "would ensure that BPA's RDC application is consistent with the Administrator's obligations under" Sections 6(b)(5) and 6(e)(1) of the Northwest Power Act.[117] NWEC asserts that "the proposed RDC application is inconsistent with the Power Act because it does not reinvest any of the revenues in the resource that helped make the windfall possible: energy efficiency."[118] Absent an injection of new funding, NWEC argues, BPA will fail to achieve federal obligations.[119]

As discussed more fully in BPA's FY 2022 RDC Response to Comments, Sections 6(b)(5) and 6(e)(1) of the Northwest Power Act are not applicable to the RDC decision.[120] The Northwest Power Act neither directs nor obligates BPA to repurpose financial reserves to fund or acquire additional resources, including conservation.

NWEC describes BPA as "continu[ing] to under-invest in its energy efficiency obligations and under value the role of energy efficiency in meeting the challenges facing the region."[121] NWEC states "BPA has discontinued energy efficiency programs – causing energy efficiency to be $8 million below the spending target in FY 2024," and implies this is contrary to the statutory requirements to acquire conservation "to the maximum extent practicable" and to "not reduce his [sic] efforts to achieve conservation . . . "[122]

As discussed in BPA's FY 2022 RDC Response to Comments, a difference between achieved energy savings and Council plan targets does not mean BPA is not meeting its obligations and

[114] *Id.* at 2.
[115] *Id.* at 2-3.
[116] Save Our Wild Salmon Coalition Comment at 2, n. 1.
[117] *Id.* at 2.
[118] *Id.*
[119] *Id.* at 3.
[120] FY 2022 Response to Comments at 20-29.
[121] NWEC Comment at 2.
[122] *Id.* (emphasis added).

must apply a portion of an RDC Amount to energy efficiency.[123] Nonetheless, it is worth noting that BPA exceeded its target for conservation acquisition in the FY 2022 and FY 2023 rate period. BPA acquired 82 aMW against a rate period target of 76 aMW. Further, this result was achieved at a cost lower than forecast. BPA customers utilized almost all of their Energy Efficiency Incentive funds; $126.9 million of the $137.5 million available was expended. Virtually all of the remainder will be carried over into FY 2024. Specifically, $10.5 million will be carried over and available to support additional conservation acquisition this rate period. Only $42,000—or 0.03%—exceeded BPA's carryover limits.[124]

As noted by NWEC, a bullet in the November 16, 2023 QBRT workshop stated, "Energy Efficiency Development is $8M below the target due to the program sunsetting."[125] NWEC cites this as evidence of BPA "under-invest[ing] in its energy efficiency obligations and under valu[ing] the role of energy efficiency in meeting the challenges facing the region."[126] The bullet referenced by NWEC does not refer to BPA Energy Efficiency program spending or budget, but rather to a discontinued non-IPR budget in which BPA held development funding borrowed by other federal entities. This program was sunset several years ago due to a significant decline in demand. Doing so did not impact BPA's program investment or the volume of BPA's conservation acquisitions in a material way, nor did it have a material impact on investments made by other federal entities.

The only major energy efficiency program discontinued in FY 2023 was BPA's Performance Tested Comfort Systems (PTCS) program. After 25 years of operation, the program was achieving significantly diminished acquisitions, and many of the measures it supported are no longer considered cost-effective by the Northwest Power and Conservation Council. As discussed in the EE Action Plan, the Residential Sector will shift away from PTCS program measures, and put more emphasis on HVAC measures such as ductless heat pumps.[127]

BP-24 IPR and Rate Case Estimates Do Not Require Revisions to the FY 2022 Power RDC
NWEC alleges there is an "ongoing shortfall in conservation investment" and describes BPA's funding as "anemic."[128] NWEC states BPA has "reduced its investment in this important regional resource" and that "BPA's planned expenditures for energy efficiency are flat in BP-24 (FY 2024-25) compared to BP-22, and only 5% above BP-18 levels."[129]

NWEC's challenge is to the same IPR cost forecasts discussed in BPA's FY 2022 Response to Comments. BPA continues to disagree that its cost forecast is insufficient and that a portion of the Power RDC Amount should be applied to make up for any such alleged deficiency.[130] The cost forecast reflected BPA's conservation acquisition target, and included a 2.4% increase in

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[123] *See* FY 2022 Response to Comments at 24-25.
[124] *See id.* at 26 (discussing Carryover Amounts and flexibility of ECA budget transfers).
[125] Q4 QBRT at 7.
[126] NWEC Comment at 2.
[127] *See* Bonneville Power Administration, Energy Efficiency Action Plan 2022-2027, at iv (May 2023), *available at* https://www.bpa.gov/-/media/Aep/energy-efficiency/document-library/bpa-2022-2027-ee-action-plan.pdf.
[128] NWEC Comment at 2-3.
[129] *Id.* at 1, 2.
[130] *See* FY 2022 Response to Comments at 27-28.

conservation acquisition funding for the rate period due to the forecast rising cost of conservation acquisitions necessary to meet this target.[131] A change in revenue does not create a corresponding change in the agency's underlying costs.[132] BPA's experience over the past fiscal year supports the reasonableness of the cost forecast. BPA exceeded its target for conservation acquisition and continues to have additional funding available.

State and federal policies and practical considerations do not require changes to the FY 2023 Power RDC

NWEC argues that "changes in state and federal energy policies, markets, technology innovation and the impacts of climate change strongly favor a greater effort to acquire energy efficiency."[133] NWEC cites benefits of energy efficiency and conservation from BPA's IPR process, and reframes these benefits as negative impacts that will result absent an injection of new funding.[134] NWEC describes how energy efficiency helps increase hydro flexibility and diminish market risk in situations such as last winter's surge in wholesale natural gas prices and summer heat waves.[135]

BPA agrees that conservation is valuable and has concluded that its projected investments in conservation are sufficient to recognize these benefits. BPA remains committed to implementing its conservation program consistent with its statutory mandates and will continue to work collaboratively with its partners regarding energy policies and changes in the energy market.

4.2.3 Requests for Increased Fish and Wildlife Funding

Public Comments

Many commenters request that BPA increase the amount of Power RDC dedicated for fish and wildlife mitigation. With respect to fish and wildlife, these requests characterize BPA's RDC proposal as: "not enough," "unacceptable," "inappropriate" and the like.[136] Several of these commenters argue that "at least half" of the available RDC amount should go to fish and wildlife;[137] others call for "parity" between power rate reductions and fish and wildlife funding.[138] One commenter believes a substantial portion "if not all" of the RDC should be dedicated to fish and wildlife.[139]

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[131] *Id.*
[132] *Id.* at 28.
[133] NWEC Comment at 3.
[134] *Id.* at 2-3.
[135] *Id.* at 3. *See also* Save Our Wild Salmon Coalition Comment at 2, n. 1 (describing benefits of energy efficiency).
[136] *See e.g.,* Idaho Conservation League, Great Old Broad for Wilderness, and Idaho Rivers United ("ICL") Comment at 3; State of Oregon ("Oregon") Comment at 1; Washington Department of Fish and Wildlife ("WDFW") Comment at 1.
[137] *See* ICL Comment at 1, 4; Save our Wild Salmon Coalition (consisting of 25 entities) ("Save Our Wild Salmon Coalition") Comment at 1, 3; Idaho Rivers United Comment at 1.
[138] WDFW Comment at 1; Confederated Tribes and Bands of the Yakama Nation ("Yakama Nation") at 2.
[139] *See* Nez Perce Tribe ("Nez Perce") Comment at 4.

Evaluation of Comments and Response

As an initial matter, the summary above shows that many of the comments ask for half of the available RDC Amount to be set aside for fish and wildlife, or "parity." BPA explained above (Section 3) that of the total Power RDC Amount ($285.4 million), BPA's general rate schedule requires that the first $129 million be distributed to power customers as a dividend distribution. Also, as described in Section 4.2.1.1 above, $90 million of the current Power RDC came from forgoing previously planned additional debt payments in FY 2023, in August 2023, that BPA has now decided to reinstate. Thus, the available remainder of the 2023 Power RDC amount is $66.4 million, and of that available amount, this decision dedicates nearly half ($30 million) to fish and wildlife. In that sense, while BPA does not believe that such a balancing is required, BPA's decision (and initial proposal) aligns with comments that seek a proportionally balanced use of the available RDC amount for fish and wildlife and rate relief.[140] Even so, many commenters offer various rationales for increasing the proportion of the Power RDC Amount dedicated to fish and wildlife mitigation.[141] BPA addresses those comments below.[142]

How BPA's Financial Reserves Accumulated in FY 2023

A recurring theme in several of these comments is the view that BPA's 2023 end-of-year financial reserves were realized at the expense of fish and wildlife, and therefore the 2023 Power RDC proposal should include a larger distribution towards fish and wildlife mitigation. For example, Oregon, WDFW, and Yakama Nation argue that negotiated dam operations did not maximize benefits for fish, allowing additional revenue to be generated and, in turn, pushing BPA reserves to a level where this Power RDC was triggered.[143] This position deserves correcting at the outset, because it serves as the basis for some commenters' policy arguments for additional fish and wildlife funding.

[140] However, as BPA has explained in the past, the addition of unexpected revenue or other accretions to BPA's financial reserves do not change BPA's underlying fish and wildlife obligations; neither revenues nor reserves are interdependent with the extent of BPA's fish and wildlife duties, and a change in revenue or reserves does not create a corresponding change in the agency's underlying obligation to fish and wildlife. *See, e.g.*¸ FY 2022 Response to Comments at 31-33; BP-24 IPR Closeout Report at 12 (citing BP-22 Record of Decision, BP-22-A-02, at 44-45 (July 2021) ("BP-22 ROD")), *available at* https://www.bpa.gov/-/media/Aep/finance/integrated-program-review/bp-24-ipr/bp-24-ipr-closeout-report.pdf. Nonetheless, as BPA explains elsewhere in this Response to Comments, dedication of this $30 million to fish and wildlife does indeed provide a future benefit to power costs.

[141] Some commenters make passing references to other considerations bearing on their requests for additional fish and wildlife funding, but do not develop those points. See*, e.g.,* Nez Perce Comment at 3, and Save Our Wild Salmon Coalition at 3, both of which mention tribal treaty matters. BPA has addressed similar comments previous decisions. *See* BP-24 ROD § 5. BPA has focused its responses in this document to address the arguments developed by the parties in their comments. BPA has not repeated arguments or response to issues mentioned by the commenters in passing without further development. BPA's prior responses on issues related to such topics remain applicable. *See, e.g.,* BP-22 ROD; FY 2022 Response to Comments; BP-24 ROD.

[142] Many of the comments BPA received on this topic were duplications or variations on those submitted last year for BPA's 2022 Power RDC decision. BPA evaluated and responded to those comments in its FY 2022 Response to Comments document, attached to its 2022 Power RDC Decision Letter. To the extent applicable for this 2023 decision, BPA incorporates its prior responses herein, as supplemented and modified by the discussion in this section.

[143] Oregon Comment at 1; WDFW Comment at 2; Yakama Nation Comment at 2; Nez Perce Comment at 3.

To clarify, and as explained above in section 2.4, for most of FY 2023, BPA financial reserves were under extreme pressure due to low water conditions and high purchase power costs. Indeed, by the end of the fiscal year, BPA had incurred approximately a *billion dollars more* in power purchase costs than it forecast when setting rates.[144] It was only after a confluence of a number of factors—none of which relate to taking advantage of operations at the expense of fish—that the financial picture changed at year's end. Briefly, those factors included: (1) BPA's receipt of higher than forecast secondary revenue, which was the result of higher than forecast *market prices* driven by low water conditions (in particular, associated with high energy demand during a regional heat wave in the latter half of August); (2) BPA's decision in August 2023 to forgo additional planned debt reduction actions for the Power business unit, due to liquidity concerns at that time; (3) cash and accrual carryover; and (4) an unexpectedly large credit (the second-highest in the agency's history) against BPA's annual payment to the U.S. Treasury under section 4(h)(10)(C) of the Northwest Power Act.[145] This final factor warrants elaboration.

Under section 4(h)(10)(C), BPA receives a credit for a portion of the costs it incurs for mitigating the impacts of the federal hydroelectric projects on fish and wildlife.[146] This credit accounts for the reality that when BPA mitigates for development and operation of Columbia River System dams, the effect of that mitigation also often addresses impacts associated with non-power purposes of the federal dams (*e.g*., irrigation, navigation, flood risk management) when those impacts cannot, as a practical matter for purposes of mitigation, be separated from power impacts. Thus, the 4(h)(10)(C) credit provides for an appropriate, corresponding adjustment reducing BPA's payment to Treasury. This credit applies on a system-wide basis and gives effect to the Northwest Power Act's principle that power customers pay only for power impacts.[147]

Costs eligible for this credit include BPA's market purchases of power to serve BPA's load obligations when the federal dams are unable to generate due to constraints from fish operations. Due to implementation of fish operations in 2023, in order to serve its power load obligations BPA had to purchase a substantial amount of market power, at significantly higher-than-expected market prices, compared to what it anticipated when setting rates for FY 2023. When these expenditures were factored into BPA's 4(h)(10)(C) credit calculation, the credit was 2.5 times higher than was forecast when setting rates, which caused a corresponding reduction in BPA's payment to Treasury.[148] In other words, this larger credit meant that the cash used to satisfy BPA's Treasury payment was less than expected, and resulted in a higher remaining balance in the Power business line's financial reserves at the end of the year.

Importantly, and contrary to commenters' assertions, it was these credits for the high cost of purchasing power needed to replace the power generation that was precluded by more favorable fish operations that contributed to the high level of Power reserves at the end of the year, and the triggering of this Power RDC. The other contributing factors—market prices for the power that

[144] Q4 QBRT at 7.
[145] *See id.* at 6-7.
[146] *See* 16 U.S.C. § 839b(h)(10)(C) (2022); *id*. § 839b(h)(8)(B) (2022) ("Consumers of electric power shall bear the cost of measures designed to deal with adverse impacts cause by the development and operation of electric power facilities and programs only.").
[147] *See* 16 U.S.C. § 839b(h)(8)(B) (2022).
[148] *See* Q4 QBRT at 6.

BPA was able to generate and sell, and BPA's decision to forgo planned debt payments—were unrelated to operations.

In fact, the 2023 operations that were agreed to in the Term Sheet for Stay of Preliminary Injunction Motion and Summary Judgment Schedule ("2022 Agreement") for the *NWF v. NMFS,* (3:01-cv-00640-SI) (D. Or.), litigation and subsequently extended in the United States Commitments for 2023, resulted in a *loss* of revenue—an estimated net value of -$15 million—as compared to the proposed action consulted upon under the Endangered Species Act in 2020[149] primarily due to increased spill operations that, again, resulted in less power generation.

Oregon's comment goes on to argue that "BPA's significant excess revenues (i.e., $285.4 million) indicate much more could have been done for fish without risking cost-efficient power operations."[150] This comment ignores that power costs were not a primary consideration that went into development of the 2023 operations; the United States Government (USG) approach to operations in the 2022 Agreement (as extended into 2023) was developed based on important considerations of the multiple purposes of the CRS, including potential negative impacts to bull trout, avoiding adult salmon and steelhead migration delays, human health and safety concerns, navigation, and power and transmission reliability. All of these factors were critical considerations for the USG, rather than a narrow focus on "cost-efficient power operations." Additional constraints were negotiated by all the parties and put in place during the spring in an effort to prevent high spill conditions from impeding effective adult fish passage, not to increase the cost effectiveness or revenue potential of the spill operation.[151]

Going further, WDFW and others argue:

> Fish operations (e.g., spill) were specifically constrained going into the year to ensure reliable power operations (based on BPA forecasting). However, BPA took advantage of in-season opportunities for additional power generation and sales when reliability was not a real-time constraint. These opportunities contributed to the additional revenue reserves. All or a portion of those real-time opportunities could have been invested toward additional spill to partially make up for the reliability constraints imposed on fish operations at the beginning of the season. If those in-season opportunities are not shared with the fish via enhanced real-time spill, at a minimum a larger portion of the surplus revenues generated should be retrospectively invested into enhanced fish and wildlife conservation measures recommended by the region's fish and wildlife managers.[152]

BPA understands this argument to suggest that, so long as power and transmission system reliability were not threatened in "real-time," flexibility in the system could or should have

[149] *I.e.*, the operations that BPA, Corps, and Reclamation had selected in the CRSO EIS before agreeing to modifications in the 2022 Agreement.
[150] Oregon Comment at 1. BPA notes that this statement conflates "revenue" and "reserves." It is BPA's financial *reserves*, not its revenue, that determines whether an RDC is available and in what amount.
[151] *See* FY 2022 Response to Comments at 30.
[152] WDFW Comment at 2; *see also* Yakama Nation Comment at 2 (identical language); Save Our Wild Salmon Coalition Comment at 2; Nez Perce Comment at 3.

defaulted to additional fish spill rather than power generation. There are several problems with this suggestion.

First, it ignores the other factors noted above that informed the negotiated sideboards for system operations, all of which were valid "real-time" constraints on ability to provide additional spill at various points throughout the 2023 fish spill season. As such, generating power within any remaining flexibility (*i.e.*, when water could not be spilled because of these other reasons) was entirely appropriate.[153]

Second, and related, the commenters provide no factual basis or support for their contentions that power generation, and not those other constraining factors, were the reason that fish spill operations were not further expanded beyond what was agreed to in the extended operations agreement. In fact, aside from the instances in which transmission system reliability required a variance in fish spill operations, the other variances in fish spill during 2023 were attributable to facility maintenance, program error, human error, navigation needs, and management of in-water debris, but were never due to an increase in power generation. Whenever feasible, variances were coordinated in advance rather than as "real-time" decisions.[154] Many of these commenters were party to the 2022 Operations Agreement (as extended for 2023) and thus agreed to these operational parameters; nothing in that agreement required use of any or all real-time flexibility in favor of additional fish spill rather than other system purposes.

Finally, this argument misses a fundamental point: BPA has a statutory and contractual obligation to supply customers electric power to serve their regional firm power loads. Given that BPA sells power at cost, the primary purpose of marketing federally produced power is not aimed at creating surplus revenue but at meeting BPA's supply obligation. If constraints on the hydroelectric system prevent BPA from meeting those loads, BPA must attempt to acquire power from other sources, which BPA did in FY 2023, incurring over a billion dollars in costs above its power purchase forecast, some of which was attributable to an inability to generate power when spilling water for fish.

In short, the foregoing discussion shows it is incorrect to suggest that the revenue or financial reserves leading to this Power RDC accumulated as a result of power operations implemented "at the expense of fish."

Turning from operations-based arguments, the Save Our Wild Salmon Coalition suggests that unspent fish and wildlife mitigation funds, collected during past rate periods, contributed to BPA's Power financial reserves at the end of FY 2023 and the resulting Power RDC Amount.[155] There are several problems with this suggestion.

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[153] *See, e.g.*, CRSO FEIS § 1.4.1 *available at* https://www.nwd.usace.army.mil/CRSO/Final-EIS/ ("Some requirements are established by Congress when a project is authorized, while others are established by the agencies based on operating experience. Within these operating limits, Bonneville schedules and dispatches power.").

[154] *See* Fish Operations Plan (FOP), 2023 Monthly Implementation Reports, *available at* https://pweb.crohms.org/tmt/documents/FOP_Implementation_Reports/ (noting causes for all variances from fish operations spill during the 2023 fish spill season).

[155] *See* Save Our Wild Salmon Coalition Comment at 2.

First, BPA has already explained the factors that contributed to the late-2023 accumulation of Power's financial reserves (see Section 2.4, above), and the commenter's contention finds no support in those facts. It is also unclear how the commenter purports to have tracked unspent funds (from 10 years ago) through to current reserves or this RDC Amount. BPA has not attempted to verify the commenter's accounting,[156] and finds no need to for purposes of this response. In fact, on average BPA's Fish and Wildlife Program executes approximately 95% or more of its annual budget, and often avails itself of agency policies that allow it to carry unspent portions forward into future budgets. For example, in 2023 BPA's Fish and Wildlife Program (F&W Program) expense budget was $250.2 million; the F&W Program's actual expenditures were $246.1 million. Therefore, BPA's F&W Program expenditures were $4.1 million below BPA's FY 2023 budget.[157] All of the unspent funding, $4.1 million, will be moved forward into the BPA F&W Program's budget for use in FY 2024. (A similar carryover occurred from FY 2022 to FY 2023.[158]) In addition, BPA has certain contractual commitments to make other unspent funds from prior years' fish and wildlife budgets available for mitigation expenditures. For instance, the cumulative amount of committed but uncontracted funds under BPA's various Fish Accord agreements has grown to approximately $70 million over the duration of the agreements and continues to be available for fish and wildlife mitigation by Fish Accord partners.

In any case, to the extent that BPA's current financial reserves contain any past fish and wildlife funding that was made available by BPA, but not expended by fish and wildlife project contractors, that amount is negligible compared to the significant additional fish and wildlife funding BPA has committed to in the last year, including but not limited to:

- $50 million in the 2022 RDC,
- $30 million in the 2023 RDC,
- $200 million (over 20 years) for the P2IP agreement,

To summarize, the comments claiming that BPA's 2023 end-of-year financial reserves were realized at the expense of fish and wildlife are factually inaccurate. Therefore, comments arguing that this justifies use of the Power RDC to "compensate" fish and wildlife with additional funding are unsupported.

Presidential Memorandum of September 2023

[156] The results of which could vary significantly depending on which comparison point the commenter used: *e.g.,* start-of-year budgets, contracted budgets, projected spending, etc. It appears that the commenter relied on "projections from BPA's Integrated Program Reviews," which would be an incorrect point of comparison because those numbers represent cost projections and do not determine how much funding will ultimately be available. *See id.*

[157] *See* Q4 QBRT at 6 (noting "The F&W program came in $4M below target due to minor variances at project level which account for staffing changes or any implementation hurdles encountered and naturally occurring in habitat restoration projects").

[158] FY 2022 Response to Comments at 31.

Many commenters invoke President Biden's "Memorandum on Restoring Healthy and Abundant Salmon, Steelhead, and Other Native Fish Populations in the Columbia River Basin"[159]—issued on September 27, 2023—as a reason that BPA should (or must) dedicate a greater portion of this Power RDC to fish and wildlife.[160]

The Presidential Memorandum says:

> It is a priority of [this] Administration to honor Federal trust and treaty responsibilities to Tribal Nations — including to those Tribal Nations harmed by the construction and operation of Federal dams that are part of the Columbia River System (CRS) — and to carry out the requirement of the Pacific Northwest Electric Power Planning and Conservation Act (Public Law 96-501) to operate, manage, and regulate the CRS to adequately protect, mitigate, and enhance fish and wildlife affected by the Federal dams in the Basin in a manner that provides equitable treatment for fish and wildlife with the other purposes for which the Federal dams are managed and operated.[161]

The policy statement then provides:

> In recognition of these priorities, it is the policy of [this] Administration to work with the Congress and with Tribal Nations, States, local governments, and stakeholders to pursue effective, creative, and durable solutions, informed by Indigenous Knowledge, to restore healthy and abundant salmon, steelhead, and other native fish populations in the Basin; to secure a clean and resilient energy future for the region; to support local agriculture and its role in food security domestically and globally; and to invest in the communities that depend on the services provided by the Basin's Federal dams to enhance resilience to changes to the operation of the CRS, including those necessary to address changing hydrological conditions due to climate change.[162]

The memorandum's implementation section directs agencies to "utilize their authorities and available resources to advance the policy." Accordingly, the memorandum provides:

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[159] *Available at* https://www.whitehouse.gov/briefing-room/presidential-actions/2023/09/27/memorandum-on-restoring-healthy-and-abundant-salmon-steelhead-and-other-native-fish-populations-in-the-columbia-river-basin/ ("Presidential Memorandum").

[160] *See generally* Idaho Rivers United Comment; Save Our Wild Salmon Coalition Comment; ICL Comment; WDFW Comment; Yakama Nation Comment; *see also* Comment of Donald Miller; Nez Perce Comment (addressed to Chair of the Council on Environmental Quality, Director of Office of Management and Budget, and secretaries of Energy, Interior, and Army).

[161] Presidential Memorandum § 1. *See* text, accompanying notes, and sources cited *infra* p. 32–35 ("Legal Requirements of Northwest Power Act Section 4(h)(11)(A)") (explaining that the Northwest Power Act's equitable treatment mandate applies in the context of decisions respecting the physical operation and management of the dams and reservoirs of the Columbia River System).

[162] *Id.*

> Within 120 days of the date of this memorandum [*i.e.,* Sept. 27, 2023], all agencies with applicable authorities and responsibilities, including those agencies identified in subsection (a) of this section, shall review their programs affecting salmon, steelhead, and other native fish populations in the Basin, including any program with authority or responsibility with respect to the CRS, for consistency with the policy established in section 1 of this memorandum. As soon as practicable following such review, agencies shall, consistent with applicable law, identify and initiate any steps necessary to advance that policy.[163]

BPA's Power RDC decision advances the Presidential Memorandum's policy in that it applies available resources to accelerate BPA's investment in actions that will benefit fish and wildlife of the Columbia River Basin, including salmon, steelhead, and other native fish. In addition, the rate relief component of the Power RDC invests in communities that depend on and purchase power generated by the Columbia River System, while considering changes to operation of the CRS including as related to hydrological conditions.[164] As called for in the Presidential Memorandum, Bonneville will conduct an appropriate review of relevant programs during the 120-day period to confirm that they are consistent with the memorandum's policy. This review is ongoing.

<u>*New and Expanded Mitigation Work*</u>

One comment calls the proposed RDC decision "bad policy" and "not enough" for fish and wildlife because none of the RDC Amount will go towards new or expanded fish and wildlife mitigation.[165] BPA disagrees that this amounts to bad policy. As BPA explained in the FY 2022 Response to Comments, BPA does not find the Power RDC process—a rate mechanism that's implemented over a few short weeks—generally suitable for making informed decisions on whether to undertake wholesale expansions of agency programs or establish new initiatives.[166] BPA has also noted its concern with using such a brief process to commit to potentially long-term projects, with little-to-no understanding of their details, and agree to fund them with variable, unpredictable funds from a year-to-year Power RDC process.[167] This is why the RDC decision sets aside funds for fish and wildlife purposes subject to specific criteria, with a focus primarily on non-recurring actions, but does not determine what projects or actions will be funded. Those decisions will be decided later through separate agency processes that allow for more measured consideration and decision-making.[168]

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[163] *Id.* § 2(b).
[164] *See* discussion *supra* p. 23–24 (noting power costs associated with changes in operation of the CRS, including under low water conditions); *see also* PPC Comment at 1 ("[Public Power Council] is the overall trade association for the non-profit, locally-governed utilities in the Pacific Northwest that have the priority right to purchase wholesale power from BPA at cost. PPC's members rely on BPA power and transmission products to provide their communities and businesses with reliable, affordable, and environmentally responsible power supply.")
[165] ICL Comment at 3–4.
[166] FY 2022 Response to Comments at 36-39.
[167] *Id.*
[168] BPA acknowledges Yakama Nation's and Nez Perce's suggestion that BPA allow fish and wildlife managers, and not BPA, to decide which specific fish and wildlife mitigation actions will be selected for implementation with RDC funds. BPA expects its project sponsors, including state and tribal fish and wildlife managers, will play a role in proposing, prioritizing, and implementing the fish and wildlife work that will be accomplished with this funding.

Even so, there can be little question that fish and wildlife are among the expected beneficiaries from the broad range of actions that could fall within the scope of the fish and wildlife set aside. These could include but are not limited to: additional maintenance of existing fish and wildlife infrastructure, such as hatcheries or fish screens[169]; habitat restoration actions; land acquisitions or conservation stewardship payments; acquisition of water rights for in-stream use protection. Even one-time actions like this will undoubtedly expand and advance the mitigation footprint of BPA's fish and wildlife program.

Nevertheless, certain commenters continue to characterize BPA's FY 2023 Power RDC proposal as an attempt to "buy off" future fish and wildlife mitigation, or simply "avoiding costs in future rate periods."[170] Again, BPA respectfully disagrees. Rhetoric that claims that BPA is "buying off" future mitigation entirely misunderstands the point. The RDC funds will pay now for costs or actions that BPA expects will arise in future rate periods when, in all likelihood, they would be more expensive. By funding those actions now, BPA will avoid having those (higher) costs added to future rate periods. At the same time, BPA is not committing here to set the size of its future fish and wildlife programs. Each rate period, BPA considers the needs of its fish and wildlife program and develops corresponding forecasts of those costs. Obviously, if BPA pays for a one-time cost now it avoids that cost in the future. Thus, for instance, if BPA funds a habitat restoration action such as placing woody debris in a particular riparian area in 2024, that means BPA would avoid paying (likely higher) costs to put that same debris in the same riparian area in a future year. Similarly, any prefunding of planned maintenance work on hatcheries or fish screens means less risk that the assets may fail and cause more costly future repairs. And if larger habitat projects can be funded in a single year rather than several, this would allow BPA to avoid demobilization/remobilization costs over multiple field seasons. Likewise, large equipment purchases could help avoid higher long-term rental costs. All of these actions allow BPA to avoid incurring these costs in future rates. These savings, however, do not constrain BPA's ability to develop and fund its fish and wildlife program at a level capable of fulfilling its statutory responsibilities in any future rate period. These examples also show why including accelerated fish and wildlife spending as a portion of the RDC Amount is a benefit for BPA and its power customers and is a reasonable and prudent business practice.

However, BPA must be able to assure that this work comports with the purpose of the RDC rate mechanism, which is to provide a "high-value Power purpose," such as accelerating mitigation that addresses BPA obligations. For this reason, BPA declines to use this response to comments to commit subsequent funding decisions to fish and wildlife project sponsors alone.

[169] Both the Yakama Nation and WDFW comments state: "the 2023 RDC proposes using $90 million for debt reduction, while giving comparatively little consideration to the large, and growing, backlogged maintenance needs at hatcheries and fish screen projects." Yakama Nation Comment at 2; WDFW Comment at 2. BPA disagrees with a "comparative" allocation approach. Nonetheless, BPA notes that the 2022 RDC dedicated $50 million to fish and wildlife asset maintenance, which, combined with other increases in BPA's asset management spending during BP-24 has allowed BPA to "cover existing high and medium priority needs for the Lower Snake River Compensation Plan (LSRCP) [hatcheries], and to also cover the most critical existing needs at [BPA's Fish and Wildlife] Program Hatcheries." BP-24 ROD at 91, *quoting* Memorandum on Asset Management Strategic Plan Priorities for FY2024 for hatcheries and screens, BP-24-E-BPA-17, at 10. As to fish screens, BPA staffs estimates the cost of their maintenance needs to be approximately $12 million, which is less than half of the available funding in the fish portion of this 2023 Power RDC.

[170] ICL Comment at 4; Idaho Rivers United Comment at 2.

In addition, it is important to note that BPA's Power RDC decision in no way *constrains* BPA's ability to meet its legal obligations to fund BPA's fish and wildlife program (including potentially new obligations) or to add new or expanded mitigation work.[171] Simply because specific mitigation actions are not eligible or selected to use funds set aside through the RDC process does not mean those actions are *precluded* by this RDC decision. A rate adjustment mechanism such as the RDC is not designed or equipped to select the specific mitigation projects to receive funding. Moreover, BPA need not earmark some or all of the Power RDC Amount to determine whether certain actions can be funded. If new obligations arise or discretionary actions are selected, BPA's rates are prepared to recover those costs.[172] BPA's implementation of the Power RDC does not diminish BPA's ability to either recover its costs or to take on new, modified, or expanded fish and wildlife obligations in the future.

For example, BPA has committed to new agreements for fish and wildlife interests this fiscal year—e.g., the P2IP Agreement—which were not selected or eligible under last year's RDC decision or forecast in BPA's rate case cost projections.[173] Nonetheless, BPA was able to commit to fund each of these agreements without limitation or hindrance.[174] These examples empirically demonstrate that new or expanded work is not precluded by BPA's rate assumptions or Power RDC decisions, and that the Administrator's discretion to commit funds from the BPA Fund (subject to Congressional oversight[175]) is fully retained.

Another commenter asserts that this RDC decision's dedication of an additional $30 million to fish and wildlife mitigation "push[es] back efforts to recover salmonids" and "hampers critical F&W projects from expanding in scope and resources . . . ."[176] BPA disagrees. Fundamentally, BPA is deciding here to set aside $30 million in funding to accelerate the pace of fish and wildlife mitigation. It is not clear to BPA how such a decision could "push back" or "hamper" efforts to recover salmonids. Moreover, as just described, BPA's decision in this Power RDC does not preclude or limit the Administrator's discretion to fund required mitigation actions outside of this process. Thus, if additional projects are appropriate during the rate period, BPA's Power RDC decision would not prevent that mitigation from being accomplished.

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[171] *See also* FY 2022 Response to Comments at 32-33.
[172] BP-24 ROD § 3.4 (describing six lines of risk mitigation to address cost uncertainty and new obligations).
[173] "Phase 2 Implementation Plan" or P2IP refers to a Memorandum of Understanding and Settlement Agreement with the Confederated Tribes of the Colville Reservation, the Coeur d'Alene Tribe, and the Spokane Tribe of Indians for certain funding for implementation of the Phase 2 Implementation Plan projects for reintroducing specific non-Federally protected salmonid stocks above Chief Joseph and Grand Coulee dams in the Upper Columbia River Basin. *See* Letter, Bonneville Power Administration, Sept. 21, 2023, *available at* https://www.bpa.gov/-/media/Aep/environmental-initiatives/fish-wildlife/20230921-p2ip-customer-letter.pdf.
[174] *See also* Fisher *et al.*, BP-24-E-BPA-10, at 40 ("Since the Council published the 2020 Addendum to the Columbia River Basin Fish and Wildlife Program, BPA has made available well over $3 million in new fish and wildlife funding to tribes in the Upper Columbia, specifically the Spokane Tribe of Indians and Coeur d'Alene Tribe. This funding provided for expanded hatchery O&M, increased northern Pike monitoring and suppression, and expanded monitoring in Lake Roosevelt. Specific FY 2023 actions include increased wildlife habitat O&M, large-scale habitat restoration for fish and wildlife, increased efforts to track and monitor redband trout, and genetic and diet analyses for Lake Roosevelt sturgeon.").
[175] *See* BP-24 ROD § 6.2.
[176] Idaho Rivers United Comment at 2-3.

To the extent the commenter is suggesting that a decision to use the Power RDC for something other than fish and wildlife (*e.g.,* rate relief, paying debt) *harms* fish and wildlife because those funds *could have been* used for additional fish and wildlife mitigation, BPA must also disagree. Fundamentally, BPA cannot subscribe to an "opportunity cost" theory to fish and wildlife mitigation. That theory would suggest, as the commenter seems to, that any decision to spend money on anything *other than* fish and wildlife amounts to a harm to fish and wildlife interests because those funds *could have* been spent on fish and wildlife, but were not. This would lead to the untenable result that virtually every financial decision BPA makes would need to be measured against additional fish and wildlife funding. Every day, BPA is faced with financial choices, many of which involve millions of dollars. These choices span the spectrum of business decisions, from deciding whether to make a long-term power purchase, to whether to purchase equipment now or later, to whether to hire new employees. Congress recognized the need for the Administrator to have flexibility to make these choices efficiently and in a sound, business-like manner, and therefore, afforded the Administrator substantial discretion.[177]

However, if BPA were to subscribe to the "opportunity cost" theory, the discretion afforded the Administrator to perform these duties in a business-like fashion would be all but lost as the mere presence of a financial choice would militate against a decision that funds anything other than fish and wildlife. This outcome would exist because BPA *could* always choose to forgo its current priorities (whether it be hiring additional employees, building a new turbine, upgrading old facilities, paying down debt, or providing a rate reduction) in favor of additional fish and wildlife funding. The end result would paralyze BPA's financial and business decisions, which illustrates why this "opportunity cost" theory is inappropriate.

BPA's Power RDC decision advances fish and wildlife mitigation while also defraying higher mitigation costs in the future.

Allegations of "Flat Funding" and Inflation Impacts

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[177] *See, e.g.,* Bonneville Project Act § 2(f), 16 U.S.C. § 832a(f) (2022) (providing Administrator broad authority and discretion to contract and make settlements upon "such terms and conditions and in such manner as he may deem necessary"); Transmission System Act, 16 U.S.C. § 838g (2022) (noting BPA must set rates "at the lowest possible rates to consumers consistent with sound business principles. . ."); Northwest Power Act, § 9(b), 16 U.S.C. § 839f(b) (2022) (noting "the Secretary of Energy, the Council, and the Administrator shall take such steps as are necessary to assure the timely implementation of this chapter in a sound and business-like manner."); *Ass'n of Pub. Agency Customers v. Bonneville Power Admin.*, 126 F.3d 1158, 1171 (9th Cir. 1997) ("The statutes governing BPA's operations are permeated with references to the 'sound business principles' Congress desired the Administrator to use in discharging his duties."). Legislative history confirms this discretion:

> '[The] legislative history [of the statutes governing BPA's operations] reflects a congressional recognition of the significant role played by BPA in the Pacific Northwest, and an effort to enable this organization to operate in a businesslike fashion and to free it from the requirements and restrictions ordinarily applicable to the conduct of Government business. The transfer of the functions of BPA from the Department of the Interior to the Department of Energy is not intended to diminish in any way the authority or flexibility which is a requisite to the efficient management of a utility business.'

S. Rep. No. 164, 95th Cong., 1st Sess. 30 (1977), *reprinted in* 1977 U.S.C.C.A.N. 854, 883.

Some commenters want BPA to dedicate a larger portion of the Power RDC Amount to fish and wildlife to "make up for" past years' fish and wildlife budgets that the commenters feel were too low, or to "restore" fish and wildlife budgets to past levels.[178] These commenters generally rely on a perception that BPA has a "flat funding policy" and has not appropriately accounted for the effects of inflation over recent years. BPA addressed similar comments in the FY 2022 Response to Comments,[179] and in the BP-24 ROD.[180] These responses remain.

Briefly, BPA explained why its fish and wildlife mitigation budgets need not follow exact inflation trends, how programmatic and project-level spending naturally fluctuates over time, that dollar-for-dollar reinstatement of past budget reductions (independently justifiable when made) is not necessarily appropriate, and how BPA uses a variety of tools to manage costs while continuing to provide for appropriate on-the-ground fish and wildlife mitigation.[181]

In addition, to be clear, BPA does not have a "flat funding" policy for fish and wildlife. This notion is simply belied by the facts. For instance, in the current rate period, BPA projected an 8.7% increase in fish and wildlife costs,[182] and budgets have been set accordingly. This represents the "second largest dollar increase of any program recovered in Power rates."[183] On top of that, since the BP-24 rate case, BPA has made further financial commitments for fish and wildlife adding hundreds of million dollars over the next 10-20 years (see above) for new and expanded actions. While BPA certainly strives for prudent cost management discipline—in its fish and wildlife program and across the agency as a whole—it should be abundantly clear that BPA does not employ a "flat funding" policy in fact. And to the extent that parties may claim "flat funding" in effect due to inflation impacts or by comparison to past high watermark funding years, the points BPA references in the preceding paragraph refute those points as well.

Legal Requirements of Northwest Power Act Section 4(h)(11)(A)

Some commenters seek a greater application of the RDC Amount for fish and wildlife by arguing that BPA's 2023 Power RDC decision would otherwise violate the legal requirements of the Norwest Power Act section 4(h)(11)(A).[184] Submitted on behalf of Idaho Conservation League, Idaho Rivers United, and Great Old Broads for Wilderness, the comments from ICL are most direct in this charge, though other comments make note of this Northwest Power Act provision as well.[185] ICL claims that this RDC decision is "illegal," arguing the decision does not provide for equitable treatment of fish and wildlife or reflect appropriate consideration of the

[178] ICL Comment at 3; *see also* Idaho Rivers United Comment at 1 (alleging "recent years of flatlined funding for F&W projects"); Save Our Wild Salmon Coalition Comment at 1.
[179] FY 2022 Response to Comments at 34-41.
[180] BP-24 ROD §§ 3.2-3.3.
[181] *See generally* BP-24 ROD § 4; FY 2022 Response to Comments.
[182] BP-24 ROD at 16.
[183] *Id., quoting* Fisher *et al.*, BP-24-E-BPA-10, at 33, 45.
[184] 16 U.S.C. § 839b(h)(11)(A) (2022).
[185] ICL Comment at 4-5; *see also* Idaho Rivers United Comment at 1-2; Yakama Nation Comment at 2 (stating that "parity" between power rate reduction and fish and wildlife funding would be "consistent" with the equitable treatment requirement of section 4(h)(11)(A)); Comment of Donald Miller.

Northwest Power and Conservation Council's Columbia River Basin Fish and Wildlife Program.[186]

BPA has explained numerous times how a proper interpretation of section 4(h)(11)(A) concludes it is inapplicable to financial matters such as this RDC decision.[187] Although these commenters disagree with this result, they are well aware of BPA's reasoning and analysis. Thus, a brief summary will suffice here. By its express terms, section 4(h)(11)(A) applies in decisions respecting the physical operation and management of the dams and reservoirs of the Columbia River System; this does not, however, extend to BPA's budgeting or expenditures on the types of mitigation projects with which the commenters are concerned (*i.e.*, habitat restoration and protection, mitigation infrastructure like hatcheries and fish screens, etc.). BPA demonstrates its compliance with these statutory duties, on a system-wide basis, in the contexts in which they apply: decisions regarding operation and management of the system itself.[188] In contrast, BPA's FY 2023 Power RDC decision implements a rate mechanism that addresses whether and how to repurpose financial reserves. Because it does not prescribe, alter, select, or otherwise affect system operations or management, section 4(h)(11)(A) does not apply.

Moreover, even if those statutory provisions applied here, the following factors would support the conclusion that BPA's implementation of the Power RDC satisfies their requirements.[189]

First, in relation to section 4(h)(11)(A)(i) and "equitable treatment," BPA's Power RDC decision repurposes financial reserves to certain fish and wildlife projects. Fish and wildlife is the *only* agency program afforded funds from the Power RDC Amount. BPA has multiple other programs that it funds that may have been eligible for additional funding through the RDC, but BPA did not propose to increase, and is not increasing, funding for these other programs. Nevertheless, BPA exercised its discretion under the RDC to provide accelerated funding only

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[186] ICL Comment at 4 (citing statutory requirements of section 4(h)(11)(A)).

[187] For the details of BPA's legal interpretation, *see generally*, BP-22 ROD, § 4.2.1; FY 2022 Response to Comments and accompanying citations; Respondent's Answering Brief in *Idaho Conservation League v. BPA*, No. 22-70122 (9th Cir.) (filed in BP-24 as BP-24-E-BPA-10-AT02); BP-24 ROD § 4. For discussion of the errors and omissions in ICL's comment—regarding an equitable treatment "standard" it has repeatedly sought to impute to BPA—see BP-24 ROD at 68-70; FY 2022 Response to Comments at 44-45.

[188] *See, e.g.*, CRSO EIS ROD at 47-52, *available at* https://usace.contentdm.oclc.org/utils/getfile/collection/p16021coll7/id/16248 (demonstrating BPA's compliance with section 4(h)(11)(A) in the context of a decision about operation and management of the Columbia River System).

[189] BPA provides this *arguendo* discussion only to demonstrate a full consideration of comments submitted to the agency; however, by providing this discussion, BPA does not concede that the duties of Section 4(h)(11)(A) are implicated by this decision. Nor does BPA adopt a specific theory or standard or test for what would satisfy equitable treatment of fish and wildlife in the context of financial matters. Rather, BPA's discussion here draws attention to certain context and facts that would likely be relevant to a court's review. *See Confederated Tribes of Umatilla Indian Reservation v. BPA*, 342 F.3d 924, at 931-32 (9th Cir. 2003)(explaining that BPA's decisions triggering equitable treatment must "allow[] for meaningful review" but that the statute does not require any specific mechanism to demonstrate compliance); *see also id.* at 932-33 (accepting administrative record's bullet list of relevant factors as allowing for meaningful review and demonstrating equitable treatment, even when such examples were not affirmatively offered as evidence of equitable treatment).

for its fish and wildlife program.[190] In addition, of the available Power RDC Amount—$66.4 million after the $129 million applied per requirements of the current rate schedule and implementation of $90 million reinstated debt reduction actions—BPA's decision provides for a nearly even split between power rate relief and fish and wildlife.[191] This context would support a finding that fish and wildlife are being treated in a manner that is "equitable" with power, and therefore, would satisfy section 4(h)(11)(A)(i) if it applied.[192]

Finally, ICL's comment includes a bare claim that BPA's RDC decision "does not reflect full consideration of the Council Fish and Wildlife Program" as required by section 4(h)(11)(A)(ii).[193] The basis for this argument is unclear, as the commenter did not elaborate.

In any event, BPA disagrees that implementation of a power rate mechanism—such as this RDC—is a relevant stage of decision-making with respect to the Council's fish and wildlife program. This is because rate mechanisms are not part of the process through which BPA conducts its fish and wildlife mitigation. That is, implementing a rate provision (in this case, designating an amount of financial reserves as available for specified future uses) does not select or implement fish and wildlife mitigation measures. And as BPA noted last year, it would not be practical or prudent to rely on the RDC—wildly unpredictable from year to year—to address the entirety of its fish and wildlife mitigation responsibilities, or as the source of funding for the full suite of its mitigation projects. Fundamentally, those are implemented through annual projects in BPA's fish and wildlife mitigation program. To the extent that RDC funds are applied to that purpose (and assuming arguendo that the section 4(h)(11)(A)(ii) requirement applied to this RDC

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[190] The $30 million from the Power RDC will be included in BPA's budget levels submittals to Congress, which, as BPA has noted in other forums, *see* BP-22 ROD at 57, is subject to the federal budgetary review process. While BPA expects these amounts not to change, BPA's RDC decision for fish and wildlife does not override Congress's authority to revise BPA's proposed spending. Further, the $30 million "set aside" in this process does not finally determine the programs or recipients of these funds. Final decisions on funding will occur through the contracting process that BPA must undergo when choosing contractors, vendors, and other partners who implement BPA's fish and wildlife program.

[191] However, even if the equitable treatment duty applies in the context of funding, BPA does not concede that "equitable treatment" means an equal financial share that would require RDC funds to be "equally" applied to fish and wildlife when compared to other uses.

[192] Idaho Rivers United's comments briefly discuss the equitable treatment duty, but largely in the abstract or in reference to general actions from past decades. *See* Idaho Rivers' United Comment at 2 (offering general assertions about past practice and comparing salmon populations in 1980 versus today to conclude "it is clear that equitable treatment . . . has not occurred"). Because such comments do not focus on the Power RDC decision at hand, BPA does not address them in detail. However, BPA briefly notes that by focusing on population levels as the basis for its equitable treatment point, the commenter ignores that (1) fish abundance is significantly affected by a range of other factors unrelated to the federal dams, and (2) fish survival through the Columbia River System has improved dramatically since the Northwest Power Act was passed in 1980. *See, e.g.*, FY 2022 Response to Comments at 33 (noting other factors affecting fish populations); Letter from Scott Armentrout, Exec. V.P., Bonneville Power Admin. to NW Power and Conservation Council (June 22, 2020) (filed in BP-24 as BP-24-E-BPA-10-AT17) (showing that modern day "juvenile fish passage survival at the Columbia River System dams for spring and summer migrants were 96% and 93%, respectively, as compared to when the Northwest Power Act was passed and the estimated average juvenile mortality at each main-stem dam and reservoir complex was 15-20% with losses recorded as high as 30%"); *see also* 16 U.S.C. § 839b(h)(6)(E) (2022) (establishing Northwest Power Act purposes for anadromous fish as providing for "improved survival of such fish" through the Columbia River System and river flows that "improve production, migration, and survival").

[193] ICL Comment at 4.

decision at all), consideration of relevant guidance in the Council's program would only become appropriate in the prioritization, selection, planning, etc. of actual mitigation actions. As BPA has noted, those implementation decisions are not happening within this RDC decision, and are subject to an entirely separate process. Finally, BPA finds no credible basis for the commenter's contention that BPA's decision to provide additional funding, which will help address its duties with respect to the Council's program, somehow fails to consider that same program.

For the reasons explained above, the Power RDC decision does not violate section 4(h)(11)(A) of the Northwest Power Act in any way.

4.2.4 Requests for Breach of the Lower Snake River Dams

Public Comment

One commenter asks for the Lower Snake River dams to be breached, claiming that they are "creating an extinction event for both Salmon and Orca." The commenter is of the opinion that breach is warranted because it would "double or triple salmon survival rates," because these dams "do not provide flood control and produce only low value surplus electricity," and because the dams could be breached for $80 million and "take as little as 5 years to complete."[194]

Evaluation of Comment and Response

As discussed in the Columbia River System Operations Environmental Impact Statement (CRSO EIS), breaching the four lower Snake River dams requires congressional authorization and appropriations as well as additional studies on avoiding or minimizing any potential adverse effects. BPA, the U.S. Army Corps of Engineers, and the Bureau of Reclamation do not have the authority to override decisions of Congress, remove congressionally-authorized purposes, or appropriate Federal monies outside of the decisions outlined in Congressional annual Congressional appropriation bills.[195]

In any case, whether to breach the Lower Snake River dams is not a question within the scope of this decision.

5. NATIONAL ENVIRONMENTAL POLICY ACT ANALYSIS

[194] *See* Comment of William Stewart.

[195] *See e.g.* CRSO Final EIS, Appendix T, Public Comment Report, Comment 6940 No. 5 at T-1035, Comment 31968 No. 10 at T-1108 (July 2020), *available at* https://www.nwd.usace.army.mil/CRSO/Final-EIS/; *see also* U.S. Army Corps of Engineers, Engineering Regulation (ER) 1165-2-119 Water Resources Policies and Authorities, Modifications to Completed Projects (Sept. 20, 1982), *available at* https://www.publications.usace.army.mil/Portals/76/Publications/EngineerRegulations/ER_1165-2-119.pdf; U.S. Army Corps of Engineers, ER 1105-2-100, Appendix G, Section III Post Authorization Changes (June 30, 2004), *available at* https://www.publications.usace.army.mil/portals/76/publications/engineerregulations/er_1105-2-100.pdf.

Consistent with the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321, *et seq*., BPA has assessed the potential environmental effects that could result from repurposing funds under the Power RDC.

Repurposing financial reserves under the Power RDC is administrative and financial in nature and does not require BPA to take any action that would have a potential effect on the environment. The Power RDC would repurpose financial reserves to specific uses for the Power business line. The Power RDC would apply $285.4 million as follows: (1) a $165.4 million dividend distribution to reduce FY 2024 power rates; (2) $90 million to flexible debt reduction or revenue financing; and (3) $30 million would be held in reserves not for risk to address, on an accelerated basis, fish and wildlife mitigation that meet certain criteria.

The fish and wildlife mitigation funds would be used for earlier implementation of mitigation actions that would otherwise occur during future rate periods and therefore would result in the avoidance of those costs in future rate periods. When specific mitigation actions are identified and selected for implementation, those actions would undergo site-specific environmental review, including NEPA analysis, as appropriate.

Repurposing financial reserves under the RDC is purely administrative and financial in nature and does not require BPA to take any action that would have a potential effect on the human environment. The use of funds under the RDC also falls within a class of actions excluded from preparation of an Environmental Assessment or Environmental Impact Statement under NEPA. More specifically, the use of funds under the RDC would be consistent with BPA's Financial Reserves Policy and the Power Rates schedule, and any funding towards actions that would impact the physical environment would undergo site-specific environmental review as appropriate. BPA has prepared a categorical exclusion determination memorandum that documents this categorical exclusion from further NEPA review, which is available at BPA's website: https://www.bpa.gov/learn-and-participate/public-involvement-decisions/categorical-exclusions.