

Addition to Appendix U Letter from the National Marine Fisheries Service

03 APR -8 AM 6:12



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Northwest Region
7600 Sand Point Way N.E., Bldg. 1
Seattle, WA 98115

April 3, 2003

RECEIVED BY BPA ADMINISTRATOR'S OFFICE LOG #:	03-0094
RECEIPT DATE:	4.7.03
DUE DATE:	
APP ACTION _____	

Steve Wright, Administrator
Bonneville Power Administration
P.O. Box 3621
Portland, OR 97208-3621

APP ACTION: KE/KEW-4
cc: A-7, D-7, K-7, DC/Wash, L-7, P-6,
DM-7, T/Ditt2, LBodi-A/Seattle

Steve
Dear Mr. Wright:

This to advise on the proposed Bonneville Power Administration Transmission Line (BPA-Kangley-Echo Lake) across the Cedar River Watershed and the City of Seattle's Cedar River Habitat Conservation Plan. We previously reviewed the proposed Kangley-Echo Lake Transmission Line project and found that the project as originally proposed in July 2001 does not jeopardize the continued existence of salmonids listed under the Endangered Species Act (see our ESA Section 7(a)(2) consultation letters dated January 28 and November 26, 2002). Moreover, we expect that BPA will review any revised action and reinitiate Section 7 consultation as necessary to meet all of its ESA obligations. So long as BPA complies with the terms and conditions of the ESA consultation and implements the project as proposed, we believe the transmission project is compatible with the City of Seattle's Cedar River Watershed Habitat Conservation Plan (HCP).

We view the Kangley-Echo Lake Transmission Line as a Federal project, though a large portion would occur on City of Seattle owned land. The project is proposed and funded by a Federal agency, pursuant to Federal statutory mandates, and BPA owns the property rights to conduct all activities required to construct, operate and maintain the transmission system. Furthermore, we have assured the City that their HCP remains a properly implemented conservation plan even accounting for potential impacts of BPA's proposed transmission line. The City's legal obligations under the HCP are clearly identified in the Implementing Agreement, April 21, 2000. BPA's action, as a non-party to the HCP, does not affect any rights or obligations in the HCP, or its related agreements. Furthermore, the proposed BPA conservation measures, including the permanent protection of approximately 573 acres of adjacent parcels of property, ensure that the effects of the overall action upon HCP-covered anadromous fish species will not adversely affect the purpose or operation of the HCP.

In the event that unauthorized take of a Federally listed species occurs on land in or near the proposed transmission line right of way, and such take is caused by action, or inaction, of BPA's employees, contractors or agents, NOAA Fisheries will consider BPA or its employees, contractors or agents, (not the City of Seattle), liable and responsible for any damages, penalties, or other available remedies, to the full extent allowed by law. In our view, underlying property



interest alone is not sufficient to trigger ESA liability. We hope this letter clarifies any concerns you may have regarding our view of the Kangley-Echo Lake Transmission Line project in light of the HCP.

NOAA Fisheries stands ready to work closely with BPA if a revised action leads BPA to reinitiate Section 7 consultation. At the same time, we place a high value on maintaining a close working relationship with the City and want to continue to help the City implement the HCP as an effective conservation tool for ESA. If you have any questions, please call Matt Longenbaugh of my staff at 360-753-7761.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Robert Lohn". The signature is fluid and cursive, with a long horizontal stroke at the end.

D. Robert Lohn
Regional Administrator

cc: Chuck Clarke, Seattle Public Utilities, Director