

**U.S. DEPARTMENT OF ENERGY - BONNEVILLE POWER ADMINISTRATION  
 AGREEMENT**

*Oct 93  
 BPA*

1. AGREEMENT NO. <b>DE-AI79-92BP81616</b>	2. AGREEMENT TYPE <input checked="" type="checkbox"/> Interagency <input type="checkbox"/> Intergovernmental <input type="checkbox"/> Intraagency <input type="checkbox"/> Customer	3. MODIFICATION NO. <b>M002</b>	4. EFFECTIVE DATE <b>08/19/93</b>	5. PROCUREMENT REQUEST NO. <b>79-93BP03198</b>
6. ORGANIZATION AND ADDRESS <b>U.S. Army Corps of Engineers          P.O. Box 2946          Portland, OR 97208-2946</b>		9. ORGANIZATION AND ADDRESS <b>U.S. Department of Energy          Bonneville Power Administration - SRPF          P.O. Box 3621          Portland, OR 97208-3621</b>		
7. TECHNICAL CONTACT <b>Don Chambers</b> PHONE NO. <b>(503) 326-6903</b>		10. BPA TECHNICAL CONTACT <b>Steve Levy, COTR</b> PHONE NO. <b>(503) 230-6968</b>		
8. ADMINISTRATIVE CONTACT <b>Stuart Stanger</b> PHONE NO. <b>(503) 326-6330</b>		11. BPA ADMINISTRATIVE CONTACT <b>Esther De'vore</b> PHONE NO. <b>(503) 230-4393</b>		
12. THIS AGREEMENT WAS NEGOTIATED PURSUANT TO <input type="checkbox"/> 31 U.S.C. 1535 (Federal) <input type="checkbox"/> 16 U.S.C. 832g (Other) <input checked="" type="checkbox"/> 16 U.S.C. 832a(f) ( <del>WRDA</del> ) <input checked="" type="checkbox"/> 33 U.S.C. 2286		13. AGREEMENT EFFECTIVE FROM DATE IN BLOCK 4 UNTIL <b>March 30, 1995</b>		

14. TITLE AND BRIEF DESCRIPTION OF WORK TO BE PERFORMED UNDER THIS AGREEMENT; DOCUMENTS WHICH ARE ATTACHED TO AND BECOME A PART OF THIS AGREEMENT:  
 align="center">**PROJECT NO. 91-40  
 DESIGN OF JUVENILE FISH MONITORING FACILITIES AT BONNEVILLE DAM**

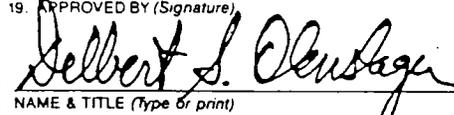
This Modification is issued to effect the following:

1. The Bonneville Power Administration and the U.S. Army Corps of Engineers are in agreement with the attached revised Interagency Agreement.
2. Funding of the revised agreement is changed FROM 31 U.S.C. 1535 (Federal) The Economy Act, TO 33 U.S.C. 2286, Section 1146, Water Resources Development Act (WRDA). The citation to 16 U.S.C. 832a(f), Bonneville Project Act, remains in effect.

Current Agreement Total: **\$943,800.00**  
 Increase this Modification: **-0-**  
 New Agreement Total: **\$943,800.00**

If this is an Intergovernmental or Customer Agreement, the provisions on the reverse of this form are a part of the Agreement.

15. SUBMIT INVOICE TO:  <b>Billing Clerk          Bonneville Power Administration          P.O. Box 3621          Portland, OR 97208-3621</b>	16. AMOUNT TO BE PAID BY BPA <b>\$ 943,800.00 NTE (No Change)</b>  17. ACCOUNTING INFORMATION (BPA use only)  <table style="width:100%; border: none;"> <tr> <td style="text-align: center;"><u>ORG</u></td> <td style="text-align: center;"><u>OBJ</u></td> <td style="text-align: center;"><u>ACTV</u></td> <td style="text-align: center;"><u>PL-6</u></td> </tr> <tr> <td style="text-align: center;">PJ</td> <td style="text-align: center;">27</td> <td style="text-align: center;">GNL</td> <td style="text-align: center;">F2616</td> </tr> </table> <b>\$943,800.00 NTE (No Change)</b>	<u>ORG</u>	<u>OBJ</u>	<u>ACTV</u>	<u>PL-6</u>	PJ	27	GNL	F2616
<u>ORG</u>	<u>OBJ</u>	<u>ACTV</u>	<u>PL-6</u>						
PJ	27	GNL	F2616						

APPROVED BY (Signature)  DATE <b>10/7/93</b>  NAME & TITLE (Type or print) <b>G. Edward Dickey          Acting Assistant Secretary of the Army          (Civil Works)</b>	APPROVED BY (Signature)  DATE <b>8/19/93</b>  NAME & TITLE (Type or print) <b>Delbert S. Olenlager          Contracting Officer</b>
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INTERAGENCY AGREEMENT  
BETWEEN  
THE DEPARTMENT OF THE ARMY  
AND  
THE BONNEVILLE POWER ADMINISTRATION  
OF THE U.S. DEPARTMENT OF ENERGY  
FOR THE PLANNING, DESIGN, AND  
CONSTRUCTION OF JUVENILE FISH MONITORING FACILITIES  
AT BONNEVILLE LOCK AND DAM

THIS AGREEMENT is entered into this 19th day of August, 1993, by and between the DEPARTMENT OF THE ARMY (hereinafter referred to as the "Army"), acting by and through the Assistant Secretary of the Army (Civil Works), and the BONNEVILLE POWER ADMINISTRATION, Department of Energy (hereinafter referred to as "BPA"), acting by and through the Administrator of BPA. The Army entity responsible for the fulfillment of this agreement is Portland District Corps of Engineers ("District").

WITNESSETH THAT:

WHEREAS, The Bonneville Lock and Dam was originally authorized on Sep. 30, 1933 by the Federal Emergency Administration of Public Works; was subsequently authorized by the Act of Aug. 30, 1935 (incorporating the Report of the Chief of Engineers dated Aug. 21, 1933, Senate Committee Print, 73rd Congress, 2nd Session); and was further authorized and modified by (1) the Bonneville Project Act of 1937, Act of Aug. 20, 1937, 16 USC 832; (2) the Flood Control Act of 1944, Section 4, Act of Dec. 22, 1944; (3) P.L. 93-251, Mar. 7, 1974; (4) P.L. 98-396, Aug. 22, 1984; (5) P.L. 99-88, Aug. 15, 1985; and (6) P.L. 99-662, Nov. 17, 1986;

WHEREAS, 16 USC 838i established the Bonneville Power Administration Fund to be administered by the Administrator, BPA;

WHEREAS, 16 USC 839b (h) directs the Pacific Northwest Electric Power Planning Council (hereafter "Council") to develop and adopt a fish and wildlife conservation plan in connection with the Columbia River power system and authorizes the Administrator, BPA, to fund fish and wildlife mitigation and enhancement measures, using funds available to the Administrator, BPA, from the Bonneville Power Administration fund;

WHEREAS, Section 1146 of the 1986 Water Resources Development Act (WRDA), 33 USC 2286, authorizes the Secretary of the Army to accept funds from any entity, public or private, in accordance with the Pacific Northwest Electric Power Planning and Conservation Act (PNPPCA), 16 USC 839 ff., to be used to protect, mitigate, and enhance fish and wildlife in connection with projects constructed or operated by the Secretary; and the Secretary may accept and use such funds without regard to any other limitation established under any other provision of law or rule of law;

WHEREAS, the Economy Act, 31 USC 1535, authorizes the heads of major organizational units of federal agencies to place orders for goods or services with the heads of major organizational units of other federal agencies, giving the Administrator, BPA, authority to enter into agreements with the Department of the Army and the Corps of Engineers, including agreements pursuant to 33 USC 2286; and

WHEREAS, Section 7, Endangered Species Act (ESA), 16 USC 1536 (1), authorizes all federal agencies to use their authorities to further the purposes of the ESA, including authorizing the Secretary of the Army and the Administrator, BPA, to use the above authorities to assist the survival of endangered and threatened salmon subspecies passing through Bonneville Lock and Dam,

NOW, THEREFORE, the Army and BPA agree as follows:

#### ARTICLE I - PROJECT DESCRIPTION

a. BPA and the Army will cooperate in the planning, design, and construction of downstream migrant juvenile fish monitoring facilities at the Bonneville Lock and Dam. Such facilities may include; large fish and debris separators, Passive Integrated Transponder (PIT) tag facilities, raceways and holding tanks.

#### ARTICLE II - RESPONSIBILITIES OF BPA

a. BPA shall provide funds to the District pursuant to above cited authorities for the planning, design, and construction of certain fish facilities, as described and budgeted in the Statements of Work (SOW) and Budgets, to be developed.

b. BPA shall transfer funds in accordance with the jointly-approved Budgets to the District, using SF 1151, Non-expenditure Transfer Authorization, to be prepared and forwarded by BPA through the U.S. Treasury to CDR HQUSACE (CERM-FC), Washington, D.C. 20314-1000 for allotment to Portland District for the actual planning, design and construction of the fish facilities.

### ARTICLE III - RESPONSIBILITIES OF DISTRICT

a. Using the funds provided under this Agreement and such other funds as may be provided, the District shall design, construct, operate, and maintain the fish facilities.

b. After construction, funding for operation and maintenance of the fish monitoring facilities shall be the responsibility of the District and not BPA.

### ARTICLE IV - COORDINATION AND COOPERATION

#### a. MONTHLY PROGRESS REPORTS:

The District will prepare and submit 3 copies of monthly progress reports to the Division of Fish and Wildlife, PJW, BPA, PO Box 3621, Portland, Oregon 97208 not later than the 15th of every month during the period of design and construction. These reports shall summarize significant results and activities (if any); shall discuss any major problems encountered, changes in work plan, or schedule deviations; shall discuss planned activities for the future 3-month period; and shall update the project budget.

#### b. ESA COORDINATION AND COMPLIANCE:

The District and the BPA shall cooperate in complying with ESA requirements, including (1) participating jointly in consultations and conferences conducted under Section 7 of the ESA; (2) cooperating in obtaining any necessary permits under Section 10 of ESA; and (3) sharing information, materials, documents, records, and otherwise assisting each other in such consultations, conferences, and permits' acquisition. Neither party shall take any actions inconsistent with or otherwise in violation of ESA requirements in connection with the fish facilities covered by this agreement.

#### c. NEPA COORDINATION AND COMPLIANCE:

The District and the BPA shall cooperate in complying with National Environmental Policy Act (NEPA) requirements applicable to the design and construction of the fish facilities.

#### d. AUTHORIZED REPRESENTATIVES:

1. Portland District is delegated by the Secretary of the Army with the authority and responsibility for carrying out the Army and the District's responsibilities under this agreement. The Director, Division of Fish and Wildlife, BPA, is delegated by the Administrator, BPA, with the authority and responsibility for carrying out BPA's responsibilities under this agreement. Both delegates are authorized to delegate their responsibilities

further to their authorized representatives.

2. The authorized delegates shall notify each other in writing of their authorized representatives for purposes of the management and implementation of this agreement. Each party shall designate one individual and an alternate who are the authorized representatives to sign documents on behalf of and to obligate funds on behalf of the respective party. Only the duly authorized representatives are authorized to obligate funds for their respective agencies under this agreement.

#### ARTICLE V - GENERAL REQUIREMENTS

##### a. LIMITATION OF COST; ANTI-DEFICIENCY ACT:

1. The District is subject to the Anti-Deficiency Act, and will not obligate funds in excess of authorized appropriations provided for the design and construction of the fish facilities.

2. The District agrees to use its best efforts to perform the work specified in the Statement of Work (SOW) and all obligations under this agreement within the estimated total cost specified in the Budgets.

3. The District shall notify the BPA Authorized Representative, in writing, whenever it has reason to believe that:

(a) The costs the District expects to incur under this agreement in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of the estimated total cost specified in the Budgets; or

(b) The total cost for the performance of this agreement will be either greater or substantially less than had been previously estimated.

4. As part of any notification, under paragraph 3, the District shall provide the BPA Authorized Representative a revised estimate of the total cost of performing this agreement.

5. Except as required by other provisions of this agreement specifically citing and stated to be an exception to this clause:

(a) The BPA is not obligated to reimburse the District for costs incurred in excess of the estimated total cost specified in the Budgets.

(b) The District is not obligated to continue performance under this agreement or otherwise incur costs in excess of the estimated cost specified in the Budgets, until the BPA Authorized Representative (i) notifies the District in writing that the estimated cost has been

increased and (ii) provides a revised estimated total cost of performing this agreement; and (iii) BPA funds have been transferred to the District.

6. No notice, communication, or representation in any form other than that specified in subparagraph (5)(b) above, except for modifications containing statements increasing the estimated cost as specified in paragraph (8) below and notices directing termination as specified in paragraph (7) below, or from any other person other than the BPA Authorized Representative, shall affect this agreement's estimated cost to the BPA. Such a notice, communication or representation shall be an exception to subparagraph (5)(a). In the absence of the specified notice, the BPA is not obligated to reimburse the District for any costs in excess of the estimated total cost.

7. If the estimated cost specified in the Budgets is increased, any costs the District incurs before the increase that are in excess of the previously estimated cost shall be allowable to the same extent as if incurred afterward, unless the BPA Authorized Representative issues a termination or other notice directing that the increase is solely to cover termination or other specified expenses. Such a notice shall be an exception to subparagraph (5)(a) to the extent specified in the notice.

8. Modifications shall not be considered an authorization to exceed the estimated cost to the BPA, unless they contain a statement increasing the estimated cost.

9. If this agreement is terminated, or the estimated cost is not increased, the District and BPA shall consult on how best to protect the federal investment in the fish facilities. While not obligating itself to do so, the Army retains the right to complete any uncompleted fish facilities with whatever other authorized and available resources as it may have or acquire.

10. Notwithstanding any provisions to the contrary, the District is not required to obligate more money under this agreement than (a) either has been transferred from BPA to the District or (b) has otherwise been made available to the District from other properly authorized and appropriated sources.

b. PROPERTY ACCOUNTABILITY:

For purposes of federal property accountability, the District shall be the accountable federal property manager under this agreement for such facilities as may be constructed under this agreement.

c. INCREMENTAL FUNDING:

BPA shall fund this agreement in two phases: (1) Planning and

Design and (2) Construction. Payment for each such phase shall be in advance of initiation of work on that phase. Amounts and dates of incremental fund transfers from BPA to the District shall be detailed in the Budgets. The Budgets when approved by the BPA and the District shall be the official, binding fund transfer schedules. If at any time the BPA fails to make payments required under this agreement as specified in the Budgets, the District shall terminate or suspend work on the fish facilities until the BPA is no longer in arrears unless the Assistant Secretary of Army for Civil Works determines that continuation of work is in the interest of the United States.

d. MODIFICATIONS:

Any modifications in the project objectives or scope, including any proposed transfer of expenditures between approved budget line items, must be approved by the BPA's and the District's Authorized Representatives. All such modifications must be submitted in writing through the parties' Technical Managers prior to initiating the modifications.

STATEMENT OF WORK  
BONNEVILLE 1ST AND 2ND POWERHOUSES  
JUVENILE FISH MONITORING FACILITIES

1. PROJECT BACKGROUND. The basis for the development of detailed designs, schedules, design budgets, and baseline construction cost estimates is contained in the feasibility study prepared by Summit Technology in July 1991 for the National Marine Fisheries Service (NMFS), entitled "Bonneville Dam 1st and 2nd Powerhouses; Juvenile Fish Monitoring Facilities."

2. PROJECT SCOPE/OBJECTIVES. The U.S. Army Corps of Engineers, Portland District (CENPP) shall perform overall project management and coordination in the development of designs for juvenile fish monitoring facilities at the 1st and 2nd powerhouses at the Bonneville Project. The design of the facilities shall be accomplished, in accordance to with the attached schedules and budgets for the project. CENPP shall furnish engineering services, materials, supplies, plant, labor, equipment, and travel in order to complete the work as described herein.

3. WORK TASKS.

a. Project Management. Elements of project management shall include the following:

- (1) Develop and maintain a project schedule.
- (2) Prepare and manage a project budget.
- (3) Coordinate project activities (meetings, reviews, comments)
- (4) Submit progress reports as needed.

b. Design Development. Elements of design development shall include the following:

- (1) Review the NMFS feasibility study.
- (2) Solicit additional comments on the feasibility study from BPA and Fish Passage Development and Evaluation Program (FPDEP) agencies.
- (3) Prepare design reports to clarify and develop concepts described in the feasibility study and supplemental review comments.

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JUVENILE FISH MONITORING FACILITIES

- (4) Conduct in-progress reviews at 65% and 95% stages.
- (5) Secure required environmental clearances.
- (6) Prepare/refine project cost estimates and present in design report.
- (7) Incorporate review comments into final design reports.
- (8) Perform value engineering study program.

c. Contract Documents.

- (1) Prepare plans and specifications.
- (2) Conduct in-progress reviews at 65% and 95% stages.
- (3) Incorporate review comments.
- (4) Prepare construction cost estimate.

4. WORK TASK CLARIFICATION. The following statements are provided as clarification of the work required under this agreement:

4.1 General.

(a) Design reports and contract documents will be prepared for the facilities at each powerhouse.

(b) NMFS feasibility study will be reviewed by CENPP and other agencies as required prior to start of design report to validate assumptions and recommendations.

(c) Design reports and contract documents will be reviewed by other agencies

4.2 Geotechnical Engineering. CENPP will provide the following geotechnical services:

(a) Perform subsurface investigations.

STATEMENT OF WORK  
BONNEVILLE 1ST AND 2ND POWERHOUSES  
JUVENILE FISH MONITORING FACILITIES

(b) Evaluate drilling and prepare drill logs, cross sections, profiles, and gradation of materials.

(c) Prepare geotechnical analyses for design reports and contract documents.

(d) Prepare plans for foundation excavation and support.

4.3 Hydraulic Engineering. CENPP will perform preliminary and final design to include, but not be limited to, the following hydraulic features:

- (1) Inclined screen, large fish and debris separator, and transport conduit.
- (2) Screen box.
- (3) Fish flume with water eliminators.
- (4) Evaluator room intake; adult fish transport channel intake.
- (5) Water supply - facilities downwell to DSM pipe.
- (6) Fish facilities downwell.
- (7) Wet separators and raceways.

4.4 Structural/Architectural Engineering. CENPP will perform preliminary and final structural and architectural design to include, but not be limited to, the following project features:

- (1) New flumes, raceways, separators, conduits, and buildings.
- (2) Modifications to existing structures.
- (3) Architectural design considerations, such as aesthetics, public accessibility, historical district compatibility, etc., will be described in design report and included, as approved, in final plans and specifications.

4.5 Mechanical Engineering. CENPP will perform preliminary and final mechanical design to include, but not be limited to, the following project elements:

- (1) Water distribution systems (supply and control, pumping, piping).
- (2) Fish distribution systems (crowding, gating, sweeps).
- (3) Water quality purification, if necessary.

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- (4) Coordination of new and existing mechanical systems.

4.6 Electrical Engineering. CENPP will perform preliminary and final electrical design to include, but not be limited to, the following project elements:

- (1) Power and control.
- (2) Lighting.
- (3) Annunciation and communication systems.
- (4) Coordination of new and existing systems.

4.7 Civil/Landscape Engineering. CENPP will perform preliminary and final civil and landscape design to include, but not be limited to, the following project elements:

- (1) Vehicular and pedestrian access (paving, curbs, walkways).
- (2) Site grading.
- (3) Landscaping (new or restoration) as required.
- (4) Sanitary and storm sewer alignments and connections.
- (5) Coordination of new and existing systems, including utility relocations.

4.8 Environmental Issues. CENPP will provide the following services:

- (1) Prepare draft environmental assessment.
- (2) Perform Endangered Species Act review.
- (3) Perform cultural resources review.
- (4) Issue public notices for review; respond to comments.
- (5) Prepare final environmental assessment.

STATEMENT OF WORK  
BONNEVILLE 1ST AND 2ND POWERHOUSES  
JUVENILE FISH MONITORING FACILITIES

4.9 Fish and Wildlife Coordination. CENPP will provide the following services:

- (1) Coordinate project through FPDEP Technical Coordinating Committee.
- (2) Biological assessments for the Endangered Species Act.
- (3) Coordinate evaluation of the design with FPDEP Facility Design Subcommittee, Region and agencies.
- (4) Coordinate the evaluation of fish and wildlife benefits/liabilities with the Region and agencies.

4.10 Value Engineering. Upon completion of design reports a formal value engineering study will be performed to evaluate proposed designs for opportunities for construction savings. Final plans and specifications will be based on the approved results of the study.

## 5. SUBMITTALS/DELIVERABLES

- a. Detailed statement of work.
- b. Project schedules.
- c. Budget estimates.
- d. Construction cost estimates.
- e. Progress reports.
- f. Design Reports. CENPP shall provide design reports for review as described in paragraph 3b, Design Development. The reports will be subject to revision after review and receipt of comments. Six (6) copies of preliminary and final reports shall be submitted for review in accordance with the project schedule.
- g. Environmental Assessment.
- h. Value Engineering Study.

STATEMENT OF WORK  
BONNEVILLE 1ST AND 2ND POWERHOUSES  
JUVENILE FISH MONITORING FACILITIES

i. Construction Documents. CENPP shall provide the following documents for review:

- (1) Calculations.
- (2) Drawings.
- (3) Specifications.
- (4) Construction Estimate.

6. **COORDINATION**. Coordination between all agencies is a critical part of this project. Every effort should be made to resolve critical issues before they become problems. Communication by telephone and FAX is strongly encouraged. Regularly scheduled meetings to exchange information are anticipated.

a. Points of Contact. Points of contact for CENPP will be as follows:

- (1) Primary: Stuart Stanger, Project Manager, CENPP-PM, 326-6330.
- (2) Secondary/Technical: Scott Chun, CENPP-PE-DS, 326-6910.
- (3) Environmental: Steve Stevens, CENPP-PE-RPE, 326-6094.
- (4) Fish and Wildlife: Blaine Ebberts, CENPP-PE-RRF, 326-6481.

b. Meetings. Progress review meetings shall be held according to the project schedule. At these meetings, the agencies will discuss the work performed to date. Comments on submittals shall be resolved. If necessary, deviations from the agreed scope or schedule will be addressed. Agreements will be reached regarding any modifications to either the schedule or scope of work. Additional meetings between the agencies may be required to discuss problems and solutions, answer questions, and review technical documents. Meetings will be used to coordinate additional design information and information to be included in final report. Such meetings may be scheduled as determined necessary by either CENPP or BPA. CENPP shall prepare and submit final meeting notes not later than 10 calendar days following the subject meeting. All meetings shall be held in the BPA offices in Portland, OR, unless otherwise agreed to. Meetings involving site investigation will require travel to Bonneville Project.

STATEMENT OF WORK  
 BONNEVILLE 1ST AND 2ND POWERHOUSES  
 JUVENILE FISH MONITORING FACILITIES

7. SCHEDULE. CENPP shall complete the work according to the following schedule:  
 (NOTE: "Calendar days" indicate time required after agreement signed; "tentative date"  
 reflects an assumed agreement date of 01 September 1993.)

<u>MILESTONE</u>	<u>CALENDAR DAYS</u>	<u>TENTATIVE DATE</u>
Begin design reports	30	01 OCT 93
Complete surveys and explorations	150	01 FEB 94
Complete in-progress review (65%)	150	01 FEB 94
Complete design report/start review	210	01 APR 94
Complete value engineering study	240	01 MAY 94
Complete review/incorporate comments/ start final design plans & specs (P&S)	330	01 AUG 94
Complete in-progress review (65%)	570	01 APR 95
Complete P&S/start review	690	01 OCT 95
Complete P&S review/incorporate comments/ ready for advertising	780	01 JAN 96

8. WORK COST ESTIMATE. CENPP estimates that the work described above can be performed for the amounts shown (by project/task/FY) on the attached summary sheet.

END OF DOCUMENT

<b>SUMMARY SHEET</b>		<b>DATE: 9-Jul-93</b>			
<b>PROJECT: BONNEVILLE I &amp; II</b> <b>JUVENILE FISH MONITORING FACILITIES</b> <b>LEAD: CENPP-PE-DS CHUN</b> <b>FY: 93-96 (x \$1000)</b>					
<b>TASK</b>	<b>FY93</b>	<b>FY94</b>	<b>FY95</b>	<b>FY96</b>	<b>TOTALS</b>
<b>BONNEVILLE I</b>					
DESIGN REPORT	30	569.3			599.3
P & S		135	1148	68	1351.4
<b>SUBTOTALS</b>	<b>30</b>	<b>704.3</b>	<b>1148</b>	<b>68</b>	<b>1950.7</b>
<b>BONNEVILLE II</b>					
DESIGN REPORT	40	445.4			485.4
P & S		118	1010	59	1186.9
<b>SUBTOTALS</b>	<b>40</b>	<b>563.4</b>	<b>1010</b>	<b>59</b>	<b>1672.3</b>
<b>TOTALS</b>	<b>70</b>	<b>1268</b>	<b>2158</b>	<b>127</b>	<b>3623</b>



DEPARTMENT OF THE ARMY  
U.S. Army Corps of Engineers  
WASHINGTON, D.C. 20314-1000

REPLY TO  
ATTENTION OF:

114 OCT 1993

CECC-J

MEMORANDUM FOR Chief, Policy Branch, Finance and Accounting  
Division, Directorate of Resource Management (ATTN: Aaron Polley)

SUBJECT: Juvenile Fish Monitoring Facilities at Bonneville Dam

1. Reference:

- a. Memorandum, CENPP-RM, 27 Sept. 1993, SAB.
- b. Memorandum, CENPP-RM, 5 Mar. 1993, SAB.

2. BACKGROUND & ISSUE:

This memorandum responds to your request for an opinion as to whether the Corps has authority to accept funding from the Bonneville Power Administration ("BPA") for the design of juvenile fish monitoring facilities at Bonneville Dam. For the reasons discussed below, I believe the Corps may accept funds from BPA for the above purposes under the authority of § 1146 of the Water Resources Development Act of 1986 ("WRDA '86").

3. DISCUSSION:

a. Section 1146 of WRDA '86 authorizes the Secretary of the Army to accept funds from any entity in accordance with the Pacific Northwest Electric Power Planning and Conservation Act ("PNEPPCA") where the funds would be used to protect, mitigate, and enhance fish and wildlife in connection with projects constructed or operated by the Secretary of the Army.<sup>1</sup> Thus, two sub-issues must be resolved in order to determine whether the Corps may accept the BPA funding. First, is the activity for which BPA proposes to provide funding to the Corps in accordance with the PNEPPCA? If so, would the funds be used to protect, mitigate, and enhance fish and wildlife in connection with projects constructed or operated by

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<sup>1</sup> The statute reads:

The Secretary is authorized to accept funds from any entity, public or private, in accordance with the Pacific Northwest Electric Power Planning and Conservation Act to be used to protect, mitigate, and enhance fish and wildlife in connection with projects constructed or operated by the Secretary. The Secretary may accept and use funds for such purposes without regard to any limitation established under any other provision of law or rule of law.

CECC-J

SUBJECT: Juvenile Fish Monitoring Facilities at Bonneville Dam

the Secretary of the Army?

b. (1) According to reference 1b, BPA has been designated by the Northwest Power Planning Council's 1987 Fish and Wildlife Program as the agency responsible for funding the design and construction of juvenile fish and monitoring facilities at Bonneville Dam. The Pacific Northwest Electric Power and Conservation Planning Council ("the Council") (presumably the same entity in the above sentence) was created pursuant to the PNEPPCA, 16 U.S.C. §§ 839 et seq. Specifically, § 839b(a) of Title 16 of the United States Code established the Council for the purposes of furthering the objectives of the PNEPPCA. The Council is required to, among other things, develop and adopt a program to protect, mitigate, and enhance fish and wildlife, including related spawning grounds and habitat, while, to the extent possible, ensuring that the program deals effectively with the unique problems and opportunities presented by the development and operation of hydroelectric facilities on the Columbia River and its tributaries. 16 U.S.C. § 839b(h)(1)(A) & (h)(5). The Council's 1987 Fish and Wildlife Program, discussed in reference 1b, would appear to be the statutorily mandated program.

(3) Section 839b(h)(10)(A) further authorizes the Administrator of the BPA to use BPA funds and authorities available under the PNEPPCA and other laws to protect, mitigate, and enhance fish and wildlife affected by development and operation of hydroelectric projects on the Columbia and its tributaries in a manner consistent with the Regional Electric Power and Conservation plan and the Council's fish and wildlife program. Thus, the activity which BPA proposes to provide funding for the Corps to accomplish would appear to be in accordance with the PNEPPCA, as required by § 1146 of WRDA '86.

c. Having cleared the first hurdle, it must now be determined whether the BPA funds would be used for the purposes of protecting, mitigating, and enhancing fish and wildlife in connection with projects constructed or operated by the Secretary of the Army, as required under § 1146 of WRDA '86. Clearly, the funds from BPA, which would be used to hire the Corps to design juvenile fish monitoring facilities at Bonneville Dam, would be used to protect, mitigate, and enhance fish and wildlife. Since the Corps operates Bonneville Dam and, I understand, had a part in constructing the dam, use by the Corps of the BPA funds would be in connection with projects constructed or operated by the Secretary of the Army, as required by § 1146 of WRDA '86.

d. Therefore, since this activity meets the requirements of § 1146 of WRDA '86, the Corps has the authority to accept funds from BPA for the design of juvenile fish monitoring facilities at

CECC-J

SUBJECT: Juvenile Fish Monitoring Facilities at Bonneville Dam

Bonneville Dam.

4. If you have any questions, please call Carlton Einsel or myself at (202) 272-0030.

A handwritten signature in black ink, appearing to read 'R. Jennings', with a stylized flourish at the end.

RUPERT JENNINGS  
Senior Counsel  
for Military Programs



DEPARTMENT OF THE ARMY  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, DC 20310-0108

29 APR 1993

DOE-BPA



REPLY TO  
ATTENTION OF

Apr 93

MEMORANDUM FOR THE DIRECTOR OF CIVIL WORKS

SUBJECT: Implementation of Section 1146 of the Water Resources Development Act of 1986

I have considered your memorandum of April 20, 1993, subject as above, together with the report which you attached in support of the request to accept funds from the Bonneville Power Administration to design juvenile fish monitoring facilities for the Bonneville Power Administration (BPA) at the Bonneville Dam under the authority of Section 1146 of the Water Resources Development Act of 1986.

An umbrella agreement between BPA and Army should not be pursued at this time, but an agreement should be developed to cover the specific work and arrangements (financing, ownership, responsibility for operation and maintenance, etc.) involved in the instant case. Toward that end, the North Pacific Division Commander, working in cooperation with the Chief Counsel of the Corps and under the guidance of the Army General Counsel, should prepare the BPA-Army agreement for the juvenile fish monitoring facilities at Bonneville. Mr. Roy Gardner, Assistant to the Deputy General Counsel, is the Army General Counsel point of contact and may be reached by telephone at (703) 693-3024.

The BPA-Army agreement for the juvenile fish monitoring facilities at Bonneville should be prepared for signature by the Assistant Secretary of the Army (Civil Works).

Sincerely,

G. Edward Dickey  
Acting Assistant Secretary of the Army  
(Civil Works)



Department of Energy *DOE*  
Bonneville Power Administration  
P.O. Box 3621  
Portland, Oregon 97208-3621

JAN 8 1993

In reply refer to: SRPF

U.S. Army Corps of Engineers  
ATTN: District Engineer  
P.O. Box 2946  
Portland, OR 97208-2946

Gentlemen:

Subject: Modification No. A001 to Interagency Agreement  
No. DE-AI79-92BP81616, Design of Juvenile Fish Monitoring Facilities  
at Bonneville Dam, Project No. 91-40

Enclosed is an executed copy of the above-subject Modification No. A001 for  
your files.

If I can be of further help, please call me at (503) 230-4393.

Sincerely,

*Esther M. DeVore*

Esther M. De'Vore  
Contracting Officer's  
Representative

Enclosure

U.S. DEPARTMENT OF ENERGY - BONNEVILLE POWER ADMINISTRATION

AGREEMENT

1. AGREEMENT NO. <b>DE-AI79-92BP81616</b>	2. AGREEMENT TYPE <input checked="" type="checkbox"/> Interagency <input type="checkbox"/> Intergovernmental <input type="checkbox"/> Intraagency <input type="checkbox"/> Customer	3. MODIFICATION NO. <b>A001</b>	4. EFFECTIVE DATE <b>01/20/93</b>	5. PROCUREMENT REQUEST NO. <b>79-93BP03198</b>
6. ORGANIZATION AND ADDRESS <b>U.S. Army Corps of Engineers          P.O. Box 2946          Portland, OR 97208-2946</b>		8. ORGANIZATION AND ADDRESS <b>U.S. Department of Energy          Bonneville Power Administration - SRPF          P.O. Box 3621          Portland, OR 97208-3621</b>		
7. TECHNICAL CONTACT <b>Stuart Stanger</b> <i>Don Chambers</i> PHONE NO. <b>6903</b> (503) 326-6330		10. BPA TECHNICAL CONTACT <b>Steve Levy, COTR</b> PHONE NO. <b>(503) 230-4153</b>		
8. ADMINISTRATIVE CONTACT <b>Norm Tolonen</b> <i>Stuart Stanger</i> PHONE NO. <b>6330</b> (503) 326-6919		11. BPA ADMINISTRATIVE CONTACT <b>Esther De'Vore</b> PHONE NO. <b>(503) 230-4393</b>		
12. THIS AGREEMENT WAS NEGOTIATED PURSUANT TO <input checked="" type="checkbox"/> 31 U.S.C. 1535 (Federal) <input type="checkbox"/> 16 U.S.C. 832g (Other) <input type="checkbox"/> 16 U.S.C. 832a(f) (Customer) <input type="checkbox"/>		13. AGREEMENT EFFECTIVE FROM DATE IN BLOCK 4 UNTIL <b>March 30, 1995</b>		

14. TITLE AND BRIEF DESCRIPTION OF WORK TO BE PERFORMED UNDER THIS AGREEMENT; DOCUMENTS WHICH ARE ATTACHED TO AND BECOME A PART OF THIS AGREEMENT:

**PROJECT NO. 91-40:  
 DESIGN OF JUVENILE FISH MONITORING FACILITIES AT BONNEVILLE DAM**

**This Modification is issued to effect the following:**

**Authorize additional funding in the amount of \$443,800.00 (January 20, 1993, to September 30, 1993).**

**ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.**

**Current Agreement Total: \$500,000.00**  
**Increase Modification No. A001: 443,800.00**  
**New Agreement Total: \$943,800.00**

If this is an Intergovernmental or Customer Agreement, the provisions on the reverse of this form are a part of the Agreement.

15. SUBMIT INVOICE TO:  <b>Billing Clerk - PJ          Bonneville Power Administration          P.O. Box 3621          Portland, OR 97208-3621</b>	16. AMOUNT TO BE PAID BY BPA <b>\$ 943,800.00 NTE</b>												
	17. ACCOUNTING INFORMATION (BPA use only)  <table border="0"> <tr> <td>ORG</td> <td>OBJ</td> <td>ACTV</td> <td>PL-6</td> </tr> <tr> <td>PJ</td> <td>27</td> <td>GNL</td> <td>F2616</td> </tr> <tr> <td colspan="4"><b>\$443,800.00 (Increase) NTE</b></td> </tr> </table>	ORG	OBJ	ACTV	PL-6	PJ	27	GNL	F2616	<b>\$443,800.00 (Increase) NTE</b>			
ORG	OBJ	ACTV	PL-6										
PJ	27	GNL	F2616										
<b>\$443,800.00 (Increase) NTE</b>													

APPROVED BY (Signature) <i>Charles A. W. Hines</i>	DATE <b>4/8/93</b>	APPROVED BY (Signature) <i>Delbert S. Olenlager</i>	DATE <b>1/8/93</b>
NAME & TITLE (Type or print) <b>CHARLES A. W. HINES Contracting Officer</b>		NAME & TITLE (Type or print) <b>Delbert S. Olenlager Contracting Officer</b>	