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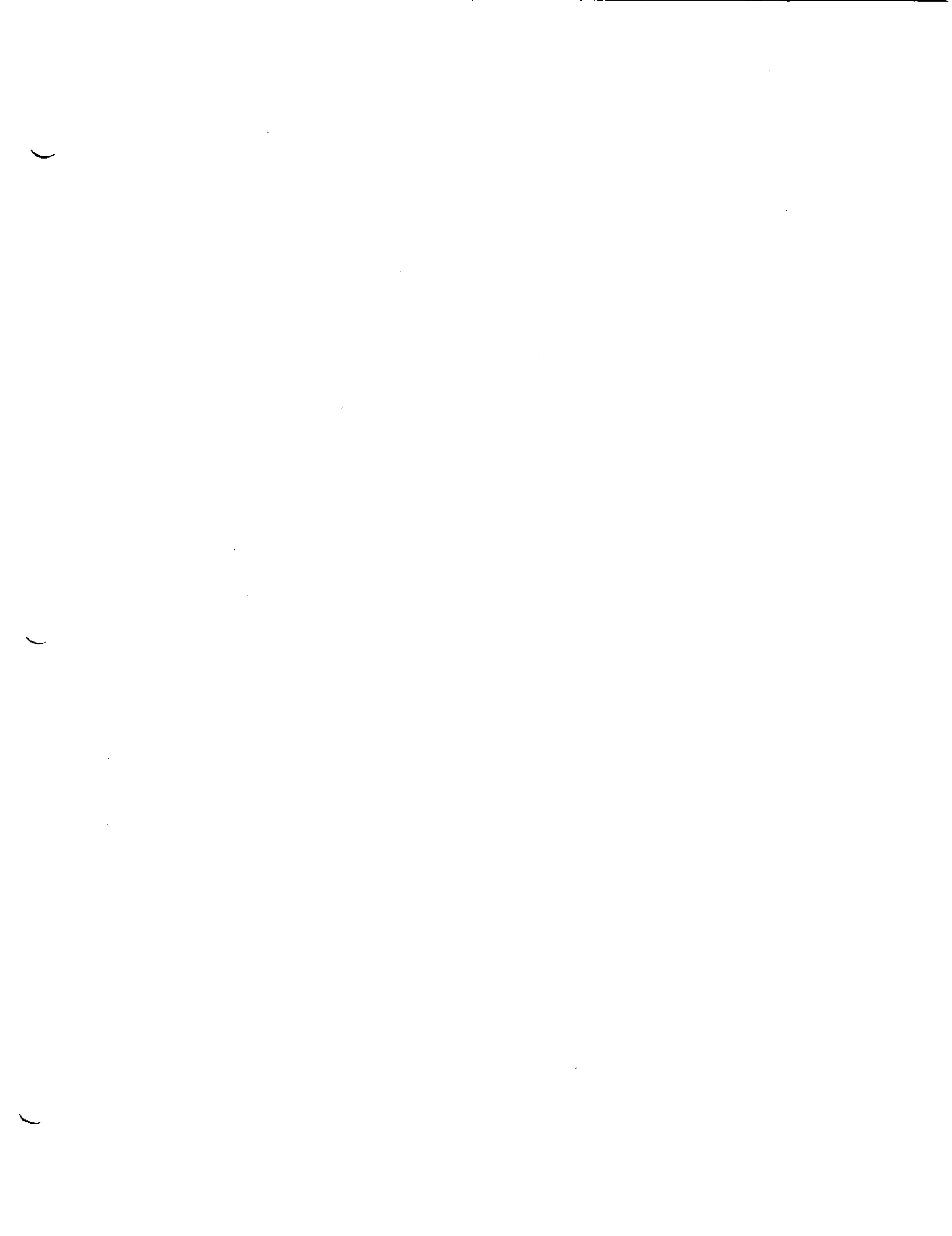
The Northwest Power Planning Council
A Model for Cooperative Planning in the Missouri Basin?

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Boundaries and Water: Allocation and Use
of a Shared Resource

Natural Resources Law Center
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The Northwest Power Planning Council
A Model for Cooperative Planning in the Missouri Basin?

Gerald Mueller

I. Introduction

A. Summary

The Northwest Power Planning Council (Council) is an interstate compact body consisting of two members appointed by each of the Governors of Montana, Idaho, Oregon, and Washington. The Council was created pursuant to the Northwest Power Act of 1980 (Act) and was mandated by that Act to develop the Northwest Conservation and Electric Power Plan and the Columbia Basin Fish and Wildlife Program.

The Council has been successful in furthering cooperative electric power and fish and wildlife mitigation planning among the states, federal agencies, Indian tribes, utilities, and environmental groups that make up the Pacific Northwest electric utility and fish and wildlife communities. Three factors have been crucial to this success: first, a tradition of cooperation within the region which resulted from the development of the Columbia Basin hydroelectric system; second, a perception widely shared within the region at the time of the Act's passage that a future without continued cooperation and a new regional body to institutionalize it would be unacceptable; and third, key features of the Council provided in the Act. These Council features included: stable funding; a clear policy mandate; clear jurisdictional proscriptions; operating standards and procedures; accountability to the region through the state governments; and the necessity to persuade because of an inability to compel.

The Council has been suggested as a model for cooperative management of water resources in the Missouri Basin. The Missouri does face circumstances somewhat similar to those of the Columbia when the Act was passed and Council was created: past and potential conflicts over management of the river; a similar mix of interested parties, including states, federal agencies, Indian tribes, fish and wildlife managers, utilities, irrigators, and environmental and public interest groups; and a hydroelectric system apparently available as a funding source. However, a number of factors render application of the Council model, i.e., an interstate compact planning body charged with comprehensive, basin-wide planning, to the Missouri both premature and difficult: the absence of a unifying perception of the future that cooperation within the basin is imperative; the lack of a shared understanding of the interests of and trust among the basin's states, federal agencies, and Indian tribes; the size and

complexity of the basin; and constraints on the practicality of the Missouri hydro revenues as a funding source.

A less ambitious pre-Council model may be appropriate. Rather than an interstate compact planning body, a less formal group might be formed by agreement of the basin's states, federal agencies, and tribes for the purposes of: compiling hydrologic and water use data; identifying data needs; proposing data standardization guidelines; and compiling and discussing outstanding equity concerns arising both from past river management decisions such as the content and implementation of the Pick-Sloan program. From this approach a more formal and comprehensive Council-type model might evolve.

B. General References

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2. Northwest Power Planning Council, Northwest Conservation and Electric Power Plan, (1986).
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4. Northwest Power Planning Council, 1988 Annual Report, (1988).
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11. Thorson, "Symposium on the Future of the Missouri River", Boundaries Carved in Water, No. 14, (Northern Lights Research and Education Institute, 1989).
12. South Dakota Board of Water & Natural Resources, "South Dakota Missouri River Pick-Sloan Water Initiative", (1987).

II. Northwest Power Planning Council

A. Organization

The Northwest Power Planning Council is an interstate compact body authorized by the Northwest Power Act (Public Law 96-501) consisting of two members from each of the States of Montana, Idaho, Oregon, and Washington. The members are appointed by the Governors and confirmed by the Legislatures of their respective states.

B. Mandate

The Act directs the Council to develop the Northwest Conservation and Electric Power Plan (Plan) and the Columbia Basin Fish and Wildlife Program (Program). The Plan must include a twenty year forecast of electrical demand and a resource plan to meet that demand at the lowest total cost. The Program must provide for the mitigation of the damage to fish and wildlife caused by past development and operation of hydroelectric dams on the Columbia River and its tributaries and for protection against damage by future hydroelectric development and operation.

Both the Plan and the Program must guide the activities of an agency of the United States Department of Energy, the Bonneville Power Administration (BPA). The BPA may not acquire the output of new electrical resources including conservation

with a capacity of 50 megawatts or larger without formally determining that such a purchase would be consistent with the Plan. The Council may review BPA's determination and should either the Council or BPA make a negative finding, BPA may not make the purchase without Congressional authorization. The BPA Administrator must also use his funds and his legal authorities to "...protect, mitigate, and enhance..." fish and wildlife to the extent affected by the development and operation of any hydroelectric project of the Columbia River and its tributaries in a manner consistent with the Plan and Program.

C. The Council Has Furthered Cooperation Within the Region

The Council's most notable achievement has been the development of the Plan and Program through a public, cooperative process. Examples of cooperative activities stimulated by the Plan and Program include: states are working with BPA, utilities, and conservation groups to chart and pursue a course of least-cost electricity resource development; state agencies and Indian tribes are conducting fish production and harvest planning in concert rather than through litigation; state and federal fish agencies, the tribes, BPA, and the utilities have negotiated agreements to provide fish protection in the operation of mainstem dams on the Columbia and Snake Rivers and are jointly lobbying the Congress for additional fish passage protection at these dams; environmental groups are negotiating electricity rate case agreements with utilities; and utilities are supporting the efforts of state and local governments to improve the energy

efficiency of new buildings.

III. Three Factors Critical to the Council's Success

A. Tradition of cooperation.

Since the early 1900's, the generation of electricity has been a dominate use of the waters of the rivers of the Columbia Basin. Over a sixty year period, public and private electric utilities and the federal government built the largest coordinated hydroelectric system in the world. Today in an average year, the Columbia Basin dams generate over 140 billion kilowatt-hours, about 14 times the total generation of the Missouri. As the system grew, the utility community recognized the tremendous advantage in operating the dams on a single-owner basis. Simply put, the total generation from all the dams operated as one system is far greater than the total produced by all the dams operated independently. In 1964, this single-owner approach was codified contractually within the U.S. portion of the Columbia Basin and extended basin wide through a treaty with Canada. This tradition of cooperation within the utility community stemming directly from the river itself provided the kernel from which a larger cooperative effort could and did grow.

B. Shared perception of the need for a new regional cooperative approach and planning entity.

During the late 1970's, a perception began to develop and spread throughout the region that challenges facing the electric utility industry and the Columbia Basin fishery could not be met without federal legislation creating new mechanisms for

cooperation. The once seemingly limitless supply of cheap hydroelectricity had reached the end of its expansion. Utilities therefore faced a dual problem: how to allocate a finite supply of cheap hydroelectricity among all parties, and how to expand the supply with new electricity resources to meet what appeared to be rapidly growing consumer demands. Because of their expense and difficulty in winning regulatory approvals from the states, the new resources, coal and nuclear plants, were becoming too risky for individual utilities. Some new means of financing and licensing these plants seemed vital to the utilities. Also, the private utilities who had pioneered the development of thermal generating plants watched their rates skyrocket relative to public utilities served by the cheap federal hydroelectric power. Allocation wars over who would continue to receive the cheaper power loomed large on the horizon.

Meanwhile, conflict was heating up on another related front. The cheap hydroelectricity which had fueled the region's economic growth had come at significant cost to another resource which was also integral to the heritage of the Columbia River, the runs of salmon and steelhead. Prior to the development of the basin, the annual run of adult salmon and steelhead totaled on the order of 13 million fish. By the early 1970's, this run had dwindled to only 2.5 million, an 80% loss. In response to this loss and the harvest conflicts it engendered, the Indian tribes whose culture and economy centered on the salmon had won a series of lawsuits that threatened to turn control of the river

over to a federal judge on behalf of Indian treaty rights. Also, the federal fishery managers faced with the imminent extinction of salmon and steelhead runs were considering adding those runs to the endangered species list, an action which could have again crippled the existing management of the river.

There seemed no way out but federal legislation which would balance the interests of all parties, the states, the feds, the utilities, the tribes and other fishery managers, and the conservation and other public interest groups. And so these parties proceeded with fits and starts to fashion a classic compromise which met the vital interests of all parties. That compromise became federal law when President Carter signed the Northwest Power Act in December of 1980.

C. Key Council Characteristics

The framers of the Act institutionalized the tradition of regional cooperation in a new entity, the Northwest Power Planning Council, and provided the Council with features critical to its success:

1. Stable funding which is provided via a surcharge on power sold by BPA. A surcharge of less than 0.3% on BPA rates allows the Council a budget of about \$7 million per year. This stable funding has enabled the Council to maintain the quality staff and other resources to be a credible force in the power and fish and wildlife communities.

2. A clear policy mandate which has kept the Council working towards definite goals and objectives and given it

considerable persuasive power in dealing with all of the individual interests in the basin.

3. Clear proscriptions carefully excluding certain areas from the Council's jurisdiction. These were necessary to protect the existing sovereignty of key parties to the Act so that they could accept the Council's creation. The proscriptions included unambiguous direction that the Council may not in any way affect existing contractual rights and obligations of the BPA or its customers, Indian treaty rights, state water rights, state energy facility siting regulation, state retail electricity rate setting, or existing federal licenses issued pursuant to other federal law.

4. Operating procedures and standards including equal representation on the Council of the four Pacific Northwest states and the application to the Council of two federal laws, the Freedom of Information Act and the Government in the Sunshine Act. Equal representation of the states was a prerequisite to the consensus necessary for the Council's creation and for its successful operation. Application of the two federal laws ensured that the business of the Council, including its decisions, has been open and accessible to the public. Conducting business in this manner has strengthened the Council by allowing the public to understand and affect, and therefore to accept Council decisions.

5. Accountability to the region through state governments. Because the Council is a creature of the states,

its members are appointed by governors and confirmed by legislatures, it can be held accountable by the people it serves. This accountability through the political system is crucial to keeping the Council grounded in the values, needs, and aspirations of the people of Montana, Idaho, Oregon, and Washington. Without this grounding a regional body will tend to become one more layer of government at least as independent and disconnected from the states as the federal government. With this grounding via the governors the Council has pursued the national and regional interests set forth in its charter while maintaining close connection with state interests.

6. And, finally, an imperative to persuade rather than compel. As a planning body, the Council does not have its hands on the controls that operate the dams or deliver electricity or raise and harvest the salmon and steelhead. The Council has some authority to veto actions; it has almost no legal authority to compel action. Because it lacks the legal power to compel, the Council must persuade. Ultimately, what has and will continue to determine whether or not the Plan and Program are implemented is the validity and strength of the ideas they contain. When the ideas have been sound and acceptable to the people of the region, then those entities which really do operate the controls in the power and fish and wildlife communities for the most part have been persuaded. Empowering the Council to persuade rather than compel was a critical decision for its effectiveness because it allowed agreement to the Council's creation, and it has kept the

Council efforts from becoming bogged down in court challenges.

IV. Presently, the Council is Not a Practical Model for the Missouri Basin

Because of its success in planning for and facilitating cooperative management of hydropower and fish and wildlife resources in the Columbia Basin, the Council has been suggested as a model for cooperative management in other basins including the Missouri. While the reality of river management in the Missouri Basin today has several basic similarities with that of the Columbia Basin at the time of the passage of the Northwest Power Act, it also has significant differences which would render application of the Council model to the Missouri premature and difficult.

Both the Missouri and the Columbia are major rivers managed for multiple purposes primarily by two federal agencies, the U.S. Army Corps of Engineers and the Bureau of Reclamation. These purposes include: hydroelectric generation, navigation, irrigation, fish and wildlife, flood control, water supply, and recreation. These purposes are vital to the economies and environments of the states in both basins. The management of these purposes also engender conflicts within and among interests in both basins including federal agencies, the states, Indian tribes, fish and wildlife managers, electric utilities, irrigators, recreationists, environmentalists, etc.

While the general nature of the management conflicts and the interests are similar, the most significant conflicts in the

Columbia Basin in the late 1970's and the Missouri today are not. In the Columbia, attention was primarily focussed on two conflicting but non-consumptive uses of the Columbia waters: hydroelectric generation and the salmon and steelhead fishery. The effects of this conflict although not completely understood were evident and generally accepted basin-wide - the hydroelectric system had substantially harmed the fishery. The necessity for remedial action and the nature of the remedy were also generally accepted basin-wide. The operation and any future development of the hydroelectric system had to be changed to accommodate restoration and protection of the fishery. However, because inexpensive hydroelectric power is a fundamental ingredient of the Pacific Northwest economy, these changes would have to be made in a manner that did not significantly impair the production of inexpensive electricity. In this environment, agreement to create a new institution charged with cooperative development of the restoration and protective program was possible and did occur.

The conflict in the Missouri Basin, on the other hand, is generally over future consumptive water uses with consequences not widely understood or accepted. Virtually all management purposes and interests might be affected. Upper basin states and Indian tribes who were either left out or have not received promised Pick-Sloan benefits seek water development or other compensation; lower basin power consumer, navigation, flood control, water supply, and fish and wildlife interests feel

threatened. Consensus for action does not exist.

The Missouri Basin also differs from the Columbia in size and hence numbers of interests which any planning body must accommodate. The Council includes representatives of only four states. A Missouri planning group would encompass ten states. Because the issues in the Missouri stem from consumptive allocation questions and because of the nature of Indian water rights, any planning body may also need to include tribal representation. Creating both a mechanism for representation and operating procedures which balance the protection of individual interests and sovereignty with the need of the planning body to make decisions and take actions would therefore be much more complex and difficult in a Missouri body. Surmounting this complexity and difficulty would require more trust and understanding within the basin than presently exists.

Finally, there is the issue of funding. The sheer magnitude of hydropower in the Columbia made this issue tractable. Hydro revenues were and continue to be large enough to incorporate funding the Council as well as implementation of the largest fish and wildlife mitigation program in the world without significantly affecting power rates. The same would not be true in the Missouri. Annual federal hydropower revenues in the Columbia today are about \$2 billion. In 1986, federal hydropower revenues in the Missouri were just over \$90 million. Funding only a basin-wide planning body modeled on the Council with no moneys for plan implementation would have a noticeable

effect on power rates. Such an effect would likely engender opposition from existing power users throughout the basin. Federal hydropower revenues therefore cannot be relied upon as the sole source of funding for a Council model in the Missouri.

V. Conclusion

While a Council model for cooperative basin-wide planning has been successful for the Columbia Basin, conditions are not ripe for applying it to the Missouri. Because the Missouri Basin is larger and involves more parties as well as issues of potential water consumption with uncertain consequences, additional knowledge, understanding and trust building should proceed an attempt to implement a Council model. A major funding source or sources in addition to hydropower revenues will also likely be required.

The additional knowledge, understanding, and trust necessary for a basin-wide cooperative planning and/or management body might be developed through an approach identified and discussed at last year's Symposium on the Future of the Missouri River organized by the Missouri River Management Project of the Northern Lights Research and Education Institute. In what might be considered a pre-Council model, a group would be formed and funded by agreement of the basin states, federal agencies, and tribes and charged with the limited purposes of: compiling hydrologic and water use data, identifying data needs, proposing data standardization guidelines, and compiling and discussing outstanding equity concerns arising from past management

decisions such as the content and implementation of the Pick-Sloan program.