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Northwest **Power** and **Conservation** Council

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May 11, 2022

DECISION MEMORANDUM

TO: Council Members

FROM: John Shurts, General Counsel
Andrea Goodwin, Senior Counsel

SUBJECT: Approval of the Statement of Basis and Purpose and Response to
Comments to complete the 2021 Power Plan process

PROPOSED ACTION: Approve the Statement of Basis and Purpose and Response to
Comments for the 2021 Northwest Power Plan

SIGNIFICANCE: With the approval of the Statement of Basis and Purpose and
Response to Comments, the Council will complete the process
to develop and adopt the 2021 Northwest Power Plan. Upon
approval, the Council will publish in the Federal Register a
notice of the Council's final decision to adopt the 2021 Power
Plan.

BUDGETARY/ECONOMIC IMPACTS

There are no budgetary impacts associated with this decision.

BACKGROUND AND ANALYSIS

The Council adopted the 2021 Power Plan at its February 2022 Council meeting. The Council completes its power plan process by approving a "statement of basis and purpose" that includes a response to the comments the Council received on the draft power plan. The statement explains the statutory framework for the power plan, the process the Council followed in developing and adopting the power plan, and how the

Council considered and addressed key issues and topics in development of the power plan and issues raised in the comments received on the draft.

The Power Act does not say anything about a “statement of basis and purpose” or a “response to comments” on the draft for the power plan. We do this because of basic principles of administrative law (courts faced by a challenge to an administrative agency decision will want to see from the agency a discussion of the how the agency handled key issues and comments) and specific requirements of the federal Administrative Procedures Act (APA). The APA requires federal agencies, after completion of a notice and comment rulemaking, to approve a “statement of basis and purpose” that identifies how the agency handled key issues in the development of the final rule, especially those raised in comments from outside the agency. The Council generally follows the notice-and-comment rulemaking requirements of the federal APA to the extent practicable, and the Act explicitly says that the standards of judicial review in the APA apply to review of Council decisions.

The statement of basis and purpose should enable the public to obtain a general idea of the purpose of, and justification for the analysis, findings, and recommendations included in the power plan. The response to comments should demonstrate the Council’s consideration of the issues raised in comments to the Council throughout the power plan process, including on the draft plan, and how the Council considered those comments in shaping the final plan.

Staff circulated a draft statement of basis and purpose and response to comments to the Council members and staff in late April under separate cover. The document circulated then is still the operative document we are asking the members to approve. We have received a small number of non-substantive editorial suggestions (e.g., spell out T&D) that we will incorporate after approval.

ALTERNATIVES

Staff recommends adoption of the Statement of Basis and Purpose and Response to Comments for the 2021 Power Plan. Alternatively, the Council could recommend substantive changes to the statement and delay approval until those changes have been made and reviewed.