COLUMBIA BASIN
FISH AND WILDLIFE AUTHORITY
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Final

Coordinating and promoting effective protection and restoration of fish, wildlife, and their habitat in the Columbia River Basin.

The Authority is comprised of the following tribes and fish and wildlife agencies:

Burns Paiute Tribe

Confederated Salish and Kootenai Tribes of the Flathead Reservation

Confederated Tribes of the Umatilla Indian Reservation

Confederated Tribes of the Warm Springs Reservation

Confederated Tribes and Bands of the Yakama Nation

Idaho Department of Fish and Game

Kootenai Tribe of Idaho

Montana Fish, Wildlife and Parks

National Marine Fisheries Service

Nez Perce Tribe

Oregon Department of Fish and Wildlife

Shoshone-Bannock Tribes of Fort Hall

Shoshone-Paiute Tribes of Duck Valley

U.S. Fish & Wildlife Service

Washington Department of Fish and Wildlife

Coordinating Agencies

Columbia River Inter-Tribal Fish Commission

Compact of the Upper Snake River Tribes

Upper Columbia United Tribes

DATE: February 25, 2011

TO: Members Advisory Group (MAG)

FROM: Jann Eckman, Interim Executive Director

SUBJECT: Final Action Notes for the February 23, 2011 MAG Meeting

Members Advisory Group (MAG) Meeting
Wednesday, February 23, 2011
9:00am – 12:00pm (pacific)
@ CBFWA Office Portland, OR
MAG Webpage

Final Action Notes

Attendees: Doug Taki, SBT; Brad Houslet, Elmer Ward CTWS; Elizabeth Gaar, NOAA Fisheries; Jann Eckman, Tom Iverson, Dave Ward, Neil Ward, Binh Quan, Patricia Burgess, CBFWA

Phone/WebEx: Lynn DuCharme, CSKT; Gary James, CTUIR; Lance Hebdon, IDFG; William Barquin, KTOI; Brian Marotz, MFWP; Edmond Murrell, SPT; Mark Bagdovitz, USFWS; Joe Mentor, Mentor Law Group

Time Allocation:		
	Objective 1: Participation	100%
	Objective 2: Technical Review	0%
	Objective 3: Presentation	0%

ITEM 1: Introductions and Approve Agenda

Action: The MAG approved the draft agenda with the addition of an item to discuss the schedule for future MAG meetings. No objections.

ITEM 2: Change of Officers

Elizabeth Gaar, National Oceanic Atmospheric Administration (NOAA), passed the gavel to the incoming MAG Chair, Doug Taki, Shoshone-Bannock Tribes (SBT). The Vice-chair of MAG will be a representative of Idaho Department of Fish and Game (IDFG). The IDFG Member representative to assume the Vice-chair role is yet to be confirmed.

Discussion: Elizabeth Gaar expressed thanks to MAG Members and CBFWA staff and stated that she enjoyed her term as MAG chair and that it was a productive year. Elizabeth shared that she has received positive feedback from within NOAA for the products delivered this year and the direction of the work plan. Doug Taki thanked Elizabeth and Rob Walton, NOAA, for their work with the MAG over the last year.

ITEM 3: Draft Action Notes from the December 2, 2010 MAG Teleconference

Action: The MAG approved the December 2, 2010 MAG action notes as final.

Added Item/ Announcement: **Northwest Power and Conservation Council (Council) Fish and Wildlife Committee Meeting:** Tom Iverson, CBFWA, stated that the update on CBFWA activities was not included on the agenda because of time constraints; however, Tom wanted the MAG members to be aware of a Council Fish and Wildlife Committee meeting scheduled for this Friday, February 25. The Council will discuss the monitoring projects as a continuation of the project recommendation process for the RM&E categorical review.

ITEM 4: Nez Perce Tribe (NPT) Funding Request

Discussion: The NPT has requested an additional $7,500 in Members' travel funding to support unexpected costs related to the Coordinated Assessments project and participation on the MAG subgroup for the future of regional coordination. The current balance in the unallocated placeholder is approximately $51,222.00.

Jann Eckman, CBFWA, confirmed that the funds will not carry over and must be used prior to the end of the fiscal year, March 31, 2011. The MAG stated concern regarding the large amount of unallocated funds remaining. Chairman Taki reminded everyone to get their invoices in before the end of the fiscal year. Jann added that she will send out a reminder to the Members.

Action: The MAG approved the NPT request for an additional $7,500 in Members' travel funding. No objections.

Added Item: **Funding Request for Coordinated Assessments Technician Computer Training**

Discussion: Tom Iverson advised that within the Coordinated Assessments project (see Item 7 below), ten temporary technicians were hired in February under StreamNet to work with each of the participating agencies and Tribes to support their assessments.

Enhanced Excel and Visio computer training was provided for the temporary technicians to give them the capability to help the agencies and Tribes create the Excel data exchange templates and create data flow diagrams in Visio. Cost for the technicians' travel was allotted for in the contract held by StreamNet; however, the computer training was an unforeseen cost. The cost for the training is $2450.

Tom requested MAG consideration toward funding the training out of the Members' unallocated placeholder account since it is unlikely that the entire amount of that placeholder will be used before the fiscal year ends March 31. The Coordinated Assessments project is a cooperative project between StreamNet, Pacific Northwest Aquatic Monitoring Partnership (PNAMP), and CBFWA. Funding of this one-time computer training out of the placeholder account would be considered a cost share. The unallocated placeholder is a contract services account so this would be an appropriate use of the funds.

Action: The MAG approved the request to pay the $2450 training cost out of the unallocated placeholder account. No objections.

The remaining balance in the Members unallocated placeholder after the two abovementioned actions is approximately $41,272.00.

ITEM 5: **Update by Fish Screening Oversight Committee on National Marine Fisheries Service Draft Criteria for Horizontal Screens**

Discussion: Dave Ward, CBFWA, explained that the National Marine Fisheries Service (NMFS) developed criteria for horizontal flat plated screens. Although NMFS is not required to obtain approval from the Fish Screening Oversight Committee (FSOC) or CBFWA or others regarding screen criteria, they sought technical consensus from the FSOC so the managers are in agreement with the draft criteria. Dave stated that after lengthy review and discussion over several meetings, the FSOC endorsed the draft criteria on January 27, 2011, with three abstentions. The U.S. Fish and Wildlife Service and the Confederated Tribes of the Umatilla Indian Reservation (CTUIR) abstained deferring to NMFS expertise. Montana Fish, Wildlife and Parks (MFWP) abstained because the NMFS criteria are not applicable in Montana.

Although written generically for all horizontal screens, the criteria are highly applicable to screens designed and developed by the Farmers Conservation Alliance

(FCA); however, the FCA has stated that some of the criteria do not utilize the best available science.

FSOC gave the technical endorsement to the criteria, which covers a lot of the FCA screens, but not all. Dave reiterated that NMFS is not seeking CBFWA approval and that this agenda item is meant as a briefing to MAG on the technical endorsement by the FSOC of the draft criteria, and the position of the FCA.

The next step for FSOC is to develop criteria for lamprey and for all screens including horizontal.

ITEM 6: **Approve the review paper prepared by the Lamprey Technical Workgroup: *Translocating Adult Pacific Lamprey Within the Columbia River Basin: State of the Science***

Discussion: Dave Ward advised that the Lamprey Technical Workgroup (LTWG) has completed a two-year effort to develop the review paper: *Translocating Adult Pacific Lamprey Within the Columbia River Basin: State of the Science (Feb 2011).*

Dave stated that the paper is a review, and does not support or refute any position regarding the use of translocation. This paper has been vetted throughout the Basin with CBFWA Member representatives. The LTWG subgroup approved it and sent it on to the Anadromous Fish Advisory Committee (AFAC) for approval and the AFAC recommended that it be presented to the MAG for approval. Dave stated that the only minor edit required at this point is an update of two tables to include 2010 data.

The paper will at minimum be a valuable tool for managers in the Columbia River Basin. If approved, portions of the paper would possibly be submitted for publication in an appropriate journal.

Action: A motion was made by Gary James, CTUIR, to approve the review paper for dissemination and potential publication. Mark Bagdovitz, U.S. Fish and Wildlife Service (USFWS), seconded the motion but stated concern about the paper receiving an endorsement from CBFWA and sending it out for publication without being further vetted through specific regional policy channels. Mark Bagdovitz withdrew his second to the motion. After additional discussion, Brian Marotz, MFWP, seconded the motion. No objections. USFWS and Idaho Department of Fish and Game (IDFG) abstained.

Additional Discussion: Mark Bagdovitz, USFWS, stated that although he abstained, he would circulate the document at a regional policy level and request that any concerns or questions be sent to the LTWG for possible changes to the document (i.e., clarifications, updating, etc).

Chairman Taki suggested that MAG members educate their Members on this review paper. The review paper will not be directly circulated to the Members but will be made available on the CBFWA website.

ITEM 7: **Coordinated Assessments Phase II Work Plan**

Tom Iverson advised that the Coordinated Assessments project is proceeding with their effort to assess and identify gaps, needs, and priorities for sharing salmon and steelhead indicators. The project has entered the important phase of hiring technicians to work with each of the participating agencies and Tribes to support their assessments.

The draft Phase II Work Plan for Coordinated Assessments for Salmon and Steelhead was circulated via email prior to the meeting and posted for MAG's review. Approval of the Phase II work plan will allow for continuation of the

Coordinated Assessments effort.

Action: The MAG approved the Phase II Work Plan for continuation of the Coordinated Assessments effort. No objections.

ITEM 8: **CBFWA 2011 Survey Results**

Discussion: CBFWA staff administered a satisfaction survey during the week of February 7-11, 2011. Tom Iverson reviewed a presentation providing the preliminary results of the survey and provided an overview from an executive summary containing individual comments and details of the results.

CBFWA staff will prepare a shorter presentation for delivery to the Members at the March meeting. CBFWA staff encouraged the MAG to review the data with their Members and ask that the Members bring their own opinions for discussion to meeting in March, and to be sure to review the comments on the last page of the executive summary.

If MAG members have any comments regarding information to be included in the Members presentation, or have questions about the survey data presented or information contained within the executive summary, they should contact Tom Iverson (tom.iverson@cbfwa.org) or Neil Ward (neil.ward@cbfwa.org).

Action: The MAG approved that staff prepare a presentation of the survey results for Members review and discussion at their March 10th meeting. No objections.

ITEM 9: **Regional Coordination FY 2012 and Beyond**

Discussion: At the December 2, 2010 meeting, the MAG formed a subgroup to discuss alternatives for the future role and funding of regional coordination. The subgroup consists of: Doug Taki, SBT; Dave Statler, NPT; Lance Hebdon, IDFG; Mark Bagdovitz, USFWS; Elmer Ward, Brad Houslet, CTWS; and Rob Walton, Elizabeth Gaar, NOAA, and participating CBFWA staff members: Jann Eckman and Tom Iverson.

The MAG subgroup briefed the MAG on their meeting with Bill Maslen, Bonneville Power Administration (BPA), which took place on Wednesday, February 2, 2011. The group had requested a meeting with Bill to informally discuss BPA's funding for regional coordination, and understand the context and test their assumptions moving into the Council's RME Categorical Review Process for regional coordination projects.

A white paper: *Current Status of Regional Coordination and Alternatives to Implement CBFWA Policy Directives for FY2012 and Beyond* was generated out of the MAG subgroup discussions. Tom Iverson emailed the white paper to the MAG on February 17th requesting MAG review and comment prior to the today's meeting. The white paper was not posted or distributed as a handout.

After considerable discussion, the MAG directed that the subgroup do some additional work on the white paper and further refine the decision base, prior to forwarding the white paper to the Members for their consideration at the March 10 meeting. Tom Iverson requested MAG comments and feedback on the white paper by COB Monday, February 28 (tom.iverson@cbfwa.org).

ITEM 10: **Fort McDermitt Paiute and Shoshone Tribe Membership Request**

Discussion: The Fort McDermitt Paiute and Shoshone Tribe (FMPST) requested membership in the CBFWA in a letter dated January 5, 2011. Under the CBFWA Charter, the MAG is tasked with providing the initial review of membership requests to verify that applications are complete prior to forwarding to the Members for their

consideration.

Joe Mentor, Mentor Law Group, CBFWA's legal counsel, was asked to review the application and present his findings to the MAG. Joe Mentor began the discussion by providing some background on the process. Joe stated that in 2001, CBFWA received a request for membership from the Idaho Office of Species Conservation, and in 2002, received requests from the Grand Ronde Tribe and the Siletz Tribe. At that time, the CBFWA Charter did not contain information regarding a process for considering membership applications. However, in 2006, two sections were added to the CBFWA Charter:

- **Section 402 – Membership (A) Eligibility**
- **Section 407 – Admission of New Members**

Joe confirmed that CBFWA received from the chairman of the Fort McDermitt Paiute and Shoshone Tribe (FMPST) a letter explaining their request, background material on the FMPST reservation and history, a technical support memo, and a resolution from the Tribal Council requesting membership.

Based on the requirements contained within the CBFWA Charter, Joe provided the following information:

The review shows that the FMPST reservation is located in the extreme southeast corner of the State of Oregon and consists of about 35,000 acres of land. The reservation is located primarily in the Quinn River basin which is part of the Great Basin and is an area of internal drainage. The Quinn River does not flow out of that drainage, it merely evaporates, but there are about 100 acres of the reservation that are located in the headwaters of the Owyhee River which is located in the Columbia Basin.

In reviewing the FMPST's constitution, which was approved by the Secretary of the Interior under the Indian Reorganization Act of 1936, it includes a provision describing the responsibilities of the Tribal Council and one of those responsibilities is to provide for the licensing of non-members coming on to the reservation for the purpose of hunting, fishing, trading or other business and for the exclusion from the reservation of persons not so licensed and establishing proper agencies for law enforcement upon the FMPST Reservation.

This assertion of the FMPST authority to regulate non-Indian hunting and fishing on its reservation is different from the situation that existed at the time we reviewed the Grand Ronde and Siletz applications because both of those Tribes had signed agreements with the State of Oregon in which the State reserved the right to regulate hunting and fishing in the lands where both Tribes had off-reservation hunting and fishing rights. The Grand Ronde and Siletz Tribes at the time did not participate in any of the management activities that took place in the Columbia Basin including participation in the subbasin planning process or sponsorship of any programs or projects under the Northwest Power Act. To his understanding, the FMPST did not participate in the subbasin planning process and currently do not have any other projects for which they receive Bonneville Power Administration (BPA) funding, or any other funding, to mitigate, protect, or enhance Columbia Basin fish and wildlife resources.

As far as determining whether the application was complete, there was enough information to review the FMPST governing documents and to review its other activities and determine whether the reservation is located within the Columbia Basin.

There is one other piece of evidence to consider and that is the Northwest Power and Conservation Council's (Council) directory of Columbia Basin Tribes. The Council document is ambiguous because while the list of Tribes and the summaries of each Tribe does not include the FMPST, the map of the Columbia Basin that is included with the Council document does clearly show the FMPST reservation. It can be determined from that map that at least according to the Northwest Power and Conservation Council that the FMPST reservation is located within the Columbia Basin.

Joe Mentor stated that it was his intent to provide a letter to the Members for the March Members meeting outlining the conclusions made based on review of the application, if the MAG determines that the application is complete. Joe stated that the current situation is a different from the last time a membership request was received (i.e., the Charter now contains a process for membership applications). In the past, Joe said he provided a letter outlining the conclusions based on a review of the application, but he also provided an opinion on the ultimate question.

Jann Eckman requested Joe's response to the question: Is this application valid enough and complete enough to send to the Members? In reply, Joe provided the following information:

The FMPST's reservation clearly includes land within the geographic boundaries within the Columbia Basin and we can present a map. I certainly conclude that as a factual matter, that is in fact true.

With regard to whether or not the FMPST has fish and wildlife management responsibilities, given the fact that the term is not defined as to what constitutes fish and wildlife management: any management by a governmental entity that includes either regulatory or proprietary management responsibilities or both, so as an owner of land, or an agency that has general governmental authority over land, they could undertake to manage that land for the benefit of fish and wildlife. Where a Tribe owns land within the Basin and manages that land for the purposes of fish and wildlife, or manages fish and wildlife on land that it does not own, either way it exercises management responsibilities. If it exercises regulatory responsibilities then that too falls under the category of management. The fact that the FMPST has asserted that regulatory authority within its constitution and it clearly has the authority under federal law to exclude non-members from its reservation and to impose conditions of their presence on the reservation. Joe stated that there is a case being made here that they qualify for membership.

Chairman Taki stated that based on the information presented by Joe today, the application is complete enough to forward to the Members.

Joe added that the only thing in his mind is whether there are other management responsibilities within the reservation, what else does it do with regard to fish and wildlife? There's a basis on which the Members could make their decision if they decide the regulatory authority is enough, then the application is complete.

Action: The MAG confirmed that the Fort McDermitt Paiute and Shoshone Tribe application request is complete and ready to be forwarded to the Members for their consideration at the March Members' meeting. No objections.

Added Item: **Schedule of Future MAG Meetings**

Discussion: Chairman Taki recommended that the MAG meet every other month instead of every month with the understanding that interim meetings would be scheduled should issues arise that require MAG attention. It was agreed that the meetings

would be of duration of approximately 6 hours.

ITEM 11: **Winter Members' Meeting: March 10, 2011 in Boise, ID**

- USRT will host a social Wednesday night before the meeting.

Discussion: Concern was stated regarding the 8:00am start time and it was requested that the meeting start time be changed to 9:00am.

Action: The MAG approved the draft agenda for the March 10, 2011 Members meeting and determined that the meeting would start at 9am and run until approximately 3pm. No objections.

Upcoming Meetings: **Winter Members Meeting: Thurs, March 10, 2011, 9am-3pm, Hilton Garden Inn Boise Spectrum, Boise, ID**

Northwest Power and Conservation Council Meeting(s) 2011: March 8-9th in Boise, ID; April 12-13 in Wenatchee, WA.

Members Advisory Group Meeting: April 19, 2011, Portland, OR