



COLUMBIA BASIN FISH AND WILDLIFE AUTHORITY

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DATE: April 2, 2007
TO: CBFWA Members
FROM: Dan Diggs USFWS, Chair and Brian Lipscomb, CBFWA
SUBJECT: Action Notes from February 7-8, 2007 Members Meeting

These action notes were approved as final at the 4/4/07 Members' Teleconference.

Winter Members Meeting – Boise Idaho

Day One: February 7, 2007 1:00-5:00 pm Dinner/Speakers: 5:30-7:30 pm

Day Two: February 8, 2007 8:00 am-3:00 pm

The support material and reference documents for the meeting are posted at:

<http://www.cbfwa.org/committees/Meetings.cfm?CommShort=Members&meeting=all>.

Action Notes

Day One – Wednesday, February 7, 2007

Attendees: Cecil Dick, BPT, Amos First Raised, BPT, Wanda Johnson, BPT, Lawrence Schwabe, BPT; Dale W. Chess, Cd'AT, Ronald Peters, Cd'AT; Ron Trahan, CSKT; Joe Peone, CTCR; Ken Hall, CTUIR, Gary James, CTUIR, Carl Scheeler, CTUIR; Michele DeHart, FPC; Cal Groen, IDFG, Peter Hassemmer, IDFG, Charlie Petrosky, IDFG, Gregg Serveen, IDFG, Steve Yundt, IDFG; Bert Bowler, IRU; Gary Aitken, Sr., KTI, Sue Ireland, KTI; Larry Peterman, MFWP; Brooklyn D. Baptiste, NPT, Dave Statler, NPT; Rob Walton, NOAA Fisheries; Tony Nigro, ODFW; Claude Broncho, SBT, Chad Colter, SBT, Aren Eddingsaas, SBT, Glenn D. Fisher, SBT, Hunter Osborne, SBT, Doug Taki, SBT; Tim Dykstra, SPT, Kyle Prior, SPT; Mark Bagdovitz, USFWS, Dan Diggs, USFWS; Jim Uehara, WDFW, Nate Pamplin, WDFW; Quanah Spencer, Cd'AT; Jann Eckman, Trina Gerlack, Tom Iverson, Tana Klum, Amy Langston, Brian Lipscomb, Ken MacDonald, Kathie Titzler, Neil Ward, Dave Ward, CBFWA

Speakers & Guests: Bill Booth, Jim Kempton, Rhonda Whiting, NPCC; John Platt, CRITFC; Gwen Lankford, Sapphire Strategies; Joe Mentor, Mentor Law Group, PLLC; Mitch Silvers, US Senate

Phone: No one attended by teleconference.

Welcome – Ron Trahan

Invocation – Glenn Fisher, SBT

Introductions/Roll Call

Brian Lipscomb introduced Kenneth MacDonald, CBFWA. Ken recently joined CBFWA as the WAC and CSMEP coordinator, assuming the position that Frank Young held prior to his retirement in October 2006.

ITEM 1: Change of Officers

Brian Lipscomb advised that the US Fish and Wildlife Service (USFWS) has served as Vice-chair during 2006 and will now step into Chairmanship role and Montana Fish, Wildlife and Parks (MFWP) will rotate into the Vice-chair roles.

Action: Members moved to accept the 2007 rotation of USFWS as CBFWA Chair and MFWP as Vice-chair. No objections.

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

Coeur d'Alene Tribe

Confederated Salish and Kootenai Tribes of the Flathead Reservation

Confederated Tribes of the Colville 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 Department of 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

Upper Columbia United Tribes

**Approve
Agenda:**

Dan Diggs, USFWS, acknowledged that USFWS has been a proud member of CBFWA for many years and he is excited to assume the CBFWA Chairmanship. He stated that the meeting agenda contains items that are going to be important to everyone over the next year. Dan stated his appreciation for Brian Lipscomb and CBFWA staff as he touched on the important topics in the agenda (SOTR, Public Relations Strategy, Amendment Process, NPCC F&W Guest Speakers, etc).

Brian Lipscomb requested that John Platt's agenda items, 9 & 16, be moved to the end of the day today. John will be unable to attend the meeting on Thursday.

Action:

Members moved to accept the agenda with the modification to move John Platt's agenda items to the end of today's meeting. No objections.

ITEM 2:

Approve as Final 1/3/07 Members Meeting Draft Action Notes

Action:

Members moved to approve the 1/3/07 Members Draft Action Notes as final. No objections.

ITEM 3:

Review Agenda and Meeting Introduction

Brian Lipscomb reported that he has met with most of the Members since December with the intent to develop strategy for the F&W Managers' participation in the upcoming proposed NPCC amendment process.

Brian stated the actions for the Members consideration are:

1. Direct the technical committees to continue to evaluate the existing program, confirm the population level objectives, validate current limiting factors and identify strategies and actions necessary to reduce those limiting factors.
2. Direct the Members Advisory Group (MAG) to link the subbasin population objectives to the regional programmatic goals and in doing that identify Bonneville Power Administration's (BPA) obligation. Additional strategy would be to interact with the Northwest Power & Conservation Council (NPCC) and the regional utilities to educate and develop an understanding of the linkages and obligations.
3. Direct the MAG to develop a comprehensive management coordination strategy for Members' adoption and recommendation for inclusion in the Program. John Platt, CRITFC, will present discussion regarding the Fish Passage Center (FPC). The FPC is a management coordination function that is explicitly called for in the Northwest Power Act (Power Act). There are several projects within the Program that provide coordination. The Members need to think about how to coordinate the rest of the management activities associated with the adaptive management cycle.
4. The NPCC has not identified provincial level objectives in the process as a next step of the Program, but the Members are the only people capable of developing them. The Members need to define province level and where it applies and they need to put the subbasin objectives in context to what we are doing regionally and strategically. This is an opportunity to engage the region in some thoughtful conversation as to how to link the subbasin and regional objectives.

The National Oceanic and Atmospheric Administration (NOAA) Fisheries reported that recovery goals are being completed in their recovery planning process. At the ESU level, it fits with the province level in the NPCC's process. A team effort is needed to keep the whole ecosystem healthy.

There are other forums outside of the NPCC's process that are generating information that CBFWA, given its comprehensive scope, could use to put together an effective RM&E program. The key when we talk about objectives is to ground

the objectives in terms of measurable performance standards.

Timeline and approach for the Members to consider:

1. A sound technical approach for making amendments.
2. Develop sound working relationships in the region. Work with the NPCC to develop amendments that address our issues and recommendations. Help the utilities understand what is being achieved with their rate case dollars. Work with local governments, who have a big stake in the subbasin planning process, as well as sport, commercial fishing, and environmental organizations' interests.
3. Create a strategy to increase the communication with the local community and utilities so as they begin the rate case discussion they understand that the fish and wildlife are protected and the Program is funded adequately to fulfill obligations.

ITEM 4: FY 2005 Status of the Resource Report (SOTR)

Neil Ward distributed a hard copy of the SOTR to each CBFWA Member for review. The report is the result of a review of subbasin plans, management plans, and recovery plans. This information came from mining the data warehouses, (e.g., StreamNet), but also through working with the F&W Managers throughout the region for the information needed to evaluate how the focal species are doing relative to the identified biological objectives. Neil stated that CBFWA is reporting the data, not storing data.

Wildlife information is absent from this report but will appear in the 2006 report.

Neil stated that the next step for this group, the technical committees, the MAG, as well as others in the region is to decide what information the F&W Managers want reported on an annual basis. Between now and May, staff will be sending templates out, similar to last year's, to figure out exactly what information needs to be reported.

The other part of this project is a website, which will provide the option to print the SOTR report by subbasin or by province. Amy Langston presented an overview of the draft SOTR interactive website. Completion is expected by the end of February/March 2007.

The F&W Managers are encouraged to review the SOTR webpage at www.cbfwa.org/sotr and send comments to Amy or Neil.

NOAA Fisheries offered data on the limiting factors and information from a report to Congress on Pacific Coast Salmon Restoration Fund.

Brian Lipscomb stated that the SOTR report could provide future input to the NPCC's report to Congress regarding the effectiveness of the F&W restoration program as part of the Power Act.

ITEM 5: Background on Legal Context of Amending the Fish and Wildlife Program under the Northwest Power Act

Brian asked Joe Mentor, Mentor Law Group, PLLC, to provide a legal analysis for inputting amendments in the upcoming F&W program process.

Joe provided a presentation outlining the history of the Power Act, the F&W Program, Amendments, ISRP reports, budgets, and more. The history can be reviewed in a draft white paper Joe prepared entitled "Authority of the Fish and Wildlife Managers under the Northwest Power Act." View draft white paper: http://www.cbfwa.org/Committees/Members/meetings/2007_0207/JoeMentorAuthorityWhitePaper02-08-07.pdf

Joe suggested that if CBFWA is going to embark on a process to submit recommended amendments, it is important to recognize what the Power Act does not do. Joe provided the following information:

Under section 4(h)(1) the NPCC is required to develop the Program.

Under section 4(h)(2), the NPCC is required to request in writing prior to development of the plan or a major revision thereto, recommendations from the regions F&W agencies and appropriate Indian tribes for measures which can be expected to be implemented by the Administrator (BPA) to protect, mitigate, and enhance F&W to the extent affected by the development operations of hydro.

Under section 4(h)(5) the NPCC is required to develop the Program on the basis of those recommendations and if the NPCC does not adopt any recommendation of the F&W agencies and tribes, it has to explain in writing the basis for its finding and there are specific principles that must be relied on.

The explanation must detail that the recommendation is inconsistent with the requirement that the plan ensure adequate, efficient, economical, and reliable power supply, or that it is inconsistent with existing future activities of the F&W Managers; that it is based on the best available scientific knowledge and that there are not equally alternative methods that are cheaper, and lastly, that it is inconsistent with legal rights of appropriate tribes. This is the basis that the Council must rely on to either decline or follow a recommendation of one of the managers.

Joe stressed that CBFWA can be instrumental in helping to coordinate and reconcile the recommendations before they go to BPA, by using its' history and documents to establish consensus.

As for cases of reference, most of the historic cases challenging an agency's decision are under the "Administrative Procedures Act" and are closed record cases; therefore, the record that was created when the decision is being challenged is all that is available. If you don't participate, the only record is the agency files and you are left with nothing except to challenge their science and their discretion on face value. A record must be developed to support the recommendations you make and CBFWA was founded to do exactly that. Joe recommends that the F&W Managers work together to create the record.

John Platt agreed and stated that BPA basically had two defenses to allow it to constrain its budget and one of those was ambiguity. When the NPCC undertook its subbasin planning program in 2004, in very small print, it gave instructions, not to include measures and budgets. This provided a very ambiguous set of subbasin plans in the Program which left BPA able to say: we'll choose to fund or not and we'll consider the NPCC's advice as an advisory council under the Gordon amendment but in terms of the Program, the Program isn't binding because it is ambiguous.

BPA's second line of defense, which they took to the 9th Circuit Court, was that they were not required to act consistent with the Program because the NPCC was not a federal body but that argument has been thrown out by the 9th Circuit Court. The NPCC is an interstate compact to the extent that it provides unambiguous direction to BPA and BPA has to follow that direction. The 9th Circuit Court has said the NPCC has certain powers, and BPA has been consistent with it and by the same token, to the extent that the agencies provide consensus and unambiguous recommendations, the NPCC is required to adopt them unless the recommendations violate some other provision in the Power Act.

Joe concurred with John's statements and added that this case has been argued and there are US Supreme Court cases that say that Congress can require federal agency consistency and require that they defer to state law. The compact established in the Power Act is merely a form of allowing the states to work in concert with all of their authorities derived from state law. All Congress did in the Power Act was require a federal agency to act consistent with state laws and you can require the federal agency to act consistent with a compact of states.

Joe explained that there are two levels of deference in the Act: the deference the NPCC is afforded by BPA and the deference of the agencies and tribes that the

NPCC is required to follow. BPA is required to defer to the NPCC and the NPCC is required to defer to the F&W Managers.

ITEM 6: Strategy and Plan for Developing Recommendations to Amend the Fish and Wildlife Program

The AFAC, RFAC, WAC provided technical comments toward amendment recommendations and specifically on providing linkages on the subbasin level.

Committee presentations are linked at:

http://www.cbfwa.org/Committees/Members/meetings/2007_0207/CFBWA-ProgramAmendments07Feb7-8MbrsMtgV2.pdf

AFAC: Doug Taki, AFAC Chair, reported that the AFAC is in the process of confirming the biological objectives at the subbasin level and to determine the link between different geographic scales moving through the province and regional scales. By the end of June, the AFAC will confirm focal species, populations, limiting factors, confirm or establish biological objectives, and identify population status by metric on the subbasin scale. Examples of the abundance data are in the SOTR.

By end of April, the AFAC expects to recommend how to express biological objectives at the different geographic scales. By the end of June, confirm the focal species, limiting factors, biological objectives, status and activities that have already been recommended. By the end of August, they can be prepared to work to develop the biological objectives at the different geographic scales, if requested.

RFAC: Jim Uehara, RFAC Chair, reported that the RFAC are following a strategy similar to the AFAC. The RFAC will start at the subbasin scale to identify focal species, populations, limiting factors, biological objectives for those focal species, and metrics for those populations. A lot of the resident fish programs are in the blocked area so by virtue of that, biological objectives do not appear exactly the same as anadromous fish. Anadromous fish centers on recovery and resident fish objectives are centered on other things like mitigation for resident fish, and losses and substitution policy. The timeline and schedule for RFAC is similar to AFAC.

Brian Lipscomb suggested making a connection between harvest and populations articulating biological objectives in terms of numbers. Ron Peters stated that the only purpose for some non-native fish population existence is for harvest and there will never be a population or specific biological objective developed for those focal species; on the other hand, there are native resident fish where there are population and biological objectives. Tony Nigro advised the F&W Managers to be cautious on how the terms are defined; Jim Uehara stated that the distinction between the two will not be problem.

WAC: Carl Scheeler, former WAC Chair, stated that the Wildlife program is organized differently as it has been habitat based since the beginning of mitigation efforts for terrestrial losses.

Wildlife operates with a set of estimated measured losses for the construction and inundation impacts of the hydro system. Those losses were developed using a metrics called habitat units. There are two ways to acquire habitat units: 1) purchasing property that is in danger of losing value or losing habitat units over time, and 2) by applying restoration measures to the piece of property it is expected to gain in value in habit units over time. BPA recognizes crediting as the dominate way of marking off their obligations and they maintain the ledger of credits on the habitat units. WAC must confirm the status of the habitat unit ledger and have had process discussions with BPA specifically on how to credit against that ledger for incomplete or missing information.

Limiting factors identified in subbasin plans are tied, not to hydro facilities as the construction and inundation losses are, but to subbasins, with little to do with the losses that accrued are to the construction and inundation of the hydro facility. The WAC must work to rectify the difference with BPA as we move forward. The construction and inundation losses don't constitute all the losses that BPA is

obligated to mitigate for. There are other opportunities to do actions that are not constrained by the habitat unit framework, construction, and inundation losses.

The WAC is looking at alternate ways to implement the program, including potential trust fund units, which might be significant and more cost effective in the long term, alternate prioritization strategies for projects, and attempting to define and develop the appropriate wildlife monitoring and evaluation.

Carl stated that BPA's focus, from a policy position, is that we may only do M&E associated with habitat and they have refused to fund a number of our biological response monitoring activities irrespective of how cost-effective they might be. BPA thinks that it is not their responsibility. We need to come together as an organization and define what the reasonable level of biological monitoring is to assure that the NPCC's program is meeting BPA's obligations.

The WAC is meeting with the Independent Economic Analysis Board (IEAB), BPA, and NPCC to evaluate cost effective implementation for the wildlife program including operations and maintenance. The WAC is the first group to start working with IEAB and NPCC for reviewing what is reasonable in terms of O&M. The WAC and IEAB are scheduled to meet at the end of February.

The WAC anticipates working on the remaining tasks through August.

Discussion:

Brian expressed that the obligation in Power Act is that the fish and wildlife be restored, not the habitat. Restoring the habitat for wildlife is the current strategy so it is very important for the F&W Managers to ask "how do you link that habitat strategy to the populations that are required to be restored under the Act?"

Brian reviewed tasks recommended for Members actions tomorrow:

- Make linkages at a local level and subbasin level.
- Link subbasin population objectives to regional programmatic goals.
- Strategize to implement that action by working with all the interested parties in basin to increase the awareness and exchange of information.

Referencing the AFAC subbasin scale slide in the presentation, Rob Walton stated that NOAA Fisheries has completed recovery plans for Lower Columbia on the Washington side, along with the Members who participated in the process, and are almost finished with the Upper Columbia. NOAA Fisheries offers their abundance and productivity data to add to the biological objectives data. Brian L. and Rob will meet to discuss NOAA's input on pending actions and transferring that data.

In response to a question by Chad Colter regarding linking subbasin population objectives, Brian Lipscomb advised that the Power Act and BPA's obligations is to restore the fish and wildlife species; therefore, historically building good habitat was a good strategy. We now have an opportunity to ask questions regarding the status of that strategy and an opportunity to change the strategy to get the fish back to the existing habitat. The limiting factors were addressed from a habitat standpoint, now it is time to start addressing the other H's. For example, what do we need to do from a supplementation standpoint and/or passage at the hydro facilities?

ITEM 9:

Update on Fish Passage Center

John Platt, CRITFC, reported the history and evolution of Fish Passage Center (FPC) and the recent 9th Circuit Court decision. John stated that the FPC concept evolved out of the ideas that the fishery agencies and Tribes had to have a seat at the table for hydro operations. John highlighted the opportunities for the fish & wildlife managers, now that the language is clear in the Power Act and supported by the 9th Circuit Court's decision.

The 9th Circuit Court ruled that the report language is not connected to the bill language and is not effective. The Court ruled on the definition of consistency. The Power Act requires consistency between the Program and the use of BPA funds,

unless higher standards are violated, i.e., a shortage of reliable power supply or *in lieu* requirements.

Provided that CBFWA is careful to insure that any recommendations are consistent with all the standards in the Program and insures a level of consensus that cannot be exploited, the NPCC has to adopt those provisions. If they don't adopt the recommendations, they have to explain their rationale.

The Tribes and F&W agencies are entitled to the technical expertise that allows them to bring forth recommendations for the way the hydro system is operated in accordance to the law. Because the Court defined consistency, it puts the burden on the Tribes and F&W agencies to provide very direct unambiguous recommendations for measures as required by the Act to insure that their positions are adopted.

Brian referred to Joe Mentor's comments with regard to deference. The fish and wildlife managers' deference is clearly defined within the Power Act and case law.

John stated that the NPCC should be arguing for proper funding for this Program. The NPCC's explicit guidance to the agencies and Tribes in the subbasin planning process was to not include measures and not include budgets. The result is that you have subbasin plans that do not serve the purpose of the recovery program or *US v Oregon* process because they are not explicit and direct.

Brian stated that the NPCC's role is the balance the fish and wildlife and power. The NPCC is required to adopt the fish and wildlife program first and then adopt a power plan that accommodates the Program. One limitation that must weigh in is having a reliable economic power supply, but the Program comes first. BPA needs to internalize F&W costs just like all the other power utility, and power marketing companies around the world who have that responsibility.

The Act requires two things for the F&W managers: 1) The NPCC is required to request measures from the F&W managers to be implemented, and 2) The NPCC is required to request recommendations for coordination management including funding.

Joe Mentor asked the Members to define project and program and stated that he supports the idea of defining specifications and providing a list of projects that meet those specifications and he supports the CBFWA vision outlined in the Amendment Process presentation as a good strategy.

CRITFC Press Releases: 9th Circuit Court orders BPA to keep salmon science center operating <http://www.critfc.org/text/press/20070124.html>

Yakama Nation wins Fish Passage Center case in 9th Circuit:
<http://www.critfc.org/text/press/20070124yak.html>

ITEM 16:

Celilo Falls Inundation Memorial Partnership – John Platt, CRITFC

CRITFC Press Release is posted <http://www.critfc.org/text/press/20070223.html>

John Platt stated that many events are planned in March to bring public awareness to the region for the Celilo Falls 50th anniversary. For at least 10,000 years, Celilo Falls was a major fishery and trading place and was the center of the Columbia Basin salmon culture. In 1951, the Elders gave up the Celilo Falls to help the Korean war effort; to make aluminum for jets which was the argument the U.S. government presented to the Tribes.

On March 10, 1957, the Dalles Dam flooded Celilo Falls and its ancient tribal fishery.

John is requesting Members support in promoting the Tribes and agencies events and highlighting the significant losses and efforts throughout region.

Action:

The Members directed Brian Lipscomb to work with the Public Relations group through the MAG to develop a statement for the March 10th gathering. The federal

agency Members will check with NOAA to see what they can offer. No objections.

Dinner Speakers: Idaho Council Members, Jim Kempton and Bill Booth, were the guest dinner speakers. See Members comments in Item 7: Recap Day One.

Day One – Meeting Adjourned.

Day Two – Thursday, February 8, 2007

Attendees: Cecil Dick, BPT, Lawrence Schwabe, BPT; Dale W. Chess, Cd'AT, Ronald Peters, Cd'AT, Quannah Spencer, Cd'AT; Lynn DuCharme, CSKT, Ron Trahan, CSKT; Joe Peone, CTCR, Ken Hall, CTUIR, Gary James, CTUIR, Carl Scheeler, CTUIR; Michele DeHart, FPC; Peter Hassemer, IDFG, Steve Yundt, IDFG; Gary Aitken, Sr., KTI, Sue Ireland, KTI; Larry Peterman, MFWP; Brooklyn D. Baptiste, NPT, Dave Statler, NPT; Tony Nigro, ODFW; Claudio Broncho, SBT, Chad Colter, SBT, Aren Eddingsaas, SBT, Glenn D. Fisher, SBT, Hunter Osborne, SBT, Doug Taki, SBT; Tim Dykstra, SPT, Kyle Prior, SPT; Mark Bagdovitz, USFWS, Dan Diggs, USFWS, Mike Faler, USFWS; Jim Uehara, WDFW, Nate Pamplin, WDFW; Jann Eckman, Trina Gerlack, Tom Iverson, Tana Klum, Brian Lipscomb, Ken MacDonald, Kathie Titzler, Neil Ward, Dave Ward, CBFWA

Speakers & Guests: Mitch Silvers, US Senate; Kerry Berg, Bill Booth, Joan Dukes, Mark Fritsch, Doug Marker, Patty O'Toole, Lynn Palensky, Rhonda Whiting, NPCC; Gwen Lankford, Sapphire Strategies

Phone: No one attended by teleconference.

ITEM 7: Recap Day One Meeting

Dan Diggs and Brian Lipscomb opened the meeting listening to each Member's thoughts regarding their understanding of Amendment Process and any comments or recommendations. Members comments included:

- The Members stated that they appreciated and benefited from the history provided in Joe Mentor's presentation on the authorities of the F&W Managers under the Northwest Power Act.
- The Members agreed that deference issue is very important and should be addressed.
- The Members enjoyed meeting the Idaho Council Members and appreciated Bill Booth's openness, and hearing from Jim Kempton regarding the Power Plan and Amendment Process and NPCC's timeline.
- The Members shared their strengths in networking, consensus, and having defined roles in the amendment process. The Members agreed that CBFWA has a lot of work to do.

Brian Lipscomb reviewed the actions in the Amendment presentation. The Members moved to approve the following actions:

Action 1: Members directed the technical committees to evaluate the existing Program:

- Define and clarify terms (i.e. focal populations, objectives, how to express limiting factors, etc.).
- Confirm population level biological objectives.
- Ensure that priorities of all plans affecting F&W are captured in this process.
- Validate current limiting factors including out-of-basin affects.
- Review and build on strategies and actions necessary to reduce the limiting factors.
- Be completed by August 2007.

No objections.

Action 2: Members directed the Members Advisory Group to work with the Spokane and Kalispel Tribes to:

- Develop a comprehensive management coordination strategy.
- Integrate all coordination initiatives into the strategy.

No objections.

Action 3: Members directed the Members Advisory Group to:

- Link subbasin population objectives to regional Program goals.
- Identify BPA's obligations.
- Interact with the Council and regional communities to educate and develop an understanding of the linkages and obligations.

No objections.

ITEM 8: CBFWA Public Relations Updates

Tana Klum, CBFWA, and Gwen Lankford, Sapphire Strategies presented the latest drafts of the new CBFWA brochure and website design and stated that the Public Relations subcommittee and the MAG assisted in selecting the language and design of these products. Gwen stated that through the implementation of the Public Relations work plan, broader audiences can be reached to help educate folks about F&W efforts and restoration in the region.

Item 8a: Approve the New CBFWA Brochure

Action 1: Members moved to approve the new CBFWA brochure. No objections.

Item 8b: Approve the new CBFWA Website Design

Action 2: Members moved to approve the new CBFWA website design concepts. No objections.

Item 8c: Provide Direction for Next Steps in Fulfilling the Tasks in the Public Relations Work Plan

Action 3: Members moved to task the MAG to work with the PR group to:

- Implement the Public Relations work plan.
- Identify and develop local contact lists.
- Schedule meeting dates.
- Develop materials for Members and locals use to educate contacts, in particular, develop a specific package for each audience, work on template to target the specific audience, and a develop a generic package with principles to follow.
- Design a Members profile template, develop talking points or PowerPoint presentation, and keep a local flavor.

The Members requested that the MAG be kept informed on the local strategies, progress, and draft products.

ITEM 9: *Moved to Day One: Update on Fish Passage Center – John Platt, CRITFC*

ITEM 10: CBFWA Business

Item 10a: Report on CBFWA Office Move and FPC

Brian Lipscomb reported that Harsch Investment Properties have offered to honor our existing contract and to pay for all remodeling and moving costs to a new office location either up to the third floor or to a building on SW 11th and Salmon. There is room for the Fish Passage Center but those moving costs have not been discussed with Harsch Properties. Brian, Jann Eckman, and Michele DeHart will meet to

evaluate the options and keep the Members updated. The move should occur in the Fall 2007.

Item 10b: Members Budget Increase Request

Action: Members moved to approve the Confederated Tribes of the Umatilla Indian Reservation's (CTUIR) \$10,000 request to continue participating through the remainder of the contract year, March 31, 2007. No objections.

Action: Members moved to approve the Washing Department of Fish and Wildlife's (WDFW) \$5,000 request to continue participating through the remainder of the contract year, March 31, 2007. No objections.

Item 10c: Official Appointment Letter Designating Each Tribe/Agency's CBFWA Committee Representatives for 2007

Discussion: Brian Lipscomb reminded the Members to fill out their templates and send them to Jann or Trina.

Item 10d: Select Members Teleconferences and Meeting Dates, Time, & Location

Action:

- Members moved to approve that the Members meet by teleconference on the first Wednesday of every month from 1:00-4:00pm and the MAG will set the Members agenda and meet on the third Tuesday of every month from 9:00am-Noon. No objections.

Action: Members moved to approve the Summer Members Meeting date for September 18 & 19, 2007 in Montana. No objections.

ITEM 11: Canadian North Fork Mining Issue Update

Brian Marotz and Mark Delray presented this issue to the MAG in January explaining that just north of the Montana and Canada border, on the hydrologic divide between the North Fork of Flathead drainage and Kootenai drainage directly to the west, there is proposed, on the Canadian side, a very large open pit coal mine. The materials are to be hauled out to the railroad for transport to the coast to sell the coal to China. Canada has a different approach than the United States, when they make resource development decisions; they don't take into account the full array of resource impacts.

The Members discussed the draft letter in the Members meeting packet outlining CBFWA's comments for public record on the Cline Mining Corporation Lodgepole Coal Mine Project.

Action: Members moved to review the letter and send all edits to the MAG. Suggestions stated during the meeting include correcting the name of the Confederated Salish and Kootenai Tribes and adding cultural significance into the letter. No objections.

Link to final letters:

http://www.cbfwa.org/Committees/Members/meetings/2007_0207/ClineMiningProjectLtrFinal.pdf
http://www.cbfwa.org/Committees/Members/meetings/2007_0207/NPCC-NorthForkMineLetter011807Final.doc

ITEM 12: Quagga Mussel Spread in the Colorado River Basin, and New Concern about Innoculation of the Snake/Columbia via the Owyhee Update

Discussion: Mark Bagdovitz reported that the USFWS has an active program, led by Paul Heimowitz, Aquatic Nuisance Species (ANS) Coordinator (paul_heimowitz@fws.gov), called the 100th Meridian Initiative. The goal of the program is to prevent the westward spread of zebra mussels and other ANS by watercrafts.

Recently discovered is the Quagga Mussels, which is very similar to the zebra mussels. The Quagga Mussels can live in deeper water, and grow and reproduce at lower water temperatures than zebra mussels, which expose the quagga to a new range of environmental conditions and new habitats. They migrated from the Great Lakes and cause extensive ecological and environmental impacts and because of their

ability to mass colonize they pollute the water and decrease the food sources for the native freshwater mussels. The colonization of Quagga Mussels around pipes and screens causes clogging and reduce drainage capabilities and once established are hard to eliminate.

Tim Dykstra, SPT reported the possibility that Quagga Mussels are in the basin around the Owyhee and Nevada reservoir.

Mark Bagdovitz stated that Paul Heimowitz is working on a strategy effort and outreach to prevent Quagga Mussels from colonizing in the basin. He is looking for support to conduct a survey and needs listings of the places where Quagga Mussels may be in basin.

Sue Ireland, Kootenai Tribe of Idaho (KTI) is searching for expertise to help write grants and funding from the federal government relative to an infestation of Eurasian Milfoil in the Idaho portion of Kootenai River and into Canada flowing into Kootenai Lake. Dan Diggs advised that he will contact his regional person who is an expert at developing and writing plans to contact Sue and discuss how he can help her.

ITEM 13: Pacific Lamprey Update

The USFWS reported that they have not forgotten the Pacific Lamprey and plan to do more in the future. Pacific Lamprey summit and conferences are planned this year. F&W Managers will see results on the regional level and regular updates will be provided at the MAG meetings.

Members are disturbed because the Pacific Lamprey is not ESA listed and the species is in grave danger. In 2006, only thirty-five adults were counted over Lower Granite Dams. The Lamprey has to pass eight dams to get to their spawning areas in the Snake Basin. Thirty to fifty percent of the returning adult Lamprey is lost at each dam. The Members made the following statements and requests:

- Actions to save the Lamprey from extinction are not moving fast enough.
- Step up the measures to improve passage thru the hydro systems for the adults to get back to their spawning grounds.
- Pacific Lamprey is a traditional food and part of the Nez Perce Tribes' (NPT) culture.
- It's time to develop a proactive approach and potential solutions to save the Lamprey.

ITEM 14: Proposed Innovative Project Solicitation Update

Tom Iverson reported the NPCC just completed their recent project solicitation process, in that they withheld \$1M a year over 3-years to put toward innovative projects. They decided to do one innovative project solicitation for \$3M.

The projects have to be 18 months or less in length and occur within this 3-year period. The open solicitation is scheduled for February 15, 2007.

CBFWA sent a letter suggesting that the NPCC look at projects that didn't get funded from the last review process and fund those as innovative projects, instead of doing a new solicitation process; however, the NPCC is choosing to do a whole new solicitation. They are looking for application projects that will demonstrate a new application or an application that has not been applied in the basin that will produce more fish with on the ground benefit. The solicitation will be out in next couple of weeks. The process includes: a review by CBFWA and an Independent Scientific Review Panel (ISRP) review. The NPCC's decision is due out in June 2007.

A project solicitation targeted at innovative proposals and the specific criteria will be available in the next couple weeks. The NPCC and CBFWA staff met and discussed the submission of pre-proposals to collect solicitation information to define innovative, but the administration decided on an open solicitation.

BPA may cut the funding from \$3M to \$2M. They are releasing a project funding decision letter and it is anticipated that in it a placeholder for innovative solicitation is expected, but not confirmed, to be less than \$3M.

ITEM 15: BPA's *In Lieu* Process Update

Brian Lipscomb reported that BPA has provided two drafts of *in lieu* determinations and a matrix of projects that potentially overlap with other entities responsibilities in the basin. The long standing debate continues on what that definition of *in lieu* entails. BPA's draft recommendations are out and should be finalized in the upcoming response to the NPCC. BPA should release its' *in lieu* analysis and project recommendations next week.

Brian referenced the meeting with Greg Delwiche, BPA, where he invited CBFWA to discuss what regional conversations need to happen to identify projects with *in lieu* issues. The MAG assigned the technical committees to review the lists, and confirm or dispute the classifications, identify the list, and utilize the BPA funds to pursue cost share from the other entities that BPA has asked to address the *in lieu* issue.

Tim Dykstra questioned how the NPCC will participate the *in lieu* determinations via the deference issue.

Mark Bagdovitz, USFWS expressed his opinion that *in lieu* issue should be completed in an amendment process, in a public manner, and as part of the NPCC's Program. He doesn't have a problem with the CBFWA exercise going forward, but it is his opinion that we should not concede the point that BPA has any authority to do what they are doing.

Brian stated that the discussions on this issue will be sequential. First step, verify the list and confirm agreement. Then if you agree, take the second step. This is not parallel discussion. It is a sequential discussion. Is this a legal issue? Should Joe Mentor review this? This hits at the core where BPA is pulling their obligations out of the Program based on their own reasons. Members should speak up before a precedent is set. Any deference that the Tribes, F&W agencies, and NPCC have should be utilized. There is room for BPA to say no, but only under some legal considerations, so we need to analyze this for all the projects from that situation and clarify BPA responsibilities.

Brian will ask Joe Mentor to provide guidance as the Members review the list from a technical aspect to determine if BPA has upheld the intent of the law as it applies to what they deny.

To answer the question: How does the BPA define *in lieu* and how do they apply it equitably in the region? Perhaps Members should do an economic evaluation.

ITEM 16: *Moved to Day One: Celilo Falls Inundation Memorial Partnership*

ITEM 17: Northwest Power & Conservation Council's F&W Committee Discussion

Discussion: CBFWA Members and NPCC Members introduced themselves and shared their questions, possible opportunities, and expectations concerning the F&W Program and the Amendment Process. Everyone expressed the value of having an open dialogue between the NPCC and CBFWA.

After a long deliberation over:

- The strengths in group consensus and sharing information.
- Merits of the Power Act.
- The importance of the deference owed to the F&W Managers and NPCC as it is stated in the Power Act.
- The effects of the current court ruling relative to the Fish Passage Center.
- The BPA *in lieu* issue.

- Pending BPA decisions and possible responses.
- Best approach for providing input to the amendment process.
- Linking objectives and obligations.
- Best method for providing specific measures or specificities in the Program.
- Strategy for implementing supplementation.
- Clear definitions of appropriate terms and recommendations in the process and Program.
- Finding a balance in the decision process.
- Defining and implementing wildlife mitigation.
- Collecting and reporting best available science for data management and future coordination funding discussions.

The group came to the conclusion that everyone has different interpretations and perspectives of the above issues. There are meetings planned to answer pending questions and opportunities to exchange information.

The Members asked the NPCC Members the following questions:

- How do we work through some of these issues as we develop proposals or develop the amendments to make sure that we are getting a consistent level of specificity?
- Is this product useful to the NPCC?
- How do we get CBFWA's perspectives in front of the NPCC and theirs in front of us as we begin to embark upon this process?
- How do we follow up on this as we develop the amendments and be sure that we have either checkpoints or meetings like this along the way where we can discuss some of the details and make sure that we are all on the same page?
- How do F&W Managers restore an equitable working relationship with the NPCC and BPA in developing guidance to the region on fish and wildlife issues?

The NPCC Members and CBFWA Members agreed to start attending each other's monthly policy meetings to give briefings and continue the open dialogue and provide guidance on where each other is with fish and wildlife issues.

ACTION:

- Members moved to add a standing agenda item to the monthly Members' teleconference meetings that invites a Member of the Council, or Members of the Council to participate in the phone call on a regular basis to update on issues of interest. No objections.

Meeting Adjourned.