



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

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 Fish, Wildlife & 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

Compact of the Upper Snake River Tribes

DATE: April 8, 2008
TO: CBFWA Members
FROM: Brian Lipscomb, CBFWA
SUBJECT: Final Action Notes from the March 31, 2008 Members Teleconference

Columbia Basin Fish and Wildlife Authority (CBFWA) Members Special Teleconference Monday, March 31, 2008 Transmittal Letter Discussion

Support material for the March 31st meeting is posted at
http://www.cbfgwa.org/committee_main.cfm

Final Action Notes

Attendees: Brian Lipscomb, Jann Eckman, Tom Iverson, Pat Burgess, CBFWA
By Phone: Billy Barquin, Haglund, Kelly, Horngren, Jones & Wilder LLP; Joe Mentor, Mentor Law Group, PLLC; John Platt, CRITFC; Nate Pamplin, WDFW; Mark Bagdovitz, USFWS; Claudio Broncho, SBT; Rob Lothrop, CRITFC
Time Allocation: Objective 1. Committee Participation 100%
Objective 2. Technical Review %
Objective 3. Presentation %

ITEM 1: Introductions

Finalizing the amendment recommendations transmittal letter was the only agenda item for this meeting: At the close of the March 28th Members teleconference, the Members agreed that Brian Lipscomb, CBFWA, John Platt, CRITFC, Joe Mentor, Mentor Law Group, Billy Barquin, KTI, and other interested Members would hold a conference call on Monday, March 31st to discuss draft edits toward a final transmittal letter.

Brian Lipscomb served as chair for the meeting and began the meeting by reviewing the process up to this point.

In the March 26th Members teleconference, John Platt, CRITFC, raised concerns relative to the transmittal letter and the Members asked John to provide edits to the letter reflecting his concerns but in a manner that would characterize the amendment submittal while preserving individual agencies and Tribes consideration so as to not minimize the importance of the document.

On March 28th, John Platt provided the following inclusion as a (4th) paragraph:

In this regard, the CBFWA recommendations provide elements for a systemwide approach that is implemented by the agencies and Tribes' recommendations. It is thus the intention of the parties that the CBFWA and individual recommendations be read consistently. However, in the event of a perceived conflict between a Tribal or agency recommendation, and a CBFWA recommendation, it is the intention of the signatories that the Tribal or agency recommendation supersedes or overrides the conflicting CBFWA recommendation as a consequence of the deference due to the Tribes or agencies because of their statutory, treaty, or other legal authorities.

In the meeting on March 28th Joe Mentor, Mentor Law Group, commented that the CBFWA recommendations are the recommendations of the agencies and Tribes that are signing and that CBFWA as an entity has the same standing as any other interested party. The significance of the CBFWA recommendations is in the fact that they are the recommendations of all the Members.

Joe suggested removing the CBFWA Chair signature block and the cc block, but to include the page of Members' signatures. Joe also suggested that references to CBFWA recommendations be removed and referenced as collective recommendations.

Discussion:

John Platt advised that he reviewed the edits to the letter with Rob Lothrop, CRITFC, and Rob suggested an additional paragraph. John stated that CRITFC was suggesting additional review of the letter because even with the edits made on March 28th, they did not feel that their concerns were fully addressed. John stated that they anticipate a battle over the next year and don't want to complicate the issue by having CBFWA recommendations conflict with the individual Tribal recommendations. They want to make sure by having some boilerplate language that the individual agency and Tribal recommendations are the primary recommendations. John elaborated stating that if the CBFWA recommendations are viewed by the NPCC as conflicting with the individual agency or Tribal recommendations, the individual recommendations are the ones that will receive deference.

Nate Pamplin, WDFW, stated that he believes a problem is being invited that does not exist and suggested striking the alternatives provided in the March 28th draft letter. John Platt responded that the CRITFC legal representation will not agree to that as an alternative.

Brian Lipscomb suggested that the group review the suggested language by CRITFC. Discussion document - Transmittal letter w/CRITFC edits of March 31st:
http://www.cbfwa.org/Committees/Members/meetings/2008_0331/CBFWATransmittal_CRITFCedits2008_0331.doc.

Mark Bagdovitz, USFWS, added that the policy question in front of the group as he understands it is that if the NPCC were to receive recommendations from CBFWA and the individual agencies and Tribes, we would want to try to advise what they should do if there is a potential conflict. Mark asked what we, as CBFWA Members, would want the NPCC to do with our recommendations and those of our individual agencies and Tribes.

In response to Mark's question, Brian Lipscomb suggested, based on conversations held to this point, that we do not want a situation where the NPCC will ignore individual specific recommendations and deference for a collective recommendation through CBFWA.

Billy Barquin, KTI, added that he feels that alternative language should be included to advise the NPCC what we want to do if they see a conflict, i.e., that we want them to consult with all the participating parties. The reason why KTI is interested in this language is that they have decided to not abstain from large portions of the CBFWA amendments as originally planned. Billy stated that KTI will do a soft support and call out the specific portions that we agree with but if we don't have some language in the transmittal letter regarding how to address conflict, KTI will most likely abstain from some portions of the recommendations because they will not be able to clearly state that they agree whole-heartedly.

Mark Bagdovitz, USFWS, agreed with Billy Barquin and added that if the NPCC sees a potential conflict, it should be CBFWA Members decision on how to resolve the conflict. In response, John Platt stated that the NPCC does have authority to override recommendations if they determine there is a conflict under their authority under the Northwest Power Act.

Joe Mentor added that the NPCC will be in an untenable position if they attempt to resolve inconsistencies between the recommendations of two entities where the two

entities, within in the comment period and in the record as this goes forward, are insisting to the NPCC that there is no conflict.

The group made edits to the transmittal letter resulting in the following draft at the end of the March 31st teleconference:

http://www.cbfwa.org/Committees/Members/meetings/2008_0331/TransmittalLetter_MembersTeleconEditsMarch31st.doc.

This version of the letter will be presented to CBFWA Members on April 2nd for final approval.

FYI:

The next Members Teleconference is scheduled for Wednesday, April 2, 2008 from 1:00-4:00 p.m.

Amendments Due to the NPCC on Friday, April 4, 2008

Next NPCC Meeting, April 15-16, 2008 in Whitefish, MT

Meeting Adjourned.

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