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October 3, 2017

MEMORANDUM

TO: Council members

FROM: Kerry Berg

SUBJECT: Update on Libby Biological Opinion

BACKGROUND:

Presenter: Jason Flory, Biologist, US Fish and Wildlife Service

Summary: Libby Dam, located on the Kootenai River in Montana approximately 220 miles from the confluence of the Columbia River, is a major upriver storage dam for the FCRPS. The dam was completed in 1973 and is operated by the U.S. Army Corps of Engineers.

The white sturgeon fish population in the Kootenai River below Libby Dam was first listed as endangered in 1994. The decline in the population has been attributed primarily to the changes in river flows caused by the existence of the dam and its operation, although flood plain development, contaminant runoff, over-harvest, and agricultural activities also have contributed.

Because the sturgeon is a freshwater fish, recovery plans and biological opinions are the responsibility of the U.S. Fish and Wildlife Service. In 1999, the USFWS prepared a recovery plan. It issued a biological opinion (BiOp) in 2000. In 2003, the Center for Biological Diversity (CBD) challenged the BiOp and USFWS's issuance of designated critical habitat. USFWS issued a new BiOp in February 2006, finding that the proposed operations of Libby Dam caused jeopardy for white sturgeon. The

Reasonable and Prudent Alternative included a suite of performance-based alternatives designed to achieve habitat changes that would assist the sturgeon with spawning and rearing below Libby Dam.

In 2007, CBD filed an amended complaint challenging the Libby BiOp, asking for re-consultation and finalization of the critical habitat designation. In 2008, the parties (CBD, Kootenai Tribe of Idaho, the State of Montana, USFWS and the Corps, as well as BPA) reached a settlement and submitted it to U.S. District Court Judge Donald Molloy for approval. On Sept. 11, 2008, Judge Molloy dismissed the case without prejudice. For this, as well as other information including the BiOp, go to <https://www.salmonrecovery.gov/BiologicalOpinions/LibbySturgeonBiOp.aspx> .

Relevance: The term of the most recent Libby BiOp was 2006-2016. It is timely to get an update on the progress the federal agencies are making in completing a new BiOp and where they are in the process.