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April 5, 2007

MEMORANDUM

TO: Council Members

FROM: John Shurts
Jim Ruff

SUBJECT: Fish Passage Center Oversight Board

At the March Council meeting in Boise, the Council settled on a proposal for reformulating the membership categories of the Fish Passage Center Oversight Board. The staff released that proposal for public review and comment, asking for comments by April 6. A copy of the request for comments is attached, to remind you of the proposal.

Packet day for the April meeting in Libby fell before the date we asked for comments. Once all the comments are in, we will summarize the comments and provide a staff recommendation.

Three points to ponder until then: First, we have received more than a dozen comments so far, which we have circulated as they have come in. Most have been from representatives of fishing interests. CBFWA provided its consensus comments to the Council yesterday evening. A copy of the CBFWA comments are attached. None of the commenters so far have supported the Council's proposal. And most have asked the Council to take more time and for direct interaction with the Council before the Council decides on the makeup of the Oversight Board. We expect a number of the comments still to come will ask the same thing.

We understand that the Council may be reluctant to delay further the decision on the Oversight Board, but at the same time the Council is going to have to grapple with these requests for more regional discussion before deciding to reconstitute the membership of the Board. The next point we make may be a way of sidestepping this point, a way of moving forward while also continuing discussion of the ultimate makeup of the Board.

Second, the more we think about this issue, the more it seems to us that the Oversight Board structure may be wrong for the purposes the Oversight Board is to fulfill. The purpose of the Board is to have an oversight group focused on ensuring that the Fish Passage Center faithfully

endeavours to implement the provisions of the Council's program in an accountable way and to assure that the Center's work is compatible with the regional data management system. This seems primarily a management oversight function that a Council standing committee and Council staff could undertake, with some technical assistance from staff and the relevant fish and wildlife managers and the use of the ISAB mainstem peer review function. What is not needed to fulfill this oversight mission is a large stakeholder representative board, because this work is not about setting or overseeing policy for the Fish Passage Center. The policy has been established already in the Fish and Wildlife Program. After talking this over with Council Member Measure, we are considering discussing with all the members an alternative approach that would have the Council begin by naming a small oversight committee -- perhaps two Council members and the Executive Director of CBFWA, or some similar configuration -- to assume the functions of the Board to begin with, and then let this group begin to work and later propose whether to extend the oversight board and to what extent.

Third, the CBFWA comments include (as the main comment) a request that the Council recommend to Bonneville that it implement the "CBFWA Fish Passage Technical Services" proposal CBFWA developed during the FY2007-09 project review process. This would bring the Fish Passage Center directly under CBFWA and its Executive Director. The Council could not decide on this request at the April meeting. But if the Council is interested in this proposal, we could build it into the FY08 start-of-year budget review process later in the spring. There may be good reasons to be interested: The Council's program already calls for the Fish Passage Center and its manager to be directly subordinate to the Executive Director of CBFWA, and for CBFWA and its Executive Director to play other roles with regard to the Center. Implementing these provisions has not been possible given that the contract relationship runs to a different entity, the Pacific States Marine Fisheries Commission. Also, the CBFWA proposal has promise of providing improved implementation by the Center of all the water measures in the Council's program, including the reservoir operating criteria to benefit important resident fish populations.

c:\z-js\mainstem amendments\fpcc packet april 2007.doc (John Shurts)

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Draft Proposal and Invitation to Comment: Revising the Membership Categories for the Fish Passage Center Oversight Board

March 15, 2007

TO: Interested Parties

FROM: John Shurts, General Counsel
Jim Ruff, Manager, Mainstem Passage and River Operations

The Northwest Power and Conservation Council is seeking comment on a proposed change in the membership categories for the Fish Passage Center Oversight Board. The Council intends that the Oversight Board resume its functions. The Council's [Columbia River Fish and Wildlife Program](#) describes the nature and duties of the Oversight Board as follows:

The Council has established an oversight board for the Fish Passage Center (Center), with representation from NOAA Fisheries, state fish and wildlife agencies, tribes, the Council, and others to provide policy guidance for the Center and to ensure that the Center carries out its functions in a way that assures regional accountability and compatibility with the regional data management system. The oversight board's responsibilities will include conducting an annual review of the performance of the Center and developing a goal-oriented plan for next year's operation. The Center shall prepare an annual report to the oversight board and the Council, summarizing its activities and accomplishments. There will be no other oversight board or board of directors for the Center.

The Council plans to reconstitute the membership of the Oversight Board before the Board resumes its work. The current membership categories are as follows:

- one Council member or Council representative
- one member representing NOAA Fisheries
- one member representing the upper Columbia River Basin tribes
- one member representing the lower Columbia River Basin tribes
- one member representing the state fish and wildlife managers
- one member from the scientific community
- two members from the public at large

At its April meeting in Libby, Montana, the Council will decide on a revised set of membership categories and approve a letter requesting nominations for people to fill these slots. The Council proposes to change the Oversight Board membership to the following:

- one Council member or Council representative, who will be the Chair
- one member representing NOAA Fisheries
- one member representing the upper Columbia River Basin tribes
- one member representing the lower Columbia River Basin tribes
- two members representing the state fish and wildlife agencies, one from the upper Columbia River Basin (ID/MT) and one from the lower Columbia River Basin (OR/WA)
- two members from the scientific community

The Council is interested in appointing members who have a scientific or technical background in disciplines related to functions which the Center performs. The Council will evaluate nominees for all positions on that basis.

The Council requests comment on this proposed change in the membership categories for the Fish Passage Center Oversight Board. See sidebar on how to comment.

Comment on this proposal

Send comments by **April 6, 2007** to:

Jim Ruff
Northwest Power & Conservation Council
851 SW 6th Avenue, Suite 1100
Portland, Oregon 97204-1348
503-222-5161 fax 503-820-2370
or email jruff@nwcouncil.org



COLUMBIA BASIN FISH AND WILDLIFE AUTHORITY

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April 4, 2007

Jim Ruff
Manager, Mainstem Passage and River Operations
Northwest Power & Conservation Council
851 SW 6th Avenue, Suite 1100
Portland, Oregon 97204-1348

Dear Mr. Ruff:

The Columbia Basin Fish and Wildlife Authority (CBFWA) is providing the following comments and recommendations in response to the March 15, 2007 invitation by the Northwest Power and Conservation Council (NPCC) for comment on its proposal to revise the membership categories for the Fish Passage Center Oversight Board (FPCOB). The CBFWA provided formal comments on a draft proposal prepared by NPCC staff as part of our testimony at the March 13, 2007, NPCC meeting. This letter reiterates points in our testimony, and offers additional recommendations in response to the most recent proposal circulated by the NPCC. Although the CBFWA appreciates the opportunity to provide the NPCC feedback on its proposal, we reiterate the request we made on March 13, 2007, that the NPCC and CBFWA members meet to discuss the details of a reinvigorated FPCOB. We believe a meeting would be an important step toward meaningful improvement in the collaborative working relationship between the fish and wildlife managers and NPCC.

The members of CBFWA would like to express our strong and unqualified support for the Fish Passage Center (FPC) due to our confidence in the technical capabilities of its staff. The FPC continues to meet the expectations and obligations, as contemplated in the Fish and Wildlife Program in providing technical support to the agencies and tribes, and other regional stakeholders. The FPC operations have been transparent, all data and analysis they conduct are posted in a timely manner on their publicly accessible web site. The FPCOB created in 2003 as a result of the 2003 Mainstem Amendment to the Fish and Wildlife Program performed an exhaustive audit of the FPC and found that their operations and performance meet the highest standards. We do not believe there is an urgency to "reinvigorate" the FPCOB, since the Council has not arranged any meetings of the board over the past year. This appears to be an effort to fix something that may not be broken.

Embodied in the CBFWA's recommendations are principles that are expressed within the specific language of the Fish and Wildlife Program (Program), consideration of how Fish Passage Center (FPC) personnel are supervised, and who is to benefit from the technical assistance provided by the FPC. These principles include:

1. According to Program, the FPCOB is established *to provide policy guidance for the Center and to ensure that the Center carries out its functions in a way that assures regional accountability and compatibility with the regional data management system*¹. The CBFWA members support ensuring the operations of the FPC are transparent and that the products of the FPC are posted and available on the World Wide Web.
2. The functions of the FPC are primarily *to provide technical assistance and information to the fish and wildlife agencies and tribes in particular, and the public in general, on matters related to juvenile and adult salmon and steelhead*

¹ Language in italics is taken directly from Council Document 2003-11, Mainstem Amendments to the Columbia River Basin Fish and Wildlife Program.

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

passage through the mainstem hydrosystem. The Program also directs the FPC, to provide the technical assistance necessary to coordinate recommendations for storage reservoir and river operations that, to the extent possible, avoid potential conflicts between anadromous and resident fish. The CBFWA members believe that the fish and wildlife agencies and tribes with authority to manage anadromous fish and resident fish species should have a strong presence on the FPCOB.

3. *Operation of the Center shall include funds for a manager and for technical and clerical support in order to perform its stated functions. For the FPC to perform the functions established in the program, a contract that articulates the performance elements of the project consistent with these functions must be maintained. This contract should reside with CBFWA as it provides the necessary management structure to link the project to the fish and wildlife agencies and tribes.*
4. Policy guidance offered by the FPCOB will be taken under advisement by the CBFWA Executive Director, as the supervising entity, in consideration of the work elements and deliverables contained in the implementation contract. The primary purpose of the FPCOB should be to assure that the FPC work statements clearly implement the specific tasks and activities identified in the Program, and the FPCOB should support annual budget recommendations that allow those tasks to be completed. In addition, the FPCOB should facilitate a regional conversation to identify the upcoming decision processes and associated tasks that would fall under FPC activities defined in the Program. This information would provide guidance, on an annual basis, for the CBFWA Executive Director to consider in the identification of work elements and deliverables contained in the annual implementation contract.
5. Although the Program calls for oversight of the FPC manager by the *Executive Director of the Authority and the Chair of the Council*, the evaluation of personnel is a confidential personnel action and needs to be treated as such. The CBFWA members commit their Executive Director to work closely with the oversight board and to fully consider input from the board in making personnel decisions; however, those decisions will rest with the Executive Director of CBFWA.
6. The Board should represent the parties that rely on the technical assistance provided by the FPC as described in the program and provide an equitable balance between the sovereignties charged with managing the region's fish and wildlife.

Given these principles, CBFWA offers the NPCC the following recommendations for consideration:

1. The NPCC should endorse and forward Project Proposal 200732100, "CBFWA Fish Passage Technical Services" to the Bonneville Power Administration (BPA) as its recommendation for implementation under the Program. This proposal is consistent with the 2003 Mainstem Amendment to the Program and addresses the following issues:
 - i. It creates the needed management structure to implement recommendations from the FPCOB as they are developed,
 - ii. It describes in detail the scope of work and contract deliverables for the FPC as contemplated in the 2003 Mainstem Amendment and as is currently being implemented by the FPC,
 - iii. It expands the current staff to include expertise in resident fish and reservoir operations, as recommended by the fish and wildlife managers and the 2003 Mainstem Amendment, and

