

# OWYHEE WATERSHED COUNCIL

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*Leading the effort in ensuring sustainable, responsible and  
productive stewardship of all land and water resources for  
the economic and environmental benefit of the  
Owyhee watershed.*

June 10, 2004

NWPCC  
Attn: Lynn Palensky  
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To Whom It May Concern:

SUBJECT: DRAFT OWYHEE SUBBASIN PLAN

Enclosed is the dissenting opinion of the Owyhee Watershed Council intended to serve as an alternative proposal to the Draft Owyhee Subbasin Plan. Since the dissenting opinion is based upon the inaccuracy of information and data relied upon in the Draft Plan, and points out the flaws in the data and analysis, the opinion should be reviewed by the public along with the Draft. With such review, the public can judge the merits of the two documents and provide valuable input as to which direction the Subbasin Plan should take. Public awareness of the flawed base of the Draft Plan is critical because of the existence of the Data Quality Act of 2001. If the data and analysis included in the Plan does not reach a high level of quality and accuracy, a complaint filed under that Act would endanger the Plan and valuable projects designed to implement the Plan.

It is the Owyhee Watershed Council's hope that the Draft Plan will be changed to reflect the content of the dissenting opinion. But, if not, then this dissenting opinion should be presented for public review and comment along with the Draft Plan. It should also be noted that given more time to complete and review the Draft prior to submission, the need for a dissenting opinion may have been eliminated. The Owyhee Watershed Council apologizes for any inconvenience this may cause, and appreciate your time and quick attention to this matter. Thank you for your consideration.

Respectfully,

Jennifer Martin  
Coordinator  
Owyhee Watershed Council

CC: Tom Dayley and Lisa Jim

## **Dissenting Opinion of the Owyhee Watershed Council to the Draft Owyhee Subbasin Plan**

### Introduction -

The Owyhee Watershed Council (Council) is a participating party in the development of the Owyhee Subbasin Plan. The Council worked diligently through the established process, trying to develop a Plan through which valuable and necessary projects will benefit the land, water, and wildlife of the Owyhee Subbasin. As the process commenced, the Council was instructed that the Subbasin Plan was to be developed with data and information that was as accurate as possible. Such data was to have been collected under accepted, sound scientific protocol. Thus, the Subbasin Plan should serve as a reliable, credible data source for future planning efforts in the subbasin. During the very short time in which the Council has had the opportunity to review the Draft Plan, it has become apparent that the data and information utilized is not as accurate as possible. Lacking the integrity and credibility which flows from accuracy, such data has led to a faulty analysis. The Council has made a sincere effort to work with Tribal Representatives to correct errors and to remedy the flaws resulting from the use of inaccurate and insufficient data and information. Some corrections have already been made due to the cooperative efforts of the Council and Tribal Representatives in the final days prior to submission of the Draft Plan. However, time did not allow for adequate review, discussion, and correction of the Draft Plan; making a dissent necessary.

There are major problems with the manner in which the Draft Subbasin Plan was constructed—problems which cannot be cured without redrafting the Plan. The main problems focus on the use of inaccurate data and analysis skewed by reliance on the flawed data. The Plan, without revision consistent with this dissent, is subject to complaint filed under the Data Quality Act of 2001, challenging the quality, objectivity, utility, and integrity of the information contained in the Plan. Dissemination of such data by the federal agency participants in the development of the Plan endangers not only the Plan, but any management action or project undertaken pursuant to, and in reliance on, the Plan.

The Owyhee Watershed Council is particularly concerned with the data provided for the QHA modeling and the resulting analysis. Objections have been made to the faulty methods observed in the collection of data in the field by agency personnel, their failure to follow protocol, and the inclusion of this data into the QHA model for this Plan. The bias, flaws, and errors convert the Plan to an unworkable document for the Owyhee Subbasin. Beginning with the Draft Owyhee Subbasin Summary, dated May 17, 2002 much of the information provided by the agencies created a flawed summary to be used as a building block for the latest Draft Owyhee Subbasin Plan, dated May 28, 2004. The validity and reliability of this Plan to achieve the goals and purposes for which it was developed are in question. Any inaccuracies or incorrect analysis found within the Plan may be used by radical special interest groups as a source of reference for legal action. This is of particular concern to local people, given the politically charged nature of the Owyhee Subbasin at this time. If published in its current form it will be used by these

groups in an adverse way and such use will impede achievement of the goals and objectives outlined in the plan.

A complaint filed pursuant to the Data Quality Act of 2001 will inevitably delay implementation of the Plan and funding of, and commencement of projects needed in the watershed. Under said Act, it is incumbent on government agencies, and participants in government programs, to carefully scrutinize the quality, objectivity, utility, and integrity of the data upon which they act. It is incumbent upon them to provide a process by which such factors are assured before data is disseminated. The Draft Plan does not reflect such a process, and the Draft Plan largely ignores the attempts of the Owyhee Watershed Council to correct the flawed data.

The Draft Owyhee Subbasin Plan Fails to Meet the Established Goals, and Provides an Internal Basis upon which it may be Challenged or Used for Adverse Impact on the Subbasin:

A later section of this document addresses a number of specific points on which the Owyhee Watershed Council dissents. As part of the dissent regarding specific points, the Council has attempted to provide not only the point of disagreement, but also a suggested improvement for the document. In addition to such specific points, the Owyhee Watershed Council has the following overall concerns regarding the degree to which the current Draft Plan fails to meet the established goals and objectives:

\* The correct number of stream miles within the planning area cannot be accurately determined under this Draft Plan. Chapter 1, page 17 of the Draft Plan references the presence of redband trout in 6,142 miles of stream within the planning area. However, in looking at the number of miles of stream on which PFC data was available, we found only 1,065.7 miles or 17% of the redband trout streams were inventoried for Proper Functioning Condition. The lack of clarity on actual mileage and a comparison of total stream miles to miles on which data has been collected should not be left uncorrected in the document. As written, this item does not support the Draft Plan's intended action to increase redband populations within the subbasin. In addition to the lack of information on total miles as compared to miles on which PFC work has been done, there is still a concern that much of the PFC work done by BLM was not done in accordance with established protocols and cannot be relied upon for management decisions or actions (addressed in detail in a later section of this document). At a minimum, the document should state clearly in the introductory sections, as well as in the executive summary, that there are significant data gaps with respect to riparian data within the subbasin. The plan should also identify project work to fill those gaps. This solution would also honor the agreement reached between Owyhee Watershed Council and Tribal Representatives at the beginning of this planning process to state where data gaps existed rather than to rely on questionable data, or attempt to determine conditions where no data existed.

Consistency among the different states (OR, ID, NV) regarding the presence of redband trout within the subbasin is also of concern. Oregon officials and scientists provided data where redband trout populations were known to exist on 157 miles of streams. Tables exist showing the presence / absence of redband trout on 1,623 miles of streams in Nevada. There is no similar information in any of the tables for Idaho, depicting whether

redband populations are present or absent. Discrepancy exists among the different states creating a void where data gaps exist, yet these are not identified or discussed within the Draft Subbasin Plan.

From a biological perspective it seems important to identify the many miles of streams where introduced fish species such as small mouth bass, sculpins, bridgelip suckers, mountain suckers, chisel mouth, mountain whitefish, redband shiners, speckled dace, long nose dace, northern pike minnows, and large scale suckers exist within the subbasin. Little, if any information is provided relevant to the distribution of these species within the Draft Plan. As different aquatic species require and thrive in different habitats, it should have been an important consideration in evaluating streams for their redband trout habitat values. There is inadequate discussion of the impacts of introduced species on redband trout within the Owyhee Subbasin within this Draft Plan.

The Draft Plan continually references livestock grazing as the primary cause of habitat degradation. Inferences to livestock degradation to specific habitats are made without any evidence or cited data to support such a claim in the specific area. These statements are indicative of the cut and paste approach taken in the drafting of this document, and lack basin-specific information/data to support their claim. Inadequate attention given to the social, cultural, and economic importance of the livestock industry also creates a document that fails to capture an accurate assessment of resource conditions within the Owyhee Subbasin, and a workable plan for their restoration / enhancement.

Numerous public comments made to the website <http://www.owyhee.us> either did not post to the site, or are extremely difficult for people to find. This is of particular concern, as these comments may not have been incorporated into this Draft Plan. Email and web postings were the only form of comment accepted by the contractor throughout the planning process, making any difficulty with navigation and operation of the website extremely significant.

#### Specific Revisions Necessitated by the Lack of Quality of Data:

1. In the first paragraph of page 12 of Chapter 4: re the Paul Black journals and interview. The Draft Plan has deleted the reference to “no salmon in the streams” and significantly changed the value of the Black’s interview statement regarding fish that their family found in the streams during this particular period. This element of the Black statement was deleted as hearsay. That deletion creates a false impression that there are no conflicting opinions as to the historical presence of salmon on the tributaries of the upper Owyhee. On the other hand, hearsay evidence that salmon were present in these tributary streams was allowed for incorporation into Draft Plan (e.g. interviews with Shoshone-Paiute Tribal Elders, information provided by Mike Hanley, etc...). Thus, the conflicting handling of hearsay has left an imbalance to one historical position, i.e., that salmon were present in the tributary streams. For purposes of public review and input, the public is entitled to know that there is conflicting evidence regarding this historical presence of salmon. The account that no salmon were present, outlined as part of journal entries and interviews with the Black family, should be restored to the document, and noted as a conflicting source of information. Both elements of evidence are important to

the study and both should be included in the assessment. All available information regarding an historical fact should be incorporated into the Draft Plan, and should be openly discussed as conflicting information. This approach allows the public to review all relevant information, make their own judgments based on that information, and fashion their input accordingly. Such an approach was not taken in the development of the Owyhee Subbasin Plan.

2. In the second paragraph of page 32, Chapter 4: The paragraph reads, in part, “The BLM produces allotment assessments. The Owyhee Planning and Technical Committees synthesized and reviewed these assessments in the subbasin planning process, but determined that they were not in a useable format for the subbasin plan. The Owyhee Planning and Technical Committees agreed it would be helpful to reformat this information for inclusion and implementation of future drafts of the Owyhee Subbasin Plan.” Much of the included allotment information regarding Owyhee County allotments is still on appeal in cases pending in the Interior Board of Land Appeals. The basis of the appeals relate directly to the quality of the data utilized in making the assessments and/or the subsequent data analysis and resulting management decisions. The last sentence of the quoted second paragraph of page 32, chapter 4, along with any other portions of the document that reference this allotment data should be removed from the Draft Plan. At best, it remains to be seen whether this information would be helpful in assessing fish and wildlife habitat within the Owyhee Subbasin.

3. The first text paragraph following the list of Standards on page 33, Chapter 4 provides what is intended to be an explanation of the basis for, and application of, the Standards for Rangeland Health. The paragraph, however, fails to address certain critical elements of the Standards and leaves the uninformed reader with a potentially wrong view of the process. For example, the paragraph addresses “indicators” as follows: “For each standard, indicators are typical physical and biological factors and processes that can be measured or observed.” While this is correct, it fails to note that selected “indicators” must be appropriate to soil type, climate, and landform. The paragraph also fails to note that “only those indicators appropriate to a particular site are to be used.” The document also fails to note, regarding indicators, “They are used in combination to provide information necessary to determine the health and condition of the rangelands. Usually, no single indicator provides sufficient information to determine rangeland health.”(Page 3, Idaho Standards for Rangeland Health and Guidelines for Livestock Grazing Management, Final August 1997) The paragraph also fails to note the warning in the Standards that, “The issue of scale must be kept in mind in evaluating the indicators listed after each standard. It is recognized that individual isolated sites within a landscape may not be meeting the standards; however, broader areas might be in proper functioning condition.” Many members of the public will not be familiar with the full content of the Standards, and will be given a slanted impression by the failure to include the critical elements set forth herein but not in the Draft Plan. Full and meaningful public review depends upon full and meaningful information. The Draft should include the missing elements set forth herein.

4. In the paragraph on page 130, Chapter 4, which discusses the role and function of the Owyhee County Natural Resource Committee (NRC), the Draft plan slightly misstates

the role of the Committee. While it correctly states the need to involve the NRC in developing action plans under the Subbasin plan, it incorrectly states the NRC's role and function. The NRC was created in 1997 by Owyhee County Ordinance which established specific duties and responsibilities for the Committee. In that those duties and responsibilities are specified in The Owyhee County Code, (Consolidated version of July 2, 2003), they are best cited in the plan in the language of the Code which follows:

There is hereby established the Owyhee County Natural Resources Committee. The Committee shall serve as an advisory committee to the Owyhee County Board of Commissioners with regard to the following:

- a. Development of plans for use of the federally and state managed lands lying within Owyhee County;
- b. Implementation of plans for use of the federally and state managed lands lying within Owyhee County;
- c. Study of and development of legislation pertaining to management of the federally and state managed lands lying within Owyhee County;
- d. Study of and development of comments and input regarding proposed legislation and administrative regulations regarding management of the federally and state managed lands lying within Owyhee County;
- e. Study of and development of comments and input regarding proposed federal or state plans, regulations, orders, decisions and other actions regarding management of the federally and state managed lands lying within Owyhee County;
- f. Conduct of public information meetings and other means of gathering information regarding public input into the management of the federally and state managed lands lying within Owyhee County;
- g. Meet and communicate with federal and state agency personnel, other public officials and citizen groups in order to develop coordination of planning for the management of the federally and state managed lands lying within Owyhee County and recommend actions to establish and implement such coordination;
- h. As directed or requested by the Board of Commissioners, perform other functions regarding the management of federally and state managed lands lying within Owyhee County and the relationship of the management to the custom, culture, and economic stability of Owyhee County.

5. On page 133, Chapter 4, the paragraph dealing with the pygmy rabbit mentions the need for a combination of both sagebrush and "deep soils" in order to support the rabbit's habitat needs. The paragraph has been amended with the addition of a statement by Jim Desmond, Director of the Owyhee County Natural Resources Committee, citing more specifics as to why the species should not be selected as a focal species. However, the transition between the pre-existing language and the addition of the summary by Desmond is awkward and detracts from the primary reason that the species was not selected as a focal species. As addressed in the summary by Desmond, a study by Laura T. Heady, Kate I. Gabler, John W. Laundre of the ISU Department of Biological Sciences titled, "Habitat Selection by Pygmy Rabbits in Southeast Idaho", is a significant study for

the purposes of this plan. The Plan refers to studies in Washington State, where the species is already listed, yet leaves the reader with the impression that the population numbers in the subbasin are in equally dire straits, when, in fact, there is no valid evidence to that effect. Though BLM is currently conducting studies to determine population numbers, that work will take years to produce the population data we seek. The Heady, et al, study provides a means (soil sand composition in conjunction with sage brush) to determine with near 100% accuracy those areas that will not be selected by the rabbits. That approach should be the starting point of project work done under the subbasin plan.

6. Table 4.25, page 142 and 143: The formatting of the draft has the first row of items, column headings, on one page and the remainder of the table on the following page. This presentation makes it very difficult to read and understand. This presentation should be revised to place the column heading information at the top of each continued page. As presented, the data within the table fails to acknowledge the fact that a number of TMDL's have been completed and implementation plans are under development.

7. Pages 168 and 169 of Chapter 4: The subbasin vision statement found on page 168 indicates a goal to “*support naturally-sustainable, diverse fish and wildlife populations...*” One of the high-priority plan items on page 169, however, indicates a desire to establish put and take fisheries in water bodies within DVIR. Since the put and take fisheries rely on human intervention for continuation, they seem to be incompatible with the vision statement of support for “naturally-sustainable” projects. This is true even though there is obvious obvious social and economic benefits which will result from the plan item. The Shoshone-Paiute Tribes are a sovereign nation, and no known objections exist to the development of put and take fisheries on the DVIR. The concern stated here is simply intended to exemplify the inconsistencies present within the Draft Plan.

8. Page 170 of Chapter 4 indicates a plan to “Construct and operate a fish ladder over dam. (ID, NV, OR)” This item is inconsistent with Objectives and Strategies section of the plan in that there were no fish ladder projects listed for Oregon and there were conflicting references for Idaho. One section of the document indicates no fish ladders for Idaho while another makes reference to fish ladder creation on Shoo Fly Creek. This section of the document does not reflect adequate revision by the contractor, and lacks consistency.

9. Page 93 of Chapter 3 addresses possible problems with Redband trout. The last draft document prior to this version contained the statement, “Illegal harvest may be a problem that is causing depressed redband trout populations in the Owyhee Subbasin.” That statement has been modified in the current version to state, “Illegal harvest *or habitat alteration* may be a problem that is causing depressed redband trout populations in some portions of the Owyhee Subbasin – the extent of this potential problem is not known.” The addition of “habitat alteration” has not been discussed and approved by the group and is not supported by evidence or discussion provided during plan development. It should be removed. There may be a need to conduct a systematic inventory of the

subbasin to determine *if* habitat alteration is a factor in redband populations. If so, then the plan should state that there is no evidence to suggest this is a problem but there will be studies to either confirm or deny its effect.

10. Pages 134-154, Chapter 2 relating to QHA: There are a number of problems with this section of the Plan including inconsistency of attribute and normative ratings across state lines, inconsistency of stream reaches considered/not considered between states, data quality of the PFC ratings used as the basis for QHA ratings for Idaho stream reaches, PFC ratings used as primary basis of QHA ratings which is contrary to the instructions regarding PFC provided in “Riparian Area Management”, TR 1737-15, 1998, published by DOI.

a. Discussions during the January and February of 2004 sessions on QHA revealed inconsistencies in how planners in the three affected states defined “normative.” After lengthy discussion that did not produce a move to consistency with Oregon’s method, the group moved on to the assessment process. In reviewing the data provided in the state reference charts found in this section, it is obvious that the failure to adhere to a uniform and consistent definition of “normative” as well as the failure to adhere to a uniform approach on which stream reaches were to be evaluated (Oregon only assessed stream reaches with known redband populations) has produced significant flaws in the document. In reviewing the charts, it would appear that the stream quality in Idaho is in worse condition than that in Oregon and Nevada (Nevada contrasted current condition against “reference” versus against “normative”). Due to differing opinions on the meaning of the word “normative,” and the decision in Idaho to rate streams without known redband populations, the data misleads the reader into concluding that habitat quality is worse in Idaho than in the other states. There is no supporting evidence for such inference.

b. During the initial QHA session in January, some members of the planning team raised questions about the validity of certain Idaho BLM PFC assessments. The issue related to numerous PFC assessments used as valid data by BLM, when those assessments had not been performed in accordance with BLM procedural requirements that specify a team assessment approach. Members of the planning team pointed out that a large number of assessments used as valid data by BLM staff had been conducted by a single individual who was performing contract work for BLM. This individual was not a BLM employee, was not qualified to perform PFC in accordance with the BLM protocol which required a team assessment, yet had completed and filed PFC’s which were in use by BLM staff. In addition to the PFC assessments improperly produced by the contract employee, this same individual had completed data collection that was later used by BLM staff, who had not been present during the collection, to complete “PFC’s” on the stream reaches. The questionable quality of the assessment work which became the basis for QHA ratings on the BLM managed lands within the subbasin calls into question the validity of the ratings and, when contrasted with the higher ratings in the neighboring states, should serve as a warning flag.

c. In addition to the invalid and questionable PFC data as discussed above, the nearly exclusive use of even valid PFC results in assigning QHA ratings for these stream reaches is contrary to the instructions found in TR 1737-15, “Riparian Area Management.” According to TR 1737-15, PFC Assessments are not necessarily a valid

basis for QHA. Appendix E of the TR, titled PFC -- What It Is and What It Isn't, points out that PFC is not, "A replacement for inventory or monitoring protocols designed to yield information on the 'biology' of the plants and animals dependent on the riparian-wetland area." It also points out that PFC cannot, "provide more than strong clues as to the actual condition of habitat for plants and animals." The appendix states that "PFC is not watershed analysis in and of itself, or a replacement for watershed analysis." Finally, the appendix concludes that, "PFC isn't a replacement for quantitative inventory or monitoring protocols. PFC is meant to complement more detailed methods by providing a way to synthesize data and communicate results." At a minimum, the reliance on PFC data and its limitations should be included as a discussion in this section of the document.

d. Because of the flaws in the QHA ratings process discussed above, the ratings are not reliable for the purpose of the plan. The most appropriate correction to the problems noted in this section would be revision of the data charts to show data gaps, which prevent ratings assignment, and which would produce projects to collect appropriate data for development of accurate and useful QHA ratings. This approach would also be the best method for dealing with the number of miles of streams within the subbasin planning area for which no data exists (see 4.2.2.2.6). (Note: In attempting to determine the number of miles of stream on which data is not available, the listing of 1,065.7 miles of streams within the subbasin on which PFC Data was available was compared to the figures given in the executive summary and in Chapter 2 which indicates that 6,142 miles of streams within the subbasin have redband trout present.)

e. While numerous individuals were present during the Idaho QHA workshops, few contributed to the QHA ratings of the various reaches. In fact, the majority of the stream reaches were ranked solely by Bruce Zoellick of the BLM. This was a point of particular concern at the various public information meetings held throughout the subbasin. In order to properly assess so many different parameters over such a vast area, input from more than one individual must be obtained. At a minimum, the Draft Plan should state the potential limitations associated with using such limited input.

11. Page 170, Chapter 4, regarding proposed projects: The plan indicates a long-range, low-priority project to remove non-native fish species in order to improve conditions for redband trout. This proposition was not sufficiently discussed during the planning process. The biological feasibility of such a project and its appeal to the fishing community are not adequately addressed within the Draft Plan.

#### Conclusion -

The Owyhee Watershed Council has endeavored to work cooperatively in the production of an accurate assessment of the Owyhee Subbasin that would lead to the development of realistic and locally supported projects beneficial to local fish and wildlife populations. It is regrettable that the Council deems it necessary to complete this Dissenting Opinion, but the inaccuracy of data and information used in preparing the Draft Plan prevents the achievement of the stated goals for the subbasin. The Owyhee Watershed Council is of the opinion that the inaccurate data which does not measure up to the quality of data required by the Data Quality Act of 2001 will prevent development and implementation of feasible and effective projects, and will result in undue economic harm to local communities that depend on the lands and waters within the Owyhee Subbasin.

For the reasons stated herein, the Owyhee Watershed Council presents this Dissenting Opinion as an alternative to the Draft Plan for public review and comment.

P.O. Box 219 Owyhee, Nevada 89832-0219 (775) 757-3161

June 30, 2004

Northwest Power and Conservation Council  
Attn: Mr. Mark Walker, Dir. of Public Affairs Division  
851 S.W. 6<sup>th</sup> Ave., Suite 1100  
Portland, OR 97204

Dear Mr. Walker:



We have been informed that the Owyhee Watershed Council (OWC) has submitted two letters and a detailed report all of which purport to be a valid dissent from the formal Owyhee Subbasin Plan (Plan) submitted to the Northwest Conservation Council (NWPCC) on May 28, 2004.

The Plan is the product of many months of work overseen by the Coordinating Committee consisting of two representatives from Shoshone-Paiute Tribes (SPT) and two representatives from the OWC.

The purpose of this letter is to describe the processes followed and the inter-working of the Coordinating Committee rather than address specific allegations of the OWC. A separate document is attached (Attachment A) for the latter purpose, which will dispute and refute the issues raised by the dissent.

NWPCC awarded a contract to the SPT designating us as the lead entity to develop a plan for the fish and wildlife mitigation in the Middle Snake Province of the Columbia Basin. The Middle Snake Province consists of eight subbasins including the Owyhee.

- As an aside it should be noted that under the agis of the SPT the work and plans of all subbasins in the Middle Snake Province, with the exception of the Owyhee, proceeded without incidence and that the Plans were submitted in a professional and timely manner. However, the contractor employed in these other subbasins was vehemently rejected by the OWC when originally proposed by the SPT. Recall that the SPT was the lead entity for the entire province. The insistence by the OWC for a separate contractor for the Owyhee Subbasin resulted in an undue hardship on the SPT since it required dual project participation

At the inception of the work on the Owyhee Subbasin the OWC and SPT participated in a series of meetings to scope out the work and contributions expected from the coordinating committee members and to select a contractor competent to perform the technical aspects of the project and to write the plan.

During these initial meetings it became apparent the OWC was more concerned with protecting the cattle and agricultural interests in the subbasin than with complying with the specifications of the contract with NWPPC. We recognized the potential for conflict inherent in a four-member committee, as a result it was proposed and agreed on a standby moderator to resolve conflicts that may arise.

The SPT proposed former Idaho Attorney General, Professor Larry Echohawk be appointed to this post. After much discussion in which the OWC questioned the competence of this prominent attorney it was agreed that Echohawk would be appointed. It is noteworthy and exceptional that the OWC never saw fit to utilize these provisions during the ongoing work to address and resolve the issues presented in its dissent submitted after completion of the plan- a plan to which all parties at least ostensibly agreed.

Another result of these initial meetings was a plan for the Coordinating Committee to meet at least monthly (more often as required) with the selected contractor, Steven Vigg and Company. During the meetings, evolving issues were addressed and input from interested parties was received and considered for inclusion in the work and final plan.

The primary purpose of the Owyhee Subbasin Plan is to protect, mitigate, and enhance fish & wildlife resources in the Owyhee Subbasin – based on best available scientific information. The Plan is intended to be incorporated into the NWPPC Fish & Wildlife Program which has the parallel purpose “to protect, mitigate, and enhance” fish & wildlife resources in the Columbia Basin – as authorized by the NW Power and Conservation Act. This, the Plan, is a Fish & Wildlife Management Plan for the Owyhee Subbasin – it is not a land management plan and it is not a water management plan – as incorrectly emphasized in the OWC dissent statement “projects will benefit the land, water, and wildlife”. That statement is backwards – the proper context is that objectives and strategies will be development in the Plan to benefit fish, wildlife, and the habitats upon which they depend for long-term sustainability.

The OWC dissenting opinion states that the OWC “worked diligently” in a sincere effort with Tribal Representatives. However, it appears that the OWC had its own agenda in these efforts.

The OWC members didn't make “corrections” in data – they simply attempted to purge the document of all data that they felt in any way could be damaging to the economic interests of their constituents – the farming and cattle industry in Idaho and Oregon.

We were quite impressed with the language and syntax present in the OWC dissent. There is evidence of professional talent used in its preparation. We did not perceive any such talent in the OWC personnel present at the ongoing meetings. Rather, the input from OWC was virtually all negative.

If, indeed, the OWC representative were in possession of such talent they did not use it in any positive way to further the plan. In the jargon this is called sandbagging, and it appears to us that a plan to play along with the SPT representatives and subsequently submit its dissent was being developed early in the work progress.

The SPT repeatedly conceded to the positions of the OWC when they were not contrary to the mandates of our contract with NWPPC.

Midway in the planning process an OWC representative opined that the OWC would not be able to "sign off" on the plan in process. The contractor, Vigg, asked that the remarks be included in the meeting minutes. The OWC member demurred and thereafter minutes were not presented to coordinating team members for review. The designated outreach person for the coordinating team the OWC representative was responsible for such minutes, but if they exist they were not made available in the ordinary course of business.

Based upon the above comments and the attached document we believe that the OWC did not participate with us in good faith and that their dissent is frivolous and entirely outside the scope of the contract with NWPPC.

Sincerely,



Lisa Jim, Executive Assistant  
Shoshone-Paiute Tribes

Cc: Files

**Response to the "Dissenting Opinion of the Owyhee Watershed Council to the Draft Owyhee Subbasin Plan"**

**Prepared by Tim Dykstra  
Shoshone-Paiute Tribes  
Lead Biologist for Subbasin Planning**

The following is a prepared response to the Owyhee Watershed Council's (OWC) Dissenting Opinion. I have been intimately involved with the development of the Owyhee Subbasin Plan since the beginning of the process and have been trained as a Fish and Wildlife Biologist. Consequently, I believe that I am qualified to make objective responses to the Owyhee Watershed Council's statement. Excerpts of their Dissenting Opinion have been copied and responded to on a point by point basis. For ease of understanding, my response is highlighted in bold font.

1. "...it has become apparent that the data and information utilized is not as accurate as possible. Lacking the integrity and credibility which flows from accuracy, such data has lead to a faulty analysis." Pg 1, Paragraph 1.

**Throughout the entire process, the best available science was utilized to develop the Owyhee Subbasin Plan. When, OWC members or others would present new information (such as Clint Shock's geology section and Duane LaFayette's climate change section) it was incorporated into the plan. At no time was inaccurate data knowingly incorporated into the plan. Data that were specifically challenged by the OWC were either removed (such as the BLM Allotment Reports) or noted in the Plan.**

2. "The Owyhee Watershed Council is particularly concerned with the data provided for the QHA modeling and the resulting analysis. Objections have been made to the faulty methods observed in the collection of data in the field by agency personnel, their failure to follow protocol, and the inclusion of this data into the QHA model for this Plan." Pg 1, Paragraph 3.

**The information used to fill out the QHA model was reported by qualified experts in fisheries biology. The model was filled in based on the observations of qualified fishery biologists, who have extensive field knowledge of the Owyhee subbasin. Redband trout assessment data were used to fill in the QHA model and were collected by using appropriate field methods and following the appropriate protocols.**

**PFC data were *not* the primary data source used to complete the QHA model.**

3. "...the Draft Plan largely ignores the attempts of the Owyhee Watershed Council to correct the flawed data." Pg 2, Paragraph 2.

**The Shoshone-Paiute Tribes (Tribes) went above and beyond what was required to accommodate the desires of the OWC. In fact from April 28, 2004 to May 28, 2004,**

the Tribes met with the OWC ten times in order to accommodate their concerns. The OWC concerns were heard and resulted in major changes that were incorporated into the Owyhee Subbasin Plan. *To say that the Plan "largely ignores" the OWC's proposed changes is simply not true.*

4. "The correct number of stream miles within the planning area cannot be accurately determined under this Draft Plan. Chapter 1, page 17 of the Draft Plan references the presence of redband trout in 6,142 miles of stream within the planning area. However, in looking at the number of miles of stream on which PFC data was available, we found only 1,065.7 miles or 17% of the redband trout streams were inventoried for Proper Functioning Condition." Pg 2, Paragraph 4.

PFC data were *not* the primary means used to fill in the QHA model. PFC inventoried streams are independent of redband trout assessment data and consequently this point addressed by the OWC reflects an overall lack of understanding of the QHA model and has no basis.

5. "The Draft Plan continually references livestock grazing as the primary cause of habitat degradation." Pg 3, Paragraph 3.

Upon reading the Owyhee Subbasin Plan, the reader will notice wording such as "*Improper grazing management may degrade riparian/wetland habitat*" throughout the document. These statements were developed with OWC (Jerry Hoagland and Jennifer Martin) approval. An objective reader will quickly notice that the Draft Plan *does not* continually references livestock grazing as the primary cause of habitat degradation.

6. "For purposes of public review and input, the public is entitled to know that there is conflicting evidence regarding this historical presence of salmon. The account that no salmon were present, outlined as part of journal entries and interviews with the Black family, should be restored to the document, and noted as a conflicting source of information." Pg 3, Paragraph 5.

The statement that no salmon were present came from a 2004 interview conducted by Duane LaFayette. Mr. LaFayette's interview was with a Black family member who is three generations removed from the pre-dammed Owyhee River salmon runs. In addition, there is a significant difference between numerous historic accounts that document salmon presence and one person's statement whose grandfather did not record observing anadromous fish in the Owyhee River. Perhaps the original Mr. Black who observed the Owyhee's pre-dammed conditions spent most of his time on the ridge tops or did not actually observe the river during the documented salmon runs. Whatever the reason, the 2004 interview with a third generation Black family member does not negate the documented fact that anadromous fish were present before their passage was blocked by impenetrable dams.

7. "In the second paragraph of page 32, Chapter 4: The paragraph reads, in part, 'The BLM produces allotment assessments. The Owyhee Planning and Technical Committees synthesized and reviewed these assessments in the subbasin planning process, but determined that they were not in a useable format for the subbasin plan. The Owyhee Planning and Technical Committees agreed it would be helpful to reformat this information for inclusion and implementation of future drafts of the Owyhee Subbasin Plan.'...The last sentence of the quoted second paragraph of page 32, chapter 4, along with any other portions of the document that reference this allotment data should be removed from the Draft Plan." Pg 4, Paragraph 2.

**This paragraph referenced by the OWC was drafted by numerous participants from the Owyhee Subbasin Planning team (including members from the OWC). The development of this statement should be reflected in the "Minutes" from the meeting, but to date, no one from the Tribes have seen the "Minutes" written by the OWC (via Jennifer Martin). This statement was drafted and agreed upon following the OWC granted request to remove the BLM allotment report data. Removing this statement would undermine the work of the Owyhee Subbasin Planning Team.**

8. "The Heady, et al, study provides a means (soil sand composition in conjunction with sage brush) to determine with near 100% accuracy those areas that will not be selected by the (pygmy) rabbits. That approach should be the starting point of project work done under the subbasin plan." Pg 6, Paragraph 1.

**Since the Owyhee Subbasin Plan should reflect subbasin specific data when possible, it seems reasonable that the starting point should be pygmy rabbit survey information collected within the Owyhee subbasin by the BLM (Helen Olmschneider). However, when these data were presented at an Owyhee Subbasin Planning Team meeting, the data were discounted and not incorporated into the subbasin plan.**

9. "Illegal harvest *or habitat alteration* may be a problem that is causing depressed redband trout populations in some portions of the Owyhee Subbasin – the extent of this potential problem is not known.'... It (the above statement about habitat alteration should be removed." (Original grammar has not been changed to ensure an accurate account of the OWC's dissent) Pg 6, Paragraph 5.

**Since habitat alteration has been documented in other subbasins to be depressing native fish populations, it seems appropriate to state that "habitat alteration *may be* a problem that is causing depressed redband trout populations in some portions of the Owyhee Subbasin" (my emphasis added).**

10. "There are a number of problems with this section (relating to QHA) of the Plan including inconsistency of attribute and normative ratings across state lines (and) inconsistency of stream reaches considered/not considered between states". Pg 7, Paragraph 2.

**There was a concerted effort to be consistent across state lines. I personally helped explain how the QHA model should be filled in at various QHA meetings. It is in everyone's best interest to make this model consistent across all three states. Simply stated, every effort was made to ensure consistency across the states and any statement to the contrary is not true.**

11. "There are a number of problems with this section of the Plan including....data quality of the PFC ratings used as the basis for QHA ratings for Idaho stream reaches (and) PFC ratings used as primary basis of QHA ratings which is contrary to the instructions regarding PFC provided in "Riparian Area Management", TR 1737-15, 1998, published by DOI." Pg 7, Paragraph 2.

**As explained above in point #4, PFC data were *not* the primary basis used for the QHA model. PFC inventoried streams are independent of the redband trout assessment data that served as the primary basis for determining redband trout presence. The QHA model was filled in by local fish experts with extensive field experience within the Owyhee subbasin. Any concerns the OWC has about PFC ranking are unrelated to the information obtained from completing the QHA model.**

12. "In fact, the majority of the stream reaches were ranked solely by Bruce Zoellick of the BLM." Pg 8, Paragraph 3.

**The QHA model was filled in by various fish experts from state and federal agencies.**

13. "The plan indicates a long-range, low-priority project to remove non-native fish species in order to improve conditions for redband trout. This proposition was not sufficiently discussed during the planning process. The biological feasibility of such a project and its appeal to the fishing community are not adequately addressed within the Draft Plan." Pg 8, Paragraph 4.

**In accordance with the guidance provided by Tom Dayley (NWPC), subbasin planning is not the forum in which to address the biological feasibility of a particular action on a project-by-project basis as the OWC proposes. However, given the impact that non-native fishes can have on native fish such as redband trout, it seems remiss to ignore the issue. Consequently, this proposition was discussed during the planning process and included in the Owyhee Subbasin Plan.**

14. "It is regrettable that the Council deems it necessary to complete this Dissenting Opinion, but the inaccuracy of data and information used in preparing the Draft Plan prevents the achievement of the stated goals for the subbasin." Pg 8, Paragraph 5.

**It is quite regrettable that the Council deemed it necessary to complete this Dissenting Opinion. In meeting after meeting, the Tribes and the OWC met to ensure that the data and information used to prepare the Plan were adequate. When they were deemed inadequate, substantial changes were made at the request**

**of the OWC. After the months of work and weeks spent in meetings with the OWC, it seems odd that such a Dissenting Opinion would come when the Tribes were led to believe that consensus was reached on every issue brought forward by the OWC.**