

COLUMBIA BASIN FISH AND WILDLIFE AUTHORITY

851 SW Sixth Avenue, Suite 260 | Pacific First Building | Portland, OR 97204-1339
Phone: 503-229-0191 | Fax: 503-229-0443 | Website: www.cbfwa.org

April 17, 2007

Tom Karier, Chair
Northwest Power & Conservation Council
851 SW 6th Avenue, Suite 1100
Portland, Oregon 97204-1348

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

Dear Chairman Karier and Mr. Ruff:

The Members of the Columbia Basin Fish and Wildlife Authority (CBFWA) are writing this letter to clarify and correct some statements made in an earlier letter we submitted to Jim Ruff of the Northwest Power and Conservation Council (NPCC) dated April 4, 2007 (see attached). Upon further reflection on two statements in the second paragraph of the above referenced letter, the Members of CBFWA provide the following modifications to those two statements:

1. In the letter, CBFWA Members "express our strong and unqualified support for the Fish Passage Center (FPC) due to our confidence in the technical capabilities of its staff." Not all Members of CBFWA would characterize their support in this way. Although each CBFWA Member is confident in the technical capabilities of the Fish Passage Center (FPC) and its staff, Members remain concerned that FPC staff lack certain expertise in resident fish and reservoir operations necessary to ensure the FPC's work reflects the NPCC's obligation to balance resident and anadromous fish needs throughout the basin. To establish that expertise within the FPC, CBFWA has included a resident fish expert in its Project Proposal 270032100 (CBFWA Fish Passage Technical Services) and again urges the NPCC to support its funding.

2. In the letter, CBFWA Members state that the original Fish Passage Center Oversight Board (FPCOB) was "created in 2003 as a result of the 2003 Mainstem Amendment". In fact, the original FPCOB was created pursuant to the Council's 2000 Fish and Wildlife Program. That FPCOB conducted an extensive review over several months of the functions of the Fish Passage Center. Pursuant to that review, a majority of the FPCOB submitted to the NPCC the findings of the FPCOB and a set of recommendations endorsed by the majority based on those findings. Efforts by the NPCC to "reinvigorate" the FPCOB should explicitly take into account this work."

When referencing the letter we submitted on April 4, please ensure that this letter and its stated clarifications and corrections are also referenced.

Sincerely,

Larry Peterman, Vice Chair
Columbia Basin Fish and Wildlife Authority

cc: CBFWA Members

Attachment

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



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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:

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Coeur d'Alene Tribe

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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:

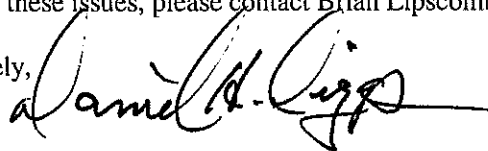
1. The NPCC should endorse and forward Project Proposal 200732100, "CBFWA Fish Passage Technical Services" to the Bonneville Power Administration (BPA) as its recommendation for implementation under the Program. This proposal is consistent with the 2003 Mainstem Amendment to the Program and addresses 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

- iv. It is structured to complement, and can be readily integrated with, the current CBFWA coordination contract to implement the Program as called for in the NPCC staff's March 2, 2007 memo.
2. We recommend broad representation on the board to insure accessibility and accountability to all interested parties. The specific FPCOB composition is not recommended by CBFWA in this letter. The CBFWA members will be prepared to offer specific recommendations on the composition of the FPCOB after we have a better understanding of the NPCC's expectations. The FPCOB should be comprised of primary stakeholders in the FPC with a significant interest in FPC products and deliverables (i.e., entities identified in the Program). The public is specifically identified as a client of the FPC. In addition, representatives of the public have testified at NPCC meetings on their extensive use of the FPC's web based data systems and expertise. Also missing from the NPCC's proposed make-up is the U.S. Fish and Wildlife Service, a regulatory and management authority similar to NOAA Fisheries. Entities that have membership on the FPCOB should designate their own representatives. According to the existing bylaws, the chair of the FPCOB should be determined by a vote of its members.
3. We recommend that the Council be consistent with the language in the Program, the Executive Director of CBFWA in consultation with the fish and wildlife managers will propose to the oversight board candidates for a technical advisory committee. The Program states that "*The oversight board will select the technical advisory committee from the names submitted by the Executive Director of the Authority*". The purpose of the technical advisory committee is to advise the FPCOB on technical issues related to the FPC.

In conclusion, the CBFWA members encourage the NPCC to delay their decision regarding the make-up of the FPCOB until after a meeting of the CBFWA members and NPCC members. As primary users of the FPC products and services identified within the Program, the members of CBFWA would appreciate an opportunity to compare and contrast their expectations of the FPCOB with members of the NPCC as a basis for continued dialogue on how best to satisfy the obligations defined within the Program.

If you have questions regarding these comments, or would like to schedule a meeting to discuss these issues, please contact Brian Lipscomb at (503) 229-0191.

Sincerely,



Dan Diggs, Chair
Columbia Basin Fish & Wildlife Authority

cc: CBFWA Members

February 28, 2003

Ms. Judy Danielson
Northwest Power and Conservation Council
851 SW Sixth Avenue, Suite 1100
Portland, OR 97204-1348

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Dear Ms. Danielson,

As members of the Fish Passage Center Oversight Board (Board), established by the Northwest Power and Conservation Council (Council) to advise it on matters concerning the operation of the Fish Passage Center, Rob Walton, Liz Hamilton, Tony Nigro and Tim Peone submit the following recommendations to the Council. These recommendations reflect our conclusions based on consultations over the past several months between the Board, Fish Passage Center staff, and parties with specific interest and experience in the operation and services of the Fish Passage Center.

The recommendations also reflect comments by John Ferguson, another Board member, who would not formally endorse the recommendations because his role as NOAA Fisheries' representative on the Board does not include policy making. However, John has stated that the recommendations are reasonable given what the Board has discovered during its review of Fish Passage Center operations.

The remaining two Board members have not endorsed the recommendations. Greg Schildwachter "has chosen to reserve judgment on the specific recommendation, but agrees that the process of developing and using data should be inclusive of the many interests in mainstem fish passage". Larry Cassidy has reviewed them and "cannot support all the inclusions" in the recommendations.

Background

In its 2000 Fish and Wildlife Program (p 28), the Council created the Fish Passage Center Oversight Board "to provide policy guidance [to the Fish Passage Center] and assure regional accountability and compatibility with the regional data management system." In its recently released Draft Mainstem Amendments to the 2000 Fish and Wildlife Program (pp 39-40), the Council proposes that the Board select the Fish Passage Center manager and review and evaluate the manager's performance.

The Board has met seven times to review the current policy context and protocols under which the Fish Passage Center operates and consider if and how Fish

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Passage Center operations can be improved to “assure regional accountability and compatibility with the regional data management system”. During its review, the Board has evaluated the merit of two issues associated with the Fish Passage Center that seem to have contributed to the Council’s decision to create the Board:

- A perception, on the part of some parties, that the work of the Fish Passage Center, including scientific analyses of fish passage issues, has been biased or “interest-based” rather than neutral and objective. In particular, the perception has apparently been that the Fish Passage Center’s work has not reflected the Council’s obligation to balance fish (protect, mitigate and enhance) and power (adequate, efficient, economic and reliable power supply) needs.
- A perception, on the part of some parties, that the Fish Passage Center has been difficult to work with.

The Board learned during its review that the perceptions described above are not completely accurate, nor is the first perception unique to the Fish Passage Center – some parties have a similar perception of other organizations that participate in analyses of fish passage issues.

The Board also learned during its review that the Council’s intent, as described in the 1994 Fish and Wildlife Program measures (5.1B.1- 5.1B.5) not superseded by the 2000 Fish and Wildlife Program, was clear -- the Fish Passage Center manager position is to be “designated by the federal and state fish and wildlife agencies and the Columbia River Basin Indian tribes” and the Fish Passage Center is “to provide expert assistance to the fish and wildlife managers in working with the power project operators and regulators to ensure that requirements for fish are made a part of all river system planning and operations”. Although the Draft Mainstem Amendments propose changes in who designates the Fish Passage Center manager and broadens the Fish Passage Center purpose to provide expert assistance to the public in general, the current mandate of the Fish Passage Center is as described in existing measures and was the basis of Board’s deliberations.

Discussion

It is clear that mainstem fish passage is a major issue in the Columbia Basin, important to numerous interests with major implications and impacts on fish survival and costs. A worthy goal for the Council and the Board would be to elevate the discussions and decision-making relating to fish passage to a “higher level” than that of an endless partisan, polarized interested-based dispute.

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The following recommendation is intended to address the perceptions described above.

Proposed Recommendation to the Council: Amend the Section in the Draft Mainstem Amendments on Monitoring and Evaluation (pp. 39- 40) to reflect the following:

Selection and Reporting of the Fish Passage Manager

The fish passage manager shall continue to be designated by and report to the federal and state fish and wildlife agencies and the Columbia River Basin Indian tribes. Currently, the fish and wildlife managers designate the Executive Director of the Columbia Basin Fish and Wildlife Authority (CBFWA) as day-to-day supervisor of the fish passage manager and require the fish passage manager report to a Board of Directors comprised of fish and wildlife managers. The Council should not change this arrangement. However, CBFWA, not the Fish Passage Center, should be the primary point of contact with the public for requests for fish passage information and analyses. CBFWA is staffed to serve this role and it would better enable the Executive Director to manage the work of the fish passage manager by assessing how best to respond to public inquiries. It would also enable the fish passage manager to focus on management the Fish Passage Center. Toward this end, the Executive Director will review and authorize all assignments to and products from the Fish Passage Center.

Funds for the fish passage manager and for technical and clerical support in order to perform the functions of the Fish Passage Center shall be contracted and administered by an entity designated by the fish and wildlife managers. Currently that entity is the Pacific States Marine Fisheries Commission. The fish and wildlife managers should consider transferring that responsibility to the Columbia Basin Fish and Wildlife Foundation so that performance and fiscal management of the Fish Passage Center fall under the same organization.

Functions of the Fish Passage Center

The Fish and Wildlife Program shall retain those functions of the Fish Passage Center described in 1994 measures 5.1B.1-5.1b.5, with the following changes.

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The Fish Passage Center shall continue to provide an empirical database of fish passage information **for use by the region** (not just fish and wildlife managers). The fish and wildlife managers, working with the Board, will ensure that the database conforms to appropriate standards for data management, including review of the database by the appropriate scientific or data review group. The Council will certify that the database meets appropriate standards.

The Fish Passage Center shall continue to provide analyses of fish passage information **for use by the region** (not just fish and wildlife managers). The fish and wildlife managers, working with the Board, will ensure that requests for analyses are considered promptly in the context of existing workload and will make a good faith effort to respond appropriately.

The fish and wildlife managers will provide a liaison position between the public and Fish Passage Center to ensure that all parties have timely and thorough access to the database. The fish and wildlife managers currently locate such staff positions in CBFWA. The liaison will assist CBFWA's Executive Director and the fish passage manager in tracking and responding to requests for Fish Passage Center goods and services. Web-based, automated and interactive access will be provided to the extent practical.

CBFWA's Executive Director will regularly consult with the Fish Passage Center Oversight Board on issues concerning the Fish Passage Center. The Fish Passage Oversight Board will continue its function as the regional forum for addressing Fish Passage Center issues and as the body that holds the fish and wildlife managers, through CBFWA's Executive Director, accountable for the effective operation of the Fish Passage Center. Toward this end, the Board will continue to work with CBFWA's Executive Director on the review of the Fish Passage Center's purpose, structure and function to ensure it is able to meet regional expectations for its goods and services.

Please feel free to contact any of the undersigned with any questions you may have.

Sincerely,

A handwritten signature in cursive script, appearing to read "Rob Walton, For".

Rob Walton, Liz Hamilton, Tony Nigro, and Tim Peone