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United States Department of the Interior

FISH AND WILDLIFE SERVICE
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Fort Snelling, MN 55111-4056

December 17, 2003

Memorandum

To: Assistant Secretary, Fish, Wildlife and Parks

Through: Director

From: Regional Director, Great Lakes-Big Rivers Region
Regional Director, Southwest Region

Subject: Missouri River Biological Opinion Assignment

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A Dale Hall

On November 3, 2003, you assigned us to select and lead a team of Fish and Wildlife Service (Service) scientists to respond to a Biological Assessment on Missouri River Operations submitted by the U.S. Army Corps of Engineers (Corps). Today we are pleased to transmit a copy of the Biological Opinion that was drafted by our team. This was a collaborative effort that we believe meets the standards that you set forth for us on November 3: (1) it is based on where the science led us; (2) it was developed through a deliberative process, with each team member involved in every decision, and was not driven by a predetermined outcome; and (3) the process was objective and transparent. This memorandum explains how we approached this assignment.

Assembling the team: Our first challenge was putting together the right team of biologists to analyze a complex river system in a short time frame. You asked us to complete this assignment by December 15, 2003, and to accomplish our task in this period, we recruited team members with experience and outstanding credentials in dealing with the Endangered Species Act section 7 consultation process, particularly for complex projects. We balanced the team membership to make certain we had strong foundations in Missouri River biological studies and section 7 processes that had already taken place, and also had "new eyes" to ask questions and offer approaches used successfully elsewhere. Seven members of the team either worked on the 2000 Biological Opinion or had worked on the Missouri River; six members from other parts of the country were able to bring perspective on ESA implementation and ideas in pursuit of solutions. These are the team members:

Charles Wooley, Mary Henry, Michael Thabault, Mike Olson, Charlie Scott, Joyce Collins, Noreen Walsh, Joy Nicholopoulos, Phil Delphey, Mark Dryer, Renne Lohofener, Teresa Woods and Lynn Lewis.

Two scientists from the U.S. Geological Survey, Robert Jacobson, Ph.D., and David Galat, Ph.D., served as technical advisors and joined us during presentations and discussion the first two weeks of the project, and helped us analyze the technical details of the Corps' proposal. At

the end of our first two weeks of work, they presented summaries of their views on the science, possible areas for us to give extra attention, and committed to be available through phone and e-mail in an advisory capacity. As we neared the end of our process to address this assignment, Drs. Jacobson and Galat gave vitally important comments and support, particularly regarding our work to address conservation of the pallid sturgeon.

Establishing the process: In the first week of this task we faced the immediate need to determine whether the Biological Assessment provided by the Corps was sufficient to invoke the ESA section 7 formal consultation process. From November 6-10 a group of Service biologists applied themselves to this question. The sub-group was led by Charles Wooley and included Michael Thabault, Mary Henry, Lynn Lewis, and Charlie Scott. On November 10 they informed us that they believed Biological Assessment was sufficient to initiate formal consultation, and we notified the Corps

The next challenge was for the full team to set procedures and a schedule that would allow us to meet the deadline while giving everyone an opportunity to participate fully in the discussions and review of the science and decision-making. The team assembled in the Great Lakes - Big Rivers Regional Office in Minneapolis, Minnesota, November 12 - 14, 2003. We described the assignment to the team, including the points you had emphasized on November 3, and then we asked them how we should proceed. This approach governed our five weeks together: all decisions were addressed as a full team. Based on discussion, team members started to identify information needs in order to fully understand the Corps' proposal and obtain current information about the three species at issue: Interior least tern, piping plover, and pallid sturgeon. We received briefings from Service biologists on the species and river issues, and the Corps briefed us on two occasions to explain the Biological Assessment elements and to present their new report on tern and plover mortality, and answer questions.

As part of our data gathering and to fulfill our section 7 obligations, we mailed (and faxed) letters to all Missouri River basin states and tribes on November 17, 2003, to request any new information on the species since the 2000 Biological Opinion. All information received is included in our Administrative Record. Data collection was limited to new information gained since 2000 because this opinion is only an amendment to, and not a replacement of, the 2000 Biological Opinion. As our Record indicates, we were aggressive in our pursuit of data, with calls to potential sources of information. We are confident that all relevant new data was gathered and considered for this assignment.

Analyzing the latest information: The team met again in Minneapolis November 18 through 21 to continue briefings and discussion. At the end of that week we outlined sequential steps for an amended biological opinion. The team then divided into sub-groups to focus on each of the three species and the newly designated critical habitat (2002) for the piping plover. We committed to a process whereby all decisions would continue to be made by the whole team; sub-groups investigated information, prepared materials and briefings for the whole team, and then wrote up the team's decisions.

Drafting the Amended Biological Opinion: Over Thanksgiving week, the sub-groups, working from their own offices, researched to find information and drafted initial reports on the status of the species. We reconvened in Albuquerque, New Mexico, December 1, and worked every day through December 12 to fulfill our tasks. Each sub-group made presentations to the full group regarding the status of the species, the requirements in the 2000 RPA for each species, and their preliminary recommendations on the effects of the Corps' proposal on the species in the action area. These briefings were tiered over the course of the two weeks, leading to the group's deliberations on whether or not the Corps' proposed action, in combination with the underlying requirements of the 2000 Biological Opinion, continued to avoid jeopardy to each of the three species. This process alternated between individual and sub-group work, and full group discussion. At the end of group discussions, when we reached a decision point, each team member was asked for their opinion. This process was followed for analysis of each of the three species, and for the analysis of critical habitat for determination of adverse modification or destruction.

In 2000 the Service had provided the Corps with a Biological Opinion on operations of the Missouri River, Kansas River, and Bank Stabilization and Navigation Project. That opinion determined that the Corps' operations would jeopardize the three species at issue, so the Service provided the Corps with a Reasonable and Prudent Alternative (RPA) that would alleviate jeopardy to the species. In their briefings to the team in November 2003, the Corps emphasized that they accepted the vast majority ("95 %") of the 2000 Biological Opinion. What the Corps proposed was to substitute some specific elements for those in the 2000 RPA. Specifically, they proposed to remove the requirements for a spring water rise and low summer habitat flows from Gavins Point Dam. In their place, they proposed several actions to minimize impacts to the listed species, including: a modified drought conservation plan; a Gavins Point Dam summer release flow test; accelerated construction of shallow water habitat; pallid sturgeon hatchery improvements; accelerated pallid sturgeon brood stock collection; and an adaptive management framework (including research, monitoring and evaluation, and flow tests). For our reinitiation of consultation in November and December 2003, we gathered and analyzed information in order to address the question: do the requirements in 2000 Biological Opinion and RPA, as modified by the Corps proposal, continue to alleviate jeopardy?

As the Administrative Record reflects, there was unanimity on our team in the decision that the Corps' proposal, considered with the 2000 Biological Opinion, would continue to avoid jeopardy for the least tern, and would not adversely modify or destroy piping plover critical habitat. It was also unanimous that the proposal was not sufficient to alleviate jeopardy to the sturgeon. For piping plover, a significant majority of the team believed the Corps proposal would continue to avoid jeopardy, while other members of the team raised concerns. After considerable discussion, we resolved the matter by moving forward with a determination that jeopardy to the plover would still be avoided by the Corps' proposal, and that team members who had expressed concerns would be actively involved in writing Reasonable and Prudent Measures and Terms and Conditions for the plover. All team members agreed this was a reasonable approach.

On Wednesday, December 10, 2003, Director Steve Williams visited the team in Albuquerque and each of the species sub-groups presented the team's findings and rationale. On Thursday, December 11, 2003, the same briefing was given (by phone) to Assistant Secretary Craig Manson. The team members noted and appreciated the fact that, during these briefings, both of you respected the team's independence and honored the integrity of our process and conclusions.

On December 12 most of the team members returned home, with some continuing through the weekend to put the group's final edits in order. During the week of December 15, 2003, we and seven members of the team went to Washington, D.C., to the final presentation of the document. We met with our Solicitors and made final changes to the document to better display the bases for our decisions. We signed the document December 16, 2003.

Conclusion: There are many thanks to express. We appreciate Service professionals from around the country who responded generously to our calls for information – if they didn't have information, they helped us find who did, and they contributed in great part to the thoroughness of our data search. We are grateful to the two technical advisors from the USGS for their analyses and help. We appreciate the responsiveness by the Corps, providing us data on short deadlines. But there is no question where we direct our greatest thanks: the thirteen biologists who worked on this assignment evidenced good will, in addition to exemplary skill, throughout the process. They sacrificed time with their families during the holiday season, and worked exhaustively in order to accomplish this task with thoroughness, scientific acumen, and ethics. Any shortcomings in the management of this effort are ours to bear; the accomplishments and credit belong to these thirteen people.

The Biological Opinion we are transmitting to you today represents the team's serious and thoughtfully considered response to your direction to go "where the science leads us." We are proud of our team's product. Between the two of us, we have 47 years of Federal government service. During those years we have been involved in several high profile, controversial issues. This effort, however, is the first time we have had no contact from our superiors until we briefed you on our decisions. We and the whole team are grateful for the opportunity to make this effort have only one focus: the pursuit of science and the well being of the species. We feel privileged to have played a small role with the team to complete this assignment. Thank you for the support you both have given.