

Klamath River Basin Task Force Meeting  
April 23-24, 1996  
Klamath Falls, Oregon  
Draft Minutes

**Agenda Item #1: Opening remarks.**

Dale Hall convened the meeting and welcomed Mr. Cliff McMillan, new Klamath County representative. A quorum was present (Attachment 1).

**Agenda Item #2: Adoption of agenda and minutes from the November 1995 meeting.**

There was no discussion of minutes from the October 26-27, 1995 meeting and they were adopted. It was agreed to defer Agenda Item #8D (Attachment 2) until after the lunch break. It was decided to add Agenda Items #29: Report of the Klamath Compact Commission and #30: Private Landowner Award. A glossary of acronyms used in the present and previous TF minutes are included with the handout summary (Attachment 4).

**Agenda Item #3: Brief review of last meeting/general correspondence.**

Hamilton briefly reviewed correspondence of general note since the last Task Force (TF) meeting (Handouts A-E, Attachment 3). There were no questions.

**Agenda Item #4: Update on ecosystem restoration issues before Congress (Dave Robertson, Senator Hatfield's office).**

Dave : Thanks for the opportunity to be here. I have some handouts, which I will save until the end (Handout F). On the Upper Basin issue, back in July 1994, Hatfield came to Klamath Falls to discuss issues and fact find. Out of that came follow up meetings to figure what to do. The overall feeling was that we were at the brink of litigation; what is needed is an avenue to work together, and it is necessary to be sensitive to economic impacts. So we pulled together the working group to decide how Congress can help. We asked the working group to develop recommendations, in particular on how to reduce drought impacts. The group included business, Cell-Tech, Oregon Institute of Technology (OIT), representatives from the U.S. Fish and Wildlife Service (USFWS), and Bureau of Reclamation (BOR). We tried to get the group as broad as possible. We have now invited the offices of Cooley and Wyden to participate. We came up with several things to help out: Tulana Farms wetland restoration, fish passage, Oregon Institute of Technology geographic information systems (GIS) work, juniper control/utilization, and pesticide provision for refuges. Hatfield took those recommendations for short term analysis and said he'd do what he can in Congress in the next term. We got \$3.5 million for Tulana for agriculture, which included money for riparian restoration in the Interior Bill. We have asked the Bureau of Reclamation (BOR) to work with tribes. We have asked the Secretary of Labor to help OIT with grants for GIS. We have inserted language into the Interior Bill to keep pesticide use in place,

and fall back to California standards, not USFWS. I have a copy of legislation which puts a five-year pilot project in place for ecosystem restoration (Handout F). The bill doesn't mesh what the upper basin is doing versus what you are doing for anadromous fish. There is an opportunity for more coordination. We have been meeting as a group and not as a federal advisory team.

Hall: For the record I want to say how helpful you have been. Thanks for the effort of this group.

Robertson: The Senator is proud of the work done. It is difficult for lawmakers to know what to do or not do because of the divisiveness. We think there is a role for this group to play. Our thanks to you and Steve Lewis.

Bingham: Could you expand on how this group will work with us? How groups will work together?

Robertson: We want feedback from you. As I read the Klamath Act, it talks about the upper and lower basin areas. Obviously, what happens upstream affects downstream; there is room for coordination. For example we want to do sump rotation, will that help downstream? We need to know. We don't want to duplicate efforts.

Hall: Should this bill get passed, and we hope it will, we want to coordinate actions. There will be a hearing in DC in the next couple of weeks.

Bingham: Regarding the Endangered Species Act (ESA) moratorium, Congress is trying to put together several bills. For Interior, one of provisions is no more listings. I am hearing this provision may be dropped. If so, we could go forward with critical habitat designation.

Orcutt: Good comment on coordination, we need to go somewhere with it, perhaps as an agenda item for a four chairs meeting. We may need to have this coordination put in legislatively. Regarding GIS, there may be duplication. What is Senator's position on the flow study?

Robertson: The Senator is aware of that effort and we have \$2.5 million. One of the possibilities is to put \$200k for flow studies. The Senator supports the flow effort.

Hall: Thanks David.

**Agenda Item # 5: Status of lake levels, flows, and forecast by U.S. Bureau of Reclamation (BOR) (Jim Bryant).**

Bryant: It's nice to have water for a change (Handout G). Upper Klamath Lake is very full to the point where Pacific Corps is uncomfortable. Gerber has been spilling. Right now it is hard to project out six weeks, but we are about 105 percent of normal. I think flow patterns will shift and prolong flow because winter conditions persist.

No questions.

**Agenda Item #6: California Department of Fish and Game (CDFG) report on 1995 river escapement and 1996 abundance forecast (Rode).**

Mike Rode summarized 'Klamath River Basin Fall Chinook Salmon Run size, In-River Harvest and Spawner Escapement 1995 Season' (Handout H) and preseason ocean abundance forecasts (Handout I).

Q: Bingham: What was the [Nat - please complete your question.] component of the chinook releases at Trinity River?

A: Rode: I don't have that. I just went back to the most recent releases. This is the largest run we have had for fall chinook on the river since 1987. The total projected in river run for next year is 227,093 fish and this is about 113% of the run size for last year. So it is projected to be a little bit larger and a major increase in the four year old component this year versus last year. So *hopefully, we will have a really large run of fall chinook and big fish too.* The in river recreational total numbers projected, if this is approved, it will be, I believe, 18,773 fish so that it is about a tenfold increase over what was available last year.

Q: Hall: So if I understand what you are saying, this year would even be a higher year than last year?

A: That is what it looks like. Recognizing that there is a little variability both high and low in those projections.

Q: Bulfinch: Didn't want to be in the position of saying kill the messenger but the sports fishing community takes exception to the way they are counting these spawners and handling these spawners at Iron Gate Hatchery (IGH). The IGH escapement is grossly understated and the natural escapement is overstated. The report fails to state that at least an equal number of fish were prevented from entering the hatchery at all because they kept the gates closed for a considerable period of time and only took what they could handle. Some 150 IGH fish were counted entering the Shasta River. A large number of hatchery shut outs obviously entered Bogus Creek to spawn (it is about 15,000 fish) so thus the rate of hatchery fish is underestimated by at least 33,014 and the natural spawner count inflated by the same amount. I can assure you, this is going to be addressed rather aggressively by the sport fishery community at your May 2nd meeting and I just want the TF to note that this exception is going to be taken.

A: Rode: Thank you, Kent. That is one issue of many that we anticipate discussing on May 2nd. That is the purpose of that meeting and I sure hope that you are there to reiterate what you just said.

Q: Hall: Can we assume that we will hear the results of your May 2nd meeting at our next TF meeting as well as any suggestions that come from that?

A: Rode: Sure can, yes.

Q: Mike Orcutt: Yes, I have quite a few comments and questions before this discussion is over, Mr. Chairman, I would like to put forth a motion on at least the hatchery policy. We certainly commented at the Klamath Fishery Management Council (KC) on the fact that last year when the Trinity program was going to end, that there are at least two things that were critical to management. First, the tagging of spring run chinook at Trinity Hatchery. One of the byproducts of Fish and Game's Commission's (F&G) decision at the time was that we will tag the fall fish and the coho, but they weren't going to tag the spring run chinook. This is a critical element if we are ever to manage that stock, in my opinion and the Tribe's opinion. The other thing is, Willow Creek Weir operation needs to continue. We instigated those discussions with CDFG and agreed that the Tribe would take over some of the tagging at the hatchery. That was the decision, the coho and the steelhead would be marked as well as the spring and fall run chinook. We got into February and we contacted CDFG and the response was "Well, we don't think we need to mark those steelhead anymore." My question (and I will put this in a motion later before we leave this subject), is who in the State of California sets this policy?

Hall: Thank you, Mr. Orcutt, I am not exactly sure when a motion will be on the agenda but please advise us when you think it is so that we can discuss it.

A: Rode: Regarding the harvest management issue, there are other forums, other venues for handling that I am not involved in and I don't think this TF is really that involved in it. It is a complex process. I understand your concerns but I am not prepared to address them or suggest any resolution. When you say marking, I think you are talking about marking in the larger sense of not just marking fish at the hatchery as they come in but marking tagging programs. Is that what you are referring to, Mike? Overall marking tagging programs?

Orcutt: Most of the tagging was the coded wire tagging (CWT).

A: Rode: I wouldn't call those policy issues such as issues that would be addressed by the F&G, those are management decisions. If I were to say who makes the decision on that probably it would be Chief Inland Fisheries Division in consultation with his fisheries staff and Regional folks and the Regional Manager in whose area those hatcheries exist. If we have good well defined objectives and if we have programs that are in place that can take advantage of those marks, then we will proceed with them. If that doesn't exist, we are not going to do it just for the sake of doing it. The position of the people working on the Trinity side of the system was that the steelhead had been marked for five years, that they had gotten the information that they wanted, that there wasn't anything additional to be gained and so they didn't support marking it for an additional year. We weren't discussing differential or selective harvest of steelhead. Their opinion is that the overall harvest is pretty low and that there wouldn't be that much gained at this point. You are welcome to bring that up at the hatchery meeting. The hatchery meeting is mainly going to be focused on how to best process and dispose of excess spawners at the hatcheries. That has been a big overriding issue but I don't want it to be the end of discussing hatchery problems in terms of your frustration.

## Public Comment

Judd Ellinwood, Executive Director of Salmonid Restoration Federation, Member of Technical Work Group (TWG): I wanted to respond to Mr. Orcutt's statement and question. First by saying that it is my understanding that the TWG is going to be conducting a review of some kind, I am not exactly sure the extent and scope, of the IGH operation. I am sure that whatever recommendations and observations we make will be coming back to the TF. I would recommend to Mr. Orcutt and the rest of the TF to consider exactly how best to use that information. I believe Mike was trying to determine exactly who the TF should be directing their comments to and I would likewise suggest that once that person is identified, that any policy considerations be passed on to that person or those persons in the form of a TF set of recommendations. There has been concern, I know, among the groups that are involved in fisheries conservation that CDFG has for one reason or another resisted making some fundamental changes in the operation at IGH. I am curious myself as a TWG member and also as one of those group leaders exactly to what degree any TF recommendations would be acted on and perhaps that would be a question to ask whoever is responsible within the Department for maintaining or revising their policies. Thank you.

Rode: The changes in the operational guidelines and constraints for the hatcheries are identified in the hatchery review report. The Inland Fisheries Division Chief in conjunction with the Regional Manager are the two authorities that will make those changes. I believe there is also some additional language in that report that specifies those changes won't be made randomly, they will be made after due deliberation involving the input of other entities in the basin, other resource and user groups.

Hall: It sounds to me like, Mr. Orcutt, you are looking at the Trinity as well as the Klamath. In that mode, our TWG has been focusing on the Klamath but not on the Trinity but the Technical Coordinating Committee (TCC) for the Trinity is also there. Is this something that we ought to ask our TWG to coordinate with the TCC and make sure that we are all looking at the kinds of things that we need to look at? Mr. Rode has said that at least the decision was partially based on saying we have received five years worth of data and we weren't sure what else we would gain. Is this kind of question the kind of question that on a technical level, it ought to be reviewed? Will that get at your concern some?

Orcutt: Yes, and we have numerous other ones but those are some of the examples that I could think of off the top of my head that need to be addressed. Release time, hatchery marking strategies, numerous other issues. How should we proceed then?

Hall: The Reauthorization of the Trinity Act in its present form would extend the Trinity Program to the mainstem Klamath below the Trinity as well which I think really makes it essential that we marry in our operations. Would there be any objection from anyone on the TF if I were to ask the TWG to make that contact with the TCC and start developing a relationship to compare notes and make sure that we are trying to work together to answer the same questions? Any objections? Then I would like to ask Mr. Bienz to do that from the TWG standpoint. Could you

be able to give us some input at the next meeting on progress and discussions that you may have had?

Orcutt: Also if you would be able to contact the Klamath Intertribal Fish and Water Commission, that would be appreciated also.

Bienz: I would like to respond, both by accepting this responsibility for the TWG. I will talk with Tom Stokely afterwards and also coordinate with the Klamath Intertribal Fish and Water Commission. I also want to hold a spot on the agenda as we go through the discussion later today specifically with Items #8 and #9 and after the presentation by Mr. Ellinwood on the Request for Proposal (RFP) process and our recommendations at that point. I think that these are all appropriate to the TWG and the subcommittee on RFP. I will report back probably in writing before we have the next committee meeting so you can see what our status is on this issue and then specifically make the presentation at the next TF meeting.

Hall: I think this has been a very fruitful discussion because it really emphasizes that we are all in this together. The problems are common and the solutions will have to be as well. I want to encourage everyone to come up with these innovative ways that we can work with other groups who are trying to accomplish the same sorts of things that we are trying to accomplish.

David Webb, Coordinated Resource Management Program (CRMP), Coordinator for Shasta River CRMP: I want to emphasize one of the things that Kent Bulfinch, among others, had mentioned regarding the harvest rates which are currently set. This sends a very dangerous message to people involved with restoration at least in the upper end of the Klamath basin. This message is that every time a little progress gets made that it is going to get taken away in harvest. We are seeing a projection of an in river natural escapement of 62,600 fish but that is predicated on IGH and Trinity River Hatchery both locking their gates as they have done the last two years. I suspect that will not occur. I think there are a lot of people who are quite concerned about the implications of that and will be taking pretty strong steps to prevent it. Even if it does occur, those hatchery fish tend to bunch up in the vicinity of the hatchery. If you look at the fish run numbers last year in the Klamath at least, which is the only system I am familiar, the "natural" escapement in Bogus Creek exceeded the natural escapement in the Shasta River, the Scott River, and the Salmon Rivers combined. Those natural escapement numbers form part of the data base which is used to estimate the percentage of hatchery/natural fish that are going to come back in succeeding years. Two years of the hatchery locking its gates on large runs has biased that estimate to some degree as the Salmon Technical Team (STT) has noted in several locations both in its Preseason I Stock Report and in other publications it made available to the Pacific Fisheries Management Council (PFMC). The net result is that they are concerned and as a consequence, we are concerned that the natural escapements that are projected by working the formulas are not going to accurately represent the reality on the ground. First, because the formulas have been biased by hatchery strays, if you will, and the second, (if you read some of the other STT concerns) is that they have concerns about the accuracy of their four year old age class estimate and their three year old age class estimate. What it boils down to is that they are not comfortable with any of the numbers they have to work with this year, yet the harvest rate, as set, calls for

harvest to the maximum target level of a 34% natural escapement rate including those hatchery strays. What I am afraid we are going to see this year is relatively poor returns to the major tributaries in the Klamath basin at least. Those returns are going to give people on the ground the message that sure you can work on restoration, but we aren't going to let you have any fish. As a consequence, it is going to get extremely difficult, I think, for me to sell restoration work to ranchers and farmers who have no financial interest in fish. They get zero income. They have little cause except the goodness of their hearts to be doing this. If they see that they are being asked to climb on a treadmill and every time they get close to getting off of it, it gets speeded up, they are going to be understandably reluctant to participate. I think the crux of the problem is that we have a couple of organizations (the PFMC and the KC) who are both apparently organized to distribute fish amongst user groups. The only organization who at least potentially could balance that distribution is this group here, the TF who is focused on restoration. Someone is going to have to become a stronger advocate for adequate spawner returns. Particularly when the numeric estimates are recognized by the people using them as being extremely shaky. I think this is going to be a year when that message gets driven home and we are all going to suffer for it.

Bingham: If I may, Mr. Chairman, I would like to respond to a couple of those points raised by Dave and also by Mike Orcutt. The primary mission of the PFMC is to conserve and protect stocks of fish. The secondary mission is to allocate the harvestable surplus of fish available for harvest among all of the various user groups and our primary responsibility is the protection and maintenance of the stocks. I just want to make that point clear and we have that goal very clearly before us. The issue that we are discussing this morning really relates to the hatchery/natural issue which is an issue which is determined in a number of different forums which is, I think, why we are all having difficulty with this issue this morning. The fundamental language that drives everything is contained within the Frame Work Plan Amendment for managing the ocean fisheries which defines a naturally spawning fish as a fish which spawns naturally. That policy was set a long time ago and I would agree with several of this morning's speakers that it is probably time to revisit that policy. The question that is really before us now is what forum do we revisit it in? Mike has told us that hatchery policies set by the State, harvest management policies are set in several different forums and really I would encourage everybody here to bring that message to the KC. I think the KC's Technical Advisory Team (TAT) is another arena where the issue of the Klamath escapement goal should be addressed. If you revisit that issue that is rather complex technical issue that is going to have to be debated among technical people with a lot of recommendations and options laid out in some public policy forum. For the Klamath basin, I would suggest to this group that forum would be the TAT that advises the KC and then the policy would probably come from the KC. I don't think it is an appropriate mission for us here on the TF. On the other hand, the issue of marking hatchery fish is I think an appropriate issue for us to deal with. I will just let the group know that the State of California has recently organized an initiative called the Coastal Salmon Initiative which is trying to come to grips with the coho issues over on the coast. One of the recommendations is that there be a subcommittee for dealing with the same issue, marking all hatchery coho. So it is being discussed in a number of different forums. We had a critique panel look at that issue a few years ago (Roger Barnhart's group) and they came back and told us, they saw no difference between the Iron Gate population and the upper end population and I know there were some of us here on the TF that didn't feel

comfortable with that finding. Unless you actually were willing to go forward with a molecular DNA program, I am not sure you could get a real answer that would be genetically based. So we kind of get down into the realm of opinion which is where I get very uncomfortable. My recommendation would be that we refer a lot of this over to the KC and ask them to take a thoughtful look at the issue and hold at least one of their meetings and next year's harvest cycle in the area of the inland folks, perhaps Yreka or some place like that, so a lot of you could dialogue with the KC and give it some input.

Orcutt: I am supporting what Nat said but would point out that the Shasta CRMP sent a letter to the KC on this issue and there was supposed to be a written response from various members of the KC.

Webb: I appreciate that and I understand that management cannot just be willy nilly, it has to be based on some sort of standard guidelines and criteria. I acknowledge what Nat is saying that the discussion of these hatchery versus natural fish is not substantially different than discussions of the merits of one religion versus another at this point. It is tough to get to any facts but the fact is, at least on the Klamath side, that those hatchery fish tend to stay bunched up by the hatchery. This means that even though their numbers contribute to the total natural escapement, their bodies do not contribute to the escapement in the tributaries. So the numbers are met but the distribution is not.

Wilkinson: A short comment on part of Nat's response. In October of '95, the KC did meet in Yreka and we enjoyed some good relationships and tours of various CRMP projects. In September of '96, the KC is scheduled to meet in Weaverville so we are trying to respond to those meeting locations.

Orcutt: As a matter of information. Tom knows that we are going to try to coordinate the Trinity TF meeting because they usually have a meeting in September, it might be well for us to consider this group meeting; you'd have them all at the same place.

Hall: What a concept. We actually could talk to the KC. I think we need to do more of that.

**Agenda Item #7: National Biological Survey (NBS) Jurisdictional Analysis (NBS/Lee Lamb).**

Lee Lamb: I am with the NBS and I lead a group of social scientists who work there. One of the things we do is economic analysis and we have talked to the TF about an economic analysis we might do in the future. Another thing that we have done for the last couple of decades is Institutional or Jurisdictional Analysis. These are analyses that we do for parties who are in the midst of controversies and difficult management situations such as you are in. We have done a Jurisdictional Analysis for the TF and that analysis is in draft. The draft has been submitted to the Chair and returned with comments and another draft will be presented to the Chair next week so that this analysis is going to be available to you in written form. The analysis as it currently stands is just over 100 pages and it contains some graphs and charts and so on. My comments today

principally will be oral although I have an overhead (Handout J). Let me just say that jurisdictional analysis is a look at the formal and informal rules of behavior that govern organizations. It is not a legal analysis. That is to say, I and my colleagues are not lawyers and do not pretend to be lawyers, we are political scientists. Our interest is in looking at the way in which organizations behave, not at looking at law. There is a part of this analysis however that does look at the authorities that govern the restoration of fish stocks of the Klamath River. That section of the analysis draws upon the Solicitor's opinion and references it. That part of the analysis was reviewed by the Solicitor's office (Handout K) and any other comments that you may have once you see the written report will be welcome.

This Jurisdictional Analysis is also not about individuals. It is not about individual people, it is about organizations and the way in which they operate. The Jurisdictional Analysis is about organizational behavior. I want to conclude these opening remarks in saying that in looking at the Klamath River fish restoration activities, we are very impressed as analysts with the work of this TF and very supportive of the work of this TF so that our comments should be taken in that context. Here is what I am going to be telling you. In the first place, I am going to talk to you just a little bit about the question that we tried to answer and then second look at the methods that we used to answer that question, discuss briefly our findings. Finally, we will present to you our four recommendations. The question that we started out to answer is what are the institutional obstacles and opportunities for restoring salmon runs to the Klamath River? The answer basically is that the obstacle to this restoration process is a proliferation of jurisdictions. Our findings actually mirror quite closely the report that you had from Senator Hatfield's office this morning so I was pretty happy to see that. It looked very much similar to the things that he said. This solution that we are going to offer you as a recommendation relies more on emphasizing diplomacy than data collection and so that is sort of the direction that we are going with this analysis.

Recommendations: 1) It is very important in a situation like this for the TF to better explain the decision making structure to all the parties, that is to say that some kind of attempts should be made, to explain the decision making structure to all the parties in the general public so that people have an opportunity to understand what is likely to happen to this resource and how that is likely to happen. We believe in looking at this scale that increased knowledge about how the decisions are likely to be made is likely to lead to moderation among the factions and this is very important for you. That is to say, not that people would change their views. In fact, when we talked to people throughout the basin, we found people with very strong views but people also of very high good will so it is not a matter of changing people around but it is a matter of giving them an opportunity to see how decisions are likely to be made so that there is shared understanding of what the decision opportunities are. That implies that the TF would enter into some significant outreach activities. 2) We recommend that the TF develop a conflict scoping exercise for all the parties. A conflict scoping exercise is called for whenever there is an indication of very wide value differences which we have here. The opportunity is for the TF to bring the parties together and have an opportunity to look at how these values are assessed and whether or not our assessment is accurate and whether or not the parties can achieve a common vision of what this problem looks like in terms of likely organizational behavior. We know that

the parties can do this because they have shown that they are very experienced and that they are highly involved in this process. That bodes well for getting people together to look at how these problems can be resolved. At the same time, however, our analysis shows a very low level of trust. That means it is important to bring people in some kind of conflict scoping exercise. 3) We suggest that the TF develop a credible alternative to arbitration by examining other decision scenarios. That is to say as we heard from Senator Hatfield's representative this morning, there is a strong tendency in this process as you can see from that cross haired diagram to move towards an arbitrated decision. Our experience in other problems such as this indicates that these arbitrated decisions are not often final solutions but are often just the beginning of even more controversy. Thus, we would argue that the TF should be looking at developing decision scenarios other than those for arbitration. 4) The TF should guide data gathering activities and studies so that those activities and studies are aimed as much at institution building as they are at finding scientific results. What is wanted is data gathering, data analysis, and modeling that helps the TF and the other parties achieve a common vision. What is not wanted is data analysis that is just for the fun of it. What is wanted is data analysis that brings the parties together and achieves the kind of cooperation that you are looking for in problem solving.

Hall: In that last target audience for that analysis with the Legal Institutional Analysis Model (LIAM), would that be at the TF level? Would that be with the public because this is an attempt to be a fair representation of the public. Who would be the target of that need?

Lamb: That would certainly be your choice. We would anticipate that you could do it either way. My recommendation is that you open it to the public and let a group of a size such as is in this room now go ahead and run the analysis along with you. I don't believe that would obviate any of your responsibilities and it would be very much like an open forum in that context but it need not be that way. It could be just TF members on the rational that you state that we do have a representation of the public here. So it would be your choice.

Bulfinch: Seems that my group is the Rodney Dangerfield of this organization because I don't see the \$18 million dollar a year sport fishing industry on this scale at all. I know we have advocacy but I don't know whether we are considered as brokers, guardians, or arbitrators.

Lamb: You may have an ideal opportunity here to pick you own dot. One of your colleagues, Mr. Chairman, said that this looked like a personality analysis and of course it is modeled after the Meyers and Briggs personality representation but it is not a personality test. It is a look at likely organizational behaviors. We know we are not completely inclusive on this list.

Orcutt: Who was interviewed? You mentioned that it was researchers? Who defined the scope What research is it focused on?

Lamb: To do the LIAM analysis, that is to produce the report that you have right in front of you, there were four researchers from the NBS.

Orcutt: That is where that information comes from.

Lamb: To check that information, we interviewed 13 people associated with the TWG but they did not perform the LIAM analysis we just cross checked with those people.

Orcutt: Who directed NBS to focus their effort on this issue?

Lamb: The NBS proposed to conduct this jurisdictional analysis and that proposal was accepted as a part of our regular study planning. This was not funded by the TF. It does not include the Trinity basin.

Orcutt: It seems like it is focused on water.

Lamb: It is focused on water.

Orcutt: So it doesn't address those other uses.

Lamb: It addresses all the uses but the question is the restoration of fish runs so that was the question that we looked at.

Orcutt: You have to have them all integrated.

Lamb: Quite right and we have included as many of those parties as we felt capable to answer questions about.

Hall: If I recall, the Jurisdictional Analysis was part of the Phase I studies and was identified early on as being very important for people to have an understanding of how things worked in the basin and it has been long overdue in being completed. Could you reiterate what caused the delay? I think it would be beneficial to have that report in hand so that we all understand a little bit better what we are all about here.

Lamb: The report was available in draft to the Chairman a couple of months ago and it has been reviewed by USFWS and we have those comments. We had a long time waiting for the Solicitor to provide comments on our chapter that dealt with the legal analysis even though we don't offer that up as an official document about laws and court decisions.

Hall: I have one comment and then kind of general questions because these are very good recommendations, I think. Anything that includes the public and has us understand issues better is certainly a tool that needs to be looked at and exercised. One of these is the conflict exercise where you say there is a high level of involvement and a low level of trust. I really believe that is the crux that if we are ever going to move forward. We have to address this and build an understanding. It has to be built but we have to have an understanding that we may not agree and that is okay as long as it is done honestly and openly so that the trust part can be remedied. Regarding the involving, reaching out, and educating are there any particular recommendations that you have for getting that sort of information out to the public?

Lamb: What we have found effective are three avenues and they may or may not be applicable here. The first of those is what we have called shuttle diplomacy; that is, that it is important for the TF to be out and about. It is important for it to be as pro-active as possible and one way to do that (and this might typically fall to the Chair but not necessarily so) is to make a rather consistent and constant round of the parties at their own headquarters or at their own offices. That process would be less telling people what is going on and much more asking people what is going on. That is really an intensive listening activity. That is one thing. The second thing that we have recommended in our report is that the TF develop an opportunity for the people to go to the public clubs and organizations of the basin and make presentations that are informal, well supported by slides or video and brief so that people can, in particular, have an understanding of what the decision process is like. We found in our investigations a great deal of misunderstanding and nonunderstanding about how these decisions are likely to be made with regard to the upcoming Federal Energy Regulatory Commission (FERC) licensing activity. We have just finished some research on how FERC licensing activities actually work. Those are published, you can also get them on our Web page but all the studies that we did showed that people entering into FERC licensing are novices at this. Third, I think that it might be quite valuable for the TF to invest some of its resources in building some videos that can be used independent of TF members and others so that people in the community can have them to look over. They can explain that not only the science is important. This TF has funded some really important work and you have some really great basic knowledge, that needs to be shared generally but also, of course we are interested in making sure the public knows about the decision process.

Hall: I think those of us in this room who have more scar tissue than we have bare flesh understand that the decision is no good unless the people that it impacts understands the decision and gets behind it and helps us implement it. I think what you are saying is to do that and figure out ways to get out and have them do that.

Orcutt: You said it was a draft document? When is the comment period going to be on that?

Lamb: That really is to be determined by you.

Orcutt: The tribes are one perspective here but there is a different relationship. So however that is going to get integrated will be reflected in our comments.

Hall: We really do appreciate the partnership that NBS is bringing to us here.

Lamb: I am pleased to do it and I look forward to working with you in the future on this.

**Agenda Item #29: Report of the Klamath Compact Commission.**

Hall: Chair Kilham, for those of you who don't know, is a business owner here in Klamath Falls, and Mr. Bennett is the Northern District Director of the California Department of Water Resources in Red Bluff and we welcome you and thank you for your time.

Kilham: Thank you, Dale. It seems like a fairly appropriate time here that we decided to activate the Compact Commission. The States have decided that the Compact Commission would be a good place to facilitate the States' cooperation and we see it as a possibility as an umbrella to take in maybe all government and all groups, to be helpful and to help resolve some of the conflicts between the basins. I have talked to a lot of people and they all seem to want to find solutions. I think we just need to find the ways. Maybe the mountains and the miles are a part of what divide us. I will quickly say I am also co-chairman of the Hatfield Committee and I would be very happy to talk with the Chair or to anybody about ways we can coordinate that work. I do think it's appropriate to have some local working because of the different problems that we have. I am more than happy to work with all of this. I would like to turn this over to Bill and let him present what he and Martha Pagel, our Oregon State Representative, have put forward here.

Bennett: Martha Pagel (Director of Oregon Water Resources), Alice, and myself have put this together. Basically the Compact Commission would like to suggest that we be a forum for the affected parties in the entire basin, to bring these parties together to discuss issues, develop options and an implementation plan that implements drainage wide measures and recommending actions in both Oregon and California. I had the opportunity a few weeks ago to take an airplane ride with Jim Bryant around the upper basins to familiarize myself with some of the problems that are up here. I am a water resources engineer by trade. I was looking at some of the dams in the watershed and thinking about options of ways to solve the entire basin's water problems and I have attended one of the Klamath Project Operation Process (KPOP) meetings so I have a flavor of what is going on. I see some opportunities there to bring some people together. This might not be an altogether divisive problem. I think there are some opportunities for engineering out there; at least some alternatives that we can look at for solving everybody's problems. The Compact Commission proposes to look at both the short and long term water management solutions in the entire basin and we are trying to represent all the interests throughout the basin. We are asking for folks to look over our concept (Handout FF) and to give us some comments now and see if they are willing to participate. In general, we have received favorable responses from many of the agencies. When we get the comments in the next few weeks, we will probably look forward to developing a process that we might be able to move forward on. I think the word that Alice and I have been using is umbrella. That is our look at how the Compact Commission might fit into the whole scheme of things; an umbrella organization or umbrella group to bring a lot of the different parties together. I am hopeful that it is a possibility and I am always encouraged by Alice's and Martha Pagel's optimism.

Kilham: I think that it is the first time that the two states have been willing to come to the table and work on these issues with everyone. I suppose that is a little unfair to say, but I think it is an opportunity and I hope we can find a way to work with it.

Wilkinson: I am going to address this question to either or both of you. If you are familiar with the Upper Basin Amendment (UBA) that we have been wrestling with in this TF since about 1989, I believe, how would you view that as fitting in with the proposal that you are making under this Compact Commission?

Kilham: I am not familiar enough with it really.

Stokely: You said that this discussion draft that you had is out for comment, when are the comments due, do you have a tentative date so that it doesn't go on forever?

Kilham: In two weeks. Send comments to the Klamath Compact Commission at 1014 Main Street here in Klamath Falls, Oregon 97601 or to Bill Bennett at 2440 Main Street, Red Bluff, California 96080. Alice's Fax number is 541-883-3738.

Orcutt: With all these things that we are hearing, how do they interact?

Kilham: Maybe we can start being inventive. If we coordinated OIT, Southern Oregon College, and Humboldt State University, GIS capabilities there is a new world of telecommunications and maybe the umbrella would not have to travel so much. It seems there has got to be some creative ways of making it easier for the lower basin and the upper basin to communicate without somebody traveling all that way.

Bennett: Our goal is to kind of bring a lot of different actions together and at least get them coordinated. There is no sense for us to provide a whole new set of meetings if we are not coordinating with the existing ones.

Stokely: Just a comment in regard to electronic communications, there is a Klamath Bioregion List Server on the Internet that very few people in this room are even aware. You can subscribe to it, you can post to it, and it goes to who ever has requested a subscription. I strongly recommend that the TF as well as the Compact Commission use it at least to point your minutes and agendas. If anybody would like information on it, I can provide it to you. There is also one on the Trinity River as well.

[Instructions for Subscribing to Klamath Bioregion List Server on Internet: To subscribe, send E-mail message to: [Majordomo@igc.apc.org](mailto:Majordomo@igc.apc.org); in the message block, put the following 1-line message: subscribe env-klamath; to post messages, just send messages to: [env-klamath@igc.apc.org](mailto:env-klamath@igc.apc.org); all messages posted to that address will go to all subscribers. For the Trinity Bioregion List Server, to subscribe, send message to: [Majordomo@igc.apc.org](mailto:Majordomo@igc.apc.org); put 1-line message as follows: subscribe env-trinity; to post messages to subscribers, send message to: [env-trinity@igc.apc.org](mailto:env-trinity@igc.apc.org); Trinity River, Tech Coordination Committee agendas, minutes, and other issues are regularly posted there.]

Hall: I have one more general kind of question and it follows what Mike was saying. I really do support what you are trying to do, so I wish you well and we will work with you as best we can to help you out but what you have laid out is a very large undertaking. I guess my question to you would be more in general terms, how can we assist you in working with the Trinity, in working with all of the other groups? There are a lot of people trying to do some good things. The problem is that it is like a tree and we are all up on different limbs and what happens financially is some of those limbs end up getting sawed off and we lose a significant effort. I

think that if you could shed some light, get some ideas or help us work with you on how we could integrate all of those things, I think it would be very beneficial to everybody concerned.

Kilham: We will develop a process here and get it out.

Hall: Comments, question from the public?

None

**Agenda Item #8: New realities for the TF.**

*A. Need to work within the limitations of \$320k budget for KRFWO*

Hall: I want to make sure that everybody knows we are working at the (approximately) \$860,000 mark instead of the million mark as a result of some of these reductions in the Continuing Resolutions, so when we get to the later discussions, it is going to be very relevant that we discuss what it is that is most important to us. Frankly, I am looking forward to the TWG recommendations because in scanning the input from them, I see some very thoughtful recommendations and I look forward to hearing the TF's response to that and in focusing our efforts. The realities of funding in this year are that I cannot tell you what the total funding for this TF is for FY96. That is sort of the status as to where we are on the funding and that is a reality and it is probably a changing reality and we will do what we can to keep you informed.

*B. Frequency of TF/TWG meetings*

Hall: I think frequency should be something that we discuss here. We voluntarily reduced the administrative support level down to \$320k for this TF so that we could try and put more money on the table for activities on the ground. If we have less than \$1 million to deal with then we are going to have to look at how we could shave money in all places to try and put more money on the ground.

*C. Reauthorization of the Trinity Restoration program and their charge to restore Lower Klamath River - what it could mean for TF program*

Hall: If that bill is passed that brings in the lower Klamath below Trinity. It is certainly an important point in marrying up with operations on the Trinity and making us more of a team working with the Trinity TF and with the TCC.

*D. Appointment by Chair of a Committee to work on Mid-Program Evaluation and need for funding (Wilkinson)*

Wilkinson: You have a copy of the Chair's memorandum appointing our Committee (Handout L) and the five year program evaluation efforts to date (Handout M). The charge we had is to develop a RFP. We elected to not decide who will do the work. Bruce Halstead and Dave

Zepponi were committee members. The Committee is concerned that this go for competitive bid. What we're trying to answer here is: "Are we fulfilling the mission of technical and legislative intent of the Klamath Act? Is our organizational behavior moving toward completion of our mission and recovery?" Recovery is our goal. We agreed in the Committee that the financial portion of this evaluation may be done by U.S. General Accounting Office in an attempt to save. The Chair's recommended budget is \$90k. We would leave this to the staff to incorporate in RFP. We have purposely left a lot of these answers to come back from proposers. What we are asking from the TF or Chair is for the go ahead for staff to get proposals. The next step is to get proposals. We in the Committee would prereview these, then present a recommendation prior to the contract going out.

Zepponi: Adaptive management or feedback is needed to determine how we are achieving the goal of restoration. It is easy to get spurious in a group of this size. My perception is that it is easy to get pulled off track of progress towards the mission. We ask that everyone should write down what their goals are (including social goals in the Act or such as those for employment of displaced fishers and Native Americans). The better way to approach this problem is to give it to the consultant and have them come back with proposals.

Hall: If there is a question about what the mission or goal is, won't this have to be resolved before you give it to the consultant to give us advice on how to get there?

Zepponi: You are not asking the consultant to tell you how to get there, you are asking the consultant to assess whether the TF has done a good job of defining the strategic mission. Whether they are following the direction in the Act.

Hall: Shouldn't that apply to where we have been over the past ten years?

Zepponi: You have to go back to the baseline to where we started. The obvious question is, do we have a plan and how well are we following the plan.

Hall: So, are we walking our legislative talk?

Wilkinson: It is pleasing to announce that this was constructed with one meeting with significant staff help.

Bingham: Thank you. Yes we do have a plan (the Long Range Plan), it has a mission and goal statement. But as I look around the table I see only three people here who were around when we wrote that plan so the question is fairly asked. I would like to direct your attention to the letter (Handout N) put on the table here by the Pacific Coast Federation of Fishermen's Associations which should be referred to the Committee to be addressed. Some of the problems we see are high administrative costs, lack of follow up evaluation, cost effectiveness of projects, catch monitoring protocols in different fisheries are not consistent, and considerations other than cost effectiveness play too large a part in considering which projects are funded. I won't go into all

the proposed remedies, but you can read them. I would like to have this letter given to the committee.

Wilkinson: I would agree, these are a lot of the same questions we have and I would expect that whatever contractor we select will address these questions.

Orcutt: I read the letter that Pacific Coast Federation of Fishermen's Associations put out and agree on certain things. The point is that the resource needs to be monitored and managed consistently. I really want to look at the RFP which comes out of your Committee.

Bingham: Our understanding in submitting this letter is that we were addressing the entire restoration Act, not just the TF portion. I would think that the issue we raised about KC, its activities, and the portion of the budget it consumes, are something that should be addressed in the RFP. How much real help is PFMC getting in terms of managing the fisheries? Some of the technical help has been good, but the policy assistance is skimpy. I hope these concerns get incorporated into the RFP.

Wilkinson: That's why we've kept things general. We want the consultant to look at the restoration program in total. Their charge would be to point out if there are useless expenditures of funds or duplication of effort.

Orcutt: The KC has dealt with monitoring and enforcement numerous times, yet these issues continue to be brought up. If people want to review the way monitoring and enforcement takes place, they should attend the September meeting. The Trinity will meet then as well.

Hall: What I am hearing is that there is disagreement on what is intended to go out with RFP. The five year program review RFP should deal with where have we been, separate from what we are supposed to do in the future. We need to separate these two to get resolution on the RFP.

Dutra: We talk about two possibilities on the financial end. I thought we agreed that there will be an accounting of where every dollar has gone?

Wilkinson: As far as the financial accountability, to save costs we recommend that we ask the GAO to do this portion of the work.

Dutra: The accounting would be done?

Wilkinson: Yes.

Farro: For me the issue is more the cost effectiveness of the program; not so much where it has been spent but where it has gotten us is the critical question.

Hall: We already know by category where funds are expended. The question is did the money get us what we're supposed to accomplish under the direction of the Act; did we get from those the

biological responses we should have, from money for education, and other categories. Did funded projects do for us what they were intended to do? This is the kind of discussion needed. Is that a fair statement?

Wilkinson: Yes, this is not just for the biological and legislative intent so we expanded to technical intent as well.

McMillan: There needs to be a sufficient level of remoteness in the contractor to ensure objectivity. Is that being addressed?

Wilkinson: We did discuss it. We talked about private contractors, GAO, universities, National Science Foundation, and Kier. We had some concerns regarding conflict of interest. We as an advisory committee don't want to get into it. We think it should be a competitive bid and the decision will be with USFWS. They have legal hoops to jump through and a conflict of interest review should be one of those.

Hall: It is built into our contracting regulations. I am in agreement that we need a fair and impartial report card.

Olson: With that in mind, I'm uncomfortable if we have questions formulated by contractors.

Zepponi: You have to give direction as a TF. We suggest you put concerns in a letter for the contractor to give direction. This would be the secondary research as you will. We did get down to some specifics for an RFP. We will go back to the TF, get specific questions, get them in RFP form, then bring back to the TF in form of a packet. Then it will go out to contractors.

Olson: With respect to the handouts, where are they?

Wilkinson: We didn't want to load up TF and contractor with too much information, so they are not included.

Hall: There is some value in leaving this nonspecific but with clear direction to the potential contractors. What Zepponi is suggesting is reasonable. We can start seeing what contractors can produce. If there's no objection to this approach, and I hear none, I ask you to move forward.

*E. Need to discuss new TF priorities within above limitations*

Hall: We need to be looking at priorities and focusing so that we can actually try and get some accomplishments done with funding that is limited. Even if the TF is fully funded, a million dollars is not a lot of money in today's economy to do the kinds of things on the ground that we would all like to see done.

Orcutt: So it is an internal decision by USFWS to pass along that funding reduction to the TF and that is where you get the \$860,000?

Hall: Yes, basically what we have tried to do over the past few years is protect this funding.

Orcutt: For example, Congress could direct USFWS to put \$1 million with the 85% budget, that could happen, correct?

Hall: Yes, Congress can do whatever they want. They could put into the appropriations language that the entire million dollars would come through to this TF for its effort which means that the make up difference would have to come out of other sources. The USFWS would not support that, but Congress could do it over the USFWS's objections because we really don't think that would be a fair way to look at the natural resources across the range.

Orcutt: What if the funds had been obligated, the whole million dollars in November, would it be off the table now?

Hall: If we had made the mistake of obligating under a continuing resolution they would, but we didn't have the authority to obligate and so we didn't.

**Agenda Item #30: Private Landowner Award.**

Hall: Can we talk about the private landowner award?

Bulfinch: We ended up going out twice for nominations. We decided there will be two plaques, one for a private individual and one for an organization. The two winners are Don Meamber from the Shasta Valley for the work on his ranch property and French Creek Watershed Advisory Group for their work on reducing sediments in French Creek as well as their superb job of monitoring this work. There are 15 certificates which need to be sent out to participants/nominees. All we need is the printing up of it. We want to invite the participants to a TF meeting to receive the award. We can arrange that with the field office for the appropriate distribution of certificates and press releases. Unless there are objections, we will proceed.

Hall: Any objections?

None.

Hall: We thank you for your time and effort. If you get the certificates to us we will get them made up with fine print. We will also have the plaques made up. We will move forward with these and appreciate your effort on this.

**Agenda Item #9. Proposed revision of RFPs and proposal ranking process.**

Ellinwood: This has been a long time coming. It became apparent that there was room for improvement six years ago. Members who have helped have given this a lot of thought. Please take into consideration the support and experience the TWG members on this subcommittee and

TWG have brought to this effort. Please keep in mind the fact that this set of recommendations is the second (first at October meeting) and both are brought to you after consensus votes.

As the Chair pointed out, the public will be looking as to whether we delivered the goods at the end of this program. The evaluation criteria is not whether we shoveled out millions of dollars to projects on the ground, but what we accomplished with those dollars.

What we came up with is an integrated package (framework elements are planning, program policies, RFP content and process, and annual budget development) of recommendations which we brought to you in October. All these are linked and if you fiddle with one, you change how the machinery operates. If you pick and choose projects outside of this rationale, it will defeat this process. Program policies will clear up a lot of confusion. The RFP content and process has a lot to do with how projects are funded, developed, and encouraged. Finally, the annual budget development will allow you to set programmatic budget goals and categories of projects.

**Agenda Item #10: TF Discussion.**

Farro: As far as the two tiered point system, why change for FY96 and then FY97? I'm unclear as to why, if changes are needed, why aren't we using it in FY97?

Judd: We want to. If you're talking about projects from the FY96 list that would be cut, then evaluated under the new criteria, I don't have a problem with it and I don't think TWG does either.

**Agenda Item #12: Action: TF decision on new priorities and revision of RFP (#8 and 9 above).**

Farro: I commend the group for the effort. In the early years of the TF we made some constructive changes, but looking at what happened last year I question whether we have made any progress at all. I hope we have the discipline to stick with this when money gets tight and certain interests don't see their projects being funded.

**\*\*Motion\*\***Second (Farro) I will move to adopt this proposal (Handout O).

**\*\*Seconded (Bingham)**

**DISCUSSION**

Wilkinson: The TWG, whose formation I opposed many years ago, is comprised of individuals with various levels of technical training and fisheries backgrounds. This circumstance is exacerbated since some of the TWG members actively promote policies and positions instead of focusing on technical fisheries restoration topics. Additionally, because several of the participants in the TWG frequently serve as TF Representatives' alternates, these individuals may have a difficult time leaving their "political hats" at home when serving as technicians at TWG meetings.

I remind the TF these are the very reasons I opposed the formation of the TWG without Task Force involvement.

I abstained from the vote on the TWG formation to move the process forward. The discussion was then that the TF members would honor the process by not interfering in TWG meetings. The reverse has not been the case. I would like to see any of our dealing with the RFP process keep this in mind: how we can bring about some compliance regarding the TWG not becoming involved in TF processes.

Hall: The TWG has only one agenda only, to bring the best science to the TF. Deviance from that cannot be accepted. If we don't understand the proper science, we can't make the right decisions. With that said I see a great deal of value in what you have laid out, in particular with reference to the Midprogram evaluation. Is it your view that these two can fit together?

Ellinwood: Yes. It's important to point out that the TF will be able to assess when budget shortfalls occur, to project, and provide short term and long term tools to successfully conclude this program.

Hall: Mr. Wilkinson, do you have any suggestions on how to alleviate your concerns?

Wilkinson: It's realistic that TWG members would be best informed alternates to TF members, but I do not agree that they should have the vote.

Farro: I agree with Keith's comments.

**\*\*Amended\*\***(Wilkinson) In the case of an alternates who are seated at TF, who are also a member of the TWG, no vote shall be afforded to that party.

**\*\*Farro accepts\*\***

**\*\*Second accepts\*\***

**\*\*Motion carries** (Orcutt, Miller, and Rode abstain).

Ellinwood: Thank you. I will go over how the process will unfold this year and in a normal year (Handout O).

Hall: As we take these actions for the five year program review and RFP revision, we need to coordinate closely. There are some policy decisions required from the TF regarding this. We need to know what those questions are.

Ellinwood: We are prepared to help Craig with this.

**Agenda Item # 11: Public Comment.**

Zeponi: A comment on the TWG focus being to look at the best science. That is a great focus and where it should be. There is another aspect here, the employment criteria in ranking projects. Is that charge one that TWG should do? This is a social issue.

Bingham: We have been troubled by this issue since we started as a TF. With this new time frame we are relieved of this. The problem is that it is now an orphan issue. You may have to include sociologists or economists on the TWG.

Olson: The U.S. Forest Service (USFS) has faced a similar charge. My view is that you should look for examples to some of the Provincial Interagency Executive Committee's.

Hall: We need to think about how we can up with criteria that are meaningful, but the bottom line is doing what we can for the resource.

Farro: I agree our charge is to do the most we can for the fisheries resources, as a main priority, with the financial resources we have. There is a ten point criteria in the spread for employing target groups. The Act says "to the extent practicable". This criteria was developed in the past with the intent that 10 points be given to proponent consistent with this, that is that good projects not be penalized if it can be demonstrated that the proponent tried to employ those groups, whether in actuality they did or not.

McMillan: My role is as an elected representative of Klamath County, and in that capacity the social and economic implications of the group will be weighed in my decisions.

Hall: Thanks, Jud.

**Agenda Item #13: Budget shortfall for FY96 projects (Hall).**

Iverson: Because of the anticipated budget in the neighborhood of \$860k rather than \$1000k, we are short about \$74k of being able to fund the whole program (FY96 workplan). If we can get some direction on a list of recommended ranked projects (Handout P), then it will enable us to go ahead and obligate funds for projects. The handout displays the set of projects recommended for FY96 funding by the Task Force, which we in the Field Office have prioritized for today's discussion. The rationale for this was developed by John Hamilton, I think he did a good job. He took as his guidance Dale's direction to focus on a few high priorities that the TF has identified. This is our recommendation to Dale on how to spend the \$860k. There is always hope that additional money will come to hand. If you look back at the six complete fiscal years of this project, we have always found a way to fund every project that the TF has recommended.

## DISCUSSION

Hall: So what you are saying is based upon staff recommendations that the projects would be funded down to \$860k, the Blue Creek Chinook and Coho Assessment?

Iverson: Yes.

Stokely: If the Interior Appropriations bill is not vetoed, you can begin to get agreements in place. If there is a Continuing Resolution, will you still begin with finalizing the agreements? Or will you be held up completely?

Hall: No to the latter, yes to the former.

Stokely: If work has started and they don't have an agreement, what happens?

Iverson: Our guidance is that it is not their problem if we aren't in the money. However, I recommend that we move down the list, as we always have, and when other dollars become available, fund the next ranked project. If any projects remain unfunded at the end of the year, then my suggestion is to move them to the top of the list for FY97 dollars.

Bulfinch: It was requested that the TF spend \$250k on flow studies, is that amount still available? What about the \$500k?

Hall: I don't know. We operate under the Appropriations Act of FY95. My understanding is that if a budget passed tomorrow, it would be for tomorrow through the rest of FY96. If passed, the \$500k it would be prorated through the end of the year.

Orcutt: Is there any latitude for cutting back on the Field Office?

Hall: I have already asked them to tighten the belt when we dropped down to \$320k. There is latitude, but it will be in savings at the expense of fewer meetings and less support. This \$320k is not just for the Yreka FO, but for this meeting and other TF, TWG, and KC functions.

Orcutt: Maybe, then, the budget committee should look at it.

Hall: I don't think anything is off the table.

Bingham: Do we see here the basic budget priorities set by the TF last June?

Iverson: The TF got a ranked list from the TWG (Handout Q), but the workplan was not in any rank order.

Bingham: There are two ways to deal with this. We can sit as a TF or we can defer to the Budget Committee and whoever wants to join us.

Orcutt: I would like to see two things. One an approved workplan list from June 1995 and I am not ready to give up on getting the full \$1000k.

Bingham: We have to come up with a decision on the deficit today.

Hamilton: I will get a copy of the workplan (Handout R) for Mike.

**\*\*Motion** (Farro) That we adopt the list down to \$691k, and below that pick up the projects in ranked order as approved by TWG as money becomes available.

**\*\*Seconded** (Stokely)

**Agenda Item #14: Task Force discussion on budget shortfall.**

Stokely: Passage is very important to cooperators who need to get started on the work.

Orcutt: If we are so interested in getting projects going, why not to go to \$860?

Dutra: If we don't get \$934k we do need a motion. If we have Continuing Resolutions and we vote this way, why can't staff start issuing agreements to the next down the list?

Hall: We can do that, but we need a priority order. Mike, do you want to see the FY96 workplan first before voting on this?

Orcutt: Yes.

**\*\*Motion Tabled\*\***

**Agenda Item #15: Public comment on budget shortfall.**

**Agenda Item #16: TF decision on priorities for FY96 \$\$:**

Hall: I will try and summarize Mr. Farro's motion. Staff had made recommendation on certain projects given the funding shortfall this year. Certain projects that were commitments for flow study for other things that the TF had seen as being high priority and then the remaining list was simply in order of how they had been ranked by the TWG. Mr. Farro had made the motion that we accept that list in order of funding. If more funding came in, then we would pick up projects that might drop off, but that would be the approach.

**DISCUSSION**

Orcutt: I cannot vote for the motion on the table but I have some alternatives to suggest.

Orcutt: We have \$860k available. I don't see any reason why we cannot take it down to that at this point in time. I also think that we can look for some latitude in some of the projects above the line, the \$862,290 line, to provide some relief for some people that are teetering right on the border line there in terms of funding and I would also note that some of those projects have higher ratings than the ones above the \$691k so that is my concern and that is my suggestion on how to proceed.

Hall: If I understand, you would like to take it down to the \$862,290 which takes it down to 96FP11, the Blue Creek Chinook Coho Assessment and then you also said that there were some projects in the TWG ranking that are in the lower part of the list that ranked higher than some of the projects above them and you wanted to discuss that?

Orcutt: No, the other thing I wanted to do, I wanted to direct the Field Office to negotiate with all the people above there.

Hall: Would what you are saying be an amendment to the motion to direct the staff to work with all of the contractors to see where any latitude would be (as well as if other funds become available) so we can cover those projects that are being hit by the lack of funding?

Orcutt: Above that cutoff point, right. I also would like to see a break out of the \$320,000 in terms of what does it cost for meetings like, in particular the KC.

Hall: Okay.

Bulfinch: There may be one other avenue in the contact with the contractors. Some of these tasks, it maybe already too late to do them in this fiscal year and they could be either deferred and resubmitted or canceled. I think if you asked them, "can you do the work in the time?" I am looking at this particular thing which says Oregon State University (OSU), Cold Water Refugial Study. It may not be timely to do it in what is left of this year and should be done at some time when the water conditions are such that you can identify the refugia from the mainstream of the river. That is just an example.

Hall: Actually that is a very good example because John Hamilton was telling me over the break that in discussion with Oregon State, they are underway with that already and would be amenable to bumping that to a '97 project so that might make that sort of thing available. Perhaps, we can say that at the June meeting, we will have that break down and we will have a discussion on the \$320 and you will have it ahead of time. I am trying to offer up some way to accommodate this. We will get the information to you from staff. At the June meeting, we will have an agenda item to discuss it and then if any decisions need to be made, we can do it. Would that satisfy your concern?

Orcutt: Yes.

Bingham: Relative to looking at the \$320,000 operational budget, the area that I would identify for savings would be in travel expenses for the KC. Quite a number of KC meetings occur concurrent to Pacific Council meetings and KC members end up traveling. I have a hunch that is a rather hefty item.

Hall: We are really drifting off in to separate discussion and I would like to bring us back and try and summarize again your amendment, Mike, to the motion which was that you would like to have the staff work with the contractors to see which projects could or couldn't be done. If it is too late, maybe we can make some changes. Also if any additional funds become available, that those funds would go to try and help fund those projects. The rest of this discussion is sort of where else we could trim corners to make funds available which I believe is a different issue than saying if funds are available, they will be put in this area. Is that a fair characterization of what you are saying?

Orcutt: Yes, but to just clarify part of it. The reason that we would be trying to save money in Projects above the line, would be to pick up the ones below the line.

Hall: That is what I am reading in to your motion about the money.

Orcutt: It wasn't clear to me because it sounded like it was as money became available, we would be putting it back to the ones that we asked to defer something or they didn't start something in this fiscal year. As far as direction, I would just say that, you can just take it down as whatever amount of money that was available there. Also, if somebody has done work that maybe isn't up to the level that they thought they were going to do in this fiscal year, that at least something would go against it, they wouldn't be eating all the cost if it came to that point.

Farro: **\*\*Motion amended\*\*** I amend the motion to commit down to \$862,290 and if any additional becomes available from savings from projects or from new sources, the money be used to fund restoration projects in ranked order down the list.

**\*\*Seconded\*\*** (Bulfinch)

Farro: The clarification for me, we would then be approving on this list down through 96-FP-11 at \$862,290?

Hall: Yes, with the understanding, I need to clarify this, with the understanding that the prediction for \$860 is based on us getting the funding that has been in the last couple Continuing Resolutions.

Dutra: Why don't we try to make the motion to get it into the KISS category.

Hall: Mr. Farro's motion was to just take the list and follow it as far as the funds went. The amendment really only says, let's do that, but if more funds become available, then we put them

there. Normally year to year, there are savings there, then those funds would be available that we could get down and continue to follow the list.

Dutra: If that is the motion, I can support it. What you just stated, if that is the motion.

Hall: That is my understanding of the motion and the amendment.

Miller: One of my concerns that I would have with it is that I kind of reviewed some of the information that Mike gave me earlier on this budget. It shows that there are projects that are actually ranked lower in the process and are being funded for one reason or another and I think that needs to be flushed out before I can accept. I think that we need to have a little more discussion on how we are going to do that because what I am hearing now is a motion to okay the first....

Hall: The question is these have already been committed to by the TF down to here and these are the ones that simply follow the TWG ranking. This was the list that we have been working with, staff recommendation. The motion on the table is to follow this list. If funds become available either through appropriations or through savings either in these projects or in other places, then we would continue to go down the list further when we can. Our projection this year, because of the continuing resolution is that we are only at about this level here at \$862k.

Farro: I have a question I would like to ask, I think it would be real germane to this. An action was taken by the TF in June that approved a Workplan budget; what happens if we do not reach agreement? What process is going to be used to prioritize the funding available?

Hall: Then the Chair falls in the unenviable position that there is no consensus recommendation to the Secretary again and I have got to make the decision. That is what it amounts to and that is why I always really try and get everybody to work together for a consensus.

Farro: And it is also clear to me that it was a difficult process in June. There were projects that are now already contracted that still wouldn't have qualified on this list. We are going to reopen the whole issue and start moving things around. Somebody is going to have to take the lead because this is just getting messy.

### **5 Minute Caucus**

Hall: Based on John's discussions with Oregon State University on the Cold Water Refugial study, that \$42,128 could be deferred to a next year project in concurrence with Oregon State, is that correct John?

Hamilton: I should qualify that. It should be in concurrence with Oregon State. We need to check with them. [a check with OSU indicated that they need \$21k in FY96 and can defer only the remainder \$21,128].

Hall: But assuming that is the case, then the difference at the bottom is only some \$70,000. That would reduce that down to somewhere in the neighborhood of \$30,000. We usually, Ron, don't we usually have \$30k or \$40k in the system at the end of the year because of unexpended funds?

Iverson: I think in every recent year, we have had some money that we are able to pick up projects from the upcoming fiscal year, yes.

Hall: All I am trying to get across here is, this may not be a real issue at all but we certainly want to discuss it. I will defer to Elwood or Mike.

Orcutt: The discussions that we have had is that we conceptually agree with that idea, but that is not the level of comfort that we would like to get. With the discussion that you had about Oregon State, (\$40,000 that they can defer until the next fiscal year) we would feel more comfortable if we dropped the line down to 96-FR-O4, the Karuk's proposal and then direct the staff to negotiate to come up with the funds to meet the intent of all projects including 96-FR-O4.

Hall: Fiscally, we cannot make commitments unless we have the funds. To try and work to find the funds, it is certainly a commitment we can make but to say that we will find them is, we cannot legally make the commitment that we would fund something that we don't have the funding level to pay for.

Orcutt: Also, there were proposals that are pulled up above the line in the staff scenario, for example, the age composition study, that got a lower rating than the Karuk proposals, yet it is now above the line and it is not flow related item. The work has already been done.

Bingham: It is hard for me to understand this as something other than reprioritization.

Orcutt: The flow stuff will shake out. In my opinion, we have already identified one that was identified for the flow study for \$45,000 and I am just simply saying look at all of them and the cooperating entity has already said that they have the latitude to hold payment until the next fiscal year. We are not reprioritizing in my opinion.

Hall: Let me just interject. If we follow the scenario that I have talked about where we are really only talking \$30,000 or so difference. If it gets us past this, we will work with the savings, we will do everything we can to negotiate, and I will come up with the difference and let's move on.

Farro: Are you asking me to amend my motion?

Hall: No, actually, if that satisfies your concern because frankly, I believe that we will find that money in the savings and other things in these projects. If it gives you the level of comfort, I will make that commitment and if I have to find it somewhere else, I will.

Farro: Mr. Chairman, is that an understanding that if the funds are not available, the projects would be cut based on their ranking?

Hall: The only unknown would be if the President and the Congress in continuing resolutions or an omnibus bill, cut us further. We don't expect that, everything we are getting from the hill and our own staff in DC say that they believe what we are projecting is legitimate, that is the only unknown. What I am saying based on an expectation that \$860k would be available, we will see if these projects are funded.

Farro: You are not asking me to change my motion?

Hall: No.

Hall: Lets call for the question on Mr. Farro's motion to follow this list and get the job done. What it would mean is that we can pay for these projects as we move through the year unless we get an omnibus bill that carries us through the remainder of the year, but if we are under a Continuing Resolution, then we take what portion of that continuing resolution and we can move on down the list.

We cannot commit until they give it to us but we will follow this just like this. Unless they reduce us in Congress, we are making the commitment to follow on through. The motion is to follow this list.

Hall: Yes. Is there any objection to that? Can you call up the motion from yesterday, John?

Hamilton: The motion was to approve the list down to \$691,000 and below that pick up these projects in ranked order as approved by the TWG as money comes available. [That \$691k is now amended to \$862k].

**\*\* Motion clarified (Hall):** Accept staff recommendation on funding the priorities as proposed (Agendum 13, attachment 1) down to \$862,290 (unless Congress does not give us this latitude). The USFWS will fund all projects (assuming Oregon State University doesn't need the \$42k this FY) as funds become available.

Farro: Excuse me, we are approving funding beyond the amount we have been told is available?

Hall: That is the commitment I am making based on a postponement of the OSU study until next year so \$42,000 would be available from that and the money left over or the Service will fund it because that is only \$30,000, we are down that close, and frankly, we need to get by this and go on. Any objections to that?

Farro: We are approving the prioritized list, approving funding through the \$862,290 and the Service will take it upon themselves to find funding to get us through the rest of the list?

Hall: That is correct because there is only one project left, once you defer the OSU study.

Farro: Through savings or other sources?

Hall: There is really only one project left once you postpone the OSU Study so it is only the last project that we are talking about and there is basically \$30,000 shortage; either through money saved or the Service will find the difference.

Farro: So this action, we would pull funding from projects higher ranked and put it in the lowest ranked project?

Hall: We look at all the projects to see where they are in the year, what they need, and any savings left over or if a project is completed and there were funds left over, those funds would be available to help cover this. Anything in addition to that \$30,000 the Service will cover it.

Orcutt: If I was the Karuk representative what would that mean in terms of them executing an agreement?

Hall: They can execute an agreement when/if Congress passes an omnibus bill or in such time as we can get the Continuing Resolution as the funds become available, we will fund the projects. We have over half of the funding now because we are over half the way through the year. We legally cannot commit to spend money that has not been appropriated to us yet. Any objections? Hearing none, motion passes.

**\*\*Motion Passes\*\*** (Hoopa Valley Tribe, Klamath Tribe, and Yurok Tribe abstained).

April 24

RECONVENE

**Agenda Item #17: Upper Basin Amendment final recommendation - (Upper Basin Amendment Ad-Hoc Committee, Keith Wilkinson)**

Hall: My recollection was that over a year ago, there was general agreement on the UBA, we ended the significant public comment phase, and the draft was in fair shape with the exception of comments from the Klamath Tribe.

Wilkinson: I have not called a meeting of the ad hoc committee on the UBA meeting because we had made a due pass recommendation through consensus here in Klamath Falls last summer. Because the Committee has had no recommendation since then, our recommendation still stands.

Orcutt: I agree with Keith. In Brookings, Robert Franklin brought forth some concerns. It may appear that there was a miscommunication between he and I, but there wasn't. We have provided written comments to the Field Office. At whatever point the those comments get incorporated, the document is OK with us.

Agenda Item #18: Task Force discussion.

Wilkinson: Mike and I are in agreement and the comment period was closed. We assimilated comments into the most recent draft. The information we received lately can be incorporated if this draft is adopted. I am at a loss as to where we go from here; we have to open up to all if we open it up to any.

Bulfinch: I submitted a list of errors. To summarize, I had four main points: 1) from an editorial standpoint some of the conclusions were not substantiated in the document, 2) I question do we now need a UBA, or can we do under the existing authorities anyway, 3) the existing document only casually addresses the tribal rights to extend anadromous fish to Upper Basin, and 4) there needs to a long-term commitment on the part of the TF to assess anadromous fish passage. I would be willing to approve the UBA if there is a serious study of all the problems facing introduction of anadromous fish. We will need the information from that to address FERC relicensing. This could be done by an outside agency by 2001.

Wilkinson: The review committee purposely did not attempt to set policy. We did identify issues. Reintroduction was considered. This is a living document and there is no attempt to limit the amendment process. In retrospect, considering the concern and effort that has gone into this, there are really insignificant obstacles remaining, at least in my mind.

Miller (now here): The tribe made comments, have they been included?

Wilkinson: No, we were living by the close of the comment period which was two years ago. We have not accepted amendment offers since we started working on this version. Reading from page 20 of the minutes, Franklin said most issues can be resolved and he would get comments to the KRFWO by December 15, 1995. It was apparent to the Chair that the motion would not pass, so he directed that Tribal comments be incorporated.

Hamilton: We got the comments from the Tribes by the December 15th deadline. The unincorporated comments of the Tribes are substantive, not just editorial. We packaged them up and sent them to Keith and the committee. It will take the parties getting together through the committee to negotiate new wording, not just having me type a few editorial changes.

Hall: In my view, what we're looking for is a general identification of what we know about the science and articulation of what we want to accomplish. We are looking at partnerships. If we knew the answers to the issues, then we wouldn't need UBA. The problem is we don't want to keep delaying this, but we need to expeditiously give the fair treatment to the comments. I would like to ask TF for ideas on how to get this UBA enacted by the next meeting.

Bulfinch: I am not suggesting that we open up the comment period, but that we address these concerns and, once a UBA is adopted, make a clear commitment to develop the policies based on the recent comments (if they are not included).

Bingham: In your view, Keith, your Committee's work is done and we should move ahead with the document which you had as a basis of the version we had when you made the do pass recommendation?

Wilkinson: My concern is that if we open it up to recent comments, then shouldn't we open it up to all.

Orcutt: We should clarify who is on the subcommittee.

Wilkinson: Orcutt, Miller, Wilkinson, Klamath County (Zepponi), a Water Users representative, and Siskiyou County (Dutra or designee).

Orcutt: We have circumvented the deadline numerous times. The understanding was that all comments could be included. We need to go on the record regarding comment about the reintroduction of fish to UB.

McMillan: If we are going to substantially restructure the document, we need to acknowledge changes since the 1992 draft (ERO office, the Hatfield Committee). It may pay to look at other options that have occurred to implementing an upper basin program which coordinates with lower basin efforts through the TF process.

**Agenda Item #19: Public Comment.**

None

**Agenda Item #20: Action: TF decision on whether or how to proceed with Upper Basin Amendment**

Hall: We are all on the same track; we want to get this done quickly. I ask Mr. Wilkinson to reconvene the Committee, look at the comments that have been received, and have any interested TF member sit in on it. The goal would be to come back at the next meeting, make a do pass recommendation, and get this done.

Dutra: It would help if players show at the meeting.

Hall: I appreciated everyone's hectic schedules, but this is very important. I ask that the scheduling get the commitment of each member of the committee.

Miller: I would like to see the TF set the date now.

Orcutt: The comments to be incorporated were the ones received by December 15, 1995, correct?

Wilkinson: Yes, for clarification, the Klamath Tribe's comments (6 pages), Hoopa Valley Tribe's comments (4 page), and editorial comments from Mr. Bulfinch (3-4 pages). Those are the documents we will be reviewing at the May 7, 1996 meeting in Yreka at KRFWO.

**Agenda Item #21: Review of the flow related correspondence and the Chair's position (Hall).**

Hall: The letter from Cooley and Herger was in your mail out (Handout S) as well as the response from our office (Handout T). Copies of all those letters of support for the flow study are in the handouts (Handouts U and V) and in the book, so I think that after the discussions we have had, I don't hear anyone anywhere saying that the flow study is not a priority. If anyone has any questions or wants to make any comments, we welcome those now but I don't know that we have anything significant to discuss here.

Orcutt: Is that just the correspondence related to this decision that was made at the Brookings meeting, with Jerry Grover acting as a DOI representative?

Hall: No, we have received other letters from other entities just encouraging us to do it as well but that information is also part of that so it is all of the information and it is in this notebook.

Orcutt: Including the Congressional letters? My only comment is that I was glad to see that the Secretary's representative take the discretion to move us off the dime on this issue.

Dutra: Please put in the minutes that I bit my tongue because I think everybody in this room knows that I grossly disagree with how that was handled.

**Agenda Item #22: Brief Technical Work Group update on the Phase II instream flow study, water quantity model and agreement with NBS (Bienz/Campbell).**

Campbell: A letter from Dale Hall went to Pacific Power regarding support for the water quantity model (Handout W). The Memorandum of Understanding was signed in January by Dale Hall so it is in place (Handout X). Please refer also to the letter from Keith Marine (Handout Y) and the response (Handout Z). A research plan and strategic plan are written (Handouts AA, BB, and CC). On the ground studies this summer - details are available. NBS is charged to take the lead to develop a cooperatively funded water quantity model for the Klamath Basin and we are coordinating with the TWG. We have received \$15,000 cash from BOR to NBS through interagency agreement that has been signed and is in place. The agreement for \$45,000 from the TF is in progress. PacifiCorp is finalizing a contract for a statement of work that we provided for them for \$50,000 and it is anticipated in the next month or so. We are very close to having the cooperative water quantity flow modeling task that we were charged with accomplishing completed.

Hall: One the TF members asked that there be sort of a third party a review of this and that is part of that, too, isn't it?

A: It is on the list, yes and that independent review task has taken off 10% of the \$50,000 funding amount that was directed for the TF share of the cooperative water quantity flow modeling task.

Q: Dutra: Can you shed any light on where in the BOR's budget the \$15,000 came from?

A: No, sir, I cannot.

Q: Dutra: Is there anyone here from the BOR who can answer that?

Beuttner: I am a biologist with the BOR. I cannot really say whether it is construction or other funds at this time but will look into it. [This information later provided: the \$15,000 that Reclamation has made available to NBS for water quantity modeling activities is charged to a construction account. All construction charges are counted against the Klamath Project and are reimbursable. Revenues from the lease lands are used to pay off the debt of the project].

McMillan: I would just like to receive assurance, that this is not a charge that will be billed back against the Klamath Project users.

Q: Orcutt: We were wondering where we fit in. It says State, Federal, Quasi-government groups and we were wondering which one of those we fit into there.

A: The tribes as you know are a government which is on the same level as the United States Government, so I would say that you were the same as the Federal. This is a draft figure that we prepared a long time ago and it hasn't been modified recently. You are there, trust me.

Q: Orcutt: Either you or Craig, could you elaborate just briefly, one of the things that we are going to look at initially was channel morphology and the hydrology that affects that, could you just briefly explain why that was?

A: The discretionary funds were \$92,000 and some odd dollars. The TWG met and prioritized the kinds of information that would fit into this Phase II flow study. The ranking for the channel morphology came below the line that we established during that meeting. However, what Bob Franklin was charged to do was to contact Trush and McBain to ask if they could develop a statement of work and that statement of work would be perhaps developed into a proposal for FY97. So that is kind of where that is. I don't know whether they ever did develop a statement of work [yes it was developed]. We have a clear recognition of that as a piece of information that should be included but we do not have the resources to perform that task but certainly it is recognized that it is a piece of information that we need to have. Again, our approach is that instead of working on the individual components and then getting to the end of FY98 and trying to do the integration, we have instead decided to alter that and take a more top down approach in the sense that we are going in to this with the intention that we are going to work on a systems analysis model. We are going to try to do the integration of those components and get it together and have this complete package put together in a basic form up front. That will allow us to show

it to you in a hands-on fashion so that you can look at it and see what it does. This will give us an opportunity to begin to give you some familiarity and comfort level with the potential uses for this in terms of resource management. So there is a kind of a training or technology transfer component there that we feel is very important for us to do because we don't want to just develop this model and put it on the table and say here it is, have fun. What we want to do is make this much more interactive kind of thing so that you can see what it does. You can get a feel for how useful the model might be and then give us some information that helps us tailor that model to meet your needs; to add things that perhaps we may not have been aware of or that we can think of that will make it more useful to you.

Q: Hall: Just from the timing standpoint, when is the "end of the first year"?

A: Calendar year.

Q: Dutra: Are these agreements that you are talking about between somebody and North Coast [Regional Water Quality Control Board], between NBS and North Coast?

A: They are informal agreements in other words, we have talked and we have informally agreed to coordinate.

Q: Dutra: If you have any documentation on that, I would appreciate it.

A: There is no documentation on that available. It is an informal agreement.

Q: Orcutt: I had heard that NBS is going to be innovated into US Geological Survey (USGS), is that, my question is last year in February, there was a guy from USGS came and said that there was some..... [Dennis Lynch] .... is that who it was? My question is where did that ever go?

A: The Klamath Basin Initiative proposal that they put in was not funded and we have been told that it is not a high priority candidate at this time for funding under their ecosystem initiative funding resources. I am hoping that we can change that.

Q: Orcutt: How does gravel recruitment fit in to that? Because you talked about geomorphology stuff and sedimentation and transport and all that kind of stuff, how does the fact that recruitment of gravel because, I don't know, I guess it cannot get through the dam, there has been cut off. How would that be addressed in terms of affecting spawning habitat?

A: I don't know and hopefully that is what you can identify for us is the critical nature of that and how we might get that kind of information.

Q: Orcutt: The only reason I ask is for example on the Trinity side. They know the source of gravel is not there any more so they just physically place it there.

A: We can learn some lessons from the Trinity certainly and that may be helpful as we go through this. That is one area where we will be in the river, on the ground or whatever you want to call it doing active data collection.

John Bartholow: We are conducting a thermal refugia study for juvenile fish, there is some confusion regarding this study versus the one for adults but they are not a duplication of effort. We plan to get in the water this year. Any questions?

None.

Campbell: The Arcata office has also been awarded \$25k from NBS for a micro habitat study this year. This was quick response money.

Mike Rode: The last involvement I had regarding the micro habitat work, we had a subcommittee formed and there was great delay in having our first meeting and certain people were going to drop out. Jim Hendrix was going to lead it and then he wasn't going to lead it and we have not had one meeting regarding these issues and it is going to be the initial task of that subcommittee to do a "scoping" as to where the Instream Flow Incremental Methodology or instream flow efforts are to be initiated. We haven't done that, my major question is what are the objectives and goals and outputs we can expect for \$25,000? How will they not conflict with the greater micro habitat studies that we had talked about previously? There just seems to be a vacuum that occurred here that was filled rather quickly and most of us have been left behind and I think we need more detail to resolve that lack of understanding.

A: Bienz: Mike's question goes back to the role of NBS participating with the TWG in developing the micro habitat study and that was proposed almost 1.5 years ago that we would start in with that and then last fall there were to be some meetings and those never happened and basically, we have never had any meetings with the NBS specifically to the development of the micro habitat study. What Sharon is talking about is a proposal by the USFWS in coordination with NBS. That is another issue and in my opinion, they are parallel to the TF recommendation that we work toward the micro habitat element of an instream flow study. At this point, Mike, we really haven't brought those two together and I think that is where the TWG is going to have to meet rather quickly to try to bring ourselves in line with the proposal that Sharon is talking about. Starting basically to get caught up. It isn't a substitute for the TF recommendations. It is its own study at this point. We don't want to duplicate work.

Q: Rode: There is this overlying concern that there is lack of coordination and that is what this group is here for is to coordinate these things and even though the funding is apart from TF funding, wouldn't it behoove us all to communicate on these things so that we know a little bit better about what is going on and are not surprised and don't have doubts and these kinds of concerns of just not doing things the right way?

A: Bienz: I think you can lay criticism here if you like, but there is a lot going on in the Klamath Basin that I am just not aware. In fact, of all that is being proposed or is being funded or is being

carried out, we really try to keep our hand on the pulse of all the researches being conducted, but it is just beyond us and I am not.... Bruce is here, he can speak on how this came through so quickly.

Campbell: The micro habitat subcommittee does not exist at least for now.

Rode: That is news, too.

Q: Hall: It sounds to me like that you are going to put together a proposal and in that you are going to try and marry these different facets together and you are going to be working with the TWG and if there is a subcommittee, working with it to try and make sure that we don't have any confusion. That is what I thought I heard said and I think that is trying to get at what you are concerned about. Am I characterizing it right?

Bienz: Yes.

Rode: I have the sense that we are going full circle on this thing when we first started entertaining doing flow studies on the Klamath River a number of years ago, one of the main reasons the whole process bogged down was because people were not involved, not all interests were involved from beginning and things are happening on the river that people are unaware of. I thought we had a process that we had defined and suddenly, we are back to this again. Another question I might have is how can we participate in this \$25,000 proposal that has come before us now? Is there some way we can get involved in that or is that closed shop situation?

A: Halstead: This was a quick response research, this is not two weeks old at best. It was just that quick response, the money came available, we submitted and we were approved. About 50 of these come available throughout the year and the USFWS cannot come to you about them all. We are still developing the study plan with the help of the TWG. We are not working behind closed doors.

Q: Olson: Question on item "planning is underway to initiate in river work this field season for micro habitat assessment", is that tied to the TWG and NBS working group type activity or just tied to this other grant?

A: Bienz: You might think of them as parallel at this time. We haven't been able to bring the TWG alongside yet with the proposal that has been funded by the USFWS. We had talked earlier about the TWG starting in with the micro habitat studies. That is a separate thing then what Bruce has but we can probably bring them together.

Q: Olson: You do feel that you have funding to initiate micro habitat work this season outside of the additional \$25,000?

A: Campbell: Yes.

Comment: Bulfinch: The Trinity is another river that has its flow influenced by factors other than the weather and it is assumed that they have made and have secured water for flow needs to a certain extent for their final assessments, in their responsibility for the Klamath River below the Trinity, it would behoove them that whatever they are going on the Trinity be brought to the attention of our own studies going through NBS and the TF. As you know, there are interests that are demanding water to be transferred to the Sacramento, the quantity goes back and forth and some of the changes for the Trinity requirements may be called on or asked for from the Klamath system so I think close coordination of what is going on there as we extend down the river ought to be considered, the river runs all the way to the mouth and we should be interested all the way to the mouth. So we need to get on the mailing list of water studies of the Trinity Restoration Act as well.

**Agenda Item #22: Public Comment:**

Bill Bennett: Are the modeling studies going to incorporate data that has been collected by the Department of Water Resources as we have 10 years of records?

Campbell: Not in FY96 because the data collection in cooperation with North Coast Regional Water Quality Control Board, it is going to take all the money that I have available. For Year 97 we actually start putting together the historical records.

James Ottoman, Malin, Oregon: I have these points: 1) The Willamette Valley had a big flood this year. Bill Bakke of Oregon Trout said that what happened in a few days by nature, was more than mankind has ever been able to do in 100 years in stream restoration. I have often wondered about the flood in '54 in the Klamath and how much of the logs and debris was taken out of the mainstem and probably the Trinity, too. 2) It is very difficult after two years of drought to have a terrific second largest run of salmon in the Klamath River this year. We would like to know why that happened but I think some of the problem is the figures that the PFMC uses. Their estimate ranges from 23% to a 304% percentage-wise estimate. I have often thought if our Secretary of Agriculture would estimate our food supply that way, boy heaven help the food market. 3) I went down to Iron Gate the other day. What really bothered me this year was those salmon coming up and hitting that Iron Gate Dam (IGD). The gate that you people put down on the hatchery. I cannot hardly believe that was occurring especially after we were cut off with our water supply and there has to be some answer for that. You could truck those salmon, like they did back into the Great Lakes or something. Seeing those fish jump out of that water and hit that IGD Hatchery thing is unbelievable.

Bingham: I, too, would like to see some of those fish that are banging up against the hatchery gates find a place to go and I know probably it is premature to talk about reintroducing them above Copco but this would be a great year of opportunity because even though as you point out the predictor tends to be wrong more than it is right and it seems to have a tendency to be too optimistic at the low end when stocks are way down, usually they are worse than it thinks they are and too pessimistic at the upper end. Last year we saw the results of being at the upper end where the predictor predicted far less than we actually got and that kind of relates to your final

question regarding the relationship between drought years and populations. People tend to only look at spawning and rearing success in the fresh water habitat and forget the ocean and the fact is that the climate is driven by what happens in the ocean and there is an association between warm El Nino events and drought that is beginning to be understood. This is what we fishermen call the El Nino rebound phenomenon. When El Nino ends, when the warm conditions start to go away, you have two things happening in the ocean, first you have a surge in productivity. Just tremendous plankton blooms and dramatic increases of macro-invertebrate and zooplankton. Accompanying that, because you had several years of poor productivity prior, some of the other predator's populations are somewhat down. If you have success in out-migrations at all, even though you may have not too many out-migrants, they will be much more successful in the ocean than they ordinarily would have been and you get these kinds of dramatic jumps in population. It is all tied together and you cannot ignore any part of the system.

Rode: Some of the other factors that might account for the extremely large returns were the fact that this '92 brood year, these are fish that spawned at the tail end of the drought in '92, had extremely favorable conditions for out-migration '93. We had a real good '92-93 winter, extensive snow pack and a nice prolonged gentle runoff that provided extremely good out-migrating conditions and then on top of that, we'd effected a number of conservation measures including a complete elimination of commercial fishing in the Klamath Management Zone, a tremendous reduction in sport harvest in the ocean as well as in the river, as well as the tribes taking some conservation measures and reducing their take and as Nat pointed out, coincidentally with that, we had this ending of the El Nino, increasing of upwelling so we had a whole host of factors coming together at once that resulted in this explosion of fish and hence we had this tremendous return last year so it wasn't all that unexpected, although our harvest people certainly didn't predict it properly.

Zepponi: I know the letters were discussed earlier and I just waited to bring up a couple of points about the letter or the statement that Jerry Grover made and some of the responses to Congressmen Cooley and Herger. I just wanted to point out, I think the letter says it, there was one vote that delayed or stopped the process and I don't think a vote was actually taken among the TF and if it had been taken, I think that it probably would have been more than one vote and so just a point of fact. The other thing is that, it is one thing that we all argue our points pretty vociferously at some times and it is one thing to argue and try to get your point across and then have someone or the rest of the TF vote against you and then ultimately in this case, the Chair under the Secretary authority made the decision. It is another thing to say that you are not participating and you haven't participated in the process and you need to participate more fully. I know personally over the last three years in the Upper Basin Amendment Subcommittee, I have put in hundreds and hundreds of hours working on that particular process and clearly, we have spent more than \$100,000 and I think that not only was it personally objectionable to see that statement there, I think it was also just inaccurate. I believe that in the TWG in particular, we participated in most of those meetings, I think we have missed one in the space of three years, even before we were TF members. We came to the meetings, I think you heard many of us downstream. That was just an added insult to missing out on what I thought was a good *discussion on whether a scientific program should go forward or shouldn't*. It is one thing to

argue the point and it is another thing to beat someone up when you win. I wanted to make sure that we all understood that. In the same light, I have grave concerns with the MOU with respect, not so much with the content but with respect to the signatory on it. It is Dale Hall is signing for the TF? I believe the discussion we had at the last TF meeting was we did not approve the MOU as it stood. We asked for comments so it was not approved by the TF. In fact, the Secretary exercises his authority to take that decision away from the TF and make the decision for the Department of the Interior. Just talking legally here in factual basis, when we look at evaluation of how the Klamath Act is to be implemented, if in fact that authority has been taken away from the TF, then the MOU should be signed under the heading or under the signatory of the Department of Interior, not the TF. I would suggest that legally, this is probably not a binding document, the MOU with the TF. It is just a point to consider and I think it is something that I think we need in the record, to make sure that the Evaluations Committee and the RFP does address that issue because that is going to come up time and time again. In light of that, I think we have the same discussion about the TWG and how it interacts with the full TF as well. That needs to be evaluated especially when you have questions in short time tables on whether it is appropriate to go forward with certain funding activities and certain types of research and what have you. That is another question of authority that I think also needs to be addressed.

Hall: I will say that when I signed that, it was not with that understanding that you have just given. If that was the true case, then, I did not understand because I wasn't at the last meeting and so I signed it thinking I was speaking for the TF and what they had done.

Zepponi: Correct me because we have other TF members who were there, I think in fact what happened was we decided it was contentious, the issue in general. The MOU was not brought up. We talked about it and said, send your comments in, but it was never approved and that is important.

Dutra: My understanding was the MOU was never approved by the TF, so what I was going to ask you, was this an MOU between USFWS and NBS? You have authority to do which ever but it was not approved by the TF. My next question was, was it ever distributed? I got a draft which I understood we were going to get some comments, but whatever you signed, I never got a copy of and one of my needling comments I have made since I have been in my position over in Siskiyou County, is that there is a Freedom of Information Act (FOIA) and I think under that TF members ought to get a copy of whatever we've, by your signature agreed. Yesterday, Mike made some comments a few minutes ago that we seem to always be hedging around. How is the TF going forward and why isn't it going forward the way we all want? We all want more fish out there in the river but if you think back through two days of session here, a lot of the distrust we have is because we don't seem to get the information to everybody and distrust is what is really, I think, keeping this TF from moving forward. Who is paying? Since you have signed an agreement between somebody and NBS, who is paying? Is the TF paying? Is USFWS paying or are my ranchers paying? These are the kind of questions that ought to be answered before we do things, not after we do things.

Hall: The only thing I can tell you is that my understanding when I signed it, was that this was covered at the last meeting and it was given to me to sign and I thought it was an action of the TF. You don't need a FOIA, Clancy, the TF is supposed to get copies of everything.

Dutra: I didn't get a copy. Did you get a copy?

Hamilton: Please refer to Agenda Item #21, you now have a copy.

Dutra: If it was signed back in January, I consider that a little bit after the fact.

Hall: My understanding was that I was working on behalf of the TF when I signed because I wasn't at the last meeting, I didn't hear the discussion so when it came through, I signed it.

Dutra: I smile because that shows an exact example of my rating of the person who sat in your seat during that meeting. When we at Siskiyou County have the assistant act as the Department head, we consider it is the assistant's job to make sure that the Department head knows what occurred and what are the next steps. This obviously did not and it shows me exactly and shows the rest of this room, exactly what I think of the job that assistant did in his action related to the flow study and not taking a vote and announcing that only one vote was blocking it. He never took a vote. He asked Klamath County, did they agree with the last proposal and he never took another vote on the thing. I am sure I would have opposed at that point in time. I had spoken against the flow study on the first day but some of my concerns just kind of got overwhelmed. A lot of other people the following day brought up more concerns, it showed to me that if we had allowed the time that was being requested, I think we could have had a happy shaking of hands and agreeing to go forward with the thing with the questions answered. I drafted a memo to you which is in the file there and I just decided back when I was holding my tongue on this subject to not forward it. It reminds me of a judge who has got a hung jury on his hands and that is what your assistant had that day. He had a hung jury. There seemed to be too many suggestions as to ways to go forward for a group this size to find the exact route that it was comfortable with. Instead of the judge giving the hung jury its time to find a comfort level which is what Congress set this TF up for, (to argue, debate and finally find something that all of us are comfortable in going forward with) the judge took that out of the Jury's hands and said, here is the decision. But now what I am finding, he also didn't inform you that the MOU wasn't approved.

Hall: I will look into both of these.

McMillan: I was present that day in Brookings and my recollection is that the discussion was terminated by the reading into the record by your stand-in that day of a message that I recalled was from you, or, if not from you, it must have been from the Secretary of the Interior and that was the end of the debate.

Hall: I appreciate you bringing these matters up and I will look into them.

Bingham: I would like to make a comment that I really should have made yesterday, but in view of the last two comments, I would try and bring this up again. We have been in existence pretty close to 10 years and we went through a lot of these kinds of issues in the early years as we wrote the original plan and we kind of shook down into a pretty good working mode. We had our annual disagreements about the budget, we were always able to resolve those because in working on the plan and working together, we had developed certain trust levels with each other which clearly (now that we have a reconstituted TF), we need to kind of step back and work on consensus building more.

Orcutt: I would echo that comment, too. As Nat said, there are very few faces that were here when the thing started and some of these things have been thrashed around before. The Trinity Program, for people's information, is not a consensus group. However, it does have the similar situation where there is an Interior agency implementing an Act and the TF is advisory to that in that capacity. It is unfortunate that those things happen but my comments earlier was the fact that probably for the first time that I am ever aware, this had to happen. The Interior representative had to move forward on something in which case, TF was unable to reach consensus. We have had situations where we were nearly in that area and I believe it maybe according to my own personal knowledge of it, maybe one of the first times, that they have ever done that and believe me, I guess it was a situation where my read of that is that somebody had to make the decision and somebody had to step forward; a lot of times, that hasn't happened. I think, I personally will look to some of the things that Nat is talking about, consensus building. I think our record is clear in being at the table in whatever forum you want it be, the KC or whatever council it is, we are there. We are always open to ideas and discussion and while we may not always agree, we are attentive to people's needs and certainly on some of the issues up here over the years, I have learned a lot and observed a lot and it has taken a long time to get up to speed but I think there is a lot of room for discussion and there is a lot of room where if communication is still open that collaborative hopefully win-win situations and solutions can be put forward.

Wilkinson: I suffer from the same syndrome you did. I only attended one day of the meeting in question and as I commented this morning, I had been just returning from a Pacific Salmon Commission meeting, and I was startled by it because it appeared to me from the short view that I had that there was a method there and a time frame to try to achieve consensus that could have been utilized and was not and so that is just my observation about the issue.

Hall: I do appreciate these comments. We have to learn, I have to learn and like I say, I will look into both of these issues.

McMillan: I haven't been privileged to read the minutes of that meeting but I would be extremely disturbed if the situation wasn't fairly clearly outlined in those minutes.

Campbell: I would like to answer Mr. Dutra's question as to who pays and I want to again let you know that the MOU does not describe any transfer of funds between anybody. There are no dollar amounts of any kind whatsoever described in the MOU. It is simply a statement of a kind

of an agreement to work together and a description of what the reciprocal responsibilities are between the two parties entering the MOU. Nobody pays.

Bulfinch: To answer Keith's concern because he wasn't there the first day. The reason the impasse came about was there was one representative there that was there as an alternate sitting at the table who had his instructions to vote no and said also his instructions that no debate, he was not allowed to participate in debate on the thing. So that when you arrived there, there was an overnight delay to see if he could get instructions from his primary sponsor, to engage in debate or compromise. The next morning, his position was going to be the same so consequently, when you arrived, all the room for reaching consensus had reached up to a road block.

Hall: Thank you, Mr. Bulfinch for the clarification and hopefully some of our actions yesterday will help resolve that issue. We just simply have to continue to work to where these kinds of issues, misunderstandings, and problems are absolutely at a minimum and we have to work together because I will always tell you the truth, it may not be what you want to hear, but I will always tell you the truth as I see it. I think that we need to continue to build to where that trust factor is there and it is going to take an effort from all of us.

Rod Kucera: I was the alternate for Klamath County, I was sitting in the hot seat that day. So I can maybe enlighten you a little bit also. In fact what had happened was the day before, we had not come to a consensus and we had agreed to meet that evening with several interested parties. Mr. Bienz and Mr. Rode were there and we met that evening. We discussed our differences and we came to a consensus among that group that if we could have a month to work on it and try and resolve our differences, then we could probably work out our problems. That is the recommendation I made to the Chair the following morning. I believe it was Mr. Spain made a motion to that effect which was seconded and at that point, the motion was killed. It did not come to a consensus and that is when Mr. Grover invoked his authority. That is just for your clarification as to exactly how things went. In regards to Mr. Dutra's comments about receiving information, I have been an alternate ever since Klamath County was given a seat. On any of the other correspondence that are coming out and I would just appreciate it as an alternate, to get that information, and so if you could just forward that motion on or to your staff?

Hall: I appreciate that and I heard Mr. Dutra's comment about not getting it until you get the agenda. I would like to ask staff that if I am asked to sign something, as soon as it is signed, it is mailed out to the TF. Each TF member please provide staff with a list of alternates or people that you want to make sure get it as well and then we can act in a more timely fashion to get the information out.

Bingham: I would just like to add one comment. Glen Spain is my alternate and he and I after the meeting, consulted very closely. He provided me with very detailed notes on what had happened and I just want to put it on the record that our organization and our industry will always support a call for time out within the constraints of having to move forward. We all recognize that we had a deadline there that had to be met and I just want to place it on record that I am still not very comfortable with the fact that their time out motion wasn't honored by the TF. We felt it

was the way to go and we will always be supportive. Part of the process of consensus building is it is rather different than the politics of majority rule and time outs are an essential part of the process so that everybody can get very comfortable with the consensus position or get more information if it is necessary. Just so everybody knows, we will always be supportive of that kind of an approach given the understanding that at times you simply have to move forward and in this case, we did have to.

John Crawford (Klamath Basin Water Users): It is interesting to hear Mike and Nat explain to us the abundance in the '95 run and I am thankful to hear that. Unfortunately as I go back to my recollections of discussion within the TF in the years of 1992 and 1994, the fact that ocean conditions may be improving during that time and that we may have a significant run of fish in 1995 is something that I never heard a hint of from anyone. All I heard was that flows in '92 and '94 were such that we were probably going to have a tremendous disaster in 1995 and in 1996 with three and four year olds regardless of conditions in the river for out-migration, regardless of conditions in the river for passage. So if we are going to look with an open mind, I would appreciate hearing some of that rhetoric during those drought times as well and identification of all of the potential problems or potential successes of the runs that follow those drought conditions. It is also interesting that the Chairman and I have talked a lot about the need to investigate the relationship between flows and fish below IGD. It is interesting that the amount of money identified by NBS as a total for this process that we are going forward with, comprises less than 10% of the money that is going to be spent without it, would we indeed be doing any investigation at all of the relationship between flows and fish below Iron Gate? We talk about who pays? Cliff, I can answer your question, Clancy, I can answer your question, too. We know that the water users, the farmers in the Klamath Basin are footing the bill for a great majority of this including the \$15,000 that Sharon identified, including the \$25,000 that the BOR has always put forth for any investigation below Iron Gate. It goes to general funding but it originates with lease revenues, whether it is described as O&M money at the BOR or it is described as construction money at the BOR, the preponderance of it initially starts with lease revenues and is coming from the farmers and the water users within the basin. So with that in mind, Mr. Chairman, do you personally deem it adequate to spend 10% or less of your instream flow budget to look at the relationship between flows and fish below Iron Gate?

Hall: My personal view of how this was going to unfold and what we had planned was that Mr. Hatfield had agreed and was helping us put into the budget (which has still not been passed), money to work in both the upper basin and for the flow study. When we talked last June about what we would do, certain projects were identified that the TF would fund. If the Service got the money that we were supposed to get, that money would have been really focused on emphasizing getting into the river, doing the measurements, getting the third phase that Sharon was talking about, the instream flow work done. We have yet to realize that money and that is part of the real problem. We have made commitments on other areas but I have really felt strongly that we have to get in the water and start making measurements or the models don't do anything for us. I am concerned and maybe after this 24 hour Continuing Resolution that they are talking about giving us, that they may actually be talking about an omnibus bill and then we will know a little better where we are. Any funds coming from that, I think we ought to look seriously at doing what we

said we would do and increase the amount of work in the river. That is the best answer I can give you. I am not real happy that we are not doing more measurements in the river but we sort of set out a path expecting to get it. I say Mr. Hatfield did his job and the money was in there, it has just not been signed into law yet.

Crawford: I have to clarify though it is not that Senator Hatfield did his job that the money got in there. I sit on the Hatfield Committee and there was never one word discussed in the committee about money being charted to go to the Department of Interior to fund an instream flow study. That money was ripped off from the Hatfield Committee by the Department of Interior.

Hall: I will have to disagree with you on that one, John. From the very beginning when we went to talk to Mr. Hatfield in supporting doing this sort of thing, because he asked us our opinion. We told him our top priority was to get this flow question answered. We told him that whatever funds he could help get and we also asked the President, it was in the President's budget as well for \$500,000. That was our top priority. I have never hidden that from Alice, I have never hidden it from you or anybody else. So while the Hatfield Committee may not have discussed that, I have done everything I could including working with David Robertson to make sure that they understood that if the money came through the Service, that the flow study was our first priority.

Crawford: Certainly, I don't debate the need, Dale and I think that you are cognizant that the water users have always stressed that the development of information regarding that flow to fish relationship is essential in the making of any progress at all to identify the issues. However, the Hatfield Committee itself was never apprised that the Senator had taken that money and designated it to go to the Department of Interior for a flow study.

Hall: I have never attended a Hatfield Committee meeting. Steve Lewis attends for us and sometimes, Tom Stewart. Any time that Congress is getting ready to add money for a certain thing, it will come back to the agency that is going to receive and say, write us the justification, what it will be used for and we have been very clear that it will be used for a first priority flow study. We have tried to be open and honest about that and talking with Carl and he seemed to have the same confusion you did and I talked to him several months ago. I told him, I am sorry, I have been trying to get this across and that is where we are. If there is a block in communication there, then first let me clarify it right here that if asked for appropriations, the Service will put the flow study as the first thing that we do. Not all of it, we don't want to hurt the habitat efforts and all the volunteer partnerships that are being built up there. However, we need to have some of that money to work down there and so he had that understanding. I can't come visit with the Hatfield Committee. I can send someone else to do that. If there is failure, with the Hatfield Committee, then I will certainly accept some responsibility and do everything I can trying in remedy it.

Crawford: Certainly if the money is indeed spent to investigate flow then whether it comes from the Hatfield Committee, from the farmers, or from anyone else, I don't think you will see an

objection coming from the folks in the upper basin. That is all they have ever wanted from the beginning was to understand that relationship.

Hall: Let's just keep trying to build that so there isn't any miscommunication and I appreciate those comments.

Bulfinch: I would like to answer Mr. Crawford's concern about the fact of costs of certain things that are being passed back to the agricultural community. I would acknowledge that is probably true, but I want to leap back to the very first meeting that was held in the Courthouse here in Klamath Falls, when a member of the audience reminded the TF that none of this was going to come and everybody was going to pay something. To point out to that effect, the salmon stamp program which is dedicated to this comes from the contribution of the commercial trollers. The CDFG in California has instituted fees for ocean sport fishing which in 1994, they came in with a salmon/steelhead tag at \$3.15 per each. In 1994, 75,000 of those tags were bought and I assume it was the same in 1995 so that is roughly a 1/2 million dollars contributed by constituents. So while everybody hates to spend the money, John, at least the pain is shared, only it may not be quite as visible at the surface to other contributors.

Bingham: I would like to thank Mr. Bulfinch for his comment on the salmon stamp. My estimate is we have spent over \$3 million in the Klamath Basin in the last 10 years and there is another group that contributes to it and that is the charter boat fleet, all passenger fishing vessels, recreational fishermen are a part of the program, too.

**Agenda Item #23: TWG recommendations to TF on Klamath Project Operation Plan KPOP.**

Deleted

**Agenda Item #24: Oregon Attorney General's opinion on Klamath Project water allocation (Reed Marbut, Oregon Department of Water Resources).**

Reed Marbut: Let me start by emphasizing the two documents that you have on the back table there. One is the memorandum to participants at the Governor's meeting on the 20th which is on your back table (Handout DD) which attaches of course the legal opinion and the other is the comments by my Director at the Compact Commission meeting last week (Handout EE). In the case of the Governor's statement, I want to point out that it is clear that the State's policy goal in the matter of the Klamath River and the management of the water resources here is a management that takes into consideration all of the interest and needs of the water in the basin. It is a complex basin. It is complex both environmentally, physically and demographically. If there is a water issue, (I am fond of telling folk around the West) in the United States, the Klamath has it. These are complex, they are difficult and we are not going to solve them quickly and we are not going to solve them to the satisfaction of all parties. Most everybody is not going to get everything they want. With that said and the Governor's commitment to that kind of a policy approach, the Governor also has a commitment to salmon restoration. Martha Pagel, my Director, commented

at the Klamath Compact meeting that perhaps the Compact Commission could assist in the process in being sort of a nucleus for some consensus building. She is clear in both her internal comments in the Department and in her public utterances that there will have to be good ground rules. We will have to have an objective and we will have to have a time line that we think that we can get, maybe not 100% consensus but at least enough of a cooperative solution that we will get there. It is going to take a while. With all that said, I should point out that the underlying ability of the State and the underlying rights of individuals is predicated upon the law. We can only do what the law allows us and you will notice in the Governor's statement and in the legal opinion, we feel we understand the current state of the law. That does not mean that there won't be changes to the law. There always can be that. It is always possible for an interest group or individual citizens to ask for legislative changes to amend the law but until that happens, we are all obligated to live with that law thus the legal opinion. I am told that the legal opinion that was issued by Mr. Sanders on the 18th of March came as some shock and surprise to a number of entities and individuals. I have trouble being shocked or surprised both because I was familiar with the law on which the opinion is predicated and also because, of course, I was privy to discussions with the attorney during development of the opinion, discussions of how it was developed and what questions it was answering. In general, the opinion does a couple of things. First of all, it lays out the legal process and the standards for adjudication of the rights. It categorizes the claims and there are really only three. There are private, pre-1909 claims; there are project claims which happen to be pre-1909, that is those areas that receive project water because the project notice was 1905 and the State law allocating the water to the project was 1905; and there are Federal reserved rights. Those are the three kinds of claims that can come forward in the adjudication.

Let me be clear what the adjudication does. All the adjudication does is to accept, verify, and document existing water rights, not new water rights, existing water rights. Those rights have two categories. The use of which or the project of which was initiated before 1909 and Federal reserved rights. The first are fairly simple to define. The project began before 1905, other uses began before 1905. There is a provision in the law which allows continuous development to run after 1909 so it doesn't mean every acre had to be under irrigation or whatever, it just means it must be a continuous and diligent project. As to the reserved rights, those rights are predicated only upon a reservation of land by the U.S. Government from the public domain. That is it. If there was reservation of land from the public domain, there is a water right associated with that. It is commonly called the Winters Doctrine for whatever the purpose of the reservation was and each reservation has its own purpose. The Klamath Indian Reservation has a treaty and that sets out the purpose. The Forest Service has set aside property in forest reserves, there is a purpose there. The Wildlife Refuges have a purpose. The National Park has a purpose. Whatever the purpose is in the founding document, that is what the water is. The purpose of the adjudication is to discover that purpose and decide a quantification of the right to meet the purpose and that is what the adjudication will be doing. The time schedule for the adjudication began in the mid-1970s. There was a notice in 1975 and one in 1977 to all water users in the basin to come forward and file a notice of intent to claim. There were about 30,000 of those original 1970 era notices which were sent out. There were about 1,200 notices of intent to claim returned. That is a little bit deceiving because some of the notices were filed, for instance, by a district that serves

hundreds even thousands of water users. The Department took the notices of intent to claim which required a semblance of a legal water use area and mapped the basin. The maps are available at our water master office. They designate the water use and anybody who wants to look at them can see them. The maps and the process were completed to the point where the Department had the right to send out a notice to the individuals who had filed a notice of intent to file their actual statement and proof of claim. That notice went out on September 7, 1990. Three weeks later, the BOR sent out a notice to a number of districts and individual contract holders and said, no, we will claim for you. Then on December 20th, 1990, the U.S. sued the State of Oregon and said your adjudication process is incompetent under the provisions of the McCarin Amendment which waived sovereign immunity of the U.S. Government. That case took from December of '90 to October of '95 to wind its way through the courts and the U.S. Supreme Court denied hearing the 9th Circuit opinion which said, yes, the Oregon system is competent and yes, the U.S. must file its claims. We are now back on the track of sending out a notice to the remaining parties and those parties will be individuals or districts who receive water through the Project and the Federal reserved rights, that is all of the agencies that will be claiming reserved rights. We have met with those agencies on a number of occasions and their attorney's, we have met with districts, the BOR, et cetera to prepare for the remaining and last claiming period. That is the adjudication.

The other portion of the opinion has to do with whether the BOR under the Federal law and the State law has authority to allocate water, I guess a better way to say that is, what authority does the BOR have in the allocation of water and pursuant to the opinion, the BOR has the authority to allocate the water which is stored in the Project for irrigation and that is it. That is based upon: 1) the Federal law, 2) the Federal notice to appropriate the water, 3) the State law which then allocated the water to the BOR. The purpose is irrigation. The question came up in connection with discussions on the operating plan, does the BOR have the discretion, the authority to allocate water, which is stored in the project or water which is under the control of the project for purposes other than irrigation? The answer in the opinion is no, they do not. Now that does not mean that Project water might not someday be allocated for other uses and we all know what we are talking about here. It is instream flows. It can be done. It has been done in the State of Oregon, Mackay Reservoir is an excellent example where there was authorization for the allocation of water for instream but there was no State water right. The BOR came to the Department with a transfer application. That transfer application was reviewed and a transfer was issued and the use was added for fish flows and a secondary right to release the water from Mackay was granted and now fish flows can be released from the BOR project in the Umatilla River. That is always possible in the Klamath but first there has to be a water right to which a transfer can be applied. That will be what the adjudication hopefully will do. In the interim, there is the possibility for coordinated voluntary efforts to allocate water but it should be done with all parties at the table and in agreement because it is in effect allowing a multiple management of a project by cooperation of those who have the first claim on the water and that is the Project water users. Now, I am speaking only of Project stored water. As to natural flow, there may or may not be claims to that water or ability to allocate. Water that is natural flow and unclaimed, can be used by the next junior claimant. Now, I should point out that in changing the Federal law, this has been done in a number of cases, it has been done in California in the Central Valley Project, it

has been done in Nevada in the Truckee-Carson to allocate water for fish and that is entirely possible, entirely reasonable, and entirely acceptable. It is something that all of us should work for at some point in the Klamath Project. Now, I think unless there are particular questions and I think I have addressed everything in the opinion, it is a well sided opinion, it speaks for itself, I don't want to expand or curtail the opinion in any way. I hope I haven't here. We would like to move forward with the adjudication just as quickly as possible so we will understand what the rights are. I might add one more quick comment and that is California claims. The adjudication is an Oregon court driven system. That is, in order for us to adjudicate, our court must have jurisdiction over the thing, meaning the water. The only way our court, meaning the Oregon Circuit Court in Klamath County has jurisdiction over the waters of the Klamath River is if the water is diverted or used in Oregon. Now, what is left out is water that would be diverted in California, not used in Oregon or water diverted in California and used in California. Our water master cannot go to California and administer water in California. California can adjudicate. Now, we envision if California were to adjudicate waters in California or where they have, Oregon can recognize that decree so long as the provisions of ranking (for instance priority dates) is similar to the process used in Oregon and California can recognize the Oregon court decree. The only place where that will be complex is if there is a different standard used. For instance, priority date is the date the right is issued rather than the time the use begins in one state, therefore in 1880, in the two states, would be a different meaningful date but generally that is not the case in the court and the states can recognize the other decree. I think that is everything that covers the opinion unless there are questions.

Hall: That was an excellent summary and succinct and to the point and we really do appreciate it.

Q: Orcutt: So what is the bottom line, should we just wait for the adjudication?

A: No, I think there are two bottom lines. First, there are certain things that are going to have to wait the adjudication but as Martha and the Governor both emphasized, we do not think it is necessary to sit back and do nothing between now and then. We think the work of the Hatfield Committee, the studies that are going on that this committee is engaged in and we think that perhaps a group formed under the auspices of the Commission should work towards some sort of management concept between now and the end of the adjudication. There are ways to get everybody to the table. We do think that people should come to the table in good faith, should stay at the table and attempt to get a sort of coordinated management scheme in place as soon as possible. Maybe, it can be a critique of BOR's operating plan, maybe it can't. The operating plan that they have been working on has gone through fits and starts as would have been expected. I do think that process is more complex than it might appear on the surface especially now that we think we understand the law. I think the lower basin tribes, upper basin tribes, the water users, the refuge managers, et cetera ought to say, this is what we need, this is how we think it should be and talk about whether there is some middle ground. In my conversations with every interest group (and this does not include the down stream tribes, because I have never had an opportunity to visit with them) in all other instances, I have found everybody to be reasonable and realistic about interim goals will not be 100% satisfied but that is what I would recommend. I think

contact with any one of the groups including our Department and the Commission, Alice Killam is very supportive of discussions.

Q: This seems to be a very definitive legal statement and obviously the operations of the BOR are in conflict with what this legal statement states, probably at this very moment. How do those two processes get mixed here in the short term? We have water going to the Refuge, we have all these things that are occurring and yet in this statement, it is at this point, it appears to be illegal.

A: There is a lot of water in the Klamath basin that isn't in this project; that is one goal. I don't want to tell you how to negotiate or how to deal. If I were a representative sitting on this group, I would say, let's take a look at all the basin, let's take a look at the ranking of the water rights, let's take a look at what legal authority we do have now that we know what legal authority we don't have. I don't think anybody has taken this thing and then said, okay, we now know what we cannot do, let's talk about what we can do. There are rights in California which are far junior to 1905. There could be a lot of talk about a joint operation of a river based upon the rights. For instance, in the Umatilla, we have a computerized system set up, where if a water right holder doesn't need his water in a particular month, he can get credit for another month, in a computer data base, a banking of water. I think there are all kinds of opportunities. I am just gratuitously throwing out a few things that strike me as ways I'd do it. It would take a real brain storming session saying, we now know the size of our playpen, now let's talk about how we can work within that playpen. This is only the water that is stored in that project. It is not all the water in this basin. It only constrains it to a certain degree unless there are cooperative ventures and then you can open that constraint to a degree. I think the Water Users Association for example is ready to come to the table and talk about what can be done but I don't want to speak for them, but I can only speak for the State and the State has a legal bottom line so to speak.

Q: Mary Taylor, Malin, Oregon: I have been told by rumor, that people are employed in the Forest Service, that there has been a room allocated, sound proofed, and that they are doing water allocations. It is apparently very confidential and I am asking whether or not, Mr. Marbut, you can shed any light on what is going on in the Klamath County Forest Service, Winema National Forest Building on water allocations?

A: I have no knowledge of such a rumor. I can only report my personal experience with the Forest Service and that is that it is very good. They are open. They are direct. We share information. We have had a number of conversations about how they will structure their claim in the adjudication. I have agreed to provide them background information. I have done already some of that. I have made maps available to them and we have talked openly about it. I know of no thing that they are doing clandestinely at all. I also know that there is a such a thing as the FOIA. I just cannot even begin to even have a little bit of paranoia about that. None. I mean, they are open as the Water Users. We have talked legal theory, we have talked claims etc., but I have no knowledge of that. Ask them.

Dick Ford, Forest Service: I could respond to that question if you would like? I am in charge of the group that is working on filing water rights for the Forest Service underneath the adjudication.

We have a section in the office set aside where we work in and we are actively collecting data and preparing to file claims in the Oregon Water Rights Adjudication Project. That is what we do, but other than that, I don't know where all the other rumors come from. We do have have a sound proof room. We have an office that is set aside from the Winema National Forest office itself.

Q: Taylor: So there is some truth to the rumor, that something is going on?

A: Ford: Yes, the Forest Service will file a claim.

Marbut: Let me point out one thing that I hope will help everyone here and that is, once claims are filed, they are public record and we don't hide anything. We are very persnickety about who gets to fiddle around in the claims because they are the only thing, also there will be a major open inspection period for everybody to view everybody else's claims. When that is all done, depending upon the magnitude of the files, etc., we might want to hold that in Salem. I hate to do that to folks, but I am going to have file cabinets full of claims. For instance, the Forest Service at one point was talking about many thousands of claims, road water, etc., and so depending upon the size of those files, I might ask folks (unfortunately) to come to Salem. We want open inspection to be here in the Basin, right here in Klamath Falls, but again the claims are too precious. They just have to be guarded and I just don't want anything to happen to them like an auto wreck or something on the way down here because they are one of a kind. However, we will make them available for inspection.

Hall: Thank you, Mr. Marbut.

**Agenda Item #25: Task Force discussion.**

Deleted

**Agenda Item #26. Public comment.**

Deleted

**Agenda Item #27: Action: TF recommendation on KPOP.**

Deleted

**Agenda Item #28: Summary and action.**

The next meeting is June 4-5 1996; the October meeting will be in Brookings on the 10th and 11th, 1996.

**Adjourn**

KLAMATH RIVER BASIN FISHERIES TASK FORCE MEETING  
April 23-24, 1996

**Klamath River Basin Fisheries Task Force Members Present:**

Kent Bulfinch	California In-River Sport Fishing Community
Jim Bybee	National Marine Fisheries Service
Clancy Dutra	Siskiyou County
Mitch Farro	Humboldt County
Dale Webster	Yurok Tribe
Dale Hall	U. S. Department of the Interior
Leaf Hillman	Karuk Tribe
Craig Bienz/Elwood Miller	Klamath Tribe
Al Olson	U.S. Forest Service
Mike Orcutt	Hoopa Indian Tribe
Michael Rode	California Department of Fish and Game
Nat Bingham	California Commercial Salmon Fishing Industry
Cliffon McMillin	Klamath County
Keith Wilkinson	Oregon Department of Fish and Wildlife

**Attendees:**

Sharon Campbell	National Biological Service
Joan Smith	Siskiyou County, Supervisor Elect
Craig Bienz	Natural Resources Dept., Klamath Tribe
Rob Beachler	Klamath Technical Work Group
Marshal Stauton	Tulelake Farmer
John Crawford	Klamath Basin Water Users
Nancy Huffman	Modoc County
George (Judd) Ellinwood	Pacific Coast Federation of Fisherman's Association
Dick Ford	US Forest Service
Alice Kilham	Klamath Compact
Dorothy Kandra	Women for Ag, Klamath County
Bruce Halstead	U. S. Fish and Wildlife Service - Arcata
Steve Lewis	U. S. Fish and wildlife Service - Klamath Falls
Bill Bennett	Department of Water Resources
John Bartholow	National Biological Service
Bud Ullman	Local Farmer
David King	Tulelake Grower's Association
Bob Byrne	Local Farmer
Gary Baker	Bureau of Reclamation

Doug Tedrick  
James Ottoman  
Don Douglas  
Rod Kucera  
Tom Shaw  
Berton Lee Lamb  
Dan Gale  
Roy Hall  
Dave Robertson  
Earl Danosky  
Mike Green  
Todd Kepple  
Del Sparks  
Glen Spain  
Mike Ryan  
Mary Taylor  
Ted Lincoln  
Ron Iverson  
Darla Eastman  
John Hamilton  
Jim Waldvogel  
Dave Zeponi  
Frank Shrier

Bureau of Indian Affairs  
Shasta View  
Langell Valley Irrigation District  
Klamath County Board of Commissioners  
U. S. Fish and Wildlife Service  
National Biological Service  
Yurok Tribe  
Shasta and Upper Klamath  
Senator Hatfield's Office  
Tulelake Irrigation Districe  
Bureau of Reclamation  
Herald and News  
Department of Water Resources  
Pacific Coast Federation of Fisherman's Association  
Bueau of Reclamation  
Farmer  
Farmer  
U. S. Fish and Wildlife Service  
U. S. Fish and Wildlife Service  
U. S. Fish and Wildlife Service  
Klamath River Task Force/Technical Work Group  
Klamath Water Users Association  
Pacific Power & Light

FINAL AGENDA FOR THE KLAMATH TASK FORCE MEETING  
KLAMATH FALLS, OREGON  
April 23-24, 1996

April 23

9:00 AM

Convene

1. Opening remarks. Welcome to Cliff McMillan, new Klamath County representative.

9:15

2. Adoption of agenda and minutes from the November 1995 meeting

9:30

3. Brief review of last meeting/general correspondence

9:45

4. Update on ecosystem restoration issues before Congress (Dave Robertson, Senator Hatfield's office)

10:15

5. Status of lake levels, flows, and forecast by U.S. Bureau of Reclamation (Jim Bryant)

10:30

6. CDFG report on 1995 river escapement and 1996 abundance forecast (Rode)

10:45

Break

11:00

7. NBS jurisdictional analysis (NBS/Lee Lamb)

11:30

29. Report of the Klamath Compact Commission (Commission members)

11:45

8. New realities for the TF (Hall)

A. Need to work within the limitations of \$320k budget for KRFWO

B. Frequency of TF/TWG meetings

C. Reauthorization of Trinity Restoration program and their charge to restore Lower Klamath River - what it could mean for KRBFTF program

D. Appointment by Chair of Committee to work on Mid-Program Evaluation and need for funding (Wilkinson)

E. Need to discuss new TF Priorities within above limitations

30. Private landowner Award

12:30 PM

Lunch

- 1:30
9. Proposed revision of request for proposals and proposal ranking process
- A. Recommendation (Ellinwood)
- B. Schedule/time line for a revised RFP(Hamilton)
- 2:30
10. TF discussion
- 3:00
11. Public comment
- 3:15
12. Action: TF decision on new priorities and revision of RFP (#8 and 9 above)
- 3:45
13. Budget shortfall for FY96 projects (Hall)
- A. Obligations to flow study, gages, CRMPs, and other FY96 projects
- B. Remaining FY96 budget and Staff recommendations/options for which other projects should be funded.
- 4:15
14. Task Force discussion on budget shortfall
- 5:00
15. Public comment on budget shortfall
- 5:30
16. TF decision on priorities for FY96 \$\$
- 6:00
- Recess**
- April 24
- 8:00 AM
- Reconvene
- 8:15
17. Upper Basin Amendment final recommendation - (Upper Basin Amendment Ad-Hoc Committee, Keith Wilkinson)
- 8:45
18. Task Force discussion
- 9:30
19. Public comment
- 10:00
- Break**
- 10:15
20. Action: TF decision on whether or how to proceed with Upper Basin Amendment
- 11:00
21. Review of flow related correspondence and Chair's position (Hall)
- 11:15
22. Brief Technical Work Group (TWG) update on Phase II, instream flow study, water quantity model and agreement with NBS(Bienz/Campbell)
- 11:45
23. TWG recommendation to TF on Klamath Project Operation Plan (Bienz)

12:00

24. Oregon Attorney General opinion on Klamath Project water allocation ( Reed Marbut, Oregon Department of Water Resources)

12:30

**Lunch**

1:30

25. Task Force discussion

2:15

26. Public comment

2:45

27. Action: TF recommendation on KPOP

3:30

28. Summary and action - decide on date, location, and agenda for the next meeting (the June 4-5 1996 meeting date agreed to last meeting is now out of sync with any RFP review or budget decisions)

3:40 PM

**Adjourn**

\*\*\*\*\*  
Task Force Meeting Handouts  
April 23-24, 1996 (Revision of 4-17-96)

- Agendum #3
- A. Letter appointing Dale Hall TF Chair
  - B. Letter to Fults in support of KRIS
  - C. Letter from Brian Helsaple
  - D. Letter from Frampton to Bingham and Statement re CVPIA amendment
  - E. Matheson letter
- Agendum #6
- A. Megatable and ocean harvest data
  - B. 1996 abundance forecast
- Agendum #7
- Letter from John Leshy, Solicitor NBS Jurisdictional Analysis (Lamb)
- Agendum #29
- Draft proposal from Klamath Compact Commission
- Agendum #9
- Recommended Revision of Request for Proposals and proposal ranking process
- Agendum #21
- A. Letter from Cooley/Herger
  - B. Response from Regional Director Spear
  - C. Letter of support for flow study from Sierra Club Legal Defense Fund
  - D. Letter of support for MOU from NMFS
  - E. Letter to DeSouza from Hall
  - F. Copy of Signed MOU with NBS
  - G. Memo to KRFWO re Role of NBS
  - H. Errata letter NBS
  - I. Letter from Keith Marine
- Agendum #24
- Oregon Attorney General Opinion

TASK FORCE MEETING HANDOUTS  
April 23-24, 1996

- Agendum #3 Handout A Letter appointing Dale Hall as the Klamath River Basin Task Force Chairman
- Agendum #3 Handout B Letter to Fults in support of KRIS
- Agendum #3 Handout C Letter from Brian Helsaple
- Agendum #3 Handout D Letter from George Frampton, Jr., to Nathaniel Bingham and statement regarding CVPIA amendment
- Agendum #3 Handout E Letter from H. G. Mattheson regarding fish screen
- Agendum #4 Handout F Bill from Senator Hatfield's office - Hatfield to Introduce the Oregon Resources Conservation Act
- Agendum #5 Handout G Upper Klamath Current Operations form Jim Bryant
- Agendum #6 Handout H Klamath Basin FMC Chinook Salmon Run Size In-river harvest, and Spawner Escapement -- 1995 Season
- Agendum #6 Handout I 1996 Pre-season stock abundance analysis for FY96
- Agendum #7 Handout J Diagram from Lee Lamb regarding the Broker, Guardian, Arbitrator and the Advocate
- Agendum #7 Handout K John Leshy, Solicitor NBS Jurisdictional Analysis (Lamb)
- Agendum #8 Handout L Memo to Task Force members from Dale Hall regarding appointment of a 5-year program review RFP committee
- Agendum #8 Handout M KRBFTF Evaluation RFP Paradigm
- Agendum #8 Handout N PCFFA desiderata for 5-year program review of the Klamath Act
- Agendum #9 Handout O Recommended revisions of the request for proposals (RFP) process
- Agendum #9 Handout P Klamath River Restoration Program. Recommended prioritization for FY 1996 Funding, in Descending Order
- Agendum #13 Handout Q FY 1996 KRBFTF Proposals

Agendum #13 Handout R FY 1996 Workplan

Agendum #21 Handout S Letter from Cooley/Herger

Agendum #21 Handout T Response from Regional Office

Agendum #21 Handout U Letter of support for flow study from Sierra Club Legal Defense Fund, Inc.

Agendum #21 Handout V Letter of support for MOU from NMFS

Agendum #22 Handout W Letter to Desouza from Dale Hall

Agendum #22 Handout X Copy of signed MOU

Agendum #22 Handout Y Letter to Dale Hall from NRS

Agendum #22 Handout Z Errata letter NBS

Agendum #22 Handout AA Memo regarding NBS role and activities in the Phase II Flow Studies

Agendum #22 Handout BB Draft Strategic Plan from NBS

Agendum #22 Handout CC Draft Research Study Plan from NBS

Agendum #24 Handout DD Memorandum from Governor John Kitzhaber - Update

Agendum #24 Handout EE Letter from Pagel to Oregon Department of Justice

Agendum #29 Handout FF Klamath Compact Commission - Discussion Draft

S:\TFFILE\MTG-MIN\FEBRUARY\TF423.96