

## **Excerpts from the Final Management Committee Meeting Minutes:**

**March 13, 2013**

*Excerpt from pages 9-11:*

### *Fish Capturing Facilities Operations, Development and Testing*

DosSantos reviewed the Fish Capturing Facilities Operations, Development and Testing Proposal. Final designs for the Cabinet Gorge Fish Passage Facility (CGFPF) were approved by the DRT. Avista will continue to work with MRL on upgrading the existing railroad crossing and obtain required permits and create a construction contract for the CGFPF. A FERC license amendment is required which involves a Biological Evaluation, Biological Analysis and Biological Opinion (BiOp) and the NEPA process. DosSantos noted the last two bullets in the Appendix C main AIP will be omitted in future years AIPs.

Bruce Sorensen provided a PowerPoint presentation on the Cabinet Gorge Dam Fish Handling Facility (CGFHF) and reviewed the existing facility components. He stated the 100% design was completed in January and approved by the DRT members. The enhanced facility will be built on the existing raceways and will utilize the existing footings and concrete. The new components include a river water supply line, aeration columns, several holding tanks, a sorting table and fish return pipe (plumbed with river water). The DRT created a contingency plan in case of disease outbreak in the hatchery. An access road will be tied into the existing MRL road to avoid possible contamination issues with the existing hatchery.

Swant noted the MC and DRT members previously discussed constructing the facility independently of the CGFPF. Robin Bekkedahl is working with the CRMG and recently submitted the Joint Application Permit. Final design is complete and Avista will continue to obtain permits, if approved today. Construction is anticipated to start in the mid-late summer for a 3-4 month period.

Sorensen provided a PowerPoint presentation on the Cabinet Gorge Dam Fish Passage Facility, noting that 100% design was also completed in January and approved by the DRT members. The design consists of an entrance pool with entrances from the tailrace on the east, north and west sides, sixteen step pools (each with a one foot drop) up to a holding pool, where fish will be crowded and captured in a hopper and elevated to the top of the dam thrust block via a hoist and monorail and loaded into the transport truck. Fish would then be transported to the CGFHF approximately one mile downstream.

Avista anticipates completing all project documents including permits, construction contracts and hopes have all paperwork in place by the end of this year. A contractor could then be selected and construction would then commence post-spill 2014 (summer). If the weather and spill season cooperate, the facility would be completed and in service by early 2016. Field work for 2013 includes final bathymetry work to verify tailrace elevations and we will be requesting 3,000 cfs flow for a two-day window in August.

Bodurtha asked how many personnel will be needed to run the facility. Swant replied at a minimum it will take two people to run the crowder, hopper and transport the fish to the CGFHF.

Bodurtha asked all year. Swant replied it will probably be run similar to the waterfall trap April – October seven days a week, but the amount of time staff will spend on the trap each day depends on catch rates.

DosSantos noted a minor date edit to the Appendix C AIP (page 4) number 7.

Swant noted that the Cabinet Gorge Fish Passage Facility Basic Monitoring Plan (BMP) sent to the MC members in advance of the meeting. The BMP was approved by the DRT members and outlines the future management for the facility. In addition, draft approval language was sent out that is essential to the approval of the Cabinet Gorge Fish Passage Facility (CGFPF), since the facility will be a significant investment. There are four major components to the CGFPF: 1) the final design 2) Basic Monitoring Plan 3) transport protocol and 4) approval language. Avista did not anticipate the approval language to be controversial and sent the document to IDFG, MFWP and USFWS for review. IDFG and USFWS provided feedback as well. However, since there are pending issues with the approval language and the transport protocol Swant proposed tabling the document for 14 days and schedule a conference call with the MC members to resolve the pending issues. Swant proposed approving the majority of Appendix C and approve the bull trout transport protocol contingent upon an MFWP exemption / permit or resolution that allows Avista to transport bull trout in 2013.

Bodurtha commented the MC members approved 70% design for CGFPF at the September 2012 meeting with the expectation of approving 100% design today. The USFWS is surprised that 100% design approval requires approval language by Avista. The USFWS reviewed the document internally and provided Avista assurances that were needed and offered alternative language. The USFWS will continue to review the language and seek a resolution. The MC members signed the Clark Fork Settlement Agreement and Native Salmonid Restoration Plan and the DRT members worked on the designs for two years. It appears the approval language is a departure from the collaborative process. Bodurtha asked if there were any design or technical issues that need to be addressed; if there are none then the USFWS will continue to work on the approval language. Swant noted the only design issue he is aware of is that the CGFPF is designed to operate at 3,000 cfs minimum flow and the USFWS needs to go through the consultation process prior to approving 3,000 cfs minimum flow. There is significant cost with excavating additional bedrock for the CGFPF for the 3,000 cfs minimum flow. Sorensen noted the design criteria included a minimum flow of 3,000 cfs with the expectation that the trap would be run at that level. Bruce Howard stated Avista cannot justify to the rate payers in two states the added expense of construction if it will not be utilized.

Swant noted the change in minimum flow will not be approved today and the MC members will have further discussion at the upcoming conference call. Ferguson asked what entity is objecting to reducing the minimum flow. Swant replied the USFWS informed Avista that they need to consult on this issue and according to the existing BiOp term 4b Avista needs written authority from the USFWS for approval. DosSantos stated critical habitat was designated after the BiOp was written and the USFWS is following their procedural process. Bodurtha stated the USFWS anticipated a vote on final design for the CGFPF; however this cannot happen because of the approval language and the unknowns associated with the transport program.

Swant asked the MC members if there were any other questions on Appendix C. Swant proposed tabling the four pending issues until the upcoming MC conference call. Swant noted Appendix C contains five major components and the MC members agreed to approve individual sections of Appendix C and others with a contingency.

#### Fish Capturing Facilities Operations, Development and Testing

Swant suggested approving all of the activities presented under the Fish Capturing Facilities Operation, Development and Testing study plan except for the four unresolved issues that will be resolved at the upcoming MC meeting conference call [1) CGFPF final design 2) Basic Monitoring Plan 3) transport protocol and 4) approval language].

***Consensus approval of the 2013 Appendix C Fish Capturing Facilities Operation, Development and Testing study plan except for the four unresolved issues that will be resolved at the upcoming MC meeting conference call [1) CGFPF final design 2) Basic Monitoring Plan 3) transport protocol and 4) approval language].***

#### **April 2, 2013**

***Excerpt from pages 1-7:***

#### Appendix T - Project Operations Package

DosSantos explained the Appendix T Annual Implementation Plan (AIP) was discussed at the March MC meeting. Afterwards, DosSantos provided edits (in track changes) to the AIP as mentioned in the MC meeting. The edits include returning to the 3,000 cfs minimum flow, which is pending USFWS approval as per the Terms and Conditions 4b of the 1999 Biological Opinion for the Clark Fork Project. The Appendix T 2013 Actions, Tasks and Decisions were modified to maintain the 5,000 cfs minimum flow and the feasibility analysis for future mitigation concepts are also pending the outcome of the USFWS consultation process. The USFWS consultation process is currently underway.

Bodurtha noted the revised language in the AIP states pending USFWS approval. The feasibility analysis is designed to address recreational fisheries and Bodurtha asked what about the feasibility analysis to address the impact of changing the minimum flow from 5,000 cfs to 3,000 cfs to bull trout habitat, should the feasibility analysis be revised to include the impacts to bull trout habitat. Swant replied no, this was discussed with Fredenberg recently and the impacts to bull trout habitat will be addressed under the consultation process. The Appendix T feasibility analysis is for future mitigation concepts designed to address the potential loss in the recreational fishery in Idaho associated with the reduction in minimum flow to 3,000 cfs. Bodurtha clarified prior to reducing the flow from 5,000 cfs to 3,000 cfs, Avista will provide an impact analysis on bull trout habitat as part of the consultation process. Swant replied yes, last week Avista met with Fredenberg and provided a significant amount of data and additional data will be provided.

***Consensus approval of Appendix T 2013 AIP as modified.***

#### Appendix C - Fish Passage/Native Salmonid Restoration Plan

### Upstream Fish Passage Studies

DosSantos reviewed at the March MC meeting and the members discussed MFWP request for species specific (bull trout) pathogen testing in order to continue facilitating the upstream fish passage program. The MC members approved the upstream fish passage program contingent upon resolution of the bull trout pathogen testing issue. As of today there is no resolution on the bull trout pathogen issue and the involved stakeholders will continue to work towards a resolution. There are other activities associated with the upstream fish passage program and DosSantos would like to assure MC approval of the upstream fish passage program activities, except for the capture and transport of adult bull trout until resolution is reached on bull trout pathogen sampling. Swant clarified the proposed request is to seek MC approval of the upstream fish passage program activities that are not related to bull trout pathogen sampling and to conditionally approve those related to bull trout pathogen sampling.

Jim Vashro explained the State of Montana denied Avista's fish import permit application based on Montana's statute on pathogens, since infectious pancreatic necrosis (IPN) was recently discovered in Idaho. MFWP is working on allowing for species specific (bull trout) pathogen testing and if the results come back negative then MFWP will issue Avista an import permit. Vashro, Jim Fredericks and state pathologists (from Montana and Idaho) are working out the logistics to utilize bull trout captured as by catch through the LPO Trap and Gill Net Program for pathogen testing; and anticipates completing the testing of 60 bull trout within the month. Vashro noted at the MC meeting the members discussed a provisional MFWP fish transport permit; however, the Montana state statute will not allow a provisional fish import permit, the only exception is for egg born diseases. A letter is in the mail to Avista from MFWP. Vashro stated there are two options in past years spring captures of adult bull trout (n=6): 1) Conduct adult bull trout capture activities and hold them until an import permit is issued; 2) USFWS intervenes through FERC and mandates the upstream transport of adult bull trout. For 10 years prior to applying for an import permit Avista provided upstream transport of adult bull trout under the USFWS or FERC authority. DosSantos replied holding adult bull trout for two to three weeks is not an option and it is not appropriate for Avista to move forward with activities without the appropriate permits. Swant concurred and stated Avista cannot voluntarily violate a state law. Vashro apologized for the late response on the import permit application; MFWP realized the error last year.

Roslak asked if bull trout test positive for a pathogen, will MFWP issue Avista an import permit. Vashro replied no. Roslak stated adult bull trout were transported upstream in previous years and the pathogen could be present in Montana. Vashro replied the next 5-year pathogen survey is scheduled and the last survey IPN was discovered in brook trout from a tributary in Idaho. The Montana statute requires negative pathogen sampling for five specific pathogens prior to issuing a fish import permit. Roslak asked how long the permit will be valid for. Vashro replied one year, we are trying to finesse the sampling by including species specific pathogen testing since they are less susceptible to pathogens; it does not matter if the upstream source populations test positive for pathogens. IPN was found over 20 years ago in the Flathead area and Les Evarts will conduct pathogen testing to investigate further, but the upstream source does not matter to a pathologist.

Corsi suggested releasing fish that genetically assign to the Cabinet Gorge Reservoir in the Idaho portion of the reservoir. Vashro replied that is not in the spirit of the Montana statute or fish passage and if you can guarantee they will not swim into Montana waters. Evarts stated the Montana statute does not apply to this case, but instead applies to the transfer of pathogens between hatcheries and IPN is known to occur above and below Cabinet Gorge Dam. Evarts asked if a statute is invalid can it be modified. Vashro replied yes, a statute could be modified by legislative review which is two years out. Evarts noted this is something to think about since the Cabinet Gorge Fish Passage Facility construction is anticipated in a few years and the duration of Avista's FERC license. Vashro stated there is no proof that IPN is located above Cabinet Gorge Dam and the 5-year pathogen testing plan will be modified to reflect ongoing testing.

Cox asked since upstream transport of adult bull trout will not be permitted until after negative pathogen testing, will the downstream transport of juvenile bull trout cease as well. DosSantos replied that was discussed at the March MC meeting and the opinion at that time was that juvenile bull trout that are transported in 2013 would not return for at least three years and hopefully the pathogen testing issue will be resolved by then. Cox suggested suspending the downstream transport of juvenile bull trout until MFWP issues Avista a fish import permit. Vashro hopes to have the pathogen testing issue resolved in approximately 30 days. Corsi stated Idaho and Montana are committed to the assessment of fish health and prefers a long term solution and assumes there will be a resolution.

Bodurtha asked Vashro if bacterial kidney disease (BKD) is one of the five pathogens Montana is concerned with. If the common pathogens are present in bull trout it will not matter because MFWP cannot permit passage of these wild fish into Montana according to Montana statute. However, Vashro replied since BKD is a relatively common pathogen there are exceptions under the state statute. Bodurtha requested a written explanation from MFWP to document how the state statute applies to passage of wild fish. This raises a USFWS legal opinion on the statute and may require further investigation. The intent is to implement passage programs, which have been implemented for 10-12 years and continue providing downstream transport of juvenile bull trout and upstream passage for adult bull trout. The USFWS is concerned that the state statute is being applied and confronts an endangered species issue and conflicts with the Biological Opinion (BiOp) and Native Salmonid Restoration Plan (NSRP) which puts Avista in a compromising position between federal and state laws. In previous years unresolved issues were forwarded to FERC and a FERC Order was issued. Bodurtha will make time prior to April 15<sup>th</sup> to meet with MFWP and investigate the issue further. Vashro will pass along the invitation and again noted that BKD is one of the five pathogens that Montana is concerned with.

Swant complimented DosSantos, Fredericks, Vashro and Fredenberg for diligently working on alternatives to the upstream fish passage program pathogen issue in a timely manner. Swant reviewed there is an additional cost of \$15,000 associated with the 2013 pathogen testing which was not originally included in the Appendix C AIP.

Bodurtha noted that BKD is a common pathogen and would not be surprised if bull trout tested positive for the pathogen. Bodurtha requested further information on the Montana statute exemption process. Bodurtha expressed concern with revisiting the pathogen testing and import

permits on an annual basis and would like to find a long-term solution. We need to devise a comprehensive long-term solution for pathogen testing within the system; previously Vashro expressed concern with passing adult bull trout over Albeni Falls Dam which will need to be discussed in the future as well. Vashro noted BKD was not discovered in the last 5-year pathogen samples, and it depends on the type of pathogen sampling protocols that are used.

Swant proposed to approve all activities under the Upstream Fish Passage Studies with the addition of \$15,000 for pathogen sampling, except for the capture and transport of adult bull trout; once the pathogen testing issue is resolved commence the capture and transport portion of the study plan.

Bodurtha asked if the proposal is approved, how would the capture and transport portion be approved, through another conference call or consent mail. Swant replied to keep it on a timely schedule instead of a consent mail or conference call, once the pathogen issue is resolved within 30 days assuming negative pathogen testing results and a Montana fish import permit is issued, then the capture and transport of adult bull trout would begin. The pathogen test results will come in sporadically and if the results appear to be positive for pathogens then the key agencies and Avista will reconvene. Roslak asked if the Montana fish import permit is not issued would the funding be held on the fishway construction. Swant stated that is an issue that will need a long-term solution for and relates to the next topic, the facilities packet. Roslak stated a long-term solution is needed prior to requesting the rate payers to pay for construction of a facility and if the annual discussions are needed that is a lot of funding. Bodurtha noted the upstream fish passage program has successfully passed over 400 adult bull trout upstream into Montana, the bull trout recovery efforts that Avista is implementing is working well and the goal of the fish passage facility is to provide upstream passage for adult fish. The DRT members worked on the design over the past two years and approved 100% design and the M&E Plan in January. The MC members previously approved 70% design and we have waited over a decade to get to this point, we need a long term solution so the facility can operate, instead of turning it off/on annually. Bodurtha is confident that it will be a good fish passage facility and capture bull trout and facilitate the upstream transport of adult bull trout into Montana. Roslak noted if Montana denied a permit would another permit be issued if a pathogen is discovered. Vashro assumes so, but will forward the question to the state pathologist. In the past when pathogens were discovered in hatcheries they were quarantined, and after negative pathogen testing they were reopened.

Swant stated the big question is a legal one; if a state permit is denied we still need to address federal ESA and bull trout recovery regulations. In the past, MC members have been extremely successful in staying out of the legal realm and the goal today is to approve the 2013 Upstream Fish Passage Program activities. The next topic will be the fish passage packet; there are rate payers to answer to, but the stakeholders have 2013 to devise a long-term solution. Vashro noted that Idaho requires a fish import permit to transport juvenile bull trout downstream and the pathogen testing for Montana fish was negative.

Swant sought consensus approval of the 2013 Upstream Fish passage Program activities and the addition of \$15,000 for pathogen testing, conditioning the approval of the capture and transport of adult bull trout until resolution is reached on the bull trout pathogen sampling issue.

***Consensus approval of the 2013 Appendix C Upstream Fish Passage study plan with the addition of \$15,000 for pathogen testing contingent upon the State of Montana's approval of bull trout pathogen testing.***

#### Fish Capturing Facilities Operations, Development and Testing

Swant reviewed at the March MC meeting the members discussed and approved all of the activities under the Fish Capturing Facilities Operation, Development Testing study plan except for the four components outlined in the fish passage packet (1) Cabinet Gorge Fish Passage Facility (CGFPF) design (2) Basic Monitoring Plan (BMP) (3) Transport Program (assuming the pathogen issue was approved) and (4) Approval Language.

Swant received and incorporated edits from the USFWS and IDFG on the approval language.

Bodurtha approves of the language, except for the last statement: MC previously approved design, construction and operation and maintenance of permanent facilities. The USFWS cannot approve the language until the document is changed. DosSantos replied at the 2003 subcommittee meeting the members drafted language to utilize the facility fund. In 2003, Avista implemented a variety of experimental projects (i.e. genetics, radio telemetry, experimental passage facilities, etc.) and during that time Appendix C operation funds were overspent, so the changes that were made reflected the experimental activities which do not fall under the definition of a permanent fish passage facility. At that time the thought was to supplement the operation and maintenance fund to accommodate those efforts and obtain the necessary information to move forward with a permanent fish passage facility. Bodurtha replied the intent of the Clark Fork Settlement Agreement (CFSA) is to provide two separate funds and to cover the Native Salmonid Restoration Plan (NSRP) activities. If the annual expenditures from annual operations exceed the amount of Appendix C, then the facility fund budget is used to cover the additional costs, but it doesn't work both ways. Bodurtha stated operation funds are still needed to implement the NSRP and the CFSA language is clear. The USFWS solicitors do not agree with the approval language. DosSantos stated to move forward with implementation of Appendix C and construction of permanent fish passage facilities there are costs associated with implementation of those facilities and Appendix C is focused on the operation and maintenance of those facilities.

Bodurtha is trying to establish the CFSA language there was an understanding that annual funding would be provided for the permanent fish passage facility fund and stated the fund will be used for design, construction, operations and maintenance; any overages will be covered by Avista.

Swant disagreed stating the CFSA language is clear the facility fund is to be used for the design and construction of permanent facilities Avista has gone above and beyond the activities originally agreed to in the CFSA and is not willing to create a third fund. The annual operation fund in Appendix C has carryover in excess of \$2 million unexpended funds. The intent of the annual operation fund is to mitigate for ongoing impacts to bull trout.

Swant asked the MC members if there were any additional comments on the approval language. The MC members had no additional comments. Swant stated there is non-consensus of the MC members and according to Paragraph 28 of the CFSA a vote will take place. Bodurtha requested approving individual sections of the fish passage packet. Swant is not authorized to parse out the fish passage packet; this is a package deal to Avista. Bodurtha stated the MC members previously approved the 70% design and would like to vote to approve 100% design and the BMP. Swant replied we cannot do that, the issue is the interpretation of the CFSA and asking Avista to spend millions of dollars for a facility will need all parties to be clear on where the operation dollars will come from. Avista needs to justify these expenditures to the ratepayers. Bodurtha replied the operations and maintenance costs associated with the facilities is a big expense, but so are the significant damages to the resources of Montana and the cost to mitigation debt and should still be approved. Swant clarified this is a CFSA interpretation issue.

Swant requested the MC members vote to approve the fish passage packet.

Les Evarts: stated he felt unqualified to render opinion on CFSA interpretation and abstained from the vote.

Kathy Ferguson: Yes

Chip Corsi: Yes

Jim Vashro: Yes

Tim Bodurtha: No

Tom Herron: Yes

John Gubel: Yes

Mike Miller: Yes

Tony Cox: Yes

Ryan Roslak: Yes

Amy Groen: Yes

Tim Swant: Yes

Swant thanked everyone for participating. A pathogen update will be sent out and Avista and USFWS will work together on the approval language issue.

### **October 1, 2013**

#### ***Excerpt from pages 8-9:***

The pathogen/policy issue was discussed at the March MC meeting: MFWP requires disease free health certification prior to permitting interstate transport of BLT. In the spring, Avista collected 60 BLT samples from the LPO trap and gill net program bycatch and tributary electrofishing. During that time three BLT were eligible for upstream transport but were released onsite below CGD. MFWP issued a transport permit after the lab tested the samples, in which all BLT were disease free. A meeting was held on August 1 to continue discussions and logistics; IDFG noted that the LPO trap and gill net program would be scaling back efforts in the near future. Pathogen samples were collected this fall from the LPO trap and gill net program bycatch and will resume after the government shutdown is over. These fall pathogen samples will go towards the requirements for disease free BLT certification for the 2014 import permit. Non-lethal pathogen sample techniques were also tested for pancreatic necrosis with favorable results.



It was agreed that pathogen sampling for westslope cutthroat trout (WCT) would begin in this fall below CGD. This will be a three year survey (2013-2015) and can include 30 WCT and 30 surrogate species. Afterwards, if the samples are disease free, then experimental passage of WCT will be initiated in 2016. Breidinger noted the proposal has not been formally accepted by MFWP and is included in their draft Position Paper, MFWP hopes to finalize the paper soon. Albright asked will annual pathogen samples need to be collected after the initial three year survey. Breidinger replied yes, according to the existing MFWP statute.

Albright stated it seems counterproductive to pass 40 BLT over the dam and kill 60 BLT for annual pathogen samples. Swant replied the August pathogen/policy meeting was held to discuss sampling logistics and modifications to the existing state statute. The group recognized that the LPO trap and gill net program will be scaling back efforts in the near-term and that CGD is physically located in Idaho. Discussions continue between agencies and legal counsel to address how to move forward with pathogen sampling (sample size, frequency of testing, surrogate species and non-lethal sampling).

***Excerpt from pages 10-11:***

Final designs and fine scale bathymetry mapping were completed for the Cabinet Gorge Fish Passage Facility (CGFPF). Construction of the distribution line and railroad crossing are anticipated to start this fall.

Swant provided an update on three pending issues that were discussed at the March MC meeting: 1) pathogen/policy issue, 2) CGD minimum flow, and 3) CGFPF annual operations funding. The pending issues need to be resolved prior to moving forward with the Biological Evaluation for the CGFPF and FERC amendment process.

The pathogen/policy issue was discussed in August and the state of Montana made it clear they would like to maintain a barrier to prevent the upstream passage of pathogens. The group discussed using Noxon Rapids Dam as a barrier until there was some assurance that pathogens would not be passed upstream, or until adequate non-lethal pathogen testing is established; it was agreed that construction of the Noxon Rapids Fish Passage Facility would be put on hold and reevaluated at a 5-year period. Avista wants assurance that the CGFPF will be operated and not be shut down due to pathogen concerns. Interpretations of the Montana statute varies and legal counsels are working on alternative wording and solutions to the pathogen/policy issue. Once a solution is agreed upon by the agencies it will be forwarded to the MC for review/approval. Mauser asked how this affects construction of the CGFPF and what if it does not capture fish. Swant replied the TAC is comfortable with the design and are confident the facility will be successful. Mauser asked how Avista will meet mitigation obligations if the CGFPF is shut down. Swant replied if the CGFPF is shut down because of a pathogen concern Avista would not be required to go above and beyond that for mitigation. According to the Joint Agreement and the Native Salmonid Restoration Plan success is defined as capturing native salmonids (bull trout, westslope cutthroat trout and mountain whitefish).

Swant explained the signatory parties of the CFSA agreed to a minimum flow of 5 kcfs below CGD and to evaluate the change in minimum flow (from 3 kcfs to 5 kcfs) to determine if the change was warranted. The 10-year study was underway during the design process for the

CGFPF, which includes a minimum operating flow of 3kcfs. Design for the CGFPF at 3 kcfs includes excavating a significant amount of bedrock at the base of CGD. At the fall MC meeting the USFWS objected to the change in minimum flow. Avista provided additional information to the USFWS in July. The USFWS will allow a return to minimum flow of 3 kcfs for all months except for September and October. However, September is a key month to Avista. The two entities met via conference call last week to discuss alternative strategies. Currently Avista is awaiting a response from the USFWS. Roslak asked why September is an important month. Swant replied the USFWS believes downstream tributary traps capture a significant number of juvenile BLT in September and the reduction of flow would create a predator rich environment below CGD. The USFWS proposed conducting a study however; Avista feels the sample size would be too small to draw any definitive conclusions.

Swant reviewed that at their August meeting the members discussed CFSA and FERC license requires Avista to fund and implement Appendix C of the CFSA and the NSRP. Swant stated Avista needs concurrence from the USFWS on how the operation of the CGFPF will be funded. The USFWS believes that other Appendix C projects (in addition to the CGFPF) need to be implemented and funded by Avista, and agreed to provide a list of projects and their estimated cost soon. The group agreed to continue their discussion after the USFWS provides a list of projects and estimated costs that are anticipated for future funding under Appendix C. The CGFPF design and monitoring plan are complete. The BE and FERC license amendment will commence after the three issues are resolved.

### **March 11, 2014**

***Excerpt from pages 7-11:***

#### ***Fish Capturing Facilities Operations, Development and Testing***

Bruce Sorensen provided a PowerPoint presentation on the Cabinet Gorge Fish Handling Facility (CGFHF) and reviewed the existing facility components. Permitting for the construction was completed in August 2013. During the RFP process one contractor (out of five) submitted a bid to construct the CGFHF. The other four contractors did not submit bids because they believed the proposed method of cut and cover excavation and complete dewatering for the river water supply and fish return pipes would be very difficult and cost prohibitive. In fact, the contractor that bid on the project provided an alternative method to install the fish return pipe and two methods for installing the river water supply pipe below the ordinary high water mark. The alternative method was selected and will be less invasive and intrusive to the streambed and shoreline compared to the original method (cut and cover excavation and cofferdam) that was initially permitted. Dewatering the in-stream construction area with a cofferdam was originally proposed and will not be necessary as divers would be utilized to complete the majority of work below the low water level. Sorensen will coordinate with the plant schedulers and operators for going below 5,000 cfs, potentially down to 0 cfs which is similar to the approach used for bathymetric mapping done in August of 2013. Clearing for the new access road was initiated in 2013.

Swant emphasized the initial design that was sent out to bid, four of the five contractors did not bid on the project because of the complexity of the in water work and the cofferdam. The in-

water work was redesigned and is anticipated to be completed post-runoff of this year, the redesign for the in-water work is far less intrusive and does not require a cofferdam. Fredenberg asked if the circular blue tanks used for holding bull trout were removed. Swant replied yes, the blue tanks were removed and are in storage, they can be re-plumbed and used if needed. DosSantos added the contractor is aware of our adult bull trout capture schedule and there will be an area to hold bull trout in mid-April.

Sorensen provided a PowerPoint presentation on the Cabinet Gorge Dam Fish Passage Facility (CGFPF). The design consists of an entrance pool with entrances from the tailrace on the east, north and west sides, sixteen step pools (each with a one foot drop) up to a holding pool, where fish will be crowded and captured in a hopper and elevated to the top of the dam thrust block via a hoist and monorail and loaded into the transport truck. Fish would then be transported to the CGFHF approximately one mile downstream. Permitting and agreements were obtained in 2013 to install a new railroad crossing, power to the site and telecommunication lines. Construction of the distribution line and railroad crossing are anticipated to commence this spring.

Swant noted in addition the State of Idaho approved the water rights for the facility and an amended easement with Idaho Department of Lands was received.

Since the March 2013 meeting IDFG, MFWP, USFWS and Avista continue to work towards a resolution for the three unresolved issues. Swant provided an update on the three pending issues that were discussed at the March 2013 MC Meeting: 1) CGFPF annual operations funding, 2) pathogen/policy issue and 3) CGD minimum flow. The bottom line is that in the interim Avista is doing everything they can to move forward. The permitting timeline will take approximately one year and includes the formal FERC license amendment review period. Avista personnel are currently updating the draft BE components to include 2013 data.

***CGFPF annual operations funding:*** Avista and the USFWS are very close to resolving the CGFPF annual operations fund issue.

***Pathogen issue:*** In 2013, several meetings were held to discuss the pathogen/policy issue. The first meeting was held in August with USFWS, MFWP, Avista and IDFG personnel in attendance. Vashro brought forward the need to amend the Montana Administrative Rules of Montana (ARM). In November, MFWP and USFWS met to discuss changes to the Montana ARM. Breidinger provided an update on the revisions to the Montana ARM and anticipates draft amendments in the spring. The revisions first need to be reviewed by the Commission and a public comment period. Legal counsels are working on alternative wording for the Montana ARM and will not likely include language that is specific to the Lower Clark Fork River. The revisions will also address the use of surrogate species and a hierarchy/categorization for the seven pathogens to categorize the risk. Breidinger encouraged members to comment on the draft Montana ARM once it is released. After the public comment period a final decision will be released in the fall (hopefully).

Albright asked will an annual MFWP import permit still be required for the CGFPF. Breidinger replied yes. Albright asked will that require lethal pathogen sampling. Breidinger replied yes, this year by-catch from the LPO trap and gill net program were used. In the future 60 lake trout

could be supplemented as surrogates with a minimum of 30 bull trout every other year. Albright asked if surrogate species could be used for westslope cutthroat trout pathogen testing. Breidinger explained 30 westslope cutthroat trout, rainbow trout and westslope cutthroat x rainbow trout hybrids annually (unless more are available to use) and the remaining 30 fish could include another salmonid species. If a surrogate is used at least 20 fish from each species would be required even if the overall sample size exceeds 60 fish. Albright asked what if no pathogens are detected for ten years, will annual pathogen testing be required. Breidinger replied yes, annual sampling would still be required, in order to detect any new pathogens. Corsi asked would the annual testing be changed if a pathogen is detected upstream. Breidinger has not seen the draft Montana ARM, and the Fish Health Committee issues the MFWP import permit.

Fredericks asked why the need for three years of westslope cutthroat trout pathogen sampling, if annual pathogen samples still need to be collected. Breidinger replied the initial three years of pathogen sampling is needed to establish a baseline. Roslak asked how much has Avista spent so far on the CGFPF. Swant replied approximately \$4.5 million (not including the railroad crossing or permitting). Roslak stated if the dams were not in place fish would pass naturally from Idaho to Montana. Are there any streams that are both in Idaho and Montana without barriers where fish could pass between states naturally? Breidinger replied West Fork Blue Creek. Roslak asked is there anything stopping those fish from volitional passage between the states. We are asking rate payers to pay millions of dollars to build the CGFPF that could be shut down by pathogens.

Breidinger stated the Montana ARM is in place to protect Montana resources. Jim Satterfield stated it would be good to have the revised Montana ARM for MC review. Once the revisions are complete there will be a public comment period, if the issue is non-controversial a decision notice will be released. MFWP is making a good faith effort at categorizing the list of seven pathogens. Realistically, MFWP cannot abandon pathogen testing. Breidinger understands the LPO trap and gill net program will be scaling back efforts, however, monitoring will likely still occur with hopefully a sufficient number of bull trout by-catch. Fredericks replied there is no assurance that netting will occur on an annual basis during the monitoring period. Breidinger stated pathogen samples will be required for the MFWP import permit.

Corsi appreciates that the revised Montana ARM will provide flexibility needed to move forward, however, encourages MFWP to consider how IDFG handles anadromous fish across multiple jurisdictions and pathogens with no apparent ill effects on wild fish populations. Corsi would like MFWP to consider that as we move forward if no pathogens are detected for several years and the lower portion of the Cabinet Gorge Reservoir is actually in Idaho. Corsi would like to see that Idaho has a voice in fish health decisions. Breidinger responded MFWP is working on finalizing the Draft Decision Paper. Corsi replied no, Idaho cannot get enough anadromous fish and the benefit to the resource outweighs the pathogen risks and would like MFWP to consider what the risks are and know that there are risk models out there.

Ferguson asked why we should spend millions of dollars to build the CGFPF when one pathogen could shut it down, we need assurance this will not happen. Swant stated the MC cannot move forward to build the facility that could be shut down, if the CGFPF is shut down because of a

pathogen concern Avista would not be required to provide additional mitigation. A resolution is needed that allows us all to move forward, recognizing state laws.

DosSantos asked if the annual pathogen sampling for bull and westslope cutthroat trout could be combined with one surrogate species. Breidinger does not think that will work, different species have different susceptibility to pathogens, the surrogates for bull and westslope cutthroat trout will need to be different.

Fredericks stated at the August pathogen/policy meeting it seemed like we were moving forward with assurance for passage at CGD and using Noxon Rapids Dam as a barrier. At that time MFWP was comfortable with that. Technically there is no need for an import permit if fish are passed immediately upstream of CGD, this would provide assurance that the CGFPF would run.

Breidinger does not recall agreement on using Noxon Rapids Dam as a barrier and that is not reflected in the August minutes. Fredericks replied the August meeting minutes captured the discussion and were reviewed by all parties without objection. Breidinger stated CGD is in Idaho; however, it is not desirable to pass fish immediately upstream because of fallback rates.

Albright asked does IDFG have a similar import permit requirement. Fredericks replied yes IDFG has the same process as MFWP. Albright asked what happens if a diseased fish washes downstream. Fredericks replied there is nothing to do; the import permit is intended for aquaculture. Albright asked is it the same for MFWP. Breidinger explained the intent of the MFWP import permit is for all fish imports. Corsi stated IDFG shares MFWP concerns with importing fish from hatcheries and there are some challenging issues, however the approach with migratory fish is different, IDFG is willing to accept more risk in certain places. Breidinger stated MFWP takes pathogen risks very seriously and is working on revisions to the Montana ARM to provide additional flexibility in making decisions for passage.

Breidinger stated at the August pathogen/policy meeting it was decided to revise the Montana ARM; however the revisions take time (coordination of legal counsel review, commission and public process). Fredericks stated now is the time to get the latitude to not do annual sampling for bull trout. Breidinger replied the revised Montana ARM will likely include pathogen sampling for surrogate species (60 lake trout) on an annual basis and bull trout samples every other year.

Swant explained in order to initiate construction of the CGFPF in 2015, resolution of the issues is needed by June 2014. Swant requested MFWP, IDFG, Avista and the USFWS caucus prior to reconvening the meeting after the lunch break.

Swant reconvened the meeting at 1:10pm and reviewed the caucus outcomes including the draft Montana ARM revisions and a secondary agreement outlining what if scenarios. Satterfield contacted MFWP in Helena to expedite revisions to the Montana ARM. MFWP, IDFG, Avista and USFWS agreed to hold three separate meetings, in April, May and June. The first meeting will be to review the draft Montana ARM and reach agreement on the pathogen/policy issue. The other meetings will be held to resolve the Appendix C annual operations funding and minimum flow issues. The goal is to resolve the three issues prior to June so Avista can initiate

the FERC license amendment process. Once the three issues are resolved the MC will reconvene (in person or via conference call) to reach consensus approval. The three unresolved issues do not have direct bearing on 2014 AIP activities that need to be approved today. Roslak asked what happens if an agreement is not reached. Swant replied we need to reach consensus on the entire Cabinet Gorge fishway package. Once resolution is reached Avista can initiate the FERC license amendment process, if all goes well and the Cabinet Gorge fishway package is approved prior to June, construction could commence post runoff 2015.

Swant stated as noted earlier there is a revised budget sheet for Appendix C which was addressed by Heide Evans.

***Consensus approval of Appendix C 2014 AIP and modified budget sheet as recommended by the WRTAC.***

**September 23, 2014**

***Excerpt from pages 10-13:***

DosSantos provided background information on the pathogen issue. Avista, MFWP, IDFG, TU and USFWS held several meetings in 2014 to discuss and resolve pending issues associated with upstream fish passage. An agreement was reached to resolve the pathogen issue that affects upstream transport of BLT and WCT. MFWP requires disease free health certification prior to permitting interstate transport of BLT. MFWP amended their Montana Code Ann. § 87-3-221 (Montana Administrative Rule (ARM Rule)) to provide additional flexibility for issuing import permits. The revisions include provisions for the use of surrogate species and categorization of pathogens (class A and B). Field crews continue to collect BLT by-catch from the LPO trap and gill net program to meet the requirements needed for obtaining a 2015 import permit.

Albright requested a copy of the final ARM Rule. Deleray will send the final ARM rules to the MC members. Roslak asked how pathogen collections will be continued once the LPO suppression program ends. DosSantos replied the revised ARM Rule allow for the use of surrogate species every other year and coordination with derbies as well to collect samples. Roslak asked if non-lethal sampling is an option. DosSantos replied non-lethal sampling was discussed and the American Fisheries Society is in the process of approving a non-lethal approach (gill filament clips) to test for infectious pancreatic necrosis (IPN).

Albright asked how many adult BLT have been transported upstream this year. DosSantos replied 54 adult BLT were transported upstream so far in 2014. Swant clarified provisions are contained in the pathogen language provides for future adaptive management with MFWP blessings. Utilizing surrogate species for BLT pathogen sampling is included in the revised ARM Rule and the scenarios may need to be modified in the future without going through the formal process of revising the ARM Rule. Deleray stated MFWP made significant changes to the import permit process to facilitate the upstream passage of adult BLT. Albright asked why Noxon Rapids Dam will be used as a barrier. Deleray explained the risk of introducing pathogens to upstream Montana waters versus the benefit of conservation actions. Some Montana tributaries contain strong WCT populations and there is risk associated with fish passage. Swant added this is a temporary situation where the WCT populations will be monitored, and then managers can quantify the benefits to the resource. As technology advances

and once non-lethal pathogen testing is approved by the American Fisheries Society then those options can be explored further. Albright asked if there is pathogen testing upstream of Cabinet Gorge Dam. Deleray replied yes. Corsi stated upstream experimental passage of WCT over Cabinet Gorge Dam is a big step in the right direction and Bull River drainage has a strong WCT population. Albright asked if juvenile WCT downstream transport was considered. Deleray has not heard that discussion yet. DosSantos will be sending out the experimental upstream WCT radio telemetry proposal to the AIT members for review and comment. It is similar to the 2001-2004 BLT radio telemetry project.

Sorensen provided a presentation on the Cabinet Gorge Fish Handling Facility (CGFHF). Construction is 75% complete and will be finished by the end of October. The access road was installed, FHF roof was extended and water supply lines were installed. Crews are installing the fish return pipe which will require 0 cfs discharge from Cabinet Gorge for a 4 hour period. Ferguson asked why the CGFHF site was chosen downstream of the Cabinet Gorge Fish Passage Facility (CGFPF). Swant explained there was limited space at the CGFPF site, the preferred site has a cold water source, and locating the facility downstream will make it less likely that non-target species will be recycled through the fishway. The new facility has larger holding capacity and will be used for implanting tags into fish (i.e. radio and PIT tags), pathogen sampling, and short-term holding while awaiting rapid response genetics lab results.

Sorensen provided a presentation on other aspects of the CGFPF that were completed this year including installation of a power supply and telecommunications line to the site. Also, Montana Rail Link installed a railroad crossing with lights and restrictive barrier arms.

Ferguson asked what happens if the CGFPF is not successful at capturing BLT, similar to Thompson Falls FPF, will crews utilize night electrofishing. Swant replied the design review team reviewed radio telemetry data and designed the CGFPF with six different entrances at varying elevations with the flexibility to test a variety of attraction flows. The ultimate goal is to have a functioning and successful fishway. However, if that is not the case the Design Review Team will reconvene to evaluate alternatives. Previous efforts included the waterfall trap, which successfully captured a variety of species including WCT. The Thompson Falls FPF relies on fish that overwinter or fallback into the reservoir and are passing all fish species except walleye and lake trout.

Swant provided a presentation on the CGFPF permitting aspects. The Idaho State Historical Society Section 106 Consultation (CRMG Process) was completed. Avista will still need to go through the formal Section 106 process with FERC and the U.S. Army Corps of Engineers as they cannot be acted upon until there is a formal federal action. An amended easement was obtained from Idaho Department of Lands for an Idaho Lake Encroachment Permit. Idaho Department of Water Resources issued Avista a permit for the fishway to appropriate water. Avista was designated as non-federal representative under the Endangered Species Act and National Historic Preservation Act. This designation is part of the formal FERC license amendment process which allows Avista to consult directly with USFWS, tribes and State Historical Preservation Office on ESA and section 106, removing FERC as the go between and in theory expedites the process; however, FERC is ultimately responsible. At the March 2012 MC meeting the USFWS, IDFG, MFWP, and Avista were directed to resolve the outstanding issues associated with CGFPF and

there was a significant amount of discussion the pathogen/import permit issue. To address this issue MFWP amended their ARM Rule to provide additional flexibility in issuing import permits. MFWP hosted three meeting in Missoula and representatives from the USFWS, IDFG, MFWP, Avista and TU were in attendance. The group reached consensus on how to resolve the pathogen/import permit issues and in August MFWP modified their ARM Rule.

Maroney stated 15 years ago a variety of engaged parties were involved in writing the CFSA, not just the IDFG, USFWS and MFWP; the CFSA was not created in a vacuum. The settlement amendment appears to be a deviation from the original process. Swant explained at the March MC meeting MFWP, IDFG, USFWS and Avista were instructed by the MC to resolve these issues, once an agreement is reached the MC is to reconvene to reach consensus approval. Swant agrees with Maroney and would like the settlement amendment to be reviewed by all involved stakeholders; however, we are waiting on comments from the USFWS.

Maroney asked why a settlement amendment is needed and provided an example from Box Canyon Dam. As MFWP, IDFG, USFWS and Avista worked though this process it became clear to Avista that they the agreements reached on pathogens/import permit as well as on the other remaining unresolved issues on minimum flow, timing for the Noxon Dam FPF, operational funding issue, as well as assurances that if we build this we would not be asked to remove or replace the facility needs to be memorialized. The draft settlement amendment is nine pages and was distributed to the regulatory agencies in early August, there is consensus on language from Montana and Idaho and we are awaiting comments from the USFWS. It has taken six years to design the CGFPF and agreements were reached and included in plans and meeting minutes, however, those agreements were nullified afterwards. For example at the March 2014 MC meeting agreement was reached, afterwards USFWS submitted a letter to FERC stating otherwise. Avista is in the middle between state and federal agencies. Therefore, Avista needs to be assured that what we are agreeing to is approved at the highest level with in the regulatory agencies and parts of this agreement will then be incorporated in to Avista's FERC license amendment application. The CGFPF is the largest project under the CFSA and Avista has spent \$5 million on the project so far, with another \$20 million anticipated for construction. The project design was a collaborative process between several agencies and to move forward with the project consensus approval is needed from the MC representatives. The settlement amendment is intended to memorialize agreements on the unresolved issues and Avista was advised by legal counsel not to move forward with the project without it. Avista needs assurance that if built the CGFPF will be used for its intended purpose through the term of Avista's FERC License. Swant hopes to receive comments from the USFWS soon. Once there is written concurrence from all of the regulatory agencies the draft settlement amendment will be forwarded to the MC members for review and seek approval through the procedures identified in the CFSA paragraph

Swant provided a presentation to illustrate the permitting and construction timeline for the CGFPF. Once the settlement amendment is finalized Avista will initiate the formal permitting process. Swant described the overall permitting process timeline for the CGFPF project. The FERC license amendment is required which involves a Biological Evaluation, Biological Analysis and Biological Opinion (BiOp) and NEPA; this process will take 8-12 months and is dependent on FERC staff availability. Idaho Joint Application for U.S. Army Corps of



Engineers Section 404 Permit will take three to six months for a Nationwide Permit or up to one year if new water quality certifications are needed from the states. Idaho Department of Water Resources stream alteration permit will take three to six months. At the March MC meeting it was stated that if all approvals and agreements were reached by June 2014 than construction could commence in 2015, however, the issues remain unresolved and in-water construction would likely not occur in 2015, but hopefully other aspects of the construction timeline could be initiated next year. Once the construction timeline is initiated the CGFPF would be running by 2018. Ferguson asked what the cofferdam will be used for. Swant replied the CGFPF will be constructed in the tailrace of Cabinet Gorge Dam and will need to be anchored to the bedrock. Excavation of bedrock will require the site to be dry and a cofferdam will be used to dewater the site.

Maroney requested a copy of the draft settlement amendment. Swant replied the settlement amendment will be sent to the MC members once comments are received from the USFWS. Swant added the settlement amendment consists of agreements on each of the unresolved issues that have been reached by Avista and the state and federal agencies at some point during the negotiation process.

Bodurtha stated the draft settlement amendment language was under internal review, and he was unable to provide an anticipated timeline for completion of the internal review process at this time, but offered to keep the parties apprised on progress.

### **March 17, 2015**

#### ***Excerpt from DRAFT Meeting Minutes pages 2-6***

#### **Clark Fork Settlement Agreement Amendment**

Tim Swant explained that during the 2014 March Management Committee meeting a number of issues were discussed regarding the Cabinet Gorge Fish Passage Facility (Fishway). At that time, the MC requested a subcommittee form to work through various issues related to the facility. The subcommittee reached consensus on pathogen testing and passage protocols for westslope cutthroat and bull trout. Avista codified the pathogen protocols and resolution to other Fishway issues in a Clark Fork Settlement Agreement amendment (settlement amendment), which was prepared in consultation with the subcommittee members. (The settlement amendment is nine-pages with the majority of the content focused on pathogens.) Avista, IDFG, and MFWP provided edits and agreed on the contents of the settlement amendment in August 2014. To date, the USFWS has not provided edits/comments on the settlement amendment.

Jodi Bush stated that she was struggling with whether or not the settlement amendment is necessary, but agrees that there is a need to codify the agreements; internally the USFWS has discussed alternatives. Bush suggested the pathogens agreement could be codified by appending it to the NSRP 5-year plan. She also suggested that the MC could make a motion today to implement the 3,000 cfs minimum flow (for all but six weeks from mid September – October) and codify the decision in the Annual Report. Bush stated that the USFWS and other members of the MC have made substantial progress on Fishway design and believe construction planning should move forward in 2015 and codifying that decision in the MC meeting minutes. Bush also stated the MC was close to agreement on the funding issues at the March 2014 MC meeting and there are ways to resolve that issue without the settlement amendment. Bush said that if the MC

members believed a settlement amendment is the best course of action, she would return to her solicitors for further discussion. However, she noted that this would create extra work that is unnecessary. Bush also expressed a transparency concern explaining that the original CFSA was a group effort while she believes the settlement amendment process has not been inclusive of all MC members.

Swant stated that the purpose of the settlement amendment is to insure the agreements on funding, minimum flow, operations, references to BMP for the Fishway, timing of Noxon, and contingencies that address what happens if the Fishway is shut down. For example, the agencies agreed if certain pathogens are found, passage efforts would cease at least until the issue was addressed. The purpose was to have the settlement amendment approved at the highest appropriate level within each agency, since the issues relate to state and federal policies. Swant disagrees that the process is not transparent, the MC process has the ability to form a subcommittee (consisting of all members interested in participating), to draft resolution language (in this case a settlement amendment), the resolution is then forwarded to the entire MC for review and approval, it is then forwarded to FERC and incorporated into Avista's FERC license.

Chip Corsi stated the MC decided the process, as a group and asked Bush to explain the transparency concern. Bush explained only the four entities (MFWP, IDFG, Avista, and USFWS) were involved in the settlement amendment drafting process. The USFWS wants to make sure that all of the MC entities will have a chance to weigh in on the settlement amendment. Corsi stated that he agreed with Swant regarding the MC deciding to approach the issue by forming a subcommittee who would then provide recommendations to the MC. Bush stated that is what she was trying to do with the alternative approach instead of a formal settlement amendment. She noted that the settlement amendment is a legal document and asked other MC members (not IDFG, MFWP, USFWS, or Avista) if they agree with the process.

Kathy Ferguson expressed confusion about what the MC was trying to do and asked if the subcommittee provided a recommendation. Swant replied that the subcommittee drafted a settlement amendment that was subsequently approved by IDFG, MFWP, and Avista. The USFWS has not provided edits. The settlement amendment was also provided to those that requested a copy, which included the Kalispel Tribe, USFS and Trout Unlimited. The discussion is with regard to whether or not a settlement amendment is necessary and the goal is for the key agencies to reach consensus on the document before seeking MC approval.

Bush stated the USFWS did not assist in drafting the Amendment and was given the document by Avista. She acknowledged that the USFWS is holding up this process, and reiterated that from the USFWS's perspective, it would be easier to include these items as part of the Annual Report or other documents, instead of amending the CFSA.

Les Evarts stated the CFSA is a legal document that was signed by all the parties. Evarts asked if the settlement amendment would necessitate the same signatures and what is the process for legally modifying the CFSA. Swant replied that Avista's legal counsel determined that the CFSA establishes the process for the MC to amend the document, through a majority vote. It would be impossible to have all parties sign since some of the organizations no longer exist.

Swant stated that regardless of which process is used it will be ultimately result in a legal document, because a FERC license amendment is needed for the Fishway.

Swant said that the MC agreed to move forward with the amendment process in March 2014. Avista needs the settlement amendment prior to moving forward with the Fishway, as the Fishway is the single largest financial decision the MC will make, and it is important to codify these agreements. The Fishway is a \$15-\$20 million dollar project and we already spent \$2 million to build the Cabinet Gorge Fish Handling and Holding Facility. It is not unreasonable to ask for this level of documentation and assurances.

Bush asked if Avista thinks the settlement amendment is the best way to codify these agreements, instead of an alternative (adding to Annual Report or other documents). Swant replied that this is correct. Bush asked if the Service continues working on the settlement amendment, will the rest of the MC members have a chance to review the document afterwards. Swant explained the goal is to have the four parties (Avista, USFWS, MFWP, and IDFG) reach consensus on the settlement amendment. Afterwards, the settlement amendment will be sent to the rest of the MC members for review. The MC will reconvene to discuss and approve the settlement amendment.

Bush asked if Avista plans on moving forward with minimum flow. Swant replied not until the settlement amendment is approved. Swant stated that all portions of the settlement amendment have been discussed by the MC at some point. Bush stated the pathogens issue is settled, but the funding issue is not resolved. Swant replied the USFWS was the only dissenting vote on the fish passage packet during the April 2013 MC conference call.

Loren Albright asked who will sign off on the settlement amendment. Swant replied that the goal is to have consensus of all parties that are still actively involved, or we will follow the voting procedures if consensus cannot be reached. Albright asked if everyone understands what you are asking for after building the Fishway, if it was shut down for any reason Avista's request with regard to financial responsibility. Swant replied that the MC discussed that as part of the funding issue. Swant explained if the Fishway were to be shut down, Avista will not be obligated to build another Fishway or provide additional mitigation. This does not diminish Avista's ongoing obligation for bull trout as defined by the Appendix C annual operation fund. The settlement amendment does clarify that Avista will not be required to mitigate for a failed mitigation.

Ferguson stated it sounds like the settlement amendment is not fully agreed upon and asked how we would vote. Swant explained we are not voting today, Bush is asking if the MC would like to go forward with the process of a settlement amendment.

Corsi stated the plan was to get consensus of the subcommittee before the settlement amendment was forwarded to the rest of the MC members. He was struggling with the notion that the USFWS thinks this process has not been transparent, because the process was previously agreed to by the MC. The MC previously discussed at length how to approach the challenging issue of building a facility, the parties involved, technical expertise on the Fishway, agreed on a design, and all parties need to take ownership, and not hold Avista accountable for more mitigation if the

facility failed. Corsi stated that it is not reasonable to think Avista has a limitless supply of funding and that signatories to the CFSA agreed to financial obligation when the document was signed in 1999. Corsi asked how we move forward to achieve natural resource goals, there is a high probability that the Fishway will work. Corsi stated that when the CFSA was written we knew it was a living document and changing license. The MC took ownership in that when the CFSA was signed and from Corsi's perspective there has been a good faith effort for 16 years to implement programs and he would like to move forward. Joe Maroney asked has the settlement amendment language changed since October. Swant replied no, the language had not changed.

Ryan Roslak agreed with Corsi, it would be a shame if the MC was still discussing the settlement amendment at next year's MC Meeting (or longer) and the costs continue to rise during the delay. Roslak continued that the MC reached consensus last spring to go through the settlement amendment process and reiterated that Avista does not have endless resources.

Maroney voiced concerns with the process at the last MC meeting procedural language was crafted exclusively by the four entities. Maroney's attorneys reviewed the settlement amendment, but the rest of the MC members have not seen the document yet. Swant repeated the settlement amendment was sent to individuals that requested it, and the goal is to have the subcommittee reach consensus on the document before forwarding it to the MC for review. Swant stated that we need to have the settlement amendment before moving forward with the Fishway.

Bush agrees with Corsi and others, this is a huge and great project and the CFSA is a precedent for similar projects throughout the country. She went on to say that nothing discussed today is meant to minimize those efforts. Bush stated the USFWS has the responsibility of moving fish through that barrier, and everyone wants to see that happen. It is not the USFWS's goal to be causing problems, but Bush wants to make sure the process is working the way it should. Bush said she understood the MC members want to move forward with the settlement amendment and that is the recommendation to the UFSWS representative.

Swant and Bush asked the MC members whether they preferred to move forward with codifying the agreements in the Annual Report or through a settlement amendment.

John Gubel: settlement amendment

Mike Miller: settlement amendment

Howard Bakke: settlement amendment

Scott Soult: Deferred to the Confederated Salish and Kootenai Tribe.

Kathy Ferguson: settlement amendment

Rick Robinson: settlement amendment

Loren Albright: settlement amendment

Ryan Roslak: settlement amendment

Mark Deleray: settlement amendment

Randy Apfelbeck: settlement amendment

Amy Groen: settlement amendment

Les Evarts: stated it is hard to say without knowing what the USFWS's comments will be. However, after having heard the discussion, the settlement amendment approach appears to make sense.

Chip Corsi: settlement amendment

Joe Maroney: Alternative approach (Maroney is fearful of amendments-other vehicles to accomplish).

Tom Herron: settlement amendment

Tim Swant: settlement amendment

Jodi Bush: Alternative approach

Bush acknowledged the majority of the MC would like to move forward with the settlement amendment and the USFWS will move forward.

Albright asked whether the settlement amendment will it be sent to FERC for approval once the MC reaches consensus. Swant explained the settlement amendment will be included in the FERC license amendment application and the FERC license amendment process will take approximately one year.

Evarts asked if the settlement amendment would need to be revised if a new pathogen was discovered. Swant replied no, the settlement amendment language provides flexibility on pathogens and would not require a revision.

Miller asked how the amendment affects the timeline or if it would significantly delay construction. Swant replied if the MC reaches consensus on the settlement amendment then that will expedite the FERC process.

Swant stated the MC members have been discussing the topic for 30 minutes. Bush said she understands where we are and will discuss this further within her organization. Bush stated she had to leave and that Wade Fredenberg would be represent the USFWS for the rest of the meeting.

***Excerpt from pages 11-12:***

***Fish Capturing Facilities Operations, Development and Testing***

Bruce Sorensen provided a PowerPoint presentation on the Cabinet Gorge Fish Handling and Holding Facility (CGFHF) and reviewed the existing facility components. The CGFHF is anticipated to be operated on April 1; however, if the project is delayed there are alternatives available to hold fish. Rick Robinson asked if fishing will be restricted/closed near the fish return pipe. Fredericks replied IDFG has the ability to close the area with posted signs, if needed in the future.

Guy Paul provided a PowerPoint presentation on the Cabinet Gorge Dam Fishway Project (Fishway). Paul will be the project manager for the project. Design for the Fishway is 100% complete, assuming approval of the CFSA Amendment and minimum flow. Consultants were selected to perform a constructability review and a kick-off meeting will be held on April 1.

Paul reviewed the major schedule milestones for the Fishway. Swant noted a constructability review was not pursued for the CGFHF and the contractor found the drawing and specs were incomplete which caused a delay in the project.

Swant stated Avista has acquired as many permits as we can at this time, completed the railroad crossing, installed fiber and power to the site. Corsi asked if the permits have a sunset clause. Swant replied no, Avista was strongly encouraged by the Army Corps of Engineers to wait until the contractor is selected before submitting the Joint Application for the cofferdam. A separate Joint Application will be submitted for the Fishway proper. Paul emphasized the CFSA Amendment is a significant component of the schedule, and if the amendment is not finalized the project will be delayed another year, since the FERC license amendment process could take up to one year. Swant stated the drop dead date for completion of the CFSA Amendment is June 2015; otherwise the project will be delayed one year. Swant will contact Bush to inquire about a timeline and process to complete the CFSA Amendment.

The 2015 AIP for the Noxon Rapids Dam Fishway Project will be revised and there are no activities scheduled for 2015.

***Consensus approval of Appendix C 2015 AIP and budget sheet as revised (noting the edit to the Noxon Rapids Dam Fishway Project) and as recommended by the WRTAC.***