

IMPLEMENTATION COMMITTEE CONFERENCE CALL AGENDA

March 9, 2011

CONVENE: 1:30 p.m. CALL-IN NUMBER: 888-842-7194, passcode 209309#

1. Roll call, review/modify agenda (5 min.) – *The Committee will consider the agenda, allotted time for each item, and make any necessary additions or revisions.*
2. (Action Item) Approve [September 22, 2010, meeting summary](#) (All, 5 min.) – *This summary was posted to the fws-coloriver listserver by Angela Kantola on 9/27/10.*
3. Program Director's update (Chart, 15 min) *This update will include: status of the 5-year reviews and recovery goals; discussion nonnative fish management changes for 2011; LCC's; recovery*
4. Legislation and budget-related updates
 - a. Updates on Program legislation and post-2011 base funding (Pitts, Chart 25 min) *Tom Pitts will update the Committee on current legislative efforts. Prior to the September 2010 meeting, Tom Chart provided the Committee an analysis of the FY 2012 budget scenario and potential implications for ESA compliance. That analysis has been updated based on the Program's 2011 budget (see Attachment 1). Limiting the use of power revenues only to 1) operation and maintenance of capital projects and 2) monitoring, would result in a significant shortfall in the Recovery Program's FY 2012 budget. An estimated \$3.1 million in currently-funded recovery activities would no longer be eligible for funding with power revenues. Of that estimated \$3.1 million, an estimated \$1.1 million could be funded with the States' and the Service's continued funding commitments, leaving a total budget shortfall of \$2 million, which would primarily fall on nonnative fish management projects, Program management, and public information/education/involvement. Significant reductions in funding for recovery actions such as nonnative fish management and research, as well as vital Program support provided via public information/education/involvement, and Program Management would delay, and likely could prevent attainment of recovery goals and would undermine and likely degrade the Recovery Program's achievements in recovering populations of the endangered fishes. As a result, ESA compliance provided by Recovery Program actions for more than 1,800 Federal, tribal, and non-Federal water and hydroelectric power projects depleting more than 2.8 million acre-feet of water per year in the upper Colorado River basin in Colorado, Utah, and Wyoming, as well as future projects, would not likely continue.*
 - b. Projection/assessment of impact of continuing resolution on Reclamation and Service Program budgets (Service, Reclamation, 10 min) *The Service and Reclamation will provide any insights they may have at this time regarding the impact of the continuing resolution on their Recovery Program budgets.*

- c. Report on February 24 Congressional staff conference call (Shields, 10 min) *See Attachment 2.*
 - d. Washington, D.C., briefing trip (Shields, Pitts, 15 min)
 - e. Capital projects (Uilenberg, 10 min)
5. (Action Item) RIPRAP revisions/assessment; 2012-2013 Program guidance (Kantola, 5 min) – *The Program Director’s draft RIPRAP revisions/assessment and 2012-2013 Program Guidance were posted to the listserv on February 3. Technical committees reviewed and commented on these documents (Water Acquisition Committee on Feb. 22; Information and Education Committee on Feb. 23, and Biology Committee March 1-2) and the documents are scheduled for Management committee review on March 25. With draft scopes of work for the FY 2012-2013 Work Plan due April 30, 2011, it is recommended that the Implementation Committee delegate approval of the RIPRAP revisions and assessment and FY 2012-2013 Program Guidance to the Management Committee.*
6. Agenda items for September 21, 2011, Implementation Committee meeting (All, 5 min) *The Committee will discuss agenda items for this meeting is scheduled for 10:30 a.m. – 3:30 p.m. in Denver near DIA. One agenda item for the September meeting will be approval of the FY 2012-2013 work plan.*

ADJOURN by 3:30 p.m.

Attachment 1

Upper Colorado River Endangered Fish Recovery Program

FY 2012 Budget Projection without Continued Use of Full Power Revenues and Potential Implications for ESA Compliance

Date: February 28, 2011

Introduction

P.L. 106-392 authorizes up to \$4 million per year in annual base funding from power revenues (adjusted annually for inflation after 2000) for the Upper Colorado River Endangered Fish Recovery Program (Recovery Program)¹. The current authorization to use power revenues for annual base funding of recovery program actions, *other than for operation and maintenance of capital projects and monitoring, expires in fiscal year 2011*, creating serious implications for the Recovery Program's FY 2012 budget.

Operation and maintenance of capital projects – Operation and maintenance of capital projects includes operation and maintenance of water-augmentation facilities, flooded bottomlands, fish screens, fish passages, and propagation facilities.

Monitoring – The term “monitoring” is used in the definition of “base funding” (“*monitoring and research to evaluate the need for or effectiveness of any recovery action . . .*”); however, no definition of “monitoring” was included in P.L. 106-392. Based on the wording included, it is apparent that monitoring includes evaluation of the “*need for or effectiveness of any recovery action.*” Monitoring is commonly understood to include data collection, associated analyses, and reporting and sharing of those data and analyses. Synthesized monitoring data are then used to develop recommendations for management action continuation, suspension, or adjustment to accomplish desired outcomes, ultimately resulting in downlisting and delisting of the endangered fishes.

Annual base funds from power revenues currently contribute significantly to the successful implementation of recovery actions under *all* Recovery Program elements, including operation and maintenance of capital projects; instream flow identification, evaluation, and protection; habitat restoration and maintenance; management of nonnative fish impacts; endangered fish propagation and stocking; research, monitoring, and data management; public information and involvement; and Program management.

¹ The States of Colorado, Utah, and Wyoming also maintain their original funding commitments pre-dating P.L. 106-392 and contribute approximately \$360,000 per year to base funding through in-kind services or agency cash contributions. The U.S. Fish and Wildlife Service provides approximately \$1.1 million annually for program management and operation/maintenance of hatcheries. Water users contribute to annual base funding via a one-time fee on new water projects based on average annual net water depletions. The fee is adjusted each year for inflation. The current fee is \$18.99 per acre-foot.

FY 2012 Budget Projection

Limiting the use of power revenues only to 1) operation and maintenance of capital projects and 2) monitoring, would result in a significant shortfall in the Recovery Program's FY 2012 budget (unless the lost power revenues were replaced by other funds [i.e., appropriations]). As shown in columns U-W of the accompanying Excel spreadsheet, an estimated \$3.1 million in currently-funded recovery activities would no longer be eligible for funding with power revenues. Of that estimated \$3.1 million, an estimated \$1.1 million could be funded with the States' and the Service's continued funding commitments, leaving a total budget shortfall of \$2 million (which would need to be adjusted for inflation). Based on which activities are expected to be eligible for continued funding with power revenues, the \$2 million shortfall would primarily fall on nonnative fish management projects, Program management, and public information/education/involvement.

Implications for ESA Compliance

Significant reductions in funding for recovery actions such as nonnative fish management and research, as well as vital Program support provided via public information/education/involvement, and Program Management would delay, and likely could prevent attainment of recovery goals and would undermine and likely degrade the Recovery Program's achievements in recovering populations of the endangered fishes. As a result, ESA compliance provided by Recovery Program actions for more than 1,800 Federal, tribal, and non-Federal water and hydroelectric power projects depleting more than 2.8 million acre-feet of water per year in the upper Colorado River basin in Colorado, Utah, and Wyoming, as well as future projects, would not likely continue. ESA compliance depends not only on implementing recovery actions, but is ultimately and directly linked to long-term improvement in the status of fish populations and achievement of recovery.

Without continued full funding of Recovery Program activities beyond operation and maintenance of capital projects and monitoring, the U.S. Fish and Wildlife Service (Service) may conclude that the Recovery Program is no longer making 'sufficient progress' towards recovery of the endangered fishes. Action agencies could then no longer rely on the Recovery Program to insure that depletion impacts of new water projects with an average annual depletion of 0.1 acre feet² (af) or more are not likely to jeopardize the endangered fishes. Instead, with sufficient progress not being achieved, the Service would likely write biological opinions for new and historic projects that identify specific action(s) in the Recovery Program's Recovery Action Plan (RIPRAP) which must be completed by each project proponent to avoid a jeopardy determination. Project proponents would then bear the responsibility for actions which the Recovery Program could not fund. For historic projects, these actions would avoid the likelihood of jeopardy as long as they are completed according to the schedule identified in the RIPRAP. For new projects, these actions avoid the likelihood of jeopardy so long as they are completed before the impact of the project occurs. The Service does not have adequate staff resources to carry out approximately one hundred of these much more complex consultations each year in a timely manner; therefore, water users could expect considerable delays in project permitting and implementation.

² The Service has previously determined that projects depleting less than 0.1 af in the upper Colorado River basin have no effect on the Colorado River fishes.

Lack of full funding of recovery actions would be expected to result in missing critical deadlines for specified recovery actions; therefore, the Service also would be expected to determine that ongoing recovery actions in previously-rendered biological opinions no longer avoid the likelihood of jeopardy. As a result, the Service could be expected to:

- Re-initiate consultation under the programmatic biological opinions (PBO's) on the Colorado, Yampa, Duchesne and Gunnison rivers, because the conservation measures cannot be implemented. This would trigger re-initiation of consultations on projects with previously-rendered biological opinions under these PBO's.
- Re-initiate consultation on Flaming Gorge Reservoir and the Gunnison PBO (which covers the Aspinall Unit). The Service would need to consider how reservoir operations could compensate for recovery actions (especially nonnative fish management) that would not be implemented due to lost funding, potentially calling for significantly increased water releases to create habitat conditions inhospitable to nonnative fishes.

The Service does not have adequate staff resources to re-initiate consultation under all of these PBO's in a timely fashion, which could lead to both project delays and potential lawsuits over ESA compliance.

Attachment 2

Outline Summary of February 24, 2011, Congressional Conference Call

Call Participants

UCREFRP PDO: Tom Chart, Angela Kantola and Debbie Felker

SJRBRIP: Dave Campbell

Water Users: Tom Pitts

Southern Ute Indian Tribe: Cathy Condon

Wyoming: John Shields

CREDA: Leslie James

USBR: Brent Uilenberg

USBR WO: Mat Maucieri

USFWS: Matt Kales and Julie Lyke

TNC Colorado River Project: Mike Roberts

Rep. Tipton: Mike Hesse

Rep. Chaffetz: Fred Ferguson

Rep. Lummis: Pete Obermueller

House Natural Resources Committee: Matt Schafle (staff for full Committee, sitting in for Kiel Weaver and Ian Lyle)

Senator Enzi: Chris Tomassi

Senator Hatch: Matt Jensen

Senator Lee: Staci Wheeler

Senator Mark Udall: Jimmy Hague and Stan Sloss

Prior e-mail to John Shields via e-mail indicating conflict with scheduled call time:

Senate ENR Committee: Tanya Trujillo

Rep. Heinrich: Maya Hermann

House Nat. Resources W&P Subcomm.: Kiel Weaver

Senator Bennet: Sean Babington

Senator Tom Udall: Jeanette Lyman

Subjects Discussed

- Description of the Upper Colorado River and San Juan River recovery programs, what they do, and why we're having the call;
- Legislation;
- Updates from the Programs' directors;
- Upcoming March briefing trip
- Seeking their advice on supporting the President's budget.

Chris Tomassi of Senator Enzi's staff e-mailed John Shields after the call to say: "I definitely thought it was useful to get an overview of the issues you'll be facing when you come up here."