

1902-44(B)
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Colorado River Recovery Implementation Committee
August 30, 1989, Meeting
- Minutes -

Attendees: (Attachment 1)

Agenda: (Attachment 2)

References:

1. August 28, 1989, memorandum from Alan Mauzy, Chairman, Sediment Ad Hoc Committee, to Jim Bennett, Chairman, Colorado River Recovery Plan Technical Committee re: Sediment Ad Hoc Committee Meeting.
2. August 30, 1989, Draft Fiscal Year 1990 Work Plan for the Recovery Implementation Program for Endangered Fish Species in the Upper Colorado River Basin.
3. August 29, 1989, memorandum from Tom Pitts to Recovery Implementation Committee re: FY-90 Project No. 9 -- "Yampa Basin Feasibility Study."
4. August 18, 1989, memorandum from Acting Regional Director, Upper Colorado Regional Office, Bureau of Reclamation, to John Hamill, Program Director, Implementation Committee re: Proposed Changes for Fiscal Year 1990, Recovery Implementation Work Plan (Endangered Species).
5. Undated informational handout for Colorado River Recovery Program Implementation Committee Meeting, August 30, 1989, re: Draft Analysis of Biological Opinions (Windy Gap) Pertaining to Colorado River Endangered Fish Made before Implementation of Recovery Program.
6. August 8, 1989, letter from Galen Buterbaugh, Chairman, Implementation Committee, to William McDonald, Director, Colorado Water Conservation Board transmitting flow recommendations for the 15-mile reach and requesting evaluation of same.
7. August 18, 1989, document entitled "Study of Alternative Water Supplies for Endangered Fishes in the '15-Mile Reach' of the Colorado River" describing the background of the Recovery Implementation Program and outlining the major alternatives which the Bureau of Reclamation will study.

Major Topics Discussed/Decided:

1. Review/Modify agenda: The sediment ad hoc work group (agenda item 7) will be discussed after the Technical Group report (agenda item 3). The cooperative agreement with the Fish and Wildlife Foundation (agenda item 7) will be addressed in the Program Director and Management Group report (agenda item 3). Use of Section 7 funds (agenda item 7) will be discussed after the FY-90 work plan (agenda item 4). Approval of the FY-90 work plan will be deferred until after agenda item 8 is completed.

2. Approval of last Implementation Committee Meeting Summary: The summary was accepted as written.
3. Recovery Program update:
 - A. Program Director and Management Group Report (Hamill): Significant events since the last meeting include: temporary withdrawal of Reclamation's proposal to include the cost of the Grand Canyon humpback chub studies as part of Reclamation's contribution to the Recovery Program; an agreement between the Service and the National Fish and Wildlife Foundation has been finalized whereby Section 7 funds provided by water project proponents would be transferred to the National Fish and Wildlife Foundation for use in accomplishing priority Recovery Program activities; water has been released from Ruedi Reservoir for instream flow purposes and will be protected under State law (see agenda item 8); finalization of flow recommendations for the 15-mile reach and the Yampa River (see agenda item 8); no followup by the Uintah Mountain Club on its notice of intent to sue; receipt of a petition to list the razorback sucker (see agenda item 6); some disillusionment with the Service's approach in applying Section 7 to depletion impacts on proposed projects (see agenda item 7); slow but steady progress on acquisition of water rights (see agenda item 8); another successful river trip; imminent selection of an assistant for the Program Director; and selection of the Program Director to participate in the Service's Upper Management Development Program in FY-90.
 - B. Congressional activity (Pitts): A trip to Washington, D.C., was recently undertaken for the purpose of reaffirming Congressional support for the Recovery Program and seeking additional appropriations for the Service to meet its \$624K obligation for FY-90. The trip was successful.
 - C. Technical Group report (Bennett): FY-90 research guidance was disseminated to roughly 50 researchers, who submitted 70 proposals. These proposals were reviewed and ranked by the Technical Group and utilized to develop a draft FY-90 work plan, which was then reviewed and modified by the Management Group.
 - D. Researcher's perspective (Valdez): Valdez made four recommendations to integrate research into the Recovery Program:
 - (1) establish technical committees composed of researchers (biological, hydrologic) to develop recommendations on research objectives and priorities as input for the Technical Group. Bennett and Valdez will discuss this idea further;
 - (2) get researchers together at the annual researchers' meeting to discuss and coordinate their research ideas. This will reduce duplication/conflict in research proposals submitted;
 - (3) researchers should be required to provide reports on all projects funded by the Recovery Program at the annual researchers' meeting to improve accountability; and

- (4) have the Technical Group establish a numbering series for reports to establish a unique identifying number that distinguishes between similar-sounding projects and ties projects back to funding and original project purposes.

McDonald agreed with Valdez' recommendations and further recommended that 5-year "road maps" be prepared by the Management Group for each of the five program elements by the next Implementation Committee meeting. Both Technical and Researchers' groups would provide input. These documents would state what we're trying to do, why we're doing it, etc. The road maps would be used in the FY-91 budget process, used to give greater guidance to the researchers, and would be updated yearly. McDonald's recommendation was supported by the Implementation Committee. Pustmueller suggested that the endangered fish propagation plan be given more attention in the 5-year planning process.

Pitts recommended that the Program Director be responsible for preparing a summary report on each FY-89 (and subsequent FY's) project by the next Implementation Committee meeting to improve accountability. Fassett suggested such a report would assist the Implementation Committee in tracking program progress. The report should show FY-89 expenditures, by project, and summarize each project based on results presented at the next researchers' meeting. This report will be distributed to the Implementation Committee, Management Group, and Technical Group.

- E. Sediment ad hoc work group (Mauzy): Sediment transport issues must be examined more closely. The sediment ad hoc work group was established to address the question "How can the Recovery Program define and address sediment transport issues as they relate to the endangered fishes and their habitat?" An outline of a discussion paper defining the issues and identifying the measures and studies required to meet the goal was prepared by the work group (Attachment 3, Reference 1). Pustmueller requested that the outline include study of changes in channel geomorphology with changes in sediment load. Some sediment-related work is in the FY-90 work plan, but there is no time to add additional sediment projects to the FY-90 budget. Instead, it will be considered in the development of the 5-year road map and the FY-91 budget.

4. Budget and work plan for the Recovery Program

A. FY-89 work plan status/progress:

- (1) Propagation/Hatchery Plan (Service, Colorado Water Conservation Board):

- Mills summarized the progress the Service has been making on investigating the role of propagation in the Recovery Program, obtaining input into how to structure propagation efforts, and developing a propagation/genetics management plan (Attachment 4). Williamson stressed that propagation should be used only as a solution to a specifically identified need.

Pustmueller recommended that survival of hatchery-reared fish be addressed in the propagation plan. Buterbaugh suggested that the Implementation Committee receive an annual progress report on propagation (oral report acceptable).

- Jencsok outlined Colorado's plan for conducting an endangered fishes hatchery feasibility study; a request for statement of qualifications will be sent out soon; these will be evaluated; a request for proposals will be sent to 3-5 firms; their proposals will be ranked; and a contract will be let. He expects completion of the feasibility study by December 1990.

- (2) Flaming Gorge biological opinion (Hamill): The consolidated report (incorporating the hydrological and biological reports) is expected to be completed November 1, 1989. It will serve as input into the draft biological opinion which is scheduled to be completed March 15, 1990. Greiner requested that spinning reserve/operational flexibility considerations be addressed in the opinion.

B. Approval of FY-90 work plan:

- (1) Overview of work activities: The draft FY-90 work plan (Reference 2) had been sent to the Implementation Committee for review prior to the meeting. Hamill opened the floor to questions.
- Fassett urged more emphasis on water acquisition projects in the FY-89 work plan. (Note: Later on, the Management Group was directed to review the work plan to identify activities that would expedite acquisition of water rights/protection of instream flows).
 - Minor changes were suggested by Pitts, Buterbaugh, and Barry to add explanatory information to the work plan.
 - Pitts urged expedition of the Yampa Basin Reservoir feasibility study (project 9), including development of a Memorandum of Understanding. (Reference 3). Hamill committed the Management Group to begin work on this task in October and expedite work.
 - Pitts recommended that the Service utilize a consistent, scientifically defensible, methodology in developing instream flow recommendations in the Recovery Program, though some flexibility may be necessary. He would like the scope of the FY-90 instream flow studies to be modified to provide for greater coordination between Service personnel involved in conducting instream flow studies.
 - Fassett expressed concern over difficulties in tracking program progress and projects from year to year. He also was concerned that the Implementation Committee was expected to approve FY-90 projects without having an accounting of the status of FY-89 projects and how money was spent in FY-89. Hamill responded that researchers are required to provide annual written reports on projects by December of each year. (This was about the earliest reporting date possible since many field activities do not conclude until November 1.)

Mills added that it is not practical to defer a decision on the FY-90 work plan/budget until reports are submitted because field personnel need to know early in the FY if funds are available so they can line up personnel and equipment for the next year. McDonald, Buterbaugh, and Pitts concluded that this was a problem that could not be solved at the meeting, but that the Management Group should address. Fassett concluded by requesting an account of funds expended in FY-89. Hamill committed to prepare such a report by the next Implementation Committee meeting (February 1990) and publish a short summary of the results/status of each project in the FY-89 work plan.

- Reclamation proposed that \$20K be added to the Service's Vernal Fisheries Office budget in FY-90 for completion of the final summary reports for the Flaming Gorge biological opinion (project 6) (Reference 4). The Implementation Committee approved this change.
- The \$312.4K contributed by the Colorado Water Conservation Board towards the Colorado hatchery feasibility study (project 23) will be credited to Colorado only if the end product is deemed useful by the Implementation Committee.
- Pustmueller was dissatisfied with continuation of funding for the San Juan Management Plan (project 40), which in FY-89 was expected to be a 1-year funding commitment only.

The Implementation Committee approved the FY-90 work plan, though Pustmueller abstained from voting on the San Juan project.

- (2) Status of funding for FY-90 by agency/participant: Utah anticipated problems in meeting its FY-90 fiscal commitment, but would explore the possibility of contributing in-kind services. Everyone else was confident that they could fund their share of the FY-90 program.
- (3) Recommendations for developing FY-91 work plan: Pitts recommended that water acquisition be considered a FY-91 emphasis. As mentioned earlier, 5-year work plans will be developed and used in preparing the FY-91 work plan, and sediment transport issues will receive consideration. As will be noted later, validation of Yampa flow recommendations will be part of the FY-91 work plan.
- (3) Use of Section 7 funds (Pitts): The Management Group recommended that all Section 7 funds (existing and future) not earmarked for specific purposes (Reference 5) be used for water acquisition and directly related actions (Attachment 5). The Implementation Committee approved this recommendation, with the understanding that exceptions can be authorized by the Management Group following coordination with the Implementation Committee.
- (4) Credit to be granted Colorado Water Conservation Board for Yampa Basin Feasibility Study (project 9): A credit of \$60K, in the form of \$20K/yr spread out over 3 years, was agreed to for the \$100K that would be invested by the Colorado Water Conservation Board in this study. No credit will be granted if the project is built, since the Colorado Water Conservation Board would be reimbursed by the project sponsor.

5. Stocking of nonnative (exotic) fishes (Pitts): Pitts felt that the Service and the States were not taking sufficient action in regard to stocking of nonnative fishes. He urged more progress within the Recovery Program on defining what constituted an affirmative demonstration that there was no conflict between stocking of nonnative fishes and endangered fishes. He suggested that the States and Service enter into agreements outlining how they would consult on stocking proposals. Bennett noted that Colorado and the Service already had an agreement to informally consult on nonnative introductions on the West Slope. The Service agreed to write letters to Utah and Wyoming to request a meeting to discuss procedures on how to deal with stocking of cool- and warm-water exotic species. A report on the results of these meetings will be sent to the Implementation Committee.
6. Petition to list the razorback sucker (Shanks): A petition to list the razorback sucker was received on March 14, 1989. A response to the petition ("petition finding") was published in the Federal Register on August 12, 1989, indicating that the petitioner presented substantial information that listing may be warranted (Attachment 6). The public comment period on the petition closes December 12, 1989. The Service must make a finding as to whether the petitioned action is warranted within 1 year from the date the petition was received. A discussion ensued regarding the possible impacts of listing on the Recovery Program; i.e., it was noted that: (a) the razorback sucker was already receiving attention in the FY-90 work plan; (b) projects that had already been consulted on would not necessarily have to re-initiate Section 7 consultation unless there was continuing Federal involvement and the razorback's needs were not being taken care of when other endangered fishes' needs were addressed; and (c) the Recovery Program would not be considered a regulatory program that could preclude the need to list the species under the Endangered Species Act.
7. Section 7 consultations:
 - a. Summary of opinions issued and pending (Hoffman): The Service summarized the status of recent and pending Section 7 consultations in the upper Colorado drainage involving water depletions (Attachment 7).
 - b. Sandstone Project (Fassett): Fassett stated that Wyoming had serious concerns with the manner in which the Service interpreted and implemented Section 7 consultation (depletion impacts) in the draft Sandstone biological opinion. The Service requested that the project sponsor contribute \$306,000 and agree to release 20,000 acre-feet (af) of the firm annual yield to enhance Yampa River flows until the Recovery Program has made sufficient progress to offset the project's average annual depletion of 30,600 af (Attachment 8):
 - Wyoming disagreed with the Service's interpretation that "sufficient progress" had not been achieved and the Service's emphasis on progress in water acquisition efforts (and not

progress in all five recovery elements) as offsetting project depletion impacts.

- Considering the different Section 7 consultation results for the Muddy Creek and Sandstone projects, Fassett did not see a consistent "basinwide" Section 7 approach being applied, as was originally intended under the Recovery Program.
- Purcell noted that two-thirds of the yield of Sandstone was set aside subject to the scrutiny and successfulness of the Recovery Implementation Program. Therefore, Wyoming's ability to fully use the water resource was subject to something not under its control.
- Purcell noted that it was not the State of Wyoming's responsibility for getting water to fish in Colorado, nor did Wyoming have any legal means to do so.
- Purcell objected to the Service's requesting both a depletion charge and water to offset Sandstone's depletion impacts.

Hamill characterized the recent disagreements regarding Section 7 consultation as one of defining and achieving "sufficient progress." After much consideration, including a Solicitor's opinion that stated that there be "reasonable certainty of future results," the Service's position is there was not yet sufficient progress within the Recovery Program to allow developers to compensate for depletion impacts with just a \$10/af depletion charge. Therefore, in the Sandstone draft biological opinion, the Service requested that flows be provided on an interim basis in addition to the depletion charge until "sufficient progress" had been achieved. Hamill pointed out that no use had been identified by Wyoming for the 20,000 af, and the Service would determine how much of the 20,000 af was actually needed later, when consultation was re-initiated. At that time, the Service would know more about the fishes' needs and the effectiveness of other recovery measures in offsetting depletion impacts.

Zallen pointed out that the draft biological opinion identified both water depletion and sediment issues, and that sediment impacts could have been a project sponsor responsibility were it not for the Recovery Program's recent efforts to begin addressing the sediment issue. Moreover, the Section 7 process described in the Recovery Implementation Program is found under the "Habitat Management" (instream flow) recovery element, and its implementation depends on six underlying assumptions being met, all flow-related (Section 4.1.5).

Offering the Sandstone consultation as an example, Fassett requested other members of the Recovery Implementation Committee to provide their understanding of how Section 7 consultation was to be conducted under the Recovery Program. Pitts, Reclamation, Utah, and Colorado sided with Wyoming's position; Pustmueller agreed with the Service's position.

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Fassett urged the Implementation Committee to make further progress on water acquisition in FY-90. Zallen recommended the Management Group be directed to review the work plan to identify activities that would expedite acquisition of water rights and protection of instream flows.

McDonald summarized the Section 7 consultation issue as follows:

- Is flow acquisition the only way to offset depletion impacts, or should one look at all five recovery elements?
- What is the standard by which "sufficient progress" should be judged: (1) by good faith efforts to implement the plan; (2) "reasonable certainty of future results" (Service's standard); or (3) actual results.
- If one considered all five recovery elements to be the basis for evaluating sufficient progress, how would one define "reasonable certainty of future results" (what is it, when is it?)

McDonald urged the Service to develop a framework for future Section 7 decisions so everyone can understand how Section 7 will be conducted.

The Service indicated it would continue working on the Sandstone biological opinion to address Wyoming's concerns as best it can.

- c. Muddy Creek biological opinion and MOU. Though there had been some concerns regarding the Muddy Creek draft biological opinion, McDonald indicated that it was acceptable to Colorado.

8. Instream flow determinations and water rights acquisition:

- a. Yampa River flow needs (Hamill): The final report for Phase 1, which addresses flow needs in a qualitative (as opposed to quantitative) sense, will be released soon. The draft Phase 2 report which will provide interim flow recommendations is scheduled to be completed October 1, 1989. The identification of additional study work to validate these recommendations will be considered in development of the FY-91 work plan.
- b. Evaluation of Little Snake River water rights (Wigington): The Little Snake River contributes one-third of the flow to two-thirds of the sediment in the lower Yampa River. The Nature Conservancy is preparing a proposal for assessing the yield of various Little Snake River's water rights and the market value of water rights on the Little Snake River.
- c. Cross Mountain ranch water rights acquisition (Wigington): The ranch, which consists of 27,000 acres and 3,700 af of senior water rights on the Yampa River, is being offered for sale for \$2.5 million. The Management Group evaluated the proposal and recommended that The Nature Conservancy get the property appraised and try to purchase the water rights. The Bureau of Land Management is interested in acquiring the land, and would make the water rights available to the Service. However, an appraisal on the value of the ranch and its water rights is needed before we can move forward on structuring the

deal and working with the Bureau of Land Management. The Nature Conservancy will fund the appraisal if the Implementation Committee expresses conditional interest. The Implementation Committee unanimously decided to support the proposal (Attachment 9). Zallen recommended early discussions on structuring the deal.

- d. 15-mile reach flow needs and instream water right/evaluation of options for providing flows to the 15-mile reach (Hamill): The final flow report providing July-September flow recommendations was transmitted to the Implementation Committee a month ago. Per the Recovery Program, the Implementation Committee requested the State of Colorado to investigate alternative means for providing the desired instream flows (Reference 6). Reclamation will work with Colorado in this study effort (Reference 7). Colorado suggested that Reclamation (Missouri Basin) be involved in discussions relating operation of Green Mountain Reservoir and the Orchard Mesa check to flows available for appropriation in the 15-mile reach.
 - e. Ruedi/Green Mountain releases (McDonald): To protect the water released from Ruedi/Green Mountain for the 15-mile reach, the Colorado Water Conservation Board has proposed to enter into a water service contract lease arrangement with the United States wherein Colorado would lease Ruedi water from the United States for instream flow purposes. A draft contract was sent to Reclamation, and technical issues will be discussed at a September 11, 1989, meeting. Zallen identified issues that still needed to be resolved, and noted she believed they could be resolved. If not, an instream water right filing will be necessary.
9. Other items:
- Three final poster designs (for information and education purposes) were selected from those presented for consideration at the meeting.
 - Buterbaugh showed slides from the river trip.
 - A letter of conditional support for the Recovery Program was received from the Wyoming Wildlife Federation (Attachment 10).
10. Next meeting: February 21, 1990, third floor conference room, 134 Union Blvd, Lakewood, Colorado. (Note: The next August budget meeting may require 2 days.)

Implementation Committee

Aug 30, 1989

Name	REPRESENTING	PHONE
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Tom Pitts	Water Users	303-667-8690
ALAN MAHEZ	WY WATER DEVEL. COMM	307-777-7626
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Robert Wisington	The Nature Conservancy	303-444-2450
Jerry Zimmerman	Upper Colorado River Commission	801-531-1150
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Margot Zallen	Solic Office - DOI	303-236-2444
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Dick Gordon	Omaha District, Corps of Engineers	402-221-4598
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Robert Green	FWS - Denver	303-236-5322
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Richard Valdez	BIO/WEST, - Logan, UT	801-752-4202
Rat Nelson	FWS - Denver	303-236-7398
Holt Williamson	FWS - Denver	303-236-8154
Dale Hoffman	FWS - Denver	303-236-8186
LEE MILLS	FWS - Denver	303-236-8154
John Sparks	FWS - DENVER	303/236-7926
Larry Shanks	FWS - Denver	303/236-7398
Bob Weaver	Environmental Groups	303/839-3799

Attachment 2

Agenda
Colorado River Recovery Implementation Committee Meeting
August 30, 1989

Convene - 8:30 a.m.

1. Review/Modify Agenda
 2. Approval of last Implementation Committee Meeting Summary
 3. Recovery Program update
 - o Program Director and Management Group report (Hamill)
 - o Congressional activity (Pitts)
 - o Technical Group Report (Bennett)
 4. Budget and work plan for the Recovery Program
 - o FY-89 work plan status/progress
 - Propagation/Hatchery Plan (FWS and CWCB)
 - Flaming Gorge Biological Opinion
 - other
 - o approval of FY-90 work plan
 - overview of work activities
 - status of funding for FY-90 by agency/participant
 - recommendations for developing FY-91 Work Plan
 5. Stocking of Nonnative (Exotic) Fishes
 6. Petition to list the razorback sucker
- LUNCH - Art contest: selection of final poster design on the rare fishes
7. Section 7 Consultations
 - o cooperative agreement with the Fish and Wildlife Foundation
 - o use of Section 7 funds (Pitts)
 - o summary of opinions issued and pending
 - o Muddy Creek biological opinion and MOU
 - o Sandstone Project - Fassett
 - o sediment ad hoc work group
 8. Instream flow determinations and water rights acquisition
 - o Yampa River flow needs
 - o evaluation of Little Snake River water rights
 - o Cross Mountain ranch water rights acquisition
 - o 15-mile reach flow needs and instream water right
 - o evaluation of options for providing instream flows to the 15-mile reach
 - o Ruedi/Green Mountain releases

9. Next meeting

Adjourn -- 3:30 p.m.