

Colorado River Recovery Implementation Committee  
January 30, 1992 Meeting  
- Minutes -

Attendees: (Attachment 1)

Agenda: (Attachment 2)

Actions and Assignments: (Attachment 3)

Major Topics Discussed/Decided:

1. Review/Modify Agenda: The agenda was modified as it appears below and in Attachment 2.
2. Approval of Last Implementation Committee Meeting Summary: The summary was accepted as written.
3. Program Highlights, Shortcomings, Future Plans: John Hamill reported on the status of the endangered fishes in the Upper Basin and on progress towards achieving Recovery Program goals (See Attachment 4). John noted that populations in the Green and Yampa Rivers seem to be increasing, which is probably correlated with changes in the operation of Flaming Gorge Reservoir implemented in 1985. Researchers are finding several age classes, and are seeing more fish in more areas of those two rivers.

Tom Pitts asked that the record reflect that more than water interests were challenging the Service's position on sufficient progress.

With regards to Program Management, Peter Evans expressed Colorado's frustration with the lack of response to their interim recovery objectives (iro's). The Management Committee referred these to the Biology Committee, and asked them to report first on the value of the approach, and then to look at their technical adequacy. The Biology Committee asked the Habitat and Life History Subcommittee to review the iro's, but has not yet responded back to the Management Committee. John Hamill noted that the Biology Committee may be reluctant to separate usefulness and technical adequacy. Peter suggested directing each Management Committee member to discuss the usefulness of the approach with their biologists and be prepared to discuss that at their next meeting. The Implementation Committee agreed.

Regarding the Colorado Water Conservation Board's preliminary notice to file for a 581 cfs instream flow right in the 15-Mile Reach, Tom Pitts said that the water users have recommended that the Board proceed through the final notice stage, but not make any court filings to finalize the appropriation until the sufficient progress and historic depletion issues are resolved (see Attachment 5).

Noting that John had mentioned progress only in his discussion of instream flows, Jeff Fassett asked if the Service viewed sufficient

progress as based solely on water acquisition. John Hamill replied that he sees sufficient progress based on protection of flows and on population response.

Margot Zallen explained the steps involved in designating critical habitat for the razorback sucker (as outlined in Attachment 6). The Service must first determine the constituent elements of habitat necessary for survival and recovery of the razorback. Only then can they determine specific areas to be designated as critical habitat. As such, the Service cannot yet predict the impacts that designating critical habitat will have on the Recovery Program, water development, recreation, etc. The Service is developing the critical habitat designation and is requesting information from the Recovery Team, which has representatives from each affected State. The Colorado squawfish and humpback chub were "grandfathered" into the Endangered Species Act in 1973, thus, they were not covered by the same critical habitat regulations. Galen Buterbaugh noted that the Service historically has maintained that they could adequately protect most species without designating critical habitat. However, this position was successfully challenged in court in the case of the spotted owl, which has resulted in the new requirements for designating critical habitat.

The draft San Juan River Recovery Program has been developed and is now being discussed between Regions 2 and 6 of the Service.

The Implementation Committee agreed to sign a resolution recognizing Jim Bennett's participation in and contribution to the Recovery Program (Jim has taken another position with the Colorado Division of Wildlife in Grand Junction and will no longer be directly involved in the Recovery Program).

4. Request for Membership on the Implementation Committee: John Hamill reported that the Management Committee has discussed requests from the Park Service and the Colorado River Energy Distributor's Association (CREDA) for membership in the Recovery Program, but has been unable to reach a consensus recommendation. Two major issues were raised at their January 21 meeting: a) how Park Service funds would be contributed (through the regular Recovery Program process or with certain stipulations); and b) whether the applicants have substantive responsibilities for endangered fish and/or water.

Peter Evans said that while Colorado has no strong feelings with regards to Park Service or CREDA membership, consensus already is difficult to achieve and thinks that this may not be a good time to consider new members, since the Program is currently addressing some tough issues regarding what was agreed on when the Recovery Program was initiated (sufficient progress, historic depletions). Tom Pitts said he believes that the Federal interests responsible for endangered species already are represented in the Recovery Program. Dan Luecke said he thought the criteria for membership established by the Management Committee are reasonable, CREDA and the Park Service have demonstrated that they meet those criteria, and thus, they deserve membership. He did not think that

adding the two would make consensus more difficult to achieve since they are likely to fall within the spectrum of positions already represented in the Program. Roland Robison said he thought the Program should grant membership to groups which meet the criteria, but noted that the Park Service is not unique in that regard (the Bureau of Land Management, Bureau of Indian Affairs, and certain private landowners might also qualify). Lloyd Greiner supported Roland's comments, and added that the Recovery Program has no real public process short of participating in the Program, therefore he thinks CREDA and the Park Service should be allowed membership. Barry Saunders supported Peter Evans' comments, saying that Utah welcomes participation by anyone, but does not support membership which gives new groups veto power through the Program's operation by consensus.

Lloyd Greiner suggested a compromise of granting the Park Service and CREDA membership on subcommittees, as a sort of test. Galen Buterbaugh noted that the proposed subcommittee membership rules would allow that. Galen suggested that existing committee members also could be more responsive to the interests of nonmembers and that the Service's votes in the Implementation Committee would be heavily influenced by the Park Service's position. Dan Luecke noted that the number of existing members on the committee is not one of the criteria for membership established by the Management Committee. Tom Pitts did not believe either group met the criteria for substantive responsibilities for endangered species or water management.

Homer Rouse, representing Park Service Regional Director Baker (who could not attend), said that the Park Service sees opportunity for tremendous benefits from their participation in Recovery Program. The Park Service has clear responsibilities for both water and endangered species within the five park units in the upper basin. They have been participating in subcommittee meetings and have seen how they and the Program could benefit from their membership in terms of reducing duplication of effort, avoiding conflict, etc. The Park Service has \$721,000 over the next 3 years for endangered fish research and they believe that membership in the Recovery Program would increase their ability to get future appropriations from Congress for these activities. When asked how their funds would be contributed to Recovery Program activities (through the regular process or with certain stipulations), Homer replied that when they go to Congress for funding, they have to identify what projects the funding will be used for. The Park Service could consult with the Recovery Program in advance on what the funds would be used for, but they could not "turn over" the funds to the Program. Galen Buterbaugh pointed out that no agency in the Program really "turns over" their funding, but they are strongly influenced by Program priorities. Homer said he believed the Park Service could work within those parameters.

Cliff Barrett said that CREDA is not dissatisfied with Western or Reclamation's representation; however, to satisfy concerns of the power community, CREDA needs to have representation on the Biology Committee so that they can be sure that adequate science is being used in making flow recommendations. For this reason, CREDA would like full membership on

the Biology Committee, and could accept ex officio membership on the other committees.

The Committee members then cast votes regarding full membership in the Recovery Program for the Park Service and CREDA. For the Park Service, the water users and Utah were opposed, Colorado abstained, and the Service, Reclamation, Wyoming, Western, and the environmental groups were in favor. For CREDA, the water users, Utah, Colorado, and the Service were opposed, and Reclamation, Wyoming, Western, and the environmental groups were in favor. The Committee then agreed to vote on ex officio membership, meaning nonvoting membership at every level (with the condition that the meaning of ex officio status be reconsidered sometime in the future). The Committee unanimously approved ex officio membership for the Park Service and CREDA. Galen Buterbaugh will provide an official response to their original membership requests with an announcement of the Committee's decision.

5. Section 7 Consultation:

- a. Biological Opinion Update (Attachment 7)--Jim Lutey pointed out that 51 projects (totaling 131,750 af in depletions) had received opinions since 1988. Gene Jencsok noted that the 131,750 af is the potential total depletion, if all projects are built. The Service agreed to clarify this. At the repeated request of the Wyoming's member to the Management Committee, the Service agreed to separate consultations for historically depleting projects from new project consultations. Clayton Palmer asked why several Blue Mesa projects have not been noted as historic, and Jim Lutey replied that those probably were new water sales. John Shields asked if Black Butte Mine wasn't an historic project, and Jim said he would check.
- b. Section 7 Consultation on Historic Depletions--Jim Lutey provided a background on discussions over the past 6 months related to "historic depletions," that is, projects previously constructed and operated which now require a new Federal action and therefore require new Section 7 consultation under the Endangered Species Act. This was discussed at the Implementation Committee's August 15, 1991, meeting where John Hamill agreed to research the administrative record to determine if the Service's method for handling these consultations had been resolved when the Recovery Program was developed. John Shields of Wyoming also conducted a review of the administrative record and reported those results to the Management Committee. The topic was discussed at the October 23, 1991, Management Committee meeting, after which each Management Committee representative was asked to draft a position on how they thought such consultations should be handled. These drafts were circulated in advance of a special Management Committee meeting on December 18, 1991. After much discussion at that meeting, the Service agreed to work from Colorado's draft position and draft an amendment to the Recovery Program that would be satisfactory to all. The Service also agreed to provide a status summary on sufficient progress. The Service sent out their draft on January 16, 1992, and

it was discussed at the January 21, 1992, Management Committee meeting. The Management Committee therefore recommended to the Recovery Implementation Committee that a smaller working committee be convened to further refine the amendment.

Galen Buterbaugh reiterated certain points in the Service's position. The Service believes the historic depletion and sufficient progress issues are connected. The Service is pleased with the way the Recovery Program is proceeding, and has continued to issue nonjeopardy opinions on small depletions as agreed to in the Recovery Program. However, the Service is concerned about the lack of response in fish populations (especially reproduction and recruitment in razorback suckers) as depletions continue to occur. Galen said he does not support a working group to further refine the Service's draft amendment. Rather, he proposes that Program participants provide responses to the Service's draft, and the Service will continue to work to refine it. The Service is willing to continue discussing the historic depletion and sufficient progress issues, and does not plan any drastic actions related to them. To the Service, the key issue in sufficient progress is acquiring instream flows. The Service's position on sufficient progress has been previously addressed in a Solicitor's opinion (See Attachment 8), and the Recovery Program itself recognizes the need for effective and continued progress. Galen said he did not believe these issues were cause for undue alarm, and that at this point, the discussion should return to the Management Committee level, with the Service providing another draft of their proposed amendment.

Peter Evans said he supports the Management Committee working on these issues, however, the Service's analysis of sufficient progress has not been open enough. He would like to see more information from the Service on how sufficient progress is determined. The Service's list of activities which will contribute to sufficient progress helps, but it doesn't explain what the Program should have already accomplished, but has not. Galen said the Service would be willing to address that with Colorado or the Management Committee. Peter said his second concern relates to who should bear the burden of sufficient progress. Colorado believes that burden should rest first on the Recovery Program, and that it is not fair to burden individual water users before the Program has had a chance to achieve progress. Jeff Fassett suggested that if acquiring water really is the key issue, then perhaps the Program should be spending all of the annual budget to do so. Galen replied that the Management Committee is seriously pursuing water acquisition on several fronts.

The Committee members then exchanged opinions on the process for resolving these issues. Tom Pitts pointed out that the Management Committee recommended an ad hoc working group to deal with the issues because they could meet more frequently. Galen recommended that Recovery Program participants comment on the Service's latest draft, the Service revise that draft, then the Management Committee

meet to discuss it. Peter Evans agreed that all members of the Management Committee probably needed to be involved. Tom was concerned that this process would not result in resolution. John Hamill noted that the Management Committee has spent the greater part of its last three meetings discussing historic depletions and sufficient progress, and that members hold some very divergent views on these subjects. Therefore, the Management Committee may first need to determine some basic principles everyone can agree on. Galen noted that if resolution cannot be reached, the Implementation Committee needs to be informed well in advance (at least 2 months) of their next meeting. Peter Evans recommended at least one more special meeting to discuss the issues before the Management Committee's regularly scheduled meeting in April.

Barry Saaunders asked that the Service clarify their legal constraints related to sufficient progress and historic depletions. Dan Luecke said the environmental community wants to see the fish recovered, they don't think historical depletions are exempt, and that the concept of sufficient progress is an important one. John Hamill noted that the Service's requirement for sufficient progress and the water user's position that this is a fundamental violation of the Program appear to be diametrically opposed. Tom Pitts said he is willing to meet as often as necessary to resolve this issue. Peter agreed that the issues need to be resolved and said that Colorado does not want water project proponents to be given biological opinions that are not defensible in court; all Program participants have an interest in seeing that the Service is able to meet their legal requirements.

The Committee agreed to return the issues to the full Management Committee. Members should provide written comments on the Service's recent draft amendment, and these will be circulated among all the members. Comments should be in the form of specific changes in the amendment language. If principles are at issue, those should be identified. Margot Zallen asked that those commenting also review the 1989 solicitor's opinion (Attachment 8) which outlines the Service's legal requirements. Jim Lutey said the Service would be willing to meet to discuss these issues individually with any members who so desire.

- c. Flaming Gorge--Jim Lutey reported that the Service provided a draft opinion to Reclamation and Western on December 24, then met Monday, January 27, with both agencies to discuss the draft. The Service hopes to quickly revise the draft and send it back to Reclamation and Western. Reclamation plans to release the draft (probably by the end of February) after the Service revises it. Dan Luecke asked if protection of the recommended flows through Utah was a concern, and Bob Jacobsen said that seems to have been dealt with.
6. Endangered Fish Slide Tape Show: John Hamill explained that the Recovery Program slide-tape show was developed through the Information and Education program and has been reviewed and approved by the Information

and Education Committee and the Management Committee. It is now complete with the exception of a few missing slides. Connie Young then presented the show. Copies will be made available to Recovery Program members, visitor centers, etc. within a month or so. The show also will be dubbed on video.

7. Report on Endangered Fish Hatchery Needs: John Hamill opened the discussion, explaining that the Propagation Coordinator (Holt Williamson) was asked to look at the Program's fish and hatchery needs and provide recommendations in the form of a coordinated hatchery facility plan. Holt then distributed an update on fish and facilities needs (Attachment 9), noting that a more comprehensive document is currently being reviewed within the Service. Galen Buterbaugh agreed to expedite completion of that document.

Holt explained that long-term fish needs will be defined after the fish populations are fully characterized (genetically). Most current propagation activities focus on populations we know are in trouble (activities include razorback sucker work, genetics studies, development of refuge and back-up refuge populations, and production of broodstock). The new facilities being built at Ouray and at Horsethief Canyon also will be used for these high-priority activities. However, even with the new facilities, we will not have enough refuge and back-up refuge space. Colorado is nearing the end of their hatchery feasibility study which should provide recommendations for additional facilities. Since facilities are limited, we must be careful to stick closely to the Propagation and Genetics Management Plan. Bob Caskey said the Colorado Division of Wildlife would be willing to work with the Service to make space available in their existing facilities where needed.

Another major concern is that the Food and Drug Administration (FDA) must now approve each chemical and drug we use for fish handling. Hopefully, approval will not be required for each species we work with. Service personnel in the Washington Office are working to solve this problem. Galen noted that the FDA is required by law to make these approvals, and that they are aware of the serious ramifications their restrictions have for endangered species management.

8. Guidance for FY 93 Work Plan: (Attachment 10) John Hamill reported that ongoing projects may leave only about \$70,000 available for new starts in FY 93. The Management Committee has asked the Biology Committee to look at ongoing projects to determine if any trimming is possible. Three high priority areas for new work in FY 93 are: a) survey/evaluate/restore flooded bottomlands; b) control nonnative fishes; and c) minimize impacts of sampling. Emphasis has been placed on activities expected to have direct benefit to the endangered fish.

Barry Saunders said the work plan should be made responsive to what comes out of the sufficient progress negotiations, so that funds are targeted at what is determined will achieve sufficient progress. John Hamill noted that restoring flooded bottomlands and controlling nonnative fishes on the Service's list of activities which will contribute to sufficient

progress, as is restoring fish passage. The feasibility study for fish passage at Redlands would require \$30,000 to \$40,000, and would include: a) review of the Corps of Engineers fish ladder study to determine if that would be the best alternative and if the cost estimate is on target; and b) evaluation of the feasibility of removing or relocating the Redlands Dam. Redlands has a 700 cfs water right for generating power, but it is a rather old and inefficient plant, so alternatives to its operation may be available.

With regards to developing recovery goals, Tom Pitts asked that the Service keep the Recovery Program well-informed as this work progresses. John Hamill said the Service planned to do that, and would begin by developing a proposal outlining their approach.

Tom Pitts moved that the Committee approve the guidance. Barry Saunders requested a proviso that the priorities in the FY 93 guidance stand unless sufficient progress negotiations indicate that other activities are more important. The Committee approved the guidance (with Dan Luecke absent from the vote).

9. Allocation of Surplus FY 92 Funds: John Hamill explained that about \$94,000 in surplus funds are available for FY 92 due to additional appropriations the Service received, project modifications, etc. The Management Committee's recommendations for expenditure of these funds are in Attachment 11. The Committee approved those recommendations (with Dan Luecke absent from the vote).
10. Washington D.C. Briefings: Tom Pitts explained that the Management Committee has recommended a briefing trip to Washington again this year. Last year's trip resulted in a \$250,000 add-on to the Service's budget (although \$50,000 of that amount was unfortunately not retained in the proposed FY 93 budget). The Management Committee recommends briefing the administration and congressionals on potential upcoming activities/needs, including: hatchery needs, fish passage, and the Yampa Basin alternative reservoir feasibility study. Barry Saunders said Utah would be hesitant to indicate to Washington contacts that everything is going well in the Recovery Program in the face of our ongoing discussions on historic depletions and sufficient progress (unless negotiations between now and then indicate that these issues will be resolved). Tom Pitts said the water users also considered that, but decided they should proceed with the briefing trip. The Committee agreed the trip was a good idea and the dates were tentatively set for March 31- April 3.
11. Annual River Trip: John Hamill reported that the Management Committee recommends a river trip on the Gunnison River this year. One day would be spent on the ground around the upper Gunnison River (National Park Service activities, wild and scenic river designation, and operation of the Aspinall Unit would be topics of discussion). Two days would be spent on the river (from Delta to Grand Junction), possibly by canoe. The final day would be spent on the ground at the Redlands Dam site and at the Horsethief ponds. The cost is expected to be less than \$10,000, of which Reclamation has agreed to pay a part. Robert Wigington said

that The Nature Conservancy might be able to help with logistical support (equipment, guides, etc.). The Committee agreed to the trip and tentatively scheduled it for June 10-13. Those who could not make a 4-day trip could miss one or more of the ground days, if necessary. Lloyd Greiner said Western could provide a 1-hour tour of their operating facility in Montrose as part of the trip.

12. Approve Revisions to Subcommittee Membership Criteria: John Hamill explained that concern regarding subcommittee membership arose after the Implementation Committee approved revised committee mission statements in August of 1990. The approved language allowed virtually anyone to be a voting member of a subcommittee. Further, requiring subcommittees to operate by consensus could compromise their technical input. The Management Committee recommends that the language be revised as shown in Attachment 12. The Implementation Committee approved the revision. Clayton Palmer pointed out that the Park Service and CREDA can now become voting members of technical subcommittees with the approval of the parent committee.
13. Next Meeting: Tuesday, August 25, 1992, beginning at 9:30 a.m. in the Fish and Wildlife Service office in Denver.

Adjourn: 3 p.m.

Attachment 1

Attendees  
Recovery Implementation Committee Meeting  
January 30, 1992

- \* Roland Robison, U.S. Bureau of Reclamation
- \* Galen Buterbaugh, U.S. Fish and Wildlife Service (Chairman)
- \* Peter Evans<sup>1</sup>, Colorado Department of Natural Resources
- \* Lloyd Greiner, Western Area Power Administration
- \* Dan Luecke, Environmental Defense Fund
- \* Tom Pitts, Upper Basin Water Users
- \* Barry Saunders<sup>2</sup>, Utah Department of Natural Resources
- \* Jeff Fassett, State of Wyoming
- \* John Hamill, U.S. Fish and Wildlife Service (Program Director)
- Bob Jacobsen, U.S. Fish and Wildlife Service
- Jim Lutey, U.S. Fish and Wildlife Service
- George Smith, U.S. Fish and Wildlife Service
- Holt Williamson, U.S. Fish and Wildlife Service
- Angela Kantola, U.S. Fish and Wildlife Service
- Steve Chaney, National Park Service
- Dan Huff, National Park Service
- Homer Rouse, National Park Service
- Connie Young, Colorado Division of Wildlife
- Bob Caskey, Colorado Division of Wildlife
- Jay Skinner, Colorado Division of Wildlife
- Gene Jencsok, Colorado Water Conservation Board
- Ray Tenney, Colorado River Water Conservation District
- John Shields, Wyoming State Engineer's Office
- Clayton Palmer, Western Area Power Administration
- Margot Zallen, Department of Interior Solicitor's Office
- Robert Wigington, The Nature Conservancy
- Cliff Barrett, Colorado River Energy Distributor's Association

\* Implementation Committee Member

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<sup>1</sup> For Ken Salazar

<sup>2</sup> For Dee Hansen.

Attachment 2

Agenda  
Colorado River Recovery Implementation Committee Meeting  
January 30, 1992

Convene - 9:30 a.m.

1. Review/Modify Agenda
2. Approval of last Implementation Committee Meeting Summary
3. Program highlights, shortcomings, future plans (Hamill)
4. Request for membership on the Implementation Committee (Hamill).
  - a. National Parks Service (NPS/Baker)
  - b. Colorado River Energy Distributors Association (CREDA/Barrett)
5. Section 7 Consultation (Lutey)
  - a. biological opinion update
  - b. Section 7 Consultation on Historic Depletions

LUNCH (noon - 1:15 p.m.)

5. Section 7 (continued)
  - c. Flaming Gorge
6. Endangered fish slide tape show (Young)
7. Report on Endangered Fish Hatchery Needs (Williamson)
8. Guidance for the FY 93 Work Plan (Hamill)
9. Allocation of surplus FY 92 funds (Hamill)
10. Washington D.C. Briefings (Pitts)
11. Annual River Trip (Hamill)
12. Approve revisions to subcommittee membership criteria
13. Next Meeting

Adjourn: 4 p.m.

### Attachment 3

#### Actions and Assignments Recovery Implementation Committee Meeting January 30, 1992

##### COMMITTEE ACTIONS:

Approved the last Implementation Committee meeting summary.

Agreed to sign a resolution recognizing Jim Bennett's participation in and contribution to the Recovery Program

Approved ex officio membership for the Park Service and CREDA.

Returned negotiations on the issues of historic depletions and sufficient progress to the Management Committee.

Approved FY 93 guidance. (With proviso that the priorities stand unless sufficient progress negotiations indicate that other activities are more important.)

Approved the Management Committee's recommendations for expenditure of surplus FY 92 funds (Shown in Attachment 11).

Approved a briefing trip to Washington, D.C., and tentatively set the dates for March 31-April 3.

Agreed to a Gunnison River trip and tentatively scheduled it for June 10-13.

Approved the Management Committee's suggested revision to subcommittee membership criteria.

Set the next Implementation Committee meeting for Tuesday, August 25, 1992, beginning at 9:30 a.m. in the Fish and Wildlife Service Office in Denver.

##### ASSIGNMENTS:

Each Management Committee member to discuss the usefulness of the "interim recovery objectives" approach with their biologists and be prepared to discuss that at their next meeting.

Galen Buterbaugh will provide an official response to Park Service and CREDA membership requests with an explanation of the Committee's decision.

The Service agreed to clarify that the 131,750 af depletion total on their consultation list is the potential total depletion, if all projects are built.

Jim Lutey will check to see if Black Butte Mine is an historic project.

The Service will provide more information on how sufficient progress is determined, addressing Peter Evans' question regarding what the Program should have already accomplished, but has not.

Members of the Management Committee will provide written comments on the Service's recent draft amendment on sufficient progress and historic depletions, and these will be circulated among all the members. Comments should be in the form of specific changes in the amendment language. If principles are at issue, those should be identified.

Galen Buterbaugh will expedite completion of the hatchery facilities needs document.

The Service will keep the Recovery Program well-informed as they progress in developing recovery goals. The Service will begin by developing a proposal outlining their approach.