

Colorado River Recovery Implementation Committee
September 8, 1993 Meeting
- Summary -

Convene: 10 a.m.

Attendees: (Attachment 1)

Actions and Assignments: (Attachment 2)

Major Topics Discussed/Decided:

1. Introductions
2. Review/Modify Agenda: The agenda was modified as it appears below.
3. Approval of Last Implementation Committee Meeting Summary: Approved.
4. Recovery Program Update: John Hamill gave an update on Program activities and accomplishments (see Attachment 3). Jeff Fassett asked about the nature of the instream flow enforcement agreement with Colorado. John Hamill explained that it is a contractual agreement requiring the State to enforce instream flow appropriations, and is needed to provide assurance to the Service that the State will not subordinate or otherwise not protect instream flow appropriations for the endangered fishes. Ted Stewart asked if a date had been set for the public meeting in Vernal; John Hamill said the meeting probably would be held in November or December.
5. Recovery Implementation Program Recovery Action Plan (RIPRAP) and the Sufficient Progress/Historic Project (Section 7) Agreement: Peter Evans explained that the Management Committee completed the Section 7 agreement in March, but the public comment period was still open on this and the RIPRAP (through October 4). The Management Committee has worked to put biological integrity first in the RIPRAP and produce a document that provides assurance that the Recovery Program is making and will continue to make the progress necessary for the Service to rely on it as a reasonable and prudent alternative in their biological opinions. Developing the RIPRAP has clarified participants' responsibilities for actions that must be taken to recover the fishes and has helped managers understand areas where consensus is still needed on how to proceed. John Hamill provided a summary of major and near-term recovery actions (Attachment 4), noting that the States and Reclamation have the lead for most of these activities. Peter said the Management Committee recommends the Implementation Committee's endorsement of the RIPRAP, but since the public comment period is still open, it cannot yet be approved in final.

o Comments and Concerns

Jeff Fassett asked about the process for soliciting public comments; Peter replied that the Service published a notice of availability in the Federal Register. John Hamill added that the RIPRAP also was sent to the Recovery Program's general mailing list and that Connie

Young was preparing a news release, as well. Ted Stewart asked if this was the only public comment period that would be required; Ralph Morgenweck said yes, unless very major changes were made in subsequent updates. Tom Pitts asked if the Service would need to publish a notice of availability of the final RIPRAP; Margot Zallen said the Service will publish a notice, but there is no deadline.

Rick Gold said his only concern about the RIPRAP is the very optimistic, aggressive schedule, but that he assumes we have options to reevaluate dates within the annual reviews. Tom Pitts echoed Rick's concern, and recommended that in the next year the Management Committee assess the Recovery Program's capabilities to implement the RIPRAP (taking into consideration workload, committee structure, operation, staffing, etc.). Tom said he is unsure if the Recovery Program will have the funding necessary to accomplish all the RIPRAP actions. Ralph Morgenweck agreed, noting he would like to discuss committee structure, missions, and staffing adequacy further.

Rick Gold noted that John Hamill's summary of RIPRAP major and near term actions (Attachment 4), was very helpful and suggested that it be added to Section 4.0 of the RIPRAP.

o Process and Schedule for Finalizing

Ralph Morgenweck recommended delegating authority to the Management Committee to make final changes to the RIPRAP after the public comment period closes (assuming that no major changes which would require Implementation Committee approval are needed). The Implementation Committee agreed. John Hamill will let Ralph know if substantive, problematic changes are recommended in the comments received. If such problems are identified, Ralph will discuss them with Implementation Committee members and determine what is needed to come to a decision (e.g., special Implementation Committee meeting, conference call, etc.).

6. Section 7 Consultation:

o Implementation of the Section 7 Agreement

Tom Pitts asked if the Service made the Management Committee's recommended language changes to their summary of how biological opinions were being done under the Section 7 Agreement. Jim Lutey said the Service had made the changes and would provide copies of the revised version at the next Management Committee meeting.

Jim Lutey summarized how the Service is implementing the Section 7 Agreement. The Service, in most cases, will consider the Recovery Program to have made sufficient progress to offset new and historic depletions under 3,000 af. For historic projects, the Service relies on progress made to date and the expectation that the RIPRAP will be implemented. For new depletions, the Service assesses the depletion charge, and relies on progress made to date and the

expectation that RIPRAP will be implemented. The Service will reevaluate sufficient progress annually (at the same time the RIPRAP is revised).

John Hamill asked if any large projects were expected; Jim Lutey said a revised Sandstone proposal was possible. Jeff Fassett said that the Wyoming legislature has approved the revised proposal (would deplete 12,000 af) and that if no technical problems are encountered, they may file for a 404 permit perhaps by the end of 1993. Jeff asked if the Service has given any thought to the process for projects for which they determine sufficient progress has not been made. Specifically, what will the process be for conferring with the Management Committee on identifying actions in the RIPRAP that must be completed to avoid jeopardy. John Hamill said the Service hadn't yet encountered a project requiring this. The process could involve: a letter from the Service to the Management Committee raising the issue and soliciting comments; a meeting, if needed; and then the Service would make their determination. Ralph Morgenweck suggested that the Management Committee discuss the process and John Shields asked the Service to outline a draft for the Management Committee's discussion.

- o Update on Consultation Activities. Jim Lutey provided an updated table of consultations (Attachment 5). Jeff Fassett asked how many new projects have gone forward and are depleting water. Jim said he didn't know, but obviously some have not, and may never come on line. Probably 80% of the total depletion amount is attributable to 4-5 projects, some of which are uncertain (e.g., Central Utah Project, Price-San Rafael, etc.). John Shields asked how "programmatic" consultations are calculated in the total depletion amount. Jim said that the maximum depletion amount is included, where it is known, but that these projects do make it difficult to predict accurate total depletion amounts.

Jim Lutey said the Service is working on internal guidance and intra-agency consultation to exempt new projects under 100 af from the depletion charge (up to cumulative depletions of 1,000 af). Past experience suggests that this would cover roughly 5-years of depletions under 100 af. After 1,000 af have been depleted, the Service could consult again to continue the process for another 1,000 af. Small projects would still require Section 7 consultation and a biological opinion, but it would be a very abbreviated, routine process.

Jim Lutey explained that the Service's rationale for exempting Ouray ponds from a depletion charge was that the ponds (refugia) are expected to have an overall beneficial effect on the endangered fishes. Margot Zallen pointed out that the Endangered Species Act does not require consultation if an action has a beneficial effect.

- 7. Critical Habitat Designation for the Endangered Colorado River Fishes: Larry Shanks outlined activities related to critical habitat designation.

The proposed rule was published January 29, 1993, and about 700 comments were received. The Service is in the process of preparing support documents on their biological and economic analyses.

8. Nonnative Fish Stocking Procedures/Policy

Peter Evans discussed the background of the draft Procedures. Nonnative fish stocking is one of the issues where Recovery Program participants lack consensus. With Management Committee approval, the States and the Service worked to develop procedures for resolving potential conflicts. The essential elements of the draft Procedures were taken from the American Fisheries Society position statement on exotic introductions.

The Management Committee discussed at length whether the Recovery Program needed to approve the Procedures, and agreed to include that approval in the RIPRAP with a deadline of January 1994. Some Management Committee members have concerns with the draft Procedures: 1) what degree of documentation would be provided by the States concerning potential impacts; 2) what is the process for notifying the public and Recovery Program participants when the State and the Service disagree on the potential impacts of a stocking plan under consideration; and 3) what is meant by a State "bearing full responsibility" if they decide to stock despite disagreement by the Service. Colorado conveyed these concerns to the Colorado Wildlife Commission, which is approving the Procedures (the Service also has published the availability of the draft Procedures in the Federal Register). Colorado believes the concerns can be resolved, but the States and the Service have not yet met to work them out. Since the Colorado Wildlife Commission is expected to approve the Procedures next week, a possible solution would be to develop a supplemental implementation agreement for the Procedures to resolve the remaining concerns. Implementation of the Procedures in Utah and Wyoming will be more informal.

Tom Pitts said he was very disturbed that the States and the Service began going through their approval processes before the Management Committee approved the draft Procedures. He listed 7 specific concerns of the water users concerning the draft procedures:

- 1) They allow nonnative fish stocking solely at the States' discretion.
- 2) They provide no fixed criteria for the States to use in deciding whether or not to stock nonnative fishes.
- 3) They allow stocking nonnative fishes in habitat occupied by endangered fishes.
- 4) They expressly allow nonnative fish stocking upstream of occupied habitat, with no specific requirements for controlling escapement
- 5) They fail to implement Section 4.4.3. of the Recovery Program.
- 6) They provide no process for conflict resolution. The "State proposing the introduction would make the final decision on stocking"
- 7) They have no provision for review of stocking proposals by the Recovery Program.

Tom said that all elements of the Recovery Program must be implemented; there is no room for selective application of Program elements. The water users believe a double standard is being applied to flow protection and nonnative fish stocking. The Service insists on stringent and perpetual protection of flows, but would allow nonnative fish stocking with no standards whatsoever. Tom concluded by saying that for the Recovery Program to maintain its integrity, Program participants should reject the draft Procedures. Dan Luecke said that the environmental groups share a number of the water users concerns.

Ralph Morgenweck agreed more discussion of the draft Procedures is needed. Nonnative stocking is one of the most sensitive issues the Service deals with, and includes concerns about States' rights. Ralph noted that there are several proposals in the reauthorization of the Endangered Species Act to increase the role of States in implementing the Act. For this to occur, the States will need to balance perceived sportfish concerns and endangered fish recovery. If it appears that States are not balancing these appropriately, this will have implications for the role given to the States in reauthorization of the Act.

Ken Salazar said this is a major component in the RIPRAP, and the States' responsibility probably needs to be given more consideration. He said he would suggest that the Colorado Wildlife Commission postpone adopting the procedures until the remaining concerns are resolved. Ken said he would work with the involved agencies in Colorado to give more thought to the document itself and the nonnative stocking issue, in general. He suggested that the Management Committee continue to work on these issues and develop a revised agreement to address them. The Implementation Committee requested that the revised agreement be available for their review before January 1994.

Ted Stewart agreed the Management Committee should continue to work on these issues. Ralph Morgenweck recommended that the Management Committee also address comments received as a result of the Federal Register notice. Peter Evans said he would work to get the experts from the States and the Service together to develop a new draft that addresses the concerns that have been identified, with the goal of having a proposal for the Management Committee to review at their October 15 meeting. The environmental groups and water users should be invited to participate, as well. Tom Pitts agreed to the proposal, as long as comments responding to the Federal Register notice would be addressed. Chris Karas and Barry Saunders questioned the feasibility of meeting the January deadline. Ralph Morgenweck recommended working to meet that deadline, saying he was philosophically opposed to changing a major deadline in the RIPRAP before the RIPRAP has even been approved. Ken Salazar agreed, noting that the States and the Service can begin working now to resolve the currently identified issues.

9. Recovery Program Funding and Authorization Activities

Tom Pitts outlined funding requested last spring for the Service's budget: 1) \$624,000 earmark for Service resource management funds for

the Program (received and added to base); 2) \$200,000 earmark for Section 6 funds (received); and 3) \$389,000 for hatchery operation and maintenance (not received). The Recovery Program's need for hatchery operation and maintenance funds is growing and we will need to get support from the Service's Washington Office for this funding. Ralph Morgenweck agreed and said he would work with Program participants to make this happen. Under Reclamation's budget, the Recovery Program had planned to request \$1.5M to start implementing the capital construction projects, but Dan Beard asked that we not request this from Congress, and he would do everything he could to find the funds in Reclamation's existing FY 94 budget.

The Implementation Committee discussed recommendations regarding seeking authorization for the Recovery Program to make it easier to get the funding for capital projects over the next several years. Rick Gold said he would pursue this question of Dan Beard's as well as lower levels within Reclamation. Ralph Morgenweck said that he expects Molly Beattie to visit Denver before the end of October, and he would arrange for her to meet with Recovery Program participants.

10. Propagation and Hatchery Facility Plan Update:

John Hamill summarized the status report on refugia/propagation facilities needs (Attachment 6). The Management Committee agreed to support the Service's expansion of the Ouray facility. With the Ouray expansion, the Program will still be short about 10 acres of ponds to meet short-term (refugia) needs. The Biology Committee will provide the Management Committee recommendations on how to spend the \$200,000 for hatchery facility planning and design (from Reclamation) by October 1. By February 1, the Biology Committee will provide recommendations for long-term facility needs (to provide fish for augmentation and reintroduction). Both Colorado and Utah are considering facilities which could play a role in meeting long-term needs.

11. FY 94 Work Plan Approval

John Hamill discussed the draft FY 94 work plan, which totals about \$7.7M this year (\$3.3M in annual funding and \$4.4M in capital project funding). Barry Saunders noted that Utah's additional in-kind contribution for protection of flows from Flaming Gorge needs to be added to the project descriptions in the appendix. Dan Luecke said he was having trouble matching the budgets in the work plan and in the RIPRAP. John Hamill said that the work plan budget table is the accurate one. The budget is the weakest part of the RIPRAP and needs to be reviewed by the Management Committee. The Management Committee also needs to review items in the RIPRAP that are to be completed in FY 94; some of these don't have a line item in the FY 94 work plan (however, John said he doesn't see any major gaps or funding shortfalls). The Implementation Committee agreed the Management Committee should compare the two.

Dan Luecke said the environmental groups have concerns about the Program paying for Colorado Water Conservation Board water acquisition staff

support (\$49,000). Ken Salazar said that they are working to get additional legislative and financial support for their Recovery Program work, but this funding is needed in the interim to help Colorado meet its RIPRAP deadlines. Peter Evans pointed out that the funding is needed to proceed as quickly as possible on water acquisition, that it would be used for part-time consultant services, and that it would come from Section 7 funds (water user depletion payments). Dan said he appreciated the explanation and that he would relate that to the environmental groups (and would meet with Peter to resolve the issue by October 1, 1993). The Implementation Committee approved all of the work plan except this item. They also approved the recommendations on page 7 of the work plan. John Shields asked that the recommendation regarding submission of scopes of work (#3) also say that projects will not be approved in future years unless they have updated scopes of work.

12. Other

Tom Pitts recommended an evaluation of Recovery Program committee structure, operations, and workload. John Hamill noted that committees (especially the Biology Committee) try to do much staff work themselves, making it difficult to accomplish all of the tasks before them. Options for solving the problem include: increasing staff support, limiting committee scope of responsibility/influence; and/or using small workgroups for some tasks. The technical "culture clash" between biologists and engineers on technical committees (particularly the Biology Committee) also has been a problem. Ralph Morgenweck noted that one option would be to invite someone outside the Recovery Program to review committee operations. Barry Saunders said he thought the Management Committee could address this issue and develop recommendations as soon as the RIPRAP and work plan workload subsides. Peter Evans said he believed the Management Committee could develop recommendations by early 1994. The Committee agreed that the Management Committee should develop recommendations by the January Implementation Committee meeting. The recommendations should be based on how the Recovery Program will implement the RIPRAP and should identify if restructuring, additional resources, etc. are needed.

Ed Wick said the National Park Service is still interested in Recovery Program membership. They have eight parks in the Colorado River System and probably manage more area proposed for critical habitat designation than any other agency. Last year, the Park Service funded \$225,000 of research and projects on the endangered fish. They are accepting proposals for FY 94 work through September, and welcome recommendations from the Recovery Program on priorities for this work.

13. Next Meeting The next regular meeting was tentatively set for Thursday, January 27, from 9:30 a.m. - 4 p.m. in the Service's 3rd floor conference room in Denver.

Adjourn: 4 p.m.

Attachment 1

Attendees
Recovery Implementation Committee Meeting
September 8, 1993

IMPLEMENTATION COMMITTEE MEMBERS:

Ralph Morgenweck, U.S. Fish and Wildlife Service (Chairman)
Rick Gold, U.S. Bureau of Reclamation
Ken Salazar, Colorado Department of Natural Resources
Lloyd Greiner, Western Area Power Administration
Dan Luecke, Environmental Defense Fund
Tom Pitts, Upper Basin Water Users
Ted Stewart, Utah Department of Natural Resources
Jeff Fassett, State of Wyoming
Russ Bovaird, Colorado River Energy Distributors Association (nonvoting)
John Hamill, U.S. Fish and Wildlife Service (Program Director) (nonvoting)

OTHERS:

Peter Evans, Colorado Department of Natural Resources
Barry Saunders, Utah Division of Water Resources
Eddie Kochman, Colorado Division of Wildlife
Bob Jacobsen, U.S. Fish and Wildlife Service
George Smith, U.S. Fish and Wildlife Service
Angela Kantola, U.S. Fish and Wildlife Service
Larry Shanks, U.S. Fish and Wildlife Service
Mike Stempel, U.S. Fish and Wildlife Service
Jim Lutey, U.S. Fish and Wildlife Service
Margot Zallen, Department of Interior Solicitor's Office
Brent Uilenberg, U.S. Bureau of Reclamation
Chris Karas, U.S. Bureau of Reclamation
John Shields, Wyoming State Engineer's Office
Clayton Palmer, Western Area Power Administration
Robert Wigington, The Nature Conservancy
Julie McKenna, Northern Colorado Water Conservancy District
Jennifer McCurdy, Denver Water Board
Ed Wick, National Park Service
Connie Young, U.S. Fish and Wildlife Service
Dave Sabo, Western Area Power Administration
Howard Rigtrup, Utah Department of Natural Resources
Gene Jencsok, Colorado Water Conservation Board
Pat Nelson, U.S. Fish and Wildlife Service
Ray Tenney, Colorado River Water Conservation District

Attachment 2
Actions and Assignments
Recovery Implementation Committee Meeting -- September 8, 1993

COMMITTEE ACTIONS:

1. Delegated authority to the Management Committee to make final changes and approve the RIPRAP after the public comment period (Ralph Morgenweck will discuss any problematic changes with the Implementation Committee).
2. Approved the work plan except for Colorado Water Conservation Board water acquisition staff assistance. Approved the recommendations on page 7 of the work plan (which also will say that projects will not be approved in future years unless they have updated scopes of work).

ASSIGNMENTS:

1. By the January Implementation Committee meeting, the Management Committee will evaluate capabilities and develop recommendations for implementation of the RIPRAP (taking into consideration workload, committee structure, operation, staffing, etc.). Recommendations will identify any needed restructuring or additional resources needed.
2. At the next Management Committee meeting, the Service will provide copies of the revised version of their summary of how biological opinions are being done under the Section 7 Agreement.
3. Ken Salazar will ask the Colorado Wildlife Commission to postpone adopting the nonnative stocking procedures until remaining concerns are resolved. The Management Committee will work on these concerns and develop recommendations for resolution (also addressing comments received from the Federal Register notice). Peter Evans will convene experts from the States and the Service to develop a new draft (the environmental groups and water users will be invited to participate). The Management Committee will develop final recommendations for Implementation Committee review before the end of the year.
4. Ralph Morgenweck will work with Program participants to get support from the Service's Washington Office for hatchery operation and maintenance funding.
5. The Management Committee will carefully review the RIPRAP budget. They also will review items in the RIPRAP to be completed in FY 94 and compare them with the FY 94 work plan to make sure that everything is covered.
6. Dan Luecke will discuss the reasons for the Colorado Water Conservation Board water acquisition staff assistance project with the environmental groups and meet with Peter Evans to resolve the issue by October 1, 1993.