



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Mountain-Prairie Region



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JAN 16 1992

Memorandum

To: Management Committee, Upper Colorado River
Recovery Implementation Program

From: U.S. Fish and Wildlife Service Representative,
Management Committee

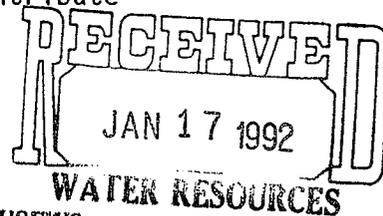
Subject: Status of Sufficient Progress of and Draft Proposed Amendment to the
Recovery Implementation Program for Endangered Fish Species in the
Upper Colorado River Basin (Recovery Program)

At the December 18, 1991, Management Committee's meeting, the Fish and Wildlife Service (Service) was requested to provide a report on the status of sufficient progress towards recovery of the listed fishes and a draft amendment to the Recovery Program which would address historic depletions.

In response to that request, the Service reviewed the attainment of sufficient progress toward recovery of the listed fish and developed a proposed amendment to the Recovery Program.

A basic tenet of the Recovery Program is that it will ensure the survival and recovery of the listed species while providing for water development in the Upper Colorado River Basin. Attachment A gives a recap of the development and implementation of the Recovery Program.

A key element in the successful implementation of the Recovery Program is the attainment of sufficient progress toward recovery of the listed fishes. The Service evaluates progress under the Recovery Program at the time a biological opinion is issued. This evaluation considers (a) progress in all areas of instream flow protection (including the good faith effort by participants in the Recovery Program), (b) progress in other recovery elements, and (c) the magnitude of impacts of the project on the endangered fishes. The Service gives consideration to progress in the drainage where project impacts occur as well as progress in other parts of the basin. Attachment B identifies activities and actions that the Service believes would contribute substantially to sufficient progress.

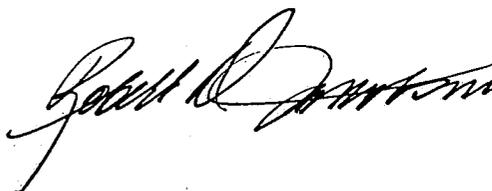


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Although the Service does not believe sufficient progress has been made in the recovery of the listed fishes, some important progress occurred through the implementation of the Recovery Program. Attachment C lists the progress that was made toward recovery of the listed fishes.

Projects which cause historic depletions contributed to the decline of listed fishes in the Colorado River Basin. Comments on how the Recovery Program addresses historic depletions were provided to the Service by participating members of the Recovery Program. The Service reviewed these comments and considered the discussions at the Management Committee's December 18, 1991, meeting. Using this information, the Service developed a draft proposed amendment to the Recovery Program which addresses historic depletions. The proposed amendment is biologically and legally defensible as well as consistent with the intent and spirit of the goals of the Recovery Program. The proposed amendment is given in Attachment D. Please review the amendment so that it can be discussed at the January 21, 1992, meeting of the Management Committee.



Attachments

ATTACHMENT A

DEVELOPMENT AND IMPLEMENTATION OF THE
RECOVERY IMPLEMENTATION PROGRAM FOR
ENDANGERED FISH SPECIES IN THE
UPPER COLORADO RIVER BASIN

On January 21-22, 1988, the Secretary of the Interior; the Governors of Wyoming, Colorado, and Utah; and the Administrator of the Western Area Power Administration cosigned a Cooperative Agreement to implement the "Recovery Implementation Program for Endangered Fish Species in the Upper Colorado River Basin" (Recovery Program) (U.S. Fish and Wildlife Service 1987). The Recovery Program applies to the Upper Colorado River Basin above Glen Canyon Dam, excluding the San Juan River Basin. An objective of the Recovery Program is to identify reasonable and prudent alternatives that would ensure the survival and recovery of the listed species while providing for new water development in the Upper Colorado River Basin. To achieve this objective, the Recovery Program consists of five elements or program areas, including:

- (a) habitat management (provision of streamflows);
- (b) habitat development and maintenance;
- (c) stocking of native fish species;
- (d) nonnative species and sportfishing management; and
- (e) research monitoring and data management.

The Recovery Program states that "full implementation of all these elements will form the basis for the 15-year recovery program It is not expected that the success of the program will be solely dependent upon any one of these elements, but on the successful interrelationships between all elements."

The following excerpts are especially pertinent to Section 7 consultations because they summarize portions of the Recovery Program that address depletion impacts, Section 7 consultation, and project proponent responsibilities:

"All future Section 7 consultations completed after approval and implementation of this program (establishment of the Implementation Committee, provision of congressional funding, and initiation of the elements) will result in a one-time contribution to be paid to the Service by water project proponents in the amount of \$10 per acre-foot based on the average annual depletion of the project This figure will be adjusted annually for inflation Concurrently with the completion of the Federal action which initiated the consultation, e.g., . . . issuance of a 404 permit . . . 10 percent of the total contribution will be provided. The balance . . . will be . . . due at the time the construction commences Funds from these contributions will be applied equally to flow acquisition and to other recovery activities" (Page 5-4)

It is important to note that the above provisions of the Recovery Program were based on numerous underlying assumptions which are described on pages 4-5 and 4-6 of the Recovery Program. The Recovery Program states:

"4.1.5 Section 7 Consultation

The mechanism described in the preceding sections is intended to provide the means to protect and manage the stream habitat of the endangered fishes by offsetting some of the factors that led to the present status of these fish. Success of this part of the recovery program is based upon numerous underlying assumptions, as follows:

- a. rapid determination of flow needs;
- b. sufficient funds to purchase water rights;
- c. availability of water rights;
- d. protection of instream flows;
- e. provision of flows by Reclamation projects; and
- f. continued participation and support by all parties.

Effective and continued progress will be dependent upon whether these assumptions are being met through periodic assessment by each party." (Pages 4-5 and 4-6)

The Recovery Program further states:

"Since this program sets in place a mechanism and a commitment to assure that the instream flows are protected under State law, the Service will consider these elements under Section 7 consultation as offsetting project depletion impacts." (Page 4-6)

Thus, the Fish and Wildlife Service (Service) determined that project depletion impacts, which the Service consistently maintained are likely to jeopardize the listed fishes, can be offset by (a) Recovery Program activities partially funded by the water project proponents' one-time financial contribution, (b) appropriate legal protection of instream flows pursuant to State law, and (c) progress in other recovery elements which results in protection of habitat or enhancement of the natural populations of the listed species. The Service believes it is essential that protection of instream flows proceed expeditiously before significant water depletions occur.

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ACTIVITIES WHICH WILL CONTRIBUTE TO ACHIEVING
SUFFICIENT PROGRESS

JANUARY 1992

The Fish and Wildlife Service (Service) believes that the following activities offer the greatest opportunity for recovering the fish (i.e., establishing self-sustaining populations), providing long-term protection of the habitat upon which the endangered fishes depend, and offsetting the impacts of historic and new water development projects. As such, successful implementation of these activities will contribute most to achieving "sufficient progress" that would allow for new water development to proceed in the upper basin.

1. Implementation and legal protection of the Service's flow recommendations for the 15-mile reach.
2. Reoperation of the Aspinall Unit to meet the flow needs and legal protection of such releases to benefit endangered fishes in the Colorado and Gunnison Rivers.
3. Open access to 100 miles of historical endangered fish habitat on the Colorado and Gunnison Rivers by successfully restoring fish passage at the Redlands Dam (Gunnison River) and the Price Stubs and Roller Dams (Colorado River).
4. Restoration and protection of flooded bottom lands along the Green, Yampa, White, Colorado, and Gunnison Rivers to successfully provide for fish access and use.
5. Implementation and legal protection of the Service's flow recommendations for the Yampa River.
6. Acceptance and implementation of the reasonable and prudent alternatives in the Flaming Gorge Biological Opinion, including legal protection of flows.
7. Management programs to successfully control or minimize the impacts of non-native fish on the endangered fishes.

As of the date of this writing, these appear to be the most significant actions that will facilitate recovery of the endangered fishes in the upper Colorado River basin. The program should measure progress toward these goals and update these at least every 3 years based on the best scientific information available at the time.

PROGRESS OF COLORADO RIVER
RECOVERY PROGRAM, JANUARY 1992

General Recovery Program progress to date includes:

- a. Signing of a cooperative agreement to implement the Recovery Program.
- b. Receipt of resolutions supporting the Recovery Program from water user groups in Utah, Colorado, Wyoming, and several major environmental groups.
- c. Active participation by all cooperators in implementing the Recovery Program, including meeting all funding commitments.
- d. Appropriation of \$1 million by Congress to acquire water rights.
- e. Implementation of the \$2.3 to \$4.0 million Recovery Program Work Plan during Fiscal Years 1982 through 1992 which supported numerous recovery activities and studies related to the rare Colorado River fish.

Progress to provide and protect instream flows in the Upper Colorado River Basin:

- a. Execution of a long-term agreement by the Bureau of Reclamation (Reclamation), Fish and Wildlife Service (Service), and Colorado Water Conservation Board (CWCB) to protect 10,000 acre-feet of Ruedi Reservoir releases to and through the 15-mile reach (complete).
- b. Agreement by Reclamation and the CWCB to provide an additional 10,000 acre-feet of water from Ruedi Reservoir for the endangered fish in the 15-mile reach, subject to approval on a year-by-year basis.
- c. Action by the CWCB to file a preliminary notice for an instream flow right for the 15-mile reach for the months of July, August, and September for 581 CFS (in progress).
- d. Conditional acceptance of the Service's flow recommendations for the 15-mile reach for the months of July, August, and September by the Implementation Committee and CWCB (complete).
- e. Agreement to fund studies related to the impact of the Aspinall Unit on endangered fish in the Gunnison and Colorado Rivers, and implementation of test flows to support those studies (in progress).

Progress to provide and protect instream flows in the Green River Basin:

- a. Acceptance of the Service's Biological Opinion on The Operation of Planning Gorge Dam by Reclamation and implementation of the reasonable and prudent alternative in the opinion (under discussion).
- b. Agreement between the Service and the Colorado Department of Parks and Recreation to provide 2,000 acre-feet of water from Steamboat Lake in 1991. A longer term agreement is under discussion.
- c. Negotiations to acquire the Cross Mountain Ranch on the Yampa River (in cooperation with The Nature Conservancy) (in progress).
- d. Implementation Committee acceptance of the Yampa River Phase I streamflow report and Phase II flow recommendations. The CWCB determined that although these recommendations are sufficient to acquire water rights in some undefined quantity, they are not acceptable to appropriate water rights in the Yampa River.
- e. Negotiations to acquire Juniper-Cross Mountain water rights including Colorado River Water Conservation District's (River District) commitment to evaluate alternative reservoir sites in the Yampa River Basin (in progress).

Progress in improving the status of fish populations:

There has been no verified change in the status of any of the fish populations since the inception of the Recovery Program in 1988.

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PROPOSED AMENDMENT TO THE
RECOVERY PROGRAM

JANUARY 1992

4.1.5 Section 7 Consultation

add at the end of the section on page 4-8

- d. Historic projects are defined as projects that were constructed and operated prior to a Federal action requiring Section 7 consultation. It is believed that historic projects contributed significantly to the decline of the endangered fish by depleting flows, altering flow and temperature regimes, blocking fish migration, reducing sediment, deteriorating water quality, and other factors.

Only historic projects which have a continuing Federal involvement or need a new Federal action are required to undergo Section 7 consultation. Section 7 consultation on such projects will be conducted in accordance with Fish and Wildlife Service (Service) regulations found in 50 CFR 402 and the provisions found in Section 4.1.5 of the Recovery Program, above, with the following exceptions or explanations:

1. If a historic project results in a jeopardy finding, the Service will develop conservation measures/reasonable and prudent alternatives based on the nature, extent, and impacts associated with the Federal action.
2. The Service will consider the limits of the Federal Agency's discretionary authority in determining the Federal action and its impacts.
3. Reasonable and prudent alternatives/conservation measures will be consistent with the intended purpose of the project.
4. Historic projects can rely on the Recovery Program as a reasonable and prudent alternative to the same extent as new water development projects, i.e., subject to the Recovery Program achieving sufficient progress to avoid the likelihood of jeopardy to the listed fish.

5. If there was not sufficient progress, other conservation measures or reasonable and prudent alternatives will be required to avoid the likelihood of jeopardy to the species. Possible measures or alternatives include:
- o modifying project features;
 - o payment of a depletion charge (subject to Section 4.1.5 c., page 4-8, of the Recovery Program); and
 - o other measures acceptable to the Service, especially acquisition of water/water rights for the fish.