



**SAN JUAN RIVER BASIN RECOVERY
IMPLEMENTATION PROGRAM (SJRIIP)
COORDINATION COMMITTEE
Wednesday, November 20, 2019**

Draft Meeting Summary

COORDINATION COMMITTEE (CC) MEMBERS:

Jason Davis, Chair
Catherine Condon
Jenny Dumas, CC Alternate
Michelle Garrison
Patrick McCarthy
Stanley Pollack
Dale Ryden
Tom Pitts
Leland Begay
Roland Becenti
Christina Noftsker, CC Alternate
Ryan Christianson

REPRESENTING:

U.S. Fish & Wildlife Service (Service), Region 2
Southern Ute Indian Tribe
Jicarilla Apache Nation
State of Colorado
The Nature Conservancy
Navajo Nation
U.S. Fish & Wildlife Service, Region 6
Water Development Interests
Ute Mountain Ute Tribe
U.S. Bureau of Indian Affairs (BIA)
State of New Mexico
U.S. Bureau of Reclamation (BOR)

PROGRAM OFFICE (PO):

Melissa Mata, Program Coordinator
Scott L. Durst, Science Coordinator
Eliza Gilbert, Program Biologist

U.S. Fish & Wildlife Service, Region 2
U.S. Fish & Wildlife Service, Region 2
U.S. Fish & Wildlife Service, Region 2

OTHER INTERESTED PARTIES:

Susan Millsap, CC Alternate
Jojo La, CC Alternate
Crystal Tulley-Cordova, CC Alternate
Lorelyn Hall, CC Alternate
Kathy Callister, CC Alternate
Nathan Franssen
Bill Miller, BC Member
Brian Westfall, BC Member
Mark McKinstry
Paul Badame

U.S. Fish & Wildlife Service (Service), Region 2
State of Colorado
Navajo Nation
Southern Ute Indian Tribe
U.S. Bureau of Reclamation
U.S. Fish & Wildlife Service, Region 2
Southern Ute Indian Tribe
U.S. Bureau of Indian Affairs
U.S. Bureau of Reclamation
State of Utah

1. Introductions, changes to agenda – Davis

Pitts requested topic #5 (Ranchman-Terrell Ditch Improvement project section 7 consultation and SOW) be discussed prior to topic #4 (ESA Section 7 Consultation Process and SJRIP Section 7 Principles). Mata requested it remain the same because it would put item #5 into context. Davis stated that based on the interrelatedness the order of the agenda would not change.

Action items updates

- A. The PO will develop a quick reference of BC and CC responsibilities/processes with specific examples.

This is ongoing and will be completed for the May CC Meeting.

- B. The PO in coordination with Region 6 will summarize the contribution of Lake Powell to recovery.

Mata has been in coordination with Julie Stahli from the Upper Colorado River Endangered Fish Recovery Program (Upper Program) and Ryden. For the SJRIP, Dr. Franssen will take the lead on the effort to summarize research and monitoring efforts taken thus far in Lake Powell. The draft summary will be provided to the BC at their February meeting. Pitts asked if this effort will help identify the role of Lake Powell toward recovery and whether those fish would be counted toward recovery. Mata stated all endangered fish count towards recovery, even if they are outside of critical habitat. The synthesis will help further inform future revision of recovery plan(s). Reproduction has been documented in Lake Powell but recruitment has not. The SSA for Razorback Sucker was finalized last August and that SSA considers Lake Powell a subpopulations.

- C. The PO and BOR will work to provide the \$25,000 to fix the Hogback Variable Frequency Drive (VFD) Pumps.

Keller-Bliesner Engineering provided a quote and it was considerably higher than expected (not a \$25,000 fix) as it included engineering plans with work assigned to ACES who would subcontract to Basin Pump and Supply. To reduce costs, McKinsty is currently looking at the Hogback O&M agreement to see if this fix can go directly to the Public Service of New Mexico or whether BOR can pay Basin Pump and Supply. The goal is to figure out the best way to fund and get the VFD functioning by March 2020. Once it is functioning, a full evaluation of the efficiency of the Hogback weir can be conducted.

- D. Any proposed future stocking will be proposed as amendments to SJRIP augmentation plans and will be subject to Program approval.

Clarification on any proposed future stocking is a topic of discussion on today's agenda.

- E. The PO will reevaluate proposed capital projects (in conjunction with BOR) before sending back to CC for review and comment.

This was completed and is on the agenda for further discussion.

2. Approval of May 16, 2019 Meeting Summary (vote) – Mata

Mata stated that the May 16, 2019 meeting summary was not approved because of concerns on what was stated in the meeting with regards to augmentation plans and future stockings and additional language added during the meeting summary comment period, which indicated that approval of augmentation plans would be required by the CC. However, that additional statement was not noted in the meeting notes. Davis's recollection was that this was discussed in regards to concerns of the McElmo Creek stocking and that future similar stockings should include additional communication,

but he had no recollection that CC approval would be needed. McCarthy expressed the same recollection and thought that the agreement was to have better communication and stockings would result in an addendum to the augmentation plans as necessary. Pollack stated the CC never agreed that they would approve augmentation plans because they are plans and not part of approval of statements of work (SOWs). Mata stated that the CC does have approval for implementation of the augmentation plan through annual work plan (AWP) process. The augmentation plan is similar to a recovery plan or sufficient progress report, and the PO would seek review and incorporate comments as appropriate. However, the end product would be a Service document. The SJRIP has the ability to make sure stocking plans and stockings will aid in recovery. There is a review process but not an approval process. The BC has been reviewing drafts of the Razorback Sucker augmentation plan, which is in development. Pitts asked whether the program has ever approved an augmentation plan. Mata said she doesn't know what the history was for prior plans but it is a Service document. Davis did not recall the CC ever approving an augmentation plan. Ryden stated in the past there was never disagreement on whether it was a SJRIP document or a Service document and comments were provided and work proceeded forward. The current situation is a new conversation. Ryden also mentioned when he wrote augmentation plans he spoke to BC and CC members but a need for approval was never discussed. In the 2019 AWP, Wayne Hubert commented that there is need for serious conversation of the stocking plan and that there has not been a plan since 2016. Davis stated that there appears to be two camps: 1) formal approval through program or 2) that there is routine review and feedback process. Ryden stated the Upper Program seeks comments from their committees. In order to finalize the May meeting summary, the statement added through meeting summary review (i.e., "Coordination Committee agreed that any proposed future stocking of endangered fish addendum into a species augmentation plan and the addendum is subject to approval by the Program") would not be included in the revised summary. However, based on the discussion a clarifying statement would be added to indicate the CC recommended augmentation plans be reviewed and commented on by the BC and CC and any stockings associated with a specific SOW would subsequently receive a BC review and CC approval while stockings outside approved SOWs would receive BC input to ensure they would not be detrimental for other recovery activities. In addition, topic #4 will be changed to say "clarification" in the May summary. Pitts motioned to approve the May summary and McCarthy seconded with no opposition. Mata will post the final version of the May 16, 2019 Meeting Summary on the SJRIP website.

3. *Approval of July 30, 2019 Meeting Summary (vote) – Mata*

Comments were received from Condon, Pitts and Christianson, which were discussed and addressed in the final version. McCarthy motioned to approve and Ryden seconded with no opposition. Mata will post the final version of the July 30, 2019 Meeting Summary on the SJRIP website.

Davis mentioned that the October 17, 2019 meeting summary was out for review and comments are due by the end of next week November 27, 2019.

4. *ESA Section 7 Consultation Process and SJRIP Section 7 Principles (Principles) – Mata*

Mata added this topic to the agenda based on BC and CC comments received during review of the Ranchman-Terrell ditch improvement project SOW. Based on comments, it appeared a higher-level discussion on how the Service implements Section 7 and the Principles was required. Mata presented flow charts which explained the relationship between Section 7 consultation and the Principles. Mata explained that initiation of Section 7 compliance is the responsibility of the federal action agency when they have a nexus to a proposed action (i.e. permit, funding, land ownership, etc.). The federal action agency determines whether their proposed action will have an effect on an endangered or threatened species or on critical habitat. Critical habitat is defined as specific geographic areas that contain features essential to the conservation of an endangered or threatened species and when a federal agency is proposing an action within such habitat, they must make an extra determination. Critical Habitat is not a designation of what habitat will lead to recovery of a species. In regard to individual endangered or threatened animals, the federal agency makes a determination of “not likely to adversely affect”, “likely to adversely affect” or “no effect”. If the federal agency makes a “not likely to adversely affect” determination, they will ask for a concurrence from the Service for an informal consultation. If the federal agency makes a “likely to adversely affect” determination, then they seek a formal consultation from the Service to review the extent of the effects. The Service will either concur the federal agency’s analysis or present a different one. Both prior to a consultation or during a consultation the Service may work with the federal agency to reduce the effects of the project. This can be done as part of the project description which results in no need for a take statement because the project has been developed such that no reasonable and prudent measure (RPM) is needed. If take is given to the federal agency, then a RPM is developed to minimize that take and one of the terms and conditions is that the federal agency is required to implement the RPM. This also includes a monitoring and reporting requirement.

The Principles does state that while the SJRIP exists, a federal action agency can choose to be or not to be within the umbrella of the SJRIP. If an agency does choose to be under the umbrella, they would be on the hook for any RPMs should the SJRIP go away. For the Service, the first decision is whether or not an action would jeopardize the existence of the species. If it does, then the Service determines whether the SJRIP can serve as a Reasonable and Prudent Alternative (RPA), which is different from an RPM. An RPA is an alternative to jeopardizing the existence of a species versus a RPM which are actions to minimize take. If the SJRIP in its current form cannot serve as the RPA, activities can be identified and incorporated into the LRP to then serve as the RPA. These would then be identified in the biological opinion (BO) and state that the SJRIP will serve as the RPA to that federal action. Since ALP and NIIP, there has not been a consultation that has been so extensive that the SJRIP would have to develop a RPA. When federal action is not going to result in jeopardizing the existence of a species, the Service determines how much take needs to be provided to the federal agency and if the federal agency chooses, whether the SJRIP can provide any RPMs (i.e., measures to minimize take). If the SJRIP has existing actions or plans in place that can serve as RPMs, these are identified as RPMs in the BO. If the SJRIP does not have actions or plans in place that can serve as RPMs, then the Service identifies those actions for the SJRIP to consider incorporating into their long-range plan. In relation to the Principles, some CC members questioned why the SJRIP would be paying for implementation of

RPMs. The Principles suggest that there would be a decision opportunity for the CC to approve an SOW to serve as an RPM.

Mata asked whether the Service should continue to suggest to action agencies that they can seek support from the program. Pitts said yes and that was the reason the SJRIP exists. It was discussed that when it comes down to an individual consultation, the Service may have some ideas they think should be an RPM and the SJRIP can say “no” to providing that RPM. New Mexico and Colorado agreed that this was a path forward as long as it was within the budget. The SJRIP has provided RPMs for other consultations such as Hogback’s weir, the antennas there, and the weir for Fruitland. This topic was on the agenda because there were questions as to why the SJRIP would provide RPM for the Ranchman-Terrell ditch irrigation project. The Principles may need to be amended to clarify some language regarding SJRIP progress to recovery, statements pertaining to take, and include a variation of the flow charts shown today.

Pitts’ motioned for Service and Mata to update the Principles as needed and then send a draft and review. McCarthy seconded. No opposition

5. *Ranchman-Terrell Ditch Improvement project section 7 consultation and SOW (vote)-Mata*

The BO has been completed and did not follow the Principles because of the concerns voiced by CC members as to why the Service was proposing a SOW to serve as a RPM. The other reason the project was not included under the umbrella of the SJRIP is because project proponents were also under a deadline and could not wait for the CC to conclude their discussion. The project proponents did want to be under the SJRIP umbrella and the BO ended up being written in a way that would allow the SJRIP to become incorporated at a later date but does not presume that the SJRIP would help pay for the RPM of that BO.

Pitts motioned to amend the Long Range Plan to include a subtask under Task 2.3.2.3 to include monitoring activities with PIT Antenna as discussed for this BO and approve the SOW. The Service would amend the BO to include the SJRIP in the RPM. Nofstker seconded. No opposition.

Mata reviewed the SOW proposal with the CC explaining the comments provided by the BC during their review and how it was revised based on those technical comments. One BC member suggested changes to the design of the project, but the Service can only ask for minor changes in the section 7 process. La added that SJRIP should continue to investigate whether wagon wheels could be used upstream of the pit tag antenna once it is installed. McCarthy motioned to approve use of Capital Funds for the SOW up to \$80K and change the timeframe. Ryden seconded and there was no opposition.

6. *Trap and Transport SOW review and approval for NFWF capital funds (vote)*

Mata informed the CC that this would be sole-sourced to FishBIO. However, the PO and BOR did consider other options such as setting up a Request for Proposal (RFP) with the National Fish and Wildlife Foundation (NFWF). The RFP process with NFWF would have cost as much as the SOW and a modification to the NFWF agreements would need to be updated to all for an RFP process. A RFP

process through BOR would also cause the SOW to be out of step with the Fish Passage Feasibility study being conducted by BOR's Technical Service Center. Therefore, a thorough investigation into entities that could provide the services needed for the Trap and Transport SOW was conducted and FishBIO was chosen. Garrison motioned for approval to use NFWF funds. It was seconded by McCarthy and there was no opposition.

7. *Biology Committee Alternates Voting Clarification (vote)*

This was a discussion during the last CC meeting and given that there was not a quorum present, the PO requested a CC vote to have BC alternates voted on as official members of the BC. This would not be enacted retroactively but from this point forward. McCarthy motioned to approve newly designated BC alternates by BC vote, Noftsker seconded, and there was no opposition.

8. *Path forward for Peer Reviewers – PO/NM*

Mata stated that as it stands there would be three Peer Reviewers and this was also the recommendation by the BC for post-2023. Mata asked if the State of New Mexico would like to add anything or have any further discussion as it was an outstanding topic over several meetings. McKinstry added that he manages the Peer Reviewers contract and there is some benefit to having five individuals because you do not know who will be able to make it to meetings. It is also advantageous for the SJRIP to identify individuals late in their career who have the ability to fully participate. La asked if we could consider term appointments to have more turnover. This has been considered but the drawback is the amount of time it takes for people to understand the system and history of data. Getting Peer Reviewer input on a consistent basis is valuable.

9. *Sole Source Justification – PO/BOR*

Pitts had requested in a prior meeting that we have further discussion on the justification for sole-sourcing. Mata referenced a solicitor memo that specifically identifies the SJRIP is allowed to sole-source projects to signatory partners. There are also situations where sole-sourcing may occur because of Navajo Nation requirements or based on those entities that have access to permits to work on the land. Pertaining to Kansas State University (KSU), which is partially why Pitts requested this conversation, KSU is a participant of the Cooperative Ecosystem Studies Unit (CESU) that has made an agreement with the government to charge a certain overhead and that contract was not a sole-source. Pittsburg State was a unique situation and although they are not part of the CESU system, it did reduce its overhead to CESU levels. That SOW was developed and recommended by the BC based on the unique study proposal and their experience in the Colorado River Basin. That project is still going through the Service's grants process which provides an opportunity for other entities to respond if they believe they can compete for the same services. Pitts stated that there are universities nearby that may have been able to provide the services and the PO should try to work with such universities.

10. *Recap Post-2023 recommendations of annual (base) funds – PO*

Mata stated that responses were received from all partners except the U.S. Bureau of Land Management. Colorado's recommendation included the caveat, which La clarified, which was that the recommendation should include the idea that sequencing/prioritization be considered when projects

are implemented. Pitts wanted to remind folks that current level of Western Area Power Administration funds was not sustainable and they are working towards defining a sustainable level. As the negotiation continues, other sources of funds will need to be identified. Mata will forward the base-funding recommendation to Garrison who is leading the Funding Group 1.

11. *Post-2023 recommendations of capital funds (vote) – PO*

At the last CC meeting the PO was given direction to work with BOR to figure out what side bars there were for annual requests and provide a realistic plan as to how the funds would be spent over a 15 year period. At that meeting the PO made it clear they had decided what to recommend to the CC and developing the 15 year plan for capital project would not follow the process of BC review and recommendation. The PO would have to interpret guidance given by the BC as far as frequency and timeframes. The CC asked that the BC now review the capital project plan the PO developed. There is no assumption that carryover of existing capital dollars will occur. Christianson stated that there is a need to separate the authorization from the appropriation as that makes it confusing to call it carryover. It will be impossible to exceed the 2023 spending cap and those funds would not be carried over for post-2023. It will be reauthorization of a new value. Under authorizing legislation, you can carry over appropriated dollars but that authorization expires in 2023. There may be an opportunity to get that language in to the new authorization changed. Christianson said that what has been appropriated in the past has been significantly lower than is being proposed for post-2023. It is something to shoot for but it will be challenging to get it. It would be good to prioritize activities to know what we want to shoot for first. La stated that the current post-2023 capital projects budget is asking for double the amount over half the time period. McCarthy wanted to know whether the funding group would make decisions about where the priorities lie and what cuts need to be made or would it be remanded to the SJRIP if there were not enough funds projected. Pitts thought it will be remanded back to the recovery programs. La thought it would be unfair to have the funding committee prioritize and wanted a prioritization list ahead of time instead of having it sent back to the programs. The answer to what is the prioritization has been that everything is a priority. Pitts did not think it would be appropriate for the funding group to set priorities.

New Mexico sent an email to Mata in regards to the capital project activity 10 on irrigation efficiencies. There might be some limitations based on New Mexico laws. Feasibility is unknown and there are other options from other programs that could be used instead of the SJRIP. There were also comments in activities 12-14 in regards to alleviating fish passage impediment and entrainment when they were not in Critical Habitat. Mata repeated that Critical Habitat is an area that is designated as habitat needed for conservation and is not a referenced recovery. Its purpose is for an analysis device for Section 7 consultations. For capital projects, fish passage and entrainment projects would only be conducted when there is a determined need but that information is not currently available. Noftsker said it seemed like an adaptive management approach was needed and all of the requested funds may not be needed over the 15 year horizon. Davis moved for the capital projects list to be forwarded to the Funding Group 1 committee and prioritized if it was sent back to the SJRIP as the Funding Group was needed to provide a reality check. Pitts thought the recommendation should be sent knowing there will be a need to prioritize. La saw value in having the BC review the 15 year plan before it goes to the

funding group. Davis suggested it be done concurrently. Pitts motioned the capital projects list be forwarded to Funding Group 1 and concurrently to the BC for their comment. This was seconded by Christianson. Condon said that any priorities developed should be approved by the CC and time should be taken to do that. The timeline for the funding group was unknown but Mata thought after the joint meeting there was agreement to have the lists to the Funding Group 1 by the end of this month. McCarthy said that developing a solid, well thought-through budget would be an iterative process. A vote was held on Pitts' motion and there was no opposition.

12. Funding Update – Reclamation/Pitts

Participants are operating on carry over funds from FY 2019 and that should get people through December. There may be more Continuing Resolutions (CRs) and there may not be enough BOR carry-over funds to continue funding the recovery program, because the current CR does not include language to fund the Recovery Programs.

13. Upcoming Meetings

- a. Biology Committee Meeting and Habitat Workshop, 3-5 December 2020, Durango, CO
- b. Researchers Meeting 14-15 January 2020 Durango, CO
- c. Hydrology Baseline Workgroup Meeting 28 January 2020
- d. Other meetings as needed per CC's request

ACTIONS ITEMS FROM 20 November 2019

COORDINATION COMMITTEE MEETING

1. The PO will develop a quick reference list of BC and CC responsibilities/processes with specific examples.
2. The PO in coordination with Region 6 will summarize the contribution of Lake Powell to recovery
3. The PO and BOR will work to provide the \$25,000 to fix the Hogback Variable Frequency Drive pumps.
4. Clarification on any proposed future stocking will be proposed as amendments to SJRIP augmentation plans.
5. The PO will finalize and post meeting summaries for May 16, 2019 and July 30, 2019.
6. Coordination Committee will provide comments on the October 17, 2019 meeting summary by November 27, 2019.
7. The Service will update the SJRIP Section 7 Principles.
8. The PO will amend the Long Range Plan to include a subtask under Task 2.3.2.3 to include monitoring activities with PIT Antenna as discussed for the Ranchmans Terrell BO.
9. The Service will update the Ranchmans-Terrell BO to be in accordance with the SJRIP Section 7 Principles.