

Approved August 14, 2008

SAN JUAN RIVER RECOVERY IMPLEMENTATION PROGRAM

Coordination Committee Meeting
USFS Public Lands Center, Durango, Colorado

Friday, May 9, 2008
8 a.m. to 12:00 p.m.

Summary

Coordination Committee Members:

Jim Brooks, Acting Committee Chair
Catherine Condon
Herb Becker
Al Pfister
Tom Pitts
Randy Seaholm
Tom Ryan for Brent Uilenberg
John Whipple
Stanley Pollack
Adrian Oglesby
Absent
Absent
Absent

Representing:

U.S. Fish and Wildlife Service, Region 2
Southern Ute Indian Tribe
Jicarilla Apache Nation
U.S. Fish and Wildlife Service, Region 6
Water Development Interests
State of Colorado
U.S. Bureau of Reclamation
State of New Mexico
Navajo Nation
Conservation Interests
Bureau of Land Management
U.S. Bureau of Indian Affairs
Ute Mountain Ute Tribe

Hydrology & Biology Committee Members and Alternates:

Rege Leach, HC Chair
Paul Holden, BC Chair
Mark McKinstry, BC Member
Tom Nesler, BC Member
Steve Harris, HC Member
Bruce Whitehead, HC Alternate
Ryan Christianson, HC, Model O&M
Katrina Grantz, HC, Model O&M

U.S. Bureau of Reclamation
Jicarilla Apache Nation
Bureau of Reclamation
State of Colorado
Southwestern Water Conservation District
Southwestern Water Conservation District
U.S. Bureau of Reclamation
U.S. Bureau of Reclamation

Program Management:

David Campbell, Program Coordinator
Sharon Whitmore, Asst. Program Coordinator

.S. Fish and Wildlife Service, Region 2
.S. Fish and Wildlife Service, Region 2

Interested Parties:

Tanya Trujillo
Melinda Roberts
Paul Sheppard
Warren Vigil
Aaron Manwell
Judy Manwell
Andrea LeFevre
Birdian Rogers

Representing:

NMISC
U.S. Bureau of Reclamation
Five Rivers Trout Unlimited
Jicarilla Apache Nation
Jicarilla Apache Nation
Jicarilla Apache Nation
Jicarilla Apache Nation
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Jim Brooks opened the meeting. He welcomed two new members to the committee, Herb Becker, representing the Jicarilla Apache Nation, and Tom Ryan, Reclamation alternate for Brent Uilenberg. Several shorter agenda items were moved to the beginning of the meeting to allow adequate time for lengthier discussion items. The May 5, 2009, FWS discussion paper on hydrology model issues was added.

Whipple said he would like access to an updated schedule for capital projects and costs from Reclamation. Brooks said the Program can make that request.

February 22, 2008, Meeting Summary – The group reviewed and made several minor edits. Whipple commented that the statement in the HC report section, “Reclamation, BIA, CO, and NM are meeting to work on [hydrology model] issues,” is not occurring and that the FWS should also be part of any such discussions. The meeting summary was approved with edits; however, the attachment, *Prelim. Summary of Hydrology Model Policy Issues Resolutions/Actions for Discussion at 2-22-08 CC Meeting*, was not reviewed at the meeting to save time. CC members will send comments on the attachment to the Program Office for revision and re-send/review by the CC.

Hogback Fish Screen Update – Tom Ryan reported. He said the 300-foot concrete weir that will be installed in the canal is a new design and described how it will operate to prevent entrainment of fish and debris. He said Reclamation’s design team has been working with the FWS, Navajo Nation, and water users and the design is about 75% complete. They expect to have the design done by this summer. Based on the status of permitting and other logistics, a construction contract probably will not be awarded until mid to late FY09 with construction starting sometime in 2009 and continuing into 2010.

Navajo Reservoir Operations and Hydrologic Conditions Update – Ryan Christianson reported. He showed a graph of San Juan River hydrology, Navajo Reservoir operations, and diversions, to-date. He said the most recent forecast shows that the above average inflows have been decreasing over the last couple months but even under their minimum probable forecast, inflows will still be 109% of average. He said they have been releasing 2,200 cfs but will be decreasing releases to 1,000 cfs to conserve water for the peak release. He said a spring release schedule presented to the BC on Wednesday showed less than a 21-day peak release of 5,000 cfs. The BC recommended shortening the ramp-up period to insure a minimum of 21 days @ 5,000 cfs. He said they re-worked the schedule shortening the ramp-up period and decreasing releases starting Monday and were able to get a full 21-day peak release.

Campbell inquired as to why they do not decrease releases this week. Christianson said they are required to notify the public and are supposed to give 10-days notice to the power plant. Whipple said they need to be more reactive and tighten up their procedures so they can make operational changes when needed. Campbell pointed out that power production is incidental to meeting irrigation deliveries and fish flows and that they could have saved a lot of water by decreasing flows immediately.

Christianson said they will center peak releases around June 7 and try to hit the Animas River peak which is expected to be between May 31 and June 14. They will avoid making any release changes for ramping on weekends/holidays. When asked about not making changes on weekends/holidays, Leach responded that it is a Reclamation policy for safety purposes. Vigil asked why they cannot do an inspection right before and after the peak release as opposed to doing one in the middle. Christianson responded that when releases are greater than 3,400 cfs they use the auxiliary outlet works which

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require inspection every 15 days. Condon asked if these release limitations can be removed. Leach said there are ways to fix the limitations. Campbell pointed out that Reclamation is to do an evaluation of the limitations and constraints and potential remedies after this release/inspection season and will report back to the Program. He emphasized that these operational limitations were not consulted on and that any “fixes” need to occur before capital funds run out.

Christianson said preliminary results from the inspections have not revealed any problems, just normal wear and tear. He said the next inspection is May 15. Seaholm asked if the abrupt increases and decreases for inspections were harmful to the fish. Holden replied they probably were not harmful and emphasized that duration of peak flows are most important.

Funds Management Report – Mark McKinstry provided this report the previous day and indicated he had nothing additional to add. Pitts asked about the Indefinite Delivery/Indefinite Quantity (IDIQ) contract. McKinstry replied that it is a broader contract that specifies a variety of work and services that can be done under one contract (e.g., hydrologist, engineering, heavy equipment operator). Individual task orders are prepared and issued that specify types of tasks, amount of time required, and estimated costs. The rates are negotiated in advance. He said it will take more work up-front to prepare the IDIQ but will save a lot of time in the end. It gives them more flexibility in contracting for a wide variety of work under one IDIQ. Harris asked if they have someone in-line for the flow recommendation revision. Mark said no one is in-line for this but through the IDIQ, the level of expertise needed to accomplish the task will be obtainable. He added it will go out for competitive bid with all the usual clauses that include certain requirements.

DOI Cooperative Conservation Awards Update – Stanley Pollack and Sharon Whitmore attended. Whitmore said the SJR certificates/citations will be sent to the Program Office for distribution to recipients. She said the awards ceremony included a photo session with each honored program, Secretary Kempthorne, and the director of the nominating DOI agency. A reception followed in the penthouse of the Main Interior Building. A two-day Cooperative Conservation workshop was also held. John Shields represented both Programs on one of the panels. Each panelist gave a short presentation on their program and answered questions from the facilitator and audience. The entire workshop was filmed.

Congressional Activities Update – Tom Pitts reported on annual appropriations, use of power revenues/Report to Congress, and amendments to the authorizing legislation. He said a delegation from the Upper Colorado River Program and the SJR Program goes to DC each year to brief congressionals, subcommittees, DOI, and NGOs. This year’s effort was again successful although the Wyoming Senators would not sign letters supporting appropriations for the programs. He mentioned the support letters for the appropriations are getting caught up in the earmark issue and that everyone, including members of Congress and their staffs, and committee staffs all seem confused about the rules regarding earmarks. These trips are very important for both programs. Without them, the programs would be quickly forgotten in the appropriations process. The letters of support provided by participants in both Programs are very important in obtaining delegation and appropriations subcommittee support for the appropriations. He said the House will pass an appropriations bill this year but the Senate is not likely to, so there may be a continuing resolution through February, 2009 or for the rest of the year.

Pitts explained that without reauthorization, the use of power revenues by the Programs after 2011 will be reduced by about forty percent. Draft legislation is being introduced to extend current funding to

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2023, the designated date for species recovery. Hopefully, the legislation can be passed in 2008, as the upper basin states will lose at least six members of the House and two Senators due to retirement. Pitts said amendments to the authorizing legislation will cover Farmer's Mutual Ditch improvements and future power revenue funding. Pitts and Randy Kirkpatrick went to DC in mid-April to discuss the legislation with the Upper Basin states delegations and the authorizing subcommittees in the House and Senate. Kirkpatrick said it seems to be in good shape and thinks it will go forward. Pitts said that after legislative drafting, he hopes it will go back to the sponsors where he and others will have another opportunity to review it. Pollack said that asking for full reimbursement for Farmer's Mutual Ditch does not seem consistent with the answer to the Hogback question, i.e., Program capital funds are to be used for fish passage not irrigation ditch O&M. Pitts replied that Domenici wanted it and that the FWS has determined the landslides are a threat to critical habitat. Campbell clarified that the threat is not the landslides but the clean-up and repair activities that take place in the river after. Pfister commented that he went on the DC briefing trip this year and thanked Pitts and Shields for doing a great job organizing the trip and leading the briefings.

2009 Annual Work Plan Priorities – Campbell presented a very preliminary budget for 2009 which included a comparison to 2008's budget. He pointed out that the projects had been reorganized into Recovery Elements and that no COLA increases had yet been added to the cost totals. He said no workshops will be held this year so the \$30,000 budgeted will not be used in 2008. If the funds are not part of another project, they cannot be carried over into 2009 and will be lost. He plans to transfer the balance to the Program Office budget for carry-over to 2009 and decrease the Program Office's 2009 budget accordingly which will free up \$30,000 in the 2009 budget. Under Element #1, \$200,000 is included for the flow recommendation/integration report in 2009. He said the two-year Habitat Mapping project included research and monitoring components so these were split into separate parts and given separate budgets. He said a new project to evaluate mechanical methods for enhancing flow effectiveness was added. While this is important to the flow recommendation revision, it was given a low priority because it may not be needed until after 2009. For Element #2, he noted that Razorback Sucker Augmentation/NAPI Pond Management will probably be adjusted after Jason Davis gets together with the Navajo Nation and FWS, Region 2, to re-work. Under element #3, Reclamation has indicated that hydrology model O&M costs will increase considerably so he added \$40,000 to their 2008 budget total. Under element #5, all monitoring budgets are expected to remain relatively unchanged except for larval fish monitoring which will increase not because of increased effort but because it was under-funded last year. The rough budget shows a ~\$45,000 deficit. The budget will be modified and refined as Scopes of Work (SOW) are received and reviewed. 2009 SOW's are due May 30. Because the budget is tight, Campbell said he has asked everyone to be realistic in their budgets and provide as much cost detail as possible.

The group discussed remaining capital projects. APS will require funds for fish passage. Based on the consultant's report, the BC made a firm decision to go forward and it is just a design question at this point. The group requested a status report on the project from Uilenberg/Ryan. Fruitland may require funds but it may be possible to handle it in low tech ways. Funding the mechanical augmentation of flow effectiveness study was discussed. McKinstry said outside funding is available for actual implementation but not for planning/design work. The Program will need to fund the design/pilot study.

Flow Recommendation Revision/SJRB Hydrology Model Discussion – The BC's proposed flow recommendation revision process was discussed. Brooks asked if anyone had issues they wanted to discuss as a group. Pitts said it will be treated like any other SOW and they will need time to review and provide meaningful comments. Oglesby agreed and said TNC focuses on designing instream

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flows and he will need time to get up to speed on the proposal before he can provide comments. He said the SJR flow recommendations are currently based on flow/habitat and fish response and he would like to see included biological responses (e.g., spawning), a wider variety of flows, and possibly a pre-dam hydrograph. He expressed concern with the use of hatchery fish to generate response information. He mentioned that the simplification of the channel which is related to the current flow regime is also a concern. Seaholm said he would like to see a focus on what flows do on an annual basis and complexity of habitat, i.e., what are other options. Pitts said he is not convinced that everything listed in the proposal can be done with the existing data. Oglesby agreed. He said each assumption made for using existing data needs to be clearly stated, by section. Pitts also said he has real concerns with using flow recommendations for developing Navajo Reservoir operations. Defining Navajo operations is Reclamation's job, not the Program's. Holden said the proposed process is basically what was done before but with new data and climate change added. Harris said the flow recommendations should be tied to recovery and, if possible, done in a way that helps decrease paranoia. It was pointed out that there will be no SOW as it will go out as a RFP or be under an IDIQ contract. The Program Office will send the most recent Flow Recommendation Proposal and related BC comments to the CC. Comments are due to the Program Office by May 30. The Program Office will send a revised proposal back by June 13 for discussion during the June 23 CC conference call.

Long Range Plan Review – A draft LRP was sent out for review April 18 with comments due to the Program Office by May 16. CC members indicated they needed more time for review and comment. The deadline for comments was extended to May 23. If possible, the CC will approve the LRP during the June 23 conference call.

HC Progress on SJRB Hydrology Model – Leach reported that the HC is currently examining the differences between Gen2 and Gen3. He said defining baseline conditions is the primary problem but it is not his call to use current baseline conditions, current water rights, all Ute settlement water, Navajo settlement water, and/or some other descriptor for this purpose. It is a policy decision that needs to be made by the CC or FWS. He emphasized the need to define roles. By the June meeting, he expects the HC will have clarification of the Gen2 and Gen3 differences at each station. He hopes all issues can be cleared up by the July meeting. He said Gen3 should be ready by this summer.

Harris said different baselines could be used, i.e., actual, maximum potential, and any other scenario in between. Whipple said it is not the job of the HC to develop the model; it is a Reclamation model that the HC is just supposed to review. He said the Program Document says the FWS will determine the baseline. Pitts showed an excerpt from 50 CFR §402 and said he does not think current model inputs fit the definition of baseline defined in the section 7 regulations. He said the model includes a lot that is not reasonably foreseeable to occur. He wants the Service to provide a written description of what is in the model and how it fits the definition. Brooks and Campbell indicated they want CC input to do this. Pitts said before he can provide input, he needs a proposal to review. Pfister said we need clarification about what is wanted because clear descriptions of what is in the baseline for consultation purposes already exist. Pollack added there are currently more water rights than uses in the baseline because the States over-appropriate. Campbell said there is nothing about water rights in the regulations so categorizing all potential uses is inappropriate. He said the courts interpret the regulations for the FWS.

Prior to discussions on hydrology model-related issues, Brooks described ground rules for voting in the event the committee needed to vote on an issue. He said a quorum of two-thirds was present (10 of 13 members) and that Robert's Rules of Order would be followed. He said Program rules state that the CC requires a seven-day notice of agenda items requiring a vote unless the CC members present

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unanimously decide to consider an issue for a vote when it is presented. He pointed out that a two-thirds vote of the committee membership is required to pass a motion. The absent members, BIA, BLM, and Ute Mountain Ute Tribe, will count as “no” votes.

USFWS SJRB Hydrology Model Purpose/Need Statement – Campbell referred to his May 1, 2008, draft letter on the subject. He said he could use a different format to convey the information if the CC prefers. Whipple said it would be useful to have an official letter from the FWS clarifying the important issues, i.e., baseline, model use, depletion guarantee, and that nothing is with certainty. Campbell said that the FWS has a certain level of flexibility with SJR consultations as compared to standard consultations because clear actions are associated with the Program. This level of flexibility applies to the baseline also. Seaholm said the draft letter describes his and Colorado’s understanding and that the devil is in the details. Pollack agreed that the Program is the ESA compliance vehicle and that this provides flexibility. Whipple said it is important to know that when the Program provides an RPA to a junior water right it does not make it higher priority than a senior water right. Pfister said consultations have to be in accordance with State laws so a junior water right could never be made higher than senior water right as a result of consultation. There was general recognition that administration of water rights is a State issue and the hydrology model does not include a priority system. The Program Office will final the letter and distribute.

FWS Discussion Paper on Flow Recommendations, San Juan Basin Hydrology Model Development, and ESA Compliance for San Juan Recovery Implementation Program (May 5, 2008) – Brooks said he wanted to go through the paper section-by-section. Whipple asked what the FWS planned to do with the document. Brooks said it is intended for discussion purposes only but wants CC input and for the CC to be comfortable with its contents. This discussion paper is attached.

Endangered Species Act Compliance for Water Development Projects – Pollack said this section was similar to the draft letter. Seaholm suggested replacing the first part of, “*The Service will consider whether the probable success of the Program is compromised as a result of specific water depletion(s)...*” (2nd paragraph; 2nd sentence) with, “*The Service will evaluate...*” Pitts suggested deleting this section because it is redundant with the letter. Brooks said it provides additional relevant background information that is not included in the letter. Others agreed and said that some of the background information from the discussion paper should be incorporated into the letter.

Flow Recommendations: What they are and what they are not – Everyone was comfortable with this section emphasizing that the important point was that the flow recommendations are not inviolate.

Hydrology Model Revision – Brooks explained this section provides background on the inception of the model and the HC, how the model was used to develop flow recommendations, and how they are implemented through operations at Navajo Dam. It says the model was expected to be updated over time and that Reclamation and the FWS recently re-affirmed lead responsibilities for model O&M. Brooks asked if it was an accurate portrayal and straight forward. Seaholm said he thinks the FWS and Reclamation took the lead in bringing the HC together but it is how the committee has been used that has caused problems. He said the HC was used correctly in the beginning but now, FWS and Reclamation needs to take more of a leadership role in decision-making. Ryan emphasized that Reclamation and the FWS cannot develop the model alone and that they need the States’ involvement.

Pending Flow Recommendations Revision, Hydrology Model Revision, HC Administration, and ESA Compliance for Future Water Development - Pitts said everyone is at fault for losing focus on the model and HC's role over time. He said he does not think the remarks about the HC's conduct should be included (e.g., 2nd paragraph; 3rd sentence). Harris pointed out that the HC recently resolved the San Juan-Chama issues. The statement, "It is apparent that developing Gen3 by committee is not working," is inaccurate because it is not the HC's responsibility to develop the model.

Recommendations – Brooks said he was open to suggestions for doing the first recommendation which is for the Service to define the depletions baseline incorporating a time-step approach for "reasonably foreseeable" water development activities. Pfister and Campbell will define the depletion baseline, with time steps, and try to have something for CC review by end of June. Seaholm said Colorado does a good job putting together time steps that could be used as an example.

Pitts provided three recommendations for the CC's consideration and moved that the CC adopt them in place of the three in the discussion paper. Pollack seconded. The first recommendation was basically the same as in the discussion paper and was discussed above. The second recommendation was a slightly reworded version of the third recommendation in the discussion paper (see below). It generated no additional discussion. The third recommendation, "*On completion of the generation 3 model, the Hydrology Committee will be convened to conduct a technical review of the model and provide comments on the model,*" intended to replace the second recommendation in the discussion paper, was discussed extensively. The group contemplated removing it altogether or revising it. The role of the HC was discussed. Leach said the model cannot be developed and maintained in a vacuum; they need technical review from stakeholders. He thinks the HC has value. He said the biggest workload associated with HC is in administration and the FWS is doing a good job there. He emphasized that if there was no HC, they would have to convene an Ad Hoc committee to get review and input. Leach asked if anyone could chair the HC. Campbell said he thinks Reclamation and/or the Service should be the chair. Brooks said that as long as the HC's role was well-defined and it did not include dealing with things like funding, water rights, ESA compliance, etc., that they might be able to have a revolving chair like the BC. Pitts pointed out that Reclamation and the Service are providing leadership but they need to make sure all members have equal ability to provide input. Whipple said Reclamation listens to Colorado more. He pointed out that the recommendation does not preclude the Service from consulting with the States individually. The recommendation and motion was revised as follows:

3. ~~On completion of the generation 3 model, t~~The Hydrology Committee will be convened to conduct a technical reviews of the model and provide comments on the model pursuant to its duties as defined in the Program Document.

Brooks asked if there was any additional discussion before they voted on the motion, as amended. Condon asked if a vote could be conducted later via email. Campbell said a conference call would be required to vote. Brooks reiterated the decision to vote on the motion had to be unanimous. The group took a break so members could confer with others then reconvened. Condon said Southern Ute Indian Tribe is concerned that their senior water rights, that are not currently being fully utilized, could be jeopardized by a junior water right that is consulted on. Seaholm said the model is being developed for the benefit of the Service by Reclamation because they need ESA compliance. There was general agreement that there will never be agreement by everyone and that the model is just a tool. Reclamation and FWS have taken the leadership role on model

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development and maintenance and will continue to do so. The vote was taken and the motion, below, carried by a unanimous vote of the nine members present.

1. The Service will provide to the Coordination Committee a definition of the depletion baseline that will be used in the generation 3 model, including a definition of 'reasonably foreseeable' water development activities, a description of the method of applying 'reasonably foreseeable' water development activities in a time step process in the model, and a description of the manner in which completed consultations will be applied in the model.
2. The Service and Reclamation will complete development of the generation 3 model, including the depletion baseline described in 1, keeping the Coordination Committee fully informed and involved in this process.
3. The Hydrology Committee will be convened to conduct technical reviews and provide comments on the model pursuant to its duties as defined in the Program Document.

Next Meeting(s)

- June 23, 9 -11 – CC Conference Call (approval of LRP, discuss Flow Rec. Revision Proposal)
- July 28; 9 -12 – BC Conference Call
- August 14 and 15, 1 p.m. to noon, CC Meeting; Farmington.

Action Items:

- Comments on the attachment to the February 22, 2008, Meeting Summary, *Prelim. Summary of Hydrology Model Policy Issues Resolutions/Actions for Discussion at 2-22-08 CC Meeting*, to the Program Office for revision and re-send with changes.
- Uilenberg/Ryan to provide status report on APS fish passage
- Reclamation to provide updated schedule for all capital projects and costs.
- Comments on revised Flow Recommendation Proposal due to Program Office by May 30. Program Office will send proposal and BC comments to CC. Program Office will send revised proposal back to CC by June 13
- LRP comments due to Program Office May 23
- FWS will final letter on FWS use of SJRB Hydrology Model in ESA consultations. Background information from the first section of the FWS discussion paper will be incorporated into the letter.
- Pfister and Campbell will define depletion baseline, with time step, and try to have something for CC review by end of June.

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Flow Recommendations, San Juan Basin Hydrology Model Development, and
ESA Compliance for San Juan Recovery Implementation Program

A Discussion Paper by US Fish Wildlife Service (Regions 2 and 6)

May 5, 2008

The purpose of this paper is to outline the position of the U.S. Fish and Wildlife Service (Service) in regards to how Endangered Species Act (ESA) compliance for water development activities is conducted under the San Juan Recovery Implementation Program (Program), what Program activities are necessary for ESA compliance, and to correctly portray Service expectations for the Program. In particular, we address the revision of the existing San Juan River Flow Recommendations (Holden 1999), the continuing revision and conversion of the generation 2 hydrology model to the generation 3 hydrology model, the planned use of the generation 3 hydrology model within the context of revised flow recommendations, and future activities for the Hydrology Committee. A second, separate document will provide the “purpose and needs” of the hydrology model, as a tool to be used in Endangered Species Act compliance and those aspects will not be repeated here.

Endangered Species Act Compliance for Water Development Projects

The Service assisted in the development of the “Principles for Conducting Endangered Species Act Section 7 Consultations on Water Development and Water Management Activities Affecting Endangered Fish Species in the San Juan River Basin” (June 2002) (Principles). The Principles were developed to be used as a guide to define how the Program’s actions will be used to provide ESA compliance for impacts to listed fish species in the Basin from water development and water management activities. The Principles were adopted by the Program’s Coordination Committee and have been reviewed by the Service and determined to be consistent with the Endangered Species Act and its implementing regulations (50 CFR Part 402).

For the Program to serve as the ESA compliance mechanism for water development and management activities, the Service will determine on a regular basis and with each consultation if the Program’s progress toward recovery has been sufficient. The Service will also evaluate whether the probable success of the Program is compromised as a result of specific water depletion(s) or the cumulative effect of depletions and the effect of those depletions on the life history needs/requirements of the listed fish and their critical habitat. The Service will make its assessment based on the best available scientific and commercial data as required by the ESA. The Service will assess the sufficiency of Program actions in proportion to the potential impacts of a proposed federal action in making our jeopardy and adverse modification of critical habitat determinations.

On 29 July 2005, then Service State Administrator for New Mexico, Joy Nicholopoulos, wrote to the Coordination Committee and reiterated the Service’s position regarding the Principles. Of note in regards to ongoing deliberations by the Program for flow recommendations and the hydrology model, are the following excerpts from that letter:

“Current and future consultations will consider the availability of water and timing of flows within the San Juan River Basin. To evaluate the impacts of a proposed action, the Service uses a model run conducted by the project proponent or the Bureau of Reclamation (BOR) to determine if flow recommendation can be met with the addition of a new project.” (pg. 1, 3rd para.)

“The Service will determine if a proposed project causes minor or major deviations from the flow recommendations. The Service will consider whether the probable success of the program is

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compromised as a result of specific water depletion or the cumulative effect of depletions.” (pg. 2, 1st para.)

“The Service will consider all reasonable water and non-water solutions to avoid jeopardy to the species and adverse modification of critical habitat and to minimize take of the species if those conditions exist. The Service will continue to look for ways to balance the needs of the listed species with the needs of water users in the San Juan River Basin.” (pg. 2, 3rd full para.)

We intend to continue evaluating water development and management projects consistent in a manner with this position. The implementation of the San Juan River Flow Recommendations (or an approved revision of the flow recommendations) will continue to be an important component of ESA compliance. Because the Service is required to use the best available science to make its determinations¹, the Service will use hydrology model run(s) conducted by the project proponent or Reclamation. Evaluation by the Service of model runs will be to determine, if any, the level of impact of the proposed action on Reclamation’s ability to meet the flow recommendations through the operation of Navajo Reservoir. The impact to the flow recommendations will be associated with biological impacts to the endangered fish and their designated critical habitat. From an ESA compliance standpoint, however, implementation of the flow recommendations is accomplished within the overall context of Program activities that include non-water actions to improve the species status.

Flow Recommendations: What they are and what they are not

The San Juan River Flow Recommendations (flow recommendations) were based on the results of the 7-year research period, including the analyses and integration of biological, hydrological, and geomorphological data. The flow recommendations were developed using the biological and ecological requirements of the species and available hydrological data and represent the best scientific and commercial data available.

As is stated in the flow recommendation report:

“Mimicry of the natural hydrograph is the foundation of the flow recommendation process for the San Juan River. Scientists have recently recognized that temporal (intra- and interannual) flow variability is necessary to create and maintain habitat and to maintain a healthy biological community in the long term.” (pg. S-1, 2nd full para.)

Table S.1 (page S-4) of the 1999 flow recommendations report illustrates the relationship between the desired biological response/habitat requirement and the flow characteristics specific to the San Juan River. Thirteen separate responses/requirements are identified and address spawning through adult life stage requirements for specific native species and are based on observations reported upon during the 7-year research period.

The Service’s reliance on the flow recommendations has been characterized as “inviolate” in a number of meetings by Program participants. This is a misrepresentation of the Service’s position. The Service does not believe that the flow recommendations are “inviolate” because the fundamental principles of the flow recommendations report are based upon “mimicry” of the natural hydrograph as defined in the report as:

¹ The § 7 formal consultation process is designed to “ensure” that any agency action “is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined...to be critical....” 16 U.S.C. § 1536(a)(2). “In fulfilling the requirements of this paragraph each agency shall use the best scientific and commercial data available.” (*Id.*)

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“...mimicry of statistical parameters of flow based on flow/geomorphology/habitat linkages and the statistical variability of the pre-dam hydrology.... Therefore, the resulting flows will not mimic a natural hydrograph in all years, but will mimic the variation and dynamic nature of the 65-year record of the San Juan River.” (pg. S-5, 1st full para.)

The very nature of the flow recommendations are based on the adaptive management process. Our expectation is that revisions would occur as new information becomes available. The structure of the 1999 flow recommendations was based on the provision of flows within the following categories: 1) volume > than a specified minimum, 2) duration > than a minimum, and 3) frequency of a specific volume for a minimum time period for a minimum frequency in years. The timing of specific Navajo Dam releases is intended to coincide with related flow conditions in the Animas River. Again, this approach is founded in the “mimicry of statistical parameters.”

Clearly the Program, Reclamation, and the Service have officially deviated from the flow recommendations on a number of occasions (i.e. ‘goose’ flows, shortage sharing, reservoir storage, and flood control concerns). In addition, no ESA consultations by the Service have considered the flow recommendations to be inviolate when considering water development impacts. The recent draft biological opinion on the Navajo-Gallup Water Supply Project took into account the level of recovery achieved along with the level of impact to the flow recommendations when considering the inclusion a depletion guarantee. However, the Service would have considered other, non-water Program activities that would also continue to contribute to sufficient progress for recovery of the listed fish species.

Hydrology Model Revision

The precursor to the current hydrology model used by the Program for use in flow recommendation implementation was the generic hydrology model used in the original flow recommendation development. During the 7-year research period, a Navajo Dam Operating Committee was formed to provide input to Reclamation to communicate water user and environmental concerns during test flows/releases and avoid or mitigate potential impacts. At the completion of the 7-year research period, an Ad Hoc hydrology committee was formed in 1997 to provide input to Reclamation and Bureau of Indian Affairs, as project applicants for Navajo Indian Irrigation Project, in the development of the hydrology model. The Hydrology Committee was subsequently authorized by the Program in 2001 to address hydrologic issues that pertained to the Program, specifically including evaluation of proposed changes to the hydrology model and flow recommendations. The hydrology model is used to analyze the capability of the river system through Reclamation’s operation of Navajo Reservoir to meet the flow recommendations. It has always been expected that updates to the hydrology model would continue and result in revisions. This is the case with the revision from the generation 2 to the Generation 3 model.

In a 13 November 2007 memorandum to the Service, Reclamation stated its support for continued lead responsibility for hydrology model development/revision. Reclamation also reaffirmed its lead role in the conduct of Hydrology Committee business, including chairing the committee and completing necessary Hydrology Committee actions needed to finalize model revisions. The Service committed to Reclamation and the Program to share in those responsibilities, including serving as a co-chair for hydrological issues in the Program. The Service also fully supports Reclamation’s continuance as the lead in the revision of the model.

Pending Flow Recommendations Revision, Hydrology Model Revision, Hydrology Committee Administration, and ESA Compliance for Future Water Development

Approved August 14, 2008

Progress on developing generation 3 of the San Juan Basin Hydrology Model has stalled because the Hydrology Committee could not resolve outstanding issues regarding revisions to the data being used in the new model. In particular, the differences and disagreement on the method for accounting for depletions by the states of Colorado and New Mexico have been irresolvable and is in large part responsible for a current stalemate in completing the generation 3 hydrology model revisions. Because the Hydrology Committee could not resolve the issues, the Coordination Committee, at their October 2007 meeting, formed a Workgroup to facilitate the transition from generation 2 to generation 3. The Workgroup convened two conference calls (December 2007 and January 2008) to work through the issues. The Coordination Committee further worked to resolve these issues at their February 2008 meeting. While many of the issues were resolved, the issue regarding depletion accounting by the States of New Mexico and Colorado were not.

The outstanding issues of depletion accounting by states and the development of an ecologically meaningful depletion baseline for use in the model are still unresolved. Based on the Hydrology Committee's past performance, the Service is concerned that the Hydrology Committee does not have ability to resolve outstanding issues. The Acting Coordination Committee Chair/Service Region 2 representative attended the 4 December 2007 meeting of the Hydrology Committee where the only issues discussed were those related to the model revision. It was apparent that the lack of progress by the Hydrology Committee in addressing model revision requirements was due in large part to differences in the way the States of Colorado and New Mexico calculate their water rights and water uses. It is also apparent that developing generation 3 by committee does not work. The Service, Reclamation and the Coordination Committee needed to take control of moving the development of generation 3 forward to completion. This means providing direction and oversight for completing the revisions to generation 3.

Numerous comments and recommendations have been provided to the Service to consider for use in the final hydrology model and the revised flow recommendations. Program participants and the Service, believe that a "reasonably foreseeable" water development future and timeline should be incorporated into the model. It is not reasonable to assume that total development (use of all of the paper depletions) will occur in the foreseeable future, if at all. Continuing with a depletions baseline that presumes full future development occurring at present is not reasonable. The Service proposes that a depletion implementation schedule be developed. The depletion implementation schedule should be structured to provide a five-year running average for depletions that vary in amount from year to year; and incorporate an implementation schedule for unused but future programmed depletions. The implementation schedule should be developed out in time until recovery is anticipated.

As a final comment on the Hydrology Committee, the Service was informed on 25 April 2008 by Reclamation that the current Hydrology Committee chair is leaving Reclamation. Reclamation staff that manage the SJR hydrology model are also retiring and new staff are in the process of assuming responsibility for the model. Reclamation has requested, and the Service is considering assuming the Chair of the Hydrology Committee. Because of these factors, Reclamation and the Service will need to work closely together to improve accuracies for conversion to generation 3 of the model and ensure that it is completed to be used with the new Flow Recommendations being developed by the Biology Committee. The Coordination Committee has directed the Biology Committee to develop and communicate a proposed process for revisions to the flow recommendation that will begin in FY2009. That topic will be discussed during the 7-9 May 2008 meetings of the Program.

Recommendations

Approved August 14, 2008

The following recommendations are provided for consideration and discussion by the Coordination Committee for use at the upcoming annual meeting to be held 8-9 May 2008 in Durango.

1. The Service will define the depletion baseline for generation 3 of the hydrology model. The depletion baseline will incorporate a time-step approach for “reasonably foreseeable” water development activities. This time step is up for discussion, but generally we believe that a range of 5-10 years is appropriate. Program participants will be requested to provide input into this process to accurately and fairly define “reasonably foreseeable” water development.
2. The Service recommends that the Hydrology Committee’s involvement in the development of generation 3 be suspended. The need for this suspension is highlighted by, 1) the Committee’s lack of progress during the last several years in model revisions, 2) unproductive participation by committee members in meetings, 3) the agreed-upon lead role by Reclamation in completing model revisions with assistance from the Service, and 4) the loss of the current Chair of the Hydrology Committee. The Hydrology Committee role should be limited to a technical review of the model and their comments provided through their respective Coordination Committee representative.
3. The Service will assist Reclamation in accomplishing their responsibility of completing the revisions necessary to complete the generation 3 model. The Service and Reclamation commit to keeping the Coordination Committee fully informed and involved in this process.