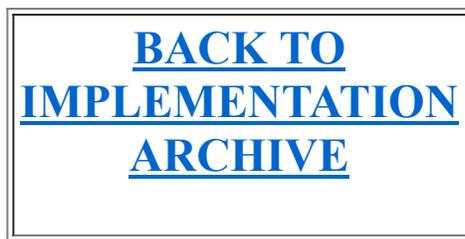


**IMPLEMENTATION COMMITTEE MEETING SUMMARY**  
**1/27/94**



ES/CR/FY-94 UCRRIC  
Mail Stop 65115  
Memorandum

To: Interested Parties

From: Director, Colorado River Recovery Implementation Program

Subject: Final January 27, 1994, Recovery Implementation Committee Meeting Summary

Attached for your information are the final action and assignment summary and the general meeting summary from the January 1994 Implementation Committee meeting. To conserve paper the attachments to this summary are not included (other than meeting attendees). Please contact Kathy Wall of my office if you need copies of the other attachments. If you have questions, please contact Angela Kantola or myself at the letterhead address or phone.

Attachments

ES/CR file, circ rf, rf

CR/AKantola:kjw:8/25/94

AK/012794.RIC

- Final Summary -

### Actions and Assignments

Recovery Implementation Committee Meeting -- January 27, 1994

#### COMMITTEE ACTIONS:

1. Signed resolutions acknowledging the contributions of Lloyd Greiner and Roland Robison to the Recovery Program.
2. Agreed to the clarification that when technical committees cannot resolve an issue, the chair has the authority to declare deadlock, request preparation of majority and minority reports, and submit recommendations to the Management Committee for resolution.
3. Agreed to delegate final approval of the Nonnative Fish Stocking Procedures to the Management Committee, with the understanding that the Implementation Committee will

be given the opportunity to see the revised Procedures (and appendices) before the Management Committee gives them final approval.

4. Approved the proposed 3-1/2 day Ouray ground tour and Green River trip (Gates of Lodore to Split Mountain).

#### ASSIGNMENTS:

1. John Hamill will include the Implementation Committee's resolutions with letters of appreciation Lloyd Greiner and Roland Robison.

2. Regarding Recovery Program membership, will identify the broad categories of interest being affected by the Recovery Program and develop recommendations for how these interests can best be represented in the Recovery Program process.

3. The Management Committee will keep the Implementation Committee posted as steps to improve the Program operations are implemented. If the Management Committee can come to agreement on a Program staffing plan, they may bring it before the Implementation Committee before their September meeting. Ralph Morgenweck will convene a conference call, if needed.

4. Jim Lochhead will draft language for authorizing legislation for the Recovery Program to look at in June; the Management Committee will work on defining long-term capital funding needs (status report due in June); and Colorado, CREDA, WAPA, and Reclamation will work on the funding source portion.

5. Jim Lutey will review the Green River Rock Springs biological opinion and let Robert Wigington know the basis for accepting the 3,244 af historic depletion.

6. Implementation Committee members will help the Management Committee invite the appropriate people on the river trip.

- Final Summary -

Colorado River Recovery Implementation Committee

January 27, 1994 Meeting

Convene: 9:30 a.m.

Attendees: (Attachment 1)

Major Topics Discussed/Decided:

1. Introductions

2. Review/Modify Agenda: The agenda was modified as it appears below.

3. Resolutions for Lloyd Greiner and Roland Robison: The Committee signed resolutions recognizing the contributions of these outgoing members. John Hamill will include the resolutions with letters of appreciation to Lloyd and Roland.

4. Recovery Program Update: John Hamill gave an update on Program activities and accomplishments (see Attachment 2). John asked the Committee for their recommendations regarding recent requests for Program membership. Peter Evans suggested that the topic be considered by the Management Committee; although the Program might not be particularly receptive to the idea of new members, it would be good to consider the interests which have been generated by recent activities such as the nonnative stocking policy and critical habitat designation. Ken Salazar has said he does not support multiple representatives of any interest group (such as a State), and he has invited the Colorado Department of Agriculture to attend Colorado's internal meetings regarding the Recovery Program. Howard Rigtrup acknowledged that committee size and effectiveness often are inversely related, but recommended that the Program not restrict participation, just membership. Ralph Morgenweck suggested that the Management Committee determine if: a) the Program has appropriate representation from the various categories of interest; b) nonvoting membership would provide a suitable avenue of participation for those who have expressed interest in membership; and c) the criteria for membership in the Recovery Program are still appropriate. The Implementation Committee agreed, and asked the Management Committee to identify the broad categories of interest being affected by the Recovery Program and to develop recommendations for how these interests can best be represented in the Recovery Program process.

Ralph Morgenweck said he expects the recent interest in the Recovery Program from Secretary Babbitt will result in a representative from the office of the Assistant Secretary for Water and Science (headed by Betsy Rieke) being appointed to the Secretarial liaison position on the Implementation Committee.

Peter Evans commented on the Colorado Water Conservation Board's draft instream flow policy. Due to remaining issues, the Board has not yet finalized the policy, and is

cognizant that this will cause a RIPRAP deadline to be missed. However, the Board is relying on the "guru 2" issue resolution process and the Recovery Program to work out a policy they can support. The Board is very hopeful that in adopting a new strategy such as outlined in the draft policy, the opposition to instream flow filings in water court will be reduced.

## 5. Critical Habitat:

o Update - Larry Shanks said that the comment period on the proposed critical habitat designation closed on January 11 and that the Service received over 450 comment letters. The comments were analyzed and recommendations for exclusions and critical habitat were provided to the Regional Directors on January 18. The final rule and economic analysis are scheduled to be completed by March 15. The Service will respond to the comments by category in the final rule. Dan Luecke asked why the economic analysis was aggregated from State to Regional economies and why the input-output model didn't reflect the price of electricity; Clayton Palmer echoed some of Dan's concerns. These concerns were discussed briefly without resolution.

o Relationship to Recovery Program - Ralph Morgenweck emphasized that the Service intends the RIPRAP to serve as the reasonable and prudent alternative for adverse modification of critical habitat, just as it does for jeopardy. After the critical habitat designation is finalized, the Service plans to publish in the Federal Register an evaluation of the ability of the RIPRAP to serve as a reasonable and prudent alternative to adverse modification of critical habitat. Recovery Program participants could join the Service in completing this evaluation. Publishing this evaluation should help alleviate concerns that critical habitat designation will place additional regulatory burdens on Upper Basin depletion impacts. Ralph noted that the Service already has issued biological opinions in which the RIPRAP has been considered the reasonable and prudent alternative to adverse modification of proposed critical habitat from depletions in the Upper Basin. Clayton Palmer asked if the final rule will state that an evaluation of the RIPRAP will be completed and published in the Federal Register. Margot Zallen said she did not believe that would not be appropriate in the final rule.

6. Evaluation of Recovery Program Operations: Peter summarized his memo detailing progress on increasing Recovery Program efficiency (Attachment 3). The Implementation Committee agreed to the clarification that when technical committees simply cannot come to resolution on an issue, the chair has the authority to declare deadlock, request preparation of majority and minority reports, and submit recommendations to the Management Committee for resolution. Ralph Morgenweck asked the Management Committee to keep the Implementation Committee posted regarding improvements and remaining concerns as steps to improve Program operations are implemented. John Hamill noted the urgency for additional Program staff and suggested that if the Management Committee can come to agreement on a staffing plan, they may need to bring it before the Implementation Committee before their September meeting. Ralph Morgenweck said he would be willing to convene a conference call, if needed, and other Committee members indicated their willing to participate if the need arose.

7. Nonnative Fish Stocking Procedures:

John Hamill outlined the process the Service, the States, and the Management Committee had undertaken to develop the current draft nonnative stocking procedures (Attachment 4). John then summarized the procedures and highlighted areas of remaining disagreement. Disagreement remains regarding:

a. Restricting nonnative stocking within critical habitat (outside the 100-year floodplain) versus the 20- or 40-year floodplain;

b. Allowing nonnative stocking in standing waters separated from occupied endangered species habitat by waters containing established reproducing nonnative populations;

c. Including a statement that high flows to control nonnative fishes is not a preferred use of water resources and that one purpose of the Procedures is to avoid the need to use water resources to control nonnatives; and

d. Concerns about potential lawsuits under Section 9 of the Endangered Species Act alleging taking of endangered fish where stocked nonnative fish escape into occupied endangered fish habitat and prey upon endangered fish or cause their demise via competition.

John Hamill said that the Management Committee has scheduled a conference call for February 2 to discuss the remaining issues. He asked that the Implementation Committee delegate authority to the Management Committee to approve the Procedures. After Recovery Program approval, the Procedures will go to the State wildlife commissions for their approval.

Peter Evans said Colorado is concerned about the 40-year floodplain boundary and the work that will be required to delineate it. However, it appears that the definition of "case-by-case review" can include, for example, review of lake management plans in a specific geographic area for a number of species. If this can be done (as opposed to only reviewing each lake and each species separately), then Colorado believes the 40-year floodplain boundary will be workable. Regarding the use of high flows to control nonnatives, Colorado recognizes flow management will affect nonnative fishes, but in efforts to control nonnatives specifically, they prefer to use other methods first.

Tom Pitts suggested that perhaps the 40-year floodplain might be defined by some simpler method, such as half the distance between the 100-year floodplain boundary and the river. Tom recommended that the Service address Section 9 in the Procedures since they will

have to do so in their biological opinion on the Procedures (or the memoranda of agreement that implement them).

Ralph Morgenweck recommended tracking so that an annual summary of nonnative fish stockings can be produced. He also noted that the Service plans to hold a workshop with the State fish and wildlife agencies focusing on how to manage aquatic systems so that neither native fishes or sportfishermen are eliminated. That dialogue should then be expanded to include interested publics, such as sportfishermen.

Eddie Kochman said he was concerned that environmental groups such as the Sierra Club Legal Defense Fund (SCLDF) may be poised to sue over taking violations and these Procedures. If they seriously intend to reject the Procedures and file lawsuits, then the State wildlife commissions need to know that. Dan Luecke replied that while he represents some of the environmental groups, he can't represent all of them on all issues. The Procedures are breaking new ground and some entities may want to test them in court. Some environmental groups believe you simply cannot stock nonnative fishes in a system where you are trying to recover endangered fish. Therefore, he can't guarantee that SCLDF won't sue. Eddie noted that anything Dan could do to facilitate discussion between the concerned environmental groups, the States, and the Service would be helpful. In light of potential litigation, Ralph Morgenweck stressed the importance of those developing the Procedures to maintain a good administrative record for the bases of their decisions. Margot Zallen agreed. She also suggested that when the States and the Service reach agreement and establish the administrative record (and before they finalize the Procedures), they determine who may want to challenge the Procedures in court and meet with them to discuss their concerns.

Mike Mitchell said he believes the Procedures are truly a consensus document. Although the Procedures will cause the aquaculture community to experience losses in some of their current markets, they are willing to accept the Procedures and find other compensating markets. However, a 100-year floodplain boundary would prevent almost all stocking. Every incremental 10-year floodplain increase exponentially increases losses for the aquaculture industry. The private aquaculture industry probably stocks 90% of the nonnative fishes in the Upper Basin; how stocking is reviewed and regulated will determine whether or not the Procedures are effective.

Peter Evans said Colorado is willing to delegate approval of the Procedures to the Management Committee. Jeff Fassett agreed, but said he would like to see the revised appendices as soon as possible. The Implementation Committee agreed to delegate final approval of the Procedures to the Management Committee, with the understanding that the Implementation Committee will be given the opportunity to see the revised Procedures (and appendices) before the Management Committee gives them final approval. Should the Management Committee be unable to reach consensus, they will bring that to the immediate attention of the Implementation Committee. Since the Procedures can't address nonnative fish stocking on tribal lands, Charles Calhoun said he would like to discuss how to approach that problem at some point. Dan Luecke asked if the Service's biological opinion would be available before the Management Committee approves the Procedures. John Hamill replied that it would not, since the biological opinion would be written on the draft memoranda of agreement between the Service and the States.

8. Washington, D.C., Trip and Program Funding: John Hamill said several recommendations were made during last year's Washington, D.C., visit regarding cost-sharing and authorizing legislation. Colorado has sponsored a number of workshops around the State to talk with constituents about authorizing legislation. Colorado thinks it's a good idea that is gaining momentum, and they are pursuing it. During the February 1, 1994, briefing, Secretary Babbitt cautioned that we make sure we have all our constituents and other interests lined up so that something else doesn't suddenly become the main thrust of the legislation; but he offered his support. John said that the group that goes to Washington will need to address cost-sharing and authorization. Chris Karas offered two strategies for seeking funding for capital improvement projects (Attachment 5). John noted that one other issue is the number of different groups going back to Washington and not coordinating with the Recovery Program and Reclamation. Chris agreed, saying that most of the funding and related issues will be solved at the Regional level. Chris asked that people start at the Regional level with their questions and concerns. The Management Committee has endorsed this approach. John said that the two questions for the Implementation Committee are: a) which funding strategy to take (see Attachment 5); and b) how should we broach the issue of authorizing legislation. For FY 95, the \$5 million may already be in the President's budget, and if so, all we need to do is support it. However, congressional people on Capitol Hill always ask about outyear funding.

## o Cost Sharing

- Tom Pitts said he thinks that cost sharing for facilities with other beneficiaries besides the endangered fish should be worked out on a case-by-case basis.

- Use of Power Revenues - Jim Lochhead said that Colorado has been talking about using a portion of CRSP power revenues for capital projects (since year-by-year funding is risky and the RIPRAP needs a more certain source of funding). Thus, they are trying to develop funding based on an apportionment formula of the Upper Basin fund (in coordination with CREDA and Reclamation). This is directly connected to authorizing legislation. If the Program were to base its legislative approach on the model of the Central Utah Project Completion Act, money would be directed into a "mitigation" fund that could be spent by the Implementation Committee. Jim said that Cliff Barrett has indicated CREDA is willing to begin discussion on this with the States.

o Authorizing Legislation - Ralph Morgenweck suggested that in talking with the people in Washington, the group might outline the ideas for legislation or explain that the Program is working on it. Peter Evans said that drafting the legislation and getting the necessary political support will be very difficult, but in order to keep the Program on track, we need to find a secure source of funding. To get it moving, the Implementation Committee needs to reach a consensus that a secure funding source is needed. The Program must address all issues on capital projects and get them resolved so we can agree on the long-term funding needs. Funding will only get tighter as competition for endangered species funds increases. Ralph agreed and said that Congress will generally accept that you don't have an answer today if you tell them when you will have an answer. We need to be able to commit to having the whole program laid out before we go back to talk about 1996 funding (will require getting it done by this August or September).

Jim Lochhead agreed with that approach and suggested that Program participants work on identifying the elements of the legislation and that CREDA, WAPA, and Colorado work on the funding aspect. Ralph Morgenweck thought that was a good idea and asked if

congressional staff would be involved at this point. Jim replied that they have spoken with the Colorado delegation, and he thinks Senator Campbell will be willing to sponsor and actively advance the legislation.

Howard Rigtrup said that Utah supports the long-term goals and agrees that we'll need long-term authorization. However, he said Utah will consider the power revenues proposal at this point. Before they can provide enthusiastic political support, they will want a clearer picture of the implications of critical habitat designation. Ralph Morgenweck said he thought the critical habitat concerns will be cleared up quite a bit in advance. Jeff Fassett said he has briefed the Wyoming delegations in a cursory manner. He also would support the authorization approach. However, critical habitat is not just an Upper Basin issue, and other States will complicate it.

Ralph Morgenweck said this raises the question of the relationship of creating a funding stream for Upper and Lower Basins. It is often easier to get authorization than it is to get appropriations, and the Program needs to be careful not to seek authorization for too little. Jim Lochhead said the Secretary also had pointed out the need for attaching a funding source to the authorization.

Dan Luecke said the environmental groups support the authorization approach and the use of power revenues to provide long-term funding. Their concern is with the high-cost capital projects for which the recovery implications haven't yet been determined (e.g., Elkhead Reservoir enlargement, major hatchery construction, and Grand Valley water management). Can Program participants reach agreement on those questions before August or September? Ralph Morgenweck suggested that the Management Committee work on these and bring any unresolvable problems to the Implementation Committee. John Hamill recommended an overall philosophy of keeping as much flexibility as possible in the capital funding requests, noting it would be best to get a general authorization to recover the fish.

Tom Pitts asked if the Implementation Committee agrees to support what's in the President's FY 95 budget, and the Committee seemed to agree.

Ralph Morgenweck said the cautions regarding authorization are good ones. Certainly Reclamation and the Service will have to discuss authorization with their Washington offices. In the meantime, he recommended that Jim Lochhead continue his drafting efforts and that the Management Committee resolve the capital projects issues. If need be, the Implementation Committee should be prepared to meet this summer.

John Hamill asked about the Lower Basin and Jim Lochhead replied that they are driven by California, which wants to go with a habitat conservation plan. John said the San Juan River should be a part of the legislation and the funding mechanism. Peter Evans said he's not optimistic that the San Juan program will have the equivalent of a RIPRAP by this summer. Larry Crist said their first draft is due in February. Peter said cost estimates for the San Juan will be difficult. Tom Pitts agreed, noting that they don't have a capital projects program at this point. Peter suggested that the authorization include the San Juan, with the understanding that it's on a different timeline. Eric Kuhn asked how the Program would answer when Congress asks why the San Juan and the Upper Basin programs aren't combined. Dan Luecke said that the environmental groups aren't part of the San Juan Recovery Program, and they would be uncomfortable with a merge or with supporting funding for the San Juan Program.

John Hamill summarized, saying the Management Committee should define the capital projects funding needs; Reclamation, CREDA, WAPA, and the States will develop the funding source proposal in parallel; and Program participants should develop the groundwork with their Congressional delegations. The group going to Washington, D.C., should support the President's budget for the Service and Reclamation (including switching the \$200,000 of Section 6 funds to resource management funds in the Service's base funding). Peter Evans said that given the importance of working out the capital projects budget issues, the Implementation Committee should ask for a status report by the end of June.

Barry Saunders and others asked what the group should tell the authorizing committees. John Hamill recommended telling them that we expect to have something by August. Eric

Kuhn suggested that this is a very aggressive schedule. If the FY 96 budget is the driving force for that deadline, then maybe the Program should consider year-by-year appropriations until FY 97. Gene Jencsok agreed that might be appropriate as a fall-back position. Eric suggested that for capital projects that are still uncertain, the Program could focus on terms and conditions for these projects to go forward (e.g., if Grand Valley water can't be saved for the benefit of the fish, then it doesn't go on to the next step). It is much more reasonable to do this by August than to decide if these projects are in or out.

Jim Lochhead asked if we should begin drafting the authorizing legislation and let that be the vehicle by which we work out some of these issues. Tom Pitts said that would be fine in terms of legislation and funding, but that he doesn't see a need for the Management Committee to be involved (as a committee). Robert Wigington said that the Management Committee should be kept in the loop to the extent the legislative package would link to RIPRAP schedules.

Tom Pitts said he thought we agreed that the Management Committee would work out funding needs and CREDA and others would figure out funding sources in parallel. Peter Evans agreed that it would be a good idea to move forward in articulating the legislative approach. Howard Rigtrup said he didn't want to be premature in drafting legislation, given the high level of nervousness and uncertainty right now regarding critical habitat.

John Hamill recommended pursuing the two things in parallel, providing status reports in June, and addressing the legislative issues as part of the recommendations at that time. Clayton Palmer thought the schedule was problematic and suggested gearing it toward going to Congress without a complete legislative package by next year, ask for one more year of year-by-year funding (FY 96), and have the capital funding needs and funding sources outlined by November. Tom Pitts said he would prefer to stick with the August deadline. Jim Lochhead said he would be willing to work on draft legislation to provide a starting point for discussion. Tom recommended the Implementation Committee accept Jim's offer.

Dan Luecke said the environmental groups would support this approach. Howard Rigtrup said Utah could live with it, but would reserve their judgement on the outcome. John Shields said Wyoming also would support this approach, but asked what new information on capital projects would be available by August that would enable the Program to more closely define those long-term funding needs. The Implementation Committee agreed that: a) Jim would draft legislation for the Recovery Program to look at in June; b) the Management Committee will work on defining long-term capital funding needs (status report due in June); and c) Colorado, CREDA, WAPA, and Reclamation will work on the funding source portion.

#### 9. Section 7 Consultation Update:

o Biological Opinion Update - Jim Lutey distributed an updated table of biological opinions (Attachment 6). The last page lists consultations since the draft Section 7 agreement in March. Robert Wigington asked what was the basis for accepting the 3,244 af of historic depletion in the Green River Rock Springs consultation (which has 1,500 af of new depletions and 3,244 af of historic depletions). Jim said that the 3,000 af depletion threshold does apply to both historic and new depletions, and that he would review the opinion and let Robert know the basis for accepting the 3,244 af.

o Small Depletions Update - Jim recounted that the Service had agreed to try to develop internal guidance to exempt new depletions under 100 af from paying a depletion charge (with a cap of 1000 af over five years). The ratio of time that it costs the Service to consult on these very small depletions is very high in comparison to the little benefit of very small depletion payments. To exempt depletions under 100 af, the Service will need to determine that the Recovery Program has made sufficient progress for these projects to proceed without collecting a depletion fee. Consultation and a biological opinion still would be required. The Service is about to send a draft to their Solicitor's office for an opinion, and may be able to put the guidance into effect in March.

10. River Trip: - John Hamill outlined the 3-1/2 day Ouray ground tour and Green River trip (Gates of Lodore to Split Mountain) proposed during the first week of June (Attachment 7) The trip would consist of 25-30 participants, and the Management

Committee would look to the Implementation Committee to help invite the appropriate people on the trip. The Implementation Committee approved the trip.

11. Next Meeting The next regular meeting was tentatively set for September 8, 1994, from 9:30 a.m. - 4 p.m. in the Service's 3rd floor conference room in Denver.

Adjourn: 3 p.m.

### Attachment 1

#### Attendees

#### Recovery Implementation Committee Meeting

January 27, 1994

#### IMPLEMENTATION COMMITTEE MEMBERS:

Ralph Morgenweck, U.S. Fish and Wildlife Service (Chairman)

Charles Calhoun, U.S. Bureau of Reclamation

Peter Evans for Ken Salazar, Colorado Department of Natural Resources

John Harrington, Western Area Power Administration

Dan Luecke, Environmental Defense Fund

Tom Pitts, Upper Basin Water Users

Howard Rigtrup for Ted Stewart, Utah Department of Natural Resources

Jeff Fassett, State of Wyoming

Russ Bovaird for Cliff Barrett, Colorado River Energy Distributors Association  
(nonvoting)

John Hamill, U.S. Fish and Wildlife Service (Program Director) (nonvoting)

OTHERS:

Lloyd Greiner, Western Area Power Administration

Barry Saunders, Utah Division of Water Resources

Eddie Kochman, Colorado Division of Wildlife

Don Birkner, City of Craig

Rob Ringhand, Craig City Mayor

Bob Crifasi, Denver Water Board

Bob Jacobsen, 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

Larry Crist, U.S. Bureau of Reclamation

Sue Uppendahl, Colorado Water Conservation Board

Daryl Jennings, National Park Service

John Shields, Wyoming State Engineer's Office

Clayton Palmer, Western Area Power Administration

Robert Wigington, The Nature Conservancy

Dave Sabo, Western Area Power Administration

Gene Jencsok, Colorado Water Conservation Board

Eric Kuhn, Colorado River Water Conservation District

Mike Mitchell, Colorado Department of Agriculture and private aquaculture

Suzanne Van Guytenbeek, National Wildlife Federation

Jim Lochhead, Colorado Water Conservation Board

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