

IMPLEMENTATION COMMITTEE MEETING SUMMARY
9/10/98



CR/FY-98 UCRRIC

Mail Stop 65115

Memorandum

To: Implementation Committee
Management Committee, Consultants, and Interested Parties
Meeting Attendees

From: Director, Colorado River Recovery Implementation Program

Subject: Draft September 10, 1998, Recovery Implementation Committee Meeting
Summary (and Ad Hoc Long-Term Funding Legislation Group Meeting summary)

Attached are the draft action and assignment summary and the general meeting summary from the recent Implementation Committee meeting. Please review these documents and contact Angela Kantola (ext. 221) or myself (ext. 223) if you think any changes are necessary. A summary of the brief Ad Hoc Long-Term Funding Legislation Group meeting also is included.

- Draft Summary -

Actions and Assignments

Recovery Implementation Committee-September 10, 1998

COMMITTEE ACTIONS:

1. Approved the March 6, 1998, meeting summary with no revisions.
2. Approved the Service's long-term agreement for a reduced overhead charge on funds transferred from Reclamation to the Service under the Recovery Program (50% of the biennially determined rate).
3. Accepted the IMO's, as Management Objectives, but not as recovery goals or as objectives to be sustained solely by stocking. The Committee expects that all elements of the Recovery Implementation Program will be used to achieve the IMO's.
4. Approved the FY 99 work plan with minor modification.

5. Agreed that the Implementation Committee should be retained.

6. Approved the Biology Committee report review process with the revision that peer reviewer selection be subject to Program Director approval.

ASSIGNMENTS:

1. Henry Maddux will look into adding a feature to the Program web site to track *who* is hitting the pages.

2. The Management Committee will continue to work on extending the Program beyond 2003, which should conform to the long-term funding legislation. The NEPA issue needs to be investigated. Wyoming and Utah need to consider contributions beyond 2003. The Program also needs to decide whether to extend the agreement through 2007 or 2010.

3. Robert Wigington and Tom Pitts will post their proposal regarding the IMO's to the listserver.

4. If after the water users consider Reclamation's proposal regarding Orchard Mesa, resolution still isn't reached, Peter Evans, Rick Gold, and Tom Pitts will review the options and make a recommendation to the Management Committee.

5. The Management Committee will discuss ways to get broader peer review of Program scientific reports.

6. The Program Director's office will make the approved revisions and finalize the peer review process document.

7. The Program Director's office will try to get a meeting room at a hotel near the Denver airport for next Implementation Committee meeting, Tuesday, March 9, 1999.

8. CREDA will provide a brief explanation of each of the amendments they've offered on the long-term funding legislation.

9. Wayne Cook will check on what happened to the scoring of the legislation by the Congressional budget office and to the review by the Office of Management and Budget.

- Draft Summary -

Recovery Implementation Committee-September 10, 1998

SEPTEMBER 10, 1998, IMPLEMENTATION COMMITTEE MEETING AGENDA

CONVENE: 10 a.m.

1. Introductions, modify/review agenda - The agenda was modified as it appears below.

2. Approve March meeting summary - The Committee approved the final summary with no revisions.

3. Recovery Program update
 - a. Program update - Henry Maddux provided an update on the Program and the status of the endangered fishes in the Upper Basin (Attachment 2).

 - b. Program participants responses/concerns.

In response to the question if the Ruedi Round II water sales biological opinion could be amended before the cost of the water goes up on October 1st, Henry replied that the draft amendment has been sent to Ralph for signature. There will be a 2-week review before it is finalized. Tom Pitts noted that commented that most of the long overdue reports on the reports due list are now being completed, but a few that may not be completed could become an agenda item for the Implementation Committee in March. Jeff Fassett asked if we can track *who* is hitting the Program web site. >Henry Maddux said he'd look into adding that capacity.

c. Long-term funding legislation update

Status of Federal Funding Legislation - Dan McAuliffe posted an update to the listserver (Attachment 3). Dave Mazour distributed a copy of amendments from CREDA, which he characterized as "house-keeping" in nature (Attachment 4).

4. Discussion on extending the Recovery Program beyond 2003 - Henry Maddux outlined the Management Committee's discussions about extending the Recovery Program beyond the 2003 date in the current Cooperative Agreement. Wyoming and Utah would require a caveat that such an extension would not obligate participants to extend their annual funding obligations as identified in the Blue Book beyond 2003. We need to investigate whether NEPA will need to be conducted. Tom Pitts said the extension will need to conform to the long-term funding legislation, so we should work on the extension now, but finalize it after the legislation is passed. Wyoming and Utah need to consider their contributions beyond 2003. The Program also will need to decide whether to extend the agreement through 2007 or 2010. >The Management Committee will continue to work on this.

5. Update on Colorado water users' discussions/15-Mile Reach biological opinion - Peter Evans reviewed the background of the issue and discussed progress to date (Attachment 5), and noted that he thinks the Service now has enough information to begin drafting the programmatic biological opinion. Tom Pitts noted although the discussions have been difficult, the benefits to all parties are carrying them through and significant progress has been made on most issues. The biggest obstacle at this point is *how* to legally protect flows from Green Mountain Reservoir, but Tom believes this can be resolved. Peter noted that the connection to the long-term funding legislation is that until Colorado and the water users have a better sense of how Section 7 issues will be resolved through the programmatic biological opinion, it would be difficult for them to offer favorable testimony on the legislation. Dan Luecke said that the environmental groups don't agree on the two increments of the 120,000 acre-foot carve-out or with the argument that a smaller increment will create a rush to development.

6. Service's position on Colorado's instream flow filings - John Hamill distributed a letter outlining the Service's concerns with the Colorado River water right filings (Attachment 6). Dan asked that the Environmental Defense Fund's (EDF) letter to the Implementation Committee regarding the instream flow filings be attached to the meeting summary (Attachment 7). Dan noted said that if we rely on a biological opinion to protect flows, then we create a delisting conundrum. Peter said EDF's letter was very helpful in outlining their position, but is not yet sure from this letter whether the Service sees the 15-Mile Reach flow filings as an important part of the RIPRAP. John replied that the Service does not believe that the water rights as currently filed should be an action item in the RIPRAP. Dan agreed, saying that for EDF, the filings as currently made are not sufficient. Tom said he thinks the Service was premature in removing their support for the instream flow filings before any final agreements had been made. That position puts the Colorado Water Conservation Board (CWCB) in a very difficult position, with objectors in the case now telling the CWCB that there's no longer a basis for the filings. Tom said it would have been more constructive for the Service to have identified their bottom-line requirements on what *would* work. Ralph replied that he thinks the Service tried to outline that bottom line repeatedly, but the process still continued in a direction that the Service does not believe will provide substantial benefits to the fish, and it did not appear that situation was going to change. However, as the Service's letter says, if a new proposal is developed that provides meaningful flow protection and has the support of the water community, then the Service is willing to reconsider their position. Margot Zallen said the Service didn't see a very bright future for the filings given the experience negotiating the filings on the 581 cfs and on the return flows (the amount of water that's there and would remain there anyway). In response to a question regarding the CWCB's meeting in Telluride, Peter clarified that the CWCB has not dismissed the need for the instream flow filings. Dan questioned whether we can use the adjudicatory process in conjunction with the Program's consensus process. Peter replied that Colorado has never said they'd require consensus on these rights. Peter also noted that CWCB never had the idea that these rights would solve the whole problem. Wade said he thinks Colorado will need to seriously consider both the Service's and EDF's letter, but shares Tom's concern that the Service's withdrawal has put the State in a very awkward position. Dan said he thinks the Service's position and letter are helpful to the process.

7. Overhead Rate for FY 99 and Beyond - Henry outlined the background of the issue, noting that Program participants felt the Service's overhead charge on funds transferred from Reclamation should be minimized, had originally asked for a limit of 3% in the annual appropriations bill, but upon further discussion the Management Committee agreed 10% was unreasonable. The Service has agreed to limit the overhead to 50% of biennially determined rate, and distributed a letter to that effect (Attachment 8). If the

Implementation Committee agrees to this, then the Service will send a memo to Reclamation asking them to include this in the interagency acquisition. The Service recommends that this takes the place of language in the funding legislation, so language referring to the overhead charge should be removed from the legislation. John Shields sent letters to appropriation subcommittee chairs in both the House and Senate and has talked to Senator Thomas, who agreed to support the 11% (50% of the biennially determined rate for FY 1999-2000). Tom Pitts complimented John Shields for his hard work on this issue. The Committee approved the Service's proposal.

8. Approval of the Interim Management Objectives - Henry said these have been approved by the Management Committee, and are ready for Implementation Committee approval as management objectives. Dan Luecke said the environmental groups don't support approval of these at this time because they think the habitat component that would constitute management objectives is missing and they have a concern about the numbers being used as targets for stocking plans. Robert said that their concern arose primarily from the Biology Committee discussion of the Genetics Management Plan. They're concerned that the IMO's may be taken out of context, but can't be sure until they see the summary of that meeting, the final Genetics Management Plan, and State stocking proposals. Henry said that if the primary concern is not with the IMO's, but in how they're being applied, then the environmental groups should raise those concerns in the context of the Genetics Management Plan and the State stocking plans. Robert said that the environmental groups don't accept the IMO's as stand-alone nonexperimental stocking objectives. Robert suggested that the Committee approve the IMO's with the understanding that the Program is accepting these as *management objectives*, but *not* as recovery goals or as stand-alone stocking objectives. Tom had concerns that this language would be used to restrict stocking and suggested instead that: the Implementation Committee accept these as Management Objectives, not as recovery goals, or as objectives to be sustained solely by stocking; all Program elements will be used to achieve management objectives; and the Service will ask the Recovery Team to develop the habitat management components and incorporate those and the Management Objectives into specific recovery goals (due by September 1999). Robert and Tom will discuss this language and try to come to something they can agree upon. The Committee approved the IMO's pending agreement on language between Robert and Tom (they will post their proposal to the listserver). The environmental groups reached agreement a few days later on the following language: The Implementation Committee accepts the IMO's as management objectives, but not as recovery goals or as objectives to be sustained solely by stocking. The Committee expects that all elements of the Recovery Implementation Program will be used to achieve the IMO's.

9. Review/approve FY 99 work plan - Henry Maddux provided an overview. Highline screening (CAP-20) will only cost about \$88K (but should maintain some flexibility there), so we have extra capital funds available. John Hamill provided a letter on an additional \$71.6K needed for tasks 12 and 14 of CAP-9 (Attachment 9) and asked the Committee to commit to continue the EA/EIS process *if* we get through Task 5 and the recommendation is to continue the project. The Committee approved the additional funds and agreed to John's request, but noted that they are not approving any specific budget amount for Tasks 6 and 7 at this time). Henry said this leaves about \$150K unobligated, and recommended waiting until the Management Committee's 6-month budget review to commit those funds. The Committee agreed. Rick Gold emphasized for the record that the Federal dollars committed in FY 99 are part of the Federal limit in the long-term as outlined in the funding legislation discussions. Clayton asked that any additional funds needed to complete the Flaming Gorge synthesis report be shown as part of the approved budget (amount needed unknown at this time). The Committee agreed and asked the Management Committee to find the money if it's needed (Chris said this work has required about \$25K in past years). The Committee discussed the budget for Flaming Gorge public involvement. Clayton recommended that the Program fund whatever percent that is attributable to providing flows for endangered fishes on both FG and Aspinall. The Committee agreed. The Implementation Committee approved the work plan with these modifications.

10. Recognition of service to the Recovery Program - The Committee presented certificates of appreciation to Jim Lochhead for his participation on the Implementation Committee and his leadership in the many tough issues that have faced the Program (accepted on Jim's behalf by Wade Buchanan) and to Peter Evans for his many years of faithful service to the Management Committee, especially the many hours he spent chairing that committee.

11. Discussion/resolution of the Orchard Mesa check settlement contract - Brent Uilenberg outlined the issue over the length of the contract that will provide water to the Orchard-Mesa Power Plant from Green Mountain Reservoir. Water users would like a perpetual contract (to coincide with the check settlement agreement), but Reclamation is operating under 25-year contracts and would need special authorization from Washington to go beyond that. Reclamation has offered two alternatives: 1) an intra-Reclamation

agreement that would be perpetual; or 2) a 25-year agreement between Reclamation and the water users. Brent noted that certainty is offered through the check settlement which stipulates that the court ruling would be re-opened if the water isn't delivered. Tom said the water users will meet within the next week or two to discuss these options. Tom asked if Reclamation has asked their Washington office for permission to do an agreement coincident with the check settlement agreement? Brent replied that officials in Reclamation's Denver office have suggested that there's not much chance Washington will approve that. Rick said that even if the policy could be waived, the most they could offer legally would be 40 years. >If after the water users consider Reclamation's offer we still can't reach resolution, Peter, Rick, and Tom will review the options and make a recommendation to the Management Committee.

12. Discussion of Management Committee's recommendation to retain the Implementation Committee - Henry said the Service recommends retaining the Committee. Rick Gold suggested that one option would be to just raise the conflicts to the Implementation Committee, not the issues that are being adequately addressed at lower levels. The Committee agreed that the Implementation Committee should be retained.

13. Final approval of Biology Committee report review process (unless approved in advance of the meeting) - Henry outlined the recommended process. The Implementation Committee discussed the Biology Committee's recommendations, but decided that they want peer reviewer selection be subject to Program Director approval. >The Program Director's office will make that revision and finalize the peer review process document. The Implementation Committee directed the Management Committee to discuss ways to get broader peer review.

14. Update on Flaming Gorge and Aspinall report and biological opinion schedules.

Flaming Gorge - The Service (Reed Harris and Bob Muth), Reclamation (Christine Karas and Larry Crist), and Western (Clayton Palmer) met September 8 to discuss the schedule for the Flaming Gorge draft Biological Opinion. They agreed that the best approach

would be to prepare a Biological Assessment (B.A.) (with a dam operation scenario) on flow recommendations presented in the Flaming Gorge Integrated Report, followed by the biological opinion and NEPA. They proposed the following schedule:

October 2, 1998 -- Draft of the Flaming Gorge Integrated Report sent out for peer review.

December 1, 1998 -- Deadline for review comments (the size and complexity of the document warranted 2 months for peer review).

January 1, 1999 -- Revised draft submitted to the Recovery Program for Biology Committee review.

-- Begin 6-month period for B.A. preparation.

July 1, 1999 -- B.A. submitted to Service

-- Begin 145-day period for B.O. preparation.

December 1, 1999 -- Draft B.O. completed (thereafter, finalization of the B.O. is a guess).

The Bureau has decided that an EIS should be completed on both Flaming Gorge and Aspinall. Reclamation is preparing a memo that will provide more detail on the Flaming Gorge schedule.

Aspinall - The Service is just now receiving final reports from individual projects, and they expect to have draft synthesis report completed by the end of December 1998. The Service is meeting monthly with Reclamation in preparation for the synthesis report, since Reclamation is preparing their biological assessment at the same time. The Service will have a draft biological opinion out in March (about a 2-month delay from the schedule in the RIPRAP. The biological opinion will be written concurrent with peer review of the synthesis report.

15. FY 99 Reclamation and Service budgets update - not discussed.

16. Next meeting - Tuesday, March 9, 1999, starting at around 9 a.m.(start time will depend on flight arrival times.) Location to be determined, but >the Program Director's office will try to get a meeting room at a hotel near the Denver airport.

ADJOURN: 3:20 p.m.

The Ad Hoc long-term funding group met immediately following the Implementation Committee.

1. Status of current legislative activities - Wayne referred to Dan's summary (Attachment 3), but several members hadn't seen the draft State funding agreement that Dan says has been circulated.

2. Status of "at-home" issues:

a. 15-Mile Reach Programmatic Biological Opinion and Ruedi and Green Mountain Contracts - Will need to reintroduce the legislation in 1999, but need to resolve these issues first. If we don't get the legislation reintroduced in 1999, our chances will be much diminished in 2000, since it's a presidential election year.

b. Colorado Water Conservation Board loan authority - achieved. All the States but New Mexico have gotten legislation to begin building their funding contribution.

c. CREDA amendments to the proposed funding legislation (Attachment 4) - If anyone has concerns about these, they need to let the group know. >CREDA will provide a brief explanation of each of the amendments.

3. How to re-invigorate next year's funding legislative process - Henry will suggest another meeting of the group close to the end of 1998, based on progress on the 15-Mile Reach opinion. >Wayne will check on what happened to the scoring of the bill by the Congressional budget office and to the review by the Office of Management and Budget.

Attachment 1 - Attendees

Colorado River Recovery Implementation Committee

September 10, 1998 Meeting

Attendees:

IMPLEMENTATION COMMITTEE MEMBERS:

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

Rick Gold, U.S. Bureau of Reclamation

Wade Buchanan, Colorado Department of Natural Resources

Dave Sabo, Western Area Power Administration

Dan Luecke, Environmental Defense Fund

Tom Pitts, Upper Basin Water Users

Kathleen Clarke, Utah Department of Natural Resources

Jeff Fassett, State of Wyoming

Dave Mazour for Leslie James, Colorado River Energy Distributors Association

Henry Maddux, U.S. Fish and Wildlife Service (Program Director) (nonvoting)

OTHERS:

Barry Saunders , Utah Department of Natural Resources

Clayton Palmer, Western Area Power Administration

Peter Evans, Colorado Water Conservation Board

Robert King, Utah Department of Natural Resources

Gerry Roehm, U.S. Fish and Wildlife Service

Bruce McCloskey, Colorado Division of Wildlife

Gene Shawcroft, Central Utah Water Conservancy District

Robert Wigington, The Nature Conservancy

Angela Kantola, U.S. Fish and Wildlife Service, Recovery

Brent Uilenberg, U.S. Bureau of Reclamation

Ray Tenney, Colorado River Water Conservation District

Margot Zallen, Department of Interior Solicitor's Office

John Hamill, U.S. Fish and Wildlife Service

Christine Karas, U.S. Bureau of Reclamation

Eric Kuhn, Colorado River Water Conservation District

Wayne Cook, Upper Colorado River Commission

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