

## CONFERENCE CALL SUMMARY

January 21, 2009

### AD-HOC LEGISLATIVE COMMITTEE PLUS FEDERAL AGENCY REPRESENTATIVES

In re: Upper Colorado River and San Juan River Recovery Programs Proposed Legislation

CONVENE: 10:00 a.m.

A conference call of the Upper Colorado and San Juan Recovery Programs' Joint Ad-hoc Legislative Committee – plus federal agency recovery program partners' representatives invited to participate – began at 10:00 a.m. on January 21, 2009. Those participating in the call are identified in *Attachment 1*. An agenda for the conference call had been distributed by Management Committee Chairman John Shields via e-mail (see *Attachment 2*). That agenda was followed and is used as the basis in describing the discussions and their outcomes below during this meeting via conference call.

#### Status Reports and Updates

1. Review of the Management Committee's deliberations and directions to the Ad-hoc Legislative Committee
2. Quick review and discussion on the Ad-hoc Committee draft status report presented to the Mgmt. Committee (attached)
  - a. Reaction/feedback from Federal agency representatives to the options included in the Ad-hoc Committee's draft status report
3. Status of S. 22, which was passed out of the United States Senate on Thursday, January 15, 2009 (information/status sheet attached)

#### Options Consideration and Deliberation/Decisions

- A. Consideration of options available to address the matter of requiring/requesting that legislative amendments require a Secretary of Interior report in 2020 (refer to Tom Pitts' e-mail memo – see *Attachment 3*).
- B. Consideration of options/make a decision about whether or not our legislation strategy should be to seek legislative amendments to P.L. 106-392 to: 1) provide for a loan from the Colorado Water Conservation Board and if that fails, to provide authorization for Congressional funding of the annual funds; or 2) simply leave the bill the way it is with respect to annual funding and propose administrative mechanisms to accomplish the funding “backstopping” that we seek for additional security and certainty that funding will be available (refer to Tom Pitts' e-mail memo – see *Attachment 3*).

John Shields and Tom Pitts summarized the Ad-hoc Legislative Committee's work/approach to date as a review for the Committee members and to get the Federal agency participants “up to speed” on the issues, deliberations, need for decisions to be reached in the near term, etc. Attention was drawn to and elements within the draft Ad-hoc Legislative Committee report and

Pitts' e-mail memo (*Attachment 3*) were discussed. We currently need legislation that extends authorization for annual funding regardless of how/whether we deal with creating a back-up for the Basin Fund via a CWCB loan (should the Basin Fund balance get too low). Tom Pitts said the simplest legislation would be to leave out the back-up, and eliminate the provision for a Secretary's report. This could be drafted and the process begun, then language added for the CWCB back-up if/when we can agree on it. John Shields noted that we don't know what/if other mechanisms are available as back-up for the Basin Fund.

Leslie James reported that CREDA, at a Board meeting last week, discussed legislative initiatives and the proposals/alternatives put forth by the Ad-hoc Legislative Committee. With regard to the alternative of having the legislation include the proposal that WAPA be authorized to borrow funds from the Colorado Water Conservation Development Authority's Construction Fund (e.g., the CWCB loan alternative), James said we're now discussing non-reimbursable annual funding (very different than the original reimbursable capital funds). She noted that the annual amount of funding isn't as large as the capital construction funding amount authorized in P.L. 106-392, and, secondly, it's non-reimbursable funding. Based on these factors, CREDA is willing to and wants to scuttle the loan provision alternative.

With regard to a report to Congress, CREDA believes that's still necessary because 2020 is several years out and we don't know what the situation will be with the Basin Fund or with progress to recovery. Nevertheless, that report could be done very differently than our first attempt. Therefore, with changes to 3 dates, this could be a fairly short, straightforward amendment. John Shields asked about the possibility of a report from the Recovery Programs instead of from the Secretary. Tom Pitts said he doesn't think that would work since we have Federal agencies in the programs for whom we can't speak. Larry Walkoviak said we need to be clear on what's being reported to Congress by whom. The issue with this report was the question of who decided the Administration was going to send a report; there's been Constitutional debate for the past two Administrations regarding legislative authority and prerogative to ask for things from the Executive Branch versus the Bush Administration arguing executive privilege, etc. A Secretary's report requires Department and OMB review. Tom Pitts said he's fine with leaving the report language in if that's CREDA's preference. Larry said he thinks Reclamation can live with this, but he can't speak for the Fish and Wildlife Service. Tom Pitts suggested including language in the legislative proposal that will again direct the Secretary of the Interior to prepare a report with recommendations with regard to use of power revenues for annual base funding by the end of fiscal year 2020 to be sent to the authorizing committees. Walkoviak noted their solicitor's bill language is in the bill, but other language isn't binding. John Shields said he supports the joint preparation of the report as was done with the current edition of the Secretary's report, but has significant objections to the current OMB review where they have, through the preparation of comments on the draft report, suggested that the Secretary's position should be contrary to Program arrangements in place for the past twenty years. Having OMB interact in this manner to essentially try to "undo" our working partnership agreements is not helpful or appreciated. Larry said that the Department of the Interior views a Secretary's report as a Secretary's report.

Tom Pitts will redraft a bill that includes language about a Secretary's report to Congress for discussion purposes and deletes/omits the CWCB loan authority provision. Pitts and CREDA both support keeping the existing legislative authority language and don't recommend at this time that we insert new language re appropriations for back-stopping the Basin Fund balance or providing an alternative source of funds for the Recovery Program's annual base funding. James requested that the bill language drafted by Pitts include a correct and simple title for the bill, as opposed to the reference to the Upper Colorado River Basin Fund.

With regard to Section 3.h. of Public Law 106-392, discussion occurred on what are the current dates if we extend base funding through 2023 and include the legislative language a requirement for the Secretary to prepare and transmit a recommendations report in 2020. Pitts noted the San Juan Recovery Implementation Program has extended its Cooperative Agreement already and it extends through the end of fiscal year 2023. Pitts, James and Shields noted the topic of extending the Cooperative Agreement for the Upper Colorado River Endangered Fish Recovery Program should be on the agenda for the Implementation Committee to consider when it meets near DIA on February 23, 2009.

Pitts noted he has a call into Amelia Jenkins, Staff Director for the House Natural Resources Water and Power Subcommittee concerning the status of the current report to Congress (being held by Reclamation after the OMB comments were received) to get her read on the current situation and ask her about her willingness to move annual base funding authorization extension language without the Secretary's report in hand. There may be no report made. Walkoviak said the report prepared by the Program survived fairly well all through Departmental review, but OMB took awhile to get to it, then the Salinity report was due, so Reclamation put their emphasis on that. Robert King and John Shields briefly discussed the possibility of the non-Federal Program participants transmitting the draft report to Congress, but others suggested there's no reason or need.

#### Assignments and Follow-up

Draft document review assignments and comment deadlines - Tom Pitts will revise the bill language today and send it to the Management Committee, etc. for review with comments back to Tom by January 30 (in light of concern re: how much input Fed. Agencies may be able to provide from their Washington offices in light of transition, simply take whatever comments they can provide).

Next meeting/conference call – February 5 at 8:30 a.m. MST (non-Federal partners). John will set up the call and send out the requisite information.

Other Items – Brad Warren of Western Area Power Administration noted with regard to the balance in the Upper Colorado River Basin Fund that in average hydrology water years there is nor will there ever be an issue with the Basin Fund being sufficient to provide annual base funding for the two recovery programs, however in drought years there can be a significant problem. With regard to determining sufficiency of the balance in the Upper Basin Fund and setting forth, in writing, such an analysis, Warren noted that WAPA may look at a worst-case,

~10% probability case to project forward what would be the 3-year cash flow. Tom Pitts noted we will need to figure out whether to address this sufficiency determination, and if so, how, at some point in time and that language could be proposed during the bill's markup, assuming a consensus emerges during our subsequent discussions about what should be done. This may also be discussed at the February 23 Implementation Committee meeting. (There may need to be a Management Committee conference call in advance of that meeting.)

Randy Kirkpatrick emphasized the importance of keeping the SJRIP Coordination Committee fully informed (they meet February 26). Randy and Tom will make sure this meeting summary gets to the Coordination Committee.

James advised that CREDA would like to be kept informed about the San Juan meetings. Shields noted he has seemed to have dropped off of that list-serve listing. Pitts and Kirkpatrick will see to it that she and Shields are added to the San Juan River Recovery Implementation Program's Coordination Committee listserve list.

ADJOURN ~ 11:00 a.m.

Attachment 1  
Conference Call Participants  
Upper Colorado and San Juan Recovery Programs Ad-hoc Legislative Committee  
Plus Federal Agency Participants  
January 21, 2009

Ad-hoc Legislative Committee Members

Dan McAuliffe	State of Colorado
Robert King	State of Utah
John Shields	State of Wyoming
Randy Kirkpatrick	San Juan Water Commission
Leslie James	Colorado River Energy Distributors Association
Dave Mazour	Tri-State Generation and Transmission Association
Tom Pitts	Water Users Representative; Water Consult
Don Ostler	Upper Colorado River Commission

Federal Agency Participants

Larry Walkoviak	Regional Director, Upper Colorado Region, U.S. Bureau of Reclamation (UCR, USBR)
Ann Gold	Deputy Regional Director, UCR, USBR
Brent Rhees	Deputy Regional Director, UCR, USBR
Tom Ryan	Management Committee Member and UCR, USBR
Pat Patch	UCR, USBR
Jane Blair	UCR, USBR
Brooke Miller Levy	UCR, USBR
Brad Warren	Western Area Power Administration
Bert Hawk	Western Area Power Administration
Clayton Palmer	Mgmt. Comm. Member and Western Area Power Admin.

Recovery Program Staff

Bob Muth	Recovery Program Director, U.S. Fish and Wildlife Service
Angela Kantola	Assistant Program Director, U.S. Fish and Wildlife Service

## Attachment 2

### January 21, 2009 Ad-hoc Legislative Committee Plus Federal Participants **Conference Call AGENDA**

#### Status Reports and Updates

- Review of the Management Committee's deliberations and directions to the Ad-hoc Legislative Committee\*
- Quick review and discussion on the Ad-hoc Committee draft status report presented to the Mgmt. Committee (attached)
  - o Reaction/feedback from Federal agency representatives to the options included in the Ad-hoc Committee's draft status report
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#### Options Consideration and Deliberation/Decisions

- Consideration of options available to address the matter of requiring/requesting that legislative amendments require a Secretary of Interior report in 2020 (refer to Tom Pitts' e-mail memo – in body of e-mail below and to the attachments to his e-mail – attached hereto).
- Consideration of options/make a decision about whether or not our legislation strategy should be to seek legislative amendments to P.L. 106-392 to: 1) provide for a loan from the Colorado Water Conservation Board and if that fails, to provide authorization for Congressional funding of the annual funds; or 2) simply leave the bill the way it is with respect to annual funding and propose administrative mechanisms to accomplish the funding "backstopping" that we seek for additional security and certainty that funding will be available (refer to Tom Pitts' e-mail memo – in body of e-mail below and to the attachments to his e-mail – attached hereto).

#### Assignments and Follow-up

- Drafting assignments with work period deadline
- Draft document review assignments and comment deadlines
- Next meeting/conference call – set date and time

#### Other Items

#### Adjournment

### Attachment 3

TO: Recovery Program Ad Hoc Legislative Committee

FROM: Tom Pitts

SUBJECT: For 1/21 Con Call: Legislative Options for Annual Funding

**Introduction:** Regardless of the options taken to eliminate shortfalls in the Basin fund, as discussed in John Shields' previous correspondence, there will be a need for legislation in 2009 to secure full annual funding beyond 2011 for the San Juan and Upper Basin recovery programs. Current legislation reduces annual funds after FY11 to those necessary for operation, maintenance and monitoring, a 40% reduction in annual funding. Such reduction will curtail the programs' abilities to carry out essential activities for recovery, including non-native fish control program management and other activities.

Options are available with respect to the following issues.

- Requirement of a Secretarial report to Congress regarding annual funding in 2023.
- Whether or not the bill should be amended 1) to provide for a loan from the Colorado Water Conservation Board and if that fails, to provide authorization for Congressional funding of the annual funds; or 2) simply leave the bill the way it is with respect to annual funding and attempt to address the shortfall, administrated, as proposed by John Shields.

These options are discussed below.

**Secretary of the Interior's report:** The draft report by the Secretary on annual funding was prepared by the staffs of the San Juan and Upper Basin programs and was reviewed by numerous program participants. Following review by the Service and Reclamation in D.C., it was sent to OMB for review. While not available, it is our understanding that OMB's comments went beyond the scope of the recommendations and recommended additional cost sharing, for both annual funding and capital funding. It is my understanding that Reclamation's current preference, if a 2008 report is needed, is to send a one-page letter to Congress in order to meet the 2008 reporting requirement.

The agreed upon draft annual funding legislation included provisions for another report by the Secretary of the Interior to Congress in 2020 on the question of authorizing continued levels of annual funding beyond 2023.

Our options with respect to the Secretary of Interior's report are as follows:

- Maintain the requirement for a report by the Secretary to Congress in 2020, as earlier proposed.

- Delete the requirement for a report by the Secretary in 2020 and simply allow Congress to extend or not extend full funding by Congressional action.

Elimination of the SOI report requirement would be achieved by striking, rather than amending the dates in, the following sentences:

No later than the end of fiscal year 2008, the Secretary shall submit a report on the utilization of power revenues for base funding to the appropriate Committees of the United States Senate and the House of Representatives. The Secretary shall also make a recommendation in such report regarding the need for continued base funding after fiscal year 2011 that may be required to fulfill the goals of the Recovery Implementation Programs.

**Sufficiency of the Basin fund to meet annual funding requirements:** Prior to the annual funding portions of the bill being stripped out, we had agreed that if annual funding were insufficient, the Commissioner and the WAPA Administrator would seek a loan from the Colorado Water Conservation Board, with repayment from power revenues in subsequent years. This mirrors the arrangement for capital funding, which has been exercised twice in the past. The legislation would authorize appropriations if the loan failed.

Based on Commissioner Johnson's attached testimony (attached), OMB objects to borrowing money for operation and maintenance and objects to borrowing money from any source but the U.S. Treasury.

It appears that our legislative options are as follows:

- Proceed with introducing legislation as originally planned to obtain a loan from CWBC, with a back-up authorizing Congressional appropriations.
- Eliminate the loan provisions from CWCB and leave the language as it is in the current legislation.

The first option will probably draw continued objections from OMB. We may be able to overcome those objections with rational arguments in Congress. Keep in mind, however, that we will be dealing with OMB in the future.

**Draft bill:** The attached modified bill that eliminates the 2020 Secretary's report requirement and includes the loan provision and Congressional authorization is attached as something to work from. We need to discuss the options for the final bill we want introduced.

**Conclusion:** We need to reach a conclusion regarding the legislative approach to be taken very soon. We need to get the legislation introduced and start on the road to passage in 2009.

I propose that we add this to the agenda for our 10:00 a.m. conference call on Wednesday, January 21.