



Upper Colorado River Endangered Fish Recovery Program

Final Summary Dated: December 4, 2017

Upper Colorado River Endangered Fish Recovery Program Management Committee discussion of proposed Program funding legislation

Friday, September 01, 2017

Conference call purpose (email from MC Chair to Committee on August 30th, 2017):

In response to the proposed reauthorization legislation, TNC and WRA strongly supported most of the draft but expressed concern about deletion of the following clause in Section 3(d)(2): “except that power revenues may continue to be utilized to fund the operation and maintenance of capital projects and monitoring.” TNC and WRA would like to discuss this change with the rest of the MC in a conference call. Specifically, they would like to better understand the basis for this deletion and would therefore be interested in any analysis from WAPA that addresses how keeping the clause would put the Basin Fund at risk. TNC and WRA propose that we keep this clause in the legislation until Congress acts on a new plan, and they hope that the MC can reach consensus on a way to move forward with the introduction of legislation during the upcoming session. We are looking for one hour of your time and ask that you be as flexible as possible.

Pre-call information (Email from Patrick McCarthy to Committee on September 1, 2017):

TNC and WRA would like share our concerns, in writing, about the draft Recovery Program funding reauthorization legislation pursuant to P.L. 106-392. We look forward to discussing these concerns with other Management Committee members at 11:00 am today.

Overall support

TNC and WRA strongly support most of the draft legislation, including (a) extension of the authority to use non-reimbursable hydropower funding to support Recovery Program activities through 2023, and (b) the requirement that the Secretary of the Interior submit a report to Congress by the end of FY 2021 regarding the need for continued base funding after FY 2023.

Concerns about the substance of the draft bill

TNC and WRA are, however, concerned about the removal of the following clause in Section 3(d)(2): “except that power revenues may continue to be utilized to fund the operation and maintenance of capital projects and monitoring.” The reasons for our concern:

- First, it is risky to erase an important source of funds for operation and maintenance of capital projects and monitoring without a plan for replacing them. These activities are critically important to the success of the program and to sustaining recovery over the long term. As Brent Uilenberg pointed out during the August 15 Management Committee meeting, if this clause is removed, Reclamation’s contractors would be thrown into uncertainty and could walk away from the extensive network of recovery-related infrastructure that has been built with the Program’s capital funds, risking non-native fish escapement, native fish entrainment, and other events detrimental to recovery.*
- Second, once a source of funding is de-authorized, the chances of restoring authorization (after 2023) are compromised. The Recovery Program partners, as you rightly point out in the memo accompanying the draft legislation, need to renegotiate the terms of the continuation and funding of recovery activities post-2023. But the removal of this clause removes one of the important*

underpinnings of program, raising the potential that there will not be enough funding from all stakeholders to support the full suite of activities needed for recovery.

Accordingly, we suggest that the clause be restored to the draft legislation. If WAPA thinks that it will not be able to pay for O&M after 2023, the Recovery Program partners – and subsequently the Congress – can address this issue in the future, as it considers new authorization and funding for post-2023 recovery activities. We suggest that the Recovery Program partners start the conversation about cost-sharing in 2021, all of us together, instead of having a conversation now about a single component of what must ultimately be a diverse funding stream?

The process for developing the draft legislation

We believe that the proposed legislation was drafted using a process that was not entirely consistent with the collaborative culture of the Recovery Program. The cover memo states that “Senator Gardner’s office circulated the bill to various parties, including some federal agencies, in order to get preliminary feedback on the bill.” The draft legislation was subsequently changed to address concerns expressed by WAPA without consultation with all the non-federal Recovery Program partners. Nor is it clear which other federal agencies or states were consulted.

Our principal worry is that a consensus was not reached among Recovery Program partners as to how to address the issues that WAPA has raised. Moreover, there has been little dialog about the impact of the deletion of this key clause on the continued base funding for O&M and monitoring. The Recovery Program has a longstanding tradition of open dialogue and decision-making consensus. We suggest that, to reach agreement on this important legislation, the proposal should be brought to the MC for a fuller discussion. We are especially interested in learning more about the impact on WAPA of keeping the clause for non-reimbursable base funding of O&M/monitoring on the stability of the Basin Fund, or on any hydropower rate, before Congress acts on the report/plan that is required by 2021.

Patrick McCarthy, Deputy Director, Colorado River Program

Summary:

Henry began the call by providing a summary of the draft legislation content and process; this information was previously discussed at the August MC meeting. Henry and Tom Pitts had asked other MC members to submit comments on the legislation by August 25. Henry then explained that the environmental interests had comments (seen above) that warranted a call to discuss.

Henry asked Shane to discuss the reasoning for WAPA’s request to eliminate the language concerning funding O&M and monitoring. Shane explained the continued open-ended funding for the components in the legislation is the biggest concern for WAPA. WAPA is not comfortable with future expenses being funded in perpetuity because there is potential risk that the Basin Fund’s status is not secure. Instead of being included in the funding legislation, WAPA requests that the O&M and monitoring components be part of the negotiations of how to fund to entire program after 2023. Leslie clarified that the issue with the basin fun is not a decrease in revenues, but rather is driven by increase in costs and expenses.

Henry explained that there were two major changes to the proposed legislation: 1) moving the Report to Congress up to 2021 (this report will summarize what the Program looks like after 2023, including financial obligations), and 2) striking the sentence that says power revenues would be used indefinitely for O&M and monitoring (WAPA would have to pay for those two components even if the Program no longer existed). Leslie asked if the monitoring funds included Program Management. Henry said no, and emphasized that if only O&M

and monitoring are funded then ESA compliance and other Program aspects (nonnative fish management, etc.) would no longer exist. Tom Pitts said that under that scenario the Program would basically shut down.

Brent said that the purpose for clause in question is because Program stakeholders didn't want to lose critical infrastructure operation and condition, and didn't want to lose the long term data collection and management. Brent said that currently annual monitoring costs are about \$1.7 million and annual capital O&M costs are about \$277,000. So this discussion is about \$2 million annually in the upper basin. Tom Pitts said this language has been in since the inception of legislation. Henry recognizes that the other aspects of the Program must continue into the future as well.

Leslie asked for the terms of the contracts for capital projects. That is, what is the Program commitment? Brent said this is a very important point. Brent provided specific language from the contract with the Grand Valley Water Users (as an example):

15. The performance of work under this Agreement by Reclamation and the Service shall be contingent upon appropriation or allotment of funds. Absence of such appropriations or allotment of funds shall relieve obligations of all parties under this Agreement. No liability shall accrue to the Company, Reclamation, or the Service in case funds are not appropriated or allotted for such work. Further, in the event funds are not appropriated or allotted for such work, the Company shall not be deemed in non compliance with this Agreement or the Recovery Agreement.

The Program cannot bind the operators to keep up with those facilities without federal assistance. That is, if there is no federal money, there is no requirement to continue to operate or maintain the structure. Brent thinks the facilities will deteriorate very quickly without required O&M funding.

Patrick stated that his constituents submitted the comments because they felt like they didn't have enough information to understand the purpose of the removal of that clause from the conversation at the August MC meeting. After receiving information from WAPA, and talking to others in the Program, TNC and WRA put together the above comments. He thanked the hydropower partners for their extensive commitment to the Programs over the past decades. TNC and WRA feel removal of this clause is a substantial deviation from previous legislation and is therefore asking for substantial changes to the post 2023 funding structure be done with everyone at the table as part of larger negotiation. They recommend keeping the existing funding structure the same as it has been and renegotiate any changes as part of the larger discussion.

Tom Pitts said everyone previously recognized that the Program needed to ensure that facilities continue to operate, but stakeholders did not recognize that we would be renegotiating the funding of the Program at this date. All participants have a large investment in the Program and a lot at risk; therefore everyone has a lot at stake during negotiations. Tom offered if it would be acceptable to have an end date on the statement at hand and suggested 2025. This would retain the clause but not in perpetuity. He doesn't think it's feasible to negotiate the Program's future prior to the current legislations endpoint (2019), so it's important to continue to move the current legislation forward and provide an adequate timeline. Previous Program negotiations took 3-4 years. Another legislation to extend the Program past 2019 would allow us time to find solutions. Leslie asked how many times we have reauthorized hydropower revenues. Tom thinks we have extended the hydropower revenues three times.

Steve Wolff supported Tom's suggestions. He is concerned that if the original language is left in, will WAPA support moving the legislation forward? Steve believes the date extension is the most important aspect of this legislation and doesn't want to jeopardize that objective. Shane does not know if WAPA management will

either support leaving the language in or the addition of a 2025 end-point. He does know Lynn Jeka's

preference is to remove the language completely.

Patrick says the environmental interests do not want this issue to stall the re-authorization of the Program, but is concerned about the commitments for these funds not being included. He asked Brent about the 2025 date's impact on the contracts. Brent said it provides some more comfort, but doesn't provide the level of confidence previously relied upon.

Michelle believes that 2021 to 2025 is an appropriate amount of time to renegotiate the terms of the Program and supports the 2025 concept. Leslie is willing to consider this concept and present it to the Board if that is what the MC approves. She emphasized that CREDA likely wouldn't have supported the Program as they did if they understood they were the "backstop". Leslie said that Lynn raised two important points about this clause: 1) the lack of an end date is troublesome, and 2) the lack of a maximum expenditure is concerning. O&M and monitoring are obviously less than total Program costs, but it is uncertain how much these two elements truly cost. Henry said the Program is about to complete the last few capital projects and would soon have a better idea of exactly what long term O&M would cost. Leslie agreed that information would really help clarify this issue.

Patrick says the committee needs more time to consider this proposal. He still doesn't see this as a solution for ensuring that existing structures are maintained, because the contracts and facilities will be in place beyond 2025.

Henry suggested another call to discuss this topic. Sharon asked if the San Juan Coordination Committee could participate in the next call as well. Henry agreed.

Assignment:

- A follow up call was scheduled for noon Mountain Time on September 11th.

Attachment 1: Attendees
Colorado River Management Committee Conf Call / Webinar, September 1, 2017

In attendance:

Management Committee members:

Henry Maddux, chair	State of Utah
Michelle Garrison	State of Colorado
Steve Wolff	State of Wyoming
Tom Pitts	Water Users
Patrick McCarthy	Environmental Interests
Shane Capron	WAPA
Leslie James	CREDA
Marj Nelson	USFWS
Brent Uilenberg	USBR
Melissa Trammell	NPS
Tom Chart (non-voting)	Program Director

Others:

Robert Wigington	WRA
Edalin Koziol	TNC
Angela Kantola	Deputy Program Director
Kevin McAbee	Program Director's Office
Sharon Whitmore	San Juan Recovery Program Director
Melissa Matta	San Juan Recovery Program Deputy Director
Lain Leoniak	Colorado Attorney General's Office
Kathy Callister	USBR
Ed Warner	USBR
Dave Speas	USBR
Ryan Christianson	USBR



Upper Colorado River Endangered Fish Recovery Program

Final Summary Dated: December 4, 2017

**Discussion of proposed funding legislation for Recovery Programs:
Joint meeting of the Upper Colorado River Endangered Fish Recovery Program Management
Committee and the San Juan River Basin Recovery Implementation Program Coordination Committee**

Monday, September 11, 2017

Conference call purpose:

To attempt to finalize proposed funding legislation language for both Recovery Programs, as discussed previously at the August 15th Upper Colorado River Recovery Program Management Committee meeting and the September 1st conference call.

Pre-call information:

(Email from Patrick McCarthy to Committee on September 10, 2017):

Subject: Revisions to annual funding reauthorization legislation for the Upper Colorado River and San Juan River Recovery Programs

Tom, Sharon, and members of the UCREFRP Management Committee and SJRBRIP Coordination Committee

Having considered the issues and alternatives discussed during the September 1 UCREFRP MC call, The Nature Conservancy and Western Resource Advocates would like to offer a new alternative for consideration during tomorrow's (9/11/17) MC/CC follow-up call.

The compromise that was proposed at the conclusion of the 9/1 call – a two-year extension of base funding for O&M and monitoring to 2025 – addresses WAPA's concern about lack of an end date for hydropower funding but fails to provide a secure source of funds for critical O&M and monitoring contracts for which Reclamation is responsible well beyond 2025.

We offer an alternative that addresses the risk to WAPA of the uncontrolled expansion of these non-reimbursable charges while also managing the risk to Reclamation and the other Program partners that funding for key recovery-related activities will be lost. This alternative is to tie those charges to actual contracts and costs and impose a total cap on them, subject to reformulation by Congress upon review of the Programs' 2021 report. Based on our review of current and anticipated O&M/monitoring costs, we propose an annual cap of \$5.2M – an amount that would permit the Recovery Programs to continue to support these critical activities while limiting WAPA's funding commitment post-2023.

Please see the attached reauthorization legislation mark-up for full details. We look forward to tomorrow's discussion – and to reaching consensus on a solution.

Patrick McCarthy, Deputy Director, Colorado River Program

(Email from Patrick McCarthy to Committee on September 11, 2017):
MC and CC members and Recovery Program staff:

I would like to provide some additional information about the TNC/WRA reauthorization legislation proposal – specifically, the basis of the proposal’s \$5.2M cap on hydropower revenue to support O&M and monitoring.

This funding amount was derived from the Secretary of the Interior’s report to Congress last December titled [“Utilization of Power Revenues for Annual Base Funding of the Upper Colorado River and San Juan River Basin Recovery Implementation Programs”](#) Specifically, we used the report’s determination of the cost of “remaining activities eligible for annual base funding after 2019 without reauthorization” highlighted in the table on page 7:

<i>Recovery Program</i>	<i>Currently Available Annual Base Funding (FY 2016 Dollars)1/</i>	<i>Reductions in Annual Base Funding After 2019 Without Reauthorization 2/</i>	<i>Remaining Activities Eligible for Annual Base Funding After 2019 Without Reauthorization</i>
<i>Upper Colorado</i>	\$5,448,100	-\$2,058,200	\$3,390,000
<i>San Juan</i>	\$2,724,100	-\$872,800	\$1,851,300
Total:	\$8,172,300	-\$2,931,000	\$5,241,300
Percent:	100%	-36%	64%

1/ Power revenues initially authorized for use as annual base funds by P.L. 106-392 indexed to 2016 dollar levels.

2/ Includes some program management costs directly related to monitoring and operation and maintenance of capital projects that may be eligible for continued power revenue funding after fiscal year 2019.

This figure is based on Table 3, in the report’s appendix: \$3,390,000 + \$1,851,200 = **\$5,241,200**.

TABLE 3.—Current activities and estimated costs (in FY 2016 dollars) of the Upper Colorado and San Juan recovery programs eligible for annual base funding from power revenues beyond fiscal year 2019 without further amending P.L. 106-392.

<i>Recovery Program Element or Activity</i>	<i>Recovery Program</i>	
	<i>Upper Colorado</i>	<i>San Juan</i>
<i>Habitat management</i>	\$402,200	\$315,700
<i>Habitat development</i>	\$494,000	\$0
<i>Propagation and stocking</i>	\$870,800	\$515,900
<i>Monitoring</i>	\$1,623,000	\$1,019,600
Total:	\$3,390,000	\$1,851,200

The activities listed in Table 3 include the operations, maintenance, and monitoring conducted by the two Recovery Programs. By the terms of the TNC/WRA proposal, these activities would still be funded by hydropower revenues in the event that funding agreement for Programs is not renegotiated prior to their scheduled deauthorization in 2023. Thus, these core activities of the Programs would continue to be funded until a new agreement is reached.

I hope that this information sufficiently “unpacks” the \$5.2M funding cap and is useful in this afternoon’s conference call.

Patrick McCarthy, Deputy Director, Colorado River Program

Summary:

Henry provided a brief summary of the discussions and process preceding this conference call (see previous summaries). Proposals for legislation wording include re-authorization with only a date change, a proposal prepared by Henry and Tom to address concerns raised by Western Area Power Administration, adding a 2025 funding date proposal, and the most recent proposal from The Nature Conservancy (TNC) and Western Resource Advocates (WRA). Patrick summarized the most recent proposal from TNC and WRA (described in emails above), and hopes these updates ameliorate other stakeholder concerns, while continuing to fund the critical actions of monitoring and operation and maintenance of existing projects that have been constructed. He noted they prefer the date change only option, but drafted a potential revision based on concerns they heard from other partners. Primary components of the new proposal include:

- preserving the date change for continued Program authorization; and
- establishing a \$5.2M cap on hydropower revenues to specifically fund operation and maintenance, and monitoring (funding cap figure extracted from 2016 Report to Congress)

This proposal attempts to honor multiple stakeholder concerns by retaining a fallback funding source for O&M and monitoring, but prevents uncapped expenses from hydropower revenues. Questions were raised about the types of projects included in the \$5.2M, the Upper Basin Program office responded that it was based on items identified as such in the RIPRAP tables. Some participants asserted that it is important to distinguish O&M of capital projects from operational expenses that are funded through base funds and expressed a desire to revisit this number.

The clause being debated funds elements of the Programs that could be seriously impacted if ignored for even short time periods (operation & maintenance, and long term monitoring) even if the Programs are not authorized to receive base annual funding. WAPA is concerned about using hydropower revenues beyond 2023 unless the Programs are re-authorized and the cooperative agreements are in place. Proponents of the clause stated that funding under this clause provides some risk management to existing commitments, such as long term datasets and capital projects. Tom Pitts explained the original intention of the clause was to provide fallback funding for those most critical aspects of the Programs in case Congress did not provide authorization. The clause was to cover a lapse in authorization, not to be a perpetual funding source.

Many voiced that it is most important to collaboratively figure out how to maintain ESA compliance so that water use development continues and to achieve recovery. Re-negotiating continued implementation of recovery actions is the most important aspect of these discussions. We know that lots of Programs' actions will need to be funded even after the Programs cease to exist in their current form, such as capital features, water contracts, and other important actions. These will all need to be negotiated.

Colorado and the NPS supported the two year extension for the clause. The extension to 2025 for O&M and monitoring was an attempt to cover any lag time between stakeholder agreement on funding commitments and Congressional authorization. That is, it provides more time to get the legislation passed.

No decision was made at this time. Stakeholders needed to reconvene in-house with their boards, constituents, and interested parties.

Attachment 1: Attendees

Upper Colorado River Recovery Program Management Committee members:

Henry Maddux, chair	State of Utah
Michelle Garrison	State of Colorado
Steve Wolff	State of Wyoming
Tom Pitts	Water Users
Patrick McCarthy	Environmental Interests
Shane Capron	WAPA
Leslie James	CREDA
Marj Nelson	USFWS
Kathy Callister for Brent Uilenberg	USBR
Melissa Trammell	NPS
Tom Chart (non-voting)	Upper Colorado River Recovery Program Director

San Juan Recovery Program Coordination Committee members:

Catherine Condon	Southern Ute Indian Tribe
Tom Pitts	Water Users
Stanley Pollack	Navajo Nation
Michelle Garrison	State of Colorado
Kathy Callister for Brent Uilenberg	USBR
Kristin Green	State of New Mexico
Patrick McCarthy	Environmental Interests
Sharon Whitmore (non-voting)	San Juan Recovery Program Director

Recovery Programs staff:

Angela Kantola	Upper Colorado River Recovery Program Deputy Program Director
Kevin McAbee	Upper Colorado River Recovery Program Director's Office
Julie Stahli	Upper Colorado River Recovery Program Director's Office
Don Anderson	Upper Colorado River Recovery Program Director's Office
Nate Franssen	San Juan Recovery Program Director's Office
Scott Durst	San Juan Recovery Program Director's Office
Dave Campbell	Former San Juan Recovery Program Director

Others:

Robert Wigington	WRA
Edalin Koziol	TNC
Lain Leoniak	Colorado Department of Law
Dave Speas	USBR
Ryan Christianson	USBR
Mark McKinstry	USBR
Ed Warner	USBR (Upper Colorado River Implementation Committee)
Carly Brown	State of Colorado
Lynn Jeka	WAPA (Upper Colorado River Implementation Committee)
Steve Johnson	WAPA (Upper Colorado River Implementation Committee)