

Colorado River Recovery Implementation Committee  
January 27, 1993 Meeting  
- Summary -

Convene: 9:30 a.m.

Attendees: (Attachment 1)

Actions and Assignments: (Attachment 2)

Major Topics Discussed/Decided:

1. Introductions
2. Review/Modify Agenda: The agenda was modified as it appears below.
3. Approval of Last Implementation Committee Meeting Summary: Tom Pitts noted that the change he requested to the news release policy (see item 9 on page 6 of the meeting summary) was not made. Ralph Morgenweck said he would see that the change was made.
4. Recovery Program Update: John Hamill gave an update on the Program activities and accomplishments (see Attachment 3). John explained that Service funding for the Recovery Program was in jeopardy for FY 94, due to a shift in how the Service allocates funding for endangered species among Regions. The Service has indicated that, beginning in FY 94, it may no longer acknowledge earmarks of Congressionally appropriated funds beyond the year the earmark was first designated. Ralph Morgenweck noted that if this proposal is accepted by the Administration, the Office of Management and Budget, and Congress, all endangered species recovery funding would be allocated by a national formula based on the number of listed species with recovery plans in each Region. Budget "add-ons" for a specific purpose would go to the affected Region in addition to their allocation from the national formula. However, if Congress earmarks existing funds, the affected Region would take that amount from their allocation. Region 6 has taken a \$1M cut in FY 93 with the prospect of more cuts in FY 94 and 95, ultimately reducing their endangered species budget from \$3M to about \$1M. The Service has had an earmark for Recovery Program funds for several years which likely will not be honored after FY 93 unless Congress so specifies. However, Region 6 would be in a real dilemma if their recovery budget were reduced to \$1M, and \$624,000 was earmarked for the Recovery Program.

Noting that the news release policy says agencies may do news releases on their own, Ralph Morgenweck asked that when they do, they provide courtesy copies to the Implementation Committee members.

Tom Pitts asked that the Service try to have the Recovery Program nonnative stocking policy ready for review at the August Implementation Committee meeting. Ralph Morgenweck agreed that was a worthwhile objective they would do their best to achieve.

John Shields asked that Program participants receive sufficient notice of meetings scheduled to set Flaming Gorge and Aspinall releases.

5. Section 7 Consultation:

- a. Recovery Implementation Program Recovery Action Plan - John Hamill gave a briefing on the Recovery Implementation Program Recovery Action Plan (RIPRAP). The RIPRAP's purpose is to guide all future Program planning, ensure that the Program serves as a viable reasonable and prudent alternative to jeopardy in Section 7 consultations, and serve as the basis for assessing sufficient progress. The RIPRAP has a 5-10 year timeframe, and will be updated annually or biannually, as needed. It is organized by action plans for each of the major river systems in the upper basin, as well as an action plan for general Program support (activities that don't relate specifically to a river reach). The RIPRAP contains eight basic steps to recovery: 1) protect streamflows; 2) restore habitat; 3) reduce impacts of nonnative species and sport fish management; 4) conserve genetic integrity and restore populations; 5) monitor populations and habitat; 6) conduct research; 7) increase public support; and 8) provide Program support. Recovery activities are classified into three categories: 1) actions needed to prevent extinction; 2) significant recovery actions; and 3) research and other actions (including those prerequisite to category 1 and 2 actions). At this point, John recommends the following for the RIPRAP: 1) complete technical committee review; 2) categorize all actions; 3) identify/prioritize actions most important to "sufficient progress;" 4) use the RIPRAP as basis for evaluating the current Program and developing the FY 94 work plan; and 5) "finalize" the RIPRAP by August 1993. The Implementation Committee agreed to this timeframe.
- b. Sufficient Progress/Historic Project Agreement (Attachment 4) - Peter Evans discussed the background of this issue and outlined the draft framework agreement developed by the Management Committee. Some Recovery Program participants became concerned about 2 years ago when historic projects that began to come up for Section 7 consultation were treated like new projects by the Service (required conservation measures). At the same time, the Service began to express concern that the Program was not making sufficient progress to serve as a reasonable and prudent alternative to jeopardy in Section 7 consultations. The Management Committee has met more than a dozen times to work out differences on these issues, and developed a draft framework agreement. The agreement attempts to "shift the paradigm" from an approach of merely offsetting depletions in Section 7 consultations to a more holistic goal of recovery of the endangered fishes (and integrating this goal with the Section 7 process). The intent is to focus first on actions most important to recovery instead of planning recovery activities based on where project impacts are expected to occur. The RIPRAP is an integral part of the agreement, and commits the Recovery Program participants to moving jointly toward recovery as quickly as is rationally

possible. Recognizing the Service's legal requirements under the Endangered Species Act, the framework agreement incorporates the RIPRAP as the tool to assure that the Program continues to serve as a reasonable and prudent alternative to jeopardy in Section 7 consultations. The framework also establishes an open and cooperative process for addressing sufficient progress. The Service has ultimate authority to determine whether the Program serves as a reasonable and prudent alternative to jeopardy. However, the framework agreement offers other Recovery Program participants an opportunity to understand any Service concerns regarding sufficient progress and contribute to a solution. At this point, the Service has some concerns with the current draft (Attachment 5), so the Management Committee is not seeking Implementation Committee endorsement today. However, they would like guidance from the Implementation Committee regarding the committee level and timing for working toward resolution on the draft agreement. Peter noted that Program participants would like to reach resolution before the Washington, D.C., briefing trip. Ralph Morgenweck suggested giving the Management Committee 6 weeks or so to work out the Service concerns, then calling a special Implementation Committee meeting to tackle any unresolved issues, if needed.

Ted Stewart asked if Peter knew of any remaining concerns, other than the Service's. Peter said he did not. Dan Luecke had questions about: 1) whether the framework agreement should be adopted before the RIPRAP is "finalized" (in August); 2) progress in one subbasin as a reasonable and prudent alternative to jeopardy in another subbasin; 3) what, if any, projects would not fit the definition of "projects under federal control . . ." for which the draft agreement says the Service will not assess depletion charges or seek to acquire or modify their flows; and 4) the ultimate solution (end of Program, jeopardy opinion, or what) if situations listed in section III. 4. occur and are not resolved through the methods contemplated in sections III. 5-6.

Ralph said that the Service may not have clearly articulated the definition or status of sufficient progress. He has been discussing this with his staff and the Service will work on this and attempt to make it more clear. Ralph also noted that one difficulty with the framework agreement is that the Recovery Program is in transition, moving toward an objective measure of progress, but faced with gray areas until that objective measure (RIPRAP) is complete.

Tom Pitts said the water users believed the Management Committee had reached consensus on this issue, and had been prepared to endorse the framework agreement. Other Recovery Program participants echoed that sentiment and expressed disappointment over the Service's concerns contained in their January 25 memo (Attachment 5). Tom went on to say that he was concerned that the Service's comments represent a 180-degree turn from what the Management Committee recommended in the framework agreement. To his thinking, any attempt by the Service to obtain water from or reduce the yield of

projects would be a violation of the Recovery Program goal to provide for water development to proceed in the upper basin. With regard to sufficient progress, Barry Saunders suggested that the Service should have an adequate legal defense if they can say that the fish are closer to recovery than they would have been without the Recovery Program.

The Implementation Committee agreed to Ralph Morgenweck's recommendation to give the Management Committee a short period of time to work out the Service concerns. If they are unable to reach consensus, the Implementation Committee will meet from 9:30 a.m. - 4 p.m. on Thursday, March 11 at the VA Regional Office, 44 Union Blvd. (just south of the Fish & Wildlife Service Bldg in the same parking lot), Lakewood, (303) 980-2840, to resolve remaining issues. If any Program participant has additional concerns which need to be resolved, they will provide a write-up of those to all Implementation and Management Committee members by Friday, February 5. Ralph Morgenweck said he and Margot Zallen would both attend the next Management Committee meeting to expedite resolution of the Service's concerns. Other Implementation Committee members also are invited, should they wish to attend.

- c. Update on Consultation Activities - Jim Lutey provided a current list of consultations (Attachment 6). Jim noted that the Service had just received requests from the Forest Service for consultation on two additional historic projects. John Hamill said Chips Barry of the Denver Water Board just sent him a letter regarding the Williams Fork historic project. The Service may not be able to delay consultation on this project much longer. John Shields questioned the basis for exempting the Ouray water supply from the depletion charge (since the Program contains no provision allowing the Service to exempt itself from the charge). Colorado officials pointed out that that they had paid depletion charges for some of their fish hatchery facilities. Ralph Morgenweck replied that the Service would look into it and report back to the Program.
6. Hatchery Facility Plan Status: A coordinated hatchery facility plan has been requested for nearly 2 years. At the last Implementation Committee, the Service was asked to work with the Biology Committee and provide a draft by this meeting. The Biology Committee began work on this task, but was unable to complete it because the Management Committee directed them to complete their portion of the RIPRAP. The Management Committee is asking for an extension of the deadline to April 15 to produce a draft plan. The Service has identified a full-time staff person for 120 days to work on this with the Biology Committee to develop the plan. A work group consisting of Colorado, Utah, Reclamation, and the Service has been formed and will meet February 9. A final plan will be submitted to the Implementation Committee in August for review and approval. The Implementation Committee approved the requested time extension.
7. Resolution Acknowledging Dee Hansen - Dee has left the Utah Department of Natural Resources, and the Management Committee asked Tom Pitts to

prepare a resolution citing his involvement in and contributions to the Recovery Program. The Implementation Committee approved and signed the resolution. Ralph Morgenweck will present the resolution to Dee in Salt Lake City, if possible.

8. Washington, D.C. Briefing - Tom Pitts outlined the planned briefing trip to Washington, D.C., in late March. Several Recovery Program participants have made such a trip to obtain funding almost annually since the Program began. Tom provided a summary of recommended funding requests and the strategy for obtaining the funding (Attachment 7). Trip participants also will try to meet with national environmental groups, although this intent was mistakenly left off the strategy summary. Dan Luecke asked if the 50% cost share on Owens Creek implied assignment of 50% of the benefit to the fish, and Ron Johnston replied that initial studies so indicated. Ralph Morgenweck asked about the coordinated operations study and if it could be accelerated. Ron replied that it probably could not be done more quickly for lack of the appropriate modelling tools. John Hamill asked if the funding needs should be prioritized, and whether we should identify which of those are related to water acquisition and can be funded from the \$1 million provided by Congress in 1988. The group agreed to that strategy. Tom said he hopes at least one representative of each of the principal participants in the Recovery Program will go on the trip. Tom requested that Implementation Committee members work with the Congressional delegations and governors to sign letters of support for the funding requests. Tom will send out a list of committees, Congressional delegations, and Department of the Interior staff to be visited. Ron suggested that the Management Committee discuss if some Program participants will testify at upcoming appropriation hearings. Tom Pitts said he would look into getting appropriate language in the water users' testimony. The Implementation Committee approved the funding request package.
  
9. Yampa River Feasibility Study Memorandum of Understanding (MOU): John Hamill provided background, explaining that the Colorado River Water Conservation District holds major conditional water rights on the Yampa River collectively referred to as the Juniper and Cross Mountain water rights. A few years ago, Chips Barry, Ken Salazar's predecessor offered to buy those rights for conversion to instream flows. The River District suggested first looking at the short- and long-term water needs and alternatives for developing a project or projects (off the mainstem Yampa). That has been done, and the recommended alternative is to expand Elkhead to meet short-term needs, reserve adequate water rights for possible future expansion of Stagecoach Reservoir, rehabilitate agricultural diversion structures on the Yampa River, and convert the remainder of the right to instream flows. The draft MOU outlines how the affected agencies would proceed and addresses institutional concerns. The River District recently reviewed the MOU, and added several negotiating principles (such as agreement that the package would satisfy all Federal water requirements and would constitute sufficient progress towards recovery). John Hamill suggested that since a number of issues are outstanding, the Implementation Committee permit Ralph Morgenweck to sign the MOU for the Recovery Program following Management Committee

review and approval. The Implementation Committee agreed. Peter Evans will include this topic on the February 16 Management Committee meeting agenda. Tom Pitts and Don Birkner pointed out that while some issues remain, public and River District Board opinion have taken a very positive turn. The Craig City Council and the Moffat County Board both unanimously adopted resolutions supporting the package.

10. River Trip Planning: Angela Kantola described the proposed Yampa River trip (Attachment 8), and explained the need for Implementation Committee member assistance in inviting participants. Peter Evans said he has drafted an invitation for Ken Salazar to send the Colorado delegation, to which he will attach Angela's summary. Colorado also would like to invite members of the Colorado Wildlife Commission and the Water Conservation Board. Ralph Morgenweck agreed to invite appropriation committees staff and Service people. John Hamill said they could invite some of the Washington, D.C., people during their briefing trip. Tom Pitts said he would like Utah and Wyoming's help in identifying water users from their States to invite. John Hamill noted that Cliff Barrett had said CREDA would like to invite a couple of people. Don Birkner suggested inviting Park Service and Bureau of Land Management people from the Craig area. By the February 16 Management Committee meeting, John Hamill will draft a standard letter of invitation that Program participants can customize. The first round of invitations will be sent out in time to receive a response by mid-April, then additional invitations will be given, as necessary. Management Committee members will get their final "nominee" list to Angela Kantola by February 12 so she can provide a final list at the February 16 meeting.
11. Critical Habitat Designation for the Endangered Colorado River Fishes: Bob Jacobsen provided background, explaining that the Service was petitioned in 1989 by the Sierra Club Legal Defense Fund (SCLDF) to list the razorback sucker, and that the Service proposed to list the species as endangered, without critical habitat in 1991. The final rule in 1992 did just that. The SCLDF then sued the Service for failure to designate critical habitat. A judge gave the Service 90-days to propose critical habitat. The Service has met this deadline, although it gave them very little time to do the job. Public hearings will be conducted in southern California, Phoenix, and Denver within the next 60 days. The Service is now developing biological support information and an economic analysis which will be available in June. Additional public hearings will be held in each of the basin States at that time. The Service plans to have a final rule in November 1993. Henry Maddux and Bill Noonan gave a presentation on the biological aspects of the critical habitat designation (see Attachment 9). Mel Schamberger explained the economic analysis process, which will consider regional and national impacts, incremental benefits and costs. Roughly 20 sectors will be considered in the areas of hydrology, recreation, agriculture, municipal and industrial, oil and gas, and other impacts. Impacts will be projected into about 2020. Standard input-output economic models will be used, and a computable general equilibrium model that can look at more than one sector at a time will be applied if there is time.

Program participants asked questions about how limitations to recovery flows by interstate compacts would be considered, whether NEPA compliance will be conducted, and the difference between recovery and critical habitat flows, which generated considerable discussion. Few definitive answers were provided due to the early stage of the designation. Recovery flows for critical habitat will be contained in the biological support document. That document and the economic analysis will be available in June. Tom Pitts asked that the Management Committee be kept up-to-date as the designation proceeds, and the Service agreed.

12. Next Meeting: The next regular meeting was tentatively set for Wednesday, September 8, 1993, from 9:30 a.m. - 4 p.m. in the Service's 3rd floor conference room in Denver. A special meeting will be held March 11 (same time, same place), if necessary to resolve sufficient progress/historic depletion issues.

Adjourn: 3:40 p.m.

Attachment 1

Attendees  
Recovery Implementation Committee Meeting  
January 27, 1993

IMPLEMENTATION COMMITTEE MEMBERS:

Ralph Morgenweck, U.S. Fish and Wildlife Service (Chairman)  
Roland Robison, U.S. Bureau of Reclamation  
Ken Salazar<sup>1</sup>, Colorado Department of Natural Resources  
Lloyd Greiner, Western Area Power Administration  
Dan Luecke, Environmental Defense Fund  
Tom Pitts, Upper Basin Water Users  
Ted Stewart, Utah Department of Natural Resources  
Jeff Fassett, State of Wyoming  
John Hamill, U.S. Fish and Wildlife Service (Program Director) (nonvoting)

OTHERS:

Peter Evans, Colorado Department of Natural Resources  
Barry Saunders, Utah Division of Water Resources  
Bob Caskey, Colorado Division of Wildlife  
Bob Jacobsen, U.S. Fish and Wildlife Service  
George Smith, U.S. Fish and Wildlife Service  
Angela Kantola, U.S. Fish and Wildlife Service  
Larry Shanks, U.S. Fish and Wildlife Service  
Dale Hoffman, U.S. Fish and Wildlife Service  
Sandra Silva, U.S. Fish and Wildlife Service  
Bill Noonan, U.S. Fish and Wildlife Service  
Henry Maddux, U.S. Fish and Wildlife Service  
Mel Schamberger, U.S. Fish and Wildlife Service  
Jim Lutey, U.S. Fish and Wildlife Service  
Daryl Jennings, National Park Service (detailed from Fish and Wildlife)  
Margot Zallen, Department of Interior Solicitor's Office  
Ron Johnston, U.S. Bureau of Reclamation  
Chris Karas, U.S. Bureau of Reclamation  
John Shields, Wyoming State Engineer's Office  
Clayton Palmer, Western Area Power Administration  
Robert Wigington, The Nature Conservancy  
Leo Lentsch, Utah Division of Wildlife Resources  
Jim Pankonin, City of Craig  
Don Birkner, City of Craig  
Ray Tenney, Colorado River Water Conservation District  
Eric Kuhn, Colorado River Water Conservation District  
Tim Bernard, Environmental Defense Fund Intern  
Mark Obmascik, Denver Post

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<sup>1</sup> Colorado was represented by Peter Evans in the afternoon.



Attachment 2

Actions and Assignments  
Recovery Implementation Committee Meeting  
January 27, 1993

COMMITTEE ACTIONS:

Agreed to a deadline of August 1993 for "finalizing" the RIPRAP.

Agreed to give the Management Committee a short period of time to work out the Service concerns about the sufficient progress/historic project agreement. If they are unable to reach consensus, the Implementation Committee will meet from 9:30 a.m. - 4 p.m. on Thursday, March 11 at the VA Regional Office, 44 Union Blvd. (just south of the Fish & Wildlife Service Bldg. in the same parking lot), Lakewood, (303)980-2840, to resolve remaining issues. If any Recovery Program participant has additional concerns which need to be resolved, they will provide a write-up of those to all Implementation and Management committee members by Friday, February 5. Ralph Morgenweck and Margot Zallen will both attend the next Management Committee meeting February 16, 1993, to expedite resolution of the Service's concerns. Other Implementation Committee members also are invited, should they wish to attend.

Approved the requested time extension for the Coordinated Hatchery Facility Plan.

Approved and signed the resolution acknowledging Dee Hansen's contributions to the Recovery Program.

Approved the FY 94 funding request package.

Agreed that Ralph Morgenweck could sign the Yampa River MOU for the Recovery Program after Management Committee review and approval.

ASSIGNMENTS:

The Service will change the news release policy per Tom Pitts request.

The Service will make every effort to have the Recovery Program nonnative stocking policy ready for review at the August Implementation Committee meeting.

Program participants will receive sufficient notice of meetings scheduled to set Flaming Gorge and Aspinall releases.

The Service will work on a clearer definition and status of sufficient progress.

The Service will look into the basis for exempting the Ouray water supply from the depletion charge and report back to the Program.

Ralph Morgenweck will present the resolution honoring Dee Hansen to Dee in Salt Lake City, if possible.

FY 94 funding needs should be prioritized by the Management Committee. Those related to water acquisition which can be funded from the \$1 million provided by Congress in 1988 will be identified.

Implementation Committee members will work with the Congressional delegations and governors to sign letters of support for the Recovery Program funding requests. Tom will send out a list of committees, Congressional delegations, and Department of the Interior staff to be visited. The Management Committee will discuss if some Recovery Program participants will testify at upcoming appropriation hearings. Tom Pitts will look into getting appropriate language in the water users' testimony.

By the February 16 Management Committee meeting, John Hamill will draft a standard letter of invitation for the Yampa River trip that Recovery Program participants can customize. Management Committee members will get their final "nominee" list to Angela Kantola by February 12 so she can provide a final list at the February 16 meeting.

The Service agreed to keep the Management Committee up-to-date on the critical habitat designation.