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United States Department of the Interior

FISH AND WILDLIFE SERVICE


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June 24, 2009

Memorandum

To: Parties to the Shortage Sharing Agreement: Navajo Nation, Jicarilla Apache Nation, City of Farmington, Public Service Company of New Mexico, Arizona Public Service Company, BHP Billiton, Hammond Conservancy District, Bloomfield Irrigation District, Farmers Mutual Ditch, Jewett Valley Ditch

Through: Pat Page, Bureau of Reclamation, Water Management Group Chief, Western Colorado Area Office, Durango, Colorado

From: David Campbell, Aquatic Ecosystems Branch Chief, New Mexico Ecological Services Field Office, U.S. Fish and Wildlife Service, Albuquerque, New Mexico 

Subject: Applicability of the San Juan River Recovery Implementation Program Biology Committee's Flow Recommendations for 2003 Shortage-Sharing Agreement

At their February 26, 2009 meeting the San Juan River Basin Recovery Implementation Program (Program) Coordination Committee directed the Biology Committee to review the maintenance flow concept for endangered fish that was originally developed for the 2003 water user shortage-sharing agreement for its application to the 2009-2012 water user shortage-sharing agreement. They further directed the Biology Committee to provide their findings to the U.S. Fish and Wildlife Service (Service) and asked that the Service, after reviewing the Biology Committee's findings, provide a response to the parties of the shortage sharing agreement. The Service received the Biology Committee's response via email on April 20, 2009 (attached).

The Service reviewed the Biology Committee's findings and is in agreement with their determination. In short, the Biology Committee states that the 2003 recommendations were based on specific hydrologic conditions occurring at that time. Because the hydrologic conditions and status of the endangered fish populations for the 2009-2012 timeframe are unknown, the basis for shortage sharing could be different from those in 2003. The Biology Committee determined that they could not recommend the application of the 2003 temporary modifications for 2009-2013; but they would review the conditions if and when a shortage occurs and at the request of the Service and the Bureau of Reclamation (Reclamation). This approach should not preclude the water users from moving forward with the shortage-sharing agreement at this time. The Service is in full support of the shortage-sharing process, as stated in our Final Biological Opinion for Navajo Reservoir Operations, dated January 5, 2006. In that

document, the development and implementation of shortage sharing agreements in periods of extreme drought was contemplated.

“The Service believes that shortage sharing would only occur during extreme drought conditions and would not affect Reclamation’s ability to meet the Flow Recommendations with the exception of the target base flows during the extreme drought conditions, or the following year. While shortage sharing arrangements could result in a short-term delay in recovery, such arrangements are designed to protect the water level of Navajo Reservoir which will be a long-term benefit to razorback sucker, pikeminnow, and primary constituent elements of their designated critical habitat, by reducing the possibility of catastrophic water shortages in the basin which could result in significant dewatering.” – USFWS, Final Biological Opinion for Navajo Reservoir Operations, January 5, 2006

If a shortage situation occurs the Service, along with Reclamation, will work closely with the Program to assess species and habitat conditions and determine the appropriate level of participation. The Service understands that by participation during a shortage, the expectation is that the Program’s flow recommendations for the recovery of the species will also "share the shortage" in a manner consistent with all shortage-sharing participants. The development and approval of any agreement documenting any shortage-sharing situation will be subject to section 7 compliance.

The Program operates under the “Principles for Conducting Endangered Species Act (ESA) Section 7 Consultations on Water Development and Water Management Activities Affecting Endangered Fish Species in the San Juan River Basin” (2006 Program Document, Appendix C) (Principles). The Principles define how the Program’s actions will be used to provide ESA compliance for impacts to listed fish species in the Basin from water development and water management activities. It is recognized in the Principles that the Service retains the ultimate authority and responsibility for determining whether jeopardy to any species and/or destruction of adverse modification of critical habitat will occur from an activity and to identify reasonable and prudent alternatives and measures for that activity.

The actions developed and implemented by the Program are intended to assist in the recovery of the species and provide the reasonable and prudent alternatives (RPAs) that avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat from water development and water management activities in the Basin. Program actions are also intended to provide the reasonable and prudent measures (RPM) needed to minimize take of listed fish. In determining whether the Program is providing or can provide a RPA or RPM, the Service will consider Program and non-Program actions throughout the Basin and all reasonable water and non-water solutions to avoid jeopardy and adverse modification of critical habitat, and to minimize take of the listed species. The Service will make its assessment based on the best available scientific and commercial data at the time of the section 7 consultation as required by ESA.

In conclusion, the Service reiterates its support for the shortage-sharing process, in addition to a commitment to look for ways in balancing the needs of the listed species with the needs of water users in the San Juan River Basin. We believe the goals of the Program, achieving recovery and continued water development in compliance with the ESA, are achievable.