

Bighorn County Commissioner

Keith Grant
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October 12, 2006

Mr. Dan Jewell
Area Manager
Montana Area Office
U.S. Bureau of Reclamation
2900 4th Avenue N.
P.O. Box 30137
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Dear Mr. Jewell,

Thank you for the opportunity to participate in this meeting and provide input for the management of water resources related to the operation of Yellowtail Dam. The operation and management of the Bureau of Reclamation (BOR) Yellowtail facilities are of crucial importance to Wyoming residents and Big Horn Basin in particular.

During the planning and construction of the Yellowtail Dam, we were promised a recreation based economy in exchange for the loss of thousands of acres of productive lands that supported our agriculture-based economy. That has not happened. The fledgling walleye fishery has been devastated, and Bighorn Lake at the Horseshoe Bend access is unusable, as the lake is dry. Tile loss of the walleye fishery and the lack of access to water-based recreation are due solely to the management choices and operations of the dam. For the past several months, the Big Horn County Commissioners, local legislators, the Friends of Bighorn Lake, residents of the Big Horn Basin, and other stakeholders are trying to understand the administrative policy and BOR regulations that have allowed the destruction of our fisheries and minimization of our recreation resources, all the while fully promoting the cold water fishery below the dam. Indeed, the BOR has publicly maintained (Friends of Bighorn Lake, 2006) that the management of the water resources was based on an "informal agreement" (USDI BOR, 1986) that established minimum flow requirements. As you know, we were only recently supplied a copy of the "informal agreement," and much to our surprise the "informal agreement" noted four separate instances when the target minimum flows of 1500 cubic feet per second (cfs) would not be met. These four triggers are: 1) "when two or more unusually dry years occur back to back," 2) "to prevent the reservoir from dropping during the Walleye spawn," 3) "to maintain an adequate lake level for early seasonal use of the boat ramps," and 4) "During consecutive dry years, low releases may be necessary throughout the year" (USDI BOR, 1986). In addition to these caveats stated in the "informal agreement" (USDI BOR, 1986) the Fisheries Target Flows addendum that accompanied the documents notes that "there may be rare instances when a bona fide water emergency exists and a 1000 cfs flow is justified (such as consecutive critical drought years), that flow is inadequate to meet fishery needs" (MFWP, 2006). It appears that the BOR implemented these targets in an inequitable fashion, did not follow its own provisions for drought management flows, and has, perhaps more importantly, disowned the "informal agreement," downgrading it to "correspondence."

The BOR Resource Management Plan Guidebook states that, under its strategic plan for FY2000-2005, "the agency will develop, monitor and update RMP's [Resource Management Plans] for lands managed by Reclamation or for lands cooperatively managed with another entity," yet we see no indication that such a planning process is contemplated for Yellowtail Dam and its associated facilities. In fact, BOR's Great Plains Office has been largely unresponsive to requests for information or to information provided by Wyoming stakeholders that should have affected dam management.

On September 21, 2006, Big Horn County and the State of Wyoming provided BOR with a list of questions to which we requested responses at our meeting scheduled for October 10, 2006, two days ago. The meeting was scheduled and participants were notified on September 12, 2006, four weeks in advance of the meeting. By contrast, BOR did not post any agenda to this meeting until eight days ago, and, to the best of our knowledge, did not send notices to the many parties who are clearly stakeholders in the management of Yellowtail Dam. A full agenda was not issued until two days before the meeting. For those of us who have commuted some distance to attend, this level of planning is at best inconsiderate and at worst indicative of the agency's evasion of meaningful planning,

including long-range, National Environmental Policy Act (NEPA) compliant planning for management of a facility that in all probability constitutes a significant federal action. Does BOR have no minimum public notice guidelines?

Many questions posed to BOR on September 21, 2006 related to the "informal agreement" with Montana Fish, Wildlife and Parks. BOR's response to these questions on October 10 was that there is not an "informal agreement." We are troubled to hear that, since our review of that correspondence clearly provides for flows below 1500 cfs down to as low as 1000 cfs.

Among the information requested from BOR on September 21, and still not answered, are the following questions. These questions are not our last, as we develop additional questions. Please provide written responses to these.

1. What was the extent of public and stakeholder involvement in developing the correspondence (previously referred to as the "informal agreement"), and, if none, why was there none? How does the BOR reconcile the "informal agreement" with its legal mandate under the NEPA? Our reading of NEPA appears to be clear and unambiguous:

Sec. 1500.2 Policy.

Federal agencies shall to the fullest extent possible:

(c) Integrate the requirements of NEPA with other planning and environmental review procedures required by law or by agency practice so that all such procedures run concurrently rather than consecutively.

(d) Encourage and facilitate public involvement in decisions which affect the quality of the human environment.

(e) Use the NEPA process to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment.

2. What are the statutory and regulatory bases for "informal agreements," how often are they reviewed, and what is the procedure for appealing or amending them? Do informal commitments take precedence over variance in annual runoff or the purposes stated in the enabling legislation? Does BOR's regulatory authority allow for arbitrary or capricious prioritization of water use at BOR managed facilities?

3. Are there formal (legal) or informal release commitments for maintaining reservoir levels, such as upstream fisheries and wetlands? BOR's PowerPoint from October 10, 2006, refers to a lake level of 3635 as a minimum for waterfowl during September-October; shouldn't there be similar levels to provide forage habitat for walleye and other reservoir species?

4. At the August 30 meeting in Lovell we understood BOR to say that it doesn't have a priority scheme written down, where one use takes priority over another, and that BOR balances all needs. Does this mean that all users have equal opportunity to request reservoir management that accommodates their uses? How often are user groups polled or management priorities adjusted? How are disagreements among users resolved? What is the appeals procedure?

5. When is the next formal dam and reservoir long range management plan revision/development scheduled to occur, and how will NEPA requirements be satisfied? Will you make available additional opportunities to provide input for the 2007 flow rate plans? If not, why?

6. The water allocation chart in your PowerPoint of October 10, 2006, (USDI BOR, 2006) is identical to the 1965, updated "Definite Plan Report" (USDI BOR, 2006; USDI BOR, 1965). Title 33 CFR 11, Section 208.11 (10) states: "Revisions. The water control plan and all associated documents will be revised by the Corps of Engineers as necessary, to reflect changed conditions that come to bear upon flood control and navigation, e.g. reallocation of reservoir storage space due to sedimentation or transfer of storage space to a neighboring project." Yellowtail Dam and Bighorn Lake are among the projects that fall under this guidance. Does BOR believe that conditions at Yellowtail Dam and Bighorn Lake have not changed since 1965?

7. It is our understanding that studies have recommended maintaining higher reservoir levels as a means of controlling siltation. What is the justification for lowering reservoir levels in favor of maintaining brown and rainbow trout spawning downstream when siltation upstream has such far-reaching impacts (e.g. reduce reservoir storage capacity, limit viability of Horseshoe Bend facilities, reduce wetlands/wetland habitat, reduce sauger habitat, reduce power generation efficiency, reduce overall recreation, storage, and fisheries opportunities)?

8. What studies have been performed that established the basis for lowering lake levels and drying up wetlands to preserve brown trout spawning below the dam? What is the justification for lowering lake levels below recommended levels for "native" sauger

habitat in order to preserve "introduced" brown trout spawning, particularly in light of native sauger being placed on the "watch" list? (American Fisheries Society, 2002).

These are questions that the agency should have been prepared to answer and are not unreasonable, particularly in light of the heavy price the people of Big Horn County, Wyoming, the State of Wyoming, and the 200,000 annual visitors to the Big Horn Canyon National Recreation Area have paid for BOR's current management practices. Nor do these questions satisfy the full extent of our need to understand how the management of Yellowtail Dam has strayed so far from the original intent and benefits that were used to "sell" the dam to us and to Congress.

We believe that a RMP for the dam and associated facilities is long overdue, and we formally request that BOR immediately initiate development of a RNIP for Yellowtail Dam and all associated facilities. We request that a thorough, NEPA compliant public process be included in the RMP development, with public meetings in Lovell and Fort Smith, and that Lovell, Wyoming, Big Horn County, and the State of Wyoming be cooperating agencies under NEPA for the RMP development. If BOR is unwilling or unable to provide recreation, fishery, and economic benefits to Big Horn County, through management of the Yellowtail Dam facility, then the agency must consider finding and delivering mitigation acceptable to Big Horn County. At the October 10, 2006, meeting, BOR stated that it does not do RMPs for its facilities if the land management responsibilities are the obligation of another agency. However, a brief review of RMP planning processes show that the BOR Angostura Project is managed by the State of South Dakota but is currently having a RMP prepared.

We, a Big Horn County Commissioner; Wyoming House District 26 Representative; the Wyoming Governor's planning office; and Mayor of Lovell hereby formally request that the BOR respond to the bulleted points below, and provide written documentation and clarification of the items noted.

- 1 Initiate development of a RMP for Yellowtail Dam and its associated facilities, in keeping with the Statement of Policy in the Water Resources Planning Act. We also request that, until a NEPA compliant RMP is in place for Yellowtail Dam and its associated facilities, that technical assistance be provided to Lovell and Big Horn County.
- 2 Provide interim management that supports both cold water and warm water fisheries equitably.
- 3 Furnish or construct the specific criteria used by the BOR to make water allocation decisions, and to objectively prioritize use of water resources through a formula or other method.
- 4 Convene a multi-state technical advisory committee to analyze data and find solutions to problems. The committee might include fish and game, water rights/water development, and land management agency representatives from Wyoming, Montana, and the Federal governments, as well as nongovernmental representatives from Friends of the Big Horn and other groups.
- 5 Promote opportunity for federal, state, and local agencies representing warm water upstream stakeholders to provide input to water allocation decisions.
- 6 Take necessary steps to fill the reservoir, beginning with fall and winter operations in the current water year, and recognize that previous water allocation has unequally benefited the cold water fishery at the expense of the flatwater warm water fishery.
- 7 Manage both cold water and warm water to the benefit of both species.
- 8 Respond to other agency and stakeholder misunderstandings regarding minimum flows; if there are no agreements, as has been publicly stated, provide supporting documentation for minimum flows.
- 9 Develop and publish objective decision criteria for water resources allocation.
- 10 Improved public process (consider this a formal request to conduct public process in Fort Smith Montana, and Lovell Wyoming), with adequate notification requirements for public meetings.
- 11 Continue to develop and improve recreation based amenities adjacent to Bighorn Lake while simultaneously updating plans.
- 12 Provide detailed documentation regarding any regulatory approval or categorical exclusion whereby the NEPA process is obviated for major federal actions e.g. dam operation and water resource allocation.

BOR personnel suggested at the Oct 10, 2006, meeting in Lovell that if upstream stakeholders continue to ask difficult questions that a public process would not be productive. Please clarify this language and intent, as many in the audience perceived this as a threat. As U.S. Congresswoman Barbara Cubin noted, the BOR needs to remember that it works for all the people.

Having noted a sedimentation issue(s) with Bighorn Lake, and that the US Army Corps of Engineers (USACE) is renowned for its skills regarding sedimentation issues, we are surprised that the BOR has not requested assistance to look for solutions to this problem. The BOR representative at the October 10, 2006 meeting suggested to the local group that they may want to be in contact with the USACE. If the request is more palatable coming from us, then on behalf of local stakeholders please request assistance from all appropriate federal agencies that can assist BOR with technical problems.

We ended the October 10, 2006 meeting by stating our desire to be good neighbors. We realize we are asking difficult questions and want to ensure these are in no way transmitted or perceived as personal criticism. We believe that we have posed valid questions, and are communicating professional disagreement with management decisions. We look forward to working with you to solve problems and to improve the operation of Yellowtail Dam and its associated facilities.

Respectfully submitted,

Keith Grant /s/
Big Horn county Commissioner
Representative

Elaine Harvey
Wyoming House District 26

Bruce Morrison
Mayor, Town of Lovell

Mary Flanderka /s/
State Plannin Coordinator (Wyo)

cc. Congresswoman Cubin
Senator Enzi
Senator Thomas
Governor Freudenthal
Friends of Bighorn Lake

References

American Fisheries Society. 2002. Comment letter from P. Beels to the Bureau of Land Management regarding a draft environmental impact statement for coalbed methane development in Wyoming American Fisheries Society, Colorado-Wyoming Chapter. Accessed at http://fisheries.org/cowy_cbm_cbm%20deis%20comments20.htm on October 11, 2006.

Big Horn County. 2006. Land records pertinent to the Bighorn Canyon National Recreation Area.

Friends of Bighorn Lake. 2006. Untitled. Video. Presented at Yellowtail Dam meeting in Lovell, WY, October 10.

MFWP (Montana Fish, Wildlife & Parks). 2006. Briefing paper: Balancing interests in the Bighorn Lake/River Basin. Presented at meeting. October 2.

USDI (US Department of the Interior) BOR (Bureau of Reclamation). 1965. Report on Yellowtail Unit (June 1962) Lower Bighorn Division, Missouri River Basin Project. January.

USDI (US Department of the Interior) BOR (Bureau of Reclamation). 1986. Informal agreement for management of the Yellowtail Dam presented as a letter from B.E. Martin to S. McMullen of Montana Fish, Wildlife & Parks Department.

USDI (US Department of the Interior) BOR (Bureau of Reclamation). 2006. Yellowtail Dam and Bighorn Lake meeting. PowerPoint. Presented at Yellowtail Dam meeting in Lovell, WY, October 10.