Dan Jewell

Thank you for the opportunity to comment I have indicated in black the page number and reference to my comment. My comments are in blue and red.

Reclamation

Draft Bighorn Lake Operating Criteria Evaluation Study and Report.

On pg. 2

-Incorporation of operational rule curves for April through July.

Operational rule curves should be incorporated through October, to make sure that the highest river flow possible for the winter can be maintained while protecting the Bureau's obligation to the National Water Fowl program outlined in the current BOR Standard Operating Plan Chapter IV.

On pg. 4

3500 cfs -3%

We recognize MFWP's desire to raise their maximum recognized fishery river flow to 3500 cfs due to the silt accumulation at the side channel entrances and the encroachment of vegetation in the side channel proper.

Bighorn County would like to have lake levels recognized in elevation levels as well as the dates and higher lake levels anticipated, with our requested lake level of 3645 recognized as MFWP's higher river flows are being recognized.

On pg. 6

Intorduction

In 2007 the worst drought year of this 8 year drought, using consertative water management the Bureau was able to provide water recreation on the South end of the lake at Horseshoe Bend while never allowing the river flows to go below 1500cfs as it had frequentlygone to 1300cfs in the previous 7 years.

The use of the rule curve during spring run off needs to be extended to October to ensure proper water storage for adequate winter river flows.

Report Purpose

We have neglected to include Lake Fishery, Water Fowl habit, National Water Fowl program Wet lands protection Act and Ice fishing. Bighorn Lake flat water recreation is not the only purpose for lake levels!

On pg. 7.

The Yellowtail Unit was authorized by the Flood Control Act of December 22, 1944.

Bighorn Canyon National Recreation Area was created by an Act of Congress and signed into law by President Johnson October 15, 1966. A MOA between the Bureau and the Park Service was signed by the Secretary of the Interior December 31, 1964. pg3. line 2. " The parties to this agreement acknowledge that as authorized by congress each has an interest in the storage, release, and utilization of the water which is contained by Yellowtail Dam." the Congressional Act creating Bighorn Canyon National Recreation Area Title 16 460t - 2. Administration "(a) Coordination. The Secretary Shall coordinate administration of the recreation area" shall is mandatory, coordination has not been defined by congress, Webster defines coordination as "of equal importance, rank or degree not subordinate" this shows the intent of congress to create a partnership. The Yellowtail Unit project boundry ends at the Afterbay Dam boat launch ramp.

On pg. 8.

2000 Bighorn Lake Operating Criteria

Operating Criteria

-Legal and Contractual operating requirements.

Legal requirements need to recognize the National Park Service. I have not seen any recognition by the BOR of the legal requirements they have to NPS. In the original 1964 MOA pg. 3. " 2. The parties to this agreement acknowledge that as authorized by Congress each has an interest in the storage, release, and utilization of the water which is to be contained by Yellowtail Dam," and " However, to the extent permitted by authorized primary purposes of said project the bureau shall operate the Dam and Reservoir in keeping with the Secretarial policy which provides for full consideration of public recreation and fish and wildlife on reservoir projects undertaken by the Federal government." This indicates a partnership. In 1966 Congress created Bighorn Canyon National Recreation Area and in this act they stated " 460t - 2 Administration (a)

Coordination The Secretary shall coordinate" since Congress has never defined coordinate, by law we use the dictionary definition, Webster's New International Dictionary "of equal importance, rank or degree not subordinate" The American heritage Dictionary " one that is equal in importance, rank or degree." This again indicates a partnership not just a cooperating relationship.

- Operating objectives for water supply, flood control, power generation, lake recreation, fishery, and the river fishery.

National Water Fowl program should be added, it is currently recognized in SOP Chapter IV. also the Wet Lands Act.

On pg. 9.

<u>Legal and Contractual Operating Requirements</u>

The mandatory and legal requirements consist of satisfying senior downstream water rights, meeting the existing and future reserved water right obligation for the Crow and Northern Cheyenne Indian tribes, meeting Reclamation's contract commitments for water stored in Bighorn Lake and operating and managing Bighorn Lake and Yellowtail Dam in a manner that is consistent with dam safety requirements.

BOR has said that the operations of Yellowtail Dam are managed in keeping with Congressional and department policy, and the authorized purposes of the Yellowtail Unit, of the 1944 Flood Control Act. The Definite Report Plan 1962, and finally Chapter IV Reservoir Operations 2001 (current SOP) and the Interagency Agreement between NPS and BOR, (MOU) 1998. As outlined in the 1964 MOA signed by the Secretary of the Interior he indicated that as directed by Congress there is a partnership between BOR and NPS.

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equal importance, rank or degree not subordinate" The American heritage Dictionary Coordination " one that is equal in importance, rank or degree." This again indicates a partnership not just a cooperating relationship. I believe that the National Park is a legal requirement that seems to have been overlooked. The Organic Act of 1916 the General Authorities Act of 1970 and 1979 amendment to the General Authorities Act of 1970 has come to be known as the "Redwood amendment", these 3 acts have elevated Bighorn Canyon National Recreation Area to the status of National Park and the protections afforded to national parks increasing the importance of this partnership. These actions add significant importance to the BOR and NPS partnership in administering this National Park, Reservoir and Dam.

"Redwood amendment

During the 1960s numerous legal challenges arose over the mission of the National Park Service. Using the court decisions, Congress supplemented and clarified the Organic Act of 1916 through the General Authorities Act of 1970. Additional challenges during the 1970s required that Congress again clarify the mission of the National Park Service. The 1979 amendment to the General Authorities Act of 1970 has been come known as the "Redwood amendment", as it also contained language expanding Redwood National Park. The key part of that act, as amended, is:

> **'Congress declares that the national park system, which began with establishment of Yellowstone National Park in 1872, has since grown to include superlative natural, historic, and recreation areas in every major region of the United States, its territories and island possessions; that these areas, though distinct in character, are united through their inter-related purposes and resources into one national park system as cumulative expressions of a single national heritage; that, individually and collectively, these areas derive increased national dignity and recognition of their superlative environmental quality through their inclusion jointly with each other in one national park system preserved and managed for the benefit and inspiration of all the people of the United States; and that it is the purpose of this Act to include all such areas in the System and to clarify the authorities applicable to the system. Congress further reaffirms, declares and directs that the promotion and regulation of the various areas of the National Park system, as defined in section Ic of this title, shall be consistent with and founded in the purpose established by section I of this title (the Organic Act provisions), to the common benefit of all the people of the United States. The authorization of activities shall be construed and the protection, management, and administration of these areas shall be conducted in light of the high public value and integrity of the National Park System and shall not be exercised in derogation of the values and purposes for which these various areas have been established,**

Operating Requirements and Objectives

Maintaining desired releases to the Bighorn River below the Afterbay Dam for the river fishery is surely an objective but not a requirement. The Bureau's project boundary ends at the Afterbay dam.

Pg.11. Paragraph 1

The reservoir elevation targets for Bighorn Lake were established to provide an early fall target for the benefit of water fowl hunting.BOR's current SOP Chapter IV

N. Conservation and Wildlife Enhancement Program.

" This area is important as a wildlife management area, as part of the National Waterfowl program to distribute breeding, migrating, and wintering waterfowl populations in patterns that will cause the least amount of natural mortality, the least possible conflict with agriculture and the maximum amount of public hunting compatible with safeguarding the resources."

This concept is not being properly addressed in this document or being given the proper consideration that a National Waterfowl program (Flyway) that is requires!

Pg. 12. Paragraph 2

The WYGF has made similar recommendations requesting that the reservoir needs to be at or above 3620 and preferably above 3630. To adequately produce the food supply needed to support the sport fishery, the WYGF recommends that the reservoir be at or above elevation 3630 during the growing season. WYGF believes that below elevation 3620 the reservoir fails to provide fishing opportunities in Wyoming and greatly reduces the preferred habit of many fish. These desired levels were not considered when the reservoir level targets were first established as the above recommendations had not been available.

I would also suggest that it raises concerns for the habit of the sensitive species Sauger which may soon be nominated as Endangered.

Pg. 13. Paragraph 3

" WYGF now agree that a spring draft after the end of March is not a real concern for the existing reservoir fishery."

WYGF have clearly stated that the reservoir fishery suffers when the lake levels go below the 3620 elevation.

Pg. 14. Paragraph 5

November 30 3630 Eliminate Nov. target

We should not eliminate the November target because the National Waterfowl program is a very significant obligation as it is part of an international agreement.

Pg. 18. Paragraph 2

" the forecasted November through March Bighorn Lake gain"

We seem to continually over estimate inflows to maintain higher outflows? It seems that the over estimation of the gains is problematic.

Balancing Risk:

I do not understand the rational of borrowing 10,000AF when the lake is low and paying back 10,000AF when the lake is full. The only understanding I get from this is the desire to favor the river fishery when the lake is low.

Pg.19. Second paragraph. 1. - Add 10,000 acre - feet to the forecasted gain and recalculate the November through March release.

We seem to historically overestimate the gains how is this balancing the risk?

Pg. 21. Spring Operational Rule Curves;

I believe the rule curve should run through October - November to insure a higher lake level to accommodate the lake fishery and the National Waterfowl program as well as being able to accommodate a higher winter river flow. It would allow the BOR to more quickly react to existing conditions.

Pg. 22. 2nd paragraph " to provide minimum service levels for lake recreation and fishery"

Add National Water Fowl Program!

Pg.24. Paragraph 1

" sufficient storage to provide minimum service levels for lake recreation and fishery."

Add and National Water Fowl Program!!

The Bureau has a informal Agreement with Montana Fish Wildlife and Parks or- letters of correspondence

"1. Optimum Target level 2500cfs can be met 4 to 5 years out of 10

2. Standard Target 2000cfs can be met 7 to 8 years out of 10

3. Minimum Target 1500cfs can be met 9 years out of 10

Normally the only time it will be necessary to drop release below this level will be when two or more unusually dry years occur back to back."

In 2007 BOR proved that even after 7 years of drought and one of the worst years yet, that they could manage the river flows at 1500cfs and provide adequate lake levels with proper management.

I thought that using the rule curve that lake levels and river flows were to be equitably administered! I think if river flows are to be spelled out then lake levels must be taken into consideration also!

Pg. 26. Paragraph 1

The 3500 cfs is a recent addition to MFWPs requested flow targets.

If we are to recognize MFWP's desire to raise their maximum recognized fishery river flow to 3500 cfs then we need to recognize the requested need for higher Lake levels of 3645 elevation due to silt retention. We see from the report on the side channel study report, that no down cutting is occurring and it would be quite simple to do mechanical fix's on many of the river side channels. While fixing the silt problem in the lake is complex and expensive.

I would like to thank Dan Jewell and his staff for the great work they have accomplished over the past three and a half years, the Bighorn River System Long Term Issues Group is folks made up of government and local citizens working for a balance to best meet the needs of all the stake holders. It has been a long and sometimes contenious process, but it has been well worth it. I believe that if there is a genuine commitment to these operetion plans and if politics allow the Bureau to follow this opperation plan that It will serve all parties well. The Bureau has done a good job of working through this issue.

Keith Grant

Bighorn County Wyoming