



## Upper Colorado River Endangered Fish Recovery Program

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Program established in 1988 to  
address conflicts between the  
Endangered Species Act and  
water development

✓ **In the mid to late 1970s, U.S. Fish and Wildlife Service decided that any depletion of water would result in jeopardy to endangered fish.**

- Included water depletions anywhere in Upper Colorado River Basin, even upstream of occupied habitat

✓ **In 1983, U.S. Fish and Wildlife Service proposed:**

- Minimum stream flows for all habitat occupied by endangered fish in the Upper Colorado River Basin.
- These minimum stream flows were pre-1960 flows that no longer occurred.
- Any water project causing water depletions below minimum stream flows would have to replace depletions on a one-for-one basis.
- This requirement could have:
  - stopped water development in the basin.
  - put limits on use of existing water supplies.
  - conflicted with existing federal and state laws that allocate water.
- Head-on collision would have occurred among states, water users, federal agencies, power users, and environmental groups.

✓ **Choices**

- Filing lawsuits
- Enforcing the ESA and creating the conflict
- Amending the Endangered Species Act
- Seeking exemptions from the ESA
- Identifying the facts and negotiating a solution

**The latter course was chosen by all parties because no other choice was feasible or would solve the problem to the satisfaction of all parties.**

**Conflicts to be resolved:**

- ✓ Water for people vs. water for endangered fish species
- ✓ Sport fishing vs. protection of endangered fish species
- ✓ Federal vs. local/state control of water
- ✓ Numerous conflicting federal and state laws, authorities, and regulations

✓ **Complexity:**

- Upper Colorado River Basin covers 108,000 square miles or 69 million acres
- Hundreds of miles of rivers and streams
- Four endangered fish species
- Potential impacts on hundreds of municipalities, irrigators, and industries
- No agreement on conclusions based on science and data

✓ **Unanimous consensus was required to resolve conflicts. All of the parties had to agree or there was no acceptable resolution of the conflict.**

**Values/interests that could not be compromised**

- 1. Interstate compacts that allocate water to states must be respected.**
- 2. State water rights that allocate water to specific users within each state must be respected.**
- 3. Costs must be equitably distributed.**
- 4. ESA compliance must be achieved.**
- 5. Federal water and hydropower projects must continue to operate, per authorized purposes.**
- 6. States must retain control of non-endangered fish/sport species.**

✓In March 1984, discussions were initiated with federal agencies, states, environmentalists, and water users to resolve the problem.

✓In late 1984, water users told their negotiator (Pitts) to define a solution.

✓The negotiator re-defined the problem:

- Conflicts are a symptom of the problem.
- PROBLEM*: The fish are endangered.
- SOLUTION*: Make the fish not endangered.

✓In mid-1985, Colorado water users proposed a Recovery Program be initiated to recover and de-list the endangered fish species in the Upper Basin, i.e., restore habitat and populations so that the fish no longer require ESA protection.

✓**Rationale:** Without affirmative action on terms acceptable to all parties, conflicts would continue and worsen. Water development and management activities would be threatened. Recovery provides the ultimate economic and regulatory certainty for water users.

**✓ Numerous sub-issues were resolved in the context of a Recovery Program.**

- Who pays and how much?
- How to provide water for fish under state law?
- What will be the Program governance and rules?
- How to achieve ESA compliance for water/power projects?
- What approach to use for non-native sport fish control?
- And many more

**✓The overall framework of the Recovery Program was completed in late 1987.**

**✓In January, 1988, the Secretary of the Interior, Governors of Colorado, Wyoming, and Utah, and Administrator of the Western Area Power Administration, signed a Cooperative Agreement establishing the Recovery Program.**

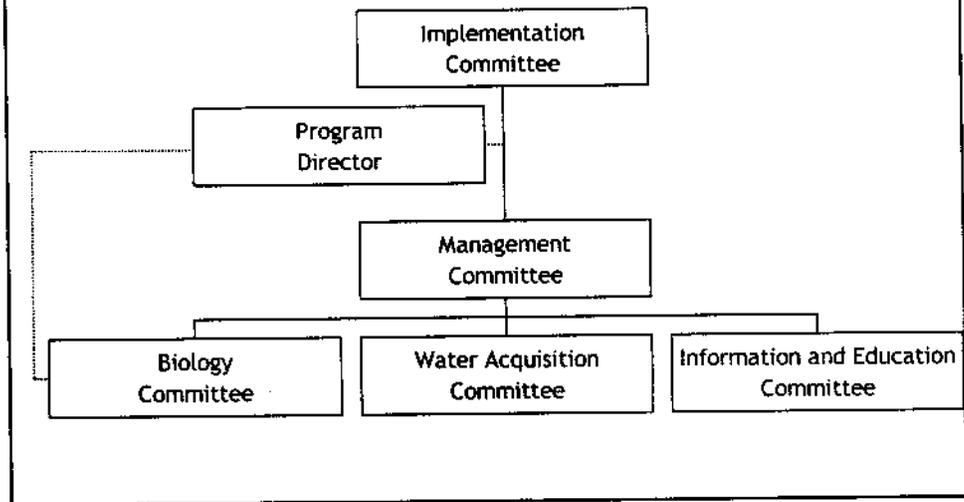
**Goal:** Recover the endangered fish as water development proceeds in compliance with the Endangered Species Act and state water law.



## Partnership



# Program structure



How will we know  
when the fish are  
recovered?

## Recovery goals

- Developed in collaboration with States, water and power users, environmental groups, tribes and Federal agencies
- Define basis for recovery in upper and lower basins
- Specify numbers of fish for self-sustaining populations
- Identify management actions required to downlist and delist the species
- Estimate time to recovery
- Progress toward goals to be measured by population estimates

## Program Funding

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- \$110M spent over 14 years (FY 1989-2002)
  - \$44M in capital funds; remainder from power revenues, USFWS, States, water users, congressional appropriation.
- P.L. 106-392 (October 2000)
  - \$82M capital funds for Colorado River through 2005 (seeking extension through 2008)
  - \$18M capital funds for San Juan through 2007
  - Capital costs shared between congressional appropriations, power revenues, and States.
  - Annual base funding from hydropower revenues

**Established Cost-sharing of Capital Construction for the Upper Colorado and San Juan Recovery Programs**

Upper Colorado Recovery Program .....	\$ 82 million
San Juan Recovery Program.....	\$ 18 million
	<u>Total \$100 million</u>

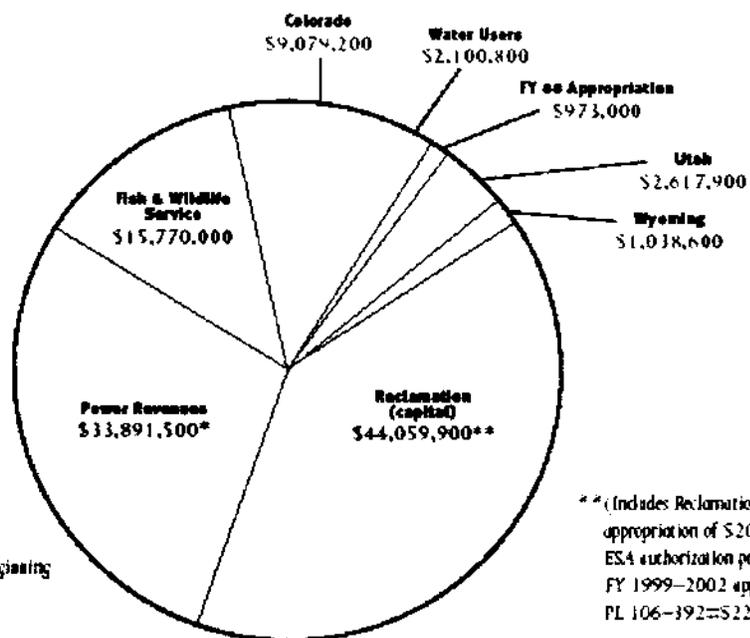
**Sources of Revenue (Cost-sharing)**

Federal	Non-Federal
Congress: \$ 46 million	Power Revs: \$ 17 million
	States: \$ 17 million
	Water & Power: \$ 20 million
<u>Total \$ 46 million</u>	<u>Total \$ 54 million</u>

**Cost-sharing by the Four Participating States**

		Upper Colorado River Rec. Program	San Juan Rec. Program
Colorado	\$ 9.146 M	\$ 8.065 M	\$ 1.081 M
Utah	3.422 M	3.422 M	0.000 M
New Mexico	2.744 M	0.000 M	2.744 M
Wyoming	1.688 M	1.688 M	0.000 M
	<u>total \$ 17.000 M</u>	<u>total \$ 13.175 M</u>	<u>total \$ 3.825 M</u>

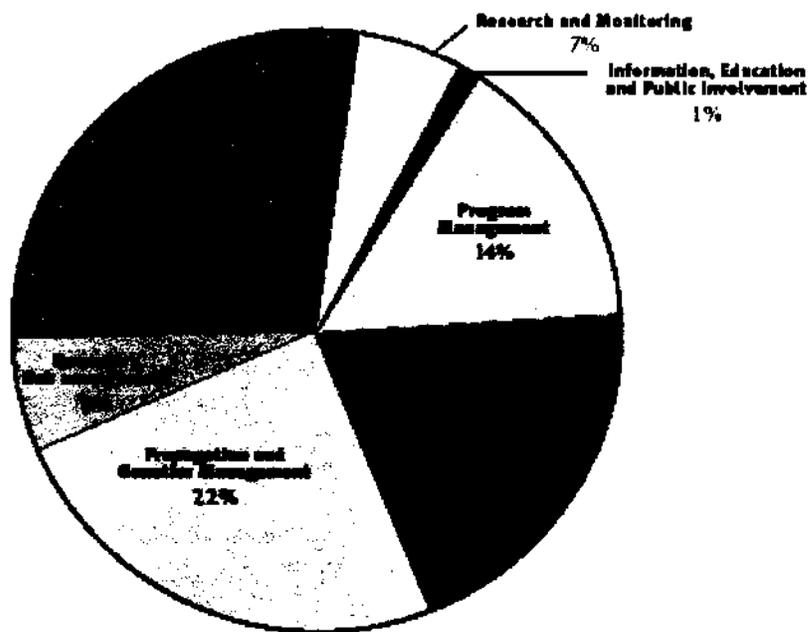
Total Expenditures = \$109,530,900 (FYs 1989–2002)



\* (Includes capital appropriations beginning FY 2001.)

\*\* (Includes Reclamation capital appropriation of \$20,979,700 ESA authorization prior to FY 1999–2002 appropriation PL 106–192=\$22,192,000)

Percentage Expenditures by Category (FY 2002 only)



## What about water development?

### “Section 7” Agreement

- Section 7 agreement (1993) outlines how the ESA will be applied
- Recovery Action Plan developed
- “Sufficient progress” determined annually
- Programmatic biological opinions

## ESA Compliance and Water Projects

### Consultations

696

### Depletions (acre-feet)

1,718,745 (1,493,290 historic)

- 427 projects <100af
- 126 projects under Colorado PBO

## Why the Program Works

- Recovery proceeds on all fronts
- Program successfully meets the needs of water users and endangered fish
- Partners remain committed to the Program
- We recognize that cooperation is better than confrontation

## Why it works, continued:

- Listen to all sides
- Recognize we can't have all we *want*

## Why it works, continued:

- Good science builds trust
- Respect others' values while not necessarily sharing them
- Avoid litigation
- Fund "on-the-ground" recovery efforts
- Congressional support
- Costs are shared
- Focus on collaboration

- Consensus-based collaboration better than unproductive confrontation
- Program provides vital public support, committed partners, funds
- Program focuses on recovery

- Program operates in an adaptive management style
- “Sufficient progress” measured by accomplishment of recovery actions and by population status
- Program staff employed by FWS, but work to serve and represent all ten Program partners

- Consensus-based collaboration takes time
- Requires:
  - A high level of commitment
  - Tenacity, integrity, leadership and respect
  - Willingness to let go of "us vs. them" mentalities
- No one has complete "certainty"

- FWS concerns:
  - Extensive debate required to finalize flow recommendations
  - Legal protection of flows and habitat in perpetuity
- Still, collaboration is the best approach
- Program appears to be working for both fish and Program participants

## WHAT REALLY MAKES A CONSENSUS BUILDING PROCESS WORK?

- ✓ Participants identify their interests and concerns.
- ✓ Communication is open.
- ✓ Everyone participates in the discussion; no one dominates the discussion.
- ✓ The process requires patience, tolerance, and dedication.
- ✓ Time necessary to reach consensus is available.

### Internet Information Links:

Upper Colorado River Endangered Fish Recovery  
Program

*<http://www.r6.fws.gov/coloradoriver>  
(general)*

*<http://www.r6.fws.gov/crrip> (more specifics)*

*<http://www.waterconsult.com/news.htm>  
(article re: Upper Basin Program)*

San Juan River Basin Recovery Implementation  
Program

*<http://southwest.fws.gov/sjrip>*

#### LESSONS FROM THE UPPER BASIN RECOVERY PROGRAM

- ✓ Consensus can work in the development and implementation of complex solutions to multi-faceted problems.
- ✓ Consensus process takes a lot of:
  - Time,
  - Creativity,
  - Tolerance, patience, and listening to others.
- ✓ There would be no acceptable solution in the Upper Colorado Basin without consensus of the key parties.
- ✓ As with any negotiated solution, you must stay involved if your interests are to be represented and protected.
- ✓ This successful approach to resolving ESA/water conflicts was subsequently applied in the San Juan River Basin, and a similar program is being developed in the Rio Grande Basin in New Mexico.

#### WHAT REALLY MAKES A CONSENSUS BUILDING PROCESS WORK?

- ✓ Each participant has a very strong vested interest in resolving conflicts, developing solutions, and/or taking joint action, and in the success of the program.
- ✓ Every member gets more out of the process than could be achieved from acting without the other members of the group.
- ✓ Participation is voluntary.
- ✓ All parties important to the decision agree to participate.
- ✓ Commitment by the parties to support the decisions of the group.
- ✓ Values of each participant have to be respected by others, even if those values not shared.
- ✓ No one is asked to compromise their basic values.