

TWG
12-10-97
Hyde
Attachment 3a

Glen Canyon Dam Adaptive Management Program
REPORT OF THE NEPA/ESA ISSUES SUBGROUP
TO THE
TECHNICAL WORK GROUP

The NEPA/ESA Issues subgroup met on November 18, 1997 to discuss and attempt to reach consensus on answers to the following three questions:

Task Questions

- (1) What does Adaptive Management mean relative to NEPA and the ESA? Do we need new or revised NEPA documents?
- (2) Are Biological Opinion issues/information needs adequately coordinated with the GCMRC?
- (3) Are the Bureau of Reclamation, the Fish & Wildlife Service and the TWG communicating sufficiently to move forward with AMP goals?

NEPA Issues

We began our discussion by reviewing some of the fundamentals of NEPA, with Tony Morton, Reclamation's compliance officer in Salt Lake, walking us through that discussion and giving us Reclamation's view of NEPA compliance. Reclamation is the *action agency* when it comes to environmental compliance.

Reclamation has a working assumption that *everything* they do is subject to NEPA review, including all aspects of the operation of Glen Canyon Dam and the Adaptive Management Program. However, Reclamation believes that the AMP, specifically the activities of the AMWG and the TWG, is "NEPA in action". In other words, since all the stakeholders are represented on those bodies, and they are evaluating the environmental consequences of actions and alternatives, that which NEPA seeks to engender is already occurring. Should an action under the AMP rise to the level of an EIS, Reclamation would seek to involve a broader public. But should it only require an EA, which can involve selective public involvement, or be dealt with through a categorical exclusion (CE), which does not require any public involvement, Reclamation will rely on the workings of the AMWG and the TWG.

Documentation of those processes is critical, and therefore Reclamation must have sign-in sheets, meeting notes, draft/final work products, etc. which indicate that adequate representation, dialog, and decision-making existed to meet the requirements of NEPA. We therefore concluded that it was important that the operating procedures for both the AMWG and the TWG required the production of some minimal level of meeting documentation (agendas, sign-in sheets, notes, work products, etc.). The minimum should be sufficient for the decision-makers to ensure compliance with NEPA.

We then discussed what actions are already covered by existing NEPA documentation. Reclamation's view is that that which was identified in the FEIS and ROD -- Modified Low Fluctuating Flow alternative and the "common elements" of adaptive management -- is covered. We asked ourselves whether that "box" which Reclamation had defined could be broadened. We explored the idea of supplementing the existing NEPA documents, or putting together a process which facilitates NEPA review and compliance on a specific case-by-case basis. We ended up gravitating more toward the notion of trying to assist Reclamation (as the action agency) and the other agencies involved in compliance issues with expediting the preparation of the compliance documentation. This might take two forms: (1) ensuring that the details of a proposed action and all the additional information necessary to complete compliance were made available to the agencies in a complete and timely fashion, and (2) assisting with the preparation of some type of "baseline", or programmatic, environment compliance which would facilitate and expedite compliance for future actions that would require review on an individual basis. Reclamation needed some time to evaluate whether a programmatic approach for NEPA (and, potentially, ESA) compliance would be desirable; we asked them to provide an answer at the December 10-11 TWG meeting.

← ESA Issues

Next we turned our attention to ESA issues. Deborah Bills, U.S. Fish and Wildlife Service, Arizona Ecological Services Office, attended our meeting, and with Tony Morton clarified for us several aspects of ESA consultations. Reconsultation on the original Biological Opinion is required under conditions which are spelled out in federal regulations as follows:

if (1) the amount or extent of incidental take is exceeded, (2) new information reveals effects of the agency action that may affect listed species or critical habitat in a manner or to an extent not considered in the opinion, (3) the agency action is subsequently modified in a manner that causes an effect to the listed species or critical habitat not considered in the opinion, or (4) a new species is listed or critical habitat designated that may be affected by the action.

The action agency makes the call on whether reconsultation is necessary.

Much of the discussion on NEPA compliance was then applied to ESA and other environmental compliance. We agreed that the AMWG and the TWG needed to help expedite compliance, and that the details of all proposed actions or decisions should be forwarded to the compliance officers of the action agency, the Fish and Wildlife Service, and the agencies responsible for cultural resources under the Programmatic Agreement. We discussed the possibility of undertaking a programmatic consultation in order to expedite reconsultation on individual future actions. (It was mentioned that at Flaming Gorge target flows are selected each spring by Reclamation, WAPA and the Service without reconsultation each time, since the original consultation covered a range of flows.) The Service was not clear as to whether a

programmatic approach was desirable (or even possible) for consultation on actions under the AMP, since they did not see the need to change the way ESA compliance is currently undertaken for Glen Canyon Dam.

We discussed briefly the coordination with GCMRC on Biological Opinion issues. Reclamation explained that it uses the GCMRC to meet the requirements of the BO. Essentially, Reclamation must be satisfied that the necessary endangered species work is being contracted for in the RFPs. The issue seemed to boil down to a process question, which all parties agreed could be readily addressed.

Consensus Answers to the Questions

We agreed on the following answers to the questions we were to address:

(1) What does Adaptive Management mean relative to NEPA and the ESA? Do we need new or revised NEPA documents?

Adaptive Management does not preclude the need for environmental compliance. Since it will probably present us with compressed time frames in which to complete the necessary compliance, it forces us to think in advance about what our compliance needs will be.

Depending upon Reclamation's evaluation of the potential benefits of a programmatic NEPA approach, we may want to begin preparation of programmatic NEPA documents for some or all aspects of the AMP.

(2) Are Biological Opinion issues/information needs adequately coordinated with the GCMRC?

We believe they are, but there may be a need to spell out more firmly a process for ensuring such coordination. How the BO issues will be addressed by the GCMRC should be described and incorporated into the workplan development. We suggest that those elements of the GCMRC annual plan which address BO issues be specifically flagged as such. We also suggest a BO task group, to include Reclamation, the Service, and the GCMRC, coordinate these BO issues.

(3) Are the Bureau of Reclamation, the Fish & Wildlife Service and the TWG communicating sufficiently to move forward with AMP goals?

Yes, we believe they are, as long as the recommendations which our subgroup is forwarding to the TWG (as presented below) are followed.

Recommendations

The NEPA/ESA Issues subgroup makes the following recommendations to the TWG:

1. Adopt the following working philosophy: Any action by Reclamation related to the operation of Glen Canyon Dam which is a result of comments/recommendations by the AMWG will require compliance with environmental laws (NEPA, ESA, NHPA).
2. Adopt the following as part of its operating procedures:
 - a. Any recommendation from the TWG to the AMWG regarding operations at Glen Canyon Dam will be specific and include as many flow-related parameters as is relevant (i.e. flows, duration, schedule);
 - b. Recommendations regarding operations at Glen Canyon Dam will be made formally by the TWG and will be written into the TWG meeting notes. These notes will be forwarded to the Reclamation environmental and cultural compliance officials and the appropriate compliance officials within other agencies;
 - c. Proposals to the TWG related to Glen Canyon Dam operations that emanate from TWG subgroups, the GCMRC, or any other group will address issues, procedures and schedules regarding environmental compliance. This presumes that the proposing group has discussed matters relating to environmental compliance with Reclamation officials.
3. Request that Reclamation have an environmental compliance official present at its meetings. Tony Maton will be present @ these meetings at least for the immediate future.
4. Review the GCMRC FY 1999 ^{budget} ~~work program plan~~ specifically to ensure that ESA-related studies and activities are sufficient to comply with the requirements of the Biological Opinion on the Operation of Glen Canyon Dam.

Tom: add from the TWG to the AMWG

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