

BUREAU OF RECLAMATION

BRIEFING FOR: Tribal Funding under the Glen Canyon Dam Adaptive Management Program (a Federal Advisory Committee) **DATE:** Oct. 20, 2003

ISSUE AND PURPOSE: Department of the Interior agencies (Bureau of Indian Affairs, Bureau of Reclamation, National Park Service, U.S. Fish and Wildlife Service, U.S. Geological Survey) want to continue to assist tribes financially to participate in and consult on issues discussed at meetings of a federal advisory committee, the Glen Canyon Dam Adaptive Management Work Group. Legal authorities must be specified to enable the agencies to enter into an interagency agreement to combine appropriated dollars and then to have one agency transfer the dollars to the tribes through cooperative agreements.

If government-to-government consultation is the legal authority for the transfer of federal appropriated dollars to the tribes, does this comply with Departmental policies? Most Interior agencies do not pay consultation fees for paid tribal employees. Most agencies only pay consultation fees if the services and expertise of an unpaid tribal representative are required by the agency for a specific federal action or consultation purpose. All tribal representatives in this federal advisory committee are full-time tribal employees paid by the cooperative agreements.

Therefore, the two main issues are what authorities might be used to enter into interagency and tribal agreements to enable paid tribal representatives to participate in and consult on a federal advisory committee, and whether such financial assistance complies with Department policy on consultation with Indian tribal governments.

CURRENT STATUS: The Secretary of the Interior has appointed the agencies listed above, as well as the Hopi Tribe, Hualapai Tribe, Kaibab Band of Paiute Indians, Navajo Nation, Pueblo of Zuni, and Paiute Indian Tribe of Utah as members of a federal advisory committee, the Glen Canyon Dam Adaptive Management Work Group. The tribes participate in the committee because of their cultural interests in the Colorado River below Glen Canyon Dam. Previous assistance agreements funding a full-time representative from each of the five tribes that are members of the federal advisory committee have expired. Without new funding agreements in fiscal year 2004, the tribes have informed the agencies that they will not participate in the advisory committee. The federal agencies believe this would be a significant loss and would be contrary to the Secretary of the Interior's intent in appointing the tribes as committee members, along with the federal agencies, states, and other stakeholders in Colorado River issues.

The agencies and the tribes recognize that it is not a full-time job preparing for and participating in the two annual meetings of the federal advisory committee (and related work groups); however, the tribes lack the staff to participate fully in the federal advisory committee without federal assistance. The position of the agencies is that absence of the tribes would be detrimental to the committee in making reasoned recommendations to the

Secretary of the Interior. Therefore, in compliance with the Federal Grant and Cooperative Agreement Act, the agencies want to identify a specific legal authority under which they may fund the tribes for ongoing participation in and consultation on the Glen Canyon Dam Adaptive Management Program.

Reclamation's contract officers have questioned whether government-to-government consultation or participation in a federal advisory committee provides the legal framework for providing assistance to the tribes. In addition, there is a question whether funding full-time tribal representatives to a federal advisory committee violates Departmental policies on not paying consulting fees to paid tribal personnel.

BACKGROUND: In 1996, the Secretary of the Interior signed a Record of Decision on Glen Canyon Dam operations which created a federal advisory committee, the Glen Canyon Dam Adaptive Management Work Group. The Secretary of the Interior appoints tribal representatives to the committee because of their cultural interests; Indian trust assets are not present within the area of primary concern to the committee. Current tribal representatives are the Pueblo of Zuni, Kaibab Band of Paiute Indians, Paiute Indian Tribe of Utah, San Juan Southern Paiute, Hopi Tribe, Navajo Nation, and Hualapai Tribe.

Federal agencies on the advisory committee include Department of the Interior agencies listed above, along with Western Area Power Administration. From 1996 through 2000, Reclamation and Western Area Power Administration funded tribal participation using power revenues. Revenues were transferred to the tribes using cooperative agreements that cited the National Historic Preservation Act of 1966 and the Grand Canyon Protection Act of 1992 as legal authorities for the transfer of funds. These laws were listed as the authorities to enter into the agreements and provide assistance to the tribes because they mandate consultation between federal agencies and tribal governments.

The tribes used the funds to hire staff who participated in the Glen Canyon Dam Adaptive Management Program. While the work preparing for and traveling to meetings, presenting tribal viewpoints at meetings, and informing tribal councils of the results of the meetings is not a full time job, tribal representatives informed the agencies that they could not participate on an equal basis with the agency representatives unless they received funding to hire one professional-level, full-time equivalent position (\$80,000-95,000 per tribe per year).

On June 19, 2001, Acting Assistant Secretary for Policy, Management and Budget, Mr. Bob Lamb, issued a memorandum directing the Interior agencies to fund tribal participation in the Glen Canyon Dam Adaptive Management Program through fiscal year 2003. His directive was based on the federal trust responsibility to the tribes and the Grand Canyon Protection Act of 1992. In fiscal year 2004, the authority for financial assistance provided by Mr. Lamb's memorandum has expired.

POSITIONS OF INTERESTED PARTIES: The agencies view the dialogs at the meetings of the Glen Canyon Dam Adaptive Management Program as government-to-government consultation, so the agencies would like to continue to assist the tribes to ensure government-to-government consultation mandates are met. The agencies believe the meetings provide the tribes with a voice and a vote in recommendations made to the Secretary of the Interior with respect to federal actions proposed for the Colorado River below Glen Canyon Dam. Thus, the agencies' position is that both the government and the tribes are beneficiaries of any financial assistance provided to the tribes. The agencies want to comply with Interior policies on payment of consultation fees to tribal governments. The agencies also want to ensure they are in compliance with the Federal Grant and Cooperative Agreement Act which requires a specific legislative authority under which they may enter into interagency and tribal agreements.

The position of the tribes is that federal advisory committee meetings do not suffice for government-to-government consultation on any specific federal action, but they would like to continue participating in the Glen Canyon Dam Adaptive Management Program on an equal basis with the federal agency representatives. The tribes believe that the Interior agencies should provide financial assistance to them based on the trust responsibility, not based on government-to-government consultation. The tribes define the minimal level of adequate assistance as one full-time equivalent position per tribe; with a minimum of five participating tribes at \$95,000 per tribe, the cost would be \$475,000 per year. If all eight tribes with cultural interests in the geographic area covered by the program became active participants (i.e., adding San Juan Southern Paiute, Paiute Indian Tribe of Utah, and Havasupai Tribe), the annual cost would be \$760,000.

RECOMMENDATION: The Interior agencies believe it appropriate to continue obtaining appropriated dollars (at the Departmental level or from the Washington office of each agency) to enable the tribes to participate in the Glen Canyon Dam Adaptive Management Program, as long as the tribes and the Department agree that participation in meetings may be defined as government-to-government consultation. If the Department agrees, then action items would be identifying the specific legal authorities under which the agencies could enter into an interagency agreement to pool appropriated dollars, and having one agency enter into new cooperative agreements with the five or more tribes (\$475,000 to \$760,000 annually, depending on how many tribes the Secretary appoints to the committee).

Another strategy might be having the Department provide funds directly to the tribes to ensure their continued participation. An issue with either strategy is whether providing federal appropriated dollars for paid tribal employees to participate in and consult at advisory committee meetings meets Departmental policy on consultation.

PREPARED BY: Nancy Coulam, Upper Colorado Region of Reclamation, 801-524-3684 and Norman Henderson, National Park Service, 801-539-4251