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**SECTION 7 CONSULTATION and the
ADAPTIVE MANAGEMENT PROGRAM
GLEN CANYON DAM**

ISSUE

The “closed door” nature of Section 7 consultation between the Bureau of Reclamation (Reclamation) and the Fish and Wildlife Service (Service) precludes discussion and input from other participants in the Adaptive Management Program. Yet, the results of those consultations do more, or have the potential to do more, in determining operations of the dam than any other resource of concern.

NEED

In the spirit of the 1992 Grand Canyon Protection Act (GCPA) and the Adaptive Management Program, consider options for opening up the Section 7 process to discussion and input from the affected and interested parties.

BACKGROUND

- The GCPA directs the Secretary of the Interior to consult with various entities in the process of determining criteria and operating plans (Sec. 1804 (c) (3)) for Glen Canyon Dam, and establishing and implementing long-term monitoring programs (Sec. 1805 (a)(c)).
- Section 7 of the Endangered Species Act does not specify, nor limit, how a Federal agency may arrive at accomplishing production of a biological assessment. It only requires that the Federal agency assume full responsibility for its content and conclusions.
- Section 7 of the Endangered Species Act allows a Federal agency to request a draft biological opinion. ESA does not preclude a Federal agency from making that draft available for review by affected or interested parties.
- In accordance with their trust responsibilities to American Indians (Secretarial Order 3206), Federal agencies must consider the impacts of making certain information publicly available through draft and final documents, especially if that information could compromise sensitive tribal information. Once made available outside the Federal agency, the Section 7 consultation documents are no longer protected under provisions of the Freedom of Information Act.
- The GCPA calls for consultation with affected and interested parties for determining and implementing operating plans and developing and implementing a long-term monitoring program.

- The AMWG, in accordance with the Federal Advisory Committee Act, may function only in an advisory capacity.

CONCLUSION

Implementation of Reasonable and Prudent Alternatives, Reasonable and Prudent Measures, Terms & Conditions, and Conservation Measures from biological opinions associated with operations of Glen Canyon Dam, while the direct responsibility of Reclamation as the action agency, are also very much a part of preparation of criteria and operating plans for the dam. Elements of biological opinions are also very much a part of establishing and implementing programs for long-term monitoring of threatened, endangered and special status species affected by dam operations. Therefore, participation by stakeholders and interested parties in the Section 7 consultation process for operations of Glen Canyon Dam is appropriate to the consultation requirements of the GCPA.

OPTIONS

(A) Since Section 7 compliance is often on a parallel course with NEPA compliance, we would treat both processes the same. That is, Reclamation would arrange to produce draft documents (environmental assessment and biological assessment) and make the drafts available for public review and comment by the AMWG/TWG. Reclamation would then consider the comments and either finalize the documents or prepare for further analysis and/or discussion with the AMWG/TWG. In the case of Section 7, the next step would be to seek a biological opinion from the Service. Reclamation would request and make available a draft biological opinion, and request that the Service discuss any comments received with Reclamation and the other members of the AMWG/TWG prior to finalizing the opinion. The AMWG would be expected to fully participate and assist Reclamation with implementation of discretionary and non-discretionary elements of the opinion.

(B) The AMWG, with Reclamation's concurrence, would establish an ad-hoc, or sub-group (a "Consultation Team"), to produce draft biological assessments. Assuming equal opportunity for representation on the group by all members of the AMWG, there would probably be no need for public distribution of the draft BA. Reclamation would either adopt the draft as presented, or modify it—with explanation—and move forward with a request for a draft biological opinion. Whether a Consultation Team would be invited to assist with preparation of a draft biological opinion, would be up to the Service. If that happened, the BO team should consist of different people than those that drafted the BA. The draft biological opinion would then be reviewed by the BA team, or perhaps made available to the entire AMWG/TWG, and any comments received discussed with the Service prior to finalizing the opinion. The AMWG would be expected to fully participate and assist Reclamation with implementation of discretionary and non-discretionary elements of the opinion. FACA could apply to this option.