

LR Letter
July 11, 2000
Scoping Comments on EIS for Flaming Gorge Dam

Mr. Kerry Schwartz
Environmental Protection Specialist
US Bureau of Reclamation
302 East 1860 South
Provo, UT 84606-7317
[Link to Biological Opinion of Flaming Gorge Dam](#)

RE: Scoping Comments on EIS for Flaming Gorge Dam

Dear Mr. Schwartz:

We appreciate this opportunity to submit the following scoping comments on the proposed Environmental Impact Statement (EIS) for Flaming Gorge Dam. Our organizations collectively represent thousands of individuals from across the United States with an interest in the future of the endangered native fish species and ecological communities of the Colorado River basin, including the Green River.

We wish to thank the Bureau of Reclamation (Bureau) for recognizing the seriousness of the plight of the four endangered native fish of the Colorado River basin: the Colorado pikeminnow (*Ptychocheilus lucius*), Razorback sucker (*Xyrauchen texanus*), Bonytail (*Gila elegans*), and Humpback chub (*Gila cypha*).

There is wide agreement within the scientific community that dams in the Colorado River basin, including Flaming Gorge Dam on the Green River, contribute significantly to the degradation of riverine habitat necessary for the survival and flourishing of these species. As builder and operator of many of these structures, the Bureau has a special responsibility to address issues related to the decline and potential extinction of these four federally-listed species.

We understand that the Bureau is undertaking this EIS in response to proposed flow criteria established by the Upper Colorado River Endangered Fish Recovery Program (UCREFRP) pursuant to consultation with the US Fish & Wildlife Service under Section 7 of the Endangered Species Act (ESA). The Bureau is required to consider in an EIS, under the National Environmental Policy Act (NEPA), a range of alternatives that reasonably and practically fulfill the purpose and need of the proposed government action.

In our comments below we address some of the considerations necessary for a comprehensive EIS, including:

- Issues pertaining to the current operation of Flaming Gorge Dam and Reservoir;

- Critical areas of analysis, including the need to incorporate decommissioning as a potential alternative; and
- Issues demonstrating the need for the Bureau to undertake a programmatic EIS for endangered species recovery for its activities throughout the Colorado River watershed.

I. FLAMING GORGE DAM OPERATIONAL ISSUES

A. Endangered Fish

The operation of Flaming Gorge Dam has been known for many years to cause harm to native fish. The introduction of a successful fishery for non-native trout in the dam's tailwaters is testament to the conditions existing downstream of the dam that make the river inhospitable for native species which require warmer water for successful spawning and survival. The reservoir traps vital sediments behind the dam, thereby preventing replenishment of the silt, sand and other material, which are gradually eroded and transported downstream. The dam, which has no fish passage structure, forms a reservoir which is used and managed for a recreational sport fishery for several non-native species known to prey on endangered natives. Conditions are marginal at best for endangered fish survival in the reservoir and downstream environments created by Flaming Gorge Dam.

B. Water Supply

Flaming Gorge Dam is operated as a water storage facility, part of the Colorado River Storage Project which includes Glen Canyon Dam on the Colorado River in Arizona, Navajo Dam on the San Juan River in New Mexico, the Aspinall Unit Dams on the Gunnison River in Colorado, and others. The Upper Colorado River Endangered Fish Recovery Program goals, as stated, include providing for "future water development" (emphasis added). Presently Flaming Gorge Dam provides little if any water for consumptive use; it is designed and operated primarily as a storage dam to regulate flows for downstream users. This regulatory function is not critical to the functioning of the region's water supply system. Evaporation can be significant, especially in warmer months, resulting in less water available for downstream uses. Furthermore, water conservation, not development, must become the Bureau's strategy for meeting future supply needs. Overall, we find Flaming Gorge Dam's role for water supply purposes not sufficiently significant relative to the facility's impacts on endangered species and the alternatives available to fulfill its water supply uses.

C. Hydroelectric Power Generation

Flaming Gorge Dam was designed to produce hydroelectricity incidental to the primary function of water storage and flow regulation. The maximum output of 150 megawatts is a small portion of the region's overall generating capacity. Moreover, given that the maximum output of Glen Canyon Dam was recently cut by approximately 500

megawatts—in effect eliminating more than three times the capacity of Flaming Gorge, its loss would be relatively insignificant and could be made up through implementation of energy conservation techniques and demand management.

D. Recreation and Flood Control Issues

The dam provides a locally important recreation industry centered primarily on sportfishing and motorboating. As noted in I.A. above and II.B. below, the introduction of non-native species to support sportfishing has impacted native endangered species. Motorboats, especially personal watercraft, contribute to water quality problems that also need to be taken into account.

The dam is not authorized to serve a flood control function, but can be operated in that capacity. However, the risk of significant damage from downstream flooding is minimal, and with implementation of floodplain management techniques, what little risk exists could be further reduced.

E. Flaming Gorge Dam and the Colorado River Basin

As noted in I.B. above, Flaming Gorge Dam is a unit of the Colorado River Storage Project. In addition to the CRSP dams in the upper basin, an extensive system of dams exists in the lower basin, including Hoover Dam on the Nevada-Arizona border, and several smaller yet important water supply dams on the river between California and Arizona. The river exits the United States (and indeed, the riverbed itself!) south of Yuma, Arizona, where the once-vibrant Colorado River delta ecosystem has been decimated, converted into an alkali flat polluted by agricultural pesticide and fertilizer runoff.

Water delivery contracts for the Upper Basin are structured pursuant to the Upper Colorado River Basin Compact. The compact has never been subjected to NEPA analysis.

Contracts for the lower basin are subject to allocation by the Secretary of the Interior, pursuant to the terms of the Colorado River Compact (passed into law as the Boulder Canyon Project Act in 1928), which led to implementation of basinwide water planning and allocation ever since. Thus the operations of Flaming Gorge Dam are integrally connected to the operations of the CRSP, the Upper Basin Compact, and the Colorado River Compact/Boulder Canyon Project Act. Therefore its impacts are also tied to this larger system, and as described in item III. below, must be appropriately addressed.

II. CRITICAL AREAS OF ANALYSIS TO BE ADDRESSED IN THE EIS

A. Effects of Dam Operation on Dinosaur National Monument

The Bureau must consider the effects of Flaming Gorge Dam operations on Dinosaur National Monument downstream of the dam. The National Park Service is required by the National Park Service Organic Act to protect the Monument's natural features, ecological communities, streams, and native species, and to leave them unimpaired for future generations.

Flaming Gorge Dam has caused many documented negative effects on the Green River ecosystem downstream of the dam and in the Monument. For example, the dam's cold water releases have for years impaired the native fish stocks in Dinosaur. In addition, the absence of floods and sediment has negatively affected stream morphology characteristics important for native fishes.

Alternatives presented in the EIS must ensure compliance with National Park Service laws and regulations that provide for protecting the Green River ecosystem and its native fish. The Bureau should analyze each alternative in light of expected effects on Dinosaur's natural features and aquatic communities, especially on listed endangered species, sensitive species, and species of special concern. The EIS should explain in detail the impacts of the dam's past and present operations on Dinosaur, and show how future operations will impact park resources and natural regimes of sediment transport and distribution, depositional patterns, streamflow, temperature, riparian ecosystems, native plant communities, and native fish populations within the Monument. Finally, the EIS should explain in detail how Flaming Gorge Dam operations will be managed so as to ensure compliance with the nonimpairment provision of the Organic Act.

B. Removal of Non-Native Fish Which Prey on Endangered Fish

For years the state and federal governments have operated Flaming Gorge Dam and Reservoir and other dams in the Colorado River basin to promote and enhance sportfisheries and related recreation activities. In the reservoirs and downstream in the tailwaters, government policies have increased the numbers and habitat conditions suitable for non-native species such as trout which are known to prey in significant numbers on endangered native species. The Bureau must address the detrimental effects on endangered fish species, sensitive species, and species of special concern, caused by non-native species, and provide alternatives in the EIS that eliminates such predation, both in the reservoir and in the tailwaters.

C. Endangered Species Recovery Needs at the Species Level

The extensive system of dams and diversions throughout the Colorado River basin fragments and artificially isolates endangered fish populations. Historically, regulators have responded to declining populations of these species by attempting to formulate management criteria that fail to question the fundamental circumstances contributing to the endangerment in the first place. The US Fish & Wildlife Service and the Bureau have chosen to address endangered fish recovery by first declaring isolated populations

to be distinct, then proposing recovery plans which fail to address the factors causing the isolation in the first place.

Some or all of the endangered Colorado River fish species are known to be migratory. In addition, evidence exists that the interruption of fish migration by construction of dams in the basin has had a detrimental effect on fish recovery. Within the EIS, the Bureau must evaluate the potential effects, including genetic health and reproductive success, on recovery of fish, including listed endangered species, sensitive species, and species of special concern, that are no longer isolated between dams.

D. Water Quality and Recreational Impacts

In recent years, a rapid rise in recreational use of motorized watercraft including personal watercraft (PWC) has resulted in increases of petroleum effluent in reservoirs and streams. In particular, the proliferation of two-cycle PWCs has resulted in dramatic increases of oil and gasoline discharges into water bodies such as Flaming Gorge Reservoir. The EIS must quantify current and future trends in petroleum discharges from recreational watercraft, and address the potential impacts of these compounds (including MTBE) on native endangered fish species. The EIS should analyze one or more alternatives that consider the effects of declining water quality on listed endangered species, sensitive species, and species of special concern. Finally, the EIS should consider alternatives which implement greater restrictions or outright prohibitions on PWCs, other two-cycle motorized watercraft, and other polluting machinery.

E. Dam Decommissioning Alternative

The Bureau should incorporate into its EIS alternatives which evaluate the potential for decommissioning (e.g., breaching, removing, or disabling) Flaming Gorge Dam and allowing the Green River to flow freely once again. Decommissioning is the most ecologically effective and economically efficient alternative for addressing the purpose and need of the EIS, namely recovering endangered native fish species. Some negative impacts of dams cannot be adequately mitigated, e.g. loss of sediment deposition downstream of the dam, and reduction of frequency and intensity of flood events. And as attempts to do so become more costly, complicated and ineffective, agencies such as the Federal Energy Regulatory Commission and the Army Corps of Engineers are now turning to decommissioning as a preferred alternative for habitat restoration and species recovery. The Bureau should also consider decommissioning alternatives amongst its recovery options.

The Bureau is obliged to consider a decommissioning alternative even if the implementation of such an alternative would be beyond the scope of the agency's discretion, so long as it is reasonable and practical.

36 CFR 219.12(f)(5). Reasonable alternatives which may require a change in existing law or policy to implement shall be formulated if necessary to address a major public issue, management concern, or resource opportunity identified during the planning process.

40 CFR 1502.14(a-c). Alternatives including the proposed action. This section is the heart of the environmental impact statement. ... In this section agencies shall:

(a) Rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.

(b) Devote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits.

(c) Include reasonable alternatives not within the jurisdiction of the lead agency. ...

The Council on Environmental Quality (CEQ) addresses this question in the following excerpt from its "Forty Most Asked Questions Concerning CEQ's NEPA Regulations, 23 March 1981":

Question 2a. Alternatives Outside the Capability of Applicant or Jurisdiction of Agency. If an EIS is prepared in connection with an application for a permit or other federal approval, must the EIS rigorously analyze and discuss alternatives that are outside the capability of the applicant or can it be limited to reasonable alternatives that can be carried out by the applicant?

Answer. Section 1502.14 requires the EIS to examine all reasonable alternatives to the proposal. In determining the scope of alternatives to be considered, the emphasis is on what is "reasonable" rather than on whether the proponent or applicant likes or is itself capable of carrying out a particular alternative. Reasonable alternatives include those that are practical or feasible from the technical and economic standpoint and using common sense, rather than simply desirable from the standpoint of the applicant.

Question 2b. Must the EIS analyze alternatives outside the jurisdiction or capability of the agency or beyond what Congress has authorized?

Answer. An alternative that is outside the legal jurisdiction of the lead agency must still be analyzed in the EIS if it is reasonable. A potential conflict with local or federal law does not necessarily render an alternative unreasonable, although such conflicts must be considered. Section 1506.2(d). Alternatives that are outside the scope of what Congress has approved or funded must still be evaluated in the EIS if they are reasonable, because the EIS may serve as the basis for modifying the Congressional approval or funding in light of NEPA's goals and policies. Section 1500.1(a).

Given the increasing attention other federal and state agencies are not only paying to the examination of decommissioning alternatives, but selecting them as the preferred alternative, such an alternative in the case of Flaming Gorge does meet the definition of "reasonable" and "practical" under NEPA.

III. PERFORM A PROGRAMMATIC EIS ON COLORADO RIVER BASIN DAM OPERATIONS AND WATER MANAGEMENT

Problems facing Colorado River endangered fish on the Green River and elsewhere in the basin are not likely to be solved solely by addressing impacts associated with Flaming Gorge Dam. Federal policy has too often chosen to view isolated, remnant populations of endangered fish as if they were and always will be isolated, ignoring the purpose and goals of the ESA--to restore viable, healthy populations throughout the species' range. The problems that lead to fish endangerment are not easily resolved at the micro (individual dam) level and must also be addressed from a watershed perspective.

The Bureau is currently engaged in a number of projects, studies, and current and potential litigation that collectively have and will continue to have a significant cumulative impact on these endangered species, including:

1. Lower Colorado River Multiple Species Conservation Plan (LCRMSCP) for endangered fish and wildlife;
2. Adaptive Management Program for Glen Canyon Dam operations pursuant to the Grand Canyon Protection Act;
3. Upper Colorado River Endangered Fish Recovery Program for endangered fish;
4. Draft EIS for the Animas-La Plata project (San Juan River basin) in southwestern Colorado;
5. Draft EIS for Navajo Dam (San Juan River) operations;
6. Draft EIS for new Central Arizona Project water allocations;
7. Draft EIS/EIR for Salton Sea restoration in California;
8. Draft Programmatic EIS for the Rio Grande River (potential withdrawals of San Juan River water via San Juan-Chama Diversion project);
9. Draft EIS for Colorado River Interim "Surplus Criteria" for additional withdrawals;
10. Offstream storage of Colorado River water especially in the lower basin;

11. Continued and expanding depletions by transmountain diversions to the Front Range in Colorado from the headwaters of the Colorado River;
12. Current consultation on reoperation of the Aspinall Unit on the Gunnison River in Colorado that will lead to DEIS;
13. At least three proposals for new pipelines which would withdraw water from Navajo Reservoir and Lake Powell Reservoir;
14. Proposed settlement of Little Colorado River basin water rights in Arizona and New Mexico;
15. Price-Stubbs Diversion Dam relicensing in Colorado;
16. Virgin River Resource Management & Recovery Program;
17. Current litigation against the Bureau for failing to address endangered species needs in the Colorado River delta and Gulf of California; and
18. Potential litigation by Indian tribes, seeking additional water rights or quantification of existing rights.

Council on Environmental Quality regulations require the Bureau to address those ongoing agency actions that relate to the proposed action. Since there are numerous NEPA actions underway within the Colorado River watershed which affect water use and allocation and endangered species management, the Bureau must therefore discuss and consider in the context of the Flaming Gorge Dam EIS these other actions. 40 CFR 1501.7(a)(5). Furthermore, even if the impacts of each of these actions are to be analyzed separately, they still must be tiered to a larger programmatic EIS. 40 CFR 1508.28, 1502.20.

It is unclear whether the Bureau can adequately address long-term needs of the fish throughout the basin in the context of these individual projects. It is also unclear how the Bureau will ensure that the cumulative impacts of all these efforts will work together to guarantee, and not impede, recovery.

In addition, there is a transbasin issue linking the Colorado River basin with the Rio Grande River basin. The San Juan-Chama project diverts water from the San Juan River (Colorado River basin) into the Chama River (Rio Grande River basin). Current proposals being voiced in New Mexico call for potential future increases in diversions of San Juan River water to supply Rio Grande municipal and agricultural water users as far away as Albuquerque and the middle Rio Grande irrigation project.

The Upper Colorado River Basin Compact has had a profound effect on the management, use, and allocation of water in the upper basin, including the Green River. The compact controls all river operations, facility operations, and contracts. In the

context of this EIS, the Bureau must look at alternative ways to implement the compact in order to minimize effects on aquatic ecosystems, including endangered native fish species, sensitive species, and species of special concern, and to ensure compliance with water quality regulations under the Clean Water Act. Given the constraints of the compact, the Bureau must also consider modifications or changes to the compact that would contribute to the recovery of the affected endangered species, other sensitive species and species of concern, and achieve the purpose and need of the proposed action. As discussed in II.E. above, the Bureau is not constrained by existing laws or contracts in formulating and evaluating alternatives.

Given the extensive amount of federal activity within the Colorado River watershed, much of which directly addresses and/or affects endangered species, a comprehensive programmatic EIS covering the entire basin is not only warranted but also sorely needed. This approach is not unprecedented. The Bureau recently began scoping for a programmatic EIS on Upper Rio Grande River operations to address impacts of water diversions on endangered species. A programmatic EIS for the Colorado River basin would provide for the multitude of issues affecting endangered species to be addressed in a comprehensive fashion, and would complement the effort now under way in the Rio Grande basin. And as outlined in II.E above, such an EIS must evaluate dam decommissioning as an alternative.

The Bureau's operations of its dam and water diversion systems on the Colorado River have had massive and far-reaching environmental impacts, yet have never been the subject of an EIS. Were such an EIS to exist, it would inform the Bureau, other federal agencies, states, tribes, and the public on all aspects of the Bureau's operations and its "off-river" impacts from the continuing urbanization in the basin states that is able to occur only because of the continued supply of water, or at least the expectation of a continued supply of water, from the Colorado River.

While the construction of the dam system predated the passage of NEPA, the operations and management of the river have changed dramatically since Flaming Gorge and other dams were built—substantial activity which can no longer be considered "grandfathered in" under NEPA. Such actions include the transfer of water from Imperial Irrigation District (IID) to San Diego, the development of off-stream banking, major increases in water consumption, additional water diversions, and the uses of the water diversions and supplies. These changes have altered the character and impact of river management to the extent that now any Bureau activities must trigger a NEPA process. "[When] an ongoing project undergoes changes which themselves amount to "major federal actions, the operating agency must prepare an EIS." *Upper Snake River v. Hodel*, 921 F.2d 232, 235 (9th Cir. 1990); see *Andrus v. Sierra Club*, 442 US 347, 363 n.21 (1979).

As a result, the present NEPA analysis will need to be much more comprehensive in order to compensate for the lack of pre-existing NEPA analysis and baseline information. Note here that the environmental baseline of NEPA encompasses impacts to additional aspects of the human environment -- socioeconomic, environmental

justice, recreation, cultural resources, wildlife and its habitat for non-sensitive species, air and water pollution -- not included in the ESA environmental baseline of impacts to endangered species and critical habitat. The action to be analyzed in the scoping notice, as well as the new actions mentioned above, would require changes in operations which have never been analyzed in the first place.

In conclusion, we find the Bureau's initiative to address endangered fish below Flaming Gorge Dam an important exercise. However, we fear that unless the Bureau approaches this undertaking in the full spirit contained within the ESA and NEPA, that such an effort will be unable to guarantee species recovery. We have outlined assessment methodologies above that we believe will avoid such an eventuality, and look forward to working with the Bureau and other relevant agencies to ensure their appropriate incorporation into the current EIS process for Flaming Gorge Dam.

Thank you for the opportunity to submit these comments and recommendations, and we look forward to your reply.

Sincerely, John S. Weisheit President Glen Canyon Action Network

On behalf of the following organizations:

Access for All: Los Angeles, CA

Advocates for Instream Flow: Spokane, WA

American Lands Alliance: Washington, DC

American Wildlands: Bozeman, MT

Bluewater Network: San Francisco, CA

Bridgerland Audubon Society: Logan, UT

Canyon Creations: Grand Junction, CO

Christians Caring for Creation: Los Angeles, CA

Center for Biological Diversity: Tucson, AZ

Clearwater Biodiversity Project: Moscow, ID

Colorado Plateau River Guides: Moab, UT

Colorado Rivers Alliance: Fort Collins, CO

Committee for Idaho's High Desert: Boise, ID

Defenders of Wildlife: Washington, DC

Earth Island Institute: San Francisco, CA
Endangered Species Coalition: Washington, DC
[representing over 400 organizations]
Escalante Wilderness Project: Escalante, UT
Flagstaff Activist Network: Flagstaff, AZ
Forest Conservation Council: Santa Fe, NM
Forest Guardians: Santa Fe, NM
Four Corners School of Outdoor Education:
Monticello, UT
Friends of Pinto Creek: Glendale, AZ
Friends of the Earth: Washington, DC
Friends of the River: Sacramento, CA
Friends of Yosemite Valley: Yosemite, CA
Grand Canyon Private Boaters Assn.: Flagstaff, AZ
Green Delaware: Port Penn, DE
Green Party of Tennessee: Nashville, TN
Green Party of Utah: Farmington, UT
Hetch Hetchy Action Network: Yosemite, CA
International Rivers Network: Berkeley, CA
John Muir Project: Pasadena, CA
Land & Water Fund of the Rockies:
Salt Lake City, UT Office
Native Forest Council: Eugene, OR
Predator Conservation Alliance: Bozeman, MT
Predator Education Fund: Salt Lake City, UT

Rim to Rim Restoration: Moab, UT
Seeds of Simplicity: Glendale, CA
Sheep Mountain Alliance: Telluride, CO
Spirit of the Sage Council: Pasadena, CA
Superior Wilderness Action Network: St. Paul, MN
Taxpayers for the Animas River: Durango, CO
Utah Environmental Congress: Salt Lake City, UT
Wasatch Mountain Club: Salt Lake City, UT
Wetlands Action Network: Malibu, CA
Wild Utah Forest Campaign: Salt Lake City, UT
Wild Utah Project: Salt Lake City, UT
Wild Wilderness: Bend, OR
Wildlife Damage Review: Tucson, AZ
Wise Use Movement: Seattle, WA
Wyoming Outdoors Council: Lander, WY