MEMORANDUM

TO: Members, CWCB
FROM: Bill McDonald
DATE: September 9, 1984
SUBJECT: Agenda Item 14d, September 13-14, 1984, Board Meeting—Endangered Species Issues

The attached memo concisely summarizes the major activities which have been consummated since the last Board meeting. The staff will present an oral briefing on the status of the Colorado River effort at the meeting.

BMcD: tam
Attachment: as stated
UPPER COLORADO RIVER COMMISSION
333 South Fourth East Street
Salt Lake City, Utah 84111

August 30, 1984

MEMORANDUM

TO: Upper Colorado River Commissioners

FROM: Gerald R. Zimmerman, Executive Director

SUBJECT: Colorado River Endangered Species Study Efforts

Enclosed for your information and files are copies of the following documents:

(1) A signed "Memorandum of Understanding between United States Fish and Wildlife Service, United States Bureau of Reclamation, State of Colorado, State of Utah, and State of Wyoming"; and

(2) Excerpts from H.R. 5973, a bill providing appropriations for the Department of the Interior and related agencies, which, among other things, appropriates $450,000 to the Secretary of the Interior to develop a plan for the conservation of endangered species in the Colorado River Basin.

My May 3, 1984 memorandum to you on the same subject contained a draft of the enclosed Memorandum of Understanding. The stated purpose of this Memorandum of Understanding is for the signatory parties "to cooperate in discussions seeking ways to develop and implement a program of reasonable and prudent alternatives which will enable Federal agency actions associated with water project development and depletions in the Upper Basin of the Colorado River to proceed pursuant to Section 7 of the Endangered Species Act without the likelihood of jeopardizing the continued existence of any threatened or endangered fishes, while fully acknowledging and considering the beneficial uses of water pursuant to the respective State water rights systems and the use of water apportioned to a State pursuant to the compacts concerning the waters of the Colorado River." The Memorandum of Understanding is due to expire on March 31, 1985 unless it is otherwise extended, a majority of the signators withdraw, or its purpose has been achieved.
In the Department of the Interior and Related Agencies Appropriations bill, H.R. 5973, the Office of the Secretary has been appropriated $450,000 for participation in a working group with representatives from the States of Colorado, Utah, and Wyoming. The working group will:

(1) Cooperate in discussions seeking ways to prevent jeopardy to and provide for the conservation of endangered and threatened species in the Upper Colorado River Basin while fully maintaining the beneficial uses of water apportioned to each State by interstate compacts or Supreme Court decrees.

(2) Attempt to draft a plan which satisfies (1) above and is consistent with the Endangered Species Act.

The plan, if one is developed by the working group, must be consistent with Federal law and must not abrogate or supplant the requirements of the Endangered Species Act, State water rights, interstate compacts, and Supreme Court decrees. Also, the development of the plan will not be considered to be a major Federal action under the National Environmental Policy Act.

The bill also directs the Secretary to prepare a report to Congress on the progress of the working groups on or before September 30, 1985 and to prepare an interim report no later than June 1, 1985. As you will notice, the time to complete the study group activities contained in H.R. 5973 and in the recently signed Memorandum of Understanding are not consistent. This suggests that the Memorandum of Understanding may need to be extended until September 30, 1985.

As I receive further information on this activity I will send it to you. In the meantime, I would welcome your thoughts and comments.
MEMORANDUM OF UNDERSTANDING

Between
United States Fish and Wildlife Service
United States Bureau of Reclamation
State of Colorado
State of Utah
State of Wyoming

I. PURPOSE

The purpose of the parties to this Memorandum of Understanding is to cooperate in discussions seeking ways to develop and implement a program of reasonable and prudent alternatives which will enable Federal agency actions associated with water project development and depletions in the Upper Basin of the Colorado River to proceed pursuant to Section 7 of the Endangered Species Act without the likelihood of jeopardizing the continued existence of any threatened or endangered fishes, while fully acknowledging and considering the beneficial uses of water pursuant to the respective State water rights systems and the use of water apportioned to a State pursuant to the compacts concerning the waters of the Colorado River.
II. STATUTORY AUTHORITIES

Pursuant to the Endangered Species Act (ESA), the Secretary of the Interior has the responsibility to determine whether any species is an endangered or threatened species, to designate its critical habitat, to advise whether Federal agency actions are likely to jeopardize the continued existence of such species, and to suggest those reasonable and prudent alternatives that he finds will not violate Section 7 (a)(2) of the ESA. Federal agencies are also required to use their authorities to promote the conservation of these listed species.

Pursuant to Title 43, Chapter 12 of the U.S. Code, the United States Bureau of Reclamation has authority to construct and operate water projects.

Pursuant to their statutory authority, the States of Colorado, Utah, Wyoming, and New Mexico manage fish and game resources and oversee administration and development of water resources, and the pertinent interstate compact.

III. ORGANIZATION

The parties agree to constitute the following committees.

A. Coordinating Committee
1. A Coordinating Committee shall include the Regional Director, Fish and Wildlife Service, Region 6; Regional Directors, Bureau of Reclamation, Upper Colorado Region and Lower Missouri Region; Executive Director, Department of Natural Resources, State of Colorado; Executive Director, Department of Natural Resources, State of Utah; and a representative of the Governor of the State of Wyoming, and such other members as the Committee designates.

2. The tasks of the Coordinating Committee are identified in the following order of importance:

   a. Develop greater understanding of and agreement on scientific data and the interpretation of such data concerning factors affecting the present and future of endangered fishes in the Upper Basin of the Colorado River.

   b. Identify reasonable and prudent alternatives, including but not limited to hatchery and stocking programs, measures addressing competition with non-native species, fish passage facilities, establishment of preserves, instream flows, water delivery and reregulation, and any other reasonably feasible and effective methods or procedures to comply with Sec. 7 (a) and (b) of the ESA.

   c. Discuss with the USFWS the development of an upper basin program of reasonable and prudent alternatives which will enable the Federal agency actions associated with individual
water projects to be carried out without jeopardizing the continued existence of any endangered fishes.

d. Discuss how such a program could be implemented, including consideration of the responsibilities of Federal and State agencies and of private parties.

e. Guide the work of the steering and any other committees.

f. Discuss with the USFWS strategies for responding to Section 7 consultations regarding the endangered fishes during the time period of this Memorandum of Understanding.

g. Discuss the status and review requirements of the three species of endangered fishes in the Colorado River Basin [Colorado squawfish (Ptychocheilus lucius), Humpback chub (Gila cypha), and Bonytail chub (Gila elegans)], including the appropriateness of downlisting and/or delisting as set forth in the ESA.

h. Shall appoint an Executive Director to coordinate the activities of the Coordinating Committee and its appointed committees.

3. The Coordinating Committee has selected Frank Dunkle, a representative from the USFWS, to serve as Executive Director. The Executive Director shall have the following duties:
a. Circulate draft recommendations prior to meetings to allow adequate time for preparation for meetings.

b. Coordinate the direction of the Committee on a daily basis.

c. Keep minutes of Coordinating Committee meetings.

d. Keep Records of all Coordinating Committee and other committee actions.

e. Communicate the reports of Steering, Hydrological and Biological Committees to the Coordinating Committee.

f. Implement a program of public information concerning the public activities of all committees.

g. Organize a method of submitting monthly reports from other committees and track the progress of all committees to insure they are in keeping with the goals of the Coordinating Committee.

h. Assist all committees with collecting necessary information and data.

i. Serve as the conduit between committees, other public groups and concerned governmental agencies.
j. The subcommittees shall select the chairmen of the Biological and Hydrological subcommittees. The Subcommittee chairman shall keep minutes, circulate drafts and final reports, and arrange for meetings of the subcommittees.

4. The Coordinating Committee shall meet as necessary during the term of this Memorandum of Understanding.

5. The Coordinating Committee shall meet periodically in a roundtable setting with representatives of the Steering Committee, conservation organizations, proponents of water projects, other Federal agencies, and the public. Prior to submitting its final recommendations, the Coordinating Committee shall present draft recommendations for discussion at a roundtable meeting open to the public.

6. The Coordinating Committee shall appoint members to a Steering Committee and other committees.

7. The Coordinating Committee shall appoint hydrological and biological subcommittees to perform the technical analyses called for by the approved work plan as discussed in paragraph B.3. on page 7 of this document.

8. All parties agree to provide all necessary and available data (including raw data, analyses, and other information) to the Coordinating Committee or to other committees, as directed by the
Coordinating Committee, provided that anything related to litigation involving any parties may be withheld at their discretion to the extent permitted by law.

9. The Coordinating Committee, through the Executive Director, may circulating drafts and findings from the Steering Committee or its subcommittees for peer review to groups and individuals recommended by the Steering Committee.

B. Steering Committee

1. The Steering Committee shall be chaired by the Executive Director of the Coordinating Committee.

2. The Steering Committee shall include a biological expert and a hydrological expert representing each party to this Memorandum of Understanding who wishes to appoint a member. In addition, representatives of other organizations may be asked to join the Steering Committee by the Coordinating Committee.

3. The Steering Committee shall meet from time to time to discuss and consider such subjects or tasks as the Coordinating Committee deems appropriate. The Steering Committee shall develop a work plan, subject to the approval of the Coordinating Committee, which shall guide its work and the work of the Biological and Hydrological subcommittees.
4. The Steering Committee members may attend the roundtable public meetings of the Coordinating Committee to hear and consider views proponents of water projects and other interested parties.

C. Drafting Committee

1. A Drafting Committee may be convened by the Coordinating Committee as necessary to prepare or review any draft documents.

2. The Drafting Committee shall include a member appointed by each party to this MOU. Additional members shall be appointed by the Coordinating Committee from the organizations that have been participating members of the technical subcommittees.

D. Other Committees

From time to time, the Coordinating Committee may establish other committees or subcommittees.

IV. STAFFING

A. Each participating agency shall contribute such staff time as may be necessary to carry out the activities called for above consistent with their resources and other priorities.

B. In the event that earmarked funds become available, the Coordinating Committee may design an operating plan for the use of the funds. Any
such plan will be submitted to the Secretary of Interior for consideration.

V. DECISION AUTHORITY

A. All parties to this Memorandum of Understanding recognize that they each have responsibilities under their statutory authorities that cannot be delegated to the committees described above and that this agreement cannot and is not intended to abrogate any of their independent decision-making responsibilities. This MOU per se is not intended to be inconsistent with any existing Federal or State law or regulation.

B. All parties to this agreement agree to seek mutually agreeable solutions to the problems addressed by this Memorandum of Understanding.

VI. TERM

A. This Memorandum of Understanding shall expire March 31, 1985, unless it is otherwise extended by agreement of a majority of the Coordinating Committee members.

B. Parties to this Memorandum of Understanding may withdraw from this Memorandum of Understanding upon written notice to the Executive Director of the Coordinating Committee, but the work of the Committee shall continue for so long as a majority of the remaining members
determine or until the Memorandum has expired or its purposes are achieved.

End
Galen L. Buterbaugh, Regional Director
Region 6
United States Fish and Wildlife Service

Bill E. Martin, Regional Director
Lower Missouri Region
United States Bureau of Reclamation

Cliff L. Barrett, Regional Director
Upper Colorado Region
United States Bureau of Reclamation

David H. Gutchess, Executive Director
Colorado Department of Natural Resources

Temple A. Reynolds, Executive Director
Utah Department of Natural Resources

Warren G. White
Natural Resources Adviser to the Governor
State of Wyoming

7-24-84
Date

7-25-84
Date

7/30/84
Date

7/31/84
Date

9/30/84
Date

8/3/84
Date
AN ACT

Making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 1985, and for other purposes.

1 Be it enacted by the Senate and House of Representa-
2 tives of the United States of America in Congress assembled,
3 That the following sums are appropriated, out of any money
4 in the Treasury not otherwise appropriated, for the Depart-
5 ment of the Interior and related agencies for the fiscal year
6 ending September 30, 1985, and for other purposes, namely:
1 revenues, for support of governmental functions;
2 $118,225,000 $97,611,000, of which $70,515,000
3 $80,831,000 is for operations, and $38,650,000 $16,780,000
4 is for construction, to remain available until expended: Pro-
5 vided, That all financial transactions of the Trust Territory,
6 including such transactions of all agencies or instrumental-
7 ies established or utilized by such Trust Territory, shall be
8 audited by the General Accounting Office in accordance with
9 the provisions of the Budget and Accounting Act, 1921 (42
10 Stat. 23), as amended, and the Accounting and Auditing Act
11 of 1950 (64 Stat. 834): Provided further, That the govern-
12 ment of the Trust Territory of the Pacific Islands is author-
13 ized to make purchases through the General Services Ad-
14 ministration.

OFFICE OF THE SECRETARY

For necessary expenses of the Office of the Secretary of
the Interior, $44,181,000 $46,910,000, of which
$1,468,000 is for the "Secretary's immediate office" includ-
ing, of which not less than $400,000 is for reimbursement to
the United States Park Police and not to exceed $10,000 for
official reception and representation expenses: Provided,
That an additional $450,000 is appropriated to the Secre-
tary of the Interior (in addition to other sums under 16
U.S.C. 1535(c)) for participation in a working group with
the Governors, or their designees, of the states of the Upper
Colorado River Basin; Colorado, Utah, and Wyoming: Pro-

HR 5973 RS
vided further, That such funds shall be available for carrying out the following provisions:

(a) The Secretary, through the Director of the United States Fish and Wildlife Service and the Commissioner of the Bureau of Reclamation, shall participate in such working groups which shall—

(1) cooperate in discussions seeking ways to prevent jeopardy to, and provide for the conservation of, endangered and threatened species in such river basins, while fully maintaining the beneficial uses of water pursuant to state water rights systems, and the use of water apportioned to each state pursuant to interstate compacts or equitable apportionment decrees of the Supreme Court; and

(2) attempt to draft a plan which satisfies the goals of subparagraph (1) and is consistent with the Endangered Species Act.

(b) If such a plan is unanimously developed by a working group, the Secretary shall implement it if it is consistent with the requirements of Federal law, meets the goals of paragraph (a)(1) of this section, and does not abrogate or supplant the requirements of the Endangered Species Act, State water rights, interstate compacts and equitable apportionment decrees of the Supreme Court.
(c) Working group discussions and plan development shall not be construed to delay or alter in any way consultations or Federal actions or approvals in such river basins.

(d) The provisions of the Federal Advisory Committee Act shall not apply to the working group: Provided, That all meetings of the group shall be open to members of the public, that reasonable notice of the meetings shall be published in papers of general circulation, that the general public shall be given the opportunity to participate at such meetings through oral or written comment in the development of the study and plan, and that minutes of each meeting shall be prepared, including public comments.

(e) The Secretary shall report to Congress on the progress of working groups on or before September 30, 1985, with an interim report no later than June 1, 1985.

(f) The development of a plan, if any, by a working group and reports to Congress required under paragraph (d) of this section shall not be considered major Federal actions within the meaning of section 102 of the National Environmental Policy Act (42 U.S.C. 4332). $207,000 is for the "Executive Secretariat"; $1,000,000 is for "Congressional and Legislative affairs"; $1,448,000 is for the "Equal Opportunity" office; $700,000 is for the "Public Affairs" office; $140,000 is for the "Small and Disadvantaged Business Utilization" office; $909,000 is for the "Historically Black Col-