

**Remarks of Mike A. Hamman, PE
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WATER AND NATURAL RESOURCES COMMITTEE AUGUST 2, 2011

Thank you for the invitation to address the Committee on Middle Rio Grande endangered species issues from the perspective of the Bureau of Reclamation.

BACKGROUND

The Bureau of Reclamation has a long history in the Rio Grande Valley with the construction of Elephant Butte Dam that began in 1906 as one of Reclamation's early projects to the Flood Control Acts of 1948 and 1950 that authorized the Middle Rio Grande Project. This Project allowed for Reclamation to perform river maintenance activities in the Middle Rio Grande from Velarde NM to Caballo Reservoir. Reclamation also entered into a contract with the Middle Rio Grande Conservancy District (MRGCD) in 1951 to reclaim and rehabilitate the irrigation storage, diversion and distribution systems along with drain and levee construction that serves over 60,000 acres of agricultural land including those of the six middle Rio Grande Pueblos. Reclamation constructed the Low Flow Conveyance channel from San Acacia Diversion Dam to Elephant Butte reservoir in the 1950s to help efficiently convey water and sediment. These efforts along with substantial assistance from the NM Interstate Stream Commission (ISC) has aided in making Rio Grande Compact deliveries to Elephant Butte while providing for the continuation of irrigated agriculture in the middle valley.

In 1994, the US Fish and Wildlife Service (Service) listed the Rio Grande silvery minnow and in 1995 the southwest willow flycatcher as endangered species. Under Section 7 of the Endangered Species Act, federal agencies must consult with the Service on federal actions that may affect the existence or the habitat of the listed species. In 1998 Reclamation and the Corps of Engineers (Corps) submitted a joint programmatic Biological Assessment (BA) that addressed both agencies' water management actions. After consulting with the Service over an extended period, a new joint BA was issued in 2001 and a Biological Opinion (BiOp) was issued by the Service that covered federal actions from June 2001 to December 2003. In early 2003, the agencies re-initiated consultation with the Service, due in part to litigation that questioned Reclamation's discretion over San Juan-Chama Project water, and a final BiOp was issued in 2003 that covers the agencies actions through February 28, 2013. In 2001, Reclamation received Congressional authority to include the Middle Rio Grande ESA Collaborative Program within the Middle Rio Grande Project to act as the vehicle to address Middle Rio Grande ESA compliance requirements or suitable alternatives.

The importance of the implementation of the 2003 BiOp Reasonable and Prudent Alternatives (RPAs) provides for the continuation of existing water uses while preventing jeopardy to the listed species and has kept us out of federal court. It also provides legal coverage under Section 9 of the Act to the extent that existing water management or river maintenance activities stay within the limits of the Incidental Take Statement that is provided to the parties at the beginning of each irrigation season.

THE MIDDLE RIO GRANDE COLLABORATIVE PROGRAM

Reclamation is the fiscal agency for the Collaborative Program and to date in excess of \$120 M has been allocated to Collaborative Program activities with approximately \$50 M spent on water acquisition and pumping from the Low Flow Conveyance Channel to manage drying on the lower reach after June 15 of each year. The local cost share of 25% is applied to approximately \$56 M of the total expenditure and the State of New Mexico has contributed over \$12.5 M toward the Program and shouldered the most of the cost share requirements. Several of the RPAs have been addressed utilizing the Collaborative Program process and virtually all 16 members, that includes four state agencies and the MRGCD, have directly participated in some form to assist in meeting the goals established for developing habitat, performing monitoring programs, conducting multiple studies and constructing fish rearing facilities.

To date, over 1,000 acres of suitable habitat has been constructed, over 1 million hatchery fish have been released to the river, water management activities and modeling techniques have advanced, numerous studies

and peer review efforts have been completed, and sufficient water has been acquired to date in order to meet the prescriptive flow targets established under the 2003 BiOp.

2003 BIOLOGICAL OPINION

Reclamation has observed that the in-river flow requirements of the 2003 BiOp have been met primarily due to two factors: The basin has seen good water supplies since 2003 and the availability of San Juan-Chama water from willing leasees provided sufficient supplemental water to fill in the gaps between natural flow management and the flow targets. We do not see this as a sustainable setting going forward as natural water supplies can be wide ranging due to drought and the availability of leasable San Juan-Chama water is diminishing over time making it difficult to meet the prescriptive flow targets in the current BiOp. This BiOp does not lend itself to the flexibility needed to engage in a robust adaptive management process that allows for adjusting to the hydrologic realities of the Rio Grande basin. For these reasons and because the 2003 BiOp cannot legally be renewed past February 2013, Reclamation is preparing a new BA under the following principles.

General Consultation Strategy

- Reclamation is seeking to continue Endangered Species Act (ESA) Section 7 compliance for its and others water management activities associated with the Middle Rio Grande.
- Reclamation is preparing a Biological Assessment covering actions over which it has direct control (discretion), as well as including non-Federal actions that need coverage under Section 7 in order to continue those activities.
- Federal Actions
 - Reclamation BA will include 2 main federal actions
 - San Juan–Chama Project – Heron Operations
 - Middle Rio Grande Project - Water Operations
 - Reclamation will also include its Supplemental Water Program in the Proposed Action as conservation measures
- Non-Federal Coverage
 - Reclamation as the fiscal agency for the Middle Rio Grande Endangered Species Collaborative Program is including non-federal agencies such as the NM ISC and the Middle Rio Grande Conservancy District in its in order for the US Fish and Wildlife Service to provide coverage through the ESA Section 7 process in the new BiOp
 - A federal nexus can be based on participation in Collaborative Program
 - Can provide coverage to those proposed non-federal actions needing coverage when the non-fed or surrogate contributes to the RPA in the new BiOp
- 2003 Biological Opinion and ESA Consultation approach is unsustainable for the long term
 - *Water*
 - Reclamation is committed to developing sustainable flow requirements through adaptive management
 - Reclamation needs continued stakeholder support for water management
 - Reclamation also supports non-water solutions such as habitat restoration
 - *Funding*
 - Given the current budget climate, there will be less federal dollars available
 - Reclamation needs continued stakeholder support for funding
 - *Law*
 - Reclamation seeks to consult to full extent of its authority and action-by-action

- Reclamation seeks to distinguish between mission driven and mitigation actions
- Schedule Objectives
 - Submit a BA to the FWS in October 2011.
 - Have a new BiOp in place before the expiration of the 2003 BiOp, i.e., February 28, 2013.
 - Initial Government-to-Government consultation with Pueblos and Tribes in May-June 2011.
 - The draft BA will be provided to the Pueblos and Tribes in July prior to release to the federal agencies and the Collaborative Program.
 - The draft BA will be released to the Collaborative Program on August 18, 2011 for a 30-day review.
- Path to Success
 - Long-term ESA Compliance = Long Term Plan + Adaptive Management Program + Flexible Water Management Strategy
 - Adapting the Collaborative Program into a Recovery Program as a Reasonable and Prudent Alternative
 - Reclamation in working with the Service and our partners will determine how to best provide non-federal coverage in the new BiOp through negotiations and participation in the Collaborative Program
 - All elements do not have to be in place at the start of the consultation process and can be sequenced to be in place by the final BiOp

In conclusion, Reclamation will continue to work closely with the state agencies, particularly the ISC along with the MRGCD, the Corps and the Service as we strive to get a new BiOp that allows for continuation of existing water uses while protecting the species in an effort to achieve recovery and delisting.