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2009 PROPOSED WATER RIGHTS POLICY

REGARDING APPLICATIONS TO APPROPRIATE WATER AND CHANGE APPLICATIONS WHICH DIVERT WATER FROM THE GREEN RIVER BETWEEN FLAMING GORGE DAM AND THE DUCHESNE RIVER

In 1988, the State of Utah entered into a cooperative agreement with the Department of Interior, the Western Area Power Administration, and the states of Colorado and Wyoming. This agreement put in place the Recovery Implementation Program for Endangered Fish Species in the upper Colorado River Basin (RIP). The objective of the program is to recover the four endangered species of fish (the humpback chub, Colorado pikeminnow, razorback sucker and the bonytail) while at the same time allowing the states to develop their compact entitlement to the waters of the Colorado River and its Tributaries.

On November 25, 1992, the U.S. Fish and Wildlife Service, after consultation with the Bureau of Reclamation, the Utah Division of Wildlife Resources, the Colorado Division of Wildlife and others, issued the final Biological Opinion for the operation of Flaming Gorge Reservoir. The opinion concluded that the continued operation of Flaming Gorge Dam, as in the past, is likely to jeopardize the existence of the endangered fish species. The opinion identified elements of a reasonable and prudent alternative (RPA) that in the opinion of the Service, will avoid the likelihood of jeopardy to the endangered Colorado River fish which included refined operation of Flaming Gorge Dam, further study of the temperature and flow recommendations, and legal protection of flows for endangered fish from Flaming Gorge to Lake Powell.

The Recovery Implementation Program Recovery Action Plan (RIPRAP) was developed in 1993 by the RIP and is updated yearly. The RIPRAP outlines specific recovery actions including re-operating of existing reservoirs to provide in-stream flow for fish and identifies the agency responsible for taking action. Utah has been tasked with providing legal protection for endangered fish flows from Flaming Gorge dam to Lake Powell under the RIPRAP. On November 30, 1994, Utah State Engineer Robert Morgan, after soliciting public input, signed a Policy Amendment to protect flows in the Green River from Flaming Gorge to the Duchesne Confluence, in accordance with the RPA recommendations, for the summer and autumn seasons.

A key RIPRAP element, since the 2004 Plan was developed, is to operate Flaming Gorge to provide year round flows pursuant to the Flaming Gorge biological opinion. Implementation of this RIPRAP priority item is intended to offset water depletions to assist in meeting in-stream flow requirements for endangered fish.



The current Recovery Program in-stream flow recommendations are broken down for the four seasons, over three reaches; from Flaming Gorge to the Yampa, from the Yampa to the White and from the White to the confluence with the Colorado River, and for 5 different antecedent hydrological conditions on the river ranging from wet to dry. Over the full range of hydrologic conditions the recommended Flaming Gorge peak releases range from full power plant capacity of 4,600 cfs, to greater than full bypass of 8,600 cfs as needed for downstream reaches but no upper limits are placed on peak flow releases in any hydrological condition. Peak dam releases should be timed to coincide with peak flows from the Yampa River to produce higher and longer peak flow duration. Downstream reach requirements, from the Yampa to the Colorado, range from 8,300 cfs in dry years to 39,000 cfs in wet years. Relatively low base flows are recommended for the summer through winter seasons with Flaming Gorge releases of 800 cfs in dry years and 2,700 cfs in wet years. Annual mean base flow recommendations for the reaches downstream from the Yampa range from 900 cfs in dry years to 4,700 cfs in wet years. Variations in flow around the annual mean base flow should be consistent with the variability that occurred in pre-dam flows. Full details on these recommendations can be obtained from the Upper Colorado River Endangered Fish Recovery Program, Project FG-53 Final Report entitled "Flow and Temperature Recommendations for Endangered Fish in the Green River Downstream of Flaming Gorge Dam", September 2000.

Under the RIP, the parties agreed that state law would be followed in the acquisition and/or protection of flows required for recovery. The Utah State Engineer has examined alternative methods of flow protection, and has concluded the most appropriate alternative is the adoption of a policy that all new approvals be conditioned upon bypassing the required flows. In reviewing the potential ramifications of protecting flows in the Green River, the State Engineer considered hydrology, existing water rights, interstate compact provisions and other related information. The average annual flow of the Green River as measured at the gaging station near Jensen for the period of 1947-2005 is about 3,0610,000 acre feet per year. Within the affected reach of the Green River from Flaming Gorge Dam to the confluence with the Duchesne River, there are 120 perfected water rights or approved applications to appropriate water on file with the State Engineer. These water rights represent a total flow of 572 cfs and a potential annual diversion of 92,100 acre-feet. These figures, however, do not include any water right claims for the Ute Indian Tribe. If the 1990 Ute Indian Water Compact is ratified, additional tribal water rights will be recognized on the Green River. Under the Upper Colorado River Compact, Utah is allotted twenty-three percent of the waters apportioned to the Upper Basin States (after subtracting the 50,000 acre-feet allotted to Arizona). Current estimates place Utah's share at about 1,369,000 acre-feet annually. This Utah depletion entitlement applies to the eastern half of the state from Lake Powell on the south to Flaming Gorge Reservoir on the North. Utah is currently depleting about 1,007,500 acre-feet of its entitlement and all of the remaining water is covered by approved applications. The current appropriation policy of the State Engineer in the Upper Colorado River Basin is to allow small, groundwater only, applications for 1 family, 1/4 acre of irrigation and up to 10 livestock units.

Changes in Utah State Engineer Appropriation Policy do not affect existing water rights or currently approved applications but could impose limitations on either new applications to appropriate, or changes to existing water right applications. Considering Colorado Compact limitations, the physical availability of water and the opportunity for private land development, it

appears that adopting an appropriation policy to protect the flows released for the endangered fish species from Flaming Gorge to the Duchesne River will not unreasonably affect Utah's ability to utilize its Compact entitlement. To give the state some flexibility in meeting future water needs in this area, however, it appears desirable that a small block of water should be reserved and excluded from this policy.

It is opinion of the State Engineer that the public interest will be best served by adopting a policy to protect flows recommended for recovery of endangered fish species in the Green River from Flaming Gorge Dam (Willow Creek in the Biological Opinion) downstream to the Duchesne River confluence and measured at the USGS gage (09261000) at Jensen Utah. To accomplish this, the State Engineer implements the following policy:

1. Approval of applications to appropriate water or change applications which transfer water rights into the affected reach, will be conditioned upon bypassing those flows required for the endangered fish, as set forth in the Biological Opinion, except as provided for under paragraph 2.
2. To meet future critical water needs in the area, an additional amount of flow for diversion totaling up to twenty-five cfs year-round in the designated reach is set aside and not subject to this policy. Applications approved to utilize this twenty-five cfs will be administered according to their priority date, and will not be required to bypass flows for endangered fish.
3. All water rights established or applications approved prior to the adoption of this policy will not be subject to this policy but remain subject to any conditions imposed at the time the application was approved.
4. The State of Utah, in cooperation with Recover Program participants, will meet each year to review projected release patterns from Flaming Gorge Dam. The State Engineer will distribute the waters of the Green River in accordance with the respective priority dates of the water rights, and pursuant to the criteria set forth in this policy, to protect the flow regimes that are agreed upon at these meetings.
5. Measurements for the evaluation, administration and protection of the flows for the endangered fish species, as stipulated in this document, will be at the Green River near Jensen gage (USGS station number 09261000).

This policy is hereby adopted as of September 21, 2009.

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State Engineer