

Notes from Upper Rio Grande Basin Water Operations Review Interdisciplinary NEPA Team Meeting; October 11, 2001; 1:00 PM; Corps of Engineers Conference Room, Albuquerque

In attendance:

Neal Ackerly, Corps/Dos Rios Consultants,
Inc.

Drew Baird, USBR

Darrell Eidson, Corps

Richard Fike, Corps

Don Gallegos, Corps

Susan Goodan, Corps/SAIC

Rhea Graham, NMISC

Gerhard Krueger, Corps

Bill Liebfried, NMISC/SWCA

Charles Lujan, Pueblo of San Juan

Natalie Maldonado, Corps/R. F. Weston,
Inc.

Clay Mathers, Corps

Claudia Oakes, NMISC/SWCA

Robert Padilla, USBR

Gary Rutherford, Corps

Gail Stockton, Corps

Julie Tsatsaros, NMED

- ❖ After technical team member introductions, Michael Schoessler, Attorney with the Southwest Regional Solicitor's Office, Department of the Interior and counsel to the BIA and the USFWS was introduced. He gave a presentation on the Supreme Court Decision: DOI v. Klamath Water Users Association and its relationship to confidentiality as it relates to project guidance. A summary of his presentation follows.
 - The Klamath Water Users Association requested documents from the BIA and DOI related to tribal communications under the Freedom of Information Act (FOIA). The BIA and DOI refused to turn over some of the requested documents based on Exemption 5, which limits disclosure of inter-agency or intra-agency memoranda or letters that would not be available to a party in litigation with the agency. However, the Court found that Exemption 5 did not apply. As a result, some documents thought to be confidential were required to be disclosed.
 - The fallout from this decision is that many documents submitted by tribes to federal agencies or federal documents shared with tribes may not be subject to Exemption 5 and would be releasable under FOIA. This may include data, strategies, and position papers.
 - One method of obtaining input from tribes and pueblos for the Water Operations Review would be to view information as permitted by the tribe, but not to keep a copy.
 - One ID Team member asked if there could be a legal challenge that would force a tribe to provide the details that went into their input. Michael responded that this would not be likely, but if the notes are in an agency system of records, they can be requested under FOIA.
 - As a result of the Klamath decision, many meetings with tribes that were held after the ruling were not documented with meeting notes. This became a problem as well. Michael noted that, at some meetings between agencies and tribes, the tribal staff have taken notes, reviewed the contents to ensure that they are comfortable with the information, then sent the notes to the agency.

- The challenge is to find ways to obtain information from tribes that they are comfortable in sharing.
- Neal Ackerly suggested that Water Operations Review contacts ask tribal representatives to develop summaries of information that they are willing to provide rather than having agency staff take notes on tribal data. That way, the tribes would be providing what they choose to be made public, and would not supply information that they do not want to be disclosed.
 - Michael responded that it would be good to give the tribes choices for how to supply the information, but to make sure that they know that any information provided may be subject to disclosure.
- According to Rhea Graham, the State of New Mexico has statutes to protect personnel, health, and some mining information from being disclosed. She asked if all information is required to be shared if it was developed under a federally funded contract. Michael did not know the answer to this question.
- Clay Mathers suggested that it may be possible to develop a process for tribes to do analysis on their data using mutually agreed-upon methodologies and report on the results only. Michael suggested that this may work, but each tribe may insist on using its own decision making process. Tribes would need to be involved in developing the options and methodologies, not just in selecting their preferred options. Charles Lujan was talking about this as well.
- ❖ Drew Baird gave a presentation on river channel rectification and maintenance, related to flows associated with reservoir operations. Drew's notes will be posted on Team Link.
 - The Flood Control Act authorized the USBR and the Corps to construct large flood control structures.
 - In the last century, river beds filled with sediment and farmers constructed levees to protect their fields. These levees contributed to bed aggradation to the point where the river bed was higher than the valley floor in some areas. To reverse this trend, water managing agencies increased flow velocities and installed riverside drains to intercept groundwater flowing from the river.
 - Currently, critical problems along the Rio Grande include eroding streambanks that threaten levee stability and reduced channel capacity at San Marcial. The Corps operates Cochiti Dam flow releases to meet this reduced channel capacity.
 - If flows are increased under the current physical system, there is a high probability of levee failure under current low channel capacity conditions. Recent bank erosion problem areas include:
 - Santa Clara Pueblo at the mouth of the Santa Cruz River;
 - Santo Domingo Pueblo streambanks are encroaching on the levees;
 - Algodones at San Felipe Pueblo;
 - Santa Ana Pueblo levee toe has eroded and is currently stabilized with riprap.
 - Many levee failures occur from bank erosion but are not caused by peak flows.
 - Higher peak flows are vital for minnow habitat, but the channel capacity must be in place to carry higher flows without damage, especially at the San Marcial railroad bridge.

- ➔ ❖ **Rhea announced that there will be an all-day workshop for all technical team members on November 6 to develop a preliminary draft of the EIS alternatives. The workshop is titled “Building an Operation Alternative”.**
- ❖ Rhea’s telephone number has been changed to (505) 841-9494, extension 128, and her fax number remains (505) 841-9484.
- ➔ ❖ **The next meeting of the ID NEPA Team will be held after the workshop at the regularly scheduled date of November 8 at 1:00 p.m. in the Corps conference room.**