

CHAPTER 5

CONSULTATION AND COORDINATION

INTRODUCTION

Reclamation's consultation and coordination effort at Navajo includes formal and informal processes from initial project planning over fifty years ago to today. Resource and recreation management within the reservoir area has evolved over time and will continue to evolve. Reclamation has used and will continue to use information from its own planning efforts plus those of other associated or adjacent management agencies. The issues, concerns, management objectives and management actions in the proposed action were derived from this ongoing process.

The planning process for the Navajo Reservoir RMP began in 1995 when Reclamation contracted with EDAW, Inc. to develop a proposed RMP and its associated NEPA document. EDAW's involvement with the RMP ended with preparation of a Preliminary Draft EA (PDEA) in 1999. Following review of the PDEA by Reclamation and select agencies, Reclamation discontinued the planning process for an indefinite period. In 2003, Reclamation re-initiated the RMP process, planning to utilize as much of EDAW's previous work as possible.

SCOPING

Scoping for the Navajo Reservoir Area RMP and the associated NEPA document has come from various sources over several years. Internal scoping by Reclamation and its managing partners is an ongoing process. EDAW, Inc. conducted initial public scoping in 1995. In 2003, Reclamation re-initiated the Navajo RMP planning process and requested additional scoping. Reclamation has also carried forward applicable issues and concerns identified in prior reservoir and adjacent planning efforts. The issues and concerns identified for this planning effort are listed in Appendix H.

IN-HOUSE COORDINATION

In-house coordination for the RMP began in the fall of 1995 when EDAW planners and Reclamation staff met in Durango and visited the reservoir. Initial issues, concerns, and potential management direction were identified and discussed. As planning progressed, the issues, concerns and potential management direction were revised through internal and external input. (USBR 1999)

Upon re-initiation of the process in 2003, Reclamation staff reviewed EDAW's documents and data, plus other documents that may affect resource management at Navajo. Reclamation developed a revised list of issues, concerns, and potential management direction, as well as a list of sideboards to better define the scope of the planning process.

CONSULTATION/COORDINATION WITH OTHER AGENCIES

Both EDAW and Reclamation have consulted with several Federal, State and local agencies in developing this EA and RMP. Those agencies include:

- US Fish and Wildlife Service, Grand Junction, CO and Albuquerque, NM
- Southern Ute Indian Tribe, Department of Natural Resources, Ignacio, CO
- Bureau of Land Management, Farmington Field Office, Farmington, NM
- Colorado Division of Parks and Outdoor Recreation, Arboles and Clifton, CO
- Colorado Division of Wildlife, Durango, CO
- Colorado State Historic Preservation Office, Denver, CO
- New Mexico State Parks Division, Navajo Dam and Santa Fe, NM
- New Mexico Department of Game and Fish, Farmington, NM
- New Mexico State Historic Preservation Office, Santa Fe, NM

These agencies have provided scoping comments, issues and concerns, resource and use data, and resource management recommendations.

EDAW consulted with these agencies from 1995 to 1999 through a combination of personal meetings, telephone conversations, correspondence, public meetings and ad hoc workgroup meetings. Several of the agencies, like the State Parks, the BLM, the New Mexico Department of Game and Fish, and the U.S. Fish and Wildlife Service, were active in the ad hoc work group. (USBR 1999) Reclamation continues to consult and coordinate with these agencies.

CONSULTATION/COORDINATION WITH INDIAN TRIBES AND NATIONS

EDAW included the Southern Ute Indian Tribe, the Jicarilla Apache Nation, and the Navajo Nation in the initial planning effort. The Southern Utes were active in the ad hoc work group (USBR 1999).

Reclamation included the following tribes in the re-initiation of the RMP process: Southern Ute Indian Tribe, the Navajo Nation, the Jicarilla Apache Nation, and the Ute Mountain Ute Tribe. Responses were received from the Southern Utes and the Jicarilla Apaches. Reclamation representatives subsequently met with SUIT Department of Natural Resources representatives to further discuss issues and concerns, and possible coordination of resource management at and adjacent to the reservoir. Reclamation will continue to consult with these and other tribes regarding cultural resources and ITAs.

Fifteen tribes with ancestral and contemporary ties to the area were consulted regarding the Navajo Reservoir Operations EIS. Eleven tribes, the Hopi, Jicarilla Apache, Navajo, Jemez, Nambe, Pojoaque, San Ildefonso, Santa Clara, Taos, Laguna, and Southern Ute, expressed concerns and requested that they be included in further consultations. The remaining 4 tribes, Zuni, Tesuque, San Juan, and Picuris, either stated they have no concerns or did not respond despite a good faith effort to consult. (USBR, 2003b) All 15 tribes will be provided with a copy of this DEA.

Under NAGPRA, EO 13007, and NHPA, Reclamation consults with interested and concerned American Indian Tribes/Nations, as necessary, concerning cultural items, TCPs and sacred sites. Tribal representatives include elected officials, recognized traditional and religious leaders, Tribal historians, and cultural committees. These consultations are ongoing.

PUBLIC INVOLVEMENT

Reclamation and EDAW initiated public involvement for the Navajo Reservoir RMP in September 1995 through public open houses. These meetings were advertised in local newspapers and newsletters sent to over 300 people. Three late afternoon and evening open houses were held in Durango (CO), Farmington (NM) and Arboles (CO) during September 1995. These meetings were used to present resource information and identify issues to be addressed in the planning process. (USBR 1999)

EDAW also used an ad hoc workgroup to provide feedback. This workgroup consisted of approximately 25 members, including representatives of agencies, general producers, local residents, concessionaires, and the general public. The group met six times and reviewed resource maps, identified issues and commented on and participated in the identification of alternatives. (USBR 1999)

Reclamation re-initiated the public involvement process for the RMP in March 2003 through public notices in local and regional newspapers and a mailing to about 250 entities. The mailings included an initial listing of sideboards, issues and concerns, and scope. People were asked to identify additional issues and concerns, and possible alternatives. Reclamation received 8 responses from individuals, agencies, and Indian tribes as a result of this mailing.

On September 12, 2005, Reclamation made the Proposed Resource Management Plan/Draft Environmental Assessment available for a 45-day public review and comment, period with written comments due by October 24, 2005. We received several requests to extend the review period for at least 90 days. On October 27, 2005, Reclamation extended the review and comment period for an additional 45 days, with written comments due by December 9, 2005.

ADDITIONAL INFORMATION SOURCES

As a part of this planning and environmental assessment effort, Reclamation has used input and information from several recent planning processes for or close to the reservoir area. These other planning processes include:

- Navajo Reservoir Operations FEIS; 1999-2006 (USBR)
- Animas/La Plata Reclamation Project FSEIS; July 2000 (USBR)
- Navajo State Park (CO) Recreation Rehabilitation Program; 1994-2003 (Reclamation/CDPOR)
- Navajo State Park (CO) General Management Plan; 1987 (CDPOR)
- Navajo Lake State Park (NM) General Management Plan; 2003 (NMSPD)
- Southern Ute Natural Resource Management Plan; 2000; (SUIT)
- Farmington Field Office RMP/EIS; 2001-2003 (BLM)

These planning efforts included coordination and consultation with individuals, organizations and other agencies and were useful in developing our proposed RMP. While some of these planning efforts do not directly address the reservoir area, the issues and concerns identified helped planners understand the opinions and concerns of area residents, other agencies, resource users, and reservoir area visitors. Also, management actions developed or proposed by another agency may be suitable for implementation within the reservoir area.

LIST OF PREPARERS

Table 5-1 lists the Reclamation staff that was instrumental in the preparation of this document.

Table 5-1: List of Preparers, USBR			
Name	Title	Experience/Expertise	Contribution
Mike Andrews	Archaeologist	<ul style="list-style-type: none"> ▪ MA- Anthropology/Archaeology ▪ 27 years professional archaeologist w/ USBR, BIA, and Northern Arizona University 	<ul style="list-style-type: none"> ▪ Cultural Resources ▪ Paleontology ▪ ITAs
Mark Chiarito	Resource Management Specialist (Recreation)	<ul style="list-style-type: none"> ▪ Bachelor of Landscape Architecture ▪ 24 years recreation and land management w/ USBR ▪ 2 years planning w/ City of Colton, CA ▪ 1 year landscape architect in private practice 	<ul style="list-style-type: none"> ▪ Recreation and Land Management ▪ Team Leader, 1995
Brad Dodd	Chief, Southern Facility Maintenance Group (Supervisory Geologist)	<ul style="list-style-type: none"> ▪ BS Geology; some graduate work ▪ 5 years- Chief, SFMG w/ USBR ▪ 20 years- geology, SOD, hydrology, environmental studies w/ USBR ▪ Registered Professional Geologist-WY 	<ul style="list-style-type: none"> ▪ Project Operations and Maintenance
Warren Hurley	Archaeologist	<ul style="list-style-type: none"> ▪ BA Anthropology ▪ 14 years with USBR ▪ 11 years combined with USFS, NPS, Academia, and private contracting 	<ul style="list-style-type: none"> ▪ Archaeological, Historical, and Ethnographic resources ▪ Tribal and Government consultation.
Kirk Lashmett	Fish and Wildlife Biologist	<ul style="list-style-type: none"> ▪ BS Biological Sciences/Fisheries ▪ 30 years fish and wildlife resources 	<ul style="list-style-type: none"> ▪ Fish/Wildlife Resources ▪ T&E Species ▪ NEPA Coordination
Judy Martin	Realty Specialist	<ul style="list-style-type: none"> ▪ Assoc. Administrative Management and Realty ▪ 24 + years Federal service in administration, public relations, planning, realty, land use, and rights-of-way w/ FAA, USFS, and USBR. 	<ul style="list-style-type: none"> ▪ Realty ▪ Land Use ▪ Rights-of-Way
Steve McCall	Environmental Specialist	<ul style="list-style-type: none"> ▪ MS Fisheries/Wildlife Biology ▪ 30+ years environmental management and compliance w/ USBR 	<ul style="list-style-type: none"> ▪ NEPA Coordination
Ruth Rydiger	Information Technology Specialist	<ul style="list-style-type: none"> ▪ BA- Math ▪ 20+ years w/ USBR; systems administration, data management, GIS 	<ul style="list-style-type: none"> ▪ GIS ▪ Maps
Alan Schroeder	Natural Resource Specialist	<ul style="list-style-type: none"> ▪ BS Forest Science ▪ 30+ years Federal land and resource management and planning w/ USFS, BLM, USFWS, and USBR. 	<ul style="list-style-type: none"> ▪ Team Leader ▪ All resources ▪ NEPA Coordination
Clarice Seale	Resource Technician	<ul style="list-style-type: none"> ▪ 25+ years federal service w/ NRCS and USBR 	<ul style="list-style-type: none"> ▪ Land Status and Acquisition ▪ Existing Rights and Reservations
Terry Stroh	General Biologist	<ul style="list-style-type: none"> ▪ BS Wildlife and Fisheries Science ▪ 17 years Tribal, State, and Federal resource management w/ SUI, Pueblo Zuni, and USBR 	<ul style="list-style-type: none"> ▪ NEPA Coordination
Bill Walsh	Supervisory Resource Management Specialist	<ul style="list-style-type: none"> ▪ BS Geology ▪ 5 years land management w/ USBR ▪ 22 years geologist w/ USBR 	<ul style="list-style-type: none"> ▪ Minerals ▪ Geology ▪ Soils

RESPONSES TO COMMENTS RECEIVED ON THE PROPOSED RMP AND DRAFT EA

Reclamation received over 150 comment letters on the PRMP/DEA. We would like to thank everyone that took the time to review the document and provide comments. All of the commenters that provided a return address have been added to the Navajo RMP mailing list.

The majority of the comments received were in regard to oil/gas development on the reservoir area and the effects of Reclamation's proposed action on such development. About 120 of the comment letters were a form letter from mineral rights holders describing general impacts to mineral rights and development from the proposed Navajo Reservoir Area RMP.

We have summarized the comments and provided responses in the following sections.

1. Reclamation Management Authority

Several commenters suggested that Reclamation has little or no authority for resource management on the reservoir area and that an RMP for the Reservoir Area is redundant and unnecessary, in part, because the Farmington Field Office, BLM, had just completed an RMP revision which covered the Navajo Reservoir Area.

Response: First, pursuant to Reclamation law, policy, and national interagency agreements, Reclamation has the overall administrative jurisdiction on its acquired and withdrawn lands where there is a constructed project, as is the case for the Navajo Reservoir Area. Reclamation is responsible for ensuring: 1) that an RMP is prepared and implemented for lands under its jurisdiction; 2) the protection of its project purposes and facilities; and 3) management of Reclamation lands for a balance of resource development, public recreation, and protection of natural and cultural resources and environmental values. Specific authority and guidance for Reclamation's development of RMPs is found in the Reclamation Recreation Management Act of 1992 (PL 102-575), Title 28, Article 2805(c) (1).

Second, BLM's recent Farmington RMP was not intended to fully cover all resources or the entire reservoir area. It only covers public lands and federal minerals within the Farmington Field Office's jurisdiction in New Mexico. It did not address the additional policies, guidelines, issues, and rights which affect Reclamation's management of the reservoir area. BLM's jurisdiction within the reservoir area is defined by the 1983 BOR/BLM IA, and local supplemental agreements regarding mineral leasing and development and livestock grazing. In general, the two agencies are to coordinate resource management and planning, however, BLM's management of Reclamation's lands is at Reclamation's request, must be consistent with Reclamation project purposes, and is subject to conditions and stipulations deemed necessary by Reclamation to protect the interests of the United States. Each agency may adopt portions of the other's RMP or land use plan. Where agency policies differ, the policy of the agency having primary jurisdiction over the lands will prevail, in this case, Reclamation. Finally, in its recent planning effort, BLM specifically refers to the Navajo Reservoir RMP being prepared by Reclamation and refers to Reclamation as a surface managing agency with surface management to be determined by Reclamation's land use planning documents.

Reclamation agrees that some issues and resource management within and adjacent to the reservoir area may be similar and could be addressed in a cooperative and coordinated manner and that is its intent. However, the Navajo Reservoir Area lies within two states, four counties and the Southern Ute Indian Reservation, all of which have additional issues, policies, and guidelines that may affect resource management both within and outside of the reservoir area.

Reclamation has revised the proposed RMP to provide for resource management on the reservoir area to be as seamless as possible across jurisdictional lines, provided that Reclamation's interests and needs are protected. To this end, Reclamation will work closely with its partners, adjoining land and resource management agencies, regulatory agencies, and stakeholders to coordinate resource management across jurisdictional lines.

2. NEPA/CEQ Compliance

Numerous comments were received to the effect that Reclamation did not comply with NEPA requirements and CEQ regulations (40 CFR 1500-1508). Many of these comments are general in nature, and include other requirements besides NEPA and CEQ. However, various reasons for the perceived NEPA/CEQ noncompliance are cited. These reasons include such things as: poorly written "purpose and need for action;" insufficient number of alternatives; lack of a true "No Action Alternative"; no "Full Development Alternative"; did not utilize an interdisciplinary team; failure to publish a Notice of Intent in the Federal Register; insufficient public notice, participation and review; and insufficient analysis of the effects of the alternatives, particularly with regard to socio-economics and oil/gas development.

Response: Reclamation is responsible for ensuring that the environmental assessment meets NEPA and CEQ requirements. Reclamation concurs, in part, with some of the comments.

Reclamation has revised the document to clarify and better define the purpose and need and the alternatives considered and evaluated. Reclamation has increased the detail of its assessment of the effects of the alternatives, particularly as they relate to oil/gas development and valid existing rights. However, Reclamation will not create additional alternatives such as "Full Development" or "Full Protection" because we do not consider them "reasonable" in light of the purpose and need for action, project purposes, national policy or the relative value of the various resources involved.

3. FLPMA Compliance

Many comments were received to the effect that Reclamation did not comply with FLPMA requirements. These comments are often general and include other requirements besides FLPMA in the comment. However, various reasons for the perceived FLPMA compliance failure are cited. Those reasons include: not considering multiple use; not considering the relative value or scarcity of resources; not recognizing and honoring vested and valid existing rights; etc., particularly with regard to oil/gas development.

Response: FLPMA, for the most part, does not apply to federal lands within the Navajo Reservoir Area; it applies to public lands under the jurisdiction of BLM. The reservoir area consists of federal lands under Reclamation's jurisdiction therefore, Reclamation law and policy apply. However, Reclamation recognizes that many of the elements required by FLPMA may be appropriate for consideration and considered them in its planning effort, although perhaps not in the manner or degree expected by the commenters. Reclamation's administration of its withdrawn lands is guided by Section 204 of FLPMA and supporting regulations at 43 CFR 2300.

4. BLM Requirements

Several comments were received to the effect that Reclamation did not comply with BLM requirements and regulations for resource management and/or planning, particularly as they relate to oil/gas leasing and development. Many of these comments are general in nature, but various reasons for the perceived compliance failure were cited. Some of the reasons cited include: an RMP requires an EIS (43 CFR 1601.0-6); failure to publish a Notice of Intent in the Federal Register (43 CFR 1610.2 (c)); failure to consider multiple use; failure to use least restrictive lease stipulations; failure to adequately address and protect valid existing rights; failure to provide opportunities for waivers, exceptions, and modification of lease stipulations; failure to use BLM's format for oil/gas lease stipulations; and insufficient public participation, particularly notices to the public.

Response: Again, for the most part and for reasons previously stated, BLM requirements and regulations generally do not apply to Reclamation's planning effort for the reservoir area. To the extent, BLM has administrative jurisdiction for resource management and planning on Reclamation lands then BLM requirements and regulations would apply. However, BLM's role and responsibility within the reservoir area is defined by the 1983 BOR/BLM IA and supplemental agreements for management of leasable minerals (1967 MOA) and livestock grazing (1990 MOA) on reservoir area lands within New Mexico.

BLM's 2003 Farmington RMP includes decisions related to federal oil/gas development and livestock grazing within the New Mexico portion of the reservoir area. That planning effort and those decisions were prepared under BLM requirements.

Under Reclamation guidance, an EIS is not automatically required for an RMP (516 DM 14).

Reclamation may adopt BLM guidance, when to do so will coordinate and facilitate resource management across jurisdictional lines while providing the appropriate level of protection deemed necessary by Reclamation to protect its projects, project purposes, and associated resources, including land, water, and facilities.

Reclamation's and BLM's basic roles and responsibilities on the reservoir area are set forth in the 1983 BOR/BLM IA. In general, the IA provides for coordination between the two agencies with regard to land use planning, land resource management, land conveyance and exchange, and cooperative services. Guidelines throughout the IA specify that BLM's management of Reclamation lands where there is a constructed project, are at the request of Reclamation, are subject to the development and implementation of supplemental agreements consistent with 1983 IA, and subject to conditions deemed necessary by Reclamation to protect the interests of the United States. It also establishes guidelines and requirement for more specific areas of responsibility for each agency.

5. Energy Shortage and Policy

Many comments were received to the effect that Reclamation did not address the Nation's energy shortage and did not comply with national energy policies, particularly EOs 13211 and 13212; and the National Energy Policy Act of August 2005. While many of these comments are general in nature, various reasons for the perceived compliance failure were cited. These reasons include:

failure to list these documents in Appendix B; no Statement of Energy Effects per EO 13211, and no expediting of energy projects per EO 13212.

Response: Reclamation was aware of a general national policy to encourage and promote domestic energy on federal lands and considered that during the planning effort. However, it was not aware of the specifics contained in the cited documents. The Nation's energy policy is very broad, but includes, among other things: increased and expedited production and transmission of domestic energy resources in a safe and environmentally sound manner; conservation of energy; development of alternative energy sources; and construction, maintenance, and repair of energy transmission facilities. The U.S. Department of the Interior is taking Department level action to implement the National Energy Policy Act of 2005; any requirements developed through that action will be applied to Reclamation's land and resource management as directed by the Secretary of the Interior. EO 13211 requires a Statement of Energy Effects for rule-making and regulatory promulgation normally requiring a FR notice. EO 13212 requires federal agencies, to the extent permitted by law and regulation and where appropriate, to expedite their review of permits for energy-related projects or take other actions as necessary to accelerate the completion of such projects while maintaining safety, public health, and environmental protections.

It is Reclamation's intent to allow continued oil/gas development within the Reservoir area to an extent and manner similar to that allowed on adjoining lands, but also, to ensure protection of Reclamation project purposes and facilities. Reclamation proposes to do this by applying the same or similar requirements on all of its lands as are required on adjacent lands to the fullest extent possible, consistent with valid existing rights. Reclamation recognizes that valid existing rights may limit its ability to add additional resource protection provisions and that it must depend on voluntary agreements to address certain resource conflicts. However, Reclamation also recognizes that some of the oil/gas rights within the reservoir area, including associated development, were subordinated to the construction, operation, and maintenance of the Navajo Unit at the time Reclamation acquired lands for the Navajo Unit. Reclamation further intends to coordinate oil/gas development and mitigation within the reservoir area with regulatory agencies and the operators.

A statement of energy effects is not required for this action. The statement of energy effects (EO 13211) is required for rule-making and regulatory promulgation normally requiring a Federal Register notice. The Navajo Reservoir Area RMP is not a rule-making or regulatory promulgation normally requiring a Federal Register Notice, therefore a statement of energy effects is not required. Reclamation will not add EO 13211 to Appendix B. Reclamation has revised its analysis effects to better cover the elements identified in EO 13211.

Reclamation has revised the document to include more specific energy-related information and analysis. Specifically, the revision includes such things as:

- Recognizing the nation's energy shortage and the role the reservoir area may have in helping resolve it.
- Working with BLM, BIA, COGCC, NMOCD, the oil/gas industry, local regulatory agencies, and others to develop consistently worded COAs and stipulations for use throughout the San Juan Basin.
- Working with COGCC, NMOCD, BLM, BIA, the oil/gas industry, and others to streamline permitting processes while providing necessary protection for Reclamation lands, resources, and facilities.
- Modifying Appendix D to clarify that the listed requirements are generic requirements that are typical of those being used by surface management agencies throughout New Mexico and Colorado to mitigate impacts due to development and surface disturbance; that these

requirements are cumulative and supplemental are not necessarily in addition to those required by other regulatory agencies; and that the requirements are applied to a proposed action following site- and action-specific review and analysis pursuant to NEPA.

- Adding EO 3212 to Appendix B.
- Expanding its analysis of effects to better cover the elements identified in EO 13211.

6. Cooperative Management of Reservoir Area

Several comments were received stating that Reclamation ignored, violated, and did not follow the historical cooperative management of the Navajo Reservoir Area, particularly with regard to: the 1967 Memorandum of Agreement of the Bureau of Reclamation, the New Mexico State Park and Recreation Commission, the Bureau of Land Management, and the New Mexico Department of Game and Fish Concerning the Administration of Oil, Gas, and Mineral Leasing Within the Navajo Reservoir Area (1967 MOA); the 1983 Interagency Agreement between the Bureau of Reclamation and the Bureau of Land Management (1983 IA); a 1991 Cooperative Agreement for the Protection of Environmental Resources and Energy Development between BLM, the Carson National Forest, the NM Department of Game and Fish, the NM Oil Conservation Division, and the NM State Land Office (1991 CA); and BLM's 2003 Farmington RMP/ROD. Most of these comments were made in an overall context related to oil/gas development and the effects to such development as a result of the proposed Navajo Reservoir RMP.

Response: By law, Reclamation has full management jurisdiction of its lands and associated resources and uses within the Navajo Reservoir and the authority to effect management through agreements with other entities. The cited agreements are only some of the agreements that affect management of the reservoir area and reflect the intent of the signatories for cooperative and coordinated management of the area. However, these particular agreements have elements that either conflict with more recent decisions and agreements or create confusion because of differences in wording. The PRMP/DEA has been revised to better explain the relationship between these documents and recommend action to resolve their conflicts.

The 1983 IA is the current nation-wide agreement between Reclamation and BLM for management of Reclamation lands. Since the Navajo Reservoir Area consists of Reclamation acquired and withdrawn lands on which there is a constructed project, Reclamation has full management jurisdiction on the reservoir area, pursuant to Sec. 5A. Reclamation may enter into supplemental agreements with BLM for management of its lands and resources; however, such management is generally conditioned on application of stipulations or conditions deemed necessary by Reclamation to protect the interests of the United States. Sec. 6 H is specific to mineral and geothermal leases, and states, in part, that BLM will issue such leases on Reclamation lands, subject to Reclamation's determination that leasing is permissible and with any stipulations required by Reclamation to protect the interest of the United States. That section further states that, "BLM will not issue permits, leases, or licenses on acquired or withdrawn lands under Reclamation's management without Reclamation's consent and concurrence on all conditions and stipulations."

The 1967 MOA is the original agreement between Reclamation, BLM, New Mexico State Parks Department and New Mexico Game and Fish Department for management of leasable minerals within the New Mexico portion of the reservoir area and appears to still be in effect. However, portions of this agreement are inconsistent with the 1983 IA and, therefore, pursuant to Section 1 of that IA, the 1967 MOA needs to be cancelled or revised. Reclamation has revised the PRMP/DEA to reflect the status of the 1967 MOA, provide for interim coordination consistent

with the 1983 IA, and recommend action to ensure that Reclamation and BLM management on the reservoir area is in compliance with the 1983 IA.

The 1991 CA establishes a voluntary commitment by its signatories recognizing that oil/gas development within the San Juan Basin needs to be compatible with land and wildlife managing agencies' mandates. This agreement identifies conditions of approval to be applied to oil/gas development within the San Juan Basin by those agencies. These requirements were identified as being from approved land use plans and already in use for several years; however, the applicable land use plans were not identified. Some of the listed conditions of approval relate to protection of Reclamation facilities and resources and are applied within the reservoir area. However, Reclamation, though it is a surface management agency in the San Juan Basin, is not a signatory to the 1991 CA. Also, this agreement, though providing for some protection of Reclamation resources, lands and facilities, is inconsistent with the 1967 MOA, and the 1983 IA, and the 2003 Farmington RMP. Some of the Farmington RMP decisions supersede or amend some of the 1991 CA requirements. If this agreement is still being used it needs to be revised to reflect changes and all surface management agency requirements.

7. Lack of Detail/Specific Scientific Information

Several commenters stated that Reclamation did not provide sufficient detail or specific scientific information in the document. Not enough detail is provided:

- To allow adequate determination of effects/impacts.
- As to BOR processes/procedures to be used
- Show that current/identified conditions actually exist
- Show that current regulations, requirements, BMPs, mitigation, etc. are not adequate to protect resources/facilities within the reservoir area (water quality, air quality, cultural resources, T/E, etc.)

Response: Reclamation has revised the document to provide additional detail in the areas identified.

8. Vested and Valid Existing Rights

Many comments were received to the effect that the proposed RMP did not recognize, respect, or honor vested and valid existing rights, particularly oil/gas rights. Various reasons for this perception were cited. These reasons include: no stated exceptions for vested and valid existing rights; wording regarding BOR's ability to modify valid existing rights is not carried forward from the 1999 DEA; not all vested/valid existing rights within the reservoir area were listed; and the NSOs and other oil/gas restrictions constitute interference with and a taking of vested and valid existing property rights without just compensation.

Response: Reclamation recognizes the presence of many vested and valid existing rights within the reservoir area. Such rights include mineral rights and the associated development rights, oil/gas leases, grazing leases, livestock watering ingress/egress rights, rights-of-way, licenses, permits, etc. To the extent known and readily available, such rights are listed in Appendix C with the caveat that the list is known to be incomplete and that the list will be expanded as additional information becomes available.

Reclamation recognizes that some valid existing rights may limit its ability to unilaterally modify them. However, Reclamation also recognizes that some of the oil/gas rights within the reservoir area, including associated development, were subordinated to the United States at the time

Reclamation acquired lands for the Navajo Unit. On those lands and with regard to those subordinated rights, Reclamation may prescribe the manner of development within the reservoir area.

The extent and details of these many vested and valid existing rights are highly varied and will require extensive research to fully ascertain the rights and their relationship to management of the Navajo Unit. For example, when Reclamation acquired some of the lands for the reservoir area, the vendor (the then current land owner) reserved oil/gas rights and the associated right of development subject to: 1) non-interference with the construction, operation, and maintenance of any works of the Navajo Unit, CRSP, as determined by the Secretary of the Interior (SOI) or his duly authorized representative; and 2) methods of extraction or removal shall, a) be approved by the SOI, or duly authorized representative, b) prevent pollution, and c) in no way adversely affect the water supply of the Navajo Unit. Therefore, any lease of those particular oil/gas rights after Reclamation's acquisition are subject to such development restrictions. On the other hand, such conditions would not apply to a lease of oil/gas rights not owned by the vendor at the time of Reclamation's acquisition. Unfortunately, there usually was no description of the oil/gas rights held by the vendor. There are similar subordinations of other valid existing rights on Reclamation acquired lands. A property rights abstract or assessment for Reclamation's lands would be necessary to fully identify the valid existing rights affecting resource management and use within the Navajo Reservoir Area.

Reclamation has revised the document to:

- Clarify that the Appendix C list is incomplete and subject to additions and correction as information is obtained.
- State that to list every vested/valid existing right (i.e., undivided oil/gas interests, etc.) would be unreasonably burdensome; therefore BOR will focus on major interests (e.g.- split estates federal surface/other subsurface, any subordination, rights reserved in acquisition documents, licenses, etc.)
- Better identify Reclamation's limitations regarding management of vested and valid existing rights.
- Clarify Reclamation's intent to work w/ holders of VERs to ensure that such use is in accordance with the VER and any subordination or conditions.
- Add as an action item or commitment, that Reclamation will work with holders of VERs to develop surface use agreements that protect the interests of both parties.

9. 500-foot NSO Around the Reservoir

Many comments were received with regard to the NSO within 500-feet horizontally of the maximum highwater line of the reservoir and its effect on natural gas development and valid existing rights. Most of these comments were from mineral rights holders and natural gas operators. Comments regarding this requirement included such things as: lacks scientific justification; prevents recovery of otherwise recoverable energy resources; constitutes a taking of vested and valid existing rights without just compensation; ignores topography within the 500 feet; is excessive compared to stipulation #19 from the 1991 cooperative agreement between USFS, BLM, and NMOCD; and changes the decision from the Farmington RMP without adequate public review.

Response: It is Reclamation's intent to be consistent in the requirements applied to oil/gas development within the reservoir area. We proposed to apply those requirements to all oil/gas development to the fullest extent possible subject to valid existing rights. An NSO within 500 feet of the reservoir high water line has been part of the oil/gas development policy for Reclamation's

Upper Colorado Region since at least February 1989, and, perhaps, earlier. The rationale for that requirement is to minimize the possibility of pollution and interference with operation and maintenance of the reservoir. However, the actual wording has varied over time and by the office administering Reclamation lands.

The 500-foot NSO from maximum high water line is part of Alternative D in the Farmington RMP/EIS. BLM evaluated Alternative D during that planning process, and approved Alternative D as its RMP. Since the Farmington RMP applies to federal oil/gas leasing and development within the New Mexico portion of the Reservoir Area this requirement constitutes a part of the current management and therefore part of Reclamation's No Action Alternative. It is also included in the Proposed Action Alternative for the Navajo Reservoir RMP.

Reclamation recognizes that the 500-foot NSO may reduce the amount of natural gas recovered from the reservoir area due to current technical and economic limitations on directional drilling. However, the requirement would not apply to valid existing rights that were not subordinated to Reclamation's construction, operation, and maintenance of the Navajo Unit. Further, there is no guarantee that those reserves would be produced in the next 10 to 20 years without the restriction. Much of the area identified for the NSO is also steep and may have topographic constraints to development.

Reclamation has revised the document to better identify the rationale for the NSO, its relationship to valid existing rights, and its effects.

10. Farmington RMP/ROD

Several comments were received regarding the Farmington BLM RMP/ROD and its relationship to Reclamation's proposed RMP for the Navajo Reservoir Area. Several commenters questioned the need for a separate RMP for the reservoir area, particularly with regard to oil/gas development. Some of these commenters recommended adoption, without change, of the oil/gas operation portion of the 2005 Farmington RMP and ROD. They felt that BLM had fully and adequately addressed oil/gas exploration and development within the Navajo Reservoir Area and that requirements in the Navajo Reservoir Area RMP were inconsistent with the BLM RMP.

Response: It is Reclamation's intent to adopt most of the oil/gas related decisions from the Farmington RMP/ROD and tier off the EIS in its EA. In our "No Action Alternative" we included the BLM's wording related to oil/gas development from Alternative D of the EIS in accordance with their ROD. We further intended to apply those, or similar requirements, to all oil/gas development within the reservoir area to the fullest extent possible, consistent with valid existing rights. Apparently, we did not make that intent clear. The document has been revised to clarify Reclamation's intent.

BLM's Farmington RMP, as it relates to the reservoir area, covers only BLM's jurisdiction: federal mineral leasing and development, and livestock grazing within New Mexico. It did not cover any of the reservoir area in Colorado. It also did not cover the issue of split estate with federal surface and private, state, or SUIU mineral rights, with or without subordination of such rights.

The commenters may have misunderstood BLM's ROD for the Farmington RMP regarding oil/gas development and associated mitigation requirements on Reclamation lands. In the original ROD, at two places (pgs. 1 and 2), BLM stated that its approved plan consists of Alternative D in its entirety, plus that portion of Alternative B regarding oil/gas leasing in the Negro Canyon

Specially Designated Area. That decision included the use, as Conditions of Approval, of the site specific mitigation identified in Appendix G of the PRMP/FEIS, plus additional measures, not listed in Appendix G, that may be developed during permitting to address site-specific resource concerns. All conditions of approval will be consistent with valid existing rights. However, in the RMP, BLM used mitigation and wording from Alternative B, not Alternative D, for mitigation related to Reclamation lands (pg. 2-7&8- drilling restriction within 1,000 feet of Navajo Dam, and pg. 2-22- BOR review of proposed well location within 500 feet of Navajo Reservoir normal highwater line). Reclamation pointed out the discrepancy and BLM subsequently printed and distributed an errata sheet, which corrected that error. Also, while preparing this response, Reclamation found that the above cited Alternative B mitigation is also listed in Appendix G; we will request that BLM correct its Appendix G to conform to its RMP ROD.

11. Appendix D- Conditions of Approval

Several commenters had problems with the multiple pages of conditions and restrictions listed in Appendix D, particularly as they related to oil/gas development. Most of the problems cited were general in nature, but some commenters cited specific instances to support their general comment. Some of the problems cited included that they were: poorly written; often in conflict with themselves and existing regulatory requirements; redundant and unnecessary; without scientific justification or explanation; in addition to existing regulatory requirements; and, arbitrary and capricious. Many of the commenters felt that the energy industry, particularly oil/gas, has sufficient regulations that they comply with to protect other resources; no new requirements are necessary.

Response: It is not Reclamation's intent to add another layer of requirements to oil/gas development in the reservoir area. Rather, it is to coordinate with BLM and other adjacent agencies and apply the same or similar mitigation measures to all development and surface disturbing activities within the reservoir area, subject to valid existing rights. However, because of the location of the reservoir area (within two states, four counties and an Indian Reservation) and the presence of multiple agencies having jurisdiction for various resources within the reservoir area, there is a high potential for redundant or conflicting requirements. By the way, many of the conditions and restrictions listed in Reclamation's Appendix D, came directly from Appendix G of the recent Farmington RMP Amendment EIS.

Reclamation has revised the document to clarify its intent, particularly with regard to the stipulations and conditions of approval listed in Appendix D and throughout the document.

12. Waivers, Modifications, and Exceptions

The BLM and several oil/gas operators recommended that Reclamation provide an opportunity for waivers, exceptions, and modifications of the proposed development restrictions, particularly for the various NSOs within the reservoir area. Failure to do so would increase the costs for development and could lead to increased surface disturbance. Carefully structured exception criteria could reduce surface disturbance while meeting BOR's management objectives.

Response: We agree that provisions for a waiver, modification, or exception to mitigation measures applied as lease stipulations or permit conditions of approval should be provided with appropriate criteria for such actions. Reclamation has revised its document to include provisions for waivers, modifications, or exceptions to mitigation measures. Reclamation will work with BLM to develop guidelines and criteria for waivers, modifications, or exceptions to its mitigating measures.

13. Wetlands at Miller/Sambrito

Two commenters wanted to see a wetlands option for the Miller Mesa/Sambrito area. One of the commenters expanded on that and recommended that the Miller Mesa/Sambrito area be used as a wetlands mitigation bank for nearby development. Ducks Unlimited was proposed as a possible partner for management of these wetlands.

Response: Development and enhancement of wetlands in the Miller Mesa/Sambrito area is an option within the RMP's proposed action alternative. However, Reclamation is concerned with how the wetlands would be developed and managed. Intensive waterfowl development and management of this area was attempted shortly after the reservoir was constructed but was abandoned by NMGFD due to the remoteness of the area and the high cost of operation and maintenance. Reclamation's preference for wetlands development and management is low tech, low-maintenance, and low-cost passive systems. Further, a dependable source of water for such a use is not guaranteed. The document has been revised to allow for consideration of such uses on a case by case basis subject to review of proposals and additional NEPA documentation.

14. Camping at Miller/Sambrito (NM)

Several commenters stated that they would like to see the Miller Mesa/Sambrito area in New Mexico opened to vehicle access for camping, much as it had been in previous years. At least one commenter is interested in operating the area for NMSPD.

Response: The closure of the Miller Mesa/Sambrito area in New Mexico to recreational vehicle access was a NMSPD decision to protect fragile natural resources already threatened by reservoir fluctuation. Visitor safety is also a concern as this remote area is difficult to patrol and maintain. If and when NMSPD decides that it can manage the area in an economically and environmentally sound manner, the area may again be opened to vehicular camping. At a minimum, similar constraints to what was previously required for the area's use, will apply. However, Reclamation may also, require additional constraints to better protect existing resources. Any proposal to reopen the area will be subject to additional public involvement and NEPA review and documentation.

15. Cultural Resources Management Plan

Several comments from tribes and State Historic Preservation Officers indicated that they were pleased that a Cultural Resources Management Plan is to be prepared for the reservoir area. They further requested that they be involved in the development and implementation of the CRMP.

Response: Reclamation will continue to coordinate with the tribes and the SHPOs in developing and implementing the CRMP for the reservoir area.

16. Water Quality/VER

The Piedra Park Metropolitan Improvement District is concerned with: possible effects to their facilities and operations from implementation of development restrictions within the riparian area; oil/gas development upstream/near their water wells; and the potential contamination of their water source and wells. They feel that USBR should be accountable for any water source contamination that would affect the district. They would like USBR to coordinate with them regarding domestic water concerns and guarantees needed for their future water supplies.

Response: Reclamation recognizes PPMID's concerns and will keep the PPMID on the mailing list for future planning efforts. Other agencies are responsible for protection of water quality. Reclamation will coordinate with such agencies to ensure that water quality protection meets its project purposes. PPMID may also provide information and input to the Colorado Water Quality Control Commission regarding maintenance of water quality in the Piedra River. Reclamation has revised the document to clarify the relationship of VERs with proposed restrictions and potential effects.

17. Shoreline Access for Fishing and Camping

Several commenters would like to see more options for recreational access within the reservoir basin for fishing and camping; such use had been permitted for a long time after the reservoir area was opened to the public. Some would like to have more motorized vehicle access through the drawdown zone to the shoreline; they felt this type of use could be permitted in a controlled manner without causing damage. Some would like to see more remote camping opportunities along Archuleta County Road 500 in Colorado. At least one commenter felt that remote shoreline camping by boaters in New Mexico could have been better addressed. One commenter suggested that remote camping be better managed through a permit system, providing hardened sites, and requiring the use of portable toilets.

Response: Reclamation understands the desire for such recreational access within the reservoir basin and in remote areas. However, it has to balance such use against potential water pollution, damage to other natural and cultural resources, and the ability of the State parks departments to adequately manage that use.

The RMP has been modified to provide opportunities for shoreline access for fishing and camping, provided that other resources are adequately protected. The State Parks departments have the flexibility to allow such uses and to require measures to protect natural resources as part of their management of the reservoir area for recreation. Measures to protect other natural resources may include designated use and travel areas, use of portable toilets with removal of human waste from the reservoir area to a proper disposal location, "Pack it in, Pack it out" trash management, and both short and/or long term closures to protect other resources and to allow for rehabilitation of damaged areas, etc.

18. Below-Dam Cold Water Fisheries

The BLM indicated that it and the New Mexico Game and Fish Department are cooperating on fisheries habitat improvement in the San Juan River below Navajo Dam and have spent about \$50,000 dollars. BLM suggested that Reclamation, in its RMP/EA, carefully consider the potential impacts on cold water fisheries below the dam. Adequate flows during the summer period are necessary to maintain suitable cold water habitat conditions and the fish populations they are designed to benefit.

Response: Reclamation recognizes that a premier cold-water trout fishery has developed below the dam and that the habitat for endangered fish in the San Juan River changed due to the construction and operation of the dam. We completed a Record of Decision for a potential change in Navajo Unit operations to help conserve endangered fish in a manner which enables both current and future San Juan River basin water depletions to proceed in compliance with the Endangered Species Act. The effects such operations may have on the trout fishery and possible mitigation measures were addressed in that EIS. We will tier off that EIS in this EA. The

decisions made as part of the Navajo Reservoir Operations EIS, including any environmental commitments and mitigation measures related to the below-dam cold water fisheries, will become part of the Navajo Reservoir Area RMP.

Specific Comments

In addition to the general comment areas discussed above, several comments were received recommending specific changes in the document for clarification or correction. We haven't listed these individually here. However, they were considered, and where deemed appropriate, the document was changed to improve its overall content.