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United States Department of the Interior

OFFICE OF THE SECRETARY

Program Director
CUP Completion Act Office
302 East 1860 South
Provo, Utah 84606-7317



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OCT 31 2008

Mr. Michael C. Weland
Executive Director, Utah Reclamation
Mitigation and Conservation Commission
230 South 500 East, Suite 230
Salt Lake City, UT 84102

CODE	INITIALS
MCO1	[Signature]
MCO2	[Signature]
MCO4	[Signature]
MCO5	

Subject: Record of Decision, Lower Duchesne River Wetlands Mitigation Project,
Section 304, Central Utah Project Completion Act

Dear Mr. Weland:

Enclosed is a copy of the subject Record of Decision (ROD), signed by the Acting Assistant Secretary of the Interior for Water and Science on September 22, 2008.

The Final Environmental Impact Statement (FES-08-13) for the project was filed with the Environmental Protection Agency on April 11, 2008, and announcement thereof published in the Federal Register on April 18, 2008 (73 FR 21125). The 30-day waiting period for the ROD ended on May 19, 2008.

Briefly, this project fulfills a fish and wildlife impact mitigation obligation of the Federal Government to the Ute Indian Tribe associated with construction and operation of the Central Utah Project (CUP). The project restores and enhances wetlands and riverine environments by means of facilities and improved water management. The project will replace and improve resources for which the Federal Government holds trust responsibilities on behalf of the Ute Indian Tribe.

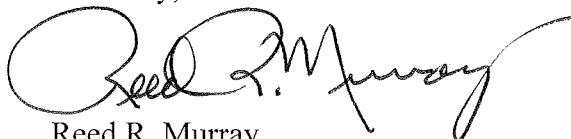
The Ute Indian Tribe Business Committee enacted Resolution No. 08-100 on April 7, 2008, supporting implementation of the Proposed Action.

The U. S. Fish and Wildlife Service (Service), pursuant to its authorities under the Fish and Wildlife Coordination Act, has concurred that the Proposed Action fulfills the mitigation obligations to the Ute Indian Tribe as set forth in several Definite Plan Reports for the Bonneville Unit of the CUP. Moreover, through informal consultation, pursuant to Section 7 of the Endangered Species Act, as amended, the Service has concurred in the determination that the Proposed Action will not adversely affect threatened or endangered fish species or their habitat. Accordingly, by signing the ROD, the Department has fulfilled the requirements of the National

Environmental Policy Act and Fish and Wildlife Coordination Act and will be acting in a manner consistent with its responsibilities under the Endangered Species Act.

For further discussion of this matter, please call Mr. Ralph Swanson at 801-379-1254.

Sincerely,

A handwritten signature in black ink, appearing to read "Reed R. Murray". The signature is fluid and cursive, with the first name "Reed" being particularly prominent.

Reed R. Murray
Program Director

Enclosure

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Record of Decision
for the
Lower Duchesne Wetlands Mitigation Project
Final Environmental Impact Statement

Prepared by

**U.S. Department of the Interior
Central Utah Project Completion Act Office
Provo, Utah**

September 2008

Table of Contents

I. Summary	2
II. Introduction.....	4
A. The Mitigation Obligation	4
B. The Central Utah Project - Bonneville Unit	7
C. The Record of Decision Organization	7
III. Description of the Proposed Action and Alternatives.....	7
A. The Proposed Action.....	8
B. Pahcease Alternative.....	8
C. Topanotes Alternative.....	9
D. No Action Alternative.....	9
IV. Decision	10
A. Selection of the Proposed Action.....	10
B. Lands.....	11
1. Acquisition.....	11
2. Acquisition by Eminent Domain	13
3. Management.....	15
V. Basis for Decision.....	17
A. Water Resources	18
1. Surface Water Resources	18
2. Groundwater Resources.....	19
B. Water Quality.....	19
C. Wetlands and Related Habitats	20
D. Wildlife Resources.....	21
E. Threatened and Endangered Species	21
1. Endangered Species Impacts.....	21
2. Interagency Cooperation/Consultation (50 C.F.R. § 402)	22
F. Soil Resources.....	22
G. Air Quality	23
H. Agriculture.....	23
I. Socioeconomics	24
J. Health and Safety.....	25
K. Noise	26
L. Cultural Resources.....	26
VI. Implementation	26
VII. Environmentally Preferable Alternative	27
VIII. Mitigation/Commitments.....	28
IX. Public Involvement	29
X. Administrative Review	31
XI. Signature	31
Attachment 1 – Environmental Commitments	32

I. Summary

This Record of Decision (ROD) is prepared pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. § 4321 et seq.) and the Council on Environmental Quality Regulations for the Implementation of Procedural Provisions of NEPA (40 C.F.R. § 1505.2).

This ROD documents the decision of the Department of the Interior (Interior) to select the Proposed Action, as presented in the Final Environmental Impact Statement (FEIS), for the Lower Duchesne River Wetland Mitigation Project (LDWP) (FES 08-13). The FEIS was filed with EPA on April 11, 2008, and Notice of Availability was published by the Environmental Protection Agency in the Federal Register on April 18, 2008 (73 FR 21125).¹ The FEIS considered the Proposed Action, two action Alternatives, plus the No Action Alternative.

The LDWP mitigates certain environmental impacts resulting from construction and operation of the Central Utah Project (CUP), Bonneville Unit, Strawberry Aqueduct and Collection System (SACS), a Federal water resource development affecting the Duchesne River, including Ute Indian Tribal trust resources in lands and water along the river, in Duchesne and Uintah Counties, Utah.

Substantial SACS impacts accrued to lands and resources held in trust by the Federal government for the benefit of the Ute Indian Tribe of the Uintah and Ouray Agency, Ft. Duchesne, Utah (Tribe). The purpose of the LDWP is to restore, create and enhance wetland and riparian (streamside) habitats along the Duchesne River corridor to compensate for Tribal wetland-wildlife losses resulting from construction and operation of SACS, and provide opportunities for additional wetland-wildlife benefits to the Tribe. The original plan for mitigation of Bonneville Unit SACS wetland impacts on Tribal resources was set forth in the

¹ The Department of the Interior, Central Utah Project Completion Act Office, published its own supplemental, expanded Notice of Availability in the Federal Register on April 11, 2008 (73 FR 19866).

report prepared by the U.S. Fish and Wildlife Service (FWS) in 1965 pursuant to the Fish and Wildlife Coordination Act of 1958 (16 U.S.C. § 661-666c), as amended (hereinafter 1965 FWCA).²

The Department of the Interior's Assistant Secretary – Water and Science (Assistant Secretary), through this ROD, selects the Proposed Action as presented in the FEIS and approves Federal agency cooperation with the Utah Reclamation Mitigation and Conservation Commission (Mitigation Commission), the lead action agency for implementation of the LDWP.

The Assistant Secretary's separate Record of Decision is necessitated by the anticipated use of U.S. Bureau of Reclamation (Reclamation), and Bureau of Indian Affairs (BIA) authorities within the project area to assist the Mitigation Commission to implement fully the selected alternative. This ROD, which incorporates the FEIS by reference, explains the basis for this decision and establishes certain parameters under which other Interior agencies will provide assistance to the Mitigation Commission.

Interior and the Mitigation Commission were Joint Lead Agencies in the preparation of the NEPA compliance documents for the LDWP. Because there was substantial involvement of Ute Indian Tribal Trust resources, the Tribe was the lead planning entity for the project and also a Cooperating Agency in the NEPA process. Reclamation, FWS, BIA, and Uintah and Duchesne Counties also served as Cooperating Agencies in the NEPA process. The public involvement process in the development and review of the LDWP is detailed in the FEIS and summarized in Section IX of this ROD.

The FEIS for the LDWP addresses Bonneville Unit impacts, resulting from the SACS construction, operation and maintenance, that have affected Tribal wetland and related wildlife resources. The FEIS describes a Proposed Action that provides fish and wildlife impact

² U.S. Dept. of the Interior, Fish and Wildlife Service. 1965. Fish and Wildlife Resources in relation to the Bonneville Unit, Central Utah Project (Initial Phase), Utah. Bureau of Sport Fisheries and Wildlife, Southwest Region, Albuquerque, New Mexico. Sept. 1965. 62 pp. + Maps. Prepared pursuant to the Fish and Wildlife Coordination Act (16 U.S.C. § 661-666c), as amended.

mitigation for SACS impacts to Tribal resources while minimizing other impacts, particularly socio-economic impacts, on local communities. The 2008 report of the U.S. Fish and Wildlife Service, (hereinafter 2008 FWCA)³, (also prepared pursuant to the Fish and Wildlife Coordination Act of 1958 as amended, 16 U.S.C. § 661-666c) has analyzed the revised LDWP and concludes that the Proposed Action is consistent with the 1965 FWCA and provides full, adequate and acceptable fish and wildlife impact mitigation for SACS impacts affecting Tribal wetland-wildlife resources, consistent with Federal mitigation policies and Federal mitigation commitments to the Tribe that originated in 1965.⁴

The Proposed Action is the environmentally preferred alternative for reasons summarized below.

II. Introduction

A. *The Mitigation Obligation*

The 1964 Central Utah Project (CUP) Definite Plan Report⁵ (1964 DPR) for the Bonneville Unit anticipated harm to the natural resources, specifically the water, wetlands and related wildlife resources, of the Tribe. The 1965 FWCA recommended that wildlife management areas totaling 6,640 acres be developed on Trust lands along the Duchesne River to replace lost wetlands and waterfowl habitat for the benefit of the Tribe. The plan would be funded by Section 8 of the Colorado Storage Project Act (CRSPA), but would not use CUP water. Reclamation adopted this recommendation and incorporated it in a September 1965 Addendum to their 1964 DPR.

³ U.S. Fish and Wildlife Service. 2008. Final Fish and Wildlife Coordination Act Report for the lower Duchesne River Wetlands Mitigation Project. Prepared for: Ute Indian Tribe, Utah Reclamation Mitigation and Conservation Commission, U.S. Dept. of the Interior. 35pp. May 16, 2008. USFWS, Utah Field Office, SLC, UT.

⁴ Other environmental mitigation commitments to the Tribe are completed or ongoing and are addressed through separate programs.

⁵ U.S. Dept. of the Interior, Bureau of Reclamation. 1964. Central Utah Project Initial Phase, Bonneville Unit, Definite Plan Report. Region 4, Salt Lake City, Utah. August 1964. 191 pp.

This mitigation commitment was subsequently affirmed in the 1965 Deferral Agreement⁶ signed by Reclamation, BIA, Central Utah Water Conservancy District, and the Ute Indian Tribe. The Deferral Agreement provides, in part “[t]hat facilities will be provided under the Colorado River Storage Act to mitigate for losses to fish, wildlife and recreation upon lands of the Ute Indian Tribe of the Uintah and Ouray Reservation or of its members caused by the construction and/or operation of the Central Utah Project.” (Item 9 of the Deferral Agreement) This commitment was further particularized in a memorandum from the Commissioners of Reclamation and Indian Affairs to the Secretary of the Interior recommending approval of the Deferral Agreement. Among other environmental mitigation measures specified was “waterfowl management areas will be established along the Duchesne River.”⁷ These recommendations are consistent with the plan of mitigation developed by the FWS and proposed in the 1965 FWCA.

The original 1973 Final Environmental Impact Statement for the Bonneville Unit⁸ (1973 BU-FEIS) evaluated Bonneville Unit environmental impacts on Tribal natural resources. Trans-basin diversion of Colorado River basin water, including tribal water resources, impacted the Tribe by reducing flows in the Duchesne River, causing a loss of wetlands, wildlife habitats and vegetative resources on Trust lands that were important to the Tribe. Specifically, the 1973-BU-FEIS acknowledged annual losses of about 300,000 waterfowl-use days and 1,000 man-days of waterfowl hunting predicted by the FWS in their 1965 FWCA. The 1973 BU-FEIS also adopted the Fish and Wildlife Service plan to develop waterfowl/wetland management units on Tribal trust lands along the Duchesne River as a mitigation commitment of the Bonneville Unit to offset these impacts.

⁶ Untitled, multiparty agreement known generally as the “1965 Deferral Agreement” Bureau of Reclamation Contract No. 14-06-W-194 made and entered into September 20, 1965.

⁷ Memo to Secretary of the Interior, dated June 22, 1965.

⁸ U.S. Dept. of the Interior. 1973. Final Environmental Impact Statement, Authorized Bonneville Unit, Central Utah Project, Utah. Prepared by the Bureau of Reclamation, Upper Colorado Region, Salt Lake City, UT (INT 73-42).

Throughout the intervening years of continued CUP planning, this commitment to the Tribe has been re-affirmed in supplements to the 1964 DPR prepared in 1988⁹ and 2004¹⁰ (hereinafter the 1988 DPR and 2004 DPR). The 2004 DPR identifies SACS wetland mitigation as an unfulfilled mitigation commitment (Fish and Wildlife Appendix, Table 2-1, Item 8; Table 3-1 Item 7).

The Central Utah Project Completion Act of 1992 (CUPCA) (P.L. 102-575; 106 Stat. 4605) addressed, in part, the priority of the Federal government to complete all unfulfilled mitigation obligations of the CUP. With enactment of CUPCA, the Mitigation Commission was created and charged with the sole responsibility to plan, fund and coordinate the implementation of all fish, wildlife and recreation mitigation provisions of the Act, *including all prior Reclamation mitigation obligations which had not been completed* (Section 304 of CUPCA) (emphasis added). The Mitigation Commission is an independent Presidential Commission vested with sole authority and responsibility, and receives all the funding, to complete CUP mitigation. Thus, unfulfilled CUP mitigation commitments are now binding on the Mitigation Commission. Interior assists the Mitigation Commission with annual funding requests to Congress, monitors Commission activities, and provides other assistance as requested.

The LDWP mitigation commitment was adopted, with public involvement, by the Mitigation Commission in its 1996 Mitigation and Conservation Plan, pursuant to its authorities under CUPCA (Sections 301(f) and (g)).¹¹

Federal funds authorized or appropriated to the Secretary under Title II of CUPCA, together with funds that are authorized for the Mitigation Commission under Title IV of CUPCA are anticipated to be available through appropriations in future years, to cover LDWP implementation costs and operation and maintenance funding.

⁹ Bureau of Reclamation. 1988. Supplement to Definite Plan Report Central Utah Project Bonneville Unit-Utah. Fish and Wildlife Resources Appendix. Upper Colorado Region, Salt Lake City, UT. 205 pp.

¹⁰ Central Utah Water Conservancy District. 2004. Supplement to the Bonneville Unit Definite Plan Report. Fish and Wildlife Appendix. October 2004.

¹¹ Utah Reclamation Mitigation and Conservation Commission. 1996. Mitigation and Conservation Plan. Salt Lake City, UT. May 1996. The plan was approved by the Mitigation Commission on May 3, 1996.

B. The Central Utah Project - Bonneville Unit

The CUP - Bonneville Unit is a major Federal water project that develops water resources for use locally in the Uinta Basin of Utah and also diverts and transports Colorado River water, including water resources held in trust by the U.S. for the Tribe (in part per terms of the 1965 Deferral Agreement), from the Uinta Basin in the east to populous areas along the Wasatch Front in central Utah.

The CUP was authorized as a participating project of the Colorado River Storage Project (CRSP) by the Act of April 11, 1956, (70 Stat. 105) (CRSPA). CUPCA was enacted on October 30, 1992, to complete the CUP, primarily the Bonneville Unit, by increasing the cost ceiling, authorizing new or reformulated water resources development features, providing for Indian water rights settlements, and accelerating fish, wildlife and recreation mitigation, among many other water resource development objectives.

C. The Record of Decision Organization

This ROD is organized into eleven sections. Following the Summary and Introduction, Section III briefly describes the LDWP Proposed Action and Alternatives, including the No Action Alternative. Section IV presents the decision of the Assistant Secretary. Section V substantiates the basis for the decision, in part, by comparing impacts among the Alternatives for the key environmental parameters addressed in the FEIS. Section VI describes the procedures for project implementation. Section VII identifies the environmentally preferable alternative. Section VIII, along with Attachment I, summarizes the mitigation and environmental commitments and monitoring that will be undertaken. Section IX summarizes the public involvement process. Section X addresses Administrative Review. Section XI is the signature of the deciding official, the Assistant Secretary of the Interior for Water and Science.

III. Description of the Proposed Action and Alternatives

The Proposed Action and Alternatives would all create, restore and enhance wetland and riparian fish and wildlife habitats along the lower Duchesne River corridor. Wetlands would be created

by reintroducing Duchesne River flows into cutoff river oxbows, connecting cutoff oxbows internally to form contiguous wetland systems, and creating large, managed marsh complexes. Upland prescriptions would improve habitats by noxious weed control, revegetation with native riparian species, and livestock grazing management to benefit wildlife. The Proposed Action and Alternatives differ in size, relative amounts of fee (private) and Trust lands to be included, location of lands, and future land ownership. Under the Proposed Action all land would be managed by the Tribe in accordance with the project purposes and commitments embodied in Management Plans and Operating Agreements to be developed between the Mitigation Commission and Tribe during project implementation, with concurrence from the BIA. Complete descriptions of the Proposed Action and Alternatives are included in the FEIS. Brief summaries follow.

A. *The Proposed Action*

The Proposed Action will create, restore and enhance 2,681 acres wetlands and riparian habitats on 4,807 acres along the Duchesne River on and near Tribal Trust Lands in eastern Utah. Approximately 1,025 acres of wetlands would be created or restored, and 1,656 acres of existing wetland and supporting upland habitat would be enhanced. The project requires acquisition of 1,592 acres of private land and compensation, via contractual arrangements with the Tribe, and BIA for loss of income on 3,215 acres of Tribal Trust and Allotted land, and the use of Federal reserved water rights held in trust by the United States on behalf of the Ute Indian Tribe (hereinafter "tribal water" or "tribal water rights") to be included in the project. Private lands acquired would be transferred, in fee title, to the Tribe and retained by the Tribe in fee status, subject to stipulations set forth below (e.g., regarding eminent domain).

B. *Pahcease Alternative*

The Pahcease Alternative is the largest action alternative, encompassing 3,055 acres of wetland and riparian habitat on 6,765 acres. On these lands, 239 acres of existing, active cropland would be placed under conservation easements. These croplands would continue to be managed by the existing owners for both agricultural production and wildlife benefits as part of the project.

This alternative requires the acquisition of 1,787 acres of private land and compensation to the Tribe for loss of income on 3,891 acres of Tribal Trust land, and appurtenant water, to be incorporated into the project. This alternative also incorporates 1,087 acres of existing Federal property (aka Riverdell North) which is adjacent, and currently under the jurisdiction of Reclamation, but is suitable for project purposes. Under this alternative, an equivalent acreage of fee land would be purchased by the project and transferred to Reclamation to replace this Federal Riverdell holding. All acquired private land (plus the Riverdell North Federal land) would be retained by the Federal government, but managed by the Tribe, under appropriate Management Plans and Agreements between the Mitigation Commission and Tribe, for project purposes.

C. Topanotes Alternative

The Topanotes Alternative totals 6,648 acres with 3,175 acres of wetland and riparian habitat. Up to 356 acres of cropland would be placed under conservation easements to be operated, in part, for the project by current landowners. Acquisition of 2,171 acres of private land and compensation to the Tribe for loss of income on up to 4,477 acres of Tribal Trust land and appurtenant tribal water are part of this alternative. As with the Pahcease Alternative, acquired private land would be retained by the Federal government, but managed by the Tribe for project purposes.

D. No Action Alternative

Under the No Action Alternative, the Mitigation Commission would take no action to create, restore, or enhance wetlands and riparian habitats along the Duchesne River. The commitment to mitigate impacts caused by the Bonneville Unit, SACS, of the CUP on Tribal resources, as described in the 1973 BU-FEIS and the DPRs would not be fulfilled. The project need and purposes for which the LDWP was designed would not be achieved.

Under the No Action Alternative, the Mitigation Commission would retain the associated mitigation obligations and commitments of the Federal government to the Ute Indian Tribe. The need to fulfill the commitment to mitigate the impacts of SACS would remain. The Mitigation Commission would also retain all its authorities under Titles II, III, and IV of CUPCA and would

be expected to pursue alternative strategies, in conjunction with Interior and the Tribe, to fulfill this mitigation obligation.

IV. Decision

A. Selection of the Proposed Action

It is the decision of the Assistant Secretary to select the Proposed Action as presented in the FEIS and approve Interior agency cooperation with the Mitigation Commission as it proceeds to construct and implement the LDWP, in accordance with statutory and contractual obligations. In making this decision, the Assistant Secretary has reviewed the Alternatives discussed in the FEIS and their predicted environmental, economic, and social impacts. The Joint Lead agencies have solicited the participation, and actively considered the views, of the Cooperating Agencies.

This decision has substantial involvement of, influence and effects on resources held in trust by Interior for the benefit of the Ute Indian Tribe. In keeping with trust principles that guide Interior and its agencies, it is particularly notable that the Tribe has directly participated as a lead planning entity throughout the process that has resulted in development and evaluation of the Proposed Action and Alternatives. The priorities expressed by the Tribe have been incorporated to the maximum extent possible during this process. The Proposed Action has been approved by the Tribe as evidenced by formal resolution of the Business Committee of the Tribe (Resolution No. 08-100) dated April 7, 2008.¹²

The governments of Duchesne and Uintah Counties, Utah, participated in developing the FEIS and shaping the Proposed Action that is hereby approved. Substantial changes in the Proposed Action and policies pertaining thereto that specifically address County concerns have been adopted by the Joint Lead Agencies and incorporated into the FEIS.

Interior has considered all oral and written comments submitted by the public, including local governments, during the Scoping Process and during the public comment period on the Draft EIS. This includes oral comments received at three public meetings held in the project vicinity

¹² Prior resolutions of support have been enacted by the Ute Indian Tribe Business Committee: Resolution #00-296 and #05-058. The last resolution was dated January 24, 2005.

and written comments received during an extended public comment period. The Assistant Secretary has considered the negative impacts of the Proposed Action and the planned mitigation therefore, and, consequently, has adopted the Proposed Action.

The 1965 FWCA describes and quantifies the tribal wetlands and waterfowl habitat impacted by SACS. The mitigation developed and recommended by FWS in 1965, and subsequently adopted by Reclamation, was a wetland/waterfowl habitat replacement plan that, while developed in 1965, is in accordance with now well-established FWS mitigation guidance.¹³ FWS mitigation policy covers impacts to fish and wildlife populations, their habitats and the human uses thereof. Generally, this mitigation guidance calls for the FWS to recommend that losses be compensated by replacements of the same kind of habitat so that the total loss of such “in kind”¹⁴ habitat value will be eliminated. In short, wetland impacts in the Duchesne River basin will be replaced by improvements to wetland resources in the Duchesne River basin. Such a mitigation concept was and remains the desire and request of the Tribe, and formed the entire basis of the original plan of action in the 1964 DPR and 1965 FWCA. The LDWP Proposed Action, selected by this ROD, complies with this mitigation guidance in all pertinent respects (2008 FWCA).

In addition, in the course of selecting the Proposed Action, Interior has made specific environmental commitments which, by agreement and statutory provision, are binding on the Mitigation Commission. These commitments are summarized in Section VIII and Attachment 1 of this ROD.

B. Lands

1. Acquisition

Lands (and interests in lands) would be acquired by the Mitigation Commission to implement the Proposed Action, and other Alternatives. Lands would be incorporated into the project through fee acquisition from private landowners and by negotiated leases/easements of Trust lands

¹³ U.S. Fish and Wildlife Service. 1981. U.S. Fish and Wildlife Service Mitigation Policy (46 FR 7644). January 23, 1981.

¹⁴ “In kind” replacement means providing or managing substitute resources to replace the habitat value of the resources lost, where such substitute resources are physically and biologically the same or closely approximate those lost (FWS Mitigation Policy, Appendix B – Other Definitions (46 FR 7644)).

between the Mitigation Commission and the Tribe (including recipients of allotments of tribal land, aka "allotees"). The Mitigation Commission proposes to use the realty services of Reclamation to facilitate land acquisition and lease/easement agreements. Such assistance by Reclamation is approved by this ROD. The Regional Director, Upper Colorado Region, Bureau of Reclamation will retain the authority to determine, and negotiate the terms of, all assistance Reclamation provides to the Mitigation Commission.

The Proposed Action requires the least land acquisition among the Action Alternatives (1,592 acres fee land; 3,215 acres tribal Trust and Allotted land). Based on issues raised during public review of the DEIS, the Proposed Action was reduced by eliminating two major project units, the Flume Unit and the Federal Riverdell North Unit. Regarding Federal Riverdell North, public concerns regarding access to, and future management of, this property were substantial. Ultimately these issues were deemed too cumbersome to resolve in the context of the LDWP, and the Federal Riverdell North property was deleted from the plan.

The Flume Unit, while valuable for wetland development, contained relatively more fee land which would increase project costs and socio-economic impacts for the riparian habitat enhancement offered.

In addition, the concept of securing conservation easements on existing agricultural lands within the project boundary was considered impractical and was, therefore, eliminated from the Proposed Action. (This project feature--conservation easements on cropland--was included in the other action alternatives as a means to assess and compare socio-economic impacts.) Together with other minor boundary adjustments to exclude most active agriculture, these changes have also reduced the agricultural and socio-economic impacts of the Proposed Action.

The Pahcease Alternative proposes 1,787 acres of fee land acquisition and lease/easements and 3,891 acres of Tribal Trust lands (including Allotted lands). This alternative also includes the Federal Riverdell North property, in part, as a means of increasing wetland habitat benefits. Title to fee lands acquired (including the Federal Riverdell property) would remain with the Federal government to be managed by the Tribe. Land acquisition would increase the tax burden on

local communities and would be contrary to local government planning objectives that strive for no net loss of private land. The otherwise critical public review of this alternative notwithstanding, the Pahcease Alternative would require additional fee land acquisitions to replace Riverdell North property (1,087 acres), which would substantially increase project costs and add additional socioeconomic burdens on local communities. In addition, encumbering 239 acres of existing agricultural land with conservation easements creates the potential for management difficulties among the landowners, the Mitigation Commission and Tribe, without compensating resource benefits.

Topanotes Alternative proposes 2,171 acres of fee land acquisition which increases socioeconomic impacts and dramatically increases project costs which, by itself, could threaten achievement of other project goals. Fee land would remain with the Federal government, contrary to local planning prerogatives, resulting in local tax impacts. The Topanotes Alternative encumbers up to 4,477 acres of Tribal Trust lands, foreclosing tribal land use options on a considerable trust acreage that may be undesirable to the Tribe. Topanotes is larger, more costly, and of greater local impact than necessary to fulfill Federal obligations to the Tribe.

2. Acquisition by Eminent Domain

The FEIS recognizes the potential use of eminent domain authorities to acquire necessary private lands and adequately analyzes the pertinent environmental and social impacts associated therewith. The Mitigation Commission anticipates using Reclamation to conduct land acquisition including eminent domain. Reclamation would transfer title to lands acquired by eminent domain to the BIA for management, under agreements with the Tribe, as part of the LDWP.

The use of eminent domain authority by Reclamation, as a partner with the Mitigation Commission, for the implementation of LDWP is appropriate. The FWCA requires Federal water development agencies to mitigate for the effects of water project construction and operations. Section 8 of CRSPA responds to the FWCA requirement by providing authority for mitigation and enhancement of fish and wildlife and recreation values. CUPCA amended CRSPA by transferring certain planning, administration, and implementation/funding tasks for CRSPA Section 8 functions from Reclamation to the Mitigation Commission for the CUP. All

Section 8 authorities not transferred specifically to the Mitigation Commission remain with Reclamation, including the power of eminent domain. Section 301(a)(2) of CUPCA specifically provides that the authorities of other agencies are not restricted and Section 301(h)(7) allows the Mitigation Commission to participate in condemnation proceedings initiated by other agencies.

The Assistant Secretary concurs that Reclamation may consider requests from the Mitigation Commission for Reclamation to invoke its eminent domain authorities to acquire lands for the LDWP, subject to the following conditions and circumstances:

- a. Eminent domain would be used only to acquire lands essential to the accomplish the LDWP Proposed Action as described in the FEIS;
- b. Eminent domain authorities would be used only if/when all reasonable attempts to negotiate purchase on a willing-seller basis are unsuccessful.
- c. Eminent domain authorities would only be used when such lands are needed to accomplish the Mitigation Commission's authorized plan for the LDWP.
- d. Eminent domain authorities would be used only after the Mitigation Commission conducts prior coordination and consultation with local, county, and state governments about the potential condemnation; and
- e. Ownership of lands acquired by eminent domain for LDWP shall be retained in fee title by the Federal government and transferred to the jurisdiction of the BIA to be managed exclusively for LDWP purposes.

Under all circumstances, Reclamation will make an independent judgment, based on factors it considers pertinent, as to whether it should exercise its eminent domain authorities on behalf of the Mitigation Commission. The Regional Director, Upper Colorado Region, Bureau of Reclamation, will make the final decision with respect to the application of eminent domain authorities.

3. Management

Under the Proposed Action, lands, or interests therein, acquired by the Mitigation Commission from willing sellers would be transferred, in fee title, to the Tribe. As part of the Proposed Action, the Mitigation Commission would develop appropriate operating agreement(s) with the Tribe, and necessary third parties as appropriate, for management of all lands and facilities, including lands acquired by eminent domain, acquired or constructed for the LDWP.

Agreements would specify the responsibilities and costs of management and commit the funding sources required to support development, operation, and maintenance of the LDWP.

Lands acquired by eminent domain would be transferred by Reclamation to the jurisdiction of the BIA to be managed exclusively for LDWP purposes. Management arrangements for such lands will include the BIA and will recognize all appropriate and applicable BIA regulations and policies pertaining thereto.

The primacy of the Mitigation Commission in mitigation planning, combined with its limited staff size, essentially dictates that the Mitigation Commission achieve its planning goals through agreements with other Federal and state agencies, or the Tribe, especially when the Mitigation Commission supplies funding. The Mitigation Commission may, of course, actually administer lands, or interests in lands, which belong to it under Section 301(h) of CUPCA. However, the Mitigation Commission has no authority to administer lands, or interests in land, belonging to other agencies. Rather, the Mitigation Commission implements its plan and achieves its planning goals through the conditions contained in agreements it executes with other entities, particularly where those agreement terms have been entered into by the other entity as a condition of obtaining funding from the Mitigation Commission. Thus, for example, if a Mitigation Commission plan requires that particular measures be undertaken on Trust lands, implementation of such measures and administration of the land would be carried out by the Tribe under the terms of an agreement with, and using funding provided by, the Mitigation Commission in cooperation with BIA.

Thus, this decision requires that agreements be executed between the Mitigation Commission and Tribe, and may include necessary third parties, for project implementation, operation and management activities.

The LDWP is somewhat unusual among environmental resource mitigation plans. Typically, a Federal environmental mitigation project mitigates public resources lost under a plan that involves existing public lands, or private lands acquired and retained in public ownership, to be enhanced/restored/protected and managed by the Federal agency or other public entity. Partnership arrangements might be completed for resource management or other services. Funding would be provided by the Federal action agency often by contractual arrangements with the managing entity. This would insure the maintenance of resource benefits, under Federal jurisdiction and control, essentially in perpetuity. Such arrangements could be altered without impact on the underlying mitigation objectives.

The LDWP, on the other hand, replaces sovereign resources held in trust for the sovereign Ute Indian Tribe. While the Federal Mitigation Commission is a partner with the Tribe for implementation, the wetlands and facilities of the LDWP, once complete, will be assets of the Tribe, to derive all future benefits therefrom and to be managed by the Tribe in their self-interest as a sovereign government. Funding would still be provided by the Mitigation Commission.

The Tribe is not only the project beneficiary, but is participating as a project partner and making their own valuable contributions of tribal resources (land, water) to the project on a voluntary basis. The Joint Lead Agencies and the Tribe desire and intend that the LDWP Proposed Action persist and yield resource benefits to the Tribe in perpetuity. To facilitate the Proposed Action, leases/easements among the Mitigation Commission, Tribe, and necessary third parties are proposed to incorporate trust lands (including allotted lands) and water into the project, and to compensate the Tribe, and facilitate expenditure of Federal funds by the Mitigation Commission. We accept that this project can only be implemented through contractual arrangements with a sovereign entity (i.e., Tribe). Leases/easements are equitable arrangements between the Mitigation Commission and Tribe that recognize and compensate the voluntary contributions and participation of the Tribe. These contractual arrangements are recognized in the FEIS, but details remain to be negotiated.

For the project to succeed, those contractual arrangements must be made sufficiently attractive to all parties to induce participation and, particularly, renewal upon expiration. We expect that the Mitigation Commission will endeavor to achieve this to the maximum extent practical. Interior will support the budget requests of the Mitigation Commission necessary to enter and maintain these contractual arrangements in the best interests of the project.

V. Basis for Decision

As a basis for this decision, the Assistant Secretary has reviewed the Proposed Action and Alternatives discussed in the FEIS, their predicted environmental, economic, and social consequences, and the risks and safeguards inherent in them. The Assistant Secretary has considered the environmental impact analysis presented in the FEIS including the public and agency comments received on the DEIS and letters received pertaining to the FEIS and Interior responses thereto; the results and conclusions of associated technical documents; the policy recommendations from Interior staff, particularly the BIA; the authorizing legislation (CRSPA and CUPCA); and other relevant materials, particularly the several Resolutions of the Ute Indian Tribe Business Committee.

The Proposed Action is superior to the other Alternatives as further particularized below. The Proposed Action meets the need and purposes established for the project as described in the FEIS. The selection of the Proposed Action Alternative responds to Interior's environmental commitments recommended in the 1965 FWCA and adopted by the DPRs, as modified by the Mitigation Commission in consultation with the Tribe, and is endorsed by the U.S. Fish and Wildlife Service (FWS 2008). The fulfillment of these mitigation commitments became binding upon the Mitigation Commission through the enactment of Section 304 of CUPCA.

The following summary compares the impacts of the Proposed Action and the other Alternatives. The No Action Alternative would provide a continuation of existing conditions, including the mitigation commitments of the Commission. As such, it is not included in the comparison.

The impact analysis conducted for the FEIS considered all resources subject to requirements specified in statutes, regulations and executive orders. Certain resource issues were eliminated from consideration because they are not present or not affected by the Proposed Action. Examples of resources not considered are prime and unique farmland, wild and scenic rivers, wilderness areas, visual resources, and mineral and energy resources.

A. Water Resources

1. Surface Water Resources

Water for the LDWP would come from existing water rights associated with land to be acquired or dedicated to the project. This water, whether appurtenant to fee lands or Trust lands, is Tribal water, which enjoys the senior water right in the Uinta Basin.

A comparison of water requirements and available water rights shows sufficient water rights exist within the project area to operate the Proposed Action and the Alternatives. Table 4-31 of the FEIS. A maximum project water requirement of 10,118 AF is within the range of tribal water rights and baseline canal diversions.

Neither the Proposed Action, nor any alternative, would adversely affect existing water rights or the delivery of water via the project canals contrary to Utah water law. Points of diversion, places and nature of water uses will not change from baseline conditions with the project.

Under the Proposed Action, junior water right holders would experience reduced deliveries in dry years (estimated once in six years). This is because the senior water rights (tribal water rights) utilized by the Proposed Action would not be available in dry years to meet junior water rights. Under each of the other action Alternatives, such shortages would be greater. Shortage impacts are unavoidable, but are consistent with Utah water law which gives priority to senior water rights. The Proposed Action minimizes this socio-economic impact.

There would be no impacts to the Duchesne River and no measurable change in flows downstream of the project area with the Proposed Action or any alternative.

2. Groundwater Resources

The Proposed Action Alternative would increase groundwater levels within footprints of developed emergent marshes and restored oxbows. Seasonally saturated wet meadows would likely develop within 100-200 feet of wetland edges. The FEIS has evaluated groundwater impacts to economic structures such as roads. Culverts would be installed to facilitate water movement and minimize such impacts.

Special consideration evaluated the potential for groundwater impacts to the cemetery near the town of Myton, Utah. Results from a number of groundwater test wells indicate that groundwater gradient slopes away from the cemetery toward the Duchesne River to the south. Thus, groundwater impacts in the cemetery are not anticipated to occur due to the project.

B. Water Quality

Boron, salinity (total dissolved solids), dissolved oxygen, pH, and temperature were the focus of water quality analyses in the FEIS. Established water quality standards would not be exceeded for any parameter with the Proposed Action or Alternatives.

Overall there would be a general improvement in water quality within existing wetlands with the Proposed Action and Alternatives. Improvement would result, in part, from increased flow of higher quality Duchesne River water through newly restored oxbow wetlands.

An increase in salinity input to the Duchesne River is expected with the Proposed Action of up to 829 tons per year. With the Pahcease and Topanotes Alternatives, increases could be up to 1,275 tons per year. These impacts result from increased deep percolation from the managed wetland complexes, primarily in the Flume and Uresk Drain Units. The Pahcease and Topanotes Alternatives both contain large developed marshes on the Flume Unit. The Flume Unit has been deleted from the Proposed Action, thus minimizing these salinity impacts.

Salinity impact evaluations were conducted using methods employed by Reclamation in reviewing projects under the Colorado River Salinity Control Program. The FEIS concludes that these increases would not result in measurable changes to salinity in the Duchesne River below

the project, nor at Imperial Dam on the lower Colorado River where the Salinity Control Program measures the salinity effects of projects it implements.

C. Wetlands and Related Habitats

The Proposed Action and Alternatives would all result in a net increase in wetlands, riparian woodland, wet meadow, emergent marsh and shrub wetlands within the project area along the lower Duchesne River. Construction activities under the Proposed Action would temporarily impact 18.5 acres and permanently impact 7.3 acres of non-riparian wetlands, riparian habitats and wetland weeds. Impacts would be localized and subsequently restored to wildlife habitat. In comparison, the Pahcease and Topanotes Alternatives would (temporarily/permanently) impact 16.8/8.4 and 20.6/8.2 acres respectively.

Wetland and riparian habitats created, restored or enhanced under the Proposed Action totals 2,681 acres. Total wetlands created, restored or enhanced for the Pahcease Alternative is 3,055 acres; and for the Topanotes and 3,175 acres.

The Proposed Action provides the least wetland acreage benefits among the alternatives (2,681 acres) and is less than originally recommended in the 1965 FWCA and adopted by the DPRs (3,000 acres). The Proposed Action is also differently configured as to location, habitat priorities, and some other elements, such as land acquisition. However, these changes reflect, in part, tribal land-use decisions since 1965, as well as revised mitigation goals that were mandated by the authorities of CUPCA. These changes emerged from planning by the Joint Lead and Cooperating Agencies, including the Tribe, and are fully within the planning authorities of the Mitigation Commission. The FWS has concurred in these changed perceptions of SACS wetland impacts and has endorsed an “ecosystem approach for providing remediation and compensation as well as taking into account contemporary Ute Indian Tribal priorities and values.” (FWS 2008)

It is reasonable that the original characterization of SACS wetland impacts, mitigation strategies, and Tribe prerogatives for their resources would be reexamined after more than 40 years.

Regardless, the Proposed Action remains consistent with the wetland and related habitat

replacement concepts recommended in the 1965 FWCA and will provide equivalent resource replacement benefits to the Tribe. FWS has provided a modern evaluation of the Proposed Action against the mitigation need--as originally conceived in 1965 and as reformulated--and concluded that it satisfies all SACS wetland mitigation obligations to the Ute Indian Tribe as originally expressed in 1965 FWCA (2008 FWCA).

While the FWS believes all alternatives fulfill the wetland-wildlife CUP obligations to the Tribe, FWS endorses the Proposed Action as the alternative that achieves the most benefits for fish and wildlife, citing such attributes as optimizing the length of management along both sides of the Duchesne River, the close association of project units to ease management, and enhanced habitat connectivity compared to other alternatives (FWS 2008). The Proposed Action is preferred by the Tribe, which helps to ensure this project is valued and sustained into the future.

D. Wildlife Resources

The Proposed Action and all Alternatives would cause an overall net increase in riparian and wetland wildlife habitat. Waterfowl habitat would increase at all project sites particularly associated with the large emergent marsh complexes created in proximity to the Duchesne River. Increased open water, improved water quality and increased emergent marsh plant habitats will benefit waterfowl. Management of adjacent uplands for food and cover, active revegetation, noxious weed control and grazing management should increase and improve the value of wildlife habitat for all riparian species under all Alternatives. All wildlife groups including waterfowl, migratory songbirds, raptors, herptiles, small mammals and big game will greatly benefit from the project (FWS 2008).

E. Threatened and Endangered Species

1. Endangered Species Impacts

The FWS has concluded that the Proposed Action, and the other Alternatives, may affect, but are not likely to adversely affect, the endangered Colorado pikeminnow, threatened Uinta basin

hookless cactus and threatened Ute ladies'-tresses (plant). See letter of February 6, 2007, with FWS concurrence dated February 7, 2007 (Appendix I, FEIS).¹⁵

2. Interagency Cooperation/Consultation (50 C.F.R. § 402)

Under Section 7 of the Federal Endangered Species Act of 1973, as amended (ESA) (16 USC 1531 *et seq*), Federal agencies are required to ensure that their actions are not likely to jeopardize the continued existence of endangered or threatened species or result in the adverse modification of Critical Habitat. The FEIS included, and served as, the Biological Assessment required pursuant to Section 7c of the ESA (50 C.F.R. § 402.12). With the FWS concurrence cited above, the Joint Lead Agencies have fulfilled all requirements for evaluation of Federal actions under the Endangered Species Act.

The Mitigation Commission will continue to consult with FWS throughout implementation of the project to avoid actions that may affect proposed or listed species or their proposed or designated Critical Habitat.

F. Soil Resources

Soil quality is not expected to change significantly as result of the Proposed Action or the Alternatives. Adverse soil erosion and stability impacts would be avoided using appropriate construction procedures and Standard Operating Procedures described in the FEIS for the Proposed Action and all Alternatives. See Attachment 1. Cofferdams would be used to temporarily dewater wetland areas during construction. Flows would be introduced gradually into each completed section following construction to minimize soil erosion and bank sloughing. Changes in groundwater elevations under new wetlands and adjacent lands could have a limited affect on soil quality. However, most soils to be flooded have limited crop productivity because of existing shallow groundwater that interferes with cultivation and have been classified by Natural Resources Conservation Service (U.S. Department of Agriculture) as most suitable for wildlife habitat.

¹⁵ The American bald eagle was included in this analysis. However, notice of removal of the eagle from the Federal Endangered Species List was published in the Federal Register on July 9, 2007 (72 FR 37346).

G. Air Quality

Vehicle emissions during construction of the Proposed Action or the Alternatives would increase. However, none of the specific air pollutants of concern would exceed allowable air standards for the project area during any single year of construction.

H. Agriculture

The Proposed Action and Alternatives would decrease grazing land and irrigated pasture. Under the Proposed Action, grazing would be eliminated on 4,749 acres to allow the creation and restoration of wetland and upland habitats. This represents a loss of 4,760 Animal Unit Months (AUM) of grazing worth about \$71,400. The Pahcease Alternative eliminates 5,439 acres of grazing (8,875 AUM) worth about \$133,100. For the Topanotes Alternative, corresponding impacts are 6,269 acres of grazing (9,063 AUM) worth about \$135,900. The related impacts on farm revenue would be minor from local and Uinta Basin perspectives, although the economic impacts on individual operations could be more significant.

Active cropland acquired by the Proposed Action totals 58 acres, primarily grass and alfalfa hay, worth about \$24,360 per year in production value. While loss of these farm products would impact local agricultural markets, agricultural production would be maintained under the project for wildlife benefits. Under the Pahcease and Topanotes Alternatives, crop production within project boundaries would be placed under conservation easements with existing owners. Under such easements, full production would be maintained, but 20 percent of production would be reserved for wildlife value. Landowners would receive compensation for the full monetary value of the reservation in any conservation easement. However, this would represent an economic impact to agriculture by removing the value of this 20 percent reservation from local markets. Under the Pahcease this net impact is estimated to be worth about \$20,000. Under the Topanotes Alternative the value is estimated to be about \$30,000.

Total marketable agricultural production (including both crop and livestock production) would be reduced only slightly on a total county-wide basis. In all, the Proposed Action has the least impact on agriculture.

I. Socioeconomics

Any of the Alternatives would slightly increase net economic output, personal earnings and employment in the construction and retail trade sectors of the local economy both during and after construction. Federal and State income taxes would increase as a result. However, these revenues generally leave the Uinta basin and do not result in direct benefits. Operation of the project would continue to contribute to increased revenue in the local economy. None of the changes in economic output represent more than a 0.1 percent change in the Uinta Basin economy.

Changes in county property tax revenues vary among Alternatives depending on changes in land ownership and in the change in tax status of some parcels (from residential to open space "greenbelt" which enjoys lower tax assessments). There would be no change in county taxes associated with changes in land ownership under the Proposed Action, because land would generally remain in fee status. Land acquired for the Pahcease and Topanotes Alternatives would reside in Federal ownership, resulting in annual county tax revenue decreases of \$3,808 and \$3,364 respectively. Changes in tax revenues associated with conversion of tax status could be up to \$4,110, with the Proposed Action having the least impact of \$1,632.

Generally these tax losses would be offset by federal reimbursements through the Payment in Lieu of Taxes (PILT) program, a Bureau of Land Management program that provides payments to counties to offset the tax impacts of Federal lands within their jurisdictions (that pay no local taxes). All acreages acquired under the LDWP will be reported to the Bureau of Land Management for inclusion in the PILT calculations.

Use of eminent domain powers to acquire lands to implement the LDWP could cause adverse socioeconomic impacts. Unwilling sellers would lose land, or portions thereof, and suffer some disruptions of lifestyles. Some landowners affected by acquisition actions would feel a sense of loss and displacement from deep associations with the land and community. It could force relocation from the local area. To mitigate these impacts, eminent domain authorities would be applied only as a last resort and only under criteria previously specified. Regardless, landowners

would be compensated for the fair market value of the highest and best use of their lands plus additional compensation as provided by law.

J. Health and Safety

One of the most controversial areas of concern regarding the LDWP is the potential for increased breeding habitats for mosquitoes, particularly the mosquito (*Culex tarsalis*) that is most typically the vector for West Nile Virus (WNV). This issue is of particular concern to the town of Myton, Utah, a rural residential community in closest proximity to project wetlands. Under the Proposed Action there would be a net increase of 124 acres of potential mosquito breeding habitat of which 68 acres would be of the habitat type conducive to *Culex tarsalis*.

The Pahcease Alternative would create about 849 acres of potential new mosquito breeding habitat, of which 441 acres would be conducive to WNV vectors. The Toponotes Alternative would create 776 acres of new potential mosquito habitats, of which 442 acres would favor *Culex tarsalis*.

Under the Proposed Action and all action Alternatives, a mosquito control program, modeled after plans recommended by the National Institutes of Health, Centers for Disease Control, would be implemented on all project lands. Because most of the existing habitat within the project areas is not currently treated for mosquitoes, there would be a greater level of mosquito control with the project than currently occurs. The project provides an impetuous and funding for expanded tribal vector control that will yield a greater level of protection to all publics (tribal and non-tribal) in the project area and surrounding vicinities.

The Mitigation Commission is committed to funding mosquito control efforts, starting with initial construction and continuing throughout the project life. Control will be a partnership effort with the Tribe implementing control programs and the Mitigation Commission providing support funding.

K. Noise

The Proposed Action and the other Alternatives would cause adverse noise impacts during construction and from recreation traffic after construction. Some of the noise impacts during construction would be significant for people who walk, drive or reside near the construction. Noise created by project traffic would be the same as traffic under baseline conditions although there could be a small increase in the frequency of noise impact. Construction noise impacts would be limited by local ordinances throughout construction period.

L. Cultural Resources

An inventory was completed for cultural resources and no resources of cultural significance were found. This conclusion is reinforced by the findings of the Tribe Office of Cultural Rights and Protection¹⁶ and the BIA¹⁷ on this issue. In compliance with the National Historic Preservation Act, a Programmatic Agreement among the Tribe, Interior and the Mitigation Commission (FEIS Appendix F) has been completed and will ensure that all potentially significant impacts on cultural resources that may be identified during construction and operations will be properly mitigated.

VI. Implementation

Implementation of the Proposed Action by the Mitigation Commission will be pursuant to and in accordance with this ROD, the FEIS, the 2008 FWCA, and licenses and permits enumerated in Table 1-2 of the FEIS. In addition, leases/easements and management/operating agreements are to be negotiated among the Mitigation Commission, Tribe, and other necessary third parties. Other written approvals among the Tribe, Mitigation Commission, BIA, or Interior may be required to guide project implementation.

Implementation of the LDWP differs from typical Federal mitigation projects by the requirement to enter contractual arrangements (leases/easements) with the Ute Tribe in order to incorporate trust lands (including allotted lands), and tribal (Federal reserved) water rights into the project.

¹⁶ Letter of March 28, 2002, from Ms. Betsy Chapoose, Director, Ute Tribe Office of Cultural Rights and Protection.
¹⁷ Letter of March 24, 2008 from Daniel C. Picard, Superintendent, Uintah and Ouray Agency, Bureau of Indian Affairs, Ft. Duchesne, Utah.

Trust lands (including allotted lands) comprise 67 percent (2/3) of the Proposed Action and 100 percent of the required water supply. Trust principles under which Interior conducts its relations with the Tribe provide that the wishes of the Tribe receive great weight in any land management decision. Thus, obviously, the on-going support and long-term participation of the Tribe is vital to the successful implementation of the Proposed Action and, ultimately, the achievement of mitigation goals. Conversely, the Mitigation Commission will provide funding for implementation of the Proposed Action, including additional land acquisition, development of water and construction of wetland resources on the lands, as well as operation and maintenance funding. These valuable considerations are equally essential to the success of the project and represent a great benefit to the Tribe. Together, the Mitigation Commission and Tribe will implement the Proposed Action successfully.

Interior stands ready to provide assistance within its authorities and responsibilities to foster success. It is the intent of Interior, the Mitigation Commission and Tribe to develop the contractual agreements in the forms necessary to implement the Proposed Action as presented in the FEIS.

The Bureau of Indian Affairs (BIA) will play an essential role in implementation of the LDWP. Among other responsibilities, the BIA will receive from Reclamation and hold all lands acquired by eminent domain and use those lands, in cooperation with the Tribe and Mitigation Commission, for the purposes of the LDWP. In addition, the BIA will continue to fulfill its routine, statutorily-mandated oversight role in relation to the actions and activities of the Tribe in the course of its (Tribe's) participation in LDWP implementation. This could include, but not be limited to, review of LDWP contract/lease/easement terms, review of project designs, assistance with delivery of Tribal (Federal) reserved water rights for project purposes, or other matters.

VII. Environmentally Preferable Alternative

Regulations promulgated by the Council on Environmental Quality require an agency that has prepared an EIS to identify in the Record of Decision the alternative or alternatives considered to be environmentally preferable (40 C.F.R. § 1505.2(b)). The environmentally preferable

alternative is the alternative that would promote the national environmental policy as expressed in NEPA. Typically this means the alternative that causes the least damage to the biological and physical environment and best protects, preserves, and enhances historic, cultural and natural resources.

The Proposed Action meets the needs and purpose of the FEIS and provides full and satisfactory mitigation of Bonneville Unit SACS fish and wildlife and related resources impacts (2008 FWCA). Furthermore, it meets the fish and wildlife mitigation objectives while causing the least impact to the physical and socio-economic environments in the project area, compared to the other action alternatives. The other alternatives create, restore and enhance greater wetland habitat acreage, but at unnecessarily high monetary costs and environmental impacts, particularly socio-economic impacts. Therefore, the Proposed Action is the environmentally preferable alternative.

VIII. Mitigation/Commitments

One purpose of a ROD is to document the considerations which led the decision maker to choose to proceed with the selected alternative. When implementing that action, certain specific requirements must be set out which govern implementing activities. However, in choosing to proceed, it is impossible to know in detail every aspect of the contracting, construction, or other activities necessary to implement the selected alternative. Therefore certain overarching commitments must be made which guide the agency in carrying out these aspects of the selected alternative.

Attachment 1 of this ROD summarizes the Environmental Commitments that will be implemented during the construction, operation and maintenance of the LDWP Proposed Action. The purpose of these Environmental Commitments is to avoid and/or minimize adverse environmental impacts.

The Mitigation Commission ultimately is the agency responsible for ensuring each Environmental Commitment is adhered to and may carry out some or all of these commitments

through arrangements with other parties, including the Ute Tribe, Department of the Interior, or others. The Department of the Interior, as a Joint Lead Agency, will assist the Mitigation Commission with mitigation responsibilities upon request.

IX. Public Involvement

Public involvement in the development of the LDWP is thoroughly detailed in Chapter 5 of the FEIS. The FEIS contains copies of all written and oral public comments received on the DEIS, and responses thereto.

Public involvement activities were conducted by the Joint Lead Agencies and Tribe starting in 2001. Interior published a Notice of Intent to prepare an EIS, including an announcement of public Scoping, in the Federal Register on April 25, 2001 (66 FR 20827).

Three Scoping meetings were held in May 2001, to obtain initial input from agency representatives, local governments, water users, irrigation companies, environmental organizations, and the general public. Conceptual alternatives were presented to the general public and the resource agencies at these meetings. Issues raised by the public in attendance, and oral/written comments were recorded as summarized in Section 5.3 of the FEIS.

On November 17, 2003, Interior filed the Draft EIS (DES 03-59) with the Environmental Protection Agency (EPA) and on November 24, 2003, published the Notice of Availability of the DEIS in the Federal Register (68 FR 65943). A sixty day public comment period ensued, which was subsequently extended by 30 days, concluding on February 17, 2004. The DEIS was mailed to individuals and groups on a prepared mailing list. Upon request, the Joint Lead Agencies provided any person or entity not on the mailing list with a copy of the DEIS and its supporting documents. Copies were made available for inspection at the Interior's local office in Provo, Utah, the Mitigation Commission office in Salt Lake City, Utah, the County Library in Roosevelt, Utah, and on the Mitigation Commission website.

During the public comment period, the Joint Lead Agencies and Tribe convened three public meetings for the purposes of receiving public comment on the DEIS--Salt Lake City, Utah; Ft. Duchesne, Utah, primarily for the benefit of Ute Tribal members; and Roosevelt, Utah. Fifty-nine people attended the 3 public meetings; 18 individuals provided oral comments. Thirty-nine letters of written comment on the DEIS were subsequently received.

All comments received on the DEIS were carefully considered and responded to in the FEIS. The revisions in the FEIS provide clarity and consistency, additional information, policy adjustments, and corrections. These revisions augment the analysis of effects described in the DEIS. Changes to the DEIS are detailed in the FEIS.

On April 11, 2008, Interior filed the FEIS (FES 08-13) with the EPA. The FEIS was sent to Federal agencies, State and local governments, landowners within the project area, environmental organizations, and the general public, including all people and organizations who commented on the DEIS.

Four letters pertaining to the FEIS were received by the Joint Lead Agencies during the 30-day waiting period prior to the ROD. These letters generally expressed opposition to the project and repeated issues that were raised during the public review of the DEIS. The Joint Lead Agencies provided individual replies, however no changes to the FEIS were warranted.

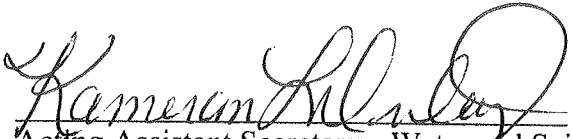
The Assistant Secretary, in formulating this decision, considered the project need and purposes, Alternatives presented in the FEIS, and the comments provided by the public participation process.

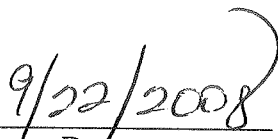
X. Administrative Review

This Record of Decision is the final step in the administrative process. There are no further opportunities for administrative review.

XI. Signature

By signing this Record of Decision, I select the Proposed Action to implement the Lower Duchesne River Wetlands Mitigation Project, as presented in the FEIS, and approve Interior agency cooperation with the Mitigation Commission as it proceeds with construction of the LDWP, in accordance with statutory and contractual obligations.


Acting Assistant Secretary - Water and Science
U.S. Department of the Interior


Date

Attachment 1

ENVIRONMENTAL COMMITMENTS

The following Environmental Commitments are adopted by Interior for the Proposed Action selected for implementation of the Lower Duchesne River Wetlands Mitigation Project.

Most of the Environmental Commitments are standard operating procedures (SOPs) for the LDWP. SOPs would be followed during construction and maintenance of the project to avoid, or minimize, adverse impacts to people and natural resources. The mitigation measures identified in Chapter 4 of the FEIS are designed to avoid or minimize the adverse impacts of the project expected to occur after the SOPs have been successfully implemented. Those measures are also incorporated here. Commitments recommended by the U.S. Fish and Wildlife Service and adopted by Interior are also incorporated herein.

The Mitigation Commission is responsible for implementing each Environmental Commitment. The Mitigation Commission may carry out some or all of these commitments through arrangements with other parties, including the Ute Tribe, Department of the Interior, or others. The Department of the Interior, as a Joint Lead Agency, will assist the Mitigation Commission with mitigation responsibilities upon request.

Agriculture

- Farm owners who may be affected by project construction would be notified of construction procedures and schedules to prevent conflicts with agricultural operations. Procedures to avoid conflicts with agricultural operations would be followed during construction to the maximum extent possible. Unavoidable damage to facilities would be replaced or restored during project construction. Farmers and/or landowners who experience additional unavoidable impacts on agricultural facilities and operations would be compensated for their direct cost of moving or reconstructing facilities.

Air Quality

- EPA's recommendations for aggregate storage pile emissions (AP-42, Section 11.2.3) would be followed to the extent feasible to minimize dust generated by the project. This would consist primarily of periodic watering of equipment staging areas and dirt roads used during construction.
- Construction machinery would be routinely maintained to ensure that engines remain tuned and emission-control equipment is properly functioning as required by law.

Aquatic Resources

- Heavy equipment use in stream beds and riparian areas during construction would be restricted to the construction of temporary access roads in the Uresk Drain and, potentially, the Ted's Flat North oxbow system to the Duchesne River. The duration of heavy equipment

intrusion into the existing channel would be minimized to the extent possible and scheduled to avoid high flow periods.

- Impacts on aquatic resources can be avoided and minimized by following hazardous materials procedures included under the Health and Safety SOPs, Revegetation and Erosion Control SOPs and Wetlands SOPs.
- As per recommendation by the U.S. Fish and Wildlife Service, where feasible, measures will be taken as part of the LDWP to control carp populations in managed wetlands created for the LDWP project. Such measures may include but not be limited to water level manipulation, mechanical removal, and treatment with a biodegradable chemical. Carp can be controlled during winter by concentrating carp using drawdowns and removing them with nets or by approved chemical poisons (rotenone).

Cultural Resources

- A detailed site inventory would be conducted for the selected project after the NEPA process is completed and before construction is started. This would be conducted by cultural resource experts and concentrated in areas that are directly impacted by construction. Data would be recovered, and mitigation procedures used, when adverse impacts are unavoidable. A Programmatic Agreement among the DOI, Mitigation Commission, Ute Tribe and Utah State Historic Preservation Office has been executed and included in this FEIS (Appendix F). Mitigation for impacts to sites eligible for the National Register of Historic Places would consist of Historic American Building Survey/Historic American Engineering Record (HABS/HAER) documentation, excavation and recordation, or other appropriate measures.

Environmental Justice

- Construction contractors would be required to give preference to members of the Ute Indian Tribe in hiring.

Energy Conservation

- Standard energy conservation measures would be used during construction, operation and maintenance (e.g., avoiding unnecessary idling, and keeping vehicles and equipment tuned and maintained).
- The shortest transportation routes would be used during construction to conserve fuel.

Health and Safety

- The LDWP Management Plan and Final Design will include greater detail on mosquito management, such as access routes for mosquito staff (use of berms as necessary, retention of interior roads) and specific areas of control emphasis. The monitoring and control program outlined in Appendix G of the FEIS would be initiated during the design phase for each site to ensure preparation for post-project conditions.

- In accordance with the DEIS and ROD, the mosquito abatement plan will be prepared and implemented in accordance with recommendations of the Centers for Disease Control (CDC). The U.S. Fish and Wildlife Service has recommended that this plan also be coordinated with the Mosquito Abatement Districts of Duchesne and Uintah County and be patterned after the plan used by the FWS on the nearby Ouray National Wildlife Refuge, to the extent it does not conflict with other health and safety directives. The plan should be developed to control insect vectors without harmful impacts to wildlife.

- The Utah Occupational Safety and Health Act and the conditions of the Federal Occupational Safety and Health Standards would be followed during construction. Copies of these publications and the Health and Safety SOPs would be provided to project workers at construction sites.

- Onsite and offsite construction activities would fully conform to appropriate federal standards. These standards include the following items:
 - Good housekeeping practices for routine scrap removal from work sites
 - Proper handling, storage, use and disposal of toxic materials
 - Prohibiting use of alcohol, drugs and firearms
 - Restricting public access to work areas to the extent possible
 - Providing onsite training to employees exposed to hazards associated with work assignments
 - Weekly safety meetings conducted by supervisors for employees under their supervision
 - Providing adequate first-aid supplies, trained personnel and emergency evacuation procedures
 - Dissemination of information on the hazards of chemicals used, stored or produced in workplaces to employees, contractors, visitors and the public who could potentially be exposed
 - Mandatory use of appropriate protective work clothing
 - Use of dependable, trained and qualified signal and flag persons wearing high-visibility apparel for traffic control
 - Adherence to a detailed fire protection plan (e.g., fuel storage and refueling facilities)
 - Proper storage of materials used in construction
 - Operation of equipment only by employees qualified to operate the type of equipment assigned
 - Providing necessary barricades and posting for public protection before the start of excavation operations

- *Mosquito Control* *See Health and Safety*

Noise and Erosion Control

- Revegetation and Erosion Control SOPs would be used where project construction would disturb soil. Disturbed areas would be reclaimed to desired riparian, agricultural and upland plant communities within one year after construction. The contractor would be required to use specified plant materials and reclamation techniques.
- The location of all residences in the project area would be considered when scheduling construction activities with significant noise levels.
- Construction contractors would be required to follow federal noise exposure and hearing conservation standards and practices to protect potentially exposed project workers and the public from harmful noise levels.
- Idling of engines, unloading and reloading of construction equipment would be prohibited within 50 feet of any residence.
- In accordance with the Duchesne County noise control ordinances, construction would take place only during the hours of 7:00 am and 9:30 pm on weekdays, 8:00 am and 9:30 pm on Saturdays and 9:00 am and 9:30 pm on Sundays.

Revegetation

- If possible, water levels within the oxbow systems would be managed during the first three to five years following construction to promote the establishment of desired wetland and riparian plants. This would allow the wetland and riparian vegetation to become established until it could provide erosion control.
- Revegetation and erosion control would be monitored and repairs made if necessary. Revegetated areas would be monitored for invasion of noxious weeds and other weed species, as required by Section 4.17.3 of the Utah Noxious Weed Act, and appropriate weed control measures implemented. These measures would include establishing a cover of desirable plant species as quickly as possible after construction, interim seeding of topsoil stockpiles if they would remain barren for lengthy periods of time, completion of weed surveys during the fall and spring after initial seeding, applying pesticides or removing the weeds by hand before they develop seeds or spread roots, and applying pesticides in accordance with federal application and record-keeping requirements. Monitoring for revegetation success would be conducted for a minimum of three years following completion of initial revegetation. Appendix B of the FEIS provides the details of a noxious weed control program.

Threatened and Endangered Species

- Prior to construction, field surveys of construction impact areas within the selected alternative will be made for threatened and endangered species with potential habitat in the construction area. All potential habitats for Ute ladies'-tresses orchid that may be impacted will be surveyed prior to activities. If the orchid is found, the U.S. Fish and Wildlife Service, Utah Field Office in Salt Lake City will immediately be contacted to determine measures to protect and conserve the

plant and its habitat. For example, planting with woody vegetation may be restricted on any floodplain surfaces containing the species.

- Known Uinta Basin hookless cactus populations and other listed and candidate species or habitat found during pre-construction surveys will be fenced during construction to prevent inadvertent access.
- Temporary displacement of wintering bald eagles by construction activities in November through March (primarily weed control and planting) will be limited by scheduling late fall and early spring activities in areas away from key wintering roosts, as much as possible.
- The Mitigation Commission will continue to consult with FWS throughout implementation of the project to avoid actions that may affect proposed or listed species or their proposed or designated Critical Habitat. Additional requirements that may arise from continued consultations will be implemented.

Transportation

- No staging areas for construction material and equipment will be allowed in residential areas. Heavy equipment and worker traffic will be required to use the designated truck route around Myton.
- Traffic control and other safety measures in construction and maintenance areas would be followed to minimize the risks of accidents to vehicles and pedestrians during construction and maintenance of the project.
- Roads damaged by project construction activities would be restored to at least the level that existed prior to construction.
- Deliveries of materials will be scheduled to avoid peak traffic periods, to the extent possible.

Visual Resources

- Disturbed areas would be landscaped to match existing and characteristic land forms. When feasible, disturbed areas would be recontoured and slopes rounded along berm edges to blend with surrounding natural contours.
- New plantings would be blended with natural vegetation at the edges, and would be configured to match existing vegetation patterns and provide horizontal and vertical/visual diversity.

Water Quality

- The SOPs implemented for aquatic resources also would help protect water quality.
- Hazardous materials procedures implemented under the Health and Safety and Revegetation and Erosion Control SOPs would help avoid and minimize adverse water quality impacts.

Weed Control

- Noxious weed control would take place during all phases of the project, from preconstruction to operation and maintenance (O&M). Weed control would include the following main components (as per Appendix B of the FEIS):
 - Mapping of weed-dominated areas,
 - Treatment of weeds before and during construction, and
 - Ongoing monitoring and control during the O&M phase.
- As recommended by U.S. Fish and Wildlife Service, the LDWP recognizes the risks to habitat of invasive and noxious plant species and will make their control and management a priority.

Wetlands

- Direct and indirect impacts on wetlands would be avoided, unless there are no practicable alternatives ("practicable" means capable of being done, after taking into consideration cost, existing technology and logistics in light of overall project purposes (40 CFR 230.3). Procedures to avoid impacts would include protection of wetlands with silt fencing during construction and avoiding impacts to surface water/groundwater resources that serve as sources for wetlands.
- Heavy equipment in wetland areas would be operated on geotextile mats with gravel overlay to minimize soil and vegetation disturbance. Details of wetland plans will be implemented in accordance with additional or modified requirements imposed pursuant to the Clean Water Act.
- When necessary, construction barriers would be installed to prevent unnecessary damage to adjacent wetlands.
- Wetland topsoil requiring removal would be stockpiled, replaced and disturbed areas would be graded to match previous contour elevations.
- Temporarily disturbed wetlands would be revegetated with native wetland plant species.

Wildlife Resources

- All construction facilities would be located and constructed to avoid the removal of large trees. This requirement is not intended to conflict with the project goals of removing non-native tamarisk and Russian olive trees.
- To the extent feasible, construction on or around important game or non-game species habitat (e.g., deer fawning areas, raptor nests) would avoid the period of use by these wildlife species.
- Impacts on wildlife resources can also be avoided and minimized by hazardous materials procedures included under the Health and Safety SOPs, the Revegetation and Erosion Control SOPs and Wetlands SOPs.