

Record of Decision Lower Duchesne River Wetlands Mitigation Project Bonneville Unit, Central Utah Project

Utah Reclamation Mitigation and Conservation Commission

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 Utah Reclamation Mitigation and Conservation Commission (Mitigation Commission) to select the Proposed Action as presented in the Final Environmental Impact Statement (FEIS) for the Lower Duchesne River Wetlands Mitigation Project (LDWP) (FES 08-13). The FEIS was filed with the Environmental Protection Agency (EPA) on April 11, 2008, and the Notice of Availability was published in the Federal Register on April 11, 2008 (73 FR 19866-19867). The FEIS described and evaluated the environmental impacts of the Proposed Action, two action alternatives, and the No Action Alternative.

The LDWP mitigates environmental impacts resulting from construction and operation of the Bonneville Unit, Central Utah Project (CUP), especially the Strawberry Aqueduct and Collection System (SACS). The Central Utah Project is a Federal water resource development affecting, among other things, the Duchesne River in Duchesne and Uintah Counties, Utah. The SACS is a component of the Bonneville Unit.

The Mitigation Commission and the Department of the Interior served as joint lead agencies in the preparation of the LDWP FEIS. The U.S. Bureau of Reclamation (Reclamation), U.S. Fish and Wildlife Service (FWS), U.S. Bureau of Indian Affairs (BIA), and Uintah and Duchesne Counties served as Cooperating Agencies. Because there was substantial involvement of Ute Indian Tribal Trust resources, the Ute Indian Tribe of the Uintah and Ouray Agency, Ft. Duchesne, Utah (Tribe) was the lead planning entity for the project and also a Cooperating Agency in the NEPA process.

The Assistant Secretary for Water and Science of the Department of the Interior (Assistant Secretary), will issue a separate ROD for the LDWP. The Assistant Secretary's separate decision is necessitated by the responsibility and authority of the Department of the Interior to mitigate for reclamation projects and because of the use of federal lands and interests in lands administered by the BIA within the Project Area for the LDWP. Consequently, the Assistant Secretary's separate Record of Decision also authorizes use of Reclamation and BIA authorities within the project area to implement the Proposed Action.

The public involvement process for this project is summarized in this ROD. The Proposed Action provides complete mitigation for SACS impacts to wetlands, compensates the Tribe for

lost fish and wildlife resources and provides associated Tribal wetland-wildlife resource benefits while minimizing other impacts, particularly socio-economic impacts, on local communities. The Fish and Wildlife Coordination Act Report for the LDWP (2008 FWCA report; prepared pursuant to 16 U.S.C. §§661-666c, as amended) concludes that the Proposed Action is consistent with the 1965 Fish and Wildlife Coordination Act report (1965 FWCA report) and the Central Utah Project Completion Act (CUPCA) (Titles II through VI of P.L. 102-575, as amended), and provides adequate and acceptable mitigation for Bonneville Unit impacts on the Duchesne River affecting wetlands, for lost Tribal fish and wildlife trust resources, and provides associated Tribal wetland-wildlife resource benefits.

The Decision

Selection of the Proposed Action

It is the decision of the Mitigation Commission to select the Proposed Action as presented in the FEIS for implementation. The Proposed Action has been selected for implementation because this alternative best addresses the issues regarding the project while still meeting the purposes and needs for the project.

Organization of the Record of Decision Document

In addition to the previous summary, this ROD is organized into ten sections. Section I contains the Introduction. Section II briefly describes the Proposed Action and other alternatives, including the No Action Alternative. Section III restates the Decision and discusses land acquisition and management aspects of the project. Section IV substantiates the basis for the decision by means of comparison of each alternative with the Purposes and needs statement for the project. Impacts of the alternatives are also summarized for the key impact parameters. Section V describes the procedures for project implementation. Section VI identifies the environmentally preferable alternative. Section VII, with Attachment A, summarizes the mitigation and environmental commitments and monitoring that will be undertaken. Section VIII summarizes the public involvement process. Section IX is the signature of the Mitigation Commission Chair.

I. Introduction

A. The Mitigation Obligation

The 1964 CUP Definite Plan Report (1964 DPR) for the Bonneville Unit described the intended plan for the Bonneville Unit of the CUP. The SACS caused significant and adverse impacts to wetlands and riverine habitats downstream of the confluence of the Strawberry River and Duchesne River by depleting natural flows of the river system. Substantial losses of fish, wildlife and other resources held in trust by the Federal government for the benefit of the Tribe were accrued. The LDWP is needed to restore, create and enhance wetland and riparian habitat along the Duchesne River corridor to compensate for Tribal wetland-wildlife losses resulting from construction and operation of SACS, and to provide additional wetland-wildlife benefits to the Tribe.

The original plan for mitigation of SACS wetland impacts was set forth in the 1965 FWCA report prepared by the FWS. The 1965 FWCA report 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 River Storage Project Act (CRSPA) (43 U.S.C. §620 *et seq.*), but would not use CUP water. Reclamation adopted this recommendation and incorporated it in its September 1965 Addendum to the 1964 DPR. This mitigation commitment was also affirmed by the 1965 Deferral Agreement¹ signed by Reclamation, BIA, Central Utah Water Conservancy District and the Tribe, and the 1973 Final Environmental Impact Statement for the Bonneville Unit prepared by Reclamation (1973 BU-FEIS)².

The 1973 BU-FEIS evaluated Bonneville Unit environmental impacts, including those on Tribal natural resources. Trans-basin diversion of Colorado River basin waters, including tribal water resources, has harmed 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 1965 FWCA report determined that reduced streamflows from the Bonneville Unit would reduce waterfowl use in the Uinta Basin by 60 percent (from 500,000 use-days to 200,000 use-days). Sport hunting and fishing opportunities would likewise be detrimentally affected. The 1973 BU-FEIS included a program called the 'Bureau of Indian Affairs Activity'³, of which development of waterfowl/wetland management units on Tribal trust lands was one of the mitigation components of the Bonneville Unit to offset these impacts.

Over intervening years of continued CUP planning, this commitment to the Tribe has been re-affirmed in supplements to the 1964 DPR prepared in 1988 and 2004 (hereinafter the DPRs). Revisions to the plan since 1965 have reduced the wetland habitat component of the Proposed Action (2,681 acres) to less than originally recommended in the 1965 FWCA and adopted by the 1988 DPR (3,000 acres). The 2004 DPR specifically identifies SACS wetland mitigation as an unfulfilled mitigation commitment (Fish and Wildlife Appendix, Table 2-1, Item 8; Table 3-1 Item 7). The Proposed Action is also somewhat differently configured as to location, habitat priorities, and some other elements, such as land acquisition. However, these changes reflect the alteration of specific mitigation goals that were mandated by the authorities of CUPCA and agreed upon during planning by the Joint Lead and Cooperating Agencies, including the Tribe. The Proposed Action in the FEIS remains consistent with the habitat replacement concepts stated in the 1965 FWCA report and will provide equivalent resource mitigation. FWS has evaluated the Proposed Action in the FEIS against the mitigation need and concluded that it satisfies all

¹ In the June 22, 1965 memorandum conveying and recommending the Deferral Agreement for approval by the Secretary of the Interior, the Commissioners of Reclamation and Indian Affairs documented with specificity the details of the recommended Deferral Agreement, including the four specific fish and wildlife mitigation features referred to in Article 9 of the Deferral Agreement. The four items were: (1) minimum flows of 25 cfs in Rock Creek at the Reservation boundary; (2) *waterfowl management areas will be established along the Duchesne River*; (3) operation and maintenance of the recreation, fishery and wildlife features of Midview Reservoir will be transferred to the Ute Indian Tribe; and (4) fishing lakes aggregating approximately 800 surface acres will be constructed on Indian lands. [emphasis added].

² Central Utah Project, Bonneville Unit Final Environmental Statement (8-2-73); page 25.

³ Central Utah Project, Bonneville Unit Final Environmental Statement (8-2-73); pages 104-108.

SACS wetland mitigation obligations including those to the Ute Indian Tribe as expressed in the 1965 FWCA report and 1965 amendment to the 1964 DPR (2008 FWCA report).

The CUPCA addressed 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 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).

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)).

Federal funds authorized or appropriated under Titles II and IV of CUPCA are anticipated to be available through appropriations in future years to cover LDWP implementation costs and operation and maintenance funding.

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 eastern Utah and also diverts and transports Colorado River water, including Tribal water resources under the 1965 Deferral Agreement, from the Uinta Basin to populous areas on the Wasatch Front in Utah.

The Central Utah Project Completion Act 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. CUPCA directs that the mitigation projects identified in the 1988 DPR (and subsequently the 2004 DPR), including the LDWP, are required to be completed as part of the CUP.

Implementation of the Proposed Action described in the FEIS will fully satisfy all aspects of the United States' obligation to mitigate SACS impacts to Ute Indian Tribal wetland-wildlife and associated Ute Indian Tribal trust resources and provide associated Tribal wetland-wildlife resource benefits as expressed in the 1965 FWCA report and 2004 DPR. Further, there are no other mitigation obligations to other publics or for other resources for the impacts of SACS on wetlands along the Duchesne River corridor (2008 FWCA).

II. Description of the Proposed Action and Alternatives

The Proposed Action and action alternatives would all create, restore and enhance wetland and riparian habitats along the lower Duchesne River corridor in the Uinta Basin of eastern Utah. 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 revegetation with native riparian species, noxious weed control, and livestock grazing management to benefit wildlife. The Proposed Action and the alternatives differ in size, relative amounts of fee and Tribal Trust and Allotted lands to be included, location of lands, and future land ownership. All land would be managed by the Tribe in accordance with the project purposes and commitments embodied in Management Plans and Agreements to be developed between the Mitigation Commission and Tribe during project implementation. A full description of the Proposed Action and alternatives is included in the FEIS. Brief summaries follow.

A. *The Proposed Action*

The Proposed Action will create, restore and enhance 2,681 acres of 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. Acquisition of 1,592 acres of private land and compensation to the Tribe via leases or easements with the Tribe and BIA for use of 3,215 acres of Tribal Trust and Allotted land and water are part of the Proposed Action. Acquired private land would be transferred to the Tribe and retained in fee ownership status, as more fully described in Section IV of this ROD and in the FEIS.

B. *Pahcease Alternative*

The Pahcease Alternative is the largest action alternative, encompassing 3,055 acres of wetland and riparian habitat on 6,765 acres. About 2,125 acres would be created or restored and 930 acres of existing habitat would be enhanced. On these lands, 239 acres of existing, active cropland would be placed under conservation easements. These croplands would be managed for both agricultural production and wildlife benefits as part of the project. Acquisition of 1,787 acres of private land and compensation to the Tribe via leases or easements with the Tribe and BIA for use of up to 3,891 acres of Tribal Trust and Allotted land and water are part of this alternative. This alternative also includes 1,087 acres of existing Federal property (aka Riverdell North) which is nearby and suitable for project purposes. Under this alternative, an equivalent acreage of fee land would be purchased by the project to replace this Federal holding. All acquired private land (plus the existing 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, of which 1,461 acres would be created or restored, and 1,714 acres of existing habitat would be enhanced. Up to 356 acres of cropland would be placed under conservation easements. Acquisition of 2,171 acres of private land and compensation to the Tribe via leases or easements with the Tribe and BIA for use of up to 4,477 acres of Tribal Trust and Allotted land and 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.

E. Other Alternatives Considered But Eliminated From Detailed Analysis

Several other alternatives were considered but were eliminated from detailed analysis. These alternatives are described in Section 1.5 of the FEIS along with the reasons they were eliminated from consideration.

III. Selection of the Proposed Action

It is the decision of the Mitigation Commission to select the Proposed Action as presented in the FEIS, and approve the Mitigation Commission to proceed to construct and implement the LDWP in accordance with statutory and contractual obligations. In making this decision, the Mitigation Commission has reviewed the alternatives discussed in the FEIS and their predicted environmental, economic, and social impacts. This decision also includes implementation of extensive environmental commitments including standard operating procedures. Because of the length of the environmental commitments, they are included as Attachment A.

This decision has substantial involvement, influence and effects on resources held in trust by the United States, acting primarily through the Secretary of the Interior, for the benefit of the Tribe. In keeping with trust principles that guide the Secretary and other federal 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, 2008.⁴

Implementing the Proposed Action requires substantial involvement from one or more cooperating agencies. Reclamation will cooperate by acquiring the lands needed for the LWDP Proposed Action with funds to be provided by the Mitigation Commission. The BIA will cooperate by administering agreements, leases, easements, or other contracts or procedures to allow the Ute Indian Tribe to participate in the LDWP project, including the use of Tribal Trust and Allotted lands and waters for the LDWP. Further particular information follows.

Land Acquisition

Private (fee) lands (and interests in lands including water rights) will be acquired to implement the Proposed Action. Lands are to be incorporated into the project through fee acquisition from private landowners, and by lease/easement of Trust lands and waters from the Tribe (including allottees of tribal land and water). The Proposed Action is the smallest in size of all the action alternatives and requires the least amount of private land acquisition (1,592 acres fee; 3,215 acres Tribal trust and allotted).

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 Assistant Secretary, in the DOI ROD, concurs that the use of eminent domain authorities to acquire land and water is appropriate, and approves Reclamation's use of its authorities of eminent domain, and all other Reclamation authorities, to complete the LDWP⁵.

⁴ Resolutions of support were enacted by the Ute Indian Tribe Business Committee: Resolutions #95-552, #98-184, #00-296 and #05-058. The most recent resolution was dated April 7, 2008.

⁵ The use of eminent domain authority by Reclamation for the implementation of LDWP is appropriate. In the Reclamation Act of 1902, the Secretary of the Interior, and at his direction, Reclamation, was "authorized and directed to make examinations and surveys for, and to locate and construct, as herein provided, irrigation works for the storage, diversion, and development of waters in the western United States. 43 U.S.C. § 411; see also 43 U.S.C. § 391. In the same Act, the Secretary of the Department of the Interior was authorized to exercise the power of eminent domain where necessary:

Where, in carrying out the provisions of this Act it becomes necessary to acquire any rights or property, the Secretary of the Interior is authorized to acquire the same for the United States by purchase or by condemnation under judicial process, and to pay from the reclamation fund sums which may be needed for that purpose

43 U.S.C. § 421. Section 421 has remained a statute of the United States, unamended, since 1902.

In the Act of March 10, 1934, Congress began to require that planning for water development projects include consideration of their impact on fish and wildlife. This policy was further strengthened when the 1934 Act was last amended by the Fish and Wildlife Coordination Act of 1958, 16 U.S.C. §§ 661-67. Section 661 sets out the Act's purpose:

. . . of recognizing the vital contribution of our wildlife resources to the Nation, the increasing public interest and significance thereof due to the expansion of our national economy and other factors, and to provide that wildlife conservation shall receive equal consideration and be coordinated with other features of water- resource development programs

Section 662(b) requires that, in any federal water project, the Secretary provide wildlife reports:

. . . for the purposes of determining means and measures that should be adopted for preventing the loss of or damage to . . . wildlife resources, as well as to provide concurrently for the development and improvement of such resources [which] shall be made an integral part of any report prepared or submitted by any agency of the Federal Government responsible for engineering surveys and construction of such projects when such reports are presented to the Congress . . . and shall describe

Reclamation would transfer title to lands acquired by eminent domain, if any, to the Bureau of Indian Affairs for management by the Tribe, as part of the LDWP.

The following restrictions were applied by the Assistant Secretary to Reclamation's use of eminent domain authority.

- a. Eminent domain will be used only to acquire lands essential to accomplish the LDWP Proposed Action as described in the FEIS.
- b. Eminent domain will be used only if/when all reasonable attempts to negotiate purchase on a willing-seller basis are unsuccessful.
- c. Eminent domain will be used only when such lands are needed to further the purposes of CRSPA and CUPCA and accomplish the Assistant Secretary's and the Mitigation Commission's authorized plan for the LDWP.
- d. Eminent domain will be used only after prior coordination and consultation with local, county, and state governments about the potential condemnation is conducted by the Mitigation Commission and/or the Department of the Interior or Reclamation.
- e. Lands acquired by eminent domain shall be retained (ownership) by the Federal government and transferred by Reclamation to the jurisdiction of the BIA.

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

Land Management

Under the Proposed Action, lands, or interests therein, acquired from willing sellers will be transferred in fee title to the Tribe. Lands acquired by eminent domain will be transferred by Reclamation to the jurisdiction of the BIA to be managed by the Tribe for LDWP purposes in

the damage to wildlife attributable to the project and the measures proposed for mitigating or compensating for these damages. . . .

As noted above, Reclamation, as an arm of the Secretary of Interior, has had uninterrupted authority to acquire property by condemnation for Reclamation projects in the western states since 1902. 43 U.S.C. § 421. The Fish and Wildlife Coordination Act, adopted in 1934 and amended in 1958, as well as the Colorado River Storage Project Act of 1956 (CRSPA), all recognize environmental mitigation as an integral part of Reclamation projects. 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 authorities not transferred specifically to the Mitigation Commission remain with Reclamation, including the power of eminent domain. The decision of the United States in the LDWP to approve the use of condemnation is fully appropriate because, as section 301(a) of CUPCA makes clear, shifting authority to plan and administer funding for section 8 of CRSPA to the Mitigation Commission had no effect upon the authority and power of the Secretary of Interior, acting through Reclamation, to follow the Commission's plan or to use section 8 funds granted by the Commission, in the exercise of Interior's own CRSPA authority to carry out the CUP mitigation plan. CUPCA did not remove or lessen the mitigation plan for the Central Utah Project so far as the LDWP is concerned. CUPCA only altered what entity performed which tasks. In the final analysis, condemned lands, if any, will remain under the authority and ownership of the United States, acting through the Secretary of the Interior. It is fully appropriate for the Secretary, acting through Reclamation, to utilize mitigation funds provided through the Mitigation Commission, to acquire necessary lands and waters for the LDWP.

accordance with appropriate and applicable BIA regulations and policies pertaining thereto.⁶ The Mitigation Commission will develop operating agreement(s) with the Tribe and BIA, as appropriate, for management of all lands and facilities, including eminent domain lands, 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.

The BIA will play an essential role in implementation of the LDWP. Among other responsibilities, the BIA will administer for the United States and the Ute Indian Tribe 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, and assistance with delivery of Tribal (Federal) reserved water rights for project purposes, or other matters.

The LDWP is unique among environmental resource mitigation plans. Typically, a Federal environmental mitigation project would involve existing public lands, or private lands acquired and retained in public ownership, to be managed by a public entity. The LDWP in part replaces sovereign resources held in trust for the sovereign Ute Indian Tribe. The wetlands and facilities of the LDWP, once complete, will be assets of the Tribe, to derive benefits from and be managed by it.

The Proposed Action requires leases/easements among the Mitigation Commission, Tribe and BIA to incorporate trust lands (including allotted lands) and water into the project so that adequate resource benefits can be achieved. These contractual arrangements are generally outlined in the FEIS, but details remain to be negotiated. The Joint Lead Agencies and the Tribe desire and intend that the LDWP persist and yield resource benefits to the Tribe in perpetuity. The Joint Lead Agencies and the Tribe commit that all project lands in the Riverdell South unit will be developed and managed for wetlands and wildlife habitat for a minimum of 50 years; and that other lands will be developed for and managed as part of the LDWP for a minimum of 10 years.

⁶ The primacy of the Mitigation Commission in mitigation planning combined with its limited staff size, essentially dictates that the Mitigation Commission achieves its planning goals through agreements with other Federal and state agencies, or the Tribe. The Mitigation Commission may, of course, actually administer lands, or interests in lands, which it acquires under § 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 administers its plan and achieves its planning goals through the conditions contained in agreements it executes with other entities. 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 the Mitigation Commission and the Bureau of Indian Affairs. Thus, this decision requires that agreements be executed between the Commission and Tribe, and any necessary third party, for the implementation and operation and management activities required on affected lands, or interests the Mitigation Commission holds in affected lands.

IV. Basis for Decision

Three main criteria were used to select the LDWP alternative: 1) the degree to which the alternative meets the legal requirement or project Aneed@ to mitigate for reclamation project impacts; (2) the degree to which the alternative meets the Apurposes@ of the LDWP; and (3) the degree to which the alternative resolves the issues raised during scoping and review of the DEIS.

As a basis for this decision, the Mitigation Commission 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 Mitigation Commission has considered the comments received on the DEIS and the FEIS; the results and conclusions of associated technical documents; the authorizing legislation (CRSPA and CUPCA); and other relevant materials such as the Resolution of the Ute Indian Tribe Business Committee. Substantial changes in the FEIS Proposed Action that specifically address the concerns of Duchesne and Uintah Counties have been incorporated by the Joint Lead Agencies.

The Mitigation Commission 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 and written comments received during an extended public comment period. Based on the analysis presented in the FEIS, the Mitigation Commission has concluded that the Proposed Action best addresses the issues raised by the public, local and county governments and other interested agencies while meeting the purposes and need for the project. The Proposed Action is also the environmentally preferable alternative as discussed later in the document. For these reasons the Proposed Action has been selected for implementation.

Project Purposes and Needs⁷

There are two needs for the LDWP:

- Acquire, develop and manage wildlife areas incorporating sufficient quality and quantity of wetlands within the Duchesne River corridor to compensate for Tribal wetland-wildlife losses resulting from construction and operation of SACS, and
- Provide additional wetland-wildlife benefits to the Tribe within the Duchesne River corridor as initially committed by the 1965 Deferral Agreement.

The project purposes are as follows:

- Restore historic riverine wetland features on, or associated with, the Duchesne River,
- Implement a plan that contains a diversity of wetland and riparian habitat types,
- Develop habitat connectivity by incorporating contiguous blocks of riparian and wetland habitat along oxbows, river terraces and other riverine features, and
- Remain within funding authorization identified in the Mitigation Commission's Mitigation and Conservation Plan (2005).

All action alternatives evaluated in the FEIS meet the underlying needs for the project and all the project purposes. The Proposed Action, however, meets the project purposes and needs more

⁷ See Section 1.2 of the LDWP FEIS.

effectively compared to the other action alternatives as explained below. The No Action Alternative would not meet the underlying needs for the project nor any of the project purposes.

- The Tribe has participated in this project as the lead planning entity, and use of Tribal trust and allotted lands is required for the LDWP to succeed. The Tribe supports the Proposed Action for implementation. This is consistent with Section 301(g)(4) of CUPCA.
- The Proposed Action accomplishes the required wetlands and fish and wildlife mitigation while requiring the least amount of private fee land to be acquired compared to the other alternatives.
- The Proposed Action has the least potential of all the action alternatives for use of eminent domain to acquire lands and waters needed for the LDWP because of its smaller size and lower acreage requirements.
- The Proposed Action minimizes adverse economic impacts on local taxes, agricultural revenues, and social lifestyles compared to the other action alternatives.
- The Proposed Action creates the least amount of mosquito breeding habitat compared to the other action alternatives.
- The Proposed Action consolidates lands that would be managed in perpetuity for fish and wildlife purposes and would potentially provide greater long-term benefits to fish and wildlife resources compared to the other action alternatives.

Factors Considered in Making the Decision

Several issues were raised during scoping, consultation with cooperating and other agencies, and public review of the DEIS. The impact analysis contained in Chapter 4 of the FEIS addresses those issues in detail. The FEIS Proposed Action was judged to be most responsive of the action alternatives to those issues, as summarized below:

Health and Safety

One of the most controversial areas of concern regarding the LDWP is the potential for increase in potential breeding habitats for mosquitoes, particularly the mosquito (*Culex tarsalis*) that is most typically the vector for West Nile Virus (WNV). This issue was raised particularly by residents in the Myton, Utah, vicinity, a rural community in proximity to the LDWP project. It is noted that with implementation of the LDWP, all lands within the LDWP project area will be treated for mosquito control; whereas presently (without the LDWP project) many of those same lands are treated only sporadically, if at all.

Approximately 43 percent of the project area boundary provides suitable mosquito producing habitat under baseline conditions, and the Proposed Action would increase this amount by 497 acres, or 11 percent. Although the Proposed Action would result in an increase in potential mosquito habitat, there would be fewer acres of untreated mosquito habitat under the Proposed Action compared to baseline conditions. This is because the LDWP would implement a comprehensive mosquito control program that is described in Appendix G of the FEIS. With the LDWP, all potential breeding habitats within the project boundaries would be treated in accordance with the Mosquito Control Plan. While mosquito control would be implemented under all action alternatives, the Proposed Action would result in the fewest acres of mosquito-

producing habitat that would need to be treated. Under the Proposed Action there would be a net increase of 497 acres of potential mosquito breeding habitat, of which 271 acres would be of the type conducive to *Culex tarsalis*. Within two miles of Myton, 124 acres of potential mosquito breeding habitat would be created of which 68 acres would be of the habitat type conducive to the *Culex tarsalis*.

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

A mosquito control program, modeled after plans recommended by the U.S. National Institutes of Health and the U.S. Centers for Disease Control and Prevention, would be implemented on all project lands. The project provides impetus and funding for an expanded vector control program on Tribal and Project lands that will yield a greater level of mosquito control in the LDWP project area, than currently exists.

Because the Proposed Action would create the fewest acres of potential mosquito breeding habitat it would have the least potential impact of any of the action alternatives. All potential breeding habitats within the project boundaries would be treated in accordance with the Mosquito Control Plan.

Noxious Weeds

The LDWP Proposed Action will result in a reduction in noxious weeds compared to the No Action Alternative, especially Russian olive, pepperweed, and tamarisk. Noxious weed control would take place during all phases of the LDWP project, from preconstruction and construction to operation and maintenance in accordance with a detailed weed control plan included as part of the LDWP (Appendix B). Weed control is an LDWP project objective to improve wetland wildlife habitat. All action alternatives are equivalent in this regard.

Funding

The weed and mosquito control programs will be initiated during construction of the project and continue throughout the life of the project. Funding will be provided by the Mitigation Commission specifically for the LDWP. All action alternatives are equivalent in this regard.

Acquisition of Private Lands

Eminent Domain The Mitigation Commission and Assistant Secretary recognize the concerns about using eminent domain to acquire private lands. Although it is necessary to preserve the right of eminent domain for the LDWP, it will be used only as a last resort in the event that all reasonable efforts to complete an acquisition on a willing-seller basis have failed. The process of acquiring lands by eminent domain is controlled by federal regulation and policy and is designed to protect both the private landowner and the taxpayer.

Loss of Private Land The Proposed Action has been revised to reduce the amount of acreage in the project and specifically to reduce the amount of private land needed. This was done primarily by eliminating the site with the most private land (the Flume site), and revising other site boundaries to avoid established cropland where possible. Together these changes have also reduced the agricultural and socio-economic impacts of the Proposed Action. The amount of private lands to be acquired under the Proposed Action has been reduced from 2,154 acres in the DEIS, to 1,592 acres as per the FEIS.

Socioeconomics

The economic impact analysis was revised for the FEIS using the IMPLAN model, instead of the model developed by the State of Utah that was used for the DEIS. IMPLAN is accepted by and used by the State of Utah for all its economic impact forecasting. None of the changes in economic output under any of the action alternatives would account for more than a 0.1 percent change in the Uinta Basin economy. None of the alternatives would adversely affect any of the local infrastructure, including roads, or local social services.

The Proposed Action would have the smallest impact on tax revenues. The total annual tax change within the two-county area from both the conversion of private land to federal ownership and the conversion of some parcels from residential to greenbelt use could range from zero (with all residents relocating to similar value homes within the two-county area) to \$1,632. The total property tax loss within the two-county area for the Pahcease Alternative would range from \$3,808 (with all residents relocating to similar value homes within the two-county area) to \$7,918 annually. The total property tax loss under the Topanotes Alternative would range from \$3,364 to \$7,043 annually.

All of the action 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. Operation of the project would continue to contribute to increased revenue in the local economy.

Private (fee) lands acquired on a willing-seller basis under the Proposed Action will be retained in fee status under Tribal corporate ownership, thereby retaining those private lands on the local tax rolls and minimizing tax impacts of the project. Under the other action alternatives, acquired private lands would be placed in federal ownership and would be removed from the local tax rolls.

Under certain circumstances, these tax losses might 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 social impacts. Unwilling sellers would lose land, or portions thereof, and likely 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 by means previously specified. Landowners would be compensated for the fair market value of the highest and best use of their lands as provided by law.

Duchesne River Area Canal Rehabilitation Program

Concerns regarding public access to and future management of the Federal Riverdell North property (acquired by the Federal government in 1987 as the site for DRACR mitigation) were substantial and widespread among the public. Under the Proposed Action, the DRACR mitigation component has been eliminated as part of the LDWP. The Mitigation Commission will develop plans for the DRACR mitigation program, separate and apart from the LDWP. None of the other action alternatives in the FEIS include the DRACR mitigation as an element of the alternative. All action alternatives are equivalent in this regard.

Water Resources

Water for the LDWP would come from existing water rights associated with land to be acquired or leased to the project by the Tribe and Bureau of Indian Affairs. This water, whether appurtenant to fee lands or Trust lands, is a Federal reserved water right held in trust for the Tribe (Tribal trust water), which is 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 baseline canal diversions.

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

Under the Proposed Action, junior water right holders would experience reduced deliveries in low water (dry) years (estimated once in six years). 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 compared to the other alternatives.

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

The Proposed Action 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 existing infrastructure such as roads and would install culverts to facilitate water movement and

minimize impacts. Special consideration was given to evaluate the potential for groundwater impacts to the cemetery near Myton, Utah, which is located approximately one mile from and 20-25 feet higher in elevation than the proposed project impoundments. Results from a number of groundwater test wells indicate that groundwater gradients slope downward and away from the cemetery toward the Duchesne River. Thus, groundwater impacts in the cemetery will not occur due to the project.

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 increases result from increased deep percolation from the managed wetland complexes. The Pahcease and Topanotes Alternatives both contain large developed marshes on lands that are not included in the Proposed Action. Salinity impact evaluations were conducted using methods the Bureau of Reclamation uses for 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 of projects it implements.

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 in the LDWP project area along the lower Duchesne River. Construction activities under the Proposed Action would temporarily impact 17.5 acres and permanently impact 7.3 acres of non-riparian wetlands, riparian habitats and wetland weeds. See Table 4-2 in the FEIS. Impacts would be localized and subsequently be 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. See Tables 4-6 and 4-9 of the FEIS. Wetland, and riparian habitats created, restored or enhanced under the Proposed Action, Pahcease, and Topanotes Alternatives are 2,681, 3,055 and 3,175 acres respectively.

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 component, 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 wildlife habitat for all riparian species under all alternatives.

Threatened and Endangered Species

The FWS has concurred with the conclusion that the Proposed Action, and the other action alternatives, may affect, but are not likely to adversely affect, the threatened American bald eagle⁸, 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). The FEIS included, and served as, the Biological Assessment required pursuant to Section 7c of the ESA (50 C.F.R. §402.12). The Joint Lead Agencies have fulfilled all requirements for evaluation of Federal actions under the Endangered Species Act (16 U.S.C 1531 *et seq.*). The Mitigation Commission will continue to consult with FWS prior to and during project implementation to avoid actions that may affect proposed or listed species or their proposed or designated Critical Habitat.

Soil Resources

Soil quality is not expected to change significantly as result of the Proposed Action or the action 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 action alternatives (see Attachment A). 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 effect 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.

Air Quality

Vehicle emissions during construction of the Proposed Action or the action alternatives would increase. However, none of the specific air pollutants of concern would exceed allowable air quality standards.

Agriculture

The Proposed Action and action 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 would eliminate 5,439 acres of grazing (8,875 AUM) worth about \$133,100. For the Topanotes Alternative,

⁸ The bald eagle was previously listed as a federally threatened species but a notice of delisting was placed in the Federal Register on July 9, 2007, with the delisting effective August 8, 2007. The bald eagle status will be monitored under section 4(g)(1) of the Endangered Species Act for at least 5 years. As a result, the bald eagle was evaluated as though it were still a threatened species in the FEIS.

corresponding impacts are 6,269 acres of grazing (9,063 AUM) worth about \$135,900. The related impacts for all action alternatives on farm revenue would be minor from a local and Uinta Basin perspective, although the economic impacts on individual operations would 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. 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% of production would be left in the field for wildlife value. Landowners would receive compensation for the full monetary value of the 20% reservation in any conservation easement. However, this would represent an economic impact to agriculture by removing the value of this 20% reservation from local markets. Under the Pahcease Alternative this net impact is estimated to be worth about \$20,000. Under the Topanotes Alternative the value is estimated to be about \$30,000. In all, the Proposed Action has the least impact on agriculture.

Noise

The Proposed Action and the action 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. However, 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 a noise impact. Construction noise impacts would be limited by local ordinances throughout the construction period.

Cultural Resources

An inventory was completed for resources of cultural significance and no resources of cultural significance were found. This conclusion is reinforced by the findings of the Ute Indian Tribe Office of Cultural Rights and Protection⁹ and the BIA¹⁰ on this issue. In compliance with the National Historic Preservation Act, a Programmatic Agreement among the Tribe, Department of the Interior and the Mitigation Commission (FEIS Appendix F) will ensure that any potentially significant impacts on cultural resources that may be identified during construction and operations will be properly mitigated.

V. Implementation

The implementation of the Proposed Action by the Mitigation Commission will be pursuant to and in accordance with this ROD, the FEIS, licenses and permits enumerated in Table 1-2 of the FEIS, lease/easement or management/operating agreements to be negotiated between the

⁹ Letter of March 28, 2002, from Ms. Betsy Chapoose, Director.

¹⁰ Letter of March 24, 2008 from, Superintendent, Uintah and Ouray Agency, Bureau of Indian Affairs.

Mitigation Commission, Bureau of Indian Affairs and Tribe, and such other written approvals as required by the Tribe, Mitigation Commission, Interior, or others.

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. Trust lands (including allotted lands) and water rights comprise 67 percent (2/3) and 100 percent of the land and water resources for the Proposed Action, respectively. Trust principles under which the United States conducts its relations with the Tribe provide that the desires of the Tribe receive great weight in any land management decision. The Mitigation Commission will provide funding for implementation of the Proposed Action, including additional land acquisition, development of project features 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. The Joint Lead Agencies and the Tribe desire and intend that the LDWP persist and yield resource benefits to the Tribe in perpetuity. The Joint Lead Agencies and the Tribe commit that all project lands in the Riverdell South unit will be developed and managed for wetlands and wildlife habitat for a minimum of 50 years; and that other lands will be developed for and managed as part of the LDWP for a minimum of 10 years. Thus, the long-term participation of the Tribe as described is vital to the successful implementation of the Proposed Action and the achievement of the required mitigation. It is the intent of the Mitigation Commission to develop the contractual agreements in the forms necessary to implement the Proposed Action as presented in the FEIS.

VI. 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 Section 101 of 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 will fully satisfy all aspects of the United States' obligation to mitigate SACS impacts to Ute Indian Tribal wetland-wildlife and associated Ute Indian Tribal trust resources and provide associated Tribal wetland-wildlife resource benefits as expressed in the 1965 FWCA report and 2004 DPR. Further, there are no other mitigation obligations to other publics or for other resources for the impacts of SACS on wetlands along the Duchesne River corridor (2008 FWCA report). Consequently, the proposed Action meets the fish and wildlife mitigation objectives while causing the least damage 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 the cost of greater environmental impacts, particularly socioeconomic impacts. As such, the Proposed Action is the environmentally preferable alternative.

VII. Mitigation/ Environmental Commitments

One purpose of a ROD is to document the considerations which led the decision maker(s) to select which alternative to proceed with. When implementing that selected 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 action. Therefore certain overarching commitments must be made which guide the agency in carrying out these aspects of the selected action.

Attachment A 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 minimize adverse environmental impacts. Most of these environmental commitments were presented as “Standard Operating Procedures” in Appendix A of the FEIS. Several additional commitments are included in response to recommendations by the FWS (FWCA 2008 report).

The Mitigation Commission is ultimately is the agency 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, and others.

VIII. 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, water users, local governments, irrigation companies, environmental organizations, and the general public. Conceptual alternatives were presented to the public 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, the Department of the Interior filed the Draft EIS (DES 03-59) with the Environmental Protection Agency (EPA) and on November 24, 2003, published the Notice of Availability in the Federal Register (68 FR 65943). A sixty day public comment period was provided, 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 Department of the Interior's local office in Provo, Utah, at 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 held three public meetings for the purposes of receiving public comment on the DEIS. The meetings were held in Salt Lake City, Utah; Ft. Duchesne, Utah; and Roosevelt, Utah. Fifty-nine people attended the three 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 FEIS Proposed Action was revised to address the substantial issues raised during the public comment period. 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, the Department of the 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.

In reaching this decision the Mitigation Commission considered purposes and needs of the project, the environmental impacts of the alternatives presented in the FEIS, and the comments provided by the public participation process.

IX. Signature

With the signing of this Record of Decision, we select the Proposed Action to implement the Lower Duchesne River Wetlands Mitigation Project, as presented in the FEIS and as described herein, and approve the Mitigation Commission to proceed with implementation of the LDWP, in accordance with statutory and contractual obligations.



Jody L. Williams, Chair
Utah Reclamation Mitigation and Conservation Commission

MAY 22 2008

Date

ATTACHMENT A

ENVIRONMENTAL COMMITMENTS

This attachment lists the Environmental Commitments for 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 in response to recommendations from the U.S. Fish and Wildlife Service are incorporated herein. The Mitigation Commission ultimately is the agency responsible for ensuring each Environmental Commitment is adhered to. 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, and others.

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 during project construction would be mitigated through replacement or restoration. 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 the re-connection of the Flume to the secondary channel, and potentially the Ted 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 seines or by 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. 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 possible 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.

- As per recommendation by the U.S. Fish and Wildlife Service, the LDWP mosquito control plan will be developed in coordination with the mosquito abatement districts of Duchesne and Uintah county and will be patterned after the plan used by the FWS on the nearby Ouray National Wildlife Refuge, to the extent it does not conflict with the Centers for Disease Control (CDC) guidelines or 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

- 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 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.
- § 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 areas 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. Other requirements arising out of ESA Section 7 consultation will be implemented.
- § 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.

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 described for aquatic resources also would help protect water quality.
- § The hazardous materials procedures included under the Health and Safety SOPs and the 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 and construction 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 per recommendation by the U.S. Fish and Wildlife Service, the LDWP recognizes the risks to habitat values of invasive and noxious plant species and will make their control and management a high priority.

Wetlands

- § Direct and indirect impacts on wetlands would be avoided, unless there are no other practicable alternatives (A practicable@ as defined in 40 CFR 230.3 means capable of being done, after taking into consideration cost, existing technology and logistics in light of overall project purposes). Procedures to avoid impacts would include protection of wetlands with silt fencing during construction and avoiding impacts on surface water and groundwater resources that serve as a source of water for wetlands.
- § Heavy equipment in wetland areas would be operated on geotextile mats with gravel overlay where feasible and/or as directed by U.S. Army Corps of Engineers permits to minimize soil and vegetation disturbance.
- § When necessary, construction barriers would be installed to prevent unnecessary construction 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 wetland areas would be revegetated with a mixture of native wetland plant species.

Wildlife Resources

- § All construction facilities would be located and constructed to avoid the removal of large trees.
- § To the extent feasible, construction activities on or around important game or non-game species habitat (e.g., deer fawning areas, raptor nests) would be scheduled to avoid the period of greatest 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.