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such absence; delegating responsibility to agency personnel as in the judgment of the Executive Director will benefit agency operations and functions; and

(C) Managing and maintaining agency office space, equipment, and facilities in a sound and efficient manner; establishing and maintaining agency files and archives; and preparing and maintaining an up-to-date inventory of all agency property; and

(ix) Exercising the full power of the Commission in times of emergency until such time as the emergency ends or the Commission meets in formal session.

(2) Except in emergency situations and when specifically delegated such responsibility by the Commission, the Executive Director has no authority to formulate mitigation and conservation policies and objectives or to approve or disapprove agency plans or projects, for implementation of the fish, wildlife, and recreation mitigation and conservation projects and features authorized in the Act.

(d) The agency staff is organized into four functional areas:

(1) Project Administration, through the Project Manager, responsible for development and management of mitigation and conservation projects;

(2) Planning Administration, through the Planning Manager, responsible for development and coordination of mitigation and conservation plans and for environmental compliance in general;

(3) Public Information, through the Public Information Officer, responsible for preparation of reports and documents and dissemination to the public of information regarding agency programs and projects; and

(4) Administrative Services, through the Administrative Officer, responsible for administrative support services and office management.

§ 10000.7 Place of business; service of process.

(a) The principle place of business and offices of the agency are located at 111 East Broadway, Suite 310, Salt Lake City, Utah 84111. All correspondence and requests for information or other materials should be submitted to the agency at this address.

(b) The Executive Director is the agency official designated to accept service of process on behalf of the agency.

PART 10005—POLICIES AND PROCEDURES FOR DEVELOPING AND IMPLEMENTING THE COMMISSION'S MITIGATION AND CONSERVATION PLAN

Sec.

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AUTHORITY: 43 U.S.C. 620k(note); sec. 301(g)(3) (A) and (C) of Pub. L. 102–575, 106 Stat. 4600, 4625.

SOURCE: 60 FR 49448, Sept. 25, 1995, unless otherwise noted.

§ 10005.1 Purpose.

The planning rule in this part establishes the Commission's policies regarding the mitigation and conservation plan required by the Central Utah Project Completion Act, Public Law 102- 575, 106 Stat. 4600, 4625, October 30, 1992. It defines the procedures that the Commission will follow in preparing and implementing the plan and provides information to other agencies and the public regarding how they might participate.

§ 10005.2 Definitions.

The Act refers to the Central Utah Project Completion Act, Titles II, III, IV, V, and VI of Public Law 102–575, October 30, 1992.

Applicant refers to an agency, organization, or individual providing formal recommendations to the Commission regarding projects to be considered for inclusion in the Commission's plan.

Commission means the Utah Reclamation Mitigation and Conservation Commission, as established by section 301 of the Act.

Interested parties refers to Federal and State agencies, Indian tribes, non-profit organizations, county and municipal governments, special districts, and members of the general public with an interest in the Commission's plan and plan development activities.

Other applicable Federal laws refers to all Federal acts and agency regulations that have a bearing on how the Commission conducts its business, with specific reference to the Fish and Wildlife Coordination Act of 1934, as amended (16 U.S.C. 661 et seq.); the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.); and the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.).

Plan and *five-year plan* refer to the Commission's mitigation and conservation plan as required by section 301 of the Act.

Planning rule refers to this part, which is a component of the Commission's administrative rules and which provides guidance for the development, and implementation, of the Commission's plan.

Section 8 funds refers to the section of the Colorado River Storage Project Act that provides for congressionally authorized funds to be used in mitigating the effects of the Colorado River Storage Project on fish, wildlife, and related recreation resources.

§ 10005.3 Policy.

(a) As directed in section 301(a) of the Act, the Commission was established ''to coordinate the implementation of the mitigation and conservation provisions of this Act among the Federal and State fish, wildlife, and recreation agencies. The United States Senate Committee on Energy and Natural Resources report accompanying the Act provided further clarification of Congressional intent: ''Focusing of such authority into a single entity is intended to eliminate past dispersion among several Federal and State resource management agencies of the responsibility, and therefore accountability, for reclamation mitigation in Utah.''

(b) It is the policy of the Commission that the mitigation and conservation plan, in tandem with the Act, serve as the principal guidance for the Commission in fulfilling its mitigation and conservation responsibilities. Further, the Commission will use the development of the plan, and subsequent amendment processes, as the primary means to involve agencies and the public in the Commission's decision making process.

§ 10005.4 Planning rule authority.

(a) The Commission is required to adopt administrative rules pursuant to the Administrative Procedures Act. The Commission adopts the rule in this part pursuant to that authority and to Section 301(g)(3)(A) and (C) of the Act, which provide for establishment of a rule to guide applicants in making recommendations to the Commission, and to ensure appropriate public involvement.

(b) Adoption of the planning rule constitutes a policy decision on the part of the Commission and, as such, requires formal public notification and approval by the Commission according to established procedures. The planning rule is a component of the administrative rules of the Commission and has the authority accorded to such administrative rules, as described in the Administrative Procedures Act.

§ 10005.5 Directives from the Act relating to the plan.

The basic directions for preparation of the plan are contained in Section 301 of the Act. Sections 304, 314, and 315 provide additional guidance. Provisions that hold particular relevance are identified below.

(a) *Primary authority*. Section 301(f)(1) directs that the mitigation and conservation funds available under the Act are to be used to ''conserve, mitigate,

and enhance fish, wildlife, and recreation resources affected by the development and operation of Federal reclamation projects in the State of Utah,'' and, further, that these funds are to be administered in accordance with ''the mitigation and conservation schedule in Section 315 of this Act, and if in existence, the applicable five-year plan.'' Section 301 further clarifies that Commission expenditures ''shall be in addition to, not in lieu of, other expenditures authorized or required from other entities under other agreements or provisions of law.''

(b) *Reallocation of funds.* Section 301(f)(2) provides for the reallocation of Section 8 funds if the Commission determines ''after public involvement and agency consultation * * * that the benefits to fish, wildlife, or recreation will be better served by allocating such funds in a different manner.'' Such reallocation requires the approval of the U.S. Fish and Wildlife Service if funds are to be reallocated from fish and wildlife purposes to recreation purposes. The Commission's authority to depart from the mitigation and conservation schedule specified in Section 315 of the Act is reiterated in Section 301(h)(1).

(c) *Funding priority.* Section 301(f)(3) directs that the Commission ''shall annually provide funding on a priority basis for environmental mitigation measures adopted as a result of compliance with the National Environmental Policy Act of 1969 for project features constructed pursuant to titles II and III of this Act.''

(d) *Plan adoption and content.* Section 301(g)(1) directs that the Commission adopt a plan ''for carrying out its duties'' and that the plan ''shall consist of the specific objectives and measures the Commission intends to administer * * * to implement the mitigation and conservation projects and features authorized in this Act.''

(e) *Recommendations.* Section 301(g)(3)(A) directs that ''the Commission shall request in writing from the Federal and State fish, wildlife, recreation, and water management agencies, the appropriate Indian tribes, and county and municipal entities, and the public, recommendations for objectives and measures to implement the mitigation and conservation projects and features authorized in this Act or amendments thereto.''

(f) *Public involvement.* Section 301(g)(3)(C) directs the Commission to provide for appropriate public involvement in the review of Commission documents produced subsequent to receiving recommendations.

(g) *Guidance on selecting measures.* Section 301(g)(4) identifies the types of measures that are to be included in the plan, namely those that will—

(1) Restore, maintain, or enhance the biological productivity and diversity of natural ecosystems within the State and have substantial potential for providing fish, wildlife, and recreation mitigation and conservation opportunities;

(2) Be based on, and supported by, the best available scientific knowledge;

(3) Utilize, where equally effective alternative means of achieving the same sound biological or recreational objectives exist, the alternative that will also provide public benefits through multiple resource uses;

(4) Complement the existing and future activities of the Federal and State fish, wildlife, and recreation agencies and appropriate Indian tribes;

(5) Utilize, when available, cooperative agreements and partnerships with private landowners and nonprofit conservation organizations; and

(6) Be consistent with the legal rights of appropriate Indian tribes.

(h) *Definite plan report.* Section 304 directs that mitigation commitments included in the 1988 draft Definite Plan Report for the Bonneville Unit of the Central Utah Project (DPR) which have not yet been completed are to be undertaken in accordance with that report and the schedule specified in Section 315 of the Act, unless otherwise provided for in the Act.

(i) *Implementation schedule.* Section 315 identifies mitigation and conservation projects to be implemented and provides a schedule and budget for doing so. Details on select components of Section 315 may be found in Sections 302 through 313, excluding Section 304.

§ 10005.6 Responsibilities.

Responsibilities concerning implementation of this planning rule are assigned as follows:

(a) *Commission.* The Commission is responsible for adopting this planning rule, including the project evaluation procedures contained herein. The Commission is also responsible for formal adoption of the final plan and, following this, approving, on a project by project basis, of agreements to implement the specific elements contained in the plan.

(b) *Executive Director and Commission staff.* The Executive Director and Commission staff are responsible for preparing planning documents, including preliminary evaluation of projects, and for consultation with agencies and other interested parties regarding the various aspects of the planning process, in accordance with procedures set forth in this planning rule.

(c) *Department of Interior Solicitor.* The Department of the Interior's Regional Solicitor acts as the agency's attorney-advisor and is responsible for advising the Commission on legal matters related to the planning rule, the plan, and the planning process as agreed upon between the Department and the Commission.

(d) *Secretary of the Interior's Representative to the Central Utah Project.* The Secretary's Representative is responsible for monitoring the plan, and activities undertaken as components of the plan, with regard to their consistency with the Act and their compatibility with other activities required by the Act. The Secretary's Representative is also responsible for coordinating relevant activities of other agencies within the Department of the Interior and for coordinating the process by which Congressionally appropriated funds are made available for Commission mitigation and conservation activities.

(e) *Interested parties.* Federal and State resource agencies, Indian tribes, and other interests are, should they choose to become involved, responsible for providing meaningful recommendations regarding potential projects, for coordinating the development of these recommendations with other appropriate agencies and organizations, and, as applicable, for participation in implementation of projects.

§ 10005.7 Agency consultation and public involvement.

The Commission considers agency consultation and public involvement to be central components of the planning process. Interested parties will be given the opportunity to become involved at several stages in the plan development, process. The major opportunities are as follows:

(a) *Planning rule development.* The initial opportunity for involvement occurs in the preparation of this planning rule, through providing written or oral comment to the Commission prior to adoption.

(b) *Project recommendations.* The next opportunity is in the preparation of recommendations for projects to be included in the Commission's plan. The Commission will make a formal announcement that it is soliciting recommendations for potential projects. Interested parties will have ninety days within which to respond. Commission staff will, upon request and as dictated by work load, provide guidance and other assistance in the preparation of project recommendations. Interested parties are encouraged to work cooperatively with others in the preparation of joint recommendations. Commission staff will facilitate this as appropriate. Section 10005.18 provides additional direction on this. At the end of the ninety day period the Commission will make all recommendations received during that time available for public review. These will be available at the Commission office during normal business hours. Copies will also be provided to those requesting them at a reasonable charge.

(c) *Plan preparation.* At the close of the ninety day project solicitation period, the Commission will proceed to prepare a draft plan. Several opportunities for agency consultation and public involvement will be provided during the preparation of the plan. One or more public briefings will be held during this period. Briefings will be announced in appropriate local and regional media. Work sessions may also

be held, sponsored either by the Commission or jointly with other interested parties, to discuss individual projects or other topics of general interest. Interested parties may also request meetings with Commission staff to discuss specific projects or issues. The availability of staff for such meetings will be dictated by work load. During this time, interested parties may also attend, and participate in, Commission meetings where the various aspects of the plan are discussed. Written comments will also be accepted during the plan preparation period.

(d) *Review of draft plan.* Following release of the draft plan, interested parties will be given thirty days within which to provide formal written comments. During this time, interested parties may request meetings with Commission staff to discuss aspects of the draft plan. The Commission will also receive comments on the draft plan at appropriate times during regularly scheduled Commission meetings. The Commission may, at its discretion, convene one or more public meetings to discuss issues related to the draft plan.

(e) *Final plan.* The release of the final plan will be announced in the media and copies made available to the public. As warranted, the Commission may hold one or more meetings to brief interested parties on the final plan.

(f) *Amendments to the plan.* The opportunities for agency consultation and public involvement described above will also be provided each time the Commission undertakes a comprehensive revision of the plan. In addition, the Commission will give appropriate public notice and grant an opportunity to comment at such times as the Commission is considering other, less comprehensive amendments. Section 10005.21 provides additional information on how agencies and the public may become involved in the plan amendment process.

§ 10005.8 Mitigation obligations.

While the Act authorizes the Commission to undertake a wide range of general planning and mitigation activities, it also specifies certain projects or groups of projects that the Commission is to implement. The Commission considers these obligations from the Act to be integral components of the mitigation and conservation plan and of the planning process used to develop this plan. From the perspective of the plan, two issues are germane. These are the extent to which these obligations must take priority over other projects, either in terms of funding or sequencing and the extent to which there is flexibility in the specific actions to be taken in fulfillment of these obligations. Through this planning rule and other means the Commission will ensure that interested parties are made aware of the implications of these obligations in order that they might use this information when participating in the development and implementation of the plan.

(a) *Description of mitigation obligations.* Obligations principally derive from three portions of the Act: Title II, section 304, and section 315. Following is a description of the obligations contained in each.

(1) *Title II.* Title II authorizes funding and provides guidance for completion of certain features of the Central Utah Project. It also provides for Commission involvement in several specific activities relating to Central Utah Project mitigation, including funding for specific Section 8 mitigation activities. In the future, additional Title II features will be implemented. These will be subject to environmental review through NEPA or other applicable Federal laws and will, in many instances, be coupled with mitigation measures. Section 301(f)(3) of the Act directs that priority be given for funding of mitigation measures that are associated with Central Utah Project features identified in either Title II or III of the Act that have been, or will be, authorized through compliance with NEPA.

(2) *Section 304.* This section directs that mitigation and conservation projects contained in the DPR be completed and that this be accomplished in accordance with the DPR and the schedule specified in section 315 of the Act. Several elements of the DPR have been either completed or initiated.

(3) *Section 315.* This section identifies several mitigation and conservation projects that are to be implemented to

enhance fish, wildlife, and recreation resources. It also identifies the funds that are to be authorized for each project. Initial phases of selected section 315 projects have already received Commission funding approval. Additional section 315 projects have undergone substantial review and detailed implementation plans have, in some cases, been prepared.

(b) *Commission policy on fulfilling obligations.* As referenced in § 10005.5, Section 301(f)(1) and (2) of the Act provides for re-programming of Section 8 funds to other projects in accordance with the plan and/or following appropriate public involvement and agency consultation, and provided ''that the benefits to fish, wildlife, or recreation will be better served'' by doing so. The Commission interprets this as giving the Commission broad discretion to determine, with appropriate agency consultation and public involvement, whether to implement projects delineated in the above stated sections and, should the Commission choose to implement these, the form that this implementation will take.

(1) This notwithstanding, the Commission recognizes that the projects referenced in Title II, Section 304, and Section 315 have, in most cases, undergone considerable planning as well as agency and public scrutiny. Their inclusion in the Act represents a consensus among Federal and state agencies, water developers, and the national and state environmental communities that these mitigation measures have merit. Further, NEPA proceedings have, in some instances, been completed.

(2) Absent the plan, the Commission will rely on Title II, Section 304, and Section 315 as the principal guidance in authorizing projects. Once adopted, the plan will become the principal form of guidance. In selecting projects for the plan, mitigation measures referenced in Title II, Section 304, and Section 315 will be given priority consideration. They will, however, be subjected to the same analysis as other proposed projects. Should these projects be found to not meet the Commission's standards for project approval, they will be rejected. Title II, Section 304, and Section 315 projects that meet Commission standards will only be superseded in the plan if it can be demonstrated that the contributions to be made by other projects proposed through the project solicitation process significantly outweigh those of the aforementioned Title II, Section 304, and/or Section 315 projects.

(3) Regardless, the Commission will retain flexibility regarding how Title II, Section 304, and Section 315 projects will be implemented. Interested parties may, if they choose, propose modifications or enhancements to these projects through the normal project solicitation process. The Commission will pay particular attention to proposals that will accomplish Title II, Section 304, or Section 315 measures at lower cost, thereby freeing up funds for heretofore unidentified projects.

(4) The Commission is aware that future NEPA procedures related to the development of Title II features may result in the identification of additional impacts and mitigation measures. The Commission considers implementation of measures that result from a formal NEPA procedure to be non-discretionary. The Commission recognizes a commitment to implement such measures as are within its authority. Further, in accordance with Section 301(f)(3), the Commission is committed to giving these measures high priority. In order to ensure that such measures are consistent with the Commission's overall program, and can be implemented within budget, the Commission will take an active role in NEPA procedures that are likely to result in significant mitigation obligations for the Commission.

(5) If the Commission chooses not to implement a mitigation measure or, for any reason be unable to implement a measure resulting from NEPA procedures, the Commission will conduct, or cause to have conducted, a supplemental environmental evaluation to determine suitable alternative mitigation measures. The Commission will implement the findings of that evaluation to the extent possible. The only exception will be when the Commission proposes to substitute an equivalent mitigation measure that meets with the approval of applicable Federal,

State, or Tribal fish and wildlife agencies, the Secretary of the Interior, and other affected parties.

(6) In order to assist agencies and other interested parties in understanding the scope of the obligations contained in Title II, Section 304, and Section 315, and others that may arise in the future, the Commission will, at the time it invites recommendations on measures to be included in the plan, prepare and distribute a list of projects that the Commission considers to be obligations as defined in this section.

§ 10005.9 Relationship of the plan to congressional appropriations and Commission expenditures.

(a) The plan itself does not constitute a commitment of resources for any given project. The commitment to expend resources is dependent upon Congressional appropriation, and, following this, Commission approval of specific projects.

(b) The Commission will rely on the plan as the primary source of information for the development of the agency's annual budget. For each fiscal year, projects identified in the plan will be arranged into a series of programs based on project type or ecological and geographical associations. These programs will serve as the basis for the agency's budget request.

(c) Once the budget request is formulated and submitted to the Congress, the request may be altered or reformulated by the Congress before the appropriation statute is finally approved. The appropriation statute will then control the implementation of the plan. In light of the controlling nature of the appropriation statute over the implementation of the plan, the plan must maintain sufficient flexibility to allow adjustments to comply with appropriations. The amendment process described in § 10005.21 provides the mechanism for modifying the plan to correspond to changes in Congressional appropriations. Changes to the annual project portfolio will, in most instances, constitute a ''substantive'' amendment as described in § 10005.21.

(d) Once appropriations have been approved by the Congress, the plan will serve as the principal guidance to the Commission in entering into agreements and approving the expenditure of funds for specific projects.

§ 10005.10 Relationship of the plan to the authorities and responsibilities of other agencies.

Within Utah, several federal agencies, state agencies, and tribal governments have authorities and responsibilities related to the management of fish and wildlife resources, through management of the resource itself, through management of the land and water upon which fish and wildlife depend, or, in the case of Federal reclamation projects, through involvement in mitigation activities. The Act specifically recognizes the authority of other Federal and State agencies to take actions in accordance with other applicable laws. The guidance for this is provided by Section 301(a)(2), which states that ''Nothing herein is intended to limit or restrict the authorities of Federal, State, or local governments, or political subdivisions thereof, to plan, develop, or implement mitigation, conservation, or enhancement of fish, wildlife, or recreation resources in the State in accordance with applicable provisions of Federal or State law.'' In preparing and implementing its plan, it is the Commission's intent to form a cooperative partnership with other agencies having fish, wildlife, and recreation responsibilities and authorities, both recognizing and relying upon their authorities. The Commission recognizes that these agencies may have specific legal obligations to take actions to maintain or restore fish, wildlife, or recreation resources that are independent of Commission mandates. While the Commission will, as appropriate, authorize the use of funds to complement the resource protection and restoration activities of these agencies, Commission involvement should not be viewed as a replacement for funding or other actions that are rightfully the responsibility of another agency.

(a) *Agencies with land management authority*. The Commission recognizes that the Federal government, the State of Utah, and applicable Indian tribes each own and/or manage lands that are important to fish and wildlife resources

and provide significant outdoor recreation opportunities. At the Federal level, the Forest Service manages National Forest System lands, the Fish and Wildlife Service manages national wildlife refuges, the National Park Service manages national parks, monuments, and recreation areas, the Bureau of Reclamation manages reservoirs and lands adjoining those reservoirs, and the Bureau of Land Management manages other public lands. Indian tribes own and manage lands in accordance with treaties between the tribes and the United States Government. The State of Utah owns and manages state parks, wildlife management areas, and public trust lands. The Commission recognizes the importance of federal, tribal, and state lands to fish, wildlife, and recreation and will entertain proposals for mitigation and conservation activities involving these lands when the following conditions are met:

(1) The managing agency concurs with the proposed action,

(2) All appropriate legal procedures have been followed, and

(3) The land management agency is willing to assume long-term responsibility for operation and maintenance of mitigation and conservation features and to refrain from management activities that may negate or significantly diminish the effects of the project on fish, wildlife, or recreation.

(b) *Agencies with Federal reclamation project mitigation responsibilities and/or authorities.* Several agencies also have direct authorities and responsibilities relating to mitigation for the effects of Federal reclamation projects in Utah. These include the Department of the Interior Central Utah Project Office, the Bureau of Reclamation, the Central Utah Water Conservancy District, the Fish and Wildlife Service, and the Utah Division of Wildlife Resources. The remainder of this section summarizes the authorities and responsibilities of these agencies with regards to Federal reclamation projects, with emphasis on the Commission's relationship to these agencies. This section does not identify or describe all of the potential relationships between the Commission and other agencies with Federal reclamation project mitigation obligations. As appropriate, the Commission may enter into formal agreements with any or all of the above agencies in order to provide additional detail regarding the relationship or to assign specific program or project responsibilities. The arrangements that are described in this section may also be modified through interagency agreement.

(1) *Secretary of the Interior's Representative to the Central Utah Project.* As required by Section 201(e) of the Act, the Secretary of the Interior is ultimately responsible for carrying out all responsibilities specifically identified in the Act. The Secretary's Representative serves as the Secretary's official representative to the Central Utah Project. The Secretary's Representative monitors activities undertaken in fulfillment of the various aspects of the Act to ensure that these activities, including mitigation activities, are in accordance with applicable law and that Federal funds are used appropriately. The Secretary's Representative also coordinates activities among Department of the Interior agencies involved with the Central Utah Project. The Commission is a Federal Commission within the executive branch of government and its activities are subject to the direct oversight of Congress. While essentially independent of the Secretary of the Interior, the Commission nevertheless has a vital relationship with the Department via both the budget process and the similarity in missions. The Secretary's Representative serves as the principal link between the Commission and the Department of the Interior and is responsible for transmitting Congressional appropriations to fund the Commission's mitigation, conservation, and administrative activities. For purposes of plan development and implementation, the following will guide the Commission's relationship to the Secretary's Representative:

(i) The Commission acknowledges the authority of the Secretary in overseeing implementation of the Act and recognizes that the Secretary's Representative plays an essential role in ensuring the compatibility of mitigation and conservation measures with the overall Central Utah Project. The Commission is committed to a strong

and productive partnership with the Secretary's Representative in fulfilling the Commission's mitigation and conservation responsibilities.

(ii) The Commission will maintain close communication with the Secretary's Representative regarding the relationship between the plan and Congressional appropriations. The Commission will provide the Secretary's Representative with both long range and annual funding proposals and otherwise assist in preparing the Commission's budget requests to Congress.

(iii) The Commission and the Secretary's Representative will independently and cooperatively monitor the plan in terms of meeting Section 8 mitigation obligations as directed by the Act.

(iv) The Commission will actively involve the Secretary's Representative in the Commission's NEPA related activities, including the identification of appropriate roles for the Secretary's Representative and Department of the Interior agencies in the preparation and review of NEPA documents.

(v) The Commission will, as appropriate, involve the Secretary's Representative in coordinating Commission mitigation and conservation activities with the Bureau of Indian Affairs and with individual Indian tribes.

(vi) The Commission will utilize the Secretary's Representative as its principal contact for matters regarding the Department of the Interior and, when appropriate, will seek assistance from the Secretary's Representative in coordinating activities involving agencies within the Department, especially when activities involve several agencies. The Commission will, as appropriate, involve the Secretary's Representative in resolving differences that might arise among the various agencies within the Department with regard to the Commission's plan, or the implementation of any measure contained in the plan. This provision does not alter the direct working relationships that the Commission maintains with the U.S. Fish and Wildlife Service, the Bureau of Reclamation, the Bureau of Land Management, and other applicable agencies.

(2) *U.S.D.I. Bureau of Reclamation.* Prior to the Act, the Bureau of Reclamation (Bureau) had the responsibility for implementing mitigation measures associated with Federal reclamation projects within the State of Utah. Section 301(a)(1) of the Act granted authority to the Commission ''to coordinate the implementation of the mitigation and conservation provisions of this Act.'' Section 301(n) further transferred from the Bureau to the Commission ''the responsibility for implementing Section 8 funds for mitigation and conservation projects and features authorized in this Act.'' While the Act therefore clearly transfers mitigation responsibilities concerning the Bonneville Unit of the Central Utah Project from the Bureau to the Commission, it does not alter the Bureau's mitigation responsibilities with respect to other components of the Colorado River Storage Project or other Federal reclamation projects in Utah. For purposes of plan development and implementation, the following will guide the Commission's relationship to the Bureau:

(i) The Commission recognizes that the Bureau and the Commission share fish, wildlife, and recreation mitigation responsibilities associated with Federal reclamation projects within the State of Utah and is committed to maintaining a strong and productive partnership with the Bureau in this regard.

(ii) Except for those features that the Secretary has assigned to others in allocating the $214,352,000 increase in CRSP authorization specified in Section 201(a) of the Act, the Commission has the primary authority and responsibility for all mitigation projects involving use of Section 8 funds for the Bonneville Unit and for alternative formulations of the Uintah and Upalco units of the Central Utah Project, and all mitigation projects identified in Section 315 of the Act, or as modified in the plan.

(iii) The Bureau retains the responsibility and primary authority to undertake fish, wildlife, and recreation mitigation and conservation activities for Federal reclamation projects in Utah other than those as described in paragraph (b)(2)(ii) of this section wherein the Bureau acts at the direction of the Commission. The Commission also has

the authority to undertake selective fish, wildlife, and recreation mitigation and conservation activities concerning these same projects, as authorized in Section 315 of the Act or in the plan. The Commission will actively consult with the Bureau with regard to potential mitigation or enhancement activities in those areas in order to ensure that Bureau and Commission mitigation activities are coordinated.

(iv) The Bureau retains responsibility for implementation of fish, wildlife, and recreation mitigation measures associated with Federal reclamation projects in Utah that were initiated prior to the establishment of the Act where that responsibility has not specifically been transferred to the Commission, a water district, or other entity.

(v) The Bureau retains responsibility for operation, maintenance, and replacement of facilities related to fish, wildlife, and recreation mitigation measures undertaken by the Bureau where that responsibility has not specifically been transferred to the Commission, a water district, or other entity.

(vi) The Bureau retains responsibility for mitigating future impacts to fish, wildlife, and recreation caused by operation, maintenance, and replacement of water resource development facilities where that responsibility has not specifically been transferred to the Commission, a water district, or other entity.

(vii) The Commission has no responsibility or authority for mitigation or replacement measures associated with Federal reclamation projects in Utah that are not related to fish, wildlife, and recreation.

(3) *Central Utah Water Conservancy District.* The Central Utah Water Conservancy District (District) is responsible for construction, operation, and management of the various features of the Central Utah Project. NEPA compliance regarding many of these features has resulted in the identification of several measures that are to be undertaken as mitigation for the Central Utah Project's impacts to fish, wildlife, and/or recreation. NEPA compliance for future project features is likely to identify additional fish, wildlife, and recreation mitigation and conservation measures. The Act directs that the Commission give funding priority to measures that result from applicable NEPA procedures. The Act does not, however, specify what role the Commission is to have in determining, or planning for, these measures. For purposes of plan development and implementation, the following will guide the Commission's relationship to the District:

(i) The Commission is committed to maintaining a strong and productive partnership with the District in order to adequately plan for and implement mitigation measures associated with the Central Utah Project.

(ii) The Commission recognizes that the District and the Commission have complementary responsibilities for fish, wildlife, and recreation mitigation regarding the Central Utah Project. The District retains the overall responsibility for planning for mitigation activities associated with its completion of the Central Utah Project. The Commission has the responsibility for ensuring that mitigation measures meet with the intent of the Act with regard to protection and restoration of fish, wildlife, and recreation resources and for approving and implementing mitigation and conservation measures. Accordingly, the Commission will monitor District mitigation and conservation planning activities and provide such assistance as is mutually agreed upon.

(iii) The Commission will actively monitor or, as appropriate, participate in NEPA procedures undertaken by the District that may result in the identification of mitigation and conservation measures that, if implemented, would require Commission funding or may affect other mitigation activities of interest to the Commission. For NEPA procedures that are likely to result in significant Commission obligations, the Commission may request ''joint lead agency'' status with the District. In such instances the specific involvement of the Commission in the preparation of NEPA documentation will be determined through agreement with the District.

(iv) The District retains responsibility for mitigating future impacts to

fish, wildlife, and recreation caused by the operation, maintenance, and replacement of its water resource development facilities, unless that responsibility has been specifically transferred to the Commission or other entity.

(v) The District retains responsibility for operation, maintenance, and, where necessary, replacement of fish, wildlife, and recreation mitigation features managed by the District, unless that responsibility has been specifically transferred to the Commission or other entity.

(4) *U.S. Fish and Wildlife Service.* The U.S. Fish and Wildlife Service (Service) has mandated responsibility to implement several acts relevant to the Commission's activities. In Section 301(b)(3), the Act specifically references a Commission obligation to comply with the Fish and Wildlife Coordination Act (FWCA) and the Endangered Species Act (ESA). Other acts administered by the Service and relevant to Commission activities include, but are not necessarily limited to, the Migratory Bird Treaty Act (16 U.S.C. 703 et seq.) and the Bald Eagle Protection Act (16 U.S.C. 668–668d). The FWCA directs that the Service, and the state fish and wildlife agency, must be consulted where the ''waters of any stream or other body of water are proposed or authorized to be impounded, diverted * * * or otherwise controlled or modified * * * by any department or agency of the United States, or by any public or private agency under Federal permit or license. * * *'' The purpose of this consultation is to provide for ''the conservation of wildlife resources by preventing loss of and damage to such resources.'' The FWCA provides the major mechanism for Service involvement in the Federal reclamation project decision process. The Service's most important role in Federal reclamation projects is in the development and later the monitoring of fish and wildlife mitigation measures. The Service is also responsible for reporting to the Secretary of the Interior on the status of mitigation programs. The Fish and Wildlife Coordination Act provides for the funding of Service FWCA consultation by the agency sponsoring the proposed activity. The Service's ESA responsibilities that are most relevant to Commission activities include listing of new species, preparation and implementation of recovery plans and consultations regarding adverse effects on listed species. Section 7(a)(1) of the Endangered Species Act authorizes Federal agencies to carry out programs for the conservation of endangered and threatened species. Participating in, and being consistent with, recovery plans is a fundamental component of this obligation. Section 7(a)(2) of the ESA requires that, prior to taking any action that may affect a listed species, a Federal agency must consult with the Service to ensure that the action will not jeopardize the continued existence of the species or adversely modify critical habitat. The Migratory Bird Treaty Act (MBTA) establishes a Federal role in protecting bird species that generally migrate across national boundaries. In Utah, these include most indigenous bird species. The MBTA is not intended as a substitute for state wildlife management authority but rather as a complement. The Service is responsible for implementing many of the features of the MBTA, and for encouraging states to undertake actions to protect migratory bird species. The Bald Eagle Protection Act prohibits the taking or possession of either bald or golden eagles, both of which commonly inhabit areas near Utah's rivers and wetlands. For purposes of plan development and implementation, the following will guide the Commission's relationship to the Service:

(i) The Commission acknowledges the biological expertise of the Service with regard to Federal reclamation projects and other Commission activities relating to the protection and restoration of fish and wildlife resources and will seek to utilize this expertise to the fullest extent. The Commission further recognizes the similarity in agency missions with regard to fish and wildlife mitigation and conservation and is committed to a strong and productive partnership with the Service in this regard.

(ii) The Commission acknowledges the Service's mandated responsibility with regard to Federal reclamation projects and will specifically consult with the Service regarding activities

that are subject to the FWCA. These include both projects directly related to mitigation for Federal water resource projects and applicable fish, wildlife, and recreation conservation projects. In developing its plan and adopting specific projects, the Commission will give significant weight to the Service's recommendations. Should the Commission choose to not follow Service recommendations, it will seek resolution through active consultation with the Service. As appropriate, the Utah Division of Wildlife Resources will be asked to be involved in these consultations as that agency also has co-responsibilities under the FWCA. Should no agreement be reached, the Commission will document its decision and provide this to the Service. The Commission recognizes that the Service has a responsibility to forward its FWCA reports to the Secretary regardless of the resolution of issues contained in the reports. The Commission recognizes that several projects contained in Title II, Section 304, and Section 315 have previously been subjected to Service evaluation pursuant to FWCA. Prior to reallocating funds authorized for these projects, the Commission will formally consult with the Service regarding the relative adequacy of proposed new projects, or significant modifications to Title II, Section 304, or Section 315 projects, in mitigating for impacts to fish and wildlife resources.

(iii) The Commission will comply with applicable provisions of the ESA and, accordingly, will consult with the Service regarding activities that may affect a listed or candidate species, regardless whether the effect is beneficial or adverse. In addition, the Commission will endeavor to undertake mitigation and conservation projects that are consistent with an adopted recovery plan for a listed species and that aid in the protection of candidate species.

(iv) The Commission will, in accordance with the Act, formally seek the Service's approval prior to reallocating funds from a project whose primary objectives are the protection and/or restoration of fish and wildlife resources to a project whose objectives are primarily related to recreation. No such funds will be reallocated unless this meets with the approval of the Service.

(v) The Commission anticipates that the Service will be an active participant in the planning for, and implementation, of mitigation and conservation projects undertaken pursuant to the Commission's plan.

(vi) The Commission will invite the Service to participate in NEPA activities undertaken or funded by the Commission that bear on fish and/or wildlife resources. The form that this participation will take will be determined on a case-by-case basis and will require agreement on the part of both agencies.

(5) *Utah Division of Wildlife Resources.* As is the case with other states, the State of Utah has the exclusive jurisdiction over non-migratory fish and wildlife and shared jurisdiction (with the U.S. Fish and Wildlife Service) over all migratory birds and Federally listed threatened and endangered fish and wildlife within the state. The applicable state law is Utah Code, Section 23–15–2, which states that ''All wildlife within the state, including but not limited to wildlife on public or private lands or in public or private waters within the state, shall fall within the jurisdiction of the Division of Wildlife Resources.'' The Utah Division of Wildlife Resources (UDWR) has authorities and responsibilities at the state level similar to those of the U.S. Fish and Wildlife Service at the Federal level, and, like the Service, has mandated authorities under the Federal Fish and Wildlife Coordination Act that relate directly to Federal Reclamation project mitigation. These authorities are described in paragraph (b)(4) of this section. In addition, the Act provides for the UDWR to assume primary responsibility for implementing measures associated with the Act after the Commission expires. In addition to the UDWR's responsibilities and authorities discussed above, the State of Utah also has jurisdiction over other activities that are relevant to the Commission's plan, including the granting of water rights and, except on Federal and tribal lands, management of land use. For purposes of plan development and implementation, the following will

guide the Commission's relationship to the UDWR:

(i) The Commission acknowledges the biological expertise of the UDWR with regard to Federal reclamation projects and other Commission activities relating to the protection and restoration of fish and wildlife resources and will seek to utilize this expertise to the fullest extent practicable. The Commission further recognizes the similarity in agency missions with regard to fish and wildlife mitigation and conservation and is committed to a strong and productive partnership with the UDWR in this regard.

(ii) The Commission acknowledges the UDWR's authority over the management of fish and wildlife within the State and will take no action that is inconsistent with this authority.

(iii) The Commission acknowledges that the UDWR has a mandated authority regarding the planning and monitoring of Federal reclamation mitigation. As is the case with the Service, the Commission will formally consult with the UDWR regarding projects that are subject to the FWCA. These include both projects directly related to mitigation for Federal reclamation projects and applicable fish and wildlife conservation projects not directly related to any Federal reclamation project. Consultation will be in accordance with procedures defined in the FWCA. It is anticipated that this consultation will be conducted in conjunction with the Service. However, the Commission recognizes that the UDWR has the right to prepare recommendations independent of the Service should it so desire. The Commission will, in making its decisions, give significant weight to recommendations made by the UDWR. Should the Commission choose to not follow the UDWR's recommendations, it will seek to resolve outstanding issues through active consultation with the UDWR. As appropriate, the Service will be asked to be involved in these consultations. Should no agreement be reached, the Commission will document its decision and provide this to the UDWR. The Commission recognizes that several mitigation projects contained in Title II, Section 304, and Section 315 have previously been subjected to the UDWR evaluation pursuant to FWCA. As is the case with the Service, the Commission will specifically consult with the UDWR prior to significantly modifying or reallocating funds away from these projects.

(iv) The Commission will specifically consult with the UDWR regarding any project that might have an affect on species identified by the UDWR as wildlife species of special concern and species listed by the UDWR Natural Heritage Program as G1 and G2 plant and animal species.

(v) The Commission anticipates that the UDWR will be an active participant in the planning for, and implementation, of mitigation and conservation projects undertaken pursuant to the Commission's plan.

(vi) The Commission will invite the UDWR to participate in NEPA activities undertaken or funded by the Commission that bear on fish and/or wildlife resources. The form that this participation will take will be determined on a case-by-case basis and will require agreement on the part of both agencies.

§ 10005.11 Environmental compliance.

(a) Section 301(c)(3) establishes that the Commission is to be considered a Federal agency ''for purposes of compliance with the requirements of all Federal fish, wildlife, recreation, and environmental laws, including (but not limited to) the Fish and Wildlife Coordination Act, the National Environmental Policy Act of 1969 (NEPA), and the Endangered Species Act of 1973.'' While not specifically referenced in that section, the Federal Water Pollution Control Act (Clean Water Act) (33 U.S.C. 1251 et seq.) also contains environmental compliance provisions that are directly relevant to the Commission's mitigation and conservation activities. The Commission is committed to full and active compliance with these laws as well as applicable State environmental law.

(b) The Commission's NEPA procedures are addressed in a different chapter of the agency's administrative rules. Because the plan is subject to alteration or amendment under a number of circumstances, the plan does not

constitute an irretrievable commitment of resources and thus is not subject to NEPA. Projects preliminarily selected for funding by the Commission will, however, be subject to formal NEPA review. The Commission recognizes that these procedures may affect both project budgets and scheduling and will therefore give specific consideration to this when preparing the plan. As described in § 10005.16 the plan will identify, at a reconnaissance level, the need for individual projects to comply with NEPA and other Federal and State environmental laws and the opportunities available for consolidating NEPA review into programmatic or watershed-wide analysis as appropriate.

§ 10005.12 Policy regarding the scope of measures to be included in the plan.

The terms ''mitigation'' and ''conservation'' are used repeatedly throughout the Act and committee reports accompanying the Act. The importance of these terms is exemplified by the fact that Congress saw fit to include them in the official name of the Commission. The Commission interprets the term ''mitigation'' to mean activities undertaken to avoid or lessen environmental impacts associated with a Federal reclamation project or, should impact occur, to protect, restore, or enhance fish, wildlife, and recreation resources adversely affected by the project. Mitigation at the site of the impact typically involves restoration or replacement. Off-site mitigation might involve protection, restoration, or enhancement of a similar resource value at a different location. Mitigation may also involve substituting one resource feature for another. In meeting its mitigation responsibilities, the Commission sees an obligation to give priority to protection and restoration activities that are within the same watershed as the original impact and that address the same fish, wildlife, or recreation resource that was originally affected. The Commission's ''conservation'' authority allows it to invest in the conservation of fish, wildlife, and recreation resources generally, and not directly associated with any Federal reclamation project. Conservation projects may, therefore, be considered for any area of the state, regardless of the presence of a reclamation project. Nothing in this section is meant to restrict consideration of conservation projects directly associated with a Federal reclamation project. The Commission recognizes that, with limited resources, it is not possible to address the entire range of fish, wildlife, and recreation needs throughout the State. Indeed, addressing only the most critical issues will require prudent and judicious planning and use of resources. This section defines the areas where the Commission intends to focus its attention over the long-term and, in so doing, provides guidance for the development of the Commission's mitigation and conservation plan. By defining priorities, the Commission narrows the options of applicants in making recommendations for potential projects, and of the Commission itself in selecting measures to be incorporated into the plan.

(a) *Priority resources.* The Commission's intent is to focus expenditures and activities on those areas and resources where the Commission believes that it can, consistent with its mandate, have the greatest positive impact. Accordingly, it is the policy of the Commission that projects selected for the plan must accomplish one or more of the following:

(1) Protect and/or restore aquatic systems that provide essential habitat for fish and wildlife,

(2) Protect and/or restore wetland and riparian systems that provide essential habitat for fish and wildlife,

(3) Protect and/or restore upland areas that contribute to important terrestrial ecosystems and/or support aquatic systems,

(4) Provide outdoor recreation opportunities that are dependent on the natural environment and that support the conservation of aquatic systems, and/or

(5) Address fish, wildlife, or recreation resources from a statewide context in order to provide essential information on aquatic systems or to assist in the establishment of statewide programs for fish, wildlife, or recreation conservation.

(b) *Priority projects.* In recognition of its responsibility to mitigate for Federal reclamation projects, the Commission will give special consideration to projects that:

(1) Address fish, wildlife, and recreation resources affected by the development of the Central Utah Project, including projects authorized in Title II, section 304, or section 315 of the Act, as described in § 10005.8,

(2) Address fish, wildlife, and recreation resources affected by the development of other features of the Colorado River Storage Project in Utah, or

(3) Address fish, wildlife, and recreation resources affected by the development of other Federal reclamation projects in Utah.

(c) *Specific objectives for five-year plans.* Each five-year plan will contain a set of specific objectives derived from the above elements. Objectives will be based on the Commission's determinations of the issues and resources that are in most need of attention, and the potential for making a substantial contribution to fish, wildlife, and recreation resources. Objectives may include the targeting of certain watersheds and/or basins for priority attention based on these same two factors.

§ 10005.13 Geographic and ecological context for the plan.

In accordance with the Act, the Commission has the authority to implement projects throughout the State of Utah. The Commission believes that, to be effective, the plan must be prepared, and evaluated, from a state-wide perspective and that, within the state, an ecosystem-based approach is appropriate. There is no one correct way to define an ecosystem or to approach ecosystem planning. The Commission concludes that, for its planning purposes, the watershed provides the appropriate geographic and ecological reference within which to evaluate proposed projects and otherwise plan its activities. In delineating watersheds, the Commission will be consistent with the best ecological and hydrological science and, to the extent possible, with the ecological and hydrological units currently used by the State of Utah, the U.S. Fish and Wildlife Service, and other applicable Federal agencies. The Commission recognizes that mitigation and conservation projects may vary in scale and that, therefore, one standard set of watersheds is not necessarily appropriate for all projects. For example, a more localized project may best be analyzed from a ''watershed within a watershed'' perspective. Alternatively, a large-scaled project may need to be visualized from the perspective of a major river basin consisting of several watersheds. The Commission will prepare, and have available for public use, a list or map that identifies major basins, watersheds, and, where appropriate, hydrologic units within watersheds, that the Commission will use to organize its mitigation and conservation activities. This list or map may be revised from time to time as circumstances change.

§ 10005.14 Resource features applicable to the plan.

In accordance with the Act, projects selected for funding must make substantial contributions to fish, wildlife and/or recreation resources. Biological projects may focus on the protection or restoration of an individual species, a group of inter-related species, or the habitats upon which these species depend. Projects that target sensitive plant species may also be included in the plan, particularly if they contribute to the overall health of the ecosystem. Recreation projects should be targeted at increasing the quality of and/or access to outdoor recreation opportunities that rely on the natural environment or at providing opportunities that have been reduced through Federal reclamation projects. Following is a representative list of the types of resources that projects may target, along with examples of possible activities that might be undertaken for each. The following list is not intended to limit the scope of projects that may qualify for inclusion in the Commission's plan:

(a) Fish and Wildlife Production, including:

(1) Enhancement of natural production,

(2) Restoration of indigenous species,

(3) Scientific studies,

(4) Development of new or upgraded culture facilities.

(b) Plant Propagation, including:

(1) Protection of critical habitat for sensitive species or communities,

(2) Reintroduction of native plants in conjunction with habitat restoration projects,

(3) Vegetation manipulation to achieve desired ecological conditions.

(c) Stream Habitat, including:

(1) Protection or enhancement of instream flow,

(2) Restoration of natural flow regimes,

(3) Improvement to water quality,

(4) Restoration of natural channel, bank, and riparian conditions,

(5) Restoration of natural instream and bank cover conditions.

(d) Lake Habitat, including:

(1) Stabilization of water level,

(2) Water quality protection or improvement,

(3) Restoration of natural lakebed conditions,

(4) Riparian area maintenance,

(5) Outlet flow maintenance.

(e) Wetlands Habitat, including:

(1) Protection of existing wetlands,

(2) Restoration of drained or otherwise degraded wetlands,

(3) Enhancement of wetland habitat.

(f) Upland Habitat, including:

(1) Protection or restoration of migration corridors,

(2) Re-connection of fragmented habitats,

(3) Protection of critical habitats,

(4) Habitat condition improvement.

(g) Outdoor Recreation, including:

(1) Establishment of fishing and boating access,

(2) Establishment of greenways and low impact trails,

(3) Providing opportunities for wildlife related recreation, including hunting and observation,

(4) Providing opportunities for passive recreation and sightseeing,

(5) Stocking waters with fish (where not incompatible with biological objectives),

(6) Education and interpretation related to fish, wildlife, and their habitats.

§ 10005.15 Planning and management techniques applicable to the plan.

The Commission recognizes that there are a wide range of techniques that may be employed to protect or restore natural resources. The Commission will consider projects that make use of techniques that either have previously been proven to be effective at meeting stated objectives or represent new and innovative approaches that hold promise for being effective and establishing positive precedents for future activities. Following is a representative list of techniques that the Commission may choose to fund. This list is not exhaustive. Other appropriate techniques may exist or be developed in the future.

(a) Acquisition of property (land or water), or an interest in property, for fish, wildlife, or recreation purposes.

(b) Physical restoration of ecological functions and habitat values of lands or water courses.

(c) Construction and reconstruction of facilities, such as trails, fish culture facilities, instream spawning facilities, water control structures, and fencing that aid in the conservation of fish and wildlife resources, and/or provide recreation opportunities.

(d) Regional planning aimed at conserving fish and wildlife, and/or providing recreation opportunities.

(e) Management and operations agreements, strategies, and other institutional arrangements aimed at conserving fish and wildlife and their habitats, and/or providing recreation opportunities.

(f) Inventory and assessment of biological resources.

(g) Applied research that targets specific biological information or management needs.

(h) Development of educational materials and programs aimed at increasing public enjoyment and awareness of fish and wildlife resources and the ecosystems upon which they depend.

§ 10005.16 Plan content.

(a) *Minimum requirements.* At a minimum, the plan will include:

(1) A summary of basic information from the planning rule, including project evaluation procedures and plan amendment procedures,

(2) The identification of measurable objectives for the term of the plan,

(3) A list, and description, of the projects selected for implementation

during the term of the plan—with particular emphasis on projects to be implemented early in the planning cycle,

(4) A description of the relationship between the projects to be included in the plan and the Commission's mitigation obligations,

(5) A preliminary determination regarding environmental review requirements for each project,

(6) A preliminary determination of management and operation requirements and how these will be met,

(7) A budget, both for the next fiscal year and for the entire five-year period,

(8) A project phasing plan spanning the term of the plan, and

(9) A strategy for monitoring progress and evaluating accomplishments, and

(b) *Potential additions.* At the Commission's discretion, the plan may also include:

(1) A discussion of the relationship of the plan to other activities affecting fish, wildlife, and recreation resources within the State of Utah, and/or

(2) Discussions of, or information on, other topics that the Commission determines to be relevant. For example, the Commission may wish to identify mitigation and/or conservation measures that the Commission may wish to consider in later years of the five-year plan or in subsequent five-year plans.

§ 10005.17 Plan development process.

Following adoption of the planning rule, the Commission will proceed with the preparation of the plan, in adherence with the following procedures and in the order stated:

(a) A formal request for recommendations regarding potential projects will be made to Federal and State resource agencies, Indian tribes, and other interested parties. An appropriate announcement will also be made in the FEDERAL REGISTER. Those choosing to participate will have 90 days to submit project proposals. The project solicitation process is discussed in detail in § 10005.18.

(b) The Commission will compile all recommendations and make these available for public review at the Commission's office. The Commission will also provide copies upon request for a reasonable cost.

(c) The Commission will evaluate each project proposal according to the decision factors, standards, and evaluation procedures described in § 10005.19 and prepare a preliminary list of priority projects.

(d) One or more public meetings will be scheduled in which Commission staff will present the Commission's analysis and preliminary conclusions.

(e) The Commission will prepare a final list of projects proposed for implementation during the term of the plan.

(f) A draft plan will be prepared, approved by the Commission, and released for public review. Availability of the document will be announced in the FEDERAL REGISTER. The public will be given a minimum of thirty days to review the draft and submit written comments.

(g) The Commission will make necessary revisions and formally adopt a final version of the plan. Completion of the plan will be announced in the FEDERAL REGISTER. The Act requires that the initial final plan be completed by March 31, 1996 and be revised at least every five years thereafter.

§ 10005.18 Project solicitation procedures.

As provided for in Section 301 of the Act, the Commission will make a formal invitation to Federal and State resource agencies, Indian tribes, and other interested parties to prepare recommendations concerning projects that will be considered for funding. This invitation will take the form of a ''project solicitation packet.'' The packet will contain a cover letter, this planning rule or a reference as to where it may be obtained, a format for preparing applications, and other materials that the Commission concludes will assist in the preparation of recommendations. Appropriate announcement will also be made in the Utah media and in the FEDERAL REGISTER in order that other interested parties might be made aware of the opportunity to participate. To assist applicants, the format for preparing application may be made available in electronic form upon request. As warranted, the Commission may propose specific projects and/or assist others in

the preparation of recommendations in order to fully execute its obligations as described in § 10005.8. The following information will be requested of applicants:

(a) An abstract of the proposed project,

(b) Information on the applicant, including the name of the person preparing the recommendation, the official authorizing the recommendation, and partners to the application, if any,

(c) The location of the proposed project,

(d) The overall goal for the project and the specific fish, wildlife, or recreation objective(s) that the project's proponent seeks to achieve,

(e) The relationship, if any, of the proposed project to Federal reclamation mitigation and, especially, to measures delineated in Title II, Section 304, or Section 315,

(f) A description of the project, including tasks to be undertaken, products to be produced, and the expected results,

(g) A proposed budget, including, where applicable, a description of contributions to be provided by project implementors or other sources,

(h) A proposed time schedule,

(i) The identification of the entity (ies) to be involved with the project (project implementation and post-project operation and management), including their qualifications for undertaking this type of work,

(j) A description of any consultation with landowners, agencies, or other affected entities, to include documentation where appropriate,

(k) An evaluation of the project in relationship to the Commission's first five decision factors identified in § 10005.19,

(l) An evaluation of the anticipated need for NEPA documentation and compliance with the ESA, the Clean Water Act, and other applicable environmental laws, and

(m) At the option of the applicant, other information that might assist the Commission in evaluating the recommendation.

§ 10005.19 Decision factors.

This section identifies the principle decision factors that the Commission will use to evaluate the relative merit of proposed projects and the way that the Commission will apply these decision factors. The Commission has selected six general decision factors that will be used to evaluate the relative priority of proposed projects. ''Standards'' related to each decision factor provide a means for measuring the extent to which each proposed project responds to the decision factors. The Commission's decision factors and standards are as follows:

(a) *Decision Factor 1: Benefits to fish, wildlife, and recreation resources.* The following three standards apply:

(1) *Biological integrity*. Projects will contribute to the productivity, integrity, and diversity of fish and wildlife resources within the State of Utah. To meet the Biological Integrity standard, projects should accomplish one or more of the following:

(i) Protect, restore, or enhance the ecological functions, values, and integrity of natural ecosystems supporting fish and wildlife resources,

(ii) Provide conservation benefits to both species and their habitats,

(iii) Provide benefits to multiple species,

(iv) Promote biodiversity and/or genetic conservation,

(v) Aid long-term survival/recovery of species, or groups of species, that are of special concern, including:

(A) Species on the Federal List of Endangered or Threatened Wildlife and Plants,

(B) Federal category 1 or 2 candidates for listing,

(C) Species identified by the UDWR as wildlife species of special concern,

(D) UDWR Natural Heritage Program G1 and G2 plant and animal species,

(E) On lands managed by the U.S. Forest Service or the Bureau of Land Management, species of special concern as recognized by the appropriate agency, and

(F) the sensitive species conservation list developed by the Utah Interagency Conservation Committee,

(vi) Provide protection to important aquatic, riparian, or upland habitats, especially those that are either critical to a sensitive indigenous species or useful to a variety of species over a

range of environmental conditions, and/or

(vii) Restore self-sustaining, naturally functioning aquatic or riparian systems, especially through the use of natural recovery methods.

(2) *Recreation opportunities.* Projects with recreation objectives will provide opportunities for high quality outdoor recreation experiences for the general public that are compatible with, and support, the conservation of biological resources and natural systems. To meet the Recreation Opportunities standard, projects should accomplish one or more of the following:

(i) Create opportunities for the public to enjoy fish, wildlife, and native plants in their natural habitats,

(ii) Provide permanent access to aquatic areas for recreation purposes,

(iii) Create opportunities for walking or bicycling that complement protection and restoration of riparian and aquatic corridors,

(iv) Create opportunities for fishing, boating, and other water-based recreation activities that complement protection and restoration of aquatic areas,

(v) Provide outdoor recreation opportunities that are lacking within the watershed or State,

(vi) Provide outdoor recreation opportunities near to or accessible by urban populations,

(vii) Provide outdoor recreation opportunities for people who are physically challenged or economically disadvantaged,

(viii) Provide opportunities for environmental education and interpretation, and/or

(ix) Do not cause a disruption to the natural environment that will, itself, require mitigation.

(3) *Scientific Foundation.* Projects will be based on and supported by the best available scientific knowledge. To meet the Scientific Foundation standard, projects should accomplish one or more of the following:

(i) Include specific and sound biological objectives,

(ii) Be supported by appropriate population and/or habitat inventories or other scientific documentation,

(iii) Provide tangible results and, to the extent possible, measurable benefits to species, habitats, and/or recreation opportunities,

(iv) Involve accepted techniques that have been demonstrated to produce significant results, or, alternatively, innovative techniques that hold promise for resolving significant issues and that might serve as models for other initiatives,

(v) Make a significant contribution to the scientific knowledge concerning ecosystem protection and restoration, and/or

(vi) Be recognized as scientifically valid by the American Fisheries Society, the Wildlife Society, or other applicable professional scientific organization.

(b) *Decision Factor 2: Fiscal responsibility*. The following three standards apply:

(1) *Fiscal accountability*. Projects will provide a substantial return on the public's investment. To meet the Fiscal Accountability standard, projects should accomplish one or more of the following:

(i) Provide significant benefit at reasonable cost,

(ii) Where alternatives exist, utilize the least cost alternative that fully meets objectives,

(iii) Continue to provide value over the long term, and/or

(iv) Encourage and facilitate economic efficiency among agencies.

(2) *Shared funding.* While not an absolute requirement, projects should, when practical, be funded through cost sharing with project participants or involve other contributions. To meet the Shared Funding standard, projects should accomplish one or more of the following:

(i) Have guaranteed partial funding from other sources,

(ii) Have a high potential for leveraging additional funding by others in the future,

(iii) Be coupled with other ongoing or proposed projects that have compatible objectives and secured non-Commission funding, and/or

(iv) Involve significant in-kind contributions by the applicant and participating agencies or organizations.

(3) *Protection of investment.* Successful implementation of projects over time

will be ensured. To meet the Protection of Investment standard, projects should accomplish one or more of the following:

(i) Result in permanent, as opposed to temporary, protection to fish and/or wildlife habitats,

(ii) Have low maintenance cost and/or be self sustaining over the long term,

(iii) Have clearly assigned operations and management responsibilities and assurances of long term support on the part of implementors,

(iv) For those projects likely to require substantial operations and management expenditures, have in place a realistic strategy for obtaining the necessary funds, including, where applicable, a commitment by the applicable agency(ies) to seek necessary appropriations,

(v) Contain guarantees on the part of the applicable landowner(s) or manager(s) that incompatible land uses will not be allowed, and/or

(vi) Have a high probability that action will not be negated by other activities outside of the control of the land owner/manager.

(c) *Decision Factor 3: Agency and public involvement and commitment.* The following three standards apply:

(1) *Partnerships.* Projects should, when practical, involve a partnership among Federal and State agencies, local governments, private organizations, and/or landowners or other citizens. To meet the Partnerships standard, projects should accomplish one or more of the following:

(i) Span multiple jurisdictions or otherwise require, or benefit from, inter-organizational cooperation and involvement,

(ii) Have been proposed through a cooperative effort among two or more agencies, governments, and/or private entities, each having a stake in the outcome and/or possessing complementary expertise, and/or

(iii) Encourage, or facilitate, the establishment of complementary management plans and programs among land and resource managers.

(2) *Authority and capability.* The entities charged with undertaking and, after completion, managing each project must have the authority to be involved in the proposed activity and possess the administrative, financial, technical, and logistical capability necessary for successful implementation. To meet the Authority and Capability standard, projects should:

(i) Be supported by documented evidence that the entities involved have previously undertaken similar work successfully, and/or

(ii) Be supported by fully developed implementation plans.

(3) *Public support.* Projects should, wherever possible, enjoy broad support within the natural resource community, and/or with the public at-large. To meet the Public Support standard, projects should:

(i) Build upon previous compatible efforts that have undergone public involvement and are widely supported,

(ii) Be supported by implementation plans that have previously been subjected to peer and/or public review,

(iii) Have documented support from affected interests, and/or

(iv) Have a high probability that agency and public support will be sustained into the future. This is especially important for multi-year projects and projects that are part of a larger, long-term initiative.

(d) *Decision factor 4: Consistency with laws and programs.* The following two standards apply:

(1) *Laws and tribal rights.* Projects will be consistent with the legal rights of Indian tribes and with applicable State and Federal laws.

(2) *Complementary activities.* Projects will complement the policies, plans, and management activities of Federal and State resource management agencies and appropriate Indian tribes. To meet the Complementary Activities standard, projects should:

(i) Complement, or contribute to, established, documented fish and wildlife protection and/or restoration programs,

(ii) Be a component of, or support, a recognized ecosystem or watershed planning initiative where protection or restoration of fish, wildlife, or recreation is a primary goal, and/or

(iii) For projects involving Federal or state lands, be consistent with, and supported by, an adopted management plan.

(e) *Decision Factor 5: Other contributions.* The following two standards apply:

(1) *Public benefits.* Projects will, wherever practicable, provide benefits in addition to those provided to fish, wildlife, and recreation. To meet the Public Benefits standard, projects should:

(i) To the extent that this is compatible with the primary objective of protecting or restoring fish, wildlife, or outdoor recreation, provide opportunities for multiple use of resources,

(ii) Provide benefits to aspects of the environment beyond fish, wildlife, and recreation,

(iii) Not result in unacceptable impacts to other aspects of the environment, and/or

(iv) Contribute to the social and/or economic well-being of the community, the region, and/or the State.

(2) *Unmet needs.* Projects will satisfy significant needs that would not otherwise be met. To meet the Unmet Needs standard, projects should:

(i) Address significant fish, wildlife, or recreation needs that are unable to secure adequate funding from other sources,

(ii) Not duplicate actions already taken or underway, and/or

(iii) Not substitute for actions that are the responsibility of another agency and that must be implemented regardless of Commission involvement. This is not meant to restrict the Commission's ability to be involved in projects advanced by land management or other agencies that, while within the general responsibility of the agency, cannot be implemented because of internal funding limitations.

(f) *Decision Factor 6: Compatibility with the Commission's overall program.* This decision factor is relevant to the overall project portfolio rather than to individual projects. The following five standards apply:

(1) *Commission obligations.* Taken as a whole, the project portfolio must help fulfill the Commission's obligations for mitigation of Federal reclamation projects as described in § 10005.8.

(2) *Project mix.* The Commission's portfolio should provide an appropriate mix of projects in terms of project type, geographical distribution, and other appropriate factors. While the Commission desires to implement a broad range of projects, and to have an effect throughout the State, this alone will not determine the Commission's mix of projects. Among the factors that the Commission will consider when selecting projects are the following:

(i) The Commission will consider concentrating projects in one watershed or basin if these projects are ecologically connected and are likely to result in a significant cumulative effect on fish, wildlife, and/or recreation that could not otherwise be realized.

(ii) The Commission will consider implementing a major, high cost project—as opposed to several smaller projects with the same total cost—if that project is likely to produce net cumulative benefits to fish, wildlife, and/or recreation that exceed those of the smaller projects.

(iii) The Commission will consider small projects that appear unconnected to other Commission activities if these can serve to demonstrate the viability of a certain type of protection and restoration project, or to establish the groundwork for additional fish, wildlife, and recreation initiatives.

(3) *Timing.* Projects should address needs that are time sensitive. To meet the Timing standard, projects should:

(i) Target immediate, high priority needs,

(ii) Target opportunities that are of limited duration,

(iii) Preempt future crises, and/or

(iv) Be consistent with identified ''critical paths'' or other logical, multiple-year project phasing plans.

(4) *Project completion.* Ongoing projects that are making satisfactory progress will generally be approved for continued funding prior to allocating funds for new projects.

(5) *Budget.* The total cost of proposed projects for any given fiscal year must not exceed the Commission's anticipated budget allocation for that year. When the total cost of qualified projects exceeds funding capability, the Commission will re-evaluate all qualified projects and identify those that, in combination, produce the most meaningful results. High cost projects will be subjected to particular scrutiny and may be scaled back, phased over

multiple years, or deferred if doing otherwise would preclude other worthwhile but lower cost projects.

§ 10005.20 Project evaluation procedures.

Projects proposed for inclusion in the plan will be subjected to a systematic evaluation using the decision factors delineated in § 10005.19. The Commission may, at any time in the project evaluation process, contact applicants to ask for clarification, to propose modifications, or to otherwise cause the formulation of project proposals that are in keeping with the Commission's authority and mission. The result of the evaluation will be a preliminary list of eligible projects, arrayed by year over the term of the plan. The evaluation will adhere to the following process:

(a) Each project will be arrayed according to location (by watershed), project type, and the resource that the project seeks to address.

(b) Each project's consistency with Commission policy delineated in § 10005.12 will be determined.

(c) Complementary, competing, and duplicative projects will be identified. (If warranted, applicants may be asked to combine efforts or otherwise modify projects.)

(d) Projects that satisfy obligations described in § 10005.8 will be identified.

(e) Using best professional judgement, Commission staff will evaluate each project according to the standards delineated in § 10005.19 with the exception of Decision Factor 6, which relates to the Commission's overall portfolio and is, therefore, not applicable to the evaluation of a specific project.

(1) For each standard, a preliminary rating will be made, with the project rated as:

(i) Exceeding minimum standard,

(ii) Meeting minimum standard,

(iii) Minor deficiency in meeting standard,

(iv) Deficient, or

(v) Not applicable.

(2) Commission ratings will be contrasted to those of applicants and major discrepancies re-evaluated. Commission findings will be recorded and will be available for review.

(f) Each project will be given an overall rating based on the extent to which it meets Commission criteria as defined in paragraphs (b) through (e) of this section. The rating will be made on the basis of best professional judgement using quantitative and/or qualitative rating techniques as appropriate. A given project need not meet all standards to be selected for inclusion in the Commission's plan. A project may, for example, be deficient in an area that the Commission determines is not important for that type of project or, alternatively, deficiencies in some areas may be off-set by major assets in others. A tiered rating scale will be used, with projects grouped into two or more categories according to how well they meet Commission criteria.

(g) Projects with moderate to high ratings will then be re-evaluated from a multiple project perspective. Decision Factor 6, Compatibility with the Commission's Overall Program, will be the focus of this evaluation. For those areas with a concentration of projects this might involve a watershed-wide analysis. It will also involve a statewide analysis. As with the previous step, the evaluation will be conducted using best professional judgement and may involve a variety of applicable techniques.

§ 10005.21 Amending the plan.

The Commission considers the plan to be a dynamic instrument that guides decisions over time and is capable of responding to changing circumstances. Amendments to the plan provide the vehicle for maintaining this dynamic quality.

(a) *Types of plan amendment.* The Commission recognizes three distinct types of plan amendment: comprehensive revisions, substantive revisions, and technical revisions. The particulars regarding each is as follows:

(1) *Comprehensive revision.* The Act requires that the Commission ''develop and adopt'' a plan every five years. At the end of each five year period the Commission will undertake a comprehensive review of the plan to determine its adequacy and the need for revision. The need to revise, and add to, the Commission's portfolio of proposed

projects will be central to this review. Other elements, for example, reconsideration of the Commission's objectives for the preceding five-year period and the Commission's standards for selecting projects, may also be reconsidered. Based on this review the Commission may call for the preparation of a new plan. The consultation procedures described in § 10005.7 will apply, as will the procedures described in § 10005.17, and the procedures described in § 10005.18. The Commission is not obligated to wait five years to undertake such revision to the plan. This may be undertaken at any time that the Commission deems appropriate.

(2) *Substantive revision.* The Commission may, from time to time, determine that changes to the plan's list of projects are in order. Typically this will take the form of substituting a project in the plan with a new project, changing the order for implementation, or making significant modifications to previously selected projects. When the Commission determines that there is a need for such substantive changes, a formal announcement will be made and interested parties will be given the opportunity to provide recommendations following the procedures described in § 10005.18. Changes of this nature will not necessitate a total revision to the plan but rather involve select modifications to specific portions of the plan. Changes to other specific elements of the plan may also be amended in this way. Portions of the plan that are proposed for modification will be released in draft form, with the public given thirty days to provide comments prior to formal adoption by the Commission. Substantive amendments provide a way to incrementally amend the plan over time without the necessity of a major rewrite and will be central to the Commission's planning process. The Commission will specifically consider the need for substantive amendments on at least an annual basis. Consideration of substantive amendments will typically be made in concert with preparation of the annual budget request.

(3) *Technical revision.* Technical revisions include changes that correct inadvertent errors or provide current information, other minor revisions that do not substantively modify the plan, or, changes in the particulars of one or more projects that do not change basic project goals and objectives nor substantively modify expected environmental effects. Technical revisions to projects might include, but are not limited to, changes in the list of participating organizations, changes in the exact location of certain project activities, and changes to specific tasks. Substitution of one project for another, or aggregation of projects, may also be considered a technical revision if the projects possess similar qualities and the action is supported by affected parties and the general public. Technical revisions do not constitute a formal amendment to the plan and do not require the notification and reporting procedures of a formal amendment. Affected agencies and interests must, however, be consulted, and the rationale for making the technical revision documented. The plan document will be corrected to reflect technical revisions, and a historical record kept in order to track the plan's evolution.

(b) *Public petitions.* Agencies and members of the public have the right to, at any time, petition the Commission to open the plan to comprehensive or substantive amendments. Petitions must be made in writing and should state the specific reason why the action is requested. The petition may be accompanied by a specific project recommendation. The Commission will, during the public session of the next official Commission meeting, announce that such a petition has been received. The Commission may choose to vote on the petition at that time or to take the matter under advisement until the following Commission meeting at which time the Commission must vote to determine if the petition has merit. Following acceptance of a petition the Commission will promptly establish the procedures and schedule that will be followed in considering amendments. Project recommendations made pursuant to a petition must be presented using the format described in § 10005.18 and will be evaluated in the manner described in § 10005.20. Proposals for technical amendments do not require a formal petition. Written requests for technical amendment will

be acted upon by the Commission in a timely manner.

PART 10010—POLICIES AND PROCEDURES FOR IMPLEMENTING THE NATIONAL ENVIRONMENTAL POLICY ACT

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AUTHORITY: 43 U.S.C. 620k (note).

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Subpart A—Protection and Enhancement of Environmental Quality

§ 10010.1 Purpose.

This Subpart establishes the Commission's policies for complying with Title 1 of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321–4347) (NEPA); Section 2 of Executive Order 11514, Protection and Enhancement of Environmental Quality, as amended by Executive Order 11991; and the regulations of the Council on Environmental Quality (CEQ)