

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 sub-

jected 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

§ 10005.12

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.

43 CFR Ch. III (10–1–12 Edition)

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.