

Executive Committee Meeting
April 13, 2012

Meeting Materials:

Meeting Agenda

Meeting Minutes



**Middle Rio Grande Endangered Species
 Collaborative Program
 EXECUTIVE COMMITTEE
 MEETING AGENDA
 Friday, April 13, 2012
 9:00 am – 4:00 pm**

LOCATION: Bureau of Reclamation, 555 Broadway Blvd. NE, Albuquerque, NM

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| <p>1. INTRODUCTIONS AND REVIEW OF PROPOSED AGENDA*</p> | <p><i>5 minutes</i></p> |
| <p>2. REVIEW MARCH 28 EC ACTIONS AND DECISIONS*</p> | <p><i>15 minutes</i></p> |
| <p>3. <i>DECISION</i> - APPROVAL OF FEBRUARY 16 MEETING SUMMARY*</p> | <p><i>20 minutes</i></p> |
| <p>4. <i>SERVICE RECOMMENDED RIP MANAGEMENT & STRUCTURE</i>
<i>(M. Shaughnessy)</i></p> | <p><i>30 minutes</i></p> |
| <p>5. <i>DECISION</i> – SHOULD CURRENT EC MEMBERSHIP BE CHANGED FOR THE PURPOSES OF THE MRG RIP?</p> <p style="margin-left: 20px;"> A. Maintain EC membership
 B. Follow current or revised EC criteria </p> | <p><i>45 minutes</i></p> |
| <p>6. BRIEF UPDATES FROM EC RIP FOCUS GROUPS</p> <p style="margin-left: 20px;"> A. Draft Program Document (<i>H. Brinegar/Y. McKenna</i>) </p> <p style="margin-left: 40px;"> i. Issues Needing EC Decision/Direction </p> | <p><i>20 minutes</i></p> |
| <p><i>BREAK</i></p> | <p><i>15 minutes</i></p> |
| <p style="margin-left: 20px;"> B. Action Plan Development(<i>R. Schmidt/J. Bair</i>) </p> <p style="margin-left: 40px;"> i. Issues Needing EC Decision/Direction </p> | <p><i>15 minutes</i></p> |
| <p><i>WORKING LUNCH</i></p> | <p><i>11:45 pm – 12:30 pm</i></p> <p><i>45 minutes</i></p> |
| <p>7. CONTINUATION OF FACILITATED SESSIONS** – <i>Goal is to resolve or make progress on current barriers to RIP; provide EC guidance on outstanding issues</i></p> <p style="margin-left: 20px;"> A. Organizational Structure and Governance </p> <p style="margin-left: 40px;"> i. RIP Management (alternatives – pros/cons)
 ii. What Currently Funded or Supported Program Activities Are Needed in the RIP?
 iii. <i>How and Who Makes the Final Decision(s) on RIP Annual Work Plan, Action Plan, and Long Term Plan?</i> </p> <p style="margin-left: 20px;"> B. Principles for ESA Compliance </p> <p style="margin-left: 40px;"> i. Sufficient Progress Evaluation and Determination (<i>ongoing</i>)
 ii. Interim Metrics
 iii. Standards for Re-initiation – Jeopardy vs. <i>Recovery</i> </p> | <p><i>60 minutes</i></p> <p><i>60 minutes</i></p> |

Members

ABCWUA
 ISC
 NMDA
 Sandia Pueblo
 UNM

APA
 Isleta Pueblo
 NMGF
 Santa Ana Pueblo
 USACE

CABQ
 NMAGO
 MRGCD
 Santo Domingo Tribe
 USFWS
 Reclamation

C. Identify other Issues Needing Discussion in Order to Decide Whether to Proceed with the RIP

8. MEETING SUMMARY (*R. Fullerton*)

9. PUBLIC COMMENT

**10. NEXT SCHEDULED EC MEETING – APRIL 20, 2012 @ _____;
ALTERNATE DATE(S); MAY 17, 2012**

* *Denotes read ahead material provided for this topic*

** *Breakout rooms available*

Middle Rio Grande Endangered Species Collaborative Program
Executive Committee Meeting
Friday, April 13, 2012
9:00 am – 4:00 pm

Actions

- Yvette McKenna and Grace Haggerty will refer to the past CC meeting summaries to verify whether or not the Population Monitoring Population Estimation peer review questions were vetted through the CC for approval prior to starting the peer review process.
- Mike Hamman will discuss with Reclamation’s Contracting Office the possibility of making the “raw” or “rough draft” February 16th, 2012 EC meeting notes available to EC members.
- EC members committed to the facilitator to call another EC member (from the opposite side of the room) in order to continue conversations in preparation for the discussions and decisions at the April 20th, 2012 EC meeting.

Decisions

- With quorum present and no objections, the March 28th, 2012 EC Actions and Decisions were accepted with the incorporation of changes discussed during the April 13th, 2012 EC meeting; however, EC members reserved the right to amend the March 28th, 2012 EC Actions and Decisions once the full draft summary is available.
 - Changes to the March 28th, 2012 EC Actions and Decisions included:
 - The last bullet under the Guidance to Focus Groups section, “*centralized conduit to the EC*”, will be struck from the record.
- With quorum present and no objections, the revised February 16th, 2012 EC meeting summary was approved for finalization with the incorporation of changes discussed during the April 13th, 2012 EC meeting.
 - Changes at the April 13th, 2012 EC meeting included:
 - With unanimous consensus, the EC agreed that the language pertaining to the Population Monitoring and Population Estimation Peer Review explanation statement will be:
 - After vigorous discussion on the Population Monitoring and Population Estimation Peer Review, the members of the EC reached consensus that the EC had provided inadequate guidance *and information* to the reviewers resulting in a draft report that *was inadequate* and unacceptable to the EC. The EC further agreed that it must establish adequate procedures and guidance for peer review. The Federal and Non-federal Co-chairs recommended and the EC agreed to cancel the planned afternoon Peer Review discussion and that any further work on the draft report be discontinued. The Program Manager will work with Reclamation's Contracting Officer to ensure the EC's decisions and recommendations are appropriately implemented.
 - The statement reflecting that MRGCD provided comments on the peer review will be kept in the meeting summary (page 7) and will read:
 - “The MRGCD provided copies of the District’s preliminary comments on the draft peer review report for all members of the EC and attendees at the meeting.”
 - The hypothetical “questions” that were part of W. Murphy’s presentation will be omitted from the text of the meeting summary and kept with the

- presentation section in order to avoid the potential confusion that these questions were asked by EC members during the meeting.
- The following edit (page 7), provided by the Service, will be kept if validated by the CC meeting summary; if the statement is not supported by the CC meeting summary, then the edit will not be accepted into the February 16th, 2012 EC meeting summary:
 - *A brief history of the Population Monitoring Population Estimation peer review effort was provided by the Program Manager. This included that the questions posed to the panel were developed in May 2010 by the Science Work Group and vetted through the Coordination Committee for approval prior to starting the peer review process.*
 - The first part of the 4th bullet on page 7 with the Service's recommended edits will read:
 - "Some EC members commented that it appears the panel was not asked to look at the original data and should have. Others responded that they believed the panelists were asked those questions. The scope of work was then reviewed and discussed."
 - With quorum present and no objection, the EC agreed to keep the original language in the bylaws for adding new EC members for the RIP Program Document, with the following changes:
 - Add the preamble statement;
 - Add a new agreement (to be (a)) to sign the RIP agreement;
 - Revisions to (b) that specifying annual cost share documentation;
 - The decision to approve new members will be left as a consensus agreement but when consensus is not reached, then by a supermajority (as already specified in the bylaws).
 - With quorum present and no objection, the EC agreed to accept the current EC membership (i.e., grandfather in existing members) and voting structure while transitioning into the RIP; however, the EC reserved the right to revisit this decision at some future time after functioning as a RIP for a while.

Requests/Recommendations

- Some members of the EC requested that the "raw" or "rough draft" meeting notes developed at the February 16th, 2012 EC meeting be made available to EC members.
- The facilitator asked each EC member to commit to calling another EC member (from the opposite sides of the room) in order to continue communications over the week in preparation for the discussions and decisions to be made at the April 20th, 2012 EC meeting.

"Straw poll" Results

- A straw poll was taken to determine the current inclination of EC members in regards to deciding management options of the RIP. There were 3 "main" options: Federal, Non-Federal, and 3rd Party.
 - 5 EC members indicated a current favor of a 3rd party lead manager of the RIP (ISC, APA, MRGCD, NMDA, and NMAGO).
 - 4 EC members indicated a current favor of a FWS lead manager of the RIP (Reclamation, Santa Ana, NMDGF, and USACE).
 - The Service, ABCWUA, and COA remained neutral in this straw poll.

Topics in the Parking Lot

- Coverage of activities versus temporary membership to EC

Next Meeting: April 20th, 2012 from 9:00 AM to 4:00 PM at Bureau of Reclamation

- Tentative agenda items include: 1) April 1st Forecast – discussion on activities that need to be done this year
- Future agenda items: 1) Discussion/decision regarding 10(j) Reintroduction Biologist position;

Meeting Summary

Introductions and Review of Proposed Agenda: Reese Fullerton brought the meeting to order and thanked the Executive Committee (EC) for being invested and committed to the issues in the Middle Rio Grande (MRG) valley. He reminded attendees that the EC agreed to explore transitioning into a recovery-focused program at the 2009 Taos Retreat and are now putting “meat” to those decisions. Change is difficult, but this is one Program and each member here brings unique perspectives that help make this a well-rounded collaborative. Brent Rhees initiated the introductions. Frank Chaves and Cody Walker provided advance notification that they were unable to attend today’s meeting.

- The agenda was reviewed and approved with the following changes:
 - Item #7 (*Continuation of Facilitated Sessions*) should be noted as a decision item that should be checked off as consensus is reached.
 - A briefing on the Virgin River and Platte River recovery programs was added to Item #4 (*Service Recommended RIP Management and Structure*).
 - A discussion on Voting Alternatives was added under Item #5 (*Should Current EC Membership be Changed for the Purposes of the MRG RIP?*).

Review March 28th EC Actions and Decisions:

- The Program Manager explained that when meetings are scheduled so closely together, it is not always possible to have the draft summary of the previous meeting available in time. There is a 10 day production period for full-day meetings. Thus, the full March 28th meeting summary will be available for the April 20th meeting.
- Attendees then reviewed the March 28th, 2012 EC Actions and Decisions.
 - It was agreed that the last bullet *Centralized conduit to the EC* under the Guidance to Focus Groups section will be struck from the record to avoid any confusion - the Science Advisor will communicate directly with the EC.
 - The March 28th, 2012 EC Actions and Decisions were accepted with the incorporation of the above change. However, EC members reserved the right to amend the March 28th, 2012 EC Actions and Decisions once the full draft summary is available – in order to make sure that all key decisions were captured accurately.
- Attendees then discussed how to improve the decision-making process during meetings.
 - It was suggested that the chairs concisely state the item (statement or phrase) for decision.
 - It was also suggested that the decision item be motioned and seconded in order to have more formality to the decision process. This should include every representative voicing a “yah” or “nay” to the decision. Following this formal approach will ensure that every individual is offered the opportunity to express agreement or disagreement.

Approval of February 16th, 2012 Meeting Summary:

- The revised February 16th, 2012 EC meeting summary contains suggested edits from several agencies.
- It was shared that regardless of the thoughts of consensus, it came to light after the February 16th meeting that there was not actually consensus on how to address the

Population Monitoring and Population Estimation Peer Review draft report. Reclamation, the Service, and the NM Attorney General's Office (N MAGO) all provided suggested language to the explanation statement for the February meeting summary.

- It was commented that the meeting summary should capture as accurately as possible what actually happened during the meeting. The regular process for consensus was followed at the February 16th, 2012 EC meeting and there was an apparent consensus. There was opportunity for objections but none were voiced at that time. The co-chairs did recommend alternatives (ex. cancelling the afternoon presentation) and after debate and conferring the general perspective is that we did reach consensus. The summary should reflect that.
- It was also commented that attendees often leave these meetings not knowing what decisions have been made. It is not always clear what is being agreed to until it is seen in writing. There was a lot of discussion and alternatives and ideas that were offered at the meeting (February 16th, 2012) but those got congealed into a single paragraph.
- Some EC members voiced concern that the Population Monitoring and Population Estimation Peer Review draft report will be used or referenced. These members cited others as indicating that "when used, it will be used in appropriate context."
 - It was explained that at the February 16th meeting, Reclamation agreed to "bury" (i.e., withdraw the report and not pursue it further) the draft report for the purposes of the Program because it was derived on insufficient scope and insufficient information/data was provided. The comments on the draft report will be included in the contract files so that everything on the matter will remain together should there be an unforeseen need to resurrect. The draft report will not be posted nor will it be used by the Program.
 - It was recommended that once a peer review process has been developed and adopted, the Population Monitoring and Population Estimation programs need to be revisited.
- It was cautioned that the meeting summaries should not "stray into editorializing" by using words like "serious" and "unreliable."
- Attendees discussed that the concerns and objections voiced will be part of the March 28th EC meeting record. The Service's letter will not be a minority report but will be captured as part of the discussion summary during March.
- After reviewing and discussing each option, the N MAGO recommended language appeared to have the most support. However, several additional changes were made:
 - Language was added explaining that the reviewers had not been provided with sufficient information; this point was strongly defended in order to make it clear that the inadequacies were not necessarily the reviewer's fault.
 - Use of the phrase "seriously flawed" (to describe the draft report) was strongly advocated for. This was language used at the meeting in February and it reflects the depth of the problems with the report (that some EC members have). It would be unfortunate if the decision to reject the draft report looks like a political one (i.e., didn't like the initial results) instead of based on the poor quality of the draft report. Other attendees expressed concern that the word "flawed" is too much of a value judgment; also, the EC never reach consensus regarding the "flaws." After much discussion, the word "inadequate" was accepted by all as an appropriate descriptor in place of "seriously flawed."

- The following language was omitted from the N MAGO suggested revisions: “...*had serious flaws, could not be relied upon and, for those reasons,...*”
- With the above changes, there was consensus agreement to use the following language in the February 16th, 2012 EC meeting summary:
 - After vigorous discussion on the Population Monitoring and Population Estimation Peer Review, the members of the EC reached consensus that the EC had provided inadequate guidance *and information* to the reviewers resulting in a draft report that *was inadequate* and unacceptable to the EC. The EC further agreed that it must establish adequate procedures and guidance for peer review. The Federal and Non-federal Co-chairs recommended and the EC agreed to cancel the planned afternoon Peer Review discussion and that any further work on the draft report be discontinued. The Program Manager will work with Reclamation's Contracting Officer to ensure the EC's decisions and recommendations are appropriately implemented.
- The EC then discussed other edits to the February 16th meeting summary:
 - The statement reflecting that MRGCD provided comments on the peer review will be kept in the meeting summary (page 7) and will read:
 - “The MRGCD provided copies of the District’s preliminary comments on the draft peer review report for all members of the EC and attendees at the meeting.”
 - The hypothetical “questions” that were part of W. Murphy’s presentation will be omitted from the text of the meeting summary and kept with the presentation section in order to avoid the potential confusion that these questions were asked by EC members during the meeting.
 - The following edit (page 7), provided by the Service, will be kept if validated by the CC meeting summaries; if the statement is not supported by the CC meeting summaries, then the edit will not be accepted into the February 16th, 2012 EC meeting summary:
 - *A brief history of the Population Monitoring Population Estimation peer review effort was provided by the Program Manager. This included that the questions posed to the panel were developed in May 2010 by the Science Work Group and vetted through the Coordination Committee for approval prior to starting the peer review process.*
 - The first part of the 4th bullet on page 7 with the Service’s recommended edits will read:
 - “Some EC members commented that it appears the panel was not asked to look at the original data and should have. Others responded that they believed the panelists were asked those questions. The scope of work was then reviewed and discussed.”
- Some EC members then raised a question on the accessibility of the actual, original meeting record – the “raw” or “rough draft” notes that are taken during the meeting (not the summary version provided). These EC members expressed wanting to have access to the rough draft notes in order to confirm that the meeting summaries reflect what is actually said during a meeting.
 - It was responded that the rough notes are not a work product (deliverable) that is provided. This request would have to be pursued through the contracting office.

Service Recommended Recovery Implementation Program (RIP) Management and

Structure: Janet Bair thanked the EC for the opportunity to share concepts that may bear on the decisions that the executives make regarding the EC membership for the RIP and management options.

- *EC Membership under the RIP*
 - There are currently 2 “schools of thought” regarding the EC membership for the RIP: (1) grandfather in existing membership and (2) accept only members that meet the Program Document criteria in order to have a streamlined, efficient decision-making body.
 - It was suggested the EC discuss and consider:
 - Entities with jurisdiction(s) or authority(s)
 - Entities that represent public interests – science, agriculture, environment, etc.
 - The value of having members who can provide consistent, informed representatives on behalf of their agency to the different Program levels;
 - In terms of reaching a balance of interest and the redundancy on the existing EC, maybe changes to the voting procedures should be explored.
- *RIP Management Option: Service (federal)*
 - A possible alternative on how to manage and run the RIP was then shared.
 - The Service could be an appropriate RIP manager for EC consideration. Remember, whatever option is selected, the RIP manager will be directly accountable to the EC.
 - While there are regulations associated with federal employment, there has been success in other areas with managers who are federal employees but who report to a body of advisors.
 - The EC will have the opportunity to participate in the writing the position description, developing the interview questions, participating on the interview panel, and making an official recommendation on selection. The Program can rest assured that the Service would not select a candidate that the EC did not like. The EC would also have opportunity to provide feedback to the RIP manager’s performance.
 - Regardless of selection, any RIP manager will have to manage the program, oversee the office(s) with the technical staff and science coordinator. This person will be in charge of all those operations.
 - The technical implementation teams will be staffed by members of the Program agencies.
 - Trust issues in the Collaborative Program were acknowledged, but the Service believes it could effectively and collaboratively run the RIP. The following reasons were offered in support:
 - *Regulatory certainty:* The Service is highly motivated to recover the species of concern. They have the technical expertise – this is in fact what they do. There is also the benefit that as the regulatory agency and the leading management agency (in a collaborative fashion), the Service would constantly be looking for and working toward sufficient progress. As an agency, they are constantly evaluating the

management of fish and wildlife. This means that the sufficient progress evaluation would be on the “plate” daily.

- *Past Experience and Success with Other Programs:* There are several other programs successfully managed by the Service (ex. the San Juan River RIP – managed by Dave Campbell). The San Juan River RIP is widely supported by the various entities and partners that are involved (water users, environmental groups, tribes, etc.). The Service has never had to reinitiate Section 7 consultation on the San Juan or Upper Colorado. And neither has been litigated. Part of the success for these groups is the support that the non-federal partners seek from congress on an annual basis.
 - *Addition Capacity and Technical Support:* As the managing agency, the Service would be able to “tap into” additional resources/benefits and extensive expertise. The Service is highly motivated to make the Middle Rio Grande (MRG) RIP successful.
 - *Integration:* The Service is inherently responsible for a lot of programs under the existing laws and regulations that guide their mission. As the managing agency, the Service would like to establish a stronger link with the Genetics and Propagation workgroup – as a way to seek greater collaboration in and through that workgroup.
 - The same desire holds with the 10(j) responsibilities. Inherently, the Service (with sister agencies) is responsible for recovery – which entails establishing populations outside the MRG. The population in the MRG could be managed forever or it could eventually be self-sustaining. If managed, then there need to be additional self-sustaining populations outside the MRG. Assisting in areas outside the Program boundaries helps to take the pressure off the MRG.
 - *Trust responsibility:* All federal agencies have trust responsibilities to Indian tribes and pueblos. The Service has a long history of working with pueblos and tribes. Regardless of the management selection, the Service will continue efforts with the pueblos but as the management agency, there is opportunity to build off the existing relationships to engage the pueblos more in this Program.
- *Questions and Comments:*
- It was commented that the Program has tried this structure before but it failed. When the overseeing Service manager (Joy Nicholopolous) left, the direction drifted and everything “fell apart” to the point that the Program refused to provide funding for the position. That structure was almost identical to what was just recommended.
 - Several members questioned that if the Service provides additional “services” then the non-federal cost-share would also be increased.
 - It was responded that this is not necessarily the case; but the details would have to be worked out.
 - In response to a question on where the RIP manager might reside (regional office? field office?) it was shared that the Service has not had any internal discussions or decisions about that.

- Some members had questions on how the RIP manager would work with the EC. Will there be direct communication or is there a chance that the manager will have to follow a Service chain-of-command?
 - It was explained that the manager's job would be to manage the RIP for the EC. EC will be able to provide input into the performance plan. As a federal employee, this person would wear 2 hats but the bigger hat is reporting to the EC. This also means that the manager will need to be in regular (daily or weekly) contact with members of the EC in order to know and understand the issues.
 - The San Juan River RIP decision body reviewed, revised, and commented on the manager's job description. The Service took their recommendations on who to hire.
- Steve Farris then provided information on the Virgin and Platte river models. One has a non-federal agency management (Virgin River) and the other has a 3rd party management (Platte River).
 - *Virgin River Resource Management and Recovery Program (VRRMRP):*
 - The VRRMRP has a non-federal management. Their Program Document is very similar to ours in many ways. Their goals are essentially the same in terms of species recovery and water concerns/issues.
 - The VRRMRP is organized with 3 committees:
 - Administration Committee – this is the decision or overseeing body similar to our EC. Existing committee members determine acceptance of new members.
 - Technical Committee – this is a subcommittee to the Administrative Committee that makes recommendations on all decisions.
 - Local Coordination Committee – another subcommittee of the Administrative Committee, this group receives, coordinates and reviews proposals for projects. This committee also makes recommendations to the Administrative Committee.
 - The VRRMRP measures the progress of the RIP through annual work plans and a 5 year strategic plan. Both are updated every year.
 - The annual progress report is drafted by the Technical Committee and is based on whether the tasks were achieved for that year. Then the Service agrees or doesn't. The Memorandum of Agreement (MOU) can be found in the appendices. The MOU includes language that the program has the right to withdraw and reevaluate should there be any "surprises."
 - Their Program Document explains that sufficient progress is made if: (1) net gain is made or (2) progress previously made is maintained and (3) the anticipated biological response has been made when achieving the milestones.
 - In terms of the program management, the director is a state employee with the Utah Department of Natural Resources. Thus, the state pays for his salary and benefits. The program management is through the Washington Conservancy District. Even though he works for a state agency, he is directly accountable to the Administrative Committee.

- *Platte River Recovery Implementation Program (PR RIP):*
 - The PR RIP is a big program with participants from 3 states: Colorado, Wyoming, and Nebraska.
 - The PR RIP has a 3rd party management.
 - The PR RIP is organized with:
 - Governance Committee – this is the deciding body (which is essentially the same as the EC and the Administrative Committee for the VRRMRP). Their charge is to oversee and implement the program itself.
 - 4 standing committees: technical, land, water, and a finance committee.
 - There is also a standing adaptive management work group.
 - For the independent 3rd party management, the Governance Committee has a contract with the Nebraska Community Foundation (NCF). This agreement allows the NCF – an independent, non-profit organization - to utilize the provided funds to contract the executive director. NCF contracted with HeadWaters Company and the contract specifies that he is directly accountable to the Governance Committee.
 - The executive director has about 15 staff members. These staff members do the work of the program – scope the habitat work that needs to happen, initiate the contracting work, etc. The PR RIP also buys land and water. The staff looks for willing buyers and sellers and opportunities for conservation easements.
 - The PR RIP is in the first increment of their strategic plan. The strategic plan includes milestones that are to be accomplished. Compliance has occurred as long as implementation has occurred and milestones are met. If there is a finding of noncompliance, everyone with coverage is included in the reconsultation; and the Governance Committee meets with the Service to determine how to achieve what was not achieved. All these procedural steps are defined in the Program Document.
- *Questions and Comments*
 - It was commented that the “heart” of the concerns lie with the perceived issue of control. While voting may be an appropriate way to address this, there are certain things that may require unanimous agreement. And there may be some things that can’t be forced.
 - It was pointed out that the VRRMRP seems to be a streamlined approach - but here, we have the Program and separate consultations. In response it was shared that in each and all cases, the Service (as the regulatory agency) has to complete their evaluation. It is assumed that there was no specific federal action; we have 2 federal actions here.
 - The intent in both is that the program is the Reasonable and Prudent Alternative (RPA). Everyone who participates is covered. Both have provisions for future development to be covered by the program under certain circumstances.
 - In response to a question about how well the 3rd party management is working, it was shared that it seems to be working very well for that program.
 - In response to a question on the need for authorizing legislation, it was shared that some have legislation but it might be possible for the Secretary to initiate and continue to implement the program without legislation. But the

- details of the program would have to be clearly understood and defined before it could be implemented.
- In response to a question about alternative mechanisms where member entities could do part of the work (not unlike how we operate today), it was shared that this type of work is considered in-kind contributions for both the VRRMRP and PR RIP. The agencies, as long as they have the authority, can complete work and not have to run funds through the management.
 - The bigger issue is to make sure that the in-kind contributions are included as part of the strategic action plan. The action plan needs to include the individual agency actions that will be done and captured as in-kind contributions.
 - It was commented that while the EC has been assured it would be able to participate in the hiring of a manager (under the Service lead option), the flipside is that if the EC is dissatisfied, it still has to work through the federal employee (human resources) process. This is similar with a non-federal management as well. However, a 3rd party management offers more direct control over the hiring/firing/reprimand/commendation process.
 - Attendees then briefly discussed that the benefits package is taken care of by the hiring agency.
 - It was shared that one way to address the potential costs of hiring a 3rd party manager could be to directly hire a contractor instead of going through an agency.
 - In response to a question on how staff are hired and retained (in both examples), it was shared that the Governance Committee delegated that to the executive director to hire the staff he needs. Their salary and benefits are taken care of through HeadWaters. The Governance Committee has the authority to get rid of the director.
 - It was also responded that in the Service-led approach, the EC could have input into the hiring of the staff as well.

Brief Updates from RIP Focus Groups:

- *Program Document:* Several items of guidance were received from the EC at the March meeting. Those revisions were made and the focus group continues to “polish” the document based on that feedback. The group will strive to have a revised version available by the April 20th meeting, but it is not likely.
 - The Program Document focus group still needs decisions on: (1) membership; (2) budget guidance principles; (3) peer review; (4) facilitation; etc.
 - Multiple comments from several organizations have been received on the Cooperative Agreement. Attendees were asked to hold off submitting any further comments until the new revised “master” Cooperative Agreement has been made available. The Cooperative Agreement will be available before the May EC meeting.
- *Action Plan:* The Action Plan Focus Group has worked on 4 things since the last EC meeting: (1) asked for comments on sections handed out - no comments were received; (2) addressed the EC direction to include Deb Freeman and Lori Robertson in the process; (3) begun the process for securing a technical editor to assist – a task order is in place; and (4) a small subset of the group met to discuss where the document is at and identify any issues. Once decisions are made, the group will be able to move forward.

EC Membership and Voting Alternatives for the Purposes of the MRG RIP:

- *Criteria for New EC Members*
 - The current criteria in the bylaws are:
 - a) representation of a sizable constituency, for example through public outreach or membership;
 - b) contribution to the non-federal cost share, including in-kind services;
 - c) ownership of an interest affected by the Program, such as land, water, or other property rights;
 - d) jurisdictional or regulatory responsibility, including sovereignty; and
 - e) commitment to participation.
 - The Program Document focus group revised the original criteria in an attempt to provide clarification and to conform the language to meet the needs of the RIP while considering the context of the RIP. Changes included:
 - Unanimous agreement from the EC on admittance of new members;
 - Specifies that the documentation for the cost-share will be provided annually;
 - As directed at the March meeting, added language specifying “shalls” and “mays” to the criteria.
 - In response to a question on agencies that desire to join short-term or on a temporary basis, it was explained that the EC can define the stakeholder group and how interested parties become members. However, the process for activities is a different process. Entities could be able to get coverage for a project without having to be an EC member. However, this seems to be a BO discussion (not set up for new depletions) and how to use the Program to offset impacts. Case by case situations would all be vetted by/through the EC.
 - There is a provision in the Program Document for consultation procedures for other activities; this is probably the appropriate section to address “actions not covered by the Programmatic BO.”
 - Some members expressed concern that the EC should be a smaller, more streamlined organization. The criteria for membership should be created with that intent in mind.
 - Some members expressed concern that the current Program documents (and draft RIP documents) do not adequately address process or procedures for potential situations of multiple “representations” (ex. 16 environmental groups want to join). There needs to be a “balance” in the group. In response, it was shared that there is a cap of 20 EC members specified in the bylaws. Currently, there are 16 members; one seat is a placeholder for the environmental community; and one seat is a placeholder for the farming community. The balance is already built into the bylaws. It was also pointed out that while there are criteria in place, the ultimate decision of accepting a new member is at the discretion of the EC - the EC can still say no to an applicant who meets the criteria.
 - Instead of accepting the suggested revision of unanimous agreement on admitting a new members, some EC members suggested that the original voting structure be kept (i.e., when consensus fails, go with a super-majority vote). The purpose is to make sure that one EC entity is unable to keep an interested party hanging for years.
 - After reviewing the changes to the acceptance criteria, some members suggested keeping the existing criteria as worded in the bylaws.
 - Other members expressed support of this suggestion (the keeping the criteria language as found in the bylaws) with the following changes:

- Inserting language that the contribution of the non-federal cost share will be reported annually: “*contribution to the non-federal cost share reported annually, including in-kind services*”
- Insert the preamble;
- Insert a new (a) to sign the RIP agreement; and
- Leave the consensus decision but accept supermajority if consensus cannot be reached.
 - It was noted that the “unanimous” consensus language will be struck from the other section in the Program Document as well.
 - It was pointed out that the bylaws do not specifically mention a “supermajority” should consensus fail. This may be another point of future discussion.
- It was pointed out that the bylaws indicate the possibility of the *Program signatories* which could be larger than the *EC signatories*. Right now, these are coterminous. But this may be something that needs to be clarified.
 - It was commented that maybe the *Program Signatories* could be the RIP advisory committee as a way for other interested parties to be involved but not necessarily carry a vote.
- *RIP EC Membership Voting Structure*
 - It was commented that everyone at the table has a stake in the process. We would not be at the table if we weren’t invested and committed to the success of the Program. Concern was expressed with the suggestion of “fractional” voting (ex. 12 environmental groups are all limited to 1 vote).
 - It was explained that the thought behind the suggestion to “group” or “pool” certain votes was to make sure that the regulatory or financial responsibilities of several of the agencies could not be overturned or “rolled over” by the group. In an example, it was shared that the San Juan River Program has a large array of public interest groups that have less stake in the cost share – those collective entities are given a single vote relative to the other agencies. This results in a weighted voting system.
 - It was responded that the bylaws contemplate the legal responsibilities of agencies and specifies: *It is recognized that the federal, state, tribal and other governmental agencies cannot achieve consensus, vote on issues, or be bound by Executive Committee decisions that would violate their obligations under applicable federal, state, tribal or local laws.(Sect. 5.3 Voting Procedures)*
 - It was pointed out that: (1) the problem with bylaws is that entities might be invoking powers outside the RIP environment - which is to keep things “in house”; and (2) requiring unanimous decisions by the EC provides “veto power” to every member of the EC. We may need a more targeted approach given the concerns of responsibilities – that certain entities (not all) have veto power.
 - It was commented that there could be 12 different opinions on how to combine or weigh the voting; this is a slippery slope situation. As previously mentioned, we all have reason to be at the table - the votes should be equal. Realistically, it will be nearly impossible to reach consensus on determining a “percentage” voting structure. Everyone

should be wary of how the system we set up can be manipulated or undone - but overcorrecting is not the answer either.

- It was shared that, all things considered, the EC has operated well. Everyone understands that there are certain responsibilities that the agencies are held to – we’ve always made the appropriate accommodations for them to do what they’ve needed to do. We haven’t had really big problems with this in the past.
- It was also pointed out that being inclusive and representative of a diverse constituency is how more support and funding is garnered.
- *RIP EC Membership*
 - After a motion to “grandfather” the existing EC membership (as independent of the criteria set for new membership) with equal voting power, federal partners called a caucus. The non-federal agencies remained in the conference room and contractors were asked to step out.
 - Upon returning, it was clarified that the motion is to keep the same membership and same voting structure as outlined in the bylaws with the recognition that certain “protections” may need to be determined at a later date. The recommendation is to accept the current EC membership and voting structure (which has worked well for the Program) until there may be the need to revisit other considerations.
 - Some members expressed the need to address that there are “certain decisions that cannot be overturned by the rest of the group - whether laws or regulations.” It was also advocated that the “gross” lack of efficiency that currently exists in this committee should be addressed – possibly through establishing a “leaner, meaner” sized committee that could be more productive.
 - In response, it was suggested that the efficiency of the group would come with a maturing of the organization. Once the direction of the Program has been jointly defined and the RIP has been implemented, then it can be assumed that we will gain some efficiency.
 - It was also suggested that the EC reserves the right to revisit the “grandfathering” decision at some future time after the group has been functional as a RIP.
 - The motion to accept the current EC membership and voting structure while reserving the right to revisit the decision after the RIP has been functioning was seconded. No objection was expressed.

RIP Management Options

- During today’s meeting, several RIP management options were presented and discussed: the Service, other federal agency (ex. DOI, Reclamation), non-federal (ex. state), and 3rd party.
 - It was pointed out that there are examples of every option – and each example is successful.
 - It was shared that the Jericho Lewis (Reclamation’s contracting officer) has not yet been able to look into some of the authorities that Reclamation might have contractually to pursue as the management agency. However, it has been advised that as things currently stand, only the Service has the authority to run the RIP starting immediately. This means that any other federal option would probably require legislation.

- This doesn't mean that Reclamation could not eventually manage the RIP, but it would have to be corrected with legislation. Reclamation does not appear to be in a position to manage the RIP in the immediate future.
 - A "hybrid" option - of continuing the Program under Reclamation with a manager hired by the EC but supervised by Reclamation – could be an option. However, this would probably be more appropriate for a recovery program instead of a RIP.
- It was suggested that the pros and cons of each of the 3 main options (the Service, non-federal, 3rd party) be listed.
 - *Option 1: the Service (or other federal lead – Reclamation, DOI)*
 - Pros:
 - Consistency with missions - administers the ESA, works with others to recovery species
 - Already have the financial responsibilities
 - Consistency with current process and staffing (Reclamation)
 - Tribal trust responsibilities
 - Legal authorities
 - Start up time – easier to “hit the ground running”
 - Cost effectiveness
 - Access to additional capacity and technical expertise
 - It was questioned that if the Service brings additional technical staff to the table, wouldn't that increase the non-federal cost-share as well? It was explained that this issue would have to be ironed out. However, charging project time to this effort may not necessarily be done.
 - It was also asked why the Service is only offering the additional capacity and expertise now if they are the RIP manager. It was explained that if the Service was managing the RIP, then it would open greater opportunities to access the technical expertise, services, and facilities just because of the relationships to the rest of the agency.
 - Access to experienced managers that exist within other successful programs
 - Familiarity with the Collaborative Program as it exists today compared to a 3rd party
 - Opportunity to better integrate other Service activities – 10(j), Genetics & Propagation workgroup, etc.
 - Blending regulatory and conservation recovery oriented missions/aspects of the mission - provides the synergy to more readily assure sufficient progress
 - Cons:
 - Linked to federal agencies who fund the work - so not really independent
 - Potential conflict - since in the role of managing while insuring compliance

- Inherent issues that may arise if the program manager is a federal employee – because even if the EC has hiring/firing “rights” that person is a federal employee
- Potential conflict between regulatory duties and collaborative duties
- Efficiency issues – the federal bureaucracy is enormous and will have to be adhered to (contracting)
- Cost efficiency - overhead that is added to the charge to pay for the staff (contracting)
- Time component – 2 to 3x as long to move projects forward as a state agency which is 2 to 3x as long as the private sector
- *Trust Issues*
 - In response to the concerns regarding “conflict of interest” should the Service manage the RIP, it was explained that the Service’s mission is to carry out the recovery of species. The Service has separation between departments that allows each part to operate with as little conflict of interest as possible (in other words, they are able to “police” themselves).
 - It was then asked what might happen should a state agency disagree with the actual science that the Service office might have/use. Wouldn’t the tendency be to “err on the side of the Service” if they were managing the program?
 - It was responded that this is one reason to have a scientific body or committee that debates the science and makes recommendations to the rest of the Program.
 - It was then shared that much of the issue is a trust issue. It was the opinion of some that the Service deals with “little crises” all the time so once a situation is no longer in crisis, the Service moves support and focus elsewhere. Members were reminded that the MRG tried a Service-lead management in the past and it failed. Another issue is that we don’t have the money or water that other programs have.
 - It was responded that this Program is still relatively “young.” Other collaborations have gone through the process of building their programs and building that trust. We are still in progress.
 - It was pointed out that while a Service management may have not been successful in the past, we are trying new and different things – things that haven’t been done here before.
 - It was shared that part of “trust building” includes enhanced communication skills for talking and sharing with one another.
 - Some members shared that if the RIP were to be managed by the Service, they would need more certainty of what was going to happen – iron clad, up front assurances in writing of how the RIP would work.
 - Some members shared that they currently feel most comfortable with the 3rd party management option because of the trust issues. Additionally, a 3rd party would be a private business which would not necessarily have the same bureaucracy (ex. contracting requirements to initiate work).
 - It was pointed out that regardless of management, the money will still be federal dollars. There will still be federal bureaucracy and processes whether a 3rd party is selected or not. Additionally, going through a 3rd party is probably the most expensive option.
 - Some members expressed that while originally leaning toward a 3rd party management option, they are “enticed” with the option of having the Service manage the RIP. The Service cannot really have a finding of

insufficient progress without violating their own mission. They are vested in recovery – maybe we should let them handle the execution of the RIP and lead us to victory. It was acknowledged that this has been done (and failed) in the past, but we are moving forward with a different scope. As long as the EC is directing the RIP and able to step in at any time, maybe the benefits of the Service management option outweigh the perceived negatives.

- Some members responded that the trust issue won't just "go away." These members believe that a 3rd party might be the only way to be able to move forward in the near future while we learn to trust. This does not necessarily mean that a 3rd party management has to be applied forever.
- It was shared that another way to move past trust issues is to have clear organizational rules and define how things are going to work (who does what when). Remember, regardless of the hiring agency, the manager will report directly to the EC.
 - However, as stated earlier there are several members who will need more certainty (especially in terms of how the RIP is measured for sufficient progress and interim metrics) provided in writing before they would approve a Service-led management.
- Some members brought up the fact that there are deadlines looming – we still need to get the BAs/BO in place, implement the action plan, and annual work plan(s) by March 2013. A 3rd party route might be the most difficult to implement.
- Members were reminded that a management decision is not necessarily permanent. The management can be revisited at the discretion of the EC – especially after the transition process has been completed and the RIP has been functioning for a period of time.
- It was pointed out that one fundamental issue has not been mentioned today - scientific conflicts. The very direction of the RIP springs from the recovery plan and that is an issue over which we have much conflict. The regulatory context in which the RIP operates could be the Recovery Plan – the legal standard that would be applied to sufficient progress. As long as the Recovery Plan remains in the current form then there is a real, fundamental problem. The recovery plan needs to be updated and fundamentally changed. This also feeds into this trust issue.
 - It was responded that the Program has the opportunity in the Long-term Plan (LTP) to use elements and components that are specific to the Program without accepting the entirety of the recovery plans.
- Another option to address concerns with a Service management structure was offered: have a state funded assistant that answers directly to the manager. The non-federal agencies would have a presence directly involved, working hand in hand with the director. Also, in the case of a vote of no confidence or the manager opts to leave, then the assistant could step in as an interim manager.

“Straw poll” Results

- A straw poll was taken to determine the current inclination of EC members in regards to deciding management options of the RIP. There were 3 “main” options: Federal, Non-Federal, and 3rd Party.
 - 5 EC members indicated a current favor of a 3rd party lead manager of the RIP (ISC, APA, MRGCD, NMDA, and N MAGO).

- 4 EC members indicated a current favor of a FWS lead manager of the RIP (Reclamation, Santa Ana, NMDGF, and USACE).
- The Service, ABCWUA, and USACE remained neutral in this straw poll.

Closing Remarks

- There was an “Open Issues” handout from MRGCD that provides information on the ESA compliance – including sufficient progress and evaluation. Two other handouts include a table and 1-page description of what the Service envisions the sufficient process could be.
- It was suggested that the April 20th meeting agenda include time to discuss the April 1st forecast – which is pretty dire (similar to 2001/2002).
- It was also suggested that the April 20th meeting agenda include an update on the Cochiti Deviation (that won’t occur this year).
- The facilitator asked EC members to commit to him that they would call another EC member (from the opposite side of the room) in order to continue conversations in preparation for the discussions and decisions at the April 20th, 2012 EC meeting.
- Thanks were expressed (on behalf of the City of Albuquerque and the Water Utility Authority) to Jen Bachus (Service), Hector Garcia (Reclamation), and Bill (Corps) for their assistance in getting needed compliance documents out rapidly.

Executive Committee Meeting Attendees April 13th, 2012, 9:00 am to 4:00 pm

Attendees:

<i>Representative</i>	<i>Organization</i>	<i>Seat</i>
Brent Rhees	U.S. Bureau of Reclamation	Federal co-chair
Estévan López (P)	NM Interstate Stream Commission	ISC, Non-federal co-chair
Michelle Shaughnessy (P)	U.S. Fish and Wildlife Service	Service
Steve Farris (P)	NM Attorney General’s Office	NMAGO
Subhas Shah (P)	Middle Rio Grande Conservancy District	MRGCD
Matt Schmader (P)	City of Albuquerque	COA
LTC Jason Williams (P)	U.S. Army Corps of Engineers	USACE
Mike Hamman (P)	U.S. Bureau of Reclamation	BOR
Janet Jarratt (P)	Assessment Payers of the MRGCD	APA of the MRGCD
Hilary Brinegar (P)	NM Department of Agriculture	NMDA
Rick Billings (A)	Albuquerque/Bernalillo County Water Utility Authority	ABCWUA
Matt Wunder (P)	NM Department of Game and Fish	NMDGF
Alan Hatch (A)	Pueblo of Santa Ana	Santa Ana

Others

Yvette McKenna – PM	U.S. Bureau of Reclamation
Jennifer Faler	U.S. Bureau of Reclamation
Ali Saenz	U.S. Bureau of Reclamation
Mary Carlson	U.S. Bureau of Reclamation
Ann Moore (A)	NM Attorney General’s Office
Christopher Shaw	NM Interstate Stream Commission

Grace Haggerty	NM Interstate Stream Commission
Deb Freeman	NM Interstate Stream Commission
Rolf Schmidt-Peterson (A)	NM Interstate Stream Commission
Kris Schafer (A)	U.S. Army Corps of Engineers
Michelle Mann	U.S. Army Corps of Engineers
Janet Bair (A)	U.S. Fish and Wildlife Service
Jennifer Bachus	U.S. Fish and Wildlife Service
Wally Murphy	U.S. Fish and Wildlife Service
Lori Robertson	U.S. Fish and Wildlife Service
Stacey Kopitsch	U.S. Fish and Wildlife Service
Mike Oetker	U.S. Fish and Wildlife Service
Jim Brooks	U.S. Fish and Wildlife Service
Brooke Wyman	MRGCD
David Gensler (A)	MRGCD
Patrick Redmond	LRPA/MRGCD
Rebecca Houtman (A)	City of Albuquerque
Liz Holmes	NMDA
Patricia Dominquez	Senator Bingaman's Office (afternoon)
Sarah Cobb	Senator Udall's Office
Mathew Zidovsky	Representative Heinrich's Office
Kyle Harwood	BDDDB (Buckman)
Beth Bardwell	Audubon NM
Reese Fullerton	GenQuest
Marta Wood	Tetra Tech