

Chapter 7

Consultation and Coordination

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7.0 Consultation and Coordination

The consultation and coordination efforts made by the lead agencies and the CWC during the preparation of this EIS are summarized in this chapter. Meetings, briefings, and consultations were conducted with federal, tribal, state, county, and local agencies and governments, as well as the public. Some actions taken by the lead agencies and the CWC were mandated by regulations; other actions were initiated by the CWC to further encourage participation in the NEPA process. Consulting and cooperating agencies reviewed the Draft SCOP EIS prior to its issuance, and provided comments, which have been addressed.

7.1 Cooperating Agencies

Two federal agencies, one state agency, and one local agency served as cooperating agencies with the NPS and Reclamation in accordance with 40 CFR 1501.5 and 1501.6. The NPS and Reclamation sought their cooperation to identify potential impacts to lands owned, administered, or managed by these agencies as a result of implementing the proposed alternatives. Specific areas of expertise within these agencies were critical to the lead agencies for the evaluation of its alternatives. General functions applicable to all cooperating agencies were to:

- Provide land-use plans and other reference documents that could assist in the analysis;
- Coordinate internal reviews and provide one set of comments for the Preliminary Draft EIS to assure accuracy;
- Attend and participate in periodic meetings such as technical working groups, public meetings and hearings, and interagency meetings related to the SCOP EIS; and
- Assist, where applicable, with response to public comments.

The following briefly describes the specific contributions of the four cooperating agencies.

U.S. Army Corps of Engineers. The USACE reviewed the SCOP Preliminary Draft EIS and provided comments that were incorporated into the Draft EIS. The USACE, in accordance with Section 404 of the CWA, regulates the discharge of dredged and fill material in waters of the U.S. e.g., Las Vegas Wash. The USACE also regulates construction and dredging in navigable waters of the U. S. e.g., Lake Mead, under Section 10 of the *Rivers and Harbors Act*. Aspects of the SCOP will require a permit from the USACE.

U.S. Bureau of Land Management. The BLM reviewed the SCOP Preliminary Draft EIS and provided comments that were incorporated into the Draft EIS. The BLM provides input for portions of the proposed SCOP alignments that would be located on BLM-managed lands and would require the issuance of BLM ROWs.

Colorado River Commission of Nevada. The Colorado River Commission of Nevada reviewed the SCOP Preliminary Draft EIS and provided comments that were incorporated into the Draft EIS. The Nevada Colorado River Commission of Nevada possesses expertise with Nevada water issues, including expertise and interest in Colorado River return flow credits. Therefore, the Colorado River Commission of Nevada provides assistance in their area of expertise during the EIS process.

Metropolitan Water District of Southern California. The MWD reviewed the SCOP Preliminary Draft EIS and provided comments that were incorporated into the Draft EIS. The MWD possesses expertise with Colorado River Water issues and water quality. Therefore, the MWD provides assistance in their area of expertise during the EIS process.

7.2 Native Americans

The DOI, SO 3175 established the policies, responsibilities, and procedures for operating on a government-to-government basis with federally recognized Native American tribes for the identification, conservation, and protection of Native American and Alaska Native trust resources to ensure the fulfillment of the Federal Indian Trust Responsibility. Legal interests in property held in trust by the U.S. for federally recognized Native American Tribes are ITA. Among other directives of SO 3175, it is a DOI requirement to consult with Native American tribes when trust property may be affected. This includes fishing and water rights. The ITA identification should be considered early in the NEPA process and involve consultation with tribes, Native American organizations, and the BIA.

Letters notifying tribal members of the proposed project and an attached copy of the Federal Register NOI were mailed on August 9, 2002 to 31 individual members representing 19 Native American Tribes located near and downstream from the proposed project (Table 7.2-1). No response letters from the tribes were received. No tribal members attended the Scoping Meetings that were held in August 2002.

Additionally, a Native American Coordination Meeting was held on March 31, 2004. Invitations were sent to the same tribal members mentioned previously. Three individuals representing the Fort Mojave, Las Vegas Paiute Tribal Council, and CRIT attended the meeting. The meeting was held in an open format, in which members of the tribes were encouraged to provide comments. Appendix C contains the transcripts of the meeting and comments received from the Native American Tribes.

7.3 Consultations

Consultation activities with the federal agencies responsible for the protection of biological and cultural resources are described in this section.

7.3.1 Endangered Species Act, Section 7 Consultation

The ESA of 1973, as amended (16 USC 1531 et seq.) directs the USFWS to protect listed plants and animals. It also directs all federal agencies to participate in endangered species conservation. Specifically, Section 7 of the ESA charges federal agencies to aid in the conservation of listed species (Section 7 (a) (1)) and requires federal agencies to ensure that their activities will not jeopardize the continued existence of listed species or adversely modify designated critical habitats (Section 7 (a)(2)). The ESA and its implementing regulations prohibit any action that would “take” (harass, harm, or kill) a federally listed threatened or endangered species, or its critical habitat (on public or private lands) (USFWS 1998).

Table 7.2-1 Native American Tribes Contacted.

Tribe	Letters	Meetings
Aha Mahav Cultural Society	August 9, 2002 March 2, 2004	Scoping Meetings – August 2002 Tribal Meeting – March 31, 2004
Chemehuevi Tribal Council	August 9, 2002 March 2, 2004	Scoping Meetings – August 2002 Tribal Meeting – March 31, 2004
Colorado River Indian Tribal Museum	August 9, 2002 March 2, 2004	Scoping Meetings – August 2002 Tribal Meeting – March 31, 2004
Colorado River Indian Tribe	August 9, 2002 March 2, 2004	Scoping Meetings – August 2002 Tribal Meeting – March 31, 2004
Fort McDowell Mohave-Apache Community Council	August 9, 2002 March 2, 2004	Scoping Meetings – August 2002 Tribal Meeting – March 31, 2004
Fort Mojave Tribal Council	August 9, 2002 March 2, 2004	Scoping Meetings – August 2002 Tribal Meeting – March 31, 2004
Havasupai Tribal Council	August 9, 2002 March 2, 2004	Scoping Meetings – August 2002 Tribal Meeting – March 31, 2004
Hopi Office of Cultural Preservation	August 9, 2002 March 2, 2004	Scoping Meetings – August 2002 Tribal Meeting – March 31, 2004
Hopi Tribe	August 9, 2002 March 2, 2004	Scoping Meetings – August 2002 Tribal Meeting – March 31, 2004
Hualapai Tribe	August 9, 2002 March 2, 2004	Scoping Meetings – August 2002 Tribal Meeting – March 31, 2004
Kaibab Paiute Tribal Council	August 9, 2002 March 2, 2004	Scoping Meetings – August 2002 Tribal Meeting – March 31, 2004
Kaibab Paiute Tribe	August 9, 2002 March 2, 2004	Scoping Meetings – August 2002 Tribal Meeting – March 31, 2004
Las Vegas Indian Center	August 9, 2002 March 2, 2004	Scoping Meetings – August 2002 Tribal Meeting – March 31, 2004
Las Vegas Paiute Tribe	August 9, 2002 March 2, 2004	Scoping Meetings – August 2002 Tribal Meeting – March 31, 2004
Las Vegas Paiute Tribal Council	August 9, 2002 March 2, 2004	Scoping Meetings – August 2002 Tribal Meeting – March 31, 2004
Moapa Paiute Band of Moapa Indian	August 9, 2002 March 2, 2004	Scoping Meetings – August 2002 Tribal Meeting – March 31, 2004
Navajo Nation	August 9, 2002 March 2, 2004	Scoping Meetings – August 2002 Tribal Meeting – March 31, 2004
Pahrump Paiute Tribe	August 9, 2002 March 2, 2004	Scoping Meetings – August 2002 Tribal Meeting – March 31, 2004
Paiute Indian Tribe of Utah Tribal Council	August 9, 2002 March 2, 2004	Scoping Meetings – August 2002 Tribal Meeting – March 31, 2004
Pueblo of Zuni	August 9, 2002 March 2, 2004	Scoping Meetings – August 2002 Tribal Meeting – March 31, 2004

Table 7.2-1 Native American Tribes Contacted (continued).

Tribe	Letters	Meetings
Pueblo of Zuni Tribal Council	August 9, 2002 March 2, 2004	Scoping Meetings – August 2002 Tribal Meeting – March 31, 2004
Yavapai Tribe	August 9, 2002 March 2, 2004	Scoping Meetings – August 2002 Tribal Meeting – March 31, 2004

Section 7(a)(2) of the ESA requires federal agencies to consult with the USFWS, prior to implementation of a project, to ensure that actions they fund, authorize, permit, or otherwise carry out will not jeopardize the continued existence of any listed species or adversely modify their habitats or designated critical habitats.

Before initiating an action, the federal action agency (the agency planning a specific action), or its non-federal permit applicant, must ask the USFWS to provide a list of threatened, endangered, proposed candidate species, and designated critical habitats that may be present in the project area. If the USFWS determines that there are no species or critical habitats present, then the federal action agency has no further ESA obligation under Section 7(a)(2) and consultation is concluded. If a species is present, then the federal action agency must determine whether the project may affect a listed species. If so, consultation is required. If the action agency determines (and the USFWS agrees) that the project does not adversely affect any listed species, then the consultation (informal to this point) is concluded and the decision is put in writing.

If the federal action agency determines that a project may adversely affect a listed species or designated critical habitat, formal consultation is required. The consultation is required to be completed within 90 days and then the biological opinion must be completed within 45 days. The determination of whether or not the proposed action would be likely to jeopardize the species or adversely modify its critical habitat is contained in the biological opinion. If a jeopardy or adverse modification determination is made, the biological opinion must identify any reasonable and prudent alternatives that could allow the project to be implemented (USFWS 2002).

The NPS and Reclamation have initiated formal consultation with the USFWS. A biological opinion for SCOP will be issued prior to issuance of the ROD.

7.3.2 National Historic Preservation Act, Section 106

The NHPA, as amended (16 USC 470 et seq.) and the ARPA, as amended (16 USC 470aa-mm) require federal agencies to assess potential effects federal actions may have on districts, sites, buildings, structures, or objects included, or eligible to be included, in the NRHP.

It is federal policy to avoid or minimize adverse effects to cultural resources when planning, constructing, and/or assisting a federal project. In some cases, it is impossible to avoid disturbance or destruction of cultural resources in order to implement an approved project. In

such instances, it is federal policy to recover the information embodied in those resources through historical and archaeological study before the project begins.

Section 106 of the NHPA mandates that consultation be conducted with other agencies such as the SHPO, Tribal Historic Preservation Officer, and/or the Advisory Council on Historic Preservation before proceeding with projects that may adversely affect cultural resources. Consultation with SHPO and the Advisory Council on Historic Preservation has been completed. A Programmatic Agreement has been initiated that ensures the required mitigation measures are implemented to minimize or eliminate the potential impact to cultural resources. In addition, Section 101(d)(6)(B) of NHPA requires consultation with Native American tribes that attach religious and cultural significance to historic properties, which are called TCPs. The federal agency must make a reasonable and good faith effort to identify such Native American tribes and invite them to be consulting parties.

Analysis for cultural resources would be required and would include a site records search and consultation with Native Americans to develop an inventory of potentially affected cultural resources including TCPs. Where sensitive cultural resources are known or have a high potential to occur, this information will be submitted to the SHPO/Tribal Historic Preservation Officer to initiate Section 106 consultation with the Advisory Council on Historic Preservation (SHPO 1998). The requirements described in the previous paragraphs have been met and the Section 106 consultation has been completed for SCOP. A Programmatic Agreement has been initiated that ensures the required mitigation measures are implemented to minimize or eliminate the potential impact to cultural resources.

7.4 Public Participation

The CEQ regulations require that “agencies shall make diligent efforts to involve the public in preparing and implementing their NEPA procedures” (40 CFR 1506.6). Scoping is the first opportunity in the NEPA process for the public to provide input regarding a proposed action. Comments and suggestions received as a result of the scoping process are used to prepare the Draft and Final EIS.

Additionally, public involvement occurs throughout the NEPA process. A common method for soliciting public input is to form a committee as discussed in Section 1.6.2. Public input is also solicited when the Draft EIS is made available for public and agency review and comment. Comments regarding the Draft EIS are addressed in the Final EIS.

7.4.1 Scoping

The CEQ Regulations for Implementing the Procedural Provisions of NEPA, 40 CFR 1501.7, states that:

There shall be an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action. This process shall be termed scoping. As soon as practicable after its decision to prepare an environmental impact statement and before the scoping process the lead agency shall publish a notice of intent in the *Federal Register*.

The NOI to prepare an EIS for the SCOP was published in the *Federal Register*/Vol. 67, No. 144 on July 26, 2002 (Appendix A). The NOI contains:

- A brief description of the proposed project;
- The location, date, and time of the scoping meetings;
- Mailing addresses for submittal of written comments; and
- The deadline for submittal of comments.

Notices were also published in local and regional newspapers including the *Las Vegas Review Journal*, *Henderson Home News*, *Arizona Republic*, *Desert Sun*, *Los Angeles Times*, and *San Diego Union-Tribune*. Postcards were mailed to residents in southern Nevada, Arizona, and California notifying them of the scoping meetings. The information provided in the newspaper notices and on the postcards included the meeting locations, dates, and times as well as a brief description of the proposed project.

Scoping meetings were conducted to give the public an opportunity to review the possible project alternatives, identify significant environmental and other issues, and to provide comments and suggestions on the proposed SCOP for consideration in the associated EIS. Appendix B contains the comments that were received during the scoping process.

Scoping meetings were held in eight locations in Nevada, Arizona, and California. The meeting dates and locations are presented in Section 1.6.1.

7.4.2 Clean Water Coalition Citizens Advisory Committee

On December 5, 2002, the governing board of the CWC established the CWCCAC to gather public input on water- and wastewater-related issues impacting the southern Nevada watershed and parts of the lower Colorado River. On December 19, 2002, the CWC Board appointed members to serve on the CWCCAC. The objectives of the CWCCAC and the process used are described in Section 1.6.2.

The CWCCAC is part of the larger public input procedure required in any EIS. The CWCCAC interfaced with the public and provided an opportunity for open discussion and public participation in the overall process. After evaluation of the issues, the CWCCAC formulated potential solutions and made critical recommendations to the CWC Board regarding the alternatives that should be carried forward in the EIS. The CWCCAC ultimately assisted with the development of alternatives that would be analyzed in this EIS.

7.4.3 Draft EIS Public Hearings

The CEQ regulations (40 CFR 1503.1) invite the public to review and comment on the Draft EIS. An NOA was published by the NPS/Reclamation in the *Federal Register* on October 5, 2005 (Vol. 70, No.192) and by the EPA on October 7, 2005 (Vol. 70, No. 194) announcing the availability of the Draft EIS for public review and comment. A copy of the NOA is presented in Appendix A.

The public notice announcing the hearings was published in the following newspapers on the following dates.

- Henderson *Home News*: September 29 and October 13, 2005.
- Las Vegas *Review Journal*: October 2 and 16, 2005.
- Kingman *Daily Miner*, Arizona Republic, LA *Times*, San Diego *Tribune*, and *Desert Sun*: October 9 and 23, 2005.

The information provided in the newspaper notices included the meeting locations, dates, and times as well as a brief description of the proposed project.

Public hearings were held in nine locations in Nevada, Arizona, and California. The meeting dates and locations are presented in Section 1.6.4. The public hearings were conducted to give the public an opportunity to comment on the potential environmental impacts described in the Draft EIS. A court recorder was in attendance at most of the meetings to record comments received from members of the public.

Written comments were accepted at the public hearings, via email, and U.S. mail. The official close of the comment period was December 7, 2005. The EPA and others were granted an extension to comment to December 22, 2005, and comments were accepted through January 30, 2006. Section 1503.4 of the CEQ Regulations requires that comments be considered and responses be provided in the Final EIS. All comments received and the associated responses are provided in Appendix L, Comments and Responses, of this Final EIS.