

## § 10005.2

## 43 CFR Ch. III (10–1–02 Edition)

### § 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 Re-

sources 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 mitiga-

tion 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.