

TO: EARIP Stakeholders

FROM: Myron Hess (Titular Chair of MOA Committee)

RE: Draft of MOA for EARIP Process

Date: Sept. 4, 2007

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The purpose of this memo is to provide some additional explanation of the draft MOA that is being circulated for your review and consideration. The members of the MOA Committee have put a lot of effort into developing a draft document that provides a clear path forward for the RIP process.

As you know, significant concerns have been raised about the appropriate decision model for the RIP process and about the inclusiveness of the legislatively-created Steering Committee. Although our Committee made significant progress in addressing both of those issues, as discussed further below, we were unable to reach complete agreement on all aspects of the decision model. In addition, because we ran out of time, there are a couple of other issues on which the MOA Committee failed to reach a final resolution. One of those issues is the question of the minimum number of signatures needed for the MOA to go into effect.

Also, because not all members of the MOA Committee were able to attend the last meeting and because those members may not have had sufficient time to provide comments on the drafts circulated, there may be MOA Committee members who have additional concerns not raised in the Committee deliberations. However, to the extent possible, we have sought to develop a proposal that no MOA Committee member was actually opposed to.

The draft MOA being circulated establishes the framework for Steering Committee decisions. Once a MOA is approved, it will be necessary for the Steering Committee to act quickly to develop and adopt specific procedures to implement that framework.

**Recommended Decision Model:** The MOA Committee did agree that the Steering Committee should seek to achieve consensus, which we defined as the point when “no Member of the Steering Committee is opposed to a proposal,” on all matters coming before the Steering Committee. However, we also acknowledged the concerns of many that requiring absolute consensus in order for any action to occur could make timely progress too difficult. We also agreed that not all Steering Committee decisions are equally important. So, although consensus is the goal for all decisions, we recommended two different decision pathways depending on the significance of the decision. For all decisions, there must be advance notice of proposed actions and opportunity for stakeholder input. The most significant decisions are designated as Tier 1 decisions.

For Tier 1 decisions, if the Steering Committee does not initially achieve consensus, we are recommending creation of a “smaller team,” inclusive of different perspectives on the specific proposal, to further explore and/or reformulate the proposal to see if consensus can be achieved. However, if the “smaller team,” after making diligent efforts, is unable to find an alternative that will achieve consensus, the Steering Committee would be able to approve a proposal through some level of super-majority vote. Although the MOA Committee agreed that the appropriate percentage for such a vote was somewhere in the range of 67 to 79%, we were unable to reach consensus on the exact percentage.

Those favoring the lower end of that range generally expressed concerns that requiring a higher percentage might cause too much delay in reaching decisions and result in a failure to meet statutory deadlines. Some members also expressed concerns that a higher percentage would give too much power to a small minority of stakeholders.

Conversely, those favoring the higher end of that range generally stressed the unique nature of the RIP process as one designed to achieve consensus and broad agreement on possible steps forward as an alternative to the existing decision venues that generally operate on a majority rule or even 60% basis. Some members also expressed the view that a higher percentage was needed to provide a strong incentive to seek to achieve consensus rather than having a proponent of a proposal potentially just count votes and bide his or her time until a vote could be taken.

For all decisions that are not Tier 1, after an initial discussion to determine if consensus could be achieved, the Steering Committee could move directly to a vote with a vote of 67% percent or greater being sufficient to approve a proposition.

**Recommended Steering Committee Makeup:** In order to address concerns about the adequacy of representation on the Steering Committee, the MOA Committee is recommending the addition of five members to the Steering Committee, as listed in the draft MOA. Two primary considerations inform the recommendations. First, we sought to address the specific membership deficiencies previously raised in RIP Stakeholder meetings. Second, in order to minimize controversy, we sought to avoid significant changes in the overall balance of interests on the Steering Committee as set out in SB 3 and HB 3.

The MOA Committee discussed using an approach that relies on voting blocs or groups, such as was used for the Lower Colorado River Multi-Species Conservation Plan. However, at least partially because of its complexity, the Committee did not include that approach in the recommendations for these additions to the Steering Committee.

**Requisite Signatures for Effectiveness of MOA:** One issue that arose late in our discussions is the question of how many signatures should be required for the MOA to go into effect. The provisions of SB 3 and HB 3 establish an absolute minimum by directing that the MOA must be signed by the EAA, FWS, TCEQ, TPWD, TDA, and TWDB, along with “other appropriate federal agencies” and “other stakeholders.” Obviously, those last two terms are fairly ambiguous. One possibility that the MOA Committee

discussed was providing the opportunity for appropriate federal agencies to be included as non-voting members of the Steering Committee. Because the MOA is being relied upon as the mechanism for addressing critically important issues of Steering Committee makeup and decision process, there may be significant value in requiring that at least a majority of the voting members of the initial Steering Committee, as established by statute, must sign the MOA in order for it to be effective. That should ensure that the necessary votes are available to make the recommended changes to add members to, and otherwise change the makeup of, the Steering Committee, as authorized by SB 3 and HB 3. The MOA Committee did not have time to develop a specific recommendation on this issue.

Attachment  
Draft MOA