

DEPARTMENT of the INTERIOR

OFFICE OF THE SOLICITOR

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SOLICITOR URGES MORE CREATIVE APPROACH TO MITIGATING FISH & WILDLIFE LOSSES IN WATER PROJECTS

Interior Solicitor Leo M. Krulitz said today that the process of mitigating fish and wildlife losses caused by federal or federally-approved water projects must become more creative and more cooperative if it is to remain strong in the face of the nation's energy problems.

In the keynote address to the Mitigation Symposium at Colorado State University in Fort Collins, the Solicitor said the combined problems of energy cost and supply will put great pressure on many important environmental programs.

Mitigation--offsetting losses to fish and wildlife and their habitat caused by water projects--is based on the Fish and Wildlife Coordination Act of 1934 and major amendments to that Act in 1946 and 1958. The Act requires that fish and wildlife be given "equal consideration" with other aspects of projects federal agencies undertake or approve. Construction agencies, such as Interior's Bureau of Reclamation and the Army Corps of Engineers, must consult with the U.S. Fish and Wildlife Service, an Interior Department agency, and state wildlife agencies to determine what steps may be necessary to mitigate and compensate for project-caused losses.

The National Environmental Policy Act and the Endangered Species Act also contain consultation and mitigation requirements.

"The requirement to mitigate is a firm, statutory mandate," said Krulitz. "But the extent of mitigation is largely discretionary with the construction agency. The Congress has made it clear that it intended to accept a reduction in other project benefits in order to achieve the benefits of fish and wildlife conservation. And the courts have been firm on two points: project approval must hinge on the public interest; and the public interest includes fish and wildlife."

The major strength of the mitigation process, Krulitz said, is that it is flexible and can be adapted to a wide range of circumstances. The key to its success and continued strength is the consultation process.

"In the 1978 amendments to the Endangered Species Act, the Congress took a very dim view of bad-faith negotiations," he said. "In requiring consultation in the first place, the Congress obviously intended project sponsors and wildlife agencies to work constructively and honestly together to

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advance worthwhile projects in a way consistent with the important objectives of fish and wildlife conservation."

The Mitigation Symposium is sponsored by the American Fisheries Society, the American Society of Civil Engineers and the Ecological Institute of America. The symposium brought together representatives of industry, agriculture and government--from both the project construction agencies and wildlife agencies--to discuss and develop strategies and practical recommendations for minimizing fish and wildlife habitat losses.

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