

**EXECUTIVE DIRECTOR'S MONTHLY REPORT
TO THE
COLORADO RIVER BOARD OF CALIFORNIA**

February 11, 2003

AGENCY MANAGERS MEETING

The Agency Managers have not met since the January Board meeting.

PROTECTION OF EXISTING RIGHTS

Colorado River Water Report

As of February 1, 2003, storage in the major Upper Basin reservoirs decreased by 516,000 acre-feet and storage in the Lower Basin reservoirs increased by 152,000 acre-feet during January. Total System active storage as of February 6th was 36.325 million acre-feet (maf) or 61 percent of capacity, which is 8.149 maf less than one year ago.

January releases from Hoover, Davis, and Parker Dams averaged 10,590, 9,890 and 6,150 cubic feet per second (cfs), respectively. Planned releases from those three dams for the month of February 2003 are 12,800, 12,100, and 8,300 cfs, respectively. The January releases represent those needed to meet downstream water requirements including those caused by reduced operation of Senator Wash reservoir.

The Lower Division States' consumptive use of Colorado River water for calendar year 2002, as calculated by Board staff, totals 8.678 maf and is distributed as follows: Arizona, 3.008 maf; California, 5.364 maf; and Nevada, 0.305 maf. Unmeasured return flow credits of 0.263 maf would reduce the total amount of projected consumptive use to 8.415 maf. All three Lower Basin states have increased their consumptive use of mainstream water due to drought conditions. For calendar year 2002, the Central Arizona Project (CAP) diverted 1.582 maf, of which 0.346 maf is to be credited to the Arizona Water Bank, and The Metropolitan Water District of Southern California (MWD) will divert 1.236 maf.

The preliminary end-of-year estimate for 2002 California agricultural consumptive use of Colorado River water under the first three priorities and the sixth priority of the 1931 *California Seven Party Agreement* is 4.031 maf. This estimate is based on the collective use through December 2002 by the Palo Verde Irrigation District, the Yuma Project Reservation Division (YPRD), the Imperial Irrigation District, and the Coachella Valley Water District. Figure 1, found at the end of this report, depicts the historic projected end-of-year agricultural use for the year.

The 2002 annual flow-weighted average salinity differential between the Northerly International Boundary (NIB) and Imperial Dam was 140.9 parts per million (ppm), which is within the Minute No. 242 of the Mexican Treaty requirement of 130 ±15 ppm.

Colorado River Operations

Yuma Desalting Plant Report to Congress

In early November 2002, Reclamation released its latest draft of a report to Congress regarding modifications to Title I of the Colorado River Basin Salinity Control Act (P.L. 93-320). This report and the accompanying *Yuma Desalting Plant Readiness Assessment* report have been discussed at previous Board meetings. The report to Congress details Reclamation's proposed methods for addressing the Mexican Treaty obligation and water quality issues in the Lower Basin. Specifically, Reclamation is evaluating methodologies and authorizations for ensuring that it will be able to continue to meet both water quantity and quality aspects associated with annual deliveries of water to Mexico. In this Report, Reclamation continues to advocate the utilization of a combination of measures to off-set releases from mainstream reservoirs to make-up the water currently bypassed to the Cienega de Santa Clara via the MODE. These combined measures include the following: (1) leasing of water from willing sellers, (2) investing in advanced irrigation techniques to reduce water uses, and (3) obtain non-system water supplies from groundwater or other sources.

Sections of the report to Congress describe the recently completed cost estimates contained within the *Yuma Desalting Plant Readiness Assessment report*. This Assessment Report has been made available to Board members. The readiness assessment report identifies key costs associated with YDP start-up, operation, and maintenance:

1. To replace design deficiencies, the costs are estimated to be nearly \$15,000,000;
2. To start the YDP up for the first time, the costs are estimated to be approximately \$26,000,000;
3. The annual costs associated with YDP operation and maintenance are estimated to range between approximately \$1,500,000 (ready-reserve), \$13,000,000 (one-third capacity), \$20,000,000 (2/3 capacity), and nearly \$24,000,000 (full capacity);
4. At full plant operation, the cost per acre foot of product water ranges from a low of \$305 to a high of \$480;
5. At full plant operation, the reduction of salinity of the Colorado River at NIB ranges from a reduction of 13 ppm to 0 ppm;

The Colorado River Board staff and others have commented on Reclamation's preliminary draft Report to Congress. After receiving those comments, Reclamation has revised the report and prepared a draft that is currently undergoing public review. Reclamation has scheduled a meeting on February 25, 2003, to discuss the comments that were received and to begin its formal review of this report before it is transmitted to Congress. A copy of Reclamation's February 2, 2003, draft Report is included in the Board's handout material. Comments on this draft of the Report to Congress are due by March 7, 2003.

Reclamation's Study of 602(a) Storage Criteria

Reclamation has published a notice in the *Federal Register* on its “Intent to Solicit Public Comments on the Adoption of an Interim 602(a) Storage Guideline for Management of the Colorado River and to Initiate a National Environmental Policy Act (NEPA) Process. Comments are due on or before March 14, 2003.

On January 16, 2001, the Secretary of the Interior signed the record of decision (ROD) for the Colorado River Interim Surplus Guidelines. During the public comment period on the draft Environmental Impact Statement (EIS), the Basin States submitted information concerning interim surplus criteria and other related issues. The final EIS was based in large part on the Basin States’ proposal except for Lake Powell “equalization” releases.

The Basin States’ had proposed that during the Interim Period, 602(a) storage requirements determined in accordance with Article II (1) of the Long-Range Operating Criteria shall utilize a value of not less than 14.85 maf (elevation 3,630 feet) for Lake Powell.

Since the Colorado River Basin is in its fourth year of drought, Reclamation is considering adoption of the Basin States’ proposal, or a reasonable alternative to it.

Consumptive Use of Mainstream Colorado River Water

During the past several Board meetings, a discussion of the proposed policy prepared by the California Agencies’ Technical Committee entitled *Proposed Policy for the Determination of a Diminution of Supply from the Colorado River As Opposed to a Diversion From and Consumptive Use of Mainstream Colorado River Water* has been discussed. Currently, both Reclamation and the State of Arizona are reviewing that proposal and are preparing responses to California’s proposal. Nevada is in general agreement with the concept contained in the California proposal.

A meeting has been scheduled for March 4, 2003, in Las Vegas, Nevada to further discuss how consumptive use associated with habitat conservation areas developed through the Lower Colorado Multi-Species Conservation Program will be treated in Reclamation’s Article V Decree Accounting reports. Prior to the March 4th meeting, both Reclamation and the State of Arizona will distribute their responses to California’s proposal.

California’s Colorado River Water Use Plan

Basin States Letter to Secretary Norton

Included in the Board folder, as an information item, is a letter to Secretary Norton signed by the 12 Senators from the other six Basin States, applauding her decision to suspend the Interim Surplus Guidelines, until such time that the Quantification Settlement Agreement (QSA) is executed.

Hearing before California Senate Committee on Agriculture and Water Resources

On January 21st, California Senator Michael Machado, held an *information hearing*, to receive information concerning the “Status of the Colorado River Quantification Settlement Agreement”. A copy of the hearing agenda has been included in the Board folder.

Imperial Irrigation District vs. United States of America; Gale Norton, et al.

On January 10, 2003, IID filed suit in the United States District Court for the Southern District of California. In the lawsuit, IID alleges that the United States cannot unilaterally reduce the 2003 water delivery to the District, and then make some of the water available to Coachella Valley Water District and The Metropolitan Water District of Southern California. The complaint alleges that the government used “strong-arm” tactics to attempt to force IID to execute the QSA, and that the government is incorrectly interpreting and utilizing 43 C.F.R. Part 417 regulations regarding reasonable and beneficial use. Also, the complaint alleges that the government is incorrectly interpreting the 1979 supplemental Decree in *Arizona v. California* which, among other things, quantified the water rights of present perfected right holders in the Lower Colorado River Basin.

On January 27, 2003, IID filed a Motion for Preliminary Injunction along with a Memorandum of Points and Authorities in Support of the Motion for Preliminary Injunction. Within its motion IID requests this Preliminary Injunction in order to ensure that IID continues to receive its full allocations of Colorado River water pending trial on this matter.

Both The Metropolitan Water District of Southern California and the Coachella Valley Water District have filed motions in the District Court for Southern California regarding this action by Secretary Norton.

Basin States/Tribes Discussions

Colorado River Basin States’ Meeting

A meeting of the Colorado River Basin States Technical Committee on the Colorado River Delta is scheduled to be held on February 25, 2003, in Las Vegas, Nevada. This meeting will follow Reclamation’s meeting discussing its report to Congress regarding alternatives to operation of the Yuma Desalting Plant. The major items to be discussed during the Technical Committee meeting include:

1. The status of U.S./Mexico negotiations and agreements regarding the Rio Grande
2. The Committee report on the legal issues regarding ecological water flows for the Colorado River Delta under international and domestic law
3. Summary of water supplies in Northern Mexico
4. “Broad Brush” (concept) document identifying potential water supplies that might be available to meet the Colorado River Delta environmental component of Mexico’s anticipated water needs in the Baja California/Sonora area
5. Evaluation criteria with which to evaluate potential water supplies identified in the

- “Broad Brush” document
6. IBWC’s Terms of Reference for the United States- Mexico Binational Committee for Information Exchange and Advice on the Colorado River Delta

Lower Colorado Water Supply Project

There are several ongoing issues and activities related to Lower Colorado Water Supply Project (LCWSP). Listed below is a brief report on the status of each of these activities. Some of these issues are inter-related.

- New applications – A few more applications, in an aggregate amount of 12 AF, have been received and undergone the staff’s review process. These and any other applications that are received, will be placed on the Board’s consent calendar for the month of March or April.
- Pending applications – The application filed by Riverside County requesting 1,230 AF of water is still on hold pending resolution of the Palo Verde Mesa issue. In order to receive LCWSP water, Riverside County will need to formally exclude these lands from PVID’s district boundary before processing the application can begin.
- Subcontract document – The form of the subcontract to be executed between Needles and the water users, has been finalized and approved by Needles’ City Council. It has been submitted to Reclamation for approval. When the form of the subcontract is approved by Reclamation, Needles will be authorized to begin executing the subcontracts with applicants. It is anticipated that this may happen sometime in April of 2003.
- Blythe Energy – Owners of Unit 1 of the Blythe Energy Project (BEP), located on the Palo Verde Mesa, have been informed by Reclamation that the lands it has proposed to fallow, do not qualify under the Reclamation’s rules as a potential water supply. As an alternative, Board staff and Reclamation have had discussions with Blythe Energy offering water from the LCWSP as an alternative. BEP 1 would have a consumptive use of 3,300 AF per year of Project water. The same issue as with the Riverside County application related to lands on Palo Verde Mesa being excluded from PVID’s district boundary applies to Blythe Energy which will have to be resolved before moving forward. It has been suggested that the easiest and fastest solution would be for Blythe Energy to formally request being excluded from PVID’s district boundaries.
- Advanced Delivery concept – Further studies have been conducted and more options have been considered with the new development of Blythe Energy possibly participating in the LCWSP. Also, studies have been conducted looking at constructing the second Phase of the LCWSP at this time. As soon as issues regarding Blythe Energy Projects participation in the Project are resolved, it will be determined how much water is available for Advanced Delivery and then the

concept can be presented to potential water users who may be interested in receiving Advanced Delivery water. The concept may lose its urgency and importance to the Project implementation if Blythe Energy is approved as a LCWSP water user. However, the Advanced Delivery concept can still be beneficial to Project water users with Blythe Energy Project's participation in its Project.

Colorado River Environmental Activities

Lower Colorado River Multi-Species Conservation Program

Since my last report to the Board in January, we have made significant progress toward the development of the Lower Colorado River Multi-Species Conservation Program (LCR MSCP). As you will recall, the LCR MSCP Steering Committee created a Coordinating Team (CT), comprised of Steering Committee principals, agency staff, and representatives of the Technical and Facilitation Consulting Teams. The charge to the group was to develop a consensus-based broad framework outline which would be utilized in developing the comprehensive LCR MSCP by late-November 2004. The goal of the effort is to achieve consensus related to each of the components of the comprehensive package. These primary LCR MSCP components include the following:

- Overall LCR MSCP conservation strategy;
- Covered projects, species, and habitats;
- Regulatory compliance needs (ESA, CESA, NEPA, and CEQA);
- Assurances, and "No Surprises" guarantees;
- LCR MSCP implementation, administration, and governance; and
- Funding and cost-sharing.

The CT met several times during January in two-day sessions, and each week, thus far, in February. Much of the discussions have revolved around the draft Conservation Strategy originally prepared by the three States. In late January, the States met with Reclamation and developed a combined proposal which meets the needs of the federal and non-federal regulated agency participants. This proposal was refined through discussions with agency staff and the Technical Consulting Team (SAIC/Jones & Stokes).

The latest iteration of the combined States/Reclamation Proposal (Proposal) was the subject of an intensive two-day workshop held in Ontario, California on February 6-7, 2003. Representatives of the U.S. Fish and Wildlife Service (USFWS) and California Department of Fish and Game (CDFG) were the target audience of the presentations and discussions. I have included a copy of the draft Proposal and accompanying tables in your Board handout materials.

The following highlights some of the more important features of the latest draft of the States'/Reclamation Proposal. It illustrates the assumptions that were utilized in developing the Proposal, the species and habitats to be addressed, and the proposed restoration actions.

The proposed Conservation Strategy has been developed based upon the following assumptions:

- The LCR MSCP will provide mitigation related to the potential impacts associated with all of the covered projects; the LCR MSCP is not intended to achieve recovery of listed species;
- The Technical Consultants utilized a “worst-case” analysis in describing and quantifying potential impacts to cottonwood-willow habitat within the planning area;
- The existing riparian habitat within the planning area is of relatively low value and quality (i.e., generally monotypic saltcedar with minor amounts of mesquite and cottonwood-willow present);
- The restored native riparian, marsh, and aquatic habitats will generally greatly improve the overall quality of the habitat within the planning area;
- Existing and proposed land-cover types will support multiple species (i.e., cottonwood-willow habitat will support more species than just the southwestern willow flycatcher);
- The temporal loss of habitat (i.e., the ongoing habitat loss associated with development of the river and reservoir system) does not drive the development of the MSCP mitigation ratios;
- There is no requirement for mitigation of current status quo degraded conditions within the planning area;
- Future degradation of habitats related to prior development of the river and reservoir system does not require mitigation;
- Current and future impacts associated with third parties (non-MSCP participants) are not mitigable through the LCR MSCP; and
- The LCR MSCP will avoid impacting the Topock Marsh on the Havasu National Wildlife Refuge.

The draft Proposal also describes a detailed Conservation Preserve Concept. The preserve concept utilizes commonly held principles of conservation biology, the current status of the species and habitats within the planning area, and applies an “integrated mosaic approach.” In other words, the conservation strategy is geared toward development of linked and contiguous patches of high quality habitat in areas conducive to utilization by the various covered species. The primary elements of the preserve concept include the following:

- Develop patches of restored habitat within the functional range of the target species;
- Utilize an “integrated mosaic” approach by creating vegetation communities historically present within the planning area (i.e., cottonwood-willow forests with a mix of atriplex, arrowweed, and mesquite);
- Ensure habitat restoration in and around areas currently occupied by MSCP covered species;
- Give priority to habitat restoration projects involving larger sized patches (e.g., 20-200 acres in size);
- Utilize a mix of federal, state, Tribal, and private lands in developing restoration projects;

- Ensure implementation of a robust and coordinated fire protection and suppression program within the planning area;
- Conservation areas may require protective buffers around them; and
- Incorporation of existing infrastructure (e.g., roads, firebreaks, canals, wells, etc.).

The States'/Reclamation Conservation Strategy proposes to restore 5,400 acres of cottonwood-willow habitat, in conjunction with 1,200 acres of mesquite, 512 acres of marsh habitat, and an additional 360 acres of backwater habitat. This restoration proposal was based upon a careful and thorough analysis of the potential impacts associated with the covered projects and the long-term needs of the covered species within the planning area. Additionally, a series of conservation measures were prepared addressing the needs of the endangered native fishes, including the razorback sucker, bonytail, and humpback chub.

The acreage proposed for restoration of native riparian, marsh, and aquatic habitat totals to approximately 7, 500 acres. Associated with the proposed package are numerical goals and targets related to production and stocking of endangered native fishes in the mainstream and reservoir system from Lake Mead to Imperial Dam. Finally, the Proposal also provides for a monetary contribution geared toward conservation of existing humpback chub in the Grand Canyon through the auspices of the Glen Canyon Dam Adaptive Management Program.

On February 7, 2003, the USFWS offered its preliminary assessment and review of the States'/Reclamation Proposal. A copy of the meeting notes describing the USFWS' overall impression and specific comments related to the Proposal is included in the handout materials. Based upon the presentation the previous day and its review of the draft proposal, the USFWS made the following observations or suggestions:

- USFWS generally approves of the assumptions used in the Proposal;
- USFWS concurs with the utilization of the "integrated mosaic" conservation preserve approach;
- USFWS recommends the addition of 10% more cottonwood-willow habitat to ensure that the habitat provides value to more species than just the southwestern willow flycatcher;
- Manage marsh habitat restoration conjunctively to benefit both California black rail and Yuma clapper rail;
- Critically important to protect and enhance the existing populations of California black rail along the Lower Colorado River, in the Laguna Division, and the Bill Williams River National Wildlife Refuge (the only other population of California black rail in the United States is in the San Francisco Bay area);
- USFWS suggests that the Proposal address the research and monitoring needs of a population of flannelmouth sucker below Davis Dam;
- USFWS generally concurs with the proposed \$10,000 per year for humpback chub conservation through the Glen Canyon Dam Adaptive Management Program;
- USFWS suggests that the LCR MSCP assume the long-term responsibility to maintain the genetic refugia of razorback sucker and bonytail in Lake Mohave through augmentation and maintenance stocking efforts;
- USFWS suggests that the long-term program provide for the maintenance stocking

- of 6,000 razorback sucker above and below Parker Dam;
- The long-term objective of the LCR MSCP should be the establishment of a razorback sucker population of 50,000-70,000 fish below Parker Dam;
- USFWS suggests that the LCR MSCP assume the responsibility for establishment of a population of 100,000 bonytail in Lake Mohave, with annual maintenance stockings of 4,000-6,000 fish
- Similar to the Lake Mohave effort, the USFWS suggests maintenance stockings of bonytail in Lake Havasu, and an additional 8,000 bonytail stocked in the mainstream below Parker Dam
- USFWS suggests that the proposal include an additional 60 acres of mesquite habitat restoration to ensure utilization by other LCR MSCP covered species; and
- USFWS generally concurs with the backwater restoration and management strategy articulated in the Proposal.

In summary, the USFWS indicated that the combined States'/Reclamation Proposal was generally acceptable and would provide significant benefits to the species and habitats within the LCR MSCP planning area. The suggested habitat restoration acreage additions resulted in increasing the total package by approximately 9%, to a total of 8,140 acres.

The States and Reclamation have asked the USFWS to provide some clarifying information related to several of their suggestions. Specifically, the States and Reclamation are concerned about issues related to the "protection and maintenance of existing habitats" within the planning area. Also, the USFWS has essentially doubled the amount of bonytail that were proposed to be stocked and maintained through the LCR MSCP. It may be very difficult, in the short run, to produce significant numbers of bonytail, given the current state of knowledge related to this particular species. Currently, there may not be enough hatchery space in the southwestern United States to raise significant numbers of bonytail and razorback sucker.

The CT is scheduled to meet again on February 13, 2003, in Ontario, California, to continue discussions related to the next draft of the combined Proposal. This meeting will not be attended by any staff from the USFWS and CDFG. The meeting is intended to finalize the next iteration of the Proposal and identify total program implementation and maintenance costs.

Currently, the total Program implementation costs are estimated to be in the range of \$500-600 million over the 50-year period. Even if all of the USFWS suggestions are accepted and incorporated, the total cost should not significantly change. The CT and Technical Consulting Team are presently re-evaluating the cost assumptions and are preparing a revised cost estimate based upon the modified Conservation Strategy Proposal.

The CT and applicable agency technical and legal staff are reviewing and finalizing the covered projects list. With respect of future flow-related projects, the current LCR MSCP Impacts Assessment report utilizes the 1.574 maf value as the maximum change in points-of-diversion.

Outstanding regulatory issues being discussed with CDFG and the California agencies

include the following:

- Ongoing discussions with CDFG related to CESA and CEQA compliance, and compatibility with federal requirements under the ESA and NEPA;
- Mitigation in perpetuity vs. mitigation during the term of the permit;
- Fully mitigating California impacts within the broader context of the combined conservation strategy mitigation package; and
- Addressing the California “fully-protected” species issues.

The CT and agency legal staff are continuing discussions with USFWS and CDFG related issues related to re-initiation of ESA Section 7 consultation; the terms of the incidental take authorizations under ESA and CESA, and the “No Surprises” guarantees under the Section 10 Habitat Conservation Plan.

With respect to governance and implementation issues, the CT and legal staff are developing a draft “Joint Participation Agreement” (JPA). The JPA identifies the funding and cost-sharing relationships and obligations, program implementation responsibilities, program management and administration, decision-making, adaptive management process. Additionally, the JPA describes the proposed dispute resolution and appeals process.

Finally, the CT has recently initiated the discussions related to overall program implementation funding and cost-sharing. Reclamation made an initial proposal that the LCR MSCP should be cost-shared 50/50 between the federal and non-federal partners. This was a response to the States original 70/30 proposal. The States will be meeting to continue developing a response to the Reclamation proposal.

In summation, I believe, overall, that States and Reclamation are very pleased with the progress that has been made through the Coordinating Team process. We seem to be very close to general agreement on many of the very difficult issues related to the development and implementation of the LCR MSCP. I would like to commend the technical and legal staff of many of the California participating agencies. This has been a significant effort on the part of many of you and your staff.

Glen Canyon Adaptive Management Work Group Activities

A meeting of the Glen Canyon Dam (GCD) Adaptive Management Work Group was held in Phoenix, Arizona, on January 28-29, 2003. The agenda for the meeting includes the following items:

- Review the status of the proposed experimental flow releases from Glen Canyon Dam;
- Discuss the status of non-native fish control efforts in the Grand Canyon reaches of the mainstream;
- Review the status of the proposed temperature control device for Glen Canyon Dam;
- Continue to review overall Adaptive Management Program (AMP) information needs;

- Review and discuss the proposed Fiscal Year 2004 budget for the GCD AMP;
- Status of Reclamation's Public Outreach strategy related to the Adaptive Management Program;
- Reclamation will provide an overview of basin-wide hydrology and projected snow-pack forecasts; and
- Issues related to reorganization of the Grand Canyon Monitoring and Research Center within the U.S. Geological Survey.

Defenders of Wildlife v. Norton, et al.

On June 28, 2000, Defenders of Wildlife (Defenders) filed in the United States District Court for the District of Columbia, a motion with the Court challenging Reclamation's continuing operations of the Colorado River System and its impact on several endangered species within the Republic of Mexico. This important case revolves around the issue of extra-territorial application of the federal Endangered Species Act outside of the sovereign boundaries of the United States.

On January 10, 2003, Defenders filed with the Court, "additional exhibits" in support of its motion for summary judgment. Defenders asserts that two recent actions by Reclamation reflect the broad discretion that Reclamation has. First, plaintiffs point to a November 22, 2002, letter from Secretary of the Interior Norton to the Governor of California allowing additional withdrawals of Colorado River water in 2002 as evidence of discretion and second, the plaintiffs argue that the Secretary has discretion because of her recent decision to limit California's diversion to the 4.4 million acre-feet per year specified by the "Law of the River." As a result, on January 21st, U.S. District Court Judge James Robertson, issued an "Order" inviting the government and intervener-defendants to respond to Plaintiffs Notice, by February 6, 2003. In his order, Judge Robertson raised the issue of "the exact nature of the Bureau of Reclamation's exercise of its discretion over water releases priorities higher than irrigation, domestic uses, and power under the Supreme Court's injunction Arizona v. California, 376 U.S. 340 (1964), namely '[f]or river regulation, improvement of navigation, and flood control.'"

In response to the Judge's order, the federal government, on February 6, 2003, filed its response. In summary, it states that its discretion "... is limited to using the waters stored behind Hoover Dam solely for uses "exclusively within the United States." The statute precludes the delivery of any stored water to Mexico. The subsequent 1944 Treaty Between the United States of America and Mexico, carved out a narrow exception to the Boulder Canyon Project Act (BCPA) allowing a limited use of the stored water to the extent that it was necessary to comply with applicable provisions of the Treaty and provide the Mexican entitlement at the border. Once the Treaty entitlement is satisfied, however, the United States is then bound by the 1928 BCPA, to limit the delivery of water to beneficial uses "exclusively within the United States."

Four Amici briefs were filed by the other Basin States and water contractors. The four amici briefs were filed by: 1) State of California; 2) Central Arizona Water Conservation District, Coachella Water District, Imperial Irrigation District, Metropolitan Water District of Southern California, San Diego County Water Authority, and Arizona Power Authority; 3) State

of Arizona, Yuma Districts and the Salt River Project; and 4) Colorado River Commission of Nevada and Southern Nevada Water Authority and the States of Colorado, New Mexico, Utah and Wyoming.

Each of the reply briefs argue essentially a similar set of points. They contend that questions of the Secretary's discretion with respect to releases of mainstream water outside of the context of the 1944 Mexican Water Treaty are not authorized by law. The Treaty clearly describes the obligations of the United States to Mexico. The reply briefs generally rely on the language within the BCPA and the 1964 Supreme Court Decree in *Arizona vs. California*. Specifically, the plaintiff's contention that there was Secretarial discretion in issuing an amended 2002 AOP, or suspending the interim surplus guidelines, is irrelevant. Article II specifically defines the Secretary's role in operating and maintaining the river and reservoir system, meeting downstream demand in the United States, and complying with the terms of the Mexican Water Treaty.

Several of the briefs also point out that the appropriate forum for coordination of endangered species issues between the two countries resides in the Executive Branch, through the Secretary of State. As you will recall, this process is already underway in the Minute 306 forum, which is administered by the American and Mexican Sections of the International Boundary and Water Commission. Also, as the reply briefs point out, Section 8 of the ESA establishes the appropriate diplomatic course through which the United States State Department and its Mexican counterpart must address endangered species issues of international importance.

WATER QUALITY

Selenium Committee

Last November, the Board was informed that the Forum was exploring the option of formally establishing a "Selenium Committee", composed of a minimum of two members from each state. Walt Shannon from the State Waters Resources Control Board, a representative from IID, and myself will represent California on the Committee. The Committee has been created and charged with the following tasks:

- Gather information concerning selenium and determine what is occurring within each Basin State with regard to selenium;
- Review the Salinity Control Act to determine if the Forum has authority to expend funds for selenium control;
- Develop the "pros" and "cons" related to the Forum's involvement in this matter; and
- Present a committee report, at the May 2003 Forum meeting, delineating its findings, without making any recommendations.

An initial conference call, among the Committee members has been schedule for February 19, 2003.

/s/

Gerald R. Zimmerman
Executive Director