

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

May 6, 2003

ADMINISTRATION

Proposed FY 03/04 Budget of the Colorado River Board

As I reported to you last month, the Assembly Budget Subcommittee No. 3 on Resources held a hearing, on March 19th, on various agency budgets, including the Colorado River Board. The CRB's budget was pulled from the consent calendar due to the lack of any budget reduction in the proposed expenditures. The Committee requested that I return at a later date to explain why the CRB's budget should not be reduced, consistent with other state agencies. To date, another hearing time has not been scheduled.

In the State Senate, Budget and Fiscal Review Subcommittee No. 2 continues to have the CRB's budget as a consent agenda item.

A copy of CRB's proposed budget as contained in the Governor's Budget will be distributed at the Board meeting. Action on the Board's fiscal year 2003-04 budget and the cost sharing agreement with the Six Agency Committee will be sought at the June Board meeting.

Support of the Quantification Settlement Agreement

The Board at its April 9, 2003 meeting took action supporting execution of the March 12, 2003, revised Quantification Settlement Agreement (QSA); the State legislature appropriating \$200 million from Proposition 50, or from other sources, to facilitate implementation of the QSA; and the State legislature passing legislation reinstating provisions contained in Senate Bill 482 to address the fully protected species and Salton Sea issues. A notice containing the Board's action is posted on the Board's website at <http://www.crb.ca.gov>.

AGENCY MANAGERS MEETING

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

PROTECTION OF EXISTING RIGHTS

Colorado River Water Report

As of May 1, 2003, storage in the major Upper Basin reservoirs decreased by 187,000 acre-feet and storage in the Lower Basin reservoirs decreased by 488,000 acre-feet during April. Total System active storage as of May 6th was 34.853 million acre-feet (maf) or 59 percent of capacity, which is 7.328 maf less than one year ago.

April releases from Hoover, Davis, and Parker Dams averaged 19,120, 18,050 and 13,450 cubic

feet per second (cfs), respectively. Planned releases from those three dams for the month of May 2003 are 18,300, 17,300, and 13,100 cfs, respectively. The March releases represent those needed to meet downstream water requirements including those caused by reduced operation of Senator Wash reservoir.

The final May 5, 2003, projected April through July 2003 unregulated inflow into Lake Powell was 4.500 maf, which is 57 percent of the 30-year average for the period 1961-1990. The final May 5, 2003, projected unregulated inflow into Lake Powell for the 2003-04 water year was 7.201 maf, or 60 percent of the 30-year average.

The Lower Division States' consumptive use of Colorado River water for calendar year 2003, as calculated by Board staff, totals 7.755 maf and is distributed as follows: Arizona, 2.916 maf; California, 4.573 maf; and Nevada, 0.266 maf. Unmeasured return flow credits of 0.264 maf would reduce the total amount of projected consumptive use to 7.491 maf. For calendar year 2003, it is estimated the Central Arizona Project (CAP) will divert 1.588 maf, of which 0.296 maf is to be credited to the Arizona Water Bank. The Metropolitan Water District of Southern California (MWD) is projected to divert 0.687 maf.

The preliminary end-of-year estimate for 2003 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 3.827 maf. This estimate is based on the collective use through February 2003 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.

Colorado River Operations

2004 Annual Operating Plan (2004 AOP)

The first consultation meeting associated with development of the 2004 Annual Operating Plan (AOP) has been scheduled for June 3, 2003, in Las Vegas, Nevada. The main subjects of discussion in addition to beginning development of the 2004 AOP relates to the sixth review of the Long-Range Operating Criteria and the status of the 602(a) Storage Process.

Calendar Year 2003 Water Use

Included in your Board folder is a copy of Reclamation's revised hand-out entitled, "Lower Colorado River Operations - Normal Year versus Full Domestic Surplus." These tables and accompanying graphs provide a side-by-side comparison of Colorado River operations for Calendar Year 2003 and Water Year 2003 under a normal or surplus condition. As you are aware, this year Reclamation is operating the Lower Colorado River under a normal condition.

With a normal condition, 7.5 maf of water are being delivered to the Colorado River mainstream users in the Lower Basin. Under a full domestic surplus, the total mainstream water use in the Lower Basin would have been 8,041,020 acre-feet, 541,020 acre-feet more than is being delivered under a

normal condition. The additional water obtained under a full domestic surplus would have gone to MWD, 504,020 acre-feet, and Southern Nevada Water Authority, 37,000 acre-feet.

Reclamation's "Era of Limits" Symposium

Included in the Board folder is a copy of the agenda for Reclamation's kickoff meeting related to the "Era of Limited Water Supply" held in Las Vegas, Nevada, on April 15, 2003. Representatives of the Colorado River Basin States and water users attended the meeting along with senior staff from Reclamation's Lower Colorado Regional Office and the Assistant Secretary for Water and Science, Bennett Raley. Reclamation provided an overview of the Law of the River, and historic river management and operations. Reclamation spent a considerable amount of time discussing current issues, including the following: (1) Contracting and unauthorized uses; (2) Decree accounting and consumptive use requirements; (3) Beneficial use requirements and water conservation; (4) Water availability and uses; (5) Yuma Desalting Plant operations; and (6) Water ordered, but not taken.

Assistant Secretary Raley provided an overview of the Administration's perspective on many of the current Colorado River Basin water management issues, including the importance of getting all of the parties to agree on a mutually acceptable Quantification Settlement Agreement. He also indicated that the Department of the Interior and Reclamation will be taking a more visible role in managing the Colorado River in accordance with the laws that govern its operation and management.

During the afternoon session, I participated in a panel discussion with Tom Carr from the Arizona Department of Water Resources and Jim Davenport from the Colorado River Commission of Nevada providing a states' perspective. I indicated that until recently Section 5 contractors had not been injured if unauthorized diversions occurred; if over deliveries were made to Mexico; if water use was not delivered in strict compliance with Section 5 contracts; and if accurate Article V Decree accounting records were not kept. However, with the existing reservoir conditions and the water demands on the reservoir system, that condition no longer exists. As a result, Reclamation must move toward implementation of new administrative practices and water policy initiatives that better manage the available water supply. However, prior to their implementation, these administrative practices and water policy initiatives must be fully coordinated with the Basin states and water users. I indicated that I believe that we can provide insight on how they can be best structured. I also indicated that the Colorado River Board and agencies in California stand ready to work with Reclamation to move management of the available water supply from the Colorado River into a new era.

Revised Colorado River Water Orders

In late-April the Department of the Interior sent revised 2003 water order letters to Imperial Irrigation District, Coachella Valley Water District, and the Metropolitan Water District of Southern California. The revised water orders are the result of the recent decision in the United States District Court in the *Imperial Irrigation District vs. Department of the Interior* lawsuit. Under the revised water order approvals, Imperial Irrigation District will receive 3.1 million acre-feet, Coachella Valley Water District will receive 238,200 acre-feet, and the Metropolitan Water District will receive 592,500 acre-feet of mainstream water. Had the Quantification Settlement Agreement been in place on January 1, 2003, the Coachella and Metropolitan would have received 347,000 acre-feet and 1,128,600 acre-feet,

respectively.

Yuma Area Operations and Issues

During the past several Board meetings, the topic of Reclamation's report to Congress regarding "Modifications to Projects of Title I of the Colorado River Basin Salinity Control Act (P.L. 93-320, As Amended, 43 U.S.C. § 1571)" and managing the high ground water levels in the Yuma area have been discussed. On April 25th, a meeting among representatives of the Lower Division states was held to further these discussions. During the meeting, because of the concern of a number of the Basin states regarding release of this report, it was the consensus of the Lower Division states that the Report should not be forwarded to Congress at this time. Also, because of the need to conserve the water available for use in the Lower Basin and to reduce the draw down of storage in Lake Mead, it was concluded that it would be prudent to support funding necessary to move toward start-up of the Yuma Desalting Plant. It was further decided that this group, along with participation by the others in the Lower Basin, as well as the Upper Basin states, should continue to work on these issues to obtain consensus on acceptable programs for managing water in the Yuma area as it relates to operation of the Yuma Desalting Plant.

California's Colorado River Water Use Plan

Status of Senate Bill 317 (Kuehl)

On February 19, 2003, State Senator Kuehl introduced S.B. 317 which addresses various sections of the California Fish and Game Code related to "fully protected" species, and the California Water Code related to the Salton Sea.

The proposed legislation makes legislative findings concerning the Salton Sea and the Quantification Settlement Agreement (QSA). Additionally, the legislation provides the California Department of Fish Game with the authority to provide incidental take authorization for species currently classified as "fully protected."

Major provisions of the proposed legislation include the following: (1) Provides \$50 million to assist in the implementation of restoration activities and the preferred alternative related to implementation of the QSA, and QSA-related activities; (2) Amends the California Fish and Game Code to provide incidental take authorization for fully protected species potentially affected by QSA-related activities; (3) Proclaims that restoration of the Salton Sea is in the State and national interest; (4) Provides for execution of the QSA to be extended indefinitely; (5) Requires that implementation of the QSA will not materially increase the salinity of the Salton Sea, or foreclose Salton Sea reclamation activities; (6) Provides for the Secretary of Resources to develop a Memorandum of Understanding between the Resources Agency, Governor, and Secretary of the Department of the Interior for the purpose of developing alternatives to meet the objectives of the Salton Sea Reclamation Act of 1998 (P.L. 105-372); (7) provides for the Secretary of Resources to establish an advisory committee and for the Resources Agency to consult with the Advisory Committee while developing Salton Sea reclamation alternatives; and (8) Releases the liability of the Imperial Irrigation District for effects to the Salton Sea or bordering areas related to implementation of water conservation measures related to the QSA.

On April 29, 2003, DWR Director Tom Hannigan sent a letter to California Senator Mike Machado requesting his support of SB 117. Director Hannigan identified the critical reasons for ensuring passage of SB 117, including facilitation of the QSA process, providing the \$200 million for QSA implementation. This appropriation of \$200 million substantially reduces the early termination of the QSA. Mr. Hannigan's letter also emphasized that the \$50 million in funding through passage of SB 317 for Salton Sea-related environmental restoration activities remains available as does \$43 million being provided by the local water agencies for environmental mitigation at the Salton Sea. A copy of Director Hannigan's letter to Senator Machado is included in the Board folder.

State Senate Committee Hearing on QSA, April 29, 2003

On April 29, 2003, a hearing was held in Sacramento, California on the proposed Quantification Settlement Agreement. At the hearing, Resources Secretary Nichols and DWR Director Hannigan provided an overview of the QSA. General Managers from several Colorado River agencies also provided testimony, including Messrs. Gastelum, Silva, Robbins, and Ms. Stapleton. The Agencies provided a perspective of the effect of the QSA on southern California water agencies.

Secretary Nichols' testimony emphasized the progress being made in the QSA process, and the need to finalize the deal in a timely fashion. Secretary Nichols highlighted the benefits of the new QSA package and the reduction of risk of early termination. This risk reduction was achieved through the proposed appropriation of \$200 million of Proposition 50 funds to support QSA implementation and an additional \$150 million loan guarantee from the California Infrastructure and Economic Development Bank to cover IID's and individual grower's stranded costs. Additionally, MWD and San Diego County Water Authority will provide matching funds to be used for Salton Sea environmental mitigation and restoration activities. The matching funds, plus local agency contributions would provide a total of \$243 million for these environmental restoration and mitigation activities.

Secretary Nichols' testimony closed with an acknowledgment of the progress being made by all of the QSA participants, particularly the "peace treaty" aspect of the QSA. Through execution of the QSA, the Agencies have agreed to set aside the legal differences and disputes associated with the priority and use of mainstream Colorado River water. Secretary Nichols suggested that real progress can be made in resolving these very complex and difficult issues when the stakeholders commit to work together to achieve their goals. Included in the Board folder is a copy of Secretary Nichols' testimony.

Also included in in the Board folder are copies of several very interesting and informative handouts that were distributed at the hearing. These informational materials provide a detailed overview of the Law of the River, the QSA, financial terms of the QSA, conditions precedent, relationship of the QSA to other Colorado River issues or programs, California's Colorado River Priority Schedule, Colorado River Water Budgets, Local Agency funding commitments, and the IID QSA Consumptive Use Schedule.

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

On April 16, 2003, U.S. District Court Judge Thomas Whelan remanded the case in Imperial

Irrigation District vs. United States of America, et.al. to the Department of the Interior for a new Part 417 review. In the order, the Court determined that the remand was appropriate for several reasons. First, the Boulder Canyon Project Act established the contracting provisions associated with allocation of mainstream water among the Lower Division States. Second, the U.S. Supreme Court in *Arizona vs. California* (376 U.S. 340) held that state law does not control Secretary's determination in apportioning mainstream water. Third, the Court believes that a remand is the appropriate remedy when a federal agency fails to follow proper administrative procedures. The Court also stated that should the Department of the Interior fail to meticulously follow Part 417's prescribed procedures, IID may again elect to bring the matter before the Court for judicial review. As will be discussed later, Reclamation has begun a new Part 417 review of IID's use of Colorado River water.

Reclamation's Review of QSA, and Part 417 Review of IID's Water Use

On April 28, 2003, the Department of the Interior sent a letter to the California Department of Water Resources Director Tom Hannigan. The letter advised CDWR that Interior was reviewing the revised Quantification Settlement Agreement proposal prepared by the State and QSA Agencies on March 12, 2003. After receiving additional information, Interior intends to complete its review of the QSA package. A copy of the letter to Director Hannigan is included in your Board folder.

On April 24, 2003, the Department of the Interior published a notice in the *Federal Register* announcing its intent to initiate a Part 417 process for determination of beneficial use of Colorado River water in the Imperial Irrigation District. The current schedule calls for a 30-day review and comment period, and a determination by the Bureau of Reclamation in late-June 2003.

Included in the Board folder is a copy of the *Federal Register* notice and Reclamation's news release regarding these subjects.

Basin States/Tribes Discussions

Colorado River Basin States' Meeting

As discussed at the April Board meeting, on March 13, 2003, the other Colorado River Basin states' representatives were briefed on the status of execution of the QSA and the revised March 12, 2003, QSA. During that meeting, a complete set of the QSA related documents was distributed to each of the Basin states. As a follow-up to that briefing, a technical meeting of the Basin states' representatives was held on April 16, 2002, in Las Vegas to address questions and issues that the other states had regarding the revised QSA and related documents.

During the April 16th meeting, most of the questions centered around the PVID Land Management, Crop Rotation, and Water Supply Program, its role in meeting the benchmarks contained in the Interim Surplus Guidelines and addressing the Salton Sea issues, the water exchange to mitigate impacts to the Salton Sea, the status of the farmer sign-ups in IID, and the forbearance by MWD and IID of 38,000 acre-feet of priority 6(a) water for use by CVWD. In response to these questions, the California parties indicated that additional information addressing these questions would be sent to them prior to the next meeting. The next meeting of the Basin states' representatives is currently

scheduled to be held on May 27th.

Colorado River Environmental Activities

Lower Colorado River Multi-Species Conservation Program

The SAIC/JSA Technical Consulting Team is preparing the draft habitat conservation plan (HCP) and draft Biological Assessment components of the Lower Colorado River Multi-Species Conservation Program (LCR MSCP). These important draft documents are scheduled to be released for public review and comment in mid-June 2003. These documents are being prepared based upon the technical and policy-level guidance contained within the framework document resulting from recent efforts of the Coordinating Team over the past few months. As you may recall, I have briefed you regarding the progress of the Coordinating Team and the resultant negotiations between the U.S. Fish and Wildlife Service and the California Department of Fish and Game.

Members of the California LCR MSCP Caucus are continuing to meet with representatives of the California Department of Fish and Game (CDFG) to discuss potential mitigation requirements associated with issuance of a 2081 incidental take authorization pursuant to the California Endangered Species Act. The parties are continuing to have discussions related to the potential requirement for additional mesquite mitigation. The latest proposal by CDFG is being considered by the California MSCP parties. It appears to be close to the last offer by the MSCP parties. As necessary, additional meetings will be set in an attempt to bring closure on this issue.

California Senate Joint Resolution No. 8 - Re: Salt Cedar Eradication

Included in your Board folder is a copy of a Senate Joint Resolution regarding eradication of salt cedar. The Joint Resolution asks the President and Congress of the United States to take action to implement a project to eradicate salt cedar along the lower Colorado River and in the other Colorado River Basin States.

Currently, large-scale salt cedar eradication is not being considered along the Lower Colorado River as much of this habitat, although poor quality, is the only riparian habitat providing cover and forage for many species, including the endangered southwestern willow flycatcher. Until such time as the LCR MSCP and other similar programs in the Colorado River Basin can effectively replace the existing salt cedar habitat with high quality native riparian habitats (e.g., cottonwood-willow, or mesquite) it is not advisable to embark upon a wholesale salt cedar eradication program.

Lower Colorado Water Supply Project

Progress in bring this Project to fruition is slow. The following provides a status of ongoing activities:

New applications – Applications continue to trickle in, however, staff has not received any significant number of new applications. All remaining applications will be brought to the Board for its consideration when Project details are better defined.

Pending applications – An application filed by Riverside County requesting 1,230 AF of water is still on hold pending resolution of PVID lands on the Palo Verde Mesa. I reported at the February 2003, Board meeting that Riverside County's lands are inside PVID's service area and for it to receive Project water the lands need to be removed from PVID's service area.

Approved applications – To date, the Board has made approval recommendations to Reclamation for 357 applicants for Project water, some of which have been waiting years to begin development of their property along the River. Two specific incidents have recently occurred in which Imperial and San Bernardino County Planning Departments have withheld planning approval until the developers can show they have an approved water contract.

Blythe Energy – The Blythe Energy Project I (BEP I), with an annual consumptive use of 3,300 AF, has been considered a potential applicant to use Project water. There has been discussions with BEP I representatives concerning the availability of Project water. Recently, I have received information that the owners of BEP I and PVID have discussed the possibility of receiving water from PVID's entitlement. I do not have information on the details of those discussions; however, since participation of BEP I in the Project has a bearing on implementation of the Project, the issue of water use by the BEP should be resolved as soon as possible. Should Blythe Energy apply for Project water, the same issue as with Riverside County related to Palo Mesa lands applies to BEP I (i.e., it is within PVID's service area). It has been suggested that the easiest and fastest solution is for Blythe Energy to request to be excluded from PVID's service area.

Subcontract document – The subcontract document format which will be executed between Needles and the water users has been finalized and approved by Needles' City Council. It has been formally submitted to Reclamation for approval. Reclamation has forwarded it to the Solicitor's office for concurrence. When the subcontract is approved by Reclamation, Needles will be authorized to begin executing the subcontracts with applicants. It is anticipated that this may occur sometime in June of 2003.

Advanced delivery concept – I reported at the February 2003 Board meeting that further studies have been conducted and more options have been considered with new developments (Blythe Energy and consequently the need for developing Phase 2 of the Project). As soon as the Blythe Energy issue is resolved, a determination can be made on how much water is available for Advanced delivery and then the concept can be presented to the potential water users who may be interested in receiving advanced delivery water. The concept may lose its necessity and importance to the Project if Blythe Energy is approved as a Project water user; however, the advanced delivery concept can still provide benefits to Project water users.

WATER QUALITY

Colorado River Basin Salinity Control Forum

Salinity Control Forum Meeting, Midway, Utah, May 21, 2003

The Colorado River Basin Salinity Control Forum will hold its Spring meeting in Midway, Utah, approximately one hour north of Salt Lake City, on May 21, 2003. Reclamation Commissioner Keys and BLM Director Clarke have indicated their intent to attend and participate in the meeting.

Last November, I informed the Board that the Forum had created a Selenium Committee. The charge given this Committee was to:

- Gather information concerning selenium and determine what is happening within each Basin State with regards to selenium;
- Review the Salinity Control Act to see 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 Forum meeting, delineating its finding, without making any recommendations.

The Forum will hear a progress report from the Selenium Committee chairman on May 21st. A copy of the proposed agenda has been included in the Board folder.



Gerald R. Zimmerman
Executive Director