

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

July 8, 2003

OPPORTUNITY FOR THE PUBLIC

Black & Veatch Consulting Engineers will make a presentation to the Board on its proposal for stabilizing the Salton Sea utilizing evaporation or brine ponds, created by a dike and dredging system and located along a portion of the Sea's perimeter, to lower salinity levels in the sea. In addition, by reducing inflows into the Salton Sea, a supply of agricultural drainage water can be captured and treated at a proposed treatment plant, creating a new, high quality water supply for Southern California. This new supply could be utilized by local water agencies or transferred to the Colorado River Aqueduct. A shoreline canal would surround the dike system and evaporation/brine ponds to ensure continuity of the existing shoreline for aesthetics and habitat. Black & Veatch's concept maintains a significant portion of the overall sea and its existing shoreline and incorporates less intrusive and less costly construction requirements, utilizing small diking systems versus large dams or other capital structures and facilities.

AGENCY MANAGERS MEETING

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

PROTECTION OF EXISTING RIGHTS

Colorado River Water Report

As of July 1, 2003, storage in the major Upper Basin reservoirs increased by 869,000 acre-feet and storage in the Lower Basin reservoirs decreased by 184,000 acre-feet during June. Total System active storage as of July 1st was 35.860 million acre-feet (maf) or 60 percent of capacity, which is 4.754 maf less than one year ago.

June releases from Hoover, Davis, and Parker Dams averaged 15,430, 15,210 and 12,020 cubic feet per second (cfs), respectively. Planned releases from those three dams for the month of July 2003 are 15,200, 14,900, and 12,700 cfs, respectively. The July releases represent those needed to meet downstream water requirements including those caused by reduced operation of Senator Wash Reservoir.

The final July 1, 2003, projected April through July 2003 unregulated inflow into Lake Powell was 4.203 maf, which is 53 percent of the 30-year average for the period 1961-1990. The final July 1,

2003, projected unregulated inflow into Lake Powell for the 2003-04 water year was 6.802 maf, or 57 percent of the 30-year average.

Without an executed Quantification Settlement Agreement, the Lower Division States' consumptive use of Colorado River water for calendar year 2003 is limited to 7.5 maf, i.e. Arizona 2.8 maf, California 4.4 maf, and Nevada 0.3 maf. For calendar year 2003, it is estimated the Central Arizona Project (CAP) will divert 1.610 maf, of which 0.273 maf is to be credited to the Arizona Water Bank. The Metropolitan Water District of Southern California (MWD) will be required to reduce its consumptive use to 0.592 maf or 48 percent of its actual use in 2002.

Taking into account both measured and unmeasured return flows, the Lower Division States' consumptive use of Colorado River water for calendar year 2003, as forecasted by Reclamation, totals 7.375 maf and is distributed as follows: Arizona, 2.770 maf; California, 4.335 maf; and Nevada, 0.270 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 3.811 maf. This estimate is based on the collective use through May 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

The second consultation meeting of the Colorado River Management Work Group is scheduled for August 6, 2003 to continue development of the 2004 Annual Operating Plan for the Colorado River System Reservoirs (2004 AOP). Also, during the August 6th meeting it is anticipated that the Work Group will continue discussions of the sixth review of the Long-Range Operating Criteria and the status of development of the Interim 602(a) Storage Guidelines.

Included in the Board folder is a copy of the preliminary draft of the 2004 AOP including the secretarial determinations related to reservoir operations.

Navajo Nation vs. Department of the Interior

At its April meeting, the Board discussed the Navajo Tribe's lawsuit filed against the Department of the Interior (DOI) regarding its management of the Lower Colorado River. In response to this action, the states of Arizona and Nevada and the Southern Nevada Water Authority, Central Arizona Project, and the Central Arizona Water Conservation District filed Motions to Intervene.

On June 13th, the DOI and the Navajo Tribe filed a joint motion requesting the Court approve a joint Stipulation. The Federal Defendants and the Navajo Nation stipulated:

1. The DOI agrees to expeditiously announce, designate, and convene a federal negotiating team to address the water rights claims of the Navajo Nation within the Lower Basin of the Colorado River.
2. The Navajo Nation and Federal Defendants stipulate that the litigation, including all pending motions to intervene (except the State of Arizona's, in accordance with paragraph 3 below) should be stayed while the settlement process proceeds, so that the parties may focus their efforts on negotiations unimpeded by the litigation. Responses to motions to intervene, currently due on June 16, 2003, and Federal Defendants' response to the complaint, currently due on June 25, 2003, need not be filed pending the Court's consideration of and adoption of an order regarding this Stipulation.
3. The Navajo Nation stipulates to the State of Arizona's intervention as of right as a defendant as requested in the State's May 1, 2003, motion to intervene.
4. Any of the parties to this matter, including the Navajo Nation, the Federal Defendants, and (upon approval of this stipulation) the State of Arizona, may seek to lift the stay on this litigation, by first providing 30 days notice to the other parties, and then filing an appropriate motion with the Court if the parties are unable during the 30 day period to resolve any differences regarding whether the stay should remain in place. Any party exercising this option must show good cause for lifting the stay.
5. The parties will submit a joint status report regarding the settlement process to the Court every six months while this case is stayed and negotiations proceed.

The Central Arizona Water Conservation District has indicated that it intends to file its opposition to the Stipulation and ask the Court to consider and grant its motion to intervene.

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 orders that were approved by Reclamation, 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.

In late May, PVID notified Reclamation that their projected consumptive use of Colorado River water for 2003 would be approximately 20,000 acre-feet less than the 502,400 acre-feet previously approved by Reclamation. This reduction represents a transfer of 20,000 acre-feet to the Coachella Valley Water District, which increases its approved order from 238,200 acre-feet to 258,200 acre-feet in 2003.

43 CFR Part 417 Process

Last month we discussed U.S. District Court Judge Whelan's preliminary injunction that: 1) barred the Department of the Interior (DOI) from cutting Imperial Irrigation District's (IID) water order by about 300,000 acre-feet; and 2) ordered DOI to initiate a Part 417 analysis process for determination of beneficial use of Colorado River water by IID.

As you are aware, opinions are split on the benefits to be derived from DOI moving forward on the 417 Process, due to the possible impact that it could have on delaying execution of the Quantification Settlement Agreement (QSA). Included in the Board folder, is a letter to Secretary Norton from members of the California Legislature, informing DOI that the ongoing 417 process is counterproductive to a successful finalization of the QSA and encourages DOI to support the QSA efforts.

On July 3rd Reclamation released, in accordance to Judge Whelan's order, its determination of beneficial use of Colorado River water by IID. In its ruling, Reclamation stated that the IID is wasting water and will reduced its water order for 2003 by 9 percent to 2,824,100 acre-feet of Colorado River water to be diverted at Imperial Dam after the Court has reviewed Reclamations determination. In addition, Reclamation provided 10 specific recommendations related to water conservation measures and operating practices in the diversion, delivery, distribution and use of Colorado River water within IID and are listed below:

1. Water measurement - Develop, maintain and use a district-wide network of water measurement devices for consistent recording and reporting and on-farm water use.
2. Scheduling Water Orders - Modify policy to give farmers greater flexibility with water deliveries.
3. Tailwater Management - Enforce ordinance limiting tailwater to 15 percent. Reduce the 15 percent tailwater limit incrementally over a specific number of years.
4. Physical Improvements - Implement IID's draft Agricultural Water Management Plan (March 2002).
5. IID Farmer Outreach - Continue and increase the level of participation in outreach activities to provide services to farmers to assist in making decisions about a wide variety of water conservation.
6. Irrigation Management - Assist farmers in using climatic and evapotranspiration data to help determine when to irrigate and how much water to apply.
7. Cultural Practices - Educate the farmers in practices used throughout the western United States to save water, reduce costs, optimize yields and improve profits.
8. Land Leveling and Grading - Reduce length of irrigation runs.
9. Linear Move Sprinklers - Consider the use of linear move sprinkler systems where slopes are relatively steep and the depth of soil is such that grading or leveling is not feasible.
10. Drip Irrigation - Investigate possibility of increasing the number of acres being irrigated by drip irrigation from the current level of 12,000 acres.

Unauthorized Use of Colorado River Water

At last month's Board meeting, there was a discussion concerning Reclamation's lack of enforcement in curtailing the use of mainstream Colorado River water by entities along the River who are not authorized to divert and use such water. As a result of that discussion, included in the Board folder is a draft letter addressed to Reclamation Regional Director, Robert Johnson, for the Board's consideration. This draft letter expresses the Board's concerns and requests that Reclamation immediately initiate the process to formalize a rule to deal with unauthorized use of Colorado River water.

California's Colorado River Water Use Plan

Status of the QSA Discussions and Activities

On July 1st, Representative Ken Calvert's Subcommittee on Water and Power held its third Oversight Field Hearing in El Cajon, California, to receive testimony on the status of California's water supply. Representatives Calvert, Napolitano, Hunter, Bono, and Davis were in attendance. Providing testimony to the Committee were representatives from the States of Arizona and Utah, Reclamation, Resources Agency, and parties to the QSA. Rep. Calvert stated that the focus of the oversight hearing was that of "Quantifying our uses of Colorado River water." From the comments I have heard and read in the newspaper, it appears that the parties are still not close to resolving the issues. However, they are continuing to meet and exchange proposals with the hope of reaching agreement.

In a related issue, on May 27th and June 13th, the parties to the QSA briefed the Basin States representatives on the revised March 12, 2003 QSA. As a result of those meetings, the Basin States requested some clarification with respect to the Secretarial Implementation Agreement and the acceptability of its content to the DOI. I have included a copy of the Basin States' letter and IID's response to their letter in the Board folder. Also, included in the handout material is a July 7th letter from the Basin States representatives to Governor Davis. In that letter, the Basin States representatives:

- Indicate continued support of the Interim Surplus Guidelines;
- Want to see a commitment by California to a defined, enforceable program that includes quantification of the agricultural priorities in California;
- Encourage the California legislation to authorize funds and enact enabling legislation necessary for implementation of the Quantification Settlement Agreement and the California Plan; and
- Formed a small group to work with California in resolving remaining issues regarding the current draft documents.

Adequacy of 1994 FEIR/EIR - All-American Canal

Last month it was reported that Reclamation had certified to DWR Director Tom Hannigan the adequacy of the 1994 Record of Decision (ROD) for the All-American Canal Lining Project and further certified that measures will be taken for replacement of incidental fish and wildlife values adjacent to the canal forgone as a result of lining the canal on an acre-for-acre basis.

Included in this month's Board folder is a letter from IID to the California Department of Fish and Game (CDFG), asking for similar certification from CDFG, in order to allow the appropriated State funds to be expended on the Project.

Basin States/Tribes Discussions

Navajo - Gallup Water Supply Project

As a brief reminder, the State of New Mexico has proposed to transfer a portion of its Colorado River apportionment from a diversion point in the San Juan River in the Upper Colorado River Basin to places of use on the Navajo Indian Reservation located within the Lower Colorado River Basin and the Rio Grande Basin. The transport of the water would be through a pipeline nearly 100 miles in length. All of the water proposed for use in New Mexico would be a depletion of the Colorado River at Lee Ferry, and would be charged against New Mexico's Upper Colorado River Basin apportionment.

New Mexico proposes to divert and transfer 31,353 acre-feet of San Juan River water. Of the total amount, 16,300 acre-feet of diversion would be used within the Upper Colorado River Basin in New Mexico; an additional 13,934 acre-feet would be transported and used within the Lower Colorado River Basin in New Mexico; and finally, 1,119 acre-feet would be transported and used within the Rio Grande Basin in New Mexico.

Included in the Board folder is a Resolution of the Upper Colorado River Commission, dated June 19, 2003, whereby the states of Colorado, New Mexico, Utah, and Wyoming have expressed their support for the proposed Navajo-Gallup Water Supply Project.

Proposed Lake Powell Pipeline Project

The Washington County Water Conservancy District, in Southern Utah, is investigating the feasibility of delivering a portion of Utah's Upper Basin's apportionment of Colorado River water, via a pipeline, from Lake Powell to Washington County, which is located within the Lower Colorado River Basin in Utah. The project would require that Lake Powell water be pumped through a pipeline about 120 miles and terminate at the existing Sand Hollow Reservoir, about 10 miles east of St. George, Utah.

Included in the Board folder is a Resolution of the Upper Colorado River Commission, dated June 19, 2003, whereby the states of Colorado, New Mexico, Utah, and Wyoming have expressed their support for the proposed Lake Powell Pipeline Project.

Colorado River Environmental Activities

Lower Colorado River Multi-Species Conservation Program

As I reported to you last month, the LCR MSCP Technical Contractors released the preliminary draft Habitat Conservation Plan (HCP) and preliminary draft Biological Assessment for internal review and comment on May 22, 2003. Comments from the LCR MSCP participatory agencies were to be submitted by June 20, 2003. A substantial number of comments and suggestions regarding the two documents were received. Most of the comments were extremely helpful and involved technical or editorial suggestions directed at making the documents more complete. There were no major comments which were directly in conflict with other comments or the general philosophical direction of the LCR MSCP.

The comments were compiled and collated by the Technical Contractors and distributed to members of the LCR MSCP Program Subcommittee. The Subcommittee met in Las Vegas, Nevada, and Phoenix, Arizona, reviewed the comments and developed appropriate guidance and direction to the contractors. The contractors will work on integrating the comments and suggestions into the next iteration of the draft documents slated for release in August 2003.

The LCR MSCP Implementation Issues Subcommittee met in Las Vegas, Nevada, on July 2, 2003, and discussed the latest version of the MSCP Joint-Participation Agreement (JPA). This document will guide how the LCR MSCP participants interact with one another, and how the program is to be implemented, managed, and funded over the long-term. Additionally, the JPA identifies the basic dispute resolution process, should any of the participants have a fundamental issue with the direction the program is going.

The Implementation Issues Subcommittee is also continuing to discuss the need for federal legislation for long-term implementation of the LCR MSCP. This is a significant issue, and relates to the total cost of the long-term program; federal-nonfederal cost-sharing formula; the potential use of mainstream Colorado River water for habitat restoration purposes; administration of the program by Reclamation; and the certainty and assurances sought by the nonfederal participants. These are important issues which must be generally framed out late this summer for inclusion in the next round of draft environmental compliance documents, particularly the NEPA and CEQA documents.

Rio Grande Silvery Minnow, et al. vs. U.S. Bureau of Reclamation, et al.

As you may have heard, on June 12, 2003, the United States Circuit Court of Appeals, for the Tenth Circuit, released its decision in the case of *Rio Grande Silvery Minnow, et al., vs. Bureau of Reclamation, et al.* In this decision, the three-judge panel affirmed the prior decisions of the U.S. District Court. This case turned on the issues related to Reclamation's discretion to release additional Rio Grande water supplies in order to ensure the maintenance of flow in the channel to sustain the small endangered Rio Grande silvery minnow (*Hybognathus amarus*). The government, the State of New Mexico, City of Albuquerque, and the Middle Rio Grande Conservancy District, Rio Chama Acequia Association, and many amici curiae all had argued that Reclamation's discretion in making endangered

species water releases was limited by existing federal statutes (e.g., San Juan-Chama Project Act, Middle Rio Grande Project, etc.), existing project and water service contracts pursuant to the 1902 Reclamation Act, language in interstate compacts (e.g., 1922 Colorado River Compact, and the Upper Colorado River Basin Compact). The U.S. District Court disagreed with this broad argument, and the 10th Circuit Court affirmed the District Court's earlier decision. In fact, the 10th Circuit relied on the sweeping language in the 1978 decision of the U.S. Supreme Court in *Tennessee Valley Authority vs. Hill* (437 U.S. 153) which stated that every federal agency must insure "that any action authorized, funded, or carried out by such agency...is not likely to jeopardize the continued existence of the endangered species or threatened species."

The 10th Circuit Court stepped through all of the defendants' arguments and distilled the following concepts: (1) under the principles of contract interpretation, the plain terms govern; (2) the contracts, written under Reclamation laws did envision applying subsequent legislation (i.e., the federal ESA) in their interpretation; and (3) the plain language of the "shortage clauses" provides the basis for Reclamation's retention of agency discretion to allocate available water supplies to comply with the ESA.

New Mexico's senior U.S. Senator, Peter V. Domenici, stated recently that he did not believe that it was Congress' intent, and certainly not his intent, with the passage of the federal Endangered Species Act, to circumvent the role of the State in managing its water resources, nor to deprive lawfully obtained water service contract holders of their valuable rights. Senator Domenici indicated that he would likely introduce federal legislation to address this issue, and that he would look to his colleagues in other western states for support.

Lower Colorado Water Supply Project (LCWSP)

- Pending applications – An application filed by Riverside County (County) requesting 1,265 acre-feet of water is still on hold pending resolution of the 16,000 acres on the Palo Verde Mesa to be served by PVID. It has been reported at previous Board meetings that if the County proposes to use LCWSP water on these lands, they must be excluded from PVID's service area before the CRB can process the application. I sent a letter to the County, in late June 2003, suggesting that the County initiate the process to remove its lands from PVID's service area so that the Board can process the application.
- Blythe Energy Project – The Blythe Energy Project (BEP) with a consumptive use of 3,300 acre-feet has been considered a potential applicant to use the Project water. There have been discussions with BEP representatives and they have expressed an interest in receiving project water. Since participation of the BEP in the LCWSP has a bearing on implementation of the Project, the issue of water use by the BEP needs to be resolved as soon as possible. Reclamation has sent a letter to owners of BEP indicating that the water being pumped from wells on the plant site is considered Colorado River water and requires a contract with Reclamation for its use. As an alternative, Reclamation suggested that the BEP could apply for LCWSP water. Should BEP apply for the Project water, the same issue as with the County related to PVID Mesa lands applies to BEP. It has been suggested that the easiest and fastest

solution would be for BEP to request to be excluded from PVID's service area. I understand that BEP also has discussed with PVID the possibility of receiving water from PVID's Colorado River entitlement.

- New applications – There are about 10 new applications requesting a total of 15 acre-feet of water that have been received during the past few months. These applications have been reviewed by the Board staff and are determined to be eligible to receive Project water. I am planning to place these and any other application that the Board may receive, on the Board's consent calendar in August.
- Needles' Subcontract – The subcontract document between Needles and applicants for Project water has been reviewed by the Solicitor's Office. Reclamation and the City of Needles are attempting to reconcile the solicitor's comments and incorporate language into the final document. Reclamation has indicated that it is ready to recommend about 300 approved applications, which will be forwarded to the City of Needles to execute subcontracts with the applicants.
- Operation of the well field – At a meeting in Yuma on June 12th with representatives from the CRB, City of Needles, BLM, and IID, Reclamation indicated that the well field should begin operation and pump about 1,500 acre-feet of Project water this year to provide for use of water by BLM, the City of Needles, and other current users. However, the costs associated with operation of the well field are of concern to the City of Needles without a revenue stream being in place to cover the costs. A possible revenue stream could be provided through an Advanced Delivery concept. This concept was discussed with Reclamation and Reclamation indicated its willingness to consider it.
- Advanced delivery concept – I have reported at previous Board meetings that based upon the applications that have been received, the amount of water requested for current use of the Project water is less than 1,500 acre feet, including the City of Needles and BLM's use. With such a small use of Project water, the operation and maintenance cost of the Project becomes prohibitive. An advanced delivery concept has been developed to make these costs more reasonable. A white paper discussing this issue is included in the Board folder. Based on this concept, the unused capacity of the Project well field, up to 6,500 acre-feet, would be pumped and delivered to a potential user (e.g., CVWD or MWD) at a minimum cost (O&M costs). The water used will be paid back in the future through an exchanged and forbearance agreement. The amount of water available for advance delivery depends on whether the BEP applies for Project water. The concept may lose its necessity and importance to the Project if the BEP is approved as a Project water user. However, the advanced delivery concept can still be beneficial to Project water users even with BEP.

WATER QUALITY

Regional Water Quality Control Board- Colorado River Basin Region

Pacific Gas & Electric Topock Gas Compressor Station

Included in the Board folder, as an informational item, is a copy of a Draft Cleanup and Abatement Order, requiring PG&E to take necessary action to cleanup a hexavalent chromium groundwater plume migrating towards the Colorado River from PG&E's Topock Gas Compressor station located 15 miles southeast of Needles, California.

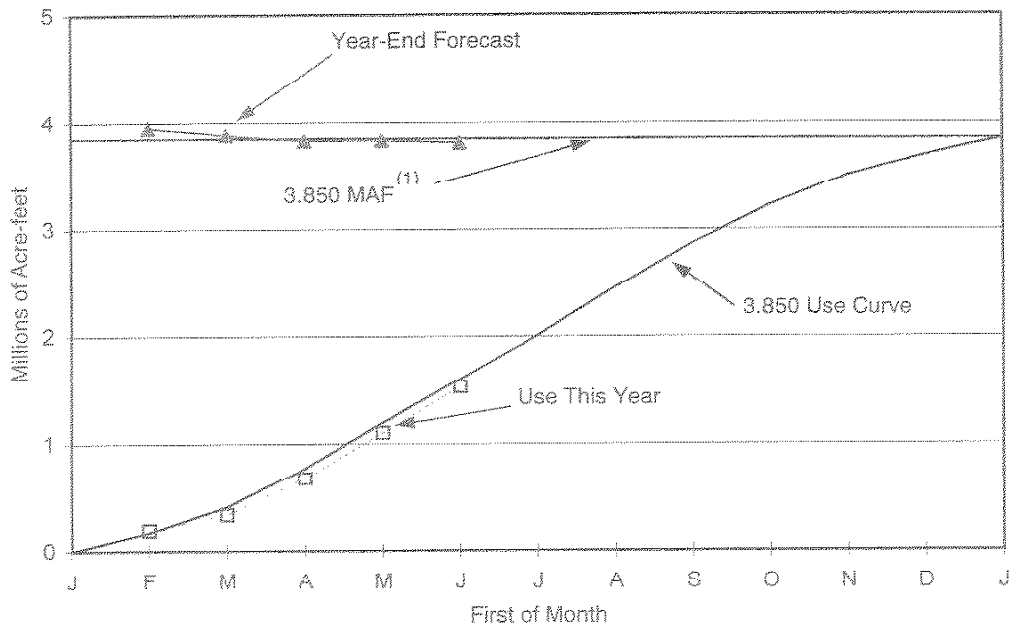
Between 1951 and 1985, PG&E used an anti-scaling chemical agent containing hexavalent chromium in its cooling towers. Until the mid-sixties, cooling tower blow down was discharged into a nearby ephemeral stream bed that discharged into the Colorado River. In late 1970, cooling tower blow down was discharged to on-site earthen evaporation basins. Subsequently, triple lined basins were constructed to accept the cooling tower blow down. Hexavalent chromium has been detected in various monitoring wells around the compressor site and, on March 19, 2003, was detected in a new well located within 300 feet of the Colorado River.

PG&E has been ordered to:

- Within 60 days of issuance of the Order, to submit a feasibility study that describes the available alternatives for remediation and identify the preferred alternative.
- 30 days after approval of the feasibility study, PG&E shall submit a remedial action work plan for the preferred alternative.
- Within 45 days, PG&E shall initiate site cleanup as detailed in the approved workplan.


Gerald R. Zimmerman
Executive Director

FIGURE 1
JULY 1 FORECAST OF 2003 YEAR-END COLORADO RIVER WATER USE
BY THE CALIFORNIA AGRICULTURAL AGENCIES



Forecast of Colorado River Water Use by the California Agricultural Agencies (Millions of Acre-feet)			
Month	Use as of First of Month	Forecast of Year End Use	Forecast of Unused Water (1)
Jan	0.000	-----	-----
Feb	0.190	3.951	-0.157
Mar	0.339	3.882	-0.088
Apr	0.676	3.827	-0.033
May	1.102	3.833	-0.039
Jun	1.530	3.811	-0.017
Jul			
Aug			
Sep			
Oct			
Nov			
Dec			
Jan			

(1) The June forecast of unused water is based on the availability of 3.794 million acre-feet under the first three priorities of the water delivery contracts as of April 28. The June forecast accounts for the 105,130 acre-feet of conserved water available for 2003, 49,538 acre-feet of which is available to CVWD and 55,592 acre-feet of which is available to MWD in accordance with the 1988 IID-MWD Conservation Agreement and the 1989 IID-MWD-CVWD-PVID Approval Agreement. The forecast of unused water for May and previous months was based on 105,130 acre-feet being available to MWD.