

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

April 13, 2004

AGENCY MANAGERS MEETING

The Agency Managers met on March 29th and April 7th in Ontario, California. The purpose of the March 29th meeting was to initiate a process for developing a new Six Agencies' cost-sharing agreement to be utilized in support of the Board's activities. During the meeting a number of proposals were discussed; however, it was felt that each of the agencies needed to have further discussions internally prior to supporting a specific proposal. The purpose of the April 7th meeting was to discuss several significant issues being negotiated among the federal and non-federal participants in the Lower Colorado River Multi-Species Conservation Program (LCR MSCP) planning process. These issues will be discussed in more detail under the LCR MSCP section of this report.

PROTECTION OF EXISTING RIGHTS

Colorado River Water Report

As of April 1, 2004, storage in the major Upper Basin reservoirs decreased by 211,600 acre-feet and storage in the Lower Basin reservoirs decreased by 207,700 acre-feet during March. Total System active storage as of April 7th was 31.801 million acre-feet (maf) or 54 percent of capacity, which is 3.587 maf less than one year ago.

March releases from Hoover, Davis, and Parker Dams averaged 15,380, 15,590 and 11,790 cubic feet per second (cfs), respectively. Planned releases from those three dams for the month of April 2004 are 18,900, 18,100, and 13,500 cfs, respectively. The April releases represent those needed to meet downstream water requirements including those caused by reduced operation of Senator Wash Reservoir.

The final April 5, 2003, observed April through July 2004 unregulated inflow into Lake Powell was 4.000 maf, which is 50 percent of the 30-year average for the period 1961-1990. The final April 5, 2003, projected unregulated inflow into Lake Powell for the 2003-04 water year was 6.655 maf, or 55 percent of the 30-year average.

As of April 7th, taking into account both measured and unmeasured return flows, the Lower Division States' consumptive use of Colorado River water for calendar year 2004, as forecasted by Reclamation, totals 7.379 maf and is described as follows: Arizona, 2.737 maf; California, 4.340 maf; and Nevada, 0.302 maf. The Central Arizona Project (CAP) will divert 1.522 maf, of which 0.308 maf are planned to be delivered to the Arizona Water Bank. The Metropolitan Water District of Southern California

(MWD) will use about 0.513 maf, which is 0.171 maf less than its actual use of mainstream water in 2003.

The preliminary end-of-year estimate for 2004 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 3.707 maf. This estimate by Board staff, is based on the collective use through February 2004 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 final 2004 Annual Operating Plan (AOP) for the Colorado River and Reservoir System was signed by Secretary of the Interior Gale Norton on March 17, 2004. The 2004 AOP, based on basinwide hydrologic analyses and the current Interim Surplus Guidelines (ISG), establishes a Partial Domestic Surplus condition for reservoir and river operations during the calendar year. A copy of the final 2004 AOP was included in the January 14, 2004, Board materials; a copy of Secretary Norton's letter approving the 2004 AOP is included in the handout material for this month's Board meeting.

Extraordinary Conservation for Overruns

As you are aware, as part of the Colorado River Water Delivery Agreement executed on October 10, 2003, Reclamation will initiate a process to monitor the implementation of the extraordinary conservation measures and require that each entitlement holder's consumptive use be at, or below, its approved water order for that year. This process would be utilized during those years that an entitlement holder is forbearing on some portion of its use to meet any payback obligation. It is Reclamation's stated goal to define the suite of extraordinary conservation measures and the verification process related to the payback of any inadvertent overruns associated with the Reclamation's Inadvertent Overrun and Payback Policy, the Colorado River Water Delivery Agreement and its associated payback of water use in 2001 and 2002, and other instances where the use of Colorado River water by an entitlement holder is forborne.

Reclamation had scheduled a meeting on April 2, 2004, at the Coachella Valley Water District offices in Coachella, California; however, because of adverse weather conditions, the meeting was held via conference call. The agenda for the meeting included the following: (1) ordinary conservation measures; (2) extraordinary conservation measures; and (3) verification and payback measures. Additionally, at the meeting Reclamation requested that each involved agricultural or water district provide the name of a Technical Specialist that will participate as a member of a Technical Group

to address these issues, and develop acceptable extraordinary conservation measures to conserve water and initiate paybacks in 2004.

California's Colorado River Water Use Plan

An agency review draft of California's Colorado River Water Use Plan is being published. I hope to distribute this review draft with a cover letter to each of the agencies by the end of this week for their review and comment. After this period of review and comment, the Board will finalize the document and more broadly distribute the Water Use Plan, including placing it on the Board's web page. The intent is to periodically update the Water Use Plan as conditions warrant.

Basin States/Tribes Discussions

Meeting of March 31st

The Colorado River Basin representatives technical group met on March 31, 2004, in Las Vegas, Nevada. The purpose of the meeting was to continue the discussions related to managing the Colorado River System during times of low runoff conditions, especially focusing on the next 24 to 36 months. The discussions focused on three major topics: 1) the Interim Surplus Guidelines agreements and operation of the reservoir system under those agreements, 2) actions that could be undertaken under drought management conditions, and 3) actions that could be undertaken under shortage management conditions. This was primarily a brainstorming session to get ideas on the table so that further analysis could be conducted on each of the potential activities and programs. The intent was to list a broad array of cooperative activities and programs that could lessen the impact, or avoid the affects, of drought and shortage declarations, rather than to focus on shortage criteria and factors to be considered in determining when a shortage should be declared by the Secretary of the Interior.

Based upon the March 31st meeting, Reclamation staff is preparing a brief discussion paper laying out the topics and management activities that were listed. To advance these discussions, a conference call has been scheduled for April 16th to discuss the matrix of opportunities that were listed on March 31st and then to hold a meeting on April 26th to further flesh out the opportunities that warrant further near-term discussion.

Colorado River Environmental Activities

Lower Colorado River Multi-Species Conservation Program

As many of you are aware, the negotiations between the federal and non-federal Lower Colorado River Multi-Species Conservation Program (LCR MSCP) participants have reached a critical phase at this point in time. There are several issues being discussed, including: (1) the federal/non-federal cost share related to Program implementation; (2) the level of certainty and assurances that the non-federal participants will require; and (3) the need for accompanying federal legislation authorizing the

Program and providing the necessary certainty and assurances that the non-federal participants desire. There is some urgency in either reaching consensus on each of these issues, or, at a minimum, agreeing on a process for their resolution prior to the proposed submittal of the agency review draft of the Habitat Conservation Plan (HCP) along with the HCP Permit Application to the U.S. Fish and Wildlife Service (USFWS) on April 16, 2004. The April 16th deadline is important in order to keep the document approval process on track to have the issuance of the Record of Decision by Secretary Norton in November of 2004.

During several telephone conference calls between the federal and non-federal representatives, the non-federal representatives have developed a proposed concept for moving the process forward for the first five-year period of Program implementation while federal legislation is sought, the final terms of the federal and non-federal cost sharing arrangements are negotiated, and other outstanding issues are resolved. If the legislation is not obtained, and/or if the California Fully Protected Species issues cannot be satisfactorily resolved, and/or if the federal/non-federal cost-sharing agreements cannot be reached, the 50-year Program would have to be either renegotiated or terminated. This would result in the federal and non-federal entities utilizing different avenues for obtaining ESA and CESA compliance related to Lower Colorado River operations and activities.

These important issues and potential strategies for moving the LCR MSCP forward were the topics of discussion at the Agency Managers' meeting on April 7th in Ontario, California. At this meeting, we discussed the current status of Program development and the status of the current federal/non-federal negotiations. The proposed "five-year period" concept was approved by the Agency Managers. The position of the Agency Managers was to continue to move the process forward by submitting the HCP Permit Application and the agency review drafts of the HCP, BA, and EIS/R to the USFWS by the April 16, 2004, deadline.

The LCR MSCP Technical Contractors have largely completed finalizing the agency review drafts of the HCP, BA, and EIS/R in anticipation of submitting these documents to the USFWS on April 16th, in conjunction with the HCP Permit Application. A draft letter is being prepared to accompany the draft documents and the HCP Permit Application. It is anticipated that representatives of the three Lower Division States would sign this letter. Additionally, it is anticipated that each of the agencies requesting long-term incidental take authorization pursuant to the terms of the proposed HCP would sign the HCP Permit Application. This, of course, recognizes that prior to execution of the LCR MSCP Implementing Agreement (IA), the governance documents, and any other LCR MSCP agreements that there would be resolution of all of the outstanding issues, including the federal/non-federal and inter- and intra-state cost sharing agreements, the CESA and Fully Protected Species issues, and the funding and assurance issues.

The Assistant Secretary for Water and Science, Bennett Raley, has indicated that a meeting of the federal and non-federal representatives, including him, will be scheduled toward the end of April in order to move these remaining significant issues forward. It is

my observation that all of the federal and non-federal LCR MSCP participants are fully committed to completing the LCR MSCP process and submitting the documents to the USFWS for its review and issuance of the ESA Section 7 federal incidental take statement (ITS) and the Section 10 non-federal incidental take authorization (ITA).

Finally, it is the intent that, through the LCR MSCP and the issuance of the non-federal incidental take authorization, all of California's diversion and return of its basic mainstream apportionment of 4.4 million acre-feet (maf) and any lawful surpluses be fully covered under the terms of the ITA. Much of the California apportionment would be covered under the ITA issued to one or more of the large water and power contractors in California. However, there are a number of Present Perfected Rights (PPRs) holders, the water uses under the Lower Colorado Water Supply Project, and so forth, that may not be directly covered under one of the large California agency's ITA. Consequently, it is my recommendation that the Board be an applicant, on behalf of the small water users in California, on the HCP Permit Application and receive an ITA covering those miscellaneous PPRs and other authorized California mainstream water uses. This will ensure that all of California's Colorado River allocations and entitlements are fully covered under the terms of the ITA permit and alleviate the need to have individual permits for each and every one of the very small entitlement holders. I will be asking approval of the Board, on behalf of California's PPR and other small entitlement holders, as well as potential contractors pursuant to the Lower Colorado Water Supply Project, to be a signatory to the HCP Permit Application with the intent of receiving ITA through the LCR MSCP.

Glen Canyon Dam Adaptive Management Program

The Glen Canyon Dam Adaptive Management Program Technical Work Group (TWG) met in Phoenix, Arizona on March 30-31, 2004. The purpose of the meeting was to review the proposed elements of the adaptive management program for Fiscal Years 2004 and 2005, and preparation of strategic plans related to core monitoring and the long-term experimental plan. Additionally, Reclamation provided an overview of its proposed maintenance schedule for the Glen Canyon Dam facility. Several of the turbines are scheduled for rewinds and turbine runner replacements. Also, several of the fixed wheel gates are scheduled to be replaced and the penstocks to be recoated. Consequently, there will be periods of time during the next four years where the facility may not be able to release required volumes of water at certain times of year for adaptive management purposes. The purpose of this briefing was to reinforce the necessity that there needs to be close coordination between the adaptive management program and Reclamation regarding future experimental flow design and timing of the releases.

Grand Canyon Trust vs. Gale A. Norton, et al.

On March 31, 2004, the Grand Canyon Trust and Earthjustice filed a lawsuit in United States District Court for the District of Arizona challenging the 2002 Recovery Goals for the Humpback chub alleging that they violate the federal Endangered Species Act (ESA) and the Administrative Procedures Act (APA). The plaintiffs allege the

following: (1) that the USFWS did not utilize the best available science in developing the recovery goals for the humpback chub; (2) that the 2002 recovery goals are inconsistent with previous chub population numbers; (3) that there are no recovery goals for the chub in all of the critical areas occupied by the species; (4) that the USFWS did not prepare economic estimates for implementing the 2002 recovery goals; (5) that the 2002 recovery goals do provide for the conservation and recovery of humpback chub; (6) that the 2002 recovery goals do not support limiting recovery to only three core populations of chub; and (7) that the USFWS failed to comply with the APA because the recovery portions of the ESA are not met.

Lower Colorado Water Supply Project (LCWSP)

The City of Needles (Needles) is continuing to execute subcontracts with the Lower Colorado Water Supply Project (LCWSP) beneficiaries to receive Project water. As of April 1st, over 474 subcontracts for current and for future use have been forwarded to potential applicants for execution. These contracts request a total of 3,237 acre-feet of water use per year (479 acre-feet for current use and 2,758 acre-feet for future use). To date, 339 or 71.5 percent, of the subcontracts have been executed and returned to the City of Needles.

Board staff continues to receive applications for LCWSP water. During a recent telephone conversation with representatives of PG&E, they informed the Board staff that PG&E plans to request another 100 acre-feet of LCWSP water per year. This is in addition to the 180 acre-feet per year (100 acre-feet for current use and 80 acre-feet for future use) that was approved by the Board on April 10, 2002, for the PG&E Topock Gas Compressor Station. PG&E has already executed a subcontract with the City of Needles for this 180 acre-feet per year and will be looking to amending its subcontract for the additional use.

At previous Board meetings that CRB staff has reported on its efforts regarding the concept of Advance Delivery of LCWSP water using the existing and authorized excess capacity of the Project's well field. The staff has also discussed its efforts to prepare a draft contract utilizing the Project's excess capacity to deliver water to a third party. As discussed, use of the Project in this manner will take advantage of the good quality water, while it is available, and provide the financial resources to ensure a long-term water supply source for the Project's beneficiaries. A copy of the draft contract has been included in the Board folder for your information. This draft contract has been forwarded to Reclamation, BLM, the City of Needles and MWD for their review. I have requested Reclamation to setup a conference call with the above agencies next week to discuss the draft contract and how to expeditiously move this contract forward. It would be advantageous to be in a position to begin pumping water this year.

WATER QUALITY

Colorado River Basin Salinity Control Program

Hexavalent Chromium & PG&E Topock Gas Compressor Station

At the March Board meeting, the Board was informed about the PG&E hexavalent chromium issue and potential contamination of the Colorado River. During the meeting, MWD provided a presentation on the PG&E site, as well as, presented data on the level of chromium concentrations in the observation wells near the River. As you recall, the California Department of Toxic Substance Control (DTSC) is the lead agency in charge of the remediation efforts. DTSC has established a Consultative Work Group (CWG) to facilitate participation of the stakeholders in the corrective action process, and through such participation, integrate applicable federal and state regulatory authorities and requirements, and assist DTSC in making appropriate decisions toward the effective and expedited remediation of the hazards and waste release. A copy of the CWG charter is in the Board folder.

Representatives of the Board staff attended the CWG meeting on March 18, at the DTSC office in Cypress. The meeting focused on the construction of a passive physical barrier and remediation methods. MWD provided a presentation on different methods for developing a physical barrier. PG&E provided presentations on physical barriers and different remediation methods (e.g., in-situ treatment, groundwater extraction and treatment, permeable reactive barrier, and phyto-remediation). Also, PG&E provided a presentation on the status of Interim Measures 1 and 2. PG&E will send the criteria for remediation to the Technical Committee for review and discussions. The next CWG meeting is scheduled for April 15, 2004, at Topock site.

A Special News clip was released by MWD regarding the efforts by PG&E to keep the Chromium VI from contaminating the Colorado River. Also, the Arizona Department of Environmental Quality and the Yuma County Board of Supervisors have raised concerns about the possible risk to the quality of the Colorado River water. Both agencies have written letters to the Regional Administrator of Region 9 of the U.S. Environmental Protection Agency (EPA) to urge EPA to review the efforts of PG&E to address the issues and control the contamination in order to avoid any potential risk to the health and safety of residents along the Colorado River. Copies of MWD's News Clips and the letters to EPA from the Arizona parties are included in the Board's handout materials.

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