



# River REPORT

Summer 2005

*A project of the Water Education Foundation*

## THE LOWER COLORADO RIVER MSCP: Protecting Endangered Species and Water Project Operations

*By Sue McClurg*

Seventy years after completion of Hoover Dam forever altered the natural floodplain of the Lower Colorado River, federal officials and water and power agencies in Arizona, California and Nevada signed off in April on a 50-year agreement to restore more than 8,100 acres of native habitat between Hoover Dam and the U.S.-Mexico border.

More than a decade in the making, the \$626 million Lower Colorado River Multi-Species Conservation Program

(MSCP) is designed to promote recovery of six federally protected species while ensuring the certainty of existing river water and power operations. It also provides incidental take authorization for many specific future flow- and non-flow-related activities by federal and non-federal entities covered under the plan. ("Take" is defined as activities that kill, harm or harass a listed species.)

The MSCP is not the first Habitat Conservation Plan (HCP) drafted under the federal Endangered Species Act (ESA), but it is one of the broadest, incorporating some 1,119 square miles, three states and 56 participating agencies, organizations and stakeholders along the Lower Colorado River. Within the documents' thousands of pages is a long list of restoration activities and actions scheduled to be carried out through 2055.

"It's taken a lot of years to produce all these pages," said Sam Spiller, Lower Colorado River coordinator for the U.S. Fish and Wildlife Service (USFWS).

"This MSCP has very far-reaching benefits. It's a very special opportunity," he said. "For 50 years, we're going to have a program that will increase the acreage of habitat along the Lower Colorado River not only for endangered fish, birds and other rare species, but others such as migratory neotropical songbirds that depend on this riparian corridor."

In addition to planting cottonwoods, willows, mesquite and other native plants, possible actions to restore and

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*The Lower Colorado River at Topock Gorge.*

## Dear Readers

*Endangered species vs. water user clashes have become all too common in the West. That's what the newly approved Lower Colorado River Multi-Species Conservation Program (MSCP) is designed to prevent. A decade in the making, this \$626 million, 50-year program includes measures designed to help restore native habitat and species – many of which are endangered – while ensuring the certainty of existing water and power operations. As with everything related to water, the program has its critics. Environmentalists would prefer to see periodic releases of water, as has occurred in the Upper Basin Fish Recovery Program. But water users say this is impractical. Only time will tell if the MSCP can achieve its goals, but it is encouraging to see the launch of such an ambitious Habitat Conservation Plan.*

*The Foundation has launched an exciting new Internet feature for you – a web-based Calendar of Events designed to be **the** place to visit to find out about upcoming conferences and seminars. Visit this site at <http://www.watereducation.org/events.asp> to find out about upcoming events, and use our special email form to post your own event – free! Each event includes a web-page link to the posting organization for further information. There also is an opportunity to place a low-cost ad on the calendar; our web site averages 300,000 hits a month.*



### Colorado River Project Advisory Members

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Thomas Graff, Environmental Defense  
Herb Guenther, Arizona Department of Water Resources  
Gary Hansen, Colorado River Indian Tribes  
J. Arturo Herrera, Mexican Section, International Boundary and Water Commission  
Pamela Hyde, Wildlands Council  
David Lindgren, Downey Brand  
James Lochhead, Brownstein Hyatt & Farber  
Patricia Mulroy, Southern Nevada Water Authority  
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The Water Education Foundation thanks all the sources and experts who reviewed this newsletter for balance and accuracy.

The mission of the Water Education Foundation, an impartial, non-profit, organization, is to create a better understanding of water issues and help resolve water resource problems through educational programs.

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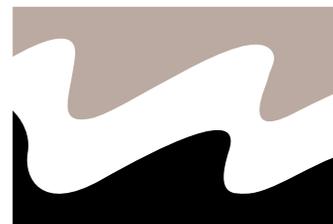
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WATER EDUCATION  
FOUNDATION

# Basin Briefs

## UPPER BASIN:

### Moab Radioactive Waste Pile Recommended for Removal

The Department of Energy announced in April that it has recommended moving a nuclear waste pile that sits near the banks of the Colorado River to a permanent, closed facility about 30 miles away. The 10 million ton pile of dirt and other waste from decades of uranium ore processing now sits on bare ground about 750 yards away from the Colorado River. The recommendation calls for the material to be moved, with the waste to be buried in a hole lined with a protective layer to keep the material from seeping into the groundwater. The pile also would be covered.

The Department of Energy estimates that 15,000 gallons of water containing radioactive material from the pile currently leaks into the Colorado River each day. The waste seeps into the soil and groundwater aquifer before discharging into the river. In addition to removing the pile, the department has recommended active groundwater remediation at the current pilings site. It will cost more than \$400 million to move the pile.

In November, the Energy Department outlined four options for the site. Three of them called for moving the waste and burying it away from the river; one, which would have cost about half as much, called for leaving the pile in place but covering it with dirt and rocks. Western politicians, water suppliers and environmentalists concerned about the pile's toxic wastes seeping into the water have lobbied heavily for the pile to be moved.

The toxic waste dump is the only decommissioned uranium mill overseen by the Energy Department that has not been cleaned up. This "preferred alternative" is included in the full Environmental Impact Statement scheduled for release this summer. •

## LOWER BASIN:

### Water Users, Environmentalists Propose Joint Plan for Yuma Desalter

A water user/environmental workgroup has issued a recommended plan to operate the Yuma Desalting Plant (YDP) while still providing water to the Cienega de Santa Clara, a wetlands area south of the U.S.-Mexico border.

Nine months in the making, the plan calls for voluntary and compensated water forbearance, groundwater pumping in the Yuma area, operating the YDP and upgrading its capability to produce a municipal-quality water supply and maintaining the habitat in the Cienega. In May, the workgroup released details of the proposal in a white paper, *Balancing Water Needs on the Lower Colorado River: Recommendations of the Yuma Desalting Plant/Cienega de Santa Clara Workgroup*. The paper is available on the Central Arizona Project's website, [www.cap.az.com](http://www.cap.az.com).

The YDP was designed to desalt drainage return flows from Wellton-Mohawk Irrigation and Drainage District prior to the water returning to the Colorado River above Mexico's Morelos Dam. As planned, once most of the salt had been removed, the water would have been counted as part of U.S. delivery obligations to Mexico. The plant has not been in operation since its six-month inaugural run in 1992. When Arizona water officials called upon the U.S. Bureau of Reclamation (Reclamation) to re-operate the plant in 2004, it sparked a controversy because environmentalists feared that by delivering the YDP flows to Mexico, it would cut the YDP flows that now supply the Cienega.

The workgroup has submitted the white paper to Reclamation and other federal agencies, urging them to take steps to implement its proposals. •

### IID Calls for Arbitration of Mitigation Clause in IID-SDCWA Transfer Agreement

Continuing uncertainties about the socioeconomic impacts of fallowing farmland for the Imperial Irrigation District-San Diego County Water Authority water transfer might be settled through arbitration. In early June, IID called for arbitration because of disagreements among economists about third-party impacts from the transfer. The transfer is a key component of California's Quantification Settlement Agreement (QSA).

The final transfer agreement included \$20 million for mitigation of the land fallowing impacts (half from SDCWA and half from IID) over 15 years. SDCWA was to mitigate any additional impacts. A Local Entity was established to determine those third-party impacts and how to mitigate them through mitigation fund. In a report of the transfer's first year's socioeconomic impacts, two members of a three-economist panel said the Imperial Valley had experienced a net economic gain; one said findings pointed toward a negative impact. The economist who reported the negative impacts works for the Local Entity. Of the other two, one represents SDCWA and the other is listed as a neutral party. Without a consensus, the Local Entity cannot spend the \$20 million it already has received.

IID requested that a three-member panel of judges review the reports and arbitrate the disagreement. As this issue of *River Report* went to press, the Local Entity had just voted to reject an economists' report on the second year of the transfer, which also showed a net gain to the valley. This report was prepared only by the SDCWA and neutral party economists; the Local Entity had instructed its economist not to participate because of the potential litigation over the first year's report. •

FEATURE

*Continued from front page*

enhance habitat include construction of infrastructure for water delivery to habitat areas and dredging to create marsh and backwater habitats. Fish hatcheries and fish stocking programs will be undertaken to boost populations of endangered, native fish in the Lower Colorado River.

This hands-on approach to actively restore native habitat and increase populations of endangered fish has been criticized by environmental groups.

“Our criticism is that they are building tree farms,” said Michael Cohen, senior associate at the Pacific Institute. “They are going to plant cottonwood, willows and mesquite but the trees can’t reproduce naturally without floods and they are not going to re-create any flood flows. So they are going to have to plant and irrigate and plant some more.”

As for the plan to raise and stock the Colorado River’s native, endangered fish,

Cohen believes it will create a “food factory for non-native fish” because these introduced fish prey on the native species. “It’s not restoration. It’s not real recovery,” he said, summing up his viewpoint of the program.

“What the MSCP is intended to do,” Spiller said, “is restore riparian habitat and the associated conditions caused naturally by flooding, riparian trees for nesting purposes and moist soil conditions. These conditions are necessary to maintain food chain needs for the fish and Southwestern willow flycatchers, yellow-billed cuckoos and other target riparian-dependent species. Similarly, (we need to) restore backwater aquatic habitats in association with rearing native razorback suckers and bonytail. These habitat functions are what existed before the dams and that’s what they’ll have after the program.”

Lorri Gray, MSCP implementation program manager for the U.S. Bureau of Reclamation’s (Reclamation) Lower Colorado Region, added, “It must be understood that the MSCP is not

intended to be a full recovery program for the listed species. The actions the MSCP provides are to offset current and future activities by the partners over the next 50 years, plus providing actions that will move listed species toward recovery.”

Environmentalists also are disappointed that the MSCP does not address restoration of the Colorado River Delta, which lies below Morelos Dam on the U.S.-Mexico border. They say this wetland area, which receives agricultural return flows from Mexico and the United States and periodic flood flows, is the only true representation of the Colorado River’s natural floodplain in the Lower Basin.

“It would have been easier to restore part of the Delta than doing what they are proposing in the MSCP,” said Kara Gillon, Water Counsel for Defenders of Wildlife. “It would improve the ability to restore the environment if you include the Delta.”

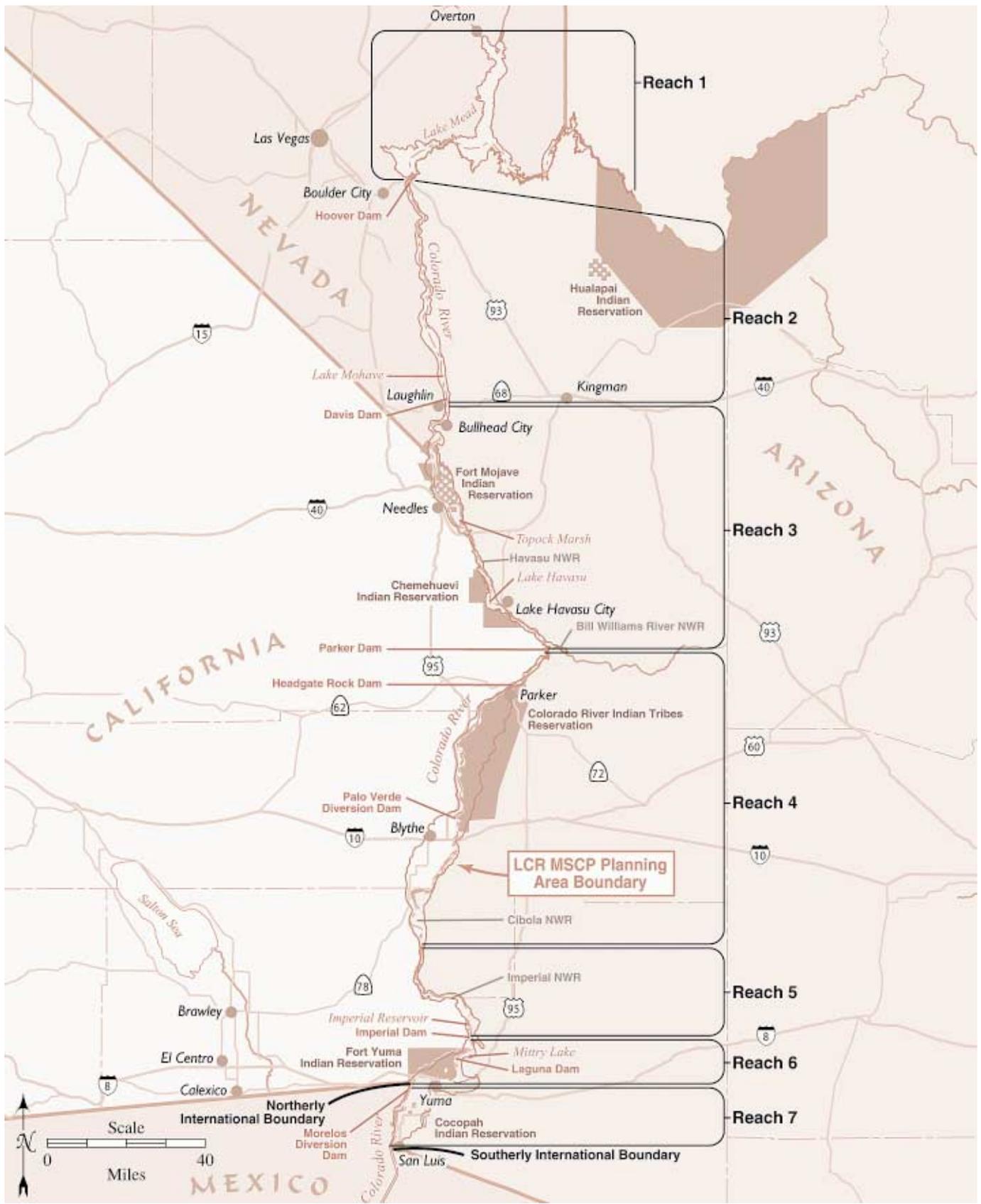
But after discussing the idea, a majority of the then-35-member MSCP steering committee decided in 1998 not to expand the program’s scope to the Colorado River Delta, maintaining that complying with federal ESA requirements in a foreign nation, where U.S. laws are unenforceable, would not provide the necessary certainty to ensure lasting benefits for the species and allow USFWS to grant an incidental take permit. In protest, representatives from Defenders of Wildlife and the Center for Biological Diversity quit the MSCP steering committee.

“The politics were unfortunate,” said Jeff Kightlinger, general counsel for the Metropolitan Water District Southern of California (MWD). “We always agreed with the environmentalists that there are good stretches of land in the Delta that could be restored, but our position is that the International Boundary and Water Commission and the State Department are the appropriate venues to pursue that goal with the Mexican government.”

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*The final MSCP documents were signed April 4 at Hoover Dam.*





The impetus for developing the MSCP occurred in 1994 when USFWS designated a major portion of the river as “critical habitat” for three endangered fish. With three other protected species and a long list of sensitive species in this same region, Arizona, California and Nevada joined with federal agencies and various stakeholders on the Lower Colorado River to develop an ecosystem-based HCP to address ESA compliance needs and associated mitigation for these species rather than individual conservation plans for each species.

The resulting MSCP is intended to protect and restore habitat for six federally endangered species: the razorback sucker, bonytail, humpback chub, southwestern willow flycatcher, Yuma clapper rail and desert tortoise. The plan’s benefits will extend to another 20 sensitive species that could be listed in the future.

One participant compared the decade-long process to develop a common plan as being “like herding cats” as each representative on the committee had his/her own goals and

*Yuma clapper rail.*



*Bonytail chub at Boulder City wetlands.*

interests. Even once broad themes were sketched out and agreed to, the details of how to incorporate these items within a federal, multi-state, multi-interest organization were difficult and time-consuming – especially against the backdrop of the existing components of the Law of the River.

The MSCP’s estimated \$626 million (in 2003 dollars; will be indexed for inflation) cost will be split 50/50 – 50 percent in federal funds, with Arizona, California and Nevada paying the remaining 50 percent (see box). Each state, in turn, established its own formula to determine fees for its participating water and power agencies. Who should pay how much, participants

said, was not easily resolved and was in itself a long and hard negotiation.

“We ran into a big obstacle last summer when it came to the question of ‘who is going to pay for the plan?’” said Robert Johnson, regional director of Reclamation’s Lower Colorado Region. The states, he said, wanted the federal government to pick up about 80 percent of the tab, adding that it was a “huge breakthrough” when the states agreed to pick up half the costs.

Attorney Bill Swan, who worked on the MSCP for Imperial Irrigation District (IID), said the Lower Basin’s water users view the program as a way to avoid the type of ESA-related water vs. species clashes that have occurred on the Rio Grande and Klamath rivers. In a press release announcing their approval of the funding mechanism, IID officials said the MSCP “provides a form of endangered species insurance protection on the Lower Colorado River.”

The MSCP is designed to reduce the likelihood of additional species on the Lower Colorado River being listed under the ESA and includes ESA incidental take authorization for endangered and threatened species for non-federal agencies (section 10(a)(1)(B) and federal agencies (section 7). In addition, the program allows continuation of a long list of ongoing flow-related activities, such as water releases and deliveries, water diversions and hydroelectric power generation, and non-flow related activities, such as channel maintenance and boating access.

But perhaps even more important for the participating urban water agencies is that the incidental take permit applies to

## Who Pays

Total cost of the MSCP over its 50-year span (indexed for inflation) ...	\$626 million
U.S. Bureau of Reclamation .....	\$313 million
Lower Basin states .....	\$313 million
California .....	\$157 million
Arizona .....	\$78.5 million
Nevada .....	\$78.5 million

anticipated future activities. Many of these, including components associated with California's implementation of the Quantification Settlement Agreement, are specifically listed in the biological opinion. For the California agencies, the MSCP also is intended to provide coverage under the California ESA and Fully Protected Species Act.

This issue of *River Report* provides an overview of this ambitious program to re-create the natural habitat of the Lower Colorado River for the protection and restoration of endangered species.

### Background

Historically, it is estimated that the Lower Colorado River between Fort Mojave (near present day Bullhead City, AZ) and Fort Yuma had some 400,000 acres of riparian vegetation. As farmers and others settled along the course of the river, much of this vegetation was cleared as the land was transformed into farms and towns. By 1938, it is estimated that the stretch of river from the Grand Canyon to the Mexican border had about 89,200 acres of dense willows and cottonwood trees. (This estimate stems from a 1999 Reclamation analysis of historic photos, maps and journals.) Today, about 126,000 acres of woody riparian vegetation remains, but only about 23,000 acres consist of native plants such as cottonwood, willow, honey mesquite and arrowweed, according to MSCP documents. The rest of the river corridor is dominated by salt cedar, an introduced and invasive plant. The native riparian vegetation is ideal habitat for the Southwestern willow flycatcher, which was listed as endangered in 1995. In addition to the flycatcher, two other terrestrial species on the ESA list are covered in the HCP: the Yuma clapper rail, an endemic bird of the Lower Colorado River, and the desert tortoise.

The river itself was altered by construction of Hoover and other dams.

Originally a muddy, brown and seasonally warm river that periodically overflowed its banks, portions of the Colorado River are now cold, clear and channelized. The river's natural flow regime also has been altered because dams and reservoirs now store spring runoff for release later during the summer; runoff that normally flowed downstream in huge flood flows. These alterations impacted native fish because they relied on the spring flows to create the warm, nutrient rich aquatic habitat essential for spawning and rearing of young fish. The introduction of non-native sport fish also impacted the native species because many prey on the native fish.

In 1980, the bonytail, a native fish of the Lower Colorado River, was listed as endangered under the ESA. In 1991, the razorback sucker, was listed. (The humpback chub was listed in 1967 under endangered species legislation enacted in 1966.) Following the critical habitat designation of major portions of

*The 1,000 acre Aha Khav Preserve area along the Colorado River has been set aside for habitat restoration on the Colorado River Indian Tribes Reservation. It is one of the main sites where MSCP habitat development techniques have been used and will be further refined.*



the Lower Colorado River for the endangered fish and the 1995 listing of the southwestern willow flycatcher, the area became the focal point for the multi-agency and stakeholder partnership to implement a long-term ESA compliance and management program for the historic floodplain, which, in turn, led to the drafting and adoption of the MSCP.

The final MSCP documents were signed April 4 at a ceremony below Hoover Dam. The MSCP includes: the funding and management agreement, an implementation agreement, the HCP, a Biological Opinion, the programmatic Environmental Impact Statement/ Environmental Impact Report, the ESA section 10(a) permit, and a California ESA 2081 permit. The documents are available on Reclamation's web site, <http://www.usbr.gov/lc/lcrmscp/index.html>

### The Program

The goal of the MSCP is to increase the amount of four types of habitat along the river: aquatic, emergent marshes, lower terrace cottonwood and willow riparian woodlands, and upper terrace native mesquite bosques (thickets). These habitats are needed to help

recover the six federally protected species. The program calls for restoration of 5,940 acres of cottonwood and willow habitat, 1,320 acres of honey mesquite, 512 acres of marshland and 360 acres of river backwaters. Of the total 8,132 acres of habitat, the California ESA incidental take permit requires that 3,048 of those restored acres be in California.

Biologists believe the habitat restoration also will benefit 20 specifically identified sensitive species, many of which are either listed or proposed for listing under the federal and/or individual states' endangered species laws. As habitat is restored and protected as directed by the MSCP, such actions should improve conditions for these species and help Arizona, California and

Nevada fulfill any restoration mandated by state laws.

"Everyone knew from day one that we needed compliance (with the ESA)," Spiller said. "But a really special goal of the steering committee members was strong interest to create a habitat approach for the value and benefit of other species, essentially an ecosystem restoration concept."

The program also will allow for the continued operation of those dams, diversion canals and other facilities that provide water to rapidly growing cities such as Phoenix, Las Vegas, San Diego and Los Angeles and thousands of acres of farmland in California and Arizona.

For these metropolitan areas, the incidental take permit provided by the MSCP also applies to specific antici-

pated projects/operations that are key to their efforts to develop sufficient supplies to meet growing needs. For Arizona, such projects include issuing water contracts for the state's approximately 20,000 acre-feet of unallocated Colorado River water and water exchanges related to Arizona water banking activities. For California, such projects include implementation of potential transfers, water banking and changes in points of diversion from agricultural to urban users as part of the programs to implement the QSA. And for Nevada, it includes potential transfers and water banking. For the Colorado River Indian Tribes, the MSCP assures that any future irrigation works it puts in to increase its agricultural production are covered. It was a

## In the Upper Basin

Above Glen Canyon Dam/Lake Powell, two programs are under way to restore populations of bonytail, humpback chub, razorback sucker and Colorado pikeminnow through habitat restoration, fish hatcheries and stocking, dam re-operation and other measures. In contrast to the dual habitat restoration/water project operations goals of the Lower Colorado River MSCP, these Upper Basin programs are ESA recovery plans, designed to reverse the decline of a threatened or endangered species and eventually bring the population to a self-sustaining level.

The Upper Colorado Endangered Fish Recovery Program was established in 1988 by the states of Colorado, Utah and Wyoming, the Department of the Interior and the Western Area Power Administration. In 2001, these parties signed an agreement to extend the program through September 2013.

In the nearby San Juan River sub-basin, a similar program is under way

to protect and recover the Colorado pikeminnow and the razorback sucker. Established in 1992, the San Juan River Basin Recovery Implementation Program encompasses the San Juan River and its tributaries in Colorado, Utah and New Mexico.

In 2002, the U.S. Fish and Wildlife Service set recovery goals for the four fish for both "downlisting" and "delisting." The goals were developed in collaboration with public, private and tribal stakeholders and scientists from the Colorado River Basin. Research-based adaptive management could lead to future revisions of the recovery criteria. The recovery goals and the status of the species will be formally reviewed at least every five years.

Examples of projects implemented under the two programs include:

- Stocking of more than 250,000 bonytail (the rarest of the four endangered Colorado River fish species) in the Colorado and Green rivers. The Utah Department of Wildlife Resources stocked 6,600

bonytails greater than 6 inches and the Colorado Division of Wildlife stocked over 6,600 bonytails greater than 8 inches in the middle Green River system in fall 2004. These agencies also stocked over 8,200 bonytails greater than 7 inches in the Colorado River.

- Construction of a 373-foot-long fish passage at Grand Valley Project Diversion Dam on the Colorado River near Grand Junction. Fish passage will become fully operational in spring 2006 at the Price-Stubbs Diversion Dam five miles downstream. At that time, endangered fish will regain access to 56 miles of critical habitat that has been blocked for nearly a century.
- Stocking of about 10,850 juvenile and adult razorback suckers in the San Juan River. Larval razorback suckers, which have been found in the river for the last seven years, indicate that previously stocked fish are surviving and spawning at separate locations in the river.

# Calendar

big victory to get those irrigable acres covered, said Gary Hansen, the tribes' water resources director, because of the ongoing battle to protect the tribes' development rights for its irrigable, undeveloped acreage.

The planning area for the MSCP covers some 1,119 square miles. Its boundaries stretch from La Paz, Mohave and Yuma counties in Arizona, to Riverside, Imperial and San Bernardino counties in California, and Clark County in Nevada. Agricultural land comprises the majority of the area. Also within the boundaries are portions of six Indian reservations: the Colorado River Indian Tribes, Fort Mojave, Chemehuevi, Fort Yuma-Quechan, Cocopah and the Hualapai.

Although specific projects and locations for habitat restoration have not been identified, developers of the HCP believe most opportunities for restoration are located within reaches three to five of the Lower Colorado River; combined, these reaches extend from Davis Dam, near the southern tip of Nevada, to Imperial Dam, just north of the U.S.-Mexican border. (See map.) With a mandate to restore more than 8,100 acres, officials plan to purchase from willing sellers farmland with the best potential for conversion to natural habitat. Existing wildlife refuges and Bureau of Land Management lands also are potential habitat sites as are restoration projects established on Indian reservations along the river. The Colorado River Indian Tribes, for example, are widely recognized for their on-reservation experiments with habitat restoration.

Spiller said the goal is to establish large, contiguous areas of habitat, but scientists are keeping in mind the need to ensure there is a continuous wildlife corridor along the length of the river.

Activities identified for implementation in the MSCP include plans to rear native endangered fish in hatcheries and ponds and stock them in the river. As many as 620,000 bonytails and 660,000

*Continued on page 11*

## July

- 21-22 **Water Education Foundation's Water Law & Policy Briefing**  
San Diego, CA. Contact: Diana Farmer, (916) 444-6240  
Email: dfarmer@watereducation.org Web: www.watereducation.org
- 27-29 **Western State College of Colorado's 30th Colorado Water Workshop**  
Gunnison, CO. Contact: George Sibley, (970) 943-2055.

## August

- 15-16 **Continuing Legal Education New Mexico Water Law**  
Santa Fe, NM. Contact: CLE International, <http://www.cle.com/dev>
- 16 **New Mexico Water Research Symposium**  
Socorro, NM. Contact: nmwrri@wrri.nmsu.edu  
Web: <http://wrri.nmsu.edu/conf/tc05/symposium.html>
- 18-19 **Continuing Legal Education Arizona Water Law Super Conference**  
Phoenix, AZ. Contact: CLE International, <http://www.cle.com/dev>

## September

- 15-16 **Continuing Legal Education Western Water Law**  
Las Vegas, NV. Contact: CLE International, <http://www.cle.com/dev>
- 21-23 **Water Education Foundation's Northern California Tour**  
Sacramento, CA. Contact: Diana Farmer, (916) 444-6240  
Email: dfarmer@watereducation.org Web: www.watereducation.org
- 21-24 **18th Annual Arizona Hydrological Society Symposium**  
Flagstaff, AZ. Contact: mtruini@usgs.gov  
web:<http://www.azhydrosoc.org/symposia.html>

## October

- 18-20 **50th Annual New Mexico Water Conference**  
Las Cruces, NM. Contact: <http://wrri.nmsu.edu/conf/confsymp.html>
- 19-21 **Water Education Foundation's Southern California Tour**  
Ontario, CA. Contact: Diana Farmer, (916) 444-6240  
Email: dfarmer@watereducation.org Web: www.watereducation.org
- 20-21 **Continuing Legal Education Nevada Water Law**  
Reno, NV. Contact: CLE International, <http://www.cle.com/dev/>

## November

- 2-4 **Wyoming Water Association's Education Seminar and Annual Meeting**  
Casper, WY. Contact: John Shields 307-631-0898;  
e-mail: [wwa@wyoming.com](mailto:wwa@wyoming.com); web: [www.wyomingwater.org](http://www.wyomingwater.org)

## December

- 15-16 **Colorado River Water Users Association Conference**  
Las Vegas, NV. Contact: Crystal Thompson, [cthompson@cap-az.com](mailto:cthompson@cap-az.com)

*Contact Sue McClurg with your calendar items from January 2006 through June 2006 for inclusion in the Winter 2005 issue of River Report, [smcclurg@watereducation.org](mailto:smcclurg@watereducation.org) or 717 K Street, Suite 317, Sacramento, CA 95814*



## ALL-AMERICAN CANAL LINING FACES POTENTIAL LITIGATION

Two U.S. environmental organizations and a Mexicali economic development group have served notice of a potential lawsuit over the lining of California's All-American Canal. They contend that the project violates several U.S. environmental statutes and poses a threat to Mexico's Andrade Mesa wetlands and groundwater wells in the Mexicali Valley.

Members of the Citizens United for Resources and the Environment (CURE) and the Consejo de Desarrollo Economico de Mexicali (CDEM) contend in a May 17 petition and notice letter sent to Interior Secretary Gale Norton, U.S. Bureau of Reclamation Commissioner John Keys and two other federal agencies that the Environmental Impact Statement (EIS) for the lining of the All-American Canal is "defective" because it does not analyze the effects of the project in the Mexicali Valley. They also say the proposal "violates numerous federal laws," specifically citing the National Environmental Policy Act, Endangered Species Act (ESA), Clean Water Act, Clean Air Act and the Migratory Bird Treaty Act. A similar letter was sent to the same federal agencies on May 19 by Desert Citizens Against Pollution.

Sections of the 82-mile canal built in the 1930s to transport Colorado River

water to the Imperial Valley are unlined. One segment that begins near Yuma, AZ, and stretches 23 miles to the west is estimated to lose about 70,000 acre-feet of water each year through seepage. Construction of a new, parallel section of concrete-lined canal is scheduled to begin next year. Once the project is completed in 2008, the estimated 67,600 of acre-feet water conserved will be dedicated to other users in the U.S.

But the water that now seeps from the unlined canal supplies groundwater wells used on the other side of the border by farmers and others in the Mexicali Valley for decades. Since Congress first approved the canal lining project in 1988, citizens of this border community have protested the potential loss of water. CURE and CDEM raised another concern about the loss of this water – its potential impact on Mexico's Andrade Mesa wetlands. Located a few miles south of the border and about 20 miles east of Mexicali, the wetlands area has been receiving increased attention from environmentalists and scientists on both sides of the border.

"We've received the notice and are considering what steps we need to take," said Bob Johnson, regional director of Reclamation's Lower Colorado Region.

In the past, U.S. officials have maintained that federal environmental

statutes stop at the border, that the United States cannot impose its laws on another sovereign nation. And they say that the United States holds legal claim to the water that now seeps out of the canal because it is part of California's 4.4 million acre-feet Colorado River allocation.

Attorney Bill Snape, who represents CURE, says "it's very clear there is legal standing and legal application" of the environmental statutes south of the border, and that the canal lining – and subsequent loss of water – will devastate farmers in the Mexicali Valley. He also said they will argue that "this is Mexico's water."

In the 1988 congressional legislation, the conserved water from the canal lining was allocated to the San Luis Rey Indian Bands for an Indian water rights settlement and the Metropolitan Water District of Southern California (MWD). In 1998, the California Legislature approved a measure that allocated \$200 million to the canal-lining project. In the final negotiations of California's Quantification Settlement Agreement (QSA), San Diego County Water Authority (SDCWA) agreed to pay MWD's wheeling charge in exchange for receiving the water conserved by the canal lining; that water will be conveyed to SDCWA via MWD's Colorado River Aqueduct as part of the IID-SDCWA water transfer agreement.

State officials said that the U.S. and Mexican sections of the International Boundary and Water Commission have been working to develop technical solutions to Mexicali farmers' concerns about the canal lining for some time. The wetlands issue was only raised recently.

But Snape said his clients' concerns have been ignored by U.S. officials and they are prepared to "litigate to the hilt," but added that "we would really like to talk to people and have the opportunity to negotiate." He said the groups are prepared to file a lawsuit by late July if the U.S. agencies decline to discuss the issues. • – *Sue McClurg*

## FEATURE ARTICLE

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razorback suckers are to be released into the river over the life of the program, with the hope that the planted fish will survive to maturity and naturally reproduce. The fish will be released into the river once they are about 1 foot long, which biologists believe will help reduce the problems with predation. Spiller added that would be impossible to remove all the non-native fish from the river because of the size of the MSCP's planning area, the number of non-native fish present in the river and the potential of harming native species.

"This effort is a measure intended to maintain the species' population in the river until a Lower Colorado River recovery plan for these species is developed and implemented," Gray said. "At that time, the fish rearing and stocking effort may be re-directed toward recovery plan implementation measures."

For Gillon, this approach seems more like preserving the "status quo" than recovering the endangered fish. "It may boost the numbers, but it won't necessarily help the fish live on their own in the wild," she said, adding that the same is true for the plan to plant cottonwoods and irrigate them rather than allowing for periodic flood flows as was the natural, pre-dam condition.

Christopher Harris, Colorado River environmental programs manager for the Colorado River Board of California, said that even "if water entitlement holders were willing to relinquish their supplies for periodic 'environmental releases,' releases greater than 20,000 cubic feet per second (cfs) begin to do damage to property along the Lower Colorado River. Additionally, it would take water releases from mainstream facilities in excess of 80,000 to 90,000 cfs to even begin to inundate portions of the natural floodplain because of the [river's] extensive channelization."

Hansen readily admits that "we're going to grow habitat like we grow

crops." But he says that is really the only way to re-create the type of habitat once found throughout the floodplain. And he says the MSCP allows

for a broader approach to habitat restoration than if individual HCPs had been written for each species. "This is doable," he said. "We have potential sites and we know how we are going to re-create the habitat."

Kightlinger said restoring the river to its natural state "is not realistic. It's not going to happen; the people and the dams are here to stay."

### What Next?

With the MSCP's approval, attention now shifts to the next step: implementation. Reclamation will be in charge of implementing the multimillion dollar program, with input from a 35-voting member steering committee comprised of representatives from the states, tribes and other interest groups that played a role in the program's development.

Implementation of the hundreds of activities detailed in the HCP will be guided by the principles of "adaptive management." As Reclamation works over the next 50 years to put the plans identified on paper into practical application, it will establish a program to use the best available scientific information along with monitoring results and research to evaluate the successes and failures of individual actions. According to Reclamation, this information will ensure the MSCP's conservation measures are flexible and adaptable to allow for changing needs and priorities.

The scientific community is generally in favor of this approach because of this flexibility, and Spiller said biologists plan to also develop pilot projects to determine the success of different approaches before applying them to a larger area.

Gillon concedes that it may be better that the agencies are coordinating their efforts and budgets to help recover species, but that the overall results of the

*"We have to build habitat and keep our fingers crossed that if we build the habitat, the species will come."*

*– Gary Hansen, CRIT*

MSCP remain to be seen. One area that concerns her is funding. Federal funding for the program is not assured; it will

require annual appropriations from Congress.

"We want reliability assurances that the funding will definitely occur over the life of the program – that it will indeed be funded and implemented for the entire 50 years," she said. As for the plan to use experiments and pilot projects to test hypotheses of habitat restoration, "My question is: What if they don't work? What do we do then?"

Cohen, too, is concerned that the MSCP may not recover endangered species, especially in light of the program's take permits for federal and state agencies and water purveyors. The MSCP, he said, "provides 50 years of protection; Reclamation and the states have no real pressure to do restoration. The ESA was the hammer and if the MSCP goes through, the hammer goes away."

Whether the environmental community files suit to regain that ESA hammer, or pursue other objections to the plan, remains to be seen.

Reclamation officials say they remain hopeful that the environmental community will resume an active role in the MSCP during its implementation.

"A lot of work remains to be done. My hope is that the environmental groups will see the advantage of participating in the implementation process," Gray said. "We would welcome their input."

For now, Reclamation and other agencies/organizations involved in the MSCP are moving forward with the program's implementation. Echoing a familiar edict from the movie *Field of Dreams*, Hansen summed up MSCP participants' overall expectation: "We have to build habitat and keep our fingers crossed that if we build the habitat, the species will come." •



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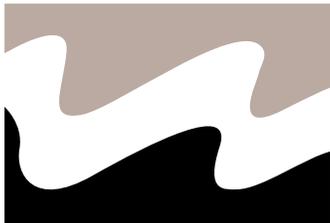
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