

# Presentation to July 8, 2003 Meeting of the Green River Basin Advisory Group

## *An Update on Colorado River Programs and Issues*

by

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and John Shields

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at

Seedskaadee National Wildlife Refuge



## *Topics for Today's Update:*

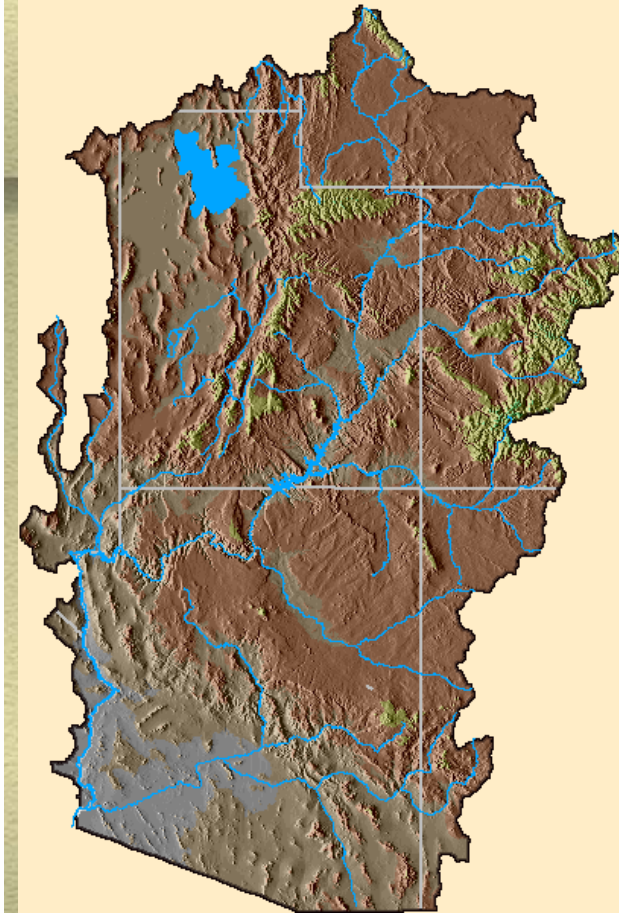
- Seven State Dialogue About and Status of Implementing California's Colo. River Water Use Plan
- Colo. River Basin Salinity Control Program
- Upper Colo. River Endangered Fish Recovery Program
- Upper Colo. River Commission
- June 2003 Silvery Minnow Court Decision
- Field Activities
  - Water Supply Situation



This is a working draft of California's Colorado River Water Use Plan. It is subject to further editing and revisions based on additional information, comments received and ongoing associated environmental reviews of Plan components. The draft Plan will be finalized following completion of the environmental reviews and the subsequent execution of agreements associated with the Plan which are scheduled to occur before the end of January 2001.

**CALIFORNIA'S**  
**COLORADO RIVER WATER**  
**USE PLAN**

**COLORADO RIVER BOARD OF CALIFORNIA**  
**THE RESOURCES AGENCY**  
**STATE OF CALIFORNIA**



**Physiographic Map**  
**of the Colorado River Basin**

# California's Efforts to Execute a Quantification Settlement Agreement Continue On . . .

- March 12 – IID, CVWD, SDCWA and MWD reach agreement on revised Quantification Settlement Agreement (QSA) and provide briefing on the agreement to Dept. of Interior officials.
- March 13 – Seven Basin States Meeting provided briefing to the other six States by CA concerning the revised QSA and related agreements.
- March 18 – U.S. District Judge Whelan grants preliminary injunction ordering Dept. of the Interior (DOI) to restore Colorado River water deliveries to Imperial Irrigation District to 2002 level, finding DOI violated procedures in reducing IID's apportionment (doesn't change 4.4 MAF limitation for 2003).
- April 4 – Asst. Sec. for Water and Science sends letter to CA DWR thanking for 3/12 briefing and states proposal makes significant progress.
  - Letter stated: “uncertainties associated with this proposal fall into three primary categories ... first, proposal is contingent on action by the CA Legislature ... second, the other ... basin states should have appropriate time to review the detailed proposal and provide comments ... third, DOI would not be able to assess ... the proposal until it receives confirmation following aspects will be consistent with ... federal law.”
- April 16 – Meeting of the Basin States Technical Staff in Las Vegas, NV to develop detailed understanding of the proposed Revised Quantification Settlement Agreement (RQSA) and appurtenant agreements



# California's Efforts to Execute a Quantification Settlement Agreement Continue On . . . continued

- April 16 – U.S. District Court Judge Whelan orders DOI to undertake new beneficial consumptive use review
- April 24 - DOI initiates its *de novo* 43 C.F.R. Part 417 review of IID's estimated water requirements for calendar year 2003
- April 28 – Asst. Sec. for Water and Science advises CVWD and MWD their 2003 water deliveries will be reduced to comply with March 18<sup>th</sup> injunction preventing DOI from reducing IID's 2003 deliveries below 3.1 MAF
  - **2003: IID @ 3,100,000 AF; CVWD @ 245,800 AF and MWD @ 594,300 AF**
- April 29 – CA Senate Committee on Agriculture and Water Resources Informational Hearing held on “The Proposed QSA: What is the agreement and how will it affect California?” Testimony by the CA Resources Agency, CA DWR and four RQSA parties (MWD, IID, CVWD and SDCWA).
  - MWD waffled on its support for the RQSA, saying, “it if sounds like we're indefinite, it's true. We are still trying to make up our minds.”
- May 6 – Arizona DWR letter to MWD's Chairman asking for clarification:
  - “What are the intentions of MWD with regards to executing the QSA? If, as stated in your [April 29th hearing] testimony, MWD may not benefit from the 2003 QSA and ISG, what actions will MWD take as the junior right holder to meet the limitations of the California normal apportionment of 4.4 MAF?”



# California's Efforts to Execute a Quantification Settlement Agreement Continue On . . . continued

- June 24 – MWD proposes to CA Gov. Davis an alternate funding proposal for the Salton Sea environmental mitigation needed for IID/SDCWA transfer
  - Proposes \$6.00/AF surcharge on all Colorado River water used in CA; MWD states proposal would shift cost from state taxpayers to water agencies who benefit from transfer; goes on to state: “The water transfer, while potentially a valuable resource, is not essential in order for CA to live within its annual apportionment of Colo. River water, or for Southern CA to have a long-term reliable water supply.”
- June 25 – CVWD, IID and SDCWA submit their joint proposal to CA Gov. Davis differing in matters of money, timing and urgency from MWD's proposal; includes proposal to spend an additional \$30 million for Salton Sea mitigation, calls for IID to SDCWA transfer to begin immediately and labels sale crucial to state's water picture.
- July 1 – House Resources Water and Power Subcommittee holds hearing in El Cajon, CA concerning CA's Colo. River Water Use Plan and the status of RQSA.
- July 3 – After weeks of conference calls and meetings, the six Colo. River Basin States reach agreement on letter to CA Gov. Davis supporting the RQSA and advising of concerns/issues with the current draft agreements; willing to work with CA to resolve remaining issues (off-ramps, inadvertent overrun payback issues, certainty of measures, etc.)
- July 3 – USBR issues initial beneficial use determination of the amount of Colorado River water needed for the beneficial use needs of the IID for calendar year 2003.



# Colorado River Basin Salinity Control Program

- Colorado River Basin Salinity Control Forum met on May 21, 2003 in Midway, Utah
  - Bureau of Land Management Director Kathleen Clarke advised the Forum of BLM's commitment to better understanding salinity and participating in the basin wide salinity control effort.
  - BLM is committed to improving its reporting of salinity control efforts on public lands under its management.
  - BLM now has a permanent Colorado River Basin Salinity Control Coordinator position established and filled – in Salt Lake City, Utah. Heidi Hadley, selected as the Coordinator, will report directly to the Assistant Director for Renewable Resources in BLM's headquarters office in Washington, DC.



# Colorado River Basin Salinity Control Program - continued

- The Forum's Selenium Committee will be issuing an internal white paper discussing the pros and cons of and options for the Forum to explore opportunities to reduce **selenium** loading in the Basin while continuing to have **salinity control** as the primary focus of its efforts.
  - The Selenium Committee has created technical and policy subcommittees to consider the ramifications and precedents of overtly considering selenium concentration reductions in salinity control project proposals.
- Next Forum and Advisory Council meetings scheduled to be held in Santa Fe, New Mexico on October 27-29, 2003.
- The Forum's Work Group will be meeting in Montrose, CO on August 6<sup>th</sup>.





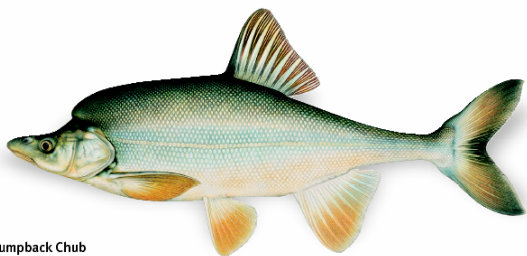
# Upper Colorado River Endangered Fish Recovery Program

- State Engineer's Office to host the July 31<sup>st</sup> – August 1<sup>st</sup> meeting of the Management Committee in Cheyenne
- Development of the Fiscal Year 2004-2005 Biennial Work Plan is underway
- This spring and summer's experimental nonnative fish management project (removal) projects are focusing on northern pike, smallmouth bass and channel catfish to determine if populations of these species in certain river reaches in CO and UT can be reduced to a level that will enable endangered and other native fishes to coexist and thrive. Three Recovery Program partners – the states of Colorado and Utah and the U.S. Fish and Wildlife Service (FWS) – will conduct the work in 438 miles of river in the Upper Colorado River Basin in Colorado and Utah. Biologists from Colorado State University (CSU) will also participate.



# Yampa River Management Plan and Programmatic Biological Opinion Update

- A revised draft of the Yampa management plan and first draft environmental assessment (EA) have been submitted to the Interior Regional Solicitor for review. The EA, which incorporates a biological assessment, also has been submitted to the USFWS Office in Grand Junction for review, prior to initiating formal Section 7 consultation.
- After Solicitor's approval, a Notice of Availability (NOA) will be published in the Federal Register, after which a 30-day comment period will follow. Within the comment period, three public meetings will be held in the Yampa Basin.



Humpback Chub



Colorado Pikeminnow



# Yampa River Management Plan and Programmatic Biological Opinion Update - continued

- August 11<sup>th</sup> meeting on the Yampa River Management Plan and Programmatic Biological Opinion to be held at the ***Little Snake River Valley Library*** in *Baggs* from 7:00 to 9:00 p.m.



**Stocking Status: Species, numbers and sizes of fish to be stocked during 2003 pursuant to the Upper Colorado River End. Fish Recovery Program's integrated stocking plan (numbers meet or exceed stocking plan requirements)**

<b>Species</b>	<b>River Section</b>	<b>Number/Season</b>	<b>Size (inches)</b>
<b>Bonytail</b>	Middle Green	~ 12,000 Fall ~ 2,700 Summer-Fall	> 8
	Lower Green	~ 5,300 Summer-Fall	> 8
	Colorado (in CO)	1,000-1,500 Spring ~ 12,000 Fall	> 8
	Colorado (in UT)	~ 2,700 Summer-Fall	> 8
<b>Razorback Sucker</b>	Middle Green	~ 8,000 Spring ~ 1,900 Summer-Fall	12
	Lower Green	~ 4,900 Fall ~4,900 Summer-Fall	> 12
	Colorado (in CO)	~ 9,900 Summer-Fall	> 12
<b>Colo. Pikeminnow</b>	Colorado (in CO)	~ 2,250 Summer-Fall	> 6



# State Engineer's Office Hosted the June 17<sup>th</sup> Meeting of the Upper Colorado River Commission at the Half Moon Lake Resort Near Pinedale, Wyoming

- The Commission adopted resolutions on the use and accounting of Upper Basin Water Supplied to the Lower Basin in 1) New Mexico by the Proposed Navajo-Gallup Water Supply Project and 2) Utah by the Proposed Lake Powell Pipeline Project.
  - These resolutions support the development of municipal water supply projects in areas within New Mexico and Utah that are within the Lower Basin (as defined by the Colo. River Compact) which have no other viable water supply.
  - Difficult issues requiring much deliberation, weighing pros and cons, and negotiation – with view to preserving Wyoming's "bottom line" that interbasin water marketing is both illegal and not in our best interests.



*Views from the Lodge at Half Moon Lake Resort*





## Wyoming's Caveats regarding the Upper Colo. River Commission Resolutions supporting New Mexico's Navajo-Gallup and Utah's Lake Powell Pipeline Water Supply Projects

- The State of Wyoming supports the projects and believes adoption of the resolutions by the Commission was appropriate. However, given the lengthy debates and discussions over a considerable period of time regarding the wording of the Resolution and the numerous issues that arose relative to Compact interpretation, Commissioner Tyrrell read into the record Wyoming's position concerning future resolutions involving the use of Upper Colorado River Basin water:
  - 1. Wyoming's support of the Navajo-Gallup resolution cannot be considered as establishing a precedent relative to future resolutions.
  - 2. Wyoming's adoption of this resolution does not, in any manner, constitute a waiver of Wyoming's right to withhold its consent and support for similar or other proposed transfers.
  - 3. Any future resolutions supporting similar or other proposed transfers will be considered by Wyoming on a case-by-case basis.



## Upper Colorado River Commission Report - continued

- The Upper Colorado River Commission also adopted a resolution recognizing the contributions of Tom Davidson, who was a former Commissioner and Alternate Commissioner for the State of Wyoming.
- The Commission received reports from the Bureau of Reclamation, Western Area Power Administration and the U.S. Fish and Wildlife Service.
- The next meeting of the Upper Colorado River Commission to be held in St. George, Utah on October 7-8, 2003.



# Rio Grande Silvery Minnow v. Keys

- On June 12, the U.S. Tenth Circuit Court of Appeals affirmed 2-1 a district court decision which held that the U.S. Bureau of Reclamation “...retains sufficient discretion over its river management and operations in the middle Rio Grande...to require USBR to consult... under Section 7(a)(2) of the ESA.”
  - The district court granted preliminary injunctive relief, and **ordered USBR to reduce contract deliveries from the San Juan-Chama Project** and/or the Middle Rio Grande Project and/or restrict diversions consistent with an order dated April 19, 2002.
- “As the majority and dissent agree, this case turns on whether the government retains discretion under the contracts with the water users to apply the provisions of the...ESA.”



# Rio Grande Silvery Minnow v. Keys - continued

- The court's opinion reviews the contracts governing USBR's allocations of water, case law -- a trio of Ninth Circuit cases, the Reclamation Act, statutes authorizing the San Juan-Chama and Middle Rio Grande projects, and ESA. A 3-page concurring opinion states even if the "...contracts themselves do not expressly retain authority in the agency to reduce water deliveries except in the event of naturally caused water shortages, under the unmistakable terms doctrine the ESA nonetheless modifies the contracts because the contracts do not affirmatively state that future legislation will not apply."
- Judge Kelly's 14-page dissent rebuts this and other majority holdings, point-by-point, concluding: "This case has enormous significance.... it is in considerable tension with Supreme Court authority...recognizing that the federal government generally must respect state [law and] water rights and lacks any inherent...right in water originating in or flowing through federal property.... Under the court's reasoning, the ESA, like Frankenstein, despite the good intentions of its creators, has become a monster."



# Rio Grande Silvery Minnow v. Keys - continued

- U.S. Senator Pete Domenici (R-NM) has announced his intention to introduce legislation that would reverse the effects of this ruling.
- According to a June 20 news release, Senator Domenici's proposed legislation would: (1) prevent enforcement of the 10th Circuit Court panel decision by decreeing that habitat requirements for the silvery minnow have been met based upon the March 2003 Bio. Opinion issued by the U.S. Fish & Wildlife Service; (2) legislate that the San Juan-Chama project and the Middle Rio Grande project water contracts supersede the ESA; (3) limit the USBR's use of funds to implement changes to Rio Grande water contracts; (4) prohibit the use of inter-basin water transfers (San Juan-Chama water) to meet ESA requirements; and (5) allow for the federal purchase of privately held water if there is a willing seller.



## Rio Grande Silvery Minnow v. Keys - continued

- **Bottom Lines:** The 10th Circuit panel upheld an earlier district court decision directing the USBR to reduce its contracted water deliveries (which include Colo. River Basin water by transbasin delivery) to provide additional water for the protection of the silvery minnow, an endangered species listed under the Endangered Species Act (ESA).
- The court broadly construed the discretionary authority of USBR to reduce water deliveries in favor of endangered species protection. It also concluded that the ESA's requirement that federal agencies conserve species and avoid jeopardy gives agencies the ability to modify existing government contracts absent an unmistakable waiver of sovereignty by the federal government.



# Upper Colorado River Basin Water Supply Situation Update

<b>Reservoir</b>	<b>Observed May Inflow (KAF)</b>	<b>Percent of Average</b>	<b>April thru July Forecast Inflow (KAF)</b>	<b>Percent of Average</b>	<b>Current Storage as Percent of Capacity</b>
Lake Powell	<b>1,156</b>	<b>50</b>	<b>4,250</b>	<b>54</b>	<b>55</b>
Fontenelle	<b>76</b>	<b>39</b>	<b>450</b>	<b>52</b>	<b>77</b>
Flaming Gorge	<b>99</b>	<b>33</b>	<b>540</b>	<b>45</b>	<b>72</b>



May we answer questions you have about  
these or other topics?

***Thank You***

