COLORADO RIVER PROJECT

River REPORT

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A project of the Water Education Foundation

COMMON CAUSE:
Border Water Issues Unite, Divide U.S., Mexico

By Glenn Totten

Water and environmental concerns have long existed along the U.S.-Mexico border, but those concerns may be growing in an era of increasing supply-demand pressures, population growth and regionalization of border economies in the two countries. Demands on the western border region's principal water supply, the Colorado River, are growing with population and economic development, as are demands to preserve at least part of the river's historic delta region in Mexico.

These increasing demands on the river have brought into sharper focus an array of water supply and environmental issues – how to supply growing border areas with irrigation and municipal water, how to keep fragile riparian habitat available for endangered species and how to get binational institutions and stakeholders to find common cause on solutions to often nettlesome border issues.

With virtually every drop of Colorado River water allotted to one user or another, any shift in water allocation in the border environment, near the river's end point at the Gulf of California, would be acutely felt and would be controversial. Some see it as a zero-sum game – there is a finite amount of water to distribute for various uses, and any efforts to change the distribution pattern inevitably must take from supplies already allocated to one or more existing users. Strategies for finding solutions include traditional diplomatic avenues, voluntary stakeholder collaborations, private initiatives and lawsuits. Each approach has its advocates and doubters.

Some have suggested that the border is becoming less relevant as the historic business, social and family relationships

Continued on page 4

In This Issue:

Dear Readers

The Colorado River Project and the Water Education Foundation lost a good friend with the recent death of **Dennis Underwood**. *Dennis was frequently quoted in* River Report *because of his deep knowledge of Colorado River issues and his willingness to share that knowledge with others. Before he became chief executive officer of the Metropolitan Water District of Southern California earlier this year, Dennis was MWD's vice president for Colorado River Issues, where he was instrumental in forging consensus among the basin states behind California's 4.4 Plan. He will be missed by everyone in the Western water world.*

Dennis was a regular at the Foundation's biennial Colorado River Symposium. Next year, the Foundation will publish the edited Proceedings of the 2005 Symposium. This edited transcript of the complete Symposium is a great tool for understanding the critical issues facing the Colorado River Basin. It features the views of top policy-makers and stakeholders on a range of issues including water rights, border issues, endangered species, recreation, climate change and more. The Proceedings book makes a great reference for understanding the latest viewpoints from Colorado River experts.

Rita Schmidt Sudman

River Report *is a project of the Water Education Foundation*

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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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WATER EDUCATION FOUNDATION

Basin Briefs

UPPER BASIN:

'Global Solution' to Colorado Water Dispute Under Study

A new study is under way to evaluate a possible "global solution" to ongoing water disputes between Colorado's rural Western Slope and the more urban Front Range around Denver. The study will examine the feasibility of building an off-stream reservoir near Wolcott, Colo., that could supply water to irrigators who now receive their water from Green Mountain Reservoir. The project also would provide water for environmental uses of the Eagle River, a tributary of the Colorado River, and free up water in Green Mountain Reservoir for use by Front Range cities.

Details of the proposal are still sketchy, but parties hope a plan will emerge that harmonizes the interests of Western Slope irrigators with the Front Range's growing water needs while also enhancing habitat for endangered fish. Earlier technical studies concluded that a Wolcott Reservoir could hold between 160,000 and 350,000 acre-feet of water, and a 2004 feasibility study looked at three smaller storage scenarios.

Front Range and Western Slope agencies will share the $200,000 cost of the new study, which will evaluate cost, water quality and hydrology. In addition to looking at the feasibility of a Wolcott Reservoir, the study will evaluate re-operation of Green Mountain Reservoir, about 60 miles west of Denver, to allow Grand Valley irrigators, who currently receive about 52,000 acre-feet of water from Green Mountain, to draw their water from Wolcott. The switch would allow water to be diverted from Green Mountain to the Front Range via the existing Roberts Tunnel. Water from the proposed Wolcott Reservoir also would be used to enhance fish habitat in the Eagle River.

Results Unclear from Glen Canyon Flow Experiments

Despite a decade of experiments, scientists are still unsure what effects different flow regimes from Glen Canyon Dam have on areas below the dam. Several different flow combinations have been tried, including simulated floods, in efforts to understand how conditions can be improved for native species and recreation to more closely resemble the river's natural flow variations.

In early October, Reclamation continued with a series of short-term flow experiments in an effort to understand the relationship between dam operations and dissolved oxygen concentrations in the river. Low dissolved oxygen levels are harmful to fish. A combination of large amounts of sediment and organic matter from a five-year drought followed by above-average runoff during the spring and summer of 2005 has depleted dissolved oxygen levels below the dam. Researchers are trying to determine if low releases spread among varying numbers of generating units will inject more oxygen into the water.

During August and September, Reclamation tried a series of alternating steady and low fluctuating experimental releases to evaluate their effects on sediment movement and native fish. The experiments were recommended by the Glen Canyon Adaptive Management Work Group.

Living Rivers, a group that advocates decommissioning Glen Canyon Dam, issued a report in late October concluding that the adaptive management program has done more studying than acting to recover endangered species and rebuild habitat in Grand Canyon. •

LOWER BASIN:

Study Finds Salt Cedar Management Options Limited

Opportunities for managing salt cedar as a way of augmenting water supplies may be limited, according to a white paper produced by the Arizona Department of Water Resources (ADWR). The study cites the presence of endangered species, complex land ownership and variability in evapotranspiration (ET) rates as factors that should be considered before undertaking a salt cedar removal or eradication project.

Salt cedar has become established in several reaches of the Colorado River, mainly south of Davis Dam. Where it is established, salt cedar's deep root systems are believed to deplete groundwater supplies and increase soil salinity, making areas crowded with salt cedar inhospitable to less salt-tolerant native plants. Projects to eliminate salt cedar by physical removal have proved costly, and water quality concerns limit eradication projects using chemicals.

The ADWR paper notes that studies of salt cedar removal projects have yielded mixed results. A recent study cited in the paper concluded that increases in water yield following salt cedar removal were likely to occur only when a salt cedar stand containing high leaf area was replaced by vegetation with a low leaf area. Other studies indicate wide variability in ET measurements for salt cedar, suggesting that water yield improvements also could vary after removal projects.

Opportunities for removal projects also are complicated by differing land ownership and management along key reaches of the river, the ADWR study found. Federal and state agencies, Indian tribes and private land owners control access to land where removal projects might occur. In addition, native species, such as the Southwest willow flycatcher (listed as endangered under the federal Endangered Species Act), nest in salt cedar along the west side of Topock Marsh. •

FEATURE

Continued from front page

between the U.S. and Mexico grow closer. The relationship also extends to water, but as competition for water increases, will it be an issue that brings the two countries closer together or one that divides them?

"We're moving from a period of relative abundance of water on the river toward a future where we're going to have to work quite a bit harder to meet the water needs of people as well as the environment and agriculture in both the United States and Mexico," says Peter Culp, project manager and attorney for programs at the Sonoran Institute.

Border water controversies cover a wide range of environmental and economic issues, including habitat preservation and enhancement, water quality and water to support agricultural and economic development. In the past, the U.S. and Mexico might try to address those issues separately or through limited binational programs, but as border cities and economies have grown more interdependent, so has the need to find solutions that satisfy constituencies on both sides of the border. A solution to a problem on one side of the border likely will have repercussions, sometimes negative, on the other side.

There have been numerous official and nongovernmental efforts over many decades to address border water issues, but progress has been slow. The decades of negotiations and hundreds of millions of dollars spent on wastewater treatment facilities to clean up two of the borders most notoriously polluted rivers, the Tijuana River near San Diego and the New River flowing through Mexicali and Calexico, are examples of the slow pace of binational efforts to address common problems. Similarly, it took 15 years for Mexico to repay a 1.5 million acre-feet water debt September 30 on the other major binational border river system, the Rio Grande.

"The long-term health of the riparian corridor will depend on base flows and pulse flows."

– Osvel Hinojosa

Three current issues relating to the Colorado River illustrate both the range of border issues and the different kinds of forums in which they are addressed. One example is a recently released white paper of recommendations for operation of the Yuma Desalting Plant (YDP) offered by a collaboration of agencies and stakeholders as a step toward addressing environmental problems in Mexico while also providing assurances to U.S. water users about their supplies. The collaboration is an example of how public and private stakeholders can find common ground where little was thought to exist.

A second border issue burst on the scene in July, when a lawsuit was filed seeking to stop the reconstruction of a 23-mile section of the All-American Canal. The case raises complex legal questions about rights to water that currently seeps out of the unlined canal and across the border, where it helps recharge the Mexicali aquifer, and the application of U.S. environmental laws.

A third emerging issue is the development of shortage guidelines for the Colorado River system in the U.S. If the guidelines are adopted, and if a shortage were declared, how would that affect Mexico? Under a 1944 water treaty between the U.S. and Mexico, Mexico's share of the river could be decreased "in the event of extraordinary drought or serious accident to the irrigation system in the United States," but that language has never been invoked, so it is unclear how it might interplay with shortage guidelines.

This issue of *River Report* focuses on water and environmental issues facing the U.S. and Mexico in the Colorado River Basin drainage they share. How the two countries will cope with the water challenges they face was the subject of a panel discussion at the

The Colorado River in the limitrophe section.

Water Education Foundation's Colorado River Symposium Sept. 28-30 in Santa Fe, N.M.

Background

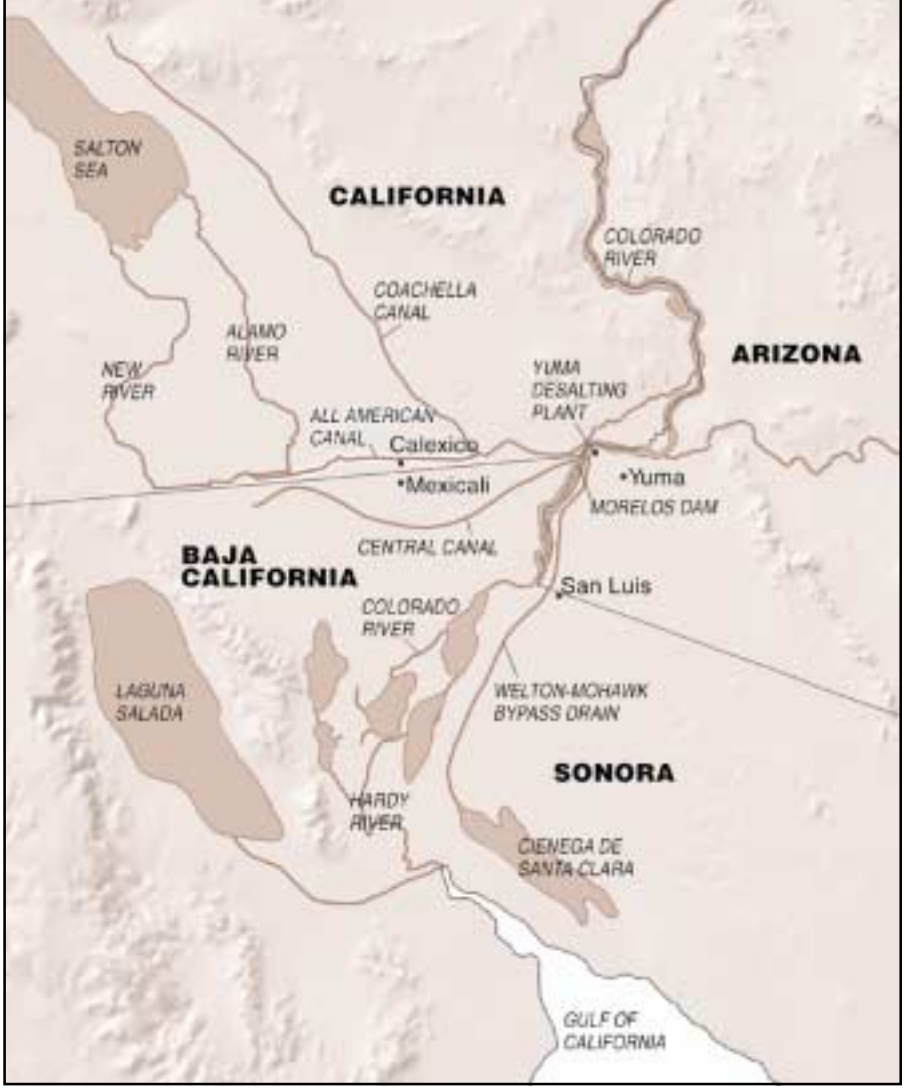
The border region affected by the Colorado is the area along the California and Arizona borders with Mexico. The region includes urbanized areas such as the Mexicali-Calexico and the San Diego-Tijuana areas, but also major agricultural areas such as the Imperial and Mexicali valleys and important environmental features along the river corridor and its delta at the Gulf of California.

The rapidly growing urban areas along the border are spawning regional economies that attract population and new investment. Chris Frahm, an attorney with Hatch & Parent, who represents water agencies and municipalities, noted that Mexico accounts for $33 billion in trade annually through the San Diego Customs District. The San Diego-Tijuana regional economy is one of the engines driving water decisions, she said, referring to the San Diego County Water Authority's (SDCWA) transfer agreement with Imperial Irrigation District that was part of the Quantification Settlement Agreement (QSA).

San Diego County is expected to increase its water use by 118,000 acre-feet per year by 2020 to keep pace with a projected population increase to 3.8 million people, said Dan Hentschke, SDCWA general counsel. By 2020, Tijuana's population could be the same, with current water use there projected to double to 170,000 acre-feet per year, he said.

A similar pattern is emerging about 150 miles east of San Diego, where the Mexican city of Mexicali sprawls along the border south of its much smaller California counterpart, Calexico. Mexicali has grown to an estimated 750,000 people in just a few decades, and will hit 1.2 million by 2020.

These border communities are centers of economic growth, but they also are straining available water resources that serve municipal and irrigation needs and sustain environmental values on both sides of the border. The recent drought in the Colorado River basin is a reminder of how thinly those resources are stretched, and no one knows if the drought has ended yet.



Besides the thriving economy outlined by Frahm and others, there is the environment of the Colorado River's riparian corridor and its delta at the Gulf of California. Once a two-million-acre wetland ecosystem, the river's delta region has shrunk to about 150,000 acres because much of the water that formerly flowed into it is diverted upstream in the U.S. and Mexico. However, the remaining wetlands still hold significant ecological value, providing habitat for hundreds of thousands of migratory birds.

With the development of the Colorado River's water and power resources has come an influx of population and agriculture. Intensively farmed areas of southeastern California divert almost 4 million acre-feet of water per year from the river to grow an astonishing variety of crops. South of the border, Mexicali farmers also use water from the river and groundwater to cultivate crops.

Efforts to restore the lower Colorado River in the U.S. and its delta habitat in Mexico have taken decades to gain momentum, but activity has quickened recently on both sides of the border. State and federal agencies in the U.S. have recently signed off on a 50-year Multi Species Conservation Program (MSCP) to restore more than 8,100 acres of riparian habitat between Hoover Dam and the U.S.-Mexico border. The ambitious plan aims to protect six endangered species, restore cottonwood and willow habitat, while at the same time ensuring certainty of existing river water and power operations (see the Summer 2005 issue of *River Report*).

If anything, figuring out what to do about the delta region in Mexico may be

The delta's largest remaining wetland is the Ciénega de Santa Clara.

harder than the MSCP because the potential area for restoration is larger and there are more institutions that could be involved. Osvel Hinojosa is director of conservation in Sonora for Pronatura Noroeste, a Mexican nongovernmental entity (NGO) working on delta restoration. Some of the largest patches of riparian habitat remaining in the entire Colorado River basin occur between Morelos Dam and the mouth of the river on the Mexican side of the border, he said.

For the riparian corridor to maintain ecological health, it must have base flows of water and periodic, higher pulse flows to promote natural regeneration of cottonwoods and willows, Hinojosa said. "The long-term health of the riparian corridor will depend not only on the base flows but also on a binational solution for pulse flows," he said.

Under current operating practices, what is left of the Colorado's historic delta area is sustained by administrative losses, water bypassed to Mexico from U.S. sources, occasional excess flows that can't be used or stored in U.S. reservoirs and any water unused by Mexico (including agricultural return flows). Such excess flows, or pulse flows, occur unpredictably about once or twice a decade, a rate some believe is not frequent enough to sustain the habitat.

A part of the Mexican Delta, the Ciénega de Santa Clara, has emerged in recent years as a focal point for restoration. The 12,000-acre marsh is the largest remaining wetland in the Colorado River delta region, and is maintained by saline agricultural drainage flows from the Wellton-Mohawk Irrigation and Drainage District across the border in the U.S. Hinojosa describes the Ciénega as a very important area for birds, supporting 70 percent of the total population of the Yuma clapper rail, an endangered bird protected by both countries.

YDP Collaboration

The recent history of the Ciénega during a drought period is instructive both for what it says about the behavior of stakeholders and the ability of those stakeholders to come up with collaborative solutions. As the drought deepened after 2000, water users and suppliers, notably the Central Arizona Project (CAP), grew anxious that their Colorado River supplies could be cut back, so some called for operation of the YDP as an additional source of supply. The idea was that reducing salinity in the drain water now discharged to the Ciénega would qualify it to be sent to Mexico as part of the 1944 treaty obligation, thus freeing up a corresponding amount of Colorado River water for use in the U.S. The 1944 treaty requires the U.S. to deliver 1.5 million acre-feet per year of Colorado River water to Mexico.

That idea alarmed environmentalists. They feared operation of the desalter would reduce the average 108,000 acre-feet of water flowing each year from Wellton-Mohawk drains to the Ciénega, potentially jeopardizing its marsh habitat. By 2003, positions had hardened into what looked like an intractable border water conflict.

But in April 2005, an unlikely collaboration of environmentalists, CAP officials and state and federal representatives announced agreement on a set of recommendations under which the YDP could be operated and the current bypass flows that sustain the Ciénega replaced by water from other sources. Culp, who was part of that YDP/Ciénega work group, said the process could be a model for binational discussions to address other border issues.

A key to the workgroup's success, Culp said, was that members came to

Border issues panelists (l-r) Chris Frahm (moderator), Bob Snow, Dan Hentschke, Malissa Hathaway McKeith, Peter Culp, Osvel Hinojosa.

the table as individuals, not as representatives of interest groups out to satisfy narrow, parochial objectives. Over months of discussions, what he called "the discourse of entitlement" gave way to talks aimed at finding solutions that would reduce or eliminate the risk of shortages feared by U.S. water users while also ensuring the maintenance or enhancement of environmental values in the Ciénega. Any solution had to comply with binational water quality requirements and preserve existing rights to use Colorado River water.

"We all have a stake in producing enough water for people, and we also have a stake in making sure that the Ciénega survives," said David S. "Sid" Wilson, general manager of the CAP, who convened the workgroup.

The workgroup's recommendations included a set of short-term measures such as correcting deficiencies in the YDP design, establishing a water shortage contingency fund to mitigate any water supply disruptions, implementing a monitoring program in the Ciénega to determine the relationship between water quantity and quality and maintenance of a healthy ecosystem and implementing a pilot, voluntary program of consumptive use reduction and forbearance to reduce the potential for shortages.

A companion set of long-term measures included the following:

- Limit the volume of bypass flow from Wellton-Mohawk through advanced water conservation practices;
- Continue short-term measures such as the shortage alleviation contingency fund and the voluntary, consumptive use and forbearance program;
- Continue water inflow to the Ciénega at quantity and quality levels necessary to maintain, and where possible, improve its value as an ecological preserve; and
- Treat excess Yuma-area groundwater at YDP for use as M&I supply.

The U.S. Bureau of Reclamation's Lower Colorado Region held public meetings in October in Phoenix and Yuma to collect information on potential methods to recover or replace agricultural return flows from Wellton-Mohawk. Operation of the YDP is one option being considered, but Reclamation has set no timetable for making a decision or issuing a proposal.

> *"It is a case that has tremendous implications in terms of the relationships between our countries and how we manage water."*
>
> *– Malissa Hathaway McKeith*

Robert Snow, an attorney for the Interior Department, said the YDP workgroup provided an important adjunct to the diplomacy and ongoing binational discussions of water issues. The "bedrock" of the relationship is the 1944 treaty, but Snow said that does not preclude other collaborations. "I think there are solutions coming from within Mexico. I think America can be a partner for that, with the Basin states, with the knowledge of the stakeholders in the [Colorado] Basin," he said.

Hinojosa's group, Pronatura, is spearheading an initiative to restore the delta region in collaboration with organizations on both sides of the border, local communities and some Mexican government agencies. The initiative's primary goal is restoration of the delta ecosystem not to some pristine past condition, but to what is possible within existing development in the Mexicali Valley and the limitations of the existing floodplain, he said.

To achieve that goal, Hinojosa said legal protection for wetlands needs to be expanded beyond the existing Biosphere Reserve. A water program needs to be created to get water to the wetlands, but it must be a program that includes participatory management by local communities and government agencies, he said.

"We are creating a water trust in Mexico to acquire water rights within the Mexicali Valley and dedicate them for the environment to maintain a perennial base flow, all with Mexican water and within Mexican institutions," Hinojosa said. But the long-term health of the riparian system will also require some kind of binational agreement on pulse flows, he said.

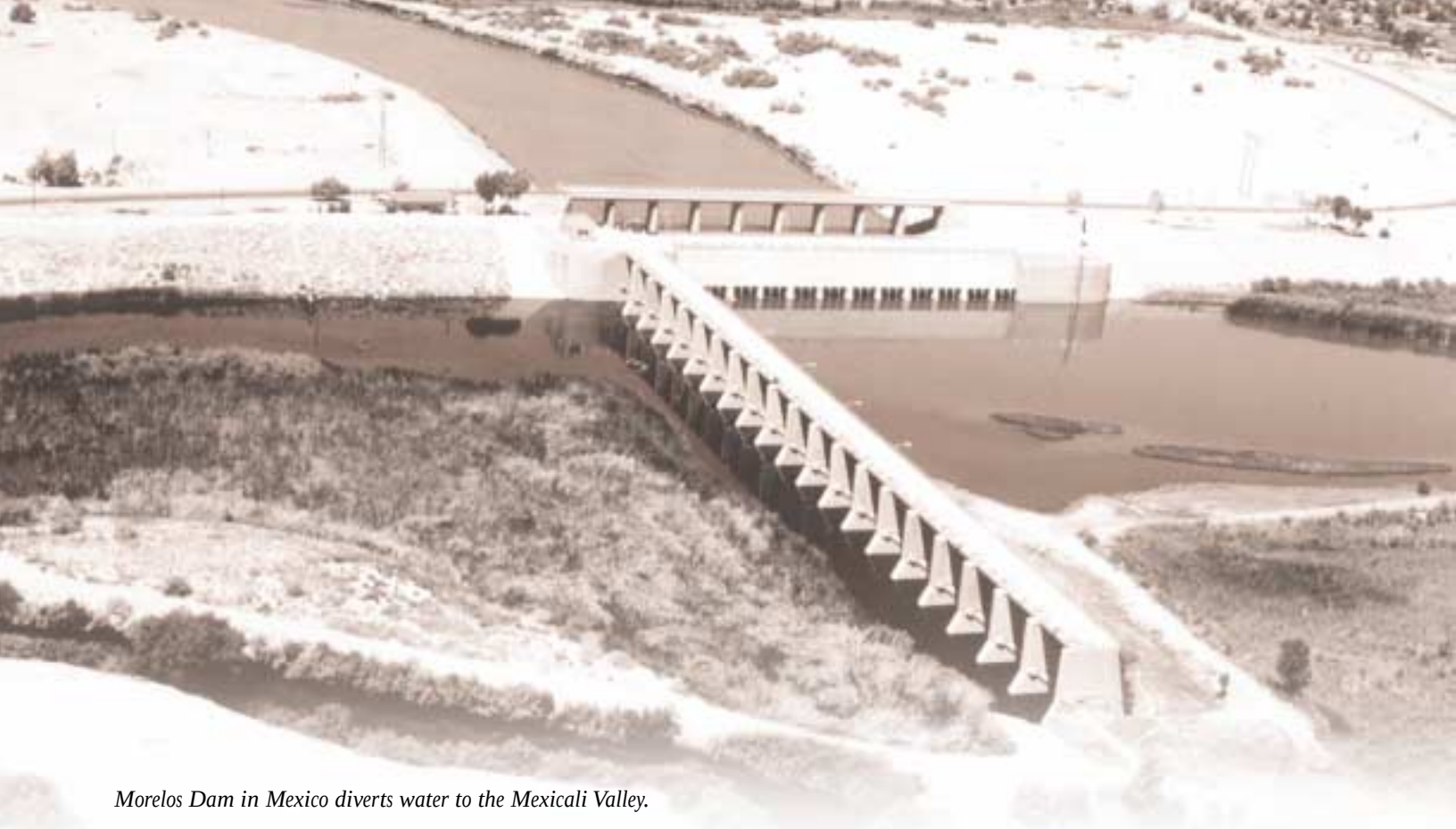
All-American Canal Case

A border issue that seems to encapsulate many of the concerns about water and the environment is the litigation filed over the lining of the All-American Canal, located in California just north of the U.S.-Mexico border. Authorized by Congress in 1988, the lining project has been stalled not only by funding problems, but also by concerns raised by the Mexican government.

The project entails constructing a

Institutions Working on U.S.-Mexico Water Issues

An alphabet soup of institutions is at work on border water issues, chief among them the binational International Boundary and Water Commission (IBWC), which administers the 1944 water treaty between the U.S. and Mexico. Other unilateral institutions include the North American Development Bank (NADB) and the Border Environmental Cooperation Commission (BECC), the U.S. Interior and State departments, EPA and its Mexican counterpart, Secretaria de Medio Ambiente y Recursos Naturales (SEMARNAT). The Comisión Nacional del Agua (CNA), Mexico's National Water Commission, is a division of SEMARNAT with state offices in Baja California and Sonora that manages Mexico's water supply. A host of NGOs also are actively involved on both sides of the border. •



Morelos Dam in Mexico diverts water to the Mexicali Valley.

parallel lined canal section adjacent to 23 miles of existing unlined canal and would conserve an estimated 67,700 acre-feet of water annually that now seeps out of the canal and flows a short distance underground across the border, where it helps recharge the Mexicali Valley aquifer in Mexico, a key source of domestic and irrigation water there. The lining project was part of the complicated QSA, counted on to help California live within its 4.4 million acre-feet per year allocation of Colorado River water.

In addition to causing some binational tension, the lining project is now the subject of a lawsuit filed in July on behalf of the Economic Development Council of Mexicali (CDEM) and two U.S. environmental groups, Citizens United for Resources and the Environment and Desert Communities Against Pollution.

Malissa Hathaway McKeith, an attorney with Lewis, Brisbois, Bisgaard & Smith, who represents CDEM and the two groups, said the lawsuit raises two basic issues – (1) alleged failure to update a 1994 environmental impact statement for the canal-lining project and (2) claims that rights to use groundwater in the Mexicali Valley predated the Colorado River Compact of 1922 or the subsequent 1944 U.S.-Mexico water treaty, and were not changed by those agreements. CDEM takes the position that water drawn from the Mexicali aquifer is not treaty water, as does the Mexican Section of the IBWC, she said.

Everyone acknowledges the importance of the case for binational relations, but opinions differ on whether litigation is the appropriate way to address the lining dispute. "It is a case that has tremendous implications in terms of the relationships between our countries and how we manage water," McKeith said. She said litigation was a last resort, a step taken only when it appeared that "the pouring of concrete was inevitable."

"The litigation wants to stop the [lining] project," said Hentschke, who characterized the suit as a "Johnny-come-lately" effort to block a project that was first authorized by legislation in 1988, later adopted by the Bureau of Reclamation in a record of decision in 1994. "It's also a case of trying to establish a water right where one doesn't exist," he said, referring to the claim concerning rights to use to groundwater.

Snow agreed it is a "tremendously important case," one that implicates not only U.S. environmental laws, but also binational relations between the U.S. and Mexico. In the past year, President Bush has discussed the lining project with Mexican President Vicente Fox, and Secretary of State Condoleezza Rice has discussed it with the Mexican foreign minister, Snow said. While the nature of those discussions has not been made public, Snow said the best hope for resolving any dispute over the All-American Canal lining project lies in continued diplomacy through the IBWC and through continued discussions between U.S. leaders and their Mexican counterparts.

The case was filed in the U.S. District Court for the District of Nevada. Hearings were scheduled for October and January, though as this article went to press, the October hearing had not yet been held. In the meantime, attorneys for CDEM and the other plaintiffs are expected to file a motion for a preliminary injunction to block any construction on the lining project until the court resolves the legal issues.

Shortage Guidelines

The development of Lower Basin shortage guidelines and coordinated management strategies for Lake Powell

and Lake Mead under low reservoir conditions to manage the river in the U.S. during drought periods is a third potential binational water concern. No formal proposal for the guidelines has been issued yet, but Reclamation held a series of hearings in early November to gather input from stakeholders. Shortage guidelines could follow the format of the interim surplus criteria, but they would address management of the reservoir system during dry conditions.

The issue is particularly acute for Colorado River basin states that have endured a record, five-year drought. The water year that ended September 30, 2005, was slightly above average, but the two main storage reservoirs, Lake Mead and Lake Powell, are only about 55 percent full, leaving the system very vulnerable should the coming water year be a dry one.

Shortage guidelines would establish some operational rules to be followed in the Lower Basin in water-short conditions, but they would raise complex questions about how a shortage declaration might affect Mexico. Would a shortage declaration in the three Lower Basin states of Arizona, California and Nevada trigger language in the 1944 U.S.-Mexico treaty compelling Mexico to share in that shortage by taking less than its 1.5 million acre-feet of water in a water-short year? Could extremely dry conditions in the Upper Basin similarly trigger the treaty provision? How shortage guidelines would be implemented within the context of the 1922 Compact and the 1944 Treaty remains unclear.

Shortage guidelines are scheduled to be completed by December 2007 under a timetable announced in May 2005 by Interior Secretary Gale Norton.

What's Ahead?

Mexico and the U.S. have a longstanding relationship on water issues, and have created a binational agency, the IBWC, to address them. How will stakeholders and those

Continued on page 11

Calendar

January

12-13 **Water and the West – Meeting Supply Challenges Today and Beyond**, sponsored by The Center for the New West, Las Vegas, NV
web: http://www.centerfornewwest.org/water.xml

26-27 **Colorado Water Congress Annual Convention**. Denver, CO.
Contact: Richard D. MacRavey, 303-837-0812, www.cowatercongress.org

February

17-20 **9th Annual Salton Sea International Bird Festival**, Imperial, CA
Contact 760-344-5359 email: birdfest@usa.net
web: http://newriverwetlands.com/saltonsea.html

20-21 **Water: Lifeline in the Desert**, sponsored by Nevada Water Resources Association, Mesquite, NV Contact: 775-626-6389
web: http://www.nvwra.org/news.asp

March

6-7 **Colorado Water Law**, Denver, CO
Contact: CLE International, 800-873-7130, www.cle.com

9-11 **Xeriscape Conference and Expo**, sponsored by Xeriscape Council of New Mexico, Inc., Albuquerque, NM
Contact: Scott Varner, 505-468-1021 email: scott@xeriscapenm.com
web: www.xeriscapenm.com

23-24 **Water Education Foundation 23rd Annual Executive Briefing**, Sacramento, CA • Contact Diana Farmer, 916-444-6240, email: dfarmer@watereducation.org web: www.watereducation.org

April

5-7 **Water Education Foundation Lower Colorado River Tour**, Las Vegas, NV
Contact: Diana Farmer, 916-444-6240 email: dfarmer@watereducation.org
web: www.watereducation.org

26-28 **Water Education Foundation Central Valley Tour**, Sacramento, CA
Contact: Diana Farmer, 916-444-6240 email: dfarmer@watereducation.org
web: www.watereducation.org

27-28 **Wyoming Water Law**, Cheyenne WY
Contact CLE International, 800-873-7130, web:www.cle.com

May

15-16 **10th Annual Water Reuse Research Conference**, sponsored by WateReuse Foundation, Phoenix, AZ Contact: 703-684-2481
web: http://watereuse.org/Foundation/2006conf/index.html

June

14-16 **Water Education Foundation Bay-Delta Tour**, Sacramento, CA
Contact: Diana Farmer, 916-444-6240, email: dfarmer@watereducation.org
web: www.watereducation.org

20-21 **Annual Statewide Water Conference,** sponsored by Arizona Water Resources Research Center, Phoenix, AZ
Contact: Cas Sprout, 520-792-9591 ext. 55 email: csprout@ag.arizona.edu

Contact Sue McClurg with your calendar items from July 2005 through December 2005 for inclusion in the Summer 2006 issue of River Report, *smcclurg@watereducation.org or 717 K Street, Suite 317, Sacramento, CA 95814*

Legal Actions, Disputes Cloud QSA Transfer

By Glenn Totten

Just two years after some of California's biggest water interests agreed to the Quantification Settlement Agreement (QSA), legal challenges and other forces are chipping away at the QSA's foundations.

While observers don't see serious problems for the agreement yet, they say there is cause for concern. Two lawsuits that involve the QSA are pending in the courts, and two big parties to the QSA – Imperial Irrigation District (IID) and San Diego County Water Authority (SDCWA) – are dueling over the socioeconomic effects of a long-term water transfer from IID to SDCWA.

One lawsuit has two parts, a claim by Imperial County that provisions of the QSA to mitigate socioeconomic impacts violate the Water Code and the California Environmental Quality Act (CEQA), and a second part in which a group of IID farmers claims the IID board of directors illegally authorized the water transfer to San Diego without approval of the district's membership. No substantive ruling has been issued in the case, and a state appeals court earlier this year put the case on hold.

Meanwhile, in Nevada federal court, a Mexican business and civic group, Economic Development Council of Mexicali (CDEM), and two U.S. environmental groups has sued, challenging a piece of the QSA that calls for building a 23-mile parallel section of the All-American Canal that would be lined to reduce seepage. Some of the water conserved by lining, 77,000 acre-feet per year, would be transferred to SDCWA, and about 16,000 acre-feet per year would go to settle a water rights dispute with the San Luis Rey Indian Tribes in the San Diego area. The lawsuit alleges that the lining project requires an updated environmental impact statement and that it would infringe on Mexican rights to pump groundwater that seeps from the unlined canal and recharges the Mexicali aquifer. IID, SDCWA and the U.S. Department of the Interior are opposing the suit.

Malissa Hathaway McKeith, attorney for CDEM and the environmental groups called it a 'myth" that the All-American Canal lawsuit would undermine the QSA or the Interim Surplus Guidelines. But Dan Hentschke, general counsel for SDCWA, said the water to be conserved by the lining project is a key part of San Diego's water reliability program for the future, as is its water transfer agreement with IID.

But IID lately is showing signs of concern over water transfers. In a resolution adopted in early November, the district's board said IID won't approve any additional water transfer agreements and "intends to move away from fallowing as a means of developing conserved water" for future transfers. And IID and SDCWA are involved in an ongoing dispute over whether water transferred so far under their agreement has caused economic harm to the Imperial Valley.

Under the IID-SDCWA agreement, IID will transfer up to 200,000 acre-feet of water per year to SDCWA for 45 years with an option to renew the agreement for another 30 years. The full 200,000 acre-feet per year rate won't be reached until 2021, but by then water from the IID transfer and the canal-lining project are expected to account for 30 percent of San Diego's water supply. This year, 30,000 acre-feet of water is expected to be transferred from IID to San Diego.

Under the QSA, SDCWA was to pay $10 million during the first four years of the agreement to mitigate socioeconomic impacts of land fallowing on the Imperial Valley. John Liarakos, a spokesman for SDCWA, said the first $2 million has been paid. A panel of three economists determined in a December 2004 report that SDCWA's payments for transferred water more than offset actual impacts. IID directors disagree with that finding, and the dispute was referred to an administrative committee made up of representatives from IID and SDCWA, Liarakos said. The committee's report was due Nov. 18. If the administrative committee is unable to reach accord, the impacts question would go to another committee that includes agency board members, and if that panel is unable to reach agreement, issues would be submitted to arbitration.

The litigation, and the dispute between IID and SDCWA, are all signs that bear watching for the future of the QSA, said Antonio Rossman, an attorney who represents Imperial County. "Imperial County has been a cautious supporter of the QSA," he said, but he noted there is growing sentiment within the county questioning whether to continue with it. •

FEATURE ARTICLE

Continued from page 9

institutions respond to water shortages and environmental preservation needs in a time of increasing competition for water for food production and municipal and industrial use? Developments like the YDP recommendations and private initiatives on both sides of the border give reason for optimism, but strong binational commitments will be needed to fulfill their promise.

Most of the environmental values in the Colorado system, such as the Ciénega de Santa Clara, are currently supported by system inefficiencies, Culp noted. "As the belts tighten on water resource management, as we try to put more people onto the same 'pie,' there's a real risk that those resources are going to be lost," he warned.

The risks of not finding solutions could have powerful regional repercussions, said McKeith. Depleting the Mexicali aquifer by lining the All-American Canal could have serious economic and social consequences for both countries, she warned. "We're talking about really big impacts to the agricultural community of the Mexicali Valley, which supports a lot of farmworkers who otherwise would be coming across the border looking for work," she said.

But there is disagreement on the institutional framework within which border water issues can be resolved. Some believe the best approach lies in using existing relationships such as the IBWC, but others question whether diplomatic institutions can act quickly enough or include all stakeholder interests. What roles will litigation or private relationships play?

"The reality is that . . . our institutions don't seem to serve us all that well as far as creating partnerships, helping [the U.S. and Mexico] bond together," said Frahm.

Snow is a believer that litigation can be avoided and that existing institutional arrangements between the U.S. and Mexico can address and resolve binational water issues. "What I think is inevitable is that there will be greater and continuing regional partnerships across the border. The dialogue between the U.S. and Mexico with respect to the Colorado River will always have to work through the treaty mechanisms [that] have been established between our two countries because the way governments bond is through their formal structures," he said.

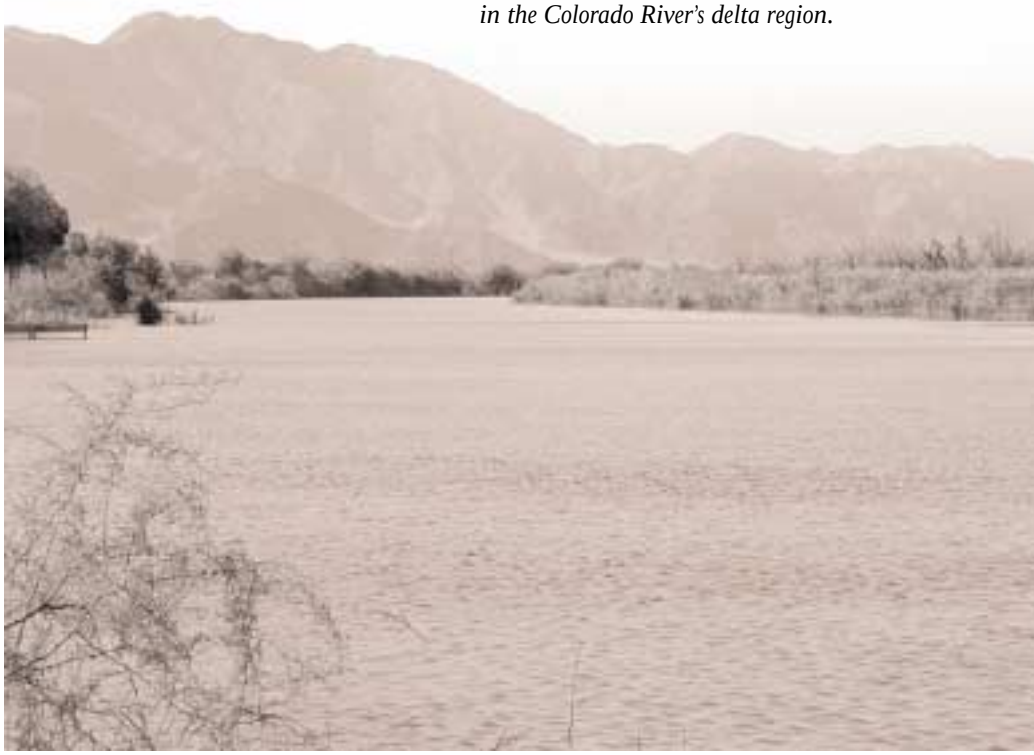
Culp said interests on both sides of the border may need to change the way they look at border issues. "If we want to avoid a future of conflict, I think we need to frame the issues, particularly binational issues, in a broader context that will allow us to avoid zero-sum outcomes with regard to water management. There are interests on both sides of the border that can be served through a collaborative approach to river management," he said. But if that approach is to be successful, stakeholders must commit to follow through on reaching solutions, he said.

But McKeith said litigation sometimes is necessary to get the attention of parties focused on a problem they've been ignoring. "The fact that litigation has been filed does not preclude people from actually sitting down and looking at the physical alternatives to the [All-American Canal] lining that, in fact, might reduce the economic and environmental impacts on the Mexican side," she said.

Hentschke thinks litigation is a poor way to resolve border issues like the All-American Canal. "In litigation, you have winners and losers," he noted. Litigation won't end the need for a diplomatic solution to the canal-lining dispute, he predicted.

Culp thinks the five-year drought on the Colorado River system that began in 2000 may be just a preview of the conditions that could be routine for Colorado River managers and stakeholders in 20 to 25 years. If so, that will increase competition among users as well as pressure to find creative solutions to manage the resource for all its many users. •

The Rio Hardy is an important tributary in the Colorado River's delta region.



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