

JANUARY 2005

PRESIDENT'S MESSAGE

James F. Wickser



AS the Holiday season has come and gone I hope you all had a happy and safe holiday season, and on behalf of the Board of Directors, we wish you happy and prosperous New Year.

In July of this year a very troubling proposed conservation easement plan for the Owens Valley was made public. This plan was initially brought forward by two of the newer Council members, Padilla and Cardenas. Shortly thereafter Mayor Hahn proposed a similar plan, espousing to protect the Eastern Sierra from harmful development. Those of us familiar with the Owens Valley know that Los Angeles has carefully protected and preserved the area for nearly 100 years. That is why these lands are so attractive and valued today. There is virtually no development of Los Angeles owned land in the Valley except for small areas of land the Counties of Inyo and Mono and the City of Bishop have requested for economic growth, recreation, and tourism. Los Angeles has not sold any land for residential development. The proposed plan for a conservation easement is not only unneeded but it creates very serious potential risks to Los Angeles Water Supply, and Electric development and transmission.

The open use of L.A. lands for recreation and cattle grazing could also be restricted. We are continuing to monitor this situation, and will be working to inform our elected officials of the inherent risk to the City of Los Angeles. The loss of water from the Owens Valley could result in shortages and the need to buy more water from MWD, if they have the water, and this would result in our customers paying more for Water and electric bills also be impacted.

(Continued on page 2)

 **Happy New Year**

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MEMBERSHIP

By Vincent J. Foley

ANNUAL BOARD (& MEMBERSHIP) MEETING



**:Saturday, February 12, 2005
10:00 A.M. 'til Noon**
John Ferarro Building (JFB)
[Water and Power Headquarters]
A - Level
111 North Hope Street, Los Angeles

All members are invited to attend.

Remember to bring your DWP I.D.

If there is a topic you wish to have addressed, please notify President Jim Wickser at 323. 257-3623 by January 31. 

President's Message (Continued from page 1)

The Historical Committee is moving forward to create a DWP Museum and Learning Center telling the story of DWP, where water and electricity come from and how DWP developed their systems to keep up with the growth in Los Angeles. There is a lot of work to be done and we can use a lot of help from all of you. Please do not throw away things that are a part of DWP history. Donate them or loan them to Water and Power Associates or to the Department.

For more information call
Jim Wickser at 323. 257-3623 or
David Oliphant 818. 363-9601; or
Thu Pham 213. 367-1340.

Your Board continues to work hard for the best interest of the Department and the citizens of Los Angeles.

I want to thank the Board members for their dedication and commitment and wish them a Great New Year. 

OUR RECENT GUESTS

As always, we are honored to welcome our Board Meeting guests who represent an expansive range of backgrounds, insights, viewpoints, humor and knowledge.

We thank each of our guests for making our Board Meetings richer, more informative, and livelier.

Victoria Cross, LADWP Reclaimed Water Coordinator;

John R. Dennis, LADWP Generation Projects Director;

Thomas M. Erb, LADWP Director of Water Resources

Dorothy Green, Former LADWP Commissioner

Randy Howard, LADWP Director of Commercial Services;

Jeffrey Kightlinger, MWD General Counsel

Jan Paul Matusak, P.E., MWD of Southern California, Principal Engineer, Water Resource Management Group;

Anh-Thu Pham, LADWP Manager Graphics, Public Affairs Displays & Exhibits;

John W. Schumann, LADWP Director of Power System Planning and Projects;

Jane Scott, Trade Technical College, Teacher - Retired;

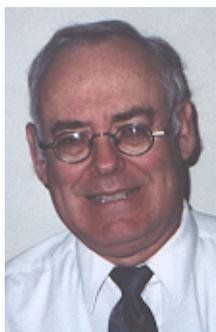
Hans Sonderling, W&PA Member

Walter S. Zeisl, APR, LADWP Corporate Communications, Manager of Environmental Communications and Educational Services;

BOOK REVIEW

FUEL FOR GROWTH: Water and Arizona's Urban Environment,

by **Douglas E. Kupel**. Tucson: University of Arizona Press, 2003. 295 pp. Maps, Illustrations, Notes, Bibliography, Index. Cloth, \$39.95. Order from University of Arizona Press, 355 S. Euclid, Suite 103, Tucson, AZ 85719-6654 (800) 426-3797; www.uapress.arizona.edu.



By *Abraham Hoffman*

Arizona and California have had their differences on water issues, as exemplified in the historic *Arizona v. California* (1964) Supreme Court decision. Douglas Kupel takes the word “difference” in another direction, arguing that there are more contrasts than comparisons in how urban areas in the two states have met their water needs. The subtitle of his book is a bit misleading, since Kupel focuses on three cities --Phoenix, Tucson, and Flagstaff -- rather than a comprehensive survey of Arizona's water resource development. Phoenix, of course, is the 1.3 million municipal gorilla in Arizona. Its immediate neighbors, Glendale (219,000), Mesa (396,000), and Scottsdale (203,000), however, receive minimal attention from Kupel. Similarly, Tucson (487,000) merits treatment, but little space is accorded Tempe (158,000). More people live in Yuma (77,500) than Flagstaff (53,000), but Yuma gets no coverage at all. The water supplies for small towns in an arid state may well call for a separate study, but fair-sized satellite cities could have been given greater attention.

As it is, Kupel argues that water resource development in Phoenix, Tucson, and Flagstaff differed from the acrimonious experiences of Los Angeles and Owens Valley, San Francisco and Hetch Hetchy, and the “water elites” espoused by Donald Worster in his book *Rivers of Empire*. He also disagrees with the “West is different” view made famous by John Wesley Powell and Walter Prescott Webb. Kupel finds Arizona's water development bears more similarity to the humid East than historians have granted. He makes his argument through describing the creation of water supplies for Phoenix, Tucson, and Flagstaff, moving from one city to another within chapters that deal with private ownership of water sources, the drive for municipal ownership, the impact of federal involvement during the Great Depression and World War II, and postwar growth. Rather than accept the dictates of a so-called Western water elite, Arizona city planners developed water supplies that did not deprive rural users of this precious resource, mainly because Arizona lacked arable land.

In some ways the differences between California conflicts and Arizona harmony may be less than Kupel assumes. Readers familiar with Los Angeles water development issues will be surprised at the involvement of Moses Sherman in the privately owned Phoenix Water Company. This was just a few years before Sherman served on the Los Angeles Board of Water Commissioners immediately after the city pried itself free of private company distribution of municipal water. Given the similarities of Los Angeles and Phoenix in working towards municipal ownership of their water supply systems, Sherman's playing both sides of the fence in such disputes argues for greater focus on this pivotal and controversial character. Sherman was involved in a wide range of economic activities, including real estate developments and electric streetcar lines. But Kupel passes on delving into Sherman's career, missing an opportunity for a closer comparative study of Los Angeles and Phoenix than he is willing to give.

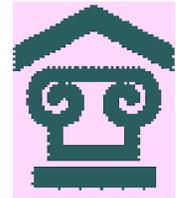
Fuel For Growth (Continued from page 3)

Kupel is also somewhat muted in his discussion of the litigation that gave Arizona the Central Arizona Project and the ongoing arguments over the capability of the Colorado River to supply allotments to the river's many claimants. His emphasis on Arizonian determinism to follow earlier, eastern practices makes for an interesting but ultimately incomplete explanation of how three key Arizona cities have succeeded in providing for the needs of an exponentially growing population.

One minor point. In his Preface, Kupel describes this reviewer's book, *Vision or Villainy: Origins of the Owens Valley-Los Angeles Water Controversy*, along with William Kahrl's *Water and Power*, as "generally credited with painting Los Angeles as the West's biggest water hustler..devious and scheming, a characterization that has colored our view of the Owens Valley conflict until the present." (p. xix) Frankly, I'm baffled. While these comments in my opinion apply to Kahrl's book, I came to no such conclusions in my study. Maybe Kupel should take a closer look at it. 



W&PA · HISTORIC · COMMITTEE



October 20, 2004

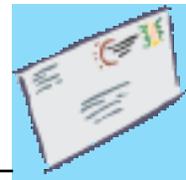
Dear Mr. Oliphant:

In November 2002, you expressed concern regarding how the Los Angeles Aqueduct/Owens Valley story was treated in Macmillan/McGraw-Hill's *California*, published in 1998. We are currently in the midst of developing our latest K-6 Social Studies Program.

As always we must be guided by the California Department of Education curriculum standards. Nonetheless, we are open to comments from interested parties who share our goal of providing quality textbooks to California's students. As such, we would like to elicit comments you may wish to make on lessons treating the construction of the Los Angeles Aqueduct.

Please let us know if you are interested in reviewing this manuscript. If you are, I can make the necessary arrangements.

Sincerely,
Jane Petlinski, Vice President,
Editorial Director Social Studies
Macmillan/McGraw-Hill School Publishers



David J. Oliphant

Ed. Note: The Board enthusiastically agreed to review the materials which will ultimately be incorporated into California Department of Education curriculum textbooks, and has so notified the Editorial Director of Social Studies.

ADDITION TO Sept. 2004 Article: INSTITUTIONAL MEMORIES

Submitted by DWP retiree Jim Reinhard:

DWP was far ahead in technology at the time Hoover Dam was designed. When the transmission line from Hoover Dam to Los Angeles was built, it had the highest voltage and became the longest transmission line in the world and remained so for 8 or 10 years. DWP was instrumental in deciding the conduction of the line - AC or DC.

Following completion of the project, Jim Reinhard personally conducted tours for engineers from Italy, Sweden, and 4 from Japan. 



by LeVal Lund



BURNING • WATER • ISSUES

W&PA, Inc. Legislation Summary

The Water and Power Associates, Inc. Board of Directors has reviewed a number of legislative bills during the 2004 legislative session. The following is a summary of those actions.

SB 1155 San Joaquin-Sacramento Delta Governance (*Machado*) (*Linden*)

W&PA, Inc. opposed this legislation in its original form. The bill proposed to place heavy governmental restrictions on the State Water Project pumping from the Delta after a Record of Decision (ROD) had been approved addressing all issues of concern. Subsequently the bill was significantly modified to eliminate the objections of the water agencies. The bill now requires the Department of Water Resources with Federal Government cooperation to make a plan to meet water objectives by January 2006. The Governor signed the bill during the week of September 24.

AB 2528 Water Quality Terminology (*Lowenthal*) (*Long Beach*)

This bill was initiated by the water agencies to eliminate the term “Action Level” for contaminates in drinking water which exceed a certain Contaminate Level (MCL). This clarifies the terms; the term “Response Level” when the utility was required to notify their governing body and “Response Level” when action was required to mitigate the contaminate.

This bill passed the Assembly by a vote of 70 to 0. The governor signed the bill on September 22.

SB 2572 Water Meters (*Kehoe*) (*San Diego*)

W&PA, Inc. supported this legislation, which would require cities without water meters (Sacramento, Lodi, Modesto, Turlock, Merced, South Lake Tahoe and other smaller communities) to install water meters by 2025 and bill customers on the amount of water used. Governor sign the bill in September.

AB 2600 Sierra Nevada Conservancy (*Leslie and Laird*) (*Tahoe city and Santa Cruz*)

This bill creates a 25 million acre conservancy to restore and protect California’s largest watershed from Oregon to Bakersfield and from Nevada to the foothills of the western slope of the Sierra Nevada. The DWP watershed lands in the Mono Basin and the Owens Valley are included. A master plan for the protection of the conservancy will be prepared and a 13 member Board of directors, who will administer the lands, with an Executive Director. The Board members will be selected from County Supervisors and others appointed by state elected officials. The Conservancy hopes to raise private and public funds for watershed protection, habitat improvement and infrastructure upgrades. The Conservancy provides the legal entity to receive State bond funds. Reportedly the Conservancy can’t impact on private property and water rights. The Governor signed the bill on September 24.

The W&PA, Inc. learned about this bill after it had passed both houses of the Legislature, when there was insufficient time to act. The Associates have concern on the implementation of this bill, which could impact on the City’s water and hydroelectric power rights in the Owens Valley and the Mono Basin.



WATER • POWER & THE • DROUGHT



By Nancy Day



"One big challenge to our work is the drought that has touched most parts of the West over the past five years. The drought has had a significant impact on our work. For example, water levels have been dramatically affected at Lake Mead, Lake Powell, and other reservoirs. Some have compared the magnitude of the current drought in the Colorado River basin to that of the Dust Bowl. That comparison is arresting. Just as arresting is this: we are not in a crisis.

On December 8, 2004, Jan Matusak, Senior Water Resources Engineer, MWD, (Mr. Colorado River) briefed the Board on water issues affecting the western U.S. The 5-year drought continues to impact water and power availability. Jan reported that the minimum water elevation at Lake Mead to support power generation is 1083 feet and the current level is 1125 feet. At Lake Powell the minimum is 3490 feet and the current elevation is 3569 feet. Low head turbines may be installed to continue generation at levels below the current minimums. Last year the Colorado River hydroelectric power plants generated 40.3 million kwh and power production is expected to drop to 38.7 million kwh this year.

We can thank the foresight of past generations, who recognized that the West is largely desert and prepared accordingly by creating an effective system of dams and reservoirs. These facilities have served their purposes well over the past century and are keeping us out of crisis today. This does not, however, mean that we continue to do business as usual, because drought is not the only cause of water shortages.

The American West is changing-the population in the West is growing faster than anywhere else in the country.

Also on December 8th, John W. Keys, III, Commissioner, U. S. Bureau of Reclamation reported the following to the participants at the Mid-West Electric Consumers Association meeting in Denver, Colorado:

On the power side of the house, with the uncertainty in the regulatory environment causing lack of investment in new power plants and transmission, the drought has made the situation equally serious." 

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA PERSONNEL CHANGES OUR CONGRATULATIONS AND BEST WISHES TO EACH



Effective December 31, 2004, President and CEO **Ronald R. Gastelum** resigned his six-year position as President and Chief Executive Officer .

Board Executive Officer **Gilbert Ivey** will serve as Interim President and CEO until the appointment of a permanent replacement is installed following a nationwide search.



Public Relations Director **Adan Ortega, Jr.** is leaving MWD. In his words, "There is nothing driving me to leave but my own need to replenish my perspective by venturing in a manner that is limited in my current capacity.



Update on the Quantification Settlement Agreement and the Colorado River Basin Drought*

**Jan Paul Matusak, P.E., MWD of Southern California,
Principal Engineer, Water Resource Management Group**

It is too early to tell whether the record five-year drought in the Colorado River Basin has ended. As of today, Upper Colorado River Basin wide average snow water equivalent is 113 percent of average and the Basin wide average precipitation to date is 123 percent. The November observed inflow to Lake Powell was 103 percent of normal and the December 1 forecast of this month's inflow is 92 percent of normal.

The Bureau of Reclamation has not yet updated its 24-month projection of reservoir storage levels to reflect this forecast. However, based on the November 1 forecast, storage in Lake Powell was projected to increase this water year by 171,000 acre-feet to 38 percent of its capacity. Lake Mead storage was projected to decrease this water year by 1,074,000 acre-feet to 49 percent of its capacity.

In November, the Bureau of Reclamation increased Metropolitan's approved 2004 Colorado River water order by 52,000 acre-feet, bringing Metropolitan's annual approval to over 704,000 acre-feet. This increase is largely due to the wet fall conditions in the Lower Colorado River region, which significantly reduced agricultural water demand. Under the terms of the Quantification Settlement Agreement, Metropolitan is entitled to receive any agricultural water that was approved for use but not needed. I anticipate that Reclamation will increase Metropolitan's approved water order to nearly 750,000 acre-feet later this week.

Based on the reservoir levels that were projected last August for January 1 of next year and the provisions of the Colorado River Interim Surplus Guidelines, the Bureau of Reclamation has developed a 2005 annual operating plan for the Colorado river system reservoirs which would declare a normal condition for delivery of 2.8 million acre-feet of water to

entities in Arizona, 4.4 million acre-feet to California, and 300,000 acre-feet to Nevada. Of the amount available to California, Metropolitan estimates that we will have about 615,000 acre-feet of water available. This includes our normal entitlement, water conserved by Imperial Irrigation District (Imperial) for Metropolitan, water saved by Palo Verde Valley farmers from fallowing land, and 30,000 acre-feet of water to be exchanged with San Diego County Water Authority from the Imperial-San Diego County Water Authority transfer.

The Metropolitan-Palo Verde Irrigation District land fallowing program will begin January 1. Our agreement with the District limits the area to be fallowed to 26,500 acres. The acreage to be fallowed will be chosen by farmers from 78,000 acres in the Palo Verde Valley, so up to 35 percent of those acres can be fallowed in any one year. We have informed the District of our intent to call for fallowing of 24,000 acres through July 2006.

Under the 2003 Colorado River Water Delivery Agreement, Metropolitan is to forebear use of 11,000 acre-feet of Colorado River water to pay back 2001 and 2002 overruns based on the 1989 agreement we signed with Imperial Irrigation District, Coachella Valley Water District (Coachella), and Palo Verde Irrigation District. Also, Metropolitan, Imperial, and Coachella are to forebear use of certain amounts of Colorado River water necessary to permit the Secretary of the Interior to deliver water to holders of present perfected rights. These are individuals, towns, and cities that were not included in the Seven Party Agreement of 1931 that allocated use of River water. In addition, Metropolitan has informed the Central Arizona Water Conservation District that it wishes to recover by exchange 40,000 acre-feet of water stored in central Arizona. This would bring the amount of water available to Metropolitan to 655,000 acre-feet. (Continued on page 8)

Update on the Quantification Settlement Agreement and the Colorado River Basin Drought*

(Continued from page 7)

In October, Coachella Valley Water District broke ground for the lining of the Coachella Canal. Although the project is described as canal lining, construction actually involves building a new, 33-mile concrete channel that will replace the existing earthen section. Construction is estimated to be completed by early 2007. Metropolitan will divert an amount of water equal to the amount conserved, 26,000 AF per year, except under certain limited circumstances. In exchange, a portion of the water will be delivered to the San Diego County Water Authority, and once a settlement agreement is reached, to the United States for the San Luis Rey Indian Water Rights Settlement Parties.

With respect to the All American Canal Lining Project, work to determine the alignment and design the new parallel canal is underway by Bookman-Edmonston which has been retained by Imperial Irrigation District. This project will conserve 67,700 acre-feet per year.

In November, Coachella Valley Water District, Desert Water Agency, and Metropolitan executed an agreement that implemented the 2003 Exchange Agreement, which transferred 100,000 acre-feet of Metropolitan's State Water Project Table A water to Desert and Coachella. Metropolitan's Board authorized the 2003 Exchange Agreement in October 2003, but the agreement was not to become effective until the parties reached agreement on implementation procedures. These implementation procedures are now complete, and include the formation of an Operating Committee, with representatives from each agency, that will coordinate operational issues.

Metropolitan is continuing to participate on the Salton Sea Restoration Advisory Committee assembled by the Secretary for the Resources Agency. The State's Resources Agency has been tasked with developing a Salton Sea

restoration plan recommendation by December 2006. The Department of Water Resources has been designated as lead agency and is developing a Draft Program Environmental Impact Report for the Salton Sea Ecosystem Management Plan. The final alternatives to be considered in the report are to be selected in early 2005. The Salton Sea Authority issued a draft Preferred Project Report in April 2004 which included a central causeway/retention structure that would create a north marine lake with ocean-like salinity.

The southern portion of the Sea would recede and a salt pond and shallow salt water habitat would be created. Recreational lakes would be created in the Imperial Valley. The receding sea would open up the possibility of additional geothermal development. Wetlands in the vicinity of the New, Alamo, and Whitewater Rivers would be created. Islands and peninsulas could be developed by dredging along the perimeter of the north lake. Other opportunities include reclaiming farmland, expanding hunting opportunities, and developing an off-highway vehicle park. The Authority is now considering revising its plan.

In September, the Secretary of the Interior and Lower Colorado River Multi-species Conservation Program participants from Arizona, California, and Nevada, including Metropolitan, signed a Program Memorandum of Agreement to advance the development of the Program with the goal of completing the Program Record of Decision by the end of this year. This federal/state agencies' partnership will provide for the conservation of 27 species of fish, birds, mammals, reptiles, and plants, and more than 8,000 acres of habitat from Hoover Dam to the international boundary with Mexico. The proposed Multi-species Conservation Program provides for 50 years of Endangered Species Act compliance for existing and future Colorado River water and power operations.

(Continued on page 9)

Update on the Quantification Settlement Agreement and the Colorado River Basin Drought

A number of lawsuits have been filed on the Quantification Settlement Agreement. Nine of the QSA cases are now in Sacramento County Superior Court. Metropolitan is a named party to four of these nine cases. Lawsuits have been brought by Imperial County, the Imperial Group, and "Protect Our Water and Environmental Rights."

As the Basin experienced the fifth year of drought, representatives of the governors of the Colorado River Basin states have been working cooperatively to develop a plan to effectively respond to the drought, with the goal of establishing a drought and shortage management and storage recovery protocol for the Colorado River Basin. The initiative is designed to lessen the impact of drought, help prevent water shortages, enhance reservoir system recovery, and improve river management.

Cooperative measures that form the Colorado River Drought Management and Reservoir Storage Recovery Initiative either:

- have already been taken or initiated,
- would be implemented through the Department of the Interior's Annual Operating Plan for Colorado River System Reservoirs process through 2009 (the earliest likely date for shortages),
- would be implemented later but in the near term, or
- would be implemented over the long term.

Potential actions to be considered include programs that reduce system losses and over-deliveries, and that provide for cooperative interstate water supply programs, such as an interstate water pool/banking and a variety of forms of water use forbearances.

One of the measures being considered is implementation of reservoir system operation guidelines during shortages. Representatives of the states are determining whether guidelines can be developed that avoid shortages to Central Arizona Project municipal and industrial and Indian subcontractors, while not adversely affecting other water supply contractors in Arizona, California, and Nevada.

The Central Arizona Water Conservation District is of the view that the Central Arizona Project's junior priority unfairly puts central Arizona water users--cities, towns, Indian communities and agricultural water users that depend on the Project at risk of future water supply shortages. To protect Arizona's citizens and restore Arizona's court-decreed rights to Colorado River water, the District plans to urge Congress to repeal the provisions of the Colorado River Basin Project Act of 1968 that impose a lower priority to Colorado River water on the Central Arizona Project. In 2003, the District began discussions with its Congressional delegation on removing its junior priority status. According to the District, Senator Kyle has been working to educate and inform key Congressional representatives of the risk faced by Arizona's water users and the fairness of Arizona's position. The District has stated that restoration of the Central Arizona Project's priority status will be a topic for Congress in 2005.

On the other hand, the Central Arizona Water Conservation District has recognized that the Central Arizona Project is well protected against a shortage of Colorado River water supplies for at least two decades. The District is of the view that its good planning should not become a rationale for requiring the Central Arizona Project to unfairly bear the burden of shrinking Colorado River water supplies. At this time, Arizona is not fully using its available supply for critical, life sustaining direct uses. A considerable amount of excess Central Arizona Project water is being stored underground each year to provide supplies in the event of future shortages. Within the Central Arizona Project service area, laws and contracts provide for the reduction of agricultural use before shorting municipal and domestic use. Central Arizona also has significant groundwater uses and the potential for leasing Colorado River water from higher priority agricultural users along the Colorado River.

Update on the Quantification Settlement Agreement and the Colorado River Basin Drought

The Central Arizona Water Conservation District is concerned that officials in other states, developers, and environmental groups have suggested that the Central Arizona Project should share its water supply to prevent other entities from suffering shortages. The suggested actions include:

- allowing Nevada or other interests to pay for land fallowing in Arizona so they can use the water;
- allowing Nevada to "wheel" tributary water from the Virgin or Muddy River through Lake Mead for direct use outside the parameters of how Colorado River water use is to be accounted in accordance with the 1964 decree of the U.S. Supreme Court in *Arizona v. California*;
- shorting the Central Arizona Project so that the Upper Basin can reduce deliveries from Lake Powell; or
- implementing shortage criteria that would reduce Central Arizona Project supplies to maintain lake levels at Lake Mead and Lake Powell high enough for power generation.

The District believes that it should not be required to accept unfair or onerous shortage criteria to benefit other states or interests.

On December 1, the Colorado River Commission of Nevada and the Southern Nevada Water Authority informed the Central Arizona Water Conservation District of their support for a mutually acceptable equitable shortage sharing program or an amendment of the Colorado River Basin Project Act of 1968. Nevada supports a cooperative effort among the Basin States and the Department of the Interior to develop a workable shortage sharing and drought mitigation program that would recognize the need to provide for more equitable shortage sharing in the Lower Basin.

In 2001, the Commission and the Authority had entered into a Storage and Interstate Release Agreement with the Arizona Water Banking Authority and the United States.

These agencies have negotiated an amendment to this agreement that would provide an assured temporary water supply for Nevada as it develops its in-state water resources. For its part, Metropolitan has forgone the use of surplus Colorado River water that was available to it in 2003 and 2004. Also, Metropolitan, the Southern Nevada Water Authority, the Colorado River Commission of Nevada, and the Bureau of Reclamation are in the process of executing an Interstate Storage and Release Agreement. Under this agreement, Metropolitan would store Colorado River water apportioned to, but unused by the Southern Nevada Water Authority with Metropolitan intentionally creating unused apportionment in future years by forbearing use of Colorado River water. The Southern Nevada Water Authority has requested that Metropolitan store 10,000 acre-feet of water this year.

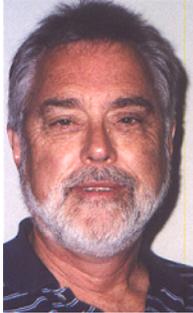
Lastly, in its Interim Surplus Guidelines Agreement with the Southern Nevada Water Authority, Metropolitan has agreed to allow the Authority to have a first right each year to store up to 200,000 acre-feet in Arizona until the Arizona Water Banking Authority stores 1.2 million acre-feet for the Authority. In addition, Metropolitan has agreed to allow the Authority to have the first right to have water withdrawn from storage in Arizona. ❀

Jan Paul Matusak,
P.E.,
MWD of Southern
California,
Principal Engineer,
Water Resource
Management Group;



REPORT ON WATER EDUCATION FOUNDATION, WATER LAW & POLICY BRIEFING

San Diego, California, July 15-16, 2004



The Water and Power Associates, Inc. was represented at the Conference by Board Members, Steven Erie [left] and Gregory Freeman [right]. Their report will be presented in 2 parts. The second section will be continued in the next edition of this newsletter.



Keynote Address

Charles “Chip” Groat, Director, U.S. Geological Survey (USGS) delivered the [keynote address on “Water, Water Anywhere?”](#) Groat addressed the question of how to link science to policy and regulatory decisions in an effective manner. The mission of the USGS is to provide unbiased, accurate data and information to policy makers and regulators. He drew from two examples involving the USGS: earthquakes and droughts in the West. Groat cautioned that with both kinds of events, USGS does better understanding their effects relative to the temporal, causal aspects.

Regarding drought, which is becoming a significant issue not only in the West but nationwide and worldwide, Groat emphasized that it is more than a surface water phenomenon. The groundwater component is as important, if not more so. Groundwater supplies irrigation needs, the largest use of freshwater in the U.S.

A key concern is that we are mining groundwater faster than it can be replenished due to increased demand. As a result, land subsidence and, near the coast, saltwater intrusion are growing problems. Unlike surface water, which is easier to measure, we don't know how much groundwater we have. Ground and surface water need to be considered a single resource. However, aquifers cross political boundaries, complicating the process of groundwater protection and replenishment.

Groat argued that California and other jurisdictions can only resolve their water problems through compromise and innovative thinking using the best science--accurate information, both in real time and long-term.

However, we cautioned that we are not good at understanding sub-surface flows. Yet, good water stewardship requires that we realize that surface and ground-water are a single resource, which need to be managed holistically through conjoined use. An example of holistic management is the Edwards Aquifer in San Antonio, Texas. Groat noted several relevant federal studies; and the U.S. Department of the Interior's Water 2025 Program, a western water initiative which is designed to minimize conflict in drought situations by studying storage volumes, flow rates, and uses of water. Groat concluded by observing that crisis management is not an effective way of dealing with water conflicts.

Panel 1

On the Ground: *the California QSA in Action*

Gary Weatherford (panel moderator; Attorney, Weatherford & Taffee):

The Quantification Settlement Agreement (QSA) is an incredibly complex document, complete with short and long-form versions, and implementation will be equally complex. The QSA

- (a) quantified two classes of priorities regarding water holders and users;
- (b) measured and reduced deliveries to Imperial Valley;
- (c) provided for transfers to San Diego which entailed the controversial measure of fallowing; and (d) called for Salton Sea restoration.

The QSA is long-term, ending in 2037 or as late as 2077, depending upon whether the SDCWA/IID water transfer is extended or not.

WATER LAW & POLICY BRIEFING

Maureen Stapleton (General Manager, San Diego County Water Authority):

The SDCWA/IID transfer is on a slow ramp up schedule. Starting in 2003, San Diego received 10,000 acre feet (AF), with annual increments of 10K AF until 100,000 AF is reached; thereafter, there will be larger annual increments, up to the full 200K AF in 2016/17. The reason for the slow ramp up is to gauge the transfer's effects in the Imperial Valley. The price of the water is \$267 AF plus MWD's wheeling rate. San Diego also will receive 20K AF annual from the lining of the Coachella Canal, and 50K AF from lining the All-American Canal.

John Penn Carter (Chief Counsel, Imperial Irrigation District):

Challenges to the QSA remain, including securing an Endangered Special Act permit and assessing the socioeconomic impacts of fallowing. There is a CEQA lawsuit pending regarding IID board proceedings in terms of the adequacy of the environmental impact review. The IID in Spring 2004 purchased 42,000 acres of land (the former Bass Brothers holdings). The IID is implementing system and on-farm conservation programs to encourage shift from fallowing to system efficiency.

Ralph Cordova (County Counsel, Imperial County):

Imperial County brought four CEQA lawsuits against IID, SDCA, MWD and Coachella Valley Water District. Not only do the environmental impacts need to be assessed and mitigation addressed, but also the air quality impacts need to be addressed. [The Imperial County Board of Supervisors appears bitter at not being included in the QSA talks.]

Steve Robbins (General Manager, Coachella Valley Water District):

CVWD is happy with the pace and direction of the QSA and transfer. CVWD received two pieces of water: 20K AF from MWD, and another 35K upfront, which Coachella will not take until 2007 so that MWD can use it.

Dennis Underwood (Vice President, Colorado River Issues, MWD of Southern California):

MWD's regional infrastructure is critical to QSA in terms of the SDCWA/IID transfer conveyance (Colorado River Aqueduct), storage, and delivery timing. MWD voluntarily took a 700K AF reduction in Colorado River deliveries, and was able to do so because of its infrastructure (including storage). Overall, California has been at 4.4 million AF for the last two years. Voluntary compliance was possible because of infrastructure (storage). In actuality, there are multiple transfers now occurring: the Indian water rights settlement (San Luis Rey Indian tribe), MWD/IID, SDCWA/IID, and Coachella.

MWD's Palo Verde crop rotation/water supply program is outside the QSA. This is a 35-year program, involving up to 111K Af, and involves land fallowing and crop rotation. MWD pays \$3.200/acre upfront (equal to the price of the land), and then provides annual payments. This helps stabilize the farm economy. Thus, the farmers find it more profitable not to change land ownership or water rights. [Note: This may lead to the renewal of the alliance between MWD and Central Valley farmers once the farmers recognize that Met's program provides a viable alternative to selling their land to developers for conversion to subdivisions.] The lands and crops involved in the program are not labor intensive. The greatest impact will be on the agricultural service sector. There will be a slow ramp up schedule. MWD has agreements with the Palo Verde Irrigation District and with individual farmers. Palo Verde's senior priority helps MWD firm up water supplies and reliability.

Robert "Bob" Johnson (Regional Director, U.S. Bureau of Reclamation, Lower Colorado Region):

Since 1964 (Arizona v. California case) there has been revamping of decree accounting: how much water is used by the three lower-basin states? *(continued on page 13)*

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USGS is the official measurer of water use. Revamping of decree accounting is needed because of water transfers (both in California and Arizona), and the addition of water banking. The QSA put a framework in place to allow agriculture-to-urban transfers to occur within decree accounting. The QSA allows for inadvertent overruns of up to 10% per year. However, these need to be paid back with "wet" water via conservation.

PANEL DISCUSSIONS

Maureen Stapleton: The 223-mile long lining of the All-American Canal is a big project. The AA Canal carries 3.1 MAF versus Colorado River Aqueduct's 1.2 MAF. The IBWC (International Border Water Commission) and the State Department are seeking opportunities for international comity and partnership. One possibility is a turnout canal from the AA Canal to Mexico to carry Mexican treaty waters. A small portion of the conserved water from the AA Canal lining goes to the six Indian tribes in San Diego.

Dennis Underwood: The AA Canal lining also has potentially adverse Mexico water impacts. Mexico concerned with loss of seepage with AA Canal lining, and has filed a formal protest with the IBWD over seepage loss. There currently is no surface conveyance facility to Mexico. In terms of Salton Sea restoration, there is tension between the Salton Sea Authority and Congressional delegation seeking robust restoration versus the State Salton Sea Advisory Committee seeking a narrower focus and not as expansive.

Steve Robbins: There is no agreement regarding what to do to restore the Salton Sea. Thus, cannot get appropriate funding, which could range from \$700 million to \$2 billion. Need an agreed up plan first. The QSA is a prime motivator for restoration, providing \$30 million upfront and another potential \$300 million. This represents a big jump start for restoration.

John Carter: The Salton Sea doesn't create any problems for implementation; the transfer will be implemented based on current agreements whether the Salton Sea is restored or not. IID will provide the water, which the state

can use for restoration, or sell and use the proceeds to fund restoration. [Note: It was unclear from Carter's comments what IID would expect in return for providing the water.]

Dennis Underwood: The key to the QSA was the state taking responsibility for restoration. Need a preferred alternative by 2006. The State Resources Agency is in the lead -- with its advisory board -- leading up to the 2006 deadline. Yet, there are problems not addressed by QSA. The key one is drought, as we moved from Colorado River surplus to scarcity. This is a dramatically new environment for implementing the early years of the QSA. The interim surplus guidelines no longer hold.

Maureen Stapleton: Drought has pulled California agencies and the state together to develop drought-management plans. This is better than a hard-core water grab. We are facing a new era on the river. 7.5 MAF is the basic allocation to the lower basin states. Four plus million AF are present perfected rights. But for the remaining 3 MAF there is no allocation plan. There is nothing in the QSA about what happens if the water isn't there.

Steve Robbins: The QSA agreement and drought: sets expectations as to who will be cut. There are 60 MAF of storage in the upper and lower basin states. After 5 years of drought, storage is at about one half of capacity; Lake Mead is at 40% capacity, and Lake Powell is about 50% filled.

Dennis Underwood: MWD built storage because there was no guarantee that the surplus on the Colorado would be there. Need to plan for all three conditions on the river -- surplus, normal, and shortage. The QSA and the Lower Colorado Multiple Species Conservation Program: Need 50 years compliance for 27 species. The clock is ticking with a short time frame. Environmental conditions can affect/override QSA. More water may be needed for MSCP compliance. Endangered species acts (federal and state) compliance also needs to be addressed. Another issue: formulas for interstate transfers. Arizona and Southern Nevada dealing with unusual appropriations, and recharging groundwater. (continued on page 14)

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Robert Johnson: We need to encourage interstate cooperation with forbearance programs. Currently, no state allows water to be exported. Congress involved with original Colorado River Compact. Does this support territoriality?

Dennis Underwood: MWS's updated Integrated Resources Plan (IRP). It will require 30 years normal rainfall to get full Colorado River storage back to elevation 1125' -- where surpluses can be declared. It requires elevation 1145' to declare full surpluses. IRP deals both with imported and local water sources. The balance is shifting. We need to look internally than to the north. Recycling can yield 900K AF. MWD's storage approach: take water when available. Overall, MWD's strategy today is to become less hydrologically dependent, as in promoting desalination.

Panel 2

Tulare Lake v. United States:

*An Analysis of the
Endangered Species Act
Takings Compensation Case*

Brian Gray (*Panel moderator, Professor, Hastings School of Law*): There are a series of "takings" cases, like the Klamath case, pending in the federal court of claims. The Tulare Lake case is the most important of these in terms of state water rights, and permits granted under these rights. The case involves the State Department of Water Resources' compliance with biological opinions by fisheries' agencies regarding endangered species. At issue were the Delta Smelt and Chinooki Salmon. The State Water Project and Central Valley Project must be operated in a fashion that does not endanger such species. Such changes in SWP and CVP operations under current salinity standards led to shortages in the state water system. State water contract deliveries were cut 50% in 1993. Tulare Lake, a state water project contractor, was deprived of 59K AF, with both drought and ESA compliance contributing (both hydrologic and regulatory shortages). Plaintiff claimed that property was "taken" as a result, and that the U.S. must pay

just compensation. The court of federal claims rejected the Sovereign Acts doctrine (U.S. cannot be sued), and held that the frustrated performance of state water contracts affected plaintiff's right to water, and thus constituted a taking of property (SWP water). The court ruled that this was a **per se** taking. The U.S. used water promised to farmers (a consumption property) that instead went to fish (a public use). The court discounted the **public trust** and **reasonable Use** doctrines, which under California water law represent two key limits on water use. Under these doctrines, the state water board can provide an appropriate weighing of interests. The court concluded that under the **per se** doctrine, the U.S. must pay for farmers' water taken to save the fish.

Daniel J. O'Hanlon (*Attorney, Kronick, Moskovitz, Tidemann & Girard*): In taking claims, there are two branches of doctrinal law: physical and regulatory. There is ambiguity and difficulty with regulatory authority and claims. Physical claims much easier. The court's concern: was this a serious invasion of a property interest? If so, then it was a **per se taking**, and compensation was entitled. ❀

In our next Newsletter this review of the Water Education and Foundation, Water Law and Policy Briefing will be continued with the completion of Panel 2, and

- Panel 3: What Does "Appropriate Measurement" of Urban and Agricultural Water Mean?
 - Panel 4: Bulletin 160 and the Schwarzenegger Administration;
 - Panel 5: Finance, Finance, Finance: How Can We Pay for the CALFED Plan?
 - Panel 6: Sea Water Desalination;
- ~ plus a special address on
- Mercury Rising: Dealing with History's Toxic Legacy.

Don't miss it!

