



MWD

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

8-9

April 27, 1993

To: Board of Directors (Executive Committee--Action)
(Finance and Insurance Committee--Action)
(Water Problems Committee--Information)

From: General Manager

Subject: Conduct of Studies Relative to the U.S. Fish and Wildlife Service Proposal to Designate Critical Habitat for Four Endangered Species of Fish in the Colorado River Basin

Report

Staff is proceeding with various activities related to the U.S. Fish and Wildlife Service (Service) proposal to designate critical habitat for four endangered fish species in the Colorado River Basin (Basin). These activities are necessary to ensure that water supply deliveries and hydroelectric power generation available to Metropolitan from the Colorado River are not curtailed by the proposed designation. Critical habitat designation for these four endangered species in the Basin will result in additional requirements for federal agencies to consult with the Service, under Section 7 of the Endangered Species Act, for any project that may affect critical habitat and to ensure that their actions are not likely to destroy or adversely modify critical habitat. The General Manager informed you of the Service's proposal by letter dated February 23, 1993 (copy attached).

The Service conducted three public hearings on the proposed critical habitat designation during March, 1993. Staff attended and presented a statement identifying Metropolitan's concerns. A letter elaborating on Metropolitan's comments was also submitted to the Service in April, 1993 (copy attached). Metropolitan's comments focused on three areas of concern relating to the proposed critical habitat designation: (1) procedural issues; (2) adequacy and appropriateness of the methodology employed to assess regional, State and Basin-wide economic impacts; and (3) potential significant economic impacts to Metropolitan's service area. The Service's initial public comment period closed on April 15, 1993. Future milestones in the critical habitat designation process include release of the economic and biological support documents for public review in July, 1993, with an additional 60-day public comment period. A final determination of critical habitat is expected by January, 1994. As the Service

has not yet released the biological or economic support documents, impacts to Metropolitan of efforts to protect these endangered species are uncertain at this point. However, consequences may include changes in the operations of federally-owned dams and reservoirs along the Colorado River and certain of its tributaries to enhance fish reproductive and recruitment success. Resultant potential impacts may include restrictions on hydroelectric power generation and water supply availability in the Basin.

As a result of the magnitude and breadth of potential impacts to Metropolitan, staff is proposing that several consultants be retained to assist in the review of the Service's proposal. Consultant services are needed to assist with regulatory planning, biological analyses, and economic analyses. A proposed budget of \$500,000 is attached. The Colorado River Board of California and the Six Agency Committee (Committee) discussed this matter at their April 14 meetings and at a workshop conducted for members of the Committee on this matter on April 30, 1993. The Committee comprises representatives of the six major southern California public agencies with Colorado River water and power contracts, including Metropolitan. Support for funding of this budget is being sought from the Committee. Metropolitan's contribution to the Committee to fund the budget would total \$222,000. Due to the need for timely planning and responsiveness to the Service's proposal, it is proposed that your Board approve a contribution not to exceed \$222,000 to the Committee, in advance of the Committee members approving funding of the total budget.

This level of funding is available within Metropolitan's 1992-93 Operation and Maintenance budget. We will report back to your Board periodically on the progress of this program.

This action is exempt from the provisions of the California Environmental Quality Act as it entails funding of studies and will have no possible impact on the environment.

Board Committee Assignment

This letter was referred to:

The Executive Committee for action because of its authority to study, advise, and make recommendations with regard to matters relating to the Colorado River Board of California pursuant to Administrative Code Section 2417(d);

The Finance and Insurance Committee for action because of its authority to study, advise, and make recommendations

with regard to disposition of funds pursuant to Administrative Code Section 2441(c); and

The Water Problems Committee for information because of its authority to study, advise, and make recommendations with regard to policies and sources of importing water required by Metropolitan pursuant to Administrative Code Section 2481(a).

Recommendation

EXECUTIVE AND FINANCE AND INSURANCE COMMITTEES FOR ACTION.

That the Board approve a contribution not to exceed \$222,000 to the Six Agency Committee to provide funds for regulatory, biological, and economic analyses relative to the U.S. Fish and Wildlife Service's proposal to designate critical habitat for four endangered fish species in the Colorado River Basin.


General Manager

MRM:led/FISH.BD(WPshared:P:\)

Attachments

**U.S. FISH AND WILDLIFE SERVICE COLORADO RIVER
PROPOSED CRITICAL HABITAT DESIGNATION
PROPOSED CONSULTANT BUDGET**

1.	Regulatory Consultant/Coordinator (1):	\$150,000
	• To interpret and coordinate the regulatory process	
2.	Biological Consultant (1):	\$100,000
	• Critical technical review of Biological Report	
	• Review existing literature	
	• Review proposed flow scenarios	
	• Assist in economic analyses	
	• Assist in regulatory process	
3.	Economic Consultants (3):	\$250,000
	• Assess potential impacts on hydroelectric power	\$ 50,000
	• Assess potential impacts on industry and urban sectors	\$100,000
	• Assess potential impacts on agricultural sectors	\$ 50,000
	• Technical peer review	\$ 50,000
	TOTAL	\$500,000

BUDGET CONTRIBUTIONS

<u>Agency</u>	<u>Percent</u>	<u>\$500,000 Program</u>
Los Angeles Department of Water and Power	20.4%	\$102,000
San Diego County Water Authority	3.0%	\$ 15,000
Metropolitan	44.4%	\$222,000
Palo Verde Irrigation District	3.2%	\$ 16,000
Imperial Irrigation District	19.0%	\$ 95,000
Coachella Valley Water District	10.0%	\$ 50,000

**MWD**

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

February 23, 1993

Board of Directors (Water Problems Committee--Information)

General Manager

U.S. Fish and Wildlife Service's Proposal to Designate
Critical Habitat for Four Endangered Species of Fish in
the Colorado River BasinReport

The Federal Government has listed four fish species native to the mainstream Colorado River as endangered under the Endangered Species Act of 1973. These fishes are the razorback sucker, Colorado squawfish, humpback chub, and bonytail chub. According to the federal findings, historically, these four species occurred throughout the Colorado River system from Wyoming to Mexico, but they are currently threatened with extinction due to the regulation of Colorado River flows, the introduction of nonnative fish, and the construction of dams and other facilities that have resulted in habitat loss. The listing obligates federal agencies, including the U.S. Bureau of Reclamation, to insure that the actions they take, approve, or fund do not threaten the listed species. They must also consult with the U.S. Fish and Wildlife Service (Service) prior to taking, approving, or funding an action which could harm the listed species.

The Service, under court order, subsequently published a proposed rule for designating critical habitat for the endangered fish species in the Federal Register on January 29, 1993. Comments on this proposed rule will be accepted by the Service until March 30, 1993. Critical habitat is (i) the specific areas within the geographical area occupied by the species at the time it is listed, in which are found those physical and biological features essential to the conservation of the species and which may require special management considerations or protection and (ii) specific areas outside the geographical area occupied by a species at the time it is listed which the Secretary of the Interior determines are essential for the conservation of the species. The Service is proposing to designate a total of 2,094 miles of critical habitat along the Colorado River and other rivers in the Colorado River Basin for the

four Colorado River endangered fishes, including portions of Colorado, Utah, New Mexico, Arizona, Nevada, and California. In some cases, the critical habitat areas overlap (see attached map).

Conservation of the species will require the identification and management of water resources and habitat areas that are considered important, such as spawning areas and nursery grounds. By designating critical habitat, populations of these species could be reestablished in areas within their former range, thus encouraging maintenance of the current genetic pool.

The designation of critical habitat consists of three steps. The first is to make a biologically-based determination of potential critical habitat areas. The second step is to determine the impacts of the designation. The third step will be to decide which proposed areas, if any, should be excluded from critical habitat designation based upon economic or other relevant impacts and to determine the costs and benefits associated with the final designation. The Service is in the process of preparing additional documentation to accompany the proposed rule. This includes the biological support document, economic analysis, and a complete evaluation of the effects of the critical habitat designation.

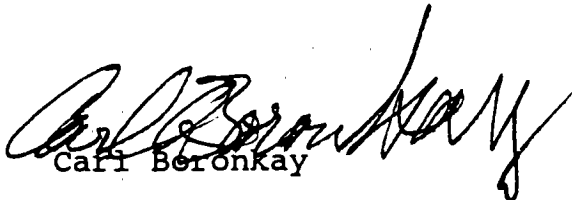
Since the review and evaluation phase of this process is not complete, it is not known at this time what effect the proposed rule for critical habitat may have on the operation of the Colorado River system reservoirs, power plants, and diversion facilities. Staff will closely monitor the Service's process, coordinate with the Colorado River Board of California, and submit comments as appropriate.

Board Committee Assignment

This letter is referred for information to the Water Problems Committee because of its authority to study and advise on the sources of importing water required by Metropolitan pursuant to Administrative Code Section 2481(a).

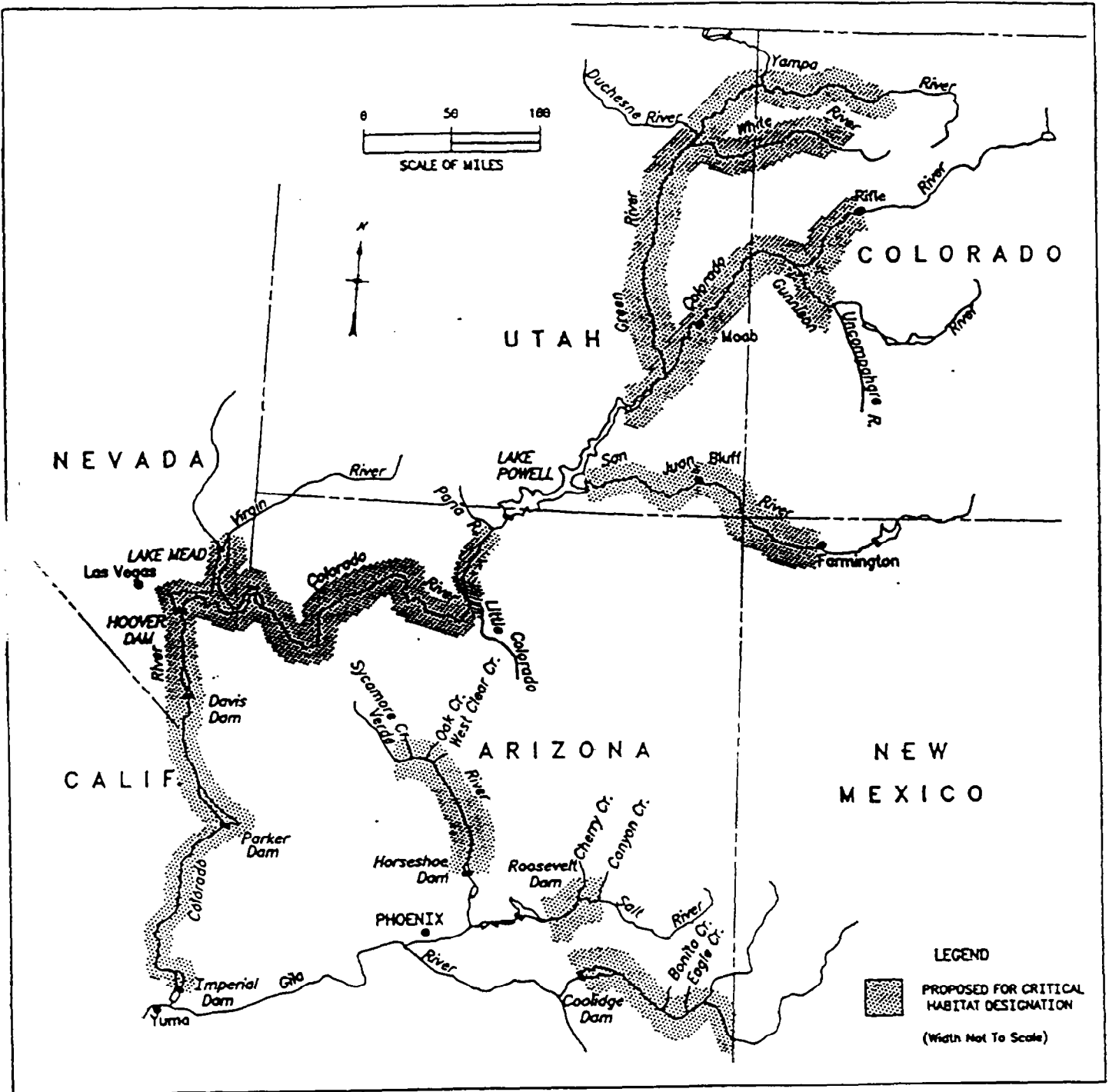
Recommendation

For information only.


Carl Beronkay

HMR:gn

Attachment



Proposed critical habitat for the razorback sucker, bonytail chub, Colorado squawfish and humpback chub.

MWD

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

APR 15 1993

Mr. Robert D. Williams
Utah State Supervisor
Ecological Services
U.S. Fish and Wildlife Service
2060 Administration Building
1745 West 1700 South
Salt Lake City, Utah 84104

Dear Mr. Williams:

Proposed Critical Habitat Designation for Four Species of
Colorado River Endangered Fishes

Thank you for allowing us the opportunity to provide comments on the proposed designation of critical habitat for the four endangered species of fishes along the Colorado River and certain of its tributaries. The Metropolitan Water District of Southern California (Metropolitan) is a public agency providing supplemental water, through its 27 member agencies, to nearly 16 million people in southern California. Metropolitan provides essential public services, which help ensure continuing public safety, health, and economic well-being in portions of Ventura, Los Angeles, San Bernardino, Riverside, Orange and San Diego counties.

The comments provided herein represent Metropolitan's concerns, as a potentially impacted public agency, regarding the U.S. Fish and Wildlife Service (Service) proposal to designate critical habitat for the four endangered species. These comments supplement the statement provided by Metropolitan at the Service's public hearing on March 29, 1993 in San Bernardino, California. We have carefully reviewed the Proposed Determination of Critical Habitat for the Colorado River Endangered Fishes: Razorback Sucker, Colorado Squawfish, Humpback Chub, and Bonytail Chub rule as set forth in the January 29, March 5, and March 15, 1993, Federal Register notices (Notice). The proposed critical habitat designation addresses 3,370 overlapping kilometers (2,094 miles) of the Colorado River system in six states extending from Colorado to California.

Our review of this proposed designation of critical habitat indicates that this action has the potential to directly and indirectly adversely impact Metropolitan's existing and future Colorado River operations and, consequently, its vital Colorado

Mr. Robert D. Williams

-2-

River water and power resources. As a result, we have extremely significant concerns that the proposed critical habitat designation would seriously impair Metropolitan's ability to carry out its public service responsibility of ensuring the safe and reliable delivery of essential water supplies to our service area. Metropolitan's primary comments and concerns encompass the following areas:

1. Procedural issues relative to the proposed critical habitat designation process;
2. Adequacy and appropriateness of the methodology employed in the assessment of economic impacts;
3. Significant adverse impacts to the economy of southern California and the entire State of California; and
4. Specific economic impacts to Metropolitan's service area as a result of potential alterations in available water and power supply and current flow regime.

These concerns and other related considerations are briefly discussed below. A fuller discussion of these issues is contained as an attachment to this letter.

Procedural Issues

Metropolitan's comments and concerns relative to procedural issues are detailed in Enclosure 1, a brief synopsis is provided below.

Adequate Time for Analysis and Comment. As the proposed rule recognizes, the economic analysis and biological support document are not currently available. These documents are at the heart of the proposed rule. While the notice indicates that a comment period will be provided after publication of these documents, it does not specify how long the period will be. We believe that in the absence of the supporting economic and biological documentation the proposed rule does not comply with the notice requirements set forth in Title 50 Code of Federal Regulations (C.F.R.) §424.16(b). Consequently, once those documents are released, a comment period of at least the minimum 60 days required by your rules at 50 C.F.R. §424.16(c)(2) must be provided. We acknowledge that representatives of the Service have indicated that a 60-day review period would be provided once the supporting documents are released. We request that the Service release each of the documents as they are completed, with a minimum 60-day review period beginning with the release of the last of the two documents distributed.

Mr. Robert D. Williams

-3-

Full Environmental Review. The Notice, at page 6588, states that no environmental review is intended since the Service has determined that the National Environmental Policy Act (NEPA) does not apply to the designation of critical habitat. That position is untenable in light of the recent federal court ruling in Douglas County v. Lujan. We strongly urge the Service to reconsider its position, immediately commence the required NEPA review, and announce its commencement of NEPA review in the Federal Register.

Adequacy of the Proposed Economic Analysis

A Comprehensive Economic Analysis is Required. The proposed rule intends to consider only the so-called "incremental impacts" of the proposed designation of critical habitat. This piecemeal approach to the required consideration of economic and other factors is not authorized by the Endangered Species Act (Act) and, indeed, will artificially minimize those impacts and skew the balance intended by Congress in the designation process. The proposed incremental approach is fundamentally improper and should be abandoned by the Service in its economic analysis.

The proposed rule (Federal Register 58: 6586) attempts to avoid a full economic accounting by arguing that the direct economic and other impacts associated with designation of critical habitat may be minimal due to the protection already provided by the initial listing. This is not, however, the case. The listing requires federal agency consultation whenever an action may jeopardize the existence of a listed species and prohibits the taking of a listed species. The Act does not include the same requirements/prohibitions for actions which modify habitat not designated critical, absent a showing of actual harm to the species. However, once habitat is designated as critical, the requirements/prohibitions of the Act are triggered with respect to habitat modification, even without a showing of harm to the species and potentially without the presence of the species itself, with attendant economic and other impacts.

The designation of critical habitat, in and of itself, could require potentially significant changes in the way the Bureau of Reclamation operates water storage and power production facilities in those areas designated. Section 4 of the Act requires that the potentially drastic economic consequences of those changes be fully considered. The "incremental" approach proposed in the Notice violates the unambiguous congressional mandate to provide a balance and must not be utilized. The economic analysis must consider the full impact of protecting the listed species in the process of designating critical habitat.

Use of Limited Data. The Service acknowledges that biological information is limited concerning the needs of these species for many reaches of the river (Federal Register 58:

Mr. Robert D. Williams

-4-

6587). Metropolitan is concerned about application of such limited data in the development of any flow scenarios for use in the economic modelling and analyses, particularly as they would be applied to the assessment of economic costs and benefits to hydroelectric power generation and water management. Use of these limited data in the development of any flow scenarios to assess economic costs and benefits may result in a significant underestimation of the costs associated with potential alterations in the current flow regimes. This is especially true in the absence of input from major users of Colorado River water, such as Metropolitan, and the Colorado River Board of California (CRB), which represents the State in matters related to the river.

Completeness and Adequacy of Economic Data. Metropolitan must question the adequacy and completeness of the data being compiled by the economists for use in computing economic costs and benefits and in assessing economic impacts. Neither Metropolitan nor the CRB has been directly contacted by the Service or the economists to date despite Metropolitan's responsibility for providing essential public services to nearly 16 million people in the Metropolitan service area. Additionally, at the March 29 and 31, 1993 public hearings, a representative of the Service stated that the economic analysis will be based on State-level data while the Notice indicates that the economic analysis will be based on sub-State-level data (i.e., county-level). Metropolitan requests clarification of this apparent discrepancy.

Validity of Assumptions in the Economic Model. Metropolitan must also question the validity of assumptions being used in constructing and running the economic model. As the final biological support document has not been available for the economists' use or for public review, and as baseline information had not been sought out by the Service or its economists from the significant users of Colorado River water prior to publication of the Notice, Metropolitan is alarmed that its interests and concerns are not being represented in the model or in the analyses. Despite this lack of opportunity for timely input, we have been informed by a representative of the Service that a draft of the economic analysis is to be available for internal Service review by April 30, 1993, only 15 days after the end of the public comment period.

Economic Impacts

Metropolitan is a public agency responsible for providing supplemental water supplies to the nearly 16 million residents and the \$400 billion economy in its 5,200 square mile service area, which covers portions of 6 counties in southern California. Metropolitan's concerns and comments relative to economic impacts are detailed in Enclosure 2, a brief synopsis is provided below. The final designation of critical habitat along the Colorado River must take these potential impacts into consideration.

Reduced Reliability in Water Supply. California is currently experiencing a crisis of substantial magnitude in the reliability of its water supply. Potential export curtailments or increased requirements for reservoir releases intended to benefit any of the four endangered fish species would further erode already dangerously low levels of reliability in water supply. Reduced reliability and resultant water supply shortages pose a threat to the California economy. These economic costs include: production and employment losses, impacts to vulnerable industries, residential impacts, increased investments to ensure reliable supplies, and reduced business confidence. A study entitled "Cost of Industrial Water Shortages," conducted for the California Urban Water Agencies (Enclosure 3), indicates that a 30 percent water shortage for one year would result in \$11.8 billion in production losses within the largest industrial sectors of the State. These types of economic impacts must be assessed in full and considered in the final designation.

Economic Impacts to Hydroelectric Power Generation. Any flow constraints on the Colorado River resulting from the proposed critical habitat designation process could reduce the availability of peaking generating capacity from the three major hydroelectric power plants (Hoover, Davis, and Parker) located on the main stem of the Colorado River in the Lower Basin. The electric utilities dependent on these resources for over 50 years, including Metropolitan, would be significantly impacted. Currently, the three power plants in the Lower Colorado Region (Region) provide approximately 2,300 megawatts of capacity and are a major source of peaking capacity for the area. The power plants are also used for ramping, regulation, and spinning reserves, which are vital to the operation of all electrical systems. If the Region were required to replace this generation, the replacement value for alternative forms of generation could be between \$1.5 billion and \$5.75 billion (approximately \$650 to \$2,500 per kilowatt installed) in capital costs alone depending on the type of replacement generation selected, in addition to significant increases in operation and maintenance costs, and degradation of air quality from fossil fuel alternatives. Necessarily, these matters must be taken into consideration in the Service's analysis.

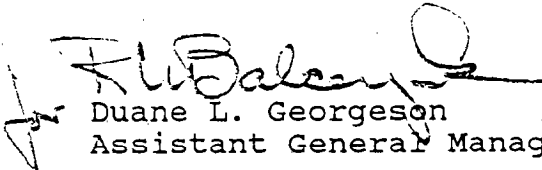
Mr. Robert D. Williams

-6-

Metropolitan would welcome the opportunity to provide necessary and essential information for use in assembling the economic models and in both the computation of economic costs and benefits and the assessment of economic impacts. We suggest a working group be formed by the Service with representatives of interested parties to include the representatives of the Governors of the seven Colorado River Basin states appointed to consult with the Secretary of the Interior (Secretary) on operation of the Colorado River reservoirs, and those entities holding water delivery contracts with the Secretary for use of Colorado River water.

We appreciate the opportunity to provide input to your critical habitat designation process and we look forward to discussing your response to our concerns. You may direct any questions regarding our comments to Ms. Kathleen Kunysz at (213) 217-6272.

Very truly yours,


Duane L. Georgeson
Assistant General Manager

Enclosures

MRM/dgs

Habitat

cc w/enclosure: Mr. Gerald R. Zimmerman
Executive Director
Suite 100
Colorado River Board of California
770 Fairmont Avenue
Glendale, California 91203-1035