

## **River Report**

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### **A Deadline Passed**

#### **With California's 4.4 Plan Seemingly on the Rocks, What's Next?**

It reads like the plot for "Chinatown" on steroids: a powerful agricultural entity in the middle of the desert that controls the majority of the water supply for the southern portion of the richest state in the union; a sprawling coastal city looking to slake its growing thirst by purchasing water from that entity; a federal deadline to reach an agreement that will allow the water sale or all parties associated with the deal – including the state – will suffer; and in the middle, an environmental time-bomb that must be diffused in order for the deal to take place. In reality, one only need to pick up the local newspaper to read the constant plot twists unfolding in California's Colorado River Water Use Plan (commonly referred to as the "4.4 Plan") and few would argue that the latest chapter in this water tome is a real doozy.

For the past seven years, water interests in southern California, including Imperial Irrigation District (IID), Coachella Valley Water District (CVWD), Metropolitan Water District of Southern California (MWD) and San Diego County Water Authority (SDCWA), along with the Department of the Interior (Interior) and its water management arm, the U.S. Bureau of Reclamation (Bureau), have been engaged in an effort to develop the 4.4 Plan. The goal of the relentless negotiations is to get California back to its basic 4.4 million acre-feet annual apportionment of the Colorado River as requested by Interior back in 1996. Two of the three elements of the 4.4 Plan (the up to 75-year water transfer agreement that would transfer up to 200,000 acre-feet of water from IID to SDCWA annually and the Interim Surplus Guidelines that would temporarily grant California [and Nevada] additional flows from the Colorado River beyond their basic annual apportionment) have been completed and signed. However, a stumbling block to the whole ongoing effort has been to generate enough consensus among the negotiating parties to finalize the Quantification Settlement Agreement (QSA) – a much anticipated agreement that would quantify Colorado River water use for the primary southern California water interests and set into motion the transfer and Interim Surplus Guidelines.

So far, the story surrounding the QSA lacks a happy ending. Thousands of hours of meetings and negotiations with concessions made on all sides; legislative amendments to the California State Fish & Game Code; potentially hundreds of millions of dollars in state funding to help grease the sticky wheels and get the deal rolling; and last-ditch attempts by the parties to reach an agreement yielded hundreds of thousands of pages of paperwork and sizable lawyer's fees for all the parties involved but no final agreement. The Dec. 31, 2002 deadline has come and gone and with it, the surplus water from the Colorado River intended to help the Golden State ease into that federally mandated reduction of the Colorado River.

"Both IID and MWD have gotten healthy cuts to their 2003 Colorado River deliveries," said Jerry Zimmerman, executive director of the Colorado River Board of California.

Just two months earlier it appeared as though the deal was done. Parties met with former California State Speaker Robert Hertzberg in October 2002 to hash out, over a four-day marathon, what everyone believed would be the final details for the QSA. Such details included how to implement the requirement that the IID/SDCWA water transfer not impact the Salton Sea

for the first 15 years (see page 7). In the end, parties on all sides agreed IID would follow about 30,000 acres of land to maintain the current salinity of the sea while a solution to “save” the sea was determined. Reports from the parties following those negotiations were mostly positive, and it seemed as though the QSA could be signed by the deadline. However, the cliffhanger vote by the IID board on Dec. 9 rejected an environmental document the QSA was based on, effectively killing the deal. Still, fingers remained crossed the impasse could be breached and attempts to salvage the QSA were made nearly until the New Year’s Eve deadline.

“I know people worked through the weekends and the night leading up to the deadline to try and get a QSA – agreed to by all sides – passed,” said Robert Johnson, regional director for Bureau’s Lower Colorado Region, who was present at most of the meetings.

The state of California appeared willing to ante up to address IID’s concerns about the QSA. There was talk of potentially offering IID a \$150 million loan guarantee should its investments in on-farm conservation measures not be recouped if the water transfer agreement with SDCWA fell apart after the 15-year period, and an additional \$200 million of Proposition 50 funds toward mitigation efforts for the beleaguered Salton Sea and within IID. (The Proposition 50 funds were contingent on the state Legislature passing legislation to appropriate the money.)

On Dec. 31, the IID board passed a revised QSA but before IID’s version of the QSA went to a vote before its board, Interior informed the press and other parties it would not accept IID’s change and MWD and CVWD quickly agreed. Both water districts and Interior concluded IID’s proposal had too many “off-ramps” that would allow IID to scuttle the deal if certain provisions were not met.

“If the state didn’t grant the \$150 million loan guarantee, IID had an option to back-out of the deal,” said acting CVWD General Manager, Steve Robbins. “The benefit of the QSA for us is supposed to be long-term reliability of water supply and we wouldn’t have gotten that under IID’s proposal.”

The Bureau’s Johnson agreed. “It’s got to be permanent,” he said.

Other Interior concerns over the IID QSA proposal stem from the fact that the majority of the funding for environmental mitigation to be carried out by IID is contingent on a \$200 million allocation from the state. IID capped its environmental responsibilities for the transfer at \$30 million and the other QSA parties agreed to pony up a combined \$13.3 million. But should the state funding not come through for IID, it had an option to bag the deal under its passed QSA.

As promised, failure to sign the QSA and meet the deadline came with a price: IID and the rest of California are feeling the clampdown by both state and federal entities.

On Jan. 1 Interior Secretary Gale Norton did as she said she would, and suspended Colorado River surplus flows to California (and Nevada), reducing supplies for the southland. In a history-making move, IID had its annual water order cut by 205,000 acre-feet and MWD, last in line for Colorado River water under California’s Colorado River priority system, saw flows to its Colorado River Aqueduct reduced by 536,500 acre-feet – nearly 50 percent of its capacity.

“We’ve turned off three of our eight Colorado River pumps,” said Dennis Underwood, Vice President of Colorado River Resources for MWD. MWD has announced that it has enough water for its member agencies, including SDCWA, to weather the worst conditions available for

at least two years and potentially longer using a combination of conjunctive use, desalination, water marketing and surface storage projects.

For IID, the federal water cutback will most likely force it to fallow 30,000 acres of land – about the same amount it would have had to fallow for the first 15-years of the transfer to avoid impacts to the Salton Sea.

John Penn Carter, chief legal counsel to IID and its primary negotiator for the 4.4 Plan, said he has been directed by his board to, “take any necessary action to challenge the Secretary’s order while continuing to negotiate with the other water agencies to complete the deal as soon as possible.”

As a result, Carter, on behalf of IID, filed suit in U.S. District Court against the United States, Gale Norton, Bennett Raley and Robert W. Johnson on Jan. 10. The complaint alleges that the federal defendants are not honoring existing water contracts and are violating IID’s water rights by unlawfully reallocating Colorado River water from IID to more junior California water right holders.

IID also is facing state action with regards to its water rights. On Jan. 7, State Sens. Mike Machado (D-Linden) and Sheila Kuehl (D-Santa Monica) announced they would introduce legislation to cap IID’s Colorado River water right to 2.6 million acre-feet in an effort to push for resolution of the QSA. In a foreshadowing of this most recent move, Machado had indicated in a letter to the parties during the Hertzberg process that should they fail to sign the QSA by the deadline, he planned action. State and federal officials have hinted they may further challenge IID’s water rights through a review of what is “reasonable and beneficial use” of the Colorado River.

“We’ve always been for what’s reasonable,” Carter said. “Were it not for the Salton Sea, this transfer would have remained a voluntary one instead of a partially involuntary one,” he said.

In addition to questions about mitigation funding, environmental issues surrounding the Salton Sea have been further complicated by the sun setting of an important amendment to the California State Fish & Game Code that would have allowed for the take of “fully protected species” as a result of the water transfer (see page 9).

And so the saga continues. This issue of *River Report* examines the background leading up to the current state of indecision on the QSA and how close (or far) the parties are to resolving the issue and getting the 4.4 Plan implemented.