

STATEMENT OF HERBERT R. GUENTHER

DIRECTOR, ARIZONA DEPARTMENT OF WATER RESOURCES

ON

H.R. 5180

LOWER COLORADO RIVER MULTI-SPECIES CONSERVATION PROGRAM

**BEFORE THE
HOUSE OF REPRESENTATIVES
RESOURCES COMMITTEE
WATER AND POWER SUBCOMMITTEE**

**OCTOBER 10, 2006
SCOTTSDALE, ARIZONA**

Good morning, and thank you for the opportunity to appear before the Committee on this fine day in Arizona. In April 2005, the Secretary of the Interior signed the Record of Decision and Program Documents that created the Lower Colorado River Multi-Species Conservation Program (LCR MSCP), a cooperative effort among 50 federal and non-federal entities in Arizona, California and Nevada to protect 26 endangered, threatened and sensitive species on the Lower Colorado River while providing assurances to the affected water and power agencies of the three states that their operations may continue upon compliance with Program requirements.

The primary reason the non-federal water and power entities have pursued development of and agreed to cost share implementation of the LCR MSCP is to attain a higher level of certainty in use of water and power resources of the Colorado River. Colorado River water and power are vital assets to the State of Arizona. The Colorado River provides 35.6% of the water used in Arizona and hydropower supports pumping and distribution of water. Operation and management of the Lower Colorado River is complex, involving non-federal actions by parties in Arizona, California, and Nevada, and management actions by the U. S. Bureau of Reclamation, acting as watermaster pursuant to a United States Supreme Court Decree, U. S. Fish and Wildlife Service, Bureau of Land Management, Environmental Protection Agency and others.

The LCR MSCP provides comprehensive coverage for ongoing non-federal and federal operations through a program that mitigates the effects of those operations. In addition, the LCR MSCP provides Endangered Species Act compliance for changes to existing operations, up to a defined range of use, such as water diversions and change of points of diversions. Having this compliance allows the basin states to discuss drought management options, such as a temporary water transfers, that otherwise would require individual compliance.

This legislation adds certainty for the non-federal participants in several specific areas. As discussed below, these include confirmation of the federal/state cost-sharing agreement by capping the non-federal share; provide the non-federal entities “no surprises” protection, and protection of the Law of the River while providing the Secretary the ability to fully utilize acquired water for the Program. In addition, the legislation increases certainty for the Bureau of Reclamation in their ability to manage the water resources in the Lower Basin by clarifying accounting methods for water required for Program implementation by agreement of the Lower Division States.

There have been other programs and individual efforts to improve the status of lower Colorado River species and habitats. The LCR MSCP differs from these other efforts in significant ways. First, the Program includes most of the major water and power users on the lower Colorado River. Second, the LCR MSCP is a *coordinated, large-scale* Program covering approximately 400 miles of the Colorado River. The opportunity to improve the status of

the threatened and endangered species to the point of down listing or delisting, is greatly enhanced by the geographic scope, stakeholder participation and coordinated implementation of the Program.

Although Program implementation has already begun, federal authorizing legislation remains a final, very important goal. All of the LCR MSCP parties fully support implementation of the Program, but federal funding priorities change over time. The LCR MSCP is a long-term, 50-year program. Program costs are high in the early years when land and water acquisition and habitat restoration and enhancement work are underway. The value of this early investment is only secure if the Federal contribution is assured for the full term of the Program.

The Federal and state parties have agreed to share Program implementation costs totaling \$626 million, indexed for inflation over the 50-year term of the Program. Costs are split 50 percent Federal/50 percent non-Federal. Legislation will affirm this agreement by providing that the Federal share of Program costs will be non-reimbursable. The legislation will also cap the non-federal costs at the agreed upon amount.

In addition to securing the Program financial agreements, this legislation includes several provisions that affirm the agreements of the Federal and non-Federal participants. The legislation provides that subsequent Congressional action will not modify the party's obligations, unless specific to the LCR MSCP. This provision protects the participants from the unintended consequences of changes to the Endangered Species Act or other law. Legislation will secure the "no surprises" and permit revocation policies contained in the Program documents. It provides for a limited waiver of sovereign immunity to the extent that the non-Federal parties would need to enforce their agreements with the Federal government. The legislation also authorizes the Secretary to enter into an agreement with the Lower Division States to provide water for implementation of the LCR MSCP.

The LCR MSCP development and implementation has been an open and public process. The Draft Habitat Conservation Plan underwent scientific peer review. Recommendations from the peer review panel were incorporated into the final Program plan. Steering Committee meetings are noticed and open to the public, and Program documents are available for review. Given the open and public nature of the Program, the legislation would exempt the LCR MSCP Steering Committee from Federal Advisory Committee Act requirements.

The LCR MSCP is an excellent Program to address endangered species needs while preserving and adding certainty to the rights of water and power users of the Colorado River in the Lower Basin. Please support H.R. 5180 and S. 3841 to authorize the Lower Colorado River Multi-Species Conservation Program.

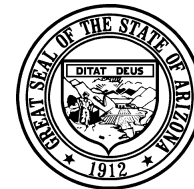
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Janet Napolitano
Governor

Herbert R. Guenther
Director

Herbert R. "Herb" Guenther

EXPERIENCE:

- Four years* Director, Arizona Department of Water Resources
- 22 years* Executive Assistant for Special Affairs
Wellton Mohawk Irrigation and Drainage District
Wellton, Arizona
Responsibilities include: Gila River flood control, State and Federal legislation, contract administration, environmental compliance, public hearings, water quality, endangered species and public relations. My responsibilities involved extensive experience with the Endangered Species Act, the National Environmental Policy Act, the Clean Water Act and the National Historic Preservation Act.
- 10 years* Senior Biologist, 1971 - 1981
U. S. Bureau of Reclamation
Boulder City, Nevada
Responsibilities included: water resource studies, environmental compliance, special projects, public hearings, mitigation plans, research and inventory contracts, environmental litigation and endangered species inventories. Major projects included: the Central Arizona Project and the Title I Salinity Control Program. My responsibilities involved extensive experience with the Endangered Species Act, the National Environmental Policy Act, the Clean Water Act, the Fish and Wildlife Coordination Act and the National Historic Preservation Act.
- 2 years* Biological Assistant, 1969 -1970
Arizona Game & Fish Department
Research Division
Phoenix, Arizona
Responsibilities included: habitat and population inventories for javelina, mule deer and doves
- 2 years* Engineering Technician, 1968-1970
Arizona Highway Department
Photogrammetry and Mapping Division
Phoenix, Arizona
Responsibilities included: route selection and analysis of portions of the interstate transportation system in Arizona
- 4 years* Geodetic Surveyor, 1963 - 1967
U.S. Air Force
Worldwide

EDUCATION:

Bachelor of Science
Associate of Arts
Graduated

1971-Wildlife Biology, Arizona State University, Tempe, Arizona
1969 Glendale Community College, Glendale, Arizona
1959- Washington High School, Phoenix, Arizona

ELECTED OFFICES:

State Senator - 1999-2003

(Forty-Fourth and Forty-Fifth Legislatures)
Arizona State Senate

Chairman, Natural Resources, Agriculture and
Environment

Chairman, Sub Appropriations Committee on Health
and Welfare

Vice Chairman, Health Committee

Committees: Appropriations, Transportation,
Government & Environmental Stewardship, Joint Legislative Audit and Joint
Committee on Capital Review

State Representative - 1986 – 1993

Arizona House of Representatives
(Thirty-seventh, Thirty-eighth, Thirty-ninth, Fortieth Legislatures)

Board Member - 1982-1987

Mohawk Valley School District

DATE OF BIRTH:

April 9, 1941
Mineola, New York

LIVED IN ARIZONA:

Since 1957

MILITARY SERVICE:

U.S. Air Force 1963 - 1967, Geodetic Surveyor
Honorable Discharge 1967

APPOINTMENTS:

Morris K. Udall Foundation, Board of Directors
Western States Water Council
Co-Chair Arizona Wine Commission
Co-Chair, Statewide Health Care Task Force
Co-Chair, Joint Select Committee on Corrections
Joint Committee on Residual Contamination of Drug Properties
Committee on Transportation between Sonora and Arizona
Arizona - Mexico Commission
Governor's Ground Water Commission
Governor's Rural Economic Development Committee
Governor's Military Facilities Task Force
Chairman, Arizona Game and Fish Commission
Commissioner, Arizona Game & Fish Commission
Council of State Governments,
Executive Committee
Chairman, Western Legislative Conference
Vice Chairman
Chairman, Water Policy Committee
Legislative Academy
Committees: Trade & Transportation, Vice Chair- Western Water Policy
Committee, Natural Resources, Mining and Agriculture Committee, Committee on
the Southern Border Initiative

Yuma Proving Ground Commander's Council,
Yuma Proving Ground, Department of the Army
Yuma District Advisory Council,
Bureau of Land Management (Two terms)
Yuma Clapper Rail Endangered Species Recovery Team,
U. S. Department of the Interior
Devil's Hole Pupfish Endangered Species Recovery Team,
U.S. Department of the Interior
President, Colorado River Water Users Association
1997 and 1998
Arizona Director, Colorado River Water Users Association
1992 - Present
Vice President, Colorado River Water Users Association
1996 and 1997
President, Antelope-Wellton Rotary Club - 1986
Trustee, Yuma Regional Medical Center - Board of
Trustees 1983 – 1987

AFFILIATIONS:

FAMILY:

Wife - Sharon
Children – Brandon, Cathy, Chris and D. J
(grown and mostly independent)

HONORS:

Legislator of the Year, National Indian Gaming Assn., 2002
Legislator of the Year, League of Cities and Towns, 2001
Legislator of the Year, American Ground Water Trust, 2000
Water Statesman of the Year, Agri-Business Council, 1992
Legislator of the Year, National Council of State
Legislatures 1987
Honorary Paul Harris Fellow, Rotary International 1990

DISCLOSURE REQUIREMENT
Required by House Rule XI, clause 2(g)
and Rules of the Committee on Resources

A. This part is to be completed by all witnesses:

1. Name: *Herbert R. Guenther*

2. Business Address: *3550 N. Central Ave., Ste. 442*
Phoenix, AZ 85012-2105

3. Business Phone Number: *(602) 771-8426*

4. Organization you are representing: *Arizona Dept. of Water Resources*

5. Any training or educational certificates, diplomas or degrees or other educational experiences which add to your qualifications to testify on or knowledge of the subject matter of the hearing:

Bachelor of Science - Wildlife Biology

6. Any professional licenses, certifications, or affiliations held which are relevant to your qualifications to testify on or knowledge of the subject matter of the hearing:

Biography attached

7. Any employment, occupation, ownership in a firm or business, or work-related experiences which relate to your qualifications to testify on or knowledge of the subject matter of the hearing:

Biography attached

8. Any offices, elected positions, or representational capacity held in the organization on whose behalf you are testifying:

Director, Arizona Department of Water Resources

B. To be completed by nongovernmental witnesses only:

1. Any federal grants or contracts (including subgrants or subcontracts) from the Department of the Interior which you have received since October 1, 2000, including the source and the amount of each grant or contract:

2. Any federal grants or contracts (including subgrants or subcontracts) the Department of the Interior which were received since October 1, 2000 by the organization(s) which you represent at this hearing, including the source and amount of each grant or contract:

3. Any other information you wish to convey which might aid the members of the Committee to better understand the context of your testimony: