

Statement of Lorri Gray
Program Manager for Colorado River Multi-Species Conservation Program
Bureau of Reclamation
U.S. Department of the Interior
Before the House Resources Committee
Subcommittee on Water and Power
HR 5180
October 10, 2006

Mr. Chairman and members of the Subcommittee, I am Lorri Gray, Program Manager of the Colorado River Multi-Species Conservation Plan for the Bureau of Reclamation. I am here today to present the views of the Department of the Interior on HR 5180, a bill to authorize a habitat conservation program on the lower Colorado River in the States of Arizona, California, and Nevada.

HR 5180 authorizes the Lower Colorado River Multi-Species Conservation Program (LCR MSCP) and addresses issues associated with implementation of the program, including Colorado River water use, investment of appropriated funds, and the enforceability of program documents. While the Department already has clear authority to administer the program under existing statutes, we also understand the interest of our partners in seeking this legislation. Consequently, the Department supports the LCR MSCP as well as the intent of HR 5180 to further this program. However, the Department remains concerned about language in Section 3(b), 4(b), 5(c), and 5(d), which I will discuss below.

The LCR MSCP was developed through a collaborative partnership with State leaders, local stakeholders and the Administration. This innovative program addresses the needs of threatened and endangered fish and wildlife on the lower Colorado River while assuring water reliability and hydropower production. By meeting the needs of fish and wildlife listed under the Endangered Species Act, as well as preventing the need to list additional species, the plan provides greater certainty of continued water and power supplies from the river for Nevada, California and Arizona - and is designed to allow future water transfers within or among water users for a 50-year period.

Under existing authorities, Reclamation has been implementing activities that are similar in nature to those described in this program since 1997 when the U.S. Fish and Wildlife Service issued a Biological Opinion for southwestern willow flycatcher, bony tail chub, Yuma clapper rail and razorback sucker fish. In 2001, Reclamation issued Surplus Guidelines that define when water operations can provide surplus water to water users in the Lower Colorado River Basin, and the Biological Opinion that provides compliance for these Surplus Guidelines is being implemented through the LCR MSCP. With these and other actions, Reclamation has been meeting the requirements of the LCR MSCP since before its inception in 2005.

To date Reclamation has spent a total of \$9.5 million in FY2004 and FY2005, and has spent an estimated \$13 million in FY2006 from both Federal and non-Federal sources pursuant to the Program's Funding and Management Agreement with non-federal entities. In addition to establishing over 180 acres of new habitat, Reclamation has stocked 17,014 razorback suckers and 6,725 bony tail chub into the lower Colorado River since 2004. A significant amount of

money has been spent on the research and monitoring needed to develop a sound scientific foundation for this program, which is designed to remain in effect for 50 years. Accomplishment reports for FY2004 and FY2005 have been approved by the MSCP Steering Committee. The FY2004 report has been reviewed by the U.S. Fish and Wildlife Service and found to be in compliance with the ESA Section 10 Permit. The FY2005 report is currently being reviewed by the U.S. Fish and Wildlife Service. Both reports can be found on Reclamation's website at www.usbr.gov/lc/lcrmsep.

In Reclamation's FY2007 budget, which is awaiting Congressional approval, \$9.6 million has been identified from Federal funding for the program, with a \$9.6 million match from non-Federal partners.

Reclamation can appreciate the states' interest in seeking formal authorization of this program because of its 50-year term and overall cost; however, Reclamation has the authority to implement this program through existing means under the Reclamation Act of 1902, the Boulder Canyon Project Act, the Colorado River Front Work and Levees Act and other statutes.

The Department has concerns with HR 5180, Section 3(b). As written, this Section would direct the Secretary to enter into an agreement with the States providing for the use of Colorado River water specifically for habitat creation and maintenance purposes. The Department believes that through existing contract terms, willing seller transactions, and current policies, Reclamation can utilize Colorado River water to implement the program. However, Reclamation is working with our funding partners in the States of Arizona, California, and Nevada to develop an agreement acceptable to all parties on the use of Colorado River water for program purposes. At this time, language that directs the Secretary to enter into an agreement which is not finalized can not be supported by the Department.

The Administration also cannot support the language in section 4(b) of this bill allowing the Secretary to invest appropriated moneys that are not required to meet current program expenditures. Investing appropriations provides additional monies to finance a governmental purpose outside of the normal appropriations process.

We are also concerned about section 5(c), which addresses judicial review of program documents. We are advised by the Department of Justice that this provision could expand Federal litigation exposure in significant respects. We would appreciate the opportunity to work with the committee to address our concerns regarding section 5(c).

Section 5(d) seeks an explicit exemption from the Federal Advisory Committee Act. The Department believes that this exemption is not necessary as the program was determined by the Director of the U.S. Fish and Wildlife Service to be an Ecosystem Recovery and Implementation Team (ECRIT) pursuant to section 4(f)(2) of the ESA, thereby making the LCR MSCP Steering Committee exempt. Therefore, section 5(d) is superfluous and we recommend deleting it.

Thank you for the opportunity to comment on this legislation. We look forward to working with you on the various concerns we have. I am happy to take any questions.