

**RESOLUTION OF THE COLORADO WATER CONSERVATION BOARD
CONCERNING THE COLORADO RIVER DELTA**

March 2001

WHEREAS, relations with Mexico, including the protection and conservation of the Colorado River Delta (Delta) in Mexico have long been issues; and

WHEREAS, a treaty between the United States of America and the United Mexican States relating to the utilization of the waters of the Colorado and Tijuana Rivers, and of the Rio Grande was signed on February 3, 1944 (1944 Treaty); and

WHEREAS, the 1944 Treaty obligates the U.S.A. to deliver 1.5 MAF of water to Mexico from the Colorado River annually, except during declared surplus or shortage conditions; and

WHEREAS, the 1944 Treaty provides that Mexico shall acquire no right beyond that provided by the 1944 Treaty to the use of waters from the Colorado River system; and

WHEREAS, Minute 242 to the 1944 Treaty was adopted to assure Mexico that the quality of Colorado River water that it received would be no more than 115 ppm, plus or minus 30 ppm, over the salinity of the Colorado River at Imperial Dam; and

WHEREAS, a drain (MODE) from the Wellton-Mohawk area of Arizona to the Yuma Desalting Plant and subsequently on down to the Santa Clara Slough was constructed for the purpose of assuring the water quality of the Colorado River to Mexico was met; and

WHEREAS, the expense of operating the Yuma Desalter has precluded its use and resulted in the MODE serving as the primary means for disposing of the saline returns; and

WHEREAS, the untreated returns released down the MODE have had positive environmental effects on the Slough and are not counted as part of the 1944 Treaty delivery obligation unless treated by the Yuma Desalter and returned to the Colorado River within the water quality standards established by Minute 242 of the 1944 Treaty; and

WHEREAS, on May 18, 2000 the U.S. Secretary of Interior and the Secretariat of Environment, Natural Resources and Fisheries of the United Mexican States entered into the, "JOINT DECLARATION BETWEEN THE DEPARTMENT OF THE INTERIOR (DOI) OF THE UNITED STATES OF AMERICA AND THE SECRETARIAT OF ENVIRONMENT, NATURAL RESOURCES AND FISHERIES (SEMARNAP) OF THE UNITED MEXICAN STATES TO ENHANCE COOPERATION IN THE COLORADO RIVER DELTA" ("Joint Declaration").

WHEREAS, the *Defenders of Wildlife v. Babbitt No. 00CV1544* lawsuit was filed on June 28, 2000 in Washington D.C. alleging failure of federal agencies to comply with the Endangered Species Act (ESA) in analyzing Lower Colorado River operations, in particular Reclamation's

failure to consider the impacts of its actions on federally listed species in the Delta in Mexico;
and

WHEREAS, without participation from all the Colorado River Basin States, the International Boundary and Water Commission adopted Minute 306 (attached) to the 1944 Treaty on December 12, 2000 and informed the Colorado River Water Users Association at their annual convention in Las Vegas.

NOW THEREFORE BE IT RESOLVED that it is the policy of the Colorado Water Conservation Board with respect to the Colorado River Delta in Mexico:

1. To continue to learn more about Delta issues and Mexican law and institutions.
2. To continue to monitor activities of the IBWC, particularly with respect to Minute 306.
3. To recommend to the Colorado Attorney General that an amicus brief be filed in the pending litigation with the Defenders of Wildlife, if appropriate, asserting that ESA has no application outside the borders of the United States of America.
4. To actively participate with the other Colorado River Basin states in developing positions on issues concerning the Delta and communicate those positions to their respective congressional delegations, the State and Interior Departments and water users.
5. To insist that both the State and Interior Departments coordinate and communicate with the Colorado River Basin States on issues concerning the Delta and acknowledge the basin states' authority to administer water and water rights within their borders pursuant to interstate compact and allocations made therein.
6. To encourage sound and unbiased research concerning the natural environment of the Delta and the establishment of clear and concise recovery goals for threatened and endangered species in the Colorado River Basin.
7. To acknowledge that protection and enhancement of the natural resources of the Delta are important to Mexico and environmental organizations and urge the U.S government to assist Mexico in protecting the resources of the Delta.
8. To oppose the U.S. making any commitments to provide any Colorado River water other than what is currently required by the 1944 Treaty and allowed by the Law of the Colorado River.
9. To encourage Mexico to find management or structural solutions within the waters available to Mexico pursuant to the 1944 Treaty.
10. To acknowledge that Delta restoration and the Interim Surplus Guidelines are separate issues and should not be linked.
11. Litigation of any issue associated with restoring the Delta, such as the litigation by the Defenders of Wildlife concerning ESA compliance, is considered unproductive and disruptive to discussions concerning the Delta. Therefore, any financial or technical assistance should be opposed until such litigation is concluded.
12. To oppose any assistance to Mexico on Colorado River Delta issues that in any way adversely impacts assistance to other endangered species recovery efforts in the U.S.
13. Encourage that the Department of State appoint a U.S. Commissioner to the IBWC that is knowledgeable on Colorado River issues.

Done this 27th day of March, 2001

INTERNATIONAL BOUNDARY AND WATER COMMISSION
UNITED STATES AND MEXICO

El Paso, Texas
December 12, 2000

Minute No. 306

**CONCEPTUAL FRAMEWORK FOR
UNITED STATES - MEXICO STUDIES FOR FUTURE
RECOMMENDATIONS CONCERNING THE RIPARIAN AND
ESTUARINE ECOLOGY OF THE LIMITROPHE SECTION OF THE
COLORADO RIVER AND ITS ASSOCIATED DELTA**

The Commission met in the offices of the United States Section in El Paso, Texas, at 11:00 a.m. on December 12, 2000, to consider a conceptual framework for cooperation by the United States and Mexico through the development of studies and recommendations concerning the riparian and estuarine ecology of the Colorado River in its limitrophe section and its associated delta.

The Commissioners observed that studies are currently being performed by the Commission to improve the capacity of the Colorado River channel to convey normal and flood waters in the 24 mile (36 kilometer) limitrophe section of the Colorado River under the authority of Article 13 of the United States - Mexico Treaty for "Utilization of Waters of the Colorado and Tijuana Rivers and of the Rio Grande," signed February 3, 1944. Studies are also currently being performed by the Commission on the preservation of the channel of the Colorado River in its limitrophe section under the terms of Article IV of the United States - Mexico Treaty to Resolve Pending Boundary Differences and Maintain the Rio Grande and the Colorado River as the International Boundary, signed November 23, 1970.

The Commissioners referred to the Commission's binational technical task force (hereinafter binational technical task force) that was established to facilitate studies concerning the Colorado River delta in Mexico, as well as water flows to the Santa Clara Slough which are discharged to Mexico under IBWC Minute No. 242, entitled "Permanent and Definitive Solution to the International Problem of Salinity of the Colorado River," signed August 30, 1973. They made note of the United States - Mexico consultations concerning the proposed United States modification of its domestic surplus water guidelines, currently being conducted under the auspices of the Commission.

The Commissioners noted that each country has laws and regulations concerning the preservation of riparian and estuarine system habitat that are executed by authorities that are provided such responsibility in their respective country. The Commissioners recognized that collaboration is growing between those authorities as well as between scientific, academic and non-government organizations in the two countries which have an interest in preserving the Colorado River delta ecology. They observed that some studies conducted by these groups have provided some definition

INTERNATIONAL BOUNDARY AND WATER COMMISSION
UNITED STATES AND MEXICO

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of the ecology affected by decreases in Colorado River flows in this reach and potential impacts to the habitat of fish, marine and wildlife species of concern to each country. The Commissioners observed that some entities in their respective countries may seek water and seek to ensure its use for ecological purposes in the Colorado River's limitrophe section and the Colorado River delta.

The Commissioners recognized that there was a need for the United States and Mexico to create a framework to formalize a process that will: 1) consider Colorado River delta restoration studies prepared by government, scientific, academic and non-government organizations in the two countries; 2) provide for development of additional studies through the binational technical task force; and 3) formulate recommendations for cooperative projects concerning the Colorado River delta in Mexico to be undertaken by the United States and Mexico based on the principle of an equitable distribution of resources. The Commissioners also recognized that there is a need to support the binational technical task force with a forum for the exchange of information and advice among government and non-government organizations with an interest in the affected areas.

Based on the above, the Commissioners submit the following recommendation for the approval of the two Governments:

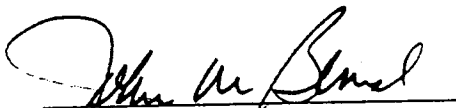
1. That in recognition of their respective governments' interest in the preservation of the riparian and estuarine ecology of the Colorado River in its limitrophe section and its associated delta, the Commission shall establish a framework for cooperation by the United States and Mexico through the development of joint studies that include possible approaches to ensure use of water for ecological purposes in this reach and formulation of recommendations for cooperative projects, based on the principle of an equitable distribution of resources. The Commission may elicit the support and technical advice of the competent agencies of each Government.
2. That the Commission, through the binational technical task force, shall examine the effect of flows on the existing riparian and estuarine ecology of the Colorado River from its limitrophe section to its delta with a focus on defining the habitat needs of fish, and marine and wildlife species of concern to each country.
3. That the Commission shall support the binational technical task force by establishing a forum for the exchange of information and advice among government and non-government organizations with an interest in the affected area.


INTERNATIONAL BOUNDARY AND WATER COMMISSION
UNITED STATES AND MEXICO

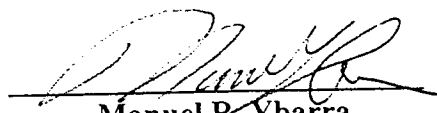
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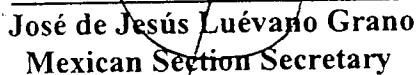
4. That all activities undertaken pursuant to the provisions of this Minute shall be subject to the availability of funds, resources, and corresponding personnel as well as to applicable laws and standards in each country.
5. That this Minute shall enter into force upon notification of approval by the Government of the United States and the Government of the United Mexican States through the respective Sections of the Commission.

The meeting was adjourned.


John M. Bernal
United States Commissioner


J. Arturo Herrera Solís
Mexican Commissioner


Manuel R. Ybarra
United States Section Secretary


José de Jesús Luévano Grano
Mexican Section Secretary