

**Statement of Robert Johnson  
Commissioner, U.S. Bureau of Reclamation  
U.S. Department of the Interior  
Before the Committee on Natural Resources  
Subcommittee on Water and Power  
U.S. House of Representatives**

**H.R. 2515  
July 24, 2007**

Madam Chairwoman and members of the Subcommittee, my name is Robert Johnson and am here today to present the views of the Department of the Interior on H.R. 2515, a bill to authorize a habitat conservation program on the lower Colorado River in the States of Arizona, California, and Nevada.

H.R. 2515 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. The Lower Colorado River is a critical resource to citizens of the southwest. Maintaining compliance with the Endangered Species Act and avoiding water supply conflicts that have been occurring in other areas of the West is critical to the Department. The Department supports the LCR MSCP as well as the intent of H.R. 2515 to further this program. However, the Department remains concerned about language in Section 2, 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 greater reliability of water deliveries 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.

Reclamation began work to develop the LCR MSCP in 1997 and the program was formally approved and adopted by Secretary Norton in 2005. 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 adopted interim Surplus Guidelines that define when water operations can provide surplus water to water users in the Lower Colorado River Basin, and the Biological Opinion for that action is being implemented through the LCR MSCP. With these and other actions, Reclamation has been meeting the requirements of the Endangered Species Act (ESA) for over a decade.

Reclamation has spent a total of \$9.5 million in FY2004 and FY2005, and spent \$13 million in FY2006 from both Federal and non-Federal sources pursuant to the Program's

Funding and Management Agreement with non-Federal entities. The LCR MSCP Steering Committee supports a budget of over \$16 million for FY 2007. In addition to establishing over 270 acres of new habitat along the Colorado River, Reclamation has stocked 46,079 razorback suckers and 14,836 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 50-year program. Accomplishment reports for FY2004 and FY2005 have been approved by the MSCP Steering Committee, reviewed by the U.S. Fish and Wildlife Service, and found to be in compliance with the LCR MSCP ESA Section 10 Permit. The FY2006 report has been approved by the Steering Committee and U.S. Fish and Wildlife Service. All reports can be found on Reclamation's website at [www.lcrmscp.gov](http://www.lcrmscp.gov).

In Reclamation's FY2008 budget, which is awaiting Congressional approval, \$7 million has been identified from Federal funding for the program, with a \$7 million match from non-Federal partners.

Since presenting testimony on HR 5180 last year, the Department is pleased to report progress toward resolving issues surrounding section 3(b). As written, this Section would direct the Secretary to enter into an agreement with the States of Arizona, California and Nevada 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 (and non-Colorado River) water to implement the program. However, Reclamation has made progress with our funding partners in the Lower Basin States to develop an agreement acceptable to all parties on the use of Colorado River water for program purposes. Such an agreement could facilitate program implementation, and we look forward to continuing productive efforts with our partners on this proposed agreement.

We do have a couple of concerns with provisions contained in H.R. 2515. The geographic definition of the Lower Colorado River in section 2 should be clarified to match that contained in the MSCP Program Documents. The Administration 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 note that this provision has been modified from the language introduced in the last session of Congress, and that language has been added clarifying that the United States would not be liable for claims for money damages. Nevertheless, we have been advised by the Department of Justice and we are concerned that this provision could expand Federal litigation exposure in significant respects and open the door for judicial intrusion into administrative decision making. We would appreciate the opportunity to continue 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, we believe section 5(d) is superfluous and we recommend deleting it.

The Department already has clear authorities to administer this program under existing statutes, and Reclamation began actively implementing the full LCR MSCP program in 2005. Through implementation of this program, the likelihood of a water conflict on the lower Colorado River is reduced.

The Department supports the LCR MSCP and will continue to work with interested stakeholders that seek to enhance the program. 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.