LOWER COLORADO RIVER
MULTI-SPECIES CONSERVATION PROGRAM
JOINT PARTICIPATION AGREEMENT

AMONG THE

U.S. DEPARTMENT OF THE INTERIOR,
BUREAU OF LAND MANAGEMENT
BUREAU OF RECLAMATION,
FISH AND WILDLIFE SERVICE,
and
NATIONAL PARK SERVICE,

STATE OF ARIZONA,
represented by the
ARIZONA DEPARTMENT OF WATER RESOURCES
and the
ARIZONA GAME AND FISH COMMISSION,

STATE OF CALIFORNIA,
represented by the
COLORADO RIVER BOARD OF CALIFORNIA
and the
CALIFORNIA DEPARTMENT OF FISH AND GAME,

AND THE
STATE OF NEVADA,
represented by its
COLORADO RIVER COMMISSION
and the
DIVISION OF WILDLIFE
of the
STATE DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES

JPA - Version No. 10
Apr. 24, 1997 (incorporates changes from 3/10 conf. call & subsequent "Principals" discussions)
This document printed: April 24, 1997

1. PARTIES

THIS AGREEMENT is made and entered into by and among the following parties, hereinafter referred to singly as "Party" and collectively as "Parties":

1.1 The United States Department of the Interior ("Department"), the Bureau of Land Management, the Bureau of Reclamation, the Fish and Wildlife Service, and the National Park Service.

1.2 The State of Arizona ("Arizona"), represented by the Arizona Department of Water Resources and the Arizona Game and Fish Commission.

1.3 The State of California ("California"), represented by the Colorado River Board of California and the California Department of Fish and Game.

1.4 The State of Nevada ("Nevada"), represented by its Colorado River Commission and Division of Wildlife of the State Department of Conservation and Natural Resources.

2. EXPLANATORY RECITALS

2.1 Representatives of the Department and of water, power and wildlife interests of the three Lower Colorado River Basin States of Arizona, California and Nevada desire to develop a Lower Colorado River Multi-Species Conservation Program ("Program"), and for that purpose they entered into that certain "Memorandum of Understanding" on November 11, 1994, and that certain "Memorandum of Agreement for Development of a Lower Colorado River Species Conservation Program," executed on August 2, 1995, as clarified by that certain "Memorandum of Clarification" fully executed as of July 18, 1996, (collectively referred to as the "MOA"), and they established the Lower Colorado River Multi-Species Conservation Program Steering Committee ("Steering Committee").

2.2 The Program is a cooperative effort between federal and nonfederal entities whose purpose is to develop a Multi-Species Conservation Program ("MSCP") which will:

- conserve habitat and work toward the recovery of "included species" (see Attachment A, Included Species list) within the 100-year floodplain of the Lower Colorado River ("LCR"), pursuant to the Endangered Species Act ("ESA"), and attempt to reduce the likelihood of additional species listings under the ESA; and

- accommodate current water diversions and power production and optimize opportunities for future water and power development, to the extent consistent with law.

2.3 It is the intention of the Parties to this Agreement to create a cooperative forum and to provide a cooperative funding approach for the development of a long-term conservation plan and conservation activities in the Lower Colorado River ecosystem as provided in this Agreement. The emphasis of this effort shall be on cooperation between the states and the Federal agencies, and each Party to this Agreement pledges to conduct itself in the utmost good faith in seeking the necessary funding for the Program, applying that funding to accomplish the appropriate purposes of the program, reaching consensus on the issues and participating in the plan development. The Federal agencies expressly reiterate the strong Federal commitment to this cooperative process and their intent to demonstrate that commitment by looking first to the Lower Colorado River Multi-Species Conservation Program to provide the reasonable and prudent measures and alternatives required as a result of formal consultation under section 7 of the ESA for Federal activities within the 100-year flood plain of the Lower Colorado River. It is the intent of all Parties that this cooperative effort will provide the initial response to formal consultation under Section 7 of the Endangered Species Act for the development of these measures and alternatives, but all Parties acknowledge that the specific terms of the Endangered Species Act must govern all such activities.

2.4 On June 26, 1996, the LCR MSCP Steering Committee, represented by its Chairman, and the Department of the Interior, represented by the Assistant Secretary for Water and Science and the Acting Director of the Fish and Wildlife Service entered into that certain "Lower Colorado River Multi-Species Conservation

Program Agreement" ("Cost-Sharing Agreement", Attachment B) by which they agreed, subject to appropriation, to a sharing between them of the costs of developing the Program and implementing certain interim conservation measures during Federal fiscal years 1996 through 1999, with the Federal Contributors and State Contributors each paying 50 percent of the costs, as provided in section 6 of this agreement. Under the Cost-Sharing Agreement, the Department of the Interior shall expend only nonreimbursable funds for the Program.

2.5 By this Joint Participation Agreement, the Parties desire to formally establish their joint participation in the Program and establish formally the Steering Committee and create other organizational processes and structures necessary to develop the Program and implement certain interim conservation measures, and prepare ESA compliance documents, including both Section 10 applications for non-Federal entities and Section 7 Biological Assessments for Federal agencies.

2.6 As provided in subsection 5.1 of the Cost-Sharing Agreement of June 26, 1996, the Arizona Department of Water Resources, the Colorado River Commission of the State of Nevada and the Six Agency Committee (representing California interests) will execute, or have executed, that certain "Lower Colorado River Multi-Species Conservation Program Inter-State Cost-Sharing Agreement" (the "Inter-State Agreement" or the "ISA", Attachment C) to provide funding commitments and arrangements with respect to the nonfederal portion of the costs of the Program. The MOA, the Cost-Sharing Agreement, the ISA, and this Agreement are hereinafter referred to collectively as the "Program Agreements."

IN CONSIDERATION of the above recitals and the mutual covenants herein contained, the Parties hereto agree as follows:

3. **EFFECTIVE DATE; TERM**

3.1 This Agreement shall become effective on the date this Agreement is executed by all of the Parties hereto and, if required by state law, filed with the appropriate state official. If such a filing is necessary for the effectiveness of this Agreement, the

Party required to make such a filing shall promptly do so after the full execution of the Agreement and notify the other Parties that the filing is completed.

3.2 Unless terminated pursuant to section 9, this Agreement shall terminate on May 15, 2002.

3.3 It is anticipated by the Parties that the cooperative relationship among the participants will continue, following Steering Committee approval of the Lower Colorado River Multi-species Conservation Plan ("Plan"), through Plan implementation, which is contemplated to be 50 years.

4. LOWER COLORADO RIVER MULTI-SPECIES CONSERVATION PROGRAM STEERING COMMITTEE

4.1 The Parties hereby establish in accordance with the terms of this Agreement the Lower Colorado River Multi-Species Conservation Program Steering Committee ("Steering Committee"). The Steering Committee may establish committees or subcommittees as it deems necessary to carry out the purposes of the Program and the responsibilities described below.

4.2 The Steering Committee shall be composed of:

4.2.1 up to five representatives of the Department of the Interior;

4.2.2 up to five representatives of each state which is a Party to this Agreement;

4.2.3 up to five representatives of Indian tribes whose reservations are located along or served by the lower Colorado River;

4.2.4 up to five representatives of conservation organizations as provided in subsection 4.3; and

4.2.5 up to five representatives of interested public or private entities approved for membership in the Steering

Committee as provided in subsection 4.4.

4.3 Conservation organizations may serve on the Steering Committee by submitting a letter of interest to the chair. The letter shall indicate a contact for the conservation organization, and shall state the conservation organization's general support of the Program and its intention to abide by the bylaws of the Steering Committee and to regularly attend Steering Committee meetings. Should more than five conservation organizations submit letters of interest, the conservation organizations will be required to select no more than five representatives from among themselves. Any conservation organization may withdraw from membership upon written notice, as provided in section 9.

4.4 Any interested public or private entity which is not a member of the Steering Committee may apply for membership by submitting a letter of interest to the chair. The letter shall indicate a contact for the entity, and shall state the entity's general support of the Program and its intention to abide by the bylaws of the Steering Committee and to regularly attend Steering Committee meetings. Should more than five entities submit a letter of interest, the members of the public shall be encouraged to select no more than five members from among themselves to serve on the Steering Committee. In the event that the members of the public are unable to select five members to serve on the Steering Committee, the Steering Committee will determine which entities are to be accepted as members. Any entity may withdraw from membership upon written notice, as provided in section 9.

4.4.1 The Steering Committee shall evaluate the application based on the following criteria:

4.4.2 The applicant must have an interest that, in the judgment of the Steering Committee, could be directly affected by the Program;

4.4.3 The applicant's interests are not, in the judgment of the Steering Committee, sufficiently represented on the Steering Committee and the applicant's membership would promote balanced representation of all affected stakeholders.

If the Steering Committee approves the letter of application, the interested entity is entitled to all of the rights provided to a member of the Steering Committee under the Program Agreements.

4.5 The Steering Committee may terminate the membership of any member if the Steering Committee determines that the entity has:

4.5.1 dissolved or no longer meets one or more of the conditions of eligibility specified in subsections 4.2, 4.3, and 4.4, as the case may be; or

4.5.2 has intentionally or repeatedly violated any bylaw of the Steering Committee.

4.6 The Steering Committee may provide in its bylaws if, when and how additional members will be selected to participate on the Steering Committee.

4.7 Within 30 days after the effective date of this Agreement or within 30 days of admission to membership, each member shall, by written notice to the other members, designate the representatives who are authorized to vote and otherwise act on matters before the Steering Committee. Each member may appoint alternates to act as its representative in the absence of its regular representative. A member may send as many representatives to any meeting in addition to the voting representative and alternate as the member may deem desirable. The Steering Committee and its subcommittees shall not be responsible for any costs incurred by members in attending meetings and functions of those bodies.

4.8 At the first meeting of the Steering Committee following the effective date of this Agreement, and at its first meeting in each calendar year thereafter, the Steering Committee shall elect from among its members two representatives who shall serve respectively as chair and vice-chair for the ensuing calendar year. Any member of the Steering Committee may serve as chair or vice-chair. However, the chair and vice-chair may not represent entities whose principal place of business is in the same state. In the absence of the chair and vice-chair, the representatives of the state wherein a meeting of the Steering Committee is held shall select one among them to preside over the meeting.

4.9 The Steering Committee shall meet at least once in each quarter of a calendar year. Except as otherwise provided in this subsection, each meeting of the Steering Committee must be open and public, and all persons must be permitted to attend any of its meetings and may file a written statement, or provide reasonable and timely oral input regarding topics on a meeting agenda. Representatives of the Steering Committee may participate in a meeting by a telephone conference call at their own expense and with advance notification of the Steering Committee chair or vice-chair. The Steering Committee may hold closed sessions, to address sensitive issues related to contract matters or legal matters, by announcing at its meeting that the Steering Committee is going into closed session. A notice of each meeting of the Steering Committee must be published as provided in the By-laws. Minutes of each meeting shall be prepared.

4.10 A simple majority of members of the Steering Committee, with at least two members being representatives of the Department of the Interior, shall constitute a quorum to do business, except when voting on approval of a budget or contribution payment schedule, where the additional requirement described in subsection 5.4 also shall apply. The Parties recognize that it is desirable that decisions on matters under consideration by the Steering Committee be based on consensus. Consensus is reached when it becomes evident through deliberation that every member, at the very least does not oppose a decision. In its deliberations, the Steering Committee shall use appropriate tools for developing consensus, and shall seek to exhaust every reasonable and practicable effort to reach consensus. To approve any action or choice under consideration in the absence of consensus, the Steering Committee may entertain a motion to put the matter under consideration to a vote, consistent with the specific limitations described in Section 10.

4.10.1 A motion to put a matter to a vote by the Steering Committee requires a simple majority of the members present and voting to succeed.

4.10.2 Subject to the additional requirement described in subsection 5.2, an affirmative vote of no less than 80 percent of the members present and voting is necessary to carry any motion under consideration.

4.10.3 If either the motion to vote, or the vote on the matter, is not approved by the appropriate majority, the matter under consideration will be automatically tabled until the next Steering Committee meeting. Each matter may only be automatically tabled once.

4.10.4 Each member of the Steering Committee shall have one vote. Voting must occur either in person or by telephone. Voting by proxy shall not be permitted.

4.10.5 The minutes of the Steering Committee must clearly record each decision of the Steering Committee whether reached by consensus or vote.

4.11 The Steering Committee may designate one or more of its members or appoint one or more public or private entities to act as agent for the Steering Committee members. Such agent shall be responsible for carrying out specific activities necessary to accomplish Program development and interim conservation measures as directed by the Steering Committee. These activities may include any or all of the activities specified in subsection 4.12.

These functions may be performed by the same agent or by different agents, as determined by the Steering Committee. The Steering Committee may agree to pay a reasonable fee to these agent(s) in exchange for services rendered. Such fees may be charged against any funds in the Program Account(s), as appropriate and necessary. The Steering Committee may designate any public or private entity serving in these capacities as an *ex officio* nonvoting member of the Steering Committee.

4.12 The Steering Committee or its agent, as expressly directed and subject to the approval of the Steering Committee, and to the extent consistent with laws, regulations, and guidelines that may be binding upon the Steering Committee members, shall:

4.12.1 when requested, make recommendations, advise, and otherwise render public service with respect to conservation of species and habitat associated with the lower Colorado River.

4.12.2 seek and secure effective cooperation and support for the Program among the Parties and other interested stakeholders on the lower Colorado River.

4.12.3 ensure the interchange of information, provide for meaningful discussions and take appropriate action as necessary or desirable, on a prompt and orderly basis, regarding administrative and technical problems which may arise in connection with the terms and conditions of the Program Agreements.

4.12.4 provide for the performance and management of Program planning and development, including, without limitation:

4.12.4.1 the selection, planning and implementation of interim conservation measures (ICMs), the criteria for evaluation and selection of its ICMs, and the development of annual goals, objectives and biological requirements pertaining to those ICMs.

4.12.4.2 the annual evaluation of its ICMs, including, without limitation, their effectiveness.

4.12.4.3 the annual identification of the next calendar year's funding level, targets and implementation schedule for its ICMs.

4.12.4.4 the preparation of a document identifying the critical biological needs of those species on the "Included Species" list (see Attachment A).

4.12.4.5 the development of a Lower Colorado River Multi-Species Conservation Program which complies with requirements of the ESA, and provides information necessary for the Fish and Wildlife Service in its regulatory capacity to make determinations on whether the Program meets the requirements of section 7 and section 10 of the ESA.

4.12.4.6 the preparation of any other documentation needed by the Program.

4.12.5 provide outreach to and liaison with interested individuals and public and private entities concerning the Program.

4.12.6 seek scientific peer review where necessary or desirable.

4.12.7 adopt bylaws consistent with the provisions of the Program Agreements, and applicable laws and regulations, and amend, supplement or repeal such bylaws as necessary or desirable.

4.12.8 enter into contracts for goods or services necessary for the accomplishment of the Program. The Steering Committee shall prepare and approve the content and scope of any requests for proposals prior to their formal distribution for proposals. All such contracts must provide for termination with 30-days' written notice.

4.12.9 establish one or more Program Account(s), as deemed necessary and appropriate, for the deposit of funds from Federal and, or, non-Federal Parties. Such accounts shall be established in an appropriate depository and managed by an appropriate entity (the "Fund Administrator"), both approved in writing by the Parties. The Parties and any other person or entity which deposits money into any such account shall have no interest in the property of an account created pursuant to this paragraph, except as expressly provided in this Agreement or the specific agreement establishing the account. All interest accruing in an account shall be added to the principal and used only for the purposes of this Agreement, unless prohibited by law. Except as provided in subsection 6.8, interest will not accrue to any person or Party depositing money into an account. It is the understanding of the Parties that for the purposes of this agreement, the phrase "Program Accounts" is defined to include U.S. Treasury accounts within which Federal funds programmed for the purposes of the Program are maintained (see subsection 6.2 of this agreement). Federal or non-Federal funds that are expended for the purposes of the Program shall be counted as contributions towards the commitments made in Paragraph 2.3 of the June 26, 1996 Multi-Species Conservation Program Agreement (see subsections 6.1 and 6.2 of this agreement).

4.12.10 administer or provide for the administration of the Program and the implementation of its interim conservation measures.

4.12.11 direct the preparation of Program planning and development schedules and costs estimates, an annual Program Planning and Development Budget ("Budget") and periodic contribution payment schedules, and, as necessary, direct the preparation of any changes to these documents.

4.12.12 through its Fund Administrator and where appropriate, accept gifts, grants and matching funds for the purposes of the Program.

4.12.13 evaluate, select and, retain consultants, suppliers and other contractors to perform work pursuant to the Program Agreements.

4.12.14 review, discuss and attempt to seek a consensus on any issue before the Steering Committee and a resolution of any dispute arising under the Program Agreements.

4.12.15 perform such other functions and duties as may be necessary to effectuate the Program Agreements.

4.12.16 Subject to any exceptions provided in this agreement, the Steering Committee, following the procedures in Section 4 of this agreement, will decide all projects to be funded under the Program. In the event that either the Federal or Non-Federal parties directly carry out any project(s), the procedures for accomplishing those projects will follow the laws, regulations, and policies of the Party (Federal or non-Federal) which is assigned to accomplish the project.

4.13 Each member of the Steering Committee is entitled to monitor the progress and performance of the Program, and must be allowed reasonable access to data, records and documents relating to the Program.

5. PROGRAM BUDGET

5.1 The Steering Committee shall develop, review, and approve an annual Program Planning and Development Budget and periodic contribution payment schedules, and review and approve all changes to the Budget and the contribution payment schedules. The Budget and contribution payment schedule shall be brought to the Steering Committee for approval during the April Steering Committee meeting. If the Budget or contribution payment schedule is not approved during the April meeting because of a veto by a Contributor, the Budget and contribution payment schedule shall be voted on during the May meeting, pursuant to subsection 5.2.

5.2 All Budgets and contribution payment schedules are to be approved by the Steering Committee, pursuant to the procedures described in subsection 4.10 and paragraphs 4.10.1 through 4.10.5, with the following addition: Where the Steering Committee fails to reach consensus on approval of the Budget, the Steering Committee may act on a motion to vote on approval of the Budget or schedule, as described in paragraph 4.10.1. Passage of a motion to approve a Budget and contribution payment schedule through a vote, as described in paragraph 4.10.2, requires, in addition to the 80 percent majority, an affirmative vote of 80 percent of Contributors that are present and voting.

5.3 "Contributors", as used in this Agreement, means:

5.3.1 one representative of the Arizona Department of Water Resources, which will represent Arizona interests relative to the Budget;

5.3.2 one representative of the Colorado River Commission of the State of Nevada, which will represent Nevada interests relative to the Budget;

5.3.3 one representative of the Six Agency Committee, which will represent California interests relative to the Budget;

5.3.4 one representative of the U.S. Bureau of Reclamation, one representative of the U.S. Fish and Wildlife Service, respectively, and one representative of any other entity of the United States that contributes at least $50,000.00 per annum to the Program in money;

5.3.5 one representative of each Indian tribe that contributes at least $50,000.00 per annum to the Program in money; and

5.3.6 one representative of any other Steering Committee member that contributes at least $50,000 per annum to the Program in money that is not represented by an entity described in paragraphs 5.4.1 through 5.4.3.

5.4 In addition to the quorum requirement described in subsection 4.10, a simple majority of the Contributors must be in attendance to constitute a quorum to vote on a Budget or contribution payment schedule.

5.5 The Program Planning and Development Budget shall, upon the written request of a Contributor, state that the requesting Contributor's contribution is not being used to fund one or more costs specified in the request. Such a request shall not have the effect of diminishing that Party's obligation to contribute its full proportionate share of the estimated expenditures of the Program in accordance with the latest approved contribution payment schedule. The Program Planning and Development Budget shall also reflect that all gifts, grants and matching funds contributed to the Program are to be used or expended only for any specific purposes for which the gift, grant or matching funds were contributed.

5.6 For the purpose of accounting for each of the Parties, any amount expended from the MSCP Program Account(s) (i.e., Federal and States accounts) shall be comprised of each Party's respective proportionate share, except where the Program Planning and Development Budget states that a particular Party's contribution is not to be used to fund a specified cost. Notwithstanding this accounting practice, each Party shall contribute the full amount required, and the Steering Committee is authorized to expend money from the MSCP Program Account(s) for all costs specified in the approved Program Planning and Development Budget. Funds in the MSCP Program Account(s) must be disbursed only in accordance with the provisions of the Program Agreements, but in no event shall money appropriated by Congress be disbursed for any purposes other than the purposes for which it was appropriated, or be disbursed in any manner other than as provided by applicable laws, regulations, and guidelines regarding method of disbursement.

6. FUNDING, AND DISBURSEMENT OF PROGRAM FUNDS

6.1 Except as provided in the next sentence, State Contributors, as defined in paragraphs 5.3.1 through 5.3.3, shall fund their proportionate share of the estimated expenditures of the Program for each contribution payment period pursuant to section 4 of the ISA. The obligation of the State Contributors to provide funds in any contribution payment period as required by this Section is subject to the commitment of a Federal contribution, as provided in Section 6.2 for that period. Each Contributor shall fund its share by depositing its money in the Program Account(s) established pursuant to paragraph 4.12.9. If a State Contributor is authorized to contribute Funds to the Program Account, but is unable to make such contributions according to the contribution payment schedule, that Contributor may make periodic payments to the Program Account as appropriate to Fund its proportionate share of scheduled payments for deliverables and other work performed pursuant to an approved Budget.

6.2 Federal Contributors, as defined in paragraph 5.3.4, shall fund their proportionate share of the estimated expenditures of the Program, subject to appropriations. The Federal Contributors shall identify the appropriate budget items and accounts containing funds to meet the commitments set forth in Article 2.3 of the Cost Sharing Agreement at the beginning of the Federal fiscal year. While the Federal Contributors recognize, acknowledge, and intend to meet the Program funding commitments set forth in the Cost Sharing Agreement, and this subsection 6.2, no expenditure of, or obligation of, federal funds can be made until all applicable and necessary requirements of the Federal appropriations procedures have been met. However, once an appropriation has been obtained for the purposes of the Program that appropriation will be used for the Program.

6.3 Any state agency or political subdivision of a state, or local governmental entity which is not a Party may contribute to the Program as an Underwriter ("Underwriter's Contribution"). An Underwriter's Contribution must be deposited in the Program Account(s) established pursuant to paragraph 4.12.9 and credited to the proportionate share of the State Party representing the State in which the Underwriter is located. When so credited, the Underwriter's Contribution becomes a part of the State Contribution for all purposes under this Agreement. Competitive grants from any source shall be considered to be Supplemental Contributions subject to the provisions of subsection 6.4.

6.4 The Parties recognize that Indian Tribes and persons other than the Parties, the United States, or Underwriters may contribute money to the Program in such forms as competitive grants, donations and matching funds ("Supplemental Contributions"). Such Supplemental Contributions may be deposited in the Program Account(s) established pursuant to paragraph 4.12.9, but the Supplemental Contributions must be accounted for separately from all Federal and State Contributions and shall not be credited to the proportionate share of any Party.

6.5 Acceptance of any gift, grant or matching funds is subject to the approval of the Steering Committee. Any such gift, grant or matching funds that is approved for acceptance by the Steering Committee as a contribution to the Program may be earmarked for any specific purpose, and shall be used or expended only for the specific purposes for which the gift, grant or matching funds were contributed.

6.6 After the Steering Committee has received and approved of an invoice, which is a proper charge against the funds in the MSCP Program Account(s), money may be withdrawn by the Steering Committee, or the Fund Administrator at the direction of the Steering Committee, from the MSCP Program Account(s) in an amount sufficient, together with any other available money, to pay the invoice.

6.7 As soon as possible following the close of each contribution payment period, the Steering Committee shall furnish to each Party a detailed written accounting of actual costs incurred by the Program and expenditures paid out of the MSCP Program Account(s) during the period covered by the accounting. As soon as possible following the termination of this Agreement, the Steering Committee shall promptly make an accurate final accounting to the Parties of all costs incurred by the Program and expenditures paid out of the MSCP Program Account(s) pursuant to this Agreement. The Fund Administrator shall be required to supply to the Steering Committee any information, which may be necessary for these accountings. All books, accounts, records, files and other records relating to the Program shall be subject at all reasonable times to inspection and audit by the Parties for five years after completion of the Program.

6.8 Unexpended funds contributed by a person or entity, if any, and any interest earned thereon, remaining after the termination of this Agreement must be promptly returned to the person or entity in proportion to the amount provided by each of them, unless otherwise agreed in writing by the Party which provided the money, subject to payment of any outstanding invoices or any irrevocable commitment of funds.

7. **DISPUTES**

The Parties to this Agreement shall strive to resolve any disputes arising under this Agreement through the consensus and/or voting procedure of the Steering Committee, as described in subsection 4.10.

8. NOTICES

8.1 Any notice, demand, request, correspondence or report required by or served, given or made pursuant to this Agreement must be in writing and shall be deemed properly served, given or made if delivered in person or sent by certified mail, postage prepaid, properly addressed, return receipt requested to the persons and addresses provided in Exhibit 1, which Exhibit is attached hereto and by this reference is incorporated.

8.2 For the purposes of this section, any Party may, at any time, by written notice to the other Parties, designate different or additional persons or different addresses. The Chair of the Steering Committee may direct that such other names or addresses may be added to Exhibit 1 as necessary.

9. **TERMINATION OF PARTICIPATION IN PROGRAM**

9.1 Except for the provisions of subsection 9.5, a Party may terminate its participation in the Program upon thirty (30) days' written notice to the other Parties given at any time after the effective date of this Agreement. The terminating party shall have no obligation for a contribution under this Agreement for any contribution payment period beginning on or after the expiration of the 30-day notice period.

9.2 Termination of a Party's participation in the Program as provided in this section shall:

9.2.1 cause all that Party's funds contributed to the Program to that date, plus any interest earned thereon, to be retained in the MSCP Program Account(s) and to be expended as needed on MSCP Program activities;

9.2.2 cause that Party to immediately lose any participatory privileges already provided or to be determined under the Program; and

9.2.3 cause that Party to no longer participate in any manner or any matter pertaining to the Steering Committee, its subcommittees or its decision-making processes.

9.3 Unless otherwise agreed by the Parties in writing, the termination of a Party's participation in the Program prior to the termination of this Agreement does not terminate this Agreement or the obligations of any remaining Party hereunder.

9.4 The termination of participation by a Party shall not have the effect of diminishing the rights of the other Parties or enlarging their obligations or costs under this Agreement. However, the Cost-Sharing Agreement states that the federal parties and the non-federal Parties will each, as a group, provide 50 percent of the estimated expenditures of the program as shown in an approved Budget and contribution payment schedule for each payment period. Termination of any Party's membership or participation does not affect the percentage of contributions provided for in the Cost-Sharing Agreement, referred to in subsection 2.3 of this agreement, and the Interstate Agreement, referred to in subsection 2.5 of this agreement.

9.5 The parties to this Agreement are put on notice that Arizona's participation in this Agreement is subject to termination pursuant to A.R.S. Section 38-511. If it becomes necessary for Arizona to exercise this provision, the Parties shall be given such notice according to the provisions of section 8.

10. SPECIFIC LIMITATIONS ON AGREEMENT

10.1 This Agreement is subject to all applicable federal and state laws, regulations, and guidelines, and nothing herein shall be construed to alter, amend or affect existing laws, regulations, or guidelines, that may be binding upon Steering Committee members. As used in this agreement, "guidelines" means written policies and procedures, adopted by any Federal or State Party, which are executed by the head of the agency or entity, or an appropriate designee.

10.2 The Parties recognize that each has statutory responsibilities which cannot be delegated, and no action of the Steering Committee or provision of this Agreement shall be construed to delegate or abrogate any of those statutory responsibilities. An entity's participation as a voting member of the Steering Committee is separate from and is not intended to interfere with or compromise any entity's statutory or regulatory responsibilities, including, but not limited to, those under the ESA, applicable Federal and State laws, or any other such laws relating to other Federal or State activities.

10.3 No provision of the Program Agreements shall be construed to require the commitment of funds in excess of the total costs for Program planning and development as provided in the ISA, or in excess of the most recently approved annual Program Planning and Development Budget.

10.4 No provision of the Program Agreements shall be construed as obligating any of the Parties to expend funds or enter into any contract or other obligation for future payment of money in excess of amounts authorized by law and appropriated for that purpose or supplied for that purpose by any other funding mechanism available to that Party.

11. GENERAL PROVISIONS GOVERNING THIS AGREEMENT

11.1 **Relationship of Parties.** Each Party shall act in an individual capacity and not as an agent, employee, partner, joint venturer or associate of the other Parties. An employee or agent of one Party shall not be deemed or construed to be an employee or agent of any other Party for any purpose.

11.2 **Transfer.** Each Party may transfer its rights in the Program and in this Agreement at any time with the consent of the other Parties, which consent must not be unreasonably withheld.

11.3 **Inurement; successors.** This Agreement inures to the benefit of, and is binding upon, the Parties and their respective successors and assigns.

11.4 **Third parties.** This Agreement is for the sole benefit of the Parties and shall not be construed as creating a cause of action or any rights in, or granting benefits or remedies to, any Party or third party as beneficiary of this Agreement, nor shall any duty, covenant, obligation or understanding established herein impose obligations on any entity other than a Party. Nothing in this Agreement shall be construed as a waiver of sovereign immunity.

11.5 **Waiver.** Any waiver at any time by a Party hereto of its rights with respect to any matter arising in connection with this Agreement shall not be deemed to be a waiver with respect to any subsequent or different matter.

11.6 **Headings.** The section and subsection headings in this Agreement are intended for convenience only and shall not be taken into consideration in any construction or interpretation or enforcement of this Agreement or any of its provisions.

11.7 **Drafting considerations.** This Agreement has been drafted, negotiated, and revised by each of the Parties hereto, each of whom is sophisticated in the matters to which this Agreement pertains, and no specific Party shall be considered to have drafted this Agreement.

11.8 **Modification of Agreement.** No modification, change or amendment of this Agreement is effective unless in writing, signed by each of the Parties hereto.

11.9 **Severability.** If any provision of this Agreement, or application thereof to any person, thing or circumstance, is held invalid by arbitration or any court of competent jurisdiction, such holding shall not affect the provisions or application of this Agreement which can be given effect without the invalid provision or application, and to this end the provisions of this Agreement are declared to be severable.

11.10 **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original.

11.11 **Representation and warranties.** Each Party hereto represents and warrants that the signatory has been properly authorized to enter into this Agreement on behalf of the Party for which the signatory signed.

11.12 **Miscellaneous.** All books, accounts, reports files and other records relating to this Agreement shall be subject at all reasonable times to inspection and audit by the Parties for five years after completion of any contract performed as part of the

Program.

- END OF AGREEMENT -

IN WITNESS WHEREOF, the Parties hereto have caused this Lower Colorado River Multi-Species Conservation Program Joint Participation Agreement to be executed.

UNITED STATES OF AMERICA

By: ____________________
Department of the Interior

Date signed 4/29/97

STATE OF ARIZONA

By: ____________________
Department of Water Resources

Date signed 4/29/97

By: ____________________
Game and Fish Commission

Date signed 4/30/97

STATE OF CALIFORNIA

By: ____________________
Colorado River Board

Date signed 4/29/97

By: Patricia Wolf
Department of Fish and Game

Date signed 5/1/97

STATE OF NEVADA

By: ____________________
Colorado River Commission

Date signed April 30, 1997

By: William A. Molini
Division of Wildlife

Date signed 4/30/97

EXHIBIT 1
MAILING LIST FOR NOTICES

Pursuant to Section 8 of the Joint Participation Agreement

1.1 Rita P. Pearson, Director
Arizona Department of Water Resources
500 North Third Street
Phoenix, Arizona 85004
Phone: (602) 417-2400
Fax: (602) 417-2401

1.2 Duane Shroufe, Secretary
Arizona Game and Fish Commission
2221 Greenway Road
Phoenix, Arizona 85023
Phone: (602) 789-3277
Fax: (602) 789-3299

1.3 Robert Johnson, Regional Director
Bureau of Reclamation
Lower Colorado Regional Office
P.O. Box 61470
Boulder City, Nevada 89006-1470
Phone: (702) 293-8411
Fax: (702) 293-8146

1.4 Denise Meridith, Arizona State Director
Bureau of Land Management
222 North Central Avenue
Phoenix, Arizona 85004-2203
Phone: (602) 417-9241
Fax: (602) 417-9452

1.5 Jacqueline E. Schafer, Director
California Department of Fish and Game
1419 Ninth Street, 12th Floor
Sacramento, California 95814
Phone: (916) 653-7667
Fax: (916) 653-7387

1.6 Gerald R. Zimmerman, Executive Director
Colorado River Board of California
770 Fairmont Avenue, Suite 100
Glendale, California 91203-1035
Phone: (818) 543-4676
Fax: (818) 543-4655

1.7 George M. Caan, Director
Colorado River Commission
555 East Washington Avenue, Suite 3100
Las Vegas, Nevada 89101
Phone: (702) 486-2670
Fax: (702) 486-2695

1.8 Nancy Kaufman, Regional Director
Southwest Region
Fish and Wildlife Service
P.O. Box 1306
Albuquerque, New Mexico 87103
Phone: (505) 248-6282
Fax: (505) 248-6845

1.9 U.S. Department of the Interior
John Rogers, Director
U.S. Fish and Wildlife Service
1839 "C" Street, N.W.
Washington, D.C. 20240
Phone: (202) 208-4545
Fax: (202) 208-6916

1.10 Alan O'Neill, Superintendent
Lake Mead National Recreation Area
National Park Service
601 Nevada Highway
Boulder City, Nevada 89005
Phone: (702) 293-8920
Fax: (702) 293-8936

1.11 William A. Molini, Administrator
Nevada Division of Wildlife
P.O. Box 10678
Reno, Nevada 89520-0022
Phone: (702) 688-1500
Fax: (702) 688-1595