Initial Steps Towards an Assessment of the Potential for a Collaborative Approach to Colorado Delta Ecosystem Restoration

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Initial Steps Towards an Assessment of the Potential for a Collaborative Approach to Colorado Delta Ecosystem Restoration

Gregory S. Weber*

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I. INTRODUCTION

In the last two decades throughout the Western United States, dozens of collaborations between public and private stakeholders have wrestled with public policy challenges involving natural resources. Water resources projects, programs, and policies have been a frequent subject of these collaborations. Using interest-based bargaining processes, many of these groups have reached consensus-based solutions to seemingly intractable disputes.

One western water challenge that remains unresolved involves the Colorado River Delta. As described elsewhere in this symposium and by numerous other authors, the once-thriving delta ecosystem has been reduced to a tiny vestige of its former extent. Once-numerous species and well-established indigenous human communities have dwindled. For some, their very survival is at stake.

In 2000, in response to concerns raised on both sides of the international border, the International Boundary and Water Commission ("IBWC") adopted Minute 306 to the 1944 treaty governing the allocation of Colorado River water between Mexico and the United States. That minute commits the parties to exploring cooperative studies of the delta's ecosystem. In 2001, the IBWC held a

bi-national symposium concerning the delta. More recently, the IBWC has created an advisory group to address ecosystem challenges in the delta of the Colorado River. The Colorado Delta Advisory Group, comprised largely of technical experts, has met just a handful of times. To date, Mexican and U.S. IBWC staff has entirely facilitated this committee.

The IBWC's Delta Advisory Group's initial efforts appear modest. After all, Minute 306 merely commits the two governments to:

- [E]stablish a framework for cooperation ... through the development of joint studies that include possible approaches to ensure use of water for ecological purposes in [the delta] and formulation of recommendations for cooperative projects;
- [E]xamine the effect of flows on the existing riparian and estuarine ecology of the Colorado River from its limitrophe section to its [d]elta with a focus on defining the habitat needs of fish, and marine and wildlife species of concern to each country;

and

- [Establish] a forum for the exchange of information and advice among government and non-government organizations with an interest in the affected area.

Nevertheless, the Delta Advisory Group could form the nucleus of a broader collaborative effort to address the delta's challenges and opportunities. One prerequisite to such a broader collaborative effort is a frank assessment of the conditions that are likely to lead to a successful collaborative. Without such an assessment, the public and private stakeholders may make commitments of time, talent, and money that are likely to fail.

This paper was prepared to provide background to participants in a workshop held as part of the Pacific McGeorge Institute for Sustainable Development's Conference on "Transboundary Ecosystem Restoration: the Role of Law, Process and Lawyers." The workshop's purpose was to test and refine the initial working assumptions regarding the likelihood of success of a broader collaborative approach. In effect, this paper is a thought experiment preliminary to a fully researched, interview-based assessment.

4. The symposium was held September 11-12, 2001, in Mexicali, Baja California. See www.ibwc.state.gov/FAO/CRDS0901/EnglishSymposium.pdf (last visited Feb. 10, 2006).
5. See infra notes 57-63 and accompanying text.
6. The Mexican Section staff contacts are Francisco Bernal and Antonio Rascon. The U.S. Section staff contacts are Bernardo Olague and Carlos Peña.
Part II of this paper provides some background on collaborative public policy processes and outlines an eleven-point assessment rubric. Part III identifies the membership of three collaborative processes underway in the Lower Colorado River region. Part IV applies the eleven-point assessment rubric to the Colorado River Delta. It sets out, for workshop participant comment and refinement, twenty working assumptions regarding the conditions for success of a collaborative approach to addressing the delta’s challenges and opportunities. Part V outlines the steps that will need to be taken for a fully researched, interview-based assessment.

II. COLLABORATIVE PUBLIC POLICY PROCESSES

A. Background

Over the past three decades, public participation in policy making processes has undergone a revolution. Previously, public participation was limited and highly formalized. For example, in agency rulemaking proceedings, the public was limited to sending in written comments. Alternatively, in environmental review processes, the agency would accept public comment on a draft environmental review document. While agencies would generally respond to the comments or critiques, in many situations the commenter would have little idea why a particular suggestion or critique was rejected.

Tired of seeing the results of traditional processes successfully challenged in court or legislatively overturned, agencies began to seek ways to build broader support for their policies in the late 1970s. As part of these efforts, many began to both broaden the types of public participation they sought and to move that participation earlier into the processes. Thus, for example, federal agencies conducting environmental review under the National Environmental Policy Act (“NEPA”) started holding “scoping sessions” to seek public input into the key issues that should be reviewed before the review was conducted. Agencies also began conducting negotiated rulemakings, where the agency and the stakeholders would attempt to reach consensus on the terms of a proposed rule—before the rule was proposed to the general public.

9. See, e.g., 5 U.S.C. § 553(c) (2000) (rule making). Unless prohibited by agency rules regarding ex parte contacts, interest groups were—and still are—permitted to lobby agency staff and executives directly. See, e.g., Sierra Club v. Costle, 657 F.2d 298 (D.C. Cir. 1981) (noting that courts do not follow earlier cases finding implicit APA limits on ex parte contacts in rulemaking). Such lobbying, however, takes place behind closed doors and does not generally create opportunities for meaningful dialogue with persons holding different perspectives.

10. See 5 U.S.C. § 553(c) (requiring only agency consideration of comments and a concise general statement of the adopted regulation’s basis and purpose).


The last ten years has seen an explosion of collaborative processes. These processes seek the active and effective engagement of the affected public throughout the formation of a policy, program, or project proposal. Policy collaborations have been undertaken at all levels of government—international, federal, state, regional, and local. Additionally, policy collaboratives have tackled a wide range of thorny subjects, from health care and education to transportation and water resources planning.

Public policy collaboratives divide into two principal forms: consensus-based and consensus-seeking. Consensus-based collaboratives seek complete consensus, as defined by the particular collaborative, among the participants. In these collaboratives, a proposal may not move forward as the group's proposal unless it achieves unanimous consensus. Similarly, in consensus-seeking proposals, the participants also strive for consensus, as defined by that process. In contrast to consensus-based processes, however, where process fails to attain full consensus, the degree of consensus and dissent is recorded and the process moves forward to its next business. The decision-maker must weigh and balance the strength of the consensus before reaching its decision.

Proponents and critics have debated the justifications and merits of these processes. Proponents argue that collaborative approaches provide more meaningful public involvement leading to more robust and implementable solutions. Critics argue that the processes are slow, expensive, elitist, and abdicate government responsibility.

14. A ten-year collaborative negotiation has been underway in the Nile Basin, but membership has been limited to member states.
15. See, e.g., California Bay-Delta Authority (federal-state collaboration with advisory committee), www.baydeltaconsortium.org/about/members/CALFED (last visited Feb. 10, 2006).
19. See, e.g., Negotiated Rulemaking Committee on Special Payment Provisions and Requirements for Prosthetics and Certain Custom-Fabricated Orthotics (on file with author).
22. See, e.g., Water Plan Update, supra note 16.
As these processes have spread across the country, a new field of process experts has arisen. These experts generally combine facilitation and mediation expertise. As professional neutrals, they specialize in the design and implementation of the components of these processes. They work under contract with one of more sponsoring public agencies. Increasingly, agencies are seeking to build their own internal capacity to support, participate in, and occasionally, to facilitate and mediate these processes.

B. Assessing the Possibility of Success

Before launching a consensus-based or consensus-seeking collaborative effort, the sponsoring agency or agencies should thoroughly assess the possibilities of success. Frequently, these assessments are conducted by third-party neutrals, trained in collaborative policy processes. Neutrals will perform background research and interview stakeholders and others familiar with the issues.

One such group of neutrals, the Center for Collaborative Policy, considers eleven points to assess the favorability of the conditions for a successful collaborative process. Rephrased as questions, these eleven points are:

1. Do issues focus on fundamental legal rights or societal values?
2. Are there potential areas for agreement, preferably with multiple issues for tradeoffs?


26. Thus, for example, the Salton Sea Advisory Committee is currently being facilitated by the Department of Water Resources. Where the sponsoring public agency is also a key stakeholder as well as the ultimate decision maker, its ability to function as a neutral mediator among other stakeholders is severely challenged.

3. Are the primary parties identifiable and willing to participate?
4. Does each party have a legitimate spokesperson?
5. Are the potential deal-breakers at the table?
6. Does any party have assurance of a much better deal elsewhere?
7. Do the parties anticipate future dealings with each other?
8. Is there a relative balance of power among the parties?
9. Are there external pressures to reach agreement?
10. Is there a realistic timetable for completion?
11. Are there adequate resources and funding to support the negotiation?

Each of these questions is explored more deeply in the following section.
Negative answers to Center for Collaborative Policy Questions 1 and 6, and positive answers to the remaining questions should largely be considered pre-requisites to launching a process.28

C. Conditions Favorable to Initiate a Collaborative Process

1. Do Issues Focus on Fundamental Legal Rights or Societal Values?

Where fundamental legal rights or societal values are at stake in a public policy controversy, consensus-based or consensus-seeking collaborative solutions are more difficult, if not impossible, to reach. In these instances, participants are often not even willing to speak with, or listen to, their counterparts. Alternatively, they may perceive that their Best Alternative To a Negotiated Agreement ("BATNA") is superior to any collaborative outcome.29 Even where dialogue about fundamental rights or values is possible, compromise is generally not possible. Creative solutions that can bridge these diametrically opposed viewpoints are infrequent.

Examples of such conflicts over fundamental rights and values are easy to find. For example, in the 1950s and 1960s, fundamental civil rights matters were best resolved by courts and legislators. Today, issues involving rights alternatively styled as "reproductive rights" or "rights to life" generally do not

28. In some situations, it might be possible to launch a collaboration even if the answer to Question 7—Do the parties anticipate future dealings with each other?—or Question 3—Are the primary parties willing to participate?—was "no." Question 7 raises the stakes for parties to seek solutions and to act in good faith. If there are otherwise adequate incentives for the parties to reach a "one time" agreement, and adequate processes to ensure good faith negotiation, a collaboration might still be launched. Similarly, with Question 3, as discussed below, it is occasionally possible to start a multi-party process without one of the primary parties, provided that party is not a "deal breaker."

29. See infra Center for Collaborative Policy Question 6, section II.C.6.
permit interest-based solutions. Similarly, issues of same-gender marriages likely do not permit easy interest-based solutions.

Neither the degree of emotion expended by participants on a dispute nor the degree of entrenchment of their positions, however, is the proper measure of its susceptibility to a collaborative, interest-based resolution. Many relatively simple and highly resolvable disputes—for example, the placement of traffic calming devices in urban neighborhoods—can stir up great passions and fixed positions. But, the underlying interests of the different stakeholders can be often identified, and solutions developed that address the different interests. Only those disputes raising principles or values that are “off the bargaining table” are not, everything else being equal, good candidates for collaborative solutions.

Cases involving endangered species, like all three of the Lower Colorado River region collaboratives noted here, illustrate the interplay between fundamental values and alternative solutions. An environmental organization dedicated to species preservation and recovery is unlikely to agree to anything that involves the extinction of a species. But, so long as extinction is “off-the-table,” multiple approaches may well exist to protect the species in question. These negotiable alternatives create the possibility for a collaborative approach, as different stakeholders may value the trade-offs differently. In contrast, in a dispute over reproductive programs, right-to-life advocates are unlikely to support any funding for any program that provides abortions, while pro-choice advocates are unlikely to support funding for any program that curtails a woman’s right to choose. The Lower Colorado Collaboratives are not hindered by non-negotiable issues.

2. Are There Potential Areas for Agreement, Preferably with Multiple Issues for Tradeoffs?

Before any agreement is possible, there must be a Zone of Potential Agreement (“ZOPA”) among the negotiators. For example, in a two-party negotiation over a single variable—for example, price—the ZOPA will extend between the parties’ reservation values. These reservations are the highest price the buyer is willing to pay, and the lowest price that the seller is willing to accept. If the buyer’s reservation value is higher than the seller’s reservation value, a ZOPA exists. With perseverance and negotiating skill, an agreement may well ensue. However, if the buyer’s reservation price is lower than the seller’s

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30. Collaborative specialists might help structure dialogues between groups with such opposing beliefs. The goals of such dialogues are not consensus but understanding.

31. Assuming that the species was covered by the Endangered Species Act, such an outcome would only be legally possible if the so-called “God Squad” was to approve extinction. See 16 U.S.C. §§ 1536(e)–(o) (2000).
reservation price, no ZOPA exists. In that case, no matter how much time or negotiating skills the parties have impasse will result.\textsuperscript{32}

Most public policy collaborations involve far more parties and far more issues than the simple two-party example noted above. While the increase in the number of parties makes reaching agreements more difficult, the increase in the number of issues often makes reaching agreements easier. Multiple issues allow parties to prioritize their concerns. The differences among priorities allow parties to trade-off their lower priority items for higher priority items.

3. Are the Primary Parties Identifiable and Willing to Participate?

The sponsoring agencies must be able to identify the primary parties, and those parties must participate willingly.

Primary parties break down into three main groups: deal breakers, deal makers, and those non-deal breakers who are especially impacted by the policy decisions. Deal breakers are those who have the power to block an agreement from being reached or implemented. They are discussed more fully below.\textsuperscript{33} Deal makers are those parties who have the power to get others to reach agreement. That power may be rhetorical, political, economic, or social. They may also control access to key resources—such as information or analysis—that are necessary to get the parties to resolve data-based disputes. The third group—non-deal breakers impacted by the policies under consideration—are often traditionally under-represented in policy-making processes. A host of historic, economic, and practical reasons can account for this under-representation. By including the perspective and insights of those most affected by the policy decisions, policymakers better ensure the robustness and legitimacy of any resulting agreement.

In many situations, most of the primary parties are readily known to the sponsoring agencies, forming a cast of “usual suspects” who are interested in the policy matters under consideration. But, where the “usual suspects” leave out historically underrepresented groups, or the agencies are developing very new policies or very new solutions, a wider group of primary parties must be identified.

Some members of this wider group may be identified during the pre-process assessment. Others will need to be identified by the process participants as one of their initial tasks. Occasionally, participants will not be identifiable until proposed solutions begin to take shape.

Voluntary participation is essential because agencies cannot compel an unwilling party’s attendance in a policy collaborative. Reluctant parties may need

\footnotesize{\textsuperscript{32} Of course, when impasse occurs, the parties can re-examine their BATNAs to see whether they have properly evaluated these alternatives. As part of that re-examination, they may adjust their reservation values and a ZOPA may result.}

\footnotesize{\textsuperscript{33} See infra Center for Collaborative Policy Question 5, section II.C.5.}
to be persuaded by the sponsoring agency to participate. Often, they will be asked to commit to attend only the initial meeting to learn more about the process and its desired outcomes.

Occasionally, an agency may choose to proceed absent a primary party. Despite efforts to encourage their participation, these parties may decline to participate for several reasons. For example, they might conclude that they have the prospects for a better deal elsewhere; they may have higher priorities for their limited resources; or they may simply be skeptical of the process, its participants, and its chances for success. Provided these parties are not “deal breakers,” their absence may not prevent an implementable agreement from being reached, though it may make the resulting agreement less robust. In other occasions, a skeptical, recalcitrant party may belatedly decide to join the process once that party sees that progress is occurring and decisions are being made without that party’s input. Collaboratives are replete with examples of parties who rush to climb on board the policymaking train once they sense that that train is about to pull out of the station.

4. Does Each Party Have a Legitimate Spokesperson?

It is not enough to identify the interests that need to be represented in the collaborative. Nor is it enough to identify the particular parties that might represent those interests. The sponsoring public agency must also make sure that each interest is organized in a way that produces legitimate spokespersons authorized to act on behalf of the members of the interest group. These spokespersons are necessary to ensure the “buy-in” of the interest group to the collaborative process, as well as to reduce the number of project participants “around the table” to a manageable level.

Assurance of adequate stakeholder representation turns upon two factors: (1) the number of entities or individuals within each interest group; and (2) the degree of organization of these interest groups. On one hand, the least challenge is posed where the number of affected interests is small, the entities representing those interests are well-known and well-organized, and those entities have designated representatives authorized to act on the entity’s behalf. On the other hand, the greatest challenge is posed where an affected interest group has a diverse membership with no organizational structure. Intermediate-level challenges are posed by groups undergoing leadership change, or where rival leaders each claim to speak on the group’s behalf.

Process facilitators can employ several tools to ensure the legitimacy of an interest group’s representative. For example, interest groups are often organized into caucuses to help the group sort through its representation and decision-making issues. Conflicts over spokesperson(s) identity can be minimized by developing a clear understanding of the spokespersons’ roles and obligations to the larger group. A communications plan, whereby members of the broader group are routinely briefed and consulted, is also essential to ensuring member
buy-in to their spokespersons’ representative work. An open meeting requirement, whereby any interest group member can attend any meeting, will also reduce concerns over the member’s representation. Finally, multiple representatives, alternates, rotating representatives, and “extended review” groups can also help resolve questions over representation.

Regardless of the specific approach they take, the process leaders must try, as hard as possible, to have the group itself determine its official representatives. Under no circumstances should the process facilitators or staff be in charge of picking the representatives. Where conflict over representation cannot be resolved within the interest group through any of the above mentioned tools, leadership of the sponsoring public agency will need to make the decision about the group’s representatives. Depending upon the particular process involved, the sponsoring public agency might seek the recommendation of elected officials, or may reserve the decision for its own agency executives.

5. Are the Potential Deal-Breakers at the Table?

As noted above, deal breakers are those who have the power to block an agreement or to block its implementation. If these parties are not part of the negotiation, the sponsoring public agency runs a substantial risk that any consensus-based agreement may be either blocked or may be reopened when the deal breaker flexes its muscles. Identification of deal breakers comes from a combination of the sponsoring public agency’s knowledge, background research by the process assessor, the assessor’s interviews with knowledgeable persons and stakeholders, and from the process participants once the process is launched.

6. Does any Party Have Assurance of a Much Better Deal Elsewhere?

Critical to a successful interest-based negotiation is each party’s understanding of its BATNA. In the public policy context, common alternatives to a negotiation include legislation, litigation, conventional administrative processes, elections, and referenda. Where a potential party believes that it has substantially better alternatives to a negotiated resolution, it is unlikely to participate willingly or eagerly.

Identification of a party’s BATNA generally begins during the assessment interviews. Frequently, process facilitators find that parties overestimate their BATNAs and underestimate their counterparts’ BATNAs. The term itself invites some overestimation, as it seems to ask parties what their ideal result would be were they not to participate in the negotiation. For this reason, the Center for Collaborative Policy sometimes asks parties to focus instead on their Most Likely

34. While not participating as full project participants, extended review groups are routinely briefed by the project leaders, and their input formally sought during these briefings.
Alternative to a Negotiated Agreement ("MLATNA"). Others ask the parties to consider their worst-case scenario—the Worst Alternative To a Negotiated Agreement ("WATNA")—if a negotiation is unsuccessful. However termed, the assessor’s role is to help the parties “reality test.” If, after a full and frank discussion of their "ATNAs," the parties remain convinced that they do, indeed, have adequate assurances of a much better deal elsewhere, participation in the collaborative is likely a waste of their time. If they are deal breakers with a good BATNA, their absence may make the collaborative a waste of time for everyone involved.

Even where identified accurately during the assessment phase, the “ATNAs” are rarely static. During the collaboration itself, the parties frequently attempt to strengthen their negotiation hand by either improving their BATNAs, or making their counterparts’ BATNAs less favorable. Negotiation process ground rules need to clarify the parties’ obligations, if any, to each other regarding these “out of the negotiating room” efforts.

7. **Do the Parties Anticipate Future Dealings With Each Other?**

The greater the extent to which parties anticipate future dealings with each other, the greater their incentive to find ways to meet each of their underlying interests to avoid future conflicts. In the public policy context, regulatory programs generally involve parties who will have future relationships with each other. Those relationships may be as regulator and regulated, as competitors, or as producers and consumers. Where public policy disputes focus not on a regulatory program but on a specific project, there is greater chance that the parties will view the negotiation as a one-time event.

8. **Is There a Relative Balance of Power Among the Parties?**

“Relative” is the key term posed in this question. Few collaboratives involve parties with roughly equal bargaining power. However, power comes in a wide variety of forms—for example, economic, political, persuasive, moral, social, or religious. Power may also come from access to information or channels of communication. During the process assessment, the neutral can help the parties frankly assess their relative powers vis-à-vis each other. If each has at least some substantial ability to affect other participants’ abilities to meet their interests, they hold enough power to be reckoned with.

The parties’ understanding of their relative power is frequently linked to their understanding of their BATNAs. As with their BATNAs, many holders of conventional political or economic power may overestimate their own power and underestimate that of their counterparts. Conversely, many interests that lack conventional power may learn, to their surprise, that they have heretofore unknown organizational abilities, strengths, allies, or access to resources.
Although not every participant’s power suddenly rises to the level of deal breaker merely by joining the collaborative, a legitimate and robust process will require the sponsoring public agency and other participants to help ensure meaningful participation by all participants. Process design can help ensure that all participants have their voices count, even those lacking conventional political or economic power. For example, the information development and sharing stage of collaborative processes equalizes access to information. Also, the sponsoring public agency can help defray participation costs by those interest groups whose organizations cannot easily afford such costs.

9. Are There External Pressures to Reach Agreement?

A tension exists between the elements addressed by assessment questions nine and ten. On one hand, Question 9 looks for assurances that the parties will have adequate incentive to keep the process moving forward. On the other hand, Question 10 asks whether the pressures to quickly resolve the policy matter are too intense to allow the parties the time necessary to honestly and meaningfully collaborate.

External pressures to reach agreement can come from a wide variety of sources. Frequently, the parties’ BATNAs will provide that pressure through pending or threatened legislation, litigation, elections, or ballot measures. Other times, the external pressures may come from matters entirely outside of the parties’ control, such as the calendar or the seasons. For example, grant funding to implement an agreement may expire on a particular date. Or, the parties may need to resolve a water management measure before the next rainy season or dry season. Absent such pressures or deadlines, however, the process can too easily stall, as more pressing matters occupy the parties’ attentions.

10. Is There a Realistic Timetable for Completion?

As noted above, Question 10 explores the converse of Question 9. While external pressures are necessary to keep the process from stalling, if the timetable is too short, the parties either may not reach agreement (for example, lacking sufficient time to build broader support for their agreement) or the reached agreement may be insufficiently robust to endure.

Collaborative processes typically run through five stages: initiation, organization, education, negotiation, and implementation. It is both a strength and a weakness that collaborative processes take substantial time to move through these five stages. The strength comes from the time the parties get to

35. If the collaborative has a complete unanimity requirement, and no “stand aside” provisions, then any participant has veto-power over the group.

36. Of course, the stages often overlap. And insights or impasses that occur in later stages may require the group to revisit, in part, earlier stages.
explore a matter in depth, develop constructive relationships with each other, and gradually build agreement step by step. The weakness is that the processes may take several years for complicated policy matters. Meanwhile, absent some interim solution, the problems or issues that sparked the collaborative’s initiation in the first place will remain unabated or unresolved.

11. Are There Adequate Resources and Funding to Support the Negotiation?

The final question presents a bit of a “chicken and egg” problem to the sponsoring public agency. On one hand, until the process is designed, the question cannot be fully answered. On the other hand, without knowing what the available resources are, the project cannot be adequately designed.

In practice, this conundrum is generally overcome by a thorough inventory of likely available resources and an initial project sketch based on those resources. The full extent of available resources and needs must be considered. These must include: financial resources; technical, scientific, and process expertise; administrative and logistical support; stakeholder time; and public agency executive sponsorship. Research should identify contributions from both the public and private sector stakeholders, as well as any attributable to third-parties. Based on the initial resources survey, the process designer can outline a work plan and budget. In an iterative process of identifying unmet needs and untapped resources combined with creative process redesign, the designer can develop a final design and budget for consideration by project sponsors.

III. COLLABORATIVE EFFORTS IN THE LOWER COLORADO RIVER REGION

A. Introduction

There currently are three major collaborative efforts underway in the Lower Colorado: the Lower Colorado River Multi-Species Conservation Program; the California Resources’ Secretary’s Salton Sea Advisory Committee; and the IBWC’s Colorado Delta Advisory Group. All are consensus-seeking processes.

37. “Executive Sponsorship” denotes the willingness of the sponsoring public agency’s directors and senior executives to support the process as an agency priority. This support can be manifested in a variety of ways, including: the directors’ or deputy directors’ willingness to invite, welcome, and encourage participants; receipt of regular briefings and provision of regular guidance; support for process budget requests; intervention, as needed, to resolve intra- or inter-agency disputes; provision of regular briefings of top administration officials and legislators; and critical stakeholder outreach to build acceptance for the collaborative’s process and results.
B. Current Programs

1. Multi-Species Conservation Program

The history, goals, legal context and outcomes of the Lower Colorado River Multi-Species Conservation Program ("MSCP") are addressed in Jeff Kightlinger's paper within this symposium.\(^{38}\) Consideration here will focus solely on the collaborative's membership.

The MSCP has the most extensive membership of the three Lower Colorado collaboratives. Its twenty-seven member Steering Committee draws its members from eighty-one participants representing thirty different organizations.\(^{39}\) These include: federal agencies;\(^{40}\) Arizona,\(^{41}\) California,\(^{42}\) and Nevada\(^{43}\) state agencies; tribes;\(^{44}\) local governments and agencies;\(^{45}\) businesses;\(^{46}\) and Non-Governmental Organizations ("NGOs").\(^{47}\)

2. Salton Sea Advisory Committee

While the MSCP is nearing the end of its program development, the Salton Sea Advisory Committee ("SSAC") is still relatively new. With its initial


\(^{39}\) The three participating organizations that are not on the Steering Committee are the Colorado River Commission of Nevada's Industrial Customers, Ducks Unlimited, and National Wildlife Foundation. The project web page also lists eight consultants as project participants. None of these consultants are on the Steering Committee.

\(^{40}\) The federal agencies are the Department of the Interior, Fish and Wildlife Service, Bureau of Reclamation, National Park Service, Bureau of Land Management, Bureau of Indian Affairs, Department of Energy, and Western Area Power Administration.

\(^{41}\) The Arizona agencies are the Department of Water Resources, Game and Fish Department, and Power Authority.

\(^{42}\) The California agencies are the Colorado River Board, and Department of Fish and Game.

\(^{43}\) The Nevada agencies are the Colorado River Commission, and Department of Wildlife.

\(^{44}\) The tribes are the Lower Colorado River Tribal Coalition, Colorado River Indian Tribes, Hualapai Indian Tribe, Cocopah Indian Tribe, Quechan Indian Tribe, Chemehuevi Indian Tribe, and Fort Mojave Indian Tribe.

\(^{45}\) The Arizona local agencies are the Central Arizona Water Conservation District, Wellton-Mohawk Irrigation and Drainage District, and City of Yuma.

The California local agencies are the Coachella Valley Water District, Imperial Irrigation District, Los Angeles Department of Water and Power, Metropolitan Water District of Southern California, Palo Verde Irrigation District, San Diego County Water Authority, Southern California Public Power Authority, and the City of Needles.

The Nevada local agencies are Overton Power District #5 and Southern Nevada Water Authority.

An additional local government member of the Steering Committee is the Quadstate County Government Coalition. The coalition represents Imperial and San Bernardino Counties, California, Lincoln County, Nevada, and Mohave County, Arizona.

\(^{46}\) The businesses include the Nevada Power Company Silver State Power Southern California Edison, and Valley Electric Association.

\(^{47}\) The NGOs are Trout Unlimited/B.A.S.S., and National Wildlife Federation.
meeting held in January 2004, the committee is a consensus-seeking body formed to advise the California Resources Secretary on Salton Sea restoration programs. It is currently being facilitated solely by the Department of Water Resources staff. Ultimate decision-making authority remains with the Resources Secretary.

The history, goals, legal context, and intended outcomes of the SSAC are addressed in Kim Delfino’s paper within this symposium. Consideration here will focus solely on the collaborative’s membership.

The SSAC currently contains twenty-nine members. These are drawn from federal agencies, tribes, state agencies, local agencies, and NGOs.

3. **IBWC Colorado Delta Advisory Group**

The newest of the three collaboratives, the IBWC’s Colorado Delta Advisory Group, held its first meeting February 25, 2004. It has seventeen representatives from Mexico and the United States. The nine Mexican representatives are drawn from federal agencies, state agencies, an NGO, and local representatives.

The eight U.S. representatives include federal agencies, state agencies, and NGOs. It is currently being facilitated solely by IBWC staff.

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49. The five federal agency members are the Bureau of Indian Affairs, Bureau of Reclamation, Fish and Wildlife Service, Geological Survey, and Environmental Protection Agency.

50. The two tribal members are the Torres-Martinez Desert Cahuilla Indians, and Cabazon Band of Mission Indians.

51. The two state agency members are the State Water Resources Control Board, and the Colorado River Regional Water Quality Control Board.

52. The ten local agency members are the Metropolitan Water District of Southern California, San Diego County Water Authority, Coachella Valley Water District, Imperial Irrigation District, Imperial County, Riverside County, Imperial County Air Pollution Control District, South Coast Air Quality Management District, Coachella Valley Association of Governments, and Imperial Valley Association of Governments.

53. The ten NGO members are the Riverside County Farm Bureau, Imperial County Farm Bureau, Planning and Conservation League, Defenders of Wildlife, California Waterfowl Association, Pacific Institute, United Anglers of Southern California, Audubon California, Sierra Club, and California Farm Bureau Federation.

54. The three federal agencies are the Comision Nacional del Agua, Comision Nacional de Areas Naturales Protegidas, and SEMARNAT—the Secretaria del Medio Ambiente y Recursos Naturales.

55. The three state agencies are the Comision Estatal de Agua de Baja California, Direccion General de Ecologia de Baja California, and SEFOA—the Secretaria de Fomento Agripecuaria of Baja California.

56. The NGO is Pronatura Sonora.

57. The two local representatives are Edith Santiago and Jesus Mosqueda.

58. The three federal agencies are the Bureau of Reclamation, Fish and Wildlife Service, and Upper Colorado River Commission.

59. The state agency is the Colorado River Board of California. This agency is comprised of members from Coachella Valley Water District, Imperial Irrigation District, Los Angeles Department of Water and Power, Palo Verde Irrigation District, San Diego County Water Authority, Metropolitan Water District of Southern California, Department of Water Resources, Department of Fish and Game, and two public members.

60. The four NGOs are the Sonoran Institute, Environmental Defense, Defenders of Wildlife, and Pacific Institute.
A quick comparison of the three processes shows that the IBWC Delta Advisory Group is substantially the smallest of the three groups. There is partial overlap between the U.S. participants in the three processes. There is no formal Mexican participation in either the MSCP or the SSAC.

IV. ASSESSING THE POSSIBILITIES FOR A COLLABORATIVE APPROACH TO ECOSYSTEM RESTORATION IN THE COLORADO RIVER DELTA: TWENTY ASSUMPTIONS FOR WORKSHOP PARTICIPANTS TO TEST

The following working assumptions are based on the author’s initial research and informal interviews. They are offered to workshop participants for their comment, correction, modification, and supplementation. Results from the workshop will be used to refocus supplemental research and identify key stakeholders as part of a more rigorously researched assessment.

A. Do Issues Focus on Fundamental Legal Rights or Societal Values?

Assumption 1: The delta ecosystem directly presents issues involving the literal survival of water-dependent wildlife species and indigenous communities. These issues, however, are built into the status quo. That is, without a negotiated resolution, it is uncertain how the water-dependent wildlife species and indigenous communities will survive under current law and policy. For these species and communities, any negotiated solution would have to be an improvement over the status quo. As such, it would not, however, force parties to compromise over fundamental values associated with the continued existence of the species and communities.

Assumption 2: Beyond these fundamental values, there are extremely high emotions challenging any collaborative. In the wake of the various water transfers that have occurred recently between agricultural and South Coast urban users, any talk of reallocating water in the Lower Colorado River—especially if talk involves letting more water flow to Mexico—will likely trigger substantial concerns in U.S. river-dependent areas. These emotions will certainly temper parties’ willingness to negotiate and encourage increasing their BATNAs.

61. Although the Colorado River Board of California participates in the IBWC Delta Advisory Committee on behalf of its ten members, it also participates alongside of many of those members in the MSCP. Thus, CRB members, Coachella Valley Water District, Imperial Irrigation District, Metropolitan Water District of Southern California, Palo Verde Irrigation District, Los Angeles Department of Power and Water, San Diego County Water Authority, and Department of Fish and Game each have their own representatives to the MSCP.

62. The Bureau of Reclamation and the Fish and Wildlife Service are the only entities directly represented in all three collaboratives. Counting their representation through the Colorado River Board of California, Coachella Valley Water District, Imperial Irrigation District, Metropolitan Water District of Southern California, Palo Verde Irrigation District, and San Diego County Water Authority are at least indirectly represented in all three processes. No NGO is represented in all three processes, although two—Defenders of Wildlife and the Pacific Institute—are represented on both the SSAC and the IBWC Delta Advisory Committee.
B. Are There Potential Areas for Agreement, Preferably With Multiple Issues for Tradeoffs?

Assumption 3: It is unclear whether parties whose best alternative is preservation of the status quo have a sufficient incentive to negotiate for.

Assumption 4: If there is a sufficient incentive to negotiate, there are multiple possible management solutions, each with different tradeoffs.

Assumption 5: If there is a sufficient incentive to negotiate, there is sufficient flexibility in the applicable parts of the law of the river to support whatever arrangements the parties may reach.

C. Are the Primary Parties Identifiable and Willing to Participate?

Assumption 6: The primary parties are readily identifiable: deal breakers, deal makers, and impacted parties.

Assumption 7: Although seventeen are directly participating in the current process (and through membership in the Colorado River Board of California, seven more are indirectly participating), it is unclear whether they, and the other parties, would be willing to participate in a more extensive collaborative effort.

Assumption 8: Most of those who stand likely to gain from any improvement of the delta ecosystem are likely to participate, as their BATNAs are not strong.

Assumption 9: Many of those who see themselves as likely to “lose” from any improvement of the delta ecosystem will be less willing to participate, as the status quo will appear better to them than a negotiated solution.

D. Does Each Party Have a Legitimate Spokesperson?

Assumption 10: There are no legitimate spokesperson issues with: the U.S. and Mexican federal, state, and local agencies; NGOs; and the upstream tribes. At least one spokesperson for the delta residents is participating in the current process; others need to be identified.

E. Are the Potential Deal-Breakers at the Table?

Assumption 11: Many, but not all, of the deal breakers are at the table. Further deal breaker analysis is needed.

F. Does Any Party Have Assurance of a Much Better Deal Elsewhere?

Assumption 12: Many upstream interests will likely perceive the status quo as a better alternative than any change.

Assumption 13: Any delta negotiations are likely to play out against the more complicated issues affecting U.S.-Mexican relations, including, but not limited to, other border water issues.
G. Do the Parties Anticipate Future Dealings With Each Other?

Assumption 14: The United States and Mexico will obviously have substantial future dealings with each other, as will many of the individual agencies and organizations. It is less clear what future dealings parties will have with delta residents.

H. Is There a Relative Balance of Power Among the Parties?

Assumption 15: Both Mexico and the United States have sufficient leverage points vis-à-vis each other to allow a meaningful negotiation on this issue.

Assumption 16: On at least the U.S. side of the border, the urban and agricultural interests have sufficient leverage vis-à-vis each other to allow for a meaningful negotiation on this issue.

Assumption 17: The environmental and social interests, including the specific interests of delta residents, have had sufficient power to get the process started. At the start of the second Bush administration, it is not yet clear that they have a sufficiently strong BATNA to move the negotiations forward very quickly.

I. Are There External Pressures to Reach Agreement?

Assumption 18: The strongest external pressure to reaching agreement is to preserve the habitat that has arisen as a result of the El Niño spills and the agricultural return flows. There are no other external pressures.

J. Is There a Realistic Timetable for Completion?

Assumption 19: There are no timetables yet, realistic or otherwise.

K. Are There Adequate Resources and Funding to Support the Negotiation?

Assumption 20: There are substantial resources available to support a negotiated process. These include: IBWC staff time; a willingness of NGO and academic parties to commit, at a minimum, staff time; and a substantial existing scientific and technical understanding of the key habitat areas and possible management solutions. There will certainly need to be substantial additional resources made available to fill data gaps, develop and test solutions, and provide process support. It is unclear where those resources will come from.

V. CONCLUSION—NEXT STEPS

Following the workshop, the Institute for Sustainable Development will undertake a more formal assessment of the potential for a collaborative approach
to Colorado River Delta ecosystem restoration. Based on the insights and suggestions of workshop participants, the author will design a research strategy and list of interviewees. Research and interviews will take place in the spring of 2007. The report detailing the results of the assessment will be written in the summer of 2007. In the fall of 2007, the report will be offered to participants for comment and submitted for publication.