



PUBLIC NOTICE

**U.S. ARMY CORPS OF ENGINEERS
LOS ANGELES DISTRICT**

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Proposed Re-Authorization of an
Existing In-Lieu Fee Program

Public Notice/Application No.: SPL-2013-00257-MB

Program: La Paz County Endangered Species 290 In-Lieu Fee Program

Comment Period: April 8 – May 8, 2013

Project Manager: Marjorie Blaine (520) 584-1684; Marjorie.E.Blaine@usace.army.mil

Program Sponsors

La Paz County Board of Supervisors
TJ Wilson
Chairman of the Board
1108 Joshua Ave
Parker, AZ 85344

U.S. Fish and Wildlife Service
Kirk Young
Supervisor Biologist
2500 South Pine Knoll Drive
Flagstaff, AZ 86001

Location

The Program service area would encompass the following watersheds:

- Lower Colorado River (LCR) HUC 150301
 - 15030102 -- Piute Wash
 - 15030103 -- Sacramento
 - 15030104 -- Imperial Reservoir
 - 15030105 -- Bouse Wash
 - 15030106 -- Tyson Wash
 - 15030107 -- Lower Colorado
 - 15030108 -- Yuma Desert

Activity

To modify the existing La Paz County Endangered Species 290 In-Lieu Fee (“ILF”) Program (“Program”) pursuant to the requirements of the Corps-EPA Compensatory Mitigation Rule¹ (33 CFR 332.8(d)) (“Mitigation Rule”). For more information see pages 2 and 3 of this notice. Supporting documents are attached to this Public Notice.

Interested parties are hereby notified that a Prospectus has been received in order to re-authorize an existing ILF Program for the purpose of mitigating impacts to waters of the United States authorized, or enforcement actions resolved, under section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act of 1899. Interested parties are invited to provide their comments on the proposed re-authorization of this Program, which will become a part of the record and will be considered as part of this proposal.

¹ The mitigation rule was promulgated by the U.S. Army Corps of Engineers and U.S. Environmental Protection Agency at 33 C.F.R. Part 332 and 40 C.F.R. Part 230, respectively.

Comments should be mailed to:

U.S. Army Corps of Engineers
Los Angeles District, Regulatory Division
Attn: Marjorie Blaine, Senior Project Manager
Tucson Resident Office
5205 E. Comanche Street
Tucson, Arizona 85707

Alternatively, comments can be sent electronically to: Marjorie.E.Blaine@usace.army.mil

Background

La Paz County ("County") and the U.S. Fish and Wildlife Service ("Service") have requested the Corps re-authorize the Program. If re-authorized, this Program would continue to receive monies from individuals or entities ("project proponent") receiving Corps authorization under section 404 of the Clean Water Act and/or section 10 of the Rivers and Harbors Act of 1899 and, when appropriate, to resolve Section 404/Section 10 enforcement actions within the proposed service area (Figures 1-3 in attached Prospectus).

The County is a governmental body administering over 20,000 county residents across 4,500 square miles. Since its establishment in 1983, the County has administered multiple county functions in compliance with state and federal regulations. The County has successfully administered this program through the Memorandum of Agreement (MOA) signed between the Corps, the County, and the Service on December 5, 2005.

To date, all projects administered by the Program Sponsor, have been developed and implemented by the Service and include the purchase of equipment for the Achii Hanyo Native Fish Hatchery to rear razorback suckers and bonytail chub, monitoring the success of recruitment and population estimates in backwaters of the LCR, recording and tracking endangered fish in the LCR, establishment of public education outreach projects regarding endangered fish in the LCR, improvement of backwater spawning habitat, and myriad other activities and programs in support of endangered LCR fish.

Mitigation Approval and Permitting Processes

Mitigation requirements for a particular project are negotiated between the project proponent and the Corps. The project proponent must therefore first submit a mitigation proposal to the Corps that describes the proposed use of an ILF Program or Mitigation Bank. If appropriate credits are not available at a Mitigation Bank located within the service area, and the Corps determines that the Program is the most appropriate approach to mitigation implementation, then the project proponent would contact the Program sponsor to discuss mitigation options. The Program sponsor would review copies of all permits issued to the project proponent and then submit a proposal to the project proponent, including the estimated cost of the proposed mitigation work. Prior to acceptance of payment ("credit sale"), the Program sponsor would also contact the Corps in order to verify the Corps' requirements.

Upon receipt of payment, the Program sponsor becomes legally responsible for initiating the necessary mitigation and monitoring within three growing seasons of receipt of payment. During this

time, the Program sponsor would submit a complete Mitigation Plan² to the Corps and Interagency Review Team (IRT)³ as well as an application for Corps permit(s)⁴ should the proposed ILF mitigation project activities involve a discharge of dredge or fill material within waters of the U.S. or work within navigable waters of the U.S. The Corps would complete consultation, as appropriate, under the Endangered Species Act, the Magnuson-Stevens Fishery Conservation and Management Act, the National Historic Preservation Act and other applicable laws, prior to any permit authorization.

Program funds would be held in a Program account, and all credit sales would be tracked and reported by the Program sponsor to the Corps at a minimum on an annual basis, and also uploaded to the Corps' Regulatory In-lieu Fee and Banking Information Tracking System (RIBITS) .

To ensure permanent protection of the ILF mitigation sites, the sponsors will provide a fully encumbered site protection instrument which may consist of a perpetual conservation easement, deed restriction, or other similar, legal restriction.

The Corps is soliciting comments from the public; Federal, state, and local agencies and officials; Indian tribes; and other interested parties in order to consider and evaluate the impacts and benefits of the proposed re-authorization of the Program. Any comments received will be considered by the Corps to determine whether the proposal has the potential to provide mitigation opportunities for permittees authorized to impact waters of the U.S. under section 404 of the Clean Water Act or as a means of resolving Section 404 enforcement actions.

Additional details are provided in the Prospectus attached to this Public Notice.

For additional information please contact Marjorie Blaine of my staff via phone at 520-584-1684 or via e-mail at Marjorie.E.Blaine@usace.army.mil . This public notice is issued by the Chief, Regulatory Division.



Regulatory Program Goals:

- To provide strong protection of the nation's aquatic environment, including wetlands.
- To ensure the Corps provides the regulated public with fair and reasonable decisions.
- To enhance the efficiency of the Corps' administration of its regulatory program.

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DEPARTMENT OF THE ARMY
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² The content of a complete Mitigation Plan is described in the Mitigation Rule, at 33 CFR 332.4(c)(2-14).

³ The Interagency Review Team (IRT) consists of member Agencies and includes U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, Arizona Game and Fish Department, Arizona Department of Environmental Quality, Pima County Regional Flood Control District, Pima County Office of Conservation and Science, and City of Phoenix Office of Environmental Programs.

⁴ The proposed mitigation activities may also require separate approval from the Arizona Department of Environmental Quality.

Prospectus

La Paz County Endangered Species Fund 290 In-Lieu Fee Program

Contacts:

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Program Description. The program is a continuation of an existing In-Lieu program administered by La Paz County (“County”) and the U.S. Fish and Wildlife Service (“Service”) providing mitigation funding for Federally-listed endangered fish species in the Lower Colorado River (LCR). Federally-listed endangered fish species of interest include the razorback sucker, *Xyrauchen texanus* (endangered), bonytail, *Gila elegans* (endangered), and other listed fish that inhabit or are subject of recovery actions in the Program geographic area. In-stream, shoreline, and within watershed construction, and other Section 404 clean water act authority activities represent threats to habitats used by, and integral to, Federally-listed fish. The program in-turn provides funding for recovery and habitat restoration actions to mitigate impacts. The County administers the mitigation funds, and on a project-by-project basis targeting actions benefiting Federally-listed native fish, with concurrence by the U.S. Army Corps of Engineers (“Corps”), provides the resources to the Service for implementation, evaluation, and reporting. Examples of activities that might occur under this Program include purchase of water quality devices to improve oxygen in backwaters used by endangered fish, purchase of supplies that aid in establishment of new populations, continued monitoring of recruitment of native fish, continued operation and maintenance of fingerling grow out coves and ponds, as well as other activities to be developed.

Qualifications:

La Paz County is a governmental body administering over 20,000 county residents across 4,500 square miles. Since its establishment in 1983, the County has administered multiple county functions in compliance with state and federal regulations. The County has successfully administered this program through the Memorandum of Agreement (MOA) since 2005. To date,

all projects administered by the Program Sponsor, have been developed and implemented by the Service and include the purchase of equipment for the Achii Hanyo Native Fish Hatchery to rear razorback suckers and bonytail chub, monitoring the success of recruitment and population estimates in backwaters of the LCR, recording and tracking endangered fish in the LCR, establishment of public education outreach projects regarding endangered fish in the LCR, improvement of backwater spawning habitat, and myriad other activities and programs in support of endangered LCR fish.

Need and Feasibility. Feasibility of the program has been demonstrated by the successful implementation and administration of this program (the La Paz County Endangered Species Fund 290 in-lieu program) through an MOA over the last eight years. Recovery activities are identified in peer-reviewed scientific publications and recovery documents for the species.

Jurisdiction:

The Colorado River and its wetlands bounded by the Hoover Dam and the Southern International Boundary with Mexico have been determined to be waters of the United States.

Compatibility:

The Program has been recovery-action oriented and has not been associated with prior land ownership instruments or physical actions. The Program will support ecosystem function by providing recovery actions for fish species native to the LCR ecosystem. Program activities will be in conformance with state and federal regulations and recovery plans for the species and has not been used for previous site-specific mitigation.

Administration:

All Program funds will be held in an account at a financial institution that is a member of the Federal Deposit Insurance Corporation and all interests and earnings accruing to the program account must remain in that account for use by the Program for the purposes of providing compensatory mitigation. The Corps has the authority to direct those funds to alternative compensatory mitigation projects in cases where the Program Sponsor does not provide compensatory mitigation in accordance with the specified time frame. The Corps has the authority to audit all program accounts at any time.

Reporting:

Annual reports will be written summarizing activities under the program, expenditures and contributions to the Fund, and contributions to subject Federally listed fish species.

The Program conceptual plan includes co-sponsor responsibilities and processes to ensure maximum mitigation benefit as follows:

U.S. Army Corps of Engineers. The Corps will review permit applications pursuant to Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act and unauthorized activities and determine the suitability to use the fund to fulfill compensatory mitigation requirements. The Corps will determine the mitigation ratio on a case by case basis and the applicant/permittee shall purchase the required credits from the County.

La Paz County. The County will establish and disburse from a dedicated interest bearing account at an FDIC approved banking institution for the sole purpose of receiving funds to be used by the Service for endangered fish species benefit; all interest accrued from this account shall be maintained in the account and used for approved expenditures for endangered fish within the project area. The County will disburse funds for approved expenditure upon receipt of Service request for payment of expenditures and provision of invoice for services from the Service representative with Corps authorization. The county will also maintain a balance ledger for the fund and annually review the balance, deposits, and disbursements with the Corps to ensure records match.

U.S. Fish and Wildlife Service. The Service will use the funds only to create, enhance or restore habitat for LCR endangered fish species or any activities directly related to the spawning, grow-out, reintroduction, augmentation, and evaluation and monitoring (occupancy, census, trends, habitat use & evaluation, etc.) or general benefit of the species within the geographic area. Use of this mitigation program will be subject to approval of the Corps on a case-by-case basis. The Service will secure all necessary permits, and provide written requests including invoices to the County with a copy to the Corps for all disbursement of funds. Annually, the Service will provide a summary of activities undertaken during the year where funds from the Fund were used.

The Compensation Planning Framework (§§332.8(d)(2)(viii)(A) & 332.8 (c))

Elements that will be used to plan for the selection, acquisition, and implementation of aquatic resources restoration, enhancement, preservation, and management.

- **33 CFR Section 332.8(c)(2)(i): The geographic Service Area, including a watershed-based rationale for the delineation of each Service Area.**

The proposed geographic Service Area for the Program is defined as an area of the LCR bounded up-river by Hoover Dam and down-river by the Southern International Boundary with Mexico constituting the LCR watershed (Figure 1). From a watershed perspective, the Program area is defined by the LCR six-digit Hydrologic Unit Code (HUC) 150301 (Figures 2 & 3) and encompasses the Colorado portion of the following eight-digit HUCs:

15030102 -- Piute Wash.
15030103 -- Sacramento.
15030104 -- Imperial Reservoir.
15030105 -- Bouse Wash.
15030106 -- Tyson Wash.
15030107 -- Lower Colorado.
15030108 -- Yuma Desert.

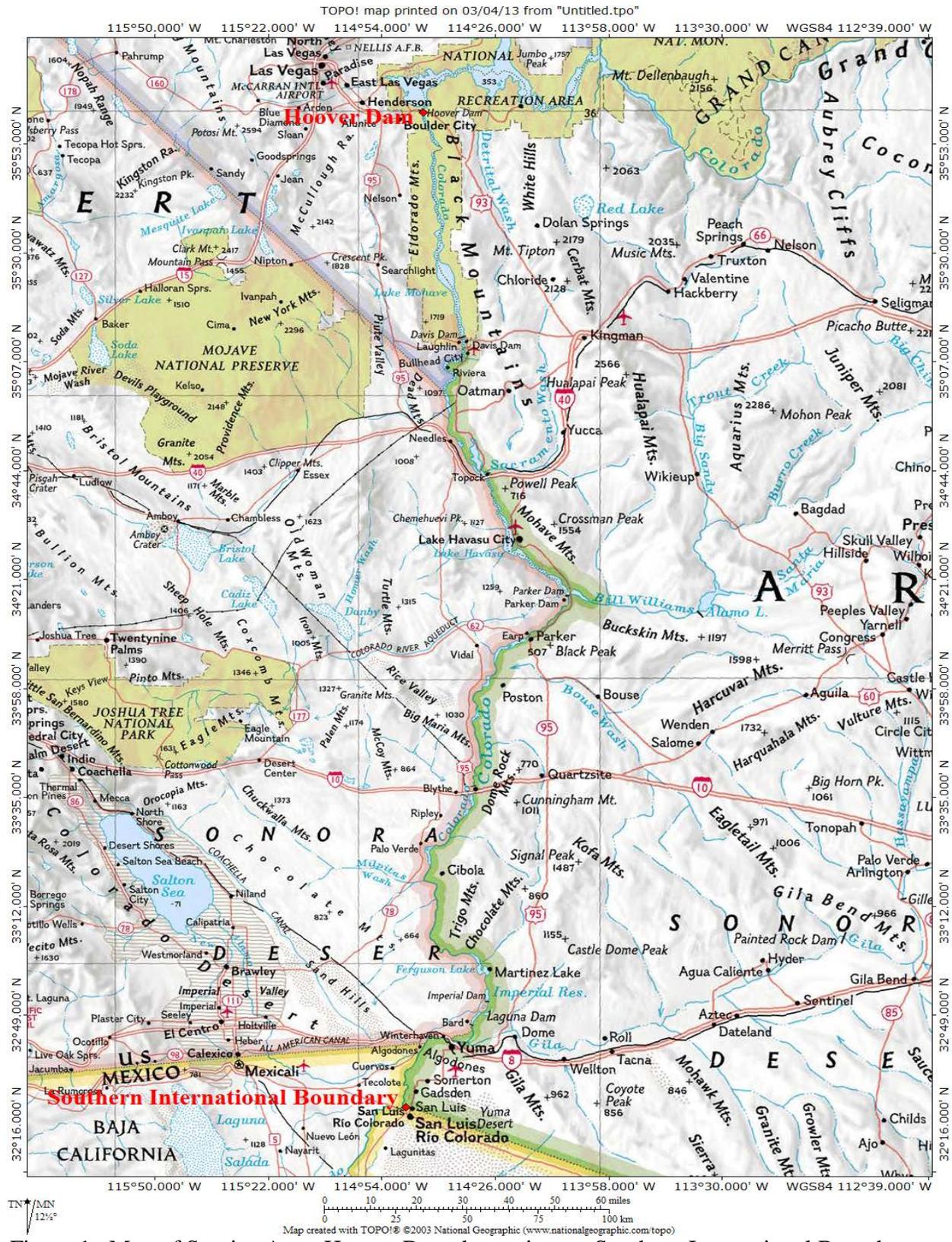


Figure 1. Map of Service Area, Hoover Dam down-river to Southern International Boundary.



Figure 2. LCR below Lake Meade (Hoover Dam) HUC 150301, upper half.



Figure 3. LCR below Lake Meade (Hoover Dam) HUC 150301, lower half.

This specific Service Area was chosen based on environmental considerations and overlays the remaining riverine range of the focal endangered fish species in the LCR basin. No specific physical habitat development is proposed as part of this In-Lieu Fee Program. Rather, the program will offset both dispersed and point impacts by using mitigation revenues to fund projects that contribute to the recovery of Federally-listed native fish species associated with the Service Area.

Within the geographic Service Area, there have been losses to endangered razorback sucker and bonytail chub habitats and aquatic Functions and Services from external impacts. Consequently, there are specific restoration and management needs within the Service Area. In using the LCR as a basis for the Program, impacts can be offset by compensatory mitigation within the same HUC promoting the goal of no-net loss of functions and offsetting of impacts to endangered species habitat losses on a watershed basis.

- **33 CFR Section 332.8(c)(2)(ii): A description of the threats to aquatic resources in the Service Area, including how the in-lieu fee program will help offset impacts resulting from those threats;**

Aquatic resource impacts in the LCR are expected to have future impacts from a variety of sources including but not limited to: utility line sitings, flood management activities, linear transportation projects, and residential, commercial and industrial developments. Functional impacts include Federally-listed native fish habitat loss or modification resulting in interruption or cessation of use and fulfillment of natural history functions (reproduction, feeding, shelter, growth, etc). The Program would assist in offsetting these impacts through implementation of recovery activities for Federally-listed aquatic species within the HUC. Specific needs for federally listed aquatic species within the watershed include support for augmentation and reestablishment recovery activities, population and habitat enhancement, and evaluation and monitoring (occupancy, census, trends, habitat use & evaluation, etc).

Additional compensatory mitigation would be developed to address the losses of Function and Services as future Project Sites were identified and proposed for inclusion in the Program. Once identified, the Project Sponsor will conduct preliminary monitoring of the priority ILF Project sites to determine current aquatic resource conditions, functional values, restoration and enhancement needs, and occupation by listed and sensitive species.

- **33 CFR Section 332.8(c)(2)(iii): An analysis of historic aquatic resource loss in the Service Area.**

A marked decline in populations of native big river fish species (razorback sucker; bonytail chub, and others) can be attributed to construction of dams and reservoirs, channelization and river shore development, introduction of nonnative fishes, and removal of large quantities of water from the Colorado River system. Dams on the mainstem Colorado River and its major tributaries have segmented the river system, blocked migration routes, and changed river habitat. Dams and river channel modification also have drastically altered flows, temperatures, and channel geomorphology. These changes have modified habitats in many areas so that they are no longer suitable for breeding, feeding, or sheltering. Major changes in species composition have occurred due to the introduction of numerous nonnative fishes, many of which have thrived due to human-induced changes to the natural riverine system. These nonnative fishes prey upon and compete with native species.

Marsh and backwater were lost from areas where they historically occurred because of agricultural conversion, construction of reservoirs, river channelization, and bankline stabilization. Historically, substantial floodplain area was inundated by the high river flows following winter and summer storms and during the spring and early summer run off. These areas that were inundated were prime areas of use for juvenile razorback suckers.

Ongoing activities affecting aquatic habitats within the LCR include shoreline development/modification (e.g. boat docks, piers, revetment, retention walls, boat docks, etc), flood control (revetment, riprap, etc.), dredging, and channelization activities.

- **33 CFR Section 332.8(c)(2)(iv): An analysis of current aquatic resource conditions in the Service Area, supported by an appropriate level of field documentation.**

Present conditions in the LCR are significantly different from historical conditions. The service area behind Parker Dam is relatively shallow mesoeutrophic and warm-water impoundment with a complex shoreline. It supports sport fisheries of nonnative species and also the repatriated and potentially remnant native fish populations of razorback sucker and bonytail. More than 50 percent of the riverbank downstream of Davis Dam has been replaced with riprap. Under existing conditions, the river is constrained by reservoir operation, levees, and channelization, which all contribute to the loss of native fish habitat.

A more specific analysis of the current aquatic resource conditions will be determined as Enhancement, Management, Preservation, and Monitoring Plans are prepared. Since this will require extensive field work, this activity will be undertaken once the Program is approved and Project Sites are selected.

- **33 CFR Section 332.8(c)(2)(v): A statement of aquatic resource goals and objectives for the Service Area, including a description of the general amounts, types and locations of aquatic resources the program will seek to provide.**

The goal of the Program is the augmentation or reestablishment of federally listed, endangered fish species within the service area, principally razorback sucker and bonytail chub. The program will seek to contribute to recovery goals in respective recovery plans for the species.

The program will offset both dispersed and point impacts by funding projects that contribute to the recovery of Federally-listed native fish species associated with the Service Area. More specifically, the program will mitigate for activities authorized under individual permits, general permits (nationwide and regional), and for unauthorized activities which result in unavoidable, permanent or functional impacts to aquatic resources on the LCR. Use of funds generated will support creation, enhancement or restoration of habitat for LCR endangered fish species or any activities directly related to the spawning, grow-out, reintroduction, augmentation, and evaluation and monitoring (occupancy, census, trends, habitat use & evaluation, etc.) or general benefit of the species within the geographic area.

- **33 CFR Section 332.8(c)(2)(vi): A prioritization strategy for selecting and implementing compensatory mitigation activities.**

Recovery Efforts

Prioritization of recovery efforts for listed species associated with the Service Area will favor: 1) projects or actions that provide direct benefits to the listed fish species or their habitats, 2) projects or actions that provide future benefits to the listed fish species or their habitats, 3) projects or actions that increase understanding of needs or facilitate quantification of program benefits.

- **33 CFR Section 332.8(c)(2)(vii): Explanation of How Preservation Objectives Identified and Addressed in the Prioritization Strategy Satisfy the Criteria for Use of Preservation in § 332.3(h) (§332.8(c)(2)(vii)).**

The main components of the Program strategy will be to support recovery related projects benefitting listed species or their habitat within the Service Area. Science-based conservation practices will be used to provide and monitor benefits to target species.

Section 332.8(c)(2)(vii) requests applicants to address the preservation criteria enumerated in Section 332.3(h).

1. Any resources to be preserved will provide important physical, chemical or biological functions for the watershed and contribute to recovery objectives for listed species within the service area.
2. The resources to be preserved will contribute significantly to the ecological sustainability of the listed species within the watershed. In determining the contribution of those resources to the ecological sustainability of the watershed, the district engineer must use appropriate quantitative assessment tools, where available.
3. Preservation is determined by the district engineer to be appropriate and practicable.
4. The resources are under threat of destruction or adverse modifications.
5. The preserved sites will be permanently protected through an appropriate real estate or other legal instrument (e.g., conservation easement, title transfer to state resource agency or land trust).

- **33 CFR Section 332.8(c)(2)(viii): Public and Private Stakeholder Involvement.**

Since 2005, Program activities have been coordinated with State (Arizona & California) and Federal agencies (USFWS-Refuges; U.S. Bureau of Reclamation) through annual coordination/science meetings (Colorado River Aquatic Biologists Meeting, Lake Mohave Work Group, Lake Havasu Work Group), various permit requests and reports, and project by project discussions.. Involvement with public and municipal entities have taken place opportunistically in the field and at meetings.

- **33 CFR Section 332.8(c)(2)(ix): Long-term Management Strategies.**

Projects will be managed on time-scale commensurate with the expected project/activity life. In general, the long- term protection and management strategies for razorback sucker and bonytail chub will be accomplished through stocking sub-adult fish from production facilities and backwater habitats there were developed using the in-lieu program. As adult populations are established in suitable mainstem and off-channel habitats, research and monitoring will be implemented for development of management strategies to promote self-persistence of the populations.

- **33 CFR Section 332.8(c)(2)(x): Periodic Progress Evaluations.**

The Project Sponsor will prepare an annual report which (1) briefly evaluates the current state of each project/activity and (2) reports on the progress of the program in achieving the goals and objectives set forth. The annual report may contain photographs, as appropriate. The report shall also identify where practicable, adaptive management will be used in the event potential problems are identified. Reports will be provided to USACE. Program activities will be reported annually.