COMMENT LETTER

**CREDA**
**Colorado River Energy Distributors Association**

**ARIZONA**
Arizona Municipal Power Users Association
Arizona Power Authority
Arizona Power Pooling Association
Irrigation and Electrical Districts Association
Navajo Tribal Utility Authority (also New Mexico, Utah)
Salt River Project
**COLORADO**
Colorado Springs Utilities
Intermountain Rural Electric Association
Platte River Power Authority
Tri-State Generation & Transmission Cooperative (also Nebraska, Wyoming, New Mexico)
Yampa Valley Electric Association, Inc.
**NEVADA**
Colorado River Commission of Nevada
Silver State Power Association
**NEW MEXICO**
Farmington Electric Utility System
Tri-State Generation & Transmission Cooperative
City of Truth or Consequences
**UTAH**
City of Provo
Strawberry Electric Service District
Utah Associated Municipal Power Systems
Utah Municipal Power Agency
**WYOMING**
Wyoming Municipal Power Agency

**Leslie James**
Executive Director
CREDA
Suite 111
1600 West Broadway Road
Tempe, Arizona 85282

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Fax: 480-557-0988
Cellular: 602-469-4046
Email: creda@uswest.net

September 7, 2000

Ms. Jayne Harkins
Bureau of Reclamation
Attn: BCOO –4600
PO Box 61470
Boulder City, NV 89006-1470
(fax: 702-293-8042)

RE: COMMENTS ON DRAFT EIS ON COLORADO RIVER INTERIM SURPLUS CRITERIA

Dear Ms. Harkins:

The Colorado River Energy Distributors Association (CREDA) is an association of over 133 consumer-owned electric systems that purchase and distribute more than eighty-five percent of the energy produced by the Colorado River Storage Project (CRSP). In addition, CREDA members repay nearly ninety-five percent of the federal investment in the CRSP. CREDA member systems serve nearly three million consumers in six Western states. CREDA represents the majority of CRSP firm power contractors, who have a direct and specific interest in issues, which could affect Glen Canyon Dam operations and output.

1 CREDA has reviewed the DEIS on the Interim Surplus Criteria, and finds that under any of the alternatives, including the base case, there will be significant impacts to the firm power contractors of the federal power projects on the Colorado River. CREDA also finds that these impacts are not adequately recognized, analyzed or measured in the DEIS.

2 When the DEIS is being used as a planning process, which seems to be the case here, it is essential that it be a process which integrates impacts on all the resources. It is clear that power resources have not been fully integrated into this planning and analyses. The analyses of impacts does not accurately reflect: 1) the operating restraints on certain of the power plants, 2) how the plants are operated, or 3) the impacts of changed power operations on the firm power contractors. For example:

3 I. Sec. 3.10.2.2.1 – does not seem to recognize the greatly reduced generating capacity at Glen Canyon Dam which resulted from the Glen Canyon Dam EIS and Record of Decision. It also seems that the study assumed operating points at which both Glen Canyon and Hoover operate most efficiently. The plants are most often not operated at these points due to scheduling entities' use of the plants for regulation and reserves. The assumption skews the results and tends to minimize the impacts of changed operations.

4 II. Sec 3.10.2.2.2 –is far too simplistic in its assumption that the impacts will felt through a large area (WSCC) and are therefore minimal. What must be measured are the direct financial impacts to the power contractors. In the case of

RESPONSES

1:The EIS analysis is intended to be an analysis of the alternatives compared to the baseline projections. As discussed in Section 3.1.3, baseline projections are used to compare possible future without interim surplus criteria to future with interim surplus criteria conditions. Under baseline conditions and each of the alternatives, the fact that reservoir elevations will have an increased probability to fall over time is predominantly a result of increased depletions in the Upper Basin states. Reclamation believes that the level of analysis for energy resources presented in the EIS, and the comparison of the alternatives to baseline conditions appropriately identifies the potential effects of interim surplus criteria.

2: The analysis shows the effects of each alternative reservoir operating strategy when compared to the baseline strategy. Increases or decreases in energy and capacity between the baseline strategy and the alternatives are shown on a yearly basis. This analysis accurately reflects the operating constraints on the powerplants in the modeling parameters. Powerplant operations change daily with differing conditions, but from an overall power production perspective, the analysis results provide a useful comparison of the anticipated reduction in energy and capacity within the WSCC region. A substantial portion of the reduction is included in baseline conditions; alternatives would result in incremental changes. The quantities of capacity needed to replace incremental reductions, while not significant when compared to the total capacity installed in the WSCC region, may have impacts on power contractors that must purchase replacement power. These impacts were not analyzed in the FEIS.

3: This analysis is not intended to analyze the effects of the Glen Canyon Dam Operation EIS and Record of Decision. The assumptions that were used for interim surplus criteria modeling related to operating points were used in the analysis of power production for both baseline conditions and each of the alternatives. Since the analysis contained in this EIS is concerned with the difference between baseline conditions and the alternatives, and the underlying assumptions are the same for all cases, the net difference should not change substantially.

4: Please see response to Comment 16-2.

cont'd Glen Canyon, as power production is reduced there is a direct and immediate upward impact on power rates. There is also an immediate additional cost to the contractors who must pay the costs of replacing the lost energy and capacity. The DEIS is completely silent on these impacts.

5 III. Sec. 3.10.2.3.1 – the proposed "easy" solution of buying replacement power from the short-term market trivializes the problem. The short-term wholesale power market this summer is causing major problems and severe economic impacts in San Diego and other areas across the WSCC. Industries are shutting down in California and the Northwest because of the short-term market prices.

6 IV. Sec 3.10.2.3.1.2 – cites the impact on the basis of an average of the study years. This is a gross oversimplification that minimizes the real financial impacts to power customers.

7 Overall the DEIS seems to be deliberately minimizing the impacts of power by using annual averages and measuring impacts on a regional basis. It does not deal with the direct financial impacts to power contractors. These contractors in the Upper Colorado River Basin Project are repaying 100% of the federal investment in power features and over 95% of the investment in irrigation projects, and are funding nearly all of the subsequent environmental studies and mitigation projects. Surely, the impacts of the surplus criteria on this important part of the equation deserve full analysis and discussion in the EIS process. The DEIS is significantly incomplete without these analyses. CREDA will be glad to assist in any way possible to achieve this goal.

I may be reached at (480) 557-0987 or email creda@uswest.net.

Sincerely.

Leslie James
Executive Director

Cc: CREDA Board

000907SurpCritEIS

5: Please see response to Comment 16-2.

6: Please see response to Comment 16-2.

7: Please see response to Comment 16-2.

COLORADO RIVER WATER
CONSERVATION DISTRICT

*Protecting Western Colorado Water Since 1937*

SEP 11 2000

September 8, 2000

BCOO1000
4CC

**SENT VIA FACSIMILE & U. S. Mail**
Ms. Jayne Harkins
Attention BCOO-4600
U. S. Bureau of Reclamation
P. O. Box 61470
Boulder City, NV 89006-1470

Dear Ms. Harkins:

The Colorado River Water Conservation District ("CRWCD") thanks you for the opportunity to review and comment on the Bureau of Reclamation's July 2000 "Colorado River Interim Surplus Criteria Draft Environmental Impact Statement" ("DEIS"). The CRWCD is an agency of Western Colorado with a mission to promote the protection, conservation and development of Colorado's water resources in order to secure the greatest utilization of those resources for the benefit of present and future generations. The CRWCD has reviewed the DEIS and provides the following comments.

1 The CRWCD strongly supports the Interim Surplus Criteria developed by the seven Colorado River basin states and noticed in the Federal Register of August 8, 2000 as Supplemental Information to the DEIS. These criteria are a modification of the six state proposal described in the DEIS. Based on our analysis of the seven state proposal, we believe that proposal is superior to the six state proposal in the DEIS because there is less impact to reservoir storage, yet it still provides the water supplies sought. 2 The interim criteria proposed by the seven basin states were developed using a 70R strategy, which is and has been the standard Colorado River reservoir operating strategy since the mid 1990s with one exception. While the 75R strategy has been reviewed on occasion as part of the annual operating plan development, it has never been the standard and we object to the DEIS suggesting that it is or has been the standard.

3 cont'd below The seven state interim criteria were also developed using the Upper Colorado River Basin depletion schedule adopted by the Upper Colorado River Commission in December 1999. The December 1999 depletion schedule shows that depletions are occurring slightly more rapidly than in the Upper Colorado River Basin depletion schedule used in the DEIS. However, the most important point to make is that, while these differences resulted in modifications to the six state

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(970) 945-8522 • FAX (970) 945-8799 • www.crwcd.gov

1: The preferred alternative in this FEIS is derived from the Seven States proposal. Reclamation did not structure the preferred alternative precisely as described in that draft proposal, but made some changes for consistency with the purpose and need for the proposed action, Reclamation policy and operational procedures.

2: The baseline has been changed to a 70R strategy for the FEIS.

3: The preferred alternative in this FEIS is derived from the Draft Seven States Proposal. The Upper Basin depletion schedule prepared in December 1999 was used to model the operation of the baseline and all the alternatives in this FEIS. The baseline has also been changed to the 70R operating strategy.

COMMENT LETTER

RESPONSES



3 cont'd proposal discussed in the DEIS, those differences and the impacts are within the range of alternatives and impacts analyzed in the DEIS. Because of its knowledge of the development of the DEIS supplemental information, the CRWCD is comfortable that the seven state proposal in the superior alternative and would likely strongly oppose the adoption of any interim surplus criteria that would change the standard or "no action alternative" in any other way.

4 Furthermore, the CRWCD, in its review of the DEIS, finds that there are a number of views expressed in the DEIS concerning the "law of the river" with which it disagrees or does not wholly concur. However, these differences do not significantly impact the results of the DEIS and, thus, the CRWCD does not see any merit in debating them in the DEIS process. However, the CRWCD wants it clearly understood by all parties that it is not, in any way, changing long standing positions on Colorado River issues as a result of the way they may be stated in the DEIS. Rather, we would strongly encourage the Bureau of Reclamation to include the usual disclaimer it uses to address the differences that exist with respect to the "law of the river."

5 In particular, in Section 1.4.2 of the Glen Canyon Dam Operations, the discussion of Glen Canyon operations is not precise. The Colorado River Compact requires the Upper Division states to not cause the flow at Lee Ferry to be depleted below an aggregate of 75 MAF (plus ½ of the Mexican Treaty Deficiency, if any) for any period of ten consecutive years. The Upper Division states have never agreed with the 8.23 MAF minimum objective release identified in the Long Rang Operating Criteria. We would encourage that language be added to this section and others to fairly reflect what the compact requires.

In conclusion, even though we disagree with the way in which the law of the river is characterized in a number of places in the DEIS, we believe the DEIS and the supplemental information fairly portray the potential impacts of the possible actions and recommend that the Secretary adopt and implement the Seven Basin States Interim Surplus Guidelines. Thank you for considering the CRWCD's comments on this very important matter.

Sincerely,

R. Eric Kuhn
General Manager

4: Comment noted.

5: Glen Canyon Dam is operated according to the LROC as discussed in Section 1.4.2. Section 1.3.3 discusses the LROC and the process for review and modification of the LROC. This EIS does not address disparities between the LROC and the Colorado River Compact. Concerns over the relationship between the Colorado River Compact and the LROC should be addressed though the LROC review process.

*Cottonwood Creek Consolidated*
*Irrigation Company*

August 30, 2000

Jayne Harkins
Attention: BC00-460
PO Box 61470
Boulder City, Nevada 89006

Dear Ms. Harkins:

1 We have reviewed the Colorado River Interim Surplus Guidelines prepared as the "Seven Basin States Consensus Proposal." We concur with the method that has been negotiated between the basin states and urge that the Secretary of Interior adopt this plan, as written, as the preferred alternative.

Sincerely,

Craig E. Johansen, President
Cottonwood Creek Consolidated Irrigation Co.

cc: Larry Anderson, Director
Division of Water Resources

P.O. Box 678 • Orangeville, Utah 84537

1: The preferred alternative in this FEIS is derived from the Seven States Proposal. Reclamation did not structure the preferred alternative precisely as described in that draft proposal, but made some changes for consistency with Reclamation policy and operational procedures.

# EMERY WATER CONSERVANCY DISTRICT

P.O. Box 998
Castle Dale, Utah 84513

Telephone (801) 381-2311

September 11, 2000

~~BC00-460~~
4600

Jayne Harkins
Attention:BC00-460
PO Box 61470
Boulder City, Nevada 89006

Dear Ms. Harkins:

1 We have reviewed the Colorado River Interim Surplus Guidelines prepared as the "Seven Basin States Consensus Proposal." We concur with the method that has been negotiated between the basin states and urge that the Secretary of the Interior adopt this plan, as written in the Federal Register / Vol. 65, No. 153 / Tuesday, August 8, 2000, as the preferred alternative.

Sincerely,

Eugene Johansen

Eugene Johansen, President
Emery Water Conservancy District

cc: Larry Anderson, Director
Division of Water Resources

1: See response to Comment 13-19.

**OPERATING COMMITTEE**

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**FAX (435) 259-8122**

To: **Ms. Jayne Harkins**
**Attention BC00-4600**
From: Gary Wilson, President
Subj: Comment on DEIS, Colorado River Interim Surplus Criteria

1 Grand Water & Sewer Service Agency would like to voice support of the "Seven State Proposal" for Interim Surplus Guidelines on the Colorado River. This proposal seems the most sensible to assure that each State in the Colorado River Compact will eventually receive its allotted share of Colorado River water. The proposal accomplishes this in a manner which places less burden on those states currently using in excess of their allotted share and at little or no risk to upper basin states.

SEP 11 2000

BC00 4600

1: See response to Comment 13-19.

IMPERIAL IRRIGATION DISTRICT

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RPM

SEP 11 2000

September 8, 2000

PXC001600
4600

**FAXED & MAILED**
Robert W. Johnson
Regional Director
Lower Colorado Region
Attn: Jayne Harkins (LC-4600)
Bureau of Reclamation
P.O. Box 61470
Boulder City, NV 89006-1470

Dear Mr. Johnson:

**Subject: Comments on Draft Environmental Impact Statement, *Colorado River Interim Surplus Criteria***

Imperial Irrigation District (IID) has reviewed and provides the following comments on the United States Bureau of Reclamation's (Reclamation) Draft Environmental Impact Statement (DEIS) regarding Colorado River Interim Surplus Criteria.

1 The DEIS has analyzed the following alternatives: no action alternative, Flood Control alternative, Six States alternative, California alternative, and Shortage Protection alternative. The Final Environmental Impact Statement (FEIS) should analyze *Interim Surplus Criteria Guidelines* ("Guidelines") developed by the Colorado River Basin states, as published by Reclamation in Federal Register/Vol 65, No. 153/August 8, 2000. IID has participated in the development of the Guidelines and supports the interim surplus criteria proposed therein.

2 From a general perspective, IID offers the following comments on the draft EIS. First, in order to maintain the public record, IID would like to remind Reclamation that compliance with NEPA in this situation is unnecessary. This issue was thoroughly addressed in comments from a variety of the basin states when Reclamation first announced its intention to undertake a NEPA compliance process for the interim criteria. As explained at that time, this interim criteria is well within the Secretary's existing authority to adjust operations at Hoover Dam within the terms of the Long Range Operating Criteria. Accordingly, there is no new "action" here upon which to base the need for NEPA compliance. Engaging in this sort of gratuitous NEPA compliance process is not authorized by NEPA, and therefore Reclamation's decision to undertake NEPA compliance in this situation only serves to confuse and mislead the public, and will also serve to mislead a court should this matter ever become involved in litigation.

3 Second, also for the record, IID objects to the decision of Reclamation to extend NEPA analysis into the country of Mexico (see sections 3.2 and 3.16). Although Reclamation relies on an old Executive Order and CEQ guidelines for this action, those authorities predate more recent

1: The preferred alternative in this FEIS is derived from the Seven States Proposal. Reclamation did not structure the preferred alternative precisely as described in that draft proposal, but made some changes for consistency with the purpose and need for the proposed action, Reclamation policy and operational procedures.

2: See response to Comment 43-2.

3: The applicable guidance appears to be contrary to the comment. EO 12114, Environmental Effects Abroad of Major Federal Actions, 44 FR 1957, 1979 WL 25866 (Pres.) requires that Federal agencies "... consider the significant effects of their actions on the environment outside the U.S., its territories and possessions...." The more recent CEQ guidance for transboundary impacts, dated July 1,1997, appears consistent with the approach in the Executive Order. See response to Comment 22-5.

COMMENT LETTER

RESPONSES

Mr. Robert W. Johnson
September 8, 2000
Page 2 of 3

cont'd judicial decisions on this issue, and the cited authorities do not take into account the Supreme Court-imposed presumption against the extraterritorial application of federal domestic laws. Furthermore, Reclamation's extension of the NEPA analysis into Mexico ignores the dominant role of the 1944 Treaty between the United States and Mexico governing uses from the Colorado River. Both the Executive Order and the CEQ guidelines recognize that a controlling treaty may obviate the need for such NEPA compliance. Again, this sort of action only serves to mislead the public, and in this case, the citizens of Mexico as well.

4 Third, although the draft EIS appears to be silent on the matter, IID is concerned that the draft EIS presents a platform for Reclamation to engage in formal consultation under the Endangered Species Act (ESA) in relation to listed species located in Mexico. Because of other documents previously submitted to Reclamation, Reclamation is fully aware of the arguments posed by IID and the other California Colorado River using entities as to why the ESA does not apply in any way to listed species in Mexico. Fundamentally, IID's position rests on the wording of the existing ESA regulations, which are domestically oriented, and also on the Supreme Court-imposed presumption against the extraterritorial application of domestic laws. Since Reclamation has not indicated its intention to engage in formal or informal consultation under the ESA, IID urges Reclamation to maintain that position in future stages of this NEPA compliance process.

5 Fourth, IID notes that in section 2.2.3 of the draft EIS Reclamation explains why the proposal submitted by the Pacific Institute and others is not analyzed in this draft EIS. IID agrees with the rational advanced by Reclamation to support that decision. The recommendations made in the Pacific Institute proposal are expressly contrary to the terms of the 1944 Treaty with Mexico. Any deviation from that treaty, either for water quantity or water quality purposes, must be addressed through the authority of the Secretary of State, the President, and the Congress to control foreign affairs. There should be no attempt to analyze or effectuate such proposed action through the authority of the Department of the Interior or through application of the ESA or NEPA.

6 Regarding the technical analysis in general, IID agrees with the framework and the approach for the DEIS. The definition and estimation of the impacts as "incremental differences in probabilities (or projected circumstances associated with a given probability) between baseline conditions and the alternatives" (DEIS, p. 3-14) is appropriate. The application of the hydrologic modeling to quantify the impacts in this manner is also appropriate. However, we have the following concerns:

7 The DEIS makes an assumption that the conditions modeled for baseline conditions and Flood Control alternative do not include the implementation of the California 4.4 Plan and water transfers described in *Key Terms for Quantification Settlement Among the State of California, IID, CVWD, and MWD*, dated October 15, 1999 ("Key Terms"). IID recognizes that the adoption of interim surplus criteria acceptable to MWD is one of Conditions Precedent in the Key Terms. However, the purpose of this DEIS is to evaluate the impacts of the interim surplus criteria, not the impacts of the water transfers described in the Key Terms. By modeling the baseline demands without the water transfers and the demands for the action alternatives with the water transfers, the DEIS has effectively evaluated the combined impacts of the interim surplus criteria and the water transfers. IID believes that the impacts of the interim surplus criteria should be isolated by using the same demands for the baseline conditions and for the action alternatives. The demands should include both the interim surplus criteria and water

4: Comment noted.

5: The Pacific Institute Proposal was considered but not analyzed as an alterantive in this FEIS. See responses to Comment 11-2 and 11-6.

6: Comment noted.

7: All alternatives analyzed in the FEIS assume implementation of the California Colorado River Water Use Plan and intrastate water transfers. See response to Comment 37-11 for more detail.

Mr. Robert W. Johnson
September 8, 2000
Page 3 of 3

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transfers, and should apply to both baseline and action alternatives. The impacts of each of the water transfers described in the Key Terms will be evaluated in separate environmental reviews, as appropriate.

In summary, IID believes that the impacts of the Interim Surplus Criteria should be analyzed using the same demands for both baseline conditions and the action alternatives. This will help ensure that the impacts of the proposed interim surplus criteria are evaluated correctly. In addition, IID urges Reclamation to seriously consider IID's comments as to the applicability of both NEPA and the ESA to this process as it relates to resources or species in Mexico.

IID appreciates the opportunity to comment on the DEIS.

Sincerely,

John R. Eckhardt

JOHN R. ECKHARDT, Ph.D., P.E.
Assistant to the General Manager

JRE/lh
U:ISC/DEIS-Comments.doc

Copy: Gerald Zimmerman, CRB
Dennis Underwood, MWD
Tom Levy, CVWD
Maureen Stapleton, SDCWA

**IRRIGATION & ELECTRICAL DISTRICTS ASSOCIATION OF ARIZONA**

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TELECOPIED AND MAILED
(Fax no.: 702-293-8042)

September 8, 2000

BC00100
4600

Ms. Jayne Harkins, BC00-4600
Lower Colorado Regional Office
Bureau of Reclamation
P.O. Box 61470
Boulder City, Nevada 89006-1470

Re: Comments on the Draft Environmental Impact Statement for Lower Colorado River Interim Surplus Criteria (ISC), 65 Fed.Reg. 42028 (July 7, 2000) and 65 Fed.Reg. 48531 (August 8, 2000)

Dear Ms. Harkins:

These comments are intended to supplement my oral comments given at the Public Hearing on this subject on August 24, 2000 in Phoenix, Arizona, which oral comments are incorporated by reference. We also endorse and support the comments that have been filed by the Colorado River Energy Distributors' Association and the oral comments and written comments provided by the Arizona Power Authority Commission, the Arizona Department of Water Resources and the Central Arizona Water Conservation District.

These comments will deal with four subjects; the comment period and late comments, the preferred alternative, power impacts, and the extraterritorial application of the National Environmental Policy Act (NEPA) and the Endangered Species Act (ESA).

COMMENT PERIOD

1 At the hearing in Phoenix, there was some discussion about the need for acquisition of additional information and additional comments. After the original notice of availability and the availability of the Draft Environmental Impact Statement (DEIS), the seven Basin states proposed an alternative not included in the DEIS. That alternative was published in the Federal Register on August 8, 2000 and has since undergone some additional modification. The question arose whether the Bureau of Reclamation (Reclamation) could accept additional comments and information after the close of the comment period on September 8, 2000. The simple answer to that question is yes. Commenting is covered by the Council on Environmental Quality (CEQ) regulations

*SERVING ARIZONA SINCE 1962*

1: Consultation and coordination is an ongoing process during the preparation of an EIS. Reclamation is aware of the regulations and guidance you cite, and makes every reasonable effort to include and respond to late comments from regulatory agencies. To the extent possible, Reclamation also includes other substantive comments received after the close of the public comment period for the DEIS.

Ms. Jayne Harkins
September 8, 2000
Page 2

cont'd at 40 C.F.R., Part 1503. While the regulations in that part do not specifically address the question of comments received after the expiration of a comment period set under 40 C.F.R. § 1501.8, the regulations do anticipate that all substantive comments received will be attached to the Final Environmental Impact Statement (FEIS) and those meriting response will be included in the responses in the FEIS. The clear implication is that substance will control over form and that information received prior to the completion of the FEIS should be included in the process. Additionally, the Department of Interior Manual, at 516 DM 4.17, says

> "B. When other commenters are late, their comments should be included in the final EIS to the extent practicable."

And the Bureau of Reclamation Handbook, paragraph 8.15.2.4 contains a similar requirement.

Thus, additional information and comments can be obtained by Reclamation for the FEIS. It would be important to have that material in writing so it can be included with the FEIS, as required by 40 C.F.R. § 1503.4(b).

PREFERRED ALTERNATIVE

2 In the FEIS, Reclamation must designate a preferred alternative. 40 C.F.R. § 1502.14(e). That should be the seven-state alternative articulated in the August 8, 2000 Federal Register notice as further modified and discussed at the Phoenix hearing and, we presume, the other hearings. NEPA is a planning process and the EIS a planning analysis document focused on environmental consequences to a proposed action and reasonable alternatives. As such, it is perfectly positioned to make the sort of adjustments necessary that are called for here in order for the seven-state alternative to be the preferred alternative in the final EIS. See Answer to Question 29b., 40 Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations. Indeed, the dialogue necessary to refine the seven-state alternative as the preferred alternative enhances the quality of the NEPA process by clarifying the proposed action and allowing the environmental analysis of it to be more discrete and comprehensive.

POWER IMPACTS

3 Without belaboring comments you have already received and other comments you are receiving on this subject, from the Arizona Power Authority, the Colorado River Energy Distributors' Association and others, let me focus on the cure to the

2: The preferred alternative in this FEIS is derived from the Seven State Proposal. Reclamation did not structure the preferred alternative precisely as described in that draft proposal, but made some changes for consistency with the purpose and need for the proposed action, Reclamation policy and operational procedures.

3: Comment noted. Reclamation believes that the level of analysis for energy resources presented in the EIS appropriately identifies the potential effects of interim surplus criteria compared with baseline conditions.

Ms. Jayne Harkins
September 8, 2000
Page 3

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inadequacies of Section 3.10 on energy resources in Chapter 3 on Affected Environment and Environmental Consequences. You must agree that the oversimplified discussion in this section does not pass the pink-face test. This region of the country is no longer capacity rich nor is it in a surplus condition with regard to energy, especially in summer months. If such surpluses existed, the 13 merchant plants being built in Arizona, or at least planned, would not even be being discussed. Nor would power bills have tripled this summer in San Diego. To correct the deficiencies in impact analysis on customers of the affected hydropower resources and the total lack of analysis of reliability impacts, I suggested to you at the hearing and I will repeat the suggestion that you reach out to the Western Systems Coordinating Council, the Colorado River Energy Distributors' Association, the Arizona Power Authority and other power customer organizations, including ours, for information on impacts that can be incorporated in the final EIS. Others have already volunteered to assist and we do likewise. These impacts must be quantified because the EIS is totally devoid, as are all of the action proposals, of any discussion of compensating those who will lose benefits from lost hydropower production and are not in a position to enjoy any of the benefits of water supply in return during times of shortage. One cannot ignore the class of beneficiaries of the hydropower projects involved that have this single source of benefit from these multi-purpose hydropower projects, i.e., hydropower.

EXTRATERRITORIAL APPLICATION OF NEPA

I. It is inappropriate and unnecessary to include an analysis of impacts to the Mexican Delta in the ISC EIS.

A. There is a strong presumption against extraterritorial application of statutes.

4

"It is a longstanding principle of American law 'that legislation of Congress, unless a contrary intent appears, is meant to apply only within the territorial jurisdiction of the United States.' ... This 'canon of construction ... is a valid approach whereby unexpressed congressional intent may be ascertained.'" EEOC v. Arabian American Oil Co. ("Aramco"), 499 U.S. 244, 248 (1991) (quoting Foley Bros. v. Filardo, 336 U.S. 281, 285 (1949)).

"The general and almost universal rule is that the character of an act as lawful or unlawful must be determined wholly by the law of the country where the act is done... [This] would lead, in case of doubt, to a construction of any statute as intended to be confined in its operation and effect to the territorial limits over which the lawmaker has general and legitimate power."

4: The applicable guidance appears to be contrary to your comment. EO 12114, Environmental Effects Abroad of Major Federal Actions, 44 FR 1957, 1979 WL 25866 (Pres.) requires that Federal agencies "... consider the significant effects of their actions on the environment outside the U.S., its territories and possessions,..." Recent CEQ guidance for transboundary impacts, dated July 1,1997, appears consistent with the approach in the Executive Order.

Ms. Jayne Harkins
September 8, 2000
Page 4

cont'd

American Banana Co. v. United Fruit Co., 213 U.S. 347, 356, 357 (1909).

The presumption against extraterritorial application is expressed most clearly by the holding in Aramco, 499 U.S. 244 (1991). The Aramco Court applied the presumption to Title VII, concluding that the statute did not apply to employment discrimination by an American company against an American citizen that occurred beyond U.S. boundaries. Despite the argued evidence that Congress intended Title VII to apply extraterritorially (i.e., Congress' specific reference which exempted employers "with respect to the employment of aliens outside any State" 42 U.S.C. 2000e-1 (1988)), Chief Justice Rehnquist held that only a "clear statement" in the language of the statute would be sufficient to overcome the presumption. 499 U.S. at 258.

Congress subsequently amended Title VII to overcome the result in Aramco. See 42 U.S.C. 2000e(f) (1994); id. 2000e-1(c); and id. 2000e-1(b). However, this does nothing to the presumption as declared by Chief Justice Rehnquist. In fact, Congress' action in this instance highlights three of the six (see II.F., post) sound policy reasons for the presumption. They are (1) the presumption provides legislators with a clear rule which allows them to predict the application of their statutes; (2) "the commonsense notion that Congress generally legislates with domestic concerns in mind," (Smith v. United States, 507 U.S. 197, 204 (1993)); and (3) separation-of-powers concerns (i.e., determination of how to apply federal legislation is beyond the constitutional scope of the judicial branch).

Furthermore, the Supreme Court has recently applied the presumption against extraterritoriality not only to Title VII, but also to the Foreign Sovereign Immunities Act, the Federal Tort Claims Act, the Immigration and Nationality Act, and, in a concurring opinion, Justice Stevens applied it to the Endangered Species Act. See Argentine Republic v. Amerada Hess Shipping Corp., 488 U.S. 428, 440-41 (1989); Smith v. United States, 507 U.S. 197, 203-04 (1993); Sale v. Haitian Centers Council, Inc., 509 U.S. 155, 173-74 (1993); and Lujan v. Defenders of Wildlife, 504 U.S. 555, 585-89 (1992), respectively. In Smith, Chief Justice Rehnquist applied the presumption again noting that it requires "clear evidence of congressional intent." 507 U.S. at 204. Similarly, in Sale, the Court held that Acts of Congress "do not have extraterritorial application unless such an intent is clearly manifested." 509 U.S. at 188. Therefore, in order to rebut the presumption against extraterritoriality, the statute must reflect the clear intent of Congress to do so. Language subject to varied interpretation is not sufficient. Aramco, 499 U.S. 244, 266-78 (1991).

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B. NEPA does not cover actions taken in other sovereign nations.

The issue of whether NEPA may be applied extraterritorially has yet to come before the Supreme Court of the United States. However, as noted above, there is a strong presumption against extraterritorial application of statutes, which includes NEPA, unless Congress clearly expresses otherwise. Aramco, 499 U.S. 244, 248 (1991). A review of the lower courts' case law supports applying this presumption to NEPA.

Three cases are most instructive in concluding that NEPA should have no extraterritorial application here. The first is Natural Resources Defense Council, Inc. v. Nuclear Regulatory Comm'n ("NRDC"), 208 U.S. App. D.C. 216, 647 F.2d 1345 (D.C. Cir. 1981). NRDC concerned nuclear shipments to the Phillipines, to which the court held that "NEPA does not apply" extraterritorially. Id. at 1366. While limited to nuclear export licensing decisions, the court explained "NEPA's legislative history illuminates nothing in regard to extraterritorial application." Thus, in the absence of any "clear evidence of congressional intent" the presumption against extraterritoriality will prevail. Smith v. United States, 507 U.S. 197, 204 (1993).

The second case regarding the extraterritoriality of NEPA is Environmental Defense Fund v. Massey ("EDF"), 300 U.S. App. D.C. 65, 986 F.2d 528 (D.C. Cir. 1993). The court in EDF held that the presumption did not apply, and consequently that NEPA did apply to the National Science Foundation's attempt to incinerate food wastes in Antarctica. However, the court relied heavily, if not entirely, upon Antarctica's sovereignless status and the potential "clashes between our laws and those of other nations." Id. at 532.

Most importantly, the court limited its holding to the specific facts of that case and did "not decide today how NEPA might apply to actions in a case involving an actual foreign sovereign..." Id. at 837. And EDF also preceded Chief Justice Rehnquist's reaffirmation in Smith, 507 U.S. at 204: "The presumption is rooted in a number of considerations, not the least of which is the commonsense notion that Congress generally legislates with domestic concerns in mind." Thus, the EDF holding is limited to its unique facts.

The third case that addresses extraterritorial application of NEPA also addresses the holding in EDF. In NEPA Coalition of Japan v. Aspin ("Aspin"), the court distinguished EDF, stating, "The [EDF] court expressly limited its ruling by refusing to decide whether NEPA might apply to actions involving an internationally recognized sovereign power." 837 F.Supp. 466, 467 (1993) (citing EDF, 986 F.2d at 537). The Aspin case asks whether NEPA requires the Department of Defense to prepare an EIS

5: NEPA does cover actions taken in the United States. The Executive Order 12114 is used to provide the decisionmaker complete information regarding the impact of the decision (See Section 1-1 of the EO in Attachment B). Additional guidelines on the applicability of NEPA to transboundary impacts that may occur as a result of proposed federal actions in the United States are contained in a memorandum prepared by the Executive Office of the President, Council on Environmental Quality. A copy of this document (CEQ Guidance on NEPA Analyses for Transboundary Impacts - July 1, 1997) is also provided in Attachment B.

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cont'd

for military installations in Japan. The court held that "the presumption against extraterritoriality not only is applicable, but particularly applies in this case because there are clear foreign policy and treaty concerns involving a security relationship between the United States and a sovereign power." 837 F. Supp. at 468. A similar result not involving a treaty was reached in Greenpeace, USA v. Stone, 748 F.Supp. 749 (D. Hawaii 1990), appeal dismissed as moot, 924 F.2d 175 (9th Cir. 1991).

Therefore, because of the above-cited case law, NEPA remains subject to the presumption against extraterritoriality in other sovereign nations.

C. The Treaty implications here require restraint.

6

1. Water deliveries are not the only Treaty matters that can be impacted.

Treaty relations and relationships will be impacted even if water deliveries are not.

"[The] presumption [against extraterritorial application] has special force when we are construing treaty and statutory provisions that may involve foreign and military affairs for which the President has unique responsibility." Sale v. Haitian Centers Council, Inc., 509 U.S. 155, 188 (1993) (quoting United States v. Curtiss-Wright Export Corp., 299 U.S. 304 (1936)).

The DEIS states that treaty water deliveries to Mexico (1.5 MAF/year) will not be affected by the implementation of the ISC. Chapter 3, Subsection 3.16.3. However, availability of treaty surplus water is specifically excluded from the DEIS. Chapter 1, Subsection 1.1.4. That, in and of itself, impacts relationships governed by the 1944 U.S./Mexico Treaty and Minute 242. It is literally impossible to assess impacts in Mexico, presumably in the Mexican Delta, without affecting relationships in Mexico, including relationships with the Mexican government. What sort of separate consultations with the Mexican government through the International Boundary Water Commission (IBWC) result from IBWC cooperating agency status? Conduct of studies? Peer review? Where does it stop?

7

2. If there are no treaty water delivery impacts, then there is even less reason to invade Mexican sovereignty, especially for blatantly speculative analysis purposes.

Since water is the sine qua non for Mexican Delta impacts, if no changes in treaty water deliveries will result, an impact analysis is irrelevant, worthless, and a waste of scarce federal funds. Continued compliance with the treaty is the only relevant subject. Since that is a given, nothing else remains to be done.

6: Reclamation agrees. See Chapter 5 for further information regarding consultation with Mexico.

7: See response to Comments 22-4 and 22-5..

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cont'd The DEIS notes that its analysis is keyed to the availability of "excess" water. However, the DEIS acknowledges that Mexico has no obligation to allow such water to flow through the Delta. Subsection 3.16.2. Indeed, the DEIS assumes consumptive use of such water. Ibid. Then the DEIS blithely goes on to model and discuss excess flows that are presumed to be targets of consumptive use demands as if they will flow through the Delta. This is sheer speculation and not required under NEPA. Environmental Defense Fund, Inc. v. Hoffman, 566 F.2d 1060 (8th Cir. 1977); Life of the Land v. Brinegar, 485 F.2d 460 (9th Cir. 1973); Forty Most Asked Questions, No. 18.

D. Executive Order 12114 does not support extraterritorial NEPA application.

8 E.O. 12114 is cited as support for extraterritorial NEPA analysis. It cannot support studying the impacts of the ISC in Mexico for three reasons. First, it predates all of the relevant case law which contradict its basic premise, including NRDC and Aspin, as well as Smith, Sale, etc. Second, it exempts actions not having significant effect outside the United States. Third, it exempts "actions taken...pursuant to the direction of [a] Cabinet officer when the national...interest is involved...", i.e., when a treaty is implicated.

E. The memorandum entitled "Council on Environmental Quality Guidance on NEPA Analyses for Transboundary Impacts" does not justify extraterritorial NEPA application where, as here, a treaty is clearly implicated.

9 The CEQ Memorandum itself cautions that the scoping process should eliminate transboundary analyses if the information is not needed. Thus, here it would exclude Section 3.16 itself. But to the extent Reclamation relies on this document, we hasten to point out its two fatal flaws. First, it totally disregards the presumption against extraterritorial application. Second, it totally avoids discussion of applications of NEPA where treaty relationships are involved. Since the document recognizes that it has no force beyond existing case law, it provides no support here in the face of NRDC and Aspin.

EXTRATERRITORIAL APPLICATION OF ESA

II. ISC decisions cannot be based on analysis of ESA-related impacts, if any, to the Mexican Delta resulting from river operations conducted pursuant to the ISC.

8: See response to Comment 22- 4.

9: Reclamation notes that the cited CEQ guidance memorandum does not provide exemptions based on instances where treaties exist.

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10 A. Using the EIS to examine extraterritorial impacts to endangered and threatened species is extraterritorial application of the ESA.

By definition, any analysis which accounts for potential impacts beyond our borders necessarily is applying the Endangered Species Act extraterritorially. See: Lujan v. Defenders of Wildlife, 504 U.S. 555, 585-89 (1992) - Stevens, J., concurring in the judgment. Using a Mexican Delta endangered and threatened species analysis as part of the EIS extends the force of the ESA across the Southern International Border with Mexico, when that analysis is presented to the decision-maker, here the Secretary of the Interior.

11 B. There is a strong presumption against extraterritorial application of statutes absent clearly expressed Congressional intent. [See I.A., supra.]

C. Section 7(a)(2) of the Endangered Species Act lacks any Congressional intent to apply these provisions extraterritorially.

12 1. Section 7(a)(2)'s silence on extraterritorial application requires a contrary conclusion.

In his concurring opinion, Justice Stevens addressed this precise point. He stated, "[T]he absence of any explicit statement that the consultation requirement is applicable to agency actions in foreign countries suggests that Congress did not intend that 7(a)(2) apply extraterritorially." Lujan v. Defenders of Wildlife, 504 U.S. 555, 588 (1992). The only geographic reference in Section 7(a)(2) is "affected States" as it applies to critical habitat. Clearly, Section 7(a)(2) lacks any explicit reference to application in foreign countries and thus, Congress did not intend that it apply extraterritorially. Moreover, in reviewing Title VII, the Court held that vague references such as "outside any State" were not sufficient to apply that statute extraterritorially. Aramco, 499 U.S. at 258. Thus, if written, albeit vague, references were not enough to warrant an expression of Congressional intent, surely silence on extraterritorial application must also fail.

2. Section 7's silence reflects Congressional intent.

13 As noted by Justice Stevens concurring opinion in Lujan v. Defenders of Wildlife, Sections 8 and 9 of the Endangered Species Act specifically address application of these sections abroad. 504 U.S. at 588. Section 7 does not. Thus, Congress clearly knew how to draft extraterritorial application of ESA provisions,

10: ESA consultation on this domestic action was completed between Reclamation and the Service and NMFS as directed by the Department of Interior Solicitor and the Commissioner of Reclamation. There is no final resolution of the legal question of application of the ESA to extraterritorial impacts. Reclamation and the Department recognize that this consultation may provide more information than the law requires. However, doing so provides the Secretary a better basis for his determinations and a better understanding of potential impacts.

11: Comment noted.

12: Comment noted.

13: Comment noted.

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yet chose not to in Section 7. As reasoned above, this absence of Congressional intent necessarily must yield to the presumption against extraterritorial application of statutes.

D. Fish and Wildlife Service's own regulations prevent extraterritorial application.

14

1. The 1986 changes in the regulations specifically limited application of ESA.

The scope of the ESA is expressed, in pertinent part, as follows:

> "Section 7(a)(2) of the [ESA] requires every Federal agency, in consultation with and with the assistance of the Secretary, to insure that any action it authorizes, funds or carries out, <u>in the United States or upon the high seas</u>, is not likely to jeopardize the continued existence of any listed species." (Emphasis added.) 50 C.F.R. § 402.01.

The Secretary of the Interior and the Secretary of Commerce have consistently taken the position that they need not designate critical habitat in foreign countries. See 42 Fed. Reg. 4869 (1977)(initial regulations of the Fish and Wildlife Service ("F&WS") and the National Marine Fisheries Service ("NMFS")).

Conversely, in 1978 the F&WS and NMFS promulgated a joint regulation stating that the obligations imposed under 7(a)(2) extend abroad. However, almost immediately the Department of the Interior began to reexamine its position. Consequently, in 1983 a revised joint regulation, reinterpreting 7(a)(2) to require consultation only for actions taken in the United States or on the high seas, was proposed (48 Fed.Reg. 29990) and in 1986, promulgated (51 Fed.Reg. 19926; 50 C.F.R. 402.01 (1991)).

That this restriction applies to effects as well as actions must follow for it would prove "illogical to conclude that Congress required federal agencies to avoid jeopardy to endangered species abroad, but not destruction of critical habitat abroad." <u>Lujan</u>, 504 U.S. 555, 588.

This analysis is confirmed by the concomitant restrictive language in the definition of "action", in pertinent part, as:

> "All activities or programs of any kind authorized, funded, or carried out, in whole or in part, by Federal agencies <u>in the United States or upon the high seas</u>." (Emphasis added.) 50 C.F.R. § 402.02.

15

2. Agency construction of the Act was clearly expressed in the 1986 rulemaking.

14: Comment noted.

15: Comment noted.

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cont'd

One need look no further than the F&WS explanation in its 1986 rulemaking for clear intent that the ESA's operative provisions are not to be applied extraterritorially.

"The 1978 rule extended the scope of section 7 beyond the territorial limits of the United States to the high seas and foreign countries. The proposed rule cut back the scope of section 7 to the United States, its territorial sea, and the outer continental shelf, because of the apparent domestic orientation of the consultation and exemption processes resulting from the Amendments, and because of the potential for interference with the sovereignty of foreign nations. Several commenters asserted that the rules should continue to have extraterritorial effect. The scope of these regulations has been enlarged to cover Federal actions on the high seas but has not been expanded to include foreign countries." 51 Fed.Reg. 19929-19930 (1986).

The F&WS has interpreted Congressional amendments to the ESA for over a decade as evincing an intent for domestic application. The F&WS is bound by its own longstanding administrative interpretation and so is Reclamation.

16

E. Using an analysis of extraterritorial impacts effectively applies § 7(a)(2) extraterritorially, which is unlawful.

Because Section 7(a)(2) does not demonstrate any, much less clear, Congressional intent concerning their foreign application, under the presumption against application of statutes, Section 7(a)(2) must be confined to application within the United States. Inserting the ESA analysis in the DEIS, Subsection 3.16.6, coupled with consultation with IBWC, Subsection 3.16.3, constitutes preparation of a de facto Biological Assessment under the ESA. Thus, this analysis of extraterritorial impacts is an impermissible application of the ESA.

17

F. Sound public policy demands that ESA application remain focused on impacts in the United States where, as here, a treaty covers the area in question.

There are six oft-cited reasons for the presumption against extraterritorial application. (1) The presumption provides legislators with a clear background rule which allows them to predict the application of their statutes; (2) "the commonsense notion that Congress generally legislates with domestic concerns in mind" (Smith, 507 U.S. 197, 204 (1993)); (3) Separation-of-powers concerns (i.e., the determination of whether and how to apply federal legislation to conduct abroad raises difficult and sensitive policy questions that tend to fall outside both the

16: Comment noted.

17: Comment noted. Reclamation acknowledges there are various sound public policy perspectives on this issue. Reclamation has appropriately focused on its ESA compliance within the United States.

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institutional competence and constitutional prerogatives of the judiciary); (4) international law limitations on extraterritoriality, which Congress should have been assumed to observe; (5) consistency with domestic conflict-of-laws rules; and (6) the need to protect against unintended clashes between our laws and those of other nations which could result in international discord. See, Dodge, "Understanding the Presumption Against Extraterritoriality," 16 Berk. J. Int'l Law 85 (1998).

1. Treaty relations and relationships will be impacted even if water deliveries are not. [See I.C.1., supra.]

2. Hydrologic impact would most likely result if extraterritorial impacts colored the decision.

It is difficult to imagine how a decision-maker, let alone the preparers of the EIS, will not be influenced by impact analysis in the Mexican Delta. Even if water deliveries are not impacted, some hydrologic, water quality or other changes will result from merely weighing the information. To think otherwise is to defy common sense. Treaty relations will be affected. Section 3.16 should be deleted from the FEIS.

Thank you for the opportunity to comment on this important proposal.

Sincerely,

Robert S. Lynch
Asst. Secretary/Treasurer

RSL:psr
cc: Hon. Jane Dee Hull, Governor of Arizona
Arizona Congressional Delegation
IEDA Board of Directors
John Leshy, Solicitor, Department of the Interior
Rita Pearson, Director, Arizona Department of Water Resources
Gerald Zimmerman, Executive Director, Colorado River Board of California
George M. Caan, Director, Colorado River Commission of Nevada
Wayne Cook, Executive Director, Upper Colorado River Commission

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Harold Simpson, Colorado State Engineer
Larry Anderson, Director, Utah Division of Water Resources
Philip Mutz, New Mexico Interstate Stream Commission
John Shields, Wyoming State Engineer's Office
Douglas Miller, General Counsel, CAWCD
Douglas Fant, Counsel, APA
Leslie James, Executive Director, CREDA
Larry Dozier, Deputy General Manager, CAWCD

COMMENT LETTER

SEP. 8.2000 3:38PM MWD NO.236 P.2

**MWD**
*METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA*

September 8, 2000

Mr. Robert W. Johnson **VIA FACSIMILE**
Regional Director
Lower Colorado Region
c/o Ms. Jayne Harkins, BC00-4600
U.S. Bureau of Reclamation
P.O. Box 61470
Boulder City, Nevada 89006-1470

Dear Mr. Johnson:

Comments on Colorado River Interim Surplus Criteria Draft Environmental Impact Statement

The Metropolitan Water District of Southern California (Metropolitan) appreciates the opportunity provided by the U.S. Bureau of Reclamation (Reclamation) to comment on the Colorado River Interim Surplus Criteria Draft Environmental Impact Statement (DEIS). Metropolitan has reviewed the DEIS in conjunction with the information submitted on the DEIS which was published in the Federal Register on August 8, 2000 on pages 48531 to 48538 (information), and the August 14, 2000 memorandum making available Attachment I for the DEIS.

Metropolitan notes that Reclamation has made a preliminary review of information submitted on the DEIS, entitled, "Interim Surplus Guidelines—Working Draft", which is the product of significant effort on the part of the representatives of the Governors of the Colorado River Basin States and has made a preliminary determination that such criteria are within the range of alternatives and impacts analyzed in the DEIS. Metropolitan encourages Reclamation to complete the final evaluation of the information, and supports the presentation of the results of
1 that final evaluation in the Final Environmental Impact Statement (FEIS). Metropolitan supports the designation of the "Interim Surplus Guidelines—Working Draft" as the preferred alternative in the FEIS.

One of the comments made at the August 24 public hearing in Phoenix, Arizona indicated that Reclamation had ample authority to participate in a dialogue on the "Interim Surplus
2 Guidelines—Working Draft" during the remainder of the NEPA process. As a potentially affected public agency, Metropolitan requests the opportunity to be invited to participate in any such dialogue.

RESPONSES

1: The preferred alternative in this FEIS is derived from the Seven States Proposal. Reclamation did not structure the preferred alternative precisely as described in that draft proposal, but made some changes for consistency with Reclamation policy and operational procedures.

2: Reclamation appreciates the willingness of state and local agency representatives to participate in a dialogue on the interim surplus criteria during the NEPA process. This has been of assistance in compiling water demand projections and other operational aspects for the analysis.

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THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

Mr. Robert W. Johnson, Regional Director
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Enclosed for your consideration are additional comments on the DEIS. Should you have any questions on Metropolitan's comments, I may be reached at (213) 217-6588.

Very truly yours,

Dennis B. Underwood

Dennis B. Underwood
Senior Executive Assistant to the General Manager

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Enclosure

COMMENT LETTER



**Additional Comments on**
**Colorado River Interim Surplus Criteria Draft Environmental Impact Statement**

The following comments are offered for consideration by the Bureau of Reclamation (Reclamation) for inclusion in the Final Environmental Impact Statement:

3 1. Insert the word "normal" before the word "apportionment" as California has not been diverting more than its normal and surplus apportionment combined. (Page 1-3, paragraph 4, line 1)

4 2. Insert the phrase "beneficial consumptive use of" before the word "water" as Article III of the Colorado River Compact apportioned the beneficial consumptive use of water between the Upper and Lower basins. (Page 1-8, point 1, line 1)

5 3. Insert the phrase "authorized the Lower Division states to enter into an agreement apportioning the", and delete the word "apportioned" before the word "water" to more precisely state what was authorized by the Boulder Canyon Project Act. After the word "water" delete the phrase "among the Lower Division States". (Page 1-8, point 2, lines 2-3)

6 4. Insert the word "Protection" after the word "Floodway" to more precisely reference the short title of Public Law 99-450, the Colorado River Floodway Protection Act. (Page 1-20, paragraph 5, line 1) Insert the phrase "from below Davis Dam to the Southerly International Boundary between the United States and Mexico" following the word "greater" to specify the location of the floodway. (Page 1-20, paragraph 5, line 3)

7 5. Delete the sentence "The Colorado River Floodway Act requires that the minimum flood release from Hoover Dam can be no less than 40,000 cfs" as Metropolitan's review of Public Law 99-450 did not reveal this requirement. (Page 1-20, paragraph 5, lines 3-5)

8 6. Is the Lower Basin apportionment referenced, the Lower Basin normal apportionment or the Lower Basin normal and surplus apportionment? (Page 1-20, paragraph 1, line 5)

9 7. It is stated that "Elevation 1083 feet msl is the minimum water level for power generation at the Hoover Powerplant based on its existing turbine configuration." (Page 3.3-10, Section 3.3.3.4, lines 6-8) In Reclamation, River Operations Team, Boulder City, Nevada's, "CRSSez Annual Colorado River System Simulation Model, Overview and Users Manual", Revised May 1998, it is stated that "If mavgelev is less than 1050 feet then Hoover energy is zero." where mavgelev is Mead average elevation for the year. (Page 13, paragraph 5, lines 8-9) In the Draft Environmental Impact Statement (DEIS), it is stated "The minimum water surface elevation for efficient power generation is 1083 feet." (Page 3.3-23, paragraph 1, lines 4-5) Please clarify whether the word

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RESPONSES

3: Comment noted, the change has been made.

4: The suggested edit was included in the FEIS.

5: The suggested edit was included in the FEIS.

6: Your comment is noted. This paragraph has been deleted. Section 3.6.4.1 has more information regarding Public Law 99-450.

7: Your comment is noted. This paragraph has been deleted.

8: Reclamation assumes this comment is referring to page 1-22, paragraph 1, line 5 of the DEIS. The sentence has been changed.

9: The fifth sentence of the first paragraph in Section 3.3.3.4 has been changed to read as follows: "Elevation 1083 feet msl is the minimum water level for effective power generation at the Hoover Powerplant based on its existing turbine configuration." A quantitative definition for "effective" as it is used in connection with power generation has been added to Section 3.10.2.1.

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cont'd "efficient" should be inserted before "generation" in the sentence quoted above which is on Page 3.3-10. Please provide a quantitative definition for "efficient" as it is used in connection with generation on pages 3.3-10, 3.3-23, and Figure 3.3-10.

10 8. Insert the phrase "the Yuma Project," before the phrase "the IID" as the All American Canal delivers water to the Yuma Project as well as IID and CVWD according to http://dataweb.usbr.gov/html/allamcanal.html#general. (Page 3.4-6, paragraph 4, line 8)

11 9. Revise the phrase "Since 1996" to "In 1996 and 1997"; and insert the phrase "normal apportionment" and delete the word "entitlement" before the phrase "due to determinations by the Secretary" to be more precise. Reclamation's annual report entitled, "Compilation of Records in Accordance With Article V of the Decree of the Supreme Court of the United States in Arizona v. California Dated March 9, 1964" indicates that California's net diversions of Colorado River water totaled about 100,000 to 200,000 acre-feet less in 1998 and 1999 than that indicated in the DEIS. (Page 3.4-7, paragraph 1, line 3)

12 10. Insert the word "normal" before the word "apportionment" to be more precise. (Page 3.4-7, paragraph 3, line 1).

13 11. Revise the word "entitlement" to the phrase "normal apportionment" to be more precise. (Page 3.4-7, paragraph 3, line 3).

14 12. The DEIS includes the phrase "for about 700,000 acre-feet of the approximate 2 million af of water that MWD currently delivers." (Page 3.4-7, paragraph 3, lines 6-7) In calendar year 2000 with the initial filling of Diamond Valley Lake, Metropolitan forecasts total deliveries of 2.7 million acre-feet to its service area, the Hayfield groundwater basin, and to Desert Water Agency and Coachella Valley Water District for recharge of the Upper Coachella groundwater basin under agreements with those two agencies, with 1.4 million acre-feet of the total being deliveries from the State Water Project. Over the calendar year period 1990-99, Metropolitan delivered between 1.5 and 2.6 million acre-feet.

15 13. Revise the word "legal" to the word "normal" to be more precise. (Page 3.4-8, paragraph 2, line 2).

16 14. Revise the number "5.3" to "5.2". (Page 3.4-8, paragraph 3, line 2) Reclamation's annual report entitled, "Compilation of Records in Accordance With Article V of the Decree of the Supreme Court of the United States in Arizona v. California Dated March 9, 1964" indicates that California's net diversions have not reached 5.3 million acre-feet in the last 10 years after accounting for unmeasured return flows.

17 15. Insert the phrase "those in place by" before the number "2015" (Page 3.5-7, paragraph 2, line 3) as the sixth paragraph on this page includes this language.

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10: The suggested edit was made.

11: The last sentence of the fifth paragraph in Section 3.4.3.3 has been changed to read as follows - Since 1996, California has received as much as 800,000 af above its annual 4.4 maf normal apportionment due to determinations by the Secretary of surplus conditions on the Colorado River through the AOP process.

12: The suggested edit was made.

13: The suggested edit was made.

14: The last part of the last sentence of the seventh paragraph in Section 3.4.3.3 has been revised to reflect the information provided.

15: The suggested edit was made.

16: The suggested change was made.

17: The referenced paragraph has been removed from the document.

COMMENT LETTER

RESPONSES

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18 16. Considering the data presented in Table 3.5-7, revise the word "almost" to "about" and revise the phrase "California Alternatives" to "Alternative". (Page 3.5-24, paragraph 4, lines 4-5)

19 17. Revise the sentences, "The Tribe maintains a claim to additional lands and reserved water rights in California, which will likely be settled soon recognizing the Tribe's right to additional reserved water rights from the Colorado River in the amount of 3,022 acre-feet. The Tribe and State of California have agreed upon a settlement of that claim which is presently before the US Supreme Court for settlement." to "In its June 19, 2000 Opinion, the US Supreme Court accepted the Special Master's uncontested recommendation and approved the proposed settlement of the dispute respecting the Fort Mojave Indian Reservation. Under the settlement the Tribe is awarded the lesser of an additional 3,022 acre-feet of water or enough water to supply the needs of 468 acres." (Page 3.14-7, paragraph 3, lines 18-23) Revise the phrase, "The attached tables incorporate the proposed" to "The above tables incorporate the". (Page 3.14-7, paragraph 3, line 23)

20 18. In Table 3.14-1, in row 11 labeled "M&I Priority" please review the phrase "(should be 18,135)" with the values "18,145" in the columns "Likely Future without GRIC" and "With GRIC Settlement" for that row. In row 12 labeled "Indian Allocation (AkChin)(minus losses)" please review the "1" found in the "With GRIC Settlement" column. (Page 3.14-12)

21 19. In Table 3.14-2 in the row labeled "Colorado River – Yuma Mesa and Wellton Mohawk", the columns from left to right "Likely Future without GRIC", "Total Water", and "With GRIC Settlement" show the value of "68,400". However, the next column to the right, "Total Water" shows a value of "64,800". It appears that this value should be "68,400" as it is the 68,400 value which when added to the second row value of "801,574" in the "With GRIC Settlement" column sums to "869,974" in the column to the right labeled "Total Water" in the second row. Should "GAGRD" in the fifth row label be "CAGRD", the acronym for the Central Arizona Groundwater Replenishment District? (Page 3.14-2)

22 20. It is stated that "At that elevation Lake Mead has a nominal 'live capacity' of 27,377,000 acre-feet and an active capacity of 17,353,000 acre-feet above elevation 1083 feet msl, the minimum elevation for power generation." (Attachment A, page 1, paragraph 3, line 8) It is also stated that "The minimum water surface elevation for efficient power generation is 1083 feet." (Page 3.3-23, paragraph 1, lines 4-5) Please clarify whether the word "efficient" should be inserted before "generation" in the sentence quoted above in Attachment A.

23 21. Revise the word "Protection" to "Policy". (Attachment H, Six States Alternative, page 2, paragraph 5, line 2) The same comment applies for the California Alternative, and the Shortage Protection Alternative.

-3-

18: Comment noted. This section has been revised to incorporate information resulting from modeling conducted for the FEIS.

19: We agree the second subparagraph under paragraph 3.14.2.6 needs to be revised to recognize the Supreme Court's recent opinion. However, in revising the paragraph, we relied primarily on the suggested rewording from the Ten Tribes Partnership. See response comment 53-14.

20: In Table 3.14-1, San Carlos Apache, M&I Priority, 18,145 acre-feet per year is listed as the M&I allocation under both the future with the GRIC settlement and the future without the GRIC settlement. This volume of water is based on the CAP Simulation Study and the draft EIS for the CAP Reallocation, dated June 2000. A note is provided in Table 3.14-1 stating that 18,135 AF per year is the volume of water which should be listed because that volume was allocated in the legislation. A footnote was written in the FEIS to explain the two numbers. The "1" in Table 3.14-1, San Carlos Apache, Indian Reallocation (Ak Chin) (minus losses), will be corrected to read "30,800".

21: The quantity and acronym have been corrected.

22: The sentence referred to is in Attachment C of the FEIS. It has been modified as suggested.

23: The correction will be made.

COMMENT LETTER

RESPONSES



24 **22.** Revise "August-July" to "July-July". (Attachment I, Draft: Last Revision, August 28, 2000, page I-11, first table, row 7)

25 **23.** Please expand Table 6, "Hoover Dam Elevation and Output", Attachment N, to include elevations 1083 and 1050 feet.

-4-

24: This correction has been made.

25: Median reservoir elevations, which were used for the power analysis, remain above 1083 feet throughout the period of analysis. Therefore, elevations 1083 and 1050 feet were not included in the table.

09/11/2000 10:12 5206805430 LHC PD CTY ATTY PAGE 01

**MOHAVE COUNTY WATER AUTHORITY**
**P.O. BOX 2419**
**BULLHEAD CITY, AZ 86430**

**FAX TRANSMITTAL LETTER**
**FAX NO. (520) 680-5430**

**DATE:** September 11, 2000
**NO. OF PAGES:** 3 **(INCLUDING TRANSMITTAL LETTER)**

**TO:** Jayne Harkins
Bureau of Reclamation
**FAX NO:** (702) 293-8042

**FROM:** Maureen George
**DEPT:** OFFICE OF THE CITY ATTORNEY
**TELEPHONE:** (520) 453-4144

**URGENT**

**SUBJECT:** Comments on Draft EIS – Colorado River Interim Surplus Criteria

**COMMENTS/INSTRUCTIONS:** To follow is a REVISED letter to that of the one faxed to you on Friday, September 8. Please replace page 2 of the September 8 letter with the REVISED page two attached hereto. Thank you for your assistance.

**CAUTION PLEASE FORWARD DOCUMENTS TO ADDRESSEE IMMEDIATELY UPON RECEIPT. THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE IS CONFIDENTIAL AND INTENDED SOLELY FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE FOR DELIVERING IT TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION, COPYING OR UNAUTHORIZED USE OF THIS COMMUNICATION IS STRICTLY PROHIBITED.**

COMMENT LETTER | RESPONSES

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**MOHAVE COUNTY WATER AUTHORITY**
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**BULLHEAD CITY, AZ 86430**
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**(520) 754-4622 (fax)**

September 11, 2000

**VIA FACSIMILE AND U.S. MAIL**
**(702) 293-8042**

Regional Director
Lower Colorado Region
Attn: Jayne Harkins (LC-4600)
Bureau of Reclamation
P.O. Box 61470
Boulder City, NV 89006-1470

**RE: Comments on the Draft Environmental Impact Statement (EIS) regarding Colorado River Interim Surplus Criteria, Colorado River Basin**

Set forth below are the comments of the Mohave County Water Authority on the Draft EIS dated July 7, 2000, in regard to proposed Colorado River interim surplus criteria.

1 1. The Draft EIS fails to address in any meaningful way the increase in the relative risk of shortage to Arizona users, particularly broken down by category of user. This is a glaring omission of key information necessary for water users in Arizona to make a determination as to the impact of the interim surplus criteria.

2 2. The report fails to address the unresolved issue of the relative priority among fourth priority users in Arizona. Again, a key factor necessary for those holders of fourth priority rights in Arizona to make a determination as to the impact of the interim surplus criteria.

3 3. The EIS does not address the impact on existing contractors for fifth and sixth priority water. The Decree provides that Arizona is entitled to 46% of the water available in the surplus year. Either we are or are not in a surplus condition and, if we are, then those holders of surplus contracts, up to 46% in Arizona, are entitled to take such water on the basis provided in the Decree.

4 4. The EIS fails to address the fact that Arizona's apportioned but "unused" water may only be available because the Arizona Water Bank, pursuant to these interim guidelines and agreements with other states would, to the detriment of Arizona water users, agree to forebear taking water that would otherwise be banked in favor of CAP and other fourth priority users.

5 5. The report fails to address in any detail the reasoning behind Arizona going to 2.3 in years of shortage versus California taking its full priority. A related issue is the provision that a consequence of not complying with the cut back in usage to 4.4 million a/f (although the numbers would appear to be 4.8 million a/f) MWD shall be reduced to a maximum of 200,000 a/f per year even though they may have diverted millions of acre feet.

1: See responses to Comment 53-16 and 14-11 for discussions of depletion schedules and Arizona shortages.

2: See responses to Comment 53-16 and 14-11 for discussions of depletion schedules and Arizona shortages.

3: See responses to Comment 53-16 and 14-11 for discussions of depletion schedules and Arizona shortages.

4: As stated in Chapter 2 of the FEIS, the Secretary will continue to apportion water consistent with the applicable provisions of the Decree. The Secretary will also honor forebearance arrangements made by various parties for the delivery of surplus water or reparations for future shortages.

5: As described in Section 3.3.3.4, the magnitude of the shortage to CAP was strictly a modeling assumption. The Colorado River Basin Project Act provided California with a 4.4 maf priority over CAP diversions.

COMMENT LETTER

09/11/2000 10:12 5206805430 LHC PD CTY ATTY PAGE 03

**Comments on the Draft Environmental Impact Statement (EIS) regarding Colorado River Interim Surplus Criteria, Colorado River Basin**
**Page Two**

6 6. The only acceptable reparation is wet water, available in the shortage year when needed, up to the amount that would have been available but for any water diverted by California as a result of these interim guidelines.

7 7. The proposed interim guidelines provide for no reparation to Arizona for continued use of water beyond its allocation when such water will only be "available" if Arizona either declines to take its apportionment in order to assist California or, in the alternative, declines to take the surplus to which it is entitled. We are concerned that either of these actions would be a detriment to water users in Arizona, particularly those outside the CAP.

8 8. The report fails to address in any detail the practical bottom line, i.e., water use is going to continue to increase astronomically at the rate California is growing. There is little or no probability that water use will actually decrease to the 4.4 number without significant enforceable sanctions which certainly are not present in the proposed interim guidelines.

9 9. The report seems to indicate while there may be an increase in demand on the Colorado River, for example in Mohave and Yuma counties, such demand is many years out. This is not true. The Arizona Water Bank's recent study indicated Lake Havasu City, for example, will run out of water prior to the proposed expiration of these interim surplus guidelines. The Draft EIS makes no effort whatsoever to address the concerns of fourth priority mainstream river users as opposed to those in CAP.

10 10. The report states the Bank's primary purpose is to firm CAP supplies. This is not true. It has an equal obligation to firm the supplies of river communities. Our concern is that obligation would not be met if these interim surplus criteria are adopted.

11 11. The Draft EIS fails to take into consideration the cumulative impact on Colorado River main stem users in Arizona of the proposed interim surplus criteria, the other provisions of California's 4.4 Plan, the policy of Reclamation regarding the use of effluent on the river and the proposed reallocation of the CAP project water supply in conjunction with settlements of CAP and Indian water rights disputes.

12 Absent more information on the relative priorities among fourth priority users in Arizona, and the relative increased risk of shortage over time to the various classes of users in Arizona, the Mohave County Water Authority must object to any but the no action alternative.

Sincerely,

Maureen R. George

MAUREEN R. GEORGE
Secretary-Treasurer
Mohave County Water Authority

c: Mohave County Water Authority Board of Directors
Lake Havasu City Mayor and City Council
Bruce Williams, City Manager

RESPONSES

6: See response to Comment 56-32, regarding reparations.

7: See response to Comment 56-32, regarding reparations.

8: See response to Comment 33-3.

9: See response to Comment 53-16 for a discussion of depletion schedules.

10: Comment noted. The evaluation of Arizona's groundwater banking programs is outside the scope of this project.

11: No cumulative impacts have been identified for the issues raised in this comment. Note that potential effects on water users in Arizona are identified in Section 3.4 of the EIS.

12: We have modified the reference to reductions in times of shortage in the third paragraph on page 3.4-15, to recognize that in Arizona a reduction in the amount of Colorado River water available to fourth priority users would be shared pro rata among CAP and non-CAP entitlement holders.

**OURAY PARK IRRIGATION CO., INC.**

HC 69 Box 127 - Randlett, Utah 84063-0092
Phone 435-823-7709 - Fax 435-545-2710

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Ms. Jayne Harkins
P.O. Box 61470
Boulder City, Nevada 89006-1470

August 21, 2000

To Ms. Jayne Harkins:

1 As President of Ouray Park Irrigation Company which controls the water to approximately 12,000 acres in northeastern Utah, I would like to show support for the 7 Upper Colorado Basin states proposal. I would also like to encourage the Secretary of Interior to adopt this proposal as the preferred alternative in the final environmental assessment.

Thank you,

Shane Frost

Shane Frost
Ouray Park Irrigation Co. President
HC 69 Box 127
Randlett, Utah 84063

1: The preferred alternative in this FEIS is derived from the Seven States Proposal. Reclamation did not structure the preferred alternative precisely as described in that draft proposal, but made some changes for consistency with the purpose and need of the proposed action, Reclamation policy and operational procedures.

SEP 1? 2000

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September 8, 2000
VIA fax and US mail

Ms. Jayne Harkins
Bureau of Reclamation
Attn: BCOO – 4600
PO Box 61470
Boulder City, NV 89006-1470
(fax: 702-293-8042)

RE: COMMENTS ON DRAFT EIS ON COLORADO RIVER INTERIM SURPLUS CRITERIA

Dear Ms. Harkins:

Salt River Project (SRP) is an agricultural improvement district in the state of Arizona and through its electric utility operation serves over 750,000 electric utility customers. SRP purchases power produced by the Colorado River Storage Project (CRSP), Parker-Davis Project and the Boulder Canyon Project, and thereby has a direct and specific interest in the operation of the generation in the Colorado River and the draft EIS on Colorado River Interim Surplus Criteria.

1 SRP supports the comments submitted by the Colorado River Energy Distributors Assn (CREDA) (attached).

Sincerely,

John Coggins
Manager, Supply & Trading

Cc: Leslie James, CREDA

1: Support of comments submitted by Colorado River Energy Distributors Association - comment noted.

**San Diego County Water Authority**

A Public Agency
3211 Fifth Avenue • San Diego, California 92103-5718
(619) 682-4100 FAX (619) 297-0511

SEP 20 2000

September 8, 2000

Regional Director, Lower Colorado Region
c/o Jayne Harkins ( LC-4600)
Bureau of Reclamation
P.O. Box 61470
Boulder City, NV 89006-1470

Dear Ms. Harkins:

1 This letter presents the Authority's comments on the Bureau of Reclamation's July 2000 Colorado River Interim Surplus Criteria Draft Environmental Impact Statement (DEIS). Surplus criteria are linked to other key elements of California's Colorado River Water Use Plan, including the Authority's core water transfer with the Imperial Irrigation District and the quantification of California's priority system for Colorado River water users. The implementation of appropriate surplus criteria is thus necessary to enable other critical programs for reducing California's demand on Colorado River water supplies above the state's basic apportionment.

The Authority supports and urges the Bureau to adopt and implement the surplus criteria guidelines proposed and presented by all seven Colorado River Basin states to the Department of Interior on July 27, 2000. The guidelines, which were published by the DOI as supplemental information to the DEIS, were the product of intensive review and study by all seven states over a period of several years. All seven states are in agreement that the guidelines will produce the interim surplus water needed by California, without creating unmitigated risk to Arizona or other lower division water users.

Because the surplus criteria are linked to other California Plan elements, it is essential that all elements move forward in a coordinated fashion. The seven states' proposal, for example, makes surplus guidelines effective only after the quantification settlement agreement becomes effective. Surplus guidelines are also a required condition for the Authority's water exchange agreement with the Metropolitan Water District, which is needed to transport up to 200,000 af of conserved agricultural water from the Imperial Valley to the Authority for future urban use. California's agencies have obligations to develop programs that offset demand for Colorado River water by specific dates. The guidelines contain benchmarks to ensure that California makes progress on developing the programs needed to reduce demand. If sufficient progress is not made, the surplus guidelines are subject to termination.

2 cont'd below Potential impacts from use of the seven states' surplus guidelines fall within the range of alternatives analysis contained in the DEIS. We believe no important parameter studied in Chapter 3 of the DEIS, Affected Environment and Environmental Consequences, would be outside the range of alternatives already reviewed. Computer modeling by the seven states has shown that impacts on reservoir system operation, reservoir elevations,



1: Comment noted.

2: Reclamation concurs with the position expressed in this comment with respect to the Basin State alternative included in this FEIS.

Ms. Jayne Harkins
09/08/00
Page 2

2 cont'd and water supplies would likely fall in a bandwidth between modeling results from the "California" and "Six States" alternatives reviewed by the DEIS. The same result holds true for the remaining factors reviewed in this chapter, such as riverflow issues, aquatic resources, special-status species, recreation, and energy resources.

3 The DEIS specifically requested comments regarding appropriate baseline criteria. While a case might be made for utilizing either the "75R" or "70R" strategy for baseline conditions, to in effect recreate recent Annual Operating Plan history, we feel the differences between the two strategies are too slight to be of any consequence for the comparison of surplus criteria alternatives. The choice is even less consequential after considering that the Secretary currently enjoys discretion to declare surplus based upon varying year-to-year water conditions, as noted in the DEIS. Neither strategy is fully capable of mimicking the recent history of surplus declarations. It should be noted that the seven states' surplus guidelines proposes using the "70R" strategy, both as a specified level of surplus during the interim period, and as the basis for surplus determinations after the interim period.

We appreciate the work the Bureau has done preparing the DEIS. Should you have any questions regarding the Authority's comments, please contact Mr. Dave Fogerson at 619-682-4153.

Sincerely,

Gordon A. Hess

Gordon A. Hess
Director of Imported Water

3: Reclamation has noted the comment regarding the relative roles of 70R and 75R strategies in portraying differences among alternatives. See response to Comment 57-11 for additional information.

SOUTHERN CALIFORNIA
EDISON
An EDISON INTERNATIONAL Company

September 8, 2000

BC00/1000
4600

VIA FACSIMILE
(702) 293-8042

Mr. Robert W. Johnson
Regional Director, Lower Colorado Region
Attn: Jayne Harkins (LC-4600)
Bureau of Reclamation
P.O. Box 61470
Boulder City, NV 89006-1470

**Comments to the Draft Environmental Impact Statement for the Colorado River Interim Surplus Criteria**

Dear Mr. Johnson

By your letter dated Jun 29, 2000, you solicited comments to the Draft Environmental Impact Statement (DEIS) that analyzes potential environmental impacts of adopting specific interim criteria under which surplus water conditions may be declared in the Lower Colorado River Basin during an interim period that would extend through 2105. The comments of the Southern California Edison Company (Edison) to the DEIS are provided below.

Edison finds that the DEIS is flawed in at least three areas: determination of base line alternative conditions, lack of mitigation measures, and understatement of environmental impacts due to reduced capacity.

***Determination of Baseline Alternative Conditions***

1 The no action alternative and baseline conditions do not represent the consensus of the entities linked to the Lower Colorado River. The baseline alternative represents a new condition that has not been reviewed by water and power users of the lower Colorado River system. The proposed baseline conditions are not consistent with the conditions provided by the U.S. Bureau of Reclamation (Reclamation) in the annual rate process associated with the Boulder Canyon Project. The DEIS forecasts higher energy amounts than the amounts forecast by the annual rate process for the Boulder Canyon Project. The higher energy amounts in the DEIS imply a higher lake elevation than that implied in the Boulder Canyon Project rate process.

For example, the latest rate process for the Boulder Canyon Project shows energy generation to equal 4,501,001 MWh for the period 2004 through 2017 which is equivalent to a lake surface elevation of 1,159 feet. The DEIS shows the baseline energy amount to be 4,623 MWh during the year 2017 and a lake surface elevation of 1,170 feet. The amounts in the DEIS are greater than the amount used to develop firm power rates for the Boulder Canyon Project.

The baseline seems to be defined in a way which would preclude findings of significant impact. Under the described baseline condition, water levels at Lake Powell and Lake Mead would

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Rosemead, CA 91770-0800

1: The 70R strategy is used for the baseline in this FEIS. Reclamation has updated the surplus depletion schedules for California, Arizona and Nevada. This and other changed modeling assumptions could account for the increased energy amounts in this process. The updated schedules will be utilized in future annual rate processes. Reclamation believes the baseline used appropriately reflects future conditions.

COMMENT LETTER

RESPONSES



steadily decline over the study period. The declaration of surplus water at these sites would further reduce water levels, but apparently not significantly. If the baseline were defined differently, the lowering of water levels associated with each alternative might be found to cause more significant environmental effects. It would seem more reasonable to describe the baseline as including relatively full reservoirs, with water releases and energy production at current and/or historic average levels.

***Lack of Mitigation Measures***

2 Another weakness of the DEIS is the failure to identify any mitigation measures. It might be argued that the failure to find significant environmental impacts precludes the need to identify mitigation measures. However, if the comparison to a more reasonable baseline were made, the impacts might be found to be of greater significance, thus requiring mitigation.

Reclamation should consult with the water and power entities of the lower Colorado River system to identify the baseline conditions for all users of the lower Colorado River system.

***Environmental Impacts of Reduced Capacity***

3 The DEIS trivializes the impact of replacing capacity and generation lost as a result of a lowering elevation of Lake Mead. The load following capability of Hoover is one of the best in the west. Hoover can change operating levels at a rate at least ten times faster than present fossil fueled generation plants. Each MW of reduction would have to be replaced by at least ten MW of conventional fossil generation. Carried to the extreme, Hoover is equivalent to about 20,000 MW of load following capability from fossil fueled generation. Since no large hydroelectric generation sites are planned for construction in the WSCC, the amount of lost load following capability will come from other resources including fossil fueled generation with attendant environmental consequences.

The DEIS should be expanded to assess the amount of capacity that would have to be replaced to supply load following capability and the environmental impact of the replacement capacity.

Thank you for giving Edison an opportunity to provide comments.

Sincerely,

Dennis G. Dagne

2: Comment noted. Although no impacts were identified that required mitigation, the FEIS includes a discussion of environmental commitments in Section 3.17. Note also that the baseline used in the FEIS (a 70R operating strategy) has been modified from that presented in the DEIS (a 75R operating strategy).

3: As discussed in Section 3.10.2.2 of the FEIS, Reclamation recognizes that the load-following capability of Hoover is important. The differences in the amount of capacity available for load-following between the baseline strategy and the alternatives is identified in the EIS.

SOUTHERN NEVADA
WATER AUTHORITY

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*Southern Nevada Water System*
*243 Lakeshore Road*
*Boulder City, NV 89005*
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BC00100

September 6, 2000

Ms. Jayne Harkins
Attn: BCOO-4600
Bureau of Reclamation
P.O. Box 61470
Boulder City, NV 89006-1470

Dear Ms. Harkins:

SUBJECT: COMMENTS ON THE DRAFT ENVIRONMENTAL IMPACT STATEMENT FOR THE COLORADO RIVER INTERIM SURPLUS CRITERIA

In July 2000, the Bureau of Reclamation (Reclamation) issued a Draft Environmental Impact Statement (DEIS) on the Colorado River Interim Surplus Criteria. The Southern Nevada Water Authority (Authority) would like to take this opportunity to provide comments. The Authority represents the major water and wastewater purveyors in southern Nevada, including the Las Vegas Valley Water District, the Cities of Boulder City, Henderson, Las Vegas, and North Las Vegas, the Clark County Sanitation District, and the Big Bend Water District in Laughlin. These agencies serve over 1.3 million people in the southern Nevada region. The Authority and its members control over 90% of the State of Nevada's 300,000 acre-foot consumptive right from the Colorado River.

The Authority supports Reclamation's proposal to establish interim surplus criteria on the Lower Colorado River. The criteria are intended to provide direction during an interim 15-year period for the annual determination by the Secretary of the Interior of normal, surplus, and shortage conditions in the Lower Colorado River Basin. They will facilitate efforts by the State of California to reduce its use of Colorado River water down to its 4.4-million acre-foot basic apportionment. They will also afford other Lower Division states, who have contracted for surplus water, a greater degree of predictability about its annual availability.

1 cont'd below

Specifically, the Authority supports the proposal submitted by the seven Colorado River basin States (Seven Basin States proposal) for the interim surplus guidelines. In the past year, the seven basin states have spent substantial time and effort and have made significant progress in their negotiations on interim surplus, which have culminated in a set of interim surplus guidelines agreed to by each state. These guidelines were presented to Reclamation by the seven states, and Reclamation issued them to the public in a Federal Register notice on August 8, 2000.



1: The preferred alternative in this FEIS is derived from the Draft Seven States Proposal. Reclamation did not structure the preferred alternative precisely as described in that draft proposal, but made some changes for consistency with the purpose and need of the proposed action, Reclamation policy and operational procedures.

Ms. Jayne Harkins
COMMENTS ON THE DRAFT ENVIRONMENTAL IMPACT . . .
September 6, 2000
Page 2

1 cont'd

The modeling approach used to perform the impact analysis and review of alternatives in the DEIS is legitimate, impartial, and best simulates the Colorado River system. Potential environmental impacts are minimal and interim in nature, and the Colorado River system would revert to baseline conditions after the expiration of the 15 year interim period.

Based upon our analysis, the Seven Basin States proposal is within the range of alternatives and impacts analyzed in the DEIS. Reclamation's National Environmental Policy Act guidance allows new or modified alternatives that do not have any significant differences in environmental impacts to alternatives analyzed in the DEIS to be fully incorporated into the Final EIS. The Seven Basin States proposal does not change the results relative to potential impacts in the DEIS. The Authority supports designation of the Seven Basin States proposal as the Preferred Alternative in the Final EIS and as the final decision in the Record of Decision.

The Authority acknowledges the leadership shown by the Department of Interior in implementing this process of developing interim surplus guidelines, and appreciates the opportunity to be involved in the process. If you have any questions about these comments, please contact David Donnelly, Deputy General Manager, at (702) 258-3107.

Sincerely,

P. Mulroy

Patricia Mulroy
General Manager

PM:JM:LL:sh

*Uintah Water Conservancy District*

"Steinaker Dam"
78 West 3325 North
Vernal, Utah 84078
Phone 789-1651
Fax 789-1670
"Red Fleet Dam"

G 00

September 5, 2000

BCC 1000

Ms. Jayne Harkins
Attention BCOO-4600
Bureau of Reclamation
P.O. Box 61470
Boulder City, Nevada 89006-1470

To Whom It May Concern:

The following comments are made on the Proposed Colorado River Interim Surplus Criteria Draft Environmental Impact Statement.

The Uintah Water Conservancy District (UWCD) was organized according to the laws of the State of Utah. UWCD has direct control and management of Red Fleet Dam and Reservoir and Steinaker Dam and Reservoir, which are part of the Jensen and Vernal Units of the Central Utah Project. UWCD and its water users also have diversion rights to Green River water for more than 54,000 acre-feet annually. UWCD has more than 20 water providers (companies) that serve nearly 80,000 acres of irrigated lands and provide more than 26,000 acre-feet of culinary water. In addition, UWCD water users have increased their water use efficiency to the point of reducing salinity contributed to the Colorado River System by 92,000 tons annually. Consequently, UWCD has a compelling interest in all Colorado River operational matters, but especially those matters that might impact availability of water under current entitlements for beneficial consumptive use or present water right assignments.

**Purpose and Need**
For many years, California has been diverting more than its 4,400,000 acre-feet apportionment as defined in *Arizona v. California (1964)*. Prior to 1996, California drew on **unused** apportionments of other Lower Division States made available by the Secretary of the Interior. Since 1996, California has also drawn on **surplus** water made available by Secretarial determination. California is developing measures to reduce its draw on the Colorado River System through conservation, surface and underground storage, conversion of available agriculture water to M&I deficiencies, and other measures. Unfortunately, the full effect of these measures on California's draw on the Colorado River will not be seen for many years.

Colorado River surplus flow determinations have their origins in the *Criteria for Coordinated Long-Range Operations of Colorado River Reservoirs* (LROC) adopted in 1970. Article III

(3)(b) of the LROC set general conditions for surplus determinations. Occasionally, the Secretary has determined that surplus conditions exist, based primarily upon avoiding mandatory
1 flood control releases. This narrow interpretation of surplus is heavily biased toward **supply**. Other discussions were heavily biased toward **need**. These discussions have led to much controversy among the Basin States and suggest that more discrete surplus criteria should attempt to balance both need and supply considerations. Meanwhile, the need for surplus determinations by California has risen sharply because of the dramatic reduction of unused apportioned water in Arizona and Nevada.

**Upper Basin Depletion**
While California is drawing far more water from the Colorado River than allocated (often as much as 800,000 acre-feet more than allocated) and Arizona and Nevada are using nearly their full allocation, the Upper Basin States have not developed their share of Colorado River water at the same pace. They have chosen a more conservative and judicial approach to Colorado River water development. *The Colorado River Compact of 1922* allocated 7,500,000 acre-feet annually to the Upper Basin States in **perpetuity**. This means there is no schedule or time horizon to cause this allocation to expire. The Compact **guarantees** the delivery of the Lower Basin's allocation, so if there is a shortage, the shortage burden is on Upper Basin. The latest "Hydrologic Determination" indicates that only 6,000,000 acre-feet are available for Upper Basin development. So, for all practical purposes, the Upper Basin States have already lost 1,500,000 acre-feet from their "permanent" allocation.

2 UWCD believes the implementation of Interim Surplus Criteria as proposed by the Seven Basin States will not jeopardize the further development of Upper Basin entitlements. Also, the proposed criteria will not limit the water available for existing uses during the 15-year interim period.

**Conclusion**
3 UWCD applauds the efforts of the Seven Basin States to reach agreement on guidelines for implementing Interim Surplus Criteria. This represents a "Herculean" effort by a highly diverse group of Colorado River stakeholders. It is unprecedented in scope and should cement the Record of Decision by the Secretary. UWCD encourages Reclamation and Interior to conclude
4 the NEPA compliance process as scheduled and without interruption or delay. The existing problems with fish and wildlife habitat in the Colorado River Delta and the Salton Sea will not be aggravated by this action. If Colorado River water is to be used to solve these problems, it must come from existing entitlements. This agreement is a reasonable approach to make the
5 transition suggested by California. The agreement provides protection to the States and treats Lake Powell and Lake Mead equally. It also provides some enforceability because of the provisions that 70R of the existing Annual Operating Plan are implemented if the agreement is not adhered to.

6 UWCD further believes that the consequence of no action on this issue would be protracted and costly legal challenges. Any legal action will likely transfer the decision process from water resource experts to the unpredictable legal arena that may further jeopardize Upper Basin entitlements. In light of the public comment meeting held in Salt Lake City, Utah on August 23,

1: Comment noted.

2: Comment noted.

3: Comment noted.

4: Comment noted.

5: Comment noted.

6: The preferred alternative in this FEIS is derived from the Seven States Proposal. Reclamation did not structure the preferred alternative precisely as described in that draft proposal, but made some changes for consistency with the purpose and need of the proposed action, Reclamation policy and operational procedures.

cont'd 2000 and the absence of any opposition whatsoever, UWCD strongly encourages the implementation of the Seven Basin States guidelines for Interim Surplus Criteria.

7 UWCD acknowledges that other Colorado River issues that remain unresolved. Water in satisfaction of the Mexican Treaty remains a federal obligation and the minimum objective release requirements from Glen Canyon Dam are contrary to Upper Basin interests and to UWCD interests, as well. However, these issues do not detract UWCD from unqualified support of this action.

8 Finally, UWCD recommends that Reclamation proceed with the development of the Annual Operating Plan (AOP) for Colorado River Reservoirs for 2001 without delay and without the Record of Decision on the Interim Surplus Criteria. The Seven Basin State agreement should be regarded as the basis for surplus determination for the year 2001. There are no other highly charged issues that are influenced by the AOP.

Sincerely,

Scott Ruppe
General Manager

CC:
Larry Anderson, Utah Division of Water Resources

Cloyd Harrison, Uintah County Commission

Randy Crozier, General Manager, Duchesne Co. Water Conservancy District

7: Comment noted. Reclamation recognizes that the Upper Basin disagrees with the minimum objective release currently in the LROC.

8: The determination of surplus conditions for 2001 is based on the factors listed in Article III(3)(b) of the LROC. This Article allows for consideration of all relevant factors, including, but not limited to, those specifically listed in the Operating Criteria, whether or not a decision is made for the proposed interim suplus criteria.