INDIVIDUALS

COMMENT LETTER RESPONSES

FEB

BC00 1000
4600

Jayne Harkins
Manager of River Operations
Bureau of Reclamation
PO Box 61470
Boulder City, NV 89006-1470.

Tucson, AZ, February 16, 2000.

Dear Mr. Harkins,

C1000

1 I strongly support the establishment of interim surplus criteria that include guaranteed flows for the lower Colorado River and its Delta, as outlined in the February 15, 2000 proposal submitted by American Rivers, Defenders of Wildlife, Environmental Defense, Friends of Arizona Rivers, Glen Canyon Institute, Grand Canyon Trust, Land and Water Fund of the Rockies, the Pacific Institute, Sierra Club, and the Sonoran Institute.

Thank you.

Sincerely,

Garcia J.
Jaqueline

Jaqueline Garcia
jaquelin@ag.arizona.edu
Graduate student
University of Arizona

1: The Pacific Institute Proposal was considered as an alternative but not analyzed in depth for the reasons discussed in Section 2.2.3. See responses to Comment 11-2 and 13-4.

Mark Belles
9318 Willard Street
Rowlett, TX 75088-4403

Regional Director
Lower Colorado Region
c/o Jayne Harkins
BC00-4600
Bureau of Reclamation
P. O. Box 61470
Boulder City, Nevada, 89006-1470

BCOO/Ltr
4600

26 August 2000

Dear Reclamation,

Thank you for the review copy of the Colorado River Interim Surplus Criteria Draft Environmental Impact Statement. Please retain my name of the mailing list for this project.

After a thorough review of the DEIS it is apparent that the various alternatives are all *very* similar and that the distinction between them is simply a matter of degree. All describe a means of of meeting the purpose and need of the project and as reading Table 2-1 reveals; a comparison of them shows there are very small differences between the plans.

I would like to make a case for the **Shortage Protection Plan**, based on following criteria that might appear to have been long sacrificed on the Colorado River.

By my reading, the shortage protection plan will result in the minimum amount of water impounded by dams over the project period. I strongly recommend this alternative on the basis of "Minimum Impact". Clearly, traditional notions of "Leave No Trace" and
1 "Minimum Impact" to the river have long been abandoned in the name of development. No one can look at Glen Canyon Dam and imagine that "Leave No Trace" has ruled the day, but as in most things improvement is made in matters of degree. The operating philosophy of the Colorado River Storage Project should be to **operate the existing system with as little impact as possible to the environment**.

Clearly the impoundment of water behind a dam is a significant impact to the Colorado River, both up and down stream. The choice of alternatives should be the one that impounds the least water for the least time and thus allows the natural river systems to operate as normally as possible.

Thank you for the opportunity to comment,

Mark M Belles

Page 1

1: Reclamation notes the preference for the Shortage Protection Alternative. We also wish to note that while the Shortage Protection Alternative would tend to produce the lowest reservoir levels, it shares with all alternatives the probability that the reservoirs would refill during periods of above-normal runoff.

COMMENT LETTER

5055642313 MEMORYMANN T-967 P-001 SEP 06 '00 09:04

6 September 2000

Verna Forbes Willson (Mrs.)
Post Office Box 2778
Farmington, NM 87499-2778

Ms. Janet Steele, Attention: BCOO-4601
Post Office Box 61470
Boulder City, NV 89006-1470

SUBJECT: Colorado River Interim Surplus Criteria: INT-DES 00-25

Dear Ms. Steele

My only comment on the DSEIS for the subject surplus criteria is this:

1 "Although the states of New Mexico and Colorado will be those most impacted by a decision that any of their water from either the Animas or San Juan Rivers which drain into the Colorado River might be considered **surplus**, not one of your meetings prior to opening your DSEIS for public comment was held in either state. How can the public comment on anything from which they have been excluded by distance, lack of information as to meeting dates, and secrecy?"

I do have two more questions: How can one intelligently comment when one is not informed that one will be impacted by the dealings of Big Government in situations such as this? Although our appointed local San Juan Water Commission MAY have been informed, our elected representatives on the three City Councils in San Juan County, NM were not made privy to the situation. Why not?

Sincerely,

Verna Forbes Willson

RESPONSES

1: The EIS was prepared in close coordination with our Upper Colorado Regional Office in Salt Lake City, Utah. We have relied upon their involvement along with input from stakeholders of the Upper Basin states during the scoping, document preparation and public review processes to ensure Upper Basin issues and concerns are adequately addressed in the EIS. It is not accurate to consider water from the Animas or San Juan rivers, or any other of the Upper Basin tributaries, as surplus. It is only water in Lake Mead that the Secretary could make available for use in the Lower Division states that would be considered "surplus." Impacts of the surplus alternatives to the Upper Basin are limited to changes that may occur to the water levels in Lake Powell.

COMMENT LETTER

RESPONSES

OFFICIAL FILE COPY

DATE	SURNAME	CODE
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Classification
Project
Control No.
Folder No.

David Hayes and Robert Johnson
Jayne Harkins,
Manager of River Operations,
Bureau of Reclamation,
PO Box 61470,
Boulder City, NV 89006-1470

February 18, 2000

1 I support the establishment of interim surplus criteria that include guaranteed flows for the lower Colorado River and its Delta, as outlined in the February 15, 2000 proposal submitted by American Rivers, Defenders of Wildlife, Environmental Defense, Friends of Arizona Rivers, Glen Canyon Institute, Grand Canyon Trust, Land and Water Fund of the Rockies, the Pacific Institute, Sierra Club, and the Sonoran Institute. It would be a grand move!
Free the Colorado

Please do not hesitate to contact me. Thanks -

Eleanor Inskip
3636 Sixteenth St NW #541B
Washington DC 20010

1: The Pacific Institute Proposal was considered as an alternative but not analyzed in depth for the reasons discussed in Section 2.2.3. See responses to Comment 11-2 and 11-6.

COMMENT LETTER

Dave Miller
P. O. Box 567
Palmer Lake, CO 80133
(719) 481-2003, Fax (719) 481-3452

SEP 11 2000

September 7, 2000

OC000100
4600

2 page fax (702) 293-8042

Ms. Jayne Harkins
Attention BC00-4600
P. O. Box 61470
Boulder City, Nevada 89006-1470

Subject: Public Comment on Draft Environmental Impact Statement, Proposed Colorado River Interim Surplus Criteria

Dear Ms. Harkins:

1 2 3 Subject Draft EIS is seriously flawed because: (1) There is a high probability California's Colorado River Water Use Plan is not sustainable over time; (2) The Plan ignores the increased hydrologic and political risks for Upper Basin States; and (3) The values of additional Upper Basin storage for solving Western water, power and air problems were not considered.

4 An anonymous survey among Southern California water managers would reveal serious doubts regarding California's ability to reduce its dependence on Colorado River water during the next 15 years. Although the Plan's objectives may seem reasonable and logical, a false sense of security can do more harm than good for the entire Western Region, including California. Colorado River Compact guarantees for Upper Basin States would quickly evaporate under the powerful political pressures created by California's thirsty farmers and urban areas during a devastating drought cycle.

5 Any agreement that allocates water surpluses and shortages within Lower Basin States, can also have profound impacts on Upper Basin States. For example, if Arizona uses Colorado River water for groundwater banking during normal conditions, the resulting lower levels in Lake Mead and Lake Powell, could greatly increase political pressures on Upper Basin States during times of hydrologic crisis.

6 Upper Basin States also have good reason to be concerned with the cumulative impacts of the 15 Year Plan with recent federal rule changes and national environmental trends. For example, Interior implemented the Colorado River Endangered Fish Recovery Program without first considering the multi-billion dollar impacts on future Upper Basin storage for drought, growth, and environmental needs on both sides of the Divide. Interior is also claiming in Colorado Supreme Court that federal hydropower operations at the Aspinall Reservoirs preempt Colorado's right to store its unallocated Colorado River entitlements above these reservoirs for consumptive needs of both slopes. National, regional, and local environmental groups continue to use unreasonable tactics to stop cooperative headwater storage projects that could benefit the entire Western Region.

RESPONSES

1: Comment noted.

2: Comment noted. Risks to Upper Basin states are limited due to Article III (3) (b) of the Criteria for Coordinated Long-Range Operation of the Colorado River Reservoirs pursuant to the Colorado River Basin Project Act of September 30, 1968 (Long Range Operating Criteria - LROC). Pursuant to these documents, equalization criteria for Lakes Mead and Powell are suspended as reservoir elevations decrease and demands increase, delinking effects in the Upper Basin from surplus declarations.

3: Development of additional water storage within the Upper Colorado River Basin would not satisfy the need for the proposed action and is therefore not addressed in this EIS.

4: Comment noted.

5: See response to Comment 5-2 above.

6: Comment noted.

COMMENT LETTER

RESPONSES

In short, Interior's subject Colorado River proposal should not be signed without a concurrent binding commitment to evaluate, permit, and construct a viable high altitude, off-channel storage capability for Upper Basin States during the same 15 year period. The unprecedented merits of such an overlooked storage program can be quickly determined using Interior's advanced River Ware Model for simulation. A modeling effort will clearly show substantial water quantity and quality benefits for both Upper and Lower Basin States, for a small fraction of the life-cycle cost of alternatives currently being considered. The Southwestern Region's endangered species, recreation, power, and air impacts can also be included in this evaluation.

7 BUREC had one million dollars in its FY 1990 budget for a similar computer study of Colorado's high altitude Gunnison storage sites. Unfortunately, misguided Gunnison activists and Colorado officials were successful in killing this early BUREC effort to objectively evaluate high altitude storage for the Western Region. Regrettably, BUREC has now apparently lost its interest in high storage.

It should also be noted that a 1987 U.S. Army Corps of Engineers' simulation of the South Platte River determined that an average annual 60,000 acre feet from high altitude Gunnison storage could increase the safe-yield of Denver's existing reservoirs by 111,000 acre feet. The additional multiple benefits for the entire Platte and Colorado River systems were not considered. In spite of this Corps of Engineers' study, Colorado's high storage alternatives were improperly excluded from the Final Two Forks Dam EIS for political reasons. These examples are typical of misguided federal, state, and environmental community efforts to prevent development of Upper Basin Colorado River entitlements.

8 In view of the above and the overlooked interrelationships between Upper and Lower Basin water agreements, I respectfully recommend at least a 90 day extension of time for public comment. To allow only 30 days for comments on a proposal that is 10 years in the making is both dangerous and unprecedented. This is especially true, considering the current trends against water development in Upper Basin States.

Sincerely,

Dave Miller

Dave Miller
Independent Water Planner

cc: Council on Environmental Quality, Western Governors, Congressional Committees

7: As discussed above, the effects of interim surplus criteria on the Upper Basin are limited to changes in Lake Powell water level due to equalization provisions of the Colorado River Basin Projects Act of 1968. Given the current climate surrounding new water storage projects in the West, high elevation storage would take many years for formulation, approval and development. Your suggested commitment is beyond the scope of this EIS, which is to evaluate impacts of proposed criteria for declaring surplus conditions on the Colorado River during the next 15 years.

8: We believe that coordination between the Upper Division and Lower Division states has resulted in an adequate assessment of potential impacts to the Upper Basin. We further believe that no extension of the comment period for the DEIS was warranted. In accordance with Department of the Interior Departmental Manual, the comment period was open for 60 days following filing of the DEIS with EPA. The notice that provided the working draft of the Seven States proposal for consideration along with the DEIS specified that its availability did not change the length of the DEIS comment period.

COMMENT LETTER RESPONSES

RECEIVED AUG 16 2000
REPLY DATE
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8/16 Harkins BC001000 4600
Classification
Project
Control No.
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Keyword

August 14, 2000

To: Ms Jayne Harkins
Bureau of Reclamation
Attention: BCOO-4600
PO Box 61470
Boulder City, NV 89006-1470

From: Earl Zarbin
3803 E. St. Catherine Ave.
Phoenix, AZ 85040-5013

Subject: Colorado River Interim Surplus Criteria - Draft Environmental Statement

The preferred alternative is the "No Action Alternative."

The reason is simple: State of California interests should
1 be required to adhere to the Colorado River water allocations
specified in the Boulder Canyon Project Act of 1928, and to
California's legislative act limiting the state to no more than
4.4 million acre-feet of water per year from the mainstream of
the Colorado River.

State of California interests have been on notice for years, ever since approval of the Colorado River Basin Project Act in 1968, that the State of Arizona would soon be using all its Colorado River entitlement. That entities within the State of California have failed to adjust their water use accordingly is distinctly their problem, and not that of Arizona, Nevada, or the four other Colorado River Basin states.

It would be imprudent for any secretary of the Interior to
guess as to the future of Colorado River water flows. Surplus
2 conditions should be decided on a yearly basis based on those
flows. Further, there is no assurance that State of California
interests, at the end of 2015, will not want to continue using
more water than California's legal entitlement.

The time to require California to obey the law is today, not in 2016 or sometime after.

1: Comment Noted.

2: Reclamation agrees that attempting to predict future inflows is an impossible task. However, even with specific guidelines in place, the Secretary will utilize Article III(3)(b) of the LROC and the guidelines in making a water supply determination for use by the Lower Division states each year in the AOP process. The establishment of specific guidelines in no way guarantees any of the Lower Division states surplus water over the next 15 years.

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SEP. 6.1999 3:42PM NO.537 P.3/3

American Water Resources, Inc.
1606 HERMOSA PLACE
COLORADO SPRINGS, CO 80906
Phone: 719-633-6969

September 6, 2000

By facsimile 702-293-8042

Jane Harkins
Lower Colorado River Office
Bureau of Reclamation
Boulder City, NV 89006-1470

Dear Ms. Harkins:

I am writing this letter to express my deep concerns on the draft environmental impact statement (DEIS) for the Colorado River Interim Surplus Criteria, currently being considered for adoption. The DEIS is concerned with the determination and distribution of surplus water conditions in the Lower Colorado River Basin during the next 15 years.

1 While environmental impacts must be carefully considered, it is my position that the process for adoption is negative to the Upper Basin states and the real possibility for a train wreck is substantial. In my view, it is unwise for the Upper Basin to enable California's insatiable desire for water by, in effect, putting California on what amounts to water welfare for the next 15 years, a period commonly referred to as the "interim." What happens in the interim in California, as is the case with any recipient of welfare, a term which denotes "helping the disadvantaged," is that a disadvantaged California's claim to the water is actually strengthened. The state's promised reductions in Colorado River water use will not be realized. California's 15-year reliance on water welfare will put it in a powerful position to show that its needs are greater, its population larger, its economic prowess stronger and more valuable than that of all the other states in the compact.

The truth is that a 15-year interim water welfare state will be a runaway train, unable to slow down and at considerable risk of derailing if any state should try to do so. California is not disadvantaged, but by signing the DEIS, the Upper Basin states would be. There are other solutions which should and must be considered.

Thank you for your time and consideration in this matter. Let's work towards an agreement that will be favorable to everyone, including California.

Very truly yours,

Judith Alberti

Judith Alberti
Vice President

JA/aa

1: Comment noted.

JUL-17-00 13:11 FROM:KINKOS ARLINGTON HTS ID:8476784146 PAGE 1/2

American Water Resources, Inc.

1606 HERMOSA PLACE
COLORADO SPRINGS, CO 80906
Phone: 719-633-6969

OFFICIAL FILE COPY		
DATE	SURNAME	CODE
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Project		
Control No.		
Folder I.D.		

July 17, 2000

By facsimile 702-293-8042

Jane Harkins
LCR Office
Bureau of Reclamation
Boulder City, NV 89006-1470

Dear Jane:

Thank you for the 81-pound CR interim surplus criteria/draft EIS. I have just read Chapter I and have serious concerns:

1 1. The time frame for your meetings and written comments is too close. It does not allow for thoughtful review and deliberation and is not reasonable based on the complexity of issues.

2. Why, as was the case in the June 1999 scoping letter, are no meetings held in the Upper Basin States?

3. Unfortunately, very few are competent and knowledgeable on such technical matters as the DEIS. Notwithstanding this, I believe many good citizens would be alarmed at this process and its potential consequences. This is a dynamic process and I would suggest the possibility of great insight by common people if they are made aware.

4. This report gives me the feeling of a freight train going too fast--why?

5. I know of no water institution in the United States that is ready for long-term drought. The probability of this event has never been higher. Astonishingly, everyone assumes the past 100-year water supply will continue. If I could dictate that all studies could be based on a 1,000-year best estimate of water supply, I would be doing a great favor to everyone, and most particularly California.

1: CEQ regulations require a 45-day minimum review period for a DEIS, starting after a Notice of Availability is published in the Federal Register. Reclamation's practice is to extend this review period an additional 15 days, allowing for a 60-day minimum comment period. The filing date of the DEIS was July 7, 2000 and the public comment period officially ended on September 8, 2000. Reclamation believes that this 63-day period allowed sufficient time for review and comment on the DEIS. One of the four public hearings to receive public comments on the DEIS was held in an Upper Basin state, in Salt Lake City, Utah. As discussed in the DEIS, the area of potential effect analyzed in the EIS is the Colorado River corridor from Lake Powell down to the SIB. Because the majority of this area is located within the Lower Basin, and because surplus determinations made by the Secretary influence water supply in the Lower Division states, holding the majority of the public hearings within the Lower Basin was determined appropriate. The NEPA process, including scoping and the preparation and distribution of the DEIS and this FEIS, has provided an opportunity for Reclamation to identify and disclose to the public the potential effects of interim surplus criteria.

JUL-17-00 13:11 FROM:KINKOS ARLINGTON HTS ID:8476784146 PAGE 2/2

Ms. Harkins
July 17, 2000
Page 2

2 This report doesn't seem to want to address the relevant "what ifs?" I believe the public has a right to know.

I hope you will consider the need to slow down and include the other half who have the greatest risk--the Upper Basin States and their citizens.

Best regards,

American Water Resources, Inc.

Thomas C. Havens

Thomas C. Havens
President

TCH/aa

2: Predictions of future climate are difficult to make, and there are conflicting points of view within the scientific community. Although the index sequential method of modeling using historical records is not a perfect predictor, it provides a rigorous representation of possible future hydrology during the coming decades. Statistical distributions obtained using this method do provide an indication of what could happen during periods of drought, using past drought scenarios as indicators.

COMMENT LETTER

RESPONSES

SEP. 6.1999 3:41PM NO.537 P.1/3

American Water Resources, Inc.

1606 HERMOSA PLACE
COLORADO SPRINGS, CO 80906
Phone: 719-633-6969

September 6, 2000

By facsimile 702-293-8042

Jane Harkins
Lower Colorado River Office
Bureau of Reclamation
Boulder City, NV 89006-1470

Dear Ms. Harkins:

I have very serious concerns about the DEIS for the Colorado River Interim Surplus Criteria. A scenario of increased drought conditions, which are probable, make the current DEIS a prescription for serious adverse consequences, extreme risk for both the Lower and Upper Basin and possible chaos. I doubt that this agreement is enforceable. It could be dangerously contentious.

1 Since there were no public meetings in Colorado, New Mexico or Wyoming, I believe the owners of this water, the people, are not all aware of the possible consequences. Is it acceptable to drain Lake Mead by 50%? Is Lake Powell vulnerable? It may be that a more balanced and reasoned approach could produce a win/win environment. I would never sign an agreement like this that has been rushed through the process and is neither fair nor wise. We are talking about a multibillion dollar value without protection or compensation for those who are at risk. Why would the Upper Basin put themselves in such a vulnerable and weak strategic position? Why would the Lower Basin assume such a speculative position, based on surplus water that may not be there?

2 The reality is that California needs a more disciplined, creative and economic-based approach. It has many serious, complicated, unresolved and unsigned internal negotiations to conclude. The Upper Basin needs to substantially reduce its risk in this deal. A multimillion dollar contingency fund should be established by California as positive incentive and to cover all the mitigation costs that may arise. The Upper Basin provides its most precious asset—water—and California provides what it has in surplus—money. Fair is fair. This is sound economics and the basis and foundation for a workable and enforceable contract.

1: Reasons the Upper Basin states support adoption of interim surplus guidelines are discussed in the interim surplus criteria proposals submitted by Six-States (see Attachment E), and by the Seven States proposed criteria (see Federal Register notice in Chapter 5). Impacts to the Upper Basin states are based on changes to water levels in Lake Powell, which result from releases to Lake Mead to "equalize" storage between the two reservoirs as discussed in Section 1.4.2 of the EIS. Reclamation is only proposing surplus criteria be in effect for an interim 15-year period, during which time they would be subject to review every 5 years, along with reviews of the LROC.

2: A requirement that California make progress on its Colorado River Water Use Plan may be included in ISC Guidelines. California is responsible for funding any costs associated with compliance and implementation of their plan components. This includes costs for mitigating impacts of those actions that require Secretarial approval as determined by other federal and state environmental compliance documents.

SEP. 6.1999 3:41PM NO.537 P.2/3

Ms. Harkins
September 6, 2000
Page 2

3 The current proposal creates a water welfare state for California whose population of over 30 million is targeted to reach 50 million by 2020, a figure which is more than the combined populations of Arizona, Nevada, Oregon, Idaho, Montana, Wyoming, New Mexico and Utah. California's economic force already represents the seventh largest in the world. Compare this to Wyoming with a population of just 450,000. Should Wyoming be expected to share the risk equally?

In consideration of the DEIS proposal, which would in effect grant water welfare to California, I contend that,

1. California does not need welfare which is negative incentive and bad policy; and,
2. It is always difficult or impossible to reverse a welfare system. It is politically naïve to believe California would be ready or willing to give up that benefit.

4 The Colorado River Assurance Program for California is a process out of control. Where is the accountability to the principals, the people? The politicians? We are all familiar with situations where three, five or ten years down the road, after major policy decisions have been made and implemented, inflicting adverse consequences on society, we ask, What were they thinking?

We believe this process could provide win/win solutions to these problems if a broader base of perspectives were applied and a more reasonable time frame was established. Without a solid base, this process will fall apart. We are not there now. Something is missing. Both the Upper Basin and Lower Basin must have the courage to do the right thing, not the politically expedient one.

The environmental issues are a major concern and should be appropriately addressed.

Sincerely,

American Water Resources, Inc.

Tom Havens

Thomas C. Havens
President

TCH/aa

3: As noted in EIS section 2.3, the interim surplus criteria would terminate at the end of the 15-year period. In the absence of subsequently specified criteria, surplus determinations would be made as is currently done, as part of the annual operating plan development (AOP) process. If California is not making progress in implementing its Colorado River Water Use Plan, the Secretary may choose to revert back to 70R Strategy or the AOP process during the interim period.

4: Reclamation is not aware of any program or process by this name. It is the intent of this current process to carefully consider any potential adverse consequences of alternative courses of action discussed by this document.

Center for Biological Diversity
Defenders of Wildlife
Environmental Defense
El Centro de Derecho Ambiental e Integración Económica del Sur, A.C.
Friends of Arizona Rivers
Glen Canyon Action Network
Glen Canyon Institute
Pacific Institute for Studies in Development, Environment and Security
Sierra Club
Fred Cagle
Jaqueline Garcia-Hernandez

SEP 14 2000

Via Fax and Mail

~~BC-001000~~
4600

September 8, 2000

Regional Director
Lower Colorado Region
Attention: Ms. Jayne Harkins (BCOO-4600)
Bureau of Reclamation
PO Box 61470
Boulder City, NV 89006-1470

Re: Draft Environmental Impact Statement on Interim Surplus Criteria

Dear Ms. Harkins:

Thank you for the opportunity to review and to comment on the Draft Environmental Impact Statement ("DEIS") on Colorado River Interim Surplus Criteria. We are supportive of the overall goal of returning California to its 4.4 maf share of the Colorado River, yet we do not believe that such an achievement should come at the expense of downstream riparian and aquatic habitats. The diversion of millions of acre-feet of water and the impoundment of millions more have eroded and desiccated the Colorado River delta in Mexico. Fortunately, since the 1980s flood flows have revegetated the delta which has grown to 150,000 acres, though still a mere 5% of its historic size. As the Department of Interior has recognized, 80 percent of the best Lower Colorado River habitat is in Mexico, yet serious environmental harms are occurring there. The interim surplus criteria provide an opportunity to avoid and mitigate these harms, yet Interior fails to take advantage of this opportunity.

1

1 Therefore, we are disappointed that the Bureau of Reclamation ("Reclamation") rejected consideration of the Pacific Institute alternative that would have provided a reliable measure of freshwater flows. We also have several procedural and substantive concerns with the new Seven States proposal, as well as with the DEIS itself. For several reasons, we recommend that a Supplemental DEIS precede the Final EIS: the DEIS omits a reasonable alternative; the uncertain status of the Seven States information precludes effective public comment; the California Colorado River Water Use Plan is not officially available for comment; the transboundary and cumulative impacts analyses are flawed; and endangered species impacts merit more research and evaluation.

A Supplemental DEIS Should Include An "Environmental" Alternative

2 The range of alternatives is an important piece of NEPA – "This section is the heart of the environmental impact statement." 40 C.F.R. § 1502.14. Contrary to Reclamation's conclusion in the DEIS, the Pacific Institute proposal is not within the range of alternatives in the document (2-3). That proposal, supported by 9 other groups, was submitted specifically to dedicate perennial flows through the river to the delta before declaration of a partial surplus and flood waters to the delta before declaration of a full surplus. No other alternative contains these or any other environmental protection or restoration provisions.

Colorado River flows that reach the Delta are the result of flood control releases in the U.S. Deliveries to Mexico were greater than 1.7 maf in only 24 of the years between 1950 and 1998. The alternatives will again halve these odds by 2015 (see Table 3.16-1), as well as reduce the quantities released. The Pacific Institute proposal provides a more reliable source of water to the delta while also providing the Basin states with predictability and California with a supply of water over its apportionment. As a reasonable alternative that satisfies the purpose and need of the surplus criteria, the Pacific Institute proposal and its impacts should be studied.

The California Colorado River Water Use Plan Must Be Included

3 Regarding the purpose and need of Interim Surplus Criteria, it is well known that the driving force behind their development has been the need to reduce California's reliance on Colorado River water above and beyond its apportionment; the 4.4 Plan is California's plan for doing so. See 1-22. The Six State, California and Shortage Protection Alternatives all include implementation of the 4.4 Plan in their modeling assumptions (3.3-9-10). Without the 4.4 Plan it is impossible to measure the quantities of water involved and impossible to gauge California's compliance. However, no version of the 4.4 Plan has been included in the DEIS. The California 4.4 Plan must be made publicly available, as quickly as possible, for public review and comment before the FEIS is released.

Seven States Alternative May Not Appear in the FEIS as the Preferred Alternative

4 On August 8, 2000, Reclamation published a notice of availability of information – the

2

1: See response to Comment 11-2 and 11-6.

2: See the response to Comment 11-2 and 11-6.

3: The 4.4 Plan has been superseded by California's draft Colorado River Water Use Plan (CA Plan), which has been publically available from the Colorado River Board of California. For more information see response to Comment 11-11.

4: Based on experience gained in modeling the operation of the alternatives in the DEIS, it was apparent to Reclamation that the shortage triggers proposed by the Seven States would place the effects of operating with those triggers and their related provisions in the midst of the range of the alternatives presented in the DEIS. It was also apparent that the effects of the Seven States Proposal would relate to those of other alternatives as a matter of degree rather than as new and different kinds of impacts. The preferred alternative in this FEIS derived from the Seven States Proposal has been subjected to the same analysis as the other alternatives in the FEIS.

cont'd Seven States proposal – related to this DEIS. 65 Fed.Reg. 48531. While it appears in substance to be another alternative, Reclamation has stated that it will analyze the issues and information in it along with all other public comments on the DEIS, and will not extend the comment period, id., despite the fact that it is modeling the proposal. Even though the 'information' is the "product of significant effort" by the States, Reclamation may not view this new information as an alternative until the proposal's modeling runs and impacts have been subject to the NEPA processes of public notice and comment.

5 Furthermore, the proposal in its current form is not within the purpose and need of the interim criteria and is therefore an inadequate proposal. The impetus behind the interim criteria has been increased predictability of availability of surplus waters that California deems necessary to meet its needs until conservation measures are in place that have reduced consumption to 4.4 maf. The Seven States proposal does not provide a starting line by which to measure California's consumption, but given that the state has diverted up to 5.2 maf in recent years and that it expects to conserve a maximum of 490,000 af by 2016, California will not reach the 4.4 maf goal. Section VIII affirms this position by setting standards for enforcement that are even lower than its expected goals. Only when the surplus criteria is based on California reducing its take of the Colorado River to its 4.4 maf share should the criteria be implemented.

6 Lastly, the Seven States proposal, in sections IV.B.3.d. & f., excessively constrains the Secretary's discretion, which is simply unacceptable. Allocation of unused apportionment and of surplus has always been entirely within the Secretary's discretion but this proposal attempts to restrict it further than surplus criteria require.

Compliance with the Endangered Species Act

7 The scope of the ESA Section 7 consultation on the Interim Surplus Criteria is of enormous importance yet contains several flaws. First, section 5.3.3 must be amended to read that the action area "will be within the 100-year floodplain and Lakes Mead, Mohave and Havasu to full pool elevations of the Colorado River *and downstream to the Gulf of California*" (5-2) (emphasized text added). In this DEIS Reclamation identifies the potential for impacts to the vaquita, totoaba, southwestern willow flycatcher and Yuma clapper rail from the decrease in frequency and amount of freshwater flows to the delta. Therefore, in an ESA consultation where the 'action area' includes "*all areas* to be affected directly or indirectly by the Federal action and not merely in the immediate area involved in the action," 50 C.F.R. § 402.02 (emphasis added), and the Colorado River delta is clearly affected by the proposed action, the scope of the analysis must include the reach of the river and its floodplain down to the Gulf.

In addition, section 5.3.3 on ESA compliance refers *only* to the U.S. Fish and Wildlife Service in caption and text, implying that the National Marine Fisheries Service, the agency with jurisdiction over the vaquita and totoaba, have not been contacted regarding this consultation. See also Letter from Rodney R. McInnis, Acting Regional Administrator, NMFS to David Hogan, Center for Biological Diversity, of July 13, 2000 ("the Bureau of Reclamation has not

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5: 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.

6: The preferred alternative in this FEIS would not change the Secretary's discretion regarding the regulation of Colorado river flows, which stems from the Law of the River. Clause IV.B.3.f contained in the Draft Seven States Proposal is not included in the preferred alternative.

7: Reclamation is consulting with the Service for the delta area of Mexico, as discussed in Section 5.3.4 of the FEIS. The action area extends to the Sea of Cortez.

cont'd contacted NMFS regarding informal or formal ESA consultation on the Department of Interior's Colorado River Interim Surplus Criteria") (Attached). This is in violation of the ESA and contrary to a memo indicated that this consultation has occurred and should continue. See Memorandum from John Leshy, Solicitor to Eluid Martinez, Commissioner, of August 14, 2000. We hope that the August 14 memo is more indicative of the consultation that is occurring on the proposed action and that consultation with both FWS and NMFS continues.

Transboundary & Cumulative Environmental Impact Analysis is Inadequate

8 We were encouraged that Reclamation included an analysis of transboundary impacts in the DEIS. However, our hopes that past recognition of the sparse ecological and biological data on the vaquita and totoaba and their effects of modified river flows and water quality would have spurred additional research were dashed when we saw that the most of the analysis of the vaquita and totoaba were taken straight from the Description and Assessment of Operations, Maintenance, and Sensitive Species of the Lower Colorado River (Reclamation 1996). This is especially disappointing because Reclamation already knows its ongoing activities in the Lower Colorado River may affect the totoaba and that the vaquita is the world's rarest cetacean.

9 The DEIS omits any discussion of cumulative impacts resulting from the actions in the above Biological Assessment, as well as impacts from the California 4.4 Plan (not referenced in the DEIS) and off-stream banking regulations. For example, Reclamation has found that current operations along the LCR may affect the endangered totoaba, citing the lack of freshwater flows to the delta as a factor. Offstream banking, as well as the interim criteria, will reduce the amount of and probability of freshwater flows to the delta. See Biological Assessment for Proposed Rule for Offstream Storage of Colorado River Water and Delivery of Intentionally Created Unused Apportionment in the Lower Division States (1998) at Table IV-3. There is no attempt to accumulate or mitigate for these impacts. Environmental values and protections are not factors in Reclamation's hydrological models, thus this lack of cumulative impacts analysis is pervasive in the DEIS.

Recommendations

10 Overall, we recommend that this DEIS expand its scope, taking into account impacts not only downstream of the NIB, but downstream of the SIB into Mexico and the Colorado River delta. Without discussion or analysis of the impacts, mitigation is impossible. We hope that expansion of the NEPA analysis will result in an expanded ESA consultation and protection and recovery of the critically endangered ecosystem that has been divided by an arbitrary line. A Supplemental DEIS must also include the Pacific Institute proposal, as well as Reclamation's models and impacts analysis for the Seven States submission.

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8: Regarding the effects on species found in both Mexico and the United States (such as the southwestern willow flycatcher), Reclamation is consulting with the U.S. Fish and Wildlife Service. For potentially affected species found only in Mexico, Reclamation is consulting with the National Marine Fisheries Service. Concurrent with these consultations, Reclamation is also continuing its dialog with Mexico to reach mutually agreeable solutions.

9: Cumulative transboundary impacts are discussed in Section 4.2. Implementation of the Lower Colorado River Multi-Species Conservation Program (LCRMSCP) is expected to prevent adverse cumulative effects to the biological resources of the lower Colorado River. The LCRMSCP is being developed to mitigate the adverse effects on resources from current and future water diversions and power production with the cooperation of federal, state, Tribal and other public and private stakeholders. The LCRMSCP will include the creation and enhancement of habitat and augmentation of native fish species populations from Lake Mead to the SIB. The LCRMSCP is evaluating the appropriate amount of acreage for restoration. Currently, acreage estimates range from a low of 3,000 acres to a high of 80,000 acres of riparian woodland, marsh, open water and mesquite habitat.

10: 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.

Sincerely,

David Hogan
Desert Rivers Coordinator
Center for Biological Diversity

Kara Gillon
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Defenders of Wildlife

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UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Southwest Region
501 West Ocean Boulevard, Suite 4200
Long Beach, California 90802-4213

July 13, 2000

Mr. David Hogan
Center for Biological Diversity
P.O. Box 628
Santa Ysabel, California 92070

Dear Mr. Hogan:

This letter is in response to the Center for Biological Diversity request under the Freedom of Information Act (FOIA), dated June 5, 2000, for documents relating to an informal or formal Endangered Species Act (ESA) consultation which may have occurred between the Bureau of Reclamation and the National Marine Fisheries Service (NMFS) with regard to the Department of the Interior's Colorado River Interim Surplus Criteria.

I understand that you spoke with Ms. Deanna Harwood, staff attorney in the Office of General Counsel, National Oceanic and Atmospheric Administration (NOAA) on July 7, 2000. Ms. Harwood and I appreciate your acceptance of our request for additional time in responding to your request. It is our understanding from that conversation that your interest is limited to whether the Bureau of Reclamation had initiated informal or formal ESA consultation with NMFS. As the Bureau of Reclamation has not contacted NMFS regarding informal or formal ESA consultation on the Department of Interior's Colorado River Interim Surplus Criteria, we have no documents responsive to your request.

Although this does not constitute a denial of your request because there were no records available or withheld, you may appeal this determination within 30 days of receipt of this letter. Appeals shall be addressed to the Office of the General Counsel, Room 5882, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, and prominently mark your letter and the outside envelope, "FOIA Appeal." Your appeal should state the reasons why you believe this determination was in error. Attach a copy of your original request and a copy of this letter to your appeal.

Sincerely,

Rodney R McInnis

Rodney R. McInnis
Acting Regional Administrator

cc: Deanna Harwood

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