STATE OF COLORADO

Colorado Water Conservation Board
Department of Natural Resources
1313 Sherman Street, Room 721
Denver, Colorado 80203
Phone: (303) 866-3441
FAX: (303) 866-4474
www.cwcb.state.co.us

Bill Owens
Governor

Greg E. Walcher
Executive Director

Rod Kuharich
CWCB Director

Dan McAuliffe
Deputy Director

March 27, 2002

Mr. Robert Johnson
Regional Director
Attn: BCOO-4600
U.S Bureau of Reclamation
Lower Colorado Region
P.O. Box 61470
Boulder City, Nevada 89006-1470

REF: 5-Year Review of the Coordinated Long-Range Operating Criteria for Colorado River Reservoirs

Dear Mr. Johnson:

I am writing on behalf of the Colorado Water Conservation Board (CWCB), pursuant to the Federal Register Notices dated January 15, 2002, and March 6, 2002, to provide our comments on the Coordinated Long-Range Operating Criteria for Colorado River Reservoirs.

The CWCB is state agency charged with promoting, protecting, conserving and developing Colorado's water resources in order to secure the greatest utilization of those resources for the benefit of present and future generations, and to minimize the risk of flood damage and related economic losses. The CWCB is a 15-member Board representing water interests from across the state and includes a number of state officials including the Director of the Department of Natural Resources, the State Engineer and the Attorney General. The CWCB has a long association with activities concerning the Colorado River Compact and the "Law of the River."

In accordance with Section 602(b) of Public Law 90-537, the Colorado River Basin Project Act ("CRBPA"), the Coordinated Long-Range Operating Criteria for Colorado River Reservoirs ("Operating Criteria") may be modified "as a result of actual operating experience or unforeseen circumstances...to better achieve the purposes specified in [Section 602(a) of the CRBPA]". As will be explained in greater detail, the CWCB considered the need for a formal review of the "Operating Criteria" at its March 21-22, 2002 meeting and does not believe there is any actual operating

experience or unforeseen circumstance which justifies modification of the "Operating Criteria" at this time.

At the time of the adoption of the "Operating Criteria," the State of Colorado made objection to certain provisions of the "Operating Criteria." Specifically, the State of Colorado joined the Upper Colorado River Commission and the Upper Division States in protesting the minimum release objective of 8.23 m.a.f. of water per year from Lake Powell and in not waiving objections to other parts of the "Operating Criteria."

The CWCB continues to object to the minimum release objective of 8.23 m.a.f./year and to other aspects of the "Operating Criteria." However, we are not aware of any actual operating experiences or unforeseen circumstances that would justify modification of the "Operating Criteria" at this time. There are several reasons for this as discussed below:

1. Section 602(b) of the CRBPA provides that the "Operating Criteria" were proposed and are to be modified in order to achieve the purposes specified in subsection 602(a) of that Act. Those purposes are "to comply with and carry out the provisions of the Colorado River Compact, the Upper Colorado River Basin Compact, and the Mexican Water Treaty". In addition, Article II(5) of the "Operating Criteria" provides that the "Operating Criteria" shall not prejudice the position of either the upper or lower basin interests with respect to required deliveries at Lee Ferry pursuant to the Colorado River Compact". Therefore, irrespective of the minimum release objective specified in the "Operating Criteria," the amount of water released from Lake Powell is ultimately controlled by the Colorado River Compact, the Upper Colorado River Basin Compact, and the Mexican Water Treaty. As a result, an amount less than the minimum release objective may be released from Lake Powell, if the States of the Upper Division are in compliance with Article III(d) of the Colorado River Compact, in order to avoid impairment or potential impairment of the beneficial consumptive use of water in any Upper Division State.

2. The States of the Upper Division have not yet developed their full entitlements to the waters of the Colorado River System.

3. The primary purpose of Section 602 of the CRBPA is to assure that the States of the Upper Division may develop their full entitlements to the water of the Colorado River System, and that consumptive uses in the Upper Division will not suffer because of the failure to store sufficient water to make deliveries pursuant to the Mexican Water Treaty and the Colorado River Compact. There has not yet been an impairment of consumptive uses in any Upper Division State as a result of operations pursuant to the existing "Operating Criteria."

4. The "Operating Criteria" in fact have been flexible enough to allow for adjustments following the floods of the 1980's. They have been flexible enough to allow for the development of the interim operating criteria to aid California in reducing its use of Colorado River water to 4.4 million acre-feet per year. Lastly, they have been flexible enough to allow for the testing of an experimental flow from Glen Canyon Dam in 1996 to see if conditions for endangered fish could be improved and sediment conserved in the Grand Canyon. However, the important thing to remember is that all these were accomplished within the limitations provided by the Colorado River Compact, the Upper Colorado River Compact and the Mexican Water Treaty. The "Operating Criteria" can not be used to modify these basic documents as some would suggest.

Therefore, while the CWCB and the State of Colorado do not waive their objection to any

aspect of the "Operating Criteria," it is the position of the CWCB and the State of Colorado that there is no justification or reason to modify the existing "Operating Criteria" at this time. The State of Colorado reserves its right to make additional comment, and to respond to the comments of others, in the course of this review process. We would appreciate being provided with copies of all comments received by you in the course of this review.

We appreciate the opportunity to comment. If you have any questions or require any additional information, please do not hesitate to contact me.

Sincerely,

Rod Kuharich
Director

Cc:

Jayne Harkins
Tom Ryan
CWCB Members
Colorado River Policy Advisory Group
Upper Colorado River Commission
Seven Basin State Representatives