

STATE OF COLORADO

OFFICE OF THE EXECUTIVE DIRECTOR

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September 11, 2000

*Agreed
4600*



DEPARTMENT OF
NATURAL
RESOURCES

Bill Owens
Governor
Greg E. Washler
Executive Director

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

Dear Ms. Harkins:

On behalf of the State of Colorado, I am writing to comment on the Bureau of Reclamation's July 2000, "Colorado River Interim Surplus Criteria Draft Environmental Impact Statement" (DEIS). The Colorado Department of Natural Resources includes the Colorado Water Conservation Board, the agency charged with promoting 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. It is our mission to ensure that Colorado's water is protected for use of future generations, and that its compact obligations are enforced under the Law of the River.

Colorado supports the effort to develop workable interim surplus criteria for the lower Colorado River that will assist California in reducing its use of Colorado River water to its allotted 4.4 million acre-feet ("maf"). The complexity of the operations of the lower Colorado River, and the Law of the River, always make clear and concise descriptions of the background and a proposed action a challenge. In general, the DEIS fairly describes the purpose and need for the criteria and the affected environment, and analyzes an appropriate range of alternatives. It would be more clear if that section of the document specifically referred to the 4.4 Plan as the primary reason for the discussion of interim surplus criteria. In addition, there are a few significant areas in the discussions where the Law of the River and river operations have not been accurately stated:

- **Use of the 75R strategy to describe the no action alternative** -- The 70R Strategy, not the 75R, has been the Colorado River reservoir operating strategy since the mid 1980's with only 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 should not have been used to describe the no action alternative.
- **Section 1.4.2 Glen Canyon Dam Operations** -- The discussion of Glen Canyon operations is not precisely accurate. The Colorado River Compact requires that the Upper Division States not deplete the flow at Lee Ferry below an aggregate of 75 maf for any period of 10 consecutive years (plus 1/2 of the Mexican Treaty delivery deficiency, if any). The 8.23 maf per year minimum objective release identified in the Long Rang Operating Criteria should not be confused with compact requirements, and this section and any others should be revised to accurately reflect what the compact requires.
- **Section 3.16.6 Preliminary Summary of Effects to Special-Status Species and Habitat in Mexico** -- We strongly disagree with the inclusion of this information, as it is beyond the scope of NEPA and ESA consultation requirements. The allocation and delivery of Colorado River

1: See response to Comment 11-9.

2: The 70R strategy is used for the baseline in this FEIS. See response to Comment 57-11 for additional information.

3: 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 through the LROC review process.

4: See response to Comments 22-4 and 22-10.

Board of Land Commissioners • Division of Minerals & Geology/Geological Survey
Oil & Gas Conservation Commission • Colorado State Parks • Soil Conservation Board
Water Conservation Board • Division of Water Resources • Division of Wildlife

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COMMENT LETTER

RESPONSES

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water to Mexico is established and controlled by international treaty. As the DEIS acknowledges, Reclamation has absolutely no control over what happens with water deliveries and to these species outside the borders of the United States. It is therefore beyond the scope of Reclamation's authority, confusing, and unnecessary to attempt to evaluate any possible effects of water deliveries to Mexico on these species. Reclamation has not included such information in other Environmental Impact Statements of comparable impact and it is inappropriate to do so here.

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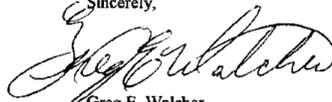
While we feel it is necessary to point out the more significant inaccuracies, they do not affect the analysis or conclusions of the DEIS, which fairly portrays the potential impacts of the possible actions. Likewise, there are a number of other statements expressed in the DEIS concerning the Law of the River with which Colorado disagrees or does not fully concur. Again, because these differences do not significantly impact the results of this DEIS, we do not see any merit in identifying them all, commenting on them or debating them in the DEIS process. Still, Colorado wants it clearly understood that its concurrence with the DEIS and its analyses does not indicate concurrence with all statements concerning the Law of the River in the DEIS. We strongly encourage Reclamation to include in the final EIS the usual disclaimer it uses to address the differences that exist with respect to the Law of the River.

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Regarding the selection of a preferred alternative, Colorado supports the Interim Surplus Criteria developed by the seven Colorado River Basin States and noticed in the Federal Register on August 8, 2000 as supplemental information to the DEIS. These criteria are a modification of the six-state proposal described in the DEIS. The seven-state proposal is preferable to the six-state proposal set out in the DEIS because it provides the water supplies sought with an acceptable level of risk to reservoir storage. In addition, the seven-state criteria were developed using a 70R Strategy, which we believe is a more appropriate representation of the Colorado River reservoir operating strategy for the past fifteen years. The seven-state criteria were also developed using the Upper Colorado River Basin depletion schedule adopted by the Upper Colorado River Commission in December 1999, which is more up-to-date than the depletion schedule used in the DEIS. While these differences resulted in modifications and improvements to the six-state proposal discussed in the DEIS, the operation and impacts of the seven-state criteria are still within the range of alternatives and impacts analyzed in the DEIS.

Colorado worked extensively on the development of the DEIS supplemental information and is convinced that the seven-state proposal is the best alternative. We oppose the selection of any interim surplus criteria alternative that departs significantly from the seven-state proposal. Thank you for considering our comments on this very important matter.

Sincerely,



Greg E. Walcher,
Executive Director

cc:

Colorado Water Conservation Board Members
Upper Colorado River Commission Members
Colorado River Advisory Committee Members
Colorado Wildlife Commission Members

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.