Lower Colorado Region Policy for Apportioned but Unused Water[1]

1. **Prior to the operating year**:
   1.1. During the preparation of the Annual Operating Plan (AOP) for the operating year, the Secretary of the Interior (Secretary) will determine the existence of any apportioned but unused water before determining the existence of a Surplus Condition and, under Article II(B)(6) of the Consolidated Decree,[2] allocate any such water for use within another Lower Division State by applying the priorities in Section 1 of the Interim Guidelines.[3]
   1.2. During the preparation of the AOP, the Secretary may, but is not required to, reallocate apportioned but unused water under Article II(B)(6) when determining a Normal Condition or Intentionally Created Surplus (ICS) Surplus Condition.
      1.2.1. In making the determination that unused water is available and will be reallocated, the Secretary will consider all relevant factors including but not limited to, the current storage conditions in Lake Mead and Lake Powell, the projected depletions in the Upper Basin, the Lower Basin, and Mexico for the operating year, the projected inflows into the Upper Basin and Lower Basin for the operating year, the water supplies available to the entitlement holders, and the likelihood of future determinations of a Shortage Condition.[4] In making these projections, the Bureau of Reclamation will utilize the technical information used in the development of the AOP and for making subsequent monthly operational updates.
      1.2.2. To the extent the Secretary reallocates apportioned but unused water under Article II(B)(6), the Secretary may, but is not required to, follow the priorities set forth in Section 1 of the Interim Guidelines (i.e., the priorities applicable to any reallocation of apportioned but unused water prior to the determination of a Surplus Condition).
   1.3. During the preparation of the AOP, the Secretary will reallocate apportioned but unused water under II(B)6 when determining a Shortage Condition only under extraordinary circumstances and in consultation with the Basin States.

2. **During the operating year:**
   2.1. If apportioned but unused water becomes available, the Secretary may, but is not required to, reallocate such water under Article II(B)(6).
   2.2. In making the determination that unused water is available and will be reallocated, the Secretary will consider all relevant factors including, but not limited to, the current storage conditions in Lake Mead and Lake Powell, the projected depletions in the Upper Basin, the Lower Basin, and Mexico for the operating year, the projected inflows into the Upper Basin and Lower Basin for the operating year, the water supplies available to the entitlement holders, and the likelihood of future determinations of a Shortage Condition.[4] In making these projections, Reclamation will utilize the technical information used in the development of the AOP and for making subsequent monthly operational updates.

---

[1] This policy does not apply to the administration of Intentionally Created Unused Apportionment pursuant to 43 CFR Part 414.
[2] Arizona v. California, 547 U.S. 150 (2006).
[3] Record of Decision, Colorado River Interim Guidelines for Lower Basin Shortages and the Coordinated Operations for Lake Powell and Lake Mead, December 13, 2007.
[4] A determination by the Secretary that insufficient mainstream water is available for release to satisfy annual consumptive use of 7,500,000 acre-feet in Arizona, California, and Nevada under Article II(B)3 of the Consolidated Decree.

2.3. To the extent the Secretary reallocates apportioned but unused water under Article II(B)(6), the Secretary may, but is not required to, follow the priorities set forth in Section 1 of the Interim Guidelines (i.e., the priorities applicable to any reallocation of apportioned but unused water prior to the determination of a Surplus Condition).

3. After completion of the operating year:

3.1. The Secretary will not reallocate apportioned but unused water under the authority of Article II(B)(6) that is discovered after December 31 of the operating year.

3.2. Before the publication of the Water Accounting Report[5] for the operating year:

3.2.1. Any apportioned but unused water discovered will be used to offset overrun obligations incurred in that operating year within the state found to have had unused water.

3.2.1.1. If an entitlement holder in the under-consuming State incurred an overrun obligation in the operating year by consuming water within the upper limit of its entitlement and that water was put to a reasonable and beneficial use, Reclamation will apply the unused water as an offset to the overrun in accordance with the Inadvertent Overrun and Payback Policy (IOPP) on an acre-foot for acre-foot basis.

3.2.1.2. If there is more than one such entitlement holder within the under-consuming State, Reclamation will reduce the payback obligations in accordance with the IOPP procedures to be adopted in consultation with the Lower Division States.

3.2.1.3. If the quantity of the apportioned but unused water in the operating year exceeds the overruns incurred in the operating year by such entitlement holders within the under-consuming State, Reclamation will consult with the Lower Division States to determine the appropriate course of action.

3.3. After the publication of the Accounting Report for the operating year:

3.3.1. As is standard operating procedure, Reclamation will correct Accounting Reports when errors are discovered.

3.3.2. If, after correcting an Accounting Report, water apportioned to a State was not used within that State, Reclamation will not apply the apportioned but unused water as an offset to any IOPP payback obligation incurred in that operating year or otherwise make that water available (i.e., the water stays in the system).

4. Term of the policy

4.1. This policy is in effect immediately and will remain in effect until rescinded by the Regional Director, in consultation with the Lower Division States.

Adopted as a policy of the Lower Colorado Region, Bureau of Reclamation:

Lorri Gray-Lee
Regional Director

FEB 11 2010
Date

[5] Colorado River Accounting and Water Use Report, Arizona, California, and Nevada. This report, among other things, contains appropriate information in satisfaction of Article V of the Consolidated Decree.