



United States Department of the Interior

BUREAU OF RECLAMATION
Lower Colorado Regional Office
P.O. Box 61470
Boulder City, NV 89006-1470

IN REPLY REFER TO:

LC-4000
WTR 4.03

JUL 02 2013

Mr. Kevin E. Kelley
General Manager
Imperial Irrigation District
P.O. Box 937
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Dear Mr. Kelley:

Reclamation has received your letter of June 28, 2013, and I appreciate your prompt and timely response to my letter of May 3, 2013, regarding the 2010 advance mitigation deliveries to the Salton Sea without conserving an equivalent amount of Colorado River water. As you are aware, these pre-deliveries have been the subject of much, often divisive, discussion among representatives of the Reclamation, Imperial Irrigation District (IID), the Basin States, and other agencies. I appreciate your desire and willingness on behalf of IID to move forward in a constructive manner to address and resolve this matter at this time.

Reclamation has reviewed the set of actions and timeline identified in your June 28th letter. We understand that IID is committing to create by conservation a total of 69,818 acre-feet through land fallowing to fully offset the 46,546 acre-feet of water pre-delivered in 2010. Of this total, 46,546 acre-feet will offset the depletion resulting from the 2010 pre-delivery and 23,272 acre-feet will meet the requirement for mitigation of the impacts to the Salton Sea due to the fallowing for the 46,546 acre-feet. IID is further committing to a two-year time window (2015 – 2016) to complete this conservation and delivery such that the total amount of 69,818 acre-feet would be conserved no later than December 31, 2016.

After consideration of your letter, Reclamation finds that the set of actions and timeline laid out by IID are credible and acceptable to Reclamation and constitute a commitment by IID to restore 46,546 acre-feet to the Colorado River system. However, several related issues, some of which you point out in your June 28th letter, need to be addressed here.

As you state in your June 28th letter, "IID believed in 2010 and continues to believe that its pre-delivery of mitigation water to the Salton Sea in 2010 was a necessary, appropriate and lawful exercise of its Colorado River water entitlement." Reclamation acknowledges IID's view. Nevertheless, Reclamation continues to stand firmly by our position that nothing in the Colorado River Water Delivery Agreement (CRWDA) or any other currently-existing contractual agreement entered into with Reclamation, on behalf of the Secretary, authorizes such advance

mitigation transfers. In the absence of authorization by the Secretary, it is our view that such advance mitigation transfers are not in compliance with Section 5 of the Boulder Canyon Project Act of 1928, or Article III(C) of the Consolidated Decree entered by the U.S. Supreme Court in *Arizona v. California*, 547 U.S. 150, 159-60.

Our legal positions differ, but we share a common goal of constructively resolving this matter and restoring water to the Colorado River system in a timely manner. We also share a common goal of improving the professional relationships and minimizing disputes among the parties to the CRWDA. Reclamation therefore expressly acknowledges that IID's identification of and implementation of this set of actions is not a concession by IID that the 2010 pre-delivery was inconsistent with the existing legal framework applicable to deliveries of Colorado River water. Although the resolution of this matter does not constitute a precedent, Reclamation does not expect this situation to arise again and continues to rely on the warrant in your November 7, 2012 letter that IID does "not envision any circumstance in which advance mitigation transfers to the Salton Sea (i.e., on a more rapid schedule than set forth in Exhibit B, col. 7 of the CRWDA) would be made by IID during the remaining period of such mitigation transfers (i.e., 2013 – 2017)."

In summary, while both IID and Reclamation reserve their respective and differing legal positions, I commend IID for submitting an acceptable set of actions and appropriately focusing on the operational and implementation aspects of prospective conservation by IID to address the 2010 pre-delivery to the Salton Sea.

I appreciate and fully agree with your statement in your June 28th letter that "these differences cannot be allowed to stand in the way of progress in ameliorating the potential shortage facing the Colorado River." I appreciate IID's commitment to consult with Reclamation and neighboring Lower Basin representatives and to monitor reservoir operating conditions and "consider modifications to this schedule should hydrologic conditions indicate that an acceleration of this schedule would preempt a shortage determination and, as such, warrant additional consideration." Reclamation is committed to work constructively with you to explore options that could be accelerated to help forestall or avoid reductions to other Colorado River water users if such need arises. Although as you note, IID faces significant challenges in the immediate future in meeting its various transfer and payback obligations, I also appreciate your commitment that, although excess conservation is unlikely in 2013 and 2014, IID is willing to consider applying a portion of any excess fallowed water toward the 69,818 acre-foot obligation, thereby further improving conditions for the Colorado River system. Accordingly, given that the ongoing 14-year drought we are experiencing is the worst in over a century, and there is no way of knowing when the drought may end, I strongly encourage IID to take every opportunity to conserve and restore this water to the system as soon as possible. As you know, the Lower Basin could be facing the first shortage reductions in modern history as soon as 2015. Reclamation will be pressing all Colorado River water users to find mechanisms to avoid or minimize the harmful consequences of reduced deliveries. In such circumstances, we expect IID to be a helpful and constructive partner in such efforts.

Again, thank you for your prompt and timely response to my May 3, 2013 letter and for your engagement and demonstrated commitment to improving conditions and relationships on the Colorado River. As you are aware, much of our success in the Colorado River Basin rests on professional and constructive working relationships among water users across multiple jurisdictions. We recognize IID's recent efforts to improve communication, cooperation, and collaboration with Reclamation and Basin State representatives and we look forward to continuing to work with you on this and other matters.

Sincerely,



Terrance J. Fulp, Ph.D.
Regional Director

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