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E-MAILED AND TELECOPIED

April 26 2005

Hon. Gale A. Norton  
Secretary of the Interior  
Department of the Interior  
1849 C Street, N.W.  
Washington, D.C. 20240

Re: Comments on the mid-year review and review process concerning the 2005 Annual Operating Plan for the Colorado River

Dear Secretary Norton:

Having just left the final consultation meeting for the mid-year review provided for in the 2005 Annual Operating Plan for the Colorado River (AOP), I thought I should share some results of that meeting with you from the perspective of an attorney who has been involved in all of the five-year reviews of the Annual Operating Plans since 1975.

The Bureau of Reclamation presented two alternative scenarios to the Colorado River Working Group. The first was a cut-back of water releases from Glen Canyon Dam for the remaining months of the water year by 200,000 acre-feet. The second was a cut-back of 500,000 acre-feet. These were represented as modeling to demonstrate ranges of impacts and not alternatives to be presented to you for consideration. They were compared to the AOP schedule for meeting the 8.23 maf minimum release objective.

Several important things came out of the discussion of these modeling alternatives. None of the Basin States or the other interested parties had seen these proposals before. In response to questions, these modeling alternatives have not been discussed with the Fish and Wildlife Service. The economic impacts to hydropower generation have been considered by Reclamation only in a "back of the envelope" fashion. We confirmed by e-mail with Western Area Power Administration officials that these particular scenarios had not been presented to them for analysis either. Reclamation was also unwilling or unable to tell us when and how water retained and not released under the 8.23 maf minimum release objective would be released in the next water year, nor tell us whether this was water that would have been delivered to the Lower Basin States under the Compact or water that would have otherwise been delivered to satisfy the Mexican Treaty burden.

Page 8 of the 2005 AOP contains the relevant discussion of environmental clearances related to water releases from Glen Canyon Dam and power operations of the Glen Canyon Dam Power

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Plant. It does not contain any analysis or any reference to any analysis of the environmental impacts downstream of a reduction in the minimum release objective, let alone an analysis of the environmental impacts of the two alternative scenarios presented to us today.

Moreover, having personally attended the five-year review meetings for all of the reviews of the Long-Range Operating Criteria, I can tell you from personal experience that the 8.23 maf minimum release objective has always been treated as a floor and not as a variable. Thirty-five years of consistent administrative interpretation and application support that characterization. Some might tell you that the 8.23 maf minimum release objective has been not observed in the past but that was only during a period when the Lake Powell filling criteria allowed temporary deviations from the principles of the Long-Range Operating Criteria.

I have run across no one who believes that you do not possess the statutory authority to alter the Long-Range Operating Criteria, including altering the minimum release objective. But the pattern for doing so has been set in the Congressional directive to have five-year reviews of the criteria and to face possible changes to them in that process. Since Congress has mandated the type of process for considering changes to the Long-Range Operating Criteria, that process must be followed. The Annual Operating Plan is not a vehicle for such changes.

This is confirmed by the process that was recently completed to set an Interim Criteria concerning 602(a) Storage. The Interim Criteria for Lake Powell specifies that equalization releases will not be required at any time when storage in Lake Powell is at or below 14.85 million acre-feet. That interim criterion was established through a consultation process with the Basin States and the other members of the Colorado River Working Group. That action confirms that the elements of the Long-Range Operating Criteria must be amended or supplemented only through such a process. You have recently completed the five-year review of the Long-Range Operating Criteria that followed that very process.

I hope you will take these thoughts into consideration in making your decision on this issue. I would hope that you would leave the minimum release objective alone. It carries with it three of the twelve bodies that are buried in the Long-Range Operating Criteria and were buried in 1970 in order that the states could work together without further litigation on major issues that could divide them. It would be a perfectly appropriate signal here for you to leave things alone and tell the states that their business of dealing with each other was unfinished.

Sincerely,

Robert S. Lynch  
Counsel and Assistant  
Secretary/Treasurer

RSL:psr

cc: Tom Weimer, Acting Assistant Secretary for Water and Science  
John Keys, Commissioner of Reclamation  
Bob Johnson, Regional Director, Lower Colorado River Region, USBR  
Rick Gold, Regional Director, Upper Colorado River Region, USBR  
Bob Snow, Office of the Solicitor  
Leslie James, Executive Director, Colorado River Energy Distributors' Association  
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