



United States Department of the Interior

U.S. Fish and Wildlife Service
2321 West Royal Palm Road, Suite 103
Phoenix, Arizona 85021-4951
Telephone: (602) 242-0210 FAX: (602) 242-2513



In Reply Refer To:

March 26, 2002

AESO/FP

Memorandum

To: Chief, Environmental Resource Management Division, Bureau of Reclamation, Phoenix Area Office (PXA0-1500), Phoenix, Arizona
From: Field Supervisor
Subject: Comments on Draft Environmental Impact Statement (DEIS-01-43), Implementation Agreement, Inadvertent Overrun and Payback Policy, and Related Actions, Colorado River in the Lower Basin

The Fish and Wildlife Service has reviewed the Bureau of Reclamation's Draft Environmental Impact Statement (DEIS) dated January 7, 2002, that describes the environmental effects of executing the Implementation Agreement (IA) wherein the Secretary of the Interior would change Colorado River water deliveries allowing certain Southern California water agencies to implement the proposed Quantification Settlement Agreement (QSA), and adopt an Inadvertent Overrun and Payback Policy (IOP) for overuse of Colorado River water. The proposed action for this DEIS also includes implementation of biological conservation measures that were provided by the BR as part of the action considered in the Biological Opinion (2-21-00-F-273) issued by the FWS on January 12, 2001, on the Interim Surplus Criteria and Secretarial Implementation Agreements. Our comments are provided under the authority of and in accordance with the Fish and Wildlife Coordination Act (16 U.S.C. 661-667e; 48 Stat. 401, as amended).

General Comments

We found the document to be well written and organized which is quite an accomplishment, given the complexity of the proposed action, the variety of actions that need to be accomplished to achieve QSA goals, and wide-spread geographic setting.

As mentioned above, conservation measures were incorporated as part of the proposed action in the consultation, and the resultant biological opinion found the action not likely to jeopardize the continued existence of federally listed species. Including the environmental effects of those measures in the DEIS highlights the needs of the species and the tasks that need to be completed in order to reduce adverse impacts to the species.

FWS-1

Chief, Environmental Resource Management, Bureau of Reclamation

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We commend BR for including the impact area in Mexico in the DEIS, particularly the discussions on the Colorado River delta. We agree with your statements that the U.S. does not control the use of Colorado River water once it has entered Mexico, but believe that if water was available to restore the ecosystem connection of the of the Colorado River to the Gulf of California, all indications are that Mexico would cooperate with the U.S. and share responsibility in maintaining and enhancing the riparian, riverine, and estuarine habitats that provide benefits to both sides of the border.

FWS-1

The action being considered in this DEIS is only about one fourth of the total amount of flow that is being considered for a change in the point of diversion in the Lower Colorado River. The total amount being requested to be diverted has been identified by the Lower Colorado River Multi-Species Conservation Program as up to 1.574 maf. Effects of the action that may be difficult to quantify in this DEIS, may be more evident in subsequent or cumulative reviews of the total diversion. We anticipate that our later reviews of the total diversion would include impacts not identified or mitigated for in this DEIS.

FWS-2

One of the features of the proposed action is the adoption of an Inadvertent Overrun and Payback Policy to administer possible overuse of water that is being managed more closely than before, which includes a forgiveness clause if there is a flood or space-building release. The forgiveness clause is of some concern to us as it may not promote the most effectual use of limited water resources. Because this is a new concept, and the potential impact of this policy can not be determined with certainty, we recommend that the policy be reviewed on a 5-year basis concurrently with the Long Range Operating Criteria.

FWS-3

In recent years, managing natural resources has progressed from sustainable yield and sustainable development to a consideration of ecological sustainability. To completely cover the social and economic implications of water from the Lower Colorado River in your sections on Agriculture Resources and Socioeconomics would be an enormous task, as these implications drive many of the water-based decisions in the basin-wide service area. With planning horizons as long as 75 years, economic impacts should be viewed in the light of sustainable economics. Defining sustainability is often difficult, but one definition we recommend is "Meeting human needs without compromising the health of ecosystems" (Callicott and Mumford 1999)<sup>1</sup>. While sustainable use of resources is not discussed in the DEIS, some of the practices necessary for such a review have been basic features of the way Colorado River water is allocated, principally the Coordinated Long-Range Operation of Colorado River Reservoirs and the predictive hydrology models used by the BR to forecast supply. The DEIS contains other components that would be part of a sustainable resource review such as the identification of important farmland in Agricultural Resources and the various discussions on groundwater recharge throughout the document.

FWS-4

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<sup>1</sup> Callicott, J.B., and K. Mumford. 1999. Ecological sustainability as a conservation concept. *Conservation Biology*, Volume 11(1):32-40.

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Evaluating the resources on sustainable basis would assist the Secretary, Basin States, and Congress in developing sound natural resource policy in decisions regarding the Colorado River. For instance, a basic question that could be asked is what is the value of an acre-foot of water? A first estimate of this was provided by Pitt (2001)<sup>2</sup> comparing water use by State and percent earnings of municipal and industrial use with agriculture use. Other questions might be, What about the recreation value, the aquatic ecosystem maintenance value, or the non-use value such as identified in the Operation of Glen Canyon Dam studies? Or, What is the longevity of irrigated croplands, and are there certain soils that should be maintained as prime farmland and other soils where irrigation should be removed some time in the future before it renders the soils useless and restoration unfeasible?

FWS-4

We recommend that the BR take the lead and develop a workgroup that would make recommendations to the Secretary on how to incorporate sustainable economics into the environmental review process. We would be willing to discuss this in a preliminary meeting with BR and other Federal and State agencies with the final process to include water users and interested environmental community.

Specific Comments

1.2 Colorado River Water Supply and Allocation

FWS-5

Pages 1-8 (lines 36-38). Another item to include here for the importance of the Colorado Basin Project Act of 1968 is that it identifies the Congressional declaration of purpose and policy of “improving conditions for fish and wildlife” as a program purpose for the management of the Colorado River Basins (both Upper and Lower). Including this purpose may assist in understanding recommendations by the Service and other natural resources agencies in regard to operations of the Colorado River.

1.5 Relationship to Other Planned Projects, Programs, and Actions

FWS-6

Page 1-24 (lines 13-18). The description of the Brawley Constructed Wetlands Demonstration Project (here and in 4.2.1 page 4-11) describes some important functions of wetlands (removing silt and other toxic substances) and helps state the reason we believe the Colorado River channel should be managed as a river ecosystem, rather than managed strictly as a conveyance device. Maintaining wetlands and other biological resources of the river by providing the necessary flows is important if they are to continue in their water quality functions.

3.1 Hydrology

Page 3.1-34 (Impacted Colorado River Reaches). Your selection and description of

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<sup>2</sup> Pitt, J. 2001. Can we restore the Colorado River delta? Journal of Arid Environments, Volume 49(1):211-220.

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representative river reaches was helpful in understanding the hydrological effects of the proposed action.

FWS-7

3.2 Biological Resources

Page 3.2-3. Add the brown trout (*Salmo trutta*) and brook trout (*Salvelinus fontinalis*) to the list of non-native fishes introduced into the Colorado River below Lee Ferry.

FWS-8

Page 3.2-4 (line 29). Listing the yellow-billed cuckoo was found to be warranted, but precluded by other higher priority species; its Federal status is now a candidate species.

FWS-9

Page 3.2-4 (line 33-34). Because the Federal listing for the brown pelican as endangered is for the species, removing California and the subspecies name, *californicus*, from the text would be more accurate. (Same for page 3.2-16 (line 25).

FWS-10

Page 3.2-4 (line 41). The Desert tortoise that is federally listed as threatened is the Mohave population which occurs on the northerly and westerly side of the Colorado River. The Sonoran population occurs easterly and southerly of the Colorado River and is not federally listed but is listed by the State of Arizona as a candidate species.

FWS-11

Page 3.2-5 (Wildlife, line 20). The Arizona Game and Fish Department also has their list of *Threatened Native Wildlife in Arizona*, approved by the Arizona Game and Fish Commission in 1988. We have attached a list of the changes to Table F-1 in Appendix F to incorporate the Arizona species.

FWS-12

Page 3.2-7 (lines 14-15). The statement that "... lined sections of the canals are less productive due to lower habitat diversity and higher water velocity" is important and a basic fish and wildlife concern for most major canal lining projects. The principle may also be extended to riprap and channel straightening projects on the mainstem Colorado River.

FWS-13

Page 3.2-16 Fish and Wildlife (lines 1-4). Stating that "sport fishes are more adaptable to changing conditions" as one of the reasons why they would not be adversely impacted by the lower river flows may not convey your meaning here. You may wish to state that some sport fish are generalists and will be able to take advantage of the altered habitat conditions presented by low water of a managed river system. Riverine systems with changing conditions that are closer to a natural hydrograph, including flood flows, have been found to favor native fishes.

FWS-14

Page 3.2-17 (lines 1-3). The DEIS states that mitigation measures developed for federally listed species (Yuma clapper rail and southwestern willow flycatcher) are anticipated to "mitigate for loss of habitat for the State-listed black rail and yellow-billed cuckoo." And "would also compensate for any loss of riparian or marsh habitat." In general, we believe

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that non-listed (Federal and State) riparian and marsh species would use the mitigation measures directed towards the listed species, and based on that, we have not included additional mitigation habitat recommendations for those species. However, the mitigation noted above may not be sufficient to accommodate the more specific requirements of State-listed species. For instance, while both flycatchers and cuckoos select nesting sites in riparian habitats near water, the cuckoo usually selects habitats with taller trees. Black rail habitat would also be anticipated to be different from the larger, Yuma clapper rail. We recommend BR work with the States and FWS to identify mitigation measures that may be necessary for these species.

FWS-15

Page 3.2-19 (lines 15-19). We have not changed our believe that the direct effects of growth within the Metropolitan Water District service area and indirect effects outside of the immediate project area should be considered. This was previously stated in our Biological Opinion and is included on page 10 of Appendix E.

FWS-16

### 3.5 Recreational Resources

Page 3.5-3 (lines 8-9). Please replace the sentence on recreational opportunities with the following: “The four refuges provide opportunities for visitors to enjoy natural values and wildlife oriented recreation while engaging in wildlife observation, nature photography, hiking, fishing, and hunting. Special emphasis is directed towards migratory birds.”

FWS-17

Pages 3.5-2 to -3. The Bureau of Land Management’s role in managing the Parker Strip, Imperial Dam Visitor Area, Betty’s Kitchen, and several wilderness areas on the Arizona side of the Colorado River should be included in this section.

FWS-18

### 3.12 Transboundary Impacts

Pages 3.12-3 (lines 11-18) and 3.12-27 (lines1-2). The DEIS states that the “U.S.-Mexico Water Treaty contains no provisions requiring Mexico to provide water for environmental protection, nor any requirements relating to Mexico’s use of that water.” And that BR had no control once the water reaches the Northern International Boundary. These statements are true, but a more complete representation of the issue would include discussion of Minute 306, a 2000 amendment to the 1944 Water Treaty.

FWS-19

The Minute calls for joint studies to be developed between the two Countries that would include possible approaches to ensure water for ecological purposes and to examine the effects of flows from the Limitrophe section to the delta. Preceding this in the same year was a Joint Declaration between the Secretaries of natural resources for both Countries to improve and conserve the natural resources of the delta. And, in 1997, a “Letter of Intent” was signed by both Secretaries that began cooperation between the Colorado River Delta Biosphere Reserve and Imperial National Wildlife Refuge.

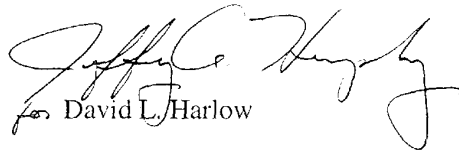
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The point here is that Mexico has placed considerable emphasis in the delta, including the 1993 establishment of the 2.3-million acre Biosphere Reserve with a core area of over 400,000 acres in the delta. Cooperation with Mexico on wildlife and natural resources even predates the water treaty, with the 1936 U.S.-Mexico Convention for the Protection of Migratory Birds and Game Mammals and the 1941 Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere. We believe that Mexico would be very supportive of water for environmental purposes that would flow through the Colorado River to the delta and estuaries of the Gulf of California.

FWS-19

We appreciate the opportunity to review and comment on this DEIS. If we can be of further assistance, please contact Frank Baucom (x 204) or Don Metz (x 217).



for David L. Harlow

Attachment (Additions to Table F-1.)

cc: Regional Director, Fish and Wildlife Service, Albuquerque, NM (ARD-ES)  
Director, Arizona Game and Fish Department, Phoenix, AZ  
Director, California Department of Fish and Game, Sacramento, CA  
Field Supervisor, Carlsbad Fish and Wildlife Office, Carlsbad, CA  
Lower Colorado River Coordinator, Fish and Wildlife Service, Phoenix, AZ

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Additions to Table F-1. Sensitive Wildlife Species Occurring within the Project Area

From Arizona Game and Fish Department (1988) *Threatened Native Wildlife in Arizona*  
(See status codes below)

Lowland Leopard Frog	AC		
Northern Leopard Frog	AC		
Colorado Fringed-toed Lizard	AC		
Desert Tortoise	AC	(note: only Mohave Population is FT)	
Flat-tailed Horned Lizard	AT		
Mohave Fringed-tailed Lizard	AC	<i>Uma scoparia</i>	Loose sand
Bonytail Chub		AE	
Desert Pupfish	AE		
Colorado Pikeminnow	AE		
Razorback Sucker	AE		
Bald Eagle	AE		
California Black Rail	AE		
Clark's Grebe	AC	<i>Aechmophorus clarki</i>	Marsh-bordered channels
Least Bittern	AC	<i>Ixobrychus exilis</i>	Dense cattails
Osprey	AT		
Southwestern Willow Flycatcher	AE		
Snowy Egret	AT	<i>Egretta thule</i>	Breeding colonies in a few sites below Bullhead City, AZ
Yellow-billed Cuckoo	AT	(note: Federal status is FC)	
Yuma Clapper Rail	AT		
California Leaf-nosed Bat	AC		
Jaguar	AE		
Spotted Bat	AC		
Yuma Puma	AE		

Status Codes

AE = Arizona Endangered

AT = Arizona Threatened

AC = Arizona Species of Concern

FT = Federal Threatened

FC = Federal Candidate

Responses

- FWS-1 Thank you.
- FWS-2 Your comment is noted.
- FWS-3 The proposed IOP policy has been revised to include a five-year review.
- FWS-4 Thank you for your comments regarding ecological sustainability. The Callicott and Mumford article ("Ecological Sustainability as a Conservation Concept," Conservation Biology, Pages 32-40, Volume 11, No. 1, 1997) mentioned in your comment offers a perspective for evaluating potential projects or actions which appears to be very balanced. Callicott and Mumford are realistic regarding society's desire to consume natural resources (and consequently diminish biodiversity and the integrity of ecosystems) for economic gain. Coupling neoclassical economic analysis of proposed projects including Federal actions with an evaluation of a project/action's ecological sustainability (as defined by Callicott and Mumford) may offer an alternative that serves as a bridge between resourcism and preservationism. Ecological sustainability is an interesting concept, which merits further discussion and consideration. Thank you for bringing this concept to our attention.
- FWS-5 The text has been revised to address your comment.
- FWS-6 Your comment is noted.
- FWS-7 Thank you.
- FWS-8 Table 3.2-3 has been revised to include brown trout and brook trout on the list of non-native species introduced into the Colorado River below Lee Ferry.
- FWS-9 The text has been revised to reflect that the Yellow-billed Cuckoo is a candidate species.
- FWS-10 The subspecific scientific name has been deleted to reflect that all brown pelicans are listed as endangered.
- FWS-11 The text has been revised to reflect that the desert tortoise is listed as threatened only for the Mojave population and that the Sonoran population is listed as a candidate by the Arizona Game and Fish Department.
- FWS-12 Table F-1 has been revised to include the threatened wildlife as approved by the Arizona Game and Fish Department.
- FWS-13 Thank you for the comment. Since installation of riprap and channel straightening is not part of the proposed action, no change in the EIS is necessary.
- FWS-14 Thank you for the information. We agree that your wording better reflects the intent of the analysis, and the text has been modified accordingly.
- FWS-15 It is anticipated that the overall mitigation measures associated with the BO will substantially lessen any potential impacts to state listed species. For example, the 44 acres of wetlands provided would include potential habitat for both



species, and any restoration of riparian habitat would also include new cottonwood willow habitat that would serve as habitat for Yellow-billed Cuckoo.

- FWS-16 As discussed in section 3.7.2, it is not expected that any indirect effects will occur within the MWD service area or elsewhere since the quantity of water diverted into the Colorado River Aqueduct will not increase over historic levels. The water diverted to the CVWD will ameliorate the existing groundwater overdraft situation in the Coachella Valley. See also responses to IC-9 and DW-9.
- FWS-17 The text has been revised to address your comment.
- FWS-18 This information has been added to the text.
- FWS-19 The text has been revised to include a discussion of Minute No. 306 of the United States-Mexico Treaty of 1944.



IN REPLY REFER TO

## United States Department of the Interior

NATIONAL PARK SERVICE  
Water Resources Division  
1201 Oak Ridge Drive, Suite 250  
Fort Collins, Colorado 80525-5596

February 19, 2002

L54(2380)  
General

Mr. Bruce Ellis  
Environmental Program Manager  
Phoenix Area Office  
Bureau of Reclamation  
PO Box 81169  
Phoenix, AZ 85069-1169

Dear Mr. Ellis,

The National Park Service (NPS) appreciates the opportunity to comment on the Draft Environmental Impact Statement for the Implementation Agreement, Inadvertent Overrun and Payback Policy, and Related Federal Actions (DEIS). The actions evaluated in the DEIS are designed to facilitate implementation of the California "4.4 Plan." The 4.4 Plan, in turn, is central to successful implementation of the Interim Surplus Criteria Record of Decision.

NPS strongly advocated development and implementation of the Interim Surplus Criteria, and commends the Bureau of Reclamation and the State of California for developing a workable Implementation Agreement and Inadvertent Overrun and Payback Policy. As you know, NPS interests throughout the Interim Surplus Criteria Process centered largely on the effects of surplus water deliveries on reservoir levels in Lakes Powell and Mead, and on the frequency of Beach Habitat Building Flows (BHBF's) downstream from Glen Canyon Dam in Glen and Grand Canyons.

The inadvertent overrun and payback policy in the DEIS Preferred Alternative reinforces, somewhat, NPS concerns over reservoir levels and instream flows. However, under the 3-year and 1-year payback schedules, both the average cumulative effect on reservoir storage and the maximum one-year effect are very small and we lack scientific information that would suggest that these very small additional effects on reservoir storage are in any way significant to NPS natural, cultural or recreational resource interests. That being said, we think it is critical that the effects of lake level changes on park resources be monitored and that adverse resource responses be addressed through the Glen Canyon Dam Adaptive Management Program and in the development of the Annual Operating Plan. Related to this, we want to reiterate NPS's strong interest in developing and implementing the experimental flow program called for in the Interim Surplus Criteria Record of Decision (ISC-ROD). The experimental flow program is

NPS-1



intended to help the Adaptive Management Program better understand how to use BHBF's and other operations strategies to mitigate the effects of surplus water deliveries (including inadvertent overruns) and reservoir operations on flow-dependent resources in Glen and Grand Canyons.

↑ NPS-1

In summary, NPS supports the preferred alternative as presented in the DEIS as part of the overall implementation of the Interim Surplus Criteria and California 4.4 Plan. NPS also supports enhanced monitoring of the effects of reservoir storage changes on park resources and implementing the experimental flow program as called for in the ISC-ROD. Thank you for the opportunity to comment on the DEIS. If you have any questions, please feel free to call me at 970-225-3503.

Sincerely,



William L. Jackson  
Chief, Water Operations Branch

cc:

DEVA - Fisk  
GLCA - Henderson  
GRCA - Cross  
LAME - Burke, Turner  
1211 - Reber, Ladd  
2380 - Kimball, Flora, Pettee, Kliwinski  
8000 - Schmierer, Kolipinski

Responses

NPS-1 Pursuant to the Interim Surplus Guidelines Record of Decision, Reclamation is working with the Glen Canyon Dam Adaptive Management Program (AMP) to develop an experimental flow program. This experimental flow program will consider both the potential for reduced frequency of Beach Habitat Building Flows (BHBFs) resulting from the Interim Surplus Guidelines and for experimental flows to be conducted independent of the hydrologic triggering criteria. Progress is being made. On April 24, 2002, the Adaptive Management Work Group passed a motion recommending that a 2-year experimental flow test be made from Glen Canyon Dam beginning in water year 2003. Reclamation, NPS, and USGS have jointly prepared an EA to document the impacts of these proposed experimental flows. The proposed experimental flows could be implemented in 2003 depending on the outcome of the NEPA process and ESA consultation.




*Comments and Responses*

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- **Page 2-59, Table 2.5-1**, upper right text on “hydrology,” insert “The inadvertent overrun and payback policy does not apply to Mexico.” | IBWC-7
- **Page 3.12-1, line 36**, insert “(4) and Morelos Dam gate leakage.” | IBWC-8
- **Page 3.12-21, line 9**, end of sentence, insert “The inadvertent overrun and payback policy does not apply to Mexico.” | IBWC-9
- **Page 10-2, line 15**, insert “United States Section, International Boundary and Water Commission (USIBWC), Headquarters, El Paso, Texas” | IBWC-10
- **Page 10-2, line 16**, insert “United States Section, USIBWC field office, Yuma, Arizona” | IBWC-11
- **Page 10-7, line 20**, delete “IBWC” and insert “USIBWC.” | IBWC-12
- **Appendix C, page 7, bottom paragraph, line 4**, delete “Border” and insert “Boundary.” | IBWC-13
- **Appendix G, page 3.2-51, paragraph 3, line 1**, change to read “...United States-Mexico Water Treaty of 1944...” | IBWC-14

If you have any questions, or require additional information, please do not hesitate to call Mr. Steve Fox at (915) 832-4736.

Sincerely,

  
Sylvia A. Waggoner  
Division Engineer  
Environmental Management Division

Responses

- IBWC-1      You are correct. The proposed IOP policy has been revised to clarify that it does not apply to Mexico.
- IBWC-2      The text has been revised to address your comment.
- IBWC-3      The text has been revised to address your comment.
- IBWC-4      The text has been revised to address your comment.
- IBWC-5      The text has been revised to address your comment.
- IBWC-6      The text has been revised to address your comment.
- IBWC-7      The text has been revised to address your comment.
- IBWC-8      The text has been revised to address your comment.
- IBWC-9      The text has been revised to address your comment.
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- IBWC-12     The text has been revised to address your comment.
- IBWC-13     The text has been revised to address your comment.
- IBWC-14     The text has been revised to address your comment.

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# TRIBAL GOVERNMENTS

**SPARKS, TEHAN & RYLEY, P. C.**

Joe P. Sparks  
John H. Ryley  
Robyn L. Kline  
Susan B. Montgomery

Attorneys  
7503 First Street  
Scottsdale, Arizona 85251-4573  
(480) 949-1339  
FAX (480) 949-7587

March 26, 2002

*Via Facsimile (602) 216-4006*

Mr. Bruce Ellis  
Environmental Program Manager  
Bureau of Reclamation, Phoenix Area Office  
P.O. Box 81169  
Phoenix, Arizona 85021

**Re: *Comment to Draft EIS for the Implementation Agreement, Inadvertant  
Overrun and Payback Policy and Related Federal Actions, Colorado River in  
the Lower Basin***

Dear Mr. Ellis :

This Firm represents the San Carlos Apache Tribe, the Yavapai-Apache Nation and the Tonto Apache Tribe, all Indian Tribes located in the State of Arizona and all beneficiaries of Central Arizona Project ("CAP") Waters.

Our Firm has reviewed the Draft EIS for the Implementation Agreement, Inadvertant Overrun and Payback Policy and Related Federal Actions, Colorado River in the Lower Basin. The following comments are made on behalf of our clients.

Effect on Indian Trust Assets

On page 3.10-5 of the Draft EIS, the comment is made that "[t]here would be no significant adverse impact to ITAs from execution of the IA. Hunting and fishing rights, tribal lands and tribal water rights would not be impacted. The water transfers would impact only users with lower priority water rights..."

We believe this comment to be incorrect. Our clients all have significant CAP water resources which have been contracted with the federal government. In addition, the San Carlos Apache Tribe has rights to the CAP project which were obtained as a result of the 1992 San Carlos Apache Tribe Water Rights Settlement Act. This negotiated settlement resolved a portion of the water rights claims of the San Carlos Apache Tribe. Thus, this right to CAP water is of vital importance to the Tribe and is a trust asset of the Tribe. Because the CAP has the lowest priority on the Colorado River in times of shortage, any change to the run of the River and points of diversion jeopardizes the long term stability of the CAP Project as a continual source of water for the Tribes. Mitigation measures should be adopted to eliminate

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**SPARKS, TEHAN & RYLEY, P. C.**

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any further jeopardy of the CAP waters to Tribes in the Draft EIS. Otherwise, the Bureau of Reclamation will be in violation of its trust duty to the Tribes. Without long term stability in the water resources of the CAP, the Tribes will be unable to develop on a scale with that of higher priority users and surrounding communities with already substantial resources to acquire further rights to water. Any activity which will possibly induce a shortage on the River at Lake Mead, thereby reducing the amount of water available to the CAP, should be carefully evaluated and mitigated to protect the status quo of the CAP Project for Tribes.

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AT-1

Detriment to Tribal Power Usage and Rates

The Draft EIS is correct when it states that the Bureau of Indian Affairs (BIA) has a duty to supply power to those Tribes that cannot acquire energy themselves. Currently the San Carlos Irrigation Project ("SCIP"), a division of the BIA, supplies approximately 76% of the total electrical load to the San Carlos Apache Reservation. SCIP purchases preference power from the Western Area Power Authority ("Western"), which is essentially the hydroelectric power generated on the Colorado River system. SCIP then provides this power to its consumers, including the San Carlos Apache Tribe. With reduction in the generation of hydroelectric power as contemplated in the Draft EIS, SCIP will be required to purchase more power on the open market which jeopardizes the stability of the rates charged to the San Carlos Apache Reservation consumers.

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AT-2

SCIP also is charged with the duty of supplying electricity to the San Carlos Apache Tribe for school, agency, and irrigation purposes pursuant to 70 Stat. 211 (1928) at a rate of 2 mills per kilowatt-hour. If SCIP is forced to procure electricity at higher than government preference rates, SCIP will be in jeopardy of being a losing government agency with respect to income and its ability to meet its trust obligations to the San Carlos Apache Tribe.

The Draft EIS also indicates that with a reduction of hydroelectric power, power provided to consumers through Western will be reduced. Recently, several Tribes of Arizona, including our clients have requested allocations of preference power from Western for the 2004 Resource Allocation Pool. Western was unable to provide all the requested power to the Tribes and was only able to meet approximately 65% of the Tribe's demands for preference power. The Tribes have never before been offered federal power at preferential rates. Western is allocating this preference power in an attempt to meet the trust responsibility of the United States towards the Tribes. With a reduction in the production of hydroelectric power, the Tribes will be impacted through a further reduction in their preference power allocations, which already are inadequate to meet the needs of the Tribes. Mitigation measures must be adopted which recover the value of the preference power for the Tribes of Arizona. Otherwise, the Tribes will remain on an unequal footing with those current customers of Western that receive enormous amounts of power at preferential rates.

On page 3 3-15, the Draft EIS comments that the CAP Project would be impacted by reduced energy production because of reduced revenues from power sales. This will in turn increase the price of CAP water delivery to Arizona CAP consumers, including Tribes. This rate increase jeopardizes the

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AT-3  
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**SPARKS, TEHAN & RYLEY, P. C.**

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continuing viability of Tribal projects and their respective outcomes. Any measure implemented which is developed to assist California in meeting its legal obligation to reduce its usage of the Colorado River should not have negative impacts to be born by other states or Tribes. The financial harms caused to the CAP by the Draft EIS should be mitigated in full. Otherwise, Arizona Tribes with CAP allocations are being unduly negatively impacted.

AT-3

Inadvertant Overrun

The Draft EIS does not explain fully the meaning of "inadvertant overrun". The Tribes object to the term in that it implies that those taking Colorado River Water are relieved of their obligations on the River system. The term should be merely deemed "overrun". This term contains all the necessary language without the implication that legal duties to the other users of the Colorado River are dismissed.

AT-4

Additionally, those charged with overrun should not be forgiven of their duty to payback the amount taken in excess of that apportioned for any reason, even in the event of a flood control release or space building release. The River is owed a payback for the water and consequences should attach to taking water in excess of that apportioned.

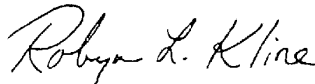
AT-5

Our clients appreciate the opportunity to comment on the Draft EIS and hope that these comments serve to inform the Bureau of Reclamation of some of the impacts to the Tribes with Cap water rights.

In the future, please place the Firm on your mailing list regarding this matter. Thank you.

Yours Truly,

**SPARKS, TEHAN & RYLEY, P.C.**



Robyn L. Kline

Responses

- AT-1            The primary purpose of the draft IA is to assist the State of California in reducing its Colorado River water demand through conservation actions, so that the State's water diverters may successfully operate their water facilities within their normal year allocations. Any reduction in California Colorado River demand inures to the benefit of CAP water users.
- In the FEIS completed in December 2000 for the Interim Surplus Guidelines, Reclamation analyzed the potential effects of shortages to Indian tribes under the CAP priority system. We acknowledge that shortage criteria have not yet been established for the delivery of Colorado River water in the Lower Basin. However, as depicted in Table 3.1-7 of the EIS, Arizona (including CAP water users) is basically unaffected by the IA. As shown on Table 3.1-6, implementation of the IOP, in addition to the IA, does not significantly decrease the probability of exceeding key Lake Mead elevations. The potential elevation change from combined IOP and IA effects is anticipated to be within the historic fluctuation and the fluctuation that would be seen under No Action.
- AT-2            The EIS states that the Parker Davis-Project (PD-P) average percentage of energy foregone due to the IA over the 75-year period is estimated to be less than 1 percent and a maximum of 1.3 percent. Should PD-P energy be affected, all preference customers would still receive their full allocation of energy as stated in their Electric Service Contracts. Additional energy may have to be purchased by Western, and the costs are taken into account during Western's rate process. At an average impact of less than 1 percent, the effect should be minor for Western's PD-P customers.
- For the current contract period, SCIP may only have to purchase additional energy on the open market due to reduced excess energy. SCIP's preference allocation will not be reduced due to the IA. Excess energy is a benefit to the PD-P customers, but is not an obligation of the United States.
- The IA would not reduce the Tribes or any PD-P contractor's current preference power allocations. There is a minor possibility of impact to the post-2008 PD-P marketing, but this would be determined during the next round of contract negotiations.
- AT-3            The CAP surcharge revenues referred to in the EIS are revenues that are applied to the repayment of the project, and should have no impact on the rates charged to CAP customers for the fixed or variable OM&R component of the project.
- AT-4            See response to DW-2b.
- AT-5            See response to DW-26.



future inflows, projecting the future state of the Colorado River system is also highly uncertain.” (dEIS, Appendix G, p2-3)

While CRIT recognizes it will prove challenging to accurately measure the impacts of future changes to the Colorado River system, CRIT also believes these changes should not be considered in isolation. This dEIS attempts to quantify the impacts of the transfer of 388 kaf under the proposed Implementation Agreement (IA). However, at maximum payback, the Inadvertent Overrun and Payback Policy (IOP) could result in a further loss of as many as 176 kaf below Parker Dam. (dEIS, Chapter 3, p3.3-16) The dEIS should have modeled the cumulative effects of both the transfer of 388 kaf under the IA and the maximum payback amount of 176 kaf under the IOP. The final EIS should model the cumulative effects of the IA and the IOP. CRIT-1

It also should be noted that the Bureau of Reclamation predicts additional changes in point of diversion of 1.174 maf. (dEIS, Appendix D, p. 39). While these additional changes exceed the scope of this dEIS, they also need to be taken into consideration during Secretarial review of the IA. CRIT-2

## 2. Additional Data Required

The final EIS should incorporate additional data in order to accurately project the impacts of the IA and IOP. The use of faulty or doubtful assumptions may also significantly bias projections. Certain assumptions contained in the dEIS should be reexamined.

The biological assessments are based upon 1996 river conditions. Data from a single year may not be representative of future river conditions. Projections should be based on a range of river conditions including the extremes. Extreme conditions are most likely to adversely affect biological conditions. Possible adverse effects include damage to revegetation projects and riparian/marsh vegetation, and fish kills in backwaters. The modeling of extreme conditions would more accurately reflect the adverse effects of the proposed IA and IOP. CRIT-3

The analysis of biological impacts in the dEIS relies on a median reduction in water surface elevation below Headgate Rock Dam of 4.4 inches. (dEIS, Executive Summary, ES-10) The use of a median to project biological impacts is problematic, as it does not address the specific issues of amount, duration, frequency, and timing of extreme low-flow conditions. The final EIS should contain an analysis of daily flows, water surface elevations, and elevation-duration-frequency analyses for the areas between Parker and Imperial Dams. CRIT-4

Current groundwater conditions should be accurately mapped in order to accurately assess the impact of the IA and IOP on groundwater. This information is needed in order to more accurately assess the biological impacts of a drop in groundwater elevation. Accurate groundwater maps and data regarding changes in groundwater elevation will allow for more specific projections of the acreage and location of impacted cottonwood/willow land cover. Mitigation could then be more effectively implemented. CRIT-5

### **B. Impacts on Hydropower**

CRIT disagrees with the Bureau of Reclamations assessment that the Dam is not a trust asset. Both Headgate Rock Dam and the power plant were built to benefit the Colorado River Indian Tribes. Although the Bureau of Reclamation constructed the diversion dam, operation of Headgate Rock Dam was transferred to the BIA upon its completion. Funding for the power plant was authorized under the Snyder Act. The sole purpose of the Snyder Act is to benefit CRIT-6

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Indians. The Dam diverts water into the Colorado River Indian Reservation irrigation system and provides the Reservation with electrical power. Revenues from the sale of power generated at Headgate are placed into a trust account and power surplus has only been sold to other Indian Tribes.

CRIT-6

The water transfers considered under the IA and the reduction in flows associated with payback years under the IOP, will reduce the amount of power that can be generated at Headgate Rock Dam. The dEIS assumes that for every acre-foot of water withdrawn from the flow at the Headgate Rock Dam, electric power generation will be reduced by 12.97 kilowatt hours. This assumption is based on Bureau of Reclamation data. According to these calculations, at the height of the transfer Headgate Rock Dam will lose approximately 5,032,360 kilowatt-hours annually (12.97 x 388,000). At maximum projected payback years under the IOP, the plant could lose an additional 2,282,720 kilowatt-hours (12.97 x 176,000).

CRIT-7

CRIT is examining the Bureau of Reclamation data and assumptions in detail but agree a significant reduction in electric generation will occur if the IA and IOP are implemented. If Headgate Rock Dam can produce an average of about 86.5 million kilowatt-hours as was intended when the plant was built, a possible loss of 7.3 million kilowatt-hours means an 8.4 percent reduction in the plant's expected output of electricity.

The dEIS recognizes the difficulty of predicting market values of electricity and thus attempted to state the value of this lost electric power in a range from 4 cents per kilowatt-hour to 6.9 cents per kilowatt-hour. This means that if the IA is implemented, economic value of the lost power generation capacity would be worth between \$200,000 and \$347,000 per year. A maximum payback scenario under the proposed IOP could result in an additional economic loss of between \$91,000 and \$157,000 dollars.

It is also important to appraise the impact of reduced generation in terms of the loss of the electric energy resource, especially at the time of the summer peak of electricity demand. The dEIS considers neither the effect of the summer peak demand nor how summer peak demand might be valued in dollars. The final EIS should incorporate such an analysis.

If the transfers underlying the IA and the IOP are implemented, CRIT will lose valuable hydroelectric resources and will be adversely impacted. CRIT believes it was given the right to make full use of river flows as of the time the power plant was authorized. Under the proposed IA and IOP River conditions will be changed solely to meet the needs of California. The Bureau of Reclamation is incorrect in its assessment that compensation for the loss of power generation capacity would set a precedent. The 1946 San Diego Diversion Contract between the Bureau of Reclamation and the Metropolitan Water District of Southern California (MWD), obligated MWD to deliver to the United States at Parker Power Plant electrical energy, "equal in amount to the energy which the water diverted from the Colorado River for delivery to the San Diego Aqueduct would have produced if such water had passed through the Parker Power Plant." A copy of this contract is enclosed. Likewise, CRIT should be compensated for any loss in power generation at Headgate Rock Dam.

CRIT-8

**C. Long-Term Monitoring**

There is a need for long-term monitoring of the biological impacts of the IA and IOP. The Colorado River is a complex and unpredictable system. This makes it extremely difficult and perhaps impossible to identify all factors that may affect projections of impacts to biological resources. Long-term biological monitoring is necessary in order to properly assess and mitigate

CRIT-9



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unforeseen impacts. Regular biological monitoring for the life of the Quantification Settlement Agreement should be required. In order to conduct regular biological monitoring a baseline must be established prior to the implementation of the Quantification Settlement Agreement. CRIT-9

**D. Mitigation**

The transfers underlying the IA and the IOP will impact CRIT's reach of the Colorado River. In order to best preserve the ecological integrity of the affected area, habitat lost due to covered actions should be replaced within the same river reach where the loss occurred. Over the course of the last decade, CRIT has made substantial investments and developed significant expertise in habitat restoration. In addition, CRIT has suitable lands that are potentially available for mitigation purposes. CRIT-10

**E. Government-to-Government Consultation**

The Bureau of Reclamation has yet to hold government-to-government consultation on the dEIS with CRIT. CRIT would appreciate a consultation session with the Bureau of Reclamation prior to the close of the comment period on the Transfer EIR/EIS. Requests for government-to-government consultation should be directed to the Tribal Council. CRIT-11

COLORADO RIVER INDIAN TRIBES



Daniel Eddy, Jr.  
Tribal Council Chairman

Enclosure

COLORADO NATIVE AMERICAN TRIBES  
OFFICE OF THE ATTORNEY GENERAL  
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Appendix 1205

RELATED PROJECTS: PARKER DAM  
"SAN DIEGO DIVERSION" CONTRACT  
OCTOBER 1, 1946

UNITED STATES DEPARTMENT OF THE INTERIOR

BUREAU OF RECLAMATION

PARKER DAM PROJECT

ARIZONA-CALIFORNIA

SUPPLEMENTAL CONTRACT PROVIDING FOR MODIFICATION OF POWER  
PRIVILEGE UNDER PARKER DAM CONTRACT (ILR-712)

1. THIS SUPPLEMENTAL CONTRACT, made this 1st day of October, nineteen hundred forty-six, pursuant to the Act of Congress approved June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, all of which acts are commonly known and referred to as the Reclamation Law; and particularly pursuant to the Act of Congress approved August 30, 1935 (49 Stat. 1028, 1039), entitled, "An Act authorizing the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes", and authority vested in the Secretary thereunder by the President; and the Metropolitan Water District Act of the Legislature of the State of California (Stats. 1927, Ch. 429, as amended), between THE UNITED STATES OF AMERICA, hereinafter referred to as the United States, acting for this purpose by Warner W. Gardner, Acting Secretary of the Interior, hereinafter styled the Secretary, and THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, a public corporation organized and existing under and by virtue of the laws of the State of California, hereinafter referred to as the District;

Witnesseth that:

EXPLANATORY RECITALS

2. Whereas the United States and the District, under date of February 10, 1933, entered into a "Cooperative Contract for Construction and Operation of Parker Dam" (Symbol and Number Ilr-712), which contract has been supplemented and amended by contracts dated September 29, 1936, April 7, 1939, and July 10, 1942, and which

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contract, as so supplemented and amended, is herein referred to as the "Parker Dam Contract"; and

3. Whereas under the said Parker Dam Contract, generating units at the Parker Power Plant numbered 1, 2, 3, and 4 have been constructed and are being operated and maintained for the use and benefit of the United States, and, until the use and benefit of Units No. 3 and No. 4 shall be transferred to the District as hereinafter recited, the United States has the right to the use, for generation of electrical energy, of all water passing Parker Dam; and

4. Whereas after ten years from the date when electrical energy was first delivered from Parker Power Plant over the Parker-Phoenix transmission line of the United States (which time will expire December 13, 1952), and upon certain notice given as provided in said Parker Dam Contract, the District has the right to have the exclusive use and benefit of generating Units No. 3 and No. 4 transferred to the District, and thereafter the United States and the District will be entitled to power privileges as in said Parker Dam Contract provided; and

5. Whereas the United States and The City of San Diego are parties to a contract dated February 15, 1933, wherein the United States agrees to deliver to the City at a point immediately above Imperial Dam, for its own use, and uses in the County of San Diego, up to 112,000 acre-feet of water per annum from the Colorado River, subject to the availability thereof for use in California under the Colorado River Compact and the Boulder Canyon Project Act, and in accordance with a schedule of priorities set out in said contract; and

6. Whereas it is now proposed to submit to the electors of the San Diego County Water Authority the question of annexation of the corporate area of the San Diego County Water Authority to the corporate area of the District, and to merge the rights held by the City of San Diego with certain contract rights to water of the Colorado River held by the District, and to arrange for the delivery of water to the San Diego County Water Authority through the aqueduct of the District, diversion thereof to be made from the Colorado River at a point immediately above Parker Dam; and

7. Whereas in the absence of this contract, the diversion of water contracted for by the City of San Diego at a point above Parker Dam would deprive the United States of the use of certain falling water at Parker Power Plant; and

8. Whereas it is the desire of the parties hereto to fully protect and keep whole the right of the United States to electrical energy and the use of falling water at Parker Power Plant, both before and after the use and benefit of Units No. 3 and No. 4 shall be transferred to the District;

9. Now, therefore, in consideration of the consent of the United States to change in point of delivery of water contracted for by the

City of San Diego in the contract of February 15, 1933, from a point on the Colorado River immediately above Imperial Dam to the District's intake at a point on the Colorado River immediately above Parker Dam, and in consideration of the covenants herein contained, the parties hereto agree as follows, to wit:

DELIVERY OF SUBSTITUTE ENERGY BY DISTRICT

10. (a) During the period prior to the time when the use and benefit of Units No. 3 and No. 4 at Parker Power Plant shall be transferred to the District, the District will deliver to the United States at Parker Power Plant electrical energy equal in amount to the energy which the water diverted from the Colorado River for delivery to the San Diego Aqueduct would have produced if such water had passed through the Parker Power Plant. The amount of such energy to be furnished to the United States by the District is hereby agreed upon as sixty (60) kilowatt-hours for each acre-foot of water delivered to the San Diego Aqueduct, as measured near the point of connection between the San Diego Aqueduct and the District's Colorado River Aqueduct immediately west of the West Portal of the San Jacinto tunnel. The said amount of sixty (60) kilowatt-hours per acre-foot has been determined with proper allowance for losses between the point of diversion and the point of measurement, and with proper allowance for the spillage of water at Parker Dam to be expected during the above-mentioned period. Such energy shall be in the form of 60-cycle, alternating current at 69-kv or such other voltage as may be agreed upon by the parties hereto. The rate of delivery of such energy shall not exceed 5 kilowatts for each second foot of capacity of the San Diego Aqueduct as it may from time to time exist, except as the District may consent to deliveries in excess of the rate so determined. Subject to such limitations energy represented by the water delivered to the San Diego Aqueduct during any calendar month shall be delivered, as requested by the United States, not later than the last day of the next succeeding calendar month. If, through no fault or failure of the District, any part of such energy is not so delivered, the District shall be under no obligation to complete the delivery at a later time.

(b) In the event that the District, for any reason, shall fail, neglect, or refuse to supply energy to the United States as herein provided, then, and in such event, the District shall compensate the United States at the rate of 5 mills per kilowatt-hour for such energy due hereunder but not delivered. Bills for any such deficiency shall be rendered to the District by the United States on or before the 10th day of the calendar month for any amount accruing hereunder during the preceding calendar month, and payment therefor by the District

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APPENDIX 1205

shall be made on or before the 25th day of the month during which such bill shall be rendered.

In the event that payment shall not be made when due, an interest charge of 1% of the amount unpaid shall be added thereto, and thereafter an additional interest charge of 1% of the principal sum unpaid shall be added on the 25th day of each succeeding calendar month, until the amount due, including such interest, is paid in full.

(c) The amount of water delivered to the San Diego Aqueduct in each calendar month or fractional part thereof shall be determined by the District by means of adequate metering equipment, which equipment shall be subject to inspection at any time and from time to time by a duly authorized representative of the United States. The United States shall be given notice of such determination of the quantity of water so delivered not later than the fourth day of the following calendar month.

(d) Energy delivered hereunder shall be measured by suitable meters furnished and maintained by the United States, subject to inspection at any time and from time to time by the District. The United States shall determine the quantity of energy delivered hereunder for each calendar month or fractional part thereof, and will give notice of such determination to the District and such other interested party or parties as may be designated for that purpose by the District, not later than the fourth day of the following calendar month.

#### MODIFICATION OF POWER PRIVILEGE

11. (a) After the use and benefit of Units No. 3 and No. 4 shall be transferred to the District, falling water equal to 50.75 percent of the concurrent actual flow in the San Diego Aqueduct, measured near the said point of connection, as provided in Article 10 (c) hereof, shall be added to the one-half of the power privilege vested in the United States, as stated in Article 15, II (b), of the Parker Dam Contract, and considered in all respects as part of the power privilege of the United States at Parker Dam, and an equal amount shall be deducted from the one-half of the power privilege vested in the District at Parker Dam as therein fixed.

(b) During any period when the additional right of the United States to use such portion of the power privilege, as may not be used by the District for the time being, as provided in Article 15, II (b), of the Parker Dam Contract, is impaired by the fact that water for the San Diego Aqueduct is being diverted above Parker Dam, the United States shall have the right to withdraw from Unit No. 3 and/or No. 4 and pass through Units No. 1 and No. 2 for the benefit of the United States, an amount of water sufficient in quantity to restore the said additional right of the United States to its original value.

PARKER DAM—"SAN DIEGO DIVERSION" CONTRACT A721

In the event that the water which can be currently made available to the United States, as herein provided, is insufficient to restore said additional right to its original value, the United States shall have the right, at a later time, to withdraw from Unit No. 3 and/or No. 4 and pass through Units No. 1 and No. 2 for the benefit of the United States, an amount of water equal to such deficiency in acre-feet, provided that such withdrawal shall be a rate not greater than the then constructed capacity of the San Diego Aqueduct, it being the intent hereof that neither the primary power privilege of the United States under the Parker Dam Contract, nor its right to use the power privilege unused by the District shall be reduced in value or utility by the diversion above Parker Dam of water for the San Diego Aqueduct.

#### EFFECT LIMITED TO 112,000 ACRE-FEET

12. The operation of Articles 10 and 11 hereof, and the obligation arising thereunder, shall be limited to the effect of the change of point of diversion of 112,000 acre-feet of water per annum from a point on the Colorado River immediately above Imperial Dam to the District's intake at a point on the Colorado River immediately above Parker Dam.

#### CONTRACT EFFECTIVE UPON ANNEXATION

13. This contract shall become effective if and when the corporate area of the San Diego County Water Authority shall be annexed to and become a part of the corporate area of the District, and the point of diversion of Colorado River water for the San Diego Aqueduct shall be changed as hereinbefore recited, and not otherwise. In the event that such annexation shall not have been accomplished prior to January 1, 1947, this contract shall be void and of no further force or effect.

#### CONTRACT CONTINGENT UPON APPROPRIATIONS

14. This contract is subject to appropriations being made by Congress from time to time of moneys sufficient to make all payments and to provide for the doing and performance of all things on the part of the United States to be done and performed under the terms hereof. No liability shall accrue against the United States, its officers, agents or employees, by reason of sufficient moneys not being so appropriated.

#### OFFICIALS NOT TO BENEFIT

15. No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit that may arise herefrom, but this restriction shall not be construed to extend to this contract if made with a corporation or company for its general benefit.

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APPENDIX 1205

SUBJECT TO COLORADO RIVER COMPACT

16. This contract is made upon the express condition, and with the express understanding, that all rights hereunder shall be subject to and controlled by, the Colorado River Compact, being the Compact signed at Santa Fe, New Mexico, November 24, 1922, which Compact was approved in Section 13 (a) of the Boulder Canyon Project Act.

NOTICES

17. (a) Any notice, demand or request required or authorized by this contract to be given or made to or upon the United States shall be delivered, or mailed postage prepaid, to the Regional Director, United States Bureau of Reclamation, Boulder City, Nevada.

(b) Any notice, demand or request required or authorized by this contract to be given or made to or upon the District shall be delivered, or mailed postage prepaid, to the General Manager and Chief Engineer of The Metropolitan Water District of Southern California, Los Angeles 13, California.

(c) The designation of any person specified in this article or in any such request for notice, or the address of any such person, may be changed at any time by notice given in the same manner as provided in this article for other notices.

SUPPLEMENTAL TO PARKER DAM CONTRACT

18. This contract shall be deemed to be a supplement to the Parker Dam Contract referred to in the recitals hereof, and in all particulars not expressly modified hereby, the said Parker Dam Contract shall remain in full force and effect.

In witness whereof, the parties hereto have caused this supplemental contract to be executed the day and year first above written.

THE UNITED STATES OF AMERICA,  
By WARNER W. GARDNER,  
*Acting Secretary of the Interior.*

THE METROPOLITAN WATER DISTRICT  
OF SOUTHERN CALIFORNIA,  
By JULIAN HINDS,  
*General Manager and Chief Engineer.*  
JHH

Attest:

A. L. GRAM,  
*Executive Secretary.*

Approved as to form.

JAMES H. HOWARD,  
*General Counsel.*

[SEAL]

Appendix 1206

RELATED PROJECTS: PARKER DAM  
FOUR-PARTY 1947 PARKER UNIT CONTRACT,  
MAY 20, 1947

FOUR-PARTY 1947 PARKER UNIT CONTRACT

1. THIS CONTRACT, made this 20th day of May 1947, by and between THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, a public corporation organized and existing under the laws of the State of California (hereinafter referred to as the "District"), THE CITY OF LOS ANGELES, a municipal corporation of the State of California, and its DEPARTMENT OF WATER AND POWER (said Department acting herein in the name of the City, but as principal in its own behalf, as well as in behalf of the City, the term "City" as herein used being deemed to include both The City of Los Angeles and its Department of Water and Power), SOUTHERN CALIFORNIA EDISON COMPANY, a private corporation organized and existing under the laws of the State of California (hereinafter referred to as "Edison Company"), and CALIFORNIA ELECTRIC POWER COMPANY, a private corporation organized and existing under the laws of the State of Delaware (hereinafter referred to as "California Electric");

Witnesseth that:

2. Whereas the District and the United States, acting through the Secretary of the Interior, under date of February 10, 1933, entered into a contract entitled "Cooperative Contract for Construction and Operation of Parker Dam," which contract was amended and supplemented under date of September 29, 1936, by a "Supplemental Contract for the Construction of Forebay and Power Plant Substructure at Parker Dam," and was further amended and supplemented under date of April 7, 1939, by a "Supplemental Contract for Construction of Power Plant at Parker Dam," which last mentioned supplemental contract was amended by a contract dated July 10, 1942; and under the last mentioned supplemental contract, as amended, the District has the right, but not the obligation, at any time after ten years from the date when electric energy was first delivered from the Parker power plant over the Parker-Phoenix transmission line of the United States, and upon twenty-five months' prior

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## Responses

- CRIT-1 As described in section 3.1.2, different but interrelated modeling efforts and impact analyses were necessary to estimate changes from the IA and IOP due to the fundamental nature of each component of the proposed action. For example, the IA is in effect at all times while the IOP represents variable year-to-year changes. We analyzed the cumulative effects by “layering” the effect of the IOP (assuming either the average or “worse case” impacts) onto impacts of the IA. We believe that this method is appropriately used in the assessment of the relative differences between baseline and proposed action conditions.
- CRIT-2 Changes in point of diversion of 1.174 MAF is not a proposed project. Reclamation, in partnership with the other participants in the MSCP, has assumed for purposes of 50 years of Endangered Species Act compliance that total future proposed changes in point of diversion could amount to 1.174 MAF, excluding the 400 KAF addressed in the August 2000 BO. In the future, as specific transfer projects are proposed, their impacts will be analyzed in compliance with NEPA, and considered by the Secretary.
- CRIT-3 A further explanation of the methodology used to analyze the effects on river stage in the Parker to Imperial reach due to reductions in Parker Dam outflow (from the 1996 annual flow value) has been provided in Appendix J. This appendix also includes additional analysis of the effects on river stage of a reduction of 400 KAF from the minimum annual Parker Dam outflow as projected by the CRSS model (6.3 MAF). As shown in this appendix, the effect of a 400 KAFY reduction from 6.3 MAF is essentially the same (approximately 0.4 feet).
- CRIT-4 Reclamation completed two analyses to determine the biological impacts of the water transfers. The first analysis was used to determine the impacts to groundwater and Southwestern willow flycatcher habitat impacts. This analysis assumed the average daily flow releases from Parker Dam (with and without the proposed transfer amounts) were routed downstream to various points along the Colorado River. The downstream water surface elevations were determined from the attenuated average daily flow. The change in water surface elevation, at a particular site downstream of Parker Dam, was determined from the difference of the water surface elevations with and without the water transfers. Using the amount of reduced water surface elevation, groundwater changes were predicted adjacent to the river. Using the changed groundwater maps, potential acreages of impacted Southwestern willow flycatcher was determined.
- The second analysis was used to determine the impacts to the open water in the main channel and open water in backwaters that are connected to the main channel. In this analysis, the daily minimum flows from Parker Dam were routed downstream to various points along the Colorado River. The downstream water surface elevations were determined from the attenuated minimum daily flow. The change in water surface elevation, at a particular site downstream of Parker Dam, was determined from the difference of the water

surface elevations with and without the water transfers. Using the amount of reduced water surface elevations, groundwater changes were predicted adjacent to the river. Using the changed groundwater maps, potential acreages of impacted open water and emergent vegetation were determined.

The analysis of biological impacts in this EIS was primarily based on the previously published Biological Assessment (Appendix D). The BA included an analysis of daily flows and water surface elevations for the reach between Parker and Imperial Dams. A further explanation of that methodology has been added as Appendix J of this EIS. In addition, minimum and maximum hourly analysis for selected months is included in the Biological Assessment. Duration of flows relies on many factors such as antecedent conditions, water demands, and scheduling of releases to meet power demands. It is extremely difficult to effectively model duration due to the variability inherent in these factors.

CRIT-5 We can not determine the actual groundwater depth near the river because the number of observation wells along the full length of the river would be prohibitively expensive in both time and cost. The only reasonable approach is to estimate the change in groundwater elevation.

CRIT-6 Tribal trust assets are defined by the Department of the Interior's Departmental Manual at 303 DM 2, Section 2.5(C.) as follows: "Indian trust assets mean lands, natural resources, money, or other assets held by the federal government in trust or that are restricted against alienation of Indian tribes and individual Indians." Reclamation believes the water appropriated to non-CRIT entities, that flows through Headgate Rock Dam and generates electricity, does not fall within the definition of an ITA; therefore, the question regarding the Dam's status as an ITA is not germane to this issue.

CRIT-7 As a point of clarification, the EIS does not characterize the reduction in energy as significant.

We agree that it is extremely difficult to predict market values for energy. As stated in the EIS in section 3.3.3, one estimate of the average open market value of energy was 3.5 cents per kWh, as estimated in late fall of 2001.

The analysis of Headgate energy on a monthly or seasonal basis would not yield a significant difference of energy reduction. Due to the volatility of energy prices, it would be difficult to estimate future seasonal differences.

CRIT-8 Reclamation is not aware of any legal or contractual requirement that power generators or users must be compensated for any adverse impacts associated with water transfers. The release of water for power generation is a relatively low priority under the Boulder Canyon Project Act, 45 Stat. 1057, and is an incidental opportunity created by water deliveries, and not an entitlement.

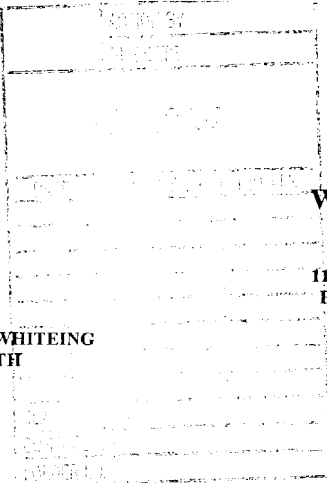
CRIT-9 We agree long-term monitoring is necessary to accurately determine those impacts. This monitoring is part of the requirements Reclamation has agreed to in order to implement the Biological Opinion issued by the FWS. This monitoring would also help to determine which impacts are due to the proposed

transfers and which are due to other stochastic events that may occur in the system.

CRIT-10 We agree that the most effective way to offset impacts would be to replace habitat in the reach where the losses occur whenever possible. Where that is not possible, Reclamation welcomes the opportunity to offset the losses with entities who have the lands and expertise to do so. We will work with CRIT to evaluate the potential for habitat mitigation projects on CRIT lands.

CRIT-11 A formal government-to-government consultation meeting was held with CRIT, Fort Mojave Indian Tribe, Chemehuevi Tribe, Quechan Indian Tribe, and Cocopah Indian Tribe on June 26, 2002.



 <p>JEANNE S. WHITEING TOD J. SMITH</p>	<p><b>WHITEING &amp; SMITH</b> ATTORNEYS AT LAW 1136 PEARL STREET, SUITE 203 BOULDER, COLORADO 80302</p>	<p>PHONE (303)444-2549 FAX (303)444-2365 EMAIL <a href="mailto:tjsmith@ccentral.com">tjsmith@ccentral.com</a></p>
March 25, 2002		

SUBMITTED BY FACSIMILE  
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Mr. Bruce D. Ellis  
Environmental Program Manager  
Phoenix Area Office  
Bureau of Reclamation  
P.O. Box 81169  
Phoenix, Arizona 85069-1169

**COMMENTS OF THE FORT MOJAVE INDIAN TRIBE  
ON THE  
DRAFT ENVIRONMENTAL IMPACT STATEMENT:  
IMPLEMENTATION AGREEMENT, INADVERTENT OVERRUN  
AND PAYBACK POLICY, AND RELATED FEDERAL ACTIONS**

Mr. Ellis:

These comments are submitted on behalf of the Fort Mojave Indian Tribe ("Tribe").

**INTRODUCTION**

The Fort Mojave Reservation is located on the Colorado River, with the Tribe's headquarters located in Needles, California. The Reservation is comprised of approximately 37,000 acres of land in the States of Arizona, California and Nevada. The Colorado River runs through the entire length of the Reservation with the Tribe owning a substantial portion of the shoreline. The Tribe possesses presently perfected federal reserved water rights from the mainstream of the River pursuant to the Decree in *Arizona v. California*, 363 U.S. 546 (1963), Original Decree at 376 U.S. 340 (1964), Supplemental Decree at 439 U.S. 419 (1979), Second Supplemental Decree at 466 U.S. 144 (1984), Third Supplemental Decree, 531 U.S. 1 (2000). Under the most recent Supplemental Decree issued in *Arizona v. California*, 531 U.S. at 1, ¶ B, the Tribe's decreed water rights are as follows:

The Fort Mojave Indian Reservation in annual quantities not to exceed (i) 132,789

acre-feet of diversions from the mainstream of (ii) the quantity of mainstream water necessary to supply the consumptive use required for irrigation of 20,544 acres and for the satisfaction of related uses, whichever of (i) or (ii) is less, with priority dates of September 19, 1890, for lands transferred by the Executive Order of said date; February 2, 1911, for lands reserved by the Executive Order of said date.

The breakdown of the Tribe’s water rights is as follows:

<u>State</u>	<u>Annual Diversion</u>	<u>Net Acres</u>	<u>Priority Date</u>
Arizona	27,969 acre-feet	4,327 acres	Sept. 18, 1890
Arizona	75,556 acre-feet	11,691 acres	Feb. 2, 1911
California	16,720 acre-feet	2,587 acres	Sept. 18, 1890
Nevada	12,534 acre-feet	1,939 acres	Sept. 18, 1890

**COMMENTS**

<u>Page</u>	<u>Comment</u>
3.8-5	<p>The Draft EIS reveals that there will be a reduction in power generation of about 5% at the Headgate Rock Dams. That reduction will impact the BIA’s ability to meet energy demands at the Colorado River Indian Reservation and the Fort Mojave Indian Reservation. To replace the loss of power production, the tribes will have to purchase power on the open market at a higher rate than charged by the BIA. The document concludes that “the magnitude of that impact is unknown.” In a later discussion of the potential loss of power generation at the Headgate Rock Dams, the Draft EIS states that “[r]epresentatives from CRIT and the Fort Mohave Indian Tribe have suggested the California parties benefitting from the water transfers should compensate the tribes for the loss. There is concern about the precedent such compensation would create.” Draft EIS at 3.10-6.</p> <p>In fact, Reclamation is required to provide compensation whenever an adverse impact to an Indian asset cannot be avoid. Reclamation’s Indian Trust Asset Policy provides that:</p> <p style="padding-left: 40px;">Reclamation will carry out its activities in a manner which protects trust assets and avoids adverse impacts when possible. <i>When Reclamation cannot avoid adverse impacts, it will provide appropriate mitigation or compensation.</i> (Emphasis added).</p> <p>Reclamation’s responsibility to mitigate or compensate the tribes for the loss of power</p>

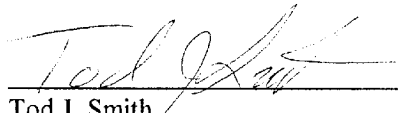
FMIT-1  
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Page	Comment	
	<p>generation is not vacated simply because Reclamation cannot, at this time, determine the difference in cost between the amount charged by the BIA for the power generated at the Headgate Rock Dams and the amount the tribes may be required to pay on the open market (or, in Reclamation’s words, because it cannot determine “the magnitude of the impact”). Any loss of power generation caused as a result of reduced flows under the Implementation Agreement (“IA”) will adversely impact the tribes. Therefore, Reclamation must assure in the Draft EIS that Reclamation or California, the entity that benefits from the IA, must mitigate that impact by compensating the tribes for the difference in cost. While the exact dollar figure may be “unknown”, the document should state that the tribes will be compensated for difference in cost between the amount that would have been charged by the BIA and the amount the tribes had to pay on the open market for any power generation lost as a result of decreased flows.</p>	FMIT-1
3.10-1	<p>Under the section entitled “Fort Mohave Indian Tribe” the Draft EIS states that the “Tribe possesses PPRs (water rights based upon diversion and beneficial use prior to the effective date of the BCPA . . . .” As is recognized in footnote 4 at page 1-8 of the Draft EIS, the vested, <i>see Arizona v. California</i>, 373 U.S. 546, 600-01 (1963), and “valid” water rights held by the five tribes located along the mainstream of the Lower Colorado River (including the Fort Mojave Tribe), are not dependent upon diversion or use, either before or after the effective date of the BCPA. Those rights were and remain reserved for and vested in the tribes as of the date of the creation of the reservations regardless of whether the water rights have been diverted or used. Therefore, the parenthetical quoted above must be removed from the document.</p>	FMIT-2
3.10-2	<p>The table of the Tribe’s water rights should accurately reflect the quantity of water and land as most recently decreed by the United States Supreme Court in <i>Arizona v. California</i>, 531 U.S. 1, ¶ B (2000). Those correct figures are previously set forth in these comments. The correct figures for California are:</p> <p>Amount - 16,720 acre-feet; Acreage - 2,587 acres. <i>Id.</i> The correct totals are:            Amount - 132,789 acre-feet; Acreage - 20,544 acres. <i>Id.</i></p> <p>The reference to past diversions in excess of the Tribe’s California water right, <i>see</i> page 3.10-2 at line 6 should be removed from the document. Any diversions <i>by the Tribe</i> in excess of the amounts decreed prior to the 2000 Supplemental Decree were made under the Tribe’s claim to additional land; a claim subsequently upheld by the Supreme Court in the 2000 Supplemental Decree. In addition, review of diversion records indicates that Reclamation has mistakenly attributed to the Tribe diversions that were in fact made by “contract” landowners immediately adjacent to tribal land. The Tribe did not make diversions in excess of amount of water to which it was legally entitled for its California lands, and any such reference should be removed</p>	FMIT-3

<u>Page</u>	<u>Comment</u>	
	from the Draft EIS.	▲ FMIT-3
3.10-6	See Comments above at page 3.8-5.	FMIT-4
3.10-7	See Comments above at page 3.8-5. The Draft EIS must provide for mitigation and or compensation for the adverse impacts discussed under the section entitled "Hydroelectric Power Generation".	FMIT-5

Respectfully submitted this 25<sup>th</sup> day of March, 2002.

WHITEING & SMITH



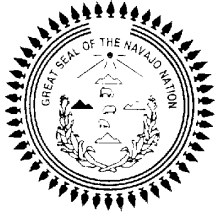
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Tod J. Smith  
1136 Pearl Street, Suite 203  
Boulder, Colorado 80302  
(303) 444-2549  
(303) 444-2365 (fax)

Attorneys for the Fort Mojave Indian Tribe

Responses

- FMIT-1 Reclamation, after consultation with the Department of the Interior Field Solicitor's Office, has concluded that the water appropriated to non-CRIT entities, that flows through Headgate Rock Dam and generates power, is not an ITA. Accordingly, Reclamation's Trust Asset Policy does not apply. Reclamation does not propose to compensate, or require the parties to the transfer to compensate, for the lost power production. It is Reclamation's view that power production is an opportunity created by water deliveries, and not an entitlement which is subject to compensation during low or reduced flow. See also responses to CRIT-6 and CRIT-8.
- FMIT-2 The text has been revised to address your comment. As you noted, a Federal PPR is created and exists whether or not the water has been diverted or used. The part in parenthesis on page 3.10-1, lines 40-41, of the DEIS (which is now deleted from the EIS) applied to non-Federal PPRs, and this point is already made in section 1.2.2.
- FMIT-3 The table has been revised to address your comment. The revised numbers come from the supplemental decree that the United States Supreme Court entered October 10, 2000. The text following the table for the Fort Mojave Indian Tribe has been revised to address your comment.
- FMIT-4 See response to FMIT-1.
- FMIT-5 See response to FMIT-1.



NAVAJO NATION DEPARTMENT OF JUSTICE  
OFFICE OF THE ATTORNEY GENERAL

LEVON B. HENRY  
ATTORNEY GENERAL

BRITT E. CLAPHAM, II  
DEPUTY ATTORNEY GENERAL

March 26, 2002

VIA TELEFAX: 602.216.4006

Bruce D. Ellis, Environmental Program Manager  
Phoenix Area Office  
Bureau of Reclamation  
P.O. Box 81169  
Phoenix, Arizona 85069-1169

Re: Draft Environmental Impact Statement (EIS) for the Implementation Agreement (IA),  
Inadvertent Overrun and Payback Policy (IOP) and Related Federal Actions,  
Colorado River in the Lower Basin.

Dear Mr. Ellis:

Please consider this letter as comments submitted on behalf of the Navajo Nation concerning the above-referenced Draft EIS. These comments are quite simple. The Draft EIS is deficient because the Bureau of Reclamation failed, once again, to consider the impact on the Navajo Nation's reserved water rights claims to the Colorado River.

**BACKGROUND**

The Colorado River forms the western boundary of the Navajo Reservation,<sup>1</sup> and with the exception of the United States, the Navajo Nation owns more miles of riparian land than any landowner along the Colorado River. The Navajo mainstream claims were not addressed in the 1963 decision or the 1964 decree in *Arizona v. California*. Special Master Rifkind determined that water uses by the tribes and others above Lake Mead would be treated as tributary water;<sup>2</sup> therefore, the water rights of the Navajo Nation, the Hualapai Tribe and the Havasupai Tribe were not quantified in that case. The Supreme Court reversed the Special Master, finding that uses above Lake Mead could diminish California's rights.<sup>3</sup> Nevertheless, only the five reservations on the mainstream below Hoover Dam were affected by the 1964 decree. Tribal water rights above Lake Mead were not quantified, and the decree does not affect the rights of any Indian reservation above Lake Mead.<sup>4</sup> The United States has never undertaken the quantification of the Navajo Nation's mainstream Colorado River rights.

<sup>1</sup> Act of June 14, 1934, ch. 521, 48 Stat. 960-962.

<sup>2</sup> Report of Special Master Simon H. Rifkind, *Arizona v. California*, December 5, 1960 at 183.

<sup>3</sup> 373 U.S. 546, 591 (1963).

<sup>4</sup> 376 U.S. 340, 353 (1964), Article VIII.

P.O. Drawer 2010 • Window Rock, Navajo Nation (AZ) 86515 • (928) 871-6931 • Fax (928) 871-6177

Bruce D. Ellis, Bureau of Reclamation

Re: Draft Environmental Impact Statement (EIS) for the Implementation Agreement (IA), Inadvertent Overrun and Payback Policy (IOP) and Related Federal Actions, Colorado River in the Lower Basin.

March 26, 2002

Page 2

The Navajo Nation possesses substantial unquantified water rights to the Colorado River in both the Upper and Lower Basin. The Navajo Nation has substantial lands located within the Lower Basin of the Colorado River, the study area of the EIS. Approximately 90,000 members of the Navajo Nation reside on these lands. The Navajo Nation is entitled to all the water necessary to secure a permanent homeland for the Navajo people. *Winters v. United States*, 207 U.S. 564, 567 (1908); *In re the General Adjudication of All Rights to Use Water in the Gila River System and Source*, 35 P. 3d 68, 76 (2001).

On September 8, 2000, the Navajo Nation submitted comments on the Draft Environmental Impact Statement on the Colorado River Interim Surplus Criteria. The Bureau of Reclamation was advised that its analysis of impacts on Indian Trust Assets (ITAs) was inadequate because the United States made no effort to quantify the Navajo Nation's Colorado River water rights. Those comments should be considered as reiterated and incorporated herein. The United States continues to take various actions on to the Colorado River without considering the potential rights of the Navajo Nation and without making any effort to quantify that right, in breach of its fiduciary trust responsibility to the Navajo Nation.

#### SPECIFIC COMMENTS

**1. The EIS Fails to Recognize the Navajo Nation as a Tribal Entity Within the Study Area.**

Section 3.10.1 of the EIS describes the "Affected Environment." Several Indian tribes located in the Lower Basin of the Colorado River are identified as "Tribal Entities with the Project Study Area" at 3.10-1. The Navajo Nation is not included, despite the fact that its reservation in the Lower Basin is significantly larger than all of the other Indian reservations combined. The EIS purports to list all of the tribal entities with PPRs to the Colorado River at 3.10-1 through 3.10-3; however, only those tribes with quantified PPRs are included. Portions of the Navajo land in the Lower Basin became part of the Navajo reservation prior to June 25, 1929; therefore, the Navajo Nation possesses unquantified PPRs not acknowledged in the EIS. The EIS makes no attempt to consider these Indian Trust Assets

NN-1

**2. In Addition to the Unquantified Pprs the Navajo Nation May Possess Additional Unquantified Water Rights Junior to the PPRs.**

The EIS concludes that adoption of the IOP would not result in a significant impact to ITAs because "[t]ribal water rights would continue to be satisfied consistent with the existing priorities on the River." EIS at 3.10-7. However, the priority of the Navajo Nation's water rights has not been determined. Portions of the Navajo lands in the Lower Basin were added to the reservation subsequent to June 25, 1929. The Navajo Nation believes that the water rights for these lands should have a priority date at least as early as 1868, the date that the Navajo reservation was created for the purpose of providing a permanent homeland for the Navajo people. The adjudication court may ultimately disagree with this view and find a priority as late as the date the lands were taken into trust as part of the Navajo reservation. *See e.g. In re the General Adjudication of All Rights to Use Water in the Gila River System and Source*, 35 P. 3d 68, 71 (2001). Inadvertent overruns could have a significant impact on the Navajo Nation's ability to utilize water rights of a very junior priority.

NN-2

Bruce D. Ellis, Bureau of Reclamation  
Re: Draft Environmental Impact Statement (EIS) for the Implementation Agreement (IA), Inadvertent Overrun and Payback Policy (IOP) and Related Federal Actions, Colorado River in the Lower Basin.  
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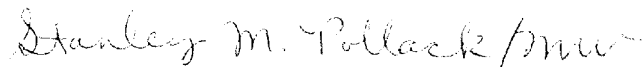
**SUMMARY**

The EIS, like the DEIS for the Interim Surplus Criteria before it, is fundamentally flawed. The EIS does not consider the unquantified water rights of the Navajo Nation. Nor can Reclamation provide a meaningful analysis of the potential impacts on such rights arising out of the proposed IOP in the absence of an evaluation of the Navajo claim. The United States should cease all further action with respect to the administration of the Colorado River until the water rights of the Navajo Nation are quantified. | NN-3

Please ensure that these comments are incorporated into the administrative record. Thank you for your anticipated cooperation.

Sincerely,

NAVAJO NATION DEPARTMENT OF JUSTICE



Stanley M. Pollack  
Water Rights Counsel



Responses

- NN-1            The Navajo Nation is not included among the Tribal entities within the Project Study Area that are listed in section 3.10.1 because a potential source of water for a water rights settlement has not been identified or quantified. The Department of the Interior is working diligently on identifying and analyzing alternative sources of water for a water rights settlement for the Navajo Nation. However, it is premature and too speculative to identify with specificity a quantified right or from where that source of water would come. When the Department identifies a potential water source for commitment to the Navajo Nation, a court of competent jurisdiction will adjudicate a water rights settlement.
- NN-2            If a court of competent jurisdiction adjudicates a water rights settlement for the Navajo Nation, the court will establish the priority date of that water right. It would be speculative and inappropriate for the EIS to attempt to analyze the potential impact to an ITA from an undetermined right.
- NN-3            The United States understands the Navajo Nation claim to Colorado River water. The Department of the Interior and Reclamation have established a Settlement Team to work on identifying sources of water to meet the Navajo Nation claim. Currently, an independent consultant has been retained by Reclamation to evaluate the Navajo Nation's water needs.

LAW OFFICES  
**MORISSET, SCHLOSSER, JOZWIAK & McGAW**  
 A PROFESSIONAL SERVICE CORPORATION

FRANK R. JOZWIAK (WA)  
 KYME A. M. MCGAW (WA)  
 MASON D. MORISSET (WA)  
 THOMAS P. SCHLOSSER (WA)

OF COUNSEL  
 SHARON I. HAENSLY (WA)

LEGAL ADMINISTRATOR  
 JEARL E. RUGH

1115 NORTON BUILDING  
 801 SECOND AVENUE  
 SEATTLE, WASHINGTON 98104-1509  
 FACSIMILE: (206) 386-7322  
 (206) 386-5200

WASHINGTON, D.C. OFFICE  
 1730 RHODE ISLAND AVENUE, N.W.  
 SUITE 209  
 WASHINGTON, D.C. 20038-3120  
 FACSIMILE: (202) 331-8738  
 (202) 331-8690

PLEASE REPLY TO THE  
 SEATTLE OFFICE

Via Facsimile - (602) 216-4006

March 26, 2002

Mr. Bruce D. Ellis  
 United States Bureau of Reclamation  
 Phoenix Area Office, PXAO-1500  
 P.O. Box 81169  
 Phoenix, Arizona 85069-1160

Re: Quechan Tribe's comments on DEIS for Implementation Agreement, Inadvertent  
 Overrun and Payback Policy, and Related Federal Actions (Jan. 2002)

Dear Mr. Ellis:

We are submitting these comments on the above DEIS on behalf of the Quechan Indian Tribe, whose Fort Yuma Reservation is located in southwestern Arizona and southern California near Yuma, Arizona. The Tribe possesses present perfected rights ("PPR") from the mainstem of the Colorado River pursuant to the Decree and supplemental Decrees (1979 and 1984). The amounts, priority dates, and state where the rights are perfected are as follows:

Amount (AFY)	Acreage	Priority Date	State
51,616	7,743	Jan. 9, 1884	California

This water is diverted at Imperial Dam through the Yuma Project Reservation Division - Indian Unit. A Supreme Court decision issued on June 19, 2000 allows the Tribe to proceed with litigation to claim rights to an additional 9,000 acres of irrigable lands. Proving this claim would increase the water rights for the reservation.

The Tribe has the following specific comments on the DEIS:

- Impact on Water Flow and the Quechan Tribe's Senior Water Rights.** How will the project affect the Quechan Tribe's perfected and unperfected water rights? Are there any indirect effects? The DEIS does not specifically address this issue. Instead, it describes reduced flows between Parker and Morelos dams. The Quechan Tribe, however, is located between Laguna and Morelos dams. This information is particularly critical because BOR must ensure that this project and the many other projects affecting the lower Colorado River do not interfere in any way with the Tribe's right to use all of its PPR and to its potential rights to an additional 9,000 acres of irrigable lands.

QT-1a

Mr. Bruce D. Ellis  
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| What will be the reduced flow between Laguna and Morelos dams? Finally, what is the reduced flow between these two dams due to the cumulative impact of the many projects affecting the lower Colorado River?  | QT-1b     |
| Will the project alone, or with the other projects affecting the lower Colorado River, facilitate others' use of surplus water, which is the Tribe's unused entitlements?  | QT-1c     |
| 2. <b>Impact on Water Salinity.</b> How much will the project cause a salinity rise in the stretch between Laguna and Morelos dams? Will the increased salinity impact the quality of water taken by the Tribe? Finally, what is the cumulative salinity increase between these two dams of the many projects affecting the lower Colorado River?  | QT-2      |
| 3. <b>Impact on Ground water.</b> Will the project cause a there be a reduction in ground water, or in the ground water levels, underlying the Fort Yuma Reservation? What is the cumulative reduction in or lowering of ground water underlying the Fort Yuma Reservation due to the many projects affecting the lower Colorado River?  | QT-3      |
| 4. <b>Impact on Electricity Supply.</b> Will the Fort Yuma Reservation experience a reduced electricity supply due to 1) the project, or 2) the cumulative impact of all of the projects affecting the lower Colorado River? Will there be a sufficient supply to accommodate the Tribe's future plans for development?  | QT-4      |
| 5. <b>Impact on Agricultural Uses.</b> How exactly will the Tribe's and its members agricultural uses be affected 1) by the project, or 2) by this and the many projects affecting the lower Colorado River?   | QT-5      |
| 6. <b>Disproportionate Impact on Low Income and Minority Populations.</b> The statement on page ES-30 in the top right-hand portion of the table is entirely unclear. Please explain, and inform the Tribe about specific impacts on the Tribe and its Fort Yuma Reservation.  | QT-6      |
| 7. <b>Impact on Cultural Resources.</b> The Tribe wants to be consulted under section 110 of the NHPA about how ongoing actions in the lower Colorado River are impacting cultural resources affiliated with the Tribe. The Tribe is concerned that BOR is deferring assessment of these impacts, particularly in light of the many projects impacting the lower Colorado River and its environs. What is the schedule for completing this assessment and report? How exactly will cultural resources affiliated with the Quechan Tribe be affected by this project. | QT-7      |
| 8. <b>Cumulative Impacts - Projects Considered.</b> The DEIS's cumulative impacts analysis omits many projects and actions that directly affect the lower Colorado River. This was   | QT-8<br>↓ |

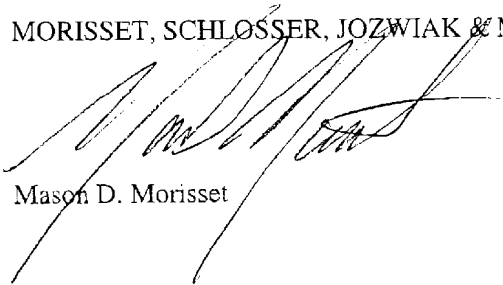
Mr. Bruce D. Ellis  
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| <p>revealed by checking the DEIS's list against the two other environmental analyses listed in no. 10 below. Please revise your analysis to include all required projects.</p>   | <p>↑<br/>QT-8</p> |
| <p>9. <b>Rulemaking.</b> Please consider establishing the IOP through rulemaking, to ensure timely enforcement against parties that exceed their entitlement.</p>  | <p>QT-9</p>       |
| <p>10. <b>Compliance with NEPA.</b> Please explain why the federal and California governments have published three related NEPA/CEQA documents, rather than combining them into one readable document? The documents are: 1) PEIR for the Quantification Settlement Agreement, 2) this DEIS and 3) the Bureau of Reclamation's and Imperial Irrigation District's Draft EIS/EIR and Habitat Conservation Plan for IID's Water Conservation and Transfer Project? This approach appears to violate rules under both NEPA and CEQA that prohibit piecemealing projects and analyses when they are related.</p>         | <p>QT-10</p>      |
| <p>11. <b>The IA.</b> How exactly does section B.3.f. of the Implementation Agreement protect the Quechan Tribe's rights to its PPRs and its potential senior water rights to an additional 9,000 acres of irrigable land? How does the same question apply to the entire IA? Please state, if true, that the QSA, Implementation Agreement and IID Transfer Agreements, together and separately, do not and will not interfere with these perfected and unperfected water rights held by the Quechan Tribe, at any point during the agreements' respective durations. This provision should be added to the IA.</p> | <p>QT-11</p>      |
| <p>12. <b>The QSA.</b> How exactly do sections 2.1(2), 2.2(2), and 2.3(2) of the QSA protect the Quechan Tribe's rights to its PPRs and its potential senior water rights to an additional 9,000 acres of irrigable land? How does the same question apply to the entire QSA? The QSA does not seem to protect the Tribe's potential rights to 9000 irrigable acres, because it only covers "present perfected" rights.</p>  | <p>QT-12</p>      |

Thank you for your consideration. The Tribe urges BOR to carefully consider these comments, and to respond in a detailed, readable manner, given the 75-year, irreversible nature of this project and the other projects affecting the lower Colorado River.

Sincerely yours,

MORISSET, SCHLOSSER, JOZWIAK & MCGAW



Mason D. Morisset

cc: Mike Jackson Sr., President  
 Quechan Indian Tribe

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Responses

- QT-1a The project will not affect the Tribe's senior water right to use all of its PPR, including any additional rights granted in a supplemental decree. If the United States Supreme Court in *Arizona v. California* upholds the Tribe's claim to additional land and enters a supplemental decree to set forth that claimed right, the priority date of the right in the supplemental decree will be established by the court. If the court follows the criteria it used for its supplemental decree entered October 10, 2000, the priority date will be the same as the Tribe's original Federal reserved right PPR (January 9, 1884).
- QT-1b The proposed action would not impact the normal flow regimes in the portion of the Colorado River system below Imperial Dam. The observed impacts to river flows in this portion of the river relate to excess flows (e.g., primarily flood control operations at Hoover Dam). The impact to excess flows in this reach of the river would be consistent with the impacts observed and documented for the portion of the Colorado River that exists below Morelos Dam (see section 3.12.2 or Appendix C).
- QT-1c The project described in this EIS to quantify some California entitlements and transfer water will reduce California's dependence on surplus water. As agricultural water within the State of California is conserved and an equivalent amount of water is made available by the Secretary to other users within California, their dependence on surplus water is reduced.
- Further, we do not agree with your premise that surplus water is the Tribe's unused entitlements. Each Colorado River entitlement holder has the right to schedule, divert, and use its full entitlement for reasonable beneficial use. A State or Tribe may authorize groundwater recharge or water banking as a beneficial use through an appropriate State law or tribal ordinance. If the entitlement holder has a place to store water and the location of the storage site is within the place of use authorized by the underlying water entitlement, water banking or groundwater recharge may be considered a beneficial use. If an entitlement holder does not divert its Colorado River water for direct use, recharge, or storage, the unused portion of the entitlement remains Colorado River system water. Colorado River system water is available for release by the Secretary to other entitlement holders in accordance with the Law of the River, the Secretary's authority, and established priority systems.
- QT-2 The proposed action in this EIS would not impact the normal flow regimes in the portion of the Colorado River system below Imperial Dam. The observed impacts to river flows in this portion of the river relate to excess flows (e.g., primarily flood control operations at Hoover Dam). The impact to excess flows in this reach of the river would be consistent with the impacts observed and documented for the portion of the Colorado River that exists below Morelos Dam (see section 3.12.2 or Appendix C). Therefore, in the stretch between Laguna and Morelos dams, the salinity increase is not expected to be any greater than that expected at Imperial Dam, 8 mg/L in the year 2076. This increase in salinity is

expected to be mitigated by programs undertaken by Reclamation, USDA, and BLM as part of the Salinity Control Program.

Based upon the modeling performed, the tendency of the water transfers to increase salinity would be more than compensated for by other actions included in the Cumulative Analysis Condition. The cumulative analysis performed indicates that in the future, with the proposed action and other reasonably foreseeable actions assumed to occur, salinity at Imperial Dam (and thus Laguna and Morelos dams) would decrease by as much as 10 mg/L. See Appendix G for more information.

- QT-3 No change in groundwater level under the Fort Yuma Reservation is anticipated to occur as a result of the proposed action.
- QT-4 It is Reclamation's understanding that Fort Yuma Reservation does not receive energy from any of the hydro-dams below Parker Dam, or any Parker Davis-Project preference power. Therefore, the IA should have no impact to its current or future energy supply.
- QT-5 As discussed in sections 3.6.1 and 3.6.2 of the EIS, agricultural land along the lower Colorado River would not be affected by the execution of the IA or IOP. As noted in section 3.6.2 of the EIS, the proposed biological conservation measures could potentially impact farmland along the mainstem of the lower portion of the Colorado River. The precise locations of the areas to be developed as habitat are not known at this time; thus, the exact impact to the Quechan Indian Tribe cannot be identified. However, use of tribal land for habitat development would be subject to tribal approval and an appropriate level of environmental analysis will be conducted once sites are selected.
- QT-6 The text in Tables ES-1 and 2.5-1 (which are identical) have been revised for clarity. Section 3.10, which has also been revised, provides a description of the potential impacts to the Quechan Indian Tribe. The Tribe's Colorado River entitlement would not be impacted; however, there would be minor changes to the degree that the Tribe utilizes or benefits from floodflows. The modeled conditions that were analyzed in this EIS do not impact the normal flow regimes in the portion of the Colorado River system below Imperial Dam. The observed impacts to river flows in this portion of the river relate to excess flows (e.g., primarily flood control operations at Hoover Dam). The impact to excess flows in this reach of the river would be consistent with the impacts observed and documented for the portion of the Colorado River that exists below Morelos Dam (see section 3.12.2 or Appendix C).
- QT-7 At this time, no impacts have been identified as potentially occurring to cultural resources affiliated with the Quechan Indian Tribe. Once site-specific locations have been identified for implementing biological conservation measures, Reclamation will conduct additional cultural resource surveys to determine what, if any, cultural resources would be impacted by any on-the-ground activities that would occur. Should it be determined that cultural resources affiliated with the Quechan Indian Tribe might be affected by those activities,

Reclamation will initiate consultation under section 106 of the NHPA, as appropriate.

QT-8 The National Environmental Policy Act, 42 U.S.C. §4321-4370, requires an analysis of the incremental effects of an action that are cumulatively considerable when viewed in connection with closely related past, present, and reasonably foreseeable future actions. Generally, effects of a particular action or group of actions must meet the following criteria to be considered in the cumulative impacts analysis:

- Effects of an action occur in a common locale or region;
- Effects on a particular resource are similar in nature;
- Effects are long-term rather than short-term (short-term effects dissipate and may not contribute to cumulative impacts).

The list of projects/actions addressed in the cumulative impacts of the EIS includes all projects identified by Reclamation that may occur in the same area of influence (the Colorado River and areas adjacent), to the same resource (e.g., resources of the lower Colorado River), and projects with long-term effects. However, it is true that the IID Water Conservation and Transfer Project EIR/EIS and the QSA EIR include different cumulative projects. This disparity is appropriate given the differing region of influence of these projects. The region of influence for the IA and IOP is the lower Colorado River. The region of influence for the QSA EIR was much broader and included projects throughout the region. The IID Water Conservation and Transfer Project EIR/EIS is more site-specific in nature and includes the lower Colorado River as well as water service areas and conveyance/distribution facilities.

QT-9 Reclamation did consider establishing the Inadvertent Overrun Policy as a rule. There was concern that promulgating the IOP as a rule would require more time than there was available. The IOP is a condition precedent to the California parties executing the QSA, and as a rule, could not have been executed in a timetable consistent with the QSA nor with the Interim Surplus Guidelines ROD. Reclamation is not precluded from adopting a rule for inadvertent overruns in the future, if necessary.

QT-10 Text has been added to section 1.3.1 to clarify the relationship between the QSA EIR, the IID Water Conservation and Transfer Project EIR/EIS, and this document (see also response to DW-1).

QT-11 The QSA, IA, and IID Transfer Agreements will not interfere with the Federal reserved right PPRs or with additional PPR rights that may be granted to the Tribes in future supplemental decrees. The Tribes are entitled to use their full entitlements for reasonable beneficial use. Sections B.3.f., B.4.d., and B.5.c. of the IA were not drafted to address the rights of the Quechan Indian Tribe or other Tribes, nor do they impact such rights. Those provisions prorate the individual forbearance in consumptive use by IID, CVWD, and MWD when California water districts are required to reduce use to prevent California's consumptive use from exceeding the amount of Colorado River water available to California

that year. For scheduling purposes only, the California water districts will assume that water use by the higher priority California water users, such as the Quechan Indian Tribe, will be the same as their historic average use. This scheduling presumption is made only so the districts can schedule their water use with more certainty; it does not restrict the rights of the Quechan Indian Tribe or other Tribes. If the Tribes' use exceeds the amount of water the water districts projected, then IID, CVWD, and MWD will need to forbear some of their consumptive use to keep California's consumptive use from exceeding the amount that is available to California. The QSA, among other things, specifies how IID, CVWD, and MWD will prorate a required reduction among themselves. In the absence of the QSA, MWD would need to bear the entire forbearance in water use as the junior user within the California priority system.

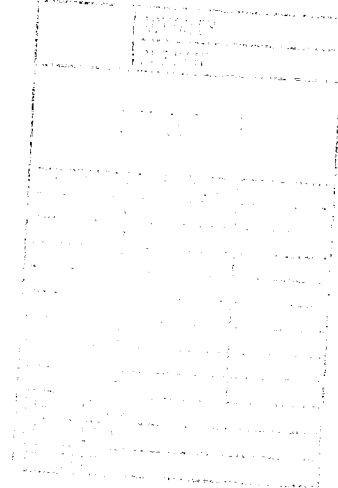
QT-12 The Tribe is entitled to use its full entitlement for reasonable beneficial use with or without the QSA. See response to QT-11. Likewise, sections 2.1(2), 2.2(2), and 2.3(2) of the QSA are not designed to protect the rights of the Quechan Indian Tribe to water rights for an additional 9,000 acres of additional lands if that claim is upheld in the Supreme Court. As noted in the response to QT-1, the Court may uphold the Tribe's claim to additional land, enter a supplemental decree, and increase the Tribe's federal reserved right PPR. In that event, the Tribe will be entitled to use its full increased entitlement for reasonable beneficial use. If IID, CVWD, and MWD do not modify their prorata shares of the responsibility for bearing any reduction to keep California's use within 7.5 MAFY in a normal year, the entire reduction for water used on the additional 9,000 acres would be borne by MWD as the junior priority user in California.



LES W. RAMIREZ  
ATTORNEY AT LAW

POST OFFICE BOX 4546  
ALBUQUERQUE, NEW MEXICO 87196  
TELEPHONE (505) 254-7812  
FACSIMILE (505) 255-6955

March 26, 2002



Mr. Bruce D. Ellis  
U.S. Bureau of Reclamation  
Phoenix Area Office  
PXAO-1500  
P.O. Box 81169  
Phoenix, AZ 85069-1169  
602-216-3854 (tel.)  
602-216-4006 (fax)

**Transmitted Via Fax**

Re: Draft Environmental Impact Statement  
Implementation Agreement, Inadvertent Overrun and Payback Policy, & Related  
Federal Actions

Dear Mr. Ellis:

On behalf of the Torres Martinez Band of Desert Cahuilla Indians ("Tribe"), please accept the following comments on the Draft Environmental Impact Statement ("DEIS") for the Implementation Agreement, Inadvertent Overrun and Payback Policy, and Related Federal Actions.

The DEIS fails to adequately consider the negative impacts to the Tribe's lands and waters and incorrectly asserts that there will be no significant impact to Indian Trust Assets. Section 3.10.2, Environmental Consequences to Indian Trust Assets, states that there will be no significant impact to Indian Trust Assets from execution of the Implementation Agreement. While this may be true of the adoption of the Inadvertent Overrun and Payback Policy, it is blatantly incorrect in regard to the Implementation Agreement. The execution of the Implementation Agreement entails the federal approval of changes in the amount and location of deliveries of Colorado River water that will allow for the implementation of the Quantification Settlement Agreement and will undoubtedly create negative effects in the quantity and quality of the Salton Sea and the groundwater under the Torres Martinez Reservation ("Reservation").

TM-1

Of equal concern is the failure of this DEIS to accurately and adequately analyze the cumulative impacts of the covered actions and other directly related agreements and programs that are inseparable from the actions analyzed in the DEIS. Among those agreements and programs are the California Colorado Water Use Plan; the Quantification Settlement Agreement environmental impact analyses; the proposed Lower Colorado River Multi-species Conservation Plan; the proposed Salton Sea Restoration Draft

TM-2

Environmental Impact Statement/Environmental Impact Report; and the Coachella Valley Water District Water Management Plan Environmental Impact Report.

↑ TM-2

While it is true that the Implementation Agreement will not change the current regime of water rights priorities, water supply priority is not the only Tribal interest affected by the changes in water management allowed under the Implementation Agreement. Projected impacts to specific Tribal assets are discussed herein.

TM-3

Groundwater

Groundwater is of vital concern to the Tribe. It has historically been the sole source of meaningful water supply and is perhaps the most valuable Tribal resource. It is the obligation of the United States to protect and defend the groundwater resources of the Tribe. Unfortunately, the DEIS fails to provide adequate data, analysis, or even an honest discussion about the current incapacity to make meaningful forecasts about future groundwater quality and levels underlying the Reservation that will be directly affected by the proposed actions.

More specifically, there is a lack of analysis in the DEIS as to the effects on groundwater quality and a lack of consistency in the DEIS as to whether groundwater levels will increase or decrease with the change in water management contemplated by the Implementation Agreement. While the DEIS discusses changes in quantities of imported water, impacts from the lining of the Coachella Canal, and increased groundwater recharge efforts in the Coachella Valley, it fails to adequately analyze two substantial and potentially critical negative effects.

First, the effects of recharging the high-quality aquifer with much lower quality Colorado River water must be thoroughly assessed. Although increased groundwater recharge efforts may have a positive impact on the quantities of water contained in the Coachella Valley aquifers, such recharge activities may also significantly impair the quality of the receiving groundwater and with it, the Tribe's water supplies. It cannot be assumed that aquifer recharge by itself is a positive environmental or resource management action.

TM-3a

For example, Colorado River water has been analyzed and identified by the U.S. EPA as containing dangerous levels of perchlorate.<sup>1</sup> The Coachella Valley Water District has proposed building a groundwater recharge facility within one mile and up-gradient from the Tribe's main domestic drinking water well. That facility would recharge the Coachella aquifer with Colorado River water, yet the DEIS contains no analysis or recommended mitigations related to these likely environmental impacts.

TM-3b

A second major concern revolves around the structural effects to the Coachella Valley aquifers resulting from the lining of the Coachella Canal and the conservation of agricultural water in the Imperial Irrigation District ("IID"). It is likely that those efforts

TM-3c ↓

<sup>1</sup> Perchlorate levels of the Colorado River at Lake Havasu have been measured at ranges between 8 and 10 ppb. On January 18, 2002 the California Department of Health Services set drinking water standards for perchlorate at 4 ppb.

will result in a decrease of water that otherwise would recharge groundwater resources. The DEIS does not reconcile the countervailing results of these actions.

↑  
TM-3c

Analysis of these impacts to the groundwater level under the Reservation may be somewhat clarified by inclusion of a temporal analysis, as it is likely that in the short-term groundwater levels will be negatively impacted by the changes in water management allowed under the Implementation Agreement, but may eventually be restored by the increased groundwater recharge contemplated under the Coachella Valley Water Management Plan. Nonetheless, the DEIS does not include adequate data to support any meaningful conclusion regarding the potential future changes in groundwater levels under the Reservation.

The conflicting results of the analysis in the DEIS are also evident in regard to the impacts to the riparian and marsh vegetation caused by changes in groundwater table levels. The DEIS states that increased groundwater levels will increase the water levels within the drains and therefore maintain riparian and marsh vegetation; in addition, the DEIS states that the accelerated decline of Salton Sea levels will result in a loss of marsh vegetation, especially at south end of the Sea. These contrary analytical results may be rectified by inclusion of location-specific analysis. Overall, in its current form, the DEIS provides inadequate detail about the localized impacts throughout the project area, including those areas in and around the Reservation.

TM-4

It is also misleading to point to structural benefits for the Coachella aquifer when there is no presently legally enforceable commitment from the parties involved in the water transfer to provide more water to the Coachella Valley Water District, or for the Coachella Valley Water District to commit that water to a recharge project. While the Tribe believes that the water transfer will not proceed without an increase in the Coachella Valley Water District's ability to use Colorado River water, the source and security for such use is through the proposed Quantification Settlement Agreement.<sup>2</sup> Under the terms of that proposed agreement, the Coachella Valley Water District must develop a Water Management Plan and complete the attendant environmental review and permitting processes. To date, the Tribe is not aware of nor has it seen a copy of even a Draft Environmental Impact Statement/Report related to the Water Management Plan.

TM-5a

Thus, it is puzzling to the Tribe how the DEIS can claim to adequately analyze the environmental effects and cumulative impacts of the Implementation Agreement and attendant policies when those activities are inextricable from the Quantification Settlement Agreement/Coachella Valley Water Management Plan/Salton Sea Restoration and other projects and their environmental reviews when those analyses have not been completed.

TM-5b

#### The Salton Sea

The DEIS clearly acknowledges that the decline in the level of the Salton Sea will be accelerated by the water management changes allowed under the Implementation

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TM-6

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<sup>2</sup> The Tribe's comments to the Quantification Settlement Agreement Draft Environmental Impact Report is being forwarded separately.

Agreement. It does not, however, adequately acknowledge the dramatic impacts the lowering of the Salton Sea will have specifically on the Tribe. Most distressingly, the discussion of impacts to Indian Trust Assets fails to mention the Tribe at all, focusing only on other tribes that are located on the Colorado River. This is an egregious oversight. While the Reservation is not located on the Colorado River, it is Colorado River water that inundates the Reservation.

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TM-6

The DEIS admits the Salton Sea will shrink faster under all potential scenarios, from a minimal conservation effort within IID to a reduction of 300,000 acre-feet a year of inflows, potentially reducing the Sea's elevation to -250 feet and increasing salinity levels to 140,000 mg/l within 75 years. This acceleration of the lowering of the Salton Sea will increase salinity levels and catalyze the decline in sports fisheries, non-sport fisheries, and bird populations.

↑  
TM-7

The DEIS states that biological conservation measures could be implemented on tribal land with tribal consent. It does not state who will bear the burden of paying for, implementing, and managing these unspecified conservation measures and the expensive associated environmental compliance requirements. While the DEIS mentions the potential for increases in odor emissions due to the lowering of the Salton Sea, there is no discussion of what environmental remediation and mitigation measures may be required to minimize soil contamination from polluted waters and the biological fallout of bird and fish die-offs, including increased air and water-borne diseases.

The DEIS seems to imply that these burdens should actually be borne by the Tribe itself, stating,

"The lands of the Torres Martinez Reservation, some of which underlie the existing Sea, would be impacted, since their lands would be exposed sooner and to a greater extent than under No Action. If this land were found to be suitable for agriculture or other purposes, such as recreational uses, it could be developed *by the Torres Martinez Indians*. (Also refer to the discussion in section 3.10, Tribal Resources)."

Please note that there is no further discussion of this topic in Section 3.10.

Also lacking in the DEIS is adequate discussion of the anticipated changes to the confluence of Salton Sea water with fresh waters underlying the Reservation. Increases in salinity levels will have effects underground as well as above. Destruction of the groundwater resources of the Tribe through the intrusion of highly saline water could effectively render the Reservation valueless unless the Tribe is then provided with substantial quantities of fresh water. Of course, that scenario is contrary to the overall intent of the Implementation Agreement to reduce the reliance of southern California on Colorado River water.

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TM-8

Fish and Wildlife

The DEIS briefly considers impacts to 170 bird species, 27 mammal species, and five reptile and amphibian species from a reduction in canal seepage to riparian and marsh ecosystems, including several federal and state listed species. The DEIS also

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TM-9

contemplates the reduction in fish and bird populations in and around the Salton Sea due to the accelerated lowering of the water level and accompanied increase in salinity and pollutant levels.

TM-9

Again, the DEIS fails to consider the tremendous harm these impacts will have on the Tribe: environmentally, economically and culturally. As recognized in the DEIS, at least 400 species and millions of individual birds, including 58 species classified by the U.S. federal government as sensitive, rely on the Salton Sea. Most significantly 25 to 40% of the Yuma clapper rail U.S. population, half of the California population of snowy plover, 80 to 90% of the entire population of American white pelicans, and the second largest population of wintering white-faced ibis utilize the Salton Sea. The Tribe has intimate cultural, religious, and natural resource management connections with these creatures and would be devastated by their demise.

In addition the DEIS fails to consider the full international considerations of decline in migratory bird species and the implications under migratory bird treaties with Canada and Mexico. While the DEIS does discuss effects in the border regions of Mexico and the Gulf of California, it fails to discuss the ramifications from reduction or destruction of bird populations that migrate into central or southern Mexico.

Environmental Justice

The Environmental Justice discussion presented in the DEIS focuses almost entirely on low-income Hispanic populations along the Colorado River mainstem. Sadly, it appears necessary to provide a reminder that the Tribe is both low-income and non-Caucasian. Therefore, to be compliant with Executive Order 12898, the DEIS should include analysis of the Environmental justice impacts to the Tribe from changes in water management allowed by the Implementation Agreement.

TM-10

This analysis should include the decline in opportunities for development of recreational businesses and the increase in environmental impacts related to the decline in Salton Sea water levels and water quality. This analysis should include consideration of the acceleration of the destruction of both sport fisheries and the non-sport fisheries upon which many bird species rely, as the DEIS itself recognizes that the self-sustaining Salton Sea fisheries will be completely eliminated 11 years sooner than under the No Action Alternative.

In addition, the hope voiced in the DEIS that exposed Torres Martinez lands could be reclaimed for agriculture conflicts with the Tribe's understanding that high salt and contaminant levels have severely impacted those underlying soils. At the time that nearly 12,000 acres of Tribal land were inundated with uncontrolled flows of Colorado River water into the Salton Sink, these lands did not contain highly saline sediments and deposits of hazardous materials. The DEIS fails to discuss the extensive mitigation measures, including required Tribal consultations, that will be required to remediate newly exposed Tribal lands.

TM-11

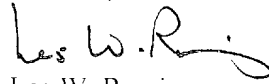
Alternative Analysis

The Tribe is disappointed that the DEIS fails to consider any alternative that include any of the proposed Salton Sea Restoration projects. The future of the Salton Sea as described in the DEIS is bleak and represents a failure to adequately protect the trust assets of the Tribe, an irrefutable duty of the Bureau of Reclamation and the United States.

TM-12

Thank you for considering these comments. The Tribe looks forward to your correcting the deficiencies noted above and hopes that the Bureau of Reclamation will more fully embrace its trust responsibility to protect, defend and enhance the trust assets of the Tribe.

Sincerely,



Les W. Ramirez  
Special Counsel for Water Resources  
& Environmental Affairs

Responses

- TM-1 Under the IA, the Secretary would agree to reduce Colorado River water deliveries to IID, consistent with the provisions of the QSA. Reduced water deliveries to IID do not necessarily result in reduced inflows to the Salton Sea, since IID could choose to create the conserved water in a manner that would reduce or eliminate the effects of conservation on the Sea. The decision by IID on how to conserve water is outside the control of Reclamation. Nevertheless, the potential for reduced inflow could have significant adverse impacts on resources of the Torres Martinez Band of Desert Cahuilla Indians. Pursuant to additional discussions and consultations with the Band, the IID Water Conservation and Transfer Project EIR/EIS has included additional evaluation of these impacts and possible mitigation. The IA EIS was revised to include a detailed summary of these impacts and proposed mitigation.
- TM-2 The cumulative impacts of the Lower Colorado River MSCP, the Salton Sea Restoration Project, CVWD Water Management Plan, and several other proposed projects that have the potential to contribute to a cumulative impact are described in section 4.2 of the EIS. The relationship of the IA to the QSA and the California Plan are described in section 3.1. See also response to QT-10.
- TM-3 Under the IA, the Secretary would deliver up to an additional 152 KAFY to CVWD, pursuant to the provisions of the QSA. How much, if any, water will be taken by CVWD, and how it will be used are decisions made by the CVWD and are outside the control of Reclamation. Nevertheless the potential adverse impact to groundwater resources used by the Tribe from CVWD's use of the additional Colorado River water has been added to section 3.10 of the IA EIS based on available information from CVWD on its intended use of the water. The detailed analysis of impacts resulting from CVWD's use of the water, and development of mitigation measures, is more appropriately dealt with in the PEIR for the CVWD Water Management Plan. The detailed comment responses that follow, as well as the revised information included in the EIS, are based on information obtained from CVWD and from the CVWMP PEIR.
- TM-3a While the overall impact of recharge on groundwater levels would be beneficial, there would be an adverse impact on groundwater quality in certain parts of the basin, because Colorado River water has a higher concentration of TDS and other constituents than some local groundwater. With respect to TDS, the anticipated increase would not impair any beneficial uses of the water, as defined by established state and federal primary (or health-based) drinking water standards. The higher salinity could exceed recommended secondary water quality standards that deal with aesthetics, such as taste and hardness. The TDS of the local groundwater is also highly variable. There are portions of the groundwater basin with native TDS levels higher than Colorado River water. Mitigation to reduce the higher TDS of Colorado River water to the equivalent of groundwater was evaluated and found by CVWD to be financially and environmentally infeasible. In the absence of CVWD's proposed groundwater recharge project, the Coachella Valley groundwater basin would continue to experience increasing

overdraft coupled with groundwater level declines, water quality degradation, increased subsidence risk and the potential for intrusion from the Salton Sea.

TM-3b

The California Department of Health Services (DHS) set a provisional action level for perchlorate at 18 ppb until January 18, 2002, when it was lowered to 4 ppb. An action level is not an enforceable drinking water standard, but a health-based advisory level for chemicals that do not have formal maximum contaminant levels. DHS establishes an action level as a guidance tool when they do not have a regulation for a contaminant and want to provide some guidance for utilities. If an action level is exceeded, state law requires the public water system operator to inform its governing body and the regulatory agency. DHS recommends but does not require public notification.

In March 2002, the California State Office of Environmental Health Hazard Assessment proposed a public health goal (PHG) of 6 ppb for perchlorate. A PHG is the first step in developing a maximum contaminant level (MCL) (DHS's goal is to have an MCL for perchlorate by 2004). A PHG is a concentration at which no adverse health effects would occur after a lifetime of water consumption at this concentration. No federal drinking water standard has yet been set for perchlorate, although the EPA has established 1 ppb as the provisional reference dose for adults (CA DHS 2002).

Perchlorate enters the Colorado River water system along Las Vegas Wash that drains into Lake Mead. Perchlorate concentrations decrease as Colorado River water flows downriver, because of other incoming flows. Water from the Colorado River Aqueduct reported perchlorate concentrations ranging from 4 to 8 ppb between 1997 and 2001. IID reported perchlorate concentrations in the All American Canal of 4.2 to 5.3 ppb during 2001-2002. The CVWD water samples found no perchlorate in water from the Coachella Canal (the detection limit is 4 ppb).

At the same time, Kerr-McGee Chemical Company, a Nevada company determined to be responsible for perchlorate entering Las Vegas Wash, has constructed and is operating a perchlorate treatment system. The treatment processes are anticipated to substantially decrease perchlorate concentrations in the Las Vegas Wash, and thus in the Colorado River water, over the next approximately 6 years. The date cannot be predicted exactly as the concentration is also a function of flow in the river, which is dependent on rainfall, and there is perchlorate already in the Las Vegas Wash sediments that will be flushed out over time at a rate that also depends on rain events. By the time the Dike 4 area recharge basin goes on line, in roughly 2005, the perchlorate level in the Colorado River water from the Coachella Canal should be lower than at present.

Should recharge of Colorado River water cause any Torres Martinez Band of Desert Cahuilla Indians' domestic drinking water well to exceed any recognized health based water quality standard, CVWD has indicated it will work with the tribe to bring the drinking water supply of the tribe into compliance by either providing domestic water service to the tribe from the district's domestic water system or by providing appropriate well-head treatment.



- TM-3c The impacts of lining the Coachella Canal were addressed in a separate EIS/EIR for that project (USBR and CVWD 2001). The lining of the Canal would have no effect on the Coachella Valley aquifers as the area to be lined does not overlie these aquifers.
- Conservation of agricultural water in IID would have no impact on Coachella Valley aquifers, as IID irrigation drainage does not have any connection to Coachella Valley aquifers. No temporal or short-term impact to groundwater levels is anticipated to result from the proposed action. Regarding long-term impacts anticipated to result from groundwater recharge contemplated under the CVWMP, adverse impacts are anticipated to occur with regard to the quality of groundwater extracted near CVWD's recharge basins in the Lower Coachella Valley. The Torres Martinez Band of Desert Cahuilla Indians has two production wells located near one of the potential CVWD recharge sites. These two wells are projected to be impacted within about 20 years after recharge commences. In addition, recharge with Colorado River water could introduce low levels of perchlorate into the groundwater near the recharge basins. Section 3.10 of the EIS has been revised to include additional information regarding potential impacts to the Tribe's ground water, and mitigation proposed by CVWD. CVWD's proposed groundwater recharge project is described in more detail in the CVWMP. This document has been available since November 2000, at [http://www.cvwd.org/Public\\_Docs.htm](http://www.cvwd.org/Public_Docs.htm).
- TM-4 The discussion of impacts to biological resources is provided on a location-specific basis. The statement in the EIS regarding increased groundwater levels potentially maintaining riparian and marsh vegetation is found in the discussion of environmental consequences to vegetation within the CVWD (section 3.2.2.). The statement regarding accelerated decline of Salton Sea levels resulting in a loss of marsh vegetation, especially at the south end of the Sea, is found in the discussion of environmental consequences to vegetation within the Salton Sea area. Regarding the comment that the DEIS provides inadequate detail about localized impacts throughout the project area, section 3.10 of the EIS has been revised to include more detailed information on effects related to local actions that would be generated by non-Federal entities in California, such as water conservation actions, which mainly affect California Indian tribes in Imperial and Riverside counties. As pointed out in this EIS, these effects are related to local actions that are outside the control of Reclamation.
- TM-5a To the degree that it is appropriate to describe possible adverse impacts to groundwater quality, as you state in your comments, it is equally appropriate to describe the corresponding benefits. As described above, these potential impacts and benefits are the result of decisions that will be made by the CVWD, but are described in the IA EIS even though these actions are outside the control of Reclamation.
- TM-5b See response to TM-2 and QT-10.
- TM-6 The discussion of Indian Trust Assets was confined to the Colorado River corridor in the Draft EIS based on the premise that Reclamation's actions under the IA are confined to river operations and deliveries, and the potential impacts

to the Salton Sea result from non-federal decisions (made by IID) that would be outside the control of Reclamation. In response to your comment, the IA EIS has been revised to include a detailed summary of the potential effects of IID's water conservation actions on Torres Martinez Band of Desert Cahuilla Indians' resources, based on the analysis done for the IID Water Conservation and Transfer Project EIR/EIS.

TM-7 The EIS has been revised to include a detailed summary of potential impacts to the Tribe from declining Salton Sea levels and proposed mitigation, based on the analysis of these impacts in the IID Water Conservation and Transfer Project EIR/EIS. See also response to EPA-5.

TM-8 CVWD groundwater modeling predicts that the intrusion of Salton Sea water into adjacent Coachella Valley aquifers will occur unless the Coachella Valley basin is recharged and groundwater overdraft addressed. Although the overall intent of the QSA and IA is to reduce California's reliance on Colorado River water, the QSA provides additional water supplies to the Coachella Valley. CVWD is proposing groundwater recharge and other plan components under the CVWMP to reduce overdraft in the Coachella Valley. The risk of Salton Sea intrusion would be substantially reduced if not eliminated with the QSA and CVWD's Water Management Plan.

TM-9 The discussion of biological resources in the draft EIS focused on the direct impacts of the Federal action (changing the point of diversion of up to 400 KAFY of Colorado River water), which would affect the Colorado River corridor. As noted above, potential impacts identified in this comment are effects of IID's water conservation actions that are described in detail in the IID Water Conservation and Transfer Project EIR/EIS. The EIS has been revised to provide additional information regarding these effects, and to assist the reader in understanding their relationship to the actions covered in this EIS and those covered in the IID Water Conservation and Transfer Project EIR/EIS. See also response to AGFD-2.

The Migratory Bird Treaty of 1918 (16 U.S.C 703-712; Ch. 128; July 13, 1918; 40 Stat. 755) as amended, prohibits killing, capturing, selling, or transporting any migratory bird included in the legislation. We do not believe the kind of temporal acceleration of habitat changes caused by IID's reduced inflow into the Salton Sea would violate such prohibitions.

TM-10 The types of impacts referred to in this comment may result from IID's water conservation actions, which could reduce inflows into the Salton Sea. This EIS has been revised to include a discussion of potential impacts from IID's water conservation actions to the Torres Martinez Band of Desert Cahuilla Indians in section 3.10 (Tribal Resources), including potential air quality, cultural resource, and recreational issues associated with reduced inflows into the Salton Sea.

The Environmental Justice section (section 3.8) was also expanded to include a summary of potential impacts from IID's water conservation actions, based on the analysis provided in the IID Water Conservation and Transfer Project EIR/EIS. Although Native Americans, as a group, were not specifically called

out within the analysis, they were included within the categories of “racial minority” and/or “low-income”, as appropriate.

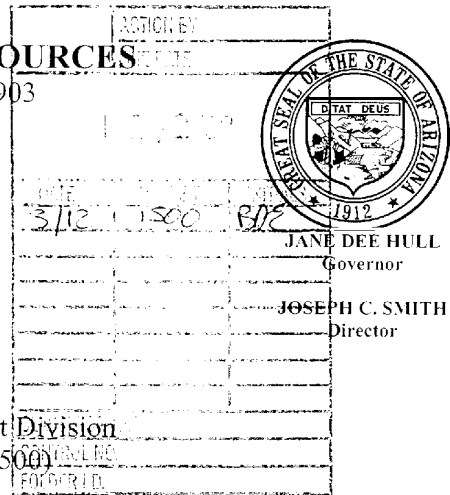
TM-11 The reference to potential use of the land for agricultural purposes and other uses has been deleted from the EIS. Additional information on possible soil contamination and the potential for hazardous materials to be present in exposed sediments is now included in the EIS. The additional information is summarized from the analysis prepared for the IID Water Conservation and Transfer Project EIR/EIS.

TM-12 See response to BIA-8.

## STATE AGENCIES

**ARIZONA DEPARTMENT OF WATER RESOURCES**

500 North Third Street, Phoenix, Arizona 85004-3903  
Telephone (602) 417-2400  
Fax (602) 417-2424



March 11, 2002

Mr. Bruce Ellis, Chief Environmental Resource Management  
U.S. Bureau of Reclamation, Phoenix Area Office (PXAO-1500)  
P.O. Box 81169  
Phoenix AZ 85069-1169

RE: The Arizona Department of Water Resources' (Department) comments concerning the Draft EIS for the Inadvertent Overrun and Payback Policy of Colorado River Water Use

Dear Mr. Ellis:

The Department has reviewed the Draft Environmental Impact Statement (DEIS) regarding the Inadvertent Overrun and Payback Policy (IOP) for Colorado River water users. Thank you for the opportunity to review the DEIS and provide comments.

The Department previously commented on the specific elements of the IOP by letter of April 5, 2001. The preliminary policy contained more detail than the descriptions of the proposed actions that are contained on pages ES-3 and 2-22 of the DEIS. Although the DEIS appears to adequately describe most of the potential impacts of the IOP, Reclamation should state that the complexities of the California Implementation Agreement (IA) and Interim Surplus Agreements will require that the final IOP have considerably more detail about implementation, monitoring and enforcement actions. In light of the statement that "...the IOP would not be materially modified for a 30-year period...", Reclamation must ensure that the EIS adequately covers all actions the Secretary may include in the IOP to manage the deliveries of water to those entities that are party to the California Implementation Agreement (IA). In particular, it may be possible that the proposed IOP will have to be adopted as a rule to provide sufficient authority for proper implementation. To clarify that this DEIS will be sufficient to properly analyze all of the impacts associated with an action to adopt rules, Reclamation should include a statement that the proposed action may include adoption of such a rule.

ADWR-1

In general, the Department agrees that better water use accounting and compliance is needed to enforce the consumptive use limits of the Interim Surplus Guidelines (ISG) and California's Quantification Settlement Agreement (QSA). The Department generally supports the proposed IOP, which indicates Reclamation's clear intent to limit water use to each state's apportionment and to each contractor's entitlement as required by the Law of the River and the ISG and QSA.

ADWR-2

The following comments and questions provide more detail about the Department's concerns and issues DEIS.

1. Page ES-3. The Department agrees, in general, with the definition of inadvertent overrun. The Department expects that Reclamation will not permit a contractor to order water that will create an overrun that is within the control of the water user. In that regard, the proposed action needs to describe the preventative actions that will be taken by Reclamation to avoid releasing water that will result in overrun declarations. If water deliveries are reduced, as described on Page ES-7, to limit overruns by particular water users, temporal changes in the river flows may create seasonal impacts to species, recreation or salinity. To be complete, the DEIS should describe the impacts, if any, and the subsequent mitigation.

ADWR-3

2. Page ES-3 and 2-22. The DEIS states a procedure has not been established for applying the IOP to unquantified entitlements. The IOP and the DEIS must clearly state that the parties to the California IA and QSA have water use limitations as consistent with the ISG, notwithstanding the lack of quantification of their entitlements in their water delivery contracts. In particular, the Coachella Irrigation District and Imperial Irrigation District must comply with the ISG Benchmark Quantities as listed in Section 5 of the ISG. The Department will support adoption of the IOP only if the IOP clearly allows the Secretary to enforce the provisions of the ISG.

ADWR-4

3. Page ES-3 and 2-22. Language needs to be added to the definition of an inadvertent overrun making it clear that an inadvertent overrun for a contractor can only occur if the state's allocation to which the contractor's entitlement is accounted was exceeded for the same year.

ADWR-5

4. Page ES-3 and 2-22. The Department agrees that water use reductions resulting from extraordinary conservation measures are the only reductions in consumptive use that can be used for payback credits. Reductions in water use must be an action caused by the water user to reduce use as part of an approved plan. For example, reductions in water use due to agricultural market conditions cannot be claimed as a reduction in use during the time a mandatory payback plan is in place.

ADWR-6

5. Page ES-4 and 2-23. The Department agrees that only a flood control release or a space building release can be used to forgive an overrun account. The Department agrees that 70R surplus in the AOP can only be used to defer a payback obligation

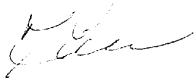
ADWR-7

while the 70R surplus is in effect. It cannot be used to forgive an overrun account. Clarify that "January 1", under the third bullet, refers to the first year of payback. Change "a minimum payback that year" to "a minimum payback the first year".

↑ ADWR-7

Thank you for the opportunity to comment of the DEIS. Please contact me with any questions or clarifications.

Sincerely,



Thomas Carr  
Chief, Colorado River Management Section

Responses

ADWR-1 The complete text of the proposed IOP policy published in the *Federal Register* is now included as Appendix I. Section 2.2.2 and the Executive Summary have been revised to provide more details found in the proposed IOP. Although Reclamation's development and adoption of a policy regarding inadvertent overruns was pursued by the California parties to the IA, it is applicable to all lower Basin States' users with quantified entitlements. As a policy, the intention is to establish the foundation principles that would govern the determination of an overrun, the development of the payback plan, and the monitoring, verification, and remedies to be applied should the specific provisions of the payback not be realized. The specific means, and measures utilized, and the details of each payback plan would be developed by the obligated user and submitted to Reclamation along with their water order, and their Reclamation-approved conservation plan as part of the 43 CFR 417 review and approval process. The details of each payback plan would be developed on a case-by-case basis, and would need to address any specific legal or institutional issues, and demonstrate that the extraordinary conservation measures are distinct from measures being undertaken for transfers.

Reclamation has decided to adopt the IOP as a policy rather than a rule. However, proceeding with a policy at this time does not preclude establishing a rule in the future, at which time, the provisions and practices would be grounded in regulation. We would not expect the environmental impacts of a rule to be substantially different from those of the policy. See also responses to QT-9 and DW-2d.

ADWR-2 Your support for the proposed action regarding the IOP is noted.

ADWR-3 The definition of overrun has been modified to address your comment. Examination of the consumptive use of districts, like PVID, finds year-to-year fluctuations in water use due to weather to be greater than 10 percent. Given the limitations of water use forecasts and water measurement, it was felt that 10 percent was reasonably representative of an "inadvertent" overrun. These limitations include considerations such as the nature of water measurement itself being generally  $\pm 5$  percent, the fact that reporting is not instantaneous, the variability of local weather patterns which can cause higher or lower water use in any given month, and the fact that unmeasured returns are estimated.

ADWR-4 Under the existing provisions of California's Seven Party Agreement, which is incorporated in IID, CVWD and MWD contracts with the Secretary, the California agricultural agencies are quantified in total, limited to an annual use of 3.85 MAF. The 3.85 MAF limitation is particularly relevant to the third priority right holders IID, Coachella, and PVID's third priority Mesa lands, and does provide a quantified basis from which to determine overruns should that be necessary. While the California agricultural agencies are quantified in total, and the 3.85 MAF would provide a basis for determining an overrun, issues would



still remain as to how the overrun would be distributed among the three third-priority entitlements.

Section 5 of the ISG listed Benchmark Quantities for California Agricultural Usage including 14.5 KAF for PPRs. The Benchmarks listed were:

<i>Benchmark Date (Calendar Year)</i>	<i>Benchmark Quantity*</i>
2003	3.74
2006	3.64
2009	3.53

\*California agricultural usage and 14.5 KAF of PPR use

As provided in section 5 of the ISG, should the Benchmark quantities not be met, the interim surplus determinations under sections 2(B)(1) and 2(B)(2) would be suspended and would instead be based upon the 70R strategy for up to the remainder of the period identified under section 4(A) of the ISG.

ADWR-5 An overrun can occur if the contractor's entitlements are exceeded. A contractor's entitlement may include a basic entitlement and a right to the unused entitlement of other entitlement holders within the State's priority system. If another entitlement holder in the contractor's State has unused entitlement within that State's apportionment, that water would be distributed according to the priority system of the State to the appropriate contractors under existing contracts. To the extent unused entitlement passes through the State's priority system, is not claimed by a higher priority entitlement holder, and is still available for distribution to the contractor pursuant to a valid water delivery contract, that water could be used to satisfy the contractor's needs and avoid an overrun.

ADWR-6 Your comment is noted.

ADWR-7 Your comments are noted; the text has been revised accordingly.



THE STATE OF ARIZONA  
**GAME AND FISH DEPARTMENT**

2221 WEST GREENWAY ROAD, PHOENIX, AZ 85023-4399  
(602) 942-3000 • WWW.AZGFD.COM

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March 26, 2002

Mr. Robert W. Johnson  
Regional Director  
U.S. Bureau of Reclamation  
P.O. Box 61470  
Boulder City, Nevada 89006-1470

RECEIVED	3/29/02	
REPLY DATE		
DATE	INITIALS	CODE
4/1/02	Shiller	2000
4/2/02	Shiller	2300
4/3/02	Shiller	2500
4/3/02	Shiller	1000

Re: Draft Environmental Impact Statement (EIS) for the Implementation Agreement (IA),  
Inadvertent Overrun and Payback Policy and Related Federal Actions, Colorado River in  
the Lower Basin

Dear Mr. Johnson:

The Arizona Game and Fish Department (Department) has reviewed the "Draft Environmental Impact Statement (DEIS) for the Implementation Agreement (IA), Inadvertent Overrun and Payback Policy and related Federal Action (IOPP), Colorado River in the Lower Basin." The Department's comments are based on the following provisions under Arizona law:

"Wildlife, both resident and migratory, native or introduced, found in this state except fish and bullfrogs impounded in private ponds or tanks or wildlife and birds reared or held in captivity under permit from the commission [Arizona Game and Fish Commission], are property of the state and may be taken at such times, in such manner, and with such devices as provided by law or rule of the commission."

(Arizona Revised Statutes § 17-102)

"The laws of the state relating to wildlife shall be administered by the game and fish department. Control of the game and fish department is vested in the game and fish commission."

(Arizona Revised Statutes § 17-201)

"The [Arizona Game and Fish] Commission shall:"

"2. Establish broad policies and long range programs for the management, preservation and harvest of wildlife."

(Arizona Revised Statutes § 17-231)

The Department's trust responsibility for fish and wildlife lies within the territorial jurisdiction of the State of Arizona. On July 26, 1987, the Arizona Game and Fish Commission formally adopted a policy, titled "Wildlife and Wildlife Habitat Compensation," which states, in part, that:

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“It is the policy of the Arizona Game and Fish Commission that the Department shall seek compensation at a 100% level, when feasible, for actual or potential habitat losses resulting from land and water projects.”

“Among factors deemed important by the Commission are potential impacts to special category species and/or economically important wildlife species as well as issues which reflect the value, quantity, and quality of habitats which may be impacted by proposed projects.”

On October 16, 1987, the Arizona Game and Fish Commission formally adopted the following policy titled, "Riparian Habitat", which states:

"It is the policy of the Arizona Game and Fish Commission that the Department shall recognize riparian habitats as areas of critical environmental importance to wildlife and fisheries. The Department shall actively encourage management practices that will result in maintenance of current riparian habitat, and restoration of past or deteriorated riparian habitat...."

The Department understands the DEIS analyzes potential impacts from Federal actions regarding the implementation of the Implementation Agreement (IA), the Inadvertent Overrun and Payback Policy (IOP), and conservation measures associated with these projects. The IA commits the Secretary of the Interior, through BR, to make the necessary Colorado River water deliveries to implement the Quantification Settlement Agreement (QSA). The QSA is an agreement between the Imperial Irrigation District (IID), Metropolitan Water District (MWD), Coachella Valley Irrigation District (CVID) and San Diego County Water Authority (SDCWA) to conserve and divert water in an effort to reduce California's water use to normal year apportionment. The QSA requires a change in the water diversion point for maximum of 388,000 acre feet per year (AFY) from the IID's All American Canal at Imperial Dam to MWD's Whittsett Intake at Parker Dam. The IOP is a policy change by BR for payback requirements for inadvertent overruns. The Department supports the efforts of the California water agencies to reduce their water use to the established apportionment and BR's efforts to better manage inadvertent overruns and paybacks.

The Colorado River below Parker Dam provides a variety of recreational opportunities and contains important aquatic, riparian and wetland habitats essential for many species of fish and wildlife. For reasons detailed below, the Department believes that the DEIS does not adequately analyze the impacts to biological resources and wildlife-related recreation on the Colorado River below Parker Dam or propose adequate mitigation for these impacts.

### General Comments

Under Section 662 of the Fish and Wildlife Coordination Act (16 USC 662 *et seq.*), federal agencies are required to consult with the U.S. Fish and Wildlife Service (USFWS) on all water diversion projects. This consultation was not completed prior to the publication of this DEIS

AGFD-1

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(page 4-1 Fish and Wildlife Coordination Act). The Department believes this consultation is an essential component of the NEPA analysis and should be completed prior to publishing and releasing the DEIS.

AGFD-1

The USFWS has primary jurisdiction over species listed under the Endangered Species Act (ESA) and migratory birds, and the state wildlife agencies have jurisdiction over all other fish and wildlife species. The Fish and Wildlife Coordination Act requires the federal proponent of water diversion projects to consult with the state wildlife agency when the diversion affects wildlife within the state's jurisdiction. This consultation provides state agencies an opportunity to analyze potential impacts to fish and wildlife resources and propose appropriate mitigation under its jurisdiction. BR has not yet initiated this consultation with the Department and this DEIS only analyzes impacts to, and proposes mitigation for, species listed under ESA. Therefore, the Department requests that this consultation be initiated and completed prior to publishing a revised DEIS.

The IID, in conjunction with BR, published a DEIS for this action (Draft Environmental Report/Environmental Impact Statement Imperial Irrigation District Water Conservation and Transfer Project 2002). After reviewing both documents, the Department understands that each DEIS tiers to the other. For example, under the section on Migratory Birds (pages 4-1 and 2) in this DEIS it states that the IID DEIS will propose mitigation for impacts to migratory birds. Because an alternative has not yet been selected by IID, it is not certain the extent of the impacts and the appropriate mitigation. The Colorado River is an important travel corridor for migratory birds, including waterfowl and neotropical migrants. The Department considers impacts to migratory birds to be a crucial part of this NEPA analysis and believes that since this component is tiered to a draft EIS, we cannot complete our review of impacts to migratory birds or for other components of this DEIS that are tiered to the IID DEIS.

AGFD-2

The analysis of impacts to wildlife in the reach of the Colorado River below Parker Dam is based on a model of the river using the Colorado River Simulation System on the Riverware software system. Because of the complexity of the Colorado River system, the model must make simplifying assumptions, such as average monthly flows. However, there can be large daily fluctuations, and the extent and timing of fluctuations could vary with proposed changes in use and diversion point. This and other unavoidable errors could result in significant impacts that have not been captured in this analysis. Since the predictive accuracy of this model is uncertain, the Department recommends adding a monitoring component to the mitigation proposal in order to evaluate deviations from the predicted behavior and to stipulate that unanticipated significant impacts will be mitigated. The DEIS should identify and commit to a conflict resolution process in the event of disagreement between the agencies regarding the quantification of unforeseen impacts.

AGFD-3

The Department notes that the discussion of cumulative impacts does not include a specific discussion of the potential cumulative impacts from future changes in water point diversions. The Department recently reviewed a DEIS from the International Boundary and Water Commission to divert 15,000 AFY of Mexico's water allotment to Tijuana using the Colorado

AGFD-4

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River Aqueduct. Projects that result in land use conversions from agriculture to municipal use could result in future changes in water diversion points. The Department recommends analyzing potential future diversion point changes under cumulative impacts. AGFD-4

The Law of the River requires apportioned and surplus water be put to a beneficial use. Creating, enhancing or restoring aquatic, riparian and wetland habitats is not considered a beneficial use, and thus restricts the Department's ability to develop projects to improve these essential habitats. Frequently, non-consumptive use of flowing river water is the only option. Reducing water flows in any reach can impact our ability to manage and improve these habitats. Since the IA and IOP will reduce flows below Parker Dam, the Department believes it is essential to analyze the potential direct and cumulative impacts to habitat improvement projects from these reduced flows. AGFD-5

**Specific Comments**

Pages 2 –32 and 2-33 potential impacts to Colorado River flood releases from IOP and Potential impacts to Colorado River flows from IOP payback

Both federal actions can result in reduced flows in the Laguna Division, Yuma Division and Limitrophe Division, which are currently experiencing low flows (0 flow below Morelos Dam). The Department believes this action could have a significant impact to wildlife resources in these river divisions. AGFD-6

Page 3.2-15, Proposed Action, Implementation Agreement, Colorado River (Biological Resources)

We believe changes in the water surface elevation of the river itself will result in changes in connectivity of adjacent sloughs and backwater areas, and may result in significant adverse effects to water circulation in those areas. Since circulation of water is seasonally important in maintaining adequate dissolved oxygen in the water, any changes may result in impacts to the quality or utility of the area as fish habitat. AGFD-7

Page 3.2-15, Proposed Action, Implementation Agreement, Colorado River (Vegetation)

The DEIS states: "Groundwater levels are predicted to drop 4.4 inches or less, which has the potential to impact riparian vegetation with shallow roots along the outward fringes of the riparian zone." We believe the creation of new cottonwood/willow habitat to offset impacts to Southwestern willow flycatcher as specified in the BO does not necessarily mitigate impacts to all fish and wildlife resources that may be affected by the Proposed Action. AGFD-8

Page 3.2-16, Proposed Action, Implementation Agreement, Colorado River (Fish and Wildlife)

The Department does not agree with the following statement: AGFD-9

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“Implementation of the IA would result in lower river flows between Parker Dam and Imperial Dam. Since the flows would be within the range of normal fluctuations, and because sport fishes are more adaptable to changing conditions and are in much greater numbers than native fish, an adverse impact to sport fishes would not occur.”

AGFD-9

As mentioned earlier, we believe changes in the water surface elevation of the river itself will result in changes in connectivity of adjacent sloughs and backwater areas, which may affect usable area for fish and angler opportunity.

Page 3.5-6 Proposed Action, Implementation Agreement, Colorado River (Recreational Resources)

The Department does not agree with the statement: “No recreational impacts to the Colorado River area would result from the IA.” We are concerned that reductions in open water will impact areas currently available for use by anglers, waterfowl hunters, and non-consumptive wildlife recreationists. We note on page 3.2-15, lines 22-32 of the document that impacts to biological resources are discussed in the following statement:

AGFD-10

“The BO determined that the biological conservation measures that are included as part of the proposed action considered in this EIS would reduce these impacts to acceptable levels.

The measures specified in the Biological Opinion are directed at offsetting impacts to federally listed species and may not offset other impacts to wildlife resources. Changes in backwaters will affect recreational fishing. The lower Colorado River is heavily utilized by anglers, with a substantial portion of this Nation’s population within three hours drive. Based on data derived from our 1992 Statewide Angler Survey, we estimate approximately 355,000-angler use days per annum from Arizona licensed anglers on the Colorado River below Parker Dam.

The findings in the BO are limited to federally listed threatened or endangered species, and may not apply to other fish and wildlife species or wildlife-related recreation. The DEIS explains that:

“Execution of the IA, wherein the Secretary agrees to changes in the amount and/or location of deliveries of Colorado River water that are necessary to implement the QSA [Quantification Settlement Agreement].”

and

“Implementation of biological conservation measures to offset potential impacts from the associated action that could occur to federally listed fish and wildlife species or their associated critical habitats within the floodplain of the Colorado River between Parker Dam and Imperial Dam.

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We believe that the analysis in the DEIS is limited and should be rewritten to include an analysis of impacts to anglers, waterfowl hunters and non-consumptive wildlife recreationists from the projected reduction in open water area of river and backwaters. We are also concerned about impacts to open water areas resulting from changes in connectivity and water quality that support fish and wildlife and associated recreation. The Department has statutory responsibility for the boating safety program at the state level in Arizona and we are interested in how changes to the river affect navigation and boating safety.

AGFD-10

The Department reiterates our support for BR and the water agencies' efforts to reduce California's water use in normal years to its apportioned amount. However, we believe this must be accomplished without significant impacts to the biological resources and recreational opportunities associated with the Colorado River. Again, we do not believe that the DEIS sufficiently analyzes these impacts, and we recommend re-analysis of impacts pertaining to biological and recreational resources as identified above, including a formal Fish and Wildlife Coordination Act consultation. The Department looks forward to working with your staff to ensure that our concerns are considered and addressed in the DEIS. Please contact Mr. Russ Engel, Regional Habitat Program Manager at (928) 342-0091 if you have any questions regarding this letter.

Sincerely,

  
Duane L. Shroufe  
Director

cc: John Kennedy, Habitat Branch Chief, Phoenix  
Larry Voyles, Regional Supervisor, Region IV, Yuma  
Russ Engel, Habitat Program Manager, Region IV, Yuma  
Bruce Ellis, Chief, Phoenix Area Office, USBR  
Curt Taucher, California Department of Fish and Game  
David Harlow, Field Supervisor, Ecological Services Office, USFWS

Responses

AGFD-1 Reclamation initiated consultation with FWS for the IA in February 2001, and provided funding to FWS for mitigation recommendations under the FWCA. It was our expectation that FWS would coordinate their recommendations with AGFD. We regret that this coordination was apparently not fully carried out. Nevertheless, we are open to any comments that AGFD may have regarding mitigation recommendations for effects on the Colorado River which you believe may not be addressed by the biological conservation measures adopted by Reclamation. FWS has provided their FWCA recommendations in the form of a comment letter on the draft IA EIS.

AGFD-2 The reductions in flow below Parker Dam attributable to the IA would not affect migratory birds. The impacts from potential reductions in inflow into the Salton Sea are described in detail in the IID Water Conservation and Transfer Project EIR/EIS and summarized and incorporated by reference in the IA EIS.

AGFD-3 See response to CRIT-9.

AGFD-4 The proposal by the IBWC to divert 15 KAF of Mexico's water allotment to Tijuana using the Colorado River Aqueduct relates to emergency situations (e.g., when there are outages in Mexico's system). Reclamation first entered into a contract for temporary emergency delivery of a portion of the Mexican Treaty Waters in the vicinity of the City of Tijuana, Mexico in 1972. The water is diverted through the Colorado River Aqueduct and through other facilities operated by California water agencies. Since 1972, water has been delivered to Mexico through the Colorado River Aqueduct as part of these emergency operations in ten different years, in amounts as small as 240 AF and as large as 10,358 AF.

Because of the intermittent nature of the project and the variable amounts of water involved, it is difficult, if not speculative to estimate the cumulative impacts.

AGFD-5 As stated in section 3.2.2, Reclamation's analysis indicates the overall changes in river flows from the proposed action would be small (a decrease in median annual water levels by 0.4 feet), which falls within the historic fluctuation of water levels for the area. Potential impacts to the Colorado River Indian Tribes' ongoing riparian restoration program along the Colorado River are described in section 3.10.2.

The comment about use of Colorado River water for creating, enhancing and restoring aquatic, riparian and wetland habitat is currently being addressed through the Multi-Species Conservation Program (MSCP) on the lower Colorado River. Arizona Game and Fish Department is an active member of the MSCP.

The intent of the MSCP is to create, enhance, and restore aquatic, riparian, and wetland habitat within the floodplain of the lower Colorado River. The MSCP intends to acquire a secure source of water as legally required by applicable law to accomplish the stated intent of the program.



- AGFD-6 The modeled conditions that were analyzed in this EIS do not impact the normal flow regimes in the portion of the Colorado River system below Imperial Dam. The observed impacts to river flows below Imperial Dam, which include the Laguna Division, Yuma Division, and Limitrophe Division, relate to excess flows (e.g., primarily flood control operations at Hoover Dam). The impact to excess flows in this reach of the river would be consistent with the impacts observed and documented for the portion of the Colorado River that exists below Morelos Dam (see section 3.12.2 or Appendix C).
- AGFD-7 A major concern in the analysis of the proposed action's impact on reduction of river flow was the potential impact to sloughs and backwaters along the river. The modeling conducted by Reclamation combined a river routing technique known as Muskingum routing, HEC-RAS water surface profile modeling software, and a GIS topographic database to determine which if any backwater or slough areas would be cut off through reduction of the river levels. Those areas where the connectivity would be impaired were included in the projected loss of 44 acres of wetland. Therefore we believe that any potential impact to this habitat has been adequately identified and mitigation measures developed for its loss.
- AGFD-8 The biological conservation measures proposed not only include the monitoring and restoration of riparian vegetation, but also includes establishment of marsh vegetation to replace any backwater/slough habitat that is impacted. Additional mitigation is also proposed to address impacts to native fish. We believe these mitigation strategies will benefit a broad suite of species. Reclamation does not propose any other mitigation measures.
- AGFD-9 Text has been revised to address your comment. See also response to FWS-14.
- AGFD-10 As noted in section 3.1.2, the proposed action would result in only a small decrease in river flow. Given implementation of the full transfer, the water surface elevation associated with the average annual Parker release would decrease a maximum of 0.4 feet in the reach between Parker Dam and Imperial Dam. Recreational facilities, such as launch ramps, would not be adversely impacted, nor would boating safety.
- As noted in section 3.2.2 of the EIS, negligible adverse impacts to sport fisheries on the Colorado River would occur; thus no adverse impacts to recreational fishing would occur. Impacts to waterfowl hunting are not considered substantial because only small areas would be affected, resulting in subtle habitat changes that would not adversely affect recreational opportunities.

**Commission**

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Chair  
MICHAEL C. FRANCIS  
Vice-Chairman  
DALTON H. COLE  
JOHN I. HUDSON  
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**Staff**

JOSEPH W. MULHOLLAND  
Executive Director  
TOM CARTER  
Deputy Director  
RITA K. GALLANT  
Executive Secretary

**ARIZONA POWER AUTHORITY**

1810 W. Adams Street • Phoenix, AZ 85007-2697  
(602) 542-4263 • FAX (602) 253-7970

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SERIALIZED	FILED
MAR 20 1500 2002	
FBI - PHOENIX	

March 18, 2002

Mr. Bruce Ellis  
Environmental Program Manager  
Phoenix Area Office  
Bureau of Reclamation  
P.O. Box 81169  
Phoenix, AZ 85069

Re: Draft Environmental Impact Statement for the Implementation Agreement (IA), Inadvertent Overrun and Payback Policy (IOP) and Related Federal Actions, Colorado River in the Lower Basin.

Dear Mr. Ellis:

The Arizona Power Authority notes two items contained in the above-captioned EIS and appendices.

1. Draft Implementation Agreement. In Section 8, Decree Accounting, of the Draft Implementation Agreement, which is contained in the Appendices, the Agreement reads: "Accordingly, so long as there is full and timely implementation of the water budget components of the QSA, the Secretary will not materially modify the Inadvertent Overrun and Payback Program for a 30-year period (during which the implementation of the California Plan to reduce its use to 4.4 million acre-feet per year is anticipated)...."

Section 8 references a 30-year period for the State of California to return to its appropriate annual 4.4 maf annual water usage. Yet from previous Department of the Interior pronouncements the Authority understands that interim period to be limited to 15 years.

For that reason, the Authority would request clarification from the Bureau of Reclamation on the use of an interim "30-year period" language in the draft IA. APA-1

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2

Mr. Bruce Ellis  
Environmental Impact Statement

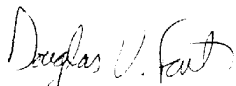
2. Potentially Overlapping Environmental Work. The Authority notes the excellent work that the Bureau of Reclamation obtained in its August 30, 2000 Biological Assessment for the proposed Interim Surplus Criteria et al.

The Biological Assessment reviews the impact of implementing various alternative actions upon species such as the yellow-billed cuckoo and southwestern willow flycatcher.

Much of the environmental work conducted by the Bureau of Reclamation may also be useful in the parallel effort to develop a plan to study the same species under the Multi Species Conservation Plan. Thus the Authority queries as to whether any efforts have been made to coordinate the Colorado River environmental work under the ISP and MSCP Programs. | APA-2

If you have any question upon the above comments, then please feel free to give me a call.

Sincerely,



Douglas V. Fant

Responses

APA-1            The 15-year interim period refers to the period of time during which the Interim Surplus Guidelines (ISG) are to be in effect. The ISG, formerly referred to as the Interim Surplus Criteria, will be used annually during the 15-year interim period (from 2002 to through 2016) to determine the conditions under which the Secretary may declare the availability and volume of surplus water for use within the States of Arizona, California, and Nevada. The Secretary has developed the ISG to provide mainstream users of Colorado River water, particularly those in California that currently utilize surplus water, a greater degree of predictability with respect to the likely existence, or lack thereof, of a surplus determination in a given year for the interim period. The guidelines facilitate California's transition to staying within its 4.4 MAF entitlement of Colorado River water during a normal year.

The IOP was intended to address overruns of quantified users of all the Lower Basin States. The Policy is not restricted to California users, nor is the time period directly related to the QSA. Rather we have noted that "during" or within the 30 years of the IOP we anticipate implementation of the QSA and California reducing its use to 4.4 MAF. The IOP will not be materially changed for 30 years. See also response to DW-2b.

APA-2            Yes. The ISG, IA, and Multi-Species Conservation Program efforts are being closely coordinated and are being carried out by the same office--Reclamation's Lower Colorado Regional Office.



**Document Details Report  
State Clearinghouse Data Base**

**SCH#** 2002014005  
**Project Title** Implementation Agreement, Inadvertent Overrun and Payback Policy, and Related Federal Actions  
**Lead Agency** U.S. Department of the Interior

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**Type** EIS Draft EIS  
**Description** Execution of an Implementation Agreement that would commit the secretary of the Interior to make Colorado River water deliveries in accordance with terms and conditions consistent with a proposed Quantification Settlement Agreement (QSA). The QSA establishes a framework of conservation measures and water transfers within Southern California for up to 75 years.

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**Lead Agency Contact**

**Name** Bruce D. Ellis  
**Agency** U.S. Department of the Interior, Bureau of Reclamation  
**Phone** 602-216-3854 **Fax**  
**email**  
**Address** P.O. Box 81169  
**City** Phoenix **State** AZ **Zip** 85069-1169

---

**Project Location**

**County** San Bernardino, Riverside, Imperial  
**City**  
**Region**  
**Cross Streets**  
**Parcel No.**  

<b>Township</b>	<b>Range</b>	<b>Section</b>	<b>Base</b>
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**Proximity to:**

**Highways**  
**Airports**  
**Railways**  
**Waterways**  
**Schools**  
**Land Use**

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**Project Issues** Agricultural Land; Air Quality; Archaeologic-Historic; Flood Plain/Flooding; Recreation/Parks; Vegetation; Water Quality; Water Supply; Wetland/Riparian; Wildlife; Growth Inducing; Landuse; Cumulative Effects

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**Reviewing Agencies** Resources Agency; Department of Boating and Waterways; Colorado River Board; Department of Fish and Game, Region 6; Office of Historic Preservation; Department of Parks and Recreation; Department of Water Resources; Caltrans, Division of Transportation Planning; Department of Food and Agriculture; Air Resources Board, Major Industrial Projects; State Water Resources Control Board, Division of Water Rights; Regional Water Quality Control Board, Region 7; Native American Heritage Commission; State Lands Commission

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**Date Received** 01/18/2002 **Start of Review** 01/18/2002 **End of Review** 03/26/2002

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Responses

CA STATE-1 No response required.