

## COMMENT LETTER

September 8, 2000

Regional Director  
Lower Colorado Region  
Attention: Jayne Harkins (LC-4600)  
Bureau of Reclamation  
PO Box 61470  
Boulder City, Nevada 89006-1470



RE: Colorado River Interim Surplus Criteria Draft Environmental Impact Statement

Dear Jayne,

Southwest Rivers appreciates the opportunity to comment on the Colorado River Interim Surplus Criteria Draft Environmental Impact Statement (DEIS) developed by the Bureau of Reclamation. Southwest Rivers is a newly formed non-profit organization with a mission to protect and restore the river ecosystems of the Colorado River basin. Established by the staff and directors of other conservation organizations active in the Colorado River basin, Southwest Rivers is focused on the long-term health of the riverine ecosystems of the Colorado River watershed.

1 Southwest Rivers joins several other environmental groups in expressing substantial concerns about the impact of the proposed action on the Colorado River ecosystem. (We support the comments filed by the Pacific Institute for Studies in Development, Environment and Security, as well as those filed by the Defenders of Wildlife, et al.) Although the Department of the Interior and the Colorado River basin states have decided that the benefit of implementing California's plan to reduce its use of Colorado River water down to its legal entitlement is of paramount importance in the Colorado River system, we cannot agree. We are supportive of efforts to reduce California's use, but not at the expense of Colorado River ecosystems. California claims that availability of surplus water over the next 15 years is essential to the success of its plan. But since the long-term effects of reducing California's use are unlikely to provide any significant environmental benefits, since California currently relies on unused apportionments to provide the additional water used which in the future would then be used by other states, the short-term environmental costs of this proposed action are an unacceptable price to pay. We believe that there must be some element to the action that provides a benefit to the environment which counteracts the potential costs.

1: Comment Noted.

2 The DEIS as published is deficient in a number of ways. As it stands, it contains enough inadequacies, inaccuracies and omissions that it is incomplete for purposes of meaningful public review. Southwest Rivers recommends that a supplemental draft be prepared and distributed for comment prior to the preparation and release of a final environmental impact statement.

2: Comment Noted.

**I. The DEIS Omits Material Essential for an Analysis of the Proposed Action**

Southwest Rivers has identified a number of elements that are material to an analysis of the proposed action which have not been included in the DEIS.

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**A. The 7 State Plan must be included and analyzed in a DEIS if it is to be considered as an alternative**

Following the July 7, 2000 publication of the DEIS, the Bureau of Reclamation on August 8 published the 7 States' proposed interim surplus guidelines (65 Fed Reg 48531). According to Reclamation, a "preliminary review" of the plan indicates that it lies "within the range of alternatives and impacts analyzed in the DEIS." However, since it has not been formally presented within the DEIS as an alternative, analyzed in the same manner as other alternatives presented in the DEIS, and contains different elements than other alternatives presented, it must be included and analyzed in a supplemental DEIS before it can be considered as an alternative and potentially selected as the preferred alternative. CEQ regulations require that the alternatives section of an EIS "present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decisionmaker and the public." (40 CFR 1502.14)

**B. The "Pacific Institute" alternative is a reasonable alternative and should be included and analyzed in a DEIS**

Article I(2) of the long-range operating criteria for the Colorado River Reservoirs requires a plan of operation that reflects "appropriate consideration of the reservoirs for all purposes, including...enhancement of fish and wildlife, and other environmental factors." (35 Fed Reg 8951) As a clarification of the long-range operating criteria, the development and implementation of interim surplus criteria are subject not only to the needs of California and the other basin states, but to the long-range operating criteria and other elements of the Law of the River and the laws of the United States, including NEPA and the ESA. The adoption of any of the current alternatives for interim surplus criteria or the 7 State Plan would not meet the Secretary's environmental responsibilities within system operations. The alternative submitted to Interior by the Pacific Institute and nine other environmental organizations meets both the purpose and need for interim surplus criteria and the Secretary's broader environmental responsibilities. Contrary to Reclamation's assertion on page 2-3 of the DEIS that "the delivery of water to or through Mexico would require modification of the Treaty," delivery of water to Mexico beyond the *minimum* amounts required by the treaty could be undertaken unilaterally by the United States. Therefore, the Pacific Institute alternative both meets the purpose and need for the action and is reasonable.

CEQ regulations on the preparation of NEPA documentation require that an EIS "rigorously explore and objectively evaluate all reasonable alternatives." (40 CFR 1502.14(a)) The exclusion of a reasonable environmental alternative that both meets the purpose and need for the action and includes limited dedication of resources for environmental purposes is arbitrary and capricious. A supplemental DEIS which fully includes and analyzes the Pacific Institute alternative should be prepared and distributed.

3: Please refer to the response to Comment 10-4.

4: An EIS need not consider an infinite range of alternatives, only reasonable and feasible ones and those reasonably related to the purposes of the project that afford a reasoned choice by the decision maker. The rule of reason shall be utilized in development of a range of alternatives. NEPA does not require a separate analysis of alternatives which are not significantly distinguishable from alternatives actually considered, or which have substantially similar consequences. For these reasons, Reclamation considered the Pacific Institute proposal but eliminated it from further analysis because part of it did not meet the purpose and need of the proposed action and the remainder of the alternative mirrored the Six State's Alternative which was analyzed in depth for the DEIS. Please also refer to the response to Comment 11-2.

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**C. The California "4.4 Plan" must be included**

5 Integral to many of the alternatives presented in the DEIS is the implementation of the California plan to reduce the state's use down to its legal entitlement (frequently – although perhaps erroneously – referred to as the "4.4 Plan"). The DEIS explicitly states that "the Secretary may condition the continuation of interim surplus criteria for the entire period through 2015 on a showing of satisfactory progress in implementing the 4.4 Plan." (DEIS, 1-22) However, no version of this 4.4 Plan has been included in the DEIS. Without the 4.4 Plan it is impossible to measure the quantities of water involved in the alternatives that include implementation of the plan, and likewise it is impossible to gauge California's compliance.

We realize that all the details of the 4.4 Plan and its implementation have not been worked out. However, CEQ regulations mandate the inclusion of such materials in a DEIS: "If the incomplete information relevant to reasonably foreseeable significant adverse impacts is essential to a reasoned choice among alternatives and the overall costs of obtaining it are not exorbitant, the agency shall include the information in the environmental impact statement." (40 CFR 1502.22(a)) A supplemental DEIS which includes the California 4.4 Plan should be prepared and distributed.

**D. The Upper Colorado River Commission's new depletion schedule must be included**

6 The modeling and analysis that was included in the DEIS used a depletion schedule for the Upper Basin states that was developed in 1996. A new schedule was developed in 1999 (DEIS, 3.4-11). Given the importance of Upper Basin depletions to the results of the modeling and the determination of effects on the environment, the updated depletion schedule should be used in the modeling of effects and such model results should be made available for review prior to release of a FEIS. A supplemental DEIS which includes analyses based on the updated depletion schedule should be prepared and distributed.

**E. The geographic scope omits areas of potential impact**

7 A material failure of the DEIS is its omission of several potentially affected geographical areas in the geographic scope and subsequent analysis within the document. Of significant concern is the omission of the area from the Northerly International Boundary to the Southerly International Boundary (Limitrophe Division), as well as the river and its full floodplain within its delta in Mexico, all the way to the Gulf of California. These areas must be included in the supplemental DEIS.

**F. Scope of Affects Analysis Inappropriately Omits Areas Subject to Other Environmental Mitigation Programs**

8 In several places, the DEIS omits any affects analysis for a geographic area due to the existence of another existing environmental mitigation program. This is most notable in the analysis of affects of the proposed action within the Grand Canyon reach of the Colorado River,

5: The purpose and need acknowledge California's efforts to lower their Colorado River consumptive use. The DEIS did note that in Section 1.4, Related and Ongoing Activities, the 4.4 Plan, now the California Colorado River Water Use Plan (CA Plan), was under development. Further, the CA Plan is not a federal action. To the extent federal actions are required as part of the plan, each element will undergo appropriate environmental compliance. As evidenced by the recent draft version of the CA Plan, this is still a work in progress although various parties have different views. Reclamation has never viewed surplus as a part of the CA Plan. Moreover, the measure of progress in implementing the CA Plan concerns reduction in water need rather than physical or institutional arrangements.

6: Revised depletion schedules provided by the Basin States were used in FEIS analyses. See response to Comment No. 14-10 for more detail.

7: The area of potential effect has been expanded for the FEIS to include the Colorado River and 100-year floodplain to the Southerly International Boundary within the U.S. Section 3.16 of the EIS, Transboundary Impacts, addresses potential effects within Mexico.

8: An analysis of the frequency with which the triggering criteria for BHBFs and low steady summer flows would be met under each of the alternatives has been conducted for the FEIS (see Section 3.6). When compared to the baseline conditions, the probability of a BHBF being triggered under the preferred alternative is reduced by 1.1% during the interim period (through 2016) and by 0.1% during the remaining period (through 2050). The probability of a low steady summer flow being triggered under the preferred alternative is reduced by 2.9% during the interim period and increased by 0.3% during the subsequent period. Given the margin of error in forecasting runoff, these proposed minor changes are not expected to impact the resources in the Colorado River corridor from Glen Canyon Dam to the headwaters of Lake Mead.