

## COMMENT LETTER

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consuming 4.4 maf per year, there would be no need for interim surplus criteria. In fact, it is highly unlikely that California will fully reduce its use to 4.4 maf (a fact apparently reflected in its Plan), and inconceivable that it will reduce its use by more than 0.8 maf in a single year. Therefore, the baseline and flood control alternatives should be modified to reflect a more realistic projection of California's use.

#### B. The presentation of model results needs improvement

To improve the presentation of the model results and allow improved review and comment upon the alternatives and their environmental impacts, we suggest the following modifications:

- Present annual-scale model results at more frequent data points. Begin with actual 1999 data as a baseline, then give model results for, at the minimum, the years 2000, 2005, 2010 and 2015, in addition to the results provided for the period following termination of the interim surplus criteria.
- Select "representative" monthly flow results, intended to show seasonal changes in flows to the delta, that capture actual maximum and minimum flows to the delta. The months selected (January, April, July and October) are unlikely to capture true seasonal variability in flows.
- In order to determine river stage, which is important in determining impacts to riverine shoreline habitats and the potential for over-the-bank flows in the floodplain in Mexico below Morales Dam, the model should be modified to project instantaneous releases.

#### C. The predictability to California is overstated

The Purpose and Need for the action states that "through adoption of specific surplus criteria, the Secretary will be able to afford mainstream users of Colorado River water, particularly users in California who currently utilize surplus flows, a **greater degree of predictability** with respect to the likely existence, or lack thereof, of surplus conditions on the river in a given year." (DEIS, 1-3, emphasis added) This is inaccurate, and overstates the predictability of surplus flows in a given year, especially to California (who will be relying most heavily on availability of such flows). Any declaration of surplus is *primarily* dependent upon hydrology and inflows. Storage conditions will also influence the likelihood of surplus flows, but even storage conditions can be overshadowed by extreme inflow conditions. Should the Colorado River system enter into an extreme and prolonged drought beginning in 2001, there may be no surplus declarations within the 15 year interim period, despite the fact that surplus flows are anticipated by the action to provide California with a "soft-landing" while it makes strides to reduce its consumption of Colorado River water. The purpose and need statement should be revised to reflect the reality that the action may provide greater predictability of surplus flows given a set of inflows and storage conditions, but the absolute predictability of surplus flows remains low.

13: Additional explanation has been added to Section 3.3 and Section 3.4 with respect to the interpretation of the figures in these sections and the meaning of the analysis results.

27: The intent of the analysis presented in Section 3.3.4.5 was not to evaluate the maximum or variation in seasonal flows to the delta but rather to evaluate and acquire an understanding of the potential effect of the surplus criteria under the modeled surplus alternatives relative to the modeled baseline conditions. Reclamation is of the opinion that the analysis presented in Section 3.3.4.5 accomplishes this.

28: The RiverWare model is a monthly time step model and as such is limited to evaluation of Colorado River operation conditions on an aggregated monthly basis. Reclamation will take this suggestion into consideration when making future improvements to the RiverWare model.

14: Reclamation agrees that we can not absolutely predict when surplus flows will be available in coming years. Inflow into the Colorado River and carryover storage from year to year are the variables in the system with the greatest impact on the system. However, Reclamation believes that the DEIS was accurate regarding predictability and that given certain hydrologic assumptions users will be able to predict with greater certainty the existence of surplus and expected amounts of surplus available, doing away with the dynamic factors currently used in the AOP.

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**D. California's use does not drop to 4.4 maf with this action, nor are there terms for determining California's non-compliance and subsequent termination of the criteria**

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The purpose and need for this action seems to indicate that implementation of the action will facilitate California's reduction of use of Colorado River water down to its legal entitlement of 4.4 maf during the fifteen year interim period. However, as indicated earlier, it appears that California will not get down to 4.4 maf, and perhaps will not even attempt to do so within its Plan. This reality undermines the purpose and need for the action.

Furthermore, although the DEIS 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) there are no mechanisms set out within the DEIS for determining what constitutes satisfactory progress, and no terms for terminating the interim surplus criteria based on California's non-compliance. These mechanisms and terms are essential, and should be included in a supplemental DEIS.

**E. The analysis of transboundary impacts is inadequate**

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Although it is encouraging to see that the DEIS addresses transboundary impacts, the analysis is cursory and based on less-than-current data. The analysis fails to acknowledge the potential impacts to the Gulf, the listed species (vaquita and totoaba) in the Gulf, and the socioeconomic impacts of further reductions in flow to the Gulf.

**F. Critical habitat for bonytail and humpback chub is incompletely stated**

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Designated critical habitat for the bonytail as stated in the DEIS (3.8-19) omits the section in the Colorado River from Hoover Dam to Davis Dam (including Lake Mohave to its full pool elevation) and Lake Havasu (to its full pool elevation). (50 FR 13374) The statement of designated critical habitat for the humpback chub (3.8-21) is also incomplete. It omits designated critical habitat in Grand Canyon, which includes the Colorado River from Nautliod Canyon (RM 35) to Granite Park (RM 209) and the lower 8 miles of the Little Colorado River. (50 FR 13374)

**G. The effect on whitewater boating in Cataract Canyon is omitted**

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The DEIS incorrectly states that "the only effect that the implementation of the interim surplus criteria alternatives would have on whitewater boaters would be the lowered pool elevations in Lake Mead." (DEIS, 3.9-34) During the period of implementation, Lake Powell end of year elevations are projected to decline, dipping below 3,640 elevation for the Shortage Protection Alternative in 2015 (Figure 3.9-1) As Lake Powell elevations decline, additional rapids are exposed in Cataract Canyon, expanding the whitewater boating opportunity in that stretch of river above Lake Powell. Therefore, implementation of the action would have a positive impact for whitewater boaters in Cataract Canyon during the implementation period.

15: See response to Comment 11-9. Whether or not California actually reduces to 4.4 maf does not eliminate the need for objective criteria that are subject to periodic reviews. Reclamation believes the preferred alternative meets the purpose and need and also will assist California in moving towards using 4.4 maf during the term of the interim surplus criteria.

16: Section 3.16.5.3 has been added to the FEIS to provide additional information on the general potential impacts that the implementation of the interim surplus criteria may have on the frequency of excess flows to Mexico as well as the potential resultant impacts to groundwater recharge and salinity south of the international border. Section 3.16.6 has been expanded to include additional information about potential impacts of the proposed interim surplus criteria on special status species and their habitat which may occur in both United States and Mexico. The Executive Order on Environmental Effects Abroad, as discussed by 3.16.2, focuses on impacts to natural resources, and specifically excludes consideration of socioeconomic impacts.

17: The descriptions of designated critical habitat have been corrected for the bonytail and humpback chub.

18: Section 3.9.4 has been revised to include the beneficial effects of lower pool elevations for whitewater boating in the Colorado River at the headwaters of Lake Powell.

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Southwest Rivers declines to formally comment on the 7 State Plan, since it has not been presented in a DEIS as an alternative. However, preliminary review of the plan spurs us to point out several deficiencies which should give Reclamation pause when considering its inclusion in present form as an alternative in a supplemental DEIS.

First, the proposal in its current form does not conform with the purpose and need of the interim criteria. The 7 State Plan does not provide a starting point for measurement of California's consumption, but given that such consumption has been as high as 5.2 maf in recent years and the plan envisions maximum conservation of 490,000 af by 2016, this plan will fail to bring California within its legally entitled use during the implementation period.

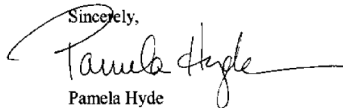
Second, the proposed plan inappropriately attempts to constrain the Secretary's discretion to allocate unused apportionments under Article II(B)(6) of the Supreme Court Decree in *Arizona v. California*. The states may not dictate how the Secretary is to use his discretion in making such allocations, and should the Secretary wish to establish firm guidelines for the exercise of his discretion, as he is currently doing in regard to surplus criteria, he would arguably be subject to the requirements of NEPA.

Finally, the proposed plan inappropriately attempts to preclude releases of water for any purposes other than those outlined in the Plan. This would preclude potential releases for environmental mitigation. The Secretary may need to release water to meet his other legal responsibilities as water master in the lower Colorado River, and the states lack legal authority to prohibit him from making releases for other purposes.

In conclusion, Southwest Rivers believes that the DEIS is inadequate and must be revised, augmented and reissued as a Supplemental DEIS. We feel that the omissions and deficiencies that we have identified in these comments clearly point out that the DEIS is so inadequate as to preclude meaningful analysis. We earnestly hope that the supplemental DEIS will recognize the core fact that environmental needs *must* be met before any quantity of discretionary water is dedicated to consumptive uses. Until that occurs, the additional water is not truly "surplus."

Feel free to contact me if you have any questions about our comments.

Sincerely,



Pamela Hyde  
Executive Director for Policy  
Southwest Rivers

19: The preferred alternative in this FEIS has been derived from the Seven States proposal. Reclamation did not structure the preferred alternative precisely as described in that draft proposal, but made some changes for consistency with the purpose and need of the proposed action, Reclamation policy and operational procedures.

20: Reclamation does not concur with the opinion expressed in this comment. The analysis of effects of the alternatives on reservoir levels and river flows, and the potential effects on resources, provide a meaningful disclosure of effects for public consideration and permit a reasoned choice by the decision maker. This FEIS contains various refinements and additional detail from public comment, modeling, and coordination with interested parties and agencies.