

COMMENT LETTER

RESPONSES

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Executive Director

RITA K. GALLANT
Executive Secretary

September 9, 2000

Via Fax and Mail

Regional Director
Lower Colorado Region
U.S. Bureau of Reclamation
c/o Ms. Jayne Harkins
Attention BC00-4600
P.O. Box 61470
Boulder City, Nevada 89006-1470
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Re: Comments Upon the Colorado River Interim
Surplus Criteria-Draft Environmental
Impact Statement; 65 Federal Register 47516
(August 2, 2000)

Dear Ms. Harkins:

Please accept the following comments from the Arizona Power Authority (Authority) relating to the Draft Environmental Impact Statement for the Colorado River Interim Surplus Criteria. The Secretary of the Interior, acting through the United States Bureau of Reclamation, is considering adoption of criteria under which surplus water conditions may be declared in the Lower Colorado River Basin. The purpose of the criteria is to ensure that the State of California returns to its proper allocation of 4.4 million acre feet of Colorado River water pursuant to the U.S. Supreme Court Decree in Arizona v. California and pursuant to Article III(3)(b) of the Criteria for Coordinated Long Range Operation of the Colorado River Reservoirs Pursuant to the Colorado River Basin Project Act of September 30, 1968 (Long Range Operating Criteria).

The Authority is a public power marketer charged under Arizona State law with responsibility for taking and marketing the State of Arizona's allocation of 377 megawatts of hydroelectric power from Hoover Dam. The Authority markets its Hoover power to 31 Arizona entities including municipalities, electrical and irrigation districts and the Central Arizona Project.

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Regional Director
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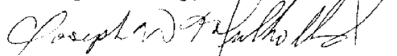
The Authority submits the following comments on the Draft Interim Surplus Criteria EIS:

1 The draft EIS extends the National Environmental Policy Act (NEPA) analysis into Mexico. We believe that such an extension is not required by law and raises the question as to why a different approach is being taken in the Multi-species Conservation Program (MSCP). The existence of a Treaty under which the Republic of Mexico has total control over any water passing into Mexico makes such an extension meaningless. We are particularly concerned that a similar extension will be made with the Endangered Species Act (ESA). The Supreme Court has clearly stated that the extraterritorial application of statutes is proper only when the terms of the statute clearly evidence the intent of Congress to apply the statute in foreign countries. Neither NEPA nor the ESA contain evidence of such intent. If protection of species in the Colorado River Delta is to be accomplished by altering the existing accord between the United States and Mexico, that should be accomplished by a modification of the Treaty through negotiations between the State Department and its counterpart in the Mexican government.

2 On a different point, we recognize that attention has been given to certain impacts on power generation. It is important that power resource issues continue to be addressed and we look forward to cooperating in that effort.

Thank you for an opportunity to submit comments on behalf of the Authority.

Very sincerely,



Joseph W. Mulholland
Executive Director

JWH/jb

1: See responses to Comments 22-4 regarding NEPA analysis and Comment 22-10 regarding ESA application in Mexico. The MSCP is a regulatory program to address ongoing and proposed actions within the U.S.

2: Comment noted. Reclamation is pleased to work with any of the customers on resource issues.