

COMMENT LETTER

RESPONSES

ARIZONA DEPARTMENT OF WATER RESOURCES

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JANE DEE HULL

Governor

September 8, 2000

SEP 11 2000
RITA PEARSON
MAGUIRE
Director

SENT VIA FACSIMILE TO 702-293-8042

Regional Director
Lower Colorado Region
Attn: Jayne Harkins, LC-4600
Bureau of Reclamation
P.O. Box 61470
Boulder City, NV 89006-1470

Dear Ms. Harkins:

The Arizona Department of Water Resources (ADWR) submits the following comments on the Draft Environmental Impact Statement (DEIS) for Colorado River Interim Surplus Criteria dated July 7, 2000. By statute, ADWR is the state agency within Arizona that is authorized and assigned the responsibility to consult, advise and confer with the Secretary of the Interior regarding matters dealing with the operation of the mainstem of the Colorado River. These comments supplement previous oral comments made on behalf of ADWR at the Bureau's public hearing held in Phoenix on August 25, 2000.

ADWR has been involved in discussions with representatives of the Colorado River Basin States and the Ten Tribes Partnership for several years. Our position regarding Colorado River reservoir management has consistently reflected that any operating criteria adopted by the Bureau must be technically feasible and legally consistent with the Law of the River, and must also be fair and objective. If there is a category of users who receive particular benefits from the proposed interim surplus criteria, then that benefit must not be realized at the expense of, or to any detriment of others. We, of course, are particularly concerned in this instance. At the present time, Arizona has the least need for use of surplus water. Arizona also faces the great risk when shortages occur because of the lower priority held by the Central Arizona Project (CAP) contractors and other post-1968 Arizona water contractors. This set of circumstances requires ADWR to take a fairly conservative viewpoint toward surplus operating criteria.

Purpose and Need for Action

The DEIS states that the purpose and the need for the proposed action is to provide more specific criteria for the Secretary to make his annual determination of the condition of the River as required by the Long Range Operating Criteria. If this was the primary purpose of the proposed action, then specificity could easily be obtained by adopting the spill avoidance methodology

COMMENT LETTER

RESPONSES

Regional Director
September 8, 2000
Page 2

1 described in the Bureau's 1986 Special Report entitled Alternative Operating Strategies for Distributing Surplus Water and Avoiding Spills. Arizona has supported the use of the "70R" spill avoidance strategy as a surplus criteria for many years. However, it is clear that the primary purpose for the interim criteria is to provide additional water for California water users during the 15-year period while they are implementing their California Water Use Plan.

California water users made a conscious and risky decision to build a reliance on water above their basic apportionment of 4.4 maf when they negotiated the Seven Party Agreement. By that Agreement, the Metropolitan Water District (MWD), who delivers municipal and industrial (M&I) water to the Southern California Coastal Plain, faces the risk of having its supply cut nearly in half if the Secretary determines that California is entitled to only its basic annual apportionment. A severe cutback in M&I supplies would potentially create an unacceptable economic disruption in Southern California. But it must also be recognized that California has received considerable economic benefits from the risk they took because they have been able to receive and use water in excess of their basic apportionment for several decades. The time has come for California to live within their basic apportionment and substantially reduce their water demands from the Colorado River.

ADWR believes that California water users have a variety of water conservation and market mechanisms available to them that will allow them to reduce their water demands, but undoubtedly those options will take some time to implement and will be expensive. The use of interim surplus water will provide a period of time to cushion that economic and financial impact. Because the implementation of interim surplus criteria is designed to deal with the issue of avoiding impacts to Southern California M&I water users, any criteria must recognize that the problem to be solved is specific and the criteria short term. When the time comes for the Secretary to limit Lower Basin deliveries to their basic apportionment, Arizona fully expects him to carry out his obligation as water master, even if that action would create negative economic impacts in Southern California.

Seven Basin States Proposal

2 Independent of the Bureau's ongoing planning process, representatives of the seven Colorado River basin states have been holding discussions to reach a mutual agreement on terms for interim operating criteria. The seven states have recently completed a "Working Draft for Interim Surplus Criteria Guidelines" which we presented to the Bureau for consideration. ADWR believes that this document describes the best possible set of criteria for meeting California's needs while protecting the rights and interests of others. We believe that the Seven Basin States Proposal falls well within the scope of the DEIS since it is very similar although clearly not identical to the Six States Alternative. Assuming that all of the remaining related issues concerning California's commitments to its Quantification Agreement and California Water Use Plan are resolved, Arizona will be prepared to work with the other states and the Bureau to finalize this proposal. We would then urge the Secretary to adopt the Seven Basin States Proposal as the Preferred Alternative in the Final Environmental Impact Statement (FEIS).

Arizona believes that its participation in formulating a consensus Basin States proposal is fully consistent with Secretary Babbitt's policy. In his December 17, 1998 speech before the Colorado River Water Users Association he stated:

1: As discussed in the purpose and need, the purpose is to provide "a greater degree of predictability" of when surplus water is and is not available. Reclamation agrees that the spill avoidance methodology of 70R would meet the purpose and need of the proposed action. Reclamation agrees that interim surplus criteria would complement California's efforts to reduce its water use.

2: The preferred alternative in this FEIS is 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.

COMMENT LETTER

RESPONSES

Regional Director
September 8, 2000
Page 3

"As to the substance of the surplus guidelines, I am aware of the proposal prepared by six of the seven basin states dated December 4th. On this issue, as on others, I reiterate my preference that all the basin states search for a recommendation on which they can agree. In light of California's needs, and the restrictions relating to surplus in Article II(B)2 of the Supreme Court decree in *Arizona v California*, it would be particularly helpful for California to engage with the other basin states in an effort to find common ground. The time is now right for California and the other states to work together to negotiate surplus guidelines that will adequately recognize the achievement implicit in the steps California is taking in reducing its reliance on Colorado River water by providing assurances that Met's aqueduct can remain full during the intensive period of conservation that lies ahead."

We believe that the Seven Basin States Proposal does exactly what Secretary Babbitt requested. It is a very specific proposal and was carefully and purposefully negotiated. We recognize that the Bureau, using the NEPA planning process, is obligated to give consideration to a variety of factors. As with any work product, there is probably room for improvement. However, ADWR wants to caution you against making significant or substantive changes or we may need to withdraw our support for the consensus proposal. In particular, the provision that requires the Secretary to terminate the guidelines in the event California has not implemented conservation measures to reduce its demand for surplus by certain milestone dates must be included. This requirement must be non-discretionary. We note with concern that the DEIS (§S.2.6) describes a similar requirement for demonstrating progress with the term "may be contingent" rather than the term "shall terminate." It is equally critical that the Secretary agrees that the surplus criteria guidelines will revert to the "70R" baseline when the interim criteria terminate.

Planning Process

ADWR has been an active participant in numerous Bureau planning programs over the years. In this case, the Bureau chose to fully integrate its planning effort into its NEPA review process. From our perspective this approach has been deficient. Aside from the reduced amount of time it will take to reach a decision, this process has generally been a step backward by the Bureau in terms of public participation and involvement in the planning process. While a series of DEIS scoping meetings were conducted, those meetings were very general and did not provide adequate opportunities to interact with the Bureau's planning team. The outcome of this process is that Bureau planners developed a series of inadequately developed and poorly explained alternatives for presentation in the DEIS. As the Bureau moves forward to complete its FEIS, we hope that the process will be more inclusive when refining the alternatives under consideration and the assumptions used in the modeling and baseline condition analysis. Most important, the Basin States must have adequate opportunity to present and explain the intent and ramifications of statements contained in the Seven Basins States Proposal.

Other Comments

- A surplus methodology of 75R was used as the baseline when 70R has been the standard in terms of discussions of surplus criteria. The FEIS should be changed to reflect 70R-spill avoidance strategy as the baseline surplus criteria.

3: Please see response to Comment 33-3.

4: Upon termination of the interim surplus criteria the Secretary's procedure for determining surplus, normal, or shortage conditions would revert back to the AOP process, in which numerous factors are considered as discussed in Chapter 1. While the 70R strategy is mathematically convenient as a representation of the baseline, it is only one of the factors considered by the Secretary in the AOP process.

5: Reclamation appreciates the willingness of state and local agency representatives to participate in a dialogue on the interim surplus criteria during the NEPA process. This has been of assistance in compiling water demand projections and other operational aspects for the analysis.

6: The 70R strategy is used for the baseline in this FEIS. For more information, see response to Comment 57-11.