

COMMENT LETTER

RESPONSES

Wyoming State Engineer's Comments on the Colo. River Interim Surplus Criteria Draft EIS
August 28, 2000
Page 4

The three State apportionment was never agreed upon by the Lower Division States despite negotiations in 1929 and 1930. However, the Supreme Court Opinion of June 3, 1963, in *Arizona v. California* (373 U.S. 546) concluded that Congress had made such an apportionment by authorizing the Secretary to accomplish this division. This was done by the Secretary's contracts for the delivery of water in the Lower Basin States and by providing (Section 5) that no person could have the use of Colorado River water without a contract with the Secretary for permanent service."

6

Page 1-14, Section 1.3.3, 3rd line - The text states that the LROC "address the operation of the Colorado River reservoirs ..." Reference to the second sentence of the LROC (Attachment A) will clarify that "They are to control the coordinated long-range operation of the storage reservoirs in the Colorado River Basin ..." Accordingly, the word "address" should be changed to "control" or "govern."

7

Page 1-15, second line - Similar to the comment offered immediately above, the word "addressed" is inappropriately used in discussing the LROC provisions regarding equalization of storage between Lakes Powell and Mead. The LROC use the word "shall" and hence the word "addressed" should be changed to "prescribed" or "mandated."

8

Page 1-16, Section 1.3.5, first line - We suggest inserting the word "federal" after "numerous" and before "reservoirs" in order to clarify this sentence. The aggregate storage capacity of all reservoirs in the Colorado River system would be much greater than this sentence indicates.

9

Page 1-20, Section 1.3.6, last sentence - Please clarify the sentence which reads: "Reclamation has the responsibility to maintain the floodway." What does "maintain" mean in the context of this sentence and this section of the DEIS?

10

Page 1-21, Section 1.4.1 - We suggest that references herein to the California 4.4 Plan or the 4.4 Plan make clear that the California Colorado River Water Use Plan was formerly referred to as the 4.4 Plan and due to the inaccuracy of this term it is no longer used.

11
cont'd
below

Page 1-22, Section 1.4.1, 2nd full paragraph, 6th line - The choice of the word "may" in the sentence stating: "Therefore, regardless of which alternative is ultimately selected, failure of California to carry out the 4.4 Plan (sic) may result in termination or suspended application of the 15-year interim surplus criteria and reversion to the current system of surplus determinations that are made through the AOP process (emphasis supplied)." The word "may" must be changed to "will." In the following sentence, which reads: "Therefore, 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 (sic) (emphasis supplied)." In this sentence, the word "may" must be changed to "will." A fundamental tenet of the willingness of Wyoming and other Colorado River Basin states to concur with the interim surplus operating criteria is enforcement of timely implementation of the California Colorado River Water Use Plan. This

6: The suggested edit was included in the FEIS.

7: The word "addressed" was changed to "included", since the requirement is included in the LROC.

8: Comment noted. The wording was not modified in the FEIS.

9: The Secretary of the Interior and Reclamation has the responsibility to conduct reviews of the floodway mapping at 5-year intervals, annually inspect the floodway to determine if any encroachment is occurring, and perform other activities. The activities for Reclamation and other federal entities as recommended to Congress are reported in the "Final Report of the Secretary of the Interior to the Congress of the United States on the Colorado River Floodway Protection Act", dated October 1992.

10: Comment noted. The term 4.4 Plan is no longer used to refer to California's current plan.

11: Comment noted. The term 4.4 Plan is no longer used to refer to California's current plan.

COMMENT LETTER

RESPONSES

Wyoming State Engineer's Comments on the Colo. River Interim Surplus Criteria Draft EIS
August 28, 2000
Page 5

11
cont'd

wording, repeated in this document several places, without clarification is troubling and is inconsistent with Secretary Babbitt's pronouncements, negotiations among the seven Colorado River Basin States and understandings reached between the Department of Interior and the seven Colorado River Basin States over a period of numerous years.

12

Page 2-1, Section 2.2.1.1 - The description that is found in this section of the spill avoidance or "R" strategy provides a well-worded and concise description of the strategy.

12: Comment noted.

13

Page 2-3, Section 2.2.3, 1st paragraph, 5th line - We suggest that the word "under" that appears after "criteria" be changed to "within."

13: The change was made.

14

Page 2-5, Section 2.3, 2nd paragraph - This paragraph states: "As noted above, the 75R operating strategy is not presented as an alternative for adoption. If an interim surplus criteria alternative is not implemented, it is presumed that the Secretary would determine surplus conditions using the same dynamic considerations currently used in the Secretary's annual determination (in the AOP), as discussed previously." While this is certainly the easiest and cleanest assumption that could be made for purposes of this DEIS, it does not seem to this office that this scenario is very likely. This assumption, as embodied in the above cited statement, ignores the fact that the Colorado River Management Work Group has discussed and has initiated several faltering attempts to develop more specific surplus and shortage operating criteria during the course of its work and discussions. The need for more specific criteria has been on the table for a number of years at this point in time. We would suggest that this wording be revised to indicate the difficulty in speculating what would be developed as the more specific criteria to be used for making surplus determinations and therefore, on that basis, it is presumed that the Secretary would determine surplus conditions using the same dynamic considerations currently used.

14: Comment noted.

15

Page 2-9, Section 2.3.3.2, 1st paragraph - As acknowledged later in the text (page 2-10) the Six States alternative proposed that Tier 1 would be established by the "70R Line," NOT the "75R Line" as stated in the text in the 3rd line from the bottom of the page.

15: See response to Comment 37-8.

16

Page 2-10, Section 2.3.3.2.1, 3rd line - Same comment as immediately above, i.e., the Six States Alternative Tier 1 was based on the "70R line," NOT the "75R line" as stated here in the text.

16: See response to Comment 37-8.

17

Page 2-10, Section 2.3.3.2.1, 2nd paragraph - The text correctly states in the first sentence of this paragraph that: "It should be noted that the original Six State Plan uses the 70R strategy as the Tier 1 trigger" The second sentence states: "However, for modeling consistency with the baseline, the 75R strategy was used in this analysis for the Six States Alternative Tier 1 trigger." We request clarification about why it is necessary to have "modeling consistency" with the baseline. What does "modeling consistency" mean as used in this sentence. Certainly other questions could be asked about consistency regarding what was done with the other alternatives. The 70R and 75R strategies have an assumed annual runoff that varies by 800,000 acre-feet.

17: Comment noted. See response to Comment 37-8.

COMMENT LETTER

RESPONSES

Wyoming State Engineer's Comments on the Colo. River Interim Surplus Criteria Draft EIS
August 28, 2000
Page 6

- | | | |
|----|---|--|
| 18 | Page 3.3-3, Section 3.3.1.2, 1st line - We suggest that the words "and pumping from Lake Mead" be added after "annual releases" and before "of at least 7.5 maf" in this first sentence of this paragraph. Without this clarification, the sentence is technically incorrect. | 18: The first sentence of the first paragraph in Section 3.3.1.2 has been changed to read as follows - Hoover Dam is managed to provide at least 7.5 maf annually for consumptive use by the Lower Division states plus the United States' obligation to Mexico. |
| 19 | Page 4-3, Section 4.4, 1st full paragraph, 7th line - As commented on above, we object to the use of the word "may" and feel that it must be changed to "will" in the sentence beginning in the 5th line of this paragraph. The seven state negotiations over the past several years have been based on the principle that if the State of California fails to meet its water conservation and management goals throughout the stipulated term of implementation of the criteria, the Secretary will terminate the interim surplus criteria and operations will revert to the present manner of determining whether a surplus water supply condition exists. | 19: The Secretary's decision to continue interim surplus criteria within the 15-year interim period would be based on a number of factors which may include satisfactory progress towards meeting the goals of the California Colorado River Water Use Plan. See Attachment I. |
| 20 | Page 5-1, Section 5.2, 1st paragraph - Change the word "on" to "in" in front of "Colorado River operations." | 20: Comment noted. |
| 21 | Page REF-22, middle of the page - There is a problem with a missing line space between the citation for "Sogge, et al." and "Thwaites." There is an extra line space that should be removed between "Unitt" and "USBR." | 21: Comment noted. Change made in FEIS. |
| 22 | Page LOP-3 - Is it Barbara "Ralston" or Barbara "Raulston" in the middle of this page? | 22: Correction has been made. "Raulston" is the correct spelling. |
| 23 | Attachment A cover page - the use of the word "guidelines" in the 3rd line of the paragraph on this cover page inappropriately understates the import and effect of the LROC. We would suggest a wording revision that eliminates use of this word. | 23: Comment noted. The change has been made. |
| 24 | Attachment A, page 2, last line "releases" should be "released." | 24: The change was made. |
| 25 | Attachment I, Detailed Modeling Documentation - We are disappointed to note that documentation of the modeling was deferred to the FEIS and that the reader is merely referred to Section 3.3.3.3 by the text on the cover-page of this Attachment. We presume that there will be sufficient opportunities to learn more about the details at the August 15, 2000 modeling meeting that is being held in Las Vegas, Nevada. Perhaps Reclamation will hear from interested reviewers and the Basin States at that meeting the sorts of descriptive information that will be most useful to include in Attachment I when it is prepared for the FEIS. | 25: Attachment I was prepared following the publication of the DEIS. Copies of Attachment I were made available to the public at the technical presentation on August 15, 2000, at all the public hearings, and as requested by mail. The Detailed Modeling Documentation is Attachment J to the FEIS. |
| 26 | Attachment P, entitled "Public Scoping Process," page 1, next to last paragraph - The first sentence of this paragraph states: "Two notices were published in the <u>Federal Register</u> regarding the proposed reallocation of Colorado River water." We believe that the choice of the words "proposed reallocation of Colorado River water" is both unfortunate and inaccurate. The adoption of more specific surplus criteria that will be applied during the interim period to make surplus determinations is not properly characterized, in our view, as a reallocation of Colorado River water. We request that this wording be changed to more specifically state the effect of the proposed action. | 26: The sentence has been corrected with wording that better matches the Federal Register Notice: "development of surplus criteria for management of the Colorado River." |

COMMENT LETTER

RESPONSES

Wyoming State Engineer's Comments on the Colo. River Interim Surplus Criteria Draft EIS
August 28, 2000
Page 7

27 | Attachment P, page 2, Table 1 - The reference to "Las Vegas, CA" in the second column should be to "Las Vegas, NV."

27: This change has been made in the document.

28 | Attachment P, pages 5-10, which encompass "Table 2" - this representation of the comments that were received during the scoping meetings and in response to the request for comments is exceedingly weak in our evaluation. The great lack of detail and extreme generalization associated with this format for describing and characterizing the comments that were received during the scoping process makes the presentation of this information of very little value. This section also fails to describe how the comments were used in any manner in the preparation of the DEIS, which is disappointing to our agency, who participated in one of the public meetings and provided a comment letter.

28: Table 2 is intended as a summary of the comments received. The specialists working on this EIS were provided with complete sets of the comment letters and with transcripts of the scoping meetings.

Thank you for the opportunity to submit these comments on the Colorado River Interim Surplus Criteria Draft Environmental Impact Statement. Should you have any questions, please don't hesitate to contact me at (307) 777-6151 or via e-mail at jshiel@state.wy.us. We look forward to expeditious preparation of the final environmental impact statement and the execution of the record of decision that will allow the implementation of interim surplus criteria for making surplus water determinations in the Secretary's Colorado River Annual Operating Plan during the interim period.

With best regards,



John W. Shields
Interstate Streams Engineer

cc: Seven Colorado River Basin States Representatives
Wayne Cook, Upper Colorado River Commission