

COMMENT LETTER

RESPONSES



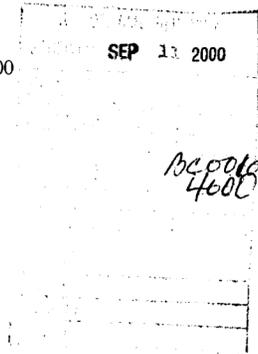
JIM GERINGER
GOVERNOR

State Of Wyoming
Office of Federal Land Policy



ART REESE
DIRECTOR

September 8, 2000



Mr. Robert Johnson, Regional Director
Lower Colorado Region
c/o Ms. Jayne Harkins, BC00-4600
Lower Colorado Regional Office
Bureau of Reclamation
P.O. Box 61470
Boulder City, Nevada 89006-1470

Dear Mr. Johnson:

On behalf of the State of Wyoming, this Office has reviewed the Draft Environmental Impact Statement for the Colorado River Interim Surplus Criteria. We also provided the information to all affected State agencies for their review, in accordance with State Clearinghouse procedures. Under separate cover I believe you received a letter from the Wyoming State Engineer's Office. I have enclosed a copy of that letter for your convenience.

State agency comments are specific to their respective agency missions. While the State defers to their respective technical expertise in developing a unified State position, the responsibility to ultimately articulate the official state policies and positions lies with the Governor or the Office of Federal Land Policy. However, having said that, in this particular case, we defer to the very able technical expertise of the State Engineer's Office. They have been active in the process since its inception and will continue to be involved.

This Office will require two copies of future information and documents regarding this project for continued distribution and review.

The State of Wyoming appreciates the opportunity to comment.

Sincerely,

Julie L. Hamilton
Assistant Director

Enclosure (1)

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RICHARD G. STOCKDALE
 ACTING STATE ENGINEER

August 28, 2000

Mr. Robert Johnson
 Regional Director, Lower Colorado Region
 c/o Ms. Jayne Harkins, BC00-4600
 Lower Colorado Regional Office
 Bureau of Reclamation
 P.O. Box 61470
 Boulder City, Nevada 89006-1470

Re: Transmittal of Comments on the Colorado River Interim Surplus Criteria Draft
 Environmental Impact Statement, DES 00-25, filed July 7, 2000

Dear Mr. Johnson:

The Wyoming State Engineer's Office has reviewed the subject draft Environmental Impact Statement (DEIS) and supplemental information provided by the Bureau of Reclamation. As you are aware, the State Engineer's Office is quite supportive of the development of interim surplus criteria and has been an active participant in the deliberations and dialogue concerning this important matter. These comments are specific to this agency's statutory mission which includes the preservation of Wyoming's water allocations to safeguard the State's current and future water supplies. In that regard, our comments, along with those of other agencies who review and comment on the subject document, are meant to assist in defining the official State position. Accordingly, the following comments defer to and are subordinate to the official State Position which will be forthcoming by the close of the public comment period.

In our letter of June 30, 1999, this office responded to the May 18 and May 29, 1999 Federal Register notices advising of Reclamation's consideration of development of interim operating criteria. In that letter, we noted our support for the development of both surplus and shortage criteria and we noted our prior recommendation to the Secretary that the development of surplus and shortage criteria for the interim period be incorporated into the ongoing and well established AOP development process. Our letter expressed concerns about the scope, commitment of resources, usefulness and time schedule associated with preparation of a National Environmental Policy Act (NEPA) document for Reclamation's development effort. The subject DEIS does not contain a preferred alternative and has been delayed far beyond the original schedule publicized during the scoping meetings (that schedule specified "agency/public review and comment - January through March 2000"). The DEIS unfortunately does not address

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shortage criteria with the exception that shortage "triggers" are embodied in certain of the surplus alternatives. Clear and concise explanations, beyond generalized statements, of the impacts and the relative differences on affected resources of the alternative analyzed are difficult to find in the DEIS.

While we feel that the document has a number of shortcomings that result from the wide-sweeping approach taken, the impact of the various alternatives and no preferred alternative being set forth, we are hopeful that the supplementary information published in the Federal Register on August 8th will be most helpful in crystallizing a preferred alternative and moving this important effort forward. The Wyoming State Engineer's Office continues to be supportive of implementing interim surplus operating criteria and urge Reclamation to expeditiously prepare the Final EIS and issue its record of decision as soon as practical.

The Wyoming State Engineer's Office offers the following specific comments on this draft environmental impact statement.

- 1 | Page S-3, 3rd, 4th and 11th lines of "The California Colorado River Water Use Plan" - references to the California Colorado River Water Use Plan as the "California 4.4 Plan" or the "4.4 Plan" should be to the "California Colorado River Water Use Plan which was formerly known as the California 4.4 Plan."
 - 2 | Page S-6, Heading S.2.6, 6th line - The word "may" needs to be changed to "will" in this line. The sentence which begins on the previous line therefore would read: "The continuation of the interim surplus criteria through 2015 will be contingent upon satisfactory progress.
 - 3 | Page S-8, S.3.4, 2nd paragraph - This paragraph states: "Mexico would receive its Treaty apportionment of Colorado River water under baseline conditions and all alternatives. The average probability of Mexico receiving its surplus entitlement of 200,000 af during any given year of the interim surplus criteria period is highest under the Flood Control Alternative (approximately 37 percent). The lowest average probability occurs under the shortage protection alternative (approximately 30 percent). The average probabilities of surplus deliveries to Mexico during any given year of the interim surplus criteria period under the baseline conditions and the Six States and California alternatives are 34, 32 and 30 percent, respectively." We note that these summary statements regarding the availability of surplus water for Mexico (the additional 200,000 af when there exists a surplus of waters of the Colorado River in excess of the amount necessary to satisfy uses in the United States) appear to be inconsistent with the statement found near the end of Section 1.1.4 on page 1-4 which reads: "This proposed action is not intended to identify conditions when Mexico may schedule this additional 0.2 maf (emphasis supplied). Reclamation is currently engaged in discussions with Mexico through the IBWC on the effects of this action."
- Further, these summary statements relating the probability of occurrence of surplus water for Mexico seem to imply that the DEIS and its underlying hydrological simulation studies have

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- 1: References to California's draft Colorado River Water Use Plan (CA Plan) have been corrected to distinguish it from their previous draft "4.4 Plan" where appropriate in the FEIS.
- 2: 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 California's Colorado River Water Use Plan. Please refer to the response to Comment 33-3.
- 3: See response to Comment No. 11-13, regarding additional water deliveries to Mexico. This FEIS does not identify conditions for such deliveries.

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prejudged that there would be Colorado River surplus waters in excess of the amount necessary to satisfy uses in the United States. The intent of the interim surplus operating criteria was set forth in the May 18, 1999 Federal Register notice (64 FR 27008 et seq.) as being:

"Summary: The Department of the Interior, Bureau of Reclamation ("Reclamation") is considering development of specific criteria that will identify those circumstances under which the Secretary of the Interior ("Secretary") may make Colorado River water available for delivery to the States of Arizona, California and Nevada (Lower Division States or Lower Basin) in excess of the 7,500,000 acre-foot Lower Basin apportionment."

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In the "Supplementary Information" section on page 27009, the Notice stated:

"In recent years, demand for Colorado River water in Arizona, California, and Nevada has exceeded the Lower Basin's 7,500,000 acre-foot basic apportionment. As a result, criteria for determining the availability of surplus has become a matter of increased importance. Under these circumstances, the Secretary believes that it may be prudent to develop specific criteria that will guide the Secretary's annual decision regarding the quantity of Colorado River water available for delivery to the Lower Basin States.

The "Summary" section of the May 28, 1999 *Federal Register* notice regarding the public meetings on the development of Surplus Criteria for Management of the Colorado River contained the same wording cited above. We suggest, based on the above, that Reclamation should recognize the intent expressed in the *Federal Register* statements and the wording found on page 1-4 and therefore revise by excluding the discussion of the additional water deliveries to Mexico in the Final Environmental Impact Statement for this proposed action.

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Page 1-11, 3rd paragraph, 1st line - "Section VII" should be changed to "Article VII" in order to be consistent with the wording in the remainder of this section and with the wording of the Colorado River Compact.

4: The suggested edit was included in the FEIS.

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below

Page 1-12, Section 1.3.2.2.2, middle of the paragraph - Herein a sentence is found which reads: "The apportionments to the Lower Basin were established by the BCPA and confirmed by the Decree." This statement is technically incorrect. Milton N. Nathanson, in *Updating the Hoover Dam Documents*, (United States Department of the Interior, Bureau of Reclamation, United States Government Printing Office, Denver, Colorado, 1978) wrote on pages 8 and 9 of this book prepared by Reclamation that:

5: Comment noted.

"Section 4(a) of the Boulder Canyon Project Act authorized the Lower Basin States of Arizona, California and Nevada to enter into an agreement providing that of the 7.5 maf/yr annually apportioned to the Lower Basin by Article III(a) of the Compact there shall be apportioned to Nevada, 300,000 acre-feet annually ...