

DEIS COMMENTS, BOR, INTERIM SURPLUS CRITERIA, SEPT. 2000

23 | 2. The DEIS states that the Flood Control Alternative conditions were modeled with the assumption that California's 4.4 Plan was not implemented (pg. 3.3-9). The FEIS should describe the rationale for this modeling assumption. Was the assumption made that the 4.4 Plan would not be implemented because the probability of surplus determinations under the Flood Control Alternative is even lower than baseline?

23: Implementation of the California Plan and intrastate transfers was included in the FEIS Flood Control alternative. See response to Comment 37-11 for more details.

24 | 3. While other Lower Basin States may receive less than their full apportionment under shortage conditions, the DEIS appears to assume that California would never receive less than 4.4 maf/year (pg. 3.4-20). Is this assumption made because 4.4 maf is already considered a shortage condition for California? Is this assumption valid? Are there conditions under which California may be unable to receive its full basic apportionment?

24: Shortage conditions for the Colorado River have not been defined. They were assumed for modeling purposes in the EIS. Section 3.3.3.4 describes the Lake Mead water level protection assumptions and the modeling conditions under which California could receive less than its normal apportionment.

25 | 4. Instead of referring to Attachment G, Lower Division Depletion Schedule and H, Draft Interim Surplus Guidelines; we suggest the description of alternatives include a summary of the information provided in these attachments. For example, describe the percentage of years that water transfers would occur to California under Tier 2 of the Six States Alternative versus just referencing Attachment G. The alternative descriptions should also include specific information on the water use restrictions which would apply for each surplus criteria tier. For instance, what types of storage and use would be acceptable for surplus water obtained during a Partial Domestic Surplus year pursuant to the Seven States Consensus alternative?

25: See Attachment H for additional information.

26 | 5. The FEIS should also provide short narratives explaining how the Lower Division Depletion Schedule (Attachment G) and Draft Interim Surplus Guidelines (Attachment H) would be interpreted. How would the Guidelines work if different surface elevation levels are triggered in different years? For example, if surplus is declared under Tier 3 of the Six States Alternative in 2002, what would be the amount of surplus released in year 2005, if surplus were declared under Tier 2 in 2005? Providing a simple example of how the Guidelines would be implemented would be helpful.

26: Additional discussion has been added to the Lower Division Demand Schedules (FEIS Att. H) regarding the influence on surplus water deliveries. The guidelines (FEIS Att. I) would be applied annually to whatever water surface elevation existed.

27 | There is a similar risk of confusion regarding the California Alternative. This alternative appears to trigger surplus determination based on a prediction of what surface elevation levels would be achieved in the year 2015. For instance, what surplus would occur if 2015 surface elevations are at 1166 msl and 2001 surface elevations are at or above 1098 msl?

27: The surplus triggers would be used once a year to determine whether surplus conditions would occur in the following year. For example, in August 2007, while preparing the AOP for 2008, Reclamation would project the January 1, 2008 Lake Mead elevation using our 24 month study (2 year model). If the water surface elevation of Lake Mead were projected to be above approximately 1163 ft, the surplus volume stipulated for Tier 1 for 2008 would be triggered for delivery during 2008, regardless of the resulting lake level within year 2008. The monthly delivery to each Lower Division state would be according to its monthly surplus water demand schedule for Tier 1. In addition, the amount of surplus water allowed for delivery in 2008 would be subject to a determination of beneficial use by the Regional Director, Lower Colorado Region.

MONITORING AND ADMINISTRATION

1. A key objective of interim surplus criteria is to provide MWD surplus water, when available, to meet direct water supply demands while California's 4.4 Plan programs and projects are implemented, as well as to provide a source of water for conjunctive use and storage programs (pg. 12 August 8, 2000 Federal Register Notice on Seven States Consensus

COMMENT LETTER

RESPONSES

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28 Alternative). Therefore, Reclamation states that failure of California to carry out the 4.4 Plan may result in termination or suspended application of the 15-year interim surplus criteria (pg. 1-22). A condition of interim surplus criteria continuation would be a showing of satisfactory progress in implementing the 4.4 Plan. The FEIS should provide more details on how "satisfactory progress" would be defined and measured. For example, describe how water conservation will be interpreted, monitored, and accounted for under California's 4.4 Plan.

29 2. The FEIS should also describe how surplus water would be monitored and measured. Effective and sustainable management of water supplies depends on an accurate knowledge of water supply availability and water use. This knowledge can only be obtained through monitoring and accounting of water supply and use. We urge Reclamation to make a firm commitment to timely and accurate monitoring and accounting of the surplus water depletions. We recommend a monitoring and accounting plan be included in the FEIS.

30 3. Attachment D Surplus Criteria Proposal by Six States includes a section requesting a commitment by Reclamation to move forward with its identification of Lower Basin water users who are either exceeding contract entitlements or are diverting water without a contract. Furthermore, it states that Reclamation must take steps necessary to require more accurate measurement and reporting of diversions and develop accurate techniques for determining both measured and unmeasured return flows to the river. EPA concurs with this statement of the Six States. We also firmly believe that an era of limits in the Lower Basin has begun and that accurate measurement of use and control of illegal diversions and uses is critical to the long-term sustainable use of the Colorado River water supply.

MITIGATION

31 1. The FEIS should describe whether MWD would provide reparation for increased shortages to specific Indian Tribes which are dependent upon CAP allocations. If reparation is not proposed, the FEIS should describe mitigation measures for potential adverse effects to Indian Tribes and their Indian trust assets.

32 2. Reparations to Nevada for potential increased shortages are also not described. The FEIS should provide the rationale for this decision.

TRIBAL ISSUES

33 1. Section 3.14 describes potential impacts to Indian trust assets. While Reclamation appears to have coordinated closely with the Ten Colorado River Tribes and Tribes utilizing Central Arizona Project (CAP) water, it is not clear whether the concerns of Tribes located in shared water basins/aquifers where the surplus water would be stored have been addressed. The

28: The purpose of this action is not to get California to 4.4 maf and thus the 4.4 Plan (now the CA Plan) is not within the scope of this EIS. Water transfers within California and their effects on and off the river are being handled by joint and separate NEPA and CEQA documentation. Through monitoring, verification, and accounting of all users uses, particularly as California begins to implement transfers and develop conservation programs, these data will be considered as part of the AOP process for measuring California's success in reducing its use to 4.4 maf. This description of monitoring, verification, and accounting of water use involves ongoing Reclamation processes that are outside the purpose and need of this action.

29: Reclamation is currently and has been monitoring diversions, return flows and consumptive uses by water users along the Colorado River since 1964. Reclamation is required by the Supreme Court (Article V, Supreme Court Decree in Arizona v California dated March 9, 1964) to prepare and maintain complete, detailed and accurate annual records of: releases of water through regulatory structures, diversions, returns and consumptive uses by State and diverter, water ordered but not diverted, and deliveries to Mexico in satisfaction of their entitlement. Reclamation began preparing this report in 1964. Since then, the accounting and monitoring procedures have been augmented with a monthly report tracking users diversion, returns and consumptive uses throughout the year. In addition to the monthly reporting and end of year accounting, Reclamation approves water use estimates by major water users before the beginning of each calendar year. Title 43, CFR 417 requires entitlement holders to provide an estimate of monthly diversion requirements (schedule), for Reclamation's planning purposes, prior to the beginning of the calendar year. The major water users are also required by contract to provide a monthly water use report which includes actual diversions and return flows. Others either report annually or have diversions and return flows reported by the USGS at the end of the year. This information is reported to all interested parties in the monthly reports and the annual report titled "Compilation of Records in Accordance with Article V of the Decree of the Supreme Court of the United States in Arizona V. California, Dated March 9, 1964." The schedules are reviewed by the water conservation, water contracts, and water operations staff to ensure that the next year demands do not exceed contract holders entitlements and that the water requested will be available in the system. Monthly reports are tracked throughout the year to monitor trends in water use which indicate when users are likely to exceed their entitlements. When surplus water is available, entitlement holders are allowed to divert up to their entitlement for surplus water, if any, in addition to their basic entitlement for a normal year in which no surplus would be available. How much surplus water was diverted by an entitlement holder can be determined only at the end of the calendar year by comparing the actual use, as reported in the Decree Accounting report, to their entitlement. Reclamation is developing a method to compare actual use to entitlements for the purpose of identifying surplus uses and uses in excess of entitlement.

30: Reclamation is taking steps to require more accurate measurement and reporting of diversions and return flows to the river. The most common case of water users who divert water without a contract involve persons who divert water from a well that is replaced with Colorado River water. Reclamation is, and for the last 5 years has been, funding the Geological Survey to perform an inventory of wells in the Colorado river flood plain and on adjacent terraces and slopes that have the potential to pump Colorado River water. The Geological Survey, at Reclamation's request and with Reclamation funding, has completed two reports which document a method for use in making a presumption if the use of water pumped by a well is pumping Colorado River water. The first report, published in 1994, provides a method of accounting for the lower Colorado River between the mouth of the Grand Canyon and Laguna Dam. The second report, published in 2000, provides a method of accounting for the lower Colorado River from Laguna Dam to Mexico. All uses of Colorado River water must be reported in the Colorado River water accounting report required by the Supreme Court (Article V, Supreme Court Decree in Arizona v California dated March 9, 1964). To date, the initial well inventory is about half complete and the methods documented in the reports identified above have been used to presume if new or planned wells would likely pump water that should be accounted for as Colorado River water. Few existing wells have been made subject to the methods described within the above identified reports. Reclamation recognizes that the accounting of water required by the Supreme Court must include accurate records of diversions, return flows, and consumptive use. Past efforts to uniquely and separately identify unmeasured return flows for individual diverters have met with mixed success. While estimates for many diverters currently exist, they cannot be considered definitive. Reclamation and others recognized many years ago that estimates on unmeasured return flows could not be made without first estimating consumptive use by some method other than measured diversion less measured return. To this end, the lower Colorado River Accounting System (LCRAS) was developed to estimate agricultural consumptive use as the evapotranspiration of the crops and related uses plus a portion of the residual of a water budget between major structures along the lower Colorado River. CONTINUED ON NEXT PAGE