

ATTACHMENT D

Surplus Criteria Proposal by Six States

This attachment to the Colorado River Interim Surplus Criteria DEIS is a December 4, 1998 document prepared by representatives of Arizona, Nevada, New Mexico, Colorado, Utah, and Wyoming presenting their joint recommendations on interim surplus criteria.

Proposal for Interim Lake Mead Reservoir Operation Criteria Related to Surplus, Normal, and Shortage Year Declarations

Prepared by Representatives of the States of Arizona, Colorado, Nevada, New Mexico, Utah, and Wyoming in Response to the Draft California 4.4 Plan

December 4, 1998

I. Introduction

The States of Arizona, Colorado, Nevada, New Mexico, Utah and Wyoming ("Six States") are encouraged by the progress presently being made by the Colorado River water users within the State of California, who are endeavoring to formulate a defined, enforceable program to reduce California's dependence on Colorado River water over its basic entitlement. If implemented as envisioned, California's plan to gradually step-down from its current use of over 5.2 million acre-feet ("maf") of Colorado River water to its basic apportionment amount of 4.4 maf over a ten-to-fifteen year period will be a significant accomplishment.

The California 4.4 Plan, however, is greatly dependent upon using Colorado River water made available from surplus declarations on the Colorado River as a way to ease the State's transition to living within its basic apportionment. The other Colorado River Basin States have been, up to now, unwilling to enter into discussions on operating criteria that would accommodate California's plan. The reason for this reticence is obvious--new reservoir operating criteria on the Colorado River must only be an interim measure while California steps down its Colorado River water use. The temporary criteria cannot be viewed as a means to continue California's utilization of Colorado River water above its basic entitlement. Therefore, the Six States have insisted that California demonstrate a tangible commitment to reduce its water use before entertaining discussions of transitory reservoir operating criteria that might facilitate that reduction.

The Six States now believe that a reasonable draft plan has been formulated by California and sufficient commitment to the plan's implementation has been demonstrated by water users in California to allow the initiation of discussions on special interim reservoir operating criteria. The purpose of this paper is to describe the parameters of the interim criteria that would be acceptable

to the Six States. These parameters are consistent with and based upon the principles described in the paper issued by the Six States on October 20, 1998 titled Background and Principles for Negotiation – Special Interim Criteria for Releases of Water from Lake Mead During Implementation of the California 4.4 Plan.

II. Consistency with the Law of the River

It goes without saying that any interim operating criteria implemented to assist California in its program to eliminate its dependence on Colorado River water above its basic apportionment must be consistent with the Law of the River. Of particular importance in developing the interim criteria will be the apportionment system decreed by the United States Supreme Court under which water diverted into any of the three Lower Division States must fit within one of three categories:

1.) The water diverted is within that state's basic apportionment. Article II(B)(1) of the Decree, 374 U.S. 340 (1964).

2.) The water diverted is water that has been declared by the Secretary of the Interior as surplus water available above the 7.5 maf basic apportionment available to the Lower Division States. It must also be recognized that, of any amount declared to be available as surplus, only 50% of that amount is available to California, unless Arizona or Nevada choose not to divert and use the 46% and 4% of the surplus amount that is available to those states, respectively. Article II(B)(2).

3.) The water diverted is water that was available to one of the other Lower Division States in accordance with a) or b), above, but was unused by that state. Article II(B)(6).

III. Other Policy Considerations

In addition to the need for the interim reservoir operating criteria to be consistent with the existing Law of the River, the Six States assert that, as a matter of fairness to all Colorado River Basin States, the process of developing and promulgating interim criteria shall be consistent with the following principles:

1.) The federal government and California must affirmatively recognize that interim operating criteria are only temporary. The interim operating criteria will be in effect only during the transition period in which California reduces its dependence upon Colorado River water. Thus, the interim operating criteria must expire by their own terms no later than 2015. However, the interim criteria will also expire at an earlier date if it is established that California has achieved its goal of living within its basic 4.4 maf annual apportionment.

2.) California must commit to implementing its 4.4 Plan as quickly as possible. If, during the implementation phase of the Plan, it appears reasonable that the goal can be achieved more quickly than allowed for in the Plan, California must agree to take those steps reasonable to hasten achievement of the goal.

The Draft California 4.4 Plan proposed a two phased implementation process. The Six States accept the reasonableness of that approach, but disagree on the proposed time frame for implementation of the second phase. Rather than waiting for the completion of phase 1 core programs to begin phase 2, the Six States believe that phase 2 programs should be initiated by the year 2005. This policy is based on the desire for California to complete the entire reduction to 4.4 maf by the year 2015. This schedule provides six years for planning and environmental compliance, followed by ten years for implementation.

3.) For the reasons discussed above, the federal government and California must affirmatively recognize that there is a direct relationship between the continuation of the interim operating criteria and California's continued commitment and implementation of its plan to reduce its Colorado River water use to its legal entitlement of 4.4 maf/yr. At any point that there is demonstrated a diminishment or lack of commitment by California to achieve its goal as quickly as is practical, the interim operating criteria must be terminated.

4.) The interim criteria cannot be adopted without a parallel commitment among the Colorado River Basin States and the United States to determine how the River will be operated during periods of water shortage. The interim criteria providing surplus supplies will likely diminish the amount of Colorado River water in storage and thus increase the risk of water shortages on the river. While California will gain the greatest benefit under surplus criteria, it will place a greater risk of shortages on the other Lower Division States. Therefore, it is inherently

unfair to Arizona and Nevada to adopt interim criteria without developing in parallel an understanding of how shortages on the river will be managed. The existence of water shortage management criteria is essential if those states are to adequately analyze the increased risks they would face from the interim surplus criteria.

5.) The United States and the Colorado River Basin States must commit to ongoing studies and analysis to examine whether the interim surplus operating criteria are causing an increased risk of water shortages to Arizona and Nevada. In this process, all parties must reach a mutual understanding of how increased risk will be measured.

6.) California must agree to mitigate any increased risk of shortage to Arizona and Nevada. That mitigation might be accomplished through several techniques including a waiver by California of the shortage protection it is afforded by 43 U.S.C. § 1521(b) or, by California agreeing to store in Arizona through the excess capacity available to the Arizona Water Banking Authority, water that could be used to compensate Arizona and Nevada for any increased water shortages they suffer due to the interim operating criteria. Impacts of this interim criteria on the Upper Basin States would be minimized by measures such as the establishment of interim 602 (a) storage criteria or through other mutually agreed-upon measures.

7.) Interim operating criteria provisions that would provide extra municipal and industrial water for California during that state's reduction in water use transition period must be designed to provide only that amount of water that is needed by California M&I users after other sources currently available to the state have been used.

The Metropolitan Water District of Southern California ("MWD") holds California priority 4 and 5 rights under the Seven Party Agreement to a total of 1.212 maf. The Six States believe that if this volume of water can be provided, the California 4.4 Plan's goal of keeping MWD's Colorado River Aqueduct "essentially full" will be satisfied.

The Six States believe that the volume of surplus water to be made available to MWD must first take into account water unused by higher priority users within California. The Draft 4.4 Plan sets forth a schedule which phases down California's overall demand for water as conservation measures are being implemented. What the Draft 4.4 Plan does not indicate is the amount of unused water that may be available from more senior water uses (present perfected

rights and agricultural districts) which could keep the Colorado River Aqueduct full without requiring additional surplus deliveries. The Six States fully anticipate and expect that the water use of the more senior agricultural users will be carefully monitored by California and the Bureau of Reclamation and to the extent the irrigation districts do not use water within their contract entitlements, that water will be made available to MWD, thereby reducing the need for surplus releases from Lake Mead.

Likewise, to the extent that unused Arizona or Nevada basic apportionment can be made available to California users under the provisions of Article II(B)6 of the Decree, that water also must be counted against MWD's needs prior to determining the need for any surplus water derived under the interim criteria.

8.) To the extent that these interim criteria operate to provide extra water to municipal and industrial water users in Southern California, municipal and industrial water users in the other Lower Division States must be afforded the same opportunity, within the allocations defined by the Law of the River. For example, if the Secretary declares a surplus, it must be recognized that municipal and industrial water users in Nevada and Arizona would also be entitled to water above the states' basic apportionments to meet their needs.

9.) The Six States are well aware that the revised Draft 4.4 Plan calls for a considerable amount of groundwater banking within California at sites in the Cadiz Basin, Hayfield/Chuckwalla Basin, and Desert/Coachella Basin. These proposals will depend upon the availability of surplus Colorado River water. The Six States are concerned that under some circumstances these off stream banking proposals will lower reservoir levels to the point where the following year a "space building" type surplus will not be declared. The interim operating criteria proposed in the Draft 4.4 Plan insulates MWD from the effects of this condition by merely triggering a "Level 2 surplus" which still will keep the Colorado River Aqueduct full. The Six States believe that off stream banking of surplus water must be limited to only those years when a reservoir spill would otherwise be imminent.

IV. Proposed Lake Mead Reservoir Interim Operating Criteria

A. Introduction

The December 17, 1997, Draft of the California 4.4 Plan outlined a proposal for Lake Mead reservoir operations. The Six States agree with many of the concepts set forth in that proposal. However, there are several areas in which those concepts deviate from the principles discussed above and thus are in need of further definition, discussion and clarification. This section briefly identifies those areas and proposed additional concepts.

The Draft California 4.4 Plan describes three levels of surplus criteria. Level 1 is a spill avoidance strategy based on anticipated runoff. Level 2 is a strategy that attempts to keep the Colorado River Aqueduct full during the transition period during which agricultural conservation measures are being implemented within California. Level 3 is similar to Level 2, except that the surplus supplies are more limited, and California is required to use additional alternate supplies including dry year land fallowing and groundwater basin pumping options if it wishes to keep the Aqueduct full.

The Six State proposal envisions a set of interim criteria for reservoir operation in which the various levels are less distinct. The Six State proposal seeks to achieve a balance between the need to release water to build storage space to avoid future flood control regulation dictated releases and the need to carry over as much water in storage as possible to sustain future water deliveries through droughts. Similar to the California proposal, the Six States are willing to provide California with additional water for a specified period of time while conservation measures are being implemented. The States believe that when California is successful in implementing programs for conservation transfers to M&I uses it will be able to meet its future needs within its basic 4.4 maf annual entitlement and, therefore, there will be no need to continue the proposed form of interim reservoir operating criteria in the future.

Underlying all levels of the interim criteria is the commitment to attempt to meet the needs of southern California municipal and industrial water users which are causing the state to use more than its 4.4 maf basic apportionment. While this volume is expected to reduce continuously over time, it is still a significant amount of water, especially in the early years of the Plan's implementation. The Six State proposal also includes water for municipal uses in Southern

Nevada to meet Nevada's M&I needs above its basic apportionment of 0.3 maf after about the year 2005.

B. Tiered Surplus Strategy

The Six State proposal for Lake Mead operation, like the California 4.4 Plan proposal, envisions a tiered water management approach. In order to meet the objective of providing additional water to MWD and the Southern Nevada Water Authority ("SNWA"), Arizona must agree, under certain circumstances, to temporarily waive all or a portion of its legal entitlement to 46% of any surplus. The Six State tiered approach allows Lower Basin demands to be met incrementally based on designed surplus releases under certain reservoir conditions and anticipated runoff. The tiered approach steps are summarized as follows:

1.) Normal Year

During the period while the proposed interim criteria are in place, normal years will be declared only when available Lake Mead storage is at or below elevation 1125 (13.569 maf content). This represents about 3.8 maf of available storage capacity above the minimum power pool. This amount of storage will allow a minimum of five years of normal year deliveries through a drought cycle represented by the 33rd percentile lowest five year average of historic runoff. At the end of the five-year period, the reservoir elevation would be at 1083, which is the minimum power head (9.764 maf content). While this elevation is greater than the protection level proposed for declaration of shortages, the Six States feel that surplus declarations must be terminated 5 years before power production is impacted, rather than 5 years before the SNWA water intake structure is impacted.

In a normal year, California will be limited to 4.4 maf of consumptive use, and Nevada will be limited to 0.3 maf of consumptive use, unless unused apportionment is available from Arizona.

2.) Partial M&I Surplus

During the interim period, MWD and SNWA will be allowed to increase orders which would result in California's and Nevada's consumptive uses exceeding their basic apportionments. Under the partial surplus tier, the surplus volume would not be large enough to keep the Colorado River Aqueduct full nor to meet all of the potential needs of the SNWA. The volume of surplus