

ATTACHMENT Q

Consultation with Mexico

This attachment to the Colorado River Interim Surplus Criteria DEIS consists of the following documents and correspondence prepared individually by the United States Section and the Mexico Section of the International Boundary and Water Commission – United States and Mexico (USIBWC and MIBWC, respectively), as part of the consultation between the United States and Mexico regarding the proposed interim surplus criteria.

Draft Authority and Assumptions governing the US-Mexico consultations on the proposed Colorado River interim surplus criteria prepared by the USIBWC, December 28, 1999.

Letter of May 22, 2000 from Commissioner J. Arturo Herrera Solis, MIBWC, to Commissioner John M. Bernal, USIBWC, regarding potential effects on Mexico's natural and physical environment.

English Translation of May 22, 2000 letter from Commissioner J. Arturo Herrera Solis, MIBWC, to Commissioner John M. Bernal, USIBWC, regarding potential effects on Mexico's natural and physical environment.

**US Section, International Boundary and Water Commission
Draft Authority and Assumptions
US - Mexico Consultations - Colorado River Surplus Criteria
December 28, 1999**

Authority

Authority	United States Position
1. Article 10, 1944 Water Treaty	Mexico has a right to 1.5 million acre feet annually in scheduled deliveries. Mexico may receive an additional 200,000 af annually, but does not have right to system waters beyond the 1.5 maf. ¹
2. Resolution 1, Minute 242	Establishes quantity and salinity of waters delivered to Mexico at northern boundary and the southern boundary area.
3. Resolution 6, Minute 242	Provides that “With the objective of avoiding future problems, the United States and Mexico shall consult with each other prior to undertaking any new development of either the surface or the groundwater resources, or undertaking substantial modifications of present developments, in its own territory in the border area that might adversely affect the other country.”

Assumptions

Assumption	United States Position
1. U.S. has right to make maximize its use of waters reserved under the 1944 Water Treaty, while recognizing Mexico’s right to 1.5 maf annually under the 1944 Treaty.	Mexico’s right to system waters is limited to the 1.5 maf annual amount and thus the U.S. obligation is ensure delivery of the 1.5 maf annually.
2. Use in the United States assumes the 15 maf Upper and Lower Basin compact allocation (Article III(a) and the lower basin right to increase its beneficial consumptive use by 1 maf (Article III(b))	Mexico should be allowed to schedule up to 200,000 af in addition to 1.5 maf, when storage in Lakes Powell and Mead are anticipated to exceed full conservation capacity.
3. U.S. surplus criteria seeks to maximize use of U.S. waters and avoid flood control releases.	The United States develop and supply technical data that identify impacts to future deliveries of up to 200,000 af of use in Mexico.
4. U.S. would not mitigate for impacts in Mexico, but would consider joint cooperation projects provided there is no net negative impact to the United States and that there is cost sharing	The United States should be prepared to identify a range of opportunities for joint cooperation projects with a benefit to the United States.

based on benefits to each.

¹ Article 10 describes a “guaranteed” annual quantity of 1.5 maf to be delivered to Mexico. Article 15, Section E, describes that “in any year in which there shall exist in the river water in excess of that necessary to satisfy the requirements in the United States and the guaranteed quantity of 1,500,000 acre feet allotted to Mexico, the Mexican Section may schedule such surplus water to complete a quantity up to a maximum of 1,700,000 acre-feet.” Article 10 provides that Mexico acquires no right beyond the 1.5 maf annually by the use of the waters in excess of 1.5 maf. The decree in *AZ v. CA* allows the U.S. to release water in satisfaction of its obligations to the Mexican treaty without regard to the priorities listed in Article II(A). The Colorado River Basin Project Act describes that the satisfaction of the requirements of the Mexican Water Treaty shall be the first obligation of any water augmentation project planned. In the absence of such augmentation, the legislation states that the requirements of the Mexican Water Treaty, shall be from the waters of the Colorado River pursuant to the treaties, laws, and compacts until the augmentation of the water supply is available. This language seems to infer that the Mexico Treaty right to 1.5 maf is guaranteed and viewed as an obligation that the United States must meet each year prior to delivery of U.S. basic and surplus apportionments.

COMISION INTERNACIONAL DE LIMITES Y AGUAS
ENTRE MEXICO Y LOS ESTADOS UNIDOS

SECCION MEXICANA

SECRETARIA
DE
RELACIONES EXTERIORES

NUM: LAE 01012/00
EXP: LAE/33

Ciudad Juárez, Chih., a 22 de mayo del 2000.

John M. Bernal,
Comisionado estadounidense,
Comisión Internacional de Limites y Aguas,
The Commons Building C., suite 310,
4171 North Mesa,
El Paso, Texas 79902-1422.

Estimado comisionado:

Me refiero a las reuniones binacionales realizadas en las ciudades de Henderson, Nevada y Mexico, D.F. el pasado 12 de abril y los días 11 y 12 de mayo respectivamente, en las que la Oficina de Restauración de los Estados Unidos (USBR por sus siglas en inglés), presentó el criterio interino de excedentes en la cuenca del Rio Colorado, el cual considera modificar la operación del sistema hidráulico de esta cuenca para la distribución de dichos excedentes en la cuenca baja, y apoyar al Estado de California para se ajuste a su asignación en los próximos 15 años, tiempo que se prevé durará la implantación de dicho criterio.

En las condiciones de operación actuales, desde 1950 Mexico ha recibido en promedio un volumen aproximado de 2,530 millones de m3 anuales (2 millones de acresXpies) producto de excedentes, los cuales tienen un uso benéfico en mi país evitando el deterioro ambiental del medio físico y natural, del entorno del Río Colorado.

El plan propuesto para la distribución de excedentes entre los Estados de Arizona, Nevada y California, ubicados en la cuenca baja, tiende a eliminar por 15 años estos flujos. Asimismo, dentro del Plan de California, se consideran medidas de conservación de agua, que afectarían la recarga de las aguas subterráneas que comparten ambos países, tal es el caso particular del revestimiento del Canal Todo Americano.

Se estima que la eliminación de estos flujos tendrían los siguientes efectos en el medio físico y natural mexicano:

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1. Afectación de la recarga del acuífero en cantidad y calidad reduciendo el uso benéfico del mismo.
2. Incremento en la salinización de las 200,000 hectáreas de cultivo del Valle de Mexicali, ya que parte de los excedentes son utilizados para el lavado de estos suelos.
3. Deterioro en la calidad del agua recibida por México en el Lindero Internacional Sur (LIS), sobre todo en lo que respecta a la salinidad, en virtud de que los flujos de agua fresca se utilizan para reducir las altas concentraciones de sal en este sitio.
4. Deterioro en la calidad del agua recibida por Mexico en el LIN, al reducirse el flujo al valor de la demanda mexicana, y mantener las descargas al río de flujos provenientes del drenaje agrícola del área de Yuma, Az.
5. En la parte alta del Mar de Cortés se afectarán especies en peligro de extinción o que requieren protección especial, tales como el cetáceo más raro y escaso del mundo, la Vaquita marina y la Totoaba. Además, se afectará la actividad pesquera comercial en la región, principalmte de camarón y dos especies de curvina, peces que no habían aparecido en números significativos en los últimos 25 años.
6. En cuanto a la flora existente en el tramo comprendido entre la Presa Morelos y la desembocadura del Río Colorado al Mar de Cortés, en los últimos años se han restablecido cerca de 33,000 hectáreas de vegetación nativa ribereña, establecida en el cauce, conformada por álamos, sauces, mezquites y pino salado, entre otras especies que son fundamentales en el ecosistema, ya que muchas de éstas son utilizadas para la anidación de gran número de aves como el Palmoteador de Yuma, la Gaviota amarilla, la Golondrina de mar y la Garza real azul, entre otras, mismas que se verán afectadas por estas medidas.

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Cabe resaltar que los impactos indicados pueden debilitar las relaciones de cooperación bilateral referentes al Delta, que incluyen la coordinación entre las áreas naturales protegidas contiguas, el manejo ambiental de las cuencas y los acuerdos binacionales de protección de hábitats de humedales y especies migratorias en las que, ambos países son signatarios como la Convención de Ramsar, el Plan de Manejo de Aves Acuáticas de Norteamérica y la Red de Reservas de la UNESCO.

Finalmente, me permito hacer notar a usted que el gobierno mexicano no está de acuerdo en que el esquema propuesto, se lleve a la práctica sin considerar las medidas que se implementarían para mitigar su impacto en territorio mexicano. Asimismo, hago patente nuestra solicitud para que se considere al medio ambiente como un usuario de los excedentes que se declaren para la cuenca baja del Río Colorado. Apoyamos la buena disposición del Departamento del Interior de los Estados Unidos en proponer una "pérdida cero neta de beneficio ambiente" en la implantación del criterio de excedentes.

Aprovecho la oportunidad para reiterar a usted la seguridad de mi atenta y distinguida consideración.

ATENTAMENTE

(Signed)

J. ARTURO HERRERA SOLÍS
COMISIONADO MEXICANO

**INTERNATIONAL BOUNDARY AND WATER COMMISSION
UNITED STATES AND MEXICO
MEXICAN SECTION**

(SEAL Secretariat of
Foreign Relations)

TRANSLATION
No.: LAE 01012/00
File: LAE/33
Ciudad Juárez, Chih.
May 22, 2000

JOHN M. BERNAL
United States Commissioner
International Boundary and Water Commission
The Commons Building C, Suite 310
4171 North Mesa
El Paso, Texas 79902-1422

Dear Commissioner:

I refer to the binational meetings carried out in Henderson, Nevada and Mexico City last April 12th and May 11th and 12th respectively, in which the United States Bureau of Reclamation (USBR) presented the interim surplus criteria for the Colorado River basin, which considers modifying the operation of the river system in this basin for the distribution of said surplus in the lower basin, and supports the state of California in adjusting its allocation in the next 15 years, the time period for the implementation of said criteria.

Under the current operating conditions, since 1950, Mexico has received an average volume of 2,530 Mm³ annually (2 million acre-feet) of surplus water, which volume has been put to beneficial use in my country avoiding environmental deterioration of the physical and natural environment in the Colorado River.

The proposed plan for the distribution of surplus water between the states of Arizona, Nevada and California, located in the lower basin, tends to eliminate these flows for 15 years. Also, within the California Plan, water conservation measures are contemplated which will affect the recharge of the groundwaters shared by both countries, as is the case with the All-American Canal lining.

It is estimated that the elimination of these flows would have the following effects on the Mexican natural and physical environment:

1. Effects on the recharge of the aquifer both in quantity and quality, reducing the beneficial use of the same;
2. Increase in salinity in the 200,000 hectares of cultivation in the Mexicali Valley, since part of the surplus is used to leach this soil;
3. Deterioration in the quality of water delivered to Mexico at the Southerly International Boundary (SIB), especially in terms of salinity given that the flows of

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fresh water are used to reduce high concentrations of salinity at this site;

4. Deterioration in the quality of water received by Mexico at NIB in reducing the flow to the value of the Mexican demand and maintaining the discharges to the river from agricultural drains in the Yuma, Arizona area;
5. In the upper part of the Sea of Cortez, species in danger of extinction or which require special protection will be affected, such as the rarest and most scarce cetacean in the world, the sea cow and the Totoaba. Also, commercial fishing activities will be affected in the region, especially shrimping and two species of (*curvina*), fish which had not appeared in significant numbers in the last 25 years; and,
6. In terms of the existing flora in the reach between Morelos Dam and the mouth of the Colorado River at the Sea of Cortez, in recent years around 33,000 hectares of native riparian vegetation have been restored in the channel, mostly poplars, willows, mesquite and salt cedar, among other species which are fundamental in the ecosystem since many of these are used as nesting areas for a great number of birds, such as the Yuma Clapper Rail, the yellow seagull, the sea swallow and the royal blue swan, among others, same which would be affected by these measures.

It should be noted that the indicated impacts could weaken the bilateral cooperative relations regarding the delta, which include coordination between the contiguous protected natural areas, the environmental management of the basins and the binational agreements for protection of wetlands and migratory species in which both countries are signatory such as the Ramsar Convention, the Plan for the Management of North American Sea Birds, and the Network of Reserves of UNESCO.

Finally, let me bring to your attention that the government of Mexico is not in agreement with putting the proposed scheme into practice without considering the measures which would be implemented to mitigate its impact in Mexican territory. In the same light, I make known our request that the environment be considered a user of the surpluses which may be declared for the lower Colorado River basin. We support the goodwill of the Department of the Interior of the United States in proposing a zero net loss of benefit to the environment in the implementation of the surplus criteria.

I take this opportunity to reiterate to you the assurances of my most distinguished consideration.

**Sincerely,
(Signed)
J. Arturo Herrera Solís
Mexican Commissioner**