

**COLORADO RIVER BOARD OF CALIFORNIA**

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November 17, 2005

Mr. Robert W. Johnson  
Regional Director  
Lower Colorado Region  
U.S. Bureau of Reclamation  
P.O. Box 61470  
Boulder City, Nevada 89006-1470

Dear Mr. Johnson:

The purpose of this letter is to provide the U.S. Bureau of Reclamation (Reclamation) with the Colorado River Board of California's (Board) comments regarding Reclamation's public process to solicit information regarding potential methods to recover or replace the bypass drainage flow from the Wellton-Mohawk Irrigation and Drainage District (WMIDD). The Board appreciates this opportunity to provide comments on a matter of significant importance concerning Lower Colorado River operations. I also want to thank your staff for extending the deadline for receiving these comments.

The Board's first comment is directed to the obligation of the United States Government to replace the bypass flow. As you are aware, the bypass of WMIDD drainage water via the Main Outlet Drain Extension (MODE) to the Cienega de Santa Clara in Mexico was arranged in the 1970's pursuant to Minute 242 of the International Boundary and Water Commission (IBWC) and Public Law 93-320. In addition to WMIDD drainage, the Board understands that pumped drainage from the South Gila Valley has also been discharged to the Cienega since the 1990s. For a period of time the federal government was allowed to take advantage of a credit from the lining of the first 49 miles of the Coachella Canal in order to compensate for the lack of return flow to the Colorado River caused by the Wellton Mohawk bypass (See 43 USC 1572 (a)). However, now that the interim period has ended, the focus is on 43 USC 1571 (c) which provides that replacement of the bypass flow is a national obligation.

The Board believes that it is important to emphasize that Congress has already determined that replacement of the bypass flow "is recognized as a national obligation ..." 43 USC 1571 (c). Furthermore, this is a significant matter because the loss of this water to Mexico on an annual basis is causing meaningful injury to the Lower Basin states. Reclamation's public notice, dated September 22, 2005, acknowledges that "system storage from the Colorado River has been used to make up for the bypass flow." As you are aware, water years 2000 through 2004 constitute one of the most severe 5-year drought periods since the beginning of flow measurements in the Colorado River Basin. Under such conditions, the Board suggests that it is inexcusable for the federal government to continue to bypass drainage water to the Cienega without undertaking immediate steps to fulfill the national obligation imposed by Congress to replace such water with an equal amount of water in the Colorado River System reservoirs. Such obligation began on

January 1, 2004, as the interim period defined in 43 USC 1572 (a) ended in 2003.

In light of the above, the Board's second comment is that Reclamation should take meaningful and proactive steps to either eliminate the bypass flows or to replace the flow so as to increase the amount of water in storage in the Colorado River System reservoirs to what it would have been absent continued bypass of the WMIDD drainage water since January 1, 2004. All realistic alternatives should be considered. One of the alternatives that should receive serious consideration is operation of the Yuma Desalting Plant (YDP) at 1/3 capacity. Indeed, in House of Representatives Report No. 109-275, "Making Appropriations for Energy and Water Development for the Fiscal Year Ending September 30, 2006, and for Other Purposes," (November 7, 2005-Ordered to be Printed), the managers on the part of the House and the Senate at the conference stated in "The Joint Explanatory Statement of the Committee of Conference" on page 132:

"Recognizing that the Yuma Desalting Plant may be one part of the solution to the return flow issue," from Wellton-Mohawk "the conferees believe that it is prudent to reiterate the direction from previous Acts that sufficient resources be dedicated to the Yuma Desalting Plant so that one-third operational capacity may be achieved by the end of calendar year 2006."

In this regard, the Board notes the recent work of the Yuma Desalting Plant-Cienega de Santa Clara Workgroup (Workgroup), sponsored by the Central Arizona Project (CAP), to engage in a process of studying the operation of the YDP in a manner that would be more environmentally acceptable. These individuals did not necessarily represent the formal positions of their employers, nor in any way was it assumed that the groups or agencies that they normally represent would even agree with or endorse the Workgroup's recommendations.

Nevertheless, the report prepared by that group appears to present a number of sound recommendations that should, in the view of the Board, be seriously considered by Reclamation. As with any alternative, this alternative should be spelled out in more detail for the public and the opportunity for meaningful public input should be provided. In that regard, the Board urges Reclamation to address the following issues in relation to the operation of the YDP:

- 1) Operation of the YDP at 1/3 capacity on an interim test program basis so as to obtain information concerning the impacts, environmentally and otherwise, from such operation;
- 2) Funding from the federal government (in light of the national obligation discussed above) or the possibility of voluntary funding from non-federal sources;
- 3) If funding is provided from a non-federal source, consideration should be given to allowing that entity to benefit from the saved water, at least for a period of years in

- amounts and on a schedule that does not reduce the amount of water in storage in Lake Mead<sup>1</sup>; and
- 4) Use of adaptive management in relation to the environmental consequences stemming from operation of the YDP, disposal of the brine stream, etc.

The Board's third comment relates to the recently-produced CAP-sponsored report referenced above. In that report it is recommended, both in relation to a short-term bypass replacement program and a long-term bypass replacement program, that Reclamation and the Lower Basin states support a "Basin-wide, consumptive use reduction and forbearance program, based on voluntary, temporary land fallowing." In relation to land fallowing, the Board notes that in May 2004 Reclamation sent out letters soliciting participation in a land fallowing test program in an effort to develop water to replace the bypass flow. For a variety of reasons that program was not pursued. Nevertheless, land fallowing may still be viewed by some stakeholders as a viable component to the bypass flow replacement program.

From California's perspective, the Board wishes to put Reclamation and the public on notice that California agriculture is not likely to be a viable source for such forbearance water. This position is based on a number of factors. First, the Board notes that some of the larger agricultural districts in California, like the Palo Verde Irrigation District (PVID), have recently entered into long-term fallowing arrangements with urban suppliers like The Metropolitan Water District of Southern California (MWD). Given the magnitude of the PVID-MWD arrangement, a sufficient quantity of water may not be available on a long-term basis.

Second, another of the large districts, the Coachella Valley Water District (CVWD), relies more on permanent crops and has commenced implementation of its ambitious Water Management Plan aimed at reversing groundwater overdraft in the Coachella Valley; and therefore, may not be interested in land fallowing programs.

Third, the largest agricultural district in southern California, the Imperial Irrigation District (IID), recently issued a resolution indicating that the IID Board has no interest in participating in new water conservation programs, whether by land fallowing or other means, through which the conserved water would be provided to users outside of IID.

And finally, water managers in California would likely agree that any water conservation carried out within the California agricultural pool, whether by land fallowing or other means, should be used first within California to meet domestic needs. As you are aware, the MWD's Colorado River Aqueduct is presently operating at only about 2/3 capacity because of limited Colorado River supplies. This kind of factor tends to dictate that any conserved water sources must be used first

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<sup>1</sup> See 43 USC 1571 (e) for Congressional direction on exchanges with desalted water.

within California as opposed to being provided to meet needs outside of California, such as replacement of the bypass flow.

If there is interest in forbearance of water from within Arizona or another Basin state, the Board would not likely oppose such an action provided that the water savings are derived from extraordinary water conservation measures and are verified. At this juncture, the Board does not want to create any expectation that such supplies might be available from within California.

As you are aware, the agencies represented on the Board are involved in a variety of water operations matters that either are or may be of interest to Mexico. Accordingly, the Board's fourth comment is to urge Reclamation to be sensitive to the broader scope of matters that are of importance to the United States and Mexico, and to recognize that any plan to replace the bypass flow must be carried out in a fashion that is respectful of these other interests. The agencies represented on the Board, along with agencies in Arizona and Nevada, have worked hard over recent years to prevail in litigation and carry out programs like the Lower Colorado River Multi-Species Conservation Program in an effort to provide long-term protections for water and power uses from Lake Mead to the Southerly International Boundary with Mexico. Accordingly, programs for the replacement of the bypass flows should be carried out in light of these other interests and with appropriate environmental compliance so as to avoid protracted and counter-productive litigation.

The Board's fifth comment is directed at funding for any bypass replacement program. The Board feels strongly, as noted above, that the federal government has a present-day obligation, imposed by the Congress, to replace the bypass flow. That means that solutions developed by Reclamation should be carried out solely with federal funds. Furthermore, such solutions should be separate and independent of the responsibility of the Secretary of the Interior (Secretary) to regulate the flow of the Colorado River and to release water for irrigation and domestic uses. For example, the Workgroup's recommended solution component that the United States be given proportional credit for its investments in extraordinary water salvage as a substitute supply to offset the national obligation could reduce the amount of surplus water that would otherwise be available to California. This reduction could occur if that investment is to salvage water which would have been stored in:

- Senator Wash Reservoir absent the safety-of-dam restrictions now imposed on that facility's operation by Reclamation,
- Laguna Reservoir absent the existence of silt reducing that reservoir's active capacity, or
- New regulatory reservoir storage constructed to compensate for the loss of storage due to safety-of-dam restrictions now imposed on Senator Wash Reservoir and the silted-in capacity behind Laguna Dam.

Such investments are the obligation of the United States to ensure the Secretary's ability to regulate the flow of the Colorado River. This was acknowledged in the House of Representatives Report No. 109-275, in which the managers on the part of the House and the Senate at the conference stated in "The Joint Explanatory Statement of the Committee of Conference" on page 129:

"The conferees have provided additional funds for continued work on the regulating reservoirs on the All American Canal and for initiation of appropriate studies to determine if additional capacity can be economically realized behind Laguna Dam if sediment is removed. The conferees understand that these projects have the potential of saving as much as 300,000 acre-feet of Colorado River System water that would otherwise be over-delivered to Mexico. Because of the potential for such water savings (essentially Nevada's entire annual share of Colorado River water), the conferees strongly recommend that Reclamation proceed aggressively with this work and to reflect the urgency of completing these projects in future budget requests. Because the regulating reservoir and Laguna Dam sediment removal provide needed improvements in river control, management and river system efficiencies, all of which are Federal responsibilities, the conferees believe that they should be undertaken at full Federal expense."

The Board would be willing to consider voluntary funding from non-federal sources for facilitating the Secretary's responsibility to regulate the flow of the River, under appropriate terms and conditions, if it were a component of a solution that would address other Colorado River related issues of importance to California as well. But the Board will strongly resist any suggestion to obtain funding by means of fees imposed on water or power users.

Finally, the Board notes that some solutions for replacing the bypass flow might involve additional groundwater pumping in the area of Yuma, Arizona. While these may be helpful suggestions that may in fact have long-term viability, the Board is concerned about matters such as Article V Decree accounting and related issues such as the impact that it may have on the federal government's obligations pursuant to the 1944 Mexican Water Treaty and Minute 242 of that Treaty. In other words, as a part of the public process to be employed by Reclamation, it will be necessary for Reclamation to explain thoroughly how the Article V Decree accounting would work in a manner that would not be injurious to other states, like California. For example, withdrawal of Yuma area groundwater for replacement of the bypass flow may be deemed as a diversion from the mainstream as defined in the U.S. Geological Survey Water Resources Investigation Report 00-4085, "Method to Identify Wells that Yield Water that will be Replaced by Water from the Colorado River Downstream from Laguna Dam in Arizona and California." Furthermore, with respect to the Yuma groundwater pumping proposals, it may be necessary for Reclamation to abide by Arizona Revised Statutes (ARS) 45-107.1 and 45-547. As provided in ARS 45-107.1, the Director of the Arizona Department of Water Resources would be requested by the Secretary of the Interior to waive rights held by Arizona to return flow credits for Colorado River water to the extent that water is returned to

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the Colorado River pursuant to a permit issued to the Secretary under ARS Section 45-547. Absent the granting of the waiver by the Director, Reclamation could not utilize Yuma-area groundwater. As the opportunity to utilize groundwater in the Yuma area to replace drainage water in the bypass drain is further explored, the administration of, and accounting for, the use of this water must be consistent with the administration of, and accounting for, the use of Colorado River system and non-system water in other areas of the Lower Basin.

In this regard, the Board suggests that it would be useful for Reclamation to convene a meeting with staff members of the Board and agencies represented on the Board to permit these individuals to better understand the Colorado River delivery system in the Yuma area, the groundwater conditions that might prove to be important to this process, and the proposed Article V Decree accounting approaches if pumping in the Yuma area is to be proposed for utilization as a component to the bypass replacement program.

Thank you for the opportunity to submit comments on this important matter. If you have any questions or require additional information, please contact me.

Sincerely,



Gerald R. Zimmerman  
Executive Director

c: Herb Guenther, Arizona Department of Water Resources  
Pat Mulroy, Southern Nevada Water Authority