

Subject: Extension of Policy Establishing a Demonstration Program for System Conservation of Colorado River Water

Purpose: Reclamation plans to continue the Demonstration Program for System Conservation (Demonstration System Conservation Program) through December 31, 2010. This Policy will become effective January 1, 2009, and will extend the Policy that became effective on May 26, 2006, that will end on December 31, 2008. The Demonstration System Conservation Program will allow Reclamation to determine whether voluntary System Conservation through the use of land fallowing can be used as an interim and supplemental measure to reduce the water supply impacts that otherwise would occur on Colorado River reservoir system storage (System Storage).

Authority: Boulder Canyon Project Act of 1928, Colorado River Basin Project Act of 1968, and Colorado River Basin Salinity Control Act of 1974, as amended

I. **General.**

A. **Background.**

1. Under current river operations, Wellton-Mohawk Irrigation and Drainage District (Wellton-Mohawk) drainage water is not returned to the Colorado River so the United States can meet the salinity requirements of the Mexican Water Treaty. This drainage water is bypassed to the Cienega de Santa Clara (Cienega) and an equivalent amount of water is released from System Storage. The Wellton-Mohawk drainage water bypassed to the Cienega is called "Bypass Water." When the Yuma Desalting Plant (YDP) is operating, it is expected that YDP Reject Stream will also be routed to the Cienega.
2. The Colorado River Basin Salinity Control Act (Salinity Control Act) recognizes that replacement of Bypass Water and YDP Reject Stream is a national obligation, as provided in section 202 of the Colorado River Basin Project Act. The Salinity Control Act further provides that measures to replace Bypass Water and YDP Reject Stream may be undertaken independently of that national obligation.
3. At the present time, approximately 110,000 acre-feet of drainage water from Wellton-Mohawk is bypassed each year to the Cienega to meet the requirements of the Mexican Water Treaty and an equivalent amount of water is released from System Storage. The release of water from System Storage to replace Bypass Water or YDP Reject Stream depletes System Storage and increases the

risk of shortage. The Demonstration System Conservation Program can mitigate the impacts caused by the increased depletions of water from System Storage. In light of the recent drought in the Colorado River watershed, it is important that Bypass Water be replaced as soon as possible and steps be taken to avoid depletions that would result from routing YDP Reject Stream to the Cienega.

B. Purpose.

1. Reclamation proposes to enter into agreements with eligible Entitlement Holders under which the Entitlement Holders will agree to conserve the use of a portion of their approved annual consumptive use of Colorado River water. Participation in this Demonstration System Conservation Program is voluntary and a participating Entitlement Holder will be paid for verified reductions in its consumptive use, up to the amount of pledged System Conservation. This voluntary System Conservation could provide an interim and supplemental source of water to offset the impacts of replacing Bypass Water or YDP Reject Stream with water from System Storage. The purpose of this Policy is to establish Reclamation's criteria for administering a Demonstration System Conservation Program.
2. Implementing a means to replace Bypass Water or YDP Reject Stream other than through the release of water from System Storage is in the common interest of all Colorado River Basin States (Basin States). The Lower Colorado Region will initiate consultations with the Basin States on a basin-wide approach to address this issue. In the interim, the Lower Colorado Region is implementing this Policy that will apply only in Arizona, California, and Nevada (the Lower Division States). This Policy would be limited to extraordinary conservation activities through land fallowing in the Lower Division States.
3. Reclamation is systematically working on implementing a dual path approach, whereby Reclamation is addressing the design deficiencies of the YDP while concurrently implementing a Demonstration System Conservation Program. The Demonstration System Conservation Program is expected to produce data that can be analyzed to determine the feasibility of using such a program as an interim conservation method, not to exceed the amount of Bypass Water or YDP Reject Stream.

C. **Applicability.** The Demonstration System Conservation Program would be limited to Entitlement Holders in the Lower Division States.

D. **Definitions.** For the purposes of this Policy:

1. Consumptive use means diversions from the Colorado River less any return flow to the river that is available for consumptive use in the United States or in satisfaction of the Mexican Treaty Obligation.
 - a. Consumptive use from the Colorado River within the Lower Division States includes water drawn from the Colorado River by underground pumping.
 - b. The Mexican Treaty Obligation is set forth in the February 3, 1944, Water Treaty between Mexico and the United States, including supplements and associated Minutes of the International Boundary and Water Commission.
2. Decree means the consolidated decree entered March 27, 2006 (547 U.S. 150 (2006)), by the United States Supreme Court in *Arizona v. California, et al.*, or as it may be further modified.
3. Entitlement Holder means a person or entity within the Lower Division States that has an existing authorization to divert Colorado River water as reasonably required for beneficial uses pursuant to (i) a decreed right, (ii) a Boulder Canyon Project Act Section 5 contract with the United States through the Secretary of the Interior, or (iii) a Federal reservation of water.
4. System Conservation for the purposes of this Policy means a voluntary reduction of consumptive use of Colorado River water use by an Entitlement Holder through land fallowing under a System Conservation Agreement. System Conservation does not include measures: (i) required by Reclamation under its existing contract(s) for delivery of water with an Entitlement Holder, (ii) required by Reclamation to avoid non-beneficial or unreasonable use determinations, (iii) implemented by the Entitlement Holder to meet consumptive use reduction obligations under any transfer or conservation agreement with another party, (iv) implemented for money payment or other valuable consideration from another party, or (v) voluntarily undertaken by an Entitlement Holder for purposes other than System Conservation.

5. System Conservation Agreement means an agreement, entered into between Reclamation and an Entitlement Holder pursuant to this Policy, to reduce consumptive use of Colorado River water through extraordinary conservation by land fallowing.
6. 43 CFR Part 417 means the procedures established in Title 43, Subtitle B, Ch. 1, Part 417 of the *Code of Federal Regulations* relating to the Department of the Interior's annual review of Entitlement Holders' water conservation measures and operating practices in the diversion, delivery, distribution, and use of Colorado River water.
7. Inadvertent Overrun and Payback Policy means the Lower Colorado Region's policy, approved by the Secretary of the Interior on October 10, 2003, and effective January 1, 2004, that identifies and defines inadvertent overruns of approved consumptive use of Colorado River water by an Entitlement Holder, establishes procedures that account for inadvertent overruns, and defines subsequent Entitlement Holder payback requirements to System Storage (69 Fed. Reg. 12208-09, March 15, 2004).
8. Secretary means the Secretary of the Interior or a duly authorized representative.

II. **Demonstration System Conservation Program.**

- A. **Program Requirements.** Reclamation proposes to initiate a Demonstration System Conservation Program to determine whether voluntary system conservation, not to exceed the amount of Bypass Water or YDP Reject Stream, would be feasible to mitigate the impacts caused by releasing water from System Storage to replace Bypass Water or YDP Reject Stream that is routed to the Cienega. The Demonstration System Conservation Program may be initiated in calendar year 2009 and will continue through December 31, 2010.
 1. **Submittal of System Conservation Proposals:** Pursuant to 43 CFR Part 417, Reclamation will determine each Entitlement Holder's estimated consumptive use water requirements for the following calendar year and inform the Entitlement Holder in writing of that determination. Reclamation may request eligible interested Entitlement Holders to submit Demonstration System Conservation Program proposals under this Policy each year this Policy is in effect. Entitlement Holders may submit such proposals at any time during the period this Policy is in effect or Reclamation may enter into negotiations with an Entitlement Holder or Entitlement Holders to implement System Conservation under this Policy.

- a. An Entitlement Holder must submit its proposal to implement System Conservation in calendar years 2009 and 2010 by September 15 of the previous year.
- b. Reclamation may also enter into negotiations with an individual Entitlement Holder(s) to implement System Conservation.
 - (1) Reclamation may establish an amount that Reclamation is willing to pay to implement System Conservation and seek an offer or offers to conserve water at that cost.
 - (2) Reclamation will then negotiate and execute the necessary System Conservation Agreement(s) with the individual Entitlement Holder(s).

2. **Eligibility to Participate in a System Conservation Program.**

Reclamation will entertain definitive System Conservation proposals only from existing Entitlement Holders with a recent history of beneficial consumptive use. Proposals from individuals that use Colorado River water delivered within the service area of an Entitlement Holder, but are not themselves existing Entitlement Holders, will not be considered. Because of the costs associated with administration of System Conservation proposals for small quantities of water conservation, the minimum quantity of water conservation that will be considered for a System Conservation proposal is a reduction of 1,000 acre-feet of consumptive use per year.

3. **Submittal of System Conservation Proposals:** System Conservation proposals must be submitted in writing to Reclamation at the following address:

Bureau of Reclamation
Lower Colorado Regional Office
PO Box 61470
Boulder City, Nevada 89006-1470
Attn: Area Manager, Boulder Canyon Operations Office

4. **Elements of a System Conservation Proposal.** Under the Demonstration System Conservation Program, Reclamation will consider only agricultural land following System Conservation proposals. Generally, each Entitlement Holder's System

Conservation of reasonable beneficial consumptive use is based on fallowing of irrigated agricultural lands and will be limited to no more than 33 percent of that Entitlement Holder's service area irrigated acreage, including fallowing that occurs under other programs undertaken by the Entitlement Holder to meet consumptive use reduction obligations under any transfer or conservation agreement with another party. This percentage is subject to modification pending implementation of this Demonstration System Conservation Program and further consultation with the Lower Division States. A waiver of this maximum participation level will be considered for an Entitlement Holder that owns all of the irrigated acreage within its service area boundaries. Any System Conservation proposal must specify the following: (1) how much consumptive use the Entitlement Holder proposes to conserve; (2) the amount of financial compensation the Entitlement Holder would expect per acre-foot of water conserved and forborne; (3) how the proposed land fallowing measures would result in a verified reduction in diversions and consumptive use; (4) required approvals, if any, under State law; and (5) other information that would assist in Reclamation's evaluation of the proposal.

5. **Overrun Payback Obligations.** An Entitlement Holder that is paying back an overrun under the Inadvertent Overrun and Payback Policy, or Exhibit C to the Colorado River Water Delivery Agreement approved by the Secretary on October 10, 2003, may concurrently participate in the Demonstration System Conservation Program. An Entitlement Holder will first be obligated to meet its annual overrun payback obligation (as reflected in Reclamation's determination of the Entitlement Holder's estimated reasonable beneficial consumptive use water requirements) before forbearing any additional water available for System Conservation under this Policy.

6. **Changes in Water Orders.** An Entitlement Holder entering into a System Conservation Agreement will be permitted to increase its water order if it determines it can divert and put to beneficial use (on lands having a recent history of irrigation) a quantity of water different than that previously specified in an annual water order or amended water order and Reclamation approves. The maximum allowable increase in a conserving Entitlement Holder's water order will be limited to its maximum entitlement, if the entitlement is quantified, less consumptive use reduction obligations under any transfer or conservation agreement with another party and its agreed to reduction in consumptive use during that year under a System Conservation Agreement. An Entitlement Holder cannot

increase the amount of System Conservation it had previously scheduled for implementation during the calendar year.

7. **Cost and Compensation.** If Reclamation is evaluating several System Conservation proposals, Reclamation will prioritize eligible System Conservation offers on the basis of offered cost per acre-foot reduction in consumptive use. Reclamation will commit its limited funding to implement System Conservation on the basis of offered cost, with the lowest cost per acre-foot receiving the first priority consideration. Offers will be considered until Reclamation has used up the appropriated funds available in that year for this program. Compensation will be limited to the reduction in reasonable beneficial consumptive use that is actually verified. Reclamation will pay 50 percent of the compensation for the reduction in consumptive use within 30 days of the execution of a System Conservation Agreement. Reclamation will pay the remaining 50 percent of the compensation after verifying that the reduction in consumptive use occurred consistent with the terms of the System Conservation Agreement. An Entitlement Holder pledging System Conservation will not be compensated for water within its estimated water requirements as determined by Reclamation that remains unused after the pledged System Conservation and consumptive use reduction obligations under any transfer or conservation agreement with another party are deducted from the Entitlement Holder's estimated consumptive use water requirements as determined by Reclamation. Such water could be available for use by Entitlement Holders within the Lower Division State subject to the terms of existing contracts, the water use priority system for that State, and approval by Reclamation.
8. **Protecting Rights of Junior Entitlement Holders.** Reclamation will not compete with a Lower Division State's existing junior Entitlement Holders for the use of Colorado River water that would be forborne by System Conservation actions in that Lower Division State.
 - a. Accordingly, an amount of water equal to the amount of water to be conserved pursuant to a System Conservation Agreement in a Lower Division State first will be made available for acquisition and beneficial use by junior Entitlement Holders within that State up to an amount necessary to satisfy the Entitlement Holder's calendar year consumptive use water requirements, pursuant to the order of priority in accordance with the priority system applicable to Entitlement Holders within that State. Reclamation will inform all junior Entitlement Holders, in writing, of the

quantity of water to be forborne that is offered to Reclamation by Entitlement Holders that submit System Conservation proposals along with the proposed financial or other terms associated with the proposed System Conservation. Any junior Entitlement Holder within the relevant Lower Division State who is interested in acquiring an amount of water less than or equal to the amount of water to be forborne will be required to submit to Reclamation a binding commitment, by a date specified by Reclamation, to acquire a specific quantity of water and to pay a proportionate share or all of the costs of the System Conservation proposal, depending upon whether the junior Entitlement Holder is interested in acquiring an amount of water less than or equal to the amount of water to be forborne.

- b. If there are no interested junior Entitlement Holders in the State where the proposed System Conservation is to occur, the water forborne under the System Conservation proposal will not be delivered in that year as unused entitlement to other users within the State or as unused apportionment to another Lower Division State but will remain in System Storage.

- 9. **Protecting the Rights of All States.** No more than one-half of the total conservation will be implemented by Arizona or California over the period of the Demonstration System Conservation Program unless a State agrees to have more than one-half the total conservation implemented in that State. Reclamation, in its Colorado River accounting and water use report prepared under Article V of the Decree for calendar year 2006 and afterwards, shall include a supplemental accounting section for the Demonstration System Conservation Program. For the year covered by the report, this supplemental accounting section will report the amount of any Bypass Water, the amount of any water made available from operation of the YDP, the amount of any YDP Reject Stream, the amount of water forborne due to System Conservation, and the amount of water made available to replace the Bypass Water or Reject Stream by any other measures.

B. Program Implementation.

1. Environmental Compliance.

- a. Reclamation has reviewed this Demonstration System Conservation Program for compliance with Federal

environmental laws, including the National Environmental Policy Act, and determined that the program meets the criteria for a Categorical Exclusion as described within 516 DM 6, Appendix 9, Categorical Exclusion 12, as follows: “Conduct of programs of demonstration, educational, and technical assistance to water user organizations for improvement of project and on-farm irrigation water use and management.” A Categorical Exclusion Checklist has been prepared for this Policy.

- b. The approval of a System Conservation agreement by Reclamation will constitute a Federal action subject to applicable Federal environmental law. Appropriate environmental compliance documentation will be completed prior to Reclamation’s execution of a System Conservation agreement.

2. **System Conservation Agreements.** Reclamation will enter into specific commitments pursuant to this Policy to implement System Conservation on an annual basis for a period not longer than one year during the term of the Demonstration System Conservation Program. System Conservation Agreements will not in any way affect the long-term entitlement to Colorado River water of any Entitlement Holder or the apportionment of any Lower Division State. Critical to Reclamation’s evaluation of any System Conservation proposal is a determination that there has been no artificial inflation of the System Conservation Entitlement Holder’s estimated reasonable beneficial consumptive use water requirements. In evaluating any System Conservation proposal, Reclamation shall consider, among other items, the cost to the United States and the recent water history of consumptive use by the Entitlement Holder.

3. **Verification of Conserved Water.** The reduction in consumptive use of Colorado River water associated with any System Conservation proposal shall be the measure of the amount of water conserved. Reclamation will require any proposed reduction in Colorado River water consumptive use from a System Conservation proposal to be reflected in verifiable reductions in consumptive use. If an Entitlement Holder with an approved System Conservation proposal does not reduce its actual water use by the agreed-upon amount for which payment has been received, Reclamation shall treat any overuse as an inadvertent overrun that is subject to the Inadvertent Overrun and Payback Policy. Reclamation will consult with Entitlement Holders, representatives of the Lower Division States, and other interested parties before,

during, and after the System Conservation action has taken place, and based on those consultations shall verify that land is fallowed to make water available that otherwise would have been consumptively used.

4. **Reclamation's Purpose in Conserving System Water.** Any water conserved through this Demonstration System Conservation Program will remain in System Storage to offset the impacts caused by depletions from System Storage attributed to Bypass Water. Reclamation will pay Entitlement Holders to conserve water under this Policy only up to the amount of the anticipated Bypass Water or YDP Reject Stream for the calendar year. By helping conserve the amount of Colorado River water in storage, the Demonstration System Conservation Program will decrease the probability and severity of potential shortage determinations and enhance the potential for future surplus determinations.
5. **Evaluation of Demonstration System Conservation Program.** Reclamation will evaluate the results of the Demonstration System Conservation Program after its conclusion and consult with Entitlement Holders, representatives of the Lower Division States, and other interested parties to determine whether a long-term System Conservation program is feasible. If Reclamation determines a long-term System Conservation program is feasible and desirable, Reclamation will develop proposed policies and procedures for a long-term System Conservation program in consultation with representatives of the Lower Division States.

III. **Other Alternatives.** This Demonstration System Conservation Program is being implemented as one element of a variety of programs that could be used to replace the Bypass Water or YDP Reject Stream. The YDP/Cienega Workgroup presented a report, dated April 22, 2005, describing various programs that could be pursued. Reclamation has an ongoing public process to examine these programs and others to gather data on one or more approaches to replace the Bypass Water or YDP Reject Stream.

In line with the dual track approach earlier described in this Policy, Reclamation continues to work on the design deficiencies for the YDP. In addition, Reclamation has conducted a demonstration with the YDP to operate the plant at 10 percent capacity for a 90-day period during 2007 to assist in evaluating the design deficiencies and the cost of operating YDP at larger capacities.

IV. **Authority of the Secretary Not Affected:** Nothing in this Policy diminishes or abrogates the authority of the Secretary of the Interior under applicable Federal law, regulation, or Supreme Court Decree.

Adopted as a Policy of the Lower Colorado Region, Bureau of Reclamation:


Lorri Gray
Regional Director

9/16/08
Date