

April 05, 2007

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To: Regional Director, Lower Colorado Region, Bureau of Reclamation, Attention: BCOO-1000, Box 61470, Boulder City, Nevada 89006-1470
From: Earl Zarbin, 3803 E. St. Catherine Ave., Phoenix, AZ 85042-5013 - (no home Internet or fax reception)
Re: BCOO-1000 - Response to Draft EIS - Colorado River Interim ENV-6.00 Guidelines for Lower Basin Shortages, etc.

Best alternative: Given Arizona's growing population, the U.S. secretary of the Interior should adopt as a guideline for Lower (Colorado River) Basin Shortages the alternative calculated to do the least harm to the sufficiency of the Central Arizona Project water supply.

Preferred action: Because it is preposterous and illogical to lock into perpetuity a system of water distribution that ignores population shifts and other Colorado River Basin changes, and,

Because the present system unjustly enriches or enables some people at the expense of others, and,

Because there exists a need to restore reason, common sense, and sanity to management of the Colorado River,

The areas of the seven Basin States and the Republic of Mexico within the Colorado River Basin should seek to create a new entity administratively independent of their federal and state governments and other special interests. To accomplish this, the seven Basin States:

Should create, using **Section 19** of the Boulder Canyon Project Act, a Colorado River Basin Authority or other entity independent of the U.S. secretary of the Interior, and invite Mexican water users to cooperate.¹

(Should the Basin States meet to create a Colorado River Basin Authority, Section 19 permits the U.S. president to name a representative to "participate" and to "report to Congress of the proceedings and of any compact or agreements entered into." The States and the Congress have to approve any agreement, but the Interior secretary has no role unless named by the president. The Interior secretary should not be named.)

¹ Ideally, as noted by John Wesley Powell, river basins should be operated as a unit. For the Colorado River Basin, options include: 1) The U.S. should acquire the portion of Mexico receiving Colorado River water; 2) Mexico should acquire areas of the seven states within the basin; 3) the Colorado River Basin, including the area in the U.S. and Mexico, should create an independent Colorado River Basin Republic. None of these are likely to occur, which means the present messy management of the river will continue unless the seven Basin States unite and act to change the system.

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Powers of the Authority should include:

1) Use of eminent domain to reallocate water from farmers or others, both on and off Indian reservations, for urban purposes. There should be one-time compensation to anyone giving up water. (Reservation Indians are citizens of the U.S. and should be treated as all other citizens, i.e., the special privileges awarded reservation Indians by the U.S. Congress at the expense of other citizens should end.)

2) Own and operate the river dams.

3) Construct additional dams and diversion works.

4) Augment the river supply.

Other considerations:

The Authority should urge the U.S. Congress to:

1) Repeal the U.S. Supreme Court's "practicably irrigable acreage" (PIA) ruling as the measure of water for Indian reservations (PIA ignores reality, from climate to location, and awards excessive quantities of water to some tribes. See footnote for two such tribes in Arizona).²

2) Repeal language in Section 5, Boulder Canyon Project Act, which the U.S. Supreme Court purposefully misinterpreted to give the U.S. secretary of the Interior power to distribute water to Arizona, California and Nevada, and to users within these states.

3) Repeal all laws based upon PIA.

4) Repeal all laws that conflict with powers given the Colorado River Basin Authority.

5) End the reservation system for Indians and assure "the equal protection of the laws" for all citizens as provided in the 14th Amendment to the U.S. Constitution.

Correction: "The Gila River Reservation," according to Chapter 3, 3-88, lines 38-39, Draft EIS, "Reclamation, Managing Water in the West," "was established by executive order in 1859..." (emphasis supplied). Not so. The reservation was created February 28, 1859, by an act of the U.S. Congress.

² With implementation of the Arizona Water Settlements Act of 2004, two Arizona Indian reservations, with less than one-half of 1% of Arizona's 5,130,632 people in 2000, are supposed to have yearly almost 1 million acre-feet of Arizona's Colorado River water entitlement. These two are the Gila River Indian Community (GRIC), 328,800 acre-feet (including 17,000 acre-feet from ASARCO, Inc., that remains unsettled), and the Colorado River Indian Tribes, 662,402 acre-feet. With fewer than 19,000 residents, these two reservations will have 991,202 acre-feet (including the 17,000 acre-feet). Add in the Gila River tribe's other water, and the two reservations yearly will have 1,315,902 acre-feet. Not morally, ethically, or historically are these tribes entitled to that much water. These tribes no doubt will be founding members of the Organization of Water Exporting Tribes (OWET).