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Date: 4/30/07
 To: Regional Director
Lower Colorado River Region Company: _____
Bureau of Reclamation
 Phone: _____ Fax: 702-293-8156
 From: David S. Wilson Phone: 623-869-2333

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Comments: _____

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April 30, 2007

Via U.S. Mail and Facsimile at 702-293-8156

Regional Director
Lower Colorado Region
Bureau of Reclamation
Attention: BCOO-1000
P.O. Box 61470
Boulder City, Nevada 89006-1470

Dear Regional Director:

The Central Arizona Water Conservation District (CAWCD) submits the following comments on the Bureau of Reclamation's February 2007 Draft Environmental Impact Statement on Colorado River Interim Guidelines for Lower Basin Shortages and Coordinated Operations for Lake Powell and Lake Mead (DEIS). CAWCD also endorses the comments on the DEIS submitted by the Arizona Department of Water Resources and the seven Basin States.
Support for Basin States Alternative

CAWCD supports adoption of the Basin States alternative as the preferred alternative. The Basin States alternative is the only alternative that can be implemented under the existing Law of the River with the cooperation of the seven Basin States.

Under the Basin States Proposal, Arizona has agreed to take shortages during the interim period when Lake Mead reaches certain trigger elevations, even though water is still available in storage at those elevations to satisfy Arizona's full entitlement. The significance of that concession by Arizona to accommodate a seven Basin States agreement cannot be overstated. To prepare for those shortages, Arizona has already spent more than \$100 million to store water and will spend hundreds of millions more for additional storage and future recovery.

No Action Alternative is Improper Both as a Baseline and for Future Operations

Each of the alternatives modeled in the DEIS assumes that Reclamation will return to the rules of the No Action alternative after 2026. But the rules of the No Action alternative are flawed and inconsistent with the Law of the River.

The No Action alternative employs an 80P1050 strategy, which would prevent Lake Mead from declining below elevation 1050 with an 80 percent probability. This operating strategy would

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require Reclamation to declare shortages in the lower basin—more specifically, shortages to Arizona and Nevada—even when there was more than enough water in storage in Lake Mead to satisfy all lower basin entitlements. As shown in Figure 2.2-1 of the DEIS, the 80P1050 rule would dictate a shortage declaration in 2060 when Lake Mead was above 1150' msl and holding more than 16.5 million acre-feet in storage. There is no legal or rational basis for such action.

The operating rules of the No Action alternative also provide absolute protection for Southern Nevada Water Authority's lower intake at elevation 1000 in Lake Mead. The DEIS ignores the fact that SNWA will have lowered its intake to below elevation 895 by around 2012, making absolute protection of elevation 1000 both unnecessary and improper.

The No Action alternative also uses the Interim 602(a) Storage Guideline adopted by the Secretary in 2004 for use through 2016. As explained more fully in Arizona's November 28, 2005 scoping comments (copy attached to Arizona's comments on the DEIS), the current guideline does not properly implement the requirements of section 602(a) of the Colorado River Basin Project Act of 1968.

Forbearance Required for Delivery of Conserved Water

Both the Conservation Before Shortage (CBS) alternative and the Reservoir Storage alternative include provisions for the storage and delivery of conserved water, similar to that proposed under the Basin States alternative. But when the delivery of conserved water would result in a total consumptive use in excess of 7.5 million acre-feet in the three lower basin states, the excess must be apportioned among the lower basin states in accordance with Article II(B)(2) of the Consolidated Decree in *Arizona v. California*. The only way in which the Secretary can deviate from the requirement of the Consolidated Decree is if the States agree to forbear the delivery of such excess water. The Basin States Proposal includes a draft forbearance agreement for that purpose. But the States have not agreed to forbear for purposes of the CBS or Reservoir Storage alternatives. Therefore, the provisions for storage and delivery of conserved water under those two alternatives cannot be implemented.

Water Supply Alternative

We note that adoption of the Water Supply alternative would result in no anticipated shortages to Arizona during the interim period. Accordingly, that alternative would appear to best satisfy Reclamation's contractual obligation to Central Arizona Project subcontractors. Each of the more than 60 subcontracts for delivery of CAP water for municipal and industrial and agricultural uses that Reclamation has entered into provides that, in determining the amount of Colorado River water available for delivery through the CAP each year, Reclamation "shall use [its] best efforts to maximize the availability and delivery of Arizona's full entitlement of Colorado River water over the term of this subcontract." Those subcontract commitments limit whatever discretion the Secretary might otherwise have in allocating shortages in the Lower Basin.

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While the shortage guidelines of the Water Supply alternative are appealing to CAP water users, we recognize that this alternative does not have the support of the Basin States. Accordingly, CAWCD supports the Basin States Proposal, which reflects the many compromises that have been made by the seven states.

DEIS Mischaracterizes CAWCD's Water Delivery Contract

Table E-1 of the DEIS indicates that CAWCD is only entitled to the delivery of 1.49 million acre-feet as Arizona 4th priority water, and that the remainder of the CAP supply holds a "Bank" priority that is below Arizona 5th priority. That is incorrect.

CAWCD's master repayment and water delivery contract allows it to take all that remains of Arizona's 2.8 million acre-foot entitlement after Arizona's 1st through 3rd priority uses have been satisfied, sharing up to 164,652 acre-feet of that supply with other Arizona 4th priority water users. In general, the Arizona Water Banking Authority (AWBA) may not store Colorado River water that would otherwise have been used in Arizona by a Colorado River contractor. A.R.S. §45-2427(B). Because of that state statute, certain Arizona 5th priority water users have been allowed to take delivery of Colorado River water ahead of the AWBA. That does not give those users priority over CAWCD, and CAWCD may deliver its entire contract entitlement as Arizona 4th priority water.

This mischaracterization of CAWCD's priority distorts the results of the DEIS shortage allocation model. The model allocates the first increment of Arizona shortage solely to the CAP supply in excess of 1.49 million acre-feet, then apportions the remaining 4th priority water among all 4th priority water users, including CAP. The net effect is to overstate the total shortage to the CAP supply.

DEIS Improperly Allocates Shortages

In the Arizona-Nevada Shortage Sharing Agreement included as part of the Basin States Proposal, Arizona and Nevada have agreed to share specified shortages to the Lower Basin States. The DEIS should reflect the terms of that agreement in describing and modeling the Basin States alternative.

For any alternative other than the Basin States alternative, the Secretary would have to develop his own guidelines to address the issue of California's priority and the method of allocating shortages in accordance with the Law of the River. The shortage guidelines assumed in the DEIS do not comport with the law.

Article II(B)(3) of the Consolidated Decree in *Arizona v. California* requires that, in time of shortage, present perfected rights (PPRs) are to be satisfied first, in order of priority and without regard to state lines, and then the remaining available supply is to be apportioned after consultation with major Colorado River contractors and the Lower Basin States. Section 301(b) of the Colorado River Basin Project Act, 43 U.S.C. §1521(b), directs that pre-1968 contractors and federal reservations in all three Lower Basin States are to be satisfied after PPRs, with the remaining supply apportioned among CAP and other post-1968 uses. Thus, the Secretary is

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required by the Law of the River to use a "bottom up" approach when allocating shortages within the Lower Basin, satisfying first PPRs, next pre-1968 uses, and finally CAP and other post-1968 uses.

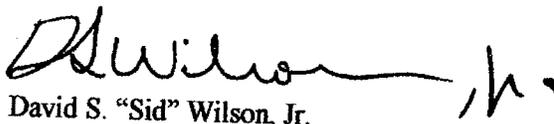
Rather than follow the "bottom up" allocation method prescribed by law, the DEIS assumed a "top down" methodology under which the first step was to reduce consumptive uses in Arizona and Nevada. The effect of that approach is to overstate shortages to Arizona and CAP.

The DEIS also assumes that all consumptive uses in California are entitled to priority over Arizona's fourth priority users, including the CAP. But the priority granted to California in 43 U.S.C. §1521(b) applies only to water users in that state served under delivery contracts entered into before September 30, 1968, and by diversion works already constructed as of that date.

Conclusion

The Basin States alternative offers distinct advantages over every other alternative. First, it sets forth shortage guidelines that can be implemented by agreement among the Lower Basin States, thereby avoiding potential disputes over the meaning and application of the Consolidated Decree and the Colorado River Basin Project Act. Second, it describes a program for the coordinated operation of Lake Powell and Lake Mead that all seven Basin States have agreed to accept for the interim period, postponing potential litigation over the Colorado River Compact and Long Range Operating Criteria. Finally, it provides for the storage of conserved water in the Lower Basin and the forbearance necessary to allow delivery of that stored water to the storing entity. For these reasons, CAWCD urges the Secretary to adopt the Basin States alternative.

Sincerely,



David S. "Sid" Wilson, Jr.
General Manager

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c: Herb Guenther, Arizona Department of Water Resources