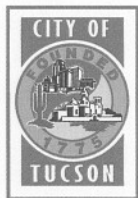


From: David Modeer [David.Modeer@tucsonaz.gov]
Sent: Monday, April 30, 2007 3:25 PM
To: strategies@lc.usbr.gov
Cc: David Modeer
Subject: State of Arizona Comments on the Draft EIS, Colorado
RiverOperations

Attachments: krisdennis.pdf

Please see attachment below.

Thank you,
David Modeer
Director
Tucson Water
(520) 791-2666



CITY OF
TUCSON

TUCSON WATER
DEPARTMENT

April 30, 2007

Honorable Dirk Kempthorne
Secretary of the United States Department of the Interior
1849 C. Street, NW
Washington, D.C. 20240

Re: City of Tucson, Arizona Water Department Comments Regarding the *Draft Environmental Impact Statement, Colorado River Interim Guidelines for Lower Basin Shortages and Coordinated Operations for Lake Powell and Lake Mead*

Dear Mr. Secretary:

The City of Tucson, Arizona Water Department (Tucson Water) submits the following comments to the *Colorado River Interim Guidelines for Lower Basin Shortages and Coordinated Operations for Lake Powell and Lake Mead, Draft Environmental Impact Statement* (February 2007).

Tucson is located in the northern semi-arid reaches of the Sonoran Desert. Tucson Water, a municipally-owned and operated utility, is the largest water provider in southeastern Arizona, serving about 700,000 customers over a 300 square-mile service area. In addition, Tucson Water has the largest municipal and industrial (M&I) allocation of Colorado River water in the state of Arizona, with delivery via the Central Arizona Project (CAP). Tucson Water is the only water provider in southern Arizona currently delivering Colorado River water to its customers, with almost half of annual customer demand met through use of this renewable resource. The Utility has both construction projects and financial mechanisms in place to rapidly increase the percentage of Colorado River water used to meet demand over the next several years.

The City of Tucson is keenly interested in the selection of a preferred alternative for the Colorado River Interim Guidelines for Lower Basin Shortages and Coordinated Operations for Lake Powell and Lake Mead. Of the 7.5 million acre-feet of Colorado River allocation available to the lower basin states of California, Arizona, and Nevada, Arizona's 1.5 million acre-foot CAP water supply has the most junior priority. Tucson's location at the very end of the 336-mile CAP canal introduces an additional level of vulnerability when discussing potential Colorado River shortages, especially since Tucson has no other access to renewable drinking water supplies.



The Proposed Alternatives

There have historically been significant differences among the seven Colorado River Basin states concerning important elements of the Law of the River. Hydrological conditions on the River require that the Secretary, in consultation with the Basin states, adopt shortage guidelines. The process for adoption of such guidelines could have resulted in each of the Basin states asserting its legal positions - with extended litigation and years of uncertainty for Colorado River water users. The seven states chose, instead, to seek agreement on shortage guidelines and guidelines for the management of Lakes Mead and Powell for an interim period of nineteen years and to reserve their legal positions for later resolution if necessary.

The Basin States Alternative

Reclamation should Adopt the Basin States Alternative as the Preferred Alternative. The Basin States Alternative provides the greatest degree of certainty for Tucson Water because it is the compromise alternative developed by the Governor's Representatives of the seven Colorado River Basin States and can be implemented upon approval of the Record of Decision ("ROD") without the need for additional action.

The Basin States Alternative is the only alternative that meets all the criteria discussed in Section 1.1 of the Draft EIS that states, "[T]he Secretary intends to consider, adopt and implement the proposed federal action consistent with applicable federal law and judicial decisions, and, further, in a manner that will not require any additional statutory authorization." (DEIS at p. 1-1). This alternative also best meets the goals of the proposed action discussed in the February 28, 2007 Federal Register Notice, i.e., "[T]his action is proposed in order to provide a greater degree of certainty to U. S. Colorado River water users and managers of the Colorado River Basin by providing detailed and objective guidelines for the operations of Lake Powell and Lake Mead, thereby allowing water managers and water users in the Lower Basin to know when, and by how much, water deliveries will be reduced in drought or other low reservoir conditions." (72 Fed. Reg. 9027 dated February 28, 2007.)

In addition, the certainty provided by the Basin States Alternative goes well beyond the actual criteria and numbers. The Agreement reached by the Basin States, as reflected in the Basin States Alternative, creates an increased level of confidence that legal issues over the interpretation and implementation of the Colorado River Compact, the Mexican Treaty, accounting under the Arizona v. California Decree, and equalization of Lake Mead and Lake Powell will not result in costly and divisive litigation with an uncertain outcome for water users. The value of collaboration by the Basin States cannot be overstated.

Further, the Basin States Alternative provides flexibility within the system and a mechanism for maximizing the efficiency of the system by allowing for the intentional creation of surplus ("ICS") in Lake Mead by a Lower Colorado River mainstem contractor and release of that surplus for use within the state that created it, with the forbearance of the other Lower Division States. The State of Arizona recently enacted legislation that allows the State to forbear ICS water if the Secretary "adopts substantially the same concepts as contained in the proposal of the seven basin states for shortage

guidelines and conjunctive management of lakes Mead and Powell,” clearing the way, at least from Arizona’s perspective, for ICS to be implemented if that alternative is memorialized in the ROD.

Certainty for water users and the ability of the Basin States Alternative to be immediately implemented is also enhanced by the fact that the Lower Colorado River Multi-Species Conservation Plan (“MSCP”) provides compliance with the Endangered Species Act (“ESA”) for this alternative because the MSCP analyzed reductions of flow that exceed the reductions proposed in the Basin States Alternative. Additional ESA consultation that may be required under other alternatives raises uncertainties regarding the implementation schedule for those alternatives.

The Basin States Alternative is the only alternative that allows for the extension and modification of the existing Interim Surplus Guidelines (“ISG”) without the need for further action. The package submitted to the Secretary by the Seven Basin States on February 3, 2006 includes provisions to amend the ISG by agreement of all the States and the Basin States Alternative adopts those amendments.

The No Action and Water Supply Alternatives

The No Action and Water Supply Alternatives analyze a broad range of environmental impacts but do not meet the goals of the proposed action. Both alternatives fail to provide certainty for the timing and extent of shortages in the Lower Basin and fail to propose viable criteria for the coordinated management of Lake Powell and Lake Mead. These two alternatives do not allow for the creation or use of ICS thus limiting flexibility in the operation of the system and creating greater risk and uncertainty regarding shortages for water users in the Lower Basin.

The Water Supply Alternative reflects the traditional strategy for managing reservoir systems in the West, wherein shortages are declared only when water is physically unavailable for delivery. The DEIS also projects no likely shortages to Arizona during the interim period under this alternative. However, there would be less water retained in storage in Lake Powell under this alternative and it lacks consensus Basin States’ support.

The analyses of the No Action and Water Supply alternatives are important because they expand the range of analyzed impacts. However, neither alternative includes negotiated criteria for the coordinated operation of Lake Powell and Lake Mead or specific guidelines for the implementation of future water supply reductions in the Lower Colorado River Basin under defined shortage conditions.

The Reservoir Storage Alternative

The Reservoir Storage Alternative (“RSA”) proposes levels of shortages starting at 600,000 AF and increasing to 1,200,000 AF and the magnitude of the average shortage volumes during the interim period are the highest under this alternative. (DEIS at p. ES-10). The RSA does not meet the goal stated in the Federal Register Notice, i.e., “to (1) Improve Reclamation’s management of the Colorado River by considering the trade-offs between the *frequency and magnitude* of reductions of water deliveries...” (72 Fed. Reg.

9027 dated February 28, 2007. emphasis added). Furthermore, this alternative would require changes to the Law of the River prior to its implementation.

The Reservoir Storage Alternative serves a valuable purpose by allowing analysis of a broad range of impacts in the EIS, but it contains provisions that impound water for power generation and recreation to the detriment of downstream agricultural and domestic uses. This is prohibited by Article IV (b) of the Colorado River Compact (Compact) which clearly states that “Subject to the provisions of this compact, water of the Colorado River System may be impounded and used for the generation of electrical power, but such impounding and use shall be subservient to the use and consumption of such water for agricultural and domestic purposes and shall not interfere with or prevent use for such dominant purposes.”

The Conservation Before Shortage Alternative

The Conservation Before Shortage Alternative (“CBS”) also falls short of meeting the certainty provisions of the proposed action. With the CBS alternative, “shortages are implemented in any given year to keep Lake Mead above SNWA’s lower intake at elevation 1000’ (absolute protect of elevation 1,000).” Water users in the Lower Basin will be left to the whims of the Annual Operating Plan for determining when and how much of a shortage will be declared under this alternative. This greatly reduces certainty for water users like Tucson Water.

This alternative essentially would allow 4.2 million AF of ICS in Lake Mead compared to a maximum ICS of 2.1 million AF under the Basin States Alternative. Creating ICS of this magnitude could create too much risk for losing expensive ICS water to spills in wet years and earmark too much Lake Mead water for a particular water use, rather than for the system.

Two additional drawbacks of the CBS alternative are: (1) no funding mechanism for creation of ICS currently exists; and (2) including ICS by the Republic of Mexico could necessitate amending the 1944 Treaty to allow for the creation and delivery of ICS water to Mexico. Reclamation recognizes the limitations of the CBS alternative by stating, “[T]he viability of the Conservation Before Shortage program funding proposal is not known at this time. Reclamation currently does not have authority to implement all facets of this proposal and additional legislation would be necessary to gain such authority.” (Draft EIS at p. 2).

Summary

In comparison of the proposed alternatives, it is evident that the Basin States Proposal is superior to any of the other alternatives because it provides the greatest degree of certainty to water users, avoids potential litigation, creates shortage criteria that are reasonable in magnitude and are readily predictable based upon elevations at Lake Mead, and presents a package that can be implemented without the need for further legislation or ESA compliance. Furthermore, the Basin States Alternative best meets all the aspects of the purpose and need for the action and has the support of the Basin States, which will enhance the Secretary’s ability to manage the Colorado River system in a collaborative manner.

Tucson Water urges the Secretary to adopt the Basin States Proposal as the preferred alternative in the Final EIS.

Conjunctive Operation of Lake Mead and Lake Powell

The Basin States Alternative creates the ability to more effectively balance the contents of Lake Mead and Lake Powell in a way that better controls large fluctuations in reservoir elevations during extended periods of low inflow into the system. That alternative also removes potential issues over the methodology for equalizing the contents of Lake Mead and Lake Powell under other proposed alternatives.

Currently, equalization is largely governed by the Interim 602(a) Storage Guideline for Management of the Colorado River, which contains a 14.85 million acre-feet storage requirement. That guideline artificially limits equalization and has a detrimental effect on storage in Lake Mead and thus on Tucson Water. While the current guideline was also part of a package agreed to by the Seven Basin States as part of the ISG process, it essentially provides for greater protection for power production at Lake Powell than is otherwise authorized under the Law of the River. The Basin States Alternative replaces this equalization requirement in favor of a strategy that is not as onerous for Tucson Water.

If the Basin States Alternative is adopted and implemented in the guidelines set out in the ROD, at the end of the interim period in 2026 or if the guidelines are changed, whichever comes first, Reclamation must consult on the guidelines to assure that they are consistent with the legal priorities established by the Law of the River. For these reasons and because the coordinated operations of Lake Powell and Lake Mead are essential components to shortage criteria, the Secretary should adopt the Basin States Alternative.

The Record of Decision and Implementation of the Preferred Alternative

Tucson Water supports the Basin States Alternative as the preferred alternative and recommends that it be incorporated into the Record of Decision ("ROD"). Tucson Water believes that the Secretary should work with the Basin States to create specific implementation criteria and guidelines consistent with the adoption of the Basin States Alternative as the preferred alternative. That document will serve as a road map that can then be relied upon to better manage our water supplies and to better prepare for shortages. To effectuate those guidelines and criteria so that the certainty outlined in the proposed action is achieved, Tucson Water urges the Secretary to include a statement in the ROD that "during the effective period of the guidelines the Secretary shall utilize the established process for development of the Annual Operating Plan for the Colorado River System Reservoirs (AOP) and shall use those guidelines to make determinations regarding normal, surplus and shortage conditions for the operation of Lake Mead and for the coordinated management of Lake Mead and Lake Powell."

Cumulative Impacts of Shortages in Arizona

The DEIS has only attempted to analyze the socio-economic impacts for shortages in a single year. Analysis by the State of Arizona indicates a high probability that multi-year

shortages will occur. The socio-economic impacts of multi-year shortages should be analyzed and incorporated into the Final EIS for all of the alternatives.

Socioeconomic Impacts to Municipal Water Users in Arizona

The DEIS does not adequately analyze and describe the impacts to municipal water users in Arizona. The DEIS states, "Implementing statewide and local demand-side and supply-side strategies are expected to minimize adverse socioeconomic effects occurring during the maximum M&I shortage." This statement accurately reflects the strategies Tucson Water has historically used, and continues to use, for determining its long-term need for water supplies including supplies to help offset shortages. Likewise, demand restrictions are also part of the Utility's plan for dealing with actual shortages. Tucson Water's goal is to minimize the impacts on its citizens and on its economy. However, neither demand-side strategies nor supply-side strategies and actions come without a substantial price.

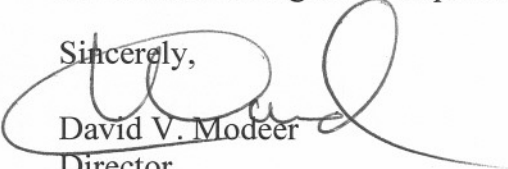
Arizona municipal water providers have already expended substantial sums of money in anticipation of shortages on the Colorado River. Municipal water users in Arizona, including Tucson Water, will rely in part on recovery of water stored underground by the Arizona Water Banking Authority to make up for shortfalls due to Colorado River shortages. Through calendar year 2006, the Arizona Water Banking Authority ("Bank") has stored about 2,243,000 AF of water at a cost of about \$101 million. Funding for the Bank comes primarily from a property tax in Maricopa, Pinal and Pima Counties, from a pump tax paid by groundwater users in those counties and from some appropriations by the Arizona Legislature.

The DEIS does not analyze quantitatively, or even qualitatively, the costs associated with shortages. This is a glaring omission in the DEIS. The socioeconomic impacts on municipal water users in Arizona due to Colorado River shortages are significant and should be documented in the Final EIS.

Conclusion

Tucson Water reiterates that the Basin States Alternative is the only alternative that meets all the criteria defined in the proposed action for the EIS. Tucson Water urges that the Final EIS adopt the Basin States Alternative as the preferred alternative and that a Record of Decision be signed incorporating the terms of the Basin States Alternative.

Sincerely,



David V. Modeer
Director

DVM:kc

cc: Robert W. Johnson, Commissioner, U. S. Bureau of Reclamation
Rick Gold, Regional Director, U. S. Bureau of Reclamation, Upper Colorado Regional Office
Jayne Harkins, Acting Regional Dir., U. S. BOR, Lower Colorado Regional Office
Larry Walkoviak, Deputy Regional Dir., U.S. BOR, Lower Colorado Regional Office