

December 11, 2007

VIA ELECTRONIC DELIVERY (strategies@lc.usbr.gov) AND U.S. MAIL

Lorri Gray
Regional Director
Lower Colorado Region
Bureau of Reclamation
Attention: BCOO-1000
PO Box 61470
Boulder City, NV 89006

Re: Colorado River Interim Guidelines for Lower Basin Shortages and Coordinated Operations for Lake Powell and Lake Mead

Dear Ms. Gray:

Thank you for posting an updated Draft Interim Guidelines for the Operation of Lake Powell and Lake Mead (announced Dec. 10, 2007, *see* <http://www.usbr.gov/lc/region/programs/strategies.html>) prepared by the Bureau of Reclamation (Reclamation). With the release of the Final Environmental Impact Statement (FEIS), 72 Fed. Reg. 62,272 (Nov. 2, 2007), and in anticipation of the Record of Decision (ROD) implementing the Secretary of the Interior's (Secretary) decision, we offer these comments on the Draft Interim Guidelines for the Operation of Lake Powell and Lake Mead (Draft Guidelines) on behalf of Defenders of Wildlife, National Wildlife Federation, Pacific Institute, and Sierra Club.

The Draft Guidelines contain confusing definitions

The Draft Guidelines, XI.F., contains 'Definitions.' We recommend adding additional definitions and amending others to avoid confusion in the Guidelines.

For example, part XI.F.4 states "'Colorado River System' shall have the same meaning as defined in the 1922 Colorado River Compact." The Compact, art.II(a), in turn, states: "The term 'Colorado River System' means that portion of the Colorado River and its tributaries within the United States of America." This means that Tributary Conservation ICS under the draft guidelines would result from specified actions on water rights *on tributaries* of tributaries of the Colorado River in the Lower Basin. *See* Section 3.A.2 (using 'Colorado River System tributaries'). We do not believe this is correct or reflects the intent of the Secretary.

In addition, "Colorado River Mainstream" used in XI.G.3.A.2 and XI.G.3A.3, is not defined in XI.F. Definitions. Mainstream, however, is defined and has the meaning used in the Consolidated Decree, XI.F.22, and as defined by the decree, 'mainstream' means "the mainstream of the Colorado River downstream from Lee Ferry within the United States, including the reservoirs thereon," Decree art. I(B), generating a similarly redundant phrase.

ICS Surplus Condition lacks criteria

According to the Draft Guidelines, when Lake Mead is between elevation 1,075 feet and 1,145 feet on January 1, the Secretary shall declare either a Normal Condition or an ICS Surplus Condition. Section 2.A.¹ However, the only criterion distinguishing a determination of an ICS Surplus Condition from a Normal Condition requires that “delivery of ICS has been requested” (without specifying by whom). Section 2.B.5. We suggest that the Secretary establish objective criteria to differentiate the two conditions. In addition, the Draft Guidelines, Section 7.A, should explicitly state that this determination is part of the AOP process in order to ensure broad public participation in making this determination. As noted under “Consultation” in the following, it is wholly inappropriate for the guidelines or Reclamation to limit consultation to the Basin States.

Determination of Shortage Condition

Section 2.D ‘Shortage Conditions’ veers from the consistent format of the previous sections language regarding Normal and Surplus Conditions. Most notably, under the current draft the Secretary does not determine a Shortage Condition. Instead, at certain Lake Mead elevations, “a quantity ... shall be apportioned for consumptive use in the Lower Division ...”² Reclamation should amend this section to remove the passive voice, eliminate any confusion caused by the lack of a prepositional phrase explaining apportioned ‘by whom,’ maintain the structure of the other sections, and require the Secretary to declare a Shortage Condition and apportion water for consumptive use.

Creation & Delivery of ICS

There is no stated limit on the amount of Tributary, System Efficiency, or Imported ICS that may be created in any year. If this is not the intent of the Secretary, Reclamation should clarify that the limits on annual creation of Extraordinary Conservation ICS in Section 3.B.4 include creation via conversion of Tributary, System Efficiency, or Imported ICS to Extraordinary Conservation ICS or some other clarification on the limits of the Draft Guidelines.

Section 3.C.5 should be rewritten as:

“If the August 24-Month Study indicates that a Shortage Condition would be determined in the succeeding Year if the requested amounts for the succeeding Year under Section 3.C. were delivered, the Secretary may deliver less than the amounts of ICS requested to be delivered. Additionally, if at any time during the Year in which deliveries have been requested the Secretary determines that such deliveries would most probably result in the determination of a Shortage Condition in the succeeding Year, the Secretary may deliver less than the amounts of ICS requested to be delivered.”

¹ Citations to the Draft Guidelines within XI.G. will follow the section numbering used by Reclamation and cease use of ‘XI.G.’

² Compare Section 2.B.3, “In years when Lake Mead content is projected to be at or above elevation 1,145 feet, but less than the amount which would initiate a Surplus under Section 2.B.3., ..., on January 1, the Secretary shall determine a Domestic Surplus Condition” (emphasis added).

ICS Evaporation

The last sentence of Section 3.B.7 states that “No evaporation losses shall be assessed during a Year in which the Secretary has determined a Shortage Condition.” Even though the determination of a Shortage Condition precludes contractors from requesting delivery of ICS, the fact remains that the volume of water in their ICS accounts will continue to diminish due to evaporation. The institutional arrangements have no impact on natural physical processes at Lake Mead. In effect, waiving evaporation losses from the ICS accounts during shortage conditions simply means that the system subsidizes the ICS accounts. We recommend that this last sentence of the referenced section be eliminated, and that evaporation reductions be applied to ICS accounts without regard to Normal or Shortage conditions.

Overdelivery of ICS and DSS

Section 3.C.8 treats delivery of ICS greater than that available to a Contractor as an inadvertent overrun until it is fully repaid. Section 4.C.6 similarly treats delivery of DSS greater than that available to a Contractor as an inadvertent overrun until fully repaid. To discourage overdeliveries and to protect the system, the Secretary should treat delivery of ICS or DSS greater than that *requested* by a Contractor as an inadvertent overrun.

The need for such a change is illustrated by Sections 3.C.7 and 4.C.5. As written, these sections require full repayment of overruns before requesting delivery of ICS or DSS and call for reduction of ICS and/or DSS Accounts. First, it is not clear, however, if this required reduction of Accounts occurs only if there is a request for delivery or if it occurs regardless of request. It is also not clear which Account will be reduced if a Contractor has both and how and by whom the Account would be chosen.

Section 3.C.7 and Section 4.C.5 should be amended to include overrun payback obligations incurred by Section 3.C.8 and Section 4.C.6, respectively, in addition to those described in the IOPP or Exhibit C to the October 10, 2003 CRWDA. Just as inadvertent overruns must be repaid before requesting delivery of ICS or DSS, overruns incurred by overdelivery of ICS or DSS should be repaid before requesting delivery of ICS or DSS and should be repaid from the ICS and DSS Accounts.

Such changes would close the loophole of allowing overruns greater than the related Account, thereby emptying the Account, but leaving the system without an Account against which to charge inadvertent overruns. Such changes would also protect against running afoul of Delivery Agreements, Section 3.C.5 (allowing the Secretary to reduce the ICS request if delivery would result in a Shortage Condition the next year), or, more importantly, Section 4.C.3 (prohibiting delivery of DSS that would cause total Lower Division deliveries to equal or exceed 7.5 maf). Any overdelivery/overrun that results in delivery greater or equal to 7.5 maf in a Shortage Condition could have serious implications and adverse effects.

Creation & Delivery of DSS

DSS is a concept not discussed in the Final Environmental Impact Statement for Colorado River Interim Guidelines for Lower Basin Shortages and Coordinated Operations for Lake Powell and Lake Mead. As such, there are many uncertainties surrounding the creation and delivery of DSS, which the Secretary should clarify. For example, the Draft Guidelines contain no limit on the amount of DSS that a Contractor can create in a calendar year, unlike ICS (*cf.* Section 3.B.4), or delivered in a year, unlike ICS (*cf.* Section 3.C.4). Is this the intent of the Secretary?

The Draft Guidelines are unclear as to the delivery of a Developed Shortage Supply during a Shortage Condition. Section 2.D. How does delivery of DSS relate to the amount apportioned for consumptive use in the Lower Division per Section 2.D.1? In other words, if the Secretary determines a Shortage Condition and apportions for consumptive use 7.167 maf in the Lower Division States, of which 287,000 af is apportioned for use in Nevada, can the Secretary deliver DSS that would result in consumptive use by Nevada greater than 287,000 af or in consumptive use by the Lower Division States greater than 7.167 maf – the amounts apportioned for consumptive use?

Consultation

The Draft Guidelines direct the Secretary to consult with the Basin States on a range of issues associated with implementation of the guidelines, but fail to acknowledge the Secretary's obligation to consult with a much broader range of stakeholders. Given that these guidelines "shall implement and be used for determinations made pursuant to the Long Range Operating Criteria," XI.G., these consultations more properly include the general public, including representatives from scientific and academic communities, environmental organizations, the recreation industry, and federal power contractors, as provided for in the development of the Long Range Operating Criteria and the Annual Operating Plan per the Grand Canyon Protection Act. *See also* Section.9 (Authority and Disclaimer) ("These Guidelines ... shall be used to implement Articles II and III of the Criteria for the Coordinated Long Range Operation of Colorado River Reservoirs ..."). Reclamation should amend the Draft Guidelines to reflect these requirements.

Conclusion

The Draft Guidelines require clarification and several key revisions before they will be suitable for inclusion in the ROD.

We appreciate the opportunity to seek clarification and resolution of the above uncertainties. Thank you for your consideration of these comments.

Sincerely,
/s/

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