Kucera, Cindy

From: Bob Lynch [rslynch@rslynchaty.com]

Sent: Wednesday, August 31, 2005 1:54 PM

To: strategies@lc.usbr.gov; strategies@uc.usbr.gov

Cc: Wade Noble; Bill Woehlecke; Charles W. Slocum; David Plumb; Dennis Delaney; DeWayne Justice; Don Pope; Elizabeth (Beth) Story; Frank McRae; Gary Ijams; Grant Ward; Jackie Meck; James "Bud" Rhodes; James D. Downing; Jay I. Moyes; Jeff Woner; Jim Sweeney; Jim Trangsrud; Ken Saline; Larry Dozier; Larry Huff; Leonard Gold; Mark Mitchell; N.W. "Bill" Plummer; Patrick Ledger; Paul R. Orme; R. Gale Pearce; Rex Green; Richard O. "Rock" Cramer; Ron McEachern; Sheryl Sweeney; Stanley H. Ashby; Terry Hinton; Thomas S. Martin; 'Pedro Serrano'

Subject: Colorado River Reservoir Operations: Development of Management Strategies for Lake Powell and Lake Mead Under Low Reservoir Conditions, 70 Fed.Reg. 34794, et seq. (June 15, 2005)

Attachments: ShortCrit083105.doc

Please see attached.

Robert S. Lynch, Esq.
Robert S. Lynch & Associates
340 E. Palm Lane, Suite 140
Phoenix, Arizona 85004-4603
Phone: 602-254-5908
Fax: 602-257-9542
E-mail: rslynch@rslynchaty.com

IRRIGATION & ELECTRICAL DISTRICTS ASSOCIATION OF ARIZONA

W.A. DUNN
CHARLES W. SLOCUM
CHAIRMAN OF THE BOARD
SECRETARY-TREASURER

R. GALE PEARCE
ROBERT S. LYNCH
PRESIDENT
ASSISTANT SECRETARY-TREASURER

R.D. JUSTICE
VICE-PRESIDENT

SUITE 140

340 E. PALM LANE

PHOENIX, ARIZONA 85004-4603
(602) 254-5908

Fax (602) 257-9542

E-mail: rslynch@rslynchaty.com

E-MAILED ONLY

August 31, 2005

Mr. Robert W. Johnson
Regional Director
Lower Colorado River Region
U.S. Bureau of Reclamation
P.O. Box 61470
Boulder City, Nevada 89006-1470
Attn: BCOO1000 E-mail: strategies@lc.usbr.gov

Mr. Rick L. Gold
Regional Director
Upper Colorado River Region
U.S. Bureau of Reclamation
125 South State Street, Room 6107
Salt Lake City, Utah 84138-1102
Attn: UC-402 E-mail: strategies@uc.usbr.gov

Re: Colorado River Reservoir Operations: Development of Management Strategies for Lake Powell and Lake Mead Under Low Reservoir Conditions, 70 Fed.Reg. 34794, et seq. (June 15, 2005)

Gentlemen:

The Irrigation & Electrical Districts' Association of Arizona (IEDA) is pleased to have the opportunity to comment on the proposal published in the Federal Register on June 15, 2005, which has been the subject of several meetings since then.

As you know, IEDA members buy power from the Colorado River Storage Project, the Boulder Canyon Project and the Parker-Davis Project. Thus, the development of criteria for shortage conditions on the Colorado River directly impacts the ability of these projects to produce the power contracted for and impacts our members who receive that power.

First, we wish to compliment the Bureau of Reclamation for its studied approach to this difficult subject. This exercise has called into question the current operating parameters for the dams and other facilities within the Colorado River Basin under your care. There has been much

discussion, including a good deal of posturing, about the current Law of the River, whether aspects of it should change and who should suffer the consequences of those changes. Drought has a way of doing that to people.

Water law only means something when there isn't enough water. Otherwise, people generally ignore it like they do many traffic laws. The water buffalos essentially act as the "cops" of the system, knowing that enforcement of the laws will need to happen at some time in the future and no one will be happy. Unfortunately, when the cops start fighting with each other, the situation becomes even more difficult.

The seven Basin States have written to the Secretary of the Interior in a letter dated August 25, 2005 and, apparently, announced a shaky ceasefire. The eight water entities that signed the letter outlined an ambitious and difficult task for themselves. With these developments in mind, let us attempt to comment on the four subjects on which you solicited comment in your Federal Register notice: content, format, mechanisms and analysis.

CONTENT

It would seem that the water agencies collectively have agreed that, at this stage, only interim shortage criteria should be developed for the Lower Basin. We support this cautious approach because there are so many moving parts to this task that there really can be no way to assess the full consequences of the plan that is proposed in advance. This interim approach would also serve the development of possible strategies for changes in the relative operational relationships of Lake Mead and Lake Powell. What that exactly means we have no idea but, here again, the cautious approach calls for interim measures, not attempts at permanent solutions. 1

FORMAT

We believe that something similar to the interim surplus guidelines process should be all the formality that this effort should undertake. We are encouraged that the Basin States are talking about leaving the Long-Range Operating Criteria and the rest of the Law of the River alone for now and seeking practical solutions to problems. 2

MECHANISMS

We are not exactly sure what you mean about asking whether the results should be implemented through the Annual Operating Plan or not. If interim shortage guidelines are adopted, they will be factored into Secretarial decisions on the Annual Operating Plan. We frankly don't see how they could not be under the appropriate hydrologic circumstances. We do not believe that reopening the Long-Range Operating Criteria, any more than opening Pandora's Box, would be a good idea. The Secretary and the Basin States have already worked together to make one interim adjustment to the Long-Range Operating Criteria for use during the operational phase of the Interim Surplus Guidelines. That is the appropriate template. 3

ANALYSIS

This is where things get complicated. Obviously, we are concerned about potential impacts to power generation at all three federal projects because changes in water releases change power generation schedules and quantities. Since power generally provides the cash register for getting most of the other things done on the River, this set of impacts will be an important part of your analysis. 4

Additionally, alteration of the parameters for water releases from Glen Canyon Dam will not only impact power generation at the dam, it will impact the way scientific studies are done under the Adaptive Management Program related to environmental impact analysis of Glen Canyon Dam power operations. Water operations changes may also impact the new Multi-Species Conservation Plan in the Lower Colorado River Basin and, if Congress continues it, the Upper Colorado River Recovery Implementation Program as well. 5

Analysis of operations and studies at Flaming Gorge and on the Gunnison River will also have to be included. Potential impacts of the water litigation on the Gunnison River will have to be evaluated. The potential impacts of the new suit filed opposing the lining of the All American Canal will also need to be evaluated. 6 7

In short, this is a very complicated river with a very complicated legal scheme.

We want to especially note that the August 25th letter emphasized complementary programs aimed at enhancing the water supply of the Colorado River. The letter singled out tamarisk eradication, Lower Colorado River facilities additions and improvements, cloud seeding and desalinization. We would urge Reclamation to include these subjects in its analysis as well and to support these complementary programs in its planning and budget requests. 8

Finally, we agree with Reclamation's observation in the Federal Register notice that it should proceed on the assumption that an environmental impact statement in advance of the Secretarial decision will be necessary. Given the massiveness of the task outlined in the August 25th letter, it is hard to imagine a result that would not be a major federal action. However, it is at least possible that the ultimate strategy decided upon could have very little in the way of impacts resulting from discretionary actions of the Secretary. Under that circumstance, lesser action under the National Environmental Policy Act may be feasible. But it is always easier to cut back than it is to ramp up so we think that ramping up under NEPA and other requirements is the safest course of action at this point. 9

We are not sure that too many people understand the enormity of this undertaking. Clearly, for Arizona, the shortage criteria alone present us with a serious economic as well as political challenge. For our part, we look forward to working with you in assessing what the impacts on power generation will be from the decision the Secretary will ultimately make. L.008

Thank you for the opportunity to comment on this extraordinarily important undertaking.

Sincerely,

/s/ Robert S. Lynch

Robert S. Lynch
Counsel and Assistant
Secretary/Treasurer

RSL:psr
cc: IEDA Members

LAW OFFICES
MORISSET, SCHLOSSER, JOZWIAK & McGAW
A PROFESSIONAL SERVICE CORPORATION

SHARON I. HAENSLY (WA)
FRANK R. JOZWIAK (WA)
KYME A.M. McGAW (WA, OK)
MASON D. MORISSET (WA)
THOMAS P. SCHLOSSER (WA)
ROB ROY SMITH (WA, OR, ID)
THANE D. SOMERVILLE (WA)

COMPTROLLER
M. ANN BERNHEISEL

1115 NORTON BUILDING
801 SECOND AVENUE
SEATTLE, WA 98104-1509

TELEPHONE: (206) 386-5200
FACSIMILE: (206) 386-7322

WWW.MSAJ.COM

August 3, 2005

Via U.S. First Class Mail

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

Re: Colorado River Reservoir Operations: Comments of Quechan Indian Tribe on Proposed Development of Management Strategies for Lake Powell and Lake Mead Under Low Reservoir Conditions

Dear Regional Director:

On behalf of the Quechan Indian Tribe, we submit the following comments on the proposed Development of Management Strategies for Lake Powell and Lake Mead Under Low Reservoir Conditions, as found in 70 Fed. Reg. 34794. The Bureau of Reclamation has not actually developed new regulations or shortage guidelines, but is simply proposing the development of such regulations in the near future. Therefore, these comments are general in nature, designed to remind the Bureau of the Quechan Tribe's senior, federally perfected rights in Colorado River water and the Bureau's trust obligation to protect and promote the Tribe's interests in any new regulations or guidelines that are developed. The comments also suggest that the Bureau should develop strategies to reduce the occurrence of shortages, in addition to addressing shortages once they occur.

A. Quechan Water Rights

The Quechan Tribe is located on the Fort Yuma Indian Reservation in Southwestern Arizona and Southern California, near Yuma, Arizona. The Tribe possesses presently perfected federal reserved water rights from the main stem of the Colorado River pursuant to the 1964 United States Supreme Court decree in Arizona v. California I, 376 U.S. 344 (1964). In that decree, the Supreme Court confirmed that the Quechan Tribe had Winters doctrine reserved water rights associated with the Fort Yuma Reservation. The decree determined that the Tribe is entitled to water to irrigate 7,743 acres, with an annual diversion of Colorado River water of 51,616 acre-feet. The priority date for this water is January 9, 1884.

On July 19, 1989, the 1964 decree was reopened to determine water rights associated with the disputed boundaries of the Fort Yuma Indian Reservation. In early 2005, the Quechan Tribe and the United States entered into separate settlement agreements with the State of California and State of Arizona regarding water rights to these disputed lands. Pursuant to the settlements, the Quechan Tribe is entitled to divert an additional 26,350 acre-feet of water from the main stem of the Colorado River. Special Master Frank J. McGarr approved the final settlement documents and has submitted them to the United States Supreme Court for review. With no objections from any of the parties anticipated, the Quechan Tribe expects the Court to enter the proposed supplemental decree this coming Fall.

In sum, once the Supreme Court enters the proposed supplemental decree, the Quechan Tribe will have perfected federal reserved water rights for 77,966 acre-feet of water, all with a priority date of January 9, 1884.

B. **Considerations For Developing A Shortage Strategy**.

1. **Preventing Shortage – Marketing of Senior Tribal Water Rights**.

In developing "shortage guidelines," the Bureau should consider proactive steps to prevent shortages from occurring. One way to minimize shortage situations is to encourage and facilitate transfers of available surplus water from Tribes, who hold senior water rights, to the more junior water users with increasing demand, such as the urban metropolitan areas of Arizona and California. Indian reserved water rights are transferable property rights that can be directly leased and marketed to other users, either intrastate or interstate. To date, the Department of the Interior has failed to adequately promote and facilitate interstate marketing of tribal water to junior users. For example, the Department had an opportunity to promote interstate marketing of tribal water rights in its 1999 water banking regulations (64 Fed. Reg. 58,986), but those regulations ultimately failed to authorize tribal banking, inter-tribal transfers, or off-reservation transfers. The new shortage guidelines should proactively encourage and take steps to facilitate both intra and interstate transfers of tribal water rights to other water users. This would not only relieve some pressure on the needs of junior municipal users, but would also assist the Tribes derive full benefit from their federally protected senior water rights.

1

2

For example, in a shortage situation, with no available "surplus" water, California is limited to a maximum of 4.4 million acre-feet under the Boulder Canyon Project Act and related agreements. In order to comply with its 4.4 maf limitation, holders of junior water rights in California, such as municipal users in Southern California, need to either develop new water resources or purchase or lease senior rights from agricultural or tribal interests. Some of this pressure can be relieved through the marketing of tribal water. In the process of considering how to manage and prevent shortages on the Colorado River, the Bureau should seriously evaluate the benefits that flow to all interested parties if Tribal interests are encouraged, or provided with incentives, to market their senior water rights to junior municipal users.

2. **Defining "Surplus"**

In developing "shortage" guidelines, the Department should also revisit how it determines "normal" or "surplus" conditions on the Colorado. The analysis of whether "normal" or "surplus" conditions exist is the key to many water rights activities on the Colorado, including revision of the annual operating plan, revision of the 4.4 Plan, etc. The determination of "surplus" and "normal" conditions is also directly related to the proposed shortage guidelines. For example, if the trigger for declaring a surplus is set too low, then surpluses may be determined in years when in fact no such surplus occurs. The erroneous surplus determination would then lead to an actual shortage of available water in subsequent years. Alternatively, setting the surplus "trigger" too high can lead to flood, storage or run-off of water which could have been put to beneficial use and for wildlife enhancement purposes. The Department should ensure that existing storage levels in the Colorado River system are sufficient to satisfy the legal entitlements of the Lower Basin users and, if not, should prohibit "surplus" determinations until the storage levels return to an adequate level. Because the "definition" of surplus can have a substantial effect on whether a "shortage" occurs in the future, the "trigger" for declaring a "surplus" should be fully analyzed when developing new shortage guidelines. 3

3. **Delivery Restrictions**

The focus in a shortage management strategy should be on proactively preventing shortages to occur. If, however, the new guidelines are not successful in preventing a "shortage," the Department would presumably restrict or limit water deliveries in times of shortage. Alternatively, if a shortage is anticipated, the Department may propose guidelines to limit deliveries prospectively in order to avoid the anticipated future shortage. Any proposals to limit future water deliveries must be evaluated in light of the existing priority system on the Colorado River. In accordance with the general law of prior appropriation, and the Law of the Colorado River, delivery or diversion restrictions, if any are adopted, must be imposed in reverse order of priority and with due consideration to the tribal holders of senior, federal reserved water rights. Senior water rights holders such as the Quechan Tribe may not be subject to delivery restrictions of any kind. 4

4. **Environmental Analysis**

The Tribe agrees that the development of shortage management strategies is an action that significantly affects the quality of the human environment and that requires a full Environmental Impact Statement pursuant to NEPA, 42 U.S.C. § 102. Development of the proposed operating strategies will require full consideration of various alternatives and will benefit from the input of all interested agencies, Tribes, states, and water users. While there is an immediate need to address shortage conditions on the Colorado, the Department should be deliberate in process and ensure that the adopted strategies will both minimize likelihood of shortages in the future and also effectively address shortages when they do occur. Again, the emphasis should be on developing strategies to prevent shortages, through water marketing, water banking, and conservation measures, and by preventing premature "surplus" declarations. 5

5. **Additional Commenting Opportunities**

Given the vague nature of the Department's proposal at this point, the comments of the Quechan Tribe are necessarily general. However, given the Quechan Tribe's significant interest in the Colorado River, the Tribe will be an active participant in the development of the proposed guidelines. Therefore, the Quechan Tribe requests to be listed as a party of interest in these proceedings and notified of any additional opportunities to comment once more specific guidelines or strategies are proposed. 5

Thank you for this opportunity to comment.

Sincerely yours,

MORISSET, SCHLOSSER, JOZWIAK & McGAW

Mason D. Morisset
Attorneys for the Quechan Indian Tribe

cc: President Mike Jackson, Sr. (via facsimile)

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tds.8/2/05

Kucera, Cindy

From: Schiaffo, Catherine [cschiaffo@allenmatkins.com]
Sent: Wednesday, November 30, 2005 3:58 PM
To: strategies@lc.usbr.gov
Subject: FW: Transmittal from Imperial Irrigation District*
Attachments: IID Letter.pdf

-----Original Message-----

From: Schiaffo, Catherine

Sent: Wednesday, November 30, 2005 1:33 PM

To: Johnson, Robert W.

Cc: Hosken, Charles; Grubaugh, Elston; Carter, John P. Esq.; Swan, William H. Esq.; Zimmerman, Gerald R.; King, Michael L.

Subject: Transmittal from Imperial Irrigation District*

<<IID Letter.pdf>>
Original will follow via overnight delivery.

L-2000

IMPERIAL IRRIGATION DISTRICT

OPERATING HEADQUARTERS • P. O. BOX 937 • IMPERIAL, CALIFORNIA 92251

November 30, 2005

Robert Johnson
Regional Director
Lower Colorado River Region
Attn: BCOO-1000
PO Box 61470
Boulder City, Nevada 89006-1470

Dear Mr. Johnson:

I am writing on behalf of the Imperial Irrigation District (IID) in regard to the NEPA scoping process for proposed interim shortage guidelines and strategies for the coordinated operation of Lake Mead and Lake Powell. IID supports, and incorporates herein by reference, the scoping comments submitted by the California Colorado River Board. However, in addition IID is submitting comments specifically addressed to the "Conservation Before Shortage" paper submitted to the Secretary of the Interior (Secretary) by a group of organizations on July 18, 2005. IID believes that the Conservation Before Shortage document contains numerous errors and misstatements and also represents a proposal that is unworkable and unnecessary. Our comments on the Conservation Before Shortage cover letter and briefing document are set forth below.

1. The document entitled "Conservation Before Shortage" clearly contemplates the inclusion of this type of program as a *component* of the interim shortage guidelines currently under consideration within the Department of the Interior through this NEPA process. Since IID asserts that this kind of program should not be included in the interim shortage guidelines, this is an appropriate matter to be addressed during the scoping phase of the NEPA process. 1

2. IID does not see the logic in this proposal when viewed in the context of the post-1968 water entitlements that are subject to early reductions in the event of declared shortages. As you are aware, the 1968 Colorado River Basin Project Act, 43 USC 1501 et. seq., provided for the subordination of Central Arizona Project (CAP) water uses to California's 4.4 maf apportionment in times of shortage. Administratively the Secretary has managed the post-1968 entitlements as a group and has provided in water delivery contracts that post-1968 water entitlements in Arizona and Nevada will be the first water uses subject to reduction in times of declared shortage because of the post-1968 status of such rights. In Arizona a rather large volume of water has been allocated to non-Indian agricultural uses within the CAP, and the CAP structural documents provide that in times of shortage the CAP non-Indian agricultural rights will be the first to be reduced.

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Similarly, there are other post-1968 agricultural rights along the river in Arizona that would also be subject to reduction in the case of a declared shortage.

Because the CAP has been in the implementation and construction phase for many years, CAP water users, other post-1968 entitlement holders, and the State of Arizona water managers are all well informed about the consequences of a declared shortage in relation to the likely cut back of post-1968 agricultural and other uses in Arizona. In light of this background, IID does not understand the wisdom of establishing a program, paid for in part by the very users who are supposed to benefit from the value of senior vested rights, that would pay farmers not to farm productive farmland so that junior CAP farmers can continue farming. While we appreciate that the reductions in CAP water uses would be uncompensated, that is in fact how water rights priority systems work in the West. In addition, CAP water users and Arizona water managers have put in place programs, like the Arizona Water Banking Authority, that are specifically designed to address the impact of this type of loss of water supply in times of declared shortages.

Accordingly, it makes no sense to develop a complex and expensive land fallowing program managed by Reclamation simply to avoid what has been contemplated within the context of the post-1968 entitlements for many years. Entities that hold CAP agricultural priority water entitlements within Arizona, whether non-Indian or Indian, have a clear expectation of having those rights reduced first in the situation of a declared shortage. There is no sound reason to create an expensive and complex Reclamation-managed program that would insulate that category of CAP water users from their junior-priority positions within the lower division states' water rights arrangement. 2

To the extent it is argued that this kind of program is needed in the case of a more severe drought where cutbacks in the post-1968 priority group of rights reach into *urban* water entitlements, IID suggests that there is ample flexibility within Arizona to arrange for the temporary use of senior agricultural rights (for example in the Yuma area) in such circumstances, without having to develop a complex and expensive Reclamation-managed program that is designed to be financially supported by taxes on water and power users in the lower basin. IID recognizes the value of short-term intra-state water transfers in such situations, but there is no justification for setting up a complex and expensive Reclamation-managed program as has been suggested here.

3. On page 1 the cover letter suggests that this large land fallowing program should be paid for by "surcharges" applied to "water users and consumers of power generated at Hoover Dam." IID will strongly resist the imposition of water and power surcharges to fund a Reclamation-managed program that is designed to avoid the operation of the water rights priority arrangement that has been in place within the lower division states for decades. IID assumes that its resistance against this suggestion will be supported by virtually all water and power users within the lower division states. There is simply no merit to the notion that senior right holders and power consumers should be taxed so as to avoid long-anticipated shortage-induced cut backs on junior water right holders. It is also a reality that under current circumstances there is clearly insufficient 3

federal funding for 50% of the program cost. Furthermore, Reclamation does not have the current statutory authority to impose such surcharges on water and power users, and so this proposal would obviously require federal legislation.

4. On page 1 the cover letter suggests that this "conservation before shortage" program would enhance power production at Hoover Dam. Again, IID questions the logic behind this conclusion. If, for example, a cut back of 400,000 af were needed to carry out a shortage declaration, what is the difference in power production at Lake Mead if the water reduction comes from farmers in California and Mexico as opposed to farmers within the post-1968 water pool in Arizona? Under either scenario Lake Mead would be enhanced by the retention of the 400,000 af. To the extent it is argued that there is a temporal advantage by arranging for the voluntary reduction in use *in advance* of the declared shortage, IID asserts that any marginal benefit in this direction is greatly outweighed by the disadvantages of the program, especially the cost of the program and the proposed funding mechanism. In light of the realistic costs of this proposed program (discussed below), it would make no sense for power users to pay for expensive land fallowing simply to maintain this marginal potential advantage to power production at Hoover Dam. 4

5. On page 1 the cover letter suggests that one of the benefits of this approach would be to "eliminate the need for costly new water projects." It is not clear to IID what "costly new water projects" the program proponents have in mind. Without such detail this kind of justification point has no merit. Nevertheless, it should be recognized that this is in reality the way the water rights priority systems work in the West. Junior right holders, recognizing the potential risk of cut backs in times of shortage, often wisely invest in water savings, infrastructure, or other programs that will serve to mitigate the impact of future shortages. IID suggests that Reclamation should *encourage* such investments as opposed to discouraging such investments. 5

6. On page 1 the cover letter also suggests that this program would reduce overall water consumption in dry years, thus "decreasing the risk of shortages that could disproportionately impact environmental uses in the future." This part of the cover letter also states that fish, wildlife, and natural areas are "last in line" for water in the lower basin. IID suggests that these statements are unsupported by the facts and are misrepresentations of the water rights structure in the lower basin. First, there are several large fish and wildlife refuges along the lower river corridor and the water entitlements for those refuges are far from being "last in line." In reality those refuges have rather senior water entitlements that are ahead of many other water uses – such as the entire block of post-1968 rights. Similarly, water rights leased or purchased for purposes of the recently-approved Multi-Species Conservation Program (MSCP) are also very likely to be senior in nature. Finally, it is critical to understand that the vast majority of the water in the lower basin travels to the bottom of the system, and this condition will be the same even in times of declared shortages (because of the senior rights in that region). So it is simply *inaccurate* to suggest that the water needs of fish, wildlife and natural areas are "last in line" or at significant risk in relation to anticipated shortage declarations. Second, the proponents of this program have made no showing to support the claim that 6

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decreasing the risk of shortages will somehow have a *positive impact* on fish, wildlife or natural areas. Statements of this nature are simply not supported by the current water rights structure and river operations reality within the lower division states.

7. In the body of the proposal document, at page 2, it is suggested that it is "desirable to avoid shortages in the Lower Basin above 500,000 acre-feet whenever possible." The sole rationale for this statement seems to be that going beyond 500,000 af exceeds the capacity of the Arizona Water Bank to make up for such impacts. However, this narrow view of the water rights priority arrangement within the region of the lower division states ignores the history of the water-use development of the region, the legal history of the Central Arizona Project and the establishment of other post-1968 rights within Arizona and Nevada, and the need to for each lower division state to look first to its intra-state resources to mitigate the impacts of shortages prior to looking to the resources of the other lower division states. IID appreciates that shortage cut backs greater than 500,000 af may exceed the capacity of the Arizona Water Bank and may also extend cut backs into uses by Arizona urban and Indian communities. But this surface recognition ignores the *kinds of uses* being made by those CAP users. For example, some senior CAP Indian water uses may be for *agricultural* purposes. If that were the case, why should farmers in California or Mexico be paid to stop farming simply to allow farmers on CAP-serviced Indian lands to continue farming? Another example is that much of the current CAP M&I water pool might be used for underground recharge. In other words, the suggested 500,000 af limitation is simplistic and without sound factual foundation. Furthermore, as noted above, if a severe drought is likely to cause cut backs within the post-1968 pool of urban water users, water managers within Arizona will have sufficient time within which to arrange temporary fallowing arrangements with senior agricultural users *within Arizona,* thus avoiding the need for this complex and expensive Reclamation-managed program. 7

8. At several places in the body of the proposal (pages 2, 5, and 11) it is suggested that "a large volume of water in the lower basin could be obtained for $20 – 100 per acre foot." It is also suggested that Reclamation should establish a "drought economic adjustment fund" so as to mitigate the impacts of such large-scale fallowing on local communities. IID believes that the cost projections contained in the Conservation Before Shortages proposal are *seriously flawed.* This conclusion is supported by the attached analysis of economist Rodney T. Smith, who was retained by IID to analyze the economic projections in the proposal. Importantly, IID believes that the Conservation Before Shortages proposal reflects a current broader misunderstanding as to the long-term costs and economic impacts of land fallowing. Like many others, the proponents of this proposal have not used comparable transactions and have misunderstood the difficulty, complexity, and expense of obtaining conserved water through the fallowing of productive farmland. The reality is that obtaining water through fallowing, in steps of 200,000, 400,000, and 600,000 acre feet, would result in an exceedingly expensive and unworkable program, and this conclusion is supported by Dr. Smith's analysis. 8

Summary – The Conservation Before Shortages proposal is almost totally lacking in merit and is based on numerous misrepresentations and misunderstandings regarding current river operations and the water rights priority system within the lower division states. Importantly, it will be difficult enough to develop a package of interim shortage guidelines and reservoir operations that are workable for Reclamation and the basin states, and so it is simply unrealistic to suggest that a complex and expensive Reclamation-managed program like this should be added as a component to the interim shortage guidelines. Finally, the cost and complexity of this proposed program has been greatly understated, Reclamation is not likely to be able to obtain 50% of the program cost though federal appropriations, and the suggestion that water and power users should pay 50% of the program cost will be strenuously resisted. As a result, consideration of this proposal as a component of the interim shortage guidelines should be rejected at the scoping phase of the NEPA process.

Sincerely,

Michael L. King
Manager, Water Department

cc: General Manager
Assistant General Manager
John Carter
William H. Swan
Jerry Zimmerman, CRB

L-2000

Stratecon Inc.

November 28, 2005

Comments on "Conservation Before Shortage"

By

Rodney T. Smith
Senior Vice President

In a letter dated July 18, 2005 to Secretary of the Interior Gale A. Norton, a consortium of interest groups proposed a program called "Conservation Before Shortage" as a means to address the management of prospective shortages on the Colorado River.[1] Under the consortium's proposal, the Bureau of Reclamation would engage in large-scale land fallowing programs where the amount of water acquired would depend on elevation triggers at Lake Mead. The conserved water acquired through such transactions would then be used to increase storage at Lake Mead in order to reduce the future risk of shortage declarations on the Colorado River.

Summary of Proposal

The scale of proposed fallowing would depend on the 24-month forecast of the elevation of Lake Mead on January 1 as follows:[2]

- Elevation At or Above 1100 feet: no acquisitions;
- Elevation Above 1075 feet but below 1100 feet: 200,000 acre feet ("AF") per year of water conserved by land fallowing ("Tier 1")
- Elevation Above 1050 but below 1075 feet: 400,000 AF per year of water conserved by land fallowing ("Tier 2");
- Elevation Below 1050 feet: 600,000 AF per year of water conserved by land fallowing ("Tier 3").

The proposal expresses a preference for voluntary programs and anticipates that the fallowed water can be acquired at a cost of $20AF to $100/ AF.[3] It also recommends that

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[1] The groups included Defenders of Wildlife, National Wildlife Federation, Sierra Club, Environmental Defense, Pacific Institute, and Sonoran Institute

[2] See Conservation Before Shortage, pp 3-4.

[3] *Ibid*, p. 5, 11-12.

the federal government mitigate the third-party impacts of fallowing through a drought economic adjustment fund that would provide economic grants to affected communities.[4]

The consortium provides useful information regarding the anticipated impact of its proposal if it were implemented successfully. Concerning its potential benefits, the consortium estimates that without the "Conservation Before Shortage" proposal, the probability of a shortage in the Lower Basin becomes material starting in the year 2015 (about 15%) and increases steadily thereafter until the probability about stabilizes between 25% and 30% by the early 2020s.[5] With implementation of the "Conservation Before Shortage" proposal, the probability of a shortage in the Lower Basin still becomes material in the year 2015, but at a substantially smaller level (less than 10% through the forecast period ending in the year 2026).[6]

Concerning the scale of acquisitions under its proposal, the consortium provides figures graphing the time profile of the probabilities of the elevation of Lake Mead being within the proposal's triggers for fallowing with the Conservation Before Shortage policy in place (see Attachment 1 for compilation).[7] Fallowing is not anticipated to occur before the year 2008, when there is about a 30% probability that Lake Mead elevations would trigger the Tier 1 fallowing of 200,000 AF per year. In the year 2009, the probability of Tier 1 fallowing increases to about 45% and the probability of Tier 2 fallowing equals about 5%, suggesting that in 2009 there is about an even money chance of either Tier 1 or Tier 2 fallowing. Thereafter, the probability of fallowing fluctuates near 50% through the year 2015 then starts a steady decline towards 40% by the year 2026.

The mix of the magnitude of fallowing will change over time. In the early years, fallowing is most likely to be at 200,000 AF per year. From the years 2011 through 2014, the most likely scale of fallowing is 400,000 AF per year. Thereafter, the most likely scale of fallowing is 600,000 AF per year. The transitioning from the fallowing volume most likely at 200,000 AF per year to 600,000 AF per year means that the expected amount of fallowing under the Conservation Before Shortage proposal will build up to about 200,000 AF per year by the year 2015 and fluctuate around that level through the year 2023 when the expected volume of fallowing will decline towards 180,000 AF per year by the year 2026 (see Attachment 2).[8]

Comments on the Economics of the Conservation Before Shortage Proposal

The consortium either neglects or misstates key economic considerations about their proposal: (i) the purpose of acquisitions, (ii) the likely economic terms for land fallowing agreements, and (iii) the scope and means for addressing the socioeconomic impacts of land fallowing. Unless these considerations are taken into account (especially the second and the third ones), proponents of the Conservation Before Shortage Proposal will generate unrealistic expectations about implementation that may set up circumstances for failed federal policy in the Lower Colorado River Basin.

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[4] *Ibid*, p. 12.

[5] *Ibid*, Figure 5 at p. 10.

[6] *Ibid*.

[7] *Ibid*, Figures 6–8 at pp. 10-11. Attachment 1 based on reading of numbers off the figures.

[8] Expected Fallowing calculated with the probabilities of Tier 1, Tier 2, and Tier 3 fallowing given in Attachment 1, where the amounts of fallowing under the tiers are, respectively, 200,000 AF per year, 400,000 AF per year, and 600,000 AF per year.

Purpose of Acquisition. The consortium proposes that the Bureau acquire water conserved by land fallowing to increase storage at Lake Mead in order to reduce the likelihood of future shortages. As the volume of water in storage falls, of course, it does make sense to consider means to increase storage in order to avoid future shortages.

The consortium's proposal to use land fallowing to increase water storage for future uses does not make economic sense. If land fallowing can indeed be turned on and turned off annually, then why not use land fallowing to meet water demands when needed? If land fallowing is done to conserve water years before the water is needed, then a portion of the water conserved by land fallowing is lost to evaporation. For example, if the incremental evaporative loss of stored water were 5%, then land fallowing would need to conserve 1.11 AF, 1.17 AF, or 1.23 AF respectively to meet a future need of 1 AF two, three, or four years in the future. Moreover, acquiring water before its needed also incurs the financing cost of incurring expenditures on fallowing transactions before the water is needed. From an economic perspective, conserving water before shortage rather than conserving water when it is needed is economically wasteful. 9

Likely Economic Terms. The consortium predicts that the Bureau can acquire water at a cost of $20/AF to $100/AF when needed. To support this claim, the consortium references undocumented claims concerning the profit per AF of water use in the Colorado River basin,[9] as well as the recent experience where IID has acquired water in 2004 at less than $60/AF.[10] The claim that this information provides any meaningful information about the likely economic terms under which water could be acquired under the proposed program is misplaced.

The best data concerning the likely economic terms comes from comparable market transactions, not hypothetical calculations. From this perspective, the most relevant information involves what information exists regarding comparable transactions and what do the terms of the comparable transactions say about the terms of acquisitions under the proposed program.

As discussed above, the proposed fallowing program involves a long-term program of land fallowing, not a single year. In effect, the program would need to acquire water on a regular although not steady basis (see Attachment 1). The most comparable transaction in the Lower Colorado River basin, therefore, is the 35-year fallowing agreement between the Palo Verde Irrigation District and the Metropolitan Water District of Southern California. Under that program, Metropolitan paid an up front payment of $3,170/acre and will make an annual payment of $602/acre (inflation adjusted) when acreage is fallowed.[11] At a yield of 4.2 AF/acre,[12] the upfront payment equals about $755/AF and the annual payment equals $143/AF (inflation adjusted). If the Bureau can enter into long term fallowing contracts on the same terms as Metropolitan, then the Conservation Before Shortage program would entail up front payments of $453 million.[13] When the option to acquire fallowed water is exercised, then annual payments

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[9] *Ibid*, pp. 11-12.

[10] *Ibid*, p. 11.

[11] Palo Verde Fact Sheet, Metropolitan Water District of Southern California (available on MWD website).

[12] Maximum amount of farmland fallowed is 26,500 acres yielding 111,000 AF. *Ibid.*

[13] $453 million = $755/AF • 600,000 AF

would equal $28.6 million (inflation adjusted) for 200,000 AF, $57.2 million (inflation adjusted) for 400,000 AF, and $85.8 million (inflation adjusted) for 600,000 AF.[14]

For two reasons, the likely acquisition costs will be higher than estimated. First, Metropolitan has other financial obligations under its agreement with Palo Verde not considered in the above estimate. Second, the proposed fallowing program for the Bureau contemplates acquisition of almost six times the maximum amount of water acquired annually by Metropolitan. With the large-scale expansion of acquisition activity contemplated by the proposed program, acquisition costs are likely to prove higher than faced by the smaller-scaled Metropolitan program.

Ignoring the most relevant comparable transaction, the consortium references the financial terms paid by the Imperial Irrigation District for fallowed water in 2004. These transactions were expressly one-time annual fallowing, NOT a long-term commitment granting an option to turn fallowing on or off. As such, the IID transaction is not a comparable. Moreover, IID's experience with its fallowing program shows the difficulty in relying upon annual fallowing arrangements for long-term commitments. First, in organizing its 2005-2006 fallowing program, IID has found that potential participants who volunteered but not selected for its 2004-2005 program have rejected participation in the 2005-2006 program even though they had first priority for participation. Financial terms that looked attractive in 2004 were no longer acceptable given the recent recovery in crop prices. Second, and in anticipation of such developments, IID had acquired 42,000 acres of farmland from the US Filter Corporation in 2004 to help manage its long term fallowing obligations. Long term fallowing cannot be underwritten by sole reliance on year-to-year contracting. 10

Socioeconomic Impact of Land Fallowing. The consortium's proposal does recognize the need to address the socioeconomic impact of land fallowing. Based on the experience of IID's first two land fallowing programs, the magnitude of socioeconomic impacts will grow with the scale of land fallowing. For the smaller 13 Month Emergency Fallowing Program, the socioeconomic impacts of IID's land fallowing were $46/AF. For the larger 2004-2005 Fallowing Program, the socioeconomic impacts of land fallowing were $97/AF.[15] The socioeconomic impacts for a Bureau fallowing program, of course, will depend on the type of crops fallowed and location. Even if the socioeconomic impacts for a Bureau program were on the low end of the experience in IID, the annual socioeconomic impacts that must be addressed would equal $10 million (inflation adjusted) for 200,000 AF, $20 million (inflation adjusted) for 400,000 AF, and $30 million (inflation adjusted) for 600,000 AF. 11

While the socioeconomic impacts to be addressed would be significant, the funding requirements for mitigation would be greater. Funding requirements will be greater than the estimated impacts to the extent that mitigation programs generate taxable benefits for recipients and that the mitigation programs (like most government programs) need more than one dollar to generate one dollar of benefit.[16]

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[14] Annual cost equals $143/AF multiplied by amount of acquired water.

[15] See *The Socioeconomic Impacts of Land Fallowing by the Imperial Irrigation District in 2003 and 2004*, Imperial Irrigation District, December 2005.

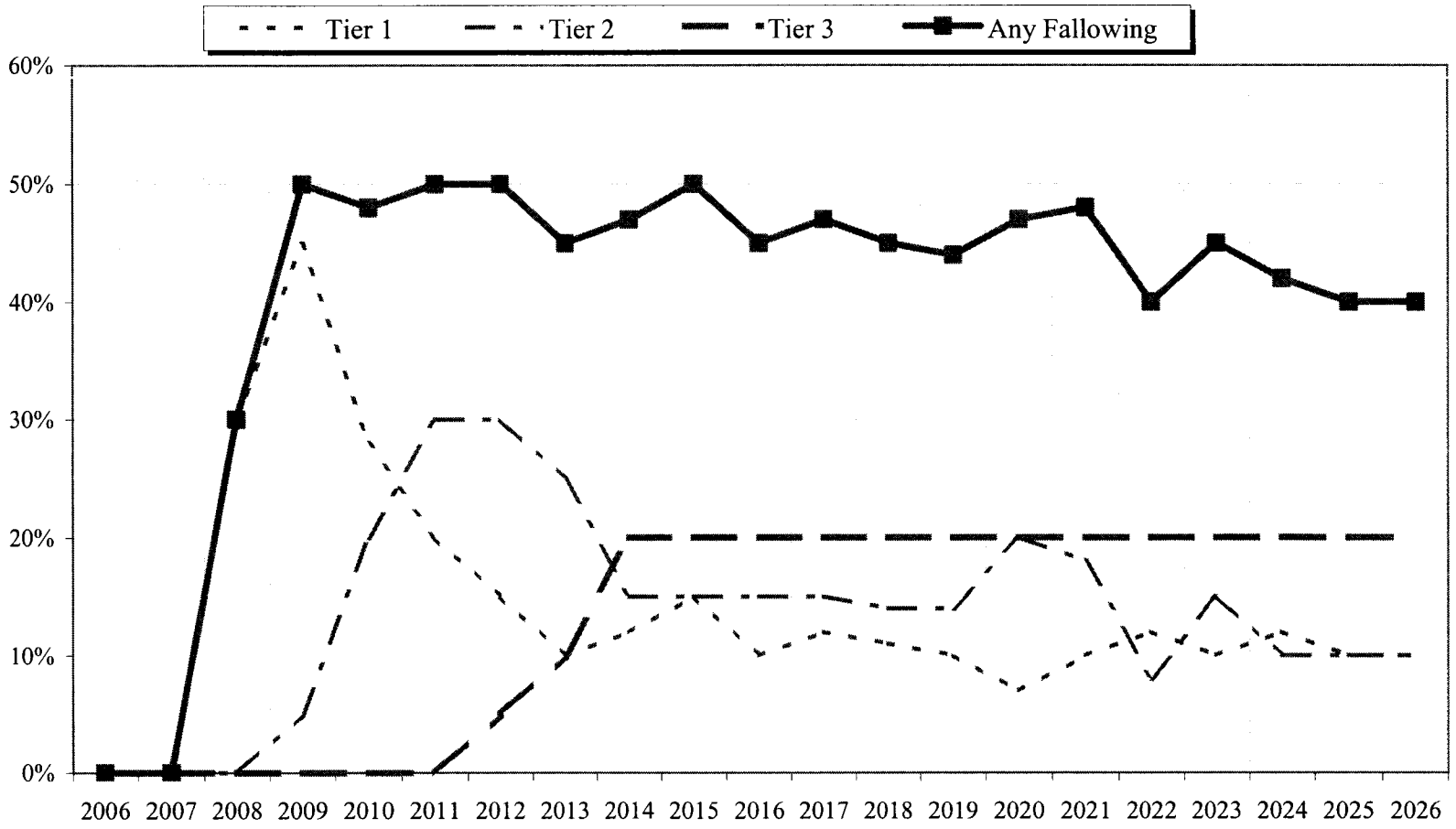
[16] *Ibid*, pp. 20-21.

Conclusion

The consortium proposal does not provide a framework for reasonable management of shortages. If the tool proposed by the consortium (long-term reliance on year-to-year fallowing) is viable, then it makes more economic sense to use the tool to meet water demands as they occur when elevations at Lake Mead cannot support the declaration of a normal or surplus year. This alternative approach avoids the cost of making acquisitions prematurely as well as avoids acquiring water that evaporates before it is needed.

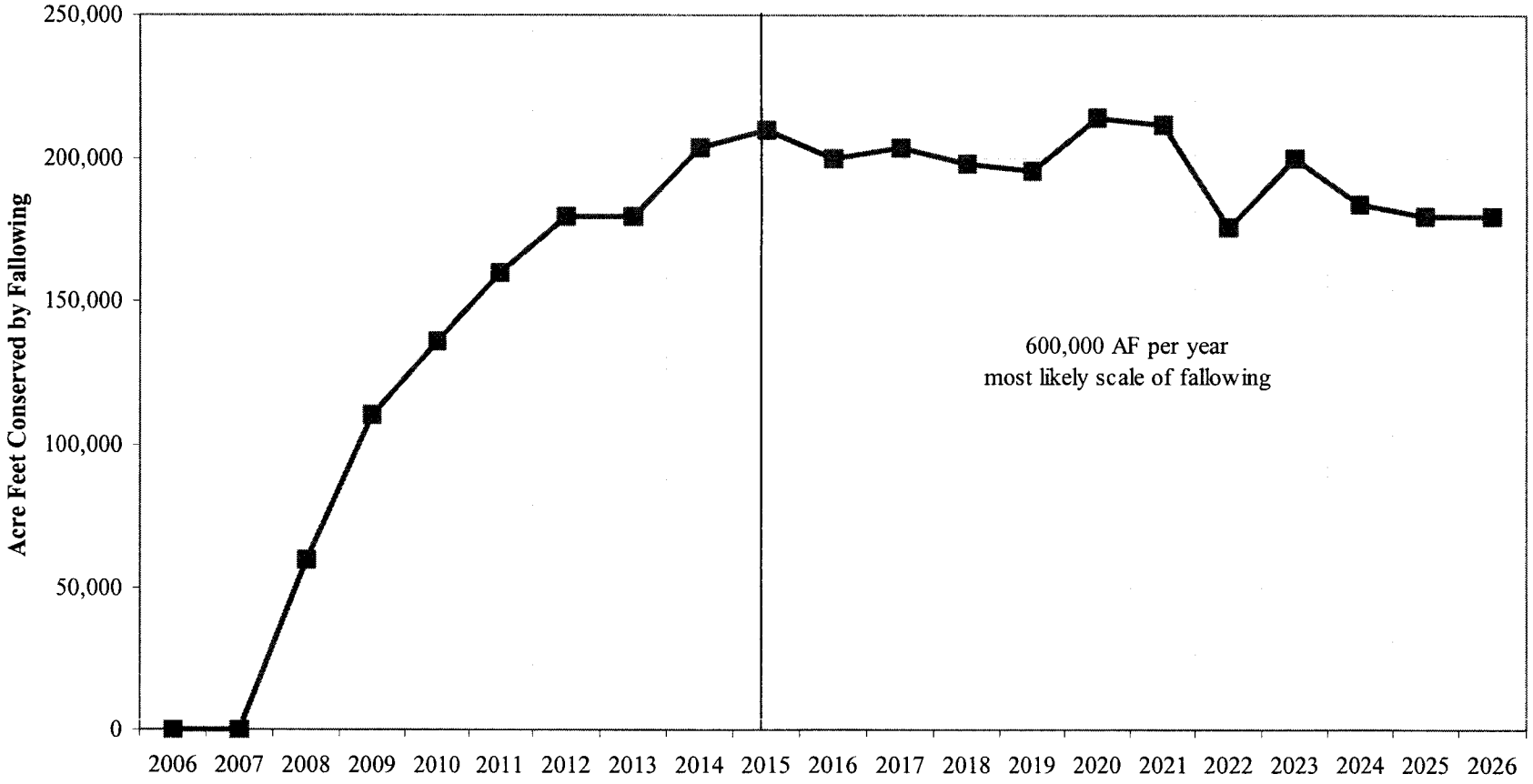
The consortium proposal lacks economic reality as well as economic wisdom. The consortium seriously understates its costs by focusing on hypothetical data or non-comparable transactions for estimating the likely costs of fallowing contracts. If the Bureau wants to initiate a long-term program of intermittent land fallowing, then the comparable transaction is the Palo Verde-Metropolitan program. Even in the unlikely circumstance where the Bureau can acquire 600,000 AF of contractual commitments at the same terms as Metropolitan's smaller program, this would require an up front payment commitment of $453 million and annual payments ranging from $28.6 million (inflation adjusted) to $85.8 million (inflation adjusted) when options to fallow land are exercised. In addition, addressing the socioeconomic impacts of land fallowing will generate a further significant financial obligation for the Bureau of Reclamation. In the end, the economic and financial costs of the proposed "Conservation Before Shortage" program will prove significantly higher than estimated by its advocates.

Attachment 1
Probability of Fallowing under Conservation Before Shortage Proposal



L-2000

Attachment 2
Expected Fallowing under Conservation Before Shortage Proposal



L-2000

Fort Mojave Indian Tribe

NORA McDOWELL - Chairperson
SHAN LEWIS - Vice Chairman
DEBBIE JACKSON - Secretary
COLLEEN GARCIA - Member • BRUCE WILLIAMS -Member
MARTHA McCORD • Member • NICHOLE GARCIA - Member
500 Merriman Avenue • Needle, CA 92363
(760) 629-4591 • FAX (760) 629-5767

November 29, 2005

Robert Johnson, Regional Director
US Bureau of Reclamation
Lower Colorado River Region
PO Box 61470
Boulder City, Nevada 89006-1470

Dear Mr Johnson:

The Fort Mojave Indian Tribe supports the Bureau of Reclamation in it's effort to develop guidelines for the management of shortage conditions on the Colorado River. We attended the scoping meeting in Henderson on November 8th held as a part of the National Environmental Policy Act process. The Tribe previously provided written comments after the introductory meeting in July but these related more to the health of the living river than the mechanics of shortage determinations. Now we respectfully submit the following comments for consideration as solicited in the Environmental Impact Statement Scoping Meeting.

In regard to reservoir operations, the Bureau of Reclamation has historically made unused entitlements of Indian tribes and others available to less senior users. We understand that the Bureau's position is that such a re-allocation is within the Secretary's discretion, but we question it's value as public policy especially during shortage conditions. This extra water is relied on, in too many cases, to foment permanent, urban development whereas the right to that water actually belongs to an ambitious and rapidly developing Indian tribe. What happens when the lawful owner makes the call for water and the water is already being used for people's homes and cannot be replaced?

The Fort Mojave Indian Tribe feels a more prudent option for it's unused entitlement would be to store it in a top water bank. This would, in some cases, reduce the total amount of water available to the most junior users but it would be a reliably fixed amount that should be more useful for planning purposes. Storage would improve reservoir conditions in shortage and would provide an available pool of water to help mitigate system shortages. 1

In regard to river operations with less than 7.5 million acre feet available for the Lower Basin. This situation seems inevitable and, perhaps, close at hand. Information handed out at the Henderson Scoping Meeting indicates that, under present demand, Lake Mead will decline at an average rate of 1.3 maf annually. We assume that the developed shortage criteria will involve protection levels in Lake Mead and Lake Powell and a reduction of delivery as these levels are approached.

The Fort Mojave Indian Tribe feels that, when shortage conditions exist and reduced deliveries are necessary, these reductions should be made based on the actual hydrologic conditions in the system. Each state should bear the same percentage reduction and water within a state apportioned according to established priorities after the Secretary satisfies " present perfected rights in the order of their priority with out regard to state lines." Arizona v California , 1964 Decree at para II (B) (3). This creates a situation in which long time users are not shorted but junior users are. In most cases the long time users with senior water rights are agricultural irrigators with little or no capacity to absorb increased costs and the junior users are urban water districts to whom the raw cost of water is almost irrelevant. Conditions such as these are best addressed by the market. The Fort Mojave Indian Tribe suggests that all restrictions to a free, spot, intra-state market be removed in shortage conditions including transactions by Indian tribes using forbearance agreements. 2 3 4

The Fort Mojave Indian Tribe appreciates the efforts by the Bureau of Reclamation and we look forward to working with you through this long and difficult process.

Sincerely

John Algots, Director
Department of Physical Resources

City of Phoenix

November 30, 2005

Mr. Robert W. Johnson
Regional Director
Bureau of Reclamation
Lower Colorado Region, Attention: BCOO-1000
P.O. Box 61470
Boulder City, NV 89006-1470

Re: Notice of intent to prepare an environmental impact statement (EIS) and notice to solicit comments and hold public scoping meetings on the development of Lower Basin shortage guidelines and coordinated management strategies for the Operation of Lake Powell and Lake Mead under low reservoir conditions.

Dear Mr. Johnson,

The City of Phoenix ("City") submits its response to the notice to scope an EIS and solicit public comments on the development of management strategies for Lake Powell and Lake Mead including Lower Basin shortage guidelines under low reservoir conditions (70 Fed. Reg. 57322, dated September 30, 2005) ("Notice"). Colorado River water delivered to Phoenix through the Central Arizona Project ("CAP") is a vital component of the City's water resources portfolio. Over 1.4 million people in the City rely on this resource to supply over 35% of the City's current total water demand. The City holds CAP subcontracts for Municipal and Industrial Priority water, non-Indian agricultural priority water and leases Indian priority water. Thus, the City has a unique perspective upon the opportunities to manage Lake Powell and Lake Mead and on Lower Basin shortage guidelines.

As you are well aware the CAP has a junior priority under the Law of the River. Therefore, the State of Arizona, the CAP, and the City, are the most vulnerable water users in the Lower Basin if shortages are declared by the Secretary of the Interior ("Secretary"). Because Arizona faces the greatest risks, the City urges the Bureau to give great weight to the comments provided by the City, the State of Arizona, the CAP and Arizona water users. Arizona stakeholders, in concert with the Arizona Department of Water Resources, have crafted a set of shortage criteria that consider impacts on various beneficiaries of the Colorado River. Those criteria are presented in detail below.

The City requests that the scope of the EIS be broad enough to encompass alternatives that are consistent with the following:

1. The Secretary should not adopt operational schemes that increase the risk of shortage in the Lower Basin that are not consistent with the Law of the River. 1

2. Water supply has a higher priority than hydrogeneration and the determination of equalization under Section 602 (a) of the Colorado River Basin Project Act of 1968 should adhere to that principle. Water users in Phoenix should not be subject to shortages for the benefit of hydropower production. The EIS must analyze potential impacts on CAP water users in Arizona if the reservoirs are operated to elevate power production to an equal or greater priority as consumptive water use. 2

3. The scope of the EIS should include an analysis of the Bureau's current and planned equalization triggers that include Upper Basin depletion schedules, any temporary limitations on storage levels or elevations, the calculation of active storage in the Upper Basin, and any inherent limitations in the Bureau's current computer model used to simulate reservoir operations. 3

4. Shortage criteria should be implemented for an interim period. An appropriate time frame is 2016, since, for example, the Interim Surplus Guidelines expire at that time. 4

5. Mexico and Nevada should share in shortages to the Lower Basin. 5

6. The City agrees with the Arizona Department of Water Resources recommendation that the EIS should analyze Lower Basin shortages that are implemented in the following manner:

    a. For Lake Mead elevations between 1075 ft. and 1050 ft. the shortage reduction should be 400,000 AF.
    b. For Lake Mead elevations between 1050 ft. and 1025 ft. the shortage reduction should be 500,000 AF.
    c. For Lake Mead elevations beginning at 1025 ft., and below, the shortage reduction should be 600,000 AF. 6
    d. Flexibility should be built into implementation of these criteria so that consultation with the State of Arizona can take place so that reductions beyond 600,000 AF will be done in the least damaging way and when improving hydrologic conditions may warrant a lesser reduction than is indicated by a trigger elevation. 7

The City appreciates the ability to provide comments and will continue to work with the Bureau as final shortage criteria and reservoir management schemes are adopted by the Secretary.

Sincerely,

Thomas Buschatzke
Water Advisor

• "Most Livable City" U.S. Conference of Mayors •

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30 November 2005

Via Facsimile (702) 293-8156
Copy to Follow via US Mail

Robert Johnson, Regional Director
US Bureau of Reclamation
Lower Colorado Region (Attn: BCOO-1000)
PO Box 61470
Boulder City, NV 89006-1470

Dear Mr. Johnson:

The City of Scottsdale ("Scottsdale") hereby submits its response to the September 30, 2005 Federal Register notice (70 FR 57322) soliciting public comment regarding development of management strategies for Lake Powell and Lake Mead under low reservoir conditions, including development of lower basin shortage guidelines.

More than 200,000 people rely on the City of Scottsdale to provide safe, reliable drinking water supplies. Central Arizona Project ("CAP") water is a vital component of the city's water supply portfolio. Nearly two-thirds (66%) of Scottsdale's water supply needs are currently met with this resource. Scottsdale has subcontracts for Municipal and Industrial priority water, non-Indian agricultural water, and excess CAP water. We also lease water from three Native American communities, and are participants in the Gila River Indian Community Water Rights Settlement Agreement, which will provide an additional leased supply.

Given that under the Law of the River, the CAP is the junior diverter in the lower basin, the management strategies being developed by the Bureau are of critical interest and importance to the City of Scottsdale. Because Arizona faces the greatest risk of shortage of all of the lower basin states, Scottsdale urges the Bureau to give special consideration to the comments provided by Scottsdale, the State of Arizona, the CAP, and other Arizona water users.

Scottsdale understands that others, including the Arizona Municipal Water Users' Association, and the City of Phoenix, will be providing comments on this issue. Scottsdale supports the general concepts contained in those letters, and would like to reiterate the following points:

- Operation of Lakes Powell and Mead must be consistent with the Law of the River, and must consider that operation of the system for the generation of hydroelectric

1

power is subordinate to operation for water supply purposes. Water users should not be subject to increased shortages for the benefit of hydroelectricity production.

- We understand that the Bureau of Reclamation has been consulting with the seven basin states regarding conjunctive management of Lakes Powell and Mead. If conjunctive management of Lakes Powell and Mead is the implemented strategy, then the time frame for this management strategy may need to be extended beyond 2016, with the opportunity for review and revision preceding the expiration date. 2

- Through a public process established by the Arizona Department of Water Resources (DWR), the affected Colorado River water users in Arizona have tentatively decided on the following lower basin shortage volumes that should be evaluated by the Bureau. Shortages to the lower basin water users should be based on water level elevations at Lake Mead as follows: 3

    - 400,000 af shortage at or below 1075 ft at Lake Mead
    - 500,000 af shortage at or below 1050 ft at Lake Mead
    - 600,000 af shortage below 1025 ft at Lake Mead

- The final shortage guidelines must be flexible enough so that, after consultation with the affected Arizona water users and DWR, any necessary reductions beyond 600,000 af are accomplished in the least damaging way. The guidelines also must consider that improved hydrologic conditions may warrant a lesser shortage volume than indicated by the Lake Mead water level elevation 4

- The DWR process also considered the management of shortages within Arizona among the Priority 4 water users located along the Colorado River mainstem and the CAP. Scottsdale believes that the Secretary must apportion shortages among Priority 4 water users in a manner consistent with the Law of the River and their contracts. 5 The Bureau's environmental impact statement should identify the impact on diversions by each Priority 4 water user under varying shortage conditions. 6

- The affected Arizona water users and DWR should be allowed to determine how to most efficiently manage shortages within Arizona. 7

- Shortage guidelines and/or managementstrategies must assume the Yuma Desalting Plant will be operated at full capacity when considering impacts on lower basin water users. If shortage guidelines and/or management strategies assume the Yuma Desalting Plant will not be operated at full capacity, impacts to lower basin water users must be evaluated. . 8

- Mexico and Nevada should share in any lower basin shortage. 9

Scottsdale appreciates the opportunity to comment on this critical issue and looks forward to continuing to work with the State of Arizona and the Bureau in the future with the intention of reaching a satisfactory conclusion for all affected parties.

Sincerely,

David M. Mansfield

David M. Mansfield, General Manager
Water Resources Department
City of Scottsdale

Cc: Herb Guenther, Director, Arizona Department of Water Resources

L-2003

GILBERT
ARIZONA

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November 29, 2005

(Via Fax 702.293.8156)

Robert Johnson, Regional Director
US Bureau of Reclamation
Lower Colorado Region (Attn: BCOO-1000)
PO Box 61470
Boulder City, NV 89006-1470

RE: Notice of Intent (70 FR57322) to prepare an EIS and solicit comments on the development of Lower Basin shortage guidelines

Dear Mr. Johnson,

The Town of Gilbert submits its response to the notice to scope an EIS and solicit for public comments on the development of management strategies for Lakes Powell and Mead, and Lower Basin shortage guidelines under low reservoir conditions.

The Colorado River water delivered through the CAP is a major component of Gilbert's water supply portfolio, equating to 42% of our renewable supplies. Gilbert holds CAP subcontracts for municipal and industrial priority and non-Indian agricultural priority water, and leases Indian priority water. Because the CAP is the Junior right holder under the Law of the River, Gilbert requests the Bureau heed the comments of the Arizona water users with regards to the development of conjunctive management of the reservoirs, and the development of shortage sharing criteria that best minimizes the impacts to Arizona water users.

The Arizona water users through a statewide stakeholders process in conjunction with the Arizona Department of Water Resources, have developed a set of shortage criteria and anticipate that the scope of the EIS be written broad enough to incorporate the following criteria:

1. Operation for the generation of hydroelectricity is subordinate to operation for water supply purposes as established by the Law of the River, 1

2. Shortage criteria should be implemented for an interim period, ie; 2016, which corresponds to the expiration of the Interim Surplus Guidelines, 2

Town of Gilbert | Community Development
90 E. Civic Center Drive, Gilbert, AZ 85296 Phone: 480-503-6700 Fax: 480-497-4923 www.ci.gilbert.az.us

3. Mexico and Nevada should share in Lower Basin shortages, 3

4. Shortage guidelines and/or management strategies must assume the Yuma Desalting Plant (YDP) will be operated when considering impacts on Arizona water users, and if shortage guidelines and/or management strategies assume the Yuma Desalting Plant will not be operated, impacts to Arizona water users must be evaluated. 4

Gilbert also recommends that the EIS analyze shortages to the Lower Basin users based upon the Arizona Department of Water Resources shortage criteria recommendations: 5

A. 400,000 af shortage at or below 1,075 water elevation at Lake Mead
B. 500,000 af shortage at or below 1,050 water elevation at Lake Mead
C. 600,000 af shortage at or below 1,025 water elevation at Lake Mead
D. Any reductions beyond 600,000 af must be accomplished through consultation with the affected Arizona water users and the ADWR, in order to minimize the impacts to the Arizona water users 6

The Town of Gilbert as a municipality of the Greater Phoenix area, appreciates the opportunity to comment on this important issue and will continue to work with the Bureau in the development of shortage criteria and reservoir management scenarios that best meets the needs of all parties.

Sincerely,

Kathy Rall

Kathy Rall,
Water Resources Manager

c: George Pettit, Town Manager
Lonnie Frost, Public Works Director

L-2004

City of Tempe
Water Utilities Department

255 East Marigold Lane
Tempe, Arizona 85281

FAX cover sheet

Date: November 30, 2005 Pages to follow: 2

To: Mr. Robert Johnson
Regional Director
U.S. Bureau of Reclamation
Lower Colorado Region

Fax No. (702) 293-8156

From: Eric Kamienski
Water Resources Administrator
Tempe Water Utilities Department

Re: City of Tempe comments for EIS scoping on "Development of Lower Basin shortage guidelines and coordinated management strategies for Lake Powell and Lake Mead under low reservoir conditions."

City of Tempe - Water Utilities Department, FAX (480) 350-8336
If you do not receive all pages in this transmission please call (480) 350-2608

City of Tempe
255 E. Marigold Lane
Tempe, AZ 85281

Tempe

Water Utilities Department

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November 30, 2005

Via Fax (702) 293-8156 and Regular Mail

Mr. Robert Johnson
Regional Director
US Bureau of Reclamation
Lower Colorado Region (Attention: BCOO-1000)
PO Box 61470
Boulder City, NV 89006-1470

Re: Colorado River Reservoir Operations - Development of Lower Basin Shortage Guidelines and Coordinated Management Strategies for Lake Powell and Lake Mead Under Low Reservoir Conditions

Dear Mr. Johnson,

The City of Tempe provides these comments in response to the September 30, 2005, Federal Register notice of intent to prepare an environmental impact statement (EIS) and solicit comments on development of Lower Basin shortage guidelines and coordinated management strategies for Lake Powell and Lake Mead under low reservoir conditions (70 FR 57322).

The City of Tempe provides water service to a population of over 171,000 people in our water service area, in addition to a large concentration of industries, businesses, and educational institutions in the heart of the greater Phoenix metropolitan area. Colorado River water delivered to Tempe via the Central Arizona Project (CAP) is a significant component of Tempe's water resources portfolio. Tempe holds CAP contracts for Municipal & Industrial (M & I) priority water, and lesser amounts of Indian lease water and non-Indian agricultural priority water. Some portions of the Tempe water service area lack rights to use Salt River Project water supplies, such as the adjacent Town of Guadalupe, to which Tempe has provided water service for over 30 years. Colorado River water delivered by the CAP is the single most important water supply to meet the needs of these areas, and Colorado River reservoir operations are fundamental to the CAP supply.

The CAP has a junior priority under the Law of the River. All CAP water users have a significant interest in the management strategies being developed by the U.S. Bureau of Reclamation. The Arizona Department of Water Resources, the CAP, and Colorado River water stakeholders in Arizona have worked together on development of shortage criteria

for total Lower Basin shortages that manage and minimize the impacts to water users from shortage declarations by the Secretary of the Interior. (See Item VI below).

The City of Tempe provides the following comments on the scope of this EIS:

I. Operation of Lake Powell and Lake Mead must be consistent with the Law of the River. 1

II. Operation of the system for water supply purposes has a higher priority than operation of the system for hydropower generation purposes. 2

III. Shortage criteria should be implemented for an interim period, with a public process for review and/or revision to the criteria prior to the expiration date. An interim period through 2016 has been suggested, as the Interim Surplus Guidelines also expire that year. 3

IV. Mexico and Nevada should share in shortages to the Lower Basin. 4

V. Shortage guidelines or management strategies should evaluate the impact to Arizona water users with the Yuma Desalting Plant (YDP) fully operational, and compare impacts to Arizona water users without the YDP in operation. 5

VI. The City of Tempe agrees with the Arizona Department of Water Resources recommendation (developed through the stakeholder process) that the EIS should analyze implementation of Lower Basin shortages as follows: 6

- For Lake Mead elevation between 1075 ft. and 1050 ft., a shortage reduction of 400,000 acre-feet.
- For Lake Mead elevation between 1050 ft. and 1025 ft., a shortage reduction of 500,000 acre-feet.
- For Lake Mead elevation beginning at 1025 ft. and below, a shortage reduction of 600,000 acre-feet.

Thank you for the opportunity to comment on this important Colorado River reservoir management process. We look forward to working with the Bureau of Reclamation, the State of Arizona, the CAP, and other water users as this process moves forward.

Sincerely,

Eric S. Kamienski

Eric Kamienski
Water Resources Administrator
Tempe Water Utilities Department

cc: Herb Guenther, Director, Arizona Department of Water Resources

Chandler • Arizona
Where Values Make The Difference

November 30, 2005

Robert Johnson, Regional Director
US Bureau of Reclamation
Lower Colorado Region (Attn: BCOO-1000)
PO Box 61470
Boulder City, NV 89006-1470

RE: Response to September 30, 2005 Federal Register Notice (70 FR 57322)

Dear Mr. Johnson:

In response to the Bureau of Reclamation's request for public comment on the scoping of the Environmental Impact Statement (EIS) for development of Lower Basin shortage guidelines and coordinated management strategies for the operation of Lake Powell and Lake Mead, Chandler submits the following information and comments. Chandler currently delivers water to over 200,000 residents and this number will increase to over 290,000. The Colorado River supplies a large portion of water needed to meet the demand of our residents. The City holds Central Arizona Project (CAP) sub-contracts for Municipal and Industrial Priority water, non-Indian agricultural priority water, and leases Indian priority water. CAP is the junior diverter in the lower basin. Management strategies and shortage guidelines developed through this process will impact Chandler's future water supply. I appreciate the opportunity to comment on the proposed development of these strategies.

Central Arizona Project water users will experience the greatest impact in the Lower Basin if the Secretary of the Interior declares a shortage. Therefore, it is imperative that the Bureau pays special attention to the comments from Chandler, the State of Arizona, the CAP, and Arizona water users. Chandler requests that the final management strategy and shortage guidelines under low reservoir conditions are consistent with the following:

1. Lake Powell and Lake Mead operations are consistent with the Law of the River. 1

2. Lakes Powell and Mead are operated for water supply purposes. Generation of hydroelectricity is subordinate to operation for water supply. Water users should not be subject to increased shortages for the benefit of hydroelectricity production. 2

3. The minimum objective release from Lake Powell to the lower basin must be at least 8.23 maf/yr. Lower basin shortage guidelines should expire no later than 2016, with the opportunity for review and revision preceding the expiration date. 3 4

Mailing Address
Mail Stop 404
PO Box 4008
Chandler, Arizona 85244-4008

Printed on recycled paper

Municipal Utilities Department
Environmental Resources/Water Conservation
Telephone (480) 782-3580
Fax (480) 782-3805
www.chandleraz.gov

Location
975 East Armstrong Way
Chandler, Arizona 85249

4. Mexico will share in shortages to the Lower Basin. 5

5. Any management strategy or shortage guidelines must consider operation of the Yuma Desalting Plant. If shortage guidelines and management strategies assume the Yuma Desalting Plant will not be operated, impacts to Arizona water users must be evaluated. 6

6. Through a public process established by the Arizona Department of Water Resources (ADWR), the affected Colorado River water users in Arizona have tentatively decided on lower basin shortage volumes. Chandler agrees with ADWR's recommendation that the EIS should analyze Lower Basin shortages that are implemented as follows: 7

   - 400,000 af shortage at or below 1075 ft at Lake Mead.
   - 500,000 af shortage at or below 1050 ft at Lake Mead.
   - 600,000 af shortage below 1025 ft at Lake Mead.

   The final shortage guidelines must be flexible so that, after consultation with the affected Arizona water users and ADWR, any reductions beyond 600,000 af are accomplished in the least damaging way. 8

7. Within the context of existing contracts, affected Arizona water users and ADWR will determine how to most efficiently manage shortages within Arizona. 9

8. The Secretary of the Interior should implement the final management strategy through a record of decision after completion of the EIS by the Bureau. 10

I appreciate the opportunity to comment on behalf of the City of Chandler. I will continue to participate in this critical issue to ensure shortage criteria and reservoir management schemes are implemented to meet the intent of the Law of the River.

Sincerely,

Doug Toy P.E.
Water Resource Engineer

xc: Herb Guenther, Director, Arizona Department of Water Resources
Karen Barfoot P.E., Assistant Municipal Utilities Director, City of Chandler