

ARIZONA DEPARTMENT OF WATER RESOURCES

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October 3, 2003



Janet Napolitano
Governor

Herbert R. Guenther
Director

Mr. James Cherry
Yuma Area Manager
U.S. Bureau of Reclamation
7301 Calle Agua Salada
Yuma, Arizona 85364

Dear Mr. Cherry:

The Arizona Department of Water Resources (ADWR) has reviewed the draft environmental assessment (EA) for the 5-Mile Zone Study Area Resources Management Plan for Yuma County, Arizona. Our primary concern, as described in more detail below, is that the draft EA misstates the basis for federal authority to impose the proposed groundwater use restrictions in the study area. Specifically, the draft EA intimates that there is Reclamation authority to require non-federal groundwater wells in the 5-Mile Zone to have a Colorado River water delivery contract with Reclamation pursuant to the Boulder Canyon Project Act. Our proposed changes to correct the misstatement in the draft EA are included at the end of this letter.

The draft EA states on page IV-10 that Reclamation would consider water pumped from existing and future wells within the 5-mile zone as Colorado River water and implement procedures to account for such water in accordance with Article V of the Supreme Court Decree in *Arizona v. California* (Decree). The EA also states that Reclamation intends to evaluate requests for increases in water usage within the study area based on established Reclamation water accounting procedures to protect its ability to meet its water delivery obligations to Mexico and other contractual agreements. These statements also apply to all of the alternatives except the "no-action" alternative. On page VI-8 under the section Water Use Issue Category for the preferred alternative, the EA lists specific water use management actions. One action is to maintain the capability to pump 140,000 acre-feet of water per year for delivery to partially satisfy the United State's water delivery obligation to Mexico. Another action is to implement procedures to account for water withdrawn in the 5-mile zone as Colorado River water.

The proposed water use management actions overreach the authorities of the United States pursuant to P.L. 93-320, known as the Colorado River Salinity Control Act. Reclamation may only enter into contracts for the delivery of water from the Protective and Regulatory Pumping Unit (PRPU). The authority for such contracts is the Reclamation Act of 1902 and not the Boulder Canyon Project Act (BPCA). Therefore, non-federal withdrawals of water within the 5-mile zone are not subject to federal contracts pursuant to the BCPA or the Reclamation Act. Accounting for the withdrawal of water outside of the PRPU is not required as part of the Article V reporting requirements, although Reclamation must account for the total withdrawals of groundwater to meet the requirements of Minute 242 of the 1944 Treaty with Mexico.

Page 2
Mr. James Cherry
October 3, 2003

Historically, Reclamation has treated the federal withdrawals from the PRPU as return flow to the Colorado River, available to meet the Mexican treaty obligation as defined in Article I of the Decree. The water withdrawn from the PRPU is within the dominion and control of Reclamation and arguably subject to federal discretion after it has been captured for use. However, water captured by non-federal entities outside of the PRPU is considered groundwater subject to state law.

We agree that Reclamation may put groundwater use restrictions on applicants for land use authorizations such as licenses, leases and permits administered by Reclamation. However, Reclamation cannot require water delivery contracts pursuant to the Boulder Canyon Project Act. ADWR requests the following changes to the draft EA to clarify its authorities to control groundwater use in the 5-mile zone.

Change the statement on page VI-8 "Use of groundwater granted in a land use authorization document by the U.S. Bureau of Reclamation in the study area will be subject to reduction..."

Delete the statement on page VI-8 "Consider water pumped from existing and future wells within the 5-mile zone as Colorado River water and implement procedures to account for such water in accordance with Article V of the Supreme Court Decree in *Arizona v. California*."

Please make all necessary conforming changes in the document.

Thank you for the opportunity to comment on the draft EA. Please advise ADWR of any changes to the final EA. If you have any questions, please contact Thomas Carr at (602)-417-2410.

Sincerely,



Herbert R. Guenther
Director