

**The States of Arizona, California, Colorado, Nevada,
New Mexico, Utah and Wyoming
Governors' Representatives on Colorado River Operations**

April 30, 2007

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

Re: Basin States' Comments on *Draft Environmental Impact Statement, Colorado River Interim Guidelines for Lower Basin Shortages and Coordinated Operations for Lake Powell and Lake Mead*

Dear Secretary Kempthorne:

Thank you for the opportunity to comment on the *Draft Environmental Impact Statement, Colorado River Interim Guidelines for Lower Basin Shortages and Coordinated Operations for Lake Powell and Lake Mead* (72 Fed. Reg. 9,026) (Feb. 28, 2007) (hereinafter "DEIS"). The Basin States emphasize that the Basin States' Alternative best meets critical elements of the purpose and need statement articulated in the DEIS. It does so by giving water managers the certainty to engage in meaningful long-range planning while also promulgating programs to increase operational and resource management flexibility on the River. This is particularly important given the impacts of the drought on the Colorado River system over the last seven years and the uncertain hydrology going forward. Thus, the Basin States strongly encourage you to select the Basin States' Alternative analyzed in the DEIS, together with the modifications outlined in this letter and the included attachments ("Basin States' Proposal"), as the preferred alternative in the Final Environmental Impact Statement ("FEIS") and the selected action in the Record of Decision ("ROD").

Basin States' Proposal

The Basin States have made tremendous progress over the last two years in setting aside contentious issues and reaching agreements regarding operation of the Colorado River system reservoirs. Since the Basin States originally forwarded a Preliminary Proposal and draft Seven States' Agreement to your predecessor on February 3, 2006 ("Preliminary Proposal"), the Basin States have finalized a number of agreements and proposals. These documents, which are described in detail below, incorporate and give further definition to each of the elements of the Preliminary Proposal and the Basin States' Alternative in the DEIS. The Basin States believe that if all material terms of the Basin States' Proposal are included in the ROD, it will establish the first comprehensive set of detailed operating guidelines in the history of the Colorado River.

The Basin States' Proposal consists of the following documents:

1. Agreement Concerning Colorado River Management and Operations (Attachment "A"). This agreement among major Colorado River water interests in all seven states that share the River system is the foundation document in the Basin States' Proposal. This agreement memorializes the consensus recommendation to the Secretary for Colorado River management and operations during an interim period, sets forth agreements regarding pursuit of system augmentation and efficiency projects, and establishes a rigorous process for the resolution of claims and controversies between the parties in an effort to set aside long standing disputes on the River.
2. Proposed Interim Guidelines for Colorado River Operations (Attachment "B"). Building upon the Preliminary Proposal, the Basin States have drafted a comprehensive set of guidelines to govern Colorado River operations during the interim period. If adopted, these proposed guidelines would: (1) replace the Interim Surplus Guidelines; (2) establish guidelines for coordinated operations for Lakes Powell and Mead; (3) establish shortage guidelines for use within the United States; and (4) establish parameters for the creation and release of Intentionally Created Surplus ("ICS") and Developed Shortage Supplies ("DSS").
3. Forbearance Agreement (Attachment "C"). This draft agreement among the Lower Division States and major water users within those states recognizes that, in the absence of forbearance by the parties, surplus water is apportioned for use according to the percentages provided in Article II(B)(2) of the Consolidated Decree in *Arizona v. California*. The execution of this agreement will facilitate implementation of the ICS program.
4. Shortage Sharing Agreement between Arizona and Nevada (Attachment "D"). As anticipated by the Basin States' February 3, 2006 Preliminary Proposal, Arizona and Nevada have executed a Shortage Sharing Agreement premised upon the Secretary's reductions in deliveries within the United States of 333,000, 417,000 and 500,000 acre-feet per year based upon specific Lake Mead elevations.
5. Delivery Agreement. It will be necessary for the Secretary to enter into one or more agreements that enable and obligate the United States to deliver ICS and DSS to entities that create ICS or DSS in conformance with relevant provisions of the Guidelines and the Forbearance Agreement. At this time, the Basin States are developing a draft delivery agreement for the Department of the Interior's ("Interior") consideration and look forward to working with Interior on drafting one or more agreements that can be executed concurrently with the issuance of the ROD. The Basin States request that the U.S. Bureau of Reclamation ("Reclamation") include appropriate analysis of the

anticipated execution of one or more agreements to deliver ICS or DSS within the preferred alternative in the FEIS and the selected action in the ROD.

Implementation of any alternative that does not include all material terms of the Basin States' Proposal will carry with it a significant degree of uncertainty given that the Basin States' Agreement, Forbearance Agreement and Arizona-Nevada Shortage Sharing Agreement are each contingent upon the issuance of a ROD that is consistent with the material terms of those agreements. These agreements make it possible for components of the proposed action, such as coordinated management of Lakes Mead and Powell and the creation and release of ICS, to be implemented without adversarial actions involving the Basin States and major water users on the Colorado River.

Reduced Deliveries to Mexico

Recent negotiations among the Basin States and major water users in those states have involved multiple issues of critical importance to the Basin States. However, in the course of these negotiations no issue has surpassed the importance of how the United States exercises its authority to reduce the quantity of water allotted to Mexico under Article 10(a) of the Mexican Water Treaty of 1944.

In the Preliminary Proposal the Basin States recommended that the Secretary reduce deliveries from Lake Mead by 400,000, 500,000 and 600,000 acre-feet per year within the United States and Mexico at certain Lake Mead elevations. In accordance with the Preliminary Proposal, Arizona and Nevada have executed a Shortage Sharing Agreement premised upon the imposition by the Secretary of shortages within the United States of 333,000, 417,000 and 500,000 acre-feet per year at the same Lake Mead elevations contained in the Preliminary Proposal. For the first 600,000 acre-feet per year of any reductions in deliveries in any year due to a declared shortage, the Basin States have agreed that Arizona and Nevada will not take more than 500,000 acre-feet per year in aggregate and California will not take any reductions. The DEIS substantially incorporates the assumptions contained in the Preliminary Proposal, the Basin States' Agreement and the Shortage Sharing Agreement into its consideration and analysis of the Basin States' Alternative.

Due to the critical nature of this issue, the Basin States believe that the Secretary should include these assumptions as part of the preferred alternative in the FEIS and the selected action in the ROD. The Basin States strongly urge the United States to exercise its authority to reduce the quantity of water allotted to Mexico in years in which the Secretary imposes shortages in deliveries of water from Lake Mead in the United States in a quantity consistent with the assumptions in the DEIS, and in other appropriate circumstances.

Mexican Participation in ICS Program

The Basin States support the concept of Mexico participating in the ICS program at some time in the future, provided that its participation is addressed in the context of other river

operation matters and is part of a comprehensive arrangement between the two nations that incorporates, at a minimum, the material terms of the Basin States' Proposal. The Basin States stand ready to discuss this comprehensive arrangement.

Colorado River Augmentation Projects

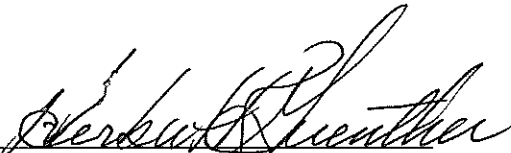
Implementation of projects to augment the long-term supply of the Colorado River is of utmost importance not only to the Basin States and the millions of people who live here, but to the nation as a whole. While no specific augmentation projects are included in the current Basin States' Proposal, the need to develop a process to implement augmentation projects must remain at the forefront of the Basin States' and Interior's agendas. Changes to existing or new federal regulations may be necessary to effectuate augmentation projects.

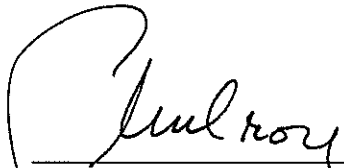
The Preliminary Proposal outlined a concept for water users in Arizona, California, or Nevada to secure additional water supplies by funding the development of a non-Colorado River System water supply in one Lower Division State for use in another Lower Division State by exchange. Through the cooperation of the International Boundary and Water Commission, United States and Mexico, similar arrangements could be established by which non-Colorado River System water supplies in Mexico could be developed for use in the United States by exchange.

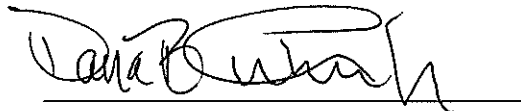
The Basin States view the inclusion in the DEIS of a quantitative analysis of the impacts to the Colorado River resulting from the implementation of future augmentation projects as a positive step and encourage you to include the same analysis in the FEIS in order to begin to establish the environmental compliance framework for future augmentation projects.

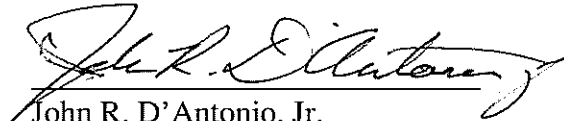
Conclusion


In closing, the Basin States thank you for your leadership and urge Interior to adopt a ROD that includes all of the material terms of the Basin States' Proposal.

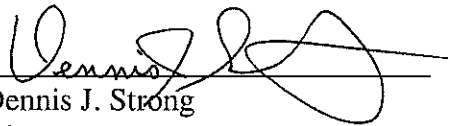

Herbert R. Guenther
Director
Arizona Department of Water Resources



Patricia Mulroy
General Manager
Southern Nevada Water Authority

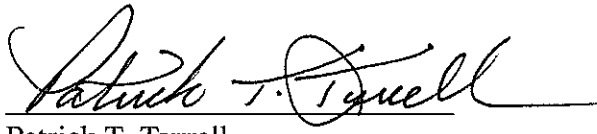

Dana B. Fisher, Jr.
Chairman
Colorado River Board of California

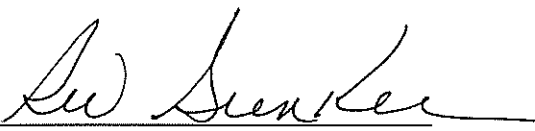

John R. D'Antonio, Jr.
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Attachments

- c: 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 Director, U. S. Bureau of Reclamation, Lower
Colorado Regional Office
- Larry Walkoviak, Deputy Regional Director, U. S. Bureau of Reclamation, Lower
Colorado Regional Office