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WATER FUND OF THE ROCKIES, ENVIRONMENTAL DEFENSE, PACIFIC
INSTITUTE, FRIENDS OF ARIZONA RIVERS, LIVING RIVERS AND AMERICAN
RIVERS

3/25/02

Regional Director
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Bureau of Reclamation
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RE: Review of Existing Coordinate Long Range Operating Criteria for Colorado River Reservoirs

Dear Mr. Johnson,

The following comments are submitted on behalf of the Sierra Club, Southwest Rivers, Defenders of Wildlife, Land and Water Fund of the Rockies, Environmental Defense, Pacific Institute, Friends of Arizona Rivers, Living Rivers, and American Rivers. We ask that you take them into consideration as part of your formal 5-year review of the Operating Criteria in accordance with Section 602(b) of P.L. 90-537.

We recommend that the Operating Criteria be modified. They currently do not reflect additions and changes to the Law of the River that have been made since these Operating Criteria were first established in 1970, nor do they reflect other federal laws that have been promulgated since 1970 that have bearing on the Secretary's responsibilities within the Colorado River system. We recommend a number of specific changes to the Operating Criteria, and offer several other general comments and recommendations.

Recommendations for Specific Changes to the Operating Criteria

1. As noted in the January 15, 2002 Federal Register Notice (67 CFR 1986), the Secretary's consultation responsibilities have been specifically extended to encompass the general public. We recommend that this responsibility be reflected in the Operating Criteria by adding the phrase "and the public" to the end of the second introductory paragraph.
2. The Grand Canyon Protection Act (P.L. 102-575) charged the Secretary with operating Glen Canyon Dam "in such a manner as to protect, mitigate impacts to, and improve the values for which Grand Canyon National Park and Glen Canyon National Recreation Area were established...." We recommend that the protection and enhancement of these values be inserted as reservoir uses that are considered in developing the annual operating plan under section I (2) of the

Operating Criteria by adding the phrase "protection of cultural resources," after "water quality control," and before "recreation", and by adding the phrase "protection and enhancement of national park values," after "enhancement of fish and wildlife," and before "and other environmental factors."

3. Although the phrase "recurrence of critical periods of water supply" that is included in section II (1)(d) may have been universally understood when these Operating Criteria were originally established, its meaning is unclear to us. We recommend that either a definition of this phrase be included in the definitions section or that the entire clause beginning with the word "including" be deleted.
4. We question whether the "Report of the Committee on Probabilities and Test Studies to the Task Force on Operating Criteria for the Colorado River," dated October 30, 1969, which is referenced in section II (1)(e) of the Operating Criteria still has relevance in determining 602(a) storage. We request either that the Bureau of Reclamation provide us with a copy of that report or a summary of it, or that section II (1)(e) be deleted from the Operating Criteria.
5. The Secretary and her agencies are engaged in modification of river operations in various parts of the basin in order to meet their responsibilities under the Endangered Species Act (P.L. 93-205, as amended). In order to reflect these changes we recommend that a new subsection be added to section II (1) that reads: "Streamflow requirements of fish and wildlife, and other environmental values."
6. The last sentence in section II (2) refers to operations in 1971 and 1972, and is no longer of any relevance. We recommend that this sentence be deleted.
7. In recognition of the Secretary's responsibilities under the Grand Canyon Protection Act and the Endangered Species Act, we recommend that a new subsection (d) be added to section II (3) that reads: "to meet the requirements of the Grand Canyon Protection Act and the Endangered Species Act."
8. Given that the Colorado River Storage Project Act lists generation of hydroelectric power as an incidental purpose for Glen Canyon Dam, and that the Record of Decision (ROD) on operations of Glen Canyon Dam interprets the mandates of the Grand Canyon Protection Act to allow bypass of water at the Glen Canyon Powerplant under limited conditions and for specified purposes, we suggest the language in section II(4) is not appropriate. We recommend that this section be deleted.
9. In recognition of the Secretary's responsibilities under the National Environmental Policy Act, the Endangered Species Act, as well as the Law of the River, we recommend inserting the following phrase at the beginning of section III (1): "Consistent with applicable federal laws, including but not limited to the National Environmental Policy Act and the Endangered Species Act,".

10. Section III(2) is no longer pertinent and we recommend that it be deleted.
11. To reflect the mandates of the Grand Canyon Protection Act within the universe of project purposes at Glen Canyon Dam, we recommend adding the phrase “and the protection and enhancement of national park values in Grand Canyon National Park and/or Glen Canyon National Recreation Area” at the end of section IV (1)(a).
12. To make section IV (1)(b) consistent with Article II(B)(2) of the decree in *Arizona v. California*, the word “demands” following the phrase “consumptive use” in this section should be deleted.
13. Since section IV (1)(d) defines a term used solely in section II (4), we recommend that it be deleted along with section II (4).

General Comments and Recommendations

Section III (3)(c) recognizes the Secretary's authority to determine the existence of a shortage condition. Since specific criteria for determining shortage conditions have not yet been developed, the Bureau of Reclamation uses certain assumptions about shortage conditions in their environmental analyses of other significant federal actions related to river operations. Those assumptions have a cumulative effect on the river system and its environmental resources, yet the public has not had an opportunity to comment specifically on those shortage assumptions. To correct this situation, we ask the Secretary to initiate the process of establishing criteria for determining shortage conditions.

Although we understand that the Interim Surplus Criteria (ISC) are not subject to review at this time, we wish to continue to express our concerns that the ISC will have an adverse impact on the Colorado River delta.

Finally, as Commissioner Keys noted last December, Reclamation is considering “more NEPA” during this review, and we request that Reclamation conduct an environmental review of these Operating Criteria under NEPA. The LROC are reviewed every five years; previous reviews occurred in 1975, 1980, 1985, 1990, and 1996-98, and resulted in no changes to the LROC. 63 Fed. Reg. 9256, 9257 (Feb. 24, 1998). The decision not to change the operating criteria is subject to NEPA, and a categorical exclusion was executed during the two most recent reviews. 58 Fed. Reg. 11864, 11868 (March 1, 1993); 63 Fed. Reg. 9256, 9259 (citing 516 DM 2, App. 1.7 which provides that a CE may be prepared for “routine government business, including such things as supervision, administration, operations, maintenance and replacement activities having limited context and intensity; e.g. limited size and magnitude or short-term effects”) (emphasis added). Long-range operating criteria for the Colorado River reservoir system are, by definition, neither of limited size nor with short-term effects. A categorical exclusion is inappropriate.

Furthermore, a categorical exclusion is arbitrary and capricious because the actual promulgation of the LROC has not been evaluated in a NEPA process, although NEPA was in effect when these Operating Criteria were established. In 1980, the Department of the Interior "recognized the desirability and necessity of completing a CEIS for the entire Colorado River Basin" and decided that continuing operations in the Colorado River Basin, including the LROC, were a major federal action. *Environmental Defense Fund v. Higginson*, 655 F.2d 1244, 1246 (D.C. Cir. 1981) (emphasis added). See also *Badoni v. Higginson*, 638 F.2d 172, 181 (10th Cir. 1980). In fact, the Tenth Circuit has recognized that the Colorado River Basin Project Act's purpose was "further comprehensive development of the water resources of the Colorado River Basin," *Id.* (citing 43 U.S.C. § 1501(a)) and that the water projects are "interrelated and interdependent," *Friends of the Earth v. Armstrong*, 485 F.2d 1, 6 (10th Cir. 1973). Because neither this basin-wide EIS, nor a series of site-specific EISs, has been completed, execution of a categorical exclusion rather than an EA or EIS during this review does not satisfy NEPA.

As described above, we believe that Reclamation needs to revise the Operating Criteria. We do not request a public meeting to submit these comments. Thank you for this opportunity to comment on the Operating Criteria.

Sincerely,



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