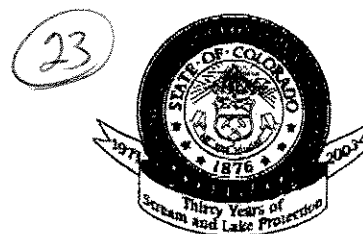


STATE OF COLORADO

Colorado Water Conservation Board

Department of Natural Resources

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December 6, 2004

Mr. Robert Johnson
 Regional Director
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Bill Owens
 Governor

Russell George
 Executive Director

Rod Kuharich
 CWCB Director

Dan McAuliffe
 Deputy Director

REF: 5-Year Review of the Coordinated Long-Range Operating Criteria for Colorado River Reservoirs

Dear Mr. Johnson: *Bob*

Thank you for the opportunity to comment on the proposed changes to the Coordinated Long-Range Operating Criteria for Colorado River Reservoirs ("Operating Criteria") developed pursuant to Section 602 of the Colorado River Basin Project Act of 1968 ("CRBPA") as noticed in the Federal Register on November 3, 2004. On behalf of the Colorado Water Conservation Board, we have no objections to the proposed removal of obsolete provisions in the "Operating Criteria."

The CWCB is the state agency charged with promoting, protecting, conserving and developing Colorado's water resources in order to secure the greatest utilization of those resources for the benefit of present and future generations, and to minimize the risk of flood damage and related economic losses. The CWCB is a 15-member Board representing water interests throughout the state and includes a number of state officials including the Director of the Department of Natural Resources, the State Engineer and the Attorney General. The CWCB has a long association with activities concerning the Colorado River Compact and the "Law of the River."

In accordance with Section 602(b) of Public Law 90-537, the "CRBPA", the "Operating Criteria" may be modified as a result of actual operating experience or unforeseen circumstances to better achieve the purposes specified in Section 602(a) of the CRBPA. The CWCB considered the need for a formal review of the "Operating Criteria" at its March 21-22, 2002 meeting and concluded there was no actual operating experience or unforeseen circumstance that justified modification of the "Operating Criteria" at this time.

Furthermore, at the time of the adoption of the "Operating Criteria," the State of Colorado made

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objection to certain provisions of the "Operating Criteria." Specifically, the State of Colorado joined the Upper Colorado River Commission and the Upper Division States in protesting the minimum release objective of 8.23 million acre-feet (MAF) of water per year from Lake Powell and in not waiving objections to other parts of the "Operating Criteria." The CWCB continues to object to the minimum release objective of 8.23 MAF/year and to other aspects of the "Operating Criteria." There are several reasons for this:

1. Section 602(b) of the CRBPA provides that the "Operating Criteria" proposed are to be modified in order to achieve the purposes specified in subsection 602(a) of that Act. Those purposes are "to comply with and carry out the provisions of the Colorado River Compact, the Upper Colorado River Basin Compact, and the Mexican Water Treaty." In addition, Article II(5) of the "Operating Criteria" provides that the "Operating Criteria" shall not prejudice the position of either the upper or lower basin interests with respect to required deliveries at Lee Ferry pursuant to the Colorado River Compact." Therefore, irrespective of the minimum release objective specified in the "Operating Criteria," the Colorado River Compact, the Upper Colorado River Basin Compact, and the Mexican Water Treaty ultimately control the amount of water released from Lake Powell. As a result, an amount less than the minimum release objective may be released from Lake Powell, if the States of the Upper Division are in compliance with Article III(d) of the Colorado River Compact, in order to avoid impairment or potential impairment of the beneficial consumptive use of water in any Upper Division State.

2. The States of the Upper Division have not yet developed their full entitlements to the waters of the Colorado River System.

3. The primary purpose of Section 602 of the CRBPA is to assure that the States of the Upper Division may develop their full entitlements to the water of the Colorado River System, and that consumptive uses in the Upper Division will not suffer because of the failure to store sufficient water to make deliveries pursuant to the Mexican Water Treaty and the Colorado River Compact. There has not yet been an impairment of consumptive uses in any Upper Division State as a result of operations pursuant to the existing "Operating Criteria," but we are getting dangerously close.

4. The "Operating Criteria" in fact have been flexible enough to allow for adjustments following the floods of the 1980's. They have been flexible enough to allow for the development of the interim operating criteria to aid California in reducing its use of Colorado River water to 4.4 MAF/year. Lastly, they have been flexible enough to allow for experimental flow tests from Glen Canyon Dam in 1996 and again in 2004 to see if conditions for endangered fish could be improved and sediment conserved in the Grand Canyon. The important thing to remember is that all these were accomplished within the limitations provided by the Colorado River Compact, the Upper Colorado River Compact and the Mexican Water Treaty. The "Operating Criteria" cannot be used to modify these basic documents, as some would suggest.

The State of Colorado remains very concerned about the extended drought that we are currently experiencing, the resulting depletion of reservoir storage and the possibility of losing power generation at Glen Canyon. We believe the operating criteria are flexible enough to allow releases to be reduced below the 8.23 MAF/year objective minimum release in order to help conserve storage and preserve power generation.

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In closing, the State of Colorado reserves its right to respond to the comments of others in the course of this review of the proposed changes to the "Operating Criteria" and we would appreciate being provided with copies of all comments received by you in the course of this review. We appreciate the opportunity to comment. If you have any questions or require any additional information, please do not hesitate to contact us.

Sincerely,



Rod Kuharich

Director

cc:

Jayne Harkins

Tom Ryan

CWCB Members

Colorado River Policy Advisory Group

Upper Colorado River Commission

Seven Basin State Representatives