



United States Department of the Interior



BUREAU OF RECLAMATION
Lower Colorado Regional Office
P.O. Box 61470
Boulder City, NV 89006-1470

IN REPLY REFER TO:

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DEC 10 1992

Mr. Gerald M. Davisson
Manager
Palo Verde Irrigation District
180 West 14th Avenue
Blythe CA 92225

Subject: California Agricultural Entitlements to Colorado River Water (Water Rights)

Dear Mr. Davisson:

This letter discusses the proposal of the Bureau of Reclamation (Reclamation) for administering the entitlements under the first three priorities of the California 7-Party Agreement.

Background

The 1931 7-Party Agreement governs the use of Colorado River water in California except for certain present perfected rights. This agreement was officially sanctioned by a regulation of the Secretary of the Interior, and is incorporated in Reclamation's water delivery contracts with the districts. The 7-Party Agreement gives the first priority for use of Colorado River water to Palo Verde Irrigation District (PVID) for such water as is required for beneficial use on its valley lands with a gross area of 104,500 acres. The second priority is given to the Yuma Project Reservation Division (YPRD) for such water as is required for beneficial use on a maximum of 25,000 acres. The third priority is then allowed to use the remaining water up to the limit of 3.85 million acre-feet (maf) total beneficial consumptive use for all three priorities. The third priority is shared by Imperial Irrigation District (IID), Coachella Valley Water District (CVWD), and PVID for its mesa lands. The 7-Party Agreement specifies equal priority for the various users under the third priority. A 1934 Agreement of Compromise between IID and CVWD gives IID priority over CVWD to the use of water delivered through the All-American Canal.

In 1988, IID and The Metropolitan Water District of Southern California (MWD) executed the Agreement for the Implementation of a Water Conservation Program and Use of Conserved Water (Conservation Agreement). Under this agreement MWD will fund water conservation measures in IID, and in return will get the use of the conserved water. Conserved water means water which is conserved or saved by measures which have been approved by a committee established for that purpose and for verifying the amount of water actually conserved.

Because the conserved water could be subject to prior claim by CVWD or PVID (which share the third priority with IID) before passing to MWD (which holds the fourth and fifth priorities), another agreement was necessary. A 1989 agreement among IID, MWD, CVWD, and PVID approves and puts additional conditions on the Conservation Agreement, to provide for the passing of the conserved water to MWD, and to partially define the responsibility for excess use beyond the 3.85 maf limit of the first three priorities. This 1989 agreement is called the Approval Agreement.

Problems

Problems with respect to administering the existing system of entitlement priorities relate to defined water service areas without specific assignments of water within the first three priorities of the 7-Party Agreement. An added complication is the 1934 Compromise Agreement between CVWD and IID which appears to place the burden for payback of overruns on CVWD. These circumstances serve to frustrate the practical and timely determinations and enforcement of annual reasonable beneficial use, and determinations and resolution of excess use, as well as creation of water banking programs and negotiation and execution of voluntary water transfers pursuant to cooperative water conservation and land following programs. Such activities and cooperative programs will become increasingly important vehicles for timely improvements in the following areas: assuring reasonable beneficial use; maximizing California's beneficial use of its Colorado River water apportionment; regional and statewide drought mitigation and management; avoidance of lengthy and costly administrative proceedings and litigation between priority users with respect to reasonable beneficial use; and in achieving compliance when California's Colorado River water use is restricted to its basic apportionment.

To address the problems discussed above with respect to responsibility for excess use, Reclamation asked the Colorado River Board of California to lead discussions among the parties involved to try to reach an agreement on a method for assigning responsibility for excess use. The parties have been unable to come to agreement, so Reclamation has developed a proposal to accomplish this and also to facilitate voluntary water transfers, water banking programs, improvements in reasonable beneficial use, apportionment use compliance, maximization of California's beneficial use of its Colorado River water apportionment, and drought mitigation management.

Proposal

Reclamation proposes that the Secretary of the Interior issue a regulation to accomplish these objectives by quantifying the entitlements under the first three priorities of the California 7-Party Agreement.

There is no simple equitable means for quantifying entitlements. The quantified entitlements reflect past water use plus adjustments to reflect the senior position of the first two priorities. The methodology employed considered past efforts to implement conservation as well as future opportunities for implementation of conservation improvements.

The initial quantification of entitlements was based on maximum use during the recent 5-year period, 1986-1990. This period is believed to be fairly typical and to have more validity than earlier years because of its recency. Maximum consumptive use was deemed to be the appropriate basis because the effects of flooding during the mid-eighties still restricted water use by districts along the river in 1986 through 1988, and also because it recognizes the senior position of the higher priorities. However, no entity would receive less than its average use for the period 1981-1990. For PVID and YPRD, in recognition of their priority position, some additional allowance is made for lands which could be farmed but are not presently.

Starting with the senior priorities, entitlements are based on maximum historical annual use during 1986-1990, with no entitlement less than average use for 1981-1990. Entitlements are rounded to the nearest 1,000 acre-feet.

PVID's maximum use (1990) was 459,615 acre-feet according to decree records. Water withdrawn from wells on the Palo Verde mesa has not in the past been included in the decree records, but is estimated to be about 11,000 acre-feet annually. It is likely that this water will be determined to be Colorado River water, so this usage is added to 459,615, for a total of 470,615 acre-feet. An additional 24,000 acre-feet is allowed for approximately 6,000 acres of presently unfarmed land on the mesa, making a total of 494,615 acre-feet.

In recognition of PVID's priority position, and for simplicity and ease of administration, its entitlements under the first and third priorities are combined as a single entitlement.

PVID maximum entitlement (rounded): 495,000 acre-feet

YPRD's maximum use (1989) was 91,882 acre-feet, including water used in the "island" area. Research of Reclamation files has indicated that the "island" area is part of the 25,000 acres intended to be served by YPRD under the second priority. An additional 12,500 acre-feet is allowed for approximately 2,500 acres of unfarmed land, making a total of 104,382 acre-feet.

YPRD maximum entitlement (rounded): 104,000 acre-feet

The water remaining for the third priority is 3,850,000 minus the sum (495,000 + 104,000), or a difference of 3,251,000. The maximum use for IID (1990) was 3,054,188 acre-feet, and CVWD's maximum (1990) was 369,685 acre-feet. The sum of these maximums is 3,423,873, which exceeds the amount remaining for the third priority. If the amount remaining were divided in proportion to the maximums, the portion for CVWD would be 351,019, and the portion for IID would be 2,899,981. The 1981 to 1990 average for CVWD was 366,545, which is greater than the above amount based on maximums, and therefore controls. However, the 1981 to 1990 average for CVWD is only 3,000 acre-feet less than its maximum. Recognizing CVWD's significant accomplishments in water conservation (much of which was accomplished before 1980), the relatively small amount of variation in annual water use, and the limited opportunity for further conservation, its entitlement is set at the maximum.

CVWD maximum entitlement (rounded): 370,000 acre-feet

The remaining entitlement is assigned to IID. It is recognized that IID is the only entity not receiving its maximum use. Because its entitlement is so large, assigning maximum use to IID would preclude the assignment of maximum use to other entities. It would also preclude assignment to the other entities based on the minimum criterion, such as based on the 1981 to 1990 average. Further, IID has more flexibility than the other entities to meet water needs with an entitlement less than maximum use since it has more opportunity to reduce use through conservation than the other entities.

IID minimum entitlement: 2,881,000 acre-feet

It is important to point out that this amount is still significantly greater than IID's 1981-1990 average use, which was 2,781,652. It is also important to point out that IID's entitlement is identified as a minimum, and is therefore eligible to receive any water left unused by PVID, YPRD, and CVWD. This provision also provides some recognition of IID's priority granted under the Agreement of Compromise by offering it the sole right to any unused entitlement assigned under the first three priorities. Any water left unused by IID would be made available to MWD under its fourth and fifth priority entitlements. Because PVID, YPRD, and CVWD received entitlements based on maximum use, they would not be eligible to receive unused entitlements.

This proposal will permit the voluntary transfer of conserved water from a conserving entity to a receiving entity, without the threat of claim upon the water by holders of intervening priorities. It will make simpler the identification of who is responsible for excess use. However, it will require modification of the Approval Agreement.

It is Reclamation's intent that the regulation would be crafted in a manner to encourage water conservation and to facilitate voluntary water transfers in a manner similar to California state law. Specifically, the proposed regulation would provide that the conservation of water by actions which are measurable, verifiable, and approved will be considered reasonable beneficial use by the conserving entity. Any cessation or reduction in the use of water resulting from such actions would not subject the conserving entity to forfeiture or loss of entitlement.

This proposed regulation would not replace or nullify the regulations under part 417 of Title 43, Code of Federal Regulations, which require that water use pursuant to an entitlement shall not exceed the reasonable beneficial use requirements of the purposes authorized by the entitlement.

Reclamation recognizes that a water banking program will need to be in place to ease the burdens associated with payback or cutback in use resulting from use in excess of entitlement. A water banking program will also facilitate water conservation and voluntary water transfers. Reclamation is participating in a technical work group with the three Lower Division States and the Indian tribes along the river to design a water banking program. Efforts to date indicate that a bank for conserved water which is subject to first release for flood control will not harm any entitlement holder. However, Reclamation is still evaluating the impacts of a conserved bank not subject to flood control release, as well as a small bank using the leftover (net) unused lower basin apportionment.

Reclamation will build upon the analysis of the technical work group to develop water banking provisions for inclusion in the draft regulations for administering entitlements to Colorado River water in the lower basin. It is Reclamation's intent that this proposal to quantify the entitlements under the first three priorities of the 7-Party Agreement will not be implemented until the final regulations, which will contain banking provisions, are in effect.

We look forward to meeting with you at the Colorado River Water Users meeting in Las Vegas, Nevada. We would like your input on this proposal, and want to work with you in arriving at an acceptable solution. If you have any questions relating to this matter, please contact Mr. Alden Briggs at 702-293-8677.

Sincerely,

ROBERT J. TOWLES

Robert J. Towles
Regional Director

Identical Letters to:

Mr. Ron Derma
General Manager
Bard Water District
1473 Ross Road
Winterhaven CA 92283

Mr. Thomas E. Levy
General Manager
Coachella Valley Water District
P.O. Box 1058
Coachella CA 92236

Mr. Charles L. Shreves
General Manager
Imperial Irrigation District
P.O. Box 937
Imperial CA 92251

Mr. Carl Boronkay
General Manager
The Metropolitan Water District
Of Southern California
P.O. Box 54153
Los Angeles CA 90054

Mr. Gerald Zimmerman
Executive Director
Colorado River Board of California
770 Fairmont Avenue, Suite 100
Glendale CA 91203

Mr. Fritz E. Brown
President
Quechan Indian Nation
P.O. Box 11352
Yuma AZ 85366-9352

bc: Superintendent
Fort Yuma Agency
Bureau of Indian Affairs
P.O. Box 1591
Yuma AZ 85366

Area Director
Phoenix Area Office
Bureau of Indian Affairs
P.O. Box 10, MS 420
Phoenix AZ 85001

bcc: Commissioner, Attention: W-1000
Assistant Commissioner - Program, Budget, and Liaison, Attention: W-6630
Assistant Commissioner - Resources Management, Attention: D-5755
Project Manager, Yuma AZ, Attention: YPO-430
Field Solicitor, Phoenix, AZ Attention: Messrs. Bill Swan and Bob Moeller