

**LOWER DIVISION STATES
OF THE COLORADO RIVER BASIN**

April 26, 2005

Honorable Gale Norton
Secretary of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

***Re: Comments on Mid-year Review of the 2005 Annual Release Amount From
Glen Canyon Dam***

Dear Madame Secretary:

The three Lower Division States believe that the minimum objective release for Lake Powell contained in the 2005 Annual Operating Plan for Colorado River System Reservoirs ("AOP") must not be reduced below 8.23 million acre-feet ("maf") for three reasons. First, and perhaps most important, such a reduction would undercut the current efforts of the seven basin states to resolve several important issues in a collaborative manner and would be inconsistent with your 4C policy. Second, the "runoff forecast," the sole basis in the 2005 AOP for the mid-year review, has improved, not worsened. Third, a reduction of the deliveries from Lake Powell would violate the Criteria for Coordinated Long-Range Operation of Colorado Reservoirs ("Operating Criteria").

The seven states of the Colorado River Basin have been engaged in discussions on many issues this year, including the one raised by your December 2004 request for proposals upon which to establish shortage criteria for the Colorado River. Those discussions have raised a number of matters that will require significant discussion, *e.g.*, shortage criteria, conjunctive reservoir management, water efficiency improvements in the Lower Basin and Mexican Treaty water delivery obligations. Continuing those discussions is imperative given the reality of changing assumptions of supply of and demand for Colorado River water. We are most concerned that any amendment of the 2005 AOP would cause the states' representatives to harden their positions on the matters under discussion.

There is no hydrologic basis for an adjustment of the 2005 AOP. That AOP provided for a "mid-year review," as follows:

The Secretary will review the 2005 annual release amount from Lake Powell in April 2005 to determine if the runoff forecast warrants an adjustment to the release amount for water year 2005. 2005 AOP, p. 24.

The 2005 AOP Determinations for the operation of the Upper Basin Reservoirs further stated, "[d]ue to the severe drought and the reduction in available reservoir storage in the Colorado River Basin, pursuant to Article I(2) of the Operating Criteria, the Secretary will review the 2005 annual release amount from Lake Powell in April 2005 to determine if the

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runoff forecast warrants an adjustment to the release amount for water year 2005. Any revision to the AOP may only occur through the AOP consultation as required by applicable federal law.” The letter transmitting the 2005 AOP to the Governors of the seven Colorado River Basin States stated, “[t]his mid-year review, will take place during April 2005 and will be conducted expeditiously, to determine if the runoff forecast warrants an adjustment to the release amount from Lake Powell, beginning with the May volume, for water year 2005.” The transmittal letter also stated that the Colorado River Management Work Group (“Work Group”) would be the mechanism used to keep the interested parties informed of any changes in the 2005 AOP.

On March 7, 2005, the Chairman of the Work Group, Tom Ryan, notified Work Group members that two consultation meetings would be conducted for the mid-year review. The letter recognized that the purpose of the review would be consistent with the purpose stated in the 2005 AOP for the operation of Lake Powell.

The 2005 AOP stated, “[t]he minimum objective release criterion will control the annual release from Glen Canyon Dam during water year 2005 in accordance with Article II(2) of the Operating Criteria unless spill avoidance and/or the storage equalization criteria in Article II(3) is controlling. Under the most probable, probable minimum, and probable maximum inflow scenario, Glen Canyon Dam will release the minimum of 8.23 maf (10,150 mcm).” This determination was made based on the estimate that “[m]ost probable inflow for Lake Powell in water year 2005 is 9.23 maf (11,380 mcm) or 77 percent of average. Most probable inflow is 2.83 maf (3,490 mcm) less than the 30 year average of 12.06 maf (14,870 mcm).” Based on this forecast, Lake Powell would have reached a minimum elevation of approximately 3552 feet before recovering to an end of water year (September 30, 2005) elevation of approximately 3569 feet or 2 feet lower than it began the water year (approximately 3571 feet).

As of April 18, 2005, according to the “Basin Hydrology-Projected Storage” document presented to the Lower Division State representatives by Bob Johnson, USBR Lower Colorado Regional Director, the April 2005 through July 2005 forecast of unregulated inflow into Lake Powell is 8.5 maf (107 percent of average) and the end of 2005 water year forecast is projected to be 12.6 maf (105 percent of average). Both forecasts are significantly higher than the forecast used to develop the 2005 AOP. With this forecasted inflow into Lake Powell and maintaining a release of 8.23 maf, the water surface elevation of Lake Powell by the end of the 2005 water year is projected to be as much as 29.0 feet higher than it was at the beginning of the water year. On the other hand, assuming a release of 8.23 maf and all of the intervening flows into Lake Mead, the water surface elevation of Lake Mead at the end of the 2005 water year is forecasted to be only 9.0 feet higher than it was at the beginning of the water year.

At the end of the 2005 water year, the contents of Lake Powell and Lake Mead are forecasted to be 11.7 maf and 14.9 maf, respectively. Although Lake Mead’s contents are forecasted to be about 3.0 maf more than Lake Powell’s contents at the end of the 2005 water

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year, the contents of Lake Powell and Lake Mead are projected to be substantially equal at the end of water year 2006, with each lake at approximately 13.4 maf.

The potential for Lake Mead to decline to elevation 1120 feet at the end of water year 2006 raises a whole new set of concerns. Elevation 1120 feet is only 70 feet above the primary intake for Southern Nevada Water Authority (SNWA) and 120 feet above SNWA's secondary intake. Bureau of Reclamation modeling has demonstrated that any reduction of releases from Lake Powell below 8.23 maf would hasten the day when the operation of SNWA's upper intake would be imperiled, causing the Lower Division States to incur shortages. Such shortages could be required even if Lake Powell's storage was increasing. The only water supply benefit from reducing the minimum release is the increase of Lake Powell's storage. Even that increased storage would not benefit the Upper Division States' actual water supplies, but would only further increase the protection of the Upper Division States against future curtailments, an extremely low probability event according to long-range studies. Moreover, modifying the minimum objective release of 8.23 maf without modifying the 602(a) storage provisions of the Operating Criteria would increase the probability of shortages to the Lower Division States, thus threatening to reduce both Arizona's and Nevada's future water supplies, with no benefit to the available water supply of the Upper Division States.

While some benefits to the hydropower system may occur by increasing the elevation of Lake Powell, they may be negligible, or even offset, when factoring in the reduced amount of water that would flow through Glen Canyon Dam turbines, and the effect on Hoover power production based on reduced water surface elevations at Lake Mead. Regardless of any potential benefit to hydropower, such a use is subordinate to consumptive water uses.

Additionally, the Operating Criteria were adopted by Secretary Hickel in 1970 as a policy, required by statute, controlling subsequent Secretarial actions. 35 Fed. Reg. 8951 (June 10, 1970). Article II(2) of the Operating Criteria requires that, in annual plans of operation, "the objective shall be to maintain a minimum release of water from Lake Powell of 8.23 million acre-feet" for each year. Unless a Secretary formally amends the Operating Criteria by public action equivalent to that taken in 1970, no annual operating plan may be adopted which alters that objective.

The "objective," or goal, required to be maintained by the Operating Criteria is that the system be operated so that a minimum release amount of at least 8.23 maf is realized. It must be the goal of the plan. Maintaining a release less than 8.23 maf would not realize the objective established by Article II(2). The Operating Criteria provide no basis for determining not to realize the objective. In fact, the Operating Criteria provide the contrary, that seeking to realize the objective is mandatory when either of the conditions precedent listed in Article II(2)(a) or (b) exists. Those conditions do exist in the 2005 water year. The Operating Criteria are binding on the Secretary. Although Section 602 of the 1968 Colorado River Basin Project Act ("1968 Act") authorizes amendment of the Operating Criteria by the Secretary based on "actual

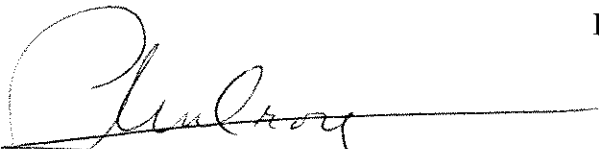
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operating experience or unforeseen circumstances,” and the Operating Criteria authorize amendment of the annual operating plans once adopted to reflect current hydrological conditions, neither authorizes de facto amendment of the Operating Criteria through amendment of the Annual Operating Plan. Article I (2) of the Operating Criteria does not authorize amendment of the Operating Criteria by either de facto operation or revision of the Annual Plan of Operation so as to alter or fail to meet the objective established by the Operating Criteria. A Secretarial determination that the objective will intentionally not be realized may be effectuated only by a direct amendment to the Operating Criteria.

In sum, the Lower Division States respectfully assert that any reduction of the minimum objective release from Glen Canyon Dam below 8.23 maf as a result of the mid-year review would not be in accordance with the 2005 AOP, the Operating Criteria, Section 602 of the 1968 Act or the Law of the River. This is especially true in light of the improved runoff forecasts into Lake Powell for the 2005 water year and the projection for equal quantities of water in Lake Mead and Lake Powell by the end of the 2006 water year.

However, be assured that the Lower Division States are willing to continue to explore various strategies that, if mutually agreed upon by the seven states and the federal parties, could incidentally result in less than 8.23 maf being released from Glen Canyon Dam in any given year. Potential strategies include interim reservoir operations for conjunctive management of the storage in Lakes Mead and Powell and the Lower Division States storing water in Lake Powell. We continue to believe that the seven basin states working together on these and other issues, including shortage criteria, efficiency improvements in the operation of the River and Mexican Treaty water delivery obligations, will be beneficial to all.

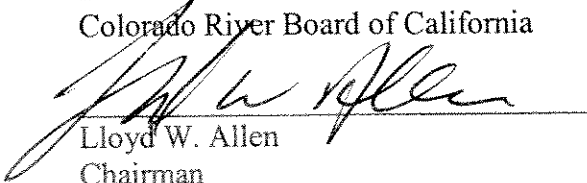
Respectfully,



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General Manager
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Gerald R. Zimmerman
Executive Director
Colorado River Board of California



Lloyd W. Allen
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Colorado River Board of California



Richard Bunker
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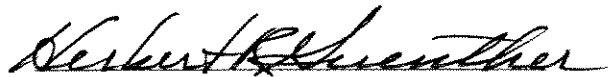
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