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April 10, 1991

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Regional Director  
Upper Colorado Region  
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P. O. Box 11568  
Salt Lake City, UT 84147

Re: Review of Existing Coordinated Long-Range Operating  
Criteria for Colorado River Reservoirs

Dear Messrs. Fite and Robison:

I am writing on behalf of the State of Colorado, pursuant to the Federal Register Notice dated December 31, 1990, and published on January 7, 1991, to provide the comments of the State of Colorado.

In accordance with Section 602(b) of Public Law 90-537, the Colorado River Basin Project Act ("CRBP Act"), the Coordinated Long-Range Operating Criteria for Colorado River Reservoirs ("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 CRBP Act]". As will be explained in greater detail, the State of Colorado does not believe there is any actual operating experience or unforeseen circumstance which justifies modification of the Operating Criteria at this time.

At the time of the adoption of the Operating Criteria, the State of Colorado made 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 m.a.f. of water per year from Lake Powell and in not waiving objections to other parts of the Operating Criteria.

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The State of Colorado continues to object to the minimum release objective of 8.23 m.a.f./year and to other aspects of the Operating Criteria. However, the State of Colorado believes that actual operating experience or unforeseen circumstances do not justify modification of the Operating Criteria at this time, for the following reasons:

1. Section 602(b) of the CRBP Act provides that the Operating Criteria were proposed and 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 amount of water released from Lake Powell is ultimately controlled by the Colorado River Compact, the Upper Colorado River Basin Compact, and the Mexican Water Treaty. 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 CRBP 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.

Therefore, while the State of Colorado does not waive its objection to any aspect of the Operating Criteria, it is the position of Colorado that there is no justification or reason to modify the existing Operating Criteria at this time. The State of Colorado reserves its right to make additional comment, and to respond to the comments of others, in the course of this review process. We would appreciate being provided with copies of all comments received by you in the course of this review.

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We appreciate the opportunity to comment. If you have any questions or require any additional information, please do not hesitate to contact me.

Very truly yours,

LEAVENWORTH & LOCHHEAD, P.C.

James S. Lochhead

JSL:rln

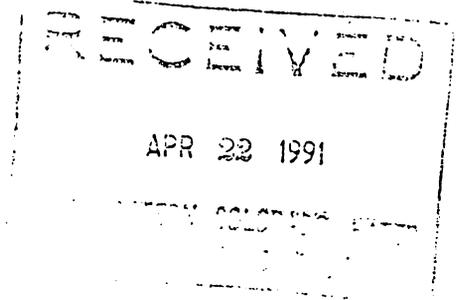
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April 19, 1991

Mr. Charles L. Thompson, General Manager  
Southeastern Colorado Water Conservancy District  
P. O. Box 440  
Pueblo, CO 81002



Re: Five-Year Review Coordinated Long-Range  
Operating Criteria of Colorado River Reservoirs

Dear Tommy:

Enclosed are copies of various comments which have been made to the Bureau of Reclamation to date concerning the Five-Year Review process. In particular, please note the following comments:

1. The environmental organizations have submitted fairly lengthy comments as to the need to incorporate "spill criteria" as well as their view that fish and wildlife and recreation purposes must be taken into account in determining releases from Glen Canyon Dam. Additionally, they are commenting that a system-wide EIS on river operations is necessary.

2. The State of Arizona Game and Fish Department has made inquiry concerning the priority of releases from Hoover Dam and the other Lower Basin facilities. This issue is similar to that which was raised in the Laughlin River Tours lawsuit, and is potentially troublesome for Upper Basin interests. The "editorial considerations" raise a number of substantive issues.

3. The Western Area Power Administration comment requests a gradual reduction in annual release volumes during a wet-to-dry cycle. Obviously, this may create over-deliveries in the early years of a ten-year period. If a dry cycle were to continue, the Upper Basin could be caught short if the minimum target release of 8.23 m.a.f. is adhered to. Western's comments in Paragraph 2 are potentially disastrous to the interests of the Upper Basin in maintaining 602(a) storage levels. Comment Nos. 3, 4, and 5 in the Western letter also carry potentially dangerous long-term ramifications concerning the purposes of the CRSP.

4. The letter from the EPA reiterates these concerns as to the overall purposes of the CRSP and implicates water releases for salinity control purposes.

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5. Finally, the letter from the National Park Service at Page, Arizona, expresses concern for maintenance of lake levels on Lake Powell but also expresses an interpretation that the required release from Lake Powell is 75 m.a.f. over a ten-year running average plus 730,000 acre-feet each year for half of the Mexican Treaty obligation. Obviously, we disagree with this interpretation.

Clearly, we will need to respond at some point to the substance of these comments. I suspect that we will have the opportunity in the consultation process (see the Management/Public Involvement Plan). However, I would like your input as to whether we should address these issues in more detail in our initial comments or if we should keep our initial comments brief and respond at a subsequent date.

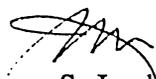
I am inclined to the position that we should keep our comments brief and respond at a subsequent date. However, we need to be undertaking some research and preparation for response to these issues. In particular, I will be asking Wayne Cook and Jane Bird at the Upper Colorado River Commission to be developing background information on the original legislative intent associated with Section 602(a) of the 1968 Act and information as to the development of the original Operating Criteria.

The Upper Colorado River Commission will be meeting in Denver on April 25, 1991, to discuss the Five-Year Review process. I will be in Denver on April 23 and 24, 1991. You can reach me through the Colorado Water Conservation Board offices (866-3441). Please call me prior to the 25th with your comments on my draft letter. I would propose to share that draft with the other States at that time, and I would, therefore, appreciate any comments or revisions you might have.

I look forward to hearing from you.

Very truly yours,

LEAVENWORTH & LOCHHEAD, P.C.

  
James S. Lochhead

JSL:rlh

Enclosures

cc: David Walker w/enc.

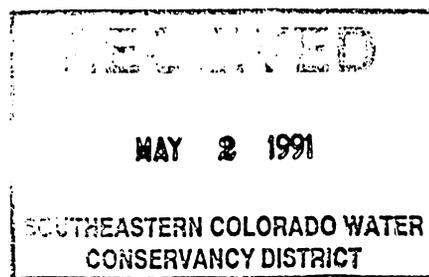
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Dear Messrs. Fite and Robison:

I am writing on behalf of the State of Colorado, pursuant to the *Federal Register* notice dated December 31, 1990, and published on January 7, 1991, to provide the comments of the State of Colorado. The comment period under that notice has been extended to May 1, 1991.

Section 602(b) of Public Law 90-537, the Colorado River Basin Project Act ("CRBP Act"), sets forth the standard for determining whether the Coordinated Long-Range Operating Criteria for Colorado River Reservoirs ("Operating Criteria") may be modified. The Operating Criteria may be modified only "as a result of actual operating experience or unforeseen circumstances . . . to better achieve the purposes specified in [Section 602(a) of the CRBP Act]". As will be explained in greater detail, the State of Colorado does not believe there is any actual operating experience or unforeseen circumstance which justifies modification of the Operating Criteria at this time.

As required by the Operating Criteria, the Secretary has sponsored a formal review of the Operating Criteria every five years. In each of those reviews, in 1975, 1980 and 1985, the Secretary determined that no modification of the Operating Criteria was justified. There are no conditions which exist today which are different than those which existed at the time of those reviews, which would justify a modification of the Operating Criteria at this time.

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At the time of the adoption of the Operating Criteria, the State of Colorado made 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 m.a.f. of water per year from Lake Powell and in not waiving objections to other parts of the Operating Criteria.

The State of Colorado continues to object to the minimum release objective of 8.23 m.a.f./year and to other aspects of the Operating Criteria. However, since this amount is only a release *objective*, it is the position of the State of Colorado that less than 8.23 m.a.f. may be released in any one year if circumstances warrant, and without a change in the Operating Criteria. Section 602(b) of the CRBP Act provides that the Operating Criteria were proposed and 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". *See also*, §§601(a) and 603(a) of the CRBP Act. Therefore, irrespective of the minimum release objective specified in the Operating Criteria, the amount of water released from Lake Powell is ultimately controlled by the Colorado River Compact, the Upper Colorado River Basin Compact, and the Mexican Water Treaty. As a result, an amount less than the minimum release objective must be released from Lake Powell, in order to avoid impairment or potential impairment of the beneficial consumptive use of water in any Upper Division State, if the States of the Upper Division are in compliance with the Colorado River Compact.

Conversely, the Operating Criteria prohibit the release of any amount of water in excess of 8.23 m.a.f. in any one year, if the conditions specified in Article II(2) exist. This is clear because Article II(3) provides the specific circumstances under which releases in excess of 8.23 m.a.f. may be made in any year. In this regard, Article II(3) follows the mandates of Section 602(a)(3) of the CRBP Act, in implementing Article III(e) of the Colorado River Compact.

The primary purpose of Section 602 of the CRBP Act is to assure that the States of the Upper Division may develop their full entitlement to the water of the Colorado River System pursuant to the Colorado River Compact, and that annual consumptive uses in the Upper Division will not be impaired or potentially impaired because of the failure to store sufficient water to make deliveries pursuant to the Mexican Water Treaty and the Colorado River Compact. The States of the Upper Division have not yet developed their full entitlement to the waters of the Colorado River System available pursuant to the Colorado River Compact, and

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there has not yet been an impairment of annual consumptive uses in any Upper Division State as a result of operations pursuant to the existing Operating Criteria.

Finally, the State of Colorado is aware of the ongoing Glen Canyon Dam Environmental Impact Statement, and of the concerns which have been raised with regard to daily and within-the-month fluctuations and releases at Glen Canyon Dam. Additionally, concerns have been raised with regard to operations pursuant to Section 602(a)(3)(iii) of the CRBP Act, which requires that water be released from Lake Powell so as to "avoid anticipated spills". The term "spills" is defined in Article IV(1)(a) of the Operating Criteria to mean: "...water released from Lake Powell which cannot be utilized for project purposes, including, but not limited to, the generation of power and energy." This language encompasses the full range of project purposes, the priority of which is governed by Section 602(a). See, §602(c) of the CRBP Act. Therefore, any change in the historic operation of Glen Canyon Dam can be made pursuant to interim and long-term criteria which are separately adopted and are specific to Glen Canyon Dam. Any such change can also be addressed within the process of adopting Annual Operating Plans. Any such daily and within-the-month operations at Glen Canyon Dam must be undertaken separate from and subject to the annual and monthly system operations governed by Article II of the Operating Criteria. The Operating Criteria should not be modified to require any change in operations at Glen Canyon Dam, which is only one unit in the overall system of operations governed by the Operating Criteria. Moreover, as a practical matter, a modification of the Operating Criteria at this time, or the consideration of any modifications, would disrupt and inject uncertainty into the ongoing GCEIS and interim criteria processes.

Therefore, while the State of Colorado does not waive its objection to any aspect of the Operating Criteria, it is the position of Colorado that there has been no actual operating experience or unforeseen circumstance with regard to operations in the Upper Basin which justifies modification of the existing Operating Criteria at this time.

Article III of the Operating Criteria relates to the operation of Lake Mead, in delivering water to the States of the Lower Division pursuant to the Decree of the United States Supreme Court in *Arizona v. California*. Although the State of California requested a surplus determination in 1991, and total contract uses in the Lower Division States are approaching 7.5 m.a.f. per year from the mainstem of the Colorado River, there have not been any extensive operations under these circumstances, and these are certainly not circumstances which could be described as "unforeseen". Moreover, until regulations concerning illegal uses and better accounting under the Decree in *Arizona v. California* are implemented, any modification to Article III of the Operating Criteria would be premature. Therefore, while the State of Colorado does not waive its objection to any aspect of the Operating Criteria, it is the position of Colorado

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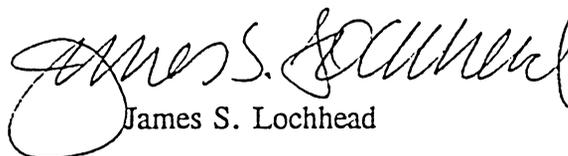
that there has been no actual operating experience or unforeseen circumstance with regard to operations in the Lower Basin which justifies modification of the existing Operating Criteria at this time.

The State of Colorado reserves its right to make additional comment, and to respond to the comments of others, in the course of this review process. We would appreciate being provided with copies of all comments received by you.

We appreciate the opportunity to comment. If you have any questions or require any additional information, please do not hesitate to contact me.

Very truly yours,

LEAVENWORTH & LOCHHEAD, P.C.

  
James S. Lochhead

JSL:rln