



United States Department of the Interior



BUREAU OF RECLAMATION

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IN REPLY REFER TO:

**FINDING OF NO SIGNIFICANT IMPACT  
(FONSI)**

FOR RULEMAKING

FOR

OFFSTREAM STORAGE OF COLORADO RIVER WATER AND  
DEVELOPMENT AND RELEASE OF INTENTIONALLY CREATED UNUSED  
APPORTIONMENT IN THE LOWER DIVISION STATES (43 CFR PART 414)

FONSI No. LC-99-3

UNITED STATES DEPARTMENT OF INTERIOR  
Bureau of Reclamation  
Lower Colorado Region  
Boulder City, Nevada

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**BACKGROUND**

The Bureau of Reclamation (Reclamation) is proposing a new rule under which Colorado River water may be stored offstream in the States of Arizona, California, and Nevada (Lower Division States) for future interstate use in those States. The Rule would establish the procedural framework for the Secretary of the Interior (Secretary) to follow in considering, participating in, and administering Storage and Interstate Release Agreements (SIRA). The Rule establishes a

framework only and does not authorize any specific activities. Under the Rule, an entity which is expressly authorized by the laws of a Lower Division State may enter into a SIRA and develop intentionally created unused apportionment (ICUA). Water stored could be from within the apportionment of the Storing State, or from unused apportionment of the Consuming State. Colorado River water stored offstream under a SIRA will be held by the authorized entity in the Storing State (storing entity). When an authorized entity in a Consuming State (consuming entity) requests development of ICUA under a SIRA, the storing entity will take actions to reduce its State's consumptive use of Colorado River water, thereby developing ICUA. When the Secretary is satisfied that ICUA has been or will be created, the Secretary will release an equivalent quantity of ICUA for the consuming entity. The Rule is based on the understanding that this type of offstream storage is a beneficial use of Colorado River water.

The Rule establishes a procedural framework under which the Secretary will implement the contractual distribution and release of ICUA pursuant to a SIRA among the Lower Division States. These procedures will provide greater flexibility, certainty, and assurance to all parties potentially interested in entering into a SIRA to store Colorado River water offstream and use ICUA. The actions and transactions contemplated under the Rule are within the current authority of the Secretary pursuant to the Boulder Canyon Project Act of 1928 (45 Stat. 1057, 43 U.S.C. 617) and the 1964 Supreme Court Opinion and Decree in *Arizona v. California*, (373 U.S. 546 and 376 U.S. 340) as supplemented and amended. The Rule formalizes the procedures for the Secretary to follow in considering, participating in, and administering a SIRA and does not expand or create authority to do so. The Secretary will be a party to a SIRA. The Rule and the final programmatic environmental assessment do not address offstream storage and distribution of water for intrastate use in the Lower Division States.

## **ENVIRONMENTAL ANALYSIS PROCESS**

### **National Environmental Policy Act**

Reclamation prepared and circulated a draft Programmatic Environmental Assessment (DPEA) which evaluated the potential impacts of the Agency Preferred Alternative-Proposed Action and the No Action Alternative. The Agency Preferred Alternative-Proposed Action is the promulgation of a new rule to establish a procedural framework for the Secretary to follow in considering, participating in, and administering a SIRA among the Lower Division States that would permit State-authorized entities to store Colorado River water offstream, develop ICUA, and make ICUA available to the Secretary for release and use in another Lower Division State. Two additional alternatives were considered but eliminated from further analysis. These alternatives were not reasonable because they either did not meet the requirements of the purpose and need for the proposed action or were not practical or feasible from an operational and economic standpoint under projected river conditions. A programmatic approach was adopted because many of the details of a specific SIRA under the Rule cannot be ascertained at this time (for example, conveyance, storage and forbearance). Reclamation will conduct the appropriate level of NEPA analysis to identify potential impacts associated with all specific SIRA when they are presented to the Secretary.

Notices of Availability of the proposed Rule and DPEA were published at 62 Federal Register 68492 and 68466, respectively, on December 31, 1997. The public comment period ran concurrently for the Rulemaking and the DPEA from December 31, 1997 to April 3, 1998. A public hearing and a public meeting for the proposed Rule and DPEA were held on February 23, 1998 (63 FR 8160) and March 27, 1998 (63 FR 12068) respectively. Reclamation reopened the comment period on the proposed Rule on September 21, 1998 (63 FR 50183) for a 30-day period ending October 21, 1998 to solicit comments on the definition of authorized entity and several other technical matters. Notices of availability of the proposed Rule and DPEA were mailed to local, state, and Federal agencies; other entities and interested parties; and to others upon request. The final PEA (FPEA) was completed in September 1999 (attached) and incorporates a number of changes made as a result of public comments received on the DPEA. The noted documents were prepared in compliance with the National Environmental Policy Act (NEPA) of 1969 as amended, the President's Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500-1508), and the U.S. Department of the Interior, Reclamation NEPA Handbook.

### **Agency Consultation/Coordination**

Reclamation consulted with the U.S. Fish and Wildlife Service (Service) pursuant to section 7(a) and (c) of the Endangered Species Act (ESA) for the Preferred Alternative-Proposed Action for potential impacts on threatened and endangered species and designated habitat in the action area for the Rule. By memorandum dated June 5, 1998, Reclamation submitted a Biological Assessment (BA) and requested concurrence from the Service that the Rule:

- Will have “no effect” on the American peregrine falcon, bald eagle, desert tortoise, flat-tailed horned lizard, brown pelican, and Colorado squawfish;
- Is “not likely to adversely affect” the razorback sucker, bonytail chub, Yuma clapper rail, or southwestern willow flycatcher. Effects on these species are expected to be discountable or insignificant and a take of the species is not expected to occur; and
- Will “not adversely modify” critical habitat for the razorback sucker and bonytail chub in the Lower Colorado River.

Reclamation identified six environmental commitments that will apply to the review and execution of all SIRAs developed pursuant to the Rule. These are included in, Appendix G, Environmental Commitments of the FPEA.

In its memorandum dated August 19, 1998 the Service, upon review of the BA and supporting documentation, concurred with Reclamation's determinations of effect and its response concluded informal consultation under regulations promulgated in 50 CFR § 402.13, which established procedures governing interagency consultation under section 7 of the ESA.

Section 2 of the Fish and Wildlife Coordination Act (FWCA) requires Reclamation to consider fish and wildlife resources needs in operation and management of water projects. Once the details of a specific SIRA are known, appropriate coordination with the Service and State fish and game agencies will be carried out to comply with the FWCA. Reclamation believes coordination with the FWCA is satisfied for the Rule through the NEPA and ESA processes.

Reclamation consulted with the State Historic Preservation Officers (SHPO) of Arizona, California, and Nevada under Section 106 of the National Historic Preservation Act (NHPA) of 1966 as amended for the Rule. By letter dated April 6, 1998, Reclamation submitted a copy of the proposed Rule and the DPEA to the SHPOs and requested concurrence from the SHPOs that the Rule:

- Will have “no effect” on historic properties because existing facilities would be utilized, no new facilities would be authorized, and no surface disturbing activities would occur; and
- Reclamation will defer a determination for potential “effects” on historic properties until there is a review of a specific SIRA.

In their letters the SHPOs concurred with Reclamation’s determination that the Rule will have “no effect” on historic properties contingent on a number of commitments. These are based on Reclamations commitment to reinitiate the Section 106 consultation process for individual SIRA when they are presented for review and prior to execution by the Secretary.

The environmental commitments required by the SHPOs are included in Appendix G, Environmental Commitments, of the FPEA.

### **Changes In The Final Programmatic Environmental Assessment**

The FPEA incorporates a number of changes as a result of public comments that include: a refined description of proposed interstate transactions, an expanded impact analysis for resource/issues, and the incorporation of consultation results. Public comments did not reveal any significant issues, new information, or new alternatives that would change the results of the analysis in the FPEA. Other changes to the FPEA include additions, corrections, and/or editorial changes made in response to public comments. Supporting documentation has been included in the FPEA for the Administrative Record.

### **FINDING**

Based on the analysis of the potential environmental impacts of the Agency Preferred Alternative-Proposed Action, as presented in the FPEA, there will be no significant impacts to the following resource/issues: River Operations; Third Parties; Wildlife and Threatened and Endangered Species; Riparian Habitat; Indian Trust Assets; Social, Economic, Financial, and

Regulatory Requirements; Cultural Resources; Indian Sacred Sites; and Environmental Justice concerns. These findings taken together with a thorough review of public comments received, consultations with the Service under sections 7 (a) and (c) of ESA and the SHPOs under section 106 of NHPA, leads Reclamation to conclude that implementation of the Agency Preferred Alternative-Proposed Action will not result in a significant impact on the quality of the human environment or on the natural and cultural resources of the action area.

Since there will be no significant impacts on the human environment from this rulemaking, it is recommended that this Finding Of No Significant Impact be approved for the Agency Preferred Alternative-Proposed Action. Preparation of an environmental impact statement is not required. This finding is based upon the consideration of the above discussion and Reclamation's obligation to monitor and implement the Environmental Commitments in Appendix G of the FPEA.

Attachment

# APPENDIX G

## ENVIRONMENTAL COMMITMENTS

### FOR RULEMAKING

### FOR

## OFFSTREAM STORAGE OF COLORADO RIVER WATER AND DEVELOPMENT AND RELEASE OF INTENTIONALLY CREATED UNUSED APPORTIONMENT IN THE LOWER DIVISION STATES (43 CFR PART 414)

### I. INTRODUCTION

The Secretary of Interior (Secretary) is responsible for insuring that Federal actions taken under the Rule, for example; considering, participating in, and administering Storage and Interstate Release Agreements (SIRA) and the development and use of Intentionally Created Unused Apportionment (ICUA), comply with NEPA, ESA, and other relevant environmental laws, regulations, and executive orders. As per the delegation of authorities in the Bureau of Reclamation's (Reclamation) Blueprint for Reform, the Lower Colorado Regional Director has the authority to consider, participate in, execute, and administer a SIRA pursuant to the Rule. The Boulder Canyon Operations Office and the Environmental Compliance and Realty Group of the Lower Colorado Region (LCR) will provide guidance and oversight in the preparation of appropriate documentation and the compliance document for a proposed Federal action such as considering a proposed SIRA. Authorized entities seeking to enter into a SIRA pursuant to the Rule may prepare the appropriate documentation and compliance document for a proposed Federal action, such as execution of a SIRA. Such compliance documents must meet the standards set forth in Reclamation's NEPA Handbook before they can be adopted.

### II. ENVIRONMENTAL COMMITMENTS

Reclamation's Lower Colorado Region, as the lead Federal Agency for the execution of a SIRA, is responsible for implementing the following environmental commitments. The Boulder Canyon Operations Office and the Environmental Compliance and Realty Group are the principal offices insuring implementation of the environmental commitments.

#### A. General

1. Appropriate environmental compliance documentation, in accordance with the standards set forth in Reclamation's NEPA Handbook, will be prepared on a case-by-case basis prior to the execution of a SIRA.

2. When considering participation in a SIRA, the Regional Director, acting on behalf of the Secretary, will consider the following in an appropriate NEPA document: applicable law and executive orders; applicable contracts; potential effects on trust resources; potential effects on contractors or Federal entitlement holders, including Indian and non-Indian present perfected rights holders and other Indian tribes; potential effects on third parties; potential effects on threatened and endangered species; potential effects on natural and other resources; comments from interested parties, particularly parties who may be affected by the proposed action; Environmental Justice concerns; concerns of the Upper Basin States; and other relevant factors, including the direct or indirect consequences of a SIRA on the financial interests of the United States.

3. All costs incurred by the United States in evaluating, processing, and/or executing a SIRA must be funded in advance by the entities which are a party to that agreement.

B. Specific Resource or Issue

1. Threatened and Endangered Species

a. A SIRA between California and Nevada and the AWBA is limited to the following: maximum storage in Arizona for interstate use is 200 kaf/yr; and by Arizona law, no more than a total of 100 kaf/yr of ICUA may be developed for release to authorized entities in California and Nevada in any given year.

b. Reclamation will consult with the Service on potential affects to listed species and designated critical habitat from a SIRA when it is presented to the Secretary for consideration, participation in, and prior to execution. In addition, a SIRA proposed after the completion of the MSCP will be included or incorporated in the consultation for the MSCP.

c. The adoption and implementation of the proposed Rule will not inhibit or diminish Reclamation's ability to implement the provisions and terms and conditions of the BCO nor have any affect on efforts by the MSCP or others to obtain water for fish and wildlife. The Rule may permit stakeholders to acquire water, through contracts, for specific fish and wildlife purposes through the MSCP or other procedures.

d. Section 7 consultation will be reinitiated where discretionary Federal agency involvement or control over the action has been retained (or is authorized by law) and if: 1) new information reveals effects of the agency actions that may affect listed species or critical habitat in a manner or to an extent not considered; 2) the agency action is subsequently modified in a manner that may cause an effect to the listed species or critical habitat not considered in the consultation (for example, a change in limits, see Number 1, that exceed those analyzed in the BA; or 3) a new

species is listed or critical habitat designated that may be affected by the agency action.

e. Reclamation will accelerate conservation efforts for the bonytail chub. Provision 1, of the RPA for Lower Colorado River Operations requires that once efforts to grow-out 50,000 razorback suckers in facilities on the Colorado River Indian Tribe (CRIT) reservation have finished, the ponds will be used to rear bonytail chubs (bonytails) for reintroduction below Parker Dam (providing the Service gains approval to reintroduce bonytails below Parker Dam). To accelerate conservation efforts for bonytails, Reclamation will immediately begin to work with the Service and the CRIT, to implement several actions. By spring 1999, two additional 3-acre CRIT ponds will be renovated and stocked with bonytails produced at the Service's Dexter, New Mexico facility. Reclamation will also work with the Service to explore the feasibility of initiating additional rearing at the Service's Willow Beach Hatchery, Arizona. By early 2000, several additional 1/4 to 1-acre CRIT ponds will be renovated to continue growing out of bonytail chubs. Coordination will be initiated with the Lake Mohave Native Fish Work Group to capture wild bonytails in spring 1999 to provide any needed augmentation of existing bonytail brood stock at Dexter. These efforts will expedite conservation work on bonytails by several years.

f. Reclamation will improve the habitat along the lower Colorado River through management of required flood control releases from Hoover Dam to provide freshening flows through Service refuges or other suitable areas to benefit existing southwestern willow flycatcher habitat and backwater habitats for endangered fish. This action will be developed in consultation with Colorado River stakeholders and consistent with Corps of Engineers flood control criteria. The idea is for Reclamation to make minor adjustments within its existing operating criteria that will allow the release of flows in a manner that will improve conditions for sustaining an existing habitat. In addition, Reclamation will also explore, in consultation with the Service and other Colorado River Stakeholders, the potential biological benefit and feasibility of providing water in years of surplus determinations to Service refuges or other suitable areas below Hoover Dam.

## 2. Indian Trust Assets

a. Reclamation will work with authorized entities and the Lower Division States banking Colorado River water to ensure that offstream storage of Colorado River water and development and release of ICUA pursuant to this Rule does not adversely impact local tribal water rights.



### 3. Cultural Resources

- a. Reclamation will reinitiate the Section 106 review process for a SIRA when it is presented to the Secretary for consideration, participation in and prior to execution.
- b. The Section 106 review process for a SIRA will include an analysis of new facilities if required, or if the characteristics of existing facilities are altered or used differently;
- c. An analysis of lake and river levels on historic properties;
- d. Assessment of direct, indirect, and cumulative impacts to cultural resources that could result from use of the water in growth-related issues; and
- e. The Section 106 consultation process will involve Native Americans and interested parties.