



IN REPLY REFER TO:

United States Department of the Interior

BUREAU OF RECLAMATION
Yuma Area Office
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Yuma, Arizona 85364



YAO – 7210
ENV – 1.10

ENVIRONMENTAL DETERMINATION Drop 2 Reservoir Project

U.S. Department of the Interior
Bureau of Reclamation
Yuma Area Office

INTRODUCTION

Through this Environmental Determination (ED), the Bureau of Reclamation (Reclamation) is selecting the Proposed Alternative (Alternative 1) as the means of implementing the Drop 2 Reservoir Project (Project). The Project involves construction of an 8,000 acre-foot regulating reservoir located near Drop 2 of the All-American Canal in southern California. The purpose of the Project, which is being implemented pursuant to the Congressional mandate provided in Sections 396 and 397 of Public Law Number 109-432, 120 Stat. 2922, 3047 (Dec. 20, 2006), is to provide additional storage capacity to reduce nonstorable flows on the Colorado River below Parker Dam.

Nonstorable flows occur when Colorado River water exceeding user demand arrives at Imperial Dam and cannot be stored or rescheduled for delivery, either within the US or as a delivery to Mexico under the 1944 Treaty. Nonstorable flows can be caused by a number of events, such as flood flows, unexpected rainfall, or malfunctioning irrigation equipment. The Project will replace and enhance capacity to temporarily store these flows until they can be rescheduled for other deliveries.

CONGRESSIONAL MANDATE FOR THE PROJECT

Congress has charged Reclamation, acting on behalf of the Secretary of the Department of the Interior, with designing and implementing the Project pursuant to Section 396 of Public Law Number 109-432, 120 Stat. 2922, 3047 (Dec. 20, 2006). That Section provides:

Sec. 396. REGULATED STORAGE WATER FACILITY.

(a) Construction, Operation and Maintenance of Facility. – Notwithstanding any other provision of law, upon the date of enactment of this Act, the Secretary shall, without delay . . . design and provide for the construction, operation and maintenance of a regulated water storage facility (including all incidental works that are reasonably necessary to operate the storage facility) to provide additional storage capacity to reduce nonstorable flows on the Colorado River below Parker Dam.

(b) Location of Facility. – The storage facility (including all incidental works) described in subsection (a) shall be located at or near the All American Canal.

Section 396 directly addresses three aspects of the Project:

- **Project Specifications:** Congress mandated what the Project shall be used for: “to provide additional storage capacity to reduce nonstorable flows on the Colorado River below Parker Dam.” Congress also mandated what features shall be constructed: a “regulated water storage facility (including all incidental works that are reasonably necessary to operate the storage facility).” Finally, Congress mandated where these features shall be located: “at or near the All American Canal.”
- **Reclamation’s Role in the Project:** As a threshold matter, Congress has imposed mandatory duties on Reclamation through its use of the word “shall” in Section 396’s phrase stating that “the Secretary shall design and provide for the construction, operation and maintenance” of the Project. These mandatory duties are twofold. First, Section 396 mandates that Reclamation shall “design” the Project. Second, Section 396 mandates that Reclamation shall “provide for the construction, operation and maintenance” of the Project. Regarding this phrase, it is important to note that funding is expected to come from non-federal sources. Funding agreements with the appropriate parties will be necessary to further any such arrangements. Accordingly, the phrase “provide for the construction, operation and maintenance” is a Congressional mandate to enter into the agreements that will result in completion and eventual operation of the Project. For convenience, this document refers to “provide for the construction, operation and maintenance” as “implementation.”
- **Project Schedule:** Congress mandated that the Project must begin: “upon the date of enactment,” which was December 20, 2006. Congress also mandated how quickly the Project must proceed: “without delay.” Finally, Congress dictated how other laws, including environmental statutes, will apply when Reclamation is designing and implementing the Project: the Project shall proceed “notwithstanding any other provision of law.”

Reading Section 396 in its entirety, the statutory language is a nondiscretionary Congressional mandate to design and implement the Project immediately and in a manner that does not cause delay. Moreover, this mandate is an exemption from inconsistent statutory procedures. Section 396 is not a prohibition on purely voluntary environmental compliance procedures, so long as such voluntary procedures do not delay the statutory mandate to design and implement the Project immediately. Reclamation outlines several voluntary environmental commitments below.

Section 397 of Public Law Number 109-432, 120 Stat. 2922, 3047 (Dec. 20, 2006) provides:

The treaty between the United States of America and Mexico relating to the utilization of waters of the Colorado and Tijuana Rivers and of the Rio Grande, and supplementary protocol signed November 14, 1944, signed at Washington February 3, 1944 (59 Stat. 1219) is the exclusive authority for identifying, considering, analyzing, or addressing impacts occurring outside the boundary of the United States of works constructed, acquired, or used within the territorial limits of the United States.

Consistent with this statutory provision and International Boundary and Water Commission (IBWC) Minute No. 242, which provides that "...the United States and Mexico shall consult with each other prior to undertaking any new development of either the surface or the groundwater resources, or undertaking substantial modifications of present developments, in its own territory in the border area that might adversely affect the other country", consultations regarding this project are being undertaken within the IBWC. The United States Section of the IBWC has advised Reclamation to proceed with its planning activities for the Project (see Attachment A).

ENVIRONMENTAL ASSESSMENT

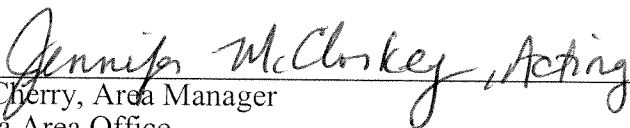
The attached Environmental Assessment (EA), which should be used as a companion document to this ED, describes the general design features of the Proposed Alternative and provides an analysis of its potential impacts. When Public Law Number 109-432 was passed on December 20, 2006, Reclamation had already accomplished considerable environmental research needed for completing a draft EA for the Project. Reclamation chose to complete the final EA because it provides the public with valuable information about the Project and because completion would not delay the Project. Specifically, the EA provides detailed analysis of potential effects on those resource areas identified as potentially affected by the alternatives considered, including the No Action Alternative. Where Reclamation identified potential effects on resources, it developed several best management practices (BMPs) to avoid, minimize, or compensate for those potential effects. Although Reclamation completed the EA, Section 396 eliminates the need to make a Finding of No Significant Impact.

ALTERNATIVE SELECTION & ENVIRONMENTAL COMMITMENTS

As noted above, Reclamation has selected the Proposed Alternative to implement the Project and satisfy its Congressional mandate. The general design features of the Proposed Alternative are described in the EA. Note that the EA does not provide detailed, engineering-level designs for the Proposed Alternative; these detailed designs will be developed at a later date as the Project proceeds.

As part of its decision, Reclamation will also implement several BMPs described in the EA as voluntary environmental commitments associated with the Project. As described above, Reclamation may undertake purely voluntary environmental commitments so long as they do not delay the Project. The summary below briefly describes each BMP and, where applicable, provides a reference to more detailed descriptions in the EA.

- Reclamation will ensure an uninterrupted water supply to IID and CVWD during construction. Reclamation will design, construct and operate the Project in a manner that will not restrict water orders or operations by IID or CVWD (page 3.1-10).
- To offset impacts to the Flat-Tailed Horned Lizard (FTHL), Reclamation will provide compensation in accordance with the Flat-Tailed Horned Lizard Management Strategy. Additionally, Reclamation will provide for the use of Field Biological Monitors and other BMPs as described in section 3.2 of the EA (page 3.2-19 *et seq.*).
- To offset potential cumulative biological impacts to the Limitrophe Division, Reclamation has coordinated with public and private organizations and provided funding for a restoration project in the Hunter's Hole area of the Limitrophe (page 4-7).
- Security and night lighting will be directed downward and inward through use of standard light shields or hoods toward the area to be illuminated, in order to minimize the aesthetic effects of off-site light and glare (page 3.3-8).
- To ensure that the Proposed Action produces less than significant air quality impacts, Reclamation will comply with the requirements of Imperial County Air Pollution Control District Regulation VIII, as outlined in Chapter 3.5 of the EA (page 3.5-1 *et seq.*).
- Cultural resources will be protected in accordance with Chapter 3.6 of the EA. Consultation with the California State Historic Preservation Officer has resulted in a finding of "no effect" for the Project (page 3.6-1 *et seq.*).



 Jim Cherry, Area Manager
 Yuma Area Office

 Date 11/1/07



OFFICE OF THE COMMISSIONER
UNITED STATES SECTION

INTERNATIONAL BOUNDARY AND WATER COMMISSION
UNITED STATES AND MEXICO

October 16, 2007

Ms. Lorri Gray
Regional Director, Lower Colorado Region
Bureau of Reclamation
Boulder City, NV 79902

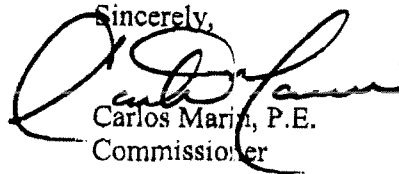
Dear Ms. Gray:

Thank you for your letter, dated July 12, 2007, requesting the USIBWC Section's assistance related to the U.S. Bureau of Reclamation proposed Drop 2 Project on the Colorado River. The U.S. Section would be pleased to assist Reclamation with any international aspects of this project.

The U.S. Section will ensure that discussions with the Mexican Section identify that the potential Drop 2 Project will replace regulatory storage previously utilized in Reclamation's Senator Wash facility. I suggest, therefore, that you proceed with planning activities for the Drop 2 Project. The U.S. Section will inform Reclamation regarding the outcome of discussions on this matter, will coordinate information sharing and provide any information or analysis that may be relevant to your ongoing planning processes.

I also appreciate your concern related to the confidentiality of USIBWC's diplomatic discussions. Reclamation may include this letter in any documents that are released to the public with respect to the Drop 2 planning efforts. Further the U.S. Section will advise Reclamation whether reports or analysis developed through discussions with the Mexican Section, if any, will be releasable to the public.

As always, my staff and I look forward to working with you on this matter. Please do not hesitate to call if we can assist you in any way or if you have any questions.

Sincerely,

Carlos Maria, P.E.
Commissioner