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## Colorado River Interim Surplus Guidelines, Notice Regarding Implementation of Guidelines

[Federal Register: June 19, 2002 (Volume 67, Number 118)]

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DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Colorado River Interim Surplus Guidelines, Notice Regarding Implementation of Guidelines

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice and correction.

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SUMMARY: The Colorado River Interim Surplus Guidelines (Guidelines) were adopted as a result of a Record of Decision signed by the Secretary of the Interior (Secretary) and published in the Federal Register on January 25, 2001 (66 FR 7772-7782). The Department of the Interior (Department) has received a number of informal comments and has identified issues regarding implementation of the Guidelines. This notice identifies and addresses these issues in order to facilitate a common understanding regarding the implementation of the Guidelines for calendar year 2003. This notice also corrects a typographical/computational error in the Guidelines as published in the Federal Register on January 25, 2001.

DATES: The Secretary is not proposing to take any specific action as a result of this Federal Register notice. Accordingly, the Department is not establishing a specific date by which comments must be submitted. The Secretary will also accept input on the issues addressed by this Federal Register notice through the process under which the Annual Operating Plan for the Colorado River System Reservoirs (AOP) is developed. This process includes consultation with the Colorado River

Management Work Group, a group that the Secretary consults with in order to carry out the provisions of section 602(b) of the Colorado River Basin Project Act of 1968 and section 1804(c)(3) of the Grand Canyon Protection Act of 1992.

ADDRESSES: You may submit written comments to the Regional Director, Lower Colorado Region, Attention: Jayne Harkins, Bureau of Reclamation, P.O. Box 61470, Boulder City, Nevada 89006-1470.

SUPPLEMENTARY INFORMATION: The Secretary, pursuant to applicable law including particularly the Boulder Canyon Project Act of December 28, 1928 (BCPA), and the Supreme Court opinion rendered June 3, 1963, and decree entered March 9, 1964 (Decree) in the case of Arizona v. California, et al., is vested with the responsibility to manage the mainstream waters of the Colorado River in the Lower Basin. In furtherance of this responsibility, the Department, through a notice published in the Federal Register on May 18, 1999 (64 FR 27008-09), initiated a process to develop specific criteria to identify those circumstances under which the Secretary would make Colorado River water available for delivery to the States of Arizona, California, and Nevada (Lower Division States or Lower Basin) in excess of the 7,500,000 acre-foot Lower Basin basic apportionment. The Department noted in that notice that "[i]n recent years, demand for Colorado River water in Arizona, California, and Nevada has exceeded the Lower Basin's 7,500,000 basic apportionment. As a result, criteria for determining the availability of surplus [water] has become a matter of increased importance." (64 FR 27009). In particular, California has been using water in excess of its 4.4 million acre-foot mainstream basic apportionment established in the BCPA for decades.

The Department, through a notice published in the Federal Register on January 25, 2001 (66 FR 7772-7782) notified the public that the Secretary signed a Record of Decision (ROD), regarding the preferred alternative for Colorado River Interim Surplus Guidelines on January 16, 2001. The Guidelines "implement Article III(3)(B) of the [Long Range Operating Criteria]" adopted pursuant to the Colorado River Basin Project Act of 1968 (as published in the Federal Register on June 10, 1970). (65 FR 78511).

Pursuant to section 3 of the Guidelines, the Secretary utilizes the "Guidelines to make determinations regarding Normal and Surplus conditions for the operation of Lake Mead \* \* \* " during "development of the Annual Operating Plan for the Colorado River System Reservoirs (AOP)." (66 FR 7781). The Secretary applied these Guidelines for the first time during the development of the 2002 AOP, signed by the Secretary on January 14, 2002.

In the period since adoption of the 2002 AOP, increasing attention has been focused on the provisions of the Guidelines and their application to AOP determinations that are upcoming for 2003. In particular, numerous entities have contacted the Department to discuss their views and concerns regarding the provisions of Section 5 of the Guidelines, entitled "California's Colorado River Water Use Plan Implementation Progress." (66 FR 7782).

This provision of the Guidelines was included in order to assist the Secretary in the execution of the Secretary's watermaster duties on the lower Colorado River, which include facilitating adherence to the Lower Basin's allocation regime. The relationship between efforts to reduce California's reliance on surplus deliveries and the adoption of

specific criteria to guide surplus determinations was established in the initial Federal Register notice announcing the potential development of surplus guidelines: ``Reclamation recognizes that efforts are currently underway to reduce California's reliance on surplus deliveries. Reclamation will take account of progress in that effort, or lack thereof, in the decision-making process regarding specific surplus criteria.'' (64 FR 27009). This concept was embodied in the purpose of and need for the Federal action as analyzed in Reclamation's Environmental Impact Statement regarding adoption of the Guidelines: ``Adoption of the [Guidelines] is intended to recognize California's plan to reduce reliance on surplus deliveries, to assist California in moving toward its allocated share of Colorado River water, and to avoid hindering such efforts. Implementation of [the Guidelines] would take into account progress, or lack thereof, in California's efforts to achieve these objectives.'' Final Environmental Impact Statement at 1-3 to 1-4.

Sections 5(B) and 5(C) of the Guidelines established independent conditions for performance of certain actions by entities in California, and the

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implications for surplus determinations in the event that the conditions for performance are not met.

Section 5(B) of the Guidelines specifically addresses California's Quantification Settlement Agreement (QSA), a proposed agreement among the Imperial Irrigation District, the Coachella Valley Water District, the San Diego County Water Authority and The Metropolitan Water District of Southern California. The QSA is a critical agreement among the California parties to reduce California's reliance on surplus water from the Colorado River. The QSA addresses the use and transfer of Colorado River water for a period of up to seventy-five years.

With respect to execution of the QSA, section 5(B) of the Guidelines states: ``It is expected that the California Colorado River contractors will execute the Quantification Settlement Agreement (and its related documents) \* \* \* by December 31, 2001.'' (66 FR 7782). The parties were unable to execute the QSA by this date, and over the past year, there has been increasing concern regarding the ability of the California Colorado River contractors to execute the QSA by the end of this year. Failure to execute the QSA by the end of 2002 is specifically addressed by section 5(B) of the Guidelines: ``In the event that the California contractors and the Secretary have not executed [the Quantification Settlement Agreement (and its related documents)]

by December 31, 2002, the interim surplus determinations under Sections 2(B)(1) and 2(B)(2) of these Guidelines will be suspended and will instead be based upon the 70R Strategy, for either the remainder of the period identified in Section 4(A) or until such time as California completes all required actions and complies with reductions in water use reflected in Section 5(C) of these Guidelines, whichever occurs first.'' (66 FR 7782).

In light of the concern regarding the ability of the California Colorado River contractors to execute the QSA by the end of 2002, increasing attention has focused on the specific requirements of this section of the Guidelines. Some informal commentators have suggested that

failure to execute the QSA would have no consequence for surplus determinations for 2003 under the Guidelines. Other commentors have observed that the Guidelines would be terminated if the QSA and its related documents were not executed by December 31, 2002. Such suggestions are inconsistent with the plain language of the Guidelines as adopted.

The Department observes that the Guidelines specifically provide that ``In the event that the California contractors and the Secretary have not executed such agreements by December 31, 2002, the interim surplus determinations under sections 2(B)(1) and 2(B)(2) of these Guidelines will be suspended and will instead be based upon the 70R Strategy \* \* \* '' (66 FR 7782) (emphasis added). Therefore, in the event that the QSA and its related documents are not executed by December 31, 2002, as provided above, the ``determinations under sections 2(B)(1) and 2(B)(2) of these Guidelines will be suspended.'' (66 FR 7782). This suspension, under section 5(B) of the Guidelines does not suspend or terminate the Guidelines as a whole; rather, in the event of a suspension, surplus determinations are limited to sections 2(A)(1), 2(B)(3) and 2(B)(4).

Nothing in this notice is intended to address or limit the appropriate circumstances for reinstatement of sections 2(B)(1) and 2(B)(2) as the bases for annual surplus determinations. Reinstatement of these sections of the Guidelines will be made in accordance with the provisions of section 5(B), which provides that in the event of a suspension, the 70R Strategy will be the basis for surplus determinations ``for either the remainder of the period identified in Section 4(A) [i.e., until December 31, 2015] or until California completes all required actions and complies with reductions in water use reflected in section 5(C) of the[] Guidelines, whichever occurs first.'' (66 FR 7782) (emphasis added).

Section 5(C) addresses the other conditions for performance of certain actions by entities in California, i.e., the specific Benchmark Quantities that California agricultural ``use would need to be at or below'' at the end of the specified calendar years. The Benchmark dates are established in three year intervals beginning in 2003.

As with the requirements in section 5(B), section 5(C) also establishes the implications for surplus determinations in the event that the Benchmark quantity conditions for performance are not met.

One of the benefits of adoption of the Guidelines was to provide ``more predictability to States and water users'' with respect to ``the Secretary's annual decision regarding the quantity of water available for delivery to the Lower Basin States.'' (64 FR 27009).

In light of the above identified concern with respect to the likelihood regarding execution of the QSA by the date established in section 5(B) of the Guidelines, one of the issues that the Secretary will be analyzing in the period between this notice and January 1, 2003 (the statutory date for transmittal of the 2003 AOP, pursuant to 43 U.S.C. Sec. 1552(b)), will be the impact on Lower Basin users, particularly in Nevada, in the event that the Guidelines are suspended pursuant to the provisions of section 5(B).

The relevant considerations with respect to this issue include the following: (1) The ability of lower basin entities outside of California, to affect compliance with the section 5(B) requirements, (2) the need of other lower basin entities outside of California, to utilize surplus quantities in 2003 (and the relative amounts of such

surplus quantities), (3) impacts on storage of water in the Colorado River reservoirs, and the impact on future deliveries to users of the waters of the Colorado River under applicable provisions of federal law and international treaty, (4) impacts on California's ability to meet applicable conditions for reinstatement of the determinations under sections 2(B)(1) and 2(B)(2).

The Department corrects a typographical/computational error in the Guidelines as published in the Federal Register on January 25, 2001. Specifically, the correction would replace the value of 100,000 acre-feet that appears in section 2(B)(1)(a) with the value of 120,000 acre-feet.

The basis for this correction is as follows. The Federal Register notice published on January 25, 2001 states that the decision made by the Secretary is ``adoption of specific interim surplus guidelines identified in the Preferred Alternative (Basin States Alternative) as analyzed in the FEIS.'' (66 FR 7773). Reclamation had earlier published information that Reclamation had received from the Colorado River Basin states of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming during the public comment period'' on the proposed adoption of the Guidelines. (65 FR 48531-48538). Reclamation crafted an alternative based on this information, which was ultimately identified as the preferred alternative.

As submitted to the Department, and published in the Federal Register, the information from the basin states provided in section IV(B)(1)(a) with respect to Direct Delivery Domestic Use by MWD, that offsets ``shall not be less than 400,000 af in 2001 and will be reduced by 20,000 af/yr over the Interim Period so as to equal 100,000 af in 2016.'' (65 FR 48536). When the ROD was prepared, the Department modified this provision of the proposed alternative to take into account that the Guidelines would not be in effect for 2001 AOP determinations, and would

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first be applied for 2002 determinations. Accordingly, the year was modified in this provision from 2001 to 2002. (66 FR 7780). However, when this change was incorporated into the ROD, the Department did not modify the corresponding value for the end date (i.e., in year 2016). The computation of a reduction of 20,000 af/year during the interim period yields a final value of 120,000 rather than the published value of 100,000.

Dated: June 13, 2002.  
Bennett W. Raley,  
Assistant Secretary--Water and Science.  
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Last updated on Thursday, March 29th, 2007

URL: <http://www.epa.gov/fedrgstr/EPA-IMPACT/2002/June/Day-19/i15470.htm>