

6.c. - Colorado River Operations



# United States Department of the Interior

## BUREAU OF RECLAMATION

Lower Colorado Regional Office

P.O. Box 61470

Boulder City, NV 89006-1470



IN REPLY REFER TO:

LC-4226

WTR-4.03

DEC 04 2009

CERTIFIED – RETURN RECEIPT REQUESTED

Mr. Gerald R. Zimmerman  
Executive Director  
Colorado River Board of California  
770 Fairmont Avenue, Suite 100  
Glendale, CA 91203-1035

Subject: Transmittal of the Interim Determination by the Secretary of the Interior of the Quantity of Water Conserved by Reaches 1, 2, and 3 of the All-American Canal Lining Project (AACLP) and the Amount of Water Available for Allocation (Interim Determination)

Dear Mr. Zimmerman:

Enclosed is the Interim Determination which is developed in accordance with Section 204 of Public Law 100-675 and Article 5 of the Allocation Agreement Among the United States of America, The Metropolitan Water District of Southern California, Coachella Valley Water District, Imperial Irrigation District, San Diego County Water Authority, the La Jolla, Pala, Pauma, Rincon, and San Pasqual Bands of Mission Indians, the San Luis Rey River Indian Water Authority, the City of Escondido, and the Vista Irrigation District. This Interim Determination supersedes the Interim Determination for Reaches 2 and 3 of the AACLP issued on February 6, 2009.

If you have questions regarding the Interim Determination, please contact Mr. Paul J. Matuska at 702-293-8164.

Sincerely,

Lorri Gray-Lee  
Regional Director

Enclosure

Identical Letters Sent To:

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(w/encl to ea)

**Interim Determination by the Secretary of the Interior of the Quantity of Water  
Conserved by the All-American Canal Lining Project  
and the Amount of Water Available for Allocation**

**Introduction**

Section 204 of Public Law (P.L.) 100-675 provides that the Secretary of the Interior (Secretary) shall determine the quantity of the water conserved as a result of the All-American Canal Lining Project (AACLP). The Secretary has delegated to the Regional Director, Lower Colorado Region, authority to make the Interim Determination.

On October 10, 2003, an Allocation Agreement<sup>1</sup>, prepared as part of the Quantification Settlement Agreement in California, was executed by the United States of America, and representatives of the Metropolitan Water District of Southern California, the Coachella Valley Water District, the Imperial Irrigation District (IID), the San Diego County Water Authority (SDCWA), the La Jolla, Pala, Pauma, Rincon, and San Pasqual Bands of Mission Indians, the San Luis Rey River Indian Water Authority, the City of Escondido, and the Vista Irrigation District. Exhibit A, appended to the Allocation Agreement, listed the estimated water yield from lining each of Reaches 1, 2, and 3 of the AACLP. The Secretary signed the Allocation Agreement on behalf of the United States and in effect the Allocation Agreement included the determination that the amount of water from the AACLP available for allocation would be 67,700 acre-feet per year, distributed by reach as shown in Exhibit A of that agreement. Article 5.2 of the Allocation Agreement provides that, at the completion of construction of the lining of each reach of the AACLP, the Secretary will send a notice of reach completion and will include a determination of the amount of water available for allocation as a result of lining that reach.

The Secretary, through the Bureau of Reclamation, hereby makes an Interim Determination of the future annual quantity of water available for allocation from the AACLP, and the 2009 partial-year quantity of water available for allocation. This Interim Determination supersedes the Interim Determination for Reaches 2 and 3 of the AACLP issued on February 6, 2009.

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<sup>1</sup> Allocation Agreement Among the United States of America, The Metropolitan Water District of Southern California, Coachella Valley Water District, Imperial Irrigation District, San Diego County Water Authority, the La Jolla, Pala, Pauma, Rincon, and San Pasqual Bands of Mission Indians, the San Luis Rey River Indian Water Authority, the City of Escondido, and Vista Irrigation District, October 10, 2003.

The specific purpose of this Interim Determination is to:

1. confirm the determination that the full-year annual amount of water available for allocation from the AACLP is 67,700 acre-feet per year as set forth in Exhibit A of the Allocation Agreement;
2. confirm the allocation of the full year amount of water among participating entities;
3. make a determination of the amount of water available for allocation in 2009 under conditions of partial completion of the AACLP; and
4. make a determination of the allocation of the water available in 2009 among participating entities.

This Interim Determination is effective upon the date of signature, but is temporary in nature, pending the completion of the construction of the AACLP and transfer of the completed works to an operation and maintenance (O&M) status.

### **Background**

The Parallel Canal Alternative is the preferred alternative in the AACLP Final Environmental Impact Statement/Environmental Impact Report (FEIS/EIR), published in March 1994, and is the alternative that is selected within the AACLP Record of Decision (ROD) (May 1994). The Geohydrology Appendix was prepared by Reclamation in May 1991 and published in March 1994. A reevaluation of the environmental assessments in the 1994 FEIS/EIR was published by Reclamation in January 2006, which did not alter the decision in the ROD to implement the construction of the Parallel Canal Alternative.

The new concrete lined canal is being constructed parallel to the existing 23 miles of the earthen All-American Canal (AAC), beginning approximately one mile downstream of Pilot Knob and ending at Drop 3 according to the Parallel Canal Alternative. Construction design decisions will result in leaving unlined approximately 350 feet of canal under the first Interstate 8 bridge over the AAC and approximately 2,550 feet immediately downstream of Drop 1.

### **Discussion**

The parallel canals in Reaches 2 and 3 of the AACLP were completed and placed in service in 2008. As of the date of this Interim Determination, Reclamation has not issued Notice of Project Completion for Reaches 2 and 3, and Reaches 2 and 3 have not been transferred from construction status to O&M status. The parallel canal in Reach 1 has been constructed in three segments, which were placed in service in 2009. As of the date of this Interim Determination, all the tie-ins between the existing AAC structures and Interstate 8 highway bridge crossings and the new lined canal have not been completed. Reach 1 contract work has not progressed to the point that a notice of completion may be issued by IID.

**Secretarial Determination of the Full-Year Water Conserved by the Works of the AACLP and Available for Allocation**

After consultation with the California Contractors<sup>2</sup>, and in accordance with Section 204 of P.L. 100-675 and Section 5.3 of the Allocation Agreement, the amount of water available for allocation as a result of the AACLP is determined to be as follows:

1. The amount of water available for allocation from the AACLP is confirmed to be 67,700 acre-feet per year, unless reduced by uncontrollable force or Colorado River shortage conditions, as described in the Allocation Agreement.
2. The amount of water allocated to SDCWA and the San Luis Rey Settlement parties, minus the amount, if any, delivered to IID, shall be as described in the Allocation Agreement.

**Future Secretarial Reevaluation of the Water Conserved by the AACLP and Available for Allocation**

In accordance with Section 204 of P.L. 100-675, the Secretary shall determine the quantity of water conserved by the works and may revise such determination at reasonable intervals based on such information as the Secretary deems appropriate. Such initial determination and subsequent revision shall be made in consultation with the California Contractors as defined in P.L. 100-675.

**Partial-Year Determination of Water Available for Allocation in 2009 from the AACLP**

The amount of water available for allocation from the AACLP in 2009 will consist of the following items, which together amount to less than the full-year amount available for allocation from the entire AACLP.

- Full-year amount of water available for allocation from Reach 2
- Full-year amount of water available for allocation from Reach 3
- Partial-year amount of water available for allocation from Reach 1

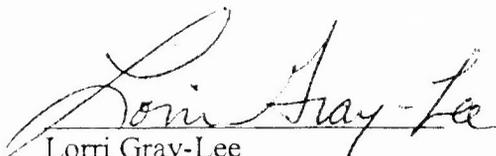
The amounts of water available in 2009 are determined to be as follows:

1. The 2009 full-year amounts of water available for allocation from Reaches 2 and 3 are 14,700 and 2,150 acre-feet per year, respectively, as cited in Exhibit A to the Allocation Agreement.

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<sup>2</sup> California Contractors as defined by P.L. 100-675 includes the Palo Verde Irrigation District, IID, the Coachella Valley Water District, and The Metropolitan Water District of Southern California.

2. During 2009, segments of Reach 1 were placed in service on three dates, which are the effective dates for calculation of the amount of water conserved by segments of Reach 1 that were defined during construction as:
  - Reach 1A: January 9, 2009;
  - Reach 1B, Sections B2 and B3: February 8, 2009; and
  - Reach 1B, Section B1: February 26, 2009.
3. The partial-year amount of water available for allocation in 2009 from Reach 1 is calculated with the formula described in Exhibit A. The amount of water so calculated is 48,727 acre-feet, as shown in Appendix 1 to this Interim Determination.
4. The amount of water available for allocation during 2009 from the AACLP is 65,577 acre-feet (48,727 + 14,700 + 2,150).
5. Pursuant to Article 7 of the Allocation Agreement, the Secretary shall deliver for the benefit of the San Luis Rey Settlement Parties, 17 percent of the water determined to be available for allocation in 2009 because of the AACLP. This amount is calculated to be 11,148 acre-feet of water.
6. From the water determined to be available for allocation in 2009, the Secretary shall deliver 54,429 acre-feet to SDCWA.

  
Lorri Gray-Lee  
Regional Director

12/4/09  
Date

## References

- Bookman-Edmonston in Association with MWH, All-American Canal Lining Project, Drawings for the Construction of the All-American Canal Lining Project, June 2006.
- Bureau of Reclamation, All-American Canal Lining Project, Final Environmental Impact Statement/Environmental Impact Report, March 1994.
- Bureau of Reclamation, All-American Canal Lining Project, Final Environmental Impact Statement/Environmental Impact Report, Geohydrology Appendix, March 1994.
- Bureau of Reclamation, All-American Canal Lining Project, Supplemental Information Report, January 2006.

**Appendix 1**  
**All American Canal Lining Project**  
**Reach 1 Partial Year Water Yield Available for Allocation in 2009**

Segment of Reach 1	In-Service Date	Cumulative Flow at In-Service Date (ac-ft)	2009 Total Flow Forecast (ac-ft)	Ratio of Remaining 2009 Flow to Total Flow	Percentage of Reach 1 Water Yield in Each Segment of Reach 1	Full Year Water Yield per Allocation Agreement Exhibit A (af/yr)	Partial Year Water Yield in 2009 (ac-ft)
<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>	<i>Column 5</i>	<i>Column 6</i>	<i>Column 7</i>	<i>Column 8</i>
Reach 1A	1/9/2009	36,496	2,935,441	0.9876	58%	29,493	<b>29,126</b>
Reach 1B, Section B1	2/26/2009	298,775	2,935,441	0.8982	16%	8,136	<b>7,308</b>
Reach 1B, Section B2 & B3	2/8/2009	206,086	2,935,441	0.9298	26%	13,221	<b>12,293</b>
<b>Totals</b>					100%	50,850	<b>48,727</b>

Explanation of Columns

1. These are segments of Reach 1 that were defined in the construction program.
2. Date on which the segment of canal became operational.
3. Flow passing Pilot Knob at canal Sta. 1117+00 in 2009 through the day before the In-Service date. The flow data is from the IID 660 Report for January and February 2009.
4. Projected full-year flow forecast at canal Sta. 1117+00 in 2009 for delivery to IID, CVWD, and Salton Sea Project from Reclamation's Forecast Web page (forecast dated October 13, 2009.)
5. The calculation for this ratio is: (Column 4 - Column 3) ÷ Column 4
6. These percentages are based on the relative losses from the three sections of Reach 1.
7. The breakdown of Reach 1 water on Exhibit A of Allocation Agreement, based on percentages in Column 6.
8. The calculation for this ratio is: Column 7 x Column 5

Attribution

These calculations were made according to the procedure described in Exhibit A of the Allocation Agreement. Reclamation's Forecast Web page is accessible at <http://www.usbr.gov/lc/region/g4000/hourly/forecast09.pdf>, and was accessed on October 14, 2009.



# United States Department of the Interior

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Boulder City, NV 89006-1470



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CERTIFIED - RETURN RECEIPT REQUESTED

Mr. Roger K. Patterson  
Assistant General Manager  
The Metropolitan Water District  
of Southern California  
P.O. Box 54153  
Los Angeles, CA 90054-0153

Subject: Approval of The Metropolitan Water District of Southern California (MWD) Plan for the Creation of Extraordinary Conservation Intentionally Created Surplus (ICS) for Calendar Year 2009

Dear Mr. Patterson:

The Bureau of Reclamation has received MWD's ICS plan in a letter dated September 14, 2009. Based upon Reclamation's review of MWD's ICS plan and completion of the Basin States consultation process, Reclamation hereby approves MWD's plan for the creation of up to 100,000 acre-feet of extraordinary conservation ICS for 2009. The factors Reclamation considered in reviewing MWD's ICS plan are discussed below.

The Secretary of the Interior issued a Record of Decision (ROD) on December 13, 2007, for Colorado River Interim Guidelines for Lower Basin Shortages and the Coordinated Operations for Lake Powell and Lake Mead (Interim Guidelines). Among other things, the Interim Guidelines establish criteria for the development and delivery of ICS. Prior to creating ICS, the Interim Guidelines require a contract holder to enter into a Delivery Agreement with the Secretary and a Forbearance Agreement with Arizona, Nevada, and certain California contract holders. On December 13, 2007, MWD entered into the necessary delivery and forbearance agreements.

Also, on December 13, 2007, the Palo Verde Irrigation District, MWD, Coachella Valley Water District, The Imperial Irrigation District, and the City of Needles entered into the California Agreement for the Creation and Delivery of Extraordinary Conservation Intentionally Created Surplus (California ICS Agreement). The California ICS Agreement discusses the amount of ICS that MWD can create in a given year and in total. Although Reclamation is not a party to the California ICS Agreement, Reclamation verified that the ICS plan submitted by MWD does not exceed the limits set forth in the California ICS Agreement.

Reclamation's review of MWD's ICS Plan confirmed that it contains the following information required by Section 3.B.2 of the Interim Guidelines:

- a. Project description, including what extraordinary measures will be taken to conserve or import water.
- b. Term of activity.
- c. Estimate of the amount of water that will be conserved or imported.
- d. Proposed methodology for verification of the amount of water conserved or imported.
- e. Documentation regarding any state or Federal permits or other regulatory approvals that have already been obtained by the contractor or that need to be obtained prior to creation of ICS.

The Interim Guidelines provide for the submittal of a certification report by MWD to Reclamation, in the year following creation of the ICS, to demonstrate the amount of ICS created and that the method of creation was consistent with the approved ICS plan. Any technical issues associated with the actual creation of the ICS will be addressed during the verification process described in Section 3.D.2 of the Interim Guidelines.

If you have questions, please contact Mr. Paul Matuska at 702-293-8164.

Sincerely,



Lorri Gray-Lee  
Regional Director

cc: Mr. Gerald Zimmerman  
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Continued on next page.

cc: Continued from previous page.

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Friday, December 11, 2009

## California judge tentatively invalidates Colorado River water use agreement

Jaclyn Belczyk at 9:46 AM ET



[JURIST] A California judge on Thursday tentatively **ruled** [opinion, PDF] that a 2003 Colorado River water use agreement is invalid. The agreement settled a dispute over how to divide the Colorado River between California and six other states: Arizona, Colorado, Nevada, New Mexico, Utah, and Wyoming. Under the agreement, California would significantly reduce the amount of water diverted from farms to California cities over the course of 75 years. Judge Roland Candee of the **Sacramento County Superior Court** [official website] tentatively found that the agreement was invalid because the state of California agreed to pay to restore the Salton Sea in southeastern California without putting a limit on spending. Candee wrote:

The focus under the facts of these coordinated proceedings is on whether "the Contracts, and each and every portion of such Contracts, are valid, legal and binding and are ... in conformity with all applicable provisions of law ..." The question is, accordingly, whether the State obligation ... withstands judicial scrutiny under a contract validation action standard. ... The answer again must be "no". To hold otherwise would point out, for all to see, a way to contract around the constitutional debt prohibition and the constitutional requirement for an appropriation before expenditure found in our Constitution.

Candee will hold a hearing next week to decide whether to make the ruling final.

Under the agreement, Imperial Valley, the state's largest consumer of Colorado River water, would have to sell up to 90 billion gallons a year to San Diego. The **Imperial Irrigation District** [website] had asked Candee to approve the agreement in order to avoid future legal challenges. Opponents, including many Imperial Valley landowners, argued that the state's commitment to pay to restore the Salton Sea could have cost the state as much as \$60 million.



# The Mercury News

MercuryNews.com

## Judge tentatively invalidates West water pact

By ELLIOT SPAGAT Associated Press Writer

Posted: 12/10/2009 11:08:18 PM PST

Updated: 12/10/2009 11:09:13 PM PST

SAN DIEGO—A California judge on Thursday tentatively invalidated a landmark pact to curtail the state's overuse of water and allow other Western states to claim their fair share.

The 2003 agreement ended of years of bickering over how to divide the Colorado River between California and six western states: Arizona, Colorado, Nevada, New Mexico, Utah and Wyoming.

More than 30 million acre-feet of water—enough to cover the state of Pennsylvania a foot deep—would move from farms to cities in Southern California over the 75-year life of the deal.

Superior Court Judge Roland Candee ruled in Sacramento that the state improperly agreed to pick up much of the cost of saving the shrinking Salton Sea in the southeastern California desert. Restoring the state's largest lake was a crucial piece of the agreement.

The state put no limit on costs, "even if they ultimately amounted to millions or billions of dollars," violating a constitutional limit on assuming debts, Candee wrote.

"The Court has no ability to sanction a way to contract around the Constitution," he wrote.

The judge will hear arguments next Thursday to decide whether to make the ruling final.

Cities like San Diego and Los Angeles were taking billions of extra gallons of Colorado River water over the years, angering other Western states. The pact outlined a plan for California to wean itself.

Much of the water affected by the deal goes to San Diego. It calls for Imperial Valley, California's biggest user of Colorado River water, to sell as much as 90 billion gallons each year to San Diego—roughly a third of the city's future water needs.

Kevin Kelley, spokesman for the Imperial Irrigation District, said the ruling "might have the makings of a perfect storm" if it is upheld.

The San Diego County Water Authority board will consider its next steps at a board meeting next week, said Dennis Cushman, assistant general manager.

"The water is flowing and will continue to flow indefinitely until the legal issues are sorted out," he said. "There's no panic button to press right now."

Imperial asked the judge to bless the agreement, a tactic to blunt legal challenges from landowners and other opponents.

Critics challenged the state's commitment to pay for restoring the Salton Sea, which is fed by Colorado River irrigation channels. Four Southern California water agencies had agreed to cap their costs at \$133 million. The state would pick up the rest.

One estimate in court documents pegged the total cost at \$193 million, which would leave the state on

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the hook for \$60 million.

Malissa McKeith, an attorney representing Imperial Valley landowners, called the ruling a "fatal blow" to the deal.

A spokesman for California Attorney General Jerry Brown, Evan Westrup, did not immediately respond to a request for comment Thursday night.