

THE LOWER COLORADO WATER SUPPLY ACT
P.L. 99-655; P.L. 109-103

Background

Use of Colorado River water within California is subject to rules and regulations, laws, decrees of the U.S. Supreme Court, contracts, agreements and an international treaty collectively known as the “Law of the River”. Consumptive use of Colorado River water is defined in the Supreme Court’s Arizona v. California decree, (547 U.S. 150 (2006)), as: “diversions from the mainstream less such return flow thereto as is available for consumptive use in the United States or in satisfaction of the Mexican treaty obligation.” Section 5 of the Boulder Canyon Project Act of 1928 (45 Stat. 1057) provides that water from the Colorado River downstream of Lee Ferry, Arizona, including reservoirs on the Colorado River, shall be released or delivered to water users, including but not limited to public and municipal corporations and other public agencies in Arizona, California, and Nevada only pursuant to valid water contracts from the Secretary of the Interior. This requirement applies to all diversions of water from the Colorado River, whether it is diverted directly from the River or through groundwater wells that are withdrawing Colorado River water.

In 1986, Congress enacted the Lower Colorado Water Supply Act of 1986 (LCWSA) (Public Law 99-655) as a mechanism to enable water users within California without contracts or with contracts for an insufficient amount of water to collectively obtain by exchange up to 10,000 acre-feet of water per year from the Colorado River for existing and future uses within California. The LCWSA authorized the U.S. Bureau of Reclamation (Reclamation) to construct the Lower Colorado Water Supply Project (Project). The Project consists of well-field facilities in the Sand Hills area along the All-American Canal in Imperial County. The purpose of the Project is to “supply water for domestic, municipal, industrial, and recreational purposes only.” Supplying water for agricultural use is not an authorized purpose of the Project. The LCWSA limits the eligible Project beneficiaries “to persons or Federal or non-Federal governmental agencies whose lands or interests in lands are located adjacent to the Colorado River in the State of California, who do not hold rights to Colorado River water or whose rights are insufficient to meet their present or anticipated future needs as determined by the Secretary.”

In 2005, the LCWSA was amended to authorize the Secretary of the Interior to enter into an agreement with the City of Needles for the design and construction of Stage 2 of the Project that will add 5,000 acre-feet of capacity to bring the Project to its full, authorized capacity. The amendment further authorized the Secretary to contract with additional entities who hold Section 5 contracts for municipal and industrial uses within the State of California for the use of any unused Project water (Public Law 109-103, Sec. 203).

The City of Needles has a contract with the Department of the Interior to utilize Colorado River water in excess of its present perfected right through an exchange agreement between

Reclamation, the Imperial Irrigation District (IID) and the Coachella Valley Water District (CVWD). Through the exchange agreement, IID has agreed to reduce its diversions from the Colorado River in the amount necessary to offset the amount of water needed to fulfill Project contracts, up to a maximum of 10,000 acre-feet per year. In exchange, IID receives an equivalent amount of groundwater pumped from the Project well field located in Imperial County, California. Water is pumped from the well field and discharged into the All-American Canal for delivery to IID and CVWD.

In addition to supplying water for its own municipal and industrial needs, the City of Needles acts as a Project Administrator for the Project to enable other eligible water users to subcontract for the use of Colorado River water subject to Project availability. Available Project capacity is determined by the City of Needles and Reclamation. Reclamation must approve all subcontracts between the City of Needles and additional water users. In exchange for obtaining the contract right to utilize water, subcontractors provide funding to repay the cost of constructing the Project facilities, plus interest, and the costs associated with Project administration, operation, maintenance and replacement.

The availability of Project water is contingent upon the ability of the Project well field to pump water into the All-American Canal in sufficient quantity and of acceptable quality in accordance with the LCWSA and the *Contract Among the United States, Imperial Irrigation District, and Coachella Valley Water District for Exchange of Water From The Lower Colorado Water Supply Project Well Field for Colorado River Water* dated May 22, 1992, as amended (“All-American Canal Exchange Contract”). None of the parties to the All-American Canal Exchange Contract assumes responsibility with respect to the quantity or quality of the water pumped from Project wells for discharge into the All-American Canal and none are under any obligation to construct or furnish facilities except those expressly authorized under the LCWSA.

Procedures to Obtain a Subcontract from the City of Needles to receive water through the Lower Colorado Water Supply Project

The Colorado River Board of California (CRB) reviews applications for use of Colorado River water by exchange for Project water and makes a recommendation to Reclamation as to whether a subcontract should be approved. Persons interested in obtaining a subcontract for Project water should submit an application to the CRB. The CRB will review the following information in evaluating applications for a subcontract:

- (1) Place of Use: The CRB will verify that the place of consumptive use for the proposed use of Project water is within California.
- (2) Point of Diversion of Colorado River Water: The CRB will determine whether the applicant is diverting directly from the Colorado River, or in the case of a request to

divert groundwater, whether the applicant's well or wells are potentially withdrawing water that is replaced by water from the Colorado River.

Water withdrawn from wells located within the flood plain of the Colorado River will be deemed to be diverting water from the Colorado River. Wells located outside of the flood plain of the Colorado River, but within the "accounting surface area" that have a static water-level elevation near (within ± 0.84 feet at the 95-percent confidence interval), equal to, or below the accounting surface are presumed to yield water that will be replaced by water from the River. Wells that have a static water-level elevation above the accounting surface are presumed to yield water that will be replaced by water from precipitation and inflow from tributary valleys. The accounting surface area represents the extent of the unconfined static water table in the aquifer adjacent to and outside the Colorado River flood plain. Wells located outside of the flood plain of the Colorado River and outside the accounting surface area will be deemed not to be diverting water from the Colorado River and no subcontract for the use of Colorado River water will be required or recommended. The "accounting surface area" has been defined by the U.S. Geological Survey in its Scientific Investigations Report 2008-5113, which may be found at <http://pubs.usgs.gov/sir/2008/5113/>.

- (3) Purpose of Use: The CRB will consider whether the applicant is consumptively using, or proposing to consumptively use, Colorado River water for a domestic, municipal, industrial or recreational purpose, which are the only uses of Project water permitted under the Act.
- (4) Quantity of Water Requested: The CRB will review the quantity of water requested for current and/or future use and determine whether sufficient capacity is available from the Project.