definition of ''object of cultural patrimony'' under Section 2 of the Act.

The item is an Apache *Gaan* ceremonial headdress of painted wood and cloth.

During the 20th century, this headdress was collected in Arizona. In 1978, this headdress was donated to the Desert Caballeros Western Museum by Henry Frick.

This headdress has been verified to be San Carlos Apache by representatives of the San Carlos Apache Tribe, the White Mountain Apache Tribe, the Tonto Apache Tribe, and the Yavapai-Apache Nation of the Camp Verde Reservation. The San Carlos Apache Tribe have documented that this item has ongoing traditional and cultural importance to the tribe and could not have been conveyed by any individual tribal member.

Based on the above-mentioned information, officials of the Desert Caballeros Western Museum have determined that, pursuant to 43 CFR 10.2 (d)(3), these cultural items are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of the Desert Caballeros Western Museum have also determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between this item and the San Carlos Apache Tribe.

This notice has been sent to officials of the San Carlos Apache Tribe, the White Mountain Apache Tribe, the Tonto Apache Tribe, and the Yavapai-Apache Nation of the Camp Verde Reservation. Representatives of any other Indian tribe that believes itself to be culturally affiliated with this object should contact Sheila Kollasch, Curator, Desert Caballeros Western Museum, 21 North Frontier St., Wickenburg, AZ 85390; telephone (520) 684–2272 before March 26, 1998. Repatriation of this object to the San Carlos Apache Tribe may begin after that date if no additional claimants come forward.

Dated: February 18, 1998.

Veletta Canouts,

Acting Departmental Consulting Archeologist,

Deputy Manager, Archeology and Ethnography Program.

[FR Doc. 98–4685 Filed 2-23; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains from Camp Verde, AZ in the Possession of Arizona State Parks, Phoenix, AZ

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43CFR 10.9, of the completion of an inventory of human remains from Camp Verde, AZ in the possession of Arizona State Parks, Phoenix, AZ

A detailed assessment of the human remains was made by Arizona State Parks professional staff in consultation with representatives of the Yavapai-Apache Nation of the Camp Verde Reservation.

In 1970, human remains representing one individual were acquired by Arizona State Parks from the Camp Verde Historical Society. This individual has been identified as Del-che, an Apache man killed in 1874. No associated funerary objects are present.

In 1874, Del-che was killed and his head was brought in to Fort Verde where his death was confirmed by the U.S. Army. Dr. James Reagles was the fort surgeon at the time, and retained possession of Del-che's skull. Following Dr. Reagles' death, his son, Walter J. Reagles had possession of the skull until it's donation to the Camp Verde Historical Society around 1943.

Based on the above mentioned information, officials of the Arizona State Parks have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of the Arizona State Parks have also determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and the Yavapai-Apache Nation of the Camp Verde Reservation.

This notice has been sent to officials of the Yavapai-Apache Nation of the Camp Verde Reservation. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Cathy Johnson, Historic Resources Manager/Archaeologist, 1300 West Washington, Phoenix, AZ 85007; telephone: (602) 542–6951, fax: (602) 542–4180, before March 26, 1998. Repatriation of the human remains to the Yavapai-Apache Nation of the Camp Verde Reservation may begin after that date if no additional claimants come forward.

Dated: February 18, 1998.

Veletta Canouts,

Acting Departmental Consulting Archeologist,

Deputy Manager, Archeology and Ethnography Program.

[FR Doc. 98–4684 Filed 2-23-98 ; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Review of Existing Coordinated Long-Range Operating Criteria for Colorado River Reservoirs (Operating Criteria)

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of final decision regarding the operating criteria.

SUMMARY: The purpose of this action is to provide public notice that the Secretary of the Interior (Secretary) has decided not to change the existing Operating Criteria as a result of the recently completed review process. The review has been conducted as an open public process, including formal consultation with the seven Colorado River Basin States (Basin States). The results of the review indicate that modification of the Operating Criteria is not justified at the present time.

EFFECTIVE DATE: February 18, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Bruce Moore, Bureau of Reclamation, 125 South State Street, Room 6107, Salt Lake City, Utah 84138–1102, telephone (801) 524-3702, or Ms. Jayne Harkins, Bureau of Reclamation, P.O. Box 61470, Boulder City, Nevada 89005, telephone (702) 293–8190.

SUPPLEMENTARY INFORMATION: The public review process began with a **Federal Register** notice published on August 20, 1996 (61 FR 43073), announcing the review of the Operating Criteria and inviting comments during the 60 days following the notice. On October 31, 1996, another **Federal Register** notice (61 FR 56246) was published announcing two public consultation meetings and extending the comment period an additional 30 days. On November 4, 1996, a Fact Sheet containing information about the Operating Criteria review and an invitation to the public consultation meetings was sent to known and anticipated interested parties and agencies, and governor-designated

representatives of the Basin States, inviting their participation.

Comments from the two **Federal Register** notices were received from 18 respondents. The comments were reviewed by the Bureau of Reclamation for identification and analysis of the issues. Public consultation meetings were held on November 18, 1996, and December 2, 1996, to discuss the identified issues and answer questions from all interested parties. A set of all comment letters received was provided to any interested party requesting a copy. After the public consultation meetings, the analyses of the issues raised during the public review process were sent to all interested parties and participants in a March 1997 newsletter entitled the River Review.

In response to requests, another public consultation meeting and an additional 45-day comment period were announced in the **Federal Register** on March 28, 1997 (62 FR 14942). On April 4, 1997, a letter from the Reclamation Team Leader containing the preliminary results of Reclamation's analysis on each major issue area and an invitation to attend a public consultation meeting on the preliminary results and analysis was sent to all 18 respondents, governor-designated representatives of the Basin States, and any others who had attended meetings or expressed an interest in the review of the Operating Criteria. On April 22, 1997, a final public consultation meeting was conducted to discuss the preliminary analyses.

As required by Pub. L. 90–537, formal consultation with the representatives of the seven Basin States, and other parties and agencies as the Secretary may deem appropriate, was conducted in the context of public consultation meetings on three separate occasions: November 18, 1996; December 2, 1996; and April 22, 1997.

Following analysis of comments received as a result of this notice, the National Environmental Policy Act (NEPA) was applied to the Secretary's final decision.

Background

The Operating Criteria, promulgated pursuant to Section 602 of Pub. L. 90–537 (43 U.S.C. 1552), were published in the **Federal Register** on June 10, 1970. The Operating Criteria provide for the coordinated long-range operation of the reservoirs constructed and operated under the authority of the Colorado River Storage Project Act, the Boulder Canyon Project Act, and the Boulder Canyon Project Adjustment Act for the purposes of complying with and carrying out the provisions of the Colorado River Compact, the Upper Colorado River Basin Compact, and the Mexican Water Treaty.

Previous reviews of the Operating Criteria were initiated in 1975, 1980, 1985, and 1990. They resulted in no changes to the Operating Criteria. Prior to 1990, reviews were conducted primarily through meetings with and correspondence among representatives of the seven Basin States and Reclamation. Because the long-range operation of the Colorado River reservoirs is important to many agencies and individuals, in 1990, through an active public involvement process, Reclamation expanded the review of the Operating Criteria to include all interested stakeholders. A team consisting of Reclamation staff from Denver, Colorado; Salt Lake City, Utah; and Boulder City, Nevada, was organized to conduct the 1990 review. Review of the Operating Criteria in 1990 resulted in no changes. For the 1995 review, Reclamation staff from Salt Lake City, Utah, and Boulder City, Nevada, followed the same public process.

The scope of the review has been consistent with the statutory purposes of the Operating Criteria which are ''to comply with and carry out the provisions of the Colorado River Compact, the Upper Colorado River Basin Compact, and the Mexican Water Treaty.'' Long-range operations generally refer to the planning of reservoir operations over several decades, as opposed to the Annual Operating Plan (AOP) which details specific reservoir operations for the next operating year.

Synopsis of Review Results

Many of the issues raised during the review are more properly dealt with during the development of the AOP. These include annual surplus determinations in the Lower Basin; the probability of spills from Lake Powell, including the release of beach/habitat building flows from Glen Canyon Dam; storage equalization between Lakes Powell and Mead; and factors for determining 602(a) storage.

The Operating Criteria were purposely designed to be flexible so that during the development of the AOP, variations in hydrologic conditions and changing demands for water use, including environmental demands and possible mitigation measures, could be accommodated. The process for developing the AOP is open to the public and all interested parties.

Reclamation regularly applies the NEPA process to activities constituting a major federal action significantly affecting the quality of the human environment. The decision not to change the Operating Criteria is subject to NEPA and a Categorical Exclusion has been executed.

With respect to other environmental issues, Reclamation is in various stages of consultation with the Fish and Wildlife Service under Section 7 of the Endangered Species Act on most Colorado River mainstem facilities. When a Section 7 consultation results in the Service providing Reclamation with specific flow recommendations to remove or prevent jeopardy to listed species or their critical habitat, they are incorporated into Reclamation's operations, and if appropriate, included in the AOP.

Reclamation has programmed and expended funds for fish and wildlife mitigation and enhancement for impacts associated with previous activities where appropriate. Reclamation will continue to use this approach. Any changes associated with the long-range Operating Criteria will also be evaluated to determine if there are any mitigation requirements or enhancement opportunities.

Regarding the issue of water marketing and banking, Reclamation has initiated a rule making process focused on water banking in groundwater aquifers or off-mainstem storage reservoirs in the Lower Basin. This administrative rule is considered a responsibility of the Secretary of the Interior and focuses only on the three Lower Basin states. Reclamation believes that water marketing and banking do not require a change to the current Operating Criteria, as this issue lends itself to the AOP process.

Throughout the course of the review of the Operating Criteria, Reclamation has encouraged public participation and developed a thorough administrative record. Based on the results of the review and the analysis of public comments, it has been decided not to modify the Operating Criteria at this time.

Analysis of Issues

Issue #1

Application of the Administrative Procedure Act (APA).

Background

The APA was signed into law in 1946 by President Truman. The purposes of the Act are: (1) To require agencies to keep the public informed on organization, procedures and rules, (2) to provide for public participation in the rule making process, (3) to prescribe uniform standards of conduct for rule making and adjudicatory proceedings,

and (4) to restate the law of judicial review. The law primarily deals with rule making. The definition in the law (5 U.S.C. 551(4)) of a rule in part is as follows: ''. . . the whole or part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency . . . '' Rule making has two parts, formal and informal.

Analysis and Response

The Coordinated Long-Range Operating Criteria is a document generated from a requirement in the 1968 Colorado River Basin Project Act. It describes how the Secretary of the Interior will meet some of the commitments under the Act. The review of the Coordinated Long-Range Operating Criteria is not a rule making exercise and is therefore not subject to the formal rule making provisions of the APA.

Nevertheless, the Bureau of Reclamation has encouraged full public participation in this process and has developed a thorough administrative record of this review.

Issue #2

Surplus declarations are referenced in the 1964 Supreme Court decree (Arizona v. California) and are a part of the 1970 Criteria for Coordinated Long-Range Operation of Colorado River Reservoirs. The decree apportions surpluses (50 percent to California, 46 percent to Arizona, and 4 percent to Nevada), while the Operating Criteria define surpluses as existing when there is sufficient storage in Lake Mead to supply greater than 7.5 million acre-feet (MAF) for Lower Basin consumptive uses. Guidelines for determining when surplus conditions exist have never been formally adopted.

Background

In the past, Reclamation has performed computer modeling studies of alternative surplus guidelines to determine the effects of various levels of surplus use. Because the shortage risks of surplus use (Arizona) fall on other than the benefactor (California), impacts and differences in risks of future shortages and reservoir drawdown have been keenly debated. All modeling strategies have as their foundation the principle of reducing system spills by allowing greater use in the Lower Basin, thus drawing down the reservoirs and thereby avoiding flood control releases. This greater drawdown then allows the high flows of flood years to be captured by the reservoir system. While the amount of system spills is thus reduced, the degree of drawdown affects the risk of shortages to users during possible future drought conditions. Resolving the balance between risk of shortages and spills is the heart of the surplus issue.

Until 1996, Lower Basin consumptive uses were less than their allocation of 7.5 MAF, and California uses were met through unused apportionments of Arizona and Nevada rather than surplus declarations. However, with the implementation of the Arizona groundwater banking program, total Lower Basin use now exceeds 7.5 MAF and water above this amount can only be delivered through surplus declarations.

The 1996 Annual Operating Plan (AOP) committed to meet all reasonable beneficial consumptive uses, and later in the year when the annual Lower Division States' net diversions were projected to be greater than 7.5 MAF, a surplus was declared. The 1997 AOP contains an explicit determination of surplus, based on the current hydrologic situation and a lack of impacts from this single decision. Taking into account (1) the existing water storage conditions in the basin, (2) the most probable near-term water supply conditions in the basin, and (3) that the beneficial consumptive use requirements of Colorado River mainstream users in the Lower Division states are expected to be more than 7.5 MAF, the surplus condition is the criterion proposed to govern the operation of Lake Mead for calendar year 1998. This determination is based on flood control and spill avoidance considerations.

While these determinations have relied on an annual examination of existing water storage conditions in the basin, the most probable near-term water supply conditions in the basin, and the expected beneficial consumptive use requirements of Colorado River mainstream users in the Lower Division states, parties interested in the operation of the Colorado River system reservoirs have not collectively agreed to support any specific long-term strategy for declaring surplus and shortage conditions. Specific, long term strategies have been evaluated, each of which could provide potential benefits and affect water supply reliability when compared to the existing mode of operating the reservoir system. Drought periods in the basin can extend for many years and with the large volume of reservoir storage, many years could be required before negative impacts of surplus determinations are observed. Much of the current debate is focused on the risk of certain things happening in the future.

Analysis and Response

The comments received addressed three key topics relating to surplus determinations: (1) The establishment of guidelines, (2) the forum for establishing these guidelines, and (3) how surpluses will affect the probability of spills from Lake Powell.

Establishment of Guidelines. The commentors all agreed that surplus and shortage guidelines should be established, but varied in how firm or detailed these guidelines should be. The most flexible approach would be the annual determination of surplus/normal/shortage conditions through the AOP process, deciding on the condition of the reservoir system on a year-by-year basis. The most rigid approach would be the revision of the Operating Criteria to include specific guidelines which then would be applied each year to produce a determination.

Flexible guidelines have the advantage of being easily modified as consumptive use demands and hydrologic conditions change throughout the basin. For some parties, near-term surpluses could be more liberal than when Upper Basin uses increase and the likelihood of surplus deliveries are reduced. Flexible guidelines could be adopted without the more formal process of incorporating guidelines into the Operating Criteria.

Modifying the Operating Criteria to include surplus guidelines offers the advantage of clearly specifying under what conditions surpluses would be declared. All interests would then understand exactly what impacts could be expected under ranges of hydrologic conditions. Contingency plans could be implemented to mitigate adverse impacts and agreements could be formed to help meet consumptive use demands during non-surplus periods.

Forum for Establishing Guidelines. Most commentors felt that the AOP would be the most appropriate mechanism for preparing surplus/shortage guidelines. The less formal nature of the AOP meetings was viewed as positive for attempting to resolve this difficult issue. However, the issue has been addressed for the last five years in the AOP meetings, and no definite guidelines have been produced.

Probability of Spills from Lake Powell. The release of beach/habitat building flows from Glen Canyon Dam was a contentious topic during the completion of the Glen Canyon Dam Environmental Impact Statement. The 1968 Colorado River Basin Project Act directed the Secretary of the Interior to avoid anticipated spills while the 1992 Grand Canyon Protection Act directed the

Secretary to operate the dam to improve the environmental conditions in the Grand Canyon. In 1995, an agreement was reached between interested parties which attempts to meet the intent of both the 1968 and 1992 Acts by providing these high flows during high reservoir storage conditions when required for dam safety purposes.

Surplus determinations which explicitly drop the level of Lake Mead and through equalization drop the level of Lake Powell would likely reduce the probability of these powerplant bypasses. Commentors responded with concern for this possibility recommending that if surpluses were declared, measures should be taken to keep the probability of bypasses the same as at the present. The impacts of high spring flows are currently believed to be very important and this potential effect should be addressed as surplus guidelines are developed.

The Bureau of Reclamation believes that surplus/shortage criteria should (1) be specific guidelines that can be used to predict measurable effects in the future, (2) be developed through the AOP process, and (3) include a discussion of the potential effects on Lake Powell spills along with possible mitigation measures.

Issue #3

Section 602(a)(3) of the 1968 Colorado River Basin Project Act discusses the quantification of a reservoir storage volume in the Upper Basin. This storage is intended to supplement the unregulated flow of the Colorado River at Lees Ferry during drought periods as part of the 1922 Colorado River Compact deliveries to the Lower Basin. The intent of this provision is to avoid impairment of Upper Basin consumptive uses.

Background

The 1968 Act contains a provision providing that water not required to be stored shall be released from Lake Powell: (i) To the extent it can be reasonably applied in the States of the Lower Division to the uses specified in article III(e) of the Colorado River Compact, but no such releases shall be made when the active storage in Lake Powell is less than the active storage in Lake Mead, (ii) to maintain, as nearly as practicable, active storage in Lake Mead equal to the active storage in Lake Powell, and (iii) to avoid anticipated spills from Lake Powell. Through a combination of avoiding spills, equalizing storage between Lakes Powell and Mead, and the 602(a) storage volume, Upper Basin water was to be transferred to Lake Mead for use in the Lower Basin. When Upper Basin storage falls below this 602(a) storage level, storage equalization provisions of the 1968 Act are disregarded.

By statute, the 602(a) storage volume was to be quantified taking into account historic stream flows, the most critical period of record, and probabilities of water supply. Since the purpose of this storage is to help provide Lower Basin deliveries, it is quantified as the difference between depleted flow at Lees Ferry and the Lower Basin delivery requirements over some period of drought. Upper Basin depletion levels significantly affect the storage calculation. Using the most critical period of natural flow, the 602(a) volume is currently estimated to be about 10 million acre-feet, which includes preservation of the 5.2 million acre-feet minimum power pool in Lake Powell. In the future, when Upper Basin consumptive uses increase, it has been assumed that Lake Powell could be completely drained to provide Lower Basin deliveries.

Controversy exists regarding the probability attached to the depleted flow assumptions with respect to both the rarity of the critical flow period and the projected depletion increases in the Upper Basin. These are the principle reasons that 602(a) storage has never been formally determined and agreed to by the Basin States. However, in the computer modeling of long-range operations of the reservoir system, some estimate or procedure must be used to model this portion of the applicable statutes. Currently, the Bureau of Reclamation uses the observed critical 12-year period (1953–1964) as the basis for the storage calculation. Reflecting the lack of a formal determination, each year's Annual Operating Plan has contained language stating that current reservoir storage in Upper Basin reservoirs exceeds the storage required under Section 602 under any reasonable range of assumptions which may be applied. The current Upper Basin depletion level is the prime reason that this statement is true.

Analysis and Response

The relationship between the 602(a) volume and surplus/shortage criteria has been raised in previous Annual Operating Plan discussions. Some parties have argued that both less or more severe drought periods should be used in the modeling, thus changing the Upper Basin risk of shortages.

Formally specifying or changing the risks associated with the 602(a) storage level will likely require a legal opinion on the issue of avoiding impairment of Upper Basin consumptive uses. Since these uses presently do not significantly restrict Lower Basin surpluses and require much less than full Lake Powell storage to meet Lower Basin deliveries, this issue perhaps is not ripe for resolution. Reclamation recommends delaying implementing guidelines or changing the current 602(a) modeling assumptions until current assumptions or practices create unacceptable impacts.

Issue #4a

The Bureau of Reclamation should conduct an environmental analysis under the National Environmental Policy Act (NEPA) of any changes to the Operating Criteria.

Background

Letters of comment to the Operating Criteria review expressed concern over the long-term effects of the Operating Criteria on downstream resources as it relates to cumulative effects and spill frequency. Several letters indicated that the current Operating Criteria do not give equal consideration to environmental and recreational resources, and instead focus only on traditional water and power uses. To incorporate consideration of all resources and impacts of the Operating Criteria, the commentors recommended that the Operating Criteria be evaluated through application of NEPA.

Analysis and Response

Reclamation regularly applies the NEPA process to activities constituting a federal action, and agrees that compliance with NEPA would be required for any proposed changes to the long-range Operating Criteria that are discretionary Federal Actions (Chapter 2.1 of the Reclamation NEPA Handbook). The appropriate level of NEPA compliance after review of the Operating Criteria was determined to be a Categorical Exclusion which has been executed.

NEPA regulations require that each agency promulgate agency-specific guidelines to supplement the Council on Environmental Quality's general regulations (40 CFR parts 1500–1508). These classifications list those actions that: (1) Have a significant impact on the environment (requiring preparation of an environmental impact statement); (2) those which are categorically excluded from the EIS process (for which a categorical exclusion (CE) is prepared); and (3) those which fall in between (1) and (2) and will usually require the preparation of an environmental assessment (EA). As a result of the analysis contained in an EA, either an EIS or a Finding of No Significant

Impact (FONSI) is prepared by the agency.

The key issue in whether NEPA documentation is needed regarding this 5-year review is whether there is a federal action or federal discretion associated with this review. If no federal action is being proposed or taken by Reclamation, no NEPA documentation would be required. No changes are being proposed as the result of this review. However, because the decision to make no changes is a federal action, Reclamation concludes that preparation of a NEPA compliance document is appropriate. Reclamation executed a Categorical Exclusion pursuant to Departmental Instructions 516 DM 2, appendix 1.7, which provides that a CE may be prepared for routine and continuing government business, including such things as supervision, administration, operations, maintenance and replacement activities having limited context and intensity; e.g. limited size and magnitude or short-term effects.

Issue #4b

The Operating Criteria should recognize the need to preserve and recover endangered species dependent upon the quantity, quality, and pattern of release.

Background

Construction and operation of water storage and delivery facilities on the Colorado River and its tributaries are recognized as factors contributing to the decline of certain fish and wildlife species which have been listed as threatened or endangered by the Fish and Wildlife Service (Service). Storing water during the spring runoff decreases the natural spring flow, and releasing water later in the year for consumptive use raises the base flow. These types of changes in the hydrograph have removed spawning cues and affected water temperature, clarity, the food base, and fluvial geomorphology. Physical alteration from riverine to extensive reservoir environments has occurred causing further change to habitat for these species and contributed to the establishment of exotic species of fish, wildlife, and plants that compete with listed species and their habitat. The control of natural flood cycles and development of the floodplain for agriculture and other purposes has significantly changed or eliminated original habitats in and along extensive parts of the lower Colorado River. The success of efforts to recover endangered species are often thought to be dependant on restoring the natural hydrograph to the degree possible. Commentors are concerned that if provisions for releases designed to recover endangered species are not incorporated into the Operating Criteria, changes to operations will not be implemented.

Analysis and Response

Reclamation is in various stages of consultation with the Service under Section 7 of the Endangered Species Act on most mainstem facilities. Conservation plans and recovery programs are also a large part of Reclamation activities in operation of the Colorado River. Operation of these facilities for endangered species would remain consistent with the original intended purpose of the project in accordance with the implementing regulations of the Endangered Species Act. When a Section 7 consultation results in the Service providing Reclamation with specific flow recommendations or other alternatives to remove or prevent jeopardy to listed species or their critical habitat, they are incorporated into Reclamation's operations, and if appropriate, are included in the Annual Operating Plan of the particular facility which was the subject of the consultation. Operations remain consistent with the ''Law of the River,'' water service contracts, and other legal obligations. Examples of facilities where consultation has been completed resulting in a flow recommendation are Flaming Gorge Dam on the Green River in Utah, Glen Canyon Dam on the Colorado River in Arizona, and several features of the Colorado River Front Work and Levee System Program on the last 270 miles of the Colorado River in the United States.

Reclamation and the Service recently completed formal Section 7 consultation on lower Colorado River operations and maintenance (Lake Mead to the Southerly International Boundary with Mexico), and are engaged in ongoing consultation for Navajo Reservoir operations on the San Juan River in Colorado, and Aspinall Unit operations on the Gunnison River in Colorado. The Department of the Interior signed a Memorandum of Agreement in August 1995 that was further described in a Memorandum of Clarification and most recently a joint Participation Agreement to develop a long-term (50 year) Lower Colorado River Multi-Species Conservation Program (MSCP) from Lees Ferry to the Southerly International Boundary with Mexico. The overall objective of the MSCP is to develop a plan which would conserve and protect more than 100 listed and sensitive species within the Colorado River and its one hundred-year flood plain, and to the extent consistent with law, accommodate current and future water and power operations.

Reclamation continues to undertake and pursue efforts for conservation and recovery of fish and wildlife and associated critical habitat under specific project authorities such as Section 8 of the Colorado River Storage Project Act and the Grand Canyon Protection Act. In addition, Reclamation has significant ongoing conservation and recovery efforts under the authority of Section 7(a)(1) of the Endangered Species Act. For example, the Lake Mohave Native Fish Rearing Program in the Lower Colorado River Basin continues to collect and rear wild larval razorback and bonytail chubs for release back into Lake Mohave to maintain the primary adult population and genetic pool for these species. Voluntary refinements to river operations have also been implemented when possible to benefit endangered species (i.e., management of reservoir levels in Lake Mohave for endangered fish). The Upper Colorado River Recovery Implementation Program, with an annual budget exceeding $7 million, and the San Juan River Basin Recovery Implementation Program are other examples.

Reclamation will continue to plan and implement initiatives for protection of endangered species and associated critical habitat on a project-specific basis as described, with the goal of integrating these actions to the greatest degree possible to address ecosystem level needs. Initiatives such as the Glen Canyon Adaptive Management Program and the MSCP will be considered and incorporated into future Annual Operating Plans and Section 7 consultations, as appropriate.

Issue #4c

Funding for mitigation of negative impacts to fish and wildlife resources should be provided.

Background

Modification of river flows due to the operation of projects authorized by the Colorado River Storage Project Act has impacted fish, wildlife, and their habitats through reduction or elimination of overbank flooding, channelization, water depletions, and changes in water quality. These projects produce revenue primarily through power production. Commentors are concerned that sufficient funds be made available for mitigation activities.

Analysis and Response

Reclamation, like all federal agencies, must have both authorization and appropriations to undertake actions and

incur debt. In the Upper Colorado River Basin, Section 8 of the Colorado River Storage Project Act authorizes and directs the Secretary of the Interior to investigate, plan, construct, operate, and maintain facilities to improve conditions for and mitigate losses of fish and wildlife. Funds authorized by this section of the Act are nonreimbursable and nonreturnable, and therefore must be appropriated by Congress. Section 5(a) specifies that the Basin Fund will not be applied to Section 8 (fish and wildlife mitigation). The Grand Canyon Protection Act states that power revenues may be used for activities designed to conserve the environment downstream from Glen Canyon Dam, but does not exclude the use of other funding mechanisms.

Mitigation and enhancement activities are typically identified and proposed on a project-by-project basis through project planning and environmental compliance. Reclamation has programmed and expended funds for fish and wildlife mitigation and enhancement for impacts associated with previous activities where appropriate. Most often these activities are identified in Fish and Wildlife Coordination Act Reports and National Environmental Policy Act documents. Reclamation will continue to use this approach. Since no changes are being proposed, there is no specific mitigation or enhancement necessary for this action. Reclamation will continue to comply with NEPA and other appropriate environmental laws in identifying, planning, and carrying out mitigation and enhancement activities.

Issue #5

Is there a need to change the Operating Criteria.

Background

The Operating Criteria are to accomplish the objectives of Section 602(a) of the Colorado River Basin Project Act. Modification of the Operating Criteria can be done by the Secretary of the Interior ''* * * as a result of actual operating experiences or unforeseen circumstances * * * to better achieve the purposes specified in (Section 602(a) of the Colorado River Basin Project Act).''

Some commentors stated that they believe ''* * * there are no conditions resulting from actual operating experiences or unforeseen circumstances, since the last review, that justify the need to modify the existing Criteria,'' and that the reservoirs have been operating satisfactorily under the present Operating Criteria. These comments support not changing the criteria at this time.

Others stated that we are entering a new era and that the Operating Criteria should be changed to reflect different circumstances and concerns. The Lower Basin States have reached their annual apportionment of 7.5 million acre-feet for consumptive use. Environmental and recreational issues have increased in value in the eyes of the public. There were also those who stated that the Operating Criteria need to be changed to include specific guidelines that allow the Secretary of the Interior to make surplus, shortage, and normal determinations. These comments all support a need for change.

Analysis and Response

The Operating Criteria provide guidelines for the operation of Upper Basin Reservoirs and Lake Mead. Specific operational needs are not detailed in the Operating Criteria. The specific needs have, in the past, been addressed in the Annual Operating Plan development process.

The Operating Criteria may be modified from time to time as a result of actual operating experiences or unforeseen circumstances. A significant amount of operating experience has been gained over the 27-year period since the Operating Criteria were issued. Furthermore, Reclamation has developed and used analytical tools which allow operations of the Colorado River system reservoirs to be projected into the future with the inclusion of alternative operating strategies.

With the above in mind, the evaluation of operational experiences over the next several years will determine whether or not to change the Operating Criteria. But in the interim, the recommendation is not to change the Operating Criteria.

Issue #6

Water marketing and banking.

Background

Several years ago the Bureau of Reclamation advanced draft regulations for administering Colorado River water entitlements in the Lower Basin States of Arizona, California, and Nevada. The draft regulations contained provisions for water banking and water marketing in the Lower Basin. Because there was not consensus with the states regarding the draft regulations, they have been held in abeyance while the three states attempt to reach some agreement on numerous issues, including water marketing and banking. This negotiation process among the states is continuing. Many people believe that some form of water banking and marketing will be essential to meeting future water needs in the Lower Colorado River Basin.

Analysis and Response

Reclamation initiated a rule making process focused on water banking in groundwater aquifers or off-mainstem storage reservoirs in the Lower Basin. Reclamation published the draft administrative rule on Offstream Storage of Colorado River Water in the **Federal Register** on December 31, 1997. In addition, the Environmental Assessment was released in the same timeframe. Both documents are out for review and comment until March 2, 1998. This administrative rule is considered a responsibility of the Secretary of the Interior under the Boulder Canyon Project Act, and focuses only on the three Lower Basin States.

Reclamation believes that the limited water marketing and banking currently under consideration would not require a change to the current Operating Criteria.

Final Decision

The Department considered issues arising from the review of the Operating Criteria. After a careful review of the issues, solicitation of involved parties' responses to Reclamation's analysis, and consultation with the Governors' representatives of the seven Basin States, the Department has decided not to modify the Operating Criteria at this time.

Dated: February 18, 1998.

Bruce Babbitt,

Secretary, Department of the Interior.

[FR Doc. 98–4570 Filed 2–23–98; 8:45 am]

BILLING CODE 4310–94–P

DEPARTMENT OF JUSTICE

Supplemental Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response Compensation & Liability Act

On February 5, 1998, the Department of Justice published notice of lodging of a proposed consent decree on January 21, 1998, with the United States District Court for the Northern District of Illinois, in *United States et al.* v. *City of Rockford, Illinois,* Civil No. 98 C 50026, under the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9601 *et seq. See* 63 FR 5967 (February 5, 1998). The Department of Justice hereby supplements its Notice to indicate that under section 7003(d) of the Resource