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Colorado River Basin Study Comments--New Mexico Interstate Stream Commission

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New Mexico Interstate Stream Commission

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Commission
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Dear Mr. Glaser:

This letter is to provide comments on the Draft of the Colorado River Basin Study prepared by Dale Pontius, Principal Investigator.

In general the report is well written, easy to understand and presents many of the current issues concerning water management in a part of the Colorado River Basin. However, the report does not deal with the entire Colorado River Basin as might be indicated by its title, i.e., Colorado River Basin Study. Instead the report contains some material on the Upper Basin and its focus is on the mainstem of the Colorado River in the Lower Basin. The mainstem in the Lower Basin, of course, is currently in the forefront of many discussions on management of the river.

A portion of the drainage basin of the Colorado River in New Mexico includes the headwaters of the Gila River System. In the Gila River System in New Mexico, water uses are strictly regulated by the Decree of the United States Supreme Court in Arizona v. California. The limits of that decree do not permit development of additional water for new or future uses. Public Law 90-537, the Colorado River Basin Project Act, authorized the Central Arizona Project including additional consumptive use in the Gila River Basin in New Mexico subject to exchanges being made downstream in the Gila River System in Arizona from the Central Arizona Project aqueduct. **New Mexico is keenly interested in measures to develop that authorized use in this state.**

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In addition, a portion of the Colorado River drainage in New Mexico is the headwaters of the Little Colorado River System including the communities of Gallup, Ramah and Zuni. Water shortages in these areas are chronic and we are seeking measures that would provide additional water to these areas.

The following comments are referenced to the appropriate page or figure number in the report.

Page 5. The last full paragraph states that the Colorado River Compact of 1922 divided the Colorado River between "States of the Upper Division" and "States of the Lower Division", which is not correct. The terms "States of the Upper Division" and "States the Lower Division" have definite meaning in Colorado River Compact. The compact divided the Colorado River between the Upper Basin and the Lower Basin, both as defined in the compact. New Mexico, as well as Utah and Arizona, have portions of the Colorado River Basin in both the upper and the lower basins. This paragraph, continued on page 8, indicates that the Upper Basin states include Colorado, New Mexico, Utah and Wyoming and the Lower Basin states include Arizona, California and Nevada. The compact does not define Upper Basin or Lower Basin states, rather it specifically defines "States of the Upper Division" as Colorado, New Mexico, Utah and Wyoming and "States of the Lower Division" as Arizona, California and Nevada. These distinctions are important because of the provisions of the Colorado River Compact as well as the provisions of the Upper Colorado River Basin Compact, which adopted the definitions of the former compact.

Page 14. The first full paragraph states that the Colorado River Compact apportions 7.5 maf/year each to the Upper Basin and Lower Basin. The Compact actually apportions an additional 1.0 maf/year to the Lower Basin, (Article III(b)). Also, the apportionment of Articles III(a) and III(b) of the Colorado River Compact is from the entire Colorado River System and is not restricted to the mainstem. In addition, the paragraph states that 1996 represents the third year in which the Lower Basin has exceeded its 7.5 maf/year entitlement since 1990. Actually 1996 is a year in which the Lower Basin exceeded its 7.5 maf/entitlement under the Decree in Arizona v. California, which entitlement is from the mainstem at Lake Mead and below. Also, the last sentence indicates that the Lower Basin water use was estimated to be 8.06 maf; again this number applies only to the mainstem from Lake Mead and below. The use in the entire Lower Basin is much greater than 8.06 maf. The second full paragraph on this page discusses only the use of water from the mainstem from Lake Mead and below, but the report does not so specify. The third full paragraph on this page states that a total of 16.5

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maf has been allocated to the seven basin states and Mexico, presumably by the Colorado River Compact and the Mexican Treaty. The total allocation by the Compact and the Treaty is 17.5 maf. Figure 6, which precedes page 17, should have the following counties in New Mexico added as being served by Colorado River water: Taos, Los Alamos, Sandoval, and Bernalillo.

Table 3 on page 17 has as its heading "Annual Water Use in the Lower Basin." However, the values reported are uses from the mainstem only and do not reflect the total use in the Lower Basin.

Table 5, page 18. Under the heading "Apportionment" some of the numbers are scrambled. The correct number for New Mexico is 0.84; Utah is 1.71, and Wyoming is 1.04. In addition, the correct number for the Lower Basin is 8.5 and the correct total is 17.5.

Figure 9 indicates that the New Mexico share of Colorado River water is 669,000 acre-feet per year based on a total of 6.0 maf being available to the Upper Basin. New Mexico does not agree and has stated its objection to the Bureau of Reclamation in commenting on the study to determine that the Upper Basin's share is only 6.0 maf. New Mexico contends that the Upper Basin share is 6.3-6.5 maf. We believe that the States of the Upper Division have similar objections to Bureau of Reclamation assumptions in its study.

Page 25. The last full paragraph states that the Grand Canyon Protection Act of 1922 redefined the operating criteria for Glen Canyon Dam and as such clearly forms an overlay of the Law of the River. Actually the Grand Canyon Protection Act refers in general to the powerplant operating criteria and does not involve the reservoir system operating criteria. The Act contains very specific language in Section 1802 (b) directing its implementation to be "...fully consistent with and subject to..." We do not believe the Act to be an overlay of the Law of the River.

Page 26. The first full paragraph indicates that in Arizona v. California the case presumably dealt with all the Lower Basin entitlements. The Decree in Arizona v. California is explicit and decrees only water from mainstream structures controlled by the United States and available for release for irrigation and domestic use in Arizona, California and Nevada, plus water for use in New Mexico from San Simon Creek, San Francisco River and Gila River, their tributaries and underground water sources (Gila River system in New Mexico). The decree further states it shall not affect the rights or priorities to water in any of the Lower

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Basin tributaries of the Colorado River except the Gila River system. While originally the case may have contemplated all of the Lower Basin, it was not so conducted. The implication of the paragraph is that uses other than those specifically decreed were considered which is not correct.

Page 32. Table 6 is headed "Colorado River Basin Water Use in the Lower Basin". Again, the numbers listed include only those uses from the mainstem.

Page 46. The second full paragraph states that the Upper Basin Compact established a Commission consisting of appointees by the Governors of the four "Upper Basin states" which should be corrected to read "Upper Division states".

Page 47. The last paragraph states that the "equalization criteria" was included in the Colorado River Basin Project Act at the insistence of the Upper Basin. We do not believe that the Upper Basin insisted on such criteria. The criteria were developed to accommodate reservoir operations important to the United States including power generation and distribution. The next sentence of this paragraph states that Glen Canyon Dam was built in part to serve as means of delivering the Lower Basin entitlement plus the Upper Basin share of the Mexican obligation from the Upper Basin. We do not agree. Further, there has not been any established share of the Mexican obligation from the Upper Basin. Glen Canyon Dam was built in part to serve as a means of meeting the Upper Division's delivery obligation under the Colorado River Compact at Lee Ferry and allowing development of additional water use in the Upper Basin.

Page 48. The last paragraph states that for planning purposes, the Upper Colorado River Commission uses 6 maf as full development. Actually, the Bureau of Reclamation, to avoid a critical compact interpretation, made an assumption in its study which resulted in a reasonable depletion of 6 maf in the Upper Basin. The Upper Colorado River Commission does not agree with Reclamation's assumption.

Page 48. Table 7 is headed "Colorado River water use in the Upper Basin". However, the numbers listed under reservoir evaporation are much less than the actual reservoir evaporation in the Upper Basin and may not include evaporation from some of the large reservoirs such as Lake Powell.

Page 51. The first full paragraph indicates that the Animas- La Plata Project is involved in controversy pitting various interests and the two Colorado Ute Tribes against other interests including the Navajo Nation. We do not believe the Navajo Nation

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has cast its lot against these various interests and the Colorado Ute Tribes.

Page 52. State Conservation Programs in the Basin. Add a sentence to state that the New Mexico State Engineer requires that all water right applications include a water conservation plan.

Page 54. The third full paragraph indicates 50 million acre-feet was discharged to the ocean from California, which is not correct. The sentence apparently is intended to refer to the discharge of the Colorado River into the Gulf.

Page 73. The last full paragraph indicates that 23 Indian tribes located out of the basin, such as the Mescalero Indian Reservation in New Mexico, have traditional or aboriginal interests in the basin and that each of these reservations have different needs and desires concerning the management of the Colorado River. We do not understand why the Mescalero's, whose reservation physically is far removed from the Colorado River Basin, receives no water and presumably has no plans to provide water to their reservation from the Colorado River, are concerned with the management of the river. The report does not specify the other 22 tribes that are located outside of the basin, some of which may have a valid interest in the management of the basin and others may not.

Page 81. The third full paragraph indicates that New Mexico diverts most of its Colorado River entitlement out of the San Juan to the Rio Grande Basin through the San Juan-Chama Project, which is incorrect. The San Juan-Chama Project diverts an average of 110,000 acre-feet per year to the Rio Grande Basin. Most of New Mexico's Colorado River entitlement currently is being used in the San Juan River basin and planning for future development is to essentially use all of the entitlement, except for the San Juan-Chama diversion, in the San Juan River basin and to meet New Mexico's share of evaporation losses for the Colorado River Storage Project reservoirs. The paragraph goes on to state that legislation authorizing the Navajo Indian Irrigation Project (NIIP) and the San Juan-Chama Project does not treat NIIP as a settlement of any part of the Navajo reserved right claim, however, the shortage sharing provision does work as a settlement condition with respect to cutting off the New Mexico uses which are junior to the Navajo priority. This sentence is an incorrect paraphrase of the legislation authorizing the project and the shortage sharing provision. **The shortage sharing provision** provides that in the event of a physical shortage of water, the Navajo Indian Irrigation Project, the San Juan-Chama Project and any other contractors for the Navajo Reservoir supply will share

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in the available water supply. This sentence should be revised to correctly state the shortage sharing provision of the legislation and delete speculation as to a settlement of the Navajo reserved right claims or the priority of the Navajo rights. Also, the last sentence should be revised to read: The Navajos and the state of New Mexico recently initiated discussions on the Navajos San Juan River Basin claims.

Page 83, 3rd paragraph. We do not believe that the decision in Sporhase v. Nebraska applies to waters apportioned by the Colorado River or other apportionments by interstate compacts.

Page 94. The section headed "Water Management" does not recognize at least two cooperative management efforts in the basin. The San Juan Basin Recovery Implementation Program which has as its goals to conserve endangered fish species while water development proceeds, and the Colorado River Management Work Group which is charged with preparing the Colorado River Reservoir System Annual Operating Plan. Both of these efforts have been ongoing for a number of years and play a role in water management in the basin.

Page 95. It is suggested that a sentence be added to state that the Federal government should provide block - grants to the states to accomplish necessary future funding.

Page 103. The first of the recommendations states that failure to operate the Yuma Desalter has diminished the supply by 6.5 maf. That number does not appear correct and should be checked. In addition, this discussion should recognize that in Public Law 90-537, Sec. 202, Congress declared that satisfaction of the requirements of the Mexican Treaty from the Colorado River is a national obligation. To date, the United States has not identified an action to address the obligation of the Act.

Page 109. The second recommendation is that a Binational Commission be established to review and make recommendations on the potential for restoration of the Colorado River delta and the environmental and economic benefits of such restoration. While parts of the Colorado River delta and the lower river ecosystem is an emerging issue primarily with environmental groups, an issue of immediate concern according to the report is a firm water supply for the Cienega de Santa Clara. The Cienega de Santa Clara may provide a desirable habitat which is located entirely in Mexico. We believe that this issue should be addressed, if indeed it is so desired, by the Mexican government and interests in Mexico. We do not agree that a binational commission needs to be established for such purposes in either country. Further, restoration or maintenance that depends on

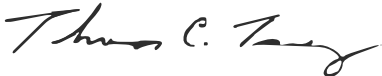
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existing or additional mainstream Colorado River water is in direct conflict with use of those waters in the United States.

Page 111. We do not share your recommendation that the Yuma Desalter be decommissioned. To date, no other viable alternative has been identified and the reason for abandonment of the Desalter has and seems to continue to be the unwillingness to finance its operation. The United States undertook the alternative of the Desalter as a "just solution" and should commit the financial resources to carry out the operation, or provide an alternative, that carries out the obligation of Public Law 90-537. In addition, we do not understand the suggested exchange of power for the water rights needed to make up for inoperation of the plant (bottom of page 111, continued on page 112). The potential water rights required may not be available for an exchange of power depending upon the sources of water rights or the users of the power.

We appreciate the opportunity to provide these comments.

Sincerely,



Thomas C. Turney
State Engineer and Secretary
Interstate Stream Commission

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