

United States Department of the Interior

U.S. Fish and Wildlife Service
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AESO/FA

August 17, 2001

Ms. Cindy Lester
Chief, Regulatory Branch
U.S. Army Corps of Engineers
Attn: Marjorie Blaine
3636 North Central Avenue, Suite 760
Phoenix, Arizona 85012-1936

Dear Ms. Lester:

The Fish and Wildlife Service has received the Bureau of Reclamation's letter of July 24, 2001, regarding application for Regional General Permit (RGP) 62 to conduct operations and maintenance activities along the Colorado River from Davis Dam to the Southerly International Boundary with Mexico (Mohave, La Paz, and Yuma Counties within Arizona and San Bernadino, Riverside, and Imperial Counties within California). On January 25 and February 13, 2001, we provided comments on the Public Notice for this proposed action. At that time we recommended RGP 62 not be issued until the following conditions were met:

- 1.) A draft environmental assessment (EA) for this proposed RGP will be provided to the Service and other appropriate parties for review and comment.
- 2.) Procedures for compliance with the Fish and Wildlife Coordination Act (FWCA) by Reclamation in coordination with the Service and State wildlife agencies of Arizona, California, and Nevada to cover these proposed activities will be addressed in the Additional Project Information section of this PN and included as a special condition for the permit.

Reclamation's July 24th letter begins to address our concern regarding compliance with the FWCA where they state they would not object to specific conditions in the permit such as:

In compliance with the (Fish and Wildlife Coordination) Act, activities will be coordinated with the state and federal wildlife agencies. Consultation and coordination with these agencies will be conducted; written comments will be received; and concurrence will be obtained prior to implementing project specific activities.

We have no objection to a condition requiring Reclamation to obtain written concurrence from the Service under the FWCA prior to implementing project specific activities. In fact, we believe it would be beneficial if this condition was expanded to require an individual permit for activities that do not receive Service concurrence under the FWCA. We continue to believe that a draft EA, addressing the issue of minimal effects, should be provided to the Service and other appropriate parties for review and comment prior to issuance of a RGP for Colorado River Operations and Maintenance activities.

Section 404(e) of the Clean Water Act allows the issuance of RGPs for any category of activities if the Corps determines that the activities are similar in nature and will cause only minimal individual and cumulative adverse environmental effects. We are unaware of any evaluation or documentation that would lead us to reasonably conclude that this RGP would meet the minimal effects standard. In regard to Reclamation's EA for the Colorado River Front Work and Levee System of June 1983, we continue to believe, consistent with our letter of September 15, 1981, that a finding of no significant impact is not justified based upon the information contained in that assessment.

One of our concerns with the 1983 EA is the lack of updated information on biological resources in the action area. For instance, Reclamation's recent Biological Assessment for Proposed Interim Surplus Criteria on the Lower Colorado River, August 30, 2000, indicates that the floodplain from Davis Dam to the border supports approximately 109,018 acres of riparian, marsh, and desert vegetation with the following makeup: 51% salt cedar, 5% cottonwood-willow, 3% honey mesquite, 8% screwbean mesquite, 16% salt cedar-honey mesquite mix, 4% arrowweed, 1% quailbush, 11% marsh, and 1% creosote scrub; while the 1983 EA indicates approximately 103,500 acres with the following makeup: 34% salt cedar, 20% salt cedar-screwbean mesquite mix, 6% salt cedar-honey mesquite, 7% cottonwood-willow, 23% honey mesquite, 6% marsh, and 4% arrowweed. Although the overall total is similar, there appears to be a significant shift in the relative abundance of vegetation types.

The 1983 EA did not address the full range of activities that would be covered by RGP 62. The EA focused mainly on quarrying, stockpiling, riprapping, bank armoring, and dredging, while RGP 62 is proposed for bank stabilization, culvert replacement, wash fan removal, dredging, rock weirs, sediment removal from inlet/outlet channels, vegetation clearing, and installation of boat ramps. There appears to be a substantial number of activities proposed for authorization under this RGP that have not been reviewed in accordance with NEPA. We are also concerned with the lack of an empirical analysis on potential effects to regional biological resources. We believe a quantitative analysis is necessary in order to ensure that proper avoidance and minimization measures are implemented prior to authorization under a RGP.

As such, we believe it would be imprudent to issue an RGP for Colorado River operations and maintenance prior to demonstrating the activities would cause only minimal individual and cumulative adverse environmental effects in accordance with 404(e). We believe the burden of

proof is on the Corps and applicant to adequately demonstrate compliance with the minimal effects standard. We do not believe the burden of proof should fall on the Service or other entities to demonstrate noncompliance with the standard, especially since we are unaware of the nature of the criteria the Corps will utilize to demonstrate minimal effects. Accordingly, we continue to hold our position that a draft EA should be prepared and provided for review to the Service, Environmental Protection Agency, state wildlife agencies of Arizona, California, and Nevada, and others as may be appropriate to demonstrate whether or not the RGP will result in minimal effects.

The Colorado River is a highly productive and diverse ecosystem that provides habitat for a multitude of wildlife including mammals, birds, fishes, reptiles, amphibians, and invertebrates. These include many species that are important for consumptive uses, as well as threatened and endangered species. The biological significance and importance of this resource is evident by the magnitude of conservation planning efforts revolving around it, such as the Lower Colorado River Multi-Species Conservation Program.

Based on these concerns, we recommend this permit be denied unless our previous conditions recommended to you are met and it is demonstrated that these proposed actions would cause only minimal individual and cumulative adverse environmental effects in accordance with 404(e). In accordance with the 1992 404(q) Memorandum of Agreement between the Department of the Interior and the Department of the Army, Part IV, paragraph 3(a), we are advising you this project as proposed may result in substantial and unacceptable impacts to aquatic resources of national importance. We request you send copies of your written response to our recommendation to the office of the Regional Director, Region 2, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103.

We are available to work with you and Reclamation on the evaluation, development, and issuance of this RGP. If you have any questions or need more information, please contact Mike Martinez (x224) or Don Metz (x217).

Sincerely,

/s/ David L. Harlow
Field Supervisor

cc: Regional Director, Fish and Wildlife Service, Albuquerque, NM (ARD-ES)
Regional Director, Bureau of Reclamation, Boulder City, NV
Regional Administrator, Environmental Protection Agency, San Francisco, CA
Supervisor, Project Evaluation Programs, Arizona Game and Fish Department, Phoenix, AZ
Director, California Department of Fish and Game, Sacramento, CA
Director, Nevada Division of Wildlife, Las Vegas, NV