

● **Board of Directors**
Water Planning and Resources Committee

December 14, 1999 Board Meeting

10-4

Subject

U.S. Bureau of Reclamation Final Rule on Offstream Storage of Colorado River Water; Development and Release of Intentionally Created Unused Apportionment in the Lower Division States

Description

On November 1, the Department of the Interior (Department) issued a Final Rule to facilitate voluntary interstate offstream storage of Colorado River water among Arizona, California and Nevada (lower division states). The Final Rule incorporates features indicated in **Attachment 1**. While the rights of those entities holding contracts to use of Colorado River water will continue to be protected under the body of laws known as the “Law of the River,” the Department’s intent is to increase the efficiency, flexibility and certainty in Colorado River management. It will enable entities in Nevada and California to store Colorado River water in Arizona’s groundwater basins. Storage of Colorado River water in the Arizona Water Bank is one of a number of programs identified in the draft *Colorado River Board 4.4 Plan; California’s Use of its Colorado River Allocation*.

The Final Rule establishes a framework for the Secretary of the Interior to follow in considering, participating in and administering Storage and Interstate Release agreements among entities in Arizona, California and/or Nevada. It will permit state-authorized entities to store Colorado River water offstream, develop intentionally created unused apportionment (ICUA), and make ICUA available to the Secretary for release and use in another lower division state using an agreement. However, an agreement between Arizona and Nevada could result in less unused apportionment being available for California due to storage of unused basic or surplus apportionment by Arizona for Nevada. Also in its responses to comments, the Department does not commit to making sufficient surplus water available to satisfy both Metropolitan’s need for surplus water and diversions for offstream storage under agreements. The Bureau of Reclamation (Reclamation) is considering the development of specific criteria to identify when surplus water will be available in the future in a separate public process to be completed by January 2001.

A number of the comments submitted by Metropolitan have been incorporated into the Final Rule. Reclamation did not incorporate Metropolitan’s suggestion that storage of water that is conserved, such as water presently anticipated to result from the proposed Imperial Irrigation District/San Diego County Water Authority transaction, be permissible under the rule as it is an intrastate transaction. Reclamation indicated that for conserved water to be stored by an authorized entity for purposes of an interstate water transaction, it must first be offered to all entitlement holders in the state in which it is conserved. (Reclamation did not agree with a comment from a state agency that banking in Lake Mead is illegal.)

The benefit cost analysis performed by Reclamation in 1997 projected a range of storage and recovery costs based on estimated Arizona Water Banking Authority costs from 1997 to 2017. Storage and recovery costs in that analysis ranged from \$220 to \$260 per acre-foot which reflected the recovery of all Central Arizona Project costs, including capital costs, associated with banked water that is distributed on an interstate basis.

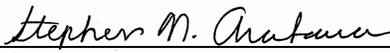
Barring a joint resolution by Congress or litigation, the Final Rule will become effective on December 1, 1999.

Policy

Consistent with the board's recommendation to explore the development of surplus criteria that would provide groundwater storage along the Colorado River Aqueduct, in the Coachella Valley, and in Arizona, as needed, to facilitate Metropolitan's ability to build up long term reserves. See paragraph 1 on page 1 of [Attachment 2](#).

Fiscal Impact

For information only.

	11/19/99
Stephen N. Arakawa Acting Manager, Water Resource Management	Date

	11/19/99
General Manager	Date

[Attachment 1](#)
[Attachment 2](#)

**Features of U.S. Bureau of Reclamation
Final Rule on Offstream Storage of Colorado River Water**

1. A storing entity is defined as one that is expressly authorized by the laws of that state to enter into an agreement and develop Intentionally Created Unused Apportionment (ICUA).
2. A consuming entity is defined as one that has authority under the laws of that state to enter into an agreement and acquire the right to use ICUA.
3. The Colorado River water stored within the storing state for this purpose is water that would otherwise be unused in that state, but that is within its basic or surplus apportionment. To qualify as unused apportionment, this water must first be offered to all entitlement holders within the storing state.
4. Under an agreement, the Secretary may make the consuming state's unused basic or surplus apportionment available for the purpose of storing this water in the storing state.
5. When the consuming entity requests water under an agreement, the storing entity will reduce the storing state's consumptive use of Colorado River water, thereby developing ICUA. The Secretary will release the ICUA to the consuming entity for use in the consuming state.
6. ICUA will be released to the consuming entity only in the year and to the extent that ICUA is developed by the storing entity after all necessary actions have been taken under the Final Rule.
7. The agreement must identify a procedure for the Secretary to follow to verify and account for the quantity of water stored, and describe the notice given to entitlement holders, including Indian Tribes, of opportunities to participate in the development of ICUA, all consistent with the laws of the storing state.
8. The Final Rule allows anticipatory releases of ICUA and use of this ICUA by the consuming entity before the actual development of ICUA by the storing entity in the same year. As the rule allows for the release and delivery of ICUA in the same year in which it is developed, the Secretary will not require actual storage of water subsequent to the release of ICUA if, consistent with the laws of the storing state, the development and recovery were to occur in the same year.
9. The Secretary will be a party to the agreement (but not necessarily to the financial aspects of the arrangements between the storing and consuming entities) and will release ICUA to the consuming entity and not to other entitlement holders. For the consuming entity, the agreement can satisfy the Boulder Canyon Project Act requirement that all diversions of water require a contract with the Secretary.
10. The Secretary will notify the public of his intent to participate in negotiations to develop an agreement and provide a means for public input. In executing an agreement, the Secretary must consider applicable law and executive orders, applicable contracts, potential effects on trust resources and potential effects on entitlement holders among other matters.

Attachment to Board Letter 8-16
January 6, 1999

1. ***Work closely with California entities and the other states to develop surplus criteria to ensure a full aqueduct in the future and to have the IID/SDCWA transfer conditions satisfied.*** Whether as part of the California Plan process or otherwise, Metropolitan will continue to work on these vital elements of the Plan. The Board recommends that the parties, as part of this effort, explore the development of surplus criteria that would provide groundwater storage along the Aqueduct, in the Coachella Valley, and in Arizona, as needed, to facilitate Metropolitan's ability to build up long term reserves.