



June 4, 2008

Lorri Gray  
Regional Director  
Lower Colorado River Region  
U.S. Bureau of Reclamation  
PO Box 61470  
Boulder City, Nevada 89006-1470

via email

**Re: Drop 2 Reservoir Funding Agreement**

Dear Lorri:

I write to follow up on questions I emailed to you and others, on December 7, 2007, regarding the Drop 2 Reservoir Funding Agreement. Perhaps because I emailed the questions to several people, it was unclear who would take responsibility to respond. In any case, I have yet to receive any response, and so I write to request Reclamation's answers to the following questions.

Unlike all other ICS accounts, which require water be conserved and stored before it can be scheduled for delivery, the Drop 2 Reservoir Funding Agreement ("Agreement") creates a large ICS credit well before any wet water is actually conserved. MWD has the option to request delivery of 100,000 acre-feet of ICS 'system efficiency' water before the project even comes on line. According to the Agreement's Exhibit D schedule, a total of as much as 330,000 acre-feet of ICS system efficiency water could be delivered to SNWA, MWD, and CAWCD by the end of 2017. Under Section 10 of the Agreement, Reclamation will not prepare a Summary Report of the Drop 2 Reservoir Project's ("Project's") effectiveness until 2017, and not until some unspecified time after that will Reclamation consult with the parties about "mutually agreed amendments" to the delivery schedule, if necessary. That is, the parties could drain half or more of their ICS accounts before Reclamation has made any determination about the efficacy of the Project. In fact, MWD could, and quite possibly will, completely drain its Drop 2 system efficiency ICS account a full seven years before Reclamation publishes its Summary Report and enters into consultations with the parties. The "consult" and "mutually agreed" language in Section 10 of the Agreement appear to limit Reclamation's authority, and the Secretary's authority as Water Master, to determine the availability of system efficiency water for delivery to the Parties.

Does Reclamation reserve any authority to diminish deliveries of system efficiency ICS, based on Project performance, prior to 2017? What would happen if Reclamation determined that the Project were far less effective than estimated, but the Parties refused to agree to changes to the delivery schedule?

Section 2.10 states that the Drop 2 Reservoir Project is estimated to conserve 70,000 acre-feet per year. However, in their comments on the Project draft Environmental Assessment, both MWD and CAWCD, using historic analyses, stated that the Project would (including evaporation) conserve less than 40,000 acre-feet annually. Factoring in current practices (such as the water transfer and ICS more generally) and future changes (such as declining storage and climate change impacts) suggests that the Project's net annual conservation will be even less. Would the Parties be charged with 'overruns' if the Drop 2 project failed to conserve the volume of water delivered to the Parties by some date? Or would the system simply absorb the loss?

Total capital contributions by the contractors are limited to \$206 million. The initial project cost estimate was ~\$80 million, revised up to \$146.7 million in February 2007, and then increased again to \$172 million.

Under Section 6.1 of the Agreement, SNWA has "no obligation to provide any funds in excess of \$206 million." Is the federal government responsible for all project costs (including OMR&R) in excess of the \$206 million cap? What happens if Reclamation is unable, or Congress is unwilling, to cover these costs and the Project can not be completed with existing funds? Is there some mechanism to suspend deliveries of ICS until the Project is actually completed and comes on line?

Thank you in advance for your prompt attention to these questions.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Cohen", written over a white background.

Michael Cohen  
Senior Associate

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