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IN REPLY
REFER TO:

United States Department of the Interior

BUREAU OF RECLAMATION
WASHINGTON, D.C. 20240

JAN 9 1989

DECISION

Ronald R. Madson, Esquire
Attorney for Complainant Laughlin
River Tours, Inc.; and John T. Talley
530 South Fourth Street
Las Vegas, Nevada 89101

Re: Administrative Decision of the Commissioner, Bureau of Reclamation, United States Department of the Interior, Regarding Appeal Brief of Administrative Decision of September 19, 1988, made by the Regional Director, Lower Colorado Region, Bureau of Reclamation, U.S. Department of the Interior, regarding application for administrative relief of Laughlin River Tours, Inc., and John T. Talley, individually, dated November 23, 1988.

Dear Mr. Madson:

I have reviewed your appeal brief and the Administrative Record. From this review I have concluded that the decision rendered by Regional Director Edward M. Hallenbach on September 19, 1988, is the correct decision and it is hereby affirmed.

In 1902, when Theodore Roosevelt created the Reclamation Service, now the Bureau of Reclamation, he used the words "... to do the greatest good for the greatest number" to guide the actions of this agency in conducting conservation activities in the West. Since that time, Congress has sought to embody the spirit of Roosevelt's words in legislation enacted which affect the natural resources of the West. Nowhere is this more apparent than in the operation of the Colorado River system.

Congress has entrusted the Secretary of the Interior with powers to direct, manage, and coordinate the operation of the Colorado River reservoir system pursuant to the Boulder Canyon Project Act and the other statutes, court decisions, decrees, treaties, and contracts which constitute the "Law of the River". This body of law guides the Secretary in the exercise of discretion and judgement in managing Colorado River operations, in balancing the competing interests on the Colorado River, and requires consultation with the seven basin States in forecasting and in the formulation of operation plans. That is to say, the Secretary is not at liberty to comply with individual or collective requests unless such requests are consistent with the "Law of the River."

The central issues presented by your initial application for administrative relief are whether the Bureau of Reclamation, through its operations, has rendered the Colorado River non-navigable and whether we are required by federal law, specifically the Boulder Canyon Project Act of 1928, 43 U.S.C. 617 et seq., to release "at all times," or at least during the operational hours of your clients' tour boat service, sufficient water to meet the navigational needs of his boats. Your initial request was for 10,000 cfs but has since been modified to 7000 cfs even flow around the clock.

Your request for administrative relief relies heavily on an interpretation of the Boulder Canyon Project Act that asserts a Congressional intent to impose a rigid priority system to the uses that should be made of the River. The Regional Director's Decision (Decision) dated September 19, 1988, fails to find such clarity in a reading of the statute and neither do I. But moreover, the Boulder Canyon Project Act is but one of the many parts of the "Law of the River". Because of their interrelationships, I believe they must be viewed in the aggregate, and in so doing I find that the purposes for which the River is operated cannot be considered mutually exclusive due to the inherent conflicts between the purposes. For these reasons and those stated on pages 21-24 of the Decision, I concur with the conclusion that the Bureau of Reclamation is not obligated to meet your request.

You also assert that the Colorado River has been made nonnavigable by the operations of the Bureau of Reclamation. On page 17 of your opposition to the June 27, 1988 Proposed Administrative Decision of the Regional Director, you conclude:

The test of whether is (sic) river is navigable is whether the river is one of "general and common usefulness for the purpose of trade and commerce." JOHN TALLEY re-emphasizes that the present river regulation (gyrating release patterns) by the BUREAU renders the river usable for trade or commerce with respect to his operation.

Therefore, not only has the Bureau's current Operating Criteria not improved navigation, but the Bureau's actions has created conditions which render the river non-navigable...

I believe it is well settled that in order to be deemed navigable, the whole of a stream need not be navigable and it need not be navigable at all times. United States v. Appalachian Power Co., (1940) 311 U.S. 377, 409; Arizona v. California, (1931) 283 U.S. 423, 453, 455; United States v. Utah (1930) 283 U.S. 64, 86) And further, Article IV of the Colorado River Compact recognized that the river had ceased to be navigable for commercial purposes. We are also mindful of Congress' intent as stated in hearings prior to the passage of the Boulder Canyon Project Act that the flow of the river be intended for use by power boats and other small craft.

I believe the record shows that the Bureau is meeting its responsibilities in administering the River. Your appeal is therefore denied.

This decision is final for the Department of the Interior.

Sincerely,

A handwritten signature in cursive script that reads "C. Dale Duvall". The signature is written in dark ink and is positioned above the printed name and title.

C. Dale Duvall
Commissioner

cc: Clerk of the Court
U.S. District Court
P.O. Box 11130
Reno, Nevada 89520