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43 CFR Part 415

Regulating the Use of Lower Colorado River Water Without an Entitlement; Proposed Rule

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

43 CFR Part 415

RIN 1006–AA50

Regulating the Use of Lower Colorado River Water Without an Entitlement

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Reclamation (Reclamation) proposes to address and eliminate the use of Colorado River water from the mainstream in the lower Colorado River basin (Lower Basin) without an entitlement. For the last eight years, the upper and lower Colorado River basins have experienced the worst drought conditions in approximately one hundred years of recorded history. This drought is the first sustained drought to be experienced on the Colorado River when all major storage facilities are in place and when Arizona, California, and Nevada (Lower Division States) are fully utilizing their basic Colorado River water apportionment of 7.5 million acre-feet per year. Reclamation believes that development of such a rule will help ensure the long-term sustainability of the lower Colorado River and in doing so will protect the water rights of lower Colorado River water entitlement holders. The rule establishes procedures that Reclamation will follow in making determinations of unlawful use of lower Colorado River water. The rule includes notice and appeal procedures for those persons or entities whose use of lower Colorado River water is identified as unlawful.

Reclamation is seeking comments on the proposed rule including comments that identify any specific economic impacts to members of the public and to small businesses located within the boundary of the river aquifer. The comments should include any identified or potential economic impacts and the estimated costs of the impacts.

DATES: Submit comments on the rule by September 15, 2008.

ADDRESSES: You may submit comments on the rule, identified by number 1006–AA50, by one of the following methods:

—Use of the Federal e-rulemaking Web site: *http://www.regulations.gov*. The notice has been assigned Docket ID: BOR–2008–0001. Follow the instructions for submitting comments using this Docket ID number.

—By mail to: Bureau of Reclamation, P.O. Box 61470, Boulder City, NV 89006–1470, Attention: Area Manager, Boulder Canyon Operations Office, Mail Code BCOO–1000. Please include the number 1006–AA50 and the Docket ID (BOR–2008–0001) in your correspondence.

FOR FURTHER INFORMATION CONTACT: Margot Selig, 702–293–8192.

SUPPLEMENTARY INFORMATION:

I. Background

Legal System for Use of Colorado River Water in the Lower Basin. The Colorado River is the primary source of water for irrigation, municipal, and industrial uses in the Lower Basin within the Lower Division States. Colorado River water is stored behind Hoover Dam, authorized by the Boulder Canyon Project Act of 1928 (BCPA), for delivery and beneficial use in the United States. In addition, water stored by Hoover Dam is released pursuant to the United States 1944 Treaty with Mexico which addresses the use of the Colorado, Rio Grande, and Tijuana Rivers.

To lawfully use water from the mainstream of the lower Colorado River, a person or entity must have an entitlement. An entitlement authorizes a person or entity to use water from the lower Colorado River for beneficial use and exists in one of three forms: (a) A decreed right as described in the Consolidated Decree entered by the United States Supreme Court in *Arizona* v. *California*, 547 U.S. 150 (2006) (Supreme Court Decree), (b) a contract with the Secretary of the Interior (Secretary), or (c) a Secretarial Reservation of Colorado River water. An entitlement to use lower Colorado River water specifies the quantity of water which may be used, the purpose for which the water may be used, and the location where the use may occur. Any diversion or consumptive use of lower Colorado River water without an entitlement is unlawful.

The BCPA and the Supreme Court Decree require a Colorado River water user in the Lower Basin to have a contract with the Secretary for the storage, delivery, and use of such water. The Regional Director of Reclamation's Lower Colorado Region enters into water delivery contracts with water users in Arizona, California, and Nevada on behalf of the Secretary. The BCPA and the Reclamation Act of 1902 authorize the Secretary to prescribe such rules and regulations necessary to carry out provisions of law.

The Supreme Court Decree requires the United States to account for all mainstream Colorado River water use in the Lower Basin. Pursuant to this requirement, Reclamation prepares and maintains complete, detailed, and accurate records of all known diversions, return flow, and consumptive use of Colorado River water in the Lower Basin on an annual basis. These accounting records include all diversions and use of Colorado River water in Arizona, California, and Nevada, whether or not currently authorized by an entitlement. All reported Colorado River water use in a state is required by the Supreme Court Decree to be accounted for against the amount of Colorado River water available in that state during that year. The Supreme Court Decree specifies that consumptive use of Colorado River water in the Lower Basin includes water drawn from the mainstream by underground pumping.

Technical Issues To Be Addressed. Current data show that Colorado River water used in the Lower Basin without an entitlement outside of existing lower Colorado River water delivery service areas ranges between 9,000 and 15,000 acre-feet per year. The amount of lower Colorado River water pumped by wells and river pumps within service areas that is not accounted for under existing entitlements is unknown. The largest amount of water being unlawfully used from the Colorado River in the Lower Basin occurs via underground pumping for irrigation use from wells located on the floodplain. The majority of water users who are using lower Colorado River water without an entitlement consist of households which pump small amounts of water for domestic use from wells located on the floodplain.

At Reclamation's request, the United States Geological Survey (USGS) has developed a method to identify wells that pump water that is replaced by water drawn from the lower Colorado River. The USGS method identifies a River Aquifer and a theoretical accounting surface within the River Aquifer. The River Aquifer extends outward from the Colorado River until encountering a geologic barrier to groundwater flow and encompasses the water bearing materials from which water can move to and from the lower Colorado River. The accounting surface was developed with a groundwater model and represents the elevation and extent of the river aquifer that is in hydraulic connection with the lower Colorado River. The accounting surface extends outward from the exterior boundary of the Colorado River floodplain to the exterior limit of the River Aquifer. Several thousand wells are located within the boundary of the River Aquifer. The USGS is performing a well inventory within the boundary of

the River Aquifer to identify river pumps and wells that can draw water directly from the lower Colorado River or pump water that would be replaced by water drawn from the lower Colorado River. Wells in the floodplain pump water directly from the lower Colorado River. The accounting surface is the area within which Reclamation will apply the USGS method to determine whether water pumped from a well is replaced with water drawn from the lower Colorado River. Reclamation will also evaluate whether unique hydrologic circumstances in some areas along the lower Colorado River merit an exception to the USGS methodology.

Need to Curtail Unlawful Use of Colorado River Water in the Lower Basin. One of Reclamation's legal obligations and administrative priorities is to ensure that all Colorado River water use in the Lower Basin is covered by an entitlement and correctly accounted for within each Lower Division State's apportionment. Each Lower Division State's apportionment of Colorado River water is limited; thus, unlawful use harms that state's entitlement holders by using water that those entitlement holders could legally use otherwise. This fact leads Reclamation to conclude that this rulemaking is necessary and appropriate. Additionally, each Lower Division State is fully utilizing its respective apportionment and the prolonged period of drought in the Colorado River Basin has reduced the amount of water stored in Colorado River reservoirs.

Content of Rule. The rule provides a framework for identifying and curtailing the use of mainstream Colorado River water in the Lower Basin without an entitlement. The rule will: (a) Establish the methodology that Reclamation will use to determine if a well pumps water that is replaced with water drawn from the lower Colorado River; (b) establish the criteria a water user must satisfy to demonstrate that his or her well does not pump water that is replaced with water drawn from the lower Colorado River; and (c) establish a process for a water user to appeal a determination that a specific well pumps water that would be replaced by water drawn from the lower Colorado River.

In the rule, Reclamation will inform unlawful users about the existence of various options to bring their use of Colorado River water in the Lower Basin into compliance with Federal law. Below are several options that Reclamation will consider:

(a) Some water may be available under the three Lower Division States' apportionments.

(1) Arizona: Some lower Colorado River water may be available for allocation in Arizona. Reclamation intends to consult with Arizona Department of Water Resources (ADWR) to determine if some of Arizona's Colorado River water could be committed for use by persons or entities in Arizona whose Colorado River water use is found to be unlawful. For the purposes of this rule, a water delivery contract between ADWR and Reclamation may satisfy the contract requirement for multiple individual water users and eliminate the need for contracts between the United States and the individual water users.

(2) California: All Colorado River water apportioned for use in California is already under permanent contract. However, a small amount of water is available for domestic use in California through the Lower Colorado Water Supply Project (LCWSP). Unlawful users in California who are eligible for domestic use in California and who wish to participate under the LCWSP must enter into a water delivery subcontract with the City of Needles. The City of Needles is the only entity authorized to enter into a standard form subcontract for delivery of this water supply to LCWSP beneficiaries.

(3) Nevada: All Colorado River water apportioned for use in Nevada is already under permanent contract. Any commitment to recognize new uses of Colorado River water in Nevada would be subject to terms established by the Southern Nevada Water Authority (SNWA). SNWA has an existing entitlement to the delivery and use of any Colorado River water not previously committed for use by other Nevada water users.

(b) A water user may be able to obtain an entitlement through an assignment, transfer, or lease from an existing entitlement holder within that state. An assignment, transfer, or lease must be approved by Reclamation.

(c) A water user may be able to obtain a right to use water as a customer of an existing entitlement holder. The place of water use must be included within the entitlement holder's service area and the inclusion must be approved by Reclamation.

(d) A water user may be able to acquire a different source of water that is not hydraulically connected to the lower Colorado River.

The rule emphasizes the options for bringing one's use of lower Colorado River water into compliance with Federal law. However, under the rule, individuals or entities who continue to use lower Colorado River water without an entitlement will be reported to the United States Supreme Court by the Regional Director. The Regional Director will work with the United States Department of Justice to seek Federal court orders requiring these users to cease using water from the lower Colorado River without an entitlement.

The proposed rule was preceded by an Advance Notice of Proposed Rulemaking (ANPR), published in the **Federal Register** on August 18, 2006 (71 FR 47763), under the title, ''Regulating Non-Contract Use of Colorado River Water in the Lower Basin.'' The ANPR provided for a public comment period that ran from August 18, 2006, through October 17, 2006. Reclamation received 21 letters during the comment period. Nine letters were requests to be placed on a mailing list. Twelve letters contained comments on the ANPR. The commentators included one Indian tribe, three state agencies, one interstate agency, one farmers' organization, one commercial business, two private individuals, one irrigation and electrical district organization, one water authority, and one municipality. Reclamation reviewed and analyzed all comments. The commentators generally support the development of a rule to address the use of Colorado River water in the Lower Basin without an entitlement. However, one commenter questioned the need for a rule since existing law is sufficient to bring unlawful users into compliance; this commenter requests further evaluation of the accounting surface around Lake Mead. One commenter desires a monitoring process, determination of required frequency for field data collection, updates to the USGS accounting surface model, and peer review of the USGS accounting surface methodology; this commenter is also concerned about the timing related to the replacement of water by Colorado River water when pumped by a well. For example, in certain areas of the River Aquifer in Arizona, the accounting surface boundary is 30 miles from the mainstream. One commenter said that unlawful users must have a means to bring their use into compliance with Federal law. One commenter said the rule should identify the point at which tributary water becomes part of the mainstream and address water from lakes and ponds fed from the mainstream through the subsurface. This commenter further added that the rule must provide for due process, and establish some type of enforcement ability to cause unlawful users to cease and desist from using mainstream water. Several commentators stated the necessity for

Reclamation to recognize the existence of unique hydrological circumstances in some areas of the lower Colorado River which could merit exemption to the River Aquifer/accounting surface methodology. All of the comments received on the ANPR are addressed in the proposed rule.

The rulemaking process provides an opportunity to (a) provide for public review and comment on the River Aquifer/accounting surface methodology; (b) adopt the River Aquifer/accounting surface methodology; (c) establish procedures for determining unlawful use; (d) develop notice and administrative appeal procedures; and (e) provide options for unlawful users to legalize their lower Colorado River water use. Reclamation is seeking comments on the proposed rule including comments that identify any specific economic impacts to members of the public and to small businesses located within the boundary of the river aquifer. The comments should include any identified or potential economic impacts and the estimated costs of the impacts.

USGS reports WRIR 94–4005 and WRIR 00–4085 were extensively reviewed through the USGS peer review and report publishing process. The frequency of field data collection for the well inventory is not predetermined. Field data collection is expected to be a continuous process to ensure that all wells are identified and inventoried, including those that have been drilled after the initial field data collection was completed for a given area. Also, the frequency for field data collection for any given area will be determined by Reclamation dynamically, based upon such parameters as significant changes in river conditions, development, population, political considerations, and availability of funding and staff. The timing of depletions from wells distant from the lower Colorado River has been addressed cooperatively by Reclamation and the USGS using numerical modeling techniques. The USGS is expected to produce a peer-reviewed ''Scientific Investigations Report'' concerning this matter in July 2008.

The only area Reclamation currently considers unique enough to warrant exemption from the River Aquifer/accounting surface method is the Yuma, Arizona area near the City of Yuma and south to the Southerly International Boundary (SIB) between the United States and Mexico. The Yuma area is hydrologically unique because it is a river delta environment, not a river environment. In the deltaic environment of the Yuma area, much of the water diverted from the Colorado River and applied to the ground for irrigation does not naturally return to either the Colorado River above the Northerly International Boundary (NIB) between the United States and Mexico or the Limotrophe section (the section of the lower Colorado River which forms the international boundary between the United States and Mexico from the NIB to the SIB) as surface water. Water which does not return to either the Colorado River above the NIB or the Limotrophe section as surface water is not available for diversion in the United States or for satisfaction of the Mexican water treaty. In the Yuma area, much of the water diverted from the Colorado River and applied to the ground for irrigation flows underground across the SIB and Limitrophe section boundaries into Mexico. A unique set of criteria governing this area is included in this rule at section 415.12. Should unique hydrological circumstances be identified elsewhere within the River Aquifer, Reclamation will likewise consider whether or not these circumstances would merit an exception to the USGS methodology. Information regarding the geographical applicability of the rule can be found in Subpart B of the rule and Figures 1 through 7.

II. Procedural Requirements

1. Regulatory Planning and Review (Executive Order (E.O.) 12866)

The Office of Management and Budget (OMB) has determined that this rule is not a significant rule and has not reviewed it under the requirements of E.O. 12866. We have evaluated the impacts of this rule as required by E.O. 12866 and have determined that it is not a significant regulatory action. The results of our evaluation follow:

(a) This rule will not have an annual effect of $100 million or more on the economy. It will not adversely affect in any material way the economy, productivity, competition, jobs, environment, public health or safety, or State, local, and tribal governments or communities. This rule will protect lawful entitlements to use water from the lower Colorado River by providing a method for identifying and reporting persons and entities unlawfully using such water.

Reclamation will incur ongoing administrative costs to monitor and address unlawful use of lower Colorado River water. Activities related to monitoring and addressing unlawful use of lower Colorado River water must be performed with or without promulgation of the rule for Reclamation to remain in compliance with Colorado River law. The Federal cost incurred to monitor and address unlawful use of lower Colorado River water is not incremental to the rule.

Water users who are using lower Colorado River water without an entitlement may incur costs to bring their lower Colorado River water use into compliance with Federal law. The type and amount of costs will vary among water users depending upon the state in which their well or river pump is located, the manner in which a water user chooses to acquire an entitlement if appropriate, whether or not their well or river pump is located within the boundaries of an entitlement holder's service area, and the fees assessed by the entitlement holder.

(b) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. Under the BCPA, the United States Congress allocated among the Lower Division States the mainstream water in the lower Colorado River to which they were entitled under the Colorado River Compact of 1922. Through the BCPA, the Congress uniquely authorized the Secretary to accomplish the allocation of Colorado River water among the Lower Division States by empowering the Secretary to enter into contracts for the delivery of water and by providing that no person shall have or be entitled to have the use of Colorado River water without a contract. The United States Supreme Court validated these and other provisions of the BCPA in the June 3, 1963 United States Supreme Court Opinion in *Arizona* v. *California* (376 U.S. 546) and the Supreme Court Decree. In the Supreme Court Decree the Secretary is charged with, among other things, accounting for and reporting the consumptive use of Colorado River water diverted directly from the mainstream and/or through underground pumping. Reclamation performs water contracting and water accounting responsibilities on behalf of the Secretary. No other agency in the United States performs these functions on the lower Colorado River.

(c) This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients; all of these will continue unaffected by the issuance of this rule.

(d) This rule does not raise any novel legal or policy issues. This rule will not implement requirements upon users of lower Colorado River water that do not already exist.

2. Regulatory Flexibility Act

The Department of the Interior (Interior) certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*). This rule imposes no requirements upon small governments (including Native American communities), small entities such as water purveyors or associations, individual lower Colorado River water entitlement holders or lawful water users that are not already imposed by the BCPA and the Supreme Court Decree concerning the use of lower Colorado River water. This rule does not impose a requirement for small entities to report or keep records on any of the requirements contained in this rule other than the type of recordkeeping regarding lower Colorado River water use that is already required by water delivery contracts with the Secretary. You may obtain a copy of the Initial Regulatory Flexibility Analysis by contacting us at the address in the Addresses section. Development of a Small Entity Compliance Guide is not required.

3. Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2)). This rule:

(a) Does not have an annual effect on the economy of $100 million or more. Under the Benefit-Cost Analysis/Unfunded Mandates Reform Act Analysis performed to evaluate the potential economic impacts of this rule the estimated net present value of the impact to the economy from 2008 through 2027 ranges between $256,313 to $3,742,363 under a real discount rate of 7.0 percent and $340,804 to $5,375,118 under a real discount rate of 3.0 percent. The estimated economic impacts over the 20-year period of the study are associated with costs that may be incurred when unlawful users of lower Colorado River water incur costs to either obtain a lower Colorado River water entitlement or become a customer of a lower Colorado River water entitlement holder. Federal costs related to oversight of unlawful use of lower Colorado River water will be incurred with or without the rule in fiscal years 2008 through 2010.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. The estimated economic impacts are not significant. This rule does not impose new requirements regarding the lawful use of lower Colorado River water.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises. The potential economic impacts incurred by lower Colorado River water users who are unlawfully using lower Colorado River water are not significant. This rule establishes procedures that Reclamation will use to determine if a well pumps water that is replaced by water drawn from the lower Colorado River.

4. Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more annually. This rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. This rule imposes no requirements regarding the lawful use of lower Colorado River water that are not already imposed by the BCPA and the Supreme Court Decree. You may obtain a copy of the Benefit-Cost Analysis/Unfunded Mandates Reform Act Analysis for Proposed Rulemaking by contacting us at the address in the **ADDRESSES** section. Therefore, a statement containing information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531, *et seq.*) is not required.

5. Takings (E.O. 12630 and E.O. 13406)

Under the criteria in E.O. 12630 and E.O. 13406, this rule does not have any significant takings implications. A Takings Implication Assessment is not required. This rule will protect valid water rights and help to ensure the long-term sustainability of the resource. For water users far from the river channel or reservoirs and who are pumping groundwater outside of the lower Colorado River floodplain, this rule provides for a test which can determine if water pumped by a well is replaced by water drawn from the mainstream of the lower Colorado River. The test is based upon the lower Colorado River accounting surface developed by the USGS. If, according to the test, the well is drawing water from the mainstream of the lower Colorado River, the well user must have an entitlement to use the water. This rule provides information explaining how to acquire an entitlement to use lower Colorado River water. This rule also explains the steps that Reclamation will take against a person or entity for failure to stop using lower Colorado River water unlawfully.

6. Federalism (E.O. 13132)

Under the criteria in E.O. 13132, the proposed rule does not have any federalism implications to warrant the preparation of a Federalism Assessment. The rule is not associated with, nor will it have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. A Federalism Assessment is not required.

7. Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of E.O. 12988. Specifically, this rule:

(a) Does not unduly burden the judicial system;

(b) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(c) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

8. Consultation With Indian Tribes (E.O. 13175)

Under E.O. 13175, Reclamation has evaluated this rule and determined that it would have no substantial effects on federally recognized Indian tribes. Reclamation consulted with the Indian tribes that are located on the mainstream of the lower Colorado River on November 1, 2006, to discuss the objectives of this rule and to hear questions and concerns on the part of Indian tribes.

9. Paperwork Reduction Act

This rule does not require collection of new or additional information from the public other than what is already required from Colorado River water entitlement holders regarding their water use. A submission under the Paperwork Reduction Act is not required.

10. National Environmental Policy Act of 1969 (NEPA)

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. An environmental assessment consistent with NEPA requirements has been prepared and is summarized below. This rule does not require construction of water diversion, delivery, treatment, or storage facilities. This rule does not impact cultural resources or threatened or endangered species. This rule may improve the long-term sustainability of the lower Colorado River by establishing

procedures which enable Reclamation to identify unlawful users of lower Colorado River water. You may obtain a copy of the environmental assessment by contacting us at the address in the **ADDRESSES** section or you may find the environmental assessment on Reclamation's Web page at *http://www.usbr.gov/lc/.*

11. Information Quality Act

In developing this rule, we did not conduct or use a study, experiment, or survey requiring peer review under the Information Quality Act (Pub. L. 106–554).

12. Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in the E.O. 13211. A Statement of Energy Effects is not required.

13. Clarity of This Regulation

We are required by E.O. 12866 and E.O. 12988, and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you believe these requirements have not been met, please send comments to Reclamation as instructed in the **ADDRESSES** section. Please make your comments as specific as possible, referring to specific sections and how they could be improved. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you believe lists or tables would be useful, etc.

14. Public Availability of Comments

Before including your name, address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

List of Subjects in 43 CFR Part 415

Water resources, Water supply.

Dated: July 9, 2008.

Timothy R. Petty,

Acting Assistant Secretary for Water and Science.

For the reasons stated in the preamble, the Bureau of Reclamation proposes to add a new part 415 to Title 43 of the Code of Federal Regulations to read as follows:

PART 415—REGULATING THE USE OF LOWER COLORADO RIVER WATER WITHOUT AN ENTITLEMENT

Subpart A—Purpose, Definitions, and Applicability

Sec.
415.1 What is the purpose of this part?
415.2 What terms are used in this part?
415.3 What is the difference between lawful and unlawful use of lower Colorado River water?
415.4 How do I know if the water I use is subject to this part?
415.5 How will the river aquifer/accounting surface methodology be applied?

Subpart B—Determining the Status of a Well

415.10 How do I determine if my well is in the floodplain?
415.11 How do I determine if my well is outside the floodplain but drawing water out of the lower Colorado River?
415.12 How do I determine the status of my well if it is located in the Yuma accounting area?

Subpart C—Adjustments to the River Aquifer, Floodplain, or the Accounting Surface

415.20 What conditions may cause adjustments to the river aquifer boundaries and the elevation values which define the accounting surface?
415.21 How will Reclamation make adjustments to the Yuma accounting area?

Subpart D—Notification of Well Status

415.30 What is the procedure for determining the status of my well and how will I be notified?
415.31 How may I challenge the determination of my well status?

Subpart E—Bringing Your Use of Lower Colorado River Water Into Compliance With Federal Law

415.40 How may I lawfully use water from the lower Colorado River?
415.41 Will compliance with Federal law incur any cost for which I will be responsible?
415.42 What is the role of an existing entitlement holder under this part?
415.43 Is this part applicable to existing lower Colorado River water delivery contracts?

Subpart F—Penalty for Noncompliance

415.50 What if I continue to use water from the lower Colorado River without an entitlement?

Illustrations to Part 415

Authority: 5 U.S.C. 552; 43 U.S.C. 373, 485, 617.

Subpart A—Purpose, Definitions, and Applicability

§ 415.1 What is the purpose of this part?

This part protects lawful entitlements to use water from the lower Colorado River by providing a method for identifying persons and entities unlawfully using such water.

§ 415.2 What terms are used in this part?

Accounting surface means the elevation and slope of the unconfined static water table in the river aquifer outside the floodplain and the reservoirs of the lower Colorado River that would exist if the lower Colorado River were the only source of water to the river aquifer. The accounting surface extends outward from the edges of the floodplain or a reservoir to the subsurface boundary of the river aquifer from the mouth of the Grand Canyon to just north of the Southerly International Boundary (SIB). In the Yuma accounting area, the use of the accounting surface is superseded as determined by Reclamation.

Accounting year means January 1 through December 31.

Boulder Canyon Project Act of 1928 (BCPA) means the act which established the responsibilities of the Secretary of the Interior to direct, manage, and coordinate the operation of Colorado River dams and related works in the Lower Basin.

Colorado River water means water in or withdrawn from the mainstream of the Colorado River, including the following:

(1) Water in the surface channels and reservoirs of the Colorado River;

(2) Water in the floodplain drains;

(3) Water beneath the Colorado River floodplain; and

(4) Water withdrawn from beneath the accounting surface.

Domestic use means the use of Colorado River water for household, stock, municipal, mining, milling, industrial and other like purposes, excluding the generation of electrical power.

Floodplain means that part of the lower Colorado River valley that has been covered by floods of the modern lower Colorado River as it meandered prior to construction of Hoover Dam. The floodplain commonly is bounded by terraces and alluvial slopes that rise to the foot of the mountains that rim the valley. In the Yuma area, the floodplain includes the floodplain of the Gila River from the Laguna and Gila Mountains to

the confluence with the lower Colorado River.

Lower basin means the lower Colorado River basin, which includes those parts of Arizona, California, Nevada, New Mexico, and Utah within and from which waters naturally drain into the Colorado River below Lee Ferry. The lower basin also includes parts of those same states that are located outside the drainage area of the Colorado River that are or can be beneficially served by waters diverted from the Colorado River below Lee Ferry.

Lower Colorado River water means mainstream water.

Lower Division States means Arizona, California, and Nevada.

Mainstream means the main channel of the Colorado River downstream from Lee Ferry within the United States. The mainstream includes the reservoirs behind dams on the main channel and Senator Wash Reservoir off the main channel.

Mainstream water means

(1) Water drawn or diverted from the main channel of the lower Colorado River, exclusive of tributaries, within the United States downstream from Lee Ferry (including the areas covered by reservoirs, wetlands, lakes, ponds, and backwaters);

(2) Water withdrawn by a well within the boundary of the floodplain portion of the lower Colorado River aquifer; and

(3) Within the boundary of the accounting surface portion of the lower Colorado River aquifer, water withdrawn from a well with a static water level indistinguishable from or less than the elevation of the accounting surface at the well site.

NIB means the Northerly International Boundary with Mexico.

Normal flow conditions mean that releases from Hoover Dam are made in accordance with downstream requirements to satisfy 7.5 million acre-feet of consumptive use in the United States and a delivery of 1.5 million acre-feet to Mexico.

Regional Director means the Regional Director, Lower Colorado Region, Bureau of Reclamation, Boulder City, Nevada.

River aquifer means the unconfined aquifer that consists of the saturated, permeable sediments and sedimentary rocks that are hydraulically connected to the lower Colorado River so that water can move between the lower Colorado River and the aquifer in response to withdrawal of water from the aquifer or differences in water level elevations between the lower Colorado River and the aquifer. The river aquifer consists of the aquifer underlying the lower Colorado River's floodplain and the accounting surface. The river aquifer has been delineated from the mouth of the Grand Canyon to SIB.

SIB means the Southerly International Boundary with Mexico.

Static water elevation means the non-pumping elevation of the water in a well, measured as the elevation of the ground, or other appropriate elevation reference, less the depth to water in the well with the pump turned off and the water elevation in the well recovered to the non-pumping elevation.

Tributary water is water that enters the mainstream or the river aquifer from a source other than the Colorado River.

USGS means the United States Geological Survey of the Department of the Interior.

Wells with a static water elevation that cannot be distinguished from the accounting surface means wells that have a static water elevation which is within ± 0.84 feet from the accounting surface elevation in the area of the well.

Yuma accounting area means the area in Arizona generally downstream from the confluence of the Gila River, on the Yuma Mesa, and the Yuma Valley. This area is delineated in Figure 7 of this part.

§ 415.3 What is the difference between lawful and unlawful use of lower Colorado River water?

(a) A person or entity may lawfully use water from the lower Colorado River only under an entitlement. An entitlement means an authorization to use water from the lower Colorado River water as described in:

(1) The Consolidated Decree entered by the United States Supreme Court in *Arizona* v. *California* in March of 2006, as supplemented or amended;

(2) A water delivery contract with the Secretary of the Interior; or

(3) A reservation of water by the Secretary of the Interior.

(b) If you are using water from the lower Colorado River without an entitlement, you are using water unlawfully. You must obtain an entitlement or you must stop using water from the lower Colorado River.

§ 415.4 How do I know if the water I use is subject to this part?

(a) This rule applies to you if you use water from the mainstream of the lower Colorado River within the States of Arizona, California, or Nevada. The lower Colorado River begins at Lee Ferry, Arizona, which is located 17.3 miles downstream from Glen Canyon Dam. The mainstream of the lower Colorado River includes all water in the river channel and all water in any reservoir on the lower Colorado River. Water in the mainstream of the lower Colorado River originates from many sources both above and below the ground. When surface water from tributary valleys reaches the mainstream of the lower Colorado River, it becomes Colorado River water. When tributary water commingles with Colorado River water beneath the floodplain, it becomes mainstream water. Tributary water that commingles with groundwater beneath the accounting surface, where the elevation of the water table is below or cannot be distinguished from the elevation of the accounting surface, is considered mainstream water.

(b) You are using mainstream water from the lower Colorado River if you divert any water out of the river channel; for example, by a diversion dam, a river pump, or a hose. You are using mainstream water from the lower Colorado River if you are diverting water out of a reservoir, such as Lake Mead, Lake Mohave, or Lake Havasu. You are using mainstream water from the lower Colorado River if you operate a well located in the river's floodplain, because that well draws water directly from the mainstream. You are using mainstream water from the lower Colorado River if you operate a well located outside the floodplain and your well pumps water that is replaced by water drawn from the lower Colorado River, as determined by the river aquifer/accounting surface methodology.

§ 415.5 How will the river aquifer/accounting surface methodology be applied?

(a) Your well must be located within the exterior boundary of the river aquifer to potentially pump water from the lower Colorado River. The river aquifer extends from Lake Mead downstream to SIB and laterally into adjacent areas generally until encountering a barrier to subsurface flow. The river aquifer contains two smaller areas called the floodplain and the accounting surface. The accounting surface exists within the river aquifer and extends laterally from edges of the floodplain (or edges of a reservoir) to the extent of the river aquifer from Lake Mead downstream to just north of SIB.

(b) Surface water from tributary valleys is considered Colorado River water when it reaches the mainstream of the lower Colorado River. When tributary water commingles with groundwater beneath the floodplain, it becomes mainstream water. Tributary water beneath the accounting surface, where the elevation of the water table is below or cannot be distinguished from

the elevation of the accounting surface, is considered mainstream water.

(c) If your well is located in the floodplain portion of the river aquifer, you are pumping lower Colorado River water. If your well is located in the accounting surface portion of the river aquifer, you are pumping water that is replaced by water drawn from the lower Colorado River unless the static water elevation in your well is above the elevation of the accounting surface in the area of your well.

(1) *Lee Ferry to the mouth of the Grand Canyon*. The river aquifer, floodplain, and accounting surface have not been delineated from Lee Ferry to the mouth of the Grand Canyon as of the writing of this part. The determination of whether a well is pumping water from the lower Colorado River or water that is replaced by water drawn from the lower Colorado River will be made on a case-by-case basis for wells in this area using criteria determined by the Regional Director.

(2) *Lake Mead area*. In the area surrounding Lake Mead, the river aquifer/accounting surface methodology will be used to determine if a well will be considered to pump lower Colorado River water or water replaced by water drawn from the mainstream of the lower Colorado River. The accounting surface in the area surrounding Lake Mead requires unique treatment in this part. The water surface elevation of Lake Mead fluctuates significantly on an annual basis in response to variations in the natural water supply. This fluctuation is unlike the other reservoirs of the lower Colorado River which correspond to monthly operational targets. The accounting surface in the area surrounding Lake Mead will vary annually and will be set at the high end-of-month elevation of Lake Mead for the accounting year. Information regarding the elevation and lateral extent of the accounting surface surrounding Lake Mead will be provided every 5 years via publication of a notice in the **Federal Register**. Figures 2 and 3 of this part show the outer-most boundary of the accounting surface surrounding Lake Mead.

(3) *Downstream from Lake Mead to the Yuma accounting area*. Accounting surface elevations in the areas surrounding Lake Mohave and Lake Havasu are set at the annual high end-of-month water surface elevation targets used to operate these reservoirs under normal flow conditions. The accounting surface elevations elsewhere are determined by water surface profiles of the lower Colorado River and by water surface elevations in drainage ditches where they exist in irrigated floodplain areas under normal flow conditions.

(d) Though the accounting surface has been defined to just north of SIB, the river aquifer/accounting surface methodology will be utilized to identify wells which pump water that is replaced by water drawn from the lower Colorado River only in the portion of the river aquifer upstream of the Yuma accounting area as shown in Figure 6. The method described in § 415.12 will be used in the Yuma accounting area to determine whether or not a well pumps lower Colorado River water or groundwater which otherwise would have returned to the lower Colorado River upstream of NIB.

Subpart B—Determining the Status of a Well

§ 415.10 How do I determine if my well is in the floodplain?

Use the following guidelines to determine if your well is in the floodplain.

(a) Generalized maps (not drawn to scale) of the floodplain of the lower Colorado River from Davis Dam to the northern boundary of the Yuma accounting area are provided at the end of this part in Figures 4 through 6. If your well is located in the floodplain shown in Figures 4 through 6, you are pumping water from the lower Colorado River and you must have an entitlement to lawfully use that water.

(b) The floodplain of the area in northern Arizona between Lee Ferry, Arizona, and the mouth of the Grand Canyon has not yet been determined. If your well is between Lee Ferry and the mouth of the Grand Canyon, Reclamation will consider the facts on a case-by-case basis to determine if your well withdraws water from the lower Colorado River.

(c) If you need help to determine whether your well is located within the floodplain, you may contact the Bureau of Reclamation, P.O. Box 61470, Boulder City, NV 89006–1470, *Attention:* Area Manager, Boulder Canyon Operations Office (BCOO–1000).

§ 415.11 How do I determine if my well is outside the floodplain but drawing water out of the lower Colorado River?

(a) A well located within the accounting surface portion of the river aquifer will be considered to pump water that is replaced by water drawn from the lower Colorado River if the static water elevation in the well is less than or cannot be distinguished from the elevation of the accounting surface at the well site.

(1) The accounting surface is the elevation at which underground water would be expected to occur in a particular area of the river aquifer if the lower Colorado River was the only source of groundwater in the area. Therefore, water pumped below or from an elevation indistinguishable from the elevation of the accounting surface in the location of your well will be replaced by water drawn from the lower Colorado River. Generalized maps (not drawn to scale) of the accounting surface from the mouth of the Grand Canyon to the northern boundary of the Yuma accounting area outside the floodplain are provided at the end of this part as Figures 2 through 6. If your well is located outside the floodplain but within the boundary of the river aquifer, the USGS will be required to measure the static water elevation in your well to determine if it is pumping water replaced by water drawn from the lower Colorado River.

(2) The static water elevation in your well is compared by Reclamation to the elevation of the accounting surface at your well site. If the static water elevation in your well is indistinguishable from or lower than the elevation of the accounting surface where your well is located, you are pumping water that is replaced by water drawn from the mainstream of the lower Colorado River. You must have an entitlement to lawfully use water from the lower Colorado River. The USGS will provide advance notice to you before measurements are made by the USGS. If the static water level has never been measured in your well, you may contact the Bureau of Reclamation, P.O. Box 61470, Attention: Area Manager, Boulder Canyon Operations Office, Mail Code BCOO–1000, Boulder City, NV 89006–1470 to schedule the measurement of the static water level in your well. No other data or method are available to determine if your well is pumping water that is replaced by lower Colorado River water. Thus, if a well user denies an employee, agent, or contractor of Reclamation or the USGS access to a well to make the required measurements, Reclamation will presume that the well pumps water that is replaced by water drawn from the lower Colorado River. If the USGS is physically unable to make the required measurements due to well construction, Reclamation will presume that the well pumps water that is replaced by water drawn from the lower Colorado River. Such a presumption about your well is made, absent the measurement of the static water elevation in your well, to maintain compliance with the BCPA.

The BCPA requires all persons using lower Colorado River water to have a contract for the storage and delivery of Colorado River water with the Secretary of the Interior or a perfected water right under state law which existed prior to June 25, 1929, the effective date of the BCPA.

§ 415.12 How do I determine the status of my well if it is located in the Yuma accounting area?

(a) This section defines the boundaries of the Yuma accounting area and describes criteria for determining when water withdrawn by a well is lower Colorado River water or groundwater that is flowing to the lower Colorado River upstream of NIB. The Yuma accounting area is delineated in Figure 7 of this part.

(b) The Yuma accounting area is hydrologically unique because much of the water diverted from the lower Colorado River and applied for irrigation generally flows underground across the SIB or under the Colorado River south of the NIB and does not return to the lower Colorado River in the United States through natural hydrologic processes. Water which does not return to the Colorado River above the NIB, or which does not return to the Limotrophe section (the section of the lower Colorado River which forms the international boundary between the United States and Mexico from the NIB to the SIB) as surface water is not available to satisfy consumptive use in the United States or delivery obligations to Mexico by the United States under the Mexican Treaty. Reclamation determined that wells within the Yuma accounting area deserve separate consideration due to the direction of groundwater flow and the deltaic nature of the Yuma area. Reclamation developed an accounting method to determine whether or not wells in this area pump lower Colorado River water, or water previously diverted from the lower Colorado River which would otherwise return to the lower Colorado River. In the Yuma accounting area, unmeasured return flow credit is calculated and credited to Arizona assuming there are no intervening wells or depletions from the time the flows leave an irrigation district to the time the flows return to the lower Colorado River. Therefore, in the Yuma accounting area, wells which pump groundwater which otherwise would have returned to the lower Colorado River upstream of the NIB are considered to be using lower Colorado River water.

(c) Figure 7 of this part depicts a groundwater divide at the northern end of the Yuma accounting area. In the Yuma accounting area, north of the groundwater divide, groundwater flows north to the lower Colorado River above the NIB as of the adoption of this part. Reclamation will determine that your well pumps lower Colorado River water if your well is located in an area where groundwater flows toward the lower Colorado River upstream of the NIB, as depicted in Figure 7 of this part.

(d) Your well is exempt from this rule if your well is located south of the groundwater divide depicted in Figure 7 of this part where groundwater does not flow toward the lower Colorado River upstream of the NIB.

Subpart C—Adjustments to the River Aquifer, Floodplain, or the Accounting Surface

§ 415.20 What conditions may cause adjustments to the river aquifer boundaries and the elevation values which define the accounting surface?

(a) Physical evidence to support adjustment to the geographic boundary of the river aquifer would include, but are not limited to, information derived from geologic studies, geophysical studies, well drilling, or the result of an extreme hydrologic event.

(b) Changes in conditions that define the lower Colorado River profile may cause Reclamation to adjust the accounting surface elevation contours. Such changes in conditions may include, but are not limited to, changes in development or growth which may increase or decrease groundwater pumping in the Yuma accounting area, changes in water deliveries and/or uses, changes in reservoir operations, or changes in hydraulic conditions or other conditions that may result in significant water surface elevation changes in the lower Colorado River channel, reservoirs, and drainage ditches of the lower Colorado River.

(c) The USGS and Reclamation will document the basis for any adjustments to the accounting surface elevations or the geographic boundary of the river aquifer and/or the accounting surface in a report which will be made available to the public. This part would be amended to reflect changes in the accounting surface elevations and/or the geographic boundary of the river aquifer.

§ 415.21 How will Reclamation make adjustments to the Yuma accounting area?

(a) The method described in § 415.12 will be used in the Yuma accounting area unless or until groundwater gradients in the Yuma accounting area change so as to require a re-evaluation of the areas from which groundwater flows toward the Colorado River upstream of NIB. Such a change could occur due to increased groundwater pumping and/or a redistribution of groundwater pumping in the Yuma accounting area.

(b) In the event of a re-evaluation, Reclamation will review the method for the Yuma accounting area and modify it, as needed, following consultations with the Lower Division States. Reclamation's review will be conducted in coordination with the Lower Division States. Changes in the Yuma accounting area will be formalized by revising this part.

Subpart D—Notification of Well Status

§ 415.30 What is the procedure for determining the status of my well and how will I be notified?

(a) The Regional Director will consider information relating to §§ 415.10 through 415.12 to determine whether or not you are using water from the lower Colorado River without an entitlement. If your well is located within the accounting surface, the USGS will ask permission to measure the static water elevation in your well and the elevation of the land surface (or other appropriate elevation datum) at your well site to determine if the water pumped from your well is lower Colorado River water or water replaced by water drawn from the lower Colorado River. After the USGS measures the static water elevation in your well, the Regional Director will inform you about the status of your well in writing. If you do not give the USGS permission to measure the static water elevation in your well, the Regional Director will assume that water pumped from your well is lower Colorado River water or water replaced by water drawn from the lower Colorado River.

(b) The Regional Director will establish a file for each determination that you dispute. This file is an administrative record and will contain all relevant information regarding the status of your well or other means of using water from the lower Colorado River. You are entitled to review the administrative record. All of the information considered by the Regional Director will be included in the administrative record.

(c) If the Regional Director determines you are using water from the lower Colorado River without an entitlement, the Regional Director will notify you of the determination in writing by certified mail, return receipt requested, and provide the basis for the determination. The Regional Director's determination is final unless, within 60 days of the receipt of the notice, you file an

objection with the Regional Director. The Regional Director will make reasonable attempts to locate you to send the notice of determination and will document these attempts. If the Regional Director is unable to locate you, the determination will be final 60 days after the first attempt to deliver the notice.

§ 415.31 How may I challenge the determination of my well status?

(a) If you file a challenge to the Regional Director's determination, you must include information to support your challenge. The Regional Director will review your challenge and any supporting information and will notify you in writing by certified mail, return receipt requested, whether the determination has been changed.

(b) If the Regional Director does not change the determination, you may file an appeal with the Commissioner of Reclamation in writing within 30 days after receiving the notice that the determination was not changed. If you do not file an appeal with the Commissioner, the decision of the Regional Director is final 30 days after you received notice that the determination was not changed.

(c) It is not necessary to include your supporting information in the appeal to the Commissioner. The Regional Director will send the administrative record to the Commissioner and will include the challenge you filed with the Regional Director and any supporting information you filed with the challenge. The Commissioner's determination will be made solely on the administrative record. The Commissioner's determination is the final determination of the Department of the Interior.

(d) Determinations by the Regional Director that may or may not be challenged:

You may challenge	You may not challenge
(1) That your well is, or is not, located within the river aquifer	That your well in the floodplain is diverting lower Colorado River water.
(2) That your well is, or is not, located within the floodplain portion of the river aquifer.	That the entire amount of water pumped from a well should be accounted for as a diversion of lower Colorado River water regardless of the hypothesized ratio of non-Colorado River water to lower Colorado River water.
(3) That your well is, or is not, located within the accounting surface portion of the river aquifer.	Whether or not Reclamation will use the method described in this part to determine if a well pumps lower Colorado River water or water replaced by water drawn from the lower Colorado River.
(4) That the static water elevation in your well in the accounting surface portion of the river aquifer is, or is not, below or cannot be distinguished from the accounting surface (new measurements will be made by the USGS; measurements made by any other person or entity will not be accepted).	

Subpart E—Bringing Your Use of Lower Colorado River Water Into Compliance With Federal Law

§ 415.40 How may I lawfully use water from the lower Colorado River?

You may be able to bring your use of water from the lower Colorado River into compliance with Federal law through one of the options provided below:

(a) *Arizona.* If you are using water from the lower Colorado River in Arizona, you may be able to acquire an entitlement through a contract with the Secretary of the Interior. You may contact the Arizona Department of Water Resources, Attention: Arizona Department of Water Resources, Colorado River Management, 3550 North Central Avenue, Phoenix, Arizona 85012 for information about acquiring an entitlement under Arizona's lower Colorado River apportionment through a contract with the Secretary of the Interior.

(b) *California.* All Colorado River water apportioned for use in California is already under permanent contract. However, if you are using water from the lower Colorado River in California, some water is available for domestic use in California through the Lower Colorado Water Supply Project (LCWSP). Unlawful users in California who are eligible as domestic users in California and who wish to participate under the LCWSP must enter into a water delivery subcontract with the City of Needles. The City of Needles is the only entity authorized to enter into a standard form subcontract for delivery of this water supply to project beneficiaries.

(c) *Nevada.* All Colorado River water apportioned for use in Nevada is already under permanent contract. Any commitment to recognize new uses of Colorado River water in Nevada would be subject to terms established by the Southern Nevada Water Authority (SNWA). SNWA has an existing entitlement to the delivery and use of any Colorado River water not previously committed for use by other Nevada water users.

(d) *Any Lower Division State.* If you are using water from the lower Colorado River in Arizona, California, or Nevada, you may be able to acquire an entitlement through an assignment, transfer, or lease from an existing entitlement holder within your state. The assignment, transfer, or lease must be approved by Reclamation.

(1) You may also be able to obtain a right to use water as a customer of an existing entitlement holder even if your well or river pump is not located within the entitlement holder's service area. At the consent of the entitlement holder, your well or river pump and place of water use must be included within the entitlement holder's service area through a change in the service area boundary and the inclusion must be approved by Reclamation. If your well or river pump is already located within the entitlement holder's service area, you must contact the entitlement holder to inquire about reporting your use of lower Colorado River water under the entitlement holder's entitlement. If you do not know if your well or river pump is near or within an entitlement holder's service area, you may refer to a map of service area boundaries within the river aquifer on Reclamation's Web page at *http://www.usbr.gov/lc/.*

(2) You may contact Reclamation at the Bureau of Reclamation, P.O. Box 61470, Boulder City, NV 89006–1470, Attention: Area Manager, Boulder Canyon Operations Office, Mail Code BCOO–1000, for information relating to the possibility of acquiring an entitlement to use water from the lower Colorado River or becoming a customer of an existing water entitlement holder.

§ 415.41 Will compliance with Federal law incur any costs for which I will be responsible?

(a) You may be required to pay for certain costs when you bring your lower

Colorado River water use into compliance with Federal law. The type and amount of costs will vary among water users. The type and amount of costs you may be required to pay will depend upon:

(1) *The state in which your well or river pump is located.* If you are using water from the lower Colorado River in Arizona, and you are not within an entitlement holder's service area, you may be able to acquire an entitlement through a contract with the Secretary for a nominal charge. In California, if you are not within an entitlement holder's service area, and you wish to enter a LCWSP water delivery subcontract with the City of Needles, you will be required to pay the initial and annual fees charged by the City of Needles to its LCWSP subcontractors. If your well is in Nevada, you would be required to comply with SNWA policies.

(2) *Whether or not your well or river pump is located within the boundaries of a contract holder's service area.* In Arizona and California, if your well or river pump is not located within the boundaries of an entitlement holder's service area, your well or river pump may be close enough to an entitlement holder's service area so that inclusion of your well or river pump by modification of the service area boundary is possible. If the entitlement holder agrees to modify its service area boundaries to include your well or river pump, you will be required to pay for the costs incurred by Reclamation to review and approve the inclusion. The entitlement holder may or may not pass on its costs, if any, to you. Once you are a customer of the entitlement holder, you may be required to pay regular fees assessed by the entitlement holder.

(b) In Arizona and California, if your well or river pump is already within an entitlement holder's service area, your use of lower Colorado River water should be reported to the entitlement holder as determined by the entitlement holder. Your lower Colorado River water use will be accounted for by the entitlement holder with all such uses within its service area. The entitlement holder will report the total use of lower Colorado River water occurring within its service area under its entitlement to Reclamation. Reclamation will account for lower Colorado River water use reported by the entitlement holder against the entitlement holder's entitlement on an annual basis. Depending upon the policies and pricing structure of the entitlement holder who is accounting for your use of lower Colorado River water, you may be subject to fees assessed by the entitlement holder.

§ 415.42 What is the role of an existing entitlement holder under this part?

Any lower Colorado River water use occurring within your service area must be accounted for within your entitlement in accordance with the Consolidated Decree entered by the United States Supreme Court in *Arizona* v. *California* (547 U.S. 150 (2006)). Reclamation will assist you by providing you with information identifying the location and type of use for all of the wells inventoried in your service area which pump lower Colorado River water or water replaced by water drawn from the lower Colorado River.

§ 415.43 Is this part applicable to existing lower Colorado River water delivery contracts?

Yes, the delivery of lower Colorado River water under existing lower Colorado River water delivery contracts is subject to Federal rules and regulations promulgated by the Secretary of the Interior under Reclamation law.

Subpart F—Penalty for Noncompliance

§ 415.50 What if I continue to use water from the lower Colorado River without an entitlement?

If you do not stop using water from the lower Colorado River without an entitlement after the notice, determination, and appeal procedures (if pursued) have been completed, then the Regional Director will report you as unlawfully using Colorado River water in an annual report filed with the United States Supreme Court. The Regional Director will then work with the United States Department of Justice to seek Federal court orders requiring you to stop using water from the lower Colorado River without an entitlement.

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Illustrations to Part 415

Figure 1 -- Index Map

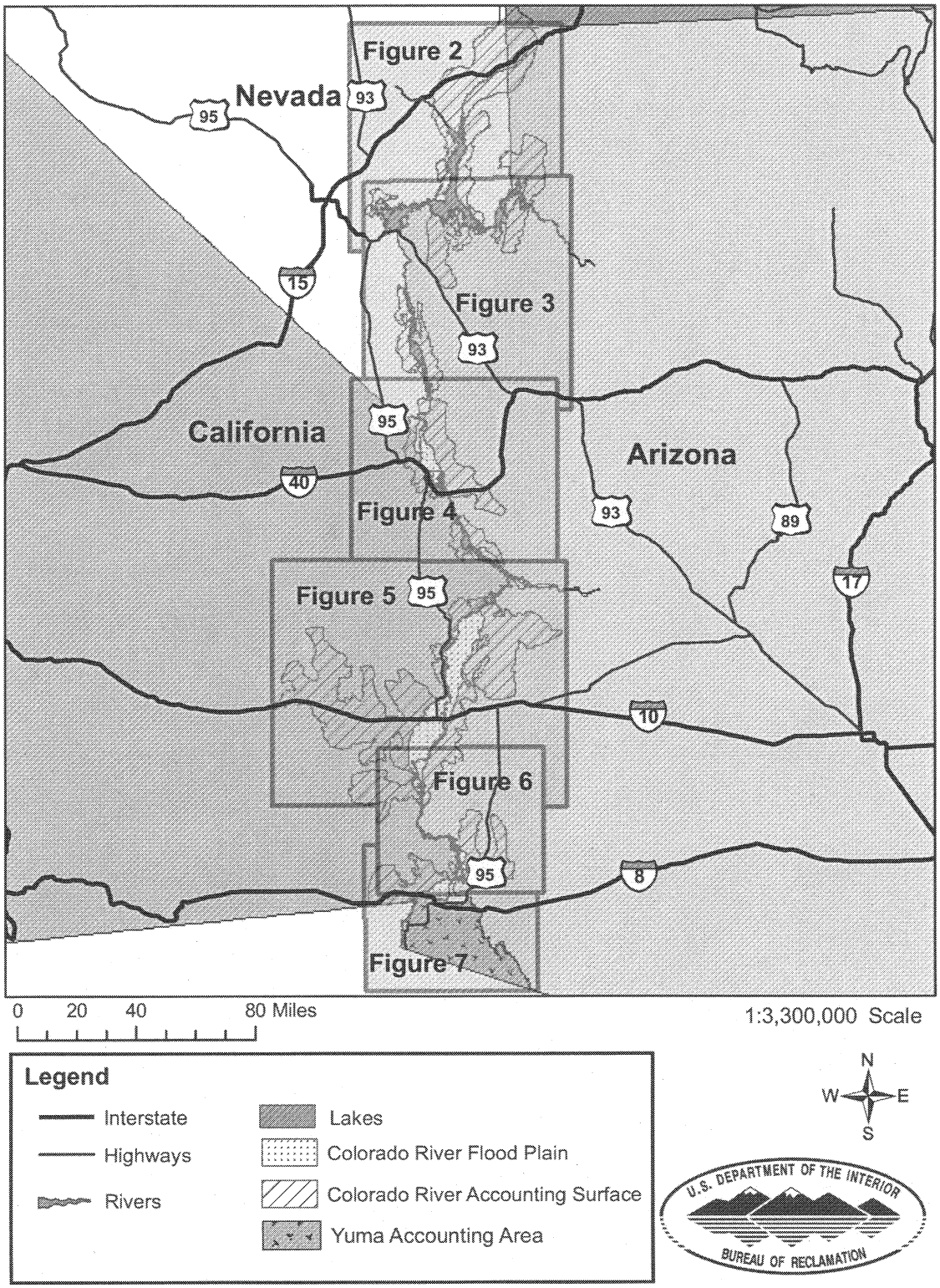


Figure 2 -- Lower Colorado River Accounting Surface: Mouth of the Grand Canyon to Hoover Dam

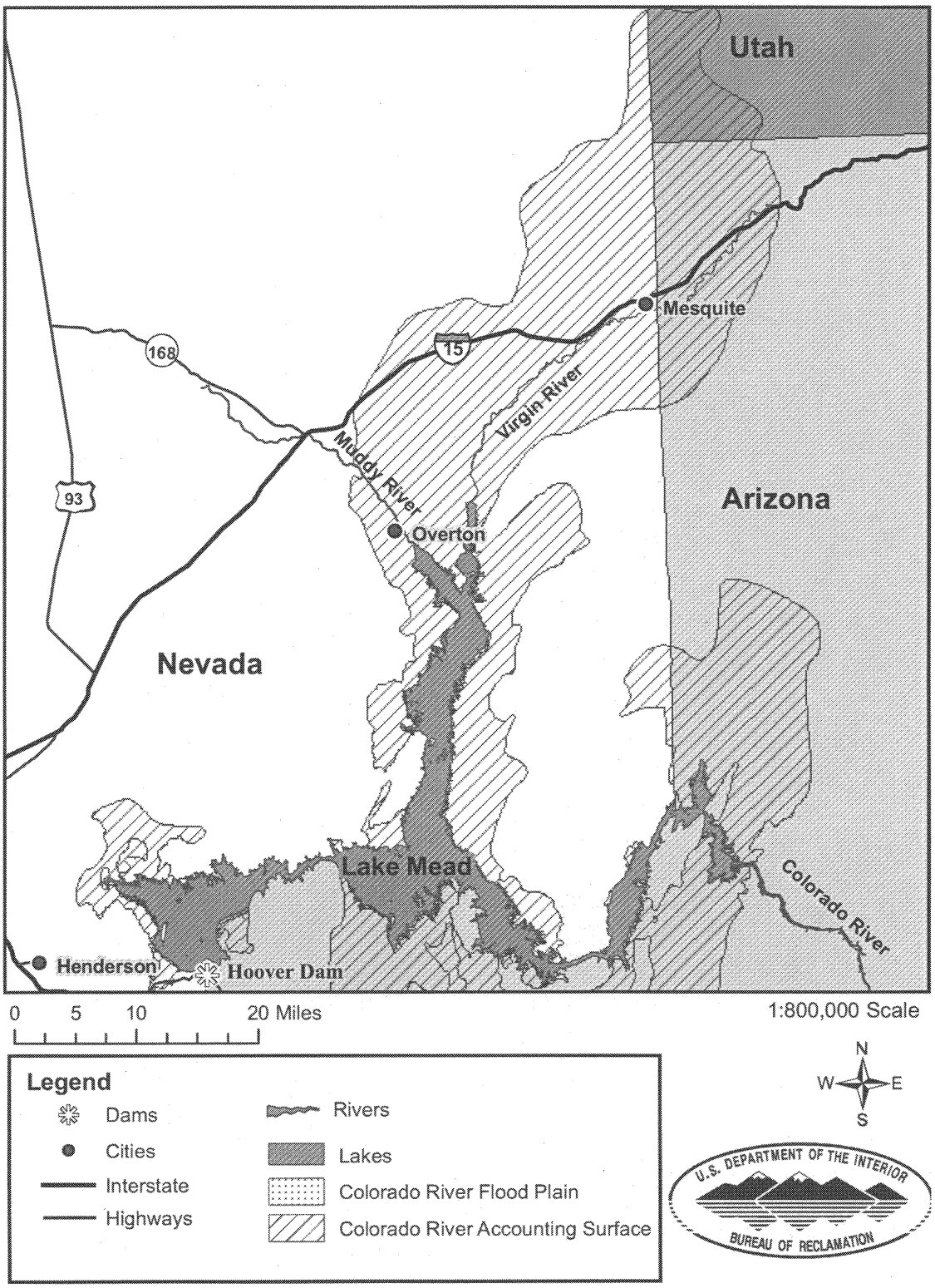


Figure 3 – Lower Colorado River Accounting Surface: Lake Mead to Davis Dam

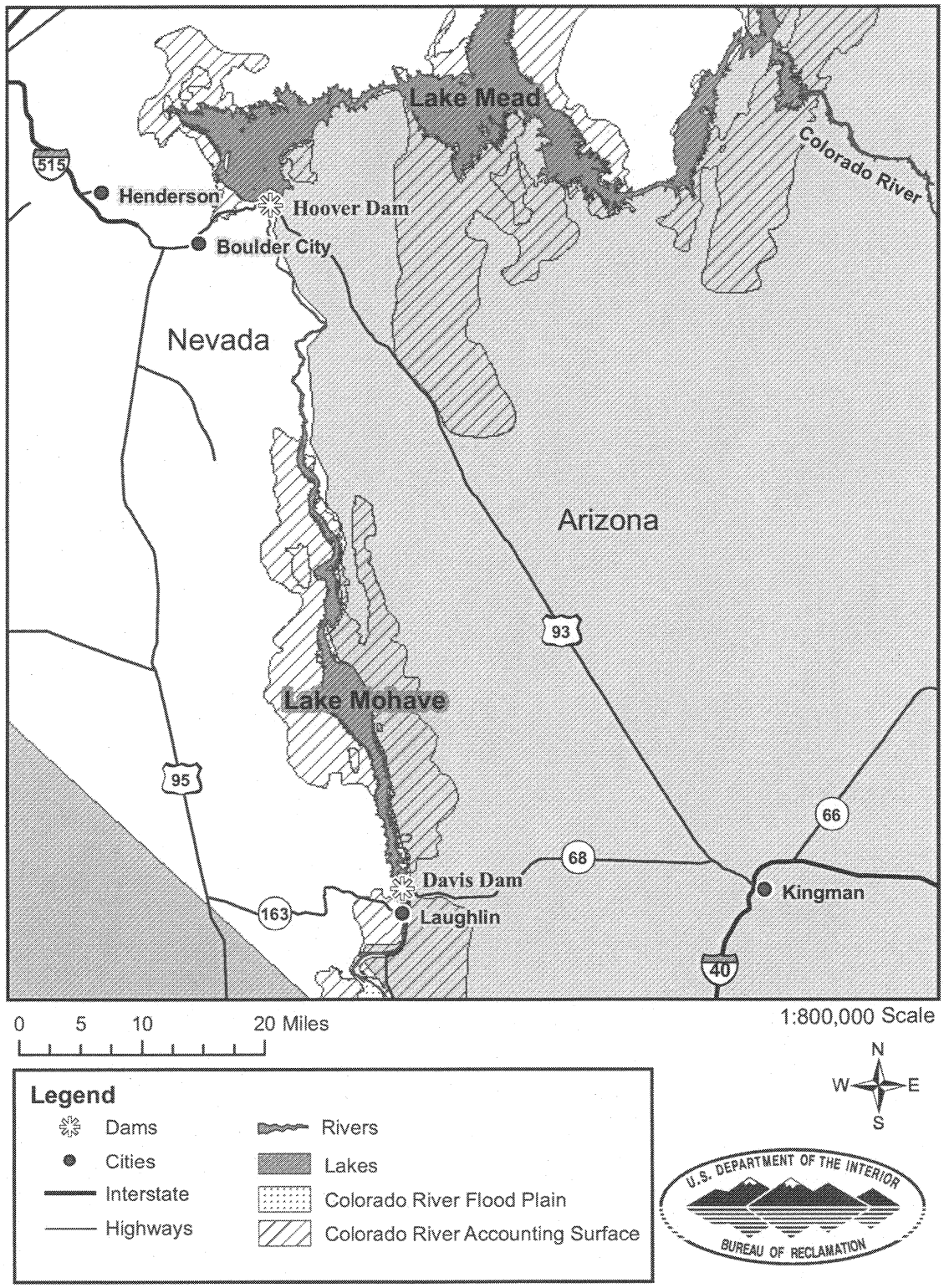


Figure 4 – Lower Colorado River Floodplain and Accounting Surface: Davis Dam to Parker Dam

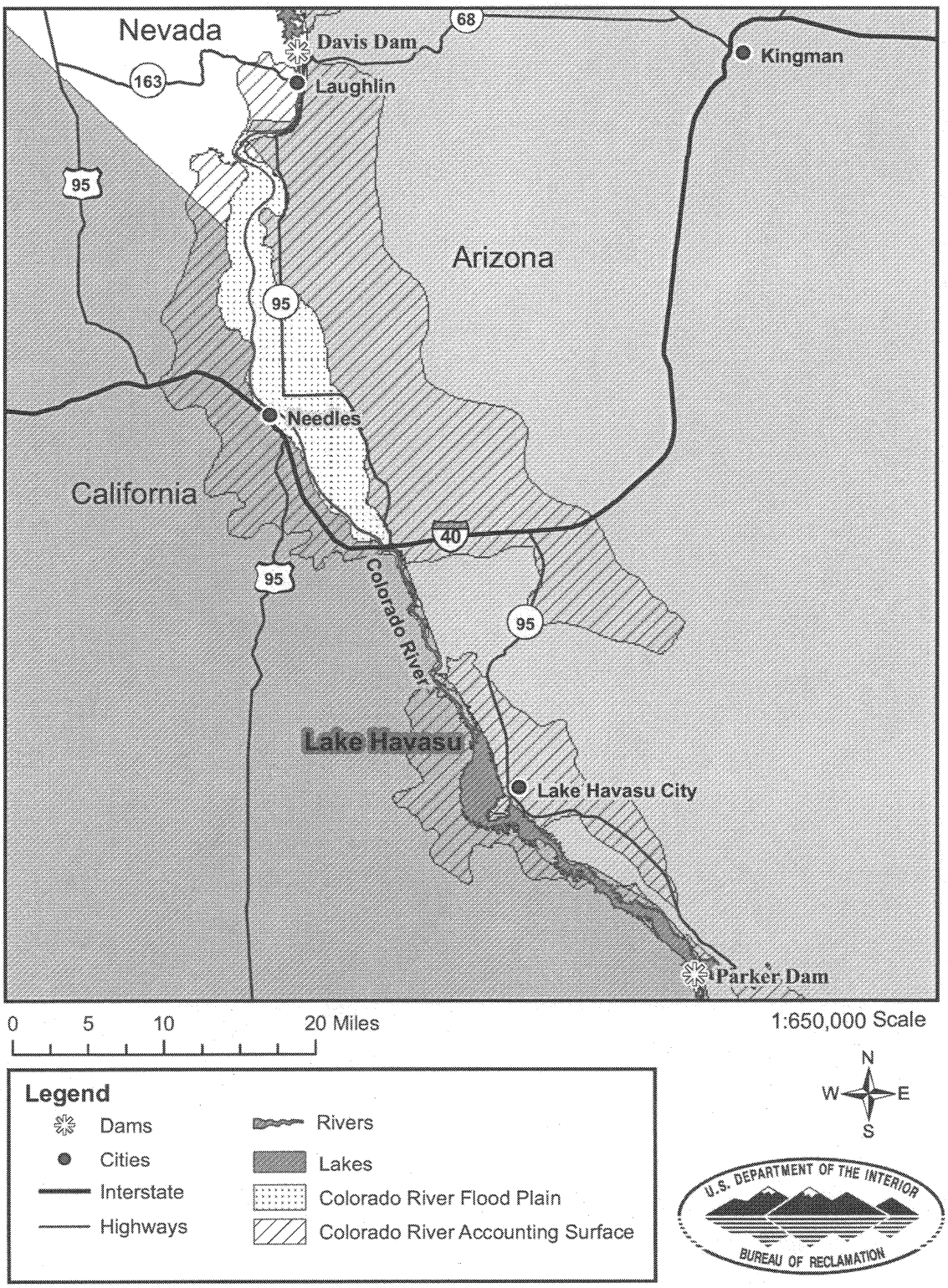


Figure 5 -- Lower Colorado River Floodplain and Accounting Surface: Parker Dam to Southern Boundary of Palo Verde Irrigation District

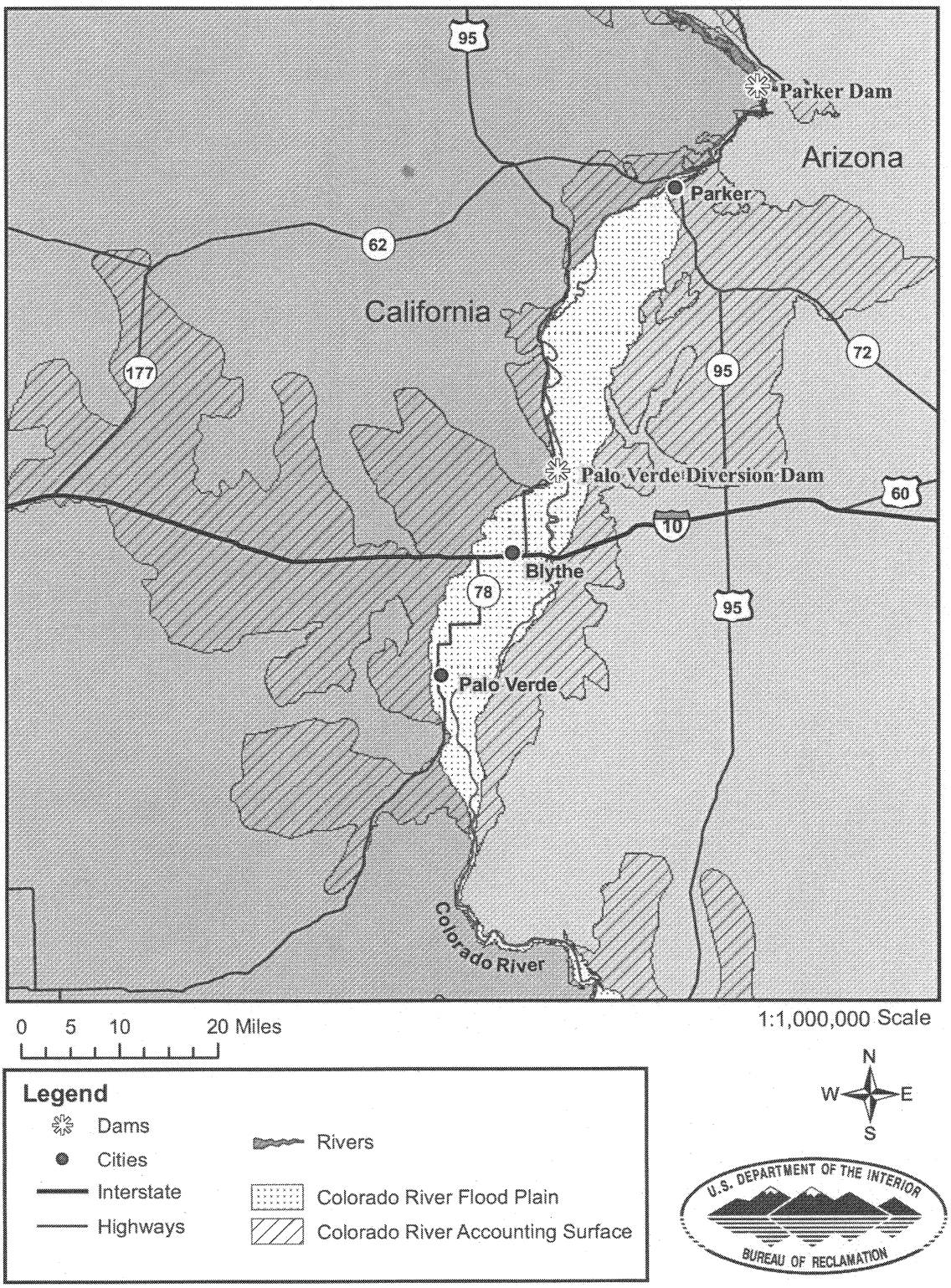


Figure 6 -- Lower Colorado River Floodplain and Accounting Surface: Southern Boundary of Palo Verde Irrigation District to Northern Boundary of Yuma Accounting Area

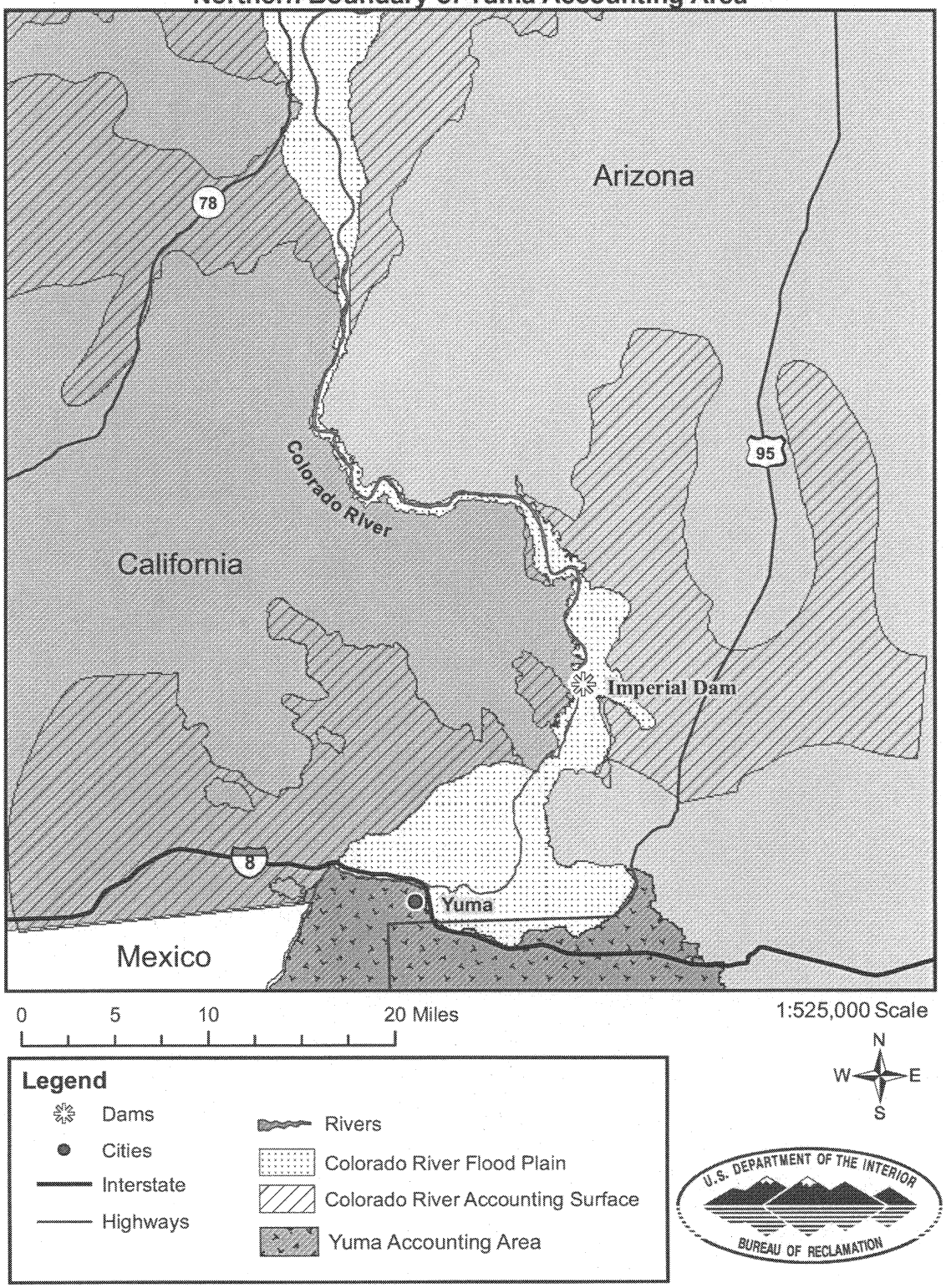
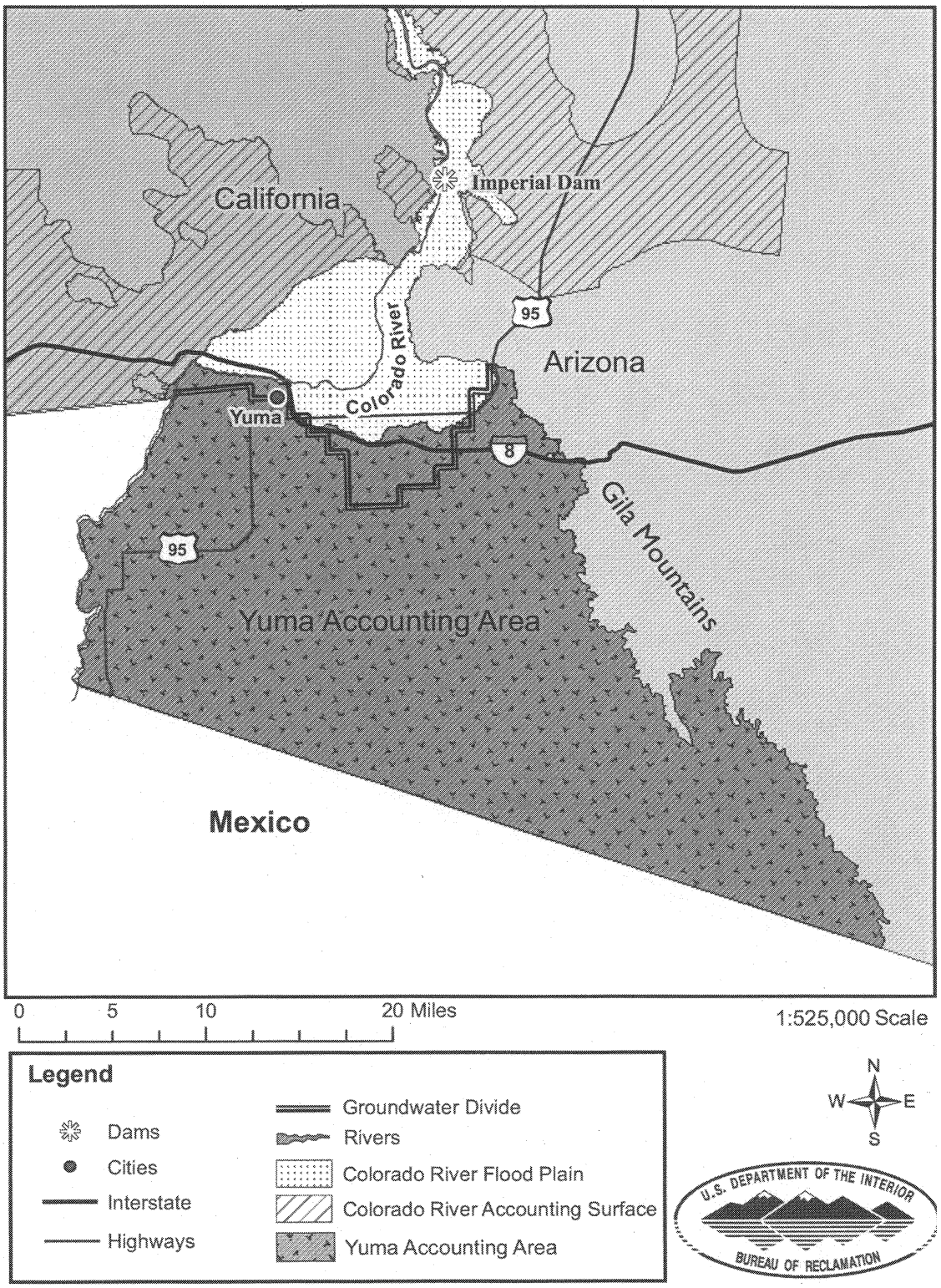


Figure 7 -- Yuma Accounting Area



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