



December 11, 2023

2007 Interim Guidelines SEIS Project Manager
Upper Colorado Basin Region
Bureau of Reclamation
125 South State Street, Suite 8100
Salt Lake City, Utah 84138

Via email: CRinterimops@usbr.gov

RE: Draft SEIS for Near-term Colorado River Operations

Dear Reclamation:

On behalf of Leadership Counsel for Justice and Accountability and Pacific Institute, we provide our comments on the revised draft Supplemental Environmental Impact Statement (SEIS) for Near-term Colorado River Operations. We thank Reclamation for your extensive outreach efforts around the SEIS, including multiple public webinars and meetings, and for providing simultaneous interpretation into Spanish at these meetings. We also commend your commitment to reaching out to tribal communities.

We recognize that hydrologic conditions have improved dramatically since Reclamation began work on the SEIS and that the Lower Division States' proposal to reduce their Colorado River use by three million acre-feet (MAF) through 2026 will likely protect critical reservoir elevations through the term of the 2007 operating guidelines. We agree that "it is appropriate for the SEIS analysis to consider the No Action Alternative and the Proposed Action as a reasonable range of alternatives to reduce the risk of reaching critical elevations at Lake Powell and Lake Mead to acceptable levels in the pre-2026 SEIS timeframe."

We recognize that Reclamation has already begun funding elements of the Lower Division proposal, including water use reductions that will be or have already been implemented in 2023. We offer our comments to highlight some of the mitigation that will be required to minimize the impacts of the expected actions and to inform the development of the post-2026 guidelines. Our experience with the development and implementation of the Quantification Settlement Agreement (QSA) and the timing and efficacy of the mitigation required to offset the impacts of the QSA water transfers on the Salton Sea and adjacent communities inform our comments and recommendations.

California's State Water Resources Control Board issued [WRO 2002-0013](#), approving the QSA, more than four years after San Diego and IID first petitioned the board to approve the water transfer. [WRO 2002-0013](#) notes that "The potential for the proposed conservation and transfer project to affect fish and wildlife in and around the Salton Sea has generated the most concern in this proceeding" (p. 2). [WRO 2002-0013](#) required the delivery of mitigation water to the Salton Sea for a period of 15 years,

“a long enough period to provide time to study the feasibility of long-term restoration actions and begin implementation of any feasible restoration projects.” Twelve years later, in the absence of meaningful state funding or action at the Salton Sea, IID petitioned the SWRCB to condition “the water transfers on restoration of the Salton Sea, according to a specific timetable, and in a manner that averts the dire public-health, environmental and economic consequences that loom for the region,” leading to the adoption of [Order WRO 2017-0134](#) in 2017, almost three years after IID petitioned the SWRCB. It took another three years for California’s Salton Sea Management Program (SSMP) to begin construction of the Species Conservation Habitat (SCH) project, the SSMP’s first habitat restoration project. While the SCH is largely constructed, state officials indicate that it will not be operational for at least another year. The lag between WRO 2002-0013 and the time when the first significant habitat restoration project at the Salton Sea becomes operational will be 22 years or more. Salton Sea mitigation efforts - for the QSA water transfers initiated twenty years ago - have not begun to offset the impacts of the reduced inflows. There is no current mechanism to pause or halt the water transfers to ensure that the many adverse impacts of those transfers are mitigated.

Environmental review of the QSA, through CEQA/NEPA and the SWRCB process, required more than four years and several amendments. The SEIS process, however, could lead to approval of hundreds of thousands of acre-feet less water flowing to the Salton Sea - a volume comparable to that of the QSA transfers - with very limited review. Currently, it does not appear as though the SWRCB will review these impacts at all. Pursuant to the [Salton Sea Commitments Agreement](#), California has waived its own environmental review of these additional reductions. While the period of the large volumetric reductions would be limited to the years 2024-2026 (at least under the current analysis), the impacts of such reductions would manifest for many years after that.

Since the QSA was signed more than twenty years ago, the surface of the Salton Sea has fallen by 12 feet and shrunk by about 33,000 acres (51 square miles). Its salinity has roughly doubled, exceeding the tolerance of almost all fish. The few fish that are left congregate near the inflows. Fish-eating bird populations have declined significantly; pelican numbers have plummeted. The SSMP has constructed a total of 22 acres of desert pupfish habitat; IID and the SSMP combined have constructed about 5,000 acres of dust suppression projects. Air quality in the region continues to decline. While the SSMP has greatly increased capacity and planning in recent years, the rate of project construction (much less completion) remains well below the rate of the Salton Sea’s decline. California’s recent budget challenges have exacerbated this salient problem: last year, the SSMP lost \$119 million in committed state funding.

Meanwhile, the QSA water transfers continue, improving water supply reliability for California and decreasing pressure on the Colorado River, at the expense of public and ecological health in the Salton Sea region. The striking disconnect between water reallocation and the implementation of required mitigation projects strongly suggests that we must make future water reduction efforts in the region contingent on verifiable mitigation. **The lesson of the past 20 years at the Salton Sea is that delaying and deferring mitigation to protect current water supply reliability is not an acceptable tradeoff.**

Despite the SEIS's frequent assertions ("would continue to improve conditions"), conditions at the Salton Sea are not improving. The SSMP's habitat and dust suppression projects have yet to meet the existing requirements for the last water transfer agreement, either under statute (CA Fish & Game Code §2940 *et seq.*) or pursuant to [Order WRO 2017-0134](#). It is not appropriate to suggest that they are sufficiently robust to mitigate the impacts of additional inflow reductions due to water conservation efforts in the Imperial and Coachella valleys.

While the recently-signed 2023 [System Conservation Implementation Agreement](#) with IID will have limited impact on inflows to the Salton Sea this calendar year in the context of Hurricane Hilary and existing IID underruns, the reduction of [an additional 800,000 acre-feet of inflows to the Imperial Valley](#) in the next three years certainly could. The immediate and cumulative impacts of these additional inflow reductions to the Salton Sea will adversely affect water quality, air quality, biological resources, socioeconomics, and environmental justice in the valley and must be mitigated in a timely fashion. The SSMP 10-Year Plan projects can not be relied upon to mitigate these impacts, neither now nor in the future.

[Future Actions Should Be Contingent on Completion of Previously Required Mitigation](#) Reclamation's approval of system conservation implementation agreements (SCIA), or any other water supply reduction agreements with IID in the years 2024-2026 inclusive, must be made contingent on the following actions by the State of California. Reclamation can exercise its discretion to execute any additional SCIA contracts with IID to ensure that previously committed mitigation will be implemented, as a partial measure to reduce the magnitude of cumulative impacts that will be caused by additional decreases in inflows to the Salton Sea and the subsequent rise in salinity, loss of additional habitat, and exposure of additional dust-emitting playa. The following actions by the State of California do not represent new or additional obligations; they are needed to meet prior state obligations and commitments.

1. Enactment of AB 1567, the Safe Drinking Water, Wildfire Prevention, Drought Preparation, Flood Protection, Extreme Heat Mitigation, Clean Energy, and Workforce Development Bond Act of 2024, at or above its current level of \$400 million to provide air quality, public health, and habitat benefits to the Salton Sea and surrounding communities;
2. Restoration of the previously committed \$119 million for SSMP funding, in addition to the funds authorized by AB 1567;
3. California's appropriation of operation and maintenance funding for existing SSMP projects and operation and maintenance funding for the SCH project; and
4. Full operation and function of at least half of the acreage of the SCH project.

Reclamation's approval of system conservation implementation agreements, or any other water supply reduction agreements with Coachella Valley Water District (CVWD) in the years 2024-2026 inclusive, must be made contingent on CVWD making water available, at IID's current "blended" CVWD transfer cost, to the proposed North Lake Pilot Demonstration Project, for the proposed life of

that project. Although this small pilot demonstration project will not create much aquatic habitat, it will be an important step forward for Salton Sea restoration in Riverside County and will provide valuable construction and operational experience on the north side of the lake, as well as important recreational benefits to communities in the area that will be adversely affected by the lake's accelerated decline. It is reasonable to deliver water to this proposed project as partial mitigation for these additional water reductions and to begin to improve conditions at the Salton Sea.

Sections 3.8, 3.9, 3.13, 3.16, and 3.17 of the SEIS (summarized in Table 2-9) note that the proposed action would adversely affect water quality, air quality, biological resources, socioeconomics, and environmental justice in the Salton Sea region, for a period of 26 years. The SEIS incorrectly dismisses these 26 years of impacts, noting that they would be "greater under the Proposed Action for the next 26 years, but long-term impacts are the same as under the No Action Alternative." This is not consistent with conventional understanding nor legal interpretation of "long-term impacts."¹ Mitigation is appropriate and necessary for 26 years of adverse impacts and should be described and undertaken by Reclamation if the proposed action is approved and implemented.

Inadequacy of Proposed Mitigation

As per NEPA requirements, all federal agencies must identify any adverse consequences that cannot be avoided and must consider appropriate measures for mitigating those adverse consequences on the affected environment.² Furthermore, NEPA also requires inclusion of means to mitigate adverse environmental impacts.³ Additionally, when analyzing adverse consequences, federal agencies must look at both direct and indirect effects, with indirect effects defined as effects which are caused by the action and are later in time or farther removed in distance but are still reasonably foreseeable.⁴ As currently written, the SEIS has no proposed mitigation action, erroneously based on the assumption that the additional impacts caused by the proposed action would diminish to the baseline after a period of 26 years and that implementation of the Salton Sea Management Program's 10-Year Plan would mitigate additional adverse impacts. Instead, we recommend the following mitigation action be implemented, in addition to the federal Salton Sea funding commitment.

Recommended Mitigation

As partial mitigation for the 26 years of cumulative additional impacts that would adversely affect the Salton Sea region, Reclamation should transfer the federal land known as the "Salton Sea Test Base" to Imperial County or to the State of California. The former test base would provide appropriate mitigation for the additional adverse impacts caused by the proposed action, enabling the SSMP to construct additional habitat and dust suppression projects on land it directly controls or could access through agreements with the County. This land transfer would also enable the construction of a

¹ 40 CFR §1508.1(g).

² 40 CFR §1502.16(a)(2) and §1502.16(a)(9).

³ 40 CFR §1502.16(a)(9).

⁴ 40 CFR §1508.1(g).

dedicated Salton Sea research campus, which would be an excellent resource for state and federal researchers. A research campus could include office space, a visitor center, wildlife and water quality laboratories, an air quality monitoring station, workshops, and a mobilization yard. In addition to providing appropriate mitigation for 26 years of additional adverse impacts, the Salton Sea research campus would demonstrate state and federal commitments to the Salton Sea and the value and benefits of partnerships and collaboration.

Federal Land Ownership

The SEIS neglects to describe the amount of federal land at the Salton Sea, some of which currently emit dust and more of which will be exposed and potentially emit dust, due to the proposed action. The federal government owns and/or manages more than 8,000 acres of exposed Salton Sea lakebed and bears responsibility for dust emitted from some of this land. In June 2022, the local air pollution control district issued a notice of violation to the US Fish & Wildlife Service for air quality violations at the Salton Sea refuge. The federal government owns about forty percent of the Salton Sea lakebed likely to be exposed during the 26 years of additional cumulative impacts identified by the SEIS. The US Fish & Wildlife Service manages the Sonny Bono Salton Sea Wildlife Refuge, supporting resident and migratory birds along the southern shoreline, and owns about 35,000 acres currently under the lake's surface. The Bureau of Land Management manages some eleven sections of former US Naval Test Base land at the southwest end of the Salton Sea. The SEIS should describe federal land ownership at and under the Salton Sea and actions it will take to protect these resources.

Public Health and Safety

The draft SEIS notes "the purpose of and need for Reclamation's action to protect both Glen Canyon Dam and Hoover Dam operations, system integrity, and public health and safety." Please define "public health and safety." Public health and safety should be a higher priority than routine dam operations.

Scope

The scope of the SEIS should include the Colorado River and its tributaries from the full pool of the most upstream reservoirs affected by potential "Emergency Drought Response Operations Agreement" (DROA) releases. DROA releases alter inflows to Lake Powell. Although the draft SEIS states "Reclamation does not control the hydrology that affects inflows to Lake Powell" (p.1-12), Reclamation in fact did, under DROA, release almost 700,000 acre-feet from upstream reservoirs from 2021-22 (p. 1-6), affecting inflows to Lake Powell.

In June 2022, Commissioner Touton testified before the [U.S. Senate Committee on Energy and Natural Resources](#) and called *on water users across the Basin* to take actions to prevent the reservoirs from falling to critically low elevations. Interior officials have noted that "*Every sector in every state* has a responsibility to ensure that water is used with maximum efficiency." The magnitude of the current and expected future decrease in Colorado River flows demands action from water users across the basin, as well as a departure from "routine dam operations."

Salinity

Table 3-20 lists the salinity criteria for the Colorado River at the three salinity criteria stations (“below Hoover Dam,” “below Parker Dam,” and “at Imperial Dam”), but Section 3.8.2 only describes the environmental consequences of the proposed action and no action alternatives for the first salinity criteria station (and for Lake Powell). Presumably, the lower releases from Lake Mead analyzed under the proposed action would increase salinity at downstream salinity criteria stations and at the international boundary due to roughly similar total loadings in diminished river volumes, but apparently this analysis was not conducted. Please analyze and report the salinity impacts of the proposed action at the downstream salinity criteria stations and at the International Boundary.

Environmental Justice

Salton Sea continues to be an urgent environmental and public health crisis for residents across the eastern Coachella Valley (ECV). As currently written, the Draft SEIS fails to adequately address impacts to the Salton Sea and the associated impacts on communities near the Salton Sea. The Salton Sea region, including the ECV, consists of [environmental justice communities](#) that are already being subjected to disproportionately high and adverse environmental, health, social, and economic consequences such as asthma, bronchitis, pneumonia, nosebleeds, allergies and other chronic respiratory health impacts as a result of rapidly depleting water levels in the Salton Sea. Additional conservation measures for the Colorado River will have both direct and indirect impacts on the Salton Sea which will have associated impacts on communities near the sea. As per Executive Order 12898, each Federal Agency must “make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations.”⁵ Furthermore, as per Executive Order 14096 federal agencies are required to “identify, analyze, and address disproportionate and adverse human health and environmental effects (including risks) and hazards of Federal activities, including those related to climate change and cumulative impacts of environmental and other burdens on communities with environmental justice concerns.”⁶ By neglecting to adequately account for impacts to the Salton Sea associated by the Proposed Action, the Draft SEIS subsequently fails to adequately and substantially account for the direct, indirect, cumulative, and disproportionate negative impacts environmental justice communities will face as a result of the Proposed Action.

Conclusion

The SEIS incorrectly dismisses these 26 years of adverse impacts on water quality, air quality, biological resources, socioeconomics, and environmental justice in the Salton Sea region. The lesson of the past 20 years at the Salton Sea is that delaying and deferring mitigation to protect current water supply reliability is not an acceptable tradeoff. We urge Reclamation to acknowledge the significant adverse impacts the proposed action will cause at the Salton Sea and make future water

⁵ Exec. Order No. 12898, 59 Fed. Reg. 7629 (1994), Section 1-101.

⁶ Exec. Order No. 14096, 88 Fed. Reg. 25251 (April 21, 2023), Section 3

reductions in the Salton Sea region contingent on the four actions noted above, to help catch previously required mitigation up with statutory and contractual obligations. We further urge Reclamation to implement the additional actions recommended above, as mitigation for the additional adverse impacts likely to be caused by the proposed action.

Thank you for your consideration of these comments.

Sincerely,

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cc:

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