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13 November, 2020

Sent via email to 7DReview@usbr.gov

Bureau of Reclamation
Attention: Ms. KayLee Nelson, LC-6056
P.O. Box 61470
Boulder City, NV 89006-1470

RE: Wyoming's comments on the draft report of the *Review of the Colorado River Interim Guidelines for Lower Basin Shortages and Coordinated Operations for Lake Powell and Lake Mead* (October 2020).

Dear Ms. Nelson:

The State of Wyoming, as a signatory to the Colorado River Compact (1922) and to the Upper Colorado River Basin Compact (1948), appreciates the opportunity to comment on the Bureau of Reclamation's draft report entitled *Review of the Colorado River Interim Guidelines for Lower Basin Shortages and Coordinated Operations for Lake Powell and Lake Mead* (draft report). According to the draft report, the purpose of the Guidelines, as stated in the 2007 Record of Decision (ROD), consists of three components:

- improve Reclamation's management of the Colorado River by considering trade-offs between the frequency and magnitude of reductions of water deliveries, and considering the effects on water storage in Lake Powell and Lake Mead, and on water supply, power production, recreation, and other environmental resources;
- provide mainstream United States users of Colorado River water, particularly those in the Lower Division states, a greater degree of predictability with respect to the amount of annual water deliveries in future years, particularly under drought and low reservoir conditions; and
- provide additional mechanisms for the storage and delivery of water supplies in Lake Mead to increase the flexibility of meeting water use needs from Lake Mead, particularly under drought and low reservoir conditions.

After the draft report identifies the purpose of the Guidelines, it then identifies operational elements intended to address the purpose, and the common themes meant to provide the basis of the Guidelines' effectiveness evaluation. The last identified common theme states that the Guidelines should "encourage parties to address future controversies on the Colorado River through consultation and

negotiation . . . before resorting to litigation.” This theme does not lend itself well to any measurement beyond the obvious facts that consultations and negotiations continue to prevail, and litigation has been avoided, at least between the Basin States. However, in Wyoming’s view its importance cannot be overstated, and the draft report fails to adequately capture its importance. The Basin States also acknowledged the unique importance of this theme at the time of the ROD.

Advancing their alternative in the EIS process, the Basin States intended that the actions contemplated by their agreement and alternative would: 1) Improve cooperation and communication among them; 2) Provide additional security and certainty in the water supply of the Colorado River System for the benefit of the people served by water from the Colorado River System; and 3) Avoid circumstances which could otherwise form the basis for claims or controversies over interpretation or implementation of the Colorado River Compact and other applicable provisions of the law of the river.¹ Encouraging consultations and negotiations thereby avoiding controversies was at the heart of the Basin States’ alternative. The operational elements developed and advanced by the Basin States, and as adopted in the ROD, were designed to achieve these purposes. No operational element stood alone, it was a package deal.

From Wyoming’s perspective, coordinated reservoir operations was the most important operational element intended to address the purposes described above. At the time of the ROD, the Basin States recognized that the Upper Division States had not yet developed their full apportionment under the Colorado River Compact.² Although the Secretary had not imposed any shortage in the Lower Basin, the Basin States also recognized that with additional Upper Basin development and in drought conditions, the Lower Division States may be required to suffer shortages in deliveries of water from Lake Mead. Therefore, discussions between the Basin States focused on ways to improve the management of water in Lakes Powell and Mead so as to enhance the protection afforded to the Upper Basin by Lake Powell, and to delay the onset and minimize the extent and duration of shortages in the Lower Basin. For the Upper Basin, its goal was to avoid the risk of curtailments of use. Stated another way, the Upper Division States wanted to maximize the protection afforded by storage in Lake Powell against possible curtailment of Upper Basin uses³—more storage in Lake Powell provides more protection for Upper Basin uses. To that end, an objective of the coordinated reservoir operations, and most important to the Upper Division States, was “to avoid curtailment of uses in the Upper Basin, minimize shortages in the Lower Basin and not adversely affect the yield for development available in the Upper Basin.” This operational element did not focus solely on the Lower Basin or the Upper Basin, it was a package deal.

However, the draft report primarily focuses on the Lower Basin, not on the protection afforded to the Upper Basin by storage in Lake Powell. The draft report underscores the utility of flexibilities imbedded in the Guidelines to help achieve the intended purposes. Its discussion regarding those flexibilities centers on helping the Lower Basin plan and operate with more certainty and security based on annual system conditions. The draft report should also recognize two important counterpoints that result from the various flexibilities. First, the flexibilities implemented to mitigate impacts of actual conditions do not extend to the Upper Basin to an equitable degree. For example, release volumes from Lake Powell were not allowed to be adjusted downward, but could only be adjusted upward if the April

¹ Agreement Concerning Colorado River Management and Operations (April 23, 2007).

² *Id.*, p.4.

³ Cover Letter, Colorado River Basin States’ Preliminary Proposal (February 3, 2006).

24 month Study projected certain conditions. Second, the flexibility contained in the Guidelines intended to incentivize Lower Basin conservation, while undeniably important and necessary to minimize the extent and duration of shortages in the Lower Basin, could not be unfettered. Without certain caps, limits and requirements defining the extent of adjustments to reservoir releases or ICS operations, the risk of Upper Basin curtailment would not be avoided, but would instead increase. The draft report not only identifies multiple flexibilities associated with ICS, it appears to support additional flexibilities. The draft report's failure to adequately recognize the protection the Guidelines intended to afford the Upper Basin is contrary to the cooperative collaboration, certainty and predictability the Guidelines sought to achieve for the entire Basin.

Wyoming recognizes, as does the draft report, the duration and magnitude of the drought and low-runoff conditions since adoption of the Guidelines resulted in an associated increase in risk of Lakes Powell and Mead declining to critically low elevations. As a result, the operational tools in the Guidelines were inadequate to meet the Guidelines' purposes, including maximizing the protection afforded by storage in Lake Powell against possible curtailment of Upper Basin uses. This increased risk was the primary impetus for the development and implementation of the Drought Contingency Plans.

Finally, the purposes described in the draft report clearly identify effects on hydropower as an important consideration. However, the draft report does very little to address and document the role the Guidelines may have had on hydropower resources. There are a variety of benefits hydropower revenues provide to the Upper Basin, including funding environmental compliance which protects existing and future Upper Basin uses. Wyoming requests that the final report better describe effects operations under the Guidelines had on hydropower.

Thank you for the opportunity to provide comments on the *Review of the Colorado River Interim Guidelines for Lower Basin Shortages and Coordinated Operations for Lake Powell and Lake Mead* draft report (October 2020). Please don't hesitate to contact me if you have any questions.

Sincerely,



Patrick T. Tyrrell,
Wyoming Commissioner,
Upper Colorado River Commission &
Governor's Representative to the Colorado River Basin States