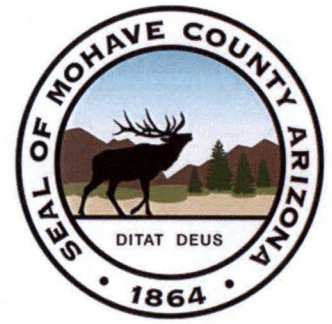


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December 11, 2023

Via email to: crinterimops@usbr.gov

Reclamation 2007 Interim Guidelines

SEIS Project Manager

Upper Colorado Basin Region

125 South State Street, Suite 8100

Salt Lake City, Utah 84138

Re: Comments on Near-Term Colorado River Operations Revised Draft Supplemental Environmental Impact Statement issued October 2023 (“Revised Draft SEIS”)

Ladies/Gentlemen:

These comments on the Revised Draft SEIS are submitted on behalf of Mohave County, Arizona. Mohave County is bounded on the west by the Colorado River. Mohave County and entities within Mohave County holding Colorado River entitlements are considered “mainstream” Colorado River users. As in our letter dated August 21, 2023, on the since-withdrawn Draft SEIS, we request that BOR consider and address the unique challenges faced by the Arizona on-river communities—concerns that have not been adequately addressed in the Revised Draft SEIS.

1. **Introduction.**

The Colorado River is the lifeblood of the communities within Mohave County. Many of these Mohave County communities hold Colorado River entitlements and are wholly or almost wholly dependent upon fourth priority water entitlements for their survival. Unlike many other Colorado River entitlement holders, these communities have no “supply-side” alternative sources of water and cannot eliminate “demand-side” use. Without the fourth priority water supplied to these communities, these communities will literally dry up. Protection of the River, these communities, and these water users is Mohave County’s primary concern. Accordingly, we submit the following comments on the Revised Draft SEIS and encourage the Bureau of Reclamation (“BOR” or “Reclamation”) to ensure an outcome that is equitable, sustainable, and compliant with the requirements of the National Environmental Policy Act (“NEPA”).

The Revised Draft SEIS fails to include adequate and meaningful discussion of the environmental effects that either of the two alternatives will have on communities that rely entirely or almost entirely on fourth priority water entitlements and the catastrophic devastation that will result. The Revised Draft SEIS fails to include any alternative that will provide water to communities that rely entirely or almost entirely on fourth priority entitlements so those communities will not perish. The Revised Draft SEIS fails to include any discussion of mitigation measures that could save these communities from obliteration under each of the alternatives.

The following entities are fourth priority Colorado River contractors located within Mohave County:

Mohave County Fourth Priority Contractors		
	AF/Yr ¹	Points of Diversion ²
Bullhead City	15,210.00	Pumped from wells
EPCOR Water Arizona Inc.	1,874.00	Pumped from wells
Golden Shores WCD	2,000.00	Pumped from wells
Lake Havasu City	19,192.70	Pumped from wells
MCWA (Subcontracts to Bullhead City, Lake Havasu City, MVIDD, MWCD)	22,778.00	Pumped from wells
MWCD	1,800.00	Pumped from wells
MVIDD	35,060.00	Pumped from wells and Topock Marsh Inlet
TOTAL	97,914.70	

Total Arizona fourth priority mainstream contractors are believed to account for 151,274 Acre-Feet (“AF”) of water under contract. Of that amount, only a small amount (from 21,148 AF to 67,828 AF) will be directly diverted from the River. The rest (93,632 to 140,312 AF) will be pumped from wells.

2. Alternatives Considered:

Given that Action Alternatives 1 and 2 were designated as alternatives considered but eliminated from detailed analysis in the Revised Draft SEIS, Mohave County provides no detailed analysis of those alternatives in this letter. We note, however, that neither alternative was ideal, and both were likely to fail to achieve an equitable and sustainable outcome for the on-river communities if not substantively modified.

With regard to the Lower Division Proposal, this becomes the basis for the single Proposed Action considered by BOR along with the No Action Alternative. To only consider only one alternative related to such a significant federal action is irregular; BOR even acknowledges that such “a single action alternative is not preferred in NEPA analysis.” Revised Draft SEIS at Dear Reader Letter. Moreover, the reality is that neither the No Action Alternative nor the Proposed Action is a viable alternative because neither substantially meets BOR’s stated Purpose and Need for this project. So, in effect, no reasonable alternatives have been considered.

The new Proposed Action consists largely of compensated System Conservation that would not be a sustainable option for the state of Arizona and the communities that rely entirely on the River as their source of water. BOR claims that, due to improved hydrology, it appears much less likely that either reservoir will drop to critical elevations through 2026. Yet, the Proposed Action, similar to the No Action Alternative, calls for a mid-year review and adjustment in the event that “Lake Mead’s content is projected to be below an elevation of 1,025 feet, based on the April 24-Month Study minimum probable projection.” Revised Draft SEIS, Section 2-7. In such circumstances, the Lower Division States would first consult with the Upper Division States and “would have 45 calendar days to provide Reclamation with an implementation plan to protect Lake Mead from reaching an elevation of 1,000 feet. If an implementation plan is not acceptable to Reclamation, then Reclamation may take additional action to protect 1,000 feet.” *Id.* This leaves significant uncertainty for Arizona fourth priority entitlement holders who will absorb the brunt of

¹ From the Revised Draft SEIS, Table E-5.

² From the 2021 Colorado River Accounting and Water Use Report; Arizona, California and Nevada, pp. 12-13.

any further shortage. Additionally, this would not be an equitable distribution of the impacts of shortages, nor would this approach be a sustainable or viable option for the on-river communities.

a. Public Health and Safety Concerns:

NEPA requires that an EIS must consider and assess the environmental consequences of the proposed action and reasonable alternatives to the action. 40 C.F.R. § 1502.14. “Consideration of alternatives is “the heart of the environmental impact statement.” *Westlands Water Dist. v. U.S. Dept. of Interior*, 376 F.3d 853, 865 (9th Cir.2004). Reclamation must “specify the underlying purpose and need for the proposed action” which provides the framework for analyzing the range of alternatives that must be discussed in an EIS. *Id.*, citing 40 C.F.R. § 1502.13; *see also. City of Carmel–By–The–Sea v. U.S. Dep’t of Transp.*, 123 F.3d 1142 (9th Cir.1995). “The stated goal of a project necessarily dictates the range of ‘reasonable’ alternatives and an agency cannot define its objectives in unreasonably narrow terms.” *Id.* at 1155 (citing *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 192 (D.C.Cir.1991)). “Project alternatives derive from an [EIS’s] ‘Purpose and Need’ section.” *Id.*

An EIS must “[r]igorously explore and objectively evaluate all reasonable alternatives,” “[i]nclude reasonable alternatives not within the jurisdiction of the lead agency,” and “[i]dentify the agency’s preferred alternative.” *Id.*, citing 40 C.F.R. § 1502.14(a), (c), (e). “The existence of a viable but unexamined alternative renders an environmental impact statement inadequate.” *Id.* quoting *Morongo Band of Mission Indians v. Fed. Aviation Admin.*, 161 F.3d 569, 575 (9th Cir.1998). The EIS must consider reasonable alternatives that are feasible, effective and consistent with the basic policy objective of the EIS so that the “discussion of alternatives fosters informed decision-making and informed public participation.” *Id.* quoting *Calif. v. Block*, 690 F.2d 753, 767 (9th Cir.1982).

In Section 1.3 of the Revised Draft SEIS, BOR provides its Purpose and Need statement, arguably the most important section of an EIS, as it establishes why the expenditure of a large amount of taxpayers’ money and the causing of significant environmental impacts are necessary and worthwhile. The Purpose and Need statement is also intended to help BOR define what can be considered reasonable, prudent, and practicable alternatives—i.e., the alternatives considered should meet the stated Purpose and Need. Here, BOR’s Purpose and Need statement includes:

“The purpose of the SEIS is to supplement the 2007 Interim Guidelines to modify guidelines for operation of the Glen Canyon and Hoover Dams to address historic drought, historically low reservoirs, and low-runoff conditions in the Basin. The need for the modified operating guidelines is based on the potential that continued low-runoff conditions in the Basin could lead Lake Powell and Lake Mead to decline to critically low elevations, impacting operations through the remainder of the interim period (prior to January 1, 2027).

To ensure Glen Canyon Dam continues to operate under its intended design for purposes of maintaining downstream water releases and protecting infrastructure from the potential consequences of operating at or below critical elevations, Reclamation may need to modify current operations and reduce Glen Canyon Dam downstream releases, impacting downstream resources and reservoir elevations at Lake Mead. Consequently, to protect Hoover Dam operations, system integrity, **and public health and safety**, Reclamation also may need to modify current operations and reduce Hoover Dam downstream releases.”

Revised Draft SEIS, Section 1.3 (emphasis added).

BOR explicitly lists public health and safety as one of the primary goals it is trying to achieve by proposing to take action. Yet, the Revised Draft SEIS fails to consider any reasonable and feasible alternatives to allocating shortages that would mitigate the environmental impact of the shortage conditions on

communities that would otherwise see their only source of municipal water curtailed down to zero if or when a currently-undefined implementation plan is instituted to protect the Lake Mead elevation of 1,000 feet. The drought allocation model identifies that Arizona on-river communities such as Lake Havasu City and Bullhead City face shortages of hundreds and thousands of acre-feet respectively, should the total shortage reach the largest levels analyzed. Revised Draft SEIS, Table E-15. Yet, BOR lays out no analysis of how these identified shortages impact public health and safety, and develops no alternative to mitigate such effects. Indeed, the discussion is limited to the following:

Industrial and Municipal Water Uses

In models of water yield and demand in the western US to 2070, data indicate that demands for municipal water are increasing across the SEIS socioeconomic study area, while projected water availability is decreasing (see, for example, Warziniack and Brown 2019). While this trend is seen throughout the western US, the Colorado River region has the largest percentage increases in projected domestic water use as well as the greatest percentage decreases in projected water yield from all sources, including Colorado River water (Warziniack and Brown 2019).

As described in the 2007 FEIS, ***municipalities potentially affected by the proposed alternatives include Phoenix, Tucson, Scottsdale, and other Arizona towns and cities served by the CAP, as well as Arizona municipalities along the Colorado River that have post-1968 Colorado River water delivery contracts, such as Lake Havasu City.*** In Arizona, industrial land uses on the Colorado River include the major power facilities of Glen Canyon Dam in Coconino County, Hoover and Davis Dams on the Arizona-Nevada border in Mohave County (and Clark County, Nevada) and Parker Dam in La Paz County (and San Bernardino County, California).

Draft Revised SEIS at pp. 3-284 – 3-285 (emphasis added).

As discussed below, the Proposed Action leaves any mitigation to be developed in an emergency 45-day consultation period. In that regard, BOR has failed to objectively evaluate all reasonable alternatives, as it is required to, because it appears to have not evaluated ***any*** alternatives that substantially meet BOR's stated Purpose and Need for this project. Moreover, NEPA requires agencies to "take a *hard look* at environmental consequences" of their proposed actions, consider alternatives, and publicly disseminate such information before taking final action. *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989) (emphasis added). Based on the Revised Draft SEIS, BOR has failed to take such a "hard look" because the single action alternative BOR has considered fails to identify and consider the public health and safety issues that will arise for entitlement holders for whom the Colorado River is the sole source of water available to them.³

This is a major concern for the Arizona fourth priority mainstream entitlement holders within Mohave County: this is the ***only*** source of water available for these communities. No other surface water supplies exist, and groundwater supplies are highly limited. Almost all of the fourth priority mainstream entitlement

³ Mohave County is further concerned that Reclamation has not taken a hard look at the impacts on Arizona's on river communities, which are identified Environmental Justice Communities of Concern, because of errors in the data analysis. For example, the Revised Draft SEIS at 3-281 asserts that La Paz County has the lowest per capita income of \$41,331, but the preceding Table 3-79 attributes that value to Mohave County and shows La Paz per capita income to be \$49,933. The limited analysis of impacts on local economies that was conducted appears to be flawed. Reclamation's errors calls into question whether the entire Draft SEIS is riddled with similar errors that are not so readily apparent.

holders in Mohave County are pumping water from wells that BOR has unilaterally categorized as pumping mainstream Colorado River water. Groundwater is physically limited to the mainstream entitlement holders. Groundwater cannot be imported. A.R.S. § 45-544, (precluding the transportation of groundwater from other Arizona groundwater basins to the mainstream basin(s)). And the limited supplies of effluent have very limited resiliency, and are often accounted for as part of a River entitlement.

BOR's mere statement that these on-river communities, which rely solely on Colorado River Water for their existence, may "potentially [be] affected by the proposed alternatives" is hardly the hard look that NEPA requires. Draft Revised SEIS at p. 3-284.

The ramifications of these issues on the health and safety of our communities are delineated below.

b. The "Six-States Proposal":

During scoping, six Basin States (Arizona, Colorado, Nevada, New Mexico, Utah, and Wyoming) proposed an allocation of evaporation, seepage, and system losses that is determined by each water user's distance downstream from Lake Mead. The Revised Draft SEIS states that "[w]hile Reclamation has not carried forward an alternative that focuses explicitly on accounting for evaporation, seepage, and system losses, the Proposed Action contemplates conservation amounts similar to those that would be assessed based on evaporation, seepage, and system loss calculations in the proposals received." Revised Draft SEIS, Section 2.8.5. Appendix B of the earlier Draft SEIS compared the six Basin States' proposal against the analyzed alternatives, concluding that the results for each state would be roughly equivalent under each approach.

The Revised Draft SEIS no longer even includes this analysis nor compares the six Basin States' proposal against the Proposed Action; rather, it dismisses the six Basin States' proposal as similar to the inferior Action Alternatives 1 and 2. Revised Draft SEIS, Section 2.1. This analysis fails to address that the six Basin States' proposed approach would treat individual users within Arizona and California differently should Lake Mead's elevation drop below 1,145 feet, in accordance with their distance from Lake Mead—a very different than the approach taken in each of the Proposed Action and the previously-analyzed alternatives. The six Basin States' approach would allow evaporation to be accounted for in use totals, whereas the Proposed Action and the No Action Alternative do not account for evaporation in use totals. Tying shortage conditions to the actual evaporation and seepage losses of the River before the point of diversion is a more equitable and sustainable solution over simply allocating shortages either by priority or proportionally per state.

The final SEIS must consider additional (or modified) alternatives or further details to the Proposed Action to avoid potential environmental devastation related to public health and safety of communities whose only source of water is fourth priority entitlements. The final SEIS must provide assurance that these communities may pump an amount of water necessary to allow them to survive, regardless of shortage level. By example, California statute contains an allowance for communities to appropriate 55 gallons per capita per day "notwithstanding curtailment of that right" for public health and safety reason, allowing those communities to continue to exist. Cal. Code Regs. Tit. 23 § 878.1(b); *see also* Cal. Wat. Code § 10608.20(b)(2)(A) (setting provisional indoor residential water use standard at 55 gallons per day per capita).

3. Health and Safety Implications for Endangered Municipalities is Possible, But Has Not Been Analyzed in the SEIS.

None of the alternatives presented consider the pronounced, negative health and safety implications of all fourth priority water usage being eliminated. Instead, the issue is relegated to a potential action plan to be developed in a 45-day period from the Basin States, or unilateral action from BOR. Revised Draft SEIS,

Section 2.7. Cities such as Bullhead City and Lake Havasu City are fourth priority water users with no alternative source of water available to serve their citizens. These are cities with thousands of residents, hospitals, schools, and businesses. The Revised Draft SEIS does not address what happens if they do not have enough water to provide drinking water to all their constituents. The health and safety impacts of multiple cities having insufficient municipal water supplies will be catastrophic. The Revised Draft SEIS fails to address the issue. Instead, the Revised Draft SEIS treats Mohave County municipal water users the same as other fourth Priority users who do not face the same health and safety impacts from curtailment. The closest the Revised Draft SEIS gets thinking about this issue is:

“The economic impacts from domestic and industrial water shortages are unknown due to the variety of approaches the municipalities and other entitlement holders utilize in shortage scenarios, including supply-side actions (such as groundwater recharge, water purchase agreements, and alternative water supplies) and demand-side strategies (such as water conservation measures).”

Revised SEIS at p. 3-306. As stated above, these communities rely solely on fourth priority entitlements without any other sources of water available. Thus, “supply-side” actions are not available to these communities. The only source of water available is from municipal production wells which BOR has unilaterally categorized as pumping Colorado River water. Demand-side strategies are also nonexistent for these communities whose only source of water has dried up under each alternative. The Revised Draft SEIS fails entirely to evaluate the health and safety impacts of entire communities without water.

In addition, as previously mentioned, almost all of the fourth priority mainstream entitlement holders in Mohave County pump their water from wells. BOR accounts for this water as Colorado River water. The Revised Draft SEIS does not distinguish between fourth priority mainstream pumpers and those who physically divert water from the River. The Revised Draft SEIS simply concludes that under several of the modeled outcomes, **ALL** fourth priority water use is eliminated. There is no evaluation of whether the elimination of pumping has any impact on Colorado River operations or the stated goals of ensuring that Glen Canyon Dam continues to operate under its intended design for purposes of downstream water releases and to protect Hoover Dam operations, system integrity and public health and safety. The vast majority of mainstream pumping that is considered by BOR to be Colorado River water occurs below Hoover Dam. Stopping that pumping will do nothing to ensure that Glen Canyon Dam continues to operate or to protect Hoover Dam operations, system integrity, or public health and safety.

Given the concerns listed above, the SEIS should include a full analysis of the environmental impacts on the health and safety of the entitlement holders for whom the Colorado River is the sole source of water available to them. As the Supreme Court has recognized, “[i]mplicit in NEPA’s demand that an agency prepare a detailed statement on ‘any adverse environmental effects which cannot be avoided should the proposal be implemented,’ 42 U.S.C. § 4332(C)(ii), is an understanding that the EIS will discuss the extent to which adverse effects can be avoided.” *Robertson*, 490 U.S. at 352. Thus, the Final SEIS must contain a detailed discussion of the adverse effects of the losing the only source of water for communities that rely on fourth priority water entitlements and if those adverse effects can be avoided. If not, there must be a discussion of the mitigation that can reduce or eliminate those adverse effects as set out below.

4. The Final SEIS Must Consider Appropriate Mitigation Measures, Including Allocating Water for Municipal Health And Safety Uses.

An EIS must contain a detailed discussion of possible mitigation measures. *Robertson*, 490 U.S. at 351. This discussion of mitigation “flows both from the language of the Act and, more expressly, from CEQ’s implementing regulations.” *Id.* see also 40 C.F.R. 1502.14(e).

Currently, the Revised Draft EIS fails to discuss any mitigation. This complete “omission of a reasonably complete discussion of possible mitigation measures ... undermine[s] the ‘action-forcing’ function of NEPA. Without such a discussion, neither the agency nor other interested groups and individuals can properly evaluate the severity of the adverse effects.” *Id.* at 352. CEQ regulations recognize “the importance of such a discussion in guaranteeing that the agency has taken a ‘hard look’ at the environmental consequences of proposed federal action” by requiring “that the agency discuss possible mitigation measures in defining the scope of the EIS, in discussing alternatives to the proposed action, and consequences of that action, and in explaining its ultimate decision.” *Id.* (internal citations omitted).

In this case, where alternative water supplies are not available, there is no way to mitigate the risk to public health and safety, other than to allow some limited exceptions to shortage sharing, so long as the water is physically available. That would include allowing fourth priority mainstream entitlement holders to continue to pump from wells in times of shortage. This exception must be made part of any alternative that is chosen. Failure to include such a commonsense and legally required mitigation measure would constitute an arbitrary and capricious action by BOR, subjecting the federal action to legitimate legal challenges.

5. Conclusion

The Revised Draft SEIS is inadequate. The issues set out above must be addressed, analyzed and discussed in detail to ensure the Final SEIS takes the requisite “hard look” at the environmental impacts of the proposed action. The failure to do so will render the Final SEIS arbitrary and capricious and invalid under NEPA.

Very truly yours,



Travis Lingenfelter, Chairman
Mohave County Board of Supervisors