



REGION 9

SAN FRANCISCO, CA 94105

December 8, 2023

Genevieve Johnson and Marcie Bainson
Project Manager Co-Leads
U.S. Bureau of Reclamation
Lower Colorado Basin Regional Office
400 Railroad Avenue
Boulder City, Nevada 89006-1470

Subject: Revised Draft Supplemental Environmental Impact Statement for Near-Term Colorado River Operations, Lower Basin States of Arizona, California, and Nevada (EIS# 20230146)

Dear Genevieve Johnson and Marcie Bainson:

The U.S. Environmental Protection Agency (EPA) has reviewed the Bureau of Reclamation's above-referenced document pursuant to the National Environmental Policy Act (NEPA), Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500-1508) and our NEPA review authority under Section 309 of the Clean Air Act (CAA). The CAA Section 309 role is unique to EPA. It requires EPA to review and comment publicly on any proposed federal action subject to NEPA's environmental impact statement requirement.

The Colorado River Basin supplies water to 40 million people in seven States, Mexico, and 30 Tribes. It irrigates nearly 5.5 million acres of agricultural land and generates renewable hydropower. Due to a 23-year region-wide drought and demand exceeding supply, water storage levels at Lake Powell and Lake Mead have declined to approximately 25% of capacity, risking the prospect of "dead pool" – the inability of the infrastructure to generate hydropower or deliver water to the Lower Basin States of Arizona, California, and Nevada within the next few years. Reservoir elevations may not be able to be maintained without reducing water deliveries by an additional 2 to 4 million acre-feet from the Lower Basin's total allotment of 7.5 million acre-feet. The adequacy and reliability of the Colorado River to supply all demands is tenuous given forecasts for a warmer, drier climate and the potential for continued low-runoff conditions Basin-wide.

The Bureau of Reclamation (Reclamation) is currently operating under the 2007 *Colorado River Interim Guidelines for Lower Basin Shortages and the Coordinated Operations for Lake Powell and Lake Mead* and 2019 *Drought Contingency Plans* which expire in 2026. This Draft Supplemental Environmental Impact Statement (SEIS) proposes to revise certain sections of the 2007 Interim Guidelines for the continued operation of Glen Canyon and Hoover Dams beginning in 2024 and to implement

operational changes which may be prudent or necessary for dam safety, public health and safety, and other emergency situations. The No Action Alternative describes the effects of implementing existing agreements that control operations of Glen Canyon and Hoover Dams. The Proposed Action is based on a recent consensus agreement between the Lower Basin States and it includes conservation measures totaling up to 3 million acre-feet through 2026, with a minimum of 1.5 million acre-feet physically conserved in the reservoirs by the end of 2024 to be implemented across a range of elevations in Lake Mead (p. 2-7). Reclamation is concurrently, but separately, developing post-2026 plans to align available water supplies with deliveries, increase stability to water users, and protect human health and the environment. These longer-term management measures will be the subject of a separate Environmental Impact Statement.

EPA Review Summary

EPA identified areas for improvement in the analysis and recommends these be addressed in the Final SEIS. To adequately disclose the consequences of the alternatives or improve environmental outcomes from the project, the attached Detailed Comments include recommendations to:

- incorporate new environmental justice policy guidelines into the analysis;
- address impacts to Tribes or communities with environmental justice concerns, including communities who already experience concerns with water reliability, quality and quantity;
- include mitigation of air quality problems and health effects in the Salton Sea area that may be exacerbated by reduced water deliveries; and
- inform decision-making for post-2026 operational and guideline considerations.

The EPA appreciates the opportunity to provide comments on the revised Draft SEIS for Near-Term Colorado River Operations. We are available to discuss our comments and help incorporate our recommendations into the Final SEIS. When the Final SEIS is available, please notify Stephanie Gordon and Robin Truitt, the lead reviewers for this project, at gordon.stephanies@epa.gov and truitt.robin@epa.gov. If you have any questions, please contact me at prijatel.jean@epa.gov or (415)947-4167.

Sincerely,

JEAN

PRIJATEL

Jean Prijatel

Manager

Environmental Review Branch

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JEAN PRIJATEL
Date: 2023.12.08
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cc: Carly Jerla, Bureau of Reclamation
Dedina Williams, Bureau of Reclamation
Buddy Fazio, National Park Service
Xavier Gonzales, Western Area Power Administration
Jeff Servoss, U.S. Fish and Wildlife Service
Catherine Wilson, Bureau of Indian Affairs

U.S. EPA DETAILED COMMENTS ON THE REVISED DRAFT SUPPLEMENTAL ENVIRONMENTAL IMPACT STATEMENT FOR NEAR TERM COLORADO RIVER OPERATIONS, LOWER BASIN STATES OF ARIZONA, CALIFORNIA, AND NEVADA – DECEMBER 8, 2023

ENVIRONMENTAL JUSTICE

A confluence of factors – including climate change – has produced historic drought, wide variability of water supply, and historically low reservoir levels in the United States.¹ The Draft SEIS acknowledges that these extraordinary circumstances may lead to lower priority water users receiving little to no water under current guidelines and the Proposed Action. For those communities reliant on Colorado River water for domestic or municipal supplies, who may have a low priority, there is the potential for the creation of an emergency over the next few years if no alternate or reasonably affordable water supplies exist (p. 3-321).

The President issued Executive Order (EO) 14096 *Revitalizing Our Nation’s Commitment to Environmental Justice for All* (2023). Executive Order 14096 requires federal agencies to:

- consider adopting or requiring measures to avoid, minimize or mitigate disproportionate and adverse human health and environmental effects of federal activities on communities with environmental justice concerns, to the maximum extent practicable; and
- seek out and encourage the involvement of communities with environmental justice concerns that are potentially affected by federal activities and provide technical assistance tools and resources to assist in facilitating meaningful and informed public participation.

EPA recommends that Reclamation follow the EO’s recommendations for coordination and cooperation between Reclamation, Tribes, the Bureau of Indian Affairs, state agencies and local utilities to identify which communities with environmental justice concerns would be most affected. This process will help direct drought mitigation or other funding to these communities to provide them with sufficient, safe, accessible, and affordable domestic or municipal supplies of water.

Recommendations: For the development of the Post-2026 Guidelines, work in cooperation with states, Tribes, and water districts to identify communities that would have no or limited alternate domestic or municipal supplies, and develop and include emergency plans to direct a portion of delivered water to those identified communities. In support of the Administration’s Justice 40 Initiative, consider directing a portion of Reclamation funding available for water resiliency projects or drought relief to impacted communities, with 40% of the benefits going to communities with environmental justice concerns.² Identify other federal funding sources that may support this initiative.

¹ The Fifth National Climate Assessment identified the aridification of the Colorado River basin as one of the greatest climate risks facing the Southwest, as well as the region’s biggest area for future climate mitigation and adaptation. <https://www.globalchange.gov/our-work/fifth-national-climate-assessment>

² Justice 40 Initiative <https://www.whitehouse.gov/environmentaljustice/justice40/>

TRIBAL WATER RIGHTS

Tribal Sovereignty

The Draft SEIS considers federally recognized Tribes to be environmental justice populations (p. 3-313). Executive Order 14096 clarifies that “[c]ommunities with environmental justice concerns exist in all areas of the country, including...within the boundaries of Tribal Nations.” We note that not all Tribes are communities with environmental justice concerns, and some prefer not to be identified as such.

Recommendations for the Final SEIS and Post-2026 Operations: Consider separating Tribal issues and concerns from the broader discussion of environmental justice unless a specific Tribe has requested that their concerns be addressed in the environmental justice section. EPA recommends that Reclamation use its Tribal consultation processes to identify communities with environmental justice concerns for additional environmental justice considerations, analysis, or outreach.

Address Historic Inequities

Executive Order 14096 directs agencies to identify, analyze, and address historical inequities and systemic barriers related to any federal regulation, policy or practice that impairs the ability of Tribes who may have environmental justice concerns to achieve or maintain a healthy and sustainable environment.

We note that Reclamation collaborated with the Ten Tribes Partnership in 2018 to document Tribal water use and potential future development to better facilitate planning and decision-making throughout the Basin. The *Colorado River Basin Ten Tribes Partnership Tribal Water Study*³ found that partnership Tribes have reserved water rights, including unresolved claims, to divert nearly 2.8 million acre-feet of water per year from the Colorado River and its tributaries. These rights are, in general, the most senior water rights in the Basin and therefore some of the most protected from shortage; however, the *Study* recognizes that many people living on the Tribal reservations do not have water security and may lack access to clean water and adequate sanitation on Tribal lands (*Study* p. 9-1).

The *Study* includes recommendations to increase development of water rights for Tribal benefit, address the administrative and legal constraints that create disparities in water development and use, and to provide flexibility in the use of Tribal water throughout the Basin. The *Study* states that Reclamation will work with partnership Tribes to identify near-term activities to help address the water challenges in the Basin (*Study* pgs. 9-2/3). It is unclear from Draft SEIS whether Reclamation has identified and addressed these concerns and observations in the current Proposed Action.

Recommendations: In sections that discuss Tribal reserved water rights or trust assets, identify, analyze, and address historic inequities and systemic barriers related to development of and access to Tribal water. Summarize or reference the findings and recommendations of the *Colorado River Basin Ten Tribes Partnership Tribal Water Study* into the Final EIS. Identify near-term activities or mitigation that will assist Tribes with unsettled rights to receive water or be compensated for the use of the Tribal water right, including any current programs or funding opportunities specifically designed to correct or remove inequities or barriers, improve water resiliency, or develop or maintain infrastructure.

³ Tribal Water Study Report; <https://www.usbr.gov/lc/region/programs/crbstudy/tws/finalreport.html>

Government to Government Consultation

Section 2 of the *Standards for Tribal Consultation* states “Consultation requires that information obtained from Tribes be given meaningful consideration, and agencies should strive for consensus with Tribes or a mutually desired outcome.” The *Standards* present best practices and consultation policies that call on federal agencies to incorporate Tribal treaty and reserved rights into agency decision-making with the goal of co-management and co-stewardship of federal land and water.

The Draft SEIS states that Reclamation has ongoing consultation relationships with federally recognized Tribes who have unresolved water rights (Tables 4-2 and 4-3; p. 4-4). The EPA is aware the Water and Tribes Initiative⁴ may also provide a forum for longer term water management and policy discussions. The *Colorado River Basin Ten Tribes Partnership Tribal Water Study* acknowledges that government-to-government coordination among Tribal, federal, and state governments and cooperation with other Basin water users is the preferred and most effective pathway to address challenges and disparities in the coming years (*Study* pg. 9-2).

Reclamation considers the NEPA scoping and public comment periods to be fundamental parts of the consultation process (*Summary of Tribal Consultation Efforts* pgs. 4-8/13). Because other water users who currently rely on unused Tribal water may be required to adjust or reduce supplies as Tribes increase or further develop their reserved water rights, it is important that the full scope of unsettled Tribal water rights, as well as identified Tribal water management concerns and recommendations, be disclosed.

Recommendations: For the Final SEIS, include a discussion of whether and how meaningful consideration has been given to the observations and concerns of Tribes by addressing them specifically in the Final SEIS. In anticipation of any Post-2026 changes to the Guidelines or operations, the EPA recommends that current and future Tribal water use and development based on the most recent basin water supply and demand studies/forecasts be assessed, and that a technical analysis of the potential impacts from the full development of Tribal water be provided.

AIR QUALITY

The Draft SEIS states that beginning in late 2025/early 2026, the Proposed Action would cause a decrease in Salton Sea water levels by about four feet and a corresponding increase in exposed playa over the next 25 years (pgs. 3-133, 3-194). Based on modeling that identified the extent of the Salton Sea lakebed that could be exposed through management activities, the No Action alternative could expose up to 35,594 acres of lakebed through 2026 and up to 40,224 acres of lakebed could be exposed through 2026 under the Proposed Action (pgs. 3-146/147; 3-194). We note that the Draft SEIS states that the Proposed Action to reduce water deliveries would result in *expedited (but not additional)* lakebed exposure as water surface elevations would decline due to consumptive uses and less available agricultural runoff (p. 3-194).

The EPA recommends considering mitigation measures to address potential air quality problems in the Salton Sea region from dust that could arise from decreased water deliveries to the Imperial and

⁴ Water and Tribes Initiative, <https://www.waterandtribes.org/about-us>

Coachella Irrigation Districts, if left unaddressed. The Draft SEIS acknowledges that Riverside and Imperial Counties are currently designated as nonattainment areas for the federal and state ozone (O₃) and particulate material (PM_{2.5}) standards and Imperial County is in maintenance for the state PM₁₀ standard (p. 3-128). Blowing dust, that has concentrated waste and agricultural runoff, not only affects the ability to meet air quality standards but also affects the respiratory health of people throughout the Coachella and Imperial Valleys, many of whom reside in disadvantaged or border communities with environmental justice concerns (pgs. 3-131, 3-327; Maps 3-3 and 3-5).

Last November, the Department of Interior, through the Bureau of Reclamation, signed the Salton Sea Inflation Reduction Act Restoration Agreement (IRA Agreement) that announced 225 million dollars in funding and committed to a set of concrete actions to reduce air quality, water quality, and habitat impacts at the Salton Sea. Many of these actions are detailed in the U.S. Army Corps of Engineer's 2022 Draft Environmental Assessment⁵ for the 10-year Salton Sea Management Program. The Salton Sea Management Program proposes to implement a total of 29,800 acres of aquatic habitat restoration and dust suppression projects around the perimeter of the Salton Sea on land owned by the U.S. Bureau of Reclamation, Imperial Irrigation District, and the Torres Martinez Tribe. Certain waterless dust suppression activities are proposed to increase surface stability and limit dust emissions, but these are generally temporary or interim treatments for water-reliant and longer-term dust suppression techniques. It is not clear from the Draft SEIS whether there will be water available for long-term dust abatement. In the interest of public health and safety, EPA supports Reclamation's efforts to quickly implement proposed and long-term mitigation to further reduce the burdens on rural, border, and agriculture-dependent economies and communities with environmental justice concerns.

Recommendations: The EPA recommends that projects identified in the comprehensive Salton Sea Management Program discussed above also be expedited given that the Reclamation's Proposed Action would expedite environmental impacts. In collaboration with the Corps, the California Natural Resources Agency, Tribes and water districts, include and commit to the following disclosures and measures in the Final SEIS:

- Prioritize and expedite dust abatement measures to address existing concerns of communities currently experiencing high environmental and health disparities, including communities with environmental justice concerns.
- Advance fair treatment and meaningful involvement for communities that would be affected by reduced water deliveries and increased air quality impacts by committing to a process for providing affected communities with detailed information about the array of dust abatement measures being considered.
- Because communities in and near the project area have high concentrations of linguistically isolated populations, discuss efforts made to address language and technology barriers. Consider translating materials into Spanish for appropriate locations within the project area.

⁵ Draft Environmental Assessment for Salton Sea Management Program, https://www.spl.usace.army.mil/Portals/17/docs/regulatory/Projects/SSMP/SPL-2019-00951_SSMP_Draft-EA_20220621.pdf

- Describe how information gathered during community outreach efforts will be used to inform mitigation measures in response to community interests and needs.

Fugitive Dust

The EPA suggests the consideration of appropriate mitigation measures to address potential fugitive dust resulting from existing guidelines and the Proposed Action that may exacerbate the spread of *Coccidioides immitis*, a fungus causing Valley fever (*Coccidioidomycosis*) in humans, particularly endemic to southeast California and southwest Arizona according to the Centers for Disease Control and Prevention.⁶ According to the CDC, rising temperatures and lands where water would no longer be used for irrigation may allow the fungus to spread to new areas that previously were too cold or wet for it to survive within the project area. As a result, fugitive dust generated on exposed reservoir margins or newly fallowed lands could disperse *Coccidioides* spores. According to the California Department of Public Health, the number of reported Valley fever cases rose from fewer than 1,000 cases in 2000 to over 9,000 cases in 2019.⁷ We note that the IRA Agreement includes goals to protect human health by limiting dust emissions.

Recommendations: To reduce the human health risk of contracting Valley fever, we encourage Reclamation to participate in drafting and/or revising Salton Sea regional dust control plans to account for the additional impacts of this Proposed Action. Ensure that dust control plans contain risk communication strategies to provide outreach in multiple languages. We recommend dust control plans identify potential fugitive dust emission sources and dust control methods, determine frequency of dust treatment applications, record dust control activities, and monitor dust control efforts. In the Final SEIS, include existing dust related Best Management Practices and minimization and mitigation measures for the area that would be protective of the environment and human health. In the Post-2026 NEPA document, identify other areas in the Basin that would have similar dust control issues with reduced water deliveries and work with partners to create or require dust management plans for those areas.

⁶ Valley Fever Maps | Fungal Diseases | CDC, <https://www.cdc.gov/fungal/diseases/coccidioidomycosis/maps.html>

⁷ Valley Fever Fact Sheet, <https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/ValleyFeverFactSheet.pdf>