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December 11, 2023

United States Bureau of Reclamation
2007 Interim Guidelines SEIS Project Manager
Upper Colorado Basin Region
125 South State Street, Suite 8100
Salt Lake City, Utah 84138
CRinterimops@usbr.gov

Re: Written Comments of the Imperial Irrigation District on the Revised Draft Supplemental Environmental Impact Statement for Near-Term Colorado River Operations

The Imperial Irrigation District appreciates the opportunity to comment on the *Near-Term Colorado River Operations Revised Draft Supplemental Environmental Impact Statement for Near-Term Colorado River Operations*, dated October 2023, issued by the United States Bureau of Reclamation (Revised DSEIS). IID supports the Lower Division Proposal, the Proposed Action analyzed in the Revised DSEIS, which fulfills Reclamation's obligations under the National Environmental Policy Act and complies with the laws, court decisions and contracts that empower and constrain the Secretary of the United States Department of Interior and Reclamation with respect to the Colorado River.

IID is an irrigation district formed under the laws of the State of California and depends solely on the Colorado River to supply water to the Imperial Valley, one of the most productive agricultural regions in the world, and an area that has been actively irrigated with Colorado River water since the late 1800s. Pursuant to a collection of compacts, treaties, statutes, U.S. Supreme Court Decisions and Decrees, and other authorities and contracts that govern Colorado River allocations and apportionments, known as the Law of the River, IID has a senior entitlement to Colorado River water. IID's entitlement has priority over many other Colorado River entitlement holders and includes 2.6 million acre-feet of present perfected rights with a senior priority date of 1901. As such, IID was very concerned about certain deficiencies included in the original Draft SEIS issued on April 14, 2023 (Original DSEIS), and particularly with regard to Alternative 2, which did not comply with the Law of the River nor honor the long-standing priority system and existing agreements that provide the parameters for Reclamation to administer shortages when necessary to protect the Colorado River system.

The Revised DSEIS accomplishes NEPA's twin goals of requiring Federal agencies to (1) analyze the potential environmental effects of their proposed actions and (2) inform the public

that the agency considered those environmental effects in the decision-making process. Further, the Revised DSEIS improves on certain deficiencies that existed in the Original DSEIS. For instance, NEPA requires an EIS to provide an accurate scientific analysis; yet, the Original DSEIS failed to include updated hydrology from the 2022-2023 wet winter, including above average snowpack and runoff conditions within the Colorado River Basin. In the Original DSEIS Reclamation stated that urgent action was necessary due to “the potential impacts of low runoff conditions in the winter of 2022–2023 and the remainder of the interim period (prior to January 1, 2027).” However, the 2022–2023 winter saw the highest runoff conditions in the Colorado River Basin since 1997. The Revised DSEIS appropriately accounts for the improved hydrology within the Basin, albeit as changed circumstances, which now presents an accurate scientific analysis that fulfills NEPA requirements.

IID supported the withdrawal of the Original DSEIS by Reclamation to study the effects of the Lower Division Proposal, which is now included as the Proposed Action in the Revised DSEIS. IID also concurs with the elimination of the previous Action Alternative 2 from detailed analysis in the Revised DSEIS because NEPA requires the analysis of alternatives that are feasible. NEPA regulations and judicial authority establish that an alternative that does not comply with the law and/or would result in “protracted debate and litigation” would be infeasible and inadequate for NEPA purposes. (*Vermont Yankee Nuclear Power v. NRDC*, 435 U.S. 519, 551; 43 C.F.R. § 46.415(b).) Action Alternative 2 was such an alternative; it was not legally viable, it was based on unsubstantiated legal precedent and dubious legal claims, and it violated the Law of the River. As such, Reclamation should also delete the reference in Section 2.4 of the Revised DSEIS that states “The Department may select different parts of any of the (eliminated) alternatives to best meet the Purpose and Need.” At minimum, Reclamation must clarify that its authority to implement additional actions are limited to those actions that are authorized under existing legal authorities and do not include elements of Alternative 2 that are not legally defensible because they are not allowed under the Law of the River.

The Law of the River is the foundation of all actions, both collaborative and litigious, on the Colorado River. Individuals, families, businesses, farms, cities, agencies, districts, counties and states have relied on the stability and collaboration of the Law of the River in signing contracts, making business decisions, approving investments and making long-term policy decisions. The implementation of the Action Alternative 2 would have laid waste to the Law of the River and would result in immediate litigation that Reclamation would be unable to successfully defend. But of even greater concern to IID is the untimely chaos that would be created in the near-term, when the focus and goal of Reclamation and Colorado River stakeholders should be on seeking collaborative, consensus-based solutions to protect critical reservoir elevations and address supply-demand imbalances to ensure the longer-term viability of the River system.

IID supports Reclamation’s decision to prepare a Revised DSEIS. In incorporating accurate updated hydrological data, analyzing the Proposed Action consistent with the Law of the River, and discarding an infeasible alternative, Reclamation has fulfilled its obligations under NEPA and delivered a document that achieves NEPA’s goals to analyze the potential environmental effects of the Proposed Action and inform the public of these considerations in the government decision-making process.

December 11, 2023
Page 3

IID looks forward to continued collaborative efforts with Reclamation and other Colorado River stakeholders and encourages Reclamation to pursue the Proposed Action, the Lower Division Proposal.

Sincerely,

A handwritten signature in black ink that reads "Tina Shields". The signature is written in a cursive, flowing style.

Tina Anderholt Shields, PE
Water Department Manager

cc: Jamie L. Asbury, General Manager
Geoffrey P. Holbrook, General Counsel