



# United States Department of the Interior



FISH AND WILDLIFE SERVICE

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In Reply Refer To:  
FWS/R2/RD/

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

Dear Ms. Genevieve Johnson:

The U.S. Fish and Wildlife Service (FWS) appreciates this opportunity to comment on Bureau of Reclamation's (Reclamation) Notice of Intent to Prepare a Supplemental Environmental Impact Statement (SEIS) as posted in the Federal Register (FR) notice on November 17, 2022 (87 FR 69042). Our comments herein are with the understanding that it is Reclamation's intention to complete the National Environmental Policy Act (NEPA) process through a SEIS with a draft in Spring 2023 and a final SEIS in Summer 2023. Reclamation is intending to create this SEIS given the current and worsening hydrologic conditions in the Colorado River Basin and the FWS supports this effort. We recognize the complexity, scope, and importance of the task and offer to assist Reclamation throughout the process. We have prepared our comments, to address issues related to this action and its compliance with the Endangered Species Act of 1973 (16 U.S.C. *et seq.*) (ESA) as amended, the National Wildlife Refuge System Act (16 U.S.C. § 668dd), and the Migratory Bird Conservation Act (16 U.S.C. § 715d).

## **Existing Endangered Species Act Compliance**

The geographic scope of this action is large, and it will intersect with at least three existing formal ESA consultations for Reclamation. We will introduce each chronologically hereafter with the most recent just being finalized on December 7, 2022.

In 2007, the FWS finalized a Biological Opinion (BO) for the proposed adoption of Colorado River Interim Guidelines for Lower Basin Shortages and Coordinated Operations of Lake Powell and Lake Mead, hereafter "Interim Guidelines". The 2007 Interim Guidelines BO provided Reclamation with ESA coverage for managing shortage conditions based on decreased hydrology in the Colorado River basin. At the time, Reclamation was seeking to balance and

coordinate operations for the two reservoirs at Lakes Powell and Mead. The 2007 BO provided coverage for impacts to Humpback Chub, Kanab Ambersnail (delisted from ESA protections in 2021; 86 FR 33137), and Southwest Willow Flycatcher. The geographic footprint of this action included the Colorado River from Glen Canyon Dam (GCD) to full pool elevation of Lake Mead, the Virgin and Muddy Rivers to Lake Mead, and Lake Mead to the southerly international border with Mexico.

In 2016, compliance was finalized on the “Glen Canyon Dam Long-term Experiment and Monitoring Plan” (LTEMP) BO. The 2016 LTEMP BO provides ESA coverage for Reclamation’s operations and adaptive management of GCD and the Colorado River. The 2016 BO evaluated impacts and provides ESA coverage for Humpback Chub, Razorback Sucker, and Kanab Ambersnail. The footprint of the 2016 BO touches the geography of the Lower Colorado River Multi-Species Conservation Program (LCR MSCP) BO, discussed below, as it ends on the Colorado River downstream in Lake Mead National Recreation Area.

In 2022, compliance was finalized on a BO entitled “Enhanced Habitat Protection and Reduction in Colorado River Flows Between Hoover Dam and Parker Dam in Excess of Flow-Related Covered Actions and Activities Provided Under the Lower Colorado Multi-Species Conservation Program”. The 2022 LCR MSCP BO describes reductions in Colorado River flow and provides ESA coverage for four listed species (Bonytail, Razorback Sucker, Northern Mexican Gartersnake, and Yuma Ridgeway’s Rail). The 2022 BO was a re-initiation of a 2005 Biological Conference Opinion (amended in 2018) for the LCR MSCP which integrated Section 7 and Section 10 responsibilities and coverages under the ESA, with no functional separation of effects and the resultant incidental take for the federal and non-federal covered actions. This series of consultations covers Reclamation’s geographic footprint on the Colorado River from Separation Canyon in the Grand Canyon to the southerly international border with Mexico.

For the SEIS, Reclamation is seeking to change aspects of its operations that may influence the Colorado River flows and, accordingly, ecological systems that occur within the geography of coverage for the previously identified BOs. In order to provide assurance for trust resources within this large geographic area, the FWS is requesting Reclamation offer the FWS early coordination on all aspects of planning for this activity. The scope of this SEIS is large, resource conditions are in flux in some of these regions, and the timeline for consultation on this SEIS is tight. For these reasons, the FWS has specific requests for information identified below in the section entitled “Effects Analysis for Act Compliance”. Additionally, in the section entitled “Tipping Point for Jeopardy”, the FWS outlines another issue that will require clear coordination between FWS and Reclamation staff as the review of the SEIS occurs. Lastly, the FWS identifies four National Wildlife Refuges (Refuges) in the National Wildlife Refuge System that are located along the Colorado River. Close coordination with Reclamation will be necessary for the continued management of these Refuges.

### **Tipping Point for Jeopardy**

In *Wild Fish Conservancy v. Salazar*, 628 F.3d 513 (9th Cir.2010), the Ninth Circuit held that the FWS must identify when a species will likely pass the tipping point for recovery and determine whether a proposed action will cause any species to reach that tipping point. That case, and

subsequent cases addressing “tipping point,” involved challenges to BOs that analyzed the effects of project-specific Federal actions. Reclamation’s SEIS represents an action which will provide program management direction and guidance and may or may not authorize future project-specific actions or ground-disturbing activities that may result in adverse effects to threatened or endangered species and/or their designated critical habitat. As such, the FWS will require certain key pieces of information to evaluate the tipping point for recovery of any species offered protections under the ESA within the geography of this SEIS.

While the FWS cannot predict the full outcome of this SEIS, it is clear given continued drought, aridification of the basin, and water demand on the system, there will be less water. What is not clear is how much water and of what quality will be available under the operating conditions identified by the SEIS. How this water quality and quantity issue plays out for the many species covered by the geography of this action is uncertain. Additionally, it is of utmost importance to evaluation of jeopardy and tipping point that the same or similar effects analyses are carried out for each of the species being evaluated in this SEIS. Therefore, in order to determine tipping point, the FWS requests that Reclamation utilize the same or similar types of information in their determinations of effects for the entirety of this effort. This is an important point, given that previous evaluations by Reclamation (LCR MSCP and LTEMP) do not use the same types of effects analysis.

### **Effects Analysis for ESA Compliance**

For Reclamation and FWS to accomplish an appropriate effects analysis for this SEIS in compliance with the ESA, we will likely need information that does not currently exist or is not formatted for this purpose. It is important to note here that the effects analysis must consider the full range and breadth of effects to ESA listed species and designated critical habitat (the ESA action area) where effects occur throughout the Colorado River basin. For each species, an evaluation of baseline conditions will be required, which will include (but would not be limited to) providing the most recent survey data, population estimates, distribution, and habitat conditions. This baseline would need to precisely indicate how the geography of this SEIS and the actions taken would overlap with the geography of each species. For example, the Humpback Chub is endemic to the Colorado River basin, though populations of this species occur upstream of the expected footprint for this SEIS. The FWS would need to evaluate the context of the baseline conditions for Humpback Chub in its whole range, not just within the SEIS footprint. Following the evaluation of baseline conditions, would be identifying the interactions of the species within its environment. Providing details on habitat interactions and biological community interactions will enhance the ability of our teams to identify positive and negative relationships which will prove helpful in the context of a changing hydrology and ultimately are expected to result in affects to ESA listed species and designated critical habitat.

As indicated in the FR notice and the December 02, 2022 slide presentation offered by Reclamation, we expect to see changes in the future conditions for water availability. As such, modeling of water velocity, daily and monthly flow, water temperature, and habitat loss for all the scenarios presented should be provided. These predictive models should then be mapped onto the baseline conditional data for each species impact to determine how these changes may affect the species and or their habitats. For the ease of this effort the FWS would like to see that

the effects analysis used in this SEIS be the same as those that have been used in prior ESA consultation documents.

### **National Wildlife Refuge System**

Four FWS Refuges are located along the Colorado River. Each of these refuges (Havasu Refuge, Bill Williams Refuge, Cibola Refuge, and Imperial Refuge) was established for a special purpose and shall be managed to fulfill the purpose under the legal authority of the establishing statutes. These refuges are managed from water that passes through and that is diverted from the Colorado River and serve as an integral component of the Lower Colorado River Multi-Species Conservation Program.

The lower Colorado River Refuges are considered vital elements to the area of ecological concern. The four refuges are some of the only large tracts of natural terrestrial vegetation remaining on the lower Colorado River. These refuges provide breeding grounds for migratory birds and other wildlife, and the protection of natural resources and conservation of endangered species or threatened species. The Cibola Refuge was established as mitigation for the straightening, channelization, and armoring of the banks of the Colorado River and protects and recreates marshes, backwaters, and meanders that historically provided wintering grounds for migratory waterfowl and other wildlife that natural flooding would have formed. The water that is supplied by the Colorado River is foundational for the continued health of these habitats. The FWS requests that the water modeling efforts extend through the refuge boundaries to determine management impacts throughout the system and to allow the refuge system to continue collaboration with Reclamation and provide input on potential impacts on these critical habitats.

Thank you again for the opportunity to comment on this important issue. We stand committed and ready to assist Reclamation with the planning phase of the SEIS. Please include the FWS as early as possible so that we can provide input and be responsive to time intensive aspects of project requirements.

Please feel free to contact me or Heather Whitlaw, our Arizona Ecological Services Field Office Supervisor, 806.773.5932 or [heather\\_whitlaw@fws.gov](mailto:heather_whitlaw@fws.gov), if you have any questions or need any further clarification of our comments.

Sincerely,

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Regional Director

cc: Regional Director, Region 6, Lakewood, CO  
Deputy Regional Director, Region 6, Lakewood, CO  
Assistant Regional Director, Ecological Services, Region 2, Albuquerque, NM  
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