

MOHAVE COUNTY WATER AUTHORITY

1355 Ramar Road, Suite 6, Bullhead City, AZ 86442
Telephone No. (480) 415-5283

August 31, 2022

Bureau of Reclamation
Department of the Interior
CRB-info@usbr.gov

Re: Request for Input on Development of Post-2026 Colorado River Reservoir
Operational Strategies for Lake Powell and Lake Mead Under Historically Low Reservoir
Conditions

Mohave County Water Authority appreciates the opportunity to provide input on the development of post-2026 Colorado River Reservoir Operational Strategies. Consistent with the notice and request for input, MCWA's comments will be broken down into two sections addressing a.) processes that can be employed to encourage and facilitate meaningful participation of Colorado River Basin ("Basin") partners, stakeholders, and the general public in the anticipated upcoming NEPA process(es); and the b.) potential substantive elements and strategies for post-2026 operations to consider in the anticipated upcoming NEPA process(es).

A. PROCESSES THAT CAN BE EMPLOYED TO ENCOURAGE AND FACILITATE MEANINGFUL PARTICIPATION OF COLORADO RIVER BASIN PARTNERS, STAKEHOLDERS, AND THE GENERAL PUBLIC IN THE ANTICIPATED UPCOMING NEPA PROCESS(ES).

Increasing participation of stakeholders and the general public will be difficult, but not impossible. Efforts to increase participation should be made regardless of the difficulty due to the gravity of the challenges facing the Basin. The topic is complex and not generally well understood, which deters engagement in the material and prevents participation. Specifically, the general public may not understand how the broad concept of the operating criteria, or the priority of water, impacts them individually. People believe that when they turn on the kitchen sink or flush the toilet, water will be available, and that their elected officials and governing entities will represent and protect their interests. These views may be a result of how water management has historically been approached with decisions made and implemented at high levels. Only through recent media coverage has the public become aware of the grave challenges facing the Basin, despite the fact those challenges have been evident for some time. To some extent, people became desensitized to the clips of "conserve water message" often made without further context or information. In fact, historically speaking, the "conserve water message" did not result in reduced consumption but rather extended the use of available supplies.

Broadly disseminating short, digestible informative articles on management of the river system, and how this process of updating and/or modifying the operating criteria for the river affects individual users to the public, perhaps through entitlement holders to distribute to their users, would address these issues. Providing fundamental knowledge will lead to greater awareness of the water realities of the Basin and provide an opportunity for constructive discourse, which is the necessary first step for sustainable changes that are equitable for all stakeholders.

The public, in general, believes their elected officials and applicable governing entity will represent and protect their interests. Governmental entities, especially local entities not included in the broad picture policy setting environment, should be afforded the opportunity of input through a small group process inclusive of similarly situated members. Often, in larger groups, voices of smaller users and stakeholders are lost among the voices of larger users. Additionally, public information meetings, or workshops if you will, should be held for the general public at a local level. Rural residents often lack the financial means to participate in public processes, especially if that process is not located within or near their community. Notice of public meetings should be through multiple media sources, not just a publication or two in the local newspapers.

B. POTENTIAL SUBSTANTIVE ELEMENTS AND STRATEGIES FOR POST-2026 OPERATIONS TO CONSIDER IN THE ANTICIPATED UPCOMING NEPA PROCESS(ES).

MCWA is concerned about potential actions to the management structure of the Colorado River to address climate change, drought, tribal concerns and, in general, the imbalance of the allocations of the Colorado River. The current system is failing the river system itself and the people dependent upon that river system. Any action to address these issues needs to be equitable. Political and economic strength should not win the day in determining equity. Any reduction in entitlements should consider all surrounding factors, including available alternative practical sources of water supplies, and impediments to developing full use of an entitlement under the existing framework governing the Colorado River. MCWA believes the Secretary of the Interior, as the water master, in light of the express language of the Arizona-California decree, needs to be more active in managing Colorado River supplies to ensure equity to all users, small and large alike, especially in light of climate change, a condition not anticipated at the time of the Colorado River Compact or the initial decision of *Arizona v. California*. That equity may be achieved through the operating guidelines.

MCWA would like the next set of guidelines to provide opportunities/mechanisms to allow on-river users to benefit from their full entitlement and to develop resiliency in their water portfolios. This resiliency could be achieved through opportunities to create ICS, either through deemed conservation or deemed importation of water for effluent discharged into the river system (which might not otherwise be discharged into the system), and to earn storage credits for its unused entitlement and effluent recharged.

It is important to acknowledge the rights of on-river users are limited by virtue of their location upon the Colorado River aquifer and/or accounting surface. Right now, on-river 4th priority water users may only benefit from their entitlements by what portion they actually consume. Unlike 4th priority users in central Arizona, they may not store unused entitlements through delivery to a groundwater savings district or an underground storage facility. Nor may they receive credit for the recharge of effluent.

The effect of the "use or lose it" rule needs to be minimized. Lower priority users, and in particular P-4 on-river municipal users, are harmed by effective conservation. Water use efficiencies have eliminated their ability to absorb shortages through increased conservation. Their water use is already very efficient. Any significant reduction in deliveries will likely result in immediate cuts to taps. They have no farm fields to fallow. They have no large quantity of non-functional turf irrigated with river water. Conservation requirements such as xeriscape, low flush toilets, effluent for outdoor irrigation and turf reduction rebate programs have been effective in minimizing their water use. Water efficiencies achieved by on-river users have accrued to the benefit of central Arizona by making more water available to central Arizona for use or storage with little to no recognition of on-river water users conservation efforts. To the extent adjustments are made to entitlement quantities in this next set of guidelines, adjustment to on-river users should be made to maximum entitlement quantities, not the quantity of water actually put to beneficial use.

Movement of water away from the on-river region should not be seen as a part of any solution for water shortages or deficits in other areas, especially if that water movement will create a water deficit in the area from which it is moved. Entities (irrigation districts, conservation districts, utility companies and private individuals) holding water entitlement contracts servicing county or municipal lands in the on-river region should be required to seek the input of the county or city, as the case may be, on allocation matters which unavoidably impact land use, and consequently the economic development of an area, especially if the lands within the service area are substantially urbanized. In evaluating any transfer of water away from the on-river region, the Secretary should consider the impact on the local area in light of the standard imposed on the Secretary with regards to importing water into the Colorado River set forth in section 203 of the Colorado River Basin Act of 1968. This section requires the Secretary "to make provision for adequate and equitable protection of the interests of the ... areas of origin ... that water supplies may be available for use... in such areas of origin adequate to satisfy their ultimate requirements at prices to users not adversely affected by the exportation of water..."

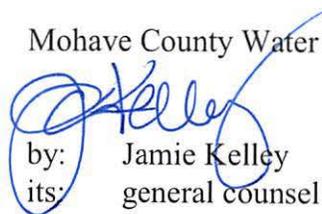
In addition, states should minimize situations giving rise to the uncontracted use of Colorado River, especially those uses attributable to exempt wells (35 gallons per minute). Entitlement holders should not be required to account for exempt well usage within their service if the state allows exempt wells to be drilled without first requiring evidence of an entitlement for the use of Colorado water. The proliferation of thousands of exempt wells has exacerbated the problem of managing water entitlements along the river.

MCWA believes reduced deliveries should be addressed in greater detail in the operating criteria and that shortages be equitably applied, and that equity is not achieved simply by a mathematical calculation. To achieve equity in administering shortages, especially in Arizona, factors such as the use of on-river users unused entitlements elsewhere in the state, impediments under state law or contract to the full development of an entitlement, and the lack of alternative supplies of water let alone reasonably practical sources of water supplies, should be considered. The Arizona Director's Shortage Sharing Agreement is set to expire with the next set of guidelines. This Shortage Sharing Agreement was intended to afford the P4 on-River users relief from the distribution of shortages in recognition of the use of their unused entitlement in central Arizona and that use by central Arizona should not be imputed to them in distributing shortages.

Although some may take the position concerns articulated in this comment letter are not appropriate issues to be considered and addressed in the operating criteria, MCWA disagrees. We believe the concerns articulated in this letter will be directly impacted by the scope of the next set of operating criteria, which for a river system in great distress, must necessarily address issues other than lake elevations, balancing of storage, and release quantities relative to the operation of the two reservoir systems.

Very truly yours,

Mohave County Water Authority


by: Jamie Kelley
its: general counsel