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Leslie A. Meyers, P.E.
PAB232 | P.O. Box 52025
Phoenix, AZ 85072-2025
P: (602) 236-5355 | C: (480) 487-1887
Leslie.Meyers@srpnet.com

August 15, 2023

Submitted via Email (crbpost2026@usbr.gov)

Ms. Amanda Erath
Colorado River Post-2026 Program Coordinator
Bureau of Reclamation
Attn: Post-2026 (Mail Stop 84–55000)
P.O. Box 25007
Denver, CO 80225

RE: Notice of Intent to Prepare an Environmental Impact Statement and Notice to Solicit Comments and Hold Public Scoping on the Development of Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead; RR03040000, 23XR0680A1, RX187860005004001

Dear Ms. Erath:

The Salt River Valley Water User's Association ("Association") and the Salt River Project Agricultural Improvement and Power District ("District"; collectively the Salt River Project "SRP") appreciate the opportunity to provide comments in response to the June 16, 2023, Notice of Intent To Prepare an Environmental Impact Statement and Notice To Solicit Comments and Hold Public Scoping Meetings on the Development of Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead.[1] The process to develop operational guidelines for these Colorado River reservoirs is critically important and will have long-lasting implications for water users across the basin. SRP has an interest in the actions developed through the public scoping process to implement procedures that will allow reliable operations, minimize future risk to Arizona, and protect critical elevations in Lakes Powell and Mead.

SRP, comprised of the Association and the District, formed in 1903 and 1937, respectively, collectively operates the Salt River Federal Reclamation Project ("Project"). The Project, which

[1] 88 FR 39455. https://www.federalregister.gov/documents/2023/06/16/2023-12923/notice-of-intent-to-prepare-an-environmental-impact-statement-and-notice-to-solicit-comments-and

is the Phoenix metropolitan area's largest supplier of raw water, delivers more than 800,000 acre-feet annually to municipal, urban, and agricultural water users. The Project also includes one of the nation's largest not-for-profit public power systems through which SRP provides electrical power to more than one million customers in the Phoenix area and certain rural areas of central Arizona. As both a water and power provider, SRP has an interest in the operational aspects of water and power deliveries from the Colorado River system. Although SRP delivers water from the Salt and Verde Rivers, water users in central Arizona have interconnected supply portfolios, linking Colorado River supplies with other sources in the state.

The Bureau of Reclamation ("Reclamation") outlined three focus areas for feedback during the scoping process webinars: 1) operational guidelines and strategies, 2) potential modification to the purpose and elements of the 2007 Interim Guidelines ("2007 Guidelines"), and 3) any other related issues that should be considered. With this in mind, SRP submits these comments for consideration as part of the scoping process to develop the successor agreements to the 2007 Guidelines.

Build on the Law of the River to address current and future conditions

SRP believes the only viable path forward is to follow the intent of the 1922 Colorado River Compact ("Compact") and build on the Law of the River to "provide for the equitable division and apportionment of the waters of the Colorado River System."[2] The "Law of the River" is the robust system of Federal and State statutes, compacts, contracts, court decisions and decrees, treaties, and administrative decisions which govern Colorado River allocations and operations. The Colorado River Basin States ("Basin States"), like much of the West, allocate water based on the doctrine of prior appropriation: the earliest uses receive the highest-priority rights. While the priority system is a valuable vestige of the early days on the Colorado River, because of the unique circumstances of the Colorado River basin, it was recognized early on that a strict application of priority on an interstate stream, whose drainage spans vastly different socioeconomic circumstances, would cause "present and future controversy," and inhibit the "expeditious development of the Basin."[3] As a result, the Basin States agreed to an equitable apportionment between the Upper and Lower Basins in the Compact, and left to each sub-Basin how to equitably distribute those volumes among the States.

In the early 1900s when the Basin States adopted the Compact, the average annual water supply in the Colorado River system was believed to be well over 16 million acre-feet ("maf") per year. Compact apportionments to the Upper and Lower Basins presumed there would likely be excess water to eventually afford to Mexico, and perhaps more thereafter. Hydrologic conditions since

[2] Colorado River Compact, Article I (1922)
[3] *Id.*

have demonstrated a shortfall in that assumed supply, ranging from a long-term average of 14.9 maf/year running up to development of the 2007 Guidelines, to an average of 12.5 maf/year since the year 2000.[4] This shortfall has had, and will continue to have, long-lasting implications for users across the Colorado River Basin who must consistently negotiate and renegotiate agreements to live within the means of the river.

The challenges of operating with the current hydrologic shortfall as compared to the Compact's foundational assumptions have led some to suggest the entire Law of the River be thrown out and redrafted, or key decisions be revisited. SRP does not support wholesale revision to the foundational legal framework. Reclamation should focus on new operational guidelines that consider the entire Colorado River system and foster cooperation among the Basin States, and "avoid unnecessary, protracted, or destabilizing litigation,"[5] as it did in developing the 2007 Guidelines.

Address shortage earlier and plan to reduce further

SRP suggests that post-2026 management of the Colorado River set forth earlier and more aggressive actions to avoid reaching critical elevations, as were narrowly avoided in 2023. The operational parameters set out in the 2007 Guidelines and Lower Basin Drought Contingency Plan ("LBDCP") were instrumental in protecting the system over two decades of record-breaking drought. Nevertheless, given the observed conditions and future hydrologic uncertainty the next round of guidelines must go further. The elevation triggers set out in Section 2.D.(1) of the 2007 Guidelines, and Appendix D of the LBDCP that set the parameters for Lower Basin reductions, while effective in their own right, proved insufficient to avoid reaching critical elevations in the system. Even when combined with other conservation measures, those triggers were inadequate to prevent the combined storage in Lakes Powell and Mead from dropping to levels that resulted in calls for drastic measures to prevent the system's collapse.[6]

The average annual yield of the Colorado River is not projected to return to the volumes that laid the foundation of the Law of the River. Further, climate change and natural weather cycles will also result in greater inflow variability in the basin. The next operational guidelines must account for the reduced annual yield and those climatic variations to address the broadest range of inflow scenarios. Additionally, should conditions worsen beyond even the most aggressive projections,

[4] Presentation, Slide 10, Public Scoping Meeting. (July 2023) https://www.usbr.gov/ColoradoRiverBasin/post2026/scoping/CR%20Post-2026%20EIS_Scoping%20Presentation_508.pdf
[5] Record of Decision, 2007 Interim Guidelines, Page 14. https://www.usbr.gov/lc/region/programs/strategies/RecordofDecision.pdf
[6] Bureau of Reclamation Commissioner Camille Calimlim Touton testimony to Congress, June 2022.

lake levels at or below certain elevations should trigger a Secretarial consultation, such as those used in 2021 under the LBDCP Agreement (i.e., the "1,030' Consultation").[7]

Finally, SRP believes that the Basin States collectively should account for greater supply variability and take a more proactive approach to water management. SRP has a long history of managing water supplies for the Greater Phoenix area. SRP continually adjusts its water management processes to ensure the availability of water stored in SRP reservoirs, while also protecting groundwater resources for the future. For example, during drought conditions in the early 2000s, SRP incorporated updated "drought of record" data to better manage low-inflow conditions and add earlier triggers to protect carry-over reservoir storage; this allowed SRP to make smaller, but more timely adjustments to its water mix. These proactive water management adjustments have yielded better results than necessity and circumstance forcing larger and more challenging adjustments. Similarly, SRP believes the operational guidelines should embrace a more forward-looking approach that seeks to slow declines before conditions force drastic cuts that adversely impact millions of water users.

Allocate reductions equitably

As previously noted, the variability of available Colorado River supplies must be accounted for in the next guidelines using an equitable mechanism for apportioning reductions. Although each Basin's allocation was made in subsequent actions (the Boulder Canyon Project Act and the Upper Basin Compact, respectively), the Lower Basin States have since had to regularly renegotiate to account for shortages, starting with the 2007 Guidelines and then again with the LBDCP in 2019. The negotiated shortage guidelines generally follow the basic principles of the priority system, where the lowest-priority users take the lion's share of the first cuts. This has preserved the system's ability to meet the demands of the most users. However, as the system approaches critical elevations in Lakes Powell and Mead, it has become increasingly important to consider 43 CFR Part 417 beneficial use and efficiency parameters,[8] and minimum deliveries necessary to protect health and human safety, including the socioeconomic impacts associated with those actions. Any future shortage sharing arrangements should equitably allocate reductions beyond certain levels, and the effects of any proposed alternatives on the human environment and socioeconomics should be fully disclosed and analyzed in the NEPA process.

Equitable allocation of Lower Basin shortages should also include an assessment of evaporation and system losses ("ESL"). All Colorado River water users who benefit from these pieces of infrastructure should share in the obligation of accounting for ESL: net reservoir losses, river

[7] *See* §V(B), *Lower Basin Drought Contingency Operations*, Exhibit 1 to the *Lower Basin Drought Contingency Plan Agreement*. 2019-05-20-attachment-b-exhibit-1-lb-drought-operations.pdf (cap-az.com)
[8] See the conditions for Reclamation determinations relating to Section 5 water contractors in 43 CFR 417.3.

losses and regulatory wastes, as those terms are used in Section III of the *Criteria for Coordinated Long-Range Operation of Colorado River Reservoirs*.[9] SRP encourages a full analysis of ESL not based on priority, as ESL is an issue for everyone and should not be viewed through such a lens, so as to differentiate such action from the administration of shortage.

Consider hydropower impacts

Although hydropower is "subservient" to the use of Colorado River water for domestic or agricultural purposes,[10] that does not mean that it should not be taken into consideration as shortage guidelines are developed. Arizona and the West experienced record-breaking temperatures in Summer 2023, which pushed the SRP power system to reach new peak loads serval times throughout the month of July. As temperatures and populations both increase, energy demands are only projected to go up. Colorado River facilities can provide more than 4,200 megawatts of renewable, carbon-free energy to millions of people across the Basin. This energy resource will continue to grow in importance for the stability and sustainability of power generation supplies. Failing to account for impacts to hydropower generation resulting from any proposed equitably allocated reductions included in future operational guidelines could have significant repercussions for those who rely on it. Those implications exist for both direct power users, and for those who rely on the hydropower produced by the Colorado River facilities to effectuate power exchanges. Domestic and agricultural water users need a stable and functional grid. The Final Environmental Impact Statement for the 2007 Guidelines included an analysis relating to hydropower production.[11] Reclamation should give *at least* that same weight to hydropower impacts during its consideration of the Post-2026 operational guidelines.

Guidelines should consider impacts to environmental programs like the MSCP

The Lower Colorado River Multi-Species Conservation Program ("LCR MSCP") serves as an important environmental mitigation mechanism for native species, including many currently listed under the Endangered Species Act ("ESA"), and their habitats through the implementation of a habitat conservation plan. The LCR MSCP participants rely on the program to meet their compliance obligations under the ESA, and the wildlife protected by habitat created under the program rely on water delivered from Lake Mead to the Lower Basin and Mexico. Impacts to that program should be analyzed as part of any reductions in flow and changes to release volumes proposed as part of the Post-2026 operational guidelines.

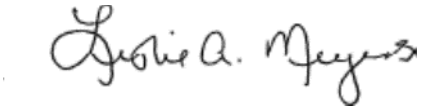
[9] *Criteria for Coordinated Long-Range Operation of Colorado River Reservoirs*, §III(1)(c-e). (1970)
[10] Colorado River Compact, Art IV(b) (1922)
[11] §4.11, Final Environmental Impact Statement, 2007 Interim Guidelines. (2007)

Encourage cooperation and collaboration with diverse interests and Mexico
SRP supports Reclamation's outreach to all interested members of the public to provide comments on the scoping process. SRP believes it is important to hear from diverse water users to ensure that the next operational guidelines are implemented in a manner that takes into account the interests of all stakeholders. Incorporating such input affords parties an opportunity to manage their risk more effectively and help mitigate the risk of legal challenges from groups that have not been heard during the process.

The process to develop the successor agreements to Minute 323 with Mexico is proceeding concurrently with the NEPA process to develop the next operating guidelines. It is critical that these processes inform one another and maintain a spirit of collaboration and cooperation with our international partners. SRP continues to support efforts towards an equitable solution for all Colorado River parties.

The Post-2026 Scoping process will guide the development of alternatives to govern operations of the Colorado River system for the foreseeable future. SRP supports consideration of the items outlined in this letter to proactively address the range of possible scenarios that the Basin will face during the duration of the new guidelines. Building on the foundational framework, equitably allocating reductions across users, appropriately addressing beneficial use and environmental concerns, as well as protecting hydropower as a renewable energy supply are not novel issues, but they remain relevant as Reclamation embarks on developing alternatives for new operational guidelines. SRP appreciates the opportunity to comment on this important next step for the Colorado River system and would be happy to provide further information on any of the issues addressed in this letter or comments submitted by others. Please contact Megan Martin at megan.martin@srpnet.com or (602) 236-2693 with any questions you have.

Sincerely,



Leslie Meyers
Associate General Manager for Water Stewardship
Salt River Project

Salton Sea Authority

August 15, 2023

The Honorable Deb Haaland
Secretary of the Interior
U.S. Department of the Interior
1849 C Street, NW
Washington, DC 20240

The Honorable Camille Touton
Commissioner
Bureau of Reclamation
1849 C Street, NW
Washington, DC 20240

RE: Notice of Intent to Prepare an Environmental Impact Statement and Notice to Solicit Public Comments and Hold Public Scoping Meetings on the Development of Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead, Fed. Reg. Vol. 88, No. 116, Friday, June 16, 2023; submitted by email to crbpost2026@usbr.gov

Dear Secretary Haaland and Commissioner Touton:

We greatly and sincerely appreciate your recent acknowledgement that the Salton Sea requires mitigation to address the negative impacts of Bureau of Reclamation (Reclamation) Colorado River management decisions to reduce water deliveries to the Imperial and Coachella Valleys.1 The attached comments describe the specific air quality, environmental justice, tribal, water quality and habitat Salton Sea impacts that are squarely within the scope of the above referenced Environmental Impact Statement (EIS).

We respectfully urge you to evaluate these impacts and provide federally funded mitigation to address them within the EIS as provided for by Reclamation National Environmental Policy Act (NEPA) guidelines and regulations, as well as other federal environmental laws. The public health and environmental costs of the impacts of Colorado River water conservation measures must not be externalized to the Salton Sea region's disadvantaged, tribal, and agricultural communities.

It is important to note at the outset that these Salton Sea impacts have not been evaluated by Reclamation or any other entity in any prior formal, public, and legally reviewable process. Accordingly, Reclamation cannot rely on prior assessments to avoid such an evaluation in the post-2026 EIS.

In particular, the 2007 Colorado River Interim Guidelines Reclamation aims to revise through this new process notably failed to federally evaluate, to consider or to

[1] Department of the Interior, *Commitment to Support Salton Sea Management Related to Water Conservation in the Lower Colorado River Basin* (Interior Commitment Agreement) (November 29, 2022) (emphasis added). https://www.iid.com/home/showpublisheddocument/20856.

82995 Highway 111, Suite 200, Indio, CA 92201
Phone: 760.863.2695 Fax: 760.262.3008
info@saltonsea.com http://saltonsea.com

mitigate the public health and environmental impacts of Colorado River water conservation on the Salton Sea. Subsequent actions to refine the guidelines such as the 2019 Drought Contingency Plan (DCP) and the 2022 Interior Commitments Agreement similarly lacked an assessment of impacts needed to rigorously guide Salton Sea mitigation and adaptive management. And Reclamation's 2023 Draft Supplemental Environmental Impact Statement (draft SEIS), now under reconsideration, also failed to evaluate and propose federal mitigation for near-term Colorado River water conservation impacts on Salton Sea region air quality, habitat, environmental justice, tribal and other environmental resources.2

The Salton Sea Authority (Authority) has worked for decades to secure state and federal resources to cooperatively evaluate and mitigate the impacts of these Colorado River water conservation measures. The Authority is a joint powers entity established under California law to promote the revitalization of the Salton Sea and surrounding region. The Authority is directed by a board of locally elected leaders from the Torres Martinez Desert Cahuilla Indians (Torres Martinez), Imperial and Riverside Counties, Imperial Irrigation District (IID) and Coachella Valley Water District (CVWD) to advance state and federal policies and projects to support this mission.

For example, the Authority's advocacy with the California State Legislature and Governor has resulted in the commitment of $582.5 million to address the significant Salton Sea public health and environmental impacts of the 2003 Quantification Settlement Agreement (QSA), which provided for largest agricultural-to-urban water transfer in U.S. history to benefit the stability of the Colorado River system.

The Authority has also been the leading advocate for federal legislation to ensure the federal government meets its own legal responsibilities at the Salton Sea. The Authority has worked closely with our Congressional delegation to secure U.S. Army Corps of Engineers Salton Sea Feasibility Study and funding to determine and ultimately fund a long-range plan to address the decline of the Salton Sea, one of only three such

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2 While the draft SEIS now under revision included the Salton Sea region within the affected environment, it did not evaluate the proposed Colorado River water conservation alternatives on the region's air quality, endangered species, or water quality. Similarly, Reclamation's draft SEIS environmental justice and tribal analyses excluded a consideration of these environmental impacts on these already overburdened communities. Instead, Reclamation's draft SEIS focused on the single question of how its proposed alternatives would affect water supply accessibility for California and Arizona environmental justice communities. NEPA does not permit Reclamation to ignore significant and well-recognized environmental impacts in this manner. Moreover, the Clean Air Act imposes substantive mandates on Reclamation which were also not addressed in the draft SEIS. Finally, while 96 Tribes were consulted by Reclamation in the draft SEIS process, the Torres Martinez were not among them, in contravention of Executive Orders and Interior policy to consult with Tribes affected by Colorado River water supply decisions.

studies approved by Congress in 2020; to secure 2018 Farm Bill legislation to broadly empower the U.S. Department of Agriculture (USDA) to implement mitigation actions on exposed Salton Sea playa and to increase investment in infrastructure to improve water use efficiency; and to establish the $4 billion Inflation Reduction Act (IRA) fund to mitigate the impacts of Reclamation's Colorado River decisions on the Salton Sea. PL 117-169.

Finally, key to the Authority's mission is ensuring that federal public health and environmental legal protections for our region are followed and implemented by our federal partners.

In 2019, the Authority, IID, and our Congressional delegation worked to defeat legislation to void Reclamation's NEPA, Clean Air Act and other federal environmental statutory duties to consider and bear the costs to mitigate the environmental and public health impacts of its Colorado River actions on the Salton Sea. Instead of voiding federal public health and environmental protections for Salton Sea region's disadvantaged and tribal communities, Congress instead provided Reclamation with the flexible $4 billion IRA fund to address these concerns.

We sincerely appreciate the seriousness of the Colorado River water supply issue and wish to work in a cooperative way to use the federal funding tools the Authority has helped to create to address it. A truly durable solution to the Colorado River crisis cannot be accomplished by imposing unanalyzed and unmitigated water cuts on California tribal and disadvantaged communities. We are confident that a solution to the Colorado River and Salton Sea crises can be found by working together to understand and equitably address both concerns.

Thank you for consideration of our views. We look forward to working with you as this critical multi-year EIS process unfolds.

Sincerely,

Altrena Santillanes
President

Castulo Estrada
Vice President

Salton Sea Authority Post-2026 Colorado River Scoping Comments

a. Legal Context

NEPA requires Federal agencies to provide a detailed statement on proposals for major Federal actions significantly affecting the quality of the human environment. 40 CFR §1500.1. The purpose of the environmental impact statement is to "ensure agencies consider the environmental impacts of their actions in decision making" by providing a "full and fair discussion of significant environmental impacts and shall inform decision makers and the public of reasonable alternatives that would avoid or minimize adverse impacts or enhance the quality of the human environment." 40 CFR § 1502.2.

The law further provides that "[e]nvironmental impact statements shall serve as the means of assessing the environmental impact of proposed agency actions, rather than justifying decisions already made," 40 CFR § 1502.2(g), and must consider the cumulative impacts of the proposed action. Cumulative impacts are "the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time." 40 CFR § 1508.7

According to Reclamation's own NEPA policy, Reclamation's NEPA review "requires full disclosure of the potential effects of major actions proposed by federal agencies and accompanying alternatives, impacts, and possible mitigation." Reclamation NEPA Handbook (Handbook) at 2-2.[3] Reclamation policy further states that it will "obtain the information necessary to fully evaluate all reasonably foreseeable, significant adverse impacts" and that the agency should not use the NEPA review to "justify a predetermined action" and must be used in an "impartial manner." Handbook at 2-2. While NEPA does not mandate Reclamation choose a particular course of action or mandate mitigation, it does require that "impacts and potential mitigation be disclosed before decision making." Handbook at 2-3. Reclamation states that it will "obtain the information necessary to fully evaluate all reasonably foreseeable, significant adverse impacts." Handbook 3-15.

Finally, in addition to informing the public, another reason behind NEPA's requirements to surface environmental concerns is so that Reclamation may incorporate "environmental commitments" in the final NEPA document to address those concerns. These are defined by Reclamation as "written statements of intent made by Reclamation to monitor and mitigate for potential adverse environmental impacts of an action … to reduce or avoid impacts, restore or enhance environmental quality." These

[3] https://www.usbr.gov/nepa/docs/NEPA_Handbook2012.pdf

commitments, when included in the final NEPA document, obliges Reclamation "to fulfill and appropriately fund all monitoring and mitigation measures …." Handbook at 3-16.

Further, these "commitments may state how Reclamation will comply with applicable statutes, regulations and other obligations including: the Clean Water Act, Clean Air Act, Endangered Species Act, National Historic Preservation Act, Executive orders, Tribal, State and local laws, rules and regulations." Handbook 3-16.

Further, reclamation is bound under other federal environmental laws to evaluate the specific Salton Sea impacts of its proposed post-2026 Colorado River water conservation measures. For example, the Clean Air Act requires Reclamation to analyze the air quality impacts of its post-2026 Colorado River water conservation measures which would reduce Salton Sea inflows to determine whether they will cause or contribute to new violations, worsen existing violations, or delay attainment with Clean Air Act standards in the Salton Sea region. 42 USC § 7506(b).

In addition, the Endangered Species Act requires Reclamation to consult with the Fish and Wildlife Service (FWS) to ensure that Reclamation's proposed action is not likely to jeopardize the continued existence of threatened and endangered species in the Salton Sea region. 16 USC § 1536(a)(2). The Clean Water Act provides for water quality standards that are applicable for eutrophic lakes like the Salton Sea. 33 USC § 1251(a).[4]

Finally, Biden administration environmental justice and tribal policies -- which protect the Salton Sea region's disadvantaged and tribal communities -- similarly require cumulative impact analyses, direct agencies to avoid imposing environmental and public health harms on these communities, and provide for mitigation of environmental and public health harms.[5] These commitments also provide that Tribes be afforded enhanced consultation in recognition of Interior's tribal trust responsibilities to protect tribal lands, assets, and resources. [6]

b. Salton Sea Region Affected Environment

[4] Clean Water Act (CWA) section 303(d) requires states to identify waters that are impaired by pollution and requires states to establish a total maximum daily load (TMDL) to ensure water quality standards may be met. The State of California Regional Water Quality Control Board Colorado River Basin Region is currently formulating a TMDL for dissolved oxygen and nutrient impairments in the Salton Sea. https://www.waterboards.ca.gov/coloradoriver/water_issues/programs/salton_sea/

[5] Exec. Order 14096, 88 Fed. Reg. 80 (2023) (Revitalizing Our Nation's Commitment to Environmental Justice for All) (Biden Environmental Justice Exec. Order); Exec. Order 12898, 59 Fed. Reg. 7629 (1994) (Federal Actions to Address Environmental Justice in Minority Populations ad Low-Income Populations); Exec. Order 14008, 86 Fed. Reg. 19 (2021) (Tackling the Climate Crisis at Home and Abroad).

[6] Exec. Order 13175 November 6, 2000 (Consultation and Coordination with Indian Tribal Governments) and Presidential Memorandum of January 26, 2021 (Tribal Consultation and Strengthening of Nation-to-Nation relationships); Presidential Memorandum of November 30, 2022 (Uniform Standards for Tribal Consultation).

The Salton Sea spans 370 square miles in Imperial and Riverside Counties and is California's largest lake. The Sea provides habitat to over 400 species of birds, including state and federal threatened and endangered species such as the desert pupfish, Yuma clapper rail, California black rail, southwestern willow flycatcher, and California brown pelican.[7] The Sea is sustained by agricultural discharges from IID and CVWD. Since the early 2000s, inflows to the Sea have been reduced by significant water conservation efforts of area irrigation districts, particularly IID,[8] to provide water supply security in the Colorado River system.

These measures, however, have decreased agricultural return flows to the Sea, which has declined 11 feet since 2003, and will expose roughly 30,000 of dry lakebed. The Sea is now twice as salty as the ocean, causing major declines in fish and bird populations along a major stopover on the Pacific Flyway. It has been estimated that the playa will become exposed at a rate of 5,500 acres year and that by 2045 there will be a total increase of 105,000 acres of Salton Sea playa exposed relative to 2003.[9] These estimates do not factor in the Salton Sea playa impacts that will result from additional near-term and long-term Colorado River water conservation measures under consideration in this post-2026 EIS process and the draft near-term SEIS process.

The Torres Martinez aboriginal homeland is comprised of 24,000 acres in and around the Salton Sea. Roughly 700 Cahuilla people live on tribal lands near the Sea. In the first half of the 20th Century, the Sea supplied the Torres Martinez with fish, wildlife and economic benefits tied to tourism. But as the Sea declined as a result as water conservation demands to support the Colorado River system, fish and birds started to die off and air pollution from exposed Salton Sea playa increased asthma and other respiratory diseases among the Cahuilla people.

The Salton Sea region is also home to disadvantaged communities which also bear a heavy burden of public health and environmental hazards. Imperial County, for

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[7] California Natural Resources Agency, *State and Federally Listed Endangered and Threatened Animals of California* (April 2023); nom.dfg.ca.gov

[8] IID has conserved approximately 7.2-million-acre feet of water to benefit Colorado River water supply security, by far the largest conservation effort of any Colorado River water user.

[9] Evan, A. (2019). Downslope Winds and Dust Storms in the Salton Basin. *Monthly Weather Review*, 147(7). https://journals.ametsoc.org/configurable/content/journals$002fmwre$002f147$002f7$002fmwr-d-18-0357.1.xml?t:ac=journals%24002fmwre%24002f147%24002f7%24002fmwr-d-18-0357.1.xml. See also IID and San Diego Water Authority Memorandum of Points and Authorities in Support of Petitioner IID and Intervenors County of Imperial and Imperial County Air Pollution Control District for the State Water Resources Control Board to Conduct an Evidentiary Hearing for Modification of Revised Water Rights Order 2002-0013. https://www.iid.com/home/showpublisheddocument/14275/636252537779170000 (noting that the expiration of the QSA requirement that IID provide mitigation water to the Salton Sea would dramatically accelerate Salton Sea playa exposure, with IID estimating an average exposure of an additional 3,300 to 5,600 acres of playa each year for the subsequent decade, with total playa exposure reaching roughly 50,000 acres by 2028).

example, is 85% minority population and experiences very high rates of poverty – with 21.4% of the population living below the poverty line. This population is among the most vulnerable to pollution in California as measured by health and socioeconomic indicators.[10] Riverside County is 50.6% minority population with a low-income population of 30.4 percent.

One in five Salton Sea region residents has been diagnosed with asthma, and pediatric emergency room visits to treat respiratory distress are two to three times more prevalent in our region than in the rest of California.[11] A cross border study comparing asthma incidence in Imperial Valley cities with communities across the border in Mexico found the incidence of asthma in Imperial to be 4 times higher.[12] In addition, a recent study found Salton Sea playa dust to be "uniquely toxic" and study authors postulate that distinct characteristics of playa dust are especially pro-inflammatory and dangerous to the lungs.[13]

Accordingly, air quality is a significant concern in the Salton Sea region. Imperial County was declared in nonattainment for PM_{10} in 2004 and has worked over the course of the intervening decades with Imperial County Air Pollution Control District (ICAPCD), the California Air Resources Board and the Environmental Protection Agency (EPA) to come into compliance with this Clean Air Act standard. Riverside County faces very similar PM_{10} and other air quality compliance challenges.[14]

The future impact of federal Colorado River conservation measures on the Salton Sea region's ability to attain and maintain Clean Air Act compliance has been expressly recognized as a challenge by EPA. For example, in EPA's recent rulemaking approving Imperial County's re-designation to attainment and its maintenance plan, EPA noted that "the Salton Sea will continue to recede, exposing an increasing amount of lakebed. EPA agrees that this creates the potential for increases in airborne particulate matter

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10 See CalEPA Environmental Justice Task Force Report. https://calepa.ca.gov/wp-content/uploads/sites/6/2019/10/Imperial_County_EJ_Initiative.a.sw_.hp_.pdf

11 https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-40

12 Johnson, et al. (2019). The Disappearing Salton Sea: A critical reflection on the emerging environmental threat disappearing saline lakes and potential impacts on children's health. *Sci Total Environ*, 663, 804-817. https://pubmed.ncbi.nlm.nih.gov/30738261/. See also CalEPA Environmental Justice Task Force (2019). Imperial County Initiative Report. https://calepa.ca.gov/wp-content/uploads/sites/6/2019/10/Imperial_County_EJ_Initiative.a.sw_.hp_.pdf

13 Trevor, et al. (2023). Aerosolized aqueous dust extracts collected near a drying lake trigger acute neutrophilic pulmonary inflammation reminiscent of microbial innate immune ligands. *Science of the Total Environment*, 858(3), 159882. https://www.sciencedirect.com/science/article/pii/S0048969722069820?via%3Dihub

14 See https://www3.epa.gov/airquality/greenbook/anayo_ca.html; https://www.aqmd.gov/home/air-quality/clean-air-plans/coachella-valley-pm10-plan; https://www.federalregister.gov/documents/2023/03/08/2023-04736/designation-of-areas-for-air-quality-planning-purposes-california-coachella-valley-ozone

from the lakebed that can potentially have adverse impacts on human health and the environment."[15]

EPA moved forward with the attainment re-designation in part based on the assumption that future water transfers such as those likely to be proposed by Reclamation in the near-term draft SEIS and post-2026 EIS would be conditioned upon air quality mitigation.

In addition, as described in more detail below, Reclamation has also acknowledged its own significant air quality compliance concerns associated with the management of its Salton Sea lands. Interior and Reclamation own roughly 40% of the lands in and surrounding the Salton Sea. The Torres Martinez reservation occupies roughly 24,000 acres at the Salton Sea's north end, while the Sonny Bono National Wildlife Refuge occupies 35,000 acres at the Sea's south end. Reclamation has explicitly acknowledged its obligation to manage these lands in compliance with the Clean Air Act,[16] and recognized that the agency will have very significant future Clean Air Act compliance costs associated with its own exposed Salton Sea playa lands.[17]

It is also important to recognize that Salton Sea region disadvantaged communities suffer from significant additional environmental and public health hazards, including cross-border air pollution and New River raw sewage inflows from Mexico. [18] The weight of these existing burdens underscores the critical importance of ensuring that Reclamation's scoping for the post-2026 EIS focuses on undertaking a cumulative impacts analysis that NEPA and the President's environmental justice orders mandate.

c. Federal Government Recognizes the Salton Sea as Within the Affected Environment and Scope of Reclamation's Post-2026 Colorado River Guidelines and Strategies

While neither Interior nor Reclamation have formally assessed the Salton Sea impacts of its Colorado River water conservation efforts, they have explicitly and repeatedly recognized that federal Colorado River water conservation decisions impact

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15 Environmental Protection Agency, PM_{10} Maintenance Plan and Redesignation Request; Imperial Valley Planning Area; California, 85 Fed. Reg. 182 at 58288 (2020).

16 See *Memorandum of Understanding Addendum By and Between the United States Department of the Interior and the State of California Regarding Coordination of Activities to Manage the Salton Sea* (2016), which provided: "the Parties will comply with all applicable requirements of the Federal Clean Air Act and all implementing rules and regulations in connection with Salton Sea playa lands owned or managed by the Parties that are exposed as a result of decline in elevation of the Salton Sea." https://www.doi.gov/sites/doi.gov/files/uploads/signed_addendum_connor_salton_sea.pdf

17 See Reclamation's FY 2021 Official Budget Justification. https://saltonseaauthority.org/wp-content/uploads/2020/09/BOR-FY-2021-Budget-Justification-Salton-Sea-c1.pdf

18 https://www.waterboards.ca.gov/coloradoriver/water_issues/programs/salton_sea/salton-sea-watershed-staff-report.html; see also https://www.desertsun.com/in-depth/news/environment/border-pollution/poisoned-cities/2018/12/05/toxic-new-river-long-neglect-mexico-border-calexico-mexicali/1381599002/

the Sea and have made rough estimates of the possible costs of addressing such impacts.

For example, Reclamation's 2007 Salton Sea Summary Report Executive Summary estimated the costs of air quality mitigation needed because of Colorado River water transfers impacting the Salton Sea at $1.4 billion with annual operations and maintenance costs of $164 million under 2007 parameters.

In particular, in the report Reclamation predicted that water transfers out of the Salton Sea region to benefit Colorado River conservation would impact the Sea, stating that: "Salton Sea salinity will increase dramatically as inflows to the Sea are reduced due to the implementation of existing water transfer agreements," and estimated that as much as 140 square miles of Salton Sea playa could be exposed as result which "could significantly increase fugitive dust emissions." Reclamation went on to recognize that "[p]articles with a diameter of less than 10 microns (PM10) are of primary concern. Imperial Valley already suffers from the highest childhood asthma rate in the State."[19]

Reclamation has also more recently explicitly recognized that Colorado River water conservation efforts diminish inflows to the Salton Sea and negatively impact the public health and environment of the Salton Sea region.

For example, in its FY21 official budget justification, Reclamation acknowledged that water conservation agreements like the QSA (similar to water conservation measures now contemplated by the draft SEIS and post-2026 EIS) led to a "dramatic and predictable change" to the Salton Sea that was "accelerating the Sea's decline" which in turn was "adversely impacting wildlife habitat, human health, economic opportunities, and recreational values of the Sea and surrounding region."[20] Reclamation further recognized that reduced Colorado River inflows to the Salton Sea "has resulted in the collapse of the existing (tilapia) fishery and associated ecosystem, as well as exposed playa that may contribute to dust emissions and public health concerns related to declining air quality."[21]

In addition, Interior and Reclamation have explicitly recognized that its current federal effort to require near-term additional water conservation from the Salton Sea region to benefit the Colorado River system will have negative public health and environmental impacts on our region.

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[19] Bureau of Reclamation, Restoration of the Salton Sea Summary Report (2007) at 1-10-11. https://www.usbr.gov/lc/region/saltnsea/FinalSummaryRpt.pdf

[20] *See supra* footnote 17. In this document, the agency states: "Reclamation estimates that approximately 8.75 square miles of Reclamation-owned lands will be emergent from the Sea as it recedes over the next 10 years. Even using extremely conservative estimates related to the costs at Owens Lake, Reclamation may still have significant air quality mitigation costs related to any applicable Clean Air Act requirements as the Sea recedes." In the same document, Reclamation estimates those costs to be at least $330 million with an annual operations and maintenance cost of $4.5 million.

[21] *See supra* footnote 17.

In particular, on November 29, 2022, Interior signed an agreement with the State of California, IID and CVWD to improve Salton Sea project coordination, land access and provide up to $225 million in federal funding to address near-term Salton Sea impacts associated with Reclamation's short-term effort to up to 250,000 acre feet (AF) of water conservation from our region to stabilize Lake Mead. In that agreement, Interior acknowledged that "[c]ombined reduced water usage in the Imperial and Coachella Valleys associated with increased system conservation activities is expected to accelerate the exposure of lakebed and increase the salinity of the Salton Sea. These increases in lakebed exposure and salinity will accelerate the environmental impacts already occurring at the Salton Sea *related to air quality, water quality, and habitat*."[22]

While this agreement is laudable for its recognition of impacts and initial funding commitment, it is not a substitute for publicly reviewable NEPA analyses of the impacts of Reclamation's Colorado River water conservation measures and determination of necessary federally funded mitigation. Undertaking these NEPA analyses in the post-2026 EIS process as required by law would help to ensure that federal funding commitments are sufficient to address the impacts of Reclamation's proposed action, allow the public to review these commitments, and provide greater assurances that funding and implementation occurs.

These measures all demonstrate a clear federal recognition that the Salton Sea air quality, water quality, habitat, tribal and environmental justice impacts are squarely within the scope of the post-2026 Colorado River EIS and must be evaluated.

d. Specific Salton Sea Issues to be Considered the Scope in Post-2026 EIS

Given that it is well established that Colorado River water management decisions impact the Salton Sea and no prior NEPA or other similar environmental review has fully assessed these impacts, the post-2026 EIS must:

- evaluate whether Reclamation's proposed action and alternatives may be accomplished in compliance with Reclamation's obligations under other federal environmental laws, including its obligations to manage its own federal lands in compliance with these laws (*i.e.*, Clean Air Act, Clean Water Act and Endangered Species Act); and, if not, what federally funded mitigation is needed to ensure such compliance;

- analyze air quality impacts to determine whether Reclamation's proposed action and alternatives will cause or contribute to new violations, worsen existing violations, or delay attainment with Clean Air Act standards in the Salton Sea

[22] *See supra* footnote 1 (emphasis added).

region, as required by the Clean Air Act, 42 USC § 7506(b); and, if not, what federally funded mitigation is needed to ensure such compliance;

- consult with the Torres Martinez as required by numerous Presidential Executive Orders and Memoranda and evaluate the impact of Reclamation's proposed action and alternatives on Interior's trust obligation to protect the lands, assets, and resources of the Torres Martinez;[23]

- meet the requirements of President Biden's environmental justice orders, including the President's most recent command to agencies like Reclamation to "fully protect"[24] the disadvantaged communities in the Salton Sea region from the cumulative environmental and public health impacts of Reclamation's proposed action;

- consult with the FWS concerning the likelihood that Reclamation's proposed action and alternatives will jeopardize the continued existence of Salton Sea region threatened and endangered species;[25]

- evaluate the impact of Reclamation's proposed action on meeting Clean Water Act requirements in the Salton Sea region;

- propose federally funded mitigation measures and firm "environmental commitments" to be included to address any unavoidable impacts to the Salton Sea region from Reclamation's proposed action.

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[23] *See supra* footnote 6.

[24] *See supra* footnote 5.

[25] If an action is likely to jeopardize a listed species, FWS will recommend reasonable and prudent alternatives to minimize harm to the species from the proposed agency action. 16 USC §1536(b)(4). In the context of the QSA Colorado River water transfer, Reclamation formally consulted with the FWS. FWS prepared Biological Opinion finding that water transfers may result in an incidental take of these threatened and endangered species in the Salton Sea region. That in turn resulted in a Species Conservation Program and HCP which included measures to mitigate those impacts. See *Conservation Agreement Among Bureau of Reclamation, Imperial Irrigation District, Coachella Valley Water District and San Diego County Water Authority* (October 10, 2003) https://www.usbr.gov/lc/region/g4000/QSA/conservationagmt.pdf

United States Bureau of Reclamation
Ms. Carly Jerla, P.E.
Program Manager—Post-2026 Guidelines
Crbpost2026@usbr.gov

[Via Electronic Mail]

August 15, 2023

RE: San Diego County Water Authority Comments – Public Scoping Process for the Development of Post-2026 Colorado River Operational Strategies

Dear Ms. Jerla:

The San Diego County Water Authority (Water Authority) appreciates the opportunity to respond to the Bureau of Reclamation's (Reclamation) published June 16, 2023, Federal Register Notice (notice) announcing the intent to prepare an environmental impact statement (EIS) for the post-2026 Colorado River Reservoir Operational Strategies for Lake Powell and Lake Mead. Specifically, the notice seeks input "on how the purpose and elements of the 2007 Interim Guidelines (Interim Guidelines) should be retained, modified, or eliminated to provide greater stability to water users and the public through more robust and adaptive operational guidelines." The Water Authority is pleased to participate in this process of developing strategies that can promote meaningful dialogue and incorporate substantive input on elements that should be included in the EIS process.

As the notice highlights, conditions on the river have changed since the development of the Interim Guidelines. Reduced flows on the river and historically low levels in its two critical reservoirs, Lake Mead and Lake Powell, have led to shortage reductions in the Lower Basin under the Interim Guidelines and the 2019 Drought Contingency Plan. In recent years, reduced flows also necessitated the implementation of emergency Drought Response Operations Agreement releases in the Upper Basin. In addition, Reclamation expects to publish an updated supplemental EIS to the Interim Guidelines that considers alternative near-term actions to bolster the river in consideration of the ongoing effects of drought brought about by climate change. While near-record snow levels this year have brought about a temporary reprieve to the declining conditions in Lakes Mead and Powell and provided more time to develop collaborative approaches to the river's management, it is clear that actions are needed to ensure the sustainability of the river for all users. We support Reclamation's desire for a transparent and inclusive process focused on collaboration and cooperation as we work to develop the post-2026 guidelines.

The Water Authority was an engaged partner in developing the Interim Guidelines and supports the actions that have been taken to date. We continue to work collaboratively with our diverse Basin partners to develop near-term and long-term solutions on the river. As you are aware, the Water Authority has a history of collaboration with a focus on conservation under its conserved water transfer agreement with the Imperial Irrigation District (IID), which has become a cornerstone of the 2003 Quantification Settlement Agreement (QSA). Another key piece of the QSA is the Water Authority's investment in the lining of the All-American and Coachella Canals (Canal Lining Projects) in the Imperial Valley, which have conserved water once lost to seepage. The QSA has proven critical in ensuring California lives within its 4.4-million-acre-foot apportionment of Colorado River water, which is critical to managing river supplies.

Locally, the San Diego region has placed great focus on conservation, reducing per capita water use by more than 40 percent since 1991. The Water Authority and its member agencies have invested heavily in local projects and infrastructure to generate and store water, such as the Claude "Bud" Lewis Carlsbad Desalination Plant (desalination plant) and our $3.1 billion Emergency Storage and Carryover Project. The Water Authority's strategic investments in water resiliency, along with the efforts of our member agencies to develop local supplies, are easing pressure on the river and the California State Water Project. Today, under the current challenges created by this ongoing drought, the Water Authority has called upon the San Diego region to do even more to conserve water in support of the river. Conservation will continue to be critical going forward for the river's long-term management.

As a member of the Colorado River Board of California, the Water Authority joins our partnering agencies in welcoming this opportunity to provide scoping comments that will help guide the EIS process and achieve Reclamation's goals in developing the post-2026 guidelines. With that goal in mind, the Water Authority offers the following comments for your consideration in the analysis.

- The new set of guidelines must continue to comply with the 1922 Colorado River Compact and the priority system that is foundational to the Law of the River. Further, the guidelines for minimum releases during times of shortages to be established by the post-2026 operating guidelines must also abide by the Law of the River.

- The EIS should consider consistent, realistic, and equitable Basin-wide water use baselines that are based on established water use histories to ensure both the urban and agricultural water sectors maintain sufficient supplies. Any additional conservation prescribed through the new set of guidelines must include adequate federal funding to ensure long-term supply reliability and that communities and economies are sustained.

- There need to be opportunities for inter-Basin transfers, exchanges, and marketing of supplies as flexible tools for the sustainability on the river. Toward that end, the EIS needs to consider the development of mechanisms that can promote these tools while protecting established priority rights, agricultural and urban economies, and the environment. The 2003 QSA can serve as a model of how to implement a transfer based on conservation that protects agriculture and the environment.

- In considering long-term, durable projects that can provide sustainability to the river's operation, even during unstable periods, the EIS needs to consider investment in seawater desalination as a drought-proof supply. The Water Authority's desalination plant has provided greater resiliency for the San Diego region. The plant has additional, built-in capacity to expand its annual production as well as additional supplies that could support the river and maintain levels in Lake Mead through federal investment in desalination as a stable and sustainable supply.

- The importance of the QSA needs to be considered in the analysis of future river operations. The QSA serves as a model for the entire Basin through a collaborative approach to conservation and water management. Through the conserved water transfer agreement, the Water Authority has funded conservation implemented by IID in a mutually beneficial program that has provided conserved water supplies to the San Diego County region while protecting agriculture and the environment. In total, the Water Authority's QSA supplies include 200,000 acre-feet annually of conserved transfer water and 77,700 acre-feet annually of water conserved through the Canal Lining Projects, which the Water Authority funded along with help from the state. Along with serving as a model for collaboration and conservation, and helping to manage California's river usage, these conserved QSA supplies facilitated, in large part, the Interim Guidelines. Specifically, by quantifying water rights within California through capping annual entitlements, the QSA allowed for the development of future conservation, forbearance, and storage programs.

- Protections for agriculture must be built into the post-2026 operating guidelines. As near-term actions call for additional conservation, the focus has turned to agriculture to provide much of the additional supplies to maintain levels in Lakes Mead and Powell. However, going forward, there must be recognition of the importance of agriculture, both to the economy of California and to food production for the nation. To that end, and in safeguarding the priority right system memorialized in the Colorado River Compact of 1922, longstanding federal laws, intrastate agreements, and Supreme Court rulings, the post-2026 guidelines should further protect agricultural water supplies through language that acknowledges the critical role of agriculture.

- Any new set of guidelines needs to consider the model established under the QSA for addressing environmental impacts to the Salton Sea that may be caused by additional conservation or other potential measures to maintain levels in Lakes Mead and Powell. The federal government, through the NEPA process, needs to acknowledge responsibility for any environmental impacts that would be associated with addressing the drought on the river and provide the necessary funding to cover costs of mitigation. The Water Authority, together with its partners in the QSA Joint Powers Authority (JPA), has met and continues to meet all its environmental mitigation obligations under the QSA, and the collaborative efforts of the QSA JPA should stand as an example for others.

- As valuable as the Intentionally Created Surplus (ICS) program is to maintaining elevations in Lake Mead, the limited access to Lake Mead storage has stood as a barrier to those who could help support the river. Specifically, the Water Authority does not currently have a storage account despite meeting ICS participation requirements. The Water Authority has an entitlement to mainstream water under a water delivery contract with the United States, a reservation of water by the Secretary of Interior, and conserved water supplies that qualify under the ICS program parameters. Granting the Water Authority a Lake Mead storage account would have Basin-wide benefits, providing the potential for additional water within the Colorado River system to build elevation in Lake Mead and protect hydropower production and infrastructure. Locally, it would create additional operational flexibility for the San Diego County region. Considering such benefits, the Water Authority requests that Reclamation incorporate expanded access to the ICS program as part of the analysis.

The Water Authority appreciates the opportunity to offer these comments. We look forward to continued engagement in the EIS process and the further discussions to develop the post-2026 operating guidelines, just as we engaged in the development of the Interim Guidelines, and before that in the adoption of the QSA. This process, which will shape future river operations and the sustainability of the river, must be as inclusive as possible. Please feel free to reach out to the Water Authority with questions regarding our comments.

Sincerely,

Dan Denham
Acting General Manager

4677 OVERLAND AVE, SAN DIEGO, CA 92123 | (858) 522-6600 | SDCWA.ORG

San Juan Water Commission

7450 East Main Street, Suite B • Farmington • New Mexico • 87402
Ph: 505-564-8969 • Fax: 505-564-3322 • Email: sjwcoffice@sjwc.org

MEMBERS:
City of Aztec
City of Bloomfield
City of Farmington
San Juan County
S.J. County Rural Water Users Association

August 14, 2023

Via E-mail (crbpost2026@usbr.gov)

Amanda Erath
Colorado River Post-2026 Program Coordinator
Bureau of Reclamation

Re: Comments of the San Juan Water Commission Concerning the Notice of Intent to Prepare an Environmental Impact Statement on the Development of Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead

Dear Ms. Erath:

This letter provides the San Juan Water Commission's ("Commission") comments in response to the Bureau of Reclamation's ("Bureau") request for "comments concerning the scope of specific operational guidelines, strategies, and any other issues that should be considered" with respect to the development of "post-2026 Colorado River reservoir operational guidelines and strategies for Lake Powell and Lake Mead (referred to as 'post-2026 operations')" published in the *Federal Register* on June 16, 2023 (88 *Fed. Reg.* 39,455). Based on the information provided by the Bureau in the *Federal Register* notice and the virtual meetings held in July, the Commission understands that the Bureau requests input on: (i) specific operational guidelines or strategies that should be considered by the Bureau; and (ii) any other related issues that the Bureau should consider when preparing the environmental impact statement ("EIS") for the development of post-2026 operations. The Commission previously submitted comments, on September 1, 2022, concerning the scope of the NEPA process and the need for inclusion of a wide range of Colorado River Basin stakeholders.

The Commission is acutely interested in all Colorado River operations, including the Bureau's preparation of an EIS for post-2026 operations. The Commission is a political subdivision of the State of New Mexico comprised of twelve other political subdivisions: (i) the cities of Aztec, Bloomfield and Farmington; (ii) San Juan County; and (iii) San Juan Rural Water Users Association, which itself is comprised of eight non-profit mutual domestic community water associations. The Commission's purpose is to acquire and protect untreated water supplies for municipal, industrial and domestic use for almost all water users in San Juan County living outside of tribal lands.

The Commission is a participant in the Animas-La Plata Project ("ALP Project"), and it holds a permit for 20,800 acre feet of water diversions from that Project. The Commission also holds permits for water diversions totaling more than 10,000 acre feet per year from the San Juan River Basin unassociated with the ALP Project. These water rights are separate from, and in addition to, the water rights of the Commission's individual member entities. Clearly, the anticipated EIS for post-2026 operations has the potential to impact the surface water supply available to the Commission's member entities, and, in fact, all water users in San Juan County, New Mexico. The Commission thus submits the following comments concerning operational guidelines and strategies the Bureau should consider when preparing the EIS.

General Scope of the NEPA Process

With respect to the scope of the NEPA process, the Commission urges the Bureau to limit its work to "develop[ing] post-2026 operational guidelines and strategies for Lake Powell and Lake Mead," as described in the June 16th *Federal Register* notice (Vol. 88 at 39,455). Addressing upstream reservoir operations and/or management of the entire Colorado River Basin will unnecessarily complicate and delay development of an operational plan for Lakes Powell and Mead and may exceed the Secretary's authority in the Upper Basin. As noted in the Bureau's December 2020 "Review of the Colorado River Interim Guidelines for Lower Basin Shortages and Coordinated Operations for Lake Powell and Lake Mead" (at 1), the 2007 Interim Guidelines "provided the opportunity to gain valuable experience for the management of Lake Powell and Lake Mead under modified operations and improve[d] the basis for making future operational decisions . . . ." Because of the experience gained under the 2007 Interim Guidelines, this NEPA process is appropriately focused on the development of post-2026 operations for Lake Powell and Lake Mead.

Specific Comments on Post-2026 Operations

In order to help stabilize the Colorado River system, the Commission urges the Bureau to incorporate accounting procedures that will assist in balancing consumptive uses and depletions with the available water supply. Such balancing must include the measurement and allocation of all system losses in the Lower Basin as consumptive uses, including evaporation, carriage, and seepage losses. For example, the 1948 Upper Basin Compact allocates CRSP reservoir evaporation to the Upper Basin states, but currently there is no similar allocation of reservoir evaporation to the Lower Basin states. The Lower Basin states and stakeholders should be consulted to determine how such losses will be apportioned among the states and/or water users.

In addition, the Bureau should establish a uniform method for measuring, reporting and accounting for such losses when calculating the total available water supply. A consistent, basin-wide approach for measuring and reporting evaporation and other system losses can be a major step toward reducing the Lower Basin's long-term structural deficit.

Finally, the Commission urges the Bureau to model whether the operational periods for Lakes Powell and Mead should be synchronized. Currently, Lake Powell operations are based on the water year (October 1 through September 30), while Lake Mead operations are based on the calendar year. Coordinating the operational periods might result in less stress on Lake Mead elevations.

Thank you for your consideration of these comments. If the Bureau has any questions about the Commission's position, please do not hesitate to call me.

Sincerely,

Aaron Chavez
Executive Director
San Juan Water Commission

STATE OF NEW MEXICO

August 15, 2023

Via email only to crbpost2026@usbr.gov

Honorable Camille Calimlim Touton
Commissioner
Bureau of Reclamation
Attn: Post-2026 (Mail Stop 84-55000)
P.O. Box 25007
Denver, CO 80225

Re: State of New Mexico scoping comments in response to the Notice of Intent to Prepare an Environmental Impact Statement and Notice to Solicit Comments and Hold Public Scoping Meetings on the Development of Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead

Dear Commissioner Touton:

The State of New Mexico provides this letter in response to the "Notice of Intent to Prepare an Environmental Impact Statement and Notice to Solicit Comments and Hold Public Scoping Meetings on the Development of Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead" published in the Federal Register on June 16, 2023. 88 Fed. Reg. 39455 (June 16, 2023).

This letter represents the State of New Mexico's comments on the scope of specific operational guidelines, strategies, and other issues that should be considered in the Bureau of Reclamation ("Reclamation")'s proposed Environmental Impact Statement ("EIS"). To avoid repetition, New Mexico hereby incorporates by reference all points made in the seven Colorado River Basin States and the Upper Colorado River Commission ("UCRC")'s comment letters submitted in response to the Notice of Intent for this EIS. Moreover, nothing in this letter is intended to, nor shall be construed to interpret, diminish, or modify the rights of the State of New Mexico under federal or state law or administrative rule, regulation, or guideline.

In considering potential future operations in the Colorado River Basin, New Mexico recommends applying lessons learned from the 2007 Colorado River Interim Guidelines for Lower Basin Shortages and the Coordinated Operations for Lake Powell and Lake Mead ("2007 Guidelines"). The 2007 Guidelines have been in place since December 2007 and currently

govern management of the two reservoirs, along with the 2019 Drought Contingency Plans ("DCPs"). The 2007 Guidelines have proven insufficient to adequately manage Lake Powell and Lake Mead, particularly in drier hydrology. This insufficiency required negotiating and implementing several other actions during the lifetime of the 2007 Guidelines. This included the DCPs and, in 2022, the Supplemental Environmental Impact Statement to the 2007 Guidelines.

Over the life of the 2007 Guidelines, releases of water from Lake Powell have, at times, outpaced the inflows into the reservoir that we have experienced in the 21st century. Historically, the abrupt jumps in Lake Powell releases at tier interfaces have been problematic because forecast errors and small changes in hydrology have been sufficient to shift from one tier to another. This has sometimes led to a perverse outcome in which slightly better hydrology resulted in a release of large amounts water from Powell storage compared to what would have been released under slightly different hydrology. In some instances, operations at Lake Mead have negatively impacted Lake Powell elevations. Lessons learned from the 2007 Guidelines can help avoid the mistakes of the past and provide helpful insight on how to proceed differently in the future. The 1922 Compact was signed to protect the interests of all seven states in the Colorado River Basin. New Mexico understands that the Lower Basin wants to protect the robust economy made possible because it has had a secure and dependable water supply. However, that must not be accomplished at the expense of the Upper Basin not being able to more fully develop its economy.

Scope

New Mexico offers the following comments to be considered by Reclamation regarding the scope of the EIS for post-2026 operational guidelines and strategies for Lake Powell and Lake Mead ("Post-2026 Operations").

1. The scope of the analysis for Post-2026 Operations must be narrow. The scope of the EIS should be limited to the coordinated operations of Lake Powell and Lake Mead. Such a narrow scope will allow Reclamation to thoroughly analyze and compare the alternatives studied in the EIS, while adhering to the ambitious timeline of publishing a Draft EIS by the end of 2024. Operational experience gained from the 2007 Guidelines has demonstrated that this is the proper scope for Post-2026 Operations. In particular, the EIS should not modify the Record of Decision for Navajo Reservoir, or those of the other upstream initial units under the Colorado River Storage Project Act (i.e., Flaming Gorge and the Aspinall Unit).

2. New Mexico believes that Reclamation must continue its efforts to shift management to a sustainable balance. For instance, it is imperative that Reclamation find a way to account for evaporation and system losses in the Lower Basin. Those are estimated to deplete more than a million acre-feet of water each year and are currently unaccounted for. Achieving a sustainable balance is a matter of reconciling demand with available supply. With respect to supply, the EIS must consider drought sequences that are longer and more severe than those observed in the historical record. Conversely, the EIS must also consider the possibility of large quantities of rain and snow coming into the system all at once, in a single year, as occurred in the spring of 2023, or in a series of wet years. With

respect to demand, the EIS must consider climate change and its hydrologic consequences, as well as continuing changes in population distribution in the Colorado River Basin.

3. The guidelines for Post-2026 Operations must be interim in nature. While the precise length of that interim period is subject to debate, the recent past has demonstrated that we cannot accurately anticipate what hydrology and climate will be in twenty years. We have also learned from the implementation of the 2007 Guidelines that short-term reactive management is very time-consuming and not very efficient. The new guidelines should include periodic reviews (possibly every five years), as well as "offramps" if original assumptions appear unrealistic as time goes on.

4. The Post-2026 Operations will require flexibility and the ability to rapidly shift between different management options. Therefore, in this EIS, within its narrow consideration of coordinated operations of Lake Powell and Lake Mead, it is important that Reclamation study a large array of hydrologies and tools, in order to have maximum flexibility for rapidly adapting to changing circumstances as necessary after 2026.

5. Reclamation must use the best available science. The Post-2026 Operations must include realistic, transparent, and agreed-upon data in modeling and analyses, with a focus on consumptive uses and losses data, demand estimates, and observed hydrology. This will provide increased predictability for water users under a wide range of conditions, including varied hydrology. New Mexico also encourages Reclamation to use Decision Making under Deep Uncertainty ("DMDU") as a tool in its evaluation of Post-2026 Operations. DMDU could help plan for an uncertain future and better allocate resources. It could help us to anticipate and adapt to changing circumstances. New Mexico values the use of any tool that helps having a systematic approach to addressing unforeseen outcomes.

6. New Mexico encourages Reclamation to further include Native American Tribes in the development of this EIS. Tribes hold title to a large portion of water in the Colorado River Basin and their participation and inclusion in this process is critical to finding solutions going forward.

7. New Mexico recommends prioritizing durable long-term reductions in consumptive use over shorter-term and temporary projects in considering Post-2026 Operations. New Mexico also supports projects that increase water efficiency to make better use of the available supply. In addition, New Mexico is supportive of projects that increase the available water supply. However, New Mexico does not believe that this EIS is the proper forum to analyze specific augmentation projects.

Purpose & Need

The Secretary has directed Reclamation to develop post-2026 Colorado River reservoir operational guidelines and strategies for Lake Powell and Lake Mead because the 2007 Guidelines expire at the end of 2025.

Post-2026 Operations need to improve the stability of the Colorado River system and ensure that stability into the future. This has to include consideration of the potential for increased hydrologic variability exacerbated by climate change in the Basin. In this context, stability means that some amount of water continues to be available to water users in the Basin in accordance with the spirit of the 1922 Compact.

Taking into account current and anticipated natural supply conditions, consumptive uses and losses cannot exceed the natural water supply provided by the watershed. Reclamation data shows that Lower Basin and Mexico depletions are currently double the total depletions in the Upper Basin. Post-2026 Operations must reduce that imbalance. This requires, among other things, effective and flexible mechanisms to protect storage. Increasingly unpredictable hydrology requires protecting higher elevations at Lake Powell and Lake Mead in order to create a buffer to sustain supplies, so that we can withstand consecutive dry years as well as intermittent wet years.

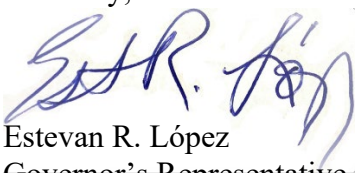
Through this EIS, Reclamation needs to develop procedures for Post-2026 Operations that better adapt and respond to actual hydrology and available water supplies in the Colorado River Basin. These supplies support multiple uses of water, including, among others, municipal, tribal, industrial, and agricultural uses, as well as power production. In the Post-2026 Operations, Reclamation will need to place more emphasis on the effects of actual hydrology on Lake Powell and Lake Mead, while using forecast modeling on a more limited basis.

Finally, the Post-2026 Operations must be consistent with the Law of the River, in particular the 1922 Compact, the 1948 Compact, and the 1944 Treaty.

Conclusion

These comments are not exhaustive, and New Mexico reserves the right to provide additional comments on this EIS as the NEPA process moves forward. We thank you for the opportunity to comment on issues related to this EIS, and we look forward to working collaboratively with you on development of the Post-2026 Operations.

Sincerely,



Estevan R. López
Governor's Representative
State of New Mexico

Cc: Courtney Kerster, New Mexico Office of the Governor
Mike Hamman, New Mexico State Engineer
Hannah Riseley-White, Director, New Mexico Interstate Stream Commission
Ali Effati, Colorado River Basin Bureau Chief, NMISC

State Engineer's Office

HERSCHLER BUILDING, 2W CHEYENNE, WYOMING 82002
(307) 777-7354 FAX (307) 777-5451

Mark Gordon
GOVERNOR

Brandon I. Gebhart, P.E.
STATE ENGINEER

August 15, 2023

Commissioner Camille Calimlim Touton
Bureau of Reclamation
Attn: Post-2026 (Mail Stop 84–55000)
P.O. Box 25007, Denver, CO 80225
Via email only: crbpost2026@usbr.gov

Re: Wyoming Comments on the Development of Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead

Dear Commissioner Touton:

The Wyoming State Engineer, Wyoming's Colorado River Governor's Representative, respectfully submits the following comments in response to the Bureau of Reclamation's *Notice of Intent To Prepare an Environmental Impact Statement and Notice To Solicit Comments and Hold Public Scoping Meetings on the Development of Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead*, 88 FR 39455 (June 16, 2023). I appreciate your consideration of Wyoming's input and comments and request that they be incorporated into the preparation of the new operational guidelines and strategies for Lake Powell and Lake Mead ("Post-2026 Operations") under the National Environmental Policy Act ("NEPA") process.

In addition to these comments, Wyoming has joined and submitted two additional comment letters. The first with the other six Colorado River Basin States of Arizona, California, Colorado, Nevada, New Mexico, and Utah. The second with the other Upper Division States of Colorado, New Mexico, and Utah, through the Upper Colorado River Commission. Wyoming fully incorporates those comments into this letter.

As acknowledged in the June 16, 2023, notice in the Federal Register, the Colorado River Basin is suffering from a prolonged period of drought and the period from 2000 through the present is estimated to be one of the driest periods in the last 1,200 years. The 2007 Interim Guidelines for Lower Basin Shortages and Coordinated Operations for Lake Powell and Lake Mead (the "2007 Guidelines") were intended, among other things, to address operations of Lake Powell and Lake Mead, particularly under drought and low reservoir conditions. However, as the drought persisted and reservoir levels declined, additional responsive actions were needed to complement the 2007 Guidelines and the Basin States and the Secretary of the Interior ("Secretary") agreed to the federally authorized 2019 Colorado River Basin Drought Contingency Plans ("DCPs"). Since 2019, additional actions have been taken to protect critical elevations and infrastructure at Lake Powell and Lake Mead. This operational experience illustrates that the 2007 Guidelines and DCPs are insufficient to properly manage Lakes Powell and Mead. Extended periods of dry hydrology and depleted reservoir conditions have highlighted the inadequacy of these past measures to adapt to worsening hydrology.

Although they were inadequate, the experience learned under the 2007 Guidelines and DCPs should to inform the Post-2026 Operations. That experience teaches us that we must prepare for and create rules which are responsive to a wide range of variable hydrology—from wet to very dry. The variable and dry hydrology of the recent past teaches us that we must balance consumptive uses and depletions with available supply. That balancing will be the foundation for sustainable management under Post-2026 Operations.

In addition to the lessons learned from dry hydrology and depleted storage conditions, the 2007 Guidelines also included an equally important lesson—we must encourage all parties to address future controversies on the Colorado River through consultation and negotiation before resulting to litigation. The importance of that lesson will intensify in times of water supply scarcity. As such, any alternative must improve cooperation and communication between the Basin States, and avoid circumstances which could otherwise form the basis of claims or controversies over interpretation or implementation of the Colorado River Compact and other applicable provisions of the Law of the River. To that end, the Post-2026 Operations must focus on ways to improve the management of water in Lakes Powell and Mead so as to enhance the protection afforded to the Upper Basin by Lake Powell in addition to minimizing, to the degree possible, the extent and duration of shortages in the Lower Basin. Although Post-2026 Operations cannot guarantee any water user a firm water supply for any specified period, water users in the Lower Basin should be able to determine when, and by how much, water deliveries will be reduced in drought and other low reservoir and water supply conditions. Lower Basin reductions need to be predictable and timely.

The 2007 Guidelines also taught us positive and negative lessons about flexibility. The flexibility imbedded in the 2007 Guidelines, as well as the DCPs, centered on helping the Lower Basin plan and operate with more certainty and predictability based on annual, and forecasted, system conditions. However, the flexibilities implemented to mitigate impacts of actual conditions did not extend to the Upper Basin to an equitable degree. On the contrary, flexibility at Lake Powell exacerbated dry conditions by only allowing increased, not decreased, releases. Further, flexibility contained in the 2007 Guidelines intended to incentivize Lower Basin conservation, while undeniably important and necessary to minimize the extent and duration of shortages in the Lower Basin, worked to increase the risk of Upper Basin curtailment. Flexibility in Post-2026 Operations must attempt to achieve certainty and predictability for the entire Basin, not just the Lower Basin. The flexibility must allow for adaptation to changing conditions while ensuring sufficient operational certainty for the Basin States and Colorado River water users to sustainably manage water supplies into the future.

As was true with the 2007 Guidelines, the 1922 Colorado River Compact, the 1948 Upper Colorado River Basin Compact, and the 1944 Treaty with Mexico must be the foundation for any Post-2026 Operations. They provide durability, certainty, and stability in managing the Colorado River System and infrastructure. They also provide sufficient flexibility to address current and future risks. These foundational elements must be honored which can be achieved through the development of a consensus seven-state recommendation that can be incorporated into an adopted preferred alternative. Wyoming remains committed to working with the other Basin States, Tribes, water users, and other stakeholders to achieve appropriate consensus.

Post-2026 Operations must seek full utilization of storage in Lakes Powell and Mead. Dry hydrology exacerbated by climate change continues to cause depleted flows into Lake Powell. As such, the Secretary must make any infrastructure improvements needed to safely operate Glen Canyon Dam below the minimum power pool elevation and gain access to the maximum storage available in Lake Powell. As climate change continues to diminish the water supply, and ultimately the Lee Ferry flow,

we must have access to all Lake Powell storage. Similar infrastructure improvements should be made at Lake Mead.

Post-2026 Operations cannot attempt to do too much. The scope of the alternatives analyses for the Post-2026 Operations NEPA process must: 1) Work to fulfill the purpose and need of the proposed action; 2) Fit within the statutory context within which the Secretary has authority to act; and 3) Remain within the bounds of reason. Following passage of the Fiscal Responsibility Act of 2023, bounds of reason are expressly limited by what is technically and economically feasible, among other things. The Secretary is not required and should not waste time on studying alternatives that go beyond the Secretary's statutory authorities to achieve the objectives of the proposed action. Alternatives must fit within and remain compliant with the Law of the River and other federal requirements and regulations. As examples, the Secretary should not consider alternatives which propose run of the river operations, filling Lake Mead first, or decommissioning Glen Canyon Dam.

Post-2026 Operations cannot, in any way, impair or impede the right of the Upper Basin to consumptively use water available to that Basin under the Colorado River Compact. Nor can they address intrastate storage or intrastate distribution of water in the Upper Basin, including storage and distribution associated with participating projects of the Colorado River Storage Project Act of 1956. Additionally, Post-2026 Operations cannot affect any right or obligation of any Upper Division state under the Colorado River Compact. Wyoming retains exclusive authority over the control, appropriation, use, and distribution of water within its borders.

Wyoming supports projects that increase the available water supply through augmentation. While the Post-2026 Operations NEPA process might account for Lower Basin augmentation if appropriate and reasonably certain, Wyoming does not believe that this NEPA process is the proper forum to analyze specific augmentation projects.

Wyoming expressly reserves its rights under applicable law, including, but not limited to, the Law of the River. Nothing in this letter is intended to be, nor shall be construed to interpret, diminish, or modify the rights of Wyoming under federal or state law or administrative rule, regulation, or guideline. This submittal is not intended to be, and shall not be construed in any way as, a waiver of any such rights. Moreover, Wyoming reserves the right to provide further comments, consult with the Secretary, take any other necessary steps, and engage with the Bureau of Reclamation as it proceeds with subsequent phases of the Post-2026 Operations NEPA process.

Wyoming thanks you for the opportunity to provide comments on the development of the Post-2026 Operations. We look forward to continuing our partnership with you, the other Basin States, Mexico, Basin Tribes, water users, and stakeholders, as we move forward in protecting and managing this critical resource.

Sincerely,

Brandon Gebhart, P.E.
Wyoming State Engineer

Surface Water
(307) 777-6475

Ground Water
(307) 777-6163

Board of Control
(307) 777-6178

THE SOUTHWESTERN WATER CONSERVATION DISTRICT
Developing and Conserving the Waters in the
SAN JUAN AND DOLORES RIVERS AND THEIR TRIBUTARIES
West Building – 841 East Second Avenue
DURANGO, COLORADO 81301
(970) 247-1302

August 15, 2023

Submitted via email to: crbpost2026@usbr.gov

Commissioner Camille Touton
Bureau of Reclamation
1849 C Street NW
Washington, DC 20240-0001

RE: Comments Regarding Development of Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead

Dear Commissioner Touton:

The Southwestern Water Conservation District (SWCD) appreciates the opportunity to submit the following comments in response to the Notice of Intent to Prepare an Environmental Impact Statement on the Development of Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead.

SWCD was created in 1941 by the Colorado General Assembly (C.R.S. § 37-47-101, et seq.). SWCD is comprised of all or part of nine counties in southwestern Colorado: Archuleta, Dolores, La Plata, Montezuma, San Juan, San Miguel, and parts of Hinsdale, Mineral, and Montrose. SWCD's statutory authority provided by the General Assembly is to protect, conserve, use, and develop the water resources of the San Juan and Dolores River Basins for the welfare of the SWCD, and safeguard for Colorado all waters to which the state is entitled. Following this mandate, SWCD has assumed a broad strategic role in interstate and intrastate matters on behalf of its diverse constituents for more than 80 years.

Any future operational guidelines or strategies for the Colorado River should focus on a few central themes, including:

- Relative to the NEPA process:
    - Analyses should be limited geographically to the operation of Lake Powell and Lake Mead.
    - The no-action alternative in the NEPA process should be based on the long-range operating criteria developed pursuant to P.L. 90-537, subject to further consultation with appropriate local water management entities in Colorado, the State of Colorado, and other Basin States needed to resolve any outstanding questions regarding their application.

- Any decision point on annual operations considered in new operating guidelines and strategies should be based on actual (near real-time) hydrology and reservoir storage. The 2007 Interim Guidelines relied too heavily on the use of forecasts from the Bureau of Reclamation's 24-month study, which have proven to be both easily manipulated and at times inaccurate.

- The different roles Lakes Powell and Mead play in water management in the Upper and Lower Basins should also be recognized. Due to Lake Powell's location at the Utah-Arizona state line, the reservoir does not physically release water supplies to Upper Basin water users. Our water users rely instead on smaller, more localized watersheds to meet their needs. This, in turn, leads to Upper Basin water users being more vulnerable to variations in annual snowpack (particularly on a local level) and regularly encountering situations on a daily, weekly, monthly, or annual basis where there is not enough water physically available to meet their needs (i.e., hydrologic shortages). In stark contrast, Lake Mead has always been able to release a full supply of water directly to Lower Basin users.

- The post-2026 operational guidelines and strategies must adhere to the Law of the River and recognize each State's authority to independently administer and distribute its water resources. System losses occurring at and below Lake Mead (e.g., transit losses, reservoir evaporation, ordered but not delivered supplies) must be accounted for and assessed against all Lower Basin contractors. Full accounting of Lower Basin tributary uses, in a manner consistent with the 1922 Colorado River Compact, is also necessary to properly develop any new guidelines and strategies.

- Post-2026 operating guidelines must fairly balance the burden of climate change across the entire Colorado River Basin. The Upper and Lower Basins have equal apportionments of the Colorado River in perpetuity. Water users in the Lower Basin cannot be given priority over water users in the Upper Division States.

- Post-2026 operational guidelines and strategies must recognize the needs of all water users in southwest Colorado, including the Southern Ute Indian Tribe and the Ute Mountain Ute Tribe, and support efforts to put Colorado's unused apportionment to beneficial use within Colorado by providing funds to develop the necessary infrastructure.

Most importantly, as the Colorado River Basin continues to be subject to the effects of climate change and provides much less certainty in local water supplies, solutions must be locally driven. We recognize that with the diminishing water availability in the West due to drought, aridification, and growing populations, there is an ongoing need to conserve water while maintaining the economic viability of our communities. The only way to be successful in this endeavor is to work at the local level where solutions can be tailored to local needs. We urge Reclamation to continue working to secure federal funding to be utilized by local entities for these local projects as part of a parallel, but distinct, process from other basin-wide efforts.

Sincerely,

Steven Wolff

Steve Wolff, General Manager

cc: SWCD Board of Directors

United States Department of the Interior

FISH AND WILDLIFE SERVICE

Post Office Box 1306
Albuquerque, New Mexico, 87103

In Reply Refer To:
FWS/R2/ES-ARD/079402

Russell Callejo
Post-2026 NEPA Project Manager
Bureau of Reclamation
P.O. Box 25007
Denver, Colorado, 80225

Dear Mr. Callejo:

The U.S. Fish and Wildlife Service (Service) appreciates this opportunity to comment on the Bureau of Reclamation's (Reclamation) Notice of Intent to Prepare an Environmental Impact Statement (EIS) on the Development of Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead as posted in the Federal Register (FR) notice on June 16, 2023 (88 FR 39455). Our comments herein are with the understanding that it is Reclamation's intention to complete the National Environmental Policy Act (NEPA) process through an EIS with a draft in late 2024 and a final EIS in sometime in 2026. The Secretary of the Interior (Secretary) has directed Reclamation to develop post-2026 Colorado River reservoir operational guidelines and strategies for Lake Powell and Lake Mead (referred to as "post-2026 operations"). Several important reservoir and water management decisional documents and agreements that govern operation of Colorado River facilities and management of Colorado River water are currently scheduled to expire at the end of 2026. Reclamation is recognizing the need to develop long-term strategies for the Colorado River operations while simultaneously addressing current drought conditions and preparing for the potential of continuing low runoff and low reservoir conditions. The Service 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, and the National Wildlife Refuge System Act (16 U.S.C. § 668dd).

Existing Endangered Species Act Compliance and Consultation History

The geographic scope of this action is large, and it will intersect with multiple Service Regions and programs, as well as build on multiple existing ESA consultations. The geographic scope intersects with the Recovery Planning and Implementation Programs for four federally protected fish species; overlaps with coordination areas of at least four ESA section 7 consultation-focused Ecological Services Field Offices; coincides with at least two Fish and Wildlife Conservation Offices and Service hatcheries; and includes five National Wildlife Refuges (NWR). The geographic scope is also divided into two Reclamation program areas, Reclamation's Upper Colorado River Basin and the Glen Canyon Dam, Adaptive Management Program (GCD AMP), and Reclamation's Lower Colorado River Basin and the Lower Colorado River Multi-Species Conservation Plan (LCR MSCP).

There is a long consultation history between the Service and Reclamation involving operations at Glen Canyon Dam and Hoover Dam and potential downstream effects inclusive of the Salton Sea. A full list of consultations is on file in the Arizona and Palm Springs Ecological Services Field Offices. Consultation histories and summaries can also be found in the 2016 Biological Opinions for the Long-Term Experimental Management Plan (LTEMP), the 2018 Biological Opinion for LCR MSCP, and the 2022 Biological Opinion for LCR MSCP. Salton Sea and surrounding areas consultation histories can also be found in section 7 consultation documents for the 1996 All American Canal Lining Project; the 2002 Coachella Canal Lining Project; the 2002 Quantification Settlement Agreement; and the 2023 Salton Sea 10-Year Management Program

Concurrent to this process, the Service is also consulting with Reclamation on a Supplemental Environmental Impact Statement (SEIS) to develop near-term Colorado River operation options and address extreme drought conditions during the 2024-2026 timeframe. That SEIS process is examining limited sections of the 2007 Interim Guidelines. The Service is also in pre-consultation with Reclamation on an EIS analysis of flow regimes (high flow experiments) under LTEMP to deter non-native smallmouth bass reproduction below Glen Canyon dam and to intentionally move sediments. While these flow analyses warrant a separate EIS, the use of the experimental high flows may help address impacts to federally listed species and their habitats associated with future operations of Lake Powell and Lake Mead.

The post-2026 NEPA process will revisit all sections of the 2007 Interim Guidelines and other domestic operating agreements to guide operations in a wide range of future conditions beyond 2026. Further, through the consultation process on the SEIS, the Service and Reclamation have agreed that greater analyses will be completed during this full EIS process on post-2026 operations.

For the EIS, 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. The scope of this EIS is large, resource conditions are in flux in some of these regions, and the timeline for consultation on this EIS is tight. For these reasons, the Service has specific requests for information and continued close and early coordination during the ESA section 7 consultation process as identified below in the sections

entitled "Tipping Point for Jeopardy" and "Effects Analysis for Act Compliance". Lastly, the Service identifies five National Wildlife Refuges (NWRs) in the National Wildlife Refuge System that are located along, or otherwise connected to, the Colorado River. Close coordination with Reclamation will be necessary for their continued successful management.

Tipping Point for Jeopardy

In *Wild Fish Conservancy v. Salazar*, 628 F.3d 513 (9th Cir.2010), the Ninth Circuit held that the Service 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 EIS represents an action which will provide program management direction and guidance and may or may not authorize future project-specific actions or activities that may result in adverse effects to threatened or endangered species and/or their designated critical habitat. As such, the Service 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 EIS. The recovery planning that the Service has accomplished thus far for the species of the Colorado River can be found on the Service's website (https://ecos.fws.gov/ecp). This information will serve as a starting point for analysis of tipping point.

While the Service cannot predict the full outcome of this EIS, 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 the EIS will analyze. It will be important that the EIS adequately analyzes and describes water quality and quantity associated with different alternatives so we can understand potential impacts to species and habitats. Additionally, in previous consultations on the LCR MSCP and LTEMP, Reclamation has employed different methods for addressing take of species. As we will be looking at combined operations in this EIS and section 7 consultation process, the Service requests that Reclamation utilize the same or similar types of information and impacts analyses to help clarify and create a transparent tipping point and jeopardy analysis for the combined operations.

Effects Analysis for ESA Compliance

The Service supports Reclamation's approach of analyzing some broad themes related to future operational guidelines in this EIS, as summarized in the June 16, 2023, FR notice (88 FR 39455), including: designing guidelines that can withstand and adapt to a broader range of future hydrologic conditions; taking a more holistic approach to Colorado River management in a way that focuses on long-term sustainability of the Basin's population and natural environment, minimizing system vulnerability and increasing system resiliency; and coordinating operation of Lake Powell and Lake Mead and considering combined reservoir or system storage. A system-, or Basin-, wide approach will help in managing environmental resources, including federally listed species, and help better understand, predict, and respond to potential effects to these resources.

For Reclamation and the Service to accomplish an appropriate effects analysis for this EIS in compliance with the ESA, we will need summary information that has not previously been formatted for this purpose. Much data has been collected while implementing the 2007 operational guidelines for Lake Powell and Lake Mead and an analysis of that data and trends should be included in Reclamation's evaluations. 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 demographic (i.e., survey data, population estimates, distribution, etc.) and habitat conditions (i.e., extent, quality, quantity, etc.). This baseline would need to precisely indicate how the geography of the EIS and the actions taken would overlap with the geography of each species. The recent SEIS to develop near-term Colorado River operation options and address extreme drought conditions during the 2024-2026 timeframe did not update the baseline information for any of the federally listed species and instead relied on the historic baseline as described in the 2005 LCR MSCP Biological/Conference Opinion and the 2007 Interim Guidelines. As this post-2026 NEPA process will revisit all sections of the 2007 Interim Guidelines and other domestic operating agreements to guide operations in a wide range of future conditions beyond 2026; it is necessary that baseline information be updated. The updated baseline condition should include current LiDAR habitat analyses and compare current habitat conditions to known habitat conditions in 2005 and 2007. This data will help us assess the efficacy of conservation measures to date. Updated baseline condition analysis also needs to reflect current demographic conditions as reviewed in Species Status Assessments and Recovery Plans and should include analyses of affects both to the species range wide as well as to individual units. For species, such as the Humpback Chub (*Gila cypha*), that are currently undergoing a revised Species Status Assessment, the Service will provide Reclamation with up-to-date information prior to the assessment being published, as appropriate.

In addition to completing full baseline condition analyses for the federally listed species and any designated critical habitat, the Service is requesting that the EIS specifically expand on some key parameters so we can understand potential effects of the various alternatives that will be considered:

1. Determine and analyze the full geographic scope of the proposed action. The Service recommends that Reclamation consider any interrelated and/or interdependent actions in the post-2026 operations analyses, to help determine the appropriate action area for analyzing effects. For example, if operating guidelines tie into water released at other dams and lakes to address shortages at Lake Powell or Lake Mead, the Service recommends including those areas and analyzing the full scope of environmental effects.

2. Please provide predicted water velocity, daily and monthly flow, water temperature, and habitat loss for all the scenarios presented. 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, habitats, and any designated critical habitat.

3. Analysis of hydrologic conditions and proposed guidelines on water delivery to existing and any proposed conservation areas. This analysis should consider and explain any assurances of water delivery to conservation areas regardless of water agreements and river conditions. These conservation areas are critical to the continued persistence, reproduction, and recruitment of many federally listed species.

4. Anticipated lake elevations at Lake Mead and Lake Powell under all proposed scenarios, identifying any potential affects at current natural barriers or landmarks (e.g., the inflow areas to both Lakes and/or large rapids serving as natural barriers). This aspect of analysis is important, as drought conditions have persisted in the basin during the last twenty years, and many locations that are now riverine have the potential to become lacustrine environments. Analyses should also consider effects to tributaries along the main stem Colorado River, including elevations, temperatures, and natural fish barriers such as rapids. Should post-2026 planning be to elevate the reservoirs to full capacity there will be an associated loss of native fish habitat, and incidentally, take of federally listed species that have re-occupied riverine habitats.

5. Further analyses of how reservoir water levels impact dam released water temperatures are recommended. Please also include modeling downstream anticipated water temperatures associated with reduced flows. Increased river temperatures favor warm-water non-native fish, and it is critical for our federally listed native fish to address those impacts. Please include any proposals for excluding and removing non-native fish from the Grand Canyon reaches as well as a long-term analysis of impacts of those proposed methods.

6. Updated accounting of all impacts associated with the various ways water will be conserved through the lifetime of the interim guidelines. This should include voluntary water conservation agreements from basin states as well as any other water conservation actions and associated reduced river flows (i.e., Minute 323; Intentionally Created Storage).

7. Evaluation of the effectiveness, efficacy and long-term benefit of various conservation measures put in place associated with the 2007 Interim Guidelines or other related consultations. Some conservation measures may not be meeting conservation goals and should be re-evaluated to determine if they can be improved or if those measures should be discontinued or replaced with different options.

8. Please ensure models also examine and predict how water reductions will affect the amount of water draining from Imperial Irrigation District and Coachella Valley Water District irrigation drains. The analysis should include the location and acreages of existing marshes at the end of those drains and how water reductions may change the size and location of the marshes and how that could impact resident Desert pupfish (*Cyprinodon macularius)* and Yuma Ridgway's rail (*Rallus obsoletus yumanensis) as* existing marsh areas dry.

National Wildlife Refuge System

Five Service National Wildlife Refuges (NWRs) are located within the likely action area of the EIS analysis; four are directly along the Colorado River (Havasu NWR, Bill Williams NWR, Cibola NWR, and Imperial NWR), and the fifth, Sonny Bono Salton Sea NWR, is connected to the Colorado River through water deliveries by the Imperial Irrigation District, the largest water user in California and the largest water right holder in the Lower Basin. Each NWR was established for a specific purpose and shall be managed to fulfill the purpose under the legal authority of the establishing statutes. Refuge management relies in part on water that passes through and that is diverted from the Colorado River and the four NWRs in Arizona serve as integral components of the LCR MSCP.

These five NWRs are vital to the ecology of the region. These refuges provide breeding grounds for migratory birds and other wildlife, and the protection of natural resources and conservation of several federally listed species. The four river refuges are some of the only large tracts of natural terrestrial vegetation remaining on the lower Colorado River. For example, 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 Service 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. Specifically, the Service is requesting that the EIS provide analysis of:

1. Inflow structure elevations and potential impacts to a refuge's ability to access water year-round from the Colorado River based on various planning scenarios as well as existing or needed gauging stations to accurately report water consumption and water returns. The Service can provide Reclamation with inflow structure elevations as well as seasonally when the refuges need to access water from the Colorado River per habitat unit in order to appropriately manage those units.

2. Ground water models that demonstrate how current, reduced, and anticipated water flows in the Colorado River may impact ground water levels at the river refuges and potential impacts to cottonwood and willow habitats.

3. Analysis of the probability of Tier 2 shortages for all proposed alternatives in the post-2026 operational guidelines, and modeled impacts of these shortages on refuge properties.

4. Refuge specific temperature analysis examining the likelihood of temperature increases with marsh and open waters in refuge units and how that may relate to issues with dissolved oxygen, algae blooms, non-native fish survival and recruitment, and changes in plant community make up or density.

5. Analysis of shoreline impacts at Sonny Bono Salton Sea NWR, including assurances that dust mitigation will be completed in a timely fashion and will not be the responsibility of the refuge. Also please determine if water reductions to the Imperial Irrigation District will have any impact on the refuge's ability to access its water right of 8,000 acre-feet annually.

The Service is concerned about the impacts that reduced flows in the Colorado River may have on the various river refuges ability to access and utilize Colorado River water to meet their specific refuge purposes; specifically whether current infrastructure will be able to access water future anticipated water elevations during times of year the refuges need that access. There could be significant cost to replacing infrastructure and/or new costs associated with pumping. As Reclamation is reviewing alternatives to the EIS we are requesting assistance in understanding if existing infrastructure will remain operable and assistance in engineering new or more efficient infrastructure as appropriate.

Other ESA responsibilities

The LCR MSCP partners and the Service have a long-standing partnership throughout its first 18 years of implementing the program. This State, Federal and Tribal partnership of 57 entities will be maintained through the early coordination process that ensures a successful section 7 consultation and issuance of the section 10(a)(1)(B) permit (Habitat Conservation Plan). As part of Reclamation's EIS project planning, please ensure coordination and scheduling to accommodate the Section 7 and 10(a)(1)(B) issuance timeline. The Service will be running a parallel Section 7 consultation, NEPA/EIS, Tribal Consultation, and financial assurances analyses, as required by the amendment and issuance criteria of the 10(a)(1)(B) permit.

The LCR MSCP provides necessary conservation for 27 ESA listed and sensitive species and is the custodian of over 8,100 acres of conservation properties. Water delivery and maintenance of these areas are important to species and associated habitats for over 400 miles of river. Re-examination of the efficacy of LCR MSCP actions and current baseline conditions will be crucial in setting the stage for a full analysis of impacts under the ESA. Although there is a daunting task in front of us, we are confident in our partnership to provide appropriate conservation to collectively work towards maintenance and recover of our most sensitive species and ecosystems.

Thank you again for the opportunity to comment on this important issue. The Service recognizes the breadth of challenges facing Reclamation as you work to balance water demand and water availability, federally listed species and habitat needs, and maintaining dam safety and integrity. We stand committed and ready to assist Reclamation with all phases of the EIS. Please include the Service as early as possible so that we can provide input and be responsive to time intensive aspects of project requirements.

We appreciate your ongoing commitment to interagency coordination. If we can be of further assistance, please contact Jonna Polk, Assistant Regional Director, Ecological Services, at

Jonna_Polk@fws.gov or 918-408-0850. If you need any further clarification of our comments, please contact Deborah Williams, Colorado River Special Assistant, at Deborah_Williams@fws.gov or 575-517-6091.

Sincerely,

for Regional Director

(Electronic Copy)
cc: Matt Hogan, Region 6 Regional Director, Business Office matt_hogan@fws.gov
Paul Souza, Regional Director, Business Office paul_souza@fws.gov
Bureau of Reclamation General Email for Post-2026 Comments crbpost2026@usbr.gov
Wayne Pullan, Upper Colorado Regional Director WPullan@usbr.gov
Jacklynn Gould, Lower Colorado Regional Director JGould@usbr.gov
Carly Jerla, Colorado River Post-2026 Program Manager CJerla@usbr.gov

August 15, 2023

VIA ELECTRONIC MAIL

Bureau of Reclamation
Attn: Post-2026 Colorado River Operations
crbpost2026@usbr.gov

Re: Environmental Impact Statement on the Development of Post-2026 Operational Guidelines and Strategies for the Management of Lake Powell and Lake Mead

Unit B Irrigation and Drainage District (the "District") as the Yuma Auxiliary Project distributes water to lands in Yuma County, Arizona for both agriculture and domestic purposes. The District can irrigate up to 3,400 acres of land and holds a present perfected right or priority 1 entitlement to the Colorado River. Yuma is a nationally significant agricultural community and its farms rely on water from the Colorado River. Because of this, the District has a vested interest in the River and its post-2026 operations. Unit B submits this letter as comment on the scope of the Bureau of Reclamation's analysis of post-2026 plans for the River.

1. The Bureau must conduct an equitable and transparent process.

Stakeholders have not been represented equally in discussions over the use of Colorado River water. Some have been given a great deal of attention, while others have been left out entirely. This disparity is exacerbated by the fact that many of those that have been given full access to the process are the most junior users on the River while many of the most senior users have been excluded. The exclusion of senior users might otherwise be fine if their water uses were not at risk, but we know that is not the case – every water user was at risk of reduction under the Bureau's SEIS alternatives and will likely continue to be at risk in the EIS process.

This disparity cannot be made worse. The process for determining the post-2026 operations of the River must involve all stakeholders, including interests in the Upper Basin, the Department of State and Mexico, the Tribes, and major water users throughout the Basin.

The Bureau must also recognize that state representatives do not adequately or properly represent the unique interests of all users within their states and should ensure full input from major water users with compelling and federally protected interests, such as agricultural users in the Yuma area.

Further, when stakeholders are not able to participate in or are left out of important discussions, they must be made aware of what discussions have occurred, what policies

have been developed, and what actions will be taken—such that all entities have notice and an opportunity to be heard.

2. The Bureau's post-2026 plans and supporting environmental analysis must follow the Law of the River.

The District and other Yuma area districts have come to rely on the Bureau for its leadership, policymaking experience, technical expertise and commitment to the Nation. We have also come to rely on the Bureau's commitment to and compliance with the Law of the River, including the water delivery contracts signed by the United States many decades ago.

The Law of the River establishes the priority system, which the Bureau lacks the authority to alter within the current process. As such, reconsideration of the priority system is necessarily outside the scope of the post-2026 process. However, proper application of the priority system is vital to correctly evaluating the impacts of any Bureau plan for post-2026 operations.

The priority system is not an accident. Users have acted in line with and have placed enormous reliance on the system and the whole of the Law of the River for decades. The Bureau would need exceedingly persuasive justifications for departing from the priority system.

If reductions are to occur, the Bureau must make reductions from the contractual entitlements of water users, not their actual usage in any given year. Using actual usage is not equitable because it is the product of different practices for different users. Further, in determining who takes reductions and in what volumes, the Bureau must certainly consider whether users have access to other sources, whether users have an opportunity to further conserve, and/or whether users have historically forgone opportunities to conserve. As part of its analysis, the Bureau must include this evaluation and disclose to the public which users may receive a favorable exercise of discretion, why and with what environmental effects.

3. Operating within the Law of the River, the Bureau should expand the legal and practical tools available for finding solutions for water shortages.

Within the Law of the River, the Bureau has considerable room to innovate to address shortages on the Colorado River. Expanding the legal and practical tools available to the Bureau and to users may in some instances require separate administrative proceedings, but such tools should be available for all or most of the Bureau's post-2026 period and therefore should be analyzed as part of the development of the EIS. Those separate processes should be commenced now so they can produce better outcomes in the near term.

Such tools should include restructuring the ICS system and prioritizing voluntary compensated conservation as described below, and also include the strengthening of the effectiveness of the Part 417 process, looking at other market-based systems for reallocating water, reevaluating how modeling is done and the timeline on which it is completed, and augmentation of water supplies throughout the Basin.

4. The Bureau should revise the regulations and processes governing the Intentionally Created Surplus ("ICS") system.

The Bureau should revise the regulation and processes governing the Intentionally Created Surplus ("ICS") system. However well-intentioned, the existing framework is prone to abuse and manipulation. If the system is continued under post-2026 operations, the Bureau should reform it in ways that better align it with the priority system and sound policy.

In particular, ICS should be administered in alignment with the Law of the River so as not to disrupt the priority system. The guidelines developed in the post-2026 process should make it clear that the ICS program does not impact users with rights senior to those creating or taking delivery of ICS. Particularly important to the District are the rules that apply in shortage conditions.

The Bureau should consider an alternative under which it winds down the ICS system after 2026. The District recognizes that the ICS program has protected critical elevations in Lake Mead. However, the system is built around ICS creators retaining rights in "conserved" water, rather than engaging in true conservation that permanently reduces the burden on the River. At the very least, the limits on each state's creation and storage of ICS volumes should not be increased, and ICS water should be charged evaporation losses in each year at a minimum rate of three percent from creation to withdrawal or depletion.

The Bureau should also take a hard look at the conservation activities used by entities to create ICS including methods used to conserve water and the length of time such activities are deemed to conserve water. The system as it currently functions leads to arbitrary outcomes in ways that the Bureau should correct.

The Bureau should consider the reform of the ICS program to be within the scope of its post-2026 process.

5. The Bureau should prioritize voluntary, compensated conservation.

Mandatory and/or involuntary reductions in water use will be painful and devastating for most users and communities that rely on Colorado River water. One way to reduce these impacts is to prioritize compensated, voluntary reductions. The Bureau should

include finding efficient systems to allocate and compensate for reductions in water usage within the scope of its post-2026 process. Existing programs demonstrate that the compensated conservation format is practicable and effective. Voluntary, compensated conservation programs are also fundamentally fair and equitable.

The District understands that this may require additional and ongoing federal funding – Unit B and other Yuma area districts stand ready to support the Bureau in this effort.

6. The Bureau's post-2026 plans should provide certainty and clarity to the greatest extent possible.

Overall, one of the most important considerations in the post-2026 process should be how we create certainty, clarity and predictability to the greatest extent possible for all users within the Basin.

In setting annual policy, the Bureau must balance its response to the fluctuation of natural systems with the users' need for predictability. Currently, the Bureau's process for establishing its Annual Operating Plans and approving water orders, though not perfect, works to provide stability to water users, particularly in the Lower Basin. Users have adequate time to respond and adjust water use in the following year based on the timing of those operational decisions. As such, the District strongly supports continuation of these existing processes and timelines post-2026.

The Bureau should also implement ways to flexibly account for current hydrology and the actual flow of the River in any given year rather than on a set, perceived annual volume of water. Should these processes and/or methods need to change post-2026 as a result, the District urges the Bureau to insure any new processes provide the same level of stability and certainty and allow sufficient time for water users to react and adjust. Mid-year changes in operating plans or approved water orders would be particularly devastating to agricultural water users and their communities given their growing seasons and corresponding contracts.

The post-2026 guidelines should aim to strengthen the Colorado River system by supporting all water users in the Basin and ensuring the livelihoods of our communities and the security of our Nation, while still providing for the protection of its extraordinary ecosystem. It is no small task. In doing so, we hope that the Bureau will consider these comments.

Thank you for your consideration. Should you have any questions or would like additional information, please do not hesitate to contact the District.

Sincerely.

Connie Beshears

Connie Beshears, President

Bryan Knight, General Manager

UPPER COLORADO
RIVER COMMISSION
50 S. 600 E. Ste #100 • Salt Lake City, UT 84102 • 801-531-1150 • www.ucrcommission.com

August 15, 2023

Commissioner Camille Calimlim Touton
Bureau of Reclamation
Attn: Post-2026 (Mail Stop 84-55000)
P.O. Box 25007
Denver, CO 80225
crbpost2026@usbr.gov

Dear Commissioner Touton:

The undersigned Governors' Representatives of the States of Colorado, New Mexico, Utah and Wyoming (the "Upper Division States"), acting through the Upper Colorado River Commission ("UCRC"), respectfully submit the following comments in response to the Bureau of Reclamation's ("Reclamation") *Notice of Intent To Prepare an Environmental Impact Statement and Notice To Solicit Comments and Hold Public Scoping Meetings on the Development of Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead* ("NOI"), 88 FR 39455 (June 16, 2023). We appreciate your consideration of our comments, which are in addition to the comment letter we are providing jointly with the States of Arizona, California, and Nevada (the "Lower Division States").

I. INTRODUCTION AND BACKGROUND

Reclamation has formally initiated an environmental review process under the National Environmental Policy Act ("NEPA") with the goal of preparing an Environmental Impact Statement ("EIS") for the development of new operations for Lake Powell and Lake Mead beyond 2026. The new operational guidelines and strategies to be selected through this EIS will replace the 2007 Colorado River Interim Guidelines for Lower Basin Shortages and the Coordinated Operations for Lake Powell and Lake Mead ("2007 Guidelines") which expire in 2026. The Upper Division States support the development of new operational guidelines and strategies for Lake Powell and Lake Mead ("Post-2026 Operations") to replace the 2007 Guidelines.

Because the Basin States have a unique interest in the management of the Colorado River, Reclamation's engagement with all seven states will be essential to ensure the effectiveness of Post-2026 Operations. This includes the Upper Division States, acting through the UCRC, and the Lower Division States. All seven Basin States have significant interests in protecting the water supplies of the millions of people who rely on the Colorado River. Recognizing the unique status of the States, the Secretary of the Interior ("Secretary") must consult with the Governors'

Representatives from each Basin State and collaborate on the development of alternatives for Post-2026 Operations at Lake Powell and Lake Mead. Options for Post-2026 Operations will be significantly limited without the Basin States' participation. The Upper Division States are committed to working with Reclamation, including through this NEPA process, to develop the new guidelines for Post-2026 Operations. In addition, the Upper Division States anticipate working with the Lower Division States to develop an alternative for consideration and evaluation, as the Basin States did for the NEPA process for the 2007 Guidelines.

II. UPPER BASIN PRIORITIES

The Post-2026 Operations must:

1. Address the imbalance between available supply and demand. This will require permanent Lower Basin reductions under most if not all operating conditions. One way to achieve these reductions would be to address evaporation and system losses in the Lower Basin, which are currently estimated at 1.2 million acre-feet to 1.5 million acre-feet annually.

2. Recognize that the Upper Basin is naturally limited by actual hydrology and that Upper Basin water users experience shortages, which include uncompensated administrative regulation, every year.

3. Not interfere with the rights of any state to administer and regulate water within its boundaries.

4. Include durable, effective, and flexible mechanisms to protect storage and critical elevations at Lake Powell and Lake Mead and to rebuild depleted storage at both reservoirs.

5. Ensure that operations cannot favor one basin over the other.

6. Be more responsive to actual hydrology at Lake Powell and Lake Mead.

III. PURPOSE AND NEED

The 2007 Guidelines remain in effect through December 31, 2025, (through preparation of the 2026 Annual Operating Plan). In order to have a new management system in place by the time the 2007 Guidelines expire, the Secretary has directed Reclamation to develop new guidelines for Post-2026 Operations at Lake Powell and Lake Mead. Over 15 years of operational experience illustrate that the 2007 Guidelines are insufficient to properly manage Lake Powell and Lake Mead. Extended periods of dry hydrology and depleted reservoir conditions have highlighted the inadequacy of the 2007 Guidelines to adapt to worsening hydrology and increased uses. Storage releases under the 2007 Guidelines do not appropriately respond to actual hydrologic conditions. Under the 2007 Guidelines, shortages in the Lower Basin are

triggered at elevations when storage is already significantly depleted. Lower Basin shortages under the 2007 Guidelines are also insufficient in magnitude to protect critical elevations at Lake Mead, which has induced balancing releases from Lake Powell. These inadequate operations, exposed by numerous years of dry hydrology, have brought the system to the brink of crisis. Operating the system in this manner is not sustainable.

In order to assure stability into the future, the Post-2026 Operations must address the imbalance between available supply and demand, considering increased hydrologic variability exacerbated by climate change. The Colorado River supports multiple uses of water. To protect these varied water uses, Reclamation must develop Post-2026 Operations for Lake Powell and Lake Mead that provide the greatest possible degree of operational certainty for water users and managers while providing sufficient flexibility to respond to changing conditions.

The Law of the River must be the foundation for the Post-2026 Operations, anchored by the 1922 Colorado River Compact and the 1948 Upper Colorado River Basin Compact ("Compacts") together with the 1944 Treaty with Mexico.

IV. SCOPE OF THE NEPA PROCESS

The scope of the NEPA process for the Post-2026 Operations should be narrow. The NOI states that new guidelines for Post-2026 Operations will focus on the operation of Lake Powell and Lake Mead. As such, Post-2026 Operations should focus only on those topics necessary to sustainably manage water supplies at Lake Powell and Lake Mead. Post-2026 Operations cannot modify operations at the other Initial Units built under the Colorado River Storage Project Act and cannot modify the respective records of decision that govern each of these reservoirs.

Other issues, such as unresolved Tribal water rights, endangered species, and other environmental issues and concerns, should be addressed through other established programs, processes, and frameworks.

The Post-2026 Operations must incorporate the best available science and account for an appropriately wide range of hydrologic conditions, from the very dry to the very wet. While forecasting may be necessary in some situations, the Post-2026 Operations must primarily focus on responding to actual conditions and rebuilding and protecting storage at Lake Powell and Lake Mead. They must also include accurate, transparent, and timely accounting of depletions.

The Post-2026 Operations must be interim in duration. This will allow Reclamation and the Basin States to gain valuable operating experience under operations that respond to actual hydrology and rebuild and protect storage in Lake Powell and Lake Mead. An interim period would also improve the basis for making additional future operational decisions, whether during the new interim period or thereafter. Finally, an interim period would allow for opportunities to continue to adapt to climate change and other unforeseen circumstances.

V. THE NO ACTION ALTERNATIVE CANNOT EXTEND THE 2007 GUIDELINES OR THE 2019 DROUGHT CONTINGENCY PLANS ("DCPs")

The NOI recognizes that the 2007 Guidelines, the DCPs, and other reservoir and water management agreements and decisional documents are scheduled to expire at the end of 2025. Amending these documents and agreements to extend their current expiration dates would require federal action. Therefore, the No Action alternative cannot include the extension of the 2007 Guidelines or the DCPs.

The No Action Alternative must acknowledge that upon expiration of the 2007 Guidelines, the operating criteria for Lake Powell and Lake Mead will revert to the long-range operating criteria used to model baseline conditions in the Final Environmental Impact Statement for the Interim Surplus Guidelines dated December 2000. However, details regarding implementation of the long-range operating criteria are unclear. We request that the Secretary consult the Basin States for input on the development of the No Action alternative.

VI. ENGAGEMENT

The success of new guidelines for Post-2026 Operations at Lake Powell and Lake Mead will depend on the support and participation of the Colorado River Basin Tribes. The Upper Division States, acting through the UCRC, will continue to use interstate and intrastate efforts to collaborate with the Tribes and look forward to their participation in EIS process.

The Upper Division States will also continue to engage with water users, non-governmental organizations, and other stakeholders that are interested in the Post-2026 Operations of Lake Powell and Lake Mead.

The NOI recognizes that Minute 323 between the United States and Mexico is scheduled to expire at the end of 2025. The United States, Mexico, and the Basin States must work through the appropriate binational process. This binational process will be separate from the development of the Post-2026 Operations; however, both processes should take place simultaneously.

VII. RESERVATION OF RIGHTS

The Upper Division States expressly reserve their rights under applicable law, including, but not limited to, the Law of the River. Nothing in this letter is intended to be, nor shall be construed to interpret, diminish, or modify the rights of the Upper Division States or the UCRC under federal or state law or administrative rule, regulation, or guideline. This submittal is not intended to be, and shall not be construed in any way as, a waiver of any such rights. Moreover, we reserve the right to provide further comments, consult with the Secretary, take any other necessary steps, and engage with Reclamation as it proceeds with subsequent phases of the Post-2026 Operations NEPA process.

VIII. CONCLUSION

We appreciate the opportunity to comment. We are committed to working with Reclamation to develop and analyze alternatives in this NEPA process. We urge Reclamation to include the elements described in these comments in its development of the No Action and action alternatives.

We will continue to work together and in cooperation with the federal government, the Lower Division States, Tribes, water users, non-governmental organizations, and other Colorado River stakeholders to reach consensus on how best to share the burden of protecting Lake Powell and Lake Mead, from which we all derive so many benefits.

Sincerely,

Rebecca Mitchell
Governor's Representative
State of Colorado

Estevan Lopez
Governor's Representative
State of New Mexico

Gene Shawcroft
Governor's Representative
State of Utah

Brandon Gebhart
Governor's Representative
State of Wyoming

WASHINGTON COUNTY
WATER
CONSERVANCY
DISTRICT

August 15, 2023

Commissioner Camille Calimlim Touton
U.S. Bureau of Reclamation
1849 C Street NW
Washington, DC 20240-0001

Re: Notice of Intent (NOI) to Prepare an Environmental Impact Statement (EIS) on the Development of Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead

Dear Commissioner Touton,

Thank you for the opportunity to provide scoping comments in response to the above-referenced NOI.

The Washington County Water Conservancy District (District) is a political subdivision of the State of Utah. The District is charged with conserving, developing, managing, and stabilizing water supplies for the citizens of Washington County.

The U.S. Census has identified Washington County as the fastest-growing metro area in America.[1] The county's population is projected to more than double by 2050.[2] Washington County is Utah's hottest, driest region. All major population centers are currently dependent on a single water source, the Virgin River Basin, which is reaching its full development capacity.

The District's 20-year water supply plan includes additional water conservation, regional reuse, local water development, groundwater optimization, and agricultural conversion.[3] Washington County has already reduced its per capita water use more than 30% since 2000—the greatest reduction in water use in Utah—and is planning for an additional 14% reduction by 2030, using 2015 as the baseline year.

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[1] Hemmersmeier, S. (2022, April 2). *Census: St. George is Fastest-Growing in U.S. Again*. AP News. https://apnews.com/article/utah-st-george-census-2020-19c02de8f8a6d0de0528c422eb84f15a

[2] *Utah Long-Term Planning Projection Summary*, (2022, January 31). Kem C. Gardner Policy Institute. https://gardner.utah.edu/wp-content/uploads/LongTermProj-Jan2022.pdf?x71849&x71849

[3] *20-Year Plan to Secure New Water Supplies for Washington County, Utah*, (2023 July). Washington County Water Conservancy District. https://www.wcwcd.org/wp-content/uploads/2023/07/20-Year-Plan-071023.pdf

Because the Virgin River is a tributary of the Colorado River located within the Colorado River Basin, Washington County's water supply is directly affected by Colorado River operations in both the near and long-term. The District supports the Colorado River Authority of Utah's (Authority) efforts in developing a basin wide consensus alternative and is coordinating with the Authority on this and other Colorado River matters. The District hereby endorses and incorporates the Authority's comments on the NOI.

Respectfully,

Zachary Renstrom
General Manager
Zach@wcwcd.org

Letter #: 6

Date Received: 7/17/2023

Sender Names: 6: Xavier Gonzalez

Emails: Not Provided

Organizations: Western Area Power Administration

Subject: CO River Public Scoping Meeting 7_17

All right. Can you hear me?
All right. Thank you. How are you going on with? Xavier Gonzalez
I'm the resource planning engineer for Hoover Parker and Dave dams. I work for Western Area Power Administration, and Phoenix office ever since the guidelines took place. I've always had this pet peeve of the reason that the Lake Powell and Lake Mead were different operational periods. Leg me is on a calendar year base period, and Lake Powell is on the water year period. Obviously, the guidelines were to, because the elevations of like we're going down so like me has been harmed, in my opinion. If I've seen it significantly by this person. So say, for example, when Lake Powell goes into, I'm not on that cover first goes into a lower operating tear, and it's cutting releases to Lake Mead like me is still operating on the previous year's operation guidelines, and it not until January first of the next year, will it go into the other guidance, in other words would like me would like how having cut Or have cut water to leg me like me to still releasing water at higher levels. Because, of the new opera the new guidelines are new tiers don't take effect until January first. Why can we not be on the same operational period? in my opinion, would be the water year? Thank you.