



# Arizona State Legislature

1700 West Washington  
Phoenix, Arizona 85007

March 2, 2026

Bureau of Reclamation  
U.S. Department of the Interior  
Attn: BCOO-1000  
P.O. Box 61470  
Boulder City, Nevada 89006  
crbpost2026@usbr.gov

Re: Comments on the Draft Environmental Impact Statement for Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead (EIS No. 20250184)

Dear Acting Commissioner Scott Cameron:

We, the President of the Arizona State Senate and the Speaker of the Arizona House of Representatives, respectfully urge the Bureau of Reclamation (Bureau) to withdraw its Draft Environmental Impact Statement on post-2026 Colorado River Reservoir Operations (the “Draft EIS”) or, in the alternative, to revise the Draft EIS. Withdrawal or revision is needed to address significant issues that affect Arizona’s entitlement to Colorado River water and to satisfy the Department of the Interior’s obligations under the Law of the River, the 1922 Colorado River Compact, and the National Environmental Policy Act (“NEPA”).

The Draft EIS completed by the Bureau, a federal agency under President Trump, additionally does not align with the President’s priorities on several fronts. In his State of the Union address on February 24, 2026, President Trump outlined his national economic agenda, which focused on the need to improve the nation’s infrastructure, increase the nation’s energy portfolio and grid reliability, and support the American Dream of homeownership by ensuring that single-family homes are affordable and market-ready for hardworking Americans. Arizona has delivered on these priorities and is committed to delivering more—but, without certainty regarding our state’s Colorado River supplies, the Bureau not only risks our state’s ability to deliver on the President’s agenda, but also risks the well-being of the entire nation and Desert Southwest.

Arizona depends on the Colorado River to support at least three million jobs; a thriving advanced manufacturing, semiconductor, and technology industry; multiple military installations; and billions of dollars’ worth of critical mineral and agricultural production, which contribute to the nation’s food and mineral supply. For more than 40 years, Arizona residents and businesses have relied on Colorado River water delivered through the Central Arizona Project. That long-standing reliability has allowed Arizona to attract unprecedented levels of investment, driving the reshoring of American manufacturing, leading the development of A.I. infrastructure, and strengthening U.S. supply chains consistent with President Trump’s priorities.

For the reasons explained below, the Draft EIS threatens the jobs, businesses, and homes that Arizona needs to continue to thrive as it supports America’s Golden Age; violates federal law, particularly the 1922 Colorado River Compact and NEPA; is arbitrary and capricious, an abuse of discretion, and not in accordance with the law; and must be withdrawn or revised to ensure an alternative that is consistent with federal law and addresses the impacts to jobs, homes, and businesses.

**I. The Draft EIS Fails to Consider Foreseeable Water Delivery Obligations Under the 1922 Colorado River Compact**

**A. The Draft EIS must respect the Law of the River.**

The “‘Law of the River’ comprises the legal obligations that govern the allocation and use of the water of the Colorado River.” *Grand Canyon Tr. v. U.S. Bureau of Reclamation*, 691 F.3d 1008, 1019 (9th Cir. 2012). This “collection of interstate compacts, federal treaties, statutes, regulations, and court decrees ... were designed to ‘resolve disputes arising from water scarcity’ and relate to Colorado River water rights.” *Cnty. of Mohave v. United States Bureau of Reclamation*, No. CV-22-08246-PCT-MTL, 2023 WL 2813695, at \*6 (D. Ariz. Apr. 6, 2023) (citation omitted).

The Draft EIS acknowledges the importance of the Law of the River. According to the Draft EIS, “the Secretary intends to consider, adopt and implement the proposed federal action consistent with the Law of the River, including the Colorado River Compact of 1922 ... and other provisions of applicable federal law.” Draft EIS, 1-4. Underscoring its significance, the Draft EIS repeatedly emphasizes the intention to adopt and implement guidelines in a manner consistent with the Law of the River. *See, e.g., id.* at 1-5 (“the Department intends to adopt and implement the guidelines in a manner consistent with the Law of the River”); *id.* at 1-9 (“the Secretary intends to adopt and implement new guidelines in a manner consistent with the Law of the River”). Thus, the Bureau’s failure to follow the Law of the River in the Draft EIS warrants its withdrawal or revision.

**B. The 1922 Colorado River Compact is the cornerstone of the Law of the River.**

More than 100 years ago, the seven States in the Colorado River Basin entered the 1922 Colorado River Compact. *See Colorado River Compact*, Nov. 24, 1922.<sup>1</sup> As the Bureau recently acknowledged, “[t]he Colorado River Compact is the cornerstone of the ‘Law of the River.’” U.S. Bureau of Reclamation, *Interior Department moves forward on guidelines for Colorado River absent full state consensus*, Feb. 14, 2026.<sup>2</sup>

The States entered the 1922 Colorado River Compact because they “wanted to assure that the Colorado became a regular, dependable source of water; they recognized that doing so would require a regional or national solution.” *Navajo Nation v. Dep’t of the Interior*, 876 F.3d 1144, 1153 (9th Cir. 2017). The States memorialized the important reasons for entering the 1922 Colorado River Compact, reasons that are still relevant today:

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<sup>1</sup> Available at <https://www.usbr.gov/lc/region/pao/pdf/crcompct.pdf>.

<sup>2</sup> Available at <https://www.usbr.gov/newsroom/news-release/5283>.

The major purposes of this compact are to provide for the equitable division and apportionment of the use of the waters of the Colorado River System; to establish the relative importance of different beneficial uses of water; to promote interstate comity; to remove causes of present and future controversies; and to secure the expeditious agricultural and industrial development of the Colorado River Basin, the storage of its waters and the protection of life and property from floods.

#### 1922 Colorado River Compact, art. I.

To make the 1922 Colorado River Compact possible, “Congress passed an Act on August 19, 1921, giving the States consent to negotiate and enter into a compact for the ‘equitable division and apportionment ... of the water supply of the Colorado River.’” *Arizona*, 373 U.S. at 556–57 (citation omitted). In 1928, Congress passed the Boulder Canyon Project Act, “which conditionally approved the 1922 Compact” and “became effective in 1929.” *Navajo Nation*, 876 F.3d at 1153.

Congressional consent for the 1922 Colorado River Compact is significant. According to the Supreme Court, “where Congress has authorized the States to enter into a cooperative agreement, and where the subject matter of that agreement is an appropriate subject for congressional legislation, the consent of Congress transforms the States’ agreement into federal law under the Compact Clause.” *Cuyler v. Adams*, 449 U.S. 433, 440 (1981). Thus, the 1922 Colorado River Compact is a “law of the United States,” *id.* at 438, that the Draft EIS is obligated to follow.

The 1922 Colorado River Compact also “is, after all, a contract.” *Texas v. New Mexico*, 482 U.S. 124, 128 (1987). All seven States ratified the Compact and consented to its terms. *See* Ariz. Rev. Stat. § 45-1311; Colo. Rev. Stat. § 37-61-101; Nev. Rev. Stat. Ann. § 538.010; N.M. Stat. Ann. § 72-15-5; Utah Code Ann. § 73-12a-2; Wyo. Stat. Ann. § 41-12-301; *see also* Act of March 4, 1929, ch. 16, 48th Session (1929), at 38-39 (California). As a contract, the Compact “remains a legal document that must be construed and applied in accordance with its terms.” *Texas*, 482 U.S. at 128.

The 1922 Colorado River Compact is the dominant law within the “Law of the River.” The other “federal statutory law and regulations, Supreme Court decrees, interstate compacts, state and federal common law, and treaties foreign and domestic” that comprise the “Law of the River,” *Navajo Nation*, 876 F.3d at 1153, expressly provide that their terms are subject to the Compact and shall not be construed to amend or conflict with the Compact.<sup>3</sup> The same is true for water delivery

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<sup>3</sup> *See, e.g., Arizona v. California*, 547 U.S. 150, 166 (2006) (Consolidated Decree stating “[t]his decree shall not affect . . . [a]ny issue of interpretation of the Colorado River Compact”); 43 U.S.C. § 1551 (Colorado River Basin Project Act stating that “[n]othing in this Act shall be construed to alter, amend, repeal, modify, or be in conflict with the provisions of the Colorado River Compact”); 43 U.S.C. § 620h (Colorado River Storage Project Act stating that “[n]othing contained in this chapter shall be construed to alter, amend, repeal, construe, interpret, modify, or be in conflict with the provisions of[,]” *inter alia*, “the Colorado River Basin Compact”); Upper Colorado River Basin Compact of 1948, art. I(b), 63 Stat. 31(1949) (“It is recognized that the Colorado River Compact is in full force and effect and all of the provisions hereof are subject thereto.”); 43 U.S.C. § 1600g

contracts to users in the Lower Basin.<sup>4</sup> Thus, the Compact is the starting point, and often the ending point, for Colorado River allocation issues.

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(Colorado River Floodway Protection Act, stating that “[n]othing contained in this Act shall be construed to alter, amend, repeal, modify, interpret, or be in conflict with the provisions of the Colorado River Compact”); 43 U.S.C. § 6171(b) (Boulder Canyon Project Act of 1928 stating that “[t]he rights of the United States in or to waters of the Colorado River and its tributaries howsoever claimed or acquired, as well as the rights of those claiming under the United States, shall be subject to and controlled by said Colorado River compact”).

<sup>4</sup> See, e.g., Amended Central Arizona Project Water Delivery Contract Between the United States and the Gila River Indian Community, at 9-11 (May 15, 2006) (“The obligation of the United States to deliver water under this Amended Contract is subject to: ... The availability of such water for use in Arizona under the provisions of the Colorado River Compact, executed November 24, 1922 .... [T]his Amended Contract is made upon the express condition and with the express covenant that all rights hereunder shall be subject to and controlled by the Colorado River Compact ...”); Contract No. 14-06-W-245 Amendment No. 1, at 17-18 (Dec. 1, 1988) (“The obligation of the United States to deliver water under this contract is subject to: ... The availability of such water for use in Arizona under the provisions of the Colorado River Compact, executed November 24, 1922 . . . . this contract is made upon the express condition and with the express covenant that all rights hereunder shall be subject to and controlled by the Colorado River Compact and that the United States and the Contractor shall observe and be subject to and controlled by said Colorado River Compact . . . .”); Contract for Delivery of Water, ¶ 7(c), 13 (Feb. 9, 1944) (“This contract is made upon the express condition and with the express covenant that the United States and Arizona, and agencies and water users therein, shall observe and be subject to and controlled by said Colorado River Compact . . . . This contract is made upon the express condition and with the express covenant that all rights of its agencies and water users, to waters of the Colorado River and its tributaries, and the use of the same, shall be subject to and controlled by the Colorado River Compact signed at Santa Fe, New Mexico, November 24, 1922 . . . .”); Contract Between the United States of America and the Uintah Water Conservancy District, Contract No. 14-06-400-178, at 9-10 (Jul. 14, 1958) (“This agreement and all works or facilities constructed pursuant hereto shall be subject to and controlled by the Colorado River Compact dated November 24, 1922 . . . .”); Agreement Between the United States and the Navajo Tribe of Indians for Delivery of Water from Navajo Reservoir, Contract No. 14-06-W-269, at 5 (Apr. 1, 1976) (“The use of water, including that diverted from the Colorado River system to the Rio Grande Basin, through works constructed under authority of the Act, shall be subject to and controlled by the Colorado River compact . . . .”); Long-Term Water Service Contract Between the United States of America and Daggett County, Contract No. 01-WC-40-6860, at 10 (Mar. 6, 2001) (“This contact and all water taken pursuant hereto shall be subject to and controlled by the Colorado River Compact, dated November 24, 1922 . . . .”); Long-Term Water Service Contract Between the United States of America and the Upper Gunnison River Water Conservancy District, Contract No. 04-WC-40-01, at 6 (Apr. 1, 2004) (“This contract and all water taken pursuant hereto shall be subject to and controlled by the Colorado River Compact, dated November 24, 1922 . . . .”); Contract Between the United States and the Navajo Nation, Contract No. 10-WC-40-384, at 35 (Dec. 17, 2010) (“The uses of water in the State of New Mexico through works constructed under the authority of the Colorado River Storage Project Act (70 Stat. 105), the Act of June 13, 1962 (76 Stat. 96), the Colorado Ute Settlement Act Amendments of 2000 (114 Stat. 2763A-258) and the Navajo Settlement Act shall be subject to and controlled by the Colorado River Compact . . . .”).

**C. The 1922 Colorado River Compact requires the Upper Basin to deliver water at Lee Ferry.**

As the Supreme Court has recognized, the 1922 Colorado River Compact was explicitly approved by Congress and “fixes a division of the waters between the basins which must be respected.” *Arizona*, 373 U.S. at 566. The United States is required to comply with and implement this Compact. *See* 43 U.S.C. § 1551(a), (c). In addition to requiring compliance with the Compact, the Colorado River Basin Project Act directs the Department of the Interior to develop criteria for the coordinated operation of water reservoirs “in order to comply with and carry out the provisions of the [Compact],” and it specifically requires that such operating criteria “shall make provision” for the storage and releases of water to satisfy the Upper Basin’s obligations to deliver water to supply one-half of the Mexico Treaty amount and the Lower Basin pursuant to Articles III(c) and (d) of the Compact. 43 U.S.C. §§ 1551(a); 1552. But although the Compact contains provisions that directly apply, the Draft EIS does not consider them.

The 1922 Colorado River Compact requires the Upper Basin to deliver at least 82.5 million acre-feet (MAF) of Colorado River water to the Lower Basin in any 10-year period. Under Article III(a) of the Compact, “[t]here is hereby apportioned from the Colorado River System in perpetuity to the Upper Basin and to the Lower Basin, respectively, the exclusive beneficial consumptive use of 7,500,000 acre-feet of water per annum, which shall include all water necessary for the supply of any rights which may now exist.” 1922 Colorado River Compact, art. III(a). Further, Article III(b) apportions an additional 1 MAF per annum to the Lower Basin. *Id.* at art. III(b)–(c). Article III(d) then provides that the “States of the Upper Division will not cause the flow of the river at Lee Ferry to be depleted below an aggregate of 75,000,000 acre-feet for any period of ten consecutive years reckoned in continuing progressive series beginning with the first day of October next succeeding the ratification of this compact.” *Id.* at art. III(d). In addition to what must be delivered under Article III(d), the Upper Basin must also deliver “one-half of the deficiency” and “equally” bear the burden of deliveries to Mexico. *Id.* at art III(c).

The Upper Basin States have long accepted their obligation to deliver water to the Lower Basin under Article III(c) and III(d). The Upper Basin States entered the Upper Colorado River Basin Compact of 1948 “to establish the obligations of each State of the Upper Division with respect to the deliveries of water required to be made at Lee Ferry by the Colorado River Compact ...” Upper Colorado River Basin Compact of 1948, Pub. L. No. 81-37, 63 Stat. 31 (1949). The Colorado River Storage Project Act provides that the use of Colorado River water by the Upper Division “consistently with the provisions of the [Compact]” is an express purpose of the Act and requires compliance with the Compact in the use of water and operation of all facilities. *See* 43 U.S.C. §§ 620; 620c; 620f; 620h; 620m. Just last year, an Upper Basin State Supreme Court again recognized these obligations: “The state entered the Upper Compact to manage and allocate the upper basin apportionment and to ensure compliance with obligations to the lower basin outlined in the Colorado River Compact.” *Water Horse Res., LLC v. Wilhemsen*, 579 P.3d 317, 322 (Utah 2025).

The Upper Basin States also have recognized that these delivery obligations take priority over their own water rights. In 1964, Colorado Upper Basin Commissioner Edwin Johnson opined to his fellow Upper Basin commissioners on the “priority” between the Lower Basin and Upper Basin:

The Colorado River Compact imposes a terrifying burden on the Upper Basin. Before the people of Denver or Colorado Springs or the Air Force Academy can take a drink of Colorado River water, before Northern Colorado or the Arkansas Valley can turn a drop of Colorado River water on their parched crops, to say nothing of the Western Slope of Colorado, the State of Utah, Wyoming and New Mexico, 7,500,000 acre-feet of water must be delivered to the Lower States at Lee Ferry. Of course, we know that is on a ten-year basis, 75,000,000 acre-feet in those ten years, but that is a terrible burden.

I was in the Colorado Legislature when this Compact was ratified by the State of Colorado, and I objected strenuously to that provision. Instead of dividing it so each of them would get their water, we gave the Lower Basin the preference.

Upper Colorado River Commission, *Official Record*, vol. 16 (1964), Meeting No. 88, Denver, Colorado, April 14 and 15, 1964, 72.

The Bureau also has recognized the Lower Basin's priority to water deliveries. The 1922 Colorado River Compact "gave priority to delivery of the Lower Basin's entitlement requiring the Upper Basin to ensure delivery of 75 million acre-feet to the Lower Basin in any rolling 10-year period regardless of hydrology." U.S. Bureau of Reclamation, *Colorado Storage Project, History*.<sup>5</sup> "[T]his left the Upper Basin to deal with the challenges of uncertain river flows." *Id.* Accordingly, the Upper Basin States's entitlement to consume 7.5 MAF annually is "contingent upon" the satisfaction of their delivery obligations under Article III of the 1922 Colorado River Compact. *See* Dep't of Interior, Water and Power Resources Service, *Project Data* 355, 360 (1981).

The 1922 Colorado River Compact is crystal clear that delivery is required to the Lower Basin and this delivery takes priority over the Upper Basin's own water entitlement. Both the Upper Basin States and the Bureau have recognized this delivery obligation and its priority status. The Draft EIS was required to recognize it as well.

**D. The Draft EIS fails to consider whether the alternatives will comply with the 1922 Colorado River Compact's delivery requirement.**

Despite the pledge to adopt and implement new guidelines "consistent with the Law of the River," Draft EIS, 1-4, 1-5, 1-9, the Draft EIS does not contemplate compliance with the 1922 Colorado River Compact's requirement to deliver water at Lee Ferry. Because it fails to consider the Compact's application to each alternative and modeled scenario, the Draft EIS violates NEPA and, if adopted, would lead to a Compact violation and potential litigation.

The Draft EIS's data demonstrates that the compliance with the 1922 Colorado River Compact is at risk. In fact, in the "Compact Point 10-Year Flow Volume" analysis, Lee Ferry deliveries are below 7.5 MAF in nearly all the moderate and dry hydrology scenarios. *See* Draft EIS, TA 3-16. Deliveries below 8.25 MAF violate the Compact.

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<sup>5</sup> Available at <https://usbr.gov/uc/rm/crsp/>.

The Draft EIS does not consider whether these conditions violate the Compact or when a violation might occur. Nor does the Draft EIS consider what actions might be taken to avoid a Compact violation. And the Draft EIS presents no alternative that would implement the Compact and follow the Law of the River. “The existence of reasonable but unexamined alternatives renders an EIS inadequate.” *Ilio ‘ulaokalani Coal. v. Rumsfeld*, 464 F.3d 1083, 1095 (9th Cir. 2006). Based on its critical infrastructure planning, *see, e.g.*, Draft EIS, 2-16, O-1, the Draft EIS could have prepared scenarios that comply with the Compact’s delivery obligations. It did not do so.

NEPA requires an EIS to consider reasonably foreseeable effects and actions. *See* NEPA § 102(2)(C)(i),(ii), 42 U.S.C. § 4332(2)(C)(i),(ii). Given the current hydrology, it is reasonably foreseeable that flows at Lee Ferry will drop below deliveries required under the Compact, that the Lower Basin States will call for Compact deliveries and curtailment in the Upper Basin and enforce the Compact if those obligations are not met, and that additional releases from Upper Initial Units will be necessary to deliver water at Lee Ferry.

The Draft EIS ignores these critical issues and fails to analyze them as a reasonably foreseeable effect of the proposed federal action. “Where the information in the initial EIS was so incomplete or misleading that the decisionmaker and the public could not make an informed comparison of the alternatives, revision of an EIS may be necessary to provide ‘a reasonable, good faith, and objective presentation of the subjects required by NEPA.’” *Animal Def. Council v. Hodel*, 840 F.2d 1432, 1439 (9th Cir. 1988) (citation omitted). In fact, one federal court has already identified a Colorado River Compact call as an appropriate topic for a NEPA analysis. *See Save the Colorado v. Semonite*, No. 18-CV-03258-CMA, 2024 WL 4519201, at \*14 n.24 (D. Colo. Oct. 16, 2024) (concluding that the agency violated NEPA for other reasons but stating that given the “last few decades of severe aridity ... it is perplexing ... that the Corps dismissed the possibility of a [1922 Colorado River] compact call in its analysis of a proposed water management project”). The Draft EIS violates NEPA by failing to consider reasonable alternatives and foreseeable effects.

#### **E. The Draft EIS fails to consider compliance with storage requirements.**

To carry out the Colorado River Compact and subsequent agreements, federal law directs the Secretary of the Interior to “make provision for the storage of water in storage units of the Colorado River storage project and releases of water from Lake Powell” in a three-step priority list. 43 U.S.C. § 1552(a).

- (1) first, releases to supply treaty obligations to Mexico referenced in Article III(c) of the Colorado River Compact;
- (2) second, releases to comply with and carry out Article III(d) of the Colorado River Compact; and
- (3) third, release of carryover storage that is not needed to meet the first and second priorities to the extent the Secretary finds it reasonably necessary to assure deliveries under the first or second priorities “without impairment” of consumptive use in the Upper Basin.

*Id.* at § 1552(a)(1)-(3).

For decades, the Secretary consistently promulgated criteria that reflected these priorities and ensured compliance with the Colorado River Compact’s delivery obligations. *See Criteria for Coordinated Long-Range Operation of Colorado River Reservoirs*, 35 Fed. Reg. 8,951, 8,951-52 (June 10, 1970) (art. III(1)(a-b)). The Long-Range Operating Criteria in 1970 set an objective “to maintain a minimum release of water from Lake Powell of 8.23 million acre-feet” per year in times of shortage, or a greater amount “if necessary to deliver 75 million acre-feet at Lee Ferry for the 10-year period ending September 30, 1972.” *Id.* at 8,951 (art. II(2)(b)). This minimum objective of 8.23 MAF per year enabled the Secretary to meet demands in the required order of priorities and to supply Mexico and the Lower Basin States with enough water to avoid a violation of Articles III(c) and III(d) of the Compact. In 2005, the Secretary promulgated revisions to the Long-Range Operating Criteria that continued to include the Colorado River Basin Project Act’s order of priorities in its text, and reiterated that “the objective shall be to maintain a minimum release of water from Lake Powell of 8.23 million acre-feet” per year in times of shortage. *Review of Existing Coordinated Long-Range Operating Criteria for Colorado River Reservoirs*, 70 Fed. Reg. 15,873, 15,875 (March 29, 2005) (art. II(2)(b)).

The 2007 Guidelines declined to take a position on the interpretation of Section 602(a). 2007 Guidelines, 57. With the expiration of the 2007 Guidelines, the Long-Range Operating Criteria, as adopted in 1970 and amended in 2005, controls the quantities of water the Secretary must release from Lake Powell under annual operating plans to comply with Section 602(a).

The Draft EIS improperly changes the decades-old interpretation of Section 602(a) storage requirements as promulgated in the 1970 Long-Range Operating Criteria. The Draft EIS claims that the Colorado River Basin Project Act and the Long-Range Operating Criteria include no set formula, only factors that the Secretary may apply in his discretion. Draft EIS, 1-26. The Draft EIS also erroneously claims that the Long-Range Operating Criteria lack “specific, objective criteria to guide annual operations,” *id.* at 1-6, and do not offer “specific guidance as to exactly when, how, or to whom reductions in deliveries would be made,” *id.* at 2-6 to 2-7.

Nothing in Section 602(a) or the Long-Range Operating Criteria provides for releasing less than 8.23 MAF each year for the Lower Basin and Mexico. In addition, federal law specifies the delivery priorities, which cannot be reordered or subordinated to any other interests, including the maintenance of existing uses in the Upper Basin. Instead of following federal law, the Draft EIS inappropriately treats the default as flexible and treats storage and release of water under Section 602(a) as discretionary matters. This approach is a sharp change from the Long-Range Operating Criteria and an incorrect interpretation of Section 602(a).

When significant changes to longstanding interpretation occur in agency actions, federal agencies must explain them. *See National Cable & Telecommunications Assn. v. Brand X Internet Services*, 545 U. S. 967, 981 (2005) (“Unexplained inconsistency is” a “reason for holding an interpretation to be an arbitrary and capricious change from agency practice.”). Agencies must “display awareness” of, and “offer good reasons” for, their departure from a “decades-old practice.” *FDA v. Wages & White Lion Invs., L.L.C.*, 604 U.S. 542, 570 (2025). This duty to explain unexpected policy shifts applies to “any agency practice, interpretation, or position, whether announced through formal means, such as a rescission of a federal regulation published in the Federal Register, or less formal means, such as a change in an interpretation of a statute that arises through an enforcement action or issuance of a ROD.” *Alaska Indus. Dev. & Exp. Auth. v. Biden*, 685 F. Supp. 3d 813, 847 (D. Alaska 2023).

Contrary to this duty, the Draft EIS offers no explanation for the new interpretation of the Colorado River Basin Project Act and the departure from the Long-Range Operating Criteria. Thus, the Draft EIS would facilitate agency action that is arbitrary, capricious, an abuse of the Secretary's limited discretion under the Colorado River Basin Project Act, and would violate the Colorado River Basin Project Act and the Colorado River Compact.

Without providing for releases of stored water from the Upper Initial Units and Lake Powell to meet the Compact obligation at Lee Ferry, the Draft EIS alternatives and associated impact analysis cannot be salvaged. It is a fundamental error, and any operating guidelines that are adopted based on the Draft EIS will necessarily violate the Compact and other authorities that are premised upon compliance with the Compact. In addition, without an analysis of the impacts of Compact compliance, the Draft EIS fails to comply with NEPA's requirements, including that an EIS analyze reasonably foreseeable effects and actions.

## **II. The Draft EIS Fails to Consider the Harmful Consequences of the Proposed Alternatives**

The five alternatives in the Draft EIS assign all shortages to the Lower Basin. In four of the five scenarios, the bulk of the shortage falls on Arizona. The Basic Coordination Alternative would reduce the total deliverable supply of water through the Central Arizona Project to 236,900 acre-feet. Under the Maximum Operational Flexibility Alternative, which effectively eliminates Arizona's third and fourth priority water entitlements, Central Arizona Project Indian Priority and M&I Priority pool allocations fall to zero in the Shortage Allocation modeling.

These water supply scenarios would be devastating to the people of Arizona. The Draft EIS recognizes that the alternatives could cause Arizona to experience "a reduction or elimination of legal access to municipal water, [causing] widespread impacts on social and economic conditions ...." Draft EIS, T17-35. However, the Draft EIS does not adequately explain these impacts or address them in the alternatives.

Because it fails to meaningfully evaluate the significant economic impacts that would result from the modeled reductions to Arizona's water supply, including effects on employment, capital investment, and national supply chains, the Draft EIS is arbitrary and capricious, an abuse of discretion, and otherwise not in accordance with the law. *Cf. Nat. Res. Def. Council v. U.S. Forest Serv.*, 421 F.3d 797, 813 (9th Cir. 2005) (finding a NEPA violation because "the Forest Service presented misleading economic effects of the Plan significant to its evaluation of alternatives considered by the Plan, and the public was similarly misled in its opportunity for comment").

### **A. The extreme shortages in the Draft EIS alternatives would devastate Arizona's economy.**

The Draft EIS does not adequately capture the significant economic impacts resulting from the level of extreme shortages proposed in the alternatives. According to analysis prepared for the Central Arizona Project, the economic consequences of the Draft EIS alternatives could exceed \$2.7 trillion in total economic impact and a loss of nearly seven million job-years. *See WestWater Research, Economic Impacts to Central Arizona of Reductions in CAP Deliveries* (Feb. 2026), 5, attached to Central Arizona Project Comments on the Draft EIS and incorporated herein by reference. This could reduce the average regional GDP by 11-14%. *Id.* at 38.

Consumers will be affected. Water scarcity will drive up wholesale water prices, which will make it more difficult for providers to acquire alternative water supplies. For example, the current wholesale water price of approximately \$500 per acre-foot could skyrocket to \$12,840 per acre-foot. *Id.* at 37. Consumers also face significant supply interruptions. For example, water shortages will affect hydropower and could result in just 18% of the Hoover Dam’s generation capacity being usable. *See* Comments on the Draft EIS by the Arizona Power Authority, *et al.* Reducing generating capacity from 1304 MW to 382 MW is a substantial loss of supply. *See id.* Power supply interruptions will lead to household welfare losses. Those losses could exceed \$60 billion. WestWater Research, *supra*, at 7, Table 1; 29.

Housing will be affected. Arizona is experiencing a housing shortage and housing affordability crisis. The demand for new homes in Arizona continues to be among the highest in the nation. However, new housing development is constrained due to challenges in securing an assured water supply. Major housing projects totaling \$4 billion are stalled due to Arizona’s uncertainty over its ability to continue to rely on water from the Colorado River. *See* Comments on the Draft EIS by the Home Builders Association of Central Arizona. If water is reduced under the alternatives in the Draft EIS, the region could experience more than a 9% reduction—more than 850,000 people—in projected residents and almost 270,000 fewer housing units. *Id.* at 34, 38. Foregoing housing development could cost Arizona \$550 billion. WestWater Research, *supra*, at 7, Table 1; 29.

Businesses will be affected. Businesses face significant supply interruptions, leading to reduced business activity. These disruptions could cost Arizona businesses more than \$460 billion. *Id.* at 7, Table 1; 29. This also will cost Arizonans, as employment impacts could result in an 8% reduction in projected employment. *Id.* at 33-34. Arizona also risks potential loss or deferral of large, advanced manufacturing investments in Central Arizona, such as the \$165 billion semiconductor fabrication and packaging facilities recently announced by Taiwan Semiconductor Manufacturing Company. This massive facility has drawn additional advanced manufacturing industries in the manufacturing corridor around it. The long-term viability of this and other advanced manufacturing projects depends on corporate assessments of regulatory certainty, even where near-term physical water availability is adequate. Losing this facility could reduce total economic output by approximately \$84 billion, household income by roughly \$24 billion, and state and local tax revenues by about \$3.6 billion. Arizona is central to the Trump Administration’s efforts to expand domestic semiconductor manufacturing and artificial intelligence infrastructure.

Tribes will be affected. The reductions in the Draft EIS will leave tribes with less surplus water available to sell. “Under the Baseline Scenario, tribes generate approximately 40,000 acre-foot annually of surplus water available for storage and sale; under the Basic Coordination Scenario, this volume falls to approximately 150 acre-feet, and under Extreme Storage the volume is completely eliminated.” *Id.* at 29. Those losses could top \$60 billion. *Id.*; *see also id.* at 7, Table 1. Despite these impacts, the Draft EIS does not analyze impacts to tribal water settlements.

These are likely to be only a fraction of the likely economic impacts that Arizona will experience under the alternatives in the Draft EIS. Arizona will experience costs from increased groundwater pumping, aquifer depletion, land subsidence, ecosystem degradation, increased energy costs from greater pumping depths, and the investments in infrastructure required to switch from surface water to groundwater.

The Draft EIS does not identify the massive economic impacts to Arizona caused by the operational decisions outlined in the alternatives. Accordingly, the Draft EIS fails to meet the requirements of NEPA.

**B. The extreme shortages in the Draft EIS alternatives would harm America’s national security.**

Arizona is a critical hub for the nation’s defense sector, military installations, and surrounding communities. For example, Luke Air Force Base supports approximately 6,000 active-duty members, 15,000 family members, 1,200 civilian employees, and more than 80,000 military retirees in the surrounding region. This base contributes an estimated \$2.4 billion annually to Arizona’s economy. Reliable Colorado River supplies are essential to sustaining this base and the communities that depend on it, as well as supporting other key national security infrastructure for our country.

The Trump Administration also has made increasing domestic production of critical minerals a national priority. *See Immediate Measures to Increase American Mineral Production*, Exec. Order 14241, 90 Fed. Reg. 13673 (Mar. 20, 2025). Mining provides high-quality employment and economic activity in rural and tribal communities across Arizona. In 2024, the total economic impact of mining in Arizona was more than \$21 billion and approximately 59,000 jobs. *See Arizona Mining Association, 2024 Economic Impact Study of the Arizona Mining Industry* (2024). Arizona’s continued ability to sustain advanced manufacturing and mineral production depends on stable access to Colorado River water.

The federal government has identified production of copper and associated byproduct minerals as critical to national security, electricity generation and infrastructure, and advanced manufacturing. As President Trump explained last year, “[c]opper is a critical material essential to the national security, economic strength, and industrial resilience of the United States” because it plays “a vital role in defense applications, infrastructure, and emerging technologies, including clean energy, electric vehicles, and advanced electronics. *Addressing the Threat to National Security from Imports of Copper*, Exec. Order 14220, 90 Fed. Reg. 11001 (February 28, 2025).

Because of copper’s importance to the economic and national security interests of the United States, President Trump has made clear that it is “the policy of the United States to ensure a reliable, secure, and resilient domestic copper supply chain.” *Id.* The Trump Administration has also ordered measures to increase the production of copper and other important minerals as well as included copper on the Department of the Interior’s list of critical minerals. *Immediate Measures to Increase American Mineral Production*, Exec. Order 14241, 90 Fed. Reg. 13673 (Mar. 20, 2025); *Final 2025 List of Critical Minerals*, Department of the Interior, U.S. Geological Survey, 90 Fed. Reg. 50494 (November 7, 2025).

Arizona is home to the largest copper mine in North America, the Morenci Mine, which produces almost one-third of the United States’ domestic copper supply. This operation alone is responsible for \$1.6 billion in economic benefits and more than 4,000 jobs. *See Comments on the Draft EIS by Freeport McMoRan*. Arizona is also home to one of only two remaining primary copper smelters in the United States in Miami, Arizona. *See id.*

The alternatives in the Draft EIS could result in substantial and front-loaded water shortages. Significant, unplanned reductions in water deliveries to mining operations, which are water intensive, cannot be absorbed simply by incremental efficiency measures. Instead, reductions can force curtailments or shutdowns. As Freeport-McMoRan warns, a material reduction in water availability to its Arizona operations would directly reduce domestic copper production and could increase dependence on imported copper from foreign nations, including China. *See id.*

The Draft EIS does not adequately assess the impacts on critical mineral production. It does not meaningfully analyze how various shortage volumes, timing, frequency, or resulting changes in State policies to protect municipal and power customers from reduced delivery would affect mining production operations. The Draft EIS also does not adequately distinguish between discretionary industrial uses and mining uses that are critical to national security objectives. Finally, the Draft EIS understates or omits potential job losses and economic impacts from mining operation impacts, downstream effects on manufacturing and national security, and increased dependence on foreign countries.

**C. The extreme shortages in the Draft EIS alternatives would harm infrastructure and public health.**

The Central Arizona Project (“CAP”) is a 336-mile-long water conveyance system critical to the delivery of Colorado River water to central Arizona. The CAP is owned by the Bureau and is operated, maintained, and managed by the Central Arizona Water Conservation District. The CAP infrastructure was not intended to withstand extended periods of low water levels or dry-ups within the system, but instead was designed and constructed by the Bureau with the assumption that water would be present in CAP’s infrastructure continually. For example, the CAP canal lining was constructed using concrete without rebar support and is physically vulnerable to large changes in temperature when dry, leading to significant cracking, buckling, and potential catastrophic failure.

The long-term health of CAP’s physical systems — including the 336 miles of concrete-lined canal, 15 pumping plants, mechanical equipment, electrical equipment, high-voltage electrical systems, and major siphons — relies heavily on the stabilizing and protective effects of continuous water presence and regular operational cycles. According to CAP’s estimates, even one year where insufficient water flows through the CAP may cause up to two years of downtime for the canal. This would leave Central Arizona without Colorado River water for up to three years at a price tag of more than \$350 million dollars. *See* Comments on the Draft EIS by the Central Arizona Project. The damage and repair costs resulting from a dry-up could be avoided if the Central Arizona Water Conservation District is able to divert sufficient minimum water volumes necessary to keep the canal full and flowing and the pumps cycling for maintenance.

Failing to maintain minimum water levels will have public health consequences as well. For example, the largest private water utility in Arizona, EPCOR USA, serves more than 15,000 residents who have no water source besides Colorado River water. *See* Comments on the Draft EIS by EPCOR USA. Shortage reductions could threaten the ability to provide water for public health and safety, including access to potable water, sanitation, and fire protection. The Draft EIS’s discussion of urban heat also does not address how reduced municipal water availability would increase heat-related illness and mortality.

The Draft EIS fails to analyze these infrastructure and public health impacts or determine the total annual diversion volumes required to avoid the impacts. It is thus arbitrary and capricious, an abuse of discretion, and not in accordance with the law.

**D. The extreme shortages in the Draft EIS alternatives would harm agriculture.**

The Central Arizona Project is an essential source of irrigation water for agriculture in Arizona irrigation and drainage districts,<sup>6</sup> comprising more than 260,000 acres located primarily in Pinal County, Arizona. CAP water delivered to the Districts helps sustain some of the most productive and efficient agriculture in the United States. A December 2018 study conducted by the University of Arizona found that, relative to all U.S. counties, Pinal County ranks in the top 2% for total value of agricultural sales, the top 1% for animal product sales, the top 1% for milk sales, the top 3% for total crop sales, and the top 7% for vegetable, fruit, and nut production. Ashley Kerna Bickel *et al.*, *Contribution of On-Farm Agriculture and Agribusiness to the Pinal County Economy* (2018).<sup>7</sup> Water from the CAP system is crucial for the viability of agriculture in the Districts, which remains a foundation for the regional economy and a critical resource for local and national food security.

The Districts already have suffered severe water supply reductions under the current 2007 Guidelines and Drought Contingency Plan, resulting in farmers fallowing approximately half of all acres. Of the land remaining in agricultural production today, more than 30,000 acres currently rely entirely on CAP water for irrigation. The additional reductions posed by the Draft EIS alternatives threaten to eliminate much, if not all, of the CAP water supplies on which those farmers rely.

The Draft EIS analysis of economic impacts of the alternatives pertaining to central Arizona agriculture is inadequate and fails to account for cascading impacts affecting the broader socioeconomic landscape resulting from large-scale, regional fallowing of agricultural land. Although the Draft EIS acknowledges that each alternative will increase fallowed cropland and associated losses of farm output generally, *see, e.g.*, Draft EIS, 3-178; 16-41 to 16-48, the Draft EIS fails to recognize that implementing those alternatives likely will result in fallowing most or all of the acres in central Arizona regions now reliant on CAP supplies abruptly and all at once. In those areas, water supply reductions resulting from the Draft EIS alternatives would not just cause increased fallowing and reduced farm output, but effectively eliminate all agriculture. That loss of agriculture would seriously threaten surrounding non-agricultural businesses that rely on agriculture-related income and agribusiness enterprises that are necessary to sustain agriculture on the remaining acres that may not face the immediate loss of all irrigation water supplies. Thus, the socioeconomic impacts of the Draft EIS alternatives on Central Arizona agriculture extend far beyond the fallowing and farm output effects analyzed in the Draft EIS.

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<sup>6</sup> Central Arizona Irrigation and Drainage District, Maricopa-Stanfield Irrigation & Drainage District, New Magma Irrigation and Drainage District, Queen Creek Irrigation District, and San Carlos Irrigation and Drainage District (collectively “Districts”).

<sup>7</sup> Available at [https://climas.arizona.edu/sites/default/files/migrated\\_media/pdfpinal-county-12-23-2018\\_5.pdf](https://climas.arizona.edu/sites/default/files/migrated_media/pdfpinal-county-12-23-2018_5.pdf).

Furthermore, additional large-scale cropland fallowing in Pinal County under the Draft EIS alternatives would have significant adverse environmental and health impacts for the majority of Arizona’s residents, which are not addressed in the Draft EIS. Pinal County includes more than 500,000 residents, and the Districts are situated directly between, and in close proximity to, Arizona’s main population centers in the Phoenix and Tucson metro areas. Thus, the scale of increased fallowing resulting from implementation of any of the Draft EIS alternatives would result in significant erosion, soil degradation, and windblown dust affecting most of Arizona’s residents.

The Draft EIS failed to consider important economic, national security, agriculture, and environmental impacts. This failure is arbitrary and capricious, an abuse of discretion, and not in accordance with the law.

### **III. The Draft EIS Fails NEPA’s Requirements**

#### **A. The No Action Alternative in the Draft EIS does not satisfy NEPA**

As the Draft EIS acknowledges, *see* Draft EIS, 2-6, NEPA requires an EIS to discuss “any negative environmental impacts of not implementing the proposed agency action in the case of a no action alternative,” 42 U.S.C. § 4332(2)(C)(iii). The Draft EIS’s discussion of “no action” alternatives falls short of the statutory standard.

First, the Draft EIS refers to a scenario as a “no action alternative” but declines to use that scenario as a baseline against which other alternatives may be measured. As the Draft EIS explains:

A No Action Alternative typically serves as an extension of current operations to provide a benchmark to compare the extent and magnitude of the impacts from each action alternative. However ... due to the expiration of current domestic and international implementing agreements, the No Action Alternative represents a change in operations. As such, the No Action Alternative in this EIS does not serve as an appropriate baseline to compare impacts.

Draft EIS, 3-5.

To try to create a baseline, the Draft EIS uses the CCS Comparative Baseline scenario, “to assess the impacts if operations continued under the current direction and strategies.” Draft EIS, 3-5. “This framework relies on strategies and agreements that expire in 2026, including the 2007 Interim Guidelines (as amended), the 2019 [Drought Contingency Plan (“DCP”)], Minute 323 of the 1944 Water Treaty, and other agreements.” *Id.* at 3-5 n.3. In other words, the baseline reflects a hypothetical “continuation of the primary existing agreements for Colorado River management including the 2007 Interim Guidelines, the 2019 DCP and Minute 323 of the 1944 Water Treaty.” *Id.* at 3-5.

But these agreements are set to expire. The expiration of the agreements is a fundamental assumption of the Draft EIS and a primary impetus for the federal action the Draft EIS discusses. Draft EIS, 1-6. The expiring agreements also are premised upon the Basin States’ forbearance of their rights under the Compact, or upon legislation that also expires. Carrying forward the

framework from the 2007 Guidelines or the 2019 Drought Contingency Plan is not possible without a similar framework of forbearance supporting a consensus alternative. It cannot be the basis for a no action alternative under NEPA.

The no action alternative should represent operations dictated by the Law of the River remaining after expiration of the 2007 Guidelines in December 2026. This includes the 1970 Long-Range Operating Criteria, as amended in 2005, which requires a determination of how much water is needed in storage to satisfy future delivery requirement to Mexico and to the Lower Basin and assumes a default objective to release 8.23 MAF to Mexico and to the Lower Basin. The Bureau must confront which laws are in place and unaffected by the expiration of the 2007 Guidelines. Informed decision-making under NEPA can only take place once the Bureau clearly articulates the rule set applicable to the no action alternative.

**B. The Draft EIS must clearly identify the “additional authorities” or “new agreements” required to implement the alternatives.**

Under NEPA, an EIS must discuss “a reasonable range of alternatives.” 42 U.S.C. § 4332(2)(C)(iii). Reasonable alternatives “meet the purpose and need for [federal] action, [and] are within the jurisdiction of the bureau...” *DOI Handbook of NEPA Procedures* (DOI NEPA Handbook), 6.1(v). They are “within the bureaus’ legal authority to implement,” *id.* at 2.3(a)(3), and—because they must meet the purpose and need for federal action, *id.* at Appendix 1, § 4(1) — must consider “the bureau’s statutory authority” to take such action, *id.* at 2.2.

Consistent with the above standards, the Draft EIS’s explanation for omitting some alternatives from detailed analysis generally treats inconsistency with applicable federal law as a basis to disqualify alternatives from further consideration. Draft EIS, 2-35 to 2-36. The Draft EIS correctly concludes that “new legal authorities that would result in impracticalities or are unlikely to be widely acceptable among stakeholders are too speculative to include in this Draft EIS.” *Id.* at 2-36 & n.26.

However, elsewhere the Draft EIS acknowledges that it would need to seek additional authorities to implement the described operations. *Id.* at 2-11 to 2-12. This qualification is included in the Basic Coordination Alternative, despite the contrary statement that the Basic Coordination Alternative is designed to be implementable without agreements among Basin water users.” *Id.* at 2-11; *see also id.* at 2-13 n.6 (“This alternative proposes that the Secretary may seek new authorities to implement additional measures ...”). It is also present in the Enhanced Coordination Alternative. *Id.* at 2-16 & n.18. “New or modified legal authorities to implement new interim guidelines” was not necessarily a basis for rejecting the alternative, but “new legal authorities that would result in impracticalities or are unlikely to be widely acceptable among stakeholders are too speculative to include in this Draft EIS.” *Id.* at 2-36 n.26. Yet another qualification in the alternatives description is the need for “new agreements among Basin water users to fully implement.” *Id.* at 2-6. All these qualifications allude to “new agreements” or “new authorities,” but the Draft EIS does not clearly identify key details necessary to evaluate and compare the alternative.

An EIS that supports future operating guidelines must identify what specific authority the Bureau believes that it currently lacks, what additional authority the Bureau believes that it needs to protect critical infrastructure, and what specific “critical infrastructure” the Bureau refers to and what other means the Bureau could use to protect such infrastructure (e.g., major repairs, structural

changes, or other “water management mechanisms”) without additional legal authority. Similarly, an EIS that supports future operating guidelines must clearly identify what agreement is needed by Basin water users. This is especially true when “agreement” by “Basin water users” requires forbearance by a sovereign state and its legislature, as is the case in Arizona. *See* Ariz. Rev. Stat. § 45-106. This is highly relevant information to judge and compare alternatives, and without this information, the Draft EIS does not meet the requirements of NEPA. *See Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989) (NEPA “ensures that the agency, in reaching its decision, will have available, and will carefully consider, detailed information concerning significant environmental impacts ... [and] ensures that important effects will not be overlooked or underestimated only to be discovered after resources have been committed or the die otherwise cast.”).

**C. The Draft EIS fails to include a rate impact analysis for Lower Basin hydropower resources.**

The Draft EIS is also incomplete because it does not include a rate impact analysis for Lower Basin hydropower resources or a market analysis for Upper or Lower Basin hydropower resources to Lower Basin contractors. Arizona public power entities and customer-owned power entities—including irrigation districts, electrical districts, electric cooperatives, municipally owned electric distribution providers, the Salt River Project, and the Central Arizona Project—receive a significant portion of the federal hydroelectric power generated by both the Lower Basin and Upper Basin Colorado River Storage Project resources. Protecting these resources from unnecessary reductions and preserving the ability to continue generating dependable hydroelectric power from Glen Canyon and Hoover Dams is thus critical to Arizona’s interests, including the ability to maintain reliable and affordable power during a period of rapidly increasing demand. Any reduction in output or availability from these resources will require the procurement of costly alternatives, while any impacts to infrastructure or maintenance costs will result in higher rates to contractors.

Hydropower is a legislative purpose included in the enabling legislation to build the Lower and Upper Basin dams. Understanding the rate impacts to hydropower contractors is fundamental to making a decision about a preferred alternative. In order for the record to be complete, the Draft EIS must be withdrawn or revised to include the required rate impact and market analyses. Ideally, the analyses would also include recommendations for rate mitigation tools and strategies to help maintain the affordability and reliability of the hydropower resource.

**D. The Draft EIS fails to analyze reasonably foreseeable of the proposed alternatives.**

This comment identifies a number of reasonably foreseeable effects of the proposed alternatives that are not analyzed in the Draft EIS. These include the reasonably foreseeable Compact Call that will occur if Compact deliveries are not maintained to Mexico and the Lower Basin and the resulting need for curtailment in the Upper Basin. Reasonably foreseeable effects also include the water quality impacts to Arizona’s water supply under shortage conditions, the fallowing to agriculture acres and associated impacts to irrigation districts and their customers, and the significant economic impacts to Arizona caused by the extreme shortages contemplated in the proposed alternatives. These impacts necessitate withdrawing or revising the Draft EIS. The lack of analysis of the reasonably foreseeable effects also means that the Draft EIS is wholly deficient under NEPA.

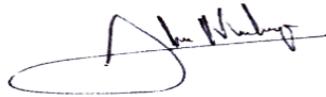
## CONCLUSION

The Draft EIS violates the Law of the River, the 1922 Colorado River Compact, and NEPA. The water shortages that it contemplates would harm America's national security and Arizona's economy, agriculture, and infrastructure. The Draft EIS is arbitrary and capricious, an abuse of discretion, and not in accordance with the law. The Bureau should withdraw or revise the Draft EIS to ensure that its guidelines follow the law and address the impacts to jobs, homes, and businesses.

Sincerely,



Warren Petersen  
President of the Arizona Senate



Steve B. Montenegro  
Speaker of the Arizona House of Representatives



cc: Secretary Doug Burgum