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VIA ELECTRONIC MAIL
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Bureau of Reclamation
Attn: BCOO-1000
P.O. Box 61470
Boulder City, Nevada 89006

Re: Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead – Unit B Irrigation & Drainage District Comment on the Draft Environmental Impact Statement

I write on behalf of the Unit B Irrigation & Drainage District to comment on the United States Bureau of Reclamation’s Draft Environmental Impact Statement for Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead (“DEIS”).

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 holds a present perfected right in the amount of 6,800 acre feet with a priority date of July 8, 1905, and has a priority 3 contract beneficial use right for the irrigation of up to 3,305 acres of land. The District and its water users rely on the Colorado River to deliver water to their fields and homes. Because of this, the District has a vested interest in the River and its post-2026 operations.

As such, the District provides these comments and suggests a number of elements that require further analysis and consideration before the Bureau finalizes its Environmental Impact Statement.

1. The Secretary must impose reductions within the priority system and the Law of the River.

The District, and other water users on the River, have come to rely on the Law of the River and the Bureau's commitment to it and the established rights and water delivery contracts signed by the United States many decades ago. A key tenet of the Law of the River is the priority system. Users have acted in line with and have placed enormous reliance on the system and the whole of the Law of the River for almost a century. Proper application of the priority system is vital and the District will not compromise on those principles.

The DEIS correctly recognizes that absent voluntary consent, the Bureau must allocate deliveries and reductions pursuant to the Law of the River. The District appreciates the Bureau's acknowledgment that pro rata distributions and distributions without reductions to Native American tribes are offered for analysis only and do not represent its interpretation of the Law of the River. The DEIS correctly states that these distributions diverge from applicable law and the priority system and may not be implementable.

Within the Lower Basin, that priority system operates as follows. Reclamation, on behalf of the Secretary, first satisfies present perfected rights ("PPRs") without regard to state lines. See *Arizona v. California*, 376 U.S. 340, 342 (1964); 43 U.S.C. § 1521; *Arizona v. California*, 547 U.S. 150, 155 (2006). Reclamation then satisfies non-PPR users with contract dates prior to 1968 before satisfying post-1968 users, as stated in the Colorado River Basin Project Act ("CRBPA"). 43 U.S.C. § 1521(b). With respect to the District, Reclamation must first satisfy its present perfected right before delivery to any user with a later present perfected right priority date. After satisfying all PPR rights, Reclamation must then satisfy contract rights with priority dates prior to 1968, which includes the District's 1952 priority 3 right.

The District has a senior water right and, as a result, enjoys less risk on the River. But the District also appreciates the risks and likely impacts to more junior users in times of shortage. As such, the District believes that the modeling of other non-priority based distributions is still appropriate for examining a broad range of impacts. As we all work to share a limited resource, voluntary arrangements distributing water from senior to junior users seem inevitable. Nevertheless, the

priority system must continue to be the foundation of the operation of the Colorado River.

The District also endorses the comments made by the Yuma County Water Users' Association as they relate to the Law of the River and the priority system.

2. The DEIS fails to sufficiently analyze the impacts of the proposed Alternatives on agriculture and rural communities.

NEPA requires Reclamation to analyze the effects of a decision or federal action of this proportion in an EIS with reasonable specificity. The Ninth Circuit has repeatedly held that "general statements" about future impacts do not satisfy NEPA. *Or. Nat. Res. Council Fund v. Brong*, 492 F.3d 1120, 1134 (9th Cir. 2007); *see, e.g., Ctr. for Biological Diversity v. Bernhardt*, 982 F.3d 723, 740 (9th Cir. 2020). This means that any EIS analyzing restrictions on Colorado River water usage must analyze environmental impacts *at the level of the specific users denied water*. It is not enough to simply include shortage allocations – the Bureau must also analyze and consider the impacts of those reductions on each user and its community.

While the District holds a senior right under the Law of the River and is less likely to see reductions on the same scale as other water users, the impacts of reducing the District's water deliveries are significant and far more impactful than contemplated in the DEIS as described below.

- The Colorado River is the District's only available water supply. Its growers rely solely on the River to irrigate their crops. As a result, reductions to the District's water supply result in immediate impacts to production.

- Growers in the District help provide food and fiber for the country and are part of the region's larger ag economy.

- Yuma agriculture also contributes to national defense by supporting local military bases and operations. Yuma's Marine Corps Air Station heavily relies on agriculture to suppress regional dust and air particulates to support and protect its military aviation operations. A reduction to agricultural water supplies in the Yuma area not only impacts ag production but also military operations. The District endorses, and incorporates herein, the comments made by the other Yuma districts on this issue and its related impacts.

- Growers in the District have made, and continue to make, significant investments and improvements in on-farm management and irrigation practices. Fields are dead-leveled using GPS and laser leveling. Growers use high flow turnouts and shortened runs. And growers continue to innovate and invest in water saving practices. The District has also made significant improvements and investments in its infrastructure – cement-lining or piping its canals and laterals.

Given water use efficiencies in the District, reductions in water deliveries will be even harder to manage. Where others may be able to deal with reductions in supply by becoming more efficient (allowing them to do the same with less), there is little to no room for further improvement or additional efficiencies in the District, meaning a reduction will likely have a direct impact on production and the local economy.

- The assumption that water delivery reductions will only largely result in ag land use changes in the form of fallowing lower value crops is not entirely accurate, leaving that analysis incomplete. Decisions about how agriculture will respond to shortage will be complex. Growers in Unit B mainly grow these “lower value crops.” But those crops are also the ones that experience the most market volatility. A crop that is not as valuable today, could be at some point(s) in the future. A grower will take a myriad of things into consideration in making a decision on how to manage with less water – one grower may fallow the lower value rotational crop, but another may decide to take land out of production entirely, leaving enough water for a normal growing cycle on other lands. These complexities should be taken into consideration when evaluating possible ag land use changes.

- Impacts to the District and the local economy are intensified when you take into consideration the possible impacts of reduced water deliveries for other Yuma area irrigation districts. The Yuma economy depends on each of these districts’ productivity. An impact to any one district results in disruption to the economy, but an impact to any combination of districts could be catastrophic. This multiplier should be considered and analyzed in determining impacts to the District and the Yuma ag economy.

- Impacts to air quality in the Yuma area are also insufficiently analyzed. Reduced water deliveries in an area made up of almost entirely ag land will most certainly result in increased fugitive dust and poorer air quality. This result is entirely foreseeable and should be fully analyzed in the DEIS. It is

especially important for Yuma County because, as the DEIS recognizes, much of the area has been designated an O₃ marginal non-attainment and a PM-10 moderate non-attainment area.

- The DEIS does not analyze the reductions that might be necessary at deadpool elevations. Reductions at these levels will be the most severe and will impact users at every priority, even the most senior. The Bureau most certainly needs to consider the most extreme and dire consequences of its proposed actions.

The DEIS does not adequately recognize or analyze these impacts or fully consider whether the District and its surrounding community would be able to manage without its full Colorado River supply. To comply with NEPA, the final EIS should include this analysis.

It should be noted that the DEIS also fails to consider the substantial economic impacts to other areas and sectors across the State of Arizona. Each of the five Alternatives presented in the DEIS lead to severe reductions in Arizona's Colorado River supply. These reductions largely hit Central Arizona Project water users, significantly impacting municipal and industrial supplies across central Arizona. Arizona's mainstem users are also impacted by these reductions in supply. Those cities, towns and water users along the mainstem of the River almost exclusively rely on Colorado River water – these users have no alternative supplies. Yet there is not a thorough analysis of the impacts of reductions to central Arizona and mainstem communities. This analysis almost certainly needs to be included in the final EIS. The District supports the comments of central Arizona and mainstem water users as they relate to those economic impacts.

- 3. While the District acknowledges the importance and utility of a storage program for the River's many users, the Bureau must carefully analyze it to ensure no harm is done to other users or the system.**

The District stresses that the Basin states and water users will need every possible tool available to address the challenges we collectively face on the River. The District understands that a reasonable, well-constructed storage program is one of those tools and may be the most significant. The District therefore supports a program that is fair, accessible, and beneficial to all participants without harming non-participants or the system.

The District believes that a well-constructed storage program is likely the best mechanism for facilitating and allowing for the transactions between junior and senior users that will likely be necessary to address significant reductions to juniors. The District, and others, believe a storage program provides great opportunity to establish a framework where agriculture water users can work with others voluntarily and in proactive and creative ways. For example, it could allow for some users, including the District, to voluntarily store small amounts of water, incrementally over time, to be accessed in larger volumes in time of need. It also allows for users to save water in wet years that it may later use in a dry year. These tools or methods most certainly lead to better and advanced planning, minimizing the need to react in a crisis and avoiding large demands all at once that senior users may be unable to meet. This feature will undoubtedly benefit a large number of users.

The DEIS analyzes some elements of a future storage program, but the analysis is incomplete. The Bureau cannot demonstrate the possible impacts to the system or to water users without full analysis of all of the elements of a potential storage program.

Most importantly, the Bureau should consider and analyze the following aspects in particular:

- In order for a storage program to provide benefits to the broadest set of users, it needs to be fair and accessible. Past programs have suffered from this flaw and have largely been built for the benefit of junior users. Any new program needs to allow for participation by all users and must allow for and recognize the conservation activities more regularly used by senior users, particularly for agriculture users and irrigation districts. The current Intentionally Created Surplus (“ICS”) system draws arbitrary lines between eligible and ineligible conservation measures in favor of junior users and their methods of conservation. Any future program must address these inconsistencies and inequities in order to generate support from and participation by the District.

- Any new storage program and related operational guidelines must truly account for the water available in the system. In the existing ICS program, stored water was not “operationally neutral” and was included as available water in determining reductions. The system looked fuller than it actually was and this meant junior users took less reductions than they otherwise would have. It had

real consequences for the system and threatened the water supplies of non-participants and senior users. In any new storage program, storage water should not be treated as part of system contents when calculating available supply, deliveries, and any resulting reductions.

- Any new storage program must also honor the priority system. The Law of the River does not allow users to avoid the priority system by delaying the delivery of water and reserving it for use at some later date. Storage water should retain the priority of the water used to create it. In effect, this means that storage water can only be delivered when users of the same priority as the storage water being requested are receiving deliveries. Or put a different way, junior storage water cannot be delivered when a more senior user is experiencing reduced deliveries. Understanding the need for flexibility in dry years or in times of significant cuts, a senior user could waive this requirement. However, the priority system must also be the foundation from which we work to develop a new storage program.

- The current storage program provides protections for lower elevations in Lake Mead, specifically at or below elevation 1025. The Bureau should similarly determine and analyze such restrictions to protect critical infrastructure in any new storage program.

4. The DEIS fails to include and properly analyze the obligations of the Upper Basin states under the Colorado River Compact and the Bureau's operation of the CRSP Upper Initial Units.

The Colorado River Compact is an agreement between the seven Basin States, codified by each state and ratified by Congress. It is a cornerstone of the Law of the River, and the Lower Basin states have particularly come to rely on the Bureau's commitment to it, which has been evidenced clearly and repeatedly up until the DEIS. However, the DEIS fails to recognize and explicitly analyze the Upper Basin states' obligations to deliver water to the Lower Basin in compliance with the Compact. The DEIS also fails to consider and analyze the full extent of the Secretary's authority to release water from the CRSP Upper Initial Units to insure delivery of water sufficient to comply with the Compact. The inclusion of, and correct assumptions on, these issues are essential to the modeling and analysis required of this process. Without these elements, Lower Basin users cannot know the true impacts of the Bureau's actions. The District generally supports the

comments made by other Lower Basin users explaining these issues and the shortfalls of the DEIS in more detail.

5. Engineering Solutions for Lake Powell

The DEIS fails to consider or analyze engineering solutions that would protect critical infrastructure at Glen Canyon Dam and maintain access to millions of acre feet in Lake Powell that would otherwise be inaccessible. Since 2022, the Bureau has asserted that it must protect elevation 3490 in Lake Powell to retain physical release capacity and avoid damaging critical infrastructure in Glen Canyon Dam. However, the DEIS seems to assume that there is no fix or will be no fix for those issues even though the Bureau has explored a number of engineering solutions. No Alternative in the DEIS analyzes the incorporation of those solutions and/or the full operation of Glen Canyon Dam. The absence of this analysis has effectively excluded approximately 3.74 million acre feet in storage from delivery, further limiting the Bureau's ability to ensure Compact delivery requirements are satisfied and resulting in more severe reductions in the Lower Basin across the Alternatives.

6. Mitigation under the Endangered Species Act

Any selection of a preferred alternative in the final EIS will likely result in the need for additional mitigation under the Endangered Species Act. While mitigation cannot solely fall on the Lower Basin states, the Lower Colorado River Multi-Species Conservation Program ("LCR MSCP") should be expanded to cover any additionally required mitigation in the Lower Basin and should be done in such a way to ensure Endangered Species Act §§ 7 and 10 coverage for water and hydropower users. Reclamation should also ensure that the process for expansion of the LCR MSCP does not result in gaps of coverage for water and hydropower users as we transition from the existing program to the newly expanded program under the Post-2026 Guidelines.

The District is still hopeful for a consensus agreement amongst the Basin States. The Basin's best chance for success likely falls outside of the Bureau's authority. The District and the other users in the Basin are looking for certainty and predictability on a River system that no longer provides a reliable and steady supply. Any set of guidelines must bolster stability, create new tools to allow for

innovation and flexibility amongst users, and be long term for the sake of predictability and future investment throughout the Basin.

The District appreciates the Bureau's time, effort and dedication to this process and looks forward to a plan that protects the system and rises to the challenges the River continues to place in front of us. Thank you for your consideration.

Sincerely,

SCOTT & ROGERS, P.L.L.C.

A handwritten signature in blue ink, appearing to read "M. Scott". The signature is fluid and cursive, with a large initial "M" and a long, sweeping tail.

Meghan C. Scott, Esq.