



# CENTRAL UTAH WATER CONSERVANCY DISTRICT

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March 2, 2026

Bureau of Reclamation  
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VIA ELECTRONIC MAIL  
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Subject: Draft Environmental Impact Statement Colorado River Post 2026 Operations - Comments

Dear Commissioner Cameron:

Central Utah Water Conservancy District (CUWCD) appreciates the opportunity to comment on the Draft Environmental Impact Statement (DEIS) for Colorado River Post-2026 Operations. CUWCD recognizes and appreciates the significant effort required to produce this DEIS within a compressed timeframe, especially given the evolving conditions, complexities, and the many interdependent considerations across the Basin.

At the same time, however, we are concerned that the 45-day review period provided by the Bureau of Reclamation (Reclamation) for the DEIS was far too short to allow thorough analysis of a 900-page document, with over 1,000 more pages of technical appendices, on a matter of such importance. Accordingly, we want to make clear that CUWCD reserves its right to provide supplemental comments if and as additional information becomes available. As the entity responsible for delivering water to more than two million Utahns—and the largest user of Colorado River water in Utah—CUWCD has a strong interest in ensuring that the post-2026 operational framework promotes reliability, sustainability, and long-term resilience for all Colorado River water users.

### **CUWCD and the Central Utah Project**

CUWCD is the local sponsor of the Bonneville Unit (BU) of the Central Utah Project (CUP) and is responsible for operations, maintenance, replacement, and repayment obligations of the BU to the federal government, in addition to fulfilling wholesale water delivery contracts to agricultural and municipal and industrial (M&I) users in the Colorado River and Great Basins. A brief description of these facilities, and associated programs, is provided hereafter to provide context to our subsequent comments and questions.



The CUP is the State of Utah's largest and most comprehensive federal water development project, and it provides water for a broad range of critical uses: M&I, irrigation, hydroelectric power, fish and wildlife, conservation, and recreation, as well as improved flood control and water quality.

The CUP was authorized as a participating project of the Colorado River Storage Project Act of 1956 (70 Stat. 105) for the express purpose of making it possible to utilize a portion of Utah's Colorado River allotment and yield.

The BU of the CUP is a complex trans basin water development system that collects, stores, and conveys Colorado River Basin water from tributaries to the Duchesne River, a Green River tributary in Uinta Basin in Eastern Utah, and water from the Provo River in the Great Basin in Central Utah.

Water is delivered to users within the Uinta and Great Basins through an integrated network of reservoirs, tunnels, pipelines, and aqueducts. Water is first gathered by the Strawberry Aqueduct and Collection System, which diverts water from Rock Creek and nine other Duchesne River tributaries via approximately 37 miles of tunnels, pipelines, and aqueducts, regulated in part by Upper Stillwater and Currant Creek Reservoirs, and delivers those waters to Strawberry Reservoir for storage. From Strawberry Reservoir, water is diverted trans basin westward through the Wasatch Mountains, and either directly delivered to customers or released to the Spanish Fork River and diverted to other conveyance facilities. BU water flows into downstream delivery systems, including pipelines serving the Utah Lake Drainage Basin, to supply municipal, industrial, agricultural, and environmental needs in Utah Valley and, through interconnected facilities, the Salt Lake Valley, forming a continuous conveyance corridor from high-elevation collection and storage in the Uinta Mountains to population centers along the Wasatch Front. Another part of the BU stores water from the Provo River in Jordanelle Reservoir. It is also possible to store Colorado River Basin water from the Strawberry Aqueduct and Collection System in Jordanelle Reservoir through a series of exchanges.

The Central Utah Project Completion Act (CUPCA) was enacted on October 30, 1992, to complete the CUP. This unique federal legislation transferred responsibility for BU planning and construction activities to the CUWCD. CUPCA also established precedent-setting water management improvement (CUPCA 207) requirements and created the Utah Reclamation Mitigation and Conservation Commission (URMCC), which designs, funds, and implements projects to protect and restore fish, wildlife, ecosystems, and related recreation resources. CUPCA also contains provisions that constitute the Ute Indian Rights Settlement.

### **Commitment to Sustainability**

CUWCD has invested in – and demonstrated a longstanding commitment to – thoughtful and prudent stewardship of these water and infrastructure resources. Contrary to some of the misleading narratives originating from Lower Basin special interest groups, we (and others) have prioritized sustainable, responsible water management even as we support robust economic growth. A few examples follow.

#### *Water Management Improvement and Conservation*

Pursuant to CUPCA, CUWCD has created and managed a Water Management Improvement Plan (WMIP) for three decades. More than \$230 million of local and federal funds have been invested in WMIP water



conservation projects, resulting in over 2.5 million acre-feet (MAF) of conserved water with an ongoing annual conservation projection of approximately 140 thousand acre-feet (KAF) – 137 percent of the total annual contracted trans basin BU water supply to the Wasatch Front. The conservation achieved by WMIP has far exceeded any statutory mandates.

CUWCD also manages a locally funded water conservation program. The program includes traditional M&I outdoor landscaping and indoor fixture efficiency components, as well as less traditional agricultural components. Even though CUWCD cannot legally enforce conservation, it has used close coordination with municipal partners and carefully designed incentives to help produce a cultural shift towards water conservation in the community. Among other things, CUWCD has invested nearly \$6.5 million in landscape conversion projects. And its annual water conservation program budget has increased 750 percent since 2020, including a tripling of staff, a plan to add four new conservation programs, and a commitment to continue program growth over the next five years.

An important part of CUWCD's conservation program is the support of agricultural efficiency research. Over the last five years, CUWCD has invested heavily in supporting strategies to promote agricultural resilience. Along with the Colorado River Authority of Utah (CRAU), CUWCD established and funded the Agricultural Water Demonstration, Research, and Implementation Pilot Program (AG-DRIP), facilitated by Utah State University, to support agricultural water users in improved water management using metering, soil moisture sensors, and water use data collection and reporting. CUWCD also instigated a multi-year pilot project to evaluate subsurface drip irrigation as an alternative to center-pivot irrigated alfalfa. This pilot is being conducted at scale on land in the Uinta Basin and is providing valuable data on water savings, crop yield impacts, and system performance under agricultural field conditions.

CUWCD has contributed, without compensation, to CRAU's state-funded Demand Management Pilot Program (DMPP) that is intended to develop administrative processes to measure and convey conserved consumptive use water on a scale, and is necessary for a successful Upper Division States (UDS) conservation program. CUWCD is a signatory to the Memorandum of Understanding by and among Colorado River Basin Municipal and Public Water Providers executed in 2022 for turf removal. CUWCD is also a partner of key Lower Division State (LDS) contractors and the Denver Water Authority on an agreement to support funding of Colorado River Basin Conservation Research Pilot Studies.

#### *June Sucker Recovery Implementation Program*

In response to a jeopardy finding for the June sucker in Utah Lake and its tributaries by the U.S. Fish and Wildlife Service under section 7 of the Endangered Species Act (ESA), CUWCD took responsibility for organizing the June Sucker Recovery Implementation Program (Recovery Program) and helping to establish the recovery plan. A critical recovery element that was established through the Recovery Plan was the acquisition and delivery of water to the streams and rivers used by the June sucker for spawning. CUWCD delivers water under contracts held by the Department of the Interior (DOI) for the recovery of the June sucker. The water used to help towards recovery of the fish was acquired through CUPCA section 207 and is dependent upon Utah's portion of the Colorado River. In 2021, the June sucker was downlisted from endangered to threatened due in part to the success of these efforts. The

June sucker is the fourth fish species protected under the ESA ever to have successfully achieved downlisting. This success, and its maintenance, is dependent on continued BU water deliveries.

### **DEIS Comments**

CUWCD is deeply concerned that substantial portions of the DEIS rely on assumptions and analytical approaches that do not fully reflect Upper Basin hydrology, limit evaluation of reasonably foreseeable impacts to Utah's Colorado River-dependent systems, and warrant further refinement to ensure durable 1922 Colorado River Compact (1922 Compact) compliance and sustained interstate cooperation in post-2026 operations.

As Utah's largest Colorado River Water User, the BU is necessary for the state's economic stability. The BU water right is also a junior water right with a priority date of 1964 and is subject to the 1922 Compact, and subsequent related treaties, laws, and agreements. The operations of Lake Powell and Lake Mead directly impact compliance with the 1922 Compact, which underpins the entirety of the DEIS. Any alternative or assumptions that directly or indirectly impact Utah's compact commitments will impact the BU and CUWCD as its operator.

The following comments identify several fundamental questions and concerns about the DEIS. We also share many of the concerns expressed by the Colorado River Authority of Utah, the Utah Reclamation Mitigation and Conservation Commission, and the Upper Colorado River Commission (UCRC). To avoid duplication, we will not repeat them here. But we urge you to give them careful consideration.

As noted above, we also reserve the right to supplement these comments as additional information becomes available. Moreover, consistent with NEPA, and Article 10(a) of CUWCD's 2020 Amended Repayment Contract with DOI, which requires the federal contracting officer to "use all reasonable means to guard against a condition of shortage" in the water made available to CUWCD and, in the event a shortage appears probable, to provide notice "as soon as practicable," we request meaningful input into (1) selection of a preferred alternative and (2) any updated evaluation of the environmental consequences of such alternative.

#### **1. Geographic Scope**

CUWCD has fundamental concerns about the geographic scope of the DEIS. Reclamation indicates the upstream extent of its environmental analysis is the full pool elevation of Lake Powell at Gypsum Canyon. This makes sense for alternatives consisting entirely of actions to be taken in and by the Lower Basin and is appropriate given that DOI does not act as watermaster in the Upper Basin. At the same time, however, the DEIS includes a few passages that could be read to suggest that aspects of certain alternatives may include or assume actions in the Upper Basin, including operation of the Upstream Initial Units (UIU) and UDS conservation programs.

First, the Secretary of the Interior (Secretary) does not have plenary authority to compel operational decisions in the Upper Basin. While the DEIS accurately notes the Secretary's statutory authority to manage operations of Colorado River facilities, it ignores the fact that such operations must be balanced against Reclamation's statutory obligations to Upper Basin stakeholders.

The DEIS also fails to address the role of the UDS and the UCRC in this legal framework. Article III of the 1922 Compact assigns responsibility for delivering a certain amount of water to Lee Ferry to the "States

of the Upper Division,” rather than the Secretary or Reclamation. Further, Article IV of the 1948 Upper Basin Compact (1948 Compact) states that if it ever becomes necessary to curtail water use by the Upper Division states, “the extent of the curtailment by each State of the consumptive use of water apportioned to it . . . shall be in such quantities and at such times as shall be determined by the [Upper Colorado River] Commission.”

The Companion Agreement of May 20, 2019, to which the 2019 Drought Contingency Plans (DCPs) for the Upper Basin and Lower Basin are attached, also constrains the Secretary’s ability to take certain actions without further authorization from Congress.<sup>1</sup> Section I of the Companion Agreement states that no amendments or modifications shall be made to the Companion Agreement or the DCPs “without a subsequent act of Congress if such amendments or modifications would conflict with existing law,” including the Colorado River Storage Project Act of 1956, the 1922 Compact, and the 1948 Compact. The DEIS acknowledges that congressional legislation was required to fully implement certain operational mechanisms in the DCPs. See DEIS at 2-5. Therefore, the Secretary will need additional authorization from Congress to carry out any plan that usurps the rights of CUWCD and UDS generally established in existing legislation.

Fundamentally, the Secretary is not the Upper Basin watermaster. The DEIS must acknowledge this bedrock constraint on the Secretary’s authority to impose requirements on the UIU and clarify that Upper Basin actions are beyond the scope of the EIS.

Second, even if Reclamation had authority to propose (or assume) actions in the Upper Basin as part of this process, the impact analysis presented in the DEIS would have an impermissibly narrow geographic scope. The analysis does not consider impacts beyond the upstream extent of Lake Powell; instead, it references the 2019 DCP. But the 2019 DCP did not – and was not intended to – consider the impacts of the activities described in the EIS, nor does it substitute for the analysis NEPA requires.

NEPA’s “hard look” requirement mandates that all reasonably foreseeable environmental consequences be carefully evaluated and addressed. If Reclamation considers alternatives that may involve or require actions in the Upper Basin (appropriately or not), its environmental analysis must disclose and address the consequences of those actions in the Upper Basin. Or, if Reclamation’s alternatives are (more appropriately) limited to actions within the Lower Basin, the scope of the environmental analysis can remain limited to the area at and below Lake Powell, but the description of the alternatives must be clarified. Either way, the EIS must be revised and clarified. But if Upper Basin actions and analysis are added, the document must also be recirculated for further review and comment.

CUWCD will not be able to support the preferred alternative unless these errors are addressed.

## **2. No Action Alternative**

Reclamation indicates that the No Action Alternative is a reversion to the Criteria for Coordinated Long-Range Operation of Colorado River Reservoirs (LROC). But Reclamation’s interpretation and application of LROC relies on outdated data and faulty modeling. And those errors, in turn, establish a flawed baseline that skews the environmental analysis in the DEIS. Consider the following examples:

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<sup>1</sup> The Companion Agreement and the DCPs were approved by Congress through the Colorado River Drought Contingency Plan Authorization Act. Pub. L. 116-14, 133 Stat. 850 (2019).



a. 602a

Reclamation's 602a storage algorithm has not been updated to reflect the new 'Critical Period' along with other related variables. Reclamation indicates the Basin has experienced one of the worst multi-decade droughts of the last 1,200 years. This is further highlighted in Reclamation's analysis of natural flow Critical Period Lengths between 1906-2018, which considers spans from 4 years to 20 years, with every critical period except one occurring since the year 2000. Despite the professed severity of the current drought and the suggestion that updating the critical period is sensible, Reclamation fails to modify the critical period used to calculate 602a storage, citing a lack of an objective standard. This is inconsistent with Reclamation's analysis and the purpose of 602a and significantly impacts the amount of water that should be held in storage above Glen Canyon Dam (GCD) to meet the requirements described in LROC.

b. Minimum Objective Release

Reclamation claims the 'minimum objective release' should be 8.23 MAF. However, LROC allows for releases other than 8.23 MAF based on the annual determination of 602a storage and a plan of operation. CUWCD cannot support an annual assumption of 8.23 MAF absent an appropriate annual determination of 602a storage and the accompanying plan of operation.

c. LDS Shortage

Reclamation has arbitrarily limited the shortage guidelines to reduce deliveries from Lake Mead by 600 KAF. The 2006 consolidated Supreme Court Decree in *Arizona v. California*<sup>2</sup> (Decree) authorizes the Secretary to adjust mainstream apportionments. The DEIS does not explain why this authority was excluded from consideration. This is notable because the authority provided by the Decree could render the No Action Alternative viable. Without addressing the Decree, the DEIS's dismissal of the No Action Alternative would be arbitrary and capricious.

### 3. Neutral Water vs System Water

Several approaches are used by Reclamation to account for various types of water – existing Intentionally Created Surplus (ICS), new ICS, tribal water, Upper Basin Conserved water, UIU water delivered for 'infrastructure protection', etc. The way Reclamation accounts for these various types of water, and how they are allowed to factor into operations, will have a significant impact on System performance, and more importantly, interstate comity. For example, in the 2007 Interim Guidelines (IGs), ICS is treated as 'system water', meaning operational determinations are agnostic to its presence. The result of this has been that over time, an overly large portion of Lake Mead's content has become ICS water with ascribed ownership, and urgently needed cuts in Lower Basin deliveries have been long delayed. Had the ICS water been 'neutral', meaning it was treated as if it were not present in the reservoir for operational purposes, the System would not be facing the severity of crisis that it is today. Reclamation should be extremely cautious to ensure similar missteps are not included in the Preferred Alternative. Existing ICS should be made neutral as soon as possible in Post-2026 operations. To avoid propagation of the problems produced by the 2007 IG, any water that would not have been in the system 'but for' actions taken to reduce consumptive use, particularly ICS and Upper Basin

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<sup>2</sup> 547 U.S 150

conservation, should be neutral and not included in Lake Powell and Lake Mead operational determinations.

Similarly, any water prematurely released from an UIU for infrastructure protection should be accounted for as neutral and fully recovered to the facility of origin, as though the release had not occurred, when its presence in Lake Powell is no longer necessary for the purpose it was originally moved. Failure to treat the UIU water in Lake Powell as neutral for operational purposes will increase the amount of water that is delivered downstream, undermining the protective intent of the action.

Furthermore, the DEIS references the 2019 DCP as authority to leverage UIU water to protect infrastructure. The 2019 DCP includes the Drought Response Operating Agreement (DROA), which expired on December 31, 2025, precluding future actions beyond those initialized prior to the agreement's expiration. Reclamation indicates its intention to use the UIU as envisioned under DROA for infrastructure protection. A key element of DROA is consideration of the effectiveness of a DROA action; specifically, it indicates that a DROA release from a UIU may not be recommended if it is futile to achieve the goal or intent of the DROA. See DROA § II.A.3.d. In many cases, the presence of UIU water in Lake Powell acts counter to the Effectiveness clause, as releasing UIU water to Lake Powell may damage the Upper Basin's ability to comply with compact commitments and minimize adverse effects to resources and infrastructure in the Upper Basin. See DROA §§ I.A.1-3, II.A.3.d.

An example of how failure to properly account for and protect DROA water is revealed when an analysis of Lake Powell operations with and without DROA water between 2021 and 2023 is performed. In 2021 and 2022 water was released, primarily from Flaming Gorge, to protect Lake Powell infrastructure. In 2023, hydrology changed, producing a dramatic short-term increase in Lake Powell elevation, and triggering a balancing release from Lake Powell to Lake Mead. At the time, unrecovered protection water from the UIUs was still in Lake Powell and treated as system water, making it subject to balancing releases. The result was that the very water sent to protect Lake Powell infrastructure *increased* releases to Lake Mead – directly counter the purpose it was sent from the UIUs to Lake Powell to achieve. CUWCD has analyzed this and determined the presence of UIU water in Lake Powell increased releases by approximately 130 KAF. For context, while this volume may be insignificant to the LDS, it represents more than 128 percent of the annual BU trans basin diversion because the water was treated as system water and not accounted for separately for operational purposes. Such counterproductive operating policies should not be carried forward into any Post-2026 Alternatives.

#### **4. Hydrologic Shortage**

CUWCD understands the UDS has communicated to Reclamation the complexities of water supply in the Upper Basin, which, unlike the Lower Basin, does not enjoy the luxury of nearly 50 MAF of federal storage sitting above diversion facilities. CUWCD understands further that Reclamation and the UDS coordinated to incorporate these complexities into the Colorado River Simulation System (CRSS) to better reflect the variability and limitations the UDS experiences in Compact-allocated water supply yield and putting it to beneficial use. Despite these interactions, Reclamation does not meaningfully address hydrologic shortage anywhere in the DEIS. The document does not even acknowledge that for 25 years, the worst drought in more than a millennium, UDS water users have operated systems, farms, industries, and municipalities on a severely strained and variable supply. For example, since 2000, the water supply yield at Strawberry Reservoir has averaged approximately 40 KAF per year, less than necessary to meet contract commitments. This constitutes a 'Millennium drought' reduction of 25% per



year relative to the yield available for contract deliveries. Unlike the UDS, the LDS's first cut did not occur until they were 20 years into the same drought. In 2020, a Tier 0 reduction of 0.24 MAF was required by the IGs only after depleting nearly 22 MAF of storage between Lake Powell and Lake Mead over the prior 20 years. While UDS water users have borne the risk of variable hydrology and supply, the LDS has drawn down stored water at unsustainable rates.

The LDS may counter this by invoking the 2003 Quantitative Settlement Agreement (QSA) and other LDS actions in the last 25 years. However, the QSA was a reduction in use *above Compact entitlements* and constituted a long-overdue correction. These reductions did not begin to address the Structural Deficit described above and are further exacerbated by the Secretary's faulty application of the Decree, allowing LDS users, but not UDS users, to escape charges for evaporation and system losses. While a Basin States Agreement was in place, CUWCD was willing to tolerate some of these issues in the name of cooperation. But in the absence of a Basin States Agreement, law, policy, hydrology, and fundamental fairness all demand greater reform in the LDS.

Additionally, much of the ICS water that has been created during the IGs has been through programs that mine system water, changing it from system water to the exclusive benefit of LDS participants, and in some cases at the expense of the American taxpayer, with limited or no long-term benefits, and the ability for those same participants to use the conserved water at a later date.

While UDS consumptive uses occur upstream of the geographically defined scope of the DEIS, it is a primary factor in the unregulated inflow to Lake Powell and an important context for necessary changes of one basin over another in Post-2026 operations. Failure to incorporate this reality appears to bias the DEIS because it only reflects the water use correction that the Reclamation and LDS should have implemented 25 years ago, while leaving out the prudent water use the UDS have always espoused.

The following table contains Natural Flow data for Lees Ferry and the Intervening Flow between Lees Ferry and Lake Mead. These data were obtained from Reclamation. Combining the Lees Ferry and Intervening Flows together and subtracting out the United States obligation to Mexico results in the flow available for use in the United States by the LDS and UDS. We have taken the flow historically used by the LDS and divided that by the flow available to the United States (excluding tributary water not included in the intervening flows) to come up with a percentage of LDS use. We started this data set in 1999 to reflect on the last time that Lake Powell was near full. The Compact split the natural flow at Lees Ferry between the LDS and the UDS. Since 1999 the LDS have consumed 78% of what was available to the United States and the UDS have used 41%. The sum of these two numbers is greater than 100% and reflects the mining of water stored in Lake Powell and Lake Mead. After the obligation to Mexico has been met the flow available to the United States averages 11.7 MAF.



Year	Lees Ferry Natural Flow	Intervening Flow	Available United States	LDS Use	LDS Use	UDS Use	UDS Use
1999	16,432,765	604,689	15,537,454	9,142,430	59%	4,492,860	29%
2000	10,561,407	419,483	9,480,890	9,384,498	99%	4,779,726	50%
2001	11,039,634	531,615	10,071,249	9,234,535	92%	4,940,381	49%
2002	5,933,609	320,027	4,753,636	9,447,175	199%	3,991,405	84%
2003	10,531,406	440,623	9,472,029	8,434,574	89%	4,267,451	45%
2004	9,593,965	680,806	8,774,771	8,206,178	94%	3,940,336	45%
2005	16,892,373	1,612,413	17,004,786	7,898,790	46%	4,335,023	25%
2006	12,613,809	474,863	11,588,672	8,262,105	71%	4,233,799	37%
2007	12,556,011	502,179	11,558,190	8,304,120	72%	4,469,490	39%
2008	16,210,962	685,488	15,396,450	8,363,840	54%	4,485,805	29%
2009	14,266,330	393,694	13,160,024	8,280,925	63%	4,465,003	34%
2010	12,318,773	948,575	11,767,348	8,123,406	69%	4,400,446	37%
2011	20,158,868	780,332	19,439,200	8,172,495	42%	4,441,872	23%
2012	8,499,849	651,889	7,651,738	8,310,691	109%	4,624,963	60%
2013	9,114,932	791,063	8,405,995	8,322,846	99%	3,563,178	42%
2014	13,982,281	514,989	12,997,270	8,452,996	65%	4,012,007	31%
2015	13,411,497	610,829	12,522,326	8,232,496	66%	3,976,450	32%
2016	13,439,430	670,989	12,610,419	8,002,270	63%	4,308,611	34%
2017	16,396,512	779,814	15,676,326	7,583,176	48%	4,709,288	30%
2018	8,633,462	544,027	7,677,489	7,937,593	103%	4,540,771	59%
2019	17,672,049	890,383	17,062,432	7,322,761	43%	4,623,573	27%
2020	9,887,593	511,759	8,899,352	7,611,167	86%	4,851,257	55%
2021	7,152,000	679,394	6,331,394	7,860,011	124%	3,928,805	62%
2022	9,851,000	681,075	9,032,075	7,399,231	82%	4,051,607	45%
2023	17,408,000	661,328	16,569,328	6,506,373	39%	4,712,049	28%
2024	11,875,000	684,788	11,059,788	6,868,245	62%	4,472,497	40%
<b>Average</b>	<b>12,555,135</b>	<b>656,427</b>	<b>11,711,563</b>	<b>8,140,959</b>	<b>78%</b>	<b>4,369,948</b>	<b>41%</b>

These data clearly show the severity of the imbalance produced by the LDS mainstream water use compared to UDS water use. The imbalance persists notwithstanding LDS conservation efforts and ICS programs implemented during 2007 IG's and should be considered by Reclamation in the development of the preferred alternative.

**5. Additional Activities Above Lake Powell**

a. Upper Basin Conservation

As drafted, three of the four DEIS action alternatives (*i.e.*, Enhanced Coordination, Maximum Operational Flexibility, and Supply Driven) appear to assume additional Upper Basin conservation contributions. However, these contributions cannot be implemented without the agreement of the UDS.

The DEIS attempts to brush this reality aside by indicating that activities that may be undertaken in the Upper Basin to generate the conserved water are not within the scope of this EIS. Any such activities are unknown at this time and will not necessarily require federal decision-making. Any federal decisions associated with these conservation activities will be assessed outside of this EIS. See DEIS at 3-45. But, as explained above, Reclamation cannot have it both ways. If the options evaluated in the EIS purport to require (or assume) actions in the Upper Basin, the environmental analysis must fully disclose, evaluate, and address Upper Basin environmental consequences – and it must be recirculated for public review and comment. Or, if the environmental analysis is limited to the area at and below Lake Powell, the document should clarify that the options under consideration do not require or assume additional actions by the UDS.

In its current form, the DEIS lacks a meaningful evaluation of the complex interplay of priority distribution, pre- and post-Compact water rights, and application of storage water in a dry year that was diverted to storage in priority from prior years. These defects undermine Reclamation’s effort to analyze all *reasonable* alternatives as required under NEPA. It likewise highlights Reclamation’s failure to take the requisite “hard look” at the consequences of the actions considered under each alternative.

Further, even assuming Upper Basin conservation actions were specified within the scope of the Secretary’s authority, the DEIS does not provide an analysis of the impacts of the prolonged drought conditions in the UDS that depend on hydrology to meet their water needs. CUWCD asserts that if conservation measures are taken by the UDS, the water conserved should be for UDS resilience and not just to prop up LDS water use.

For Utah, the analysis in the DEIS is focused on those counties that directly abut the Colorado River. But a major portion of the use of the Colorado River allotment to Utah does not take place near the Colorado River. As described above, the water is instead diverted by trans basin for delivery to the Wasatch Front. To date, the BU of the CUP has been able to meet established water contracts, but the obvious, short-term concern moving into the future is continued drought conditions, creating impacts to all the resources of concern that were addressed in DEIS Chapter 3. Absent a robust analysis of conditions of shortage, the current hydrological context and the degree of conservation programs needed cannot be truly understood and evaluated in the EIS. These drought impacts should be clearly analyzed for Utah and all UDS based on where Colorado River rights are delivered, which is the applicable area of impact. The impacts of mandatory water shortages (hydrologic and priority regulation) and additional conservation measures should be analyzed, specifically to the appropriate resources within the applicable areas of impact.

The DEIS states that Utah “will not experience shortages under any alternative, so Utah was not included in the analysis area for agriculture economic impact analysis.” DEIS, Technical Appendix 16, at 16-3. This statement, along with the acknowledgment that ‘total employment in the analysis area represented approximately 1.0 percent of total employment in Utah’ demonstrates a lack of comprehensive socioeconomic analysis among Utah residents who receive water from the Colorado River, and more fundamentally, failure to acknowledge shortage experienced under strained hydrologic conditions. See *id.* at 16-22. The Utah analysis area consists of Garfield, Kane, and San Juan Counties, but other counties with Colorado tributaries (e.g., Emery, Grand, Wayne, Carbon, Duchesne, Uinta, Daggett) have been ignored. See *id.* at 16-3. This does not account for trans basin diversions (Provo River Project and BU) that deliver water to the Wasatch Front population centers – one of the fundamental purposes and functions of the BU. As you can imagine, CUWCD is concerned with the lack of consideration given to these issues.



One example of an impact on Utah has been observed by CUWCD, acting as a participant in Utah's DMPP. The DEIS is silent on the economic impacts under various proposed alternatives, where Reclamation assumes Upper Basin conservation volumes range from 200 KAF to 350 KAF annually – when reduced from average UDS consumptive use, this constitutes a 45 percent to 47 percent reduction from Upper Basin compact entitlement. Assuming that Utah would be responsible for 23 percent (matching the state's Upper Colorado River Basin apportionment) of this conserved water, a demand management program generating 46 KAF to 80.5 KAF of yearly conserved consumptive use would be necessary. Based on available program data from Utah's 2025 DMPP, Utah would be responsible for \$15 M to \$26 M annually to produce and deliver conserved water to Lake Powell, if it is hydrologically available and there are voluntary participants. Such a dramatic increase beyond current conservation levels would necessitate a six to ten-fold increase in the annual DMPP budget, in addition to increased administrative costs. This level of demand management would certainly cause significant economic impacts to Utah, including long-term environmental impacts associated with sustaining such an expansive program. Where the BU is the junior priority in Utah, it can be reasonably anticipated that conservation requirements would fall to CUWCD to cover. Recognizing the 40 KAF loss previously identified in the average annual BU project yield since 2000, and the added requirement of up to 80.5 KAF for proposed water conservation, the total cost in water supply to the BU could be as high as 120.5 KAF per year. This would equate to more than 75 percent of CUWCD trans basin contract water deliveries, severely limiting CUWCD's ability provide water to two million people on the Wasatch Front.

b. Upstream Initial Unit Releases to Protect Glen Canyon Dam

Reclamation suggests releases from UIU may be used to protect infrastructure at GCD. CUWCD disagrees with the assertion that moving water from an UIU is an appropriate mechanism to protect infrastructure at GCD. It is far more effective to reduce releases from GCD to achieve the same purpose. And, more fundamentally, the release of UIU water to protect GCD improperly prioritizes one use of these facilities over all other Congressionally authorized purposes. Reclamation policies require a balancing of Project purposes to “ensure that all authorized project purposes share equitably in the benefits of multi-purpose projects and establish a greater level of consistency in the allocation of operation, maintenance, and replacement costs throughout Reclamation.” Bureau of Reclamation Manual PEC P07 (2020); *see also* Bureau of Reclamation NEPA Handbook, at 4-11 (2012) (“Reclamation’s policy is to encourage and facilitate the most efficient beneficial use of water when: (1) such change can be accomplished *in accordance with applicable State and Federal laws*, and (2) it can be accomplished *without diminution of service to those parties otherwise being served by such Federal resources.*”) (emphasis added). Also, while the Secretary may operate Reclamation projects to produce hydropower, including at GCD, this objective is only authorized to the extent it does not “affect or interfere with” the 1922 Compact, the 1948 Compact, and any contracts lawfully entered under those Compacts. 43 U.S.C. § 620f.

As stated in the 2005 Operation of Flaming Gorge Dam Colorado River Storage Project Final Environmental Impact Statement and Record of Decision, Flaming Gorge Dam is operated to protect and assist in the recovery of the populations and designated critical habitat of the four endangered fishes found in the Green and Colorado River Basins. The operations of the dam also maintain all authorized purposes of the Flaming Gorge Unit of the CRSP, particularly those related to the development of water resources in accordance with the Compact; however, a thorough review of the Flaming Gorge FEIS and ROD reveals that the impact analysis never contemplated use of the facility as allowed under the 2019 DCP or as proposed in the DEIS. It is not clear to CUWCD that sufficient analysis has been performed to

determine whether such operations are consistent with the existing ROD. Fundamentally, the DEIS fails to clearly explain what remaining within the ROD means in the context of the actions proposed in the DEIS and how adherence to the ROD will be evaluated. Furthermore, due to the adaptive nature of the ROD, CUWCD questions whether it is possible to model the impacts of this proposed action. This, in turn, casts doubt on the validity of the entire hydrological analysis.

The operation of Flaming Gorge Dam, under its original operating criteria, jeopardized the continued existence of the endangered fish in the Green River. The Reasonable and Prudent Alternative (RPA) to the 1992 Biological Opinion on the Operation of Flaming Gorge Dam required modification of Flaming Gorge releases to benefit the endangered fish. The Upper Colorado River Endangered Fish Recovery Program developed and approved the 2000 Flow and Temperature Recommendations report for the Green River. These recommendations are an extension of the 1992 jeopardy Biological Opinion RPA. Reclamation committed to assist in meeting flow requirements through the refined operation of Flaming Gorge and other federal reservoirs in the 1987 agreement that formed the Recovery Program. The refined operation offsets the adverse effects of flow depletions from the Green River for certain Reclamation water projects in Utah, as defined by existing jeopardy Biological Opinions.

The ability for the CUP reservoirs to continue to operate as they currently do and meet contract deliveries is dependent upon and connected to Flaming Gorge Dam operations continuing to be in compliance with the RPA.

Finally, CUWCD is further concerned with the blanket assertion (found in multiple sections of the DEIS) that ‘the Secretary retains the authority to operate outside those RODs if necessary.’ This vague disclaimer must be clarified. Under what conditions would the Secretary propose to deviate from the RODs? What would a departure from the RODs look like? And what legal authority would authorize such a deviation in the absence of new RODs? This is not an abstract concern. The sheer number of times the statement occurs in the DEIS suggests Reclamation anticipates deviation from the RODs may be likely. If an action is likely to occur, it must be disclosed, evaluated, and addressed under NEPA. If the Secretary anticipates deviating from the RODs, analysis of the impacts that would result to the resources that were analyzed in the applicable UIU EISs would be appropriate and necessary. Consideration should be given for the timing and amount of the releases made from Flaming Gorge Dam to satisfy the compliance requirements of the 1992 RPA.

CUWCD suggests that analysis should be provided to address the conditions that would trigger this action to be taken by the Secretary, and if operations outside of the RODs become necessary and authorized under law, new RODs must be prepared, and the EIS should be revised to account for the new RODs.

## **6. Preferred Alternative**

### **a. As a Compilation of Elements of Action Alternatives**

Absent a preferred alternative, Reclamation indicates the DEIS is sufficiently broad to have captured the full range of operational elements that may be included in a preferred alternative in the FEIS. The impact analysis is based on specific configurations of four action alternatives that, if reconfigured as Reclamation has suggested the Preferred Alternative would be, may result in impacts beyond the extent of those evaluated in the DEIS. Furthermore, as formulated, the current alternatives contain analytical gaps, as discussed above, that would need to be filled before any final, preferred alternative



could be prepared. A re-bundling of elements from analyzed alternatives may constitute a new alternative requiring impact analysis. Any new alternative raising potential impacts not studied as part of the DEIS would require Reclamation to prepare a supplemental EIS for further public comment.

b. In the absence of a Basin States Agreement

The 1922 Compact and related obligations were negotiated without consideration for the aridification that we are experiencing today. Reclamation should develop an operating policy that achieves flows at Lee Ferry that have been scaled in proportion to the hydrologic conditions used to establish the compact. The LDS should share in the impact of aridification.

Additionally, as the largest user of Colorado River water in Utah, CUWCD should have access to individual storage in Lake Powell on a space available basis, subject to losses and incremental evaporation.

## 7. Action Alternatives

a. Maximum Lake Powell Release Constraint

The Enhanced Coordination Alternative is constrained to a maximum water year release of 10.8 MAF to prevent “sediment scouring” damage downstream of GCD. *See* DEIS at 2-20. It is unclear to CUWCD why this maximum release constraint has not been applied to the other action alternatives.

As a general matter, in the absence of a consensus basin state agreement on prospective operations, releases from GCD should be capped at 8.23 MAF per year except when in flood control (a correctly calculated 602a storage volume requires all available storage space, minus storage space required for flood control). The Compact requires the Upper Basin to not cause the flow of the river at Lee Ferry to fall below 75 MAF over any consecutive ten-year period. This can be achieved by targeting an annual release of 7.5 MAF from the UDS, minus the Paria River inflows and accretion flows between GCD and Lee Ferry.

The Compact also requires the obligation to Mexico to be supplied from surplus water, and if that is insufficient, the Upper Basin and Lower Basin will share in making up the deficit. CUWCD maintains that calculation of available surplus must include consideration of Lower Basin tributary use, as Articles III.a and III.b apply to the Colorado River System as defined in the Compact to be ‘that portion of the Colorado River and its tributaries within the United States of America’. Maintaining a release ceiling of 8.23 MAF aligns with these obligations by preventing operations that could overdeliver water and jeopardize the Upper Basin’s ability to meet its long-term Compact obligations during dry periods. Additionally, assuming 602a storage calculations have been made to reflect updated hydrologic and demand understanding, reservoir balancing between Lake Powell and Lake Mead should only occur at times when Lake Powell is approaching full and flood control operations necessitate coordinated releases. Adhering to these principles ensures hydrologic stability, protects Upper Basin Compact compliance, and prevents unnecessary depletion of Lake Powell that could undermine system resilience.



Since 2000, the total volume in excess of an annual Lee Ferry flow of 7.5 MAF is more than 22 MAF and the total volume in excess of 8.25 MAF at Lee Ferry is more than 9 MAF. Had Reclamation appropriately constrained releases, there would be significantly more water available in storage in Lake Powell today. Damages due to the failure of the 2007 IG's have accrued only to the UDS while the LDS continued to benefit from a significantly over-proportionate share of water from the Colorado River system.

b. Gap Water

Reclamation uses a modeling mechanism to infuse water to manipulate system performance when Lake Powell cannot meet its required Water Year (WY) releases. This water is called 'Gap Water'. The model's infusion of gap water into the system influences the impact analysis but fails to identify where the gap water is coming from, the nature and availability of the gap water (pre- or post-Compact), and the corresponding impact to the source of the gap water. Where, specifically, does the gap water come from? CUWCD is also concerned that the gap water is being tied to the Lower Basin shortage as a proportionally shared reduction. Reclamation's gap water approach amounts to a UDS reduction without any authority or mechanism to implement it. Even with a consensus agreement, this is not implementable in the UDS absent a compact action. Furthermore, this does not account for the hydrologic shortage experienced annually by the UDS or Article VIII of the 1922 Compact and the fact that the UDS states have not developed their legal compact apportionment. Absent legal authority, transparent sourcing, and impact analysis, the gap water construct is not suitable for use in NEPA decision-making.

c. Accounting

Reclamation proposes many complex water banking and accounting concepts in its action alternatives but failure to incorporate the RiverWare® accounting functionality into CRSS limits effective and granular evaluation of various components of the DEIS evaluation, particularly associated with water that is being treated as system vs non-system water. CUWCD recommends Reclamation fully incorporate accounting functionality to ensure adequate and transparent verification of model performance. This is standard in the industry for certain elements proposed in the action alternatives.

**8. Updated Lower Division States Consumptive Uses and Losses (CUL)**

CUWCD is concerned that the DEIS analysis was completed prior to the most recent release of the LDS CUL report. Reclamation must evaluate how the updated CUL report might affect the impact analysis and Reclamation's interpretation of minimum release obligations from GCD in relation to the comments shared in this letter.



## Conclusion

In closing, CUWCD appreciates Reclamation's efforts to develop a post-2026 operational framework under challenging conditions. The Colorado River System is entering a new era—one defined by greater hydrologic uncertainty and heightened risks to long-term system stability. Because the Colorado River provides essential water supplies to more than two million Utah residents and is the source of the successful ESA downlisting of the June sucker, it is imperative that the FEIS employ the best available science, incorporate transparent risk assessment, and adopt management strategies capable of withstanding a wide range of future conditions while sustaining the health and safety of Utah's residents and maintaining the fragile environmental balance necessary to dependent ESA programs. These fundamental elements are necessary if the EIS is to serve as the foundation for a durable, equitable approach to managing the Colorado River.

CUWCD looks forward to continued engagement with Reclamation as the post-2026 operational framework is finalized. We appreciate the opportunity to provide these comments and pose questions, and remain committed to supporting a resilient and sustainable future for the Colorado River Basin.

Regards,

A handwritten signature in black ink that reads "Shelley Brennan".

Shelley Brennan  
Chair of the Board  
Central Utah Water Conservancy District