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March 2, 2026

United States Bureau of Reclamation
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Re: *Comments on the Draft Environmental Impact Statement for Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead*

To the United States Bureau of Reclamation:

Imperial Irrigation District ("IID") submits the following comments on the *Draft Environmental Impact Statement for Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead* (January 2026) ("DEIS") issued by the Department of Interior through the Bureau of Reclamation ("Reclamation").¹ These comments are intended to aid Reclamation in formulating a robust, defensible Final EIS.

As stated in the *Written Comments of the Imperial Irrigation District on the "Notice of Intent to Prepare an Environmental Impact Statement and Notice to Solicit Comments and Hold Public Scoping Meetings on the Development of Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead"* (87 FR 39455) dated August 15, 2023, the touchstone for analyzing post-2026 operational guideline alternatives is compliance with the Law of the River. Absent an agreement to the contrary, post-2026 reservoir operations must comply with longstanding laws governing water allocation and water rights to the Colorado River, in particular the apportionment and delivery obligations set forth in the 1922 Colorado River Compact ("Compact"). The DEIS lacks meaningful analysis of each alternatives' compliance with the Law of the River and includes alternatives that violate the Law of the River in many respects. In addition, the DEIS includes internal inconsistencies, analytical and data errors, and unsubstantiated assumptions, all of which result in material inaccuracies. Consequently, the DEIS does not fulfill Reclamation's obligations under the National Environmental Policy Act ("NEPA"). IID appreciates the opportunity to help ensure that Reclamation satisfies its obligations under NEPA and the Law of the River by providing these comments on the DEIS.

¹ This letter uses the acronyms and abbreviations in the Acronyms and Abbreviations section in the DEIS. (DEIS, pp. ix–xii.) Any abbreviation not defined in the DEIS and used herein is defined in its corresponding location in the text.

I. Introduction

IID is an irrigation district formed in 1911 pursuant to California law. It is the largest irrigation district in the nation. IID is the raw water supplier for the Imperial Valley, and the Colorado River is IID's sole source of water. A multi-billion dollar agriculture based economy dominates the Imperial Valley, where one in every six jobs is directly related to agriculture, and this industry is dependent on IID's Colorado River water rights and IID's delivery and drainage infrastructure. Additionally, Imperial Valley is the sixth largest agricultural county in the nation by total sales and grows approximately two-thirds of this nation's winter produce - providing a safe and reliable food supply for the country. IID has senior entitlements to 3.1 million acre-feet per year (MAFY) of Colorado River water, of which 2.6 MAFY are present perfected rights (PPR) established in 1901. IID's entitlement has priority over several other California entitlement holders as well as many water users and agencies in other states, including the Central Arizona Project ("CAP"). Each of the proposed alternatives discussed in the DEIS, except for generally the Basic Coordination and Maximum Operational Flexibility, if adopted absent a new consensus agreement, would undermine the security, reliability, and senior priority of IID's water rights and disrupt the lawful and effective management of the Colorado River.

NEPA has twin goals of requiring Federal agencies (1) to consider the significant environmental impacts of their proposed actions and (2) to inform the public that the decision-making agency considered environmental concerns in the decision-making process. (*Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349–350 (1989); see also 42 U.S.C. § 4332(2)(C), (J) (Federal Agencies must "make available . . . information useful in restoring, maintaining, and enhancing the quality of the environment").) NEPA requires "agencies to take a 'hard look' at how the choices before them affect the environment, and then place their data and conclusions before the public." (*Western Watersheds Project v. Abbey*, 719 F.3d 1035, 1047 (9th Cir. 2013); see also 42 U.S.C. §§ 4332(2)(J), 4336a(c).)

The DEIS contains several deficiencies regarding the methodologies and assumptions used, the analysis provided, and the conclusions reached. In particular, the many of the action alternatives violate the Law of the River's established priority system, meaning that these proposed action alternatives are facially unlawful. For instance, while acknowledging the Secretary's responsibility to operate Glen Canyon Dam and Hoover Dam consistent with the Law of the River, the Enhanced Coordination Alternative and Supply Driven Alternative (Lower Basin Pro Rata approach) (collectively, the "Pro Rata Alternatives") ignore the Law of the River and violate the Compact, the Boulder Canyon Project Act ("BCPA"), the Colorado River Basin Project Act, the Colorado River Water Delivery Agreement ("CRWDA"), and the Supreme Court's *Arizona v. California*² decision regarding priority, CAP subordination, and Secretarial contract terms. In addition, the Basic Coordination Alternative and Maximum Operational Flexibility Alternative, as well as the Pro Rata Alternatives, ignore the order of priority of uses required under the BCPA

² *State of Arizona v. State of California*, 373 U.S. 546 (1963) ("*Arizona v. California*").

because they incorrectly assume that water in Lake Mead can be dedicated to power production before irrigation and domestic uses. The Law of the River requires water in Lake Mead to be dedicated to “irrigation and domestic uses and satisfaction of present perfected rights in pursuance of Article VIII of [the Compact]” before power production. (43 U.S.C. § 617e.) The DEIS does not analyze any fully lawful alternatives aside from the required no action alternative. Such a limited number of alternatives is inconsistent with NEPA legal standards.

The DEIS similarly fails to analyze structural repairs or improvements to Glen Canyon Dam in lieu of restricting downstream releases in order to protect elevation 3490’ at Lake Powell. Those improvements should be incorporated into the alternatives analyzed in the DEIS, and not deferred to a separate study, particularly if Reclamation intends use this NEPA process to adopt longer-term post-2026 operating guidelines. Narrowing alternatives that result in increased Lower Basin risk, reductions or the mining of Lake Mead capacity to protect minimum Glen Canyon Dam hydrogeneration penstock intake levels, rather than considering engineering fixes that would remove, or at least increase, reservoir protection elevations, are nonsensical. IID is also aware of a March 24, 2024, Reclamation technical decision memo regarding “Establishment of Interim Operating Guidance for Glen Canyon Dam during Low Reservoir Levels at Lake Powell” from Richard LaFond (Director, Reclamation’s Technical Service Center). This technical memo indicates there may be additional operating concerns regarding the sole and/or prolonged use of the River Outlet Works and recommends more constrained operational parameters as a result of concerns regarding the hollow-jet valves that Reclamation may not have previously disclosed and that are not included in the DEIS. Additional discussion and clarification on this topic in the FEIS are critical to agency decision-making, as well as the accurate reporting of the current status of planning or refurbishment tasks mentioned in that memo.

Reclamation attempts to explain its willingness to abandon the Law of the River by emphasizing the inherent uncertainty and difficulty involved in modeling Colorado River hydrology amid decreasing precipitation and environmental uncertainty. But the DEIS does not reference or acknowledge climate change (although it does mention climate “variability”) as a key driver in increasing temperatures and declining water supplies in the West. The omission of references to current data, methods, and empirical evidence forming the current scientific consensus makes the analysis and conclusions in the DEIS suspect. Reclamation bemoans the uncertainty and complexity of modeling the Colorado River’s hydrological trends while ignoring the body of scientific research developed to explain those same trends.

In addition, the DEIS’s limited geographic scope of analysis does not include the Salton Sea and thus omits a critical portion of the affected area from the analysis. Reclamation’s reliance on the same geographical scope as the October 2007 *Final Environmental Impact Statement, Colorado River Interim Guidelines for Lower Basin Shortages and Coordinated Operations for Lake Powell and Lake Mead* (“2007 FEIS”) is similarly improper. (DEIS, p. 1-8.) That analysis was limited to the Colorado River corridor

and omitted impacts to the Imperial Valley because, based on the maximum imposed shortages being studied in 2007, it was assumed the impacts would not reach the Imperial Valley. However, the alternatives studied in the DEIS *do* impact the Imperial Valley, the Salton Sea and certain PPRs, and Reclamation should have assessed those impacts.

Last, the DEIS includes multiple unsubstantiated assumptions and conclusory statements, rendering the document invalid under NEPA. For the reasons explained herein, the DEIS should be revised to comply with NEPA and recirculated for additional public comment.

II. The DEIS Does Not Comport with the Law of the River

The language of the DEIS infers that Reclamation is not committed to choosing an alternative that comports with the Law of the River. Each strong statement committing Reclamation to adhere to the Law of the River (“the Secretary intends to consider, adopt and implement the proposed federal action consistent with the Law of the River” (DEIS, p. 1-4)) is weakened by language that qualifies that commitment and suggests that new, undefined authorities will be implemented to alter the current understanding of the Law of the River (“[r]ecognizing additional authorities may be developed . . .” (*id.*)). (See also DEIS, pp. 1-5, 1-8.)

This concern is heightened by the fact that two of the proposed alternatives—the Pro Rata Alternatives—are premised on a repudiation of the foundational tenant of the Law of the River: priority matters. In times of shortage, those with the lowest priority entitlement may receive some or none of their allocation. Alternatives that rely on pro rata distribution of water rather than distribution based on priority could not be implemented without a consensus agreement or rewriting many of the basic documents and statutes that comprise the Law of the River, which would almost certainly be challenged in court. Including a detailed study of such infeasible alternatives is akin to including a decoy alternative that seeks to satisfy the alternatives analysis in name only but is impermissible under NEPA.

The lack of fealty to the Law of the River is also reflected by the DEIS’s focus on the protection of Glen Canyon Dam at the expense of other fundamental aspects of the Law of the River. The DEIS’s prioritization of protecting levels at Glen Canyon Dam through reduced downstream deliveries is inconsistent with several aspects of the Law of the River, including the Compact and the US/Mexico Treaty. Under many scenarios, the proposed alternatives would result in severe reductions in Colorado River supplies to the Lower Basin without recognizing or upholding the Upper Basin’s Article III Compact obligations. The Upper Division states’ duty to not cause the flow of the river at Lee’s Ferry to be depleted below an aggregate of 75 MAF during any rolling ten-year period is a *de facto* delivery obligation. If they fail in that obligation, their own compact provides that they can be ordered to curtail use of Colorado River water until their Article III obligations are met. (Article IV of the 1948 Upper Colorado River Basin Compact expressly contemplates that the Upper Division states may be forced to curtail water use

to fulfill their Compact Article III flow obligations and mandates the creation of the Upper Colorado River Commission, which is charged with determining the extent of curtailment necessary.) Rather than recognize this firmly established Upper Basin obligation, the proposed alternatives contemplate virtually no reduction in use of Colorado River water by the Upper Division states, while threatening the Lower Division states with severe reductions. The FEIS must include alternatives that analyze additional Upper Basin reductions and/or conservation programs and their related geographically appropriate impacts to satisfy NEPA requirements should any Upper Basin actions be necessary to meet Compact obligations or a consensus agreement arise that incorporates additional Upper Basin conservation.

Reclamation's treatment of Colorado River Storage Act (CRSPA) Upper Initial Units ("UIU") similarly ignores clear congressional mandates and violates the Law of the River. The DEIS evaluates alternatives that contemplate the use of UIU releases for a singular purpose: to protect Lake Powell. The text and legislative history of the CRSPA make clear that developing water resources in the Upper Basin is but one purpose of the UIU. Equally important is the storage of water for beneficial consumptive use to assist the Upper Division states to meet its delivery obligation to the Lower Basin: "making it possible for the States of the Upper Basin to utilize, *consistently with the provisions of the Colorado River Compact*, the apportionments made to and among them in the Colorado River Compact and the Upper Colorado River Basin Compact." (43 U.S.C. § 620, emphasis added.)

Contrary to assertions by the Upper Division states and assumptions reflected in the DEIS, Reclamation—not the states—controls and manages the release of water from the UIU. It establishes the planned releases from each of the reservoirs through the Annual Operating Plan, prepared in consultation with all seven of the Basin states as required under the Colorado River Basin Project Act, as well as numerous other stakeholders and interest groups. All Basin states have a voice in the projected release of water from those reservoirs, not just the Upper Division states. The DEIS should be revised with these key concepts in mind.

The Law of the River is well-established and fundamental. Individuals, families, businesses, cities, agencies, districts, counties, and states have relied on the sanctity of the Law of the River in signing contracts, making business decisions, approving investments, and making long-term policy decisions. Implementation of an alternative that does not comply with the Law of the River invites significant risk of litigation and would likely be successfully challenged in court. Therefore, the proposed alternatives are impermissible and insufficient for NEPA purposes. A legally defensible alternatives analysis would be consistent with the Law of the River.

III. Additional Issues of Concern

A. Purpose and Need

1. The Purpose and Need Section Is Impermissibly Vague.

An EIS “shall include a statement of purpose and need that briefly summarizes the underlying purpose and need for the proposed agency action.” (42 U.S.C. § 4336a(d).) The explanation of the purpose and need is significant because it determines the scope of alternatives to be considered in an EIS. (See *City of New York v. U.S. Department of Transportation*, 715 F.2d 732, 742–743 (2d. Cir. 1983).) The specified purpose and need of a proposed federal action must be reasonable and must comport with applicable law. (*Honolulutraffic.com v. Federal Transit Administration*, 742 F.3d 1222, 1230–1231 (9th Cir. 2014) (“[C]ourts evaluate an agency’s statement of purpose under a reasonableness standard and in assessing reasonableness, must consider the statutory context of the federal action at issue.”))

The DEIS summarizes the purpose and need as follows: “Reclamation . . . proposes to adopt specific guidelines and coordinated reservoir management strategies to address operations of Lake Powell and Lake Mead through their full operating ranges. This action would improve predictability to all water users and managers in the Basin by developing and adopting objective guidelines for the operation of Glen Canyon Dam and Hoover Dam to take effect when the current operating guidelines expire in 2026.” (DEIS, p. 1-4.)

Further, the DEIS’s operational elements identify “circumstances under which the Secretary would allocate, reduce, or increase the annual amount of water available for consumptive use from Lake Mead to the Lower Division states (Arizona, California, and Nevada) at, below, or above 7.5 MAF pursuant to the Supreme Court Decree in *Arizona v. California*, 376 U.S. 340 (1964) (Final Decree entered in 2006).” (DEIS, p. 1-5.)

The DEIS thus states that the proposed federal action is needed because:

- The 1968 Long-Range Operating Criteria provide general narrative guidance regarding Lake Powell and Lake Mead operations but do not contain specific, objective criteria to guide annual operations.
- Current operational guidelines expire during the 2026 operating year. The Department has determined that specific, objective operational guidelines are important to provide improved predictability and should be established for another interim period beyond 2026.
- The Basin is experiencing increased aridity due to climate variability, and long-term drought and low-runoff conditions are expected in the future. These conditions will exacerbate the now widely recognized imbalance

between water supply and demand in the Basin. Robust and flexible guidelines are needed to manage the Colorado River system and its resources under a broad range of potential future hydrologic conditions. (DEIS, p. 1-6.)

To this end, the DEIS states that its purpose is to “[p]rovide Colorado River water users a greater degree of predictability with respect to annual water availability in future years under anticipated increasing variability, low runoff, and low-reservoir conditions.” (DEIS, p. 1-7.)

For several reasons, Reclamation’s statement of purpose and need does not match the actual analysis presented in the DEIS, indicating that the DEIS fails to comply with NEPA’s requirements. First, the purpose and need section claims to analyze objective guideline criteria for river management based on the Law of the River, but the DEIS does not bear this out. None of the alternatives fully comply with the Law of the River and thus do not comply with applicable law. Instead, the Pro Rata Alternatives evaluate pro-rata water allocations in the event of a water shortage of less than 7.5 MAFY for the Lower Basin states, thereby ignoring priority rights. With the exception of the no action alternative, all of the proposed alternatives also ignore the requirement in Article III(d) of the Compact to deliver an aggregate average of 75 MAF every ten years to the Lower Basin. As further explained below, each of the proposed alternatives are speculative and would result in protracted litigation. They therefore are not reasonable and do not fulfill NEPA’s basic goal to inform decision-makers and the public. (See *Honolulutraffic.com*, 742 F.3d at 1230–1231.)

The DEIS’s claim that “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 (Compact; 43 U.S. Code [USC] § 617I), the Consolidated Decree entered by the U.S. Supreme Court in the case of *Arizona v. California*, 547 U.S. 150 (2006) (Consolidated Decree), and other provisions of applicable federal law,” is misleading because the proposed alternatives contemplate actions that contravene the Law of the River. (DEIS, p. 1-4.)

The incongruence between the content of the DEIS and its stated purpose and need also undermines the DEIS’s purpose to create “specific, objective operational guidelines . . . to provide improved predictability.” (DEIS, p. 1-6.) Specifically, if any of the proposed alternatives is implemented, litigation would ensue. Proposing actions that are unlawful and would result in immediate litigation does not fulfill the goal of creating objective and predictable management guidelines. Therefore, the stated purpose and need must be revised to reflect the lawful actions that Reclamation may undertake and the actual analysis included in the DEIS.

B. Alternatives

NEPA requires federal agencies to study, develop, and describe “a reasonable range of alternatives to the proposed agency action, including an analysis of any negative environmental impacts of not implementing the proposed agency action in the case of a no action alternative, that are technically and economically feasible, and meet the purpose and need of the proposal.” (42 U.S.C. § 4332(2)(C)(iii), (F).) Agencies must also “study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources.” (42 U.S.C. § 4332(2)(H).)

Agency choices should “fall within a broad zone of reasonableness.” (*Seven County Infrastructure Coalition v. Eagle County*, 605 U.S. 168, 183 (2025).) “Inherent in NEPA . . . is a rule of reason.” (*Id.*) This rule of reason “must be bounded by some notion of feasibility.” (*Vermont Yankee Nuclear Power v. Natural Resources Defense Council* 435 U.S. 519, 551 (1989).) The “rule of reason” applies to an agency’s selection of a reasonable number of alternatives that permit a “reasoned choice.” (*Save Lake Washington v. Frank*, 641 F.2d 1330, 1334 (9th Cir. 1981); *see also Natural Resources Defense Council v. Morton*, 458 F.2d 827, 836 (1972).) Accordingly, the agency’s definition of the project’s “purpose and need” determines the range of alternatives it considers. (*City of New York*, 715 F.2d at 742–743.) The “detailed statement,” 42 U.S.C. § 4332(2)(C), of alternatives required by NEPA should be “sufficient to give decision makers . . . removed from the initial decision sufficient data from which to draw their own conclusions.” (*City of Tenakee Springs v. Block*, 778 F.2d 1402, 1407 (9th Cir. 1985)) (citation modified.).

The alternatives analysis “ensures that the agency, in reaching its decision, will have available, and will carefully consider, detailed information concerning significant environmental impacts; it also guarantees that the relevant information will be made available to the larger audience that may also play a role in both the decision-making process and the implementation of that decision. Simply by focusing the agency’s attention on the environmental consequences of a proposed project, NEPA ensures that important effects will not be overlooked or underestimated only to be discovered after resources have been committed or the die otherwise cast.” (*Robertson*, 490 U.S. at 349.) Ultimately, NEPA’s goal is “to insure a fully informed and well-considered decision.” (*Vermont Yankee*, 435 U.S. at 558.)

1. The Proposed Alternatives Are Unlawful, Infeasible, and Invalid.

In evaluating whether an EIS includes a reasonable range of alternatives, courts have explained “the touchstone for our inquiry is whether an EIS’s selection and discussion of alternatives fosters informed decision-making and informed public participation.” (*State of California v. Block*, 690 F.2d 753, 767 (9th Cir. 1982).) An EIS should exclude alternatives “whose effect cannot be reasonably ascertained, and whose implementation is deemed remote and speculative.” (*Id.* at 767.)

The Supreme Court has explained that “NEPA was not meant to require detailed discussion of the environmental effects of ‘alternatives’ put forward in comments when these effects cannot be readily ascertained and the alternatives are deemed only remote and speculative possibilities, in view of basic changes required in statutes and policies of other agencies—making them available, if at all, only after protracted debate and litigation [...]” (*Vermont Yankee*, 435 U.S. at 551) (quoting *Morton*, 458 F.2d at 837-838).)

“In some cases, an alternative may be reasonable, and therefore required by NEPA to be discussed in the EIS, even though it requires legislative action to put it into effect.” (*Kilroy v. Ruckelshaus*, 738 F.2d 1448, 1454 (9th Cir. 1984).) Nevertheless, the “strength and vitality” of the legislation that forbids an alternative influences this analysis. (*Id.*; see *Morton*, 458 F.2d at 837 [“We do not suppose Congress intended an agency to devote itself to extended discussion of the environmental impact of alternatives so remote from reality as to depend on, say, the repeal of the antitrust laws.”].)

An alternative that is infeasible—for instance, because it is illegal, and would result in protracted litigation—is inadequate under NEPA. Such an alternative could not actually be implemented, would not fulfill the stated purpose, and need of the proposed action, and does not provide a reasoned choice or foster informed decision-making and informed public participation. As a result, including a detailed study of an infeasible alternative is misleading, satisfies the alternatives analysis in name only, and is impermissible under NEPA.

a. The Pro Rata Alternatives

The Pro Rata Alternatives presume suspension or avoidance of the Law of the River and are therefore infeasible.

Three concepts key to understanding the Law of the River are the concepts of apportionment, entitlements, and priority. “Apportionment” refers to the allocation of water between the Upper Basin and the Lower Basin, as well as the allocation of water to states. The amount of water apportioned is the volume of water an entity has a legal right to divert within a given time period. The right to divert usually is limited to a certain diversion rate, point(s) of diversion, purpose(s) of use, and place of use (service area). “Entitlement” refers to the right of a PPR holder or an entity that has a contract with Reclamation to receive water. “Priority” refers to an entity’s right to take its allocation relative to all other entities with entitlements. The highest priority entitlement is exercised first, then the next highest priority entitlement is exercised next and so on through the descending priorities, as supplies are available. Priority becomes crucial when not enough water is available to satisfy demand.

It is a fundamental principal of the Law of the River that in times of shortage, those with the lowest priority entitlement may receive some or none of their allocation. In times of severe shortages, even higher-priority entities may be unable to take their full allocation. An alternative that relies on a pro rata distribution of water rather than priority contravenes a basic tenant of the Law of the River and is therefore infeasible.

b. Fundamental Issues Common to All Action Alternatives

The Basic Coordination Alternative and Maximum Operational Flexibility Alternatives are infeasible alternatives because they suspend or avoid requirements under the Law of the River. Although these alternatives generally do not disrupt the general priority of PPRs or the relationship between the Lower Basin states and CAP contractors under the Final Decree and 1968 Project Act, they ignore other priority requirements embedded in the Law of the River. Specifically, the BCPA and the Final Decree established a priority of uses for water stored in Lake Mead. (See 43 U.S.C. § 617e; *Arizona v. California* 373 U.S. 546, 584 (1963).) Water in that reservoir is to be dedicated “[f]irst for river regulation, improvement of navigation, and flood control; second, for irrigation and domestic uses and satisfaction of present perfected rights in pursuance of Article VIII of said Colorado River compact; and third, for power.” (43 U.S.C. § 617e.) The Basic Coordination and Maximum Operational Flexibility Alternatives impermissibly reorder this required sequence by advancing power production capabilities ahead of consumptive uses in critically dry conditions. The Pro Rata Alternatives suffer from the same flaw, circumventing the required priority of uses of water in Lake Mead. As above, this violates the fundamental doctrine of priority that underpins the Law of the River – a doctrine that is rendered meaningless if it can be set aside precisely when a shortage makes it most consequential and relevant.

Critically, all four proposed action alternatives ignore the requirement in Article III(d) of the Compact: an aggregate average of 75 MAF for any period of ten consecutive years must be delivered to Lees Ferry. Each of the proposed alternatives contemplate a scenario in which less than the requisite aggregate amount could be delivered, triggering a “Compact call” for the delivery of the difference owed. The alternatives do not offer any explanation of how such a scenario would be prevented from occurring, nor do they include Upper Basin reductions necessary to satisfy this running average requirement.

In addition, the Basic Coordination Alternative provides that it did not include a conservation program for the Upper Basin because “it would require agreements outside of Reclamation’s control.” (See DEIS, p. 2-16.) Yet Reclamation does have control of UIU releases, and each of the other proposed alternatives contemplate new conservation programs available to Upper Basin users. Even so, any proposed conservation programs require the extension and expansion of conservation agreements between Upper Basin contractors and Reclamation under the Demand Management Storage Agreement included in the 2019 Drought Contingency Plan, or the development of similar programs to continue beyond the expiration of the 2007 Interim Guidelines. Adoption of any of the alternatives without an enforceable Upper Basin conservation component would drastically disrupt two decades of conservation planning and create additional water supply constraints for the Lower Basin.

Regardless of which alternative may be selected, shortage and conservation burdens fall disproportionately on the Lower Basin. The proposed alternatives offer few incentives to the Upper Basin to meet its Compact obligations or share equitably in the

sacrifices required by prolonged drought and reduced flows. Article III(d) of the Compact imposes an affirmative delivery obligation on the Upper Basin — one that exists precisely to protect Lower Basin users during periods of scarcity. Yet none of the proposed alternatives meaningfully establish Upper Basin accountability or create mechanisms to ensure that the Upper Basin contributes proportionately to system-wide conservation. Nor do any of the alternatives include more realistic Upper Basin demand projections or consider that, without Upper Basin conservation and/or a cap on demands, any new Upper Basin growth will likely require additional reductions by the Lower Basin to balance the system. A NEPA analysis that increases the burden of shortages within the Lower Basin inconsistent with the priority system and Law of the River framework is of questionable feasibility and invites litigation. Moreover, Reclamation's statement of purpose and need is to "improve predictability to all water users and managers." The new burden shifting features of the alternatives are not consistent with that objective. Instead, they undermine predictable governance, existing shortage sharing agreements, longstanding water management investments and thwart the Law of the River, and therefore do not fulfill the stated purpose and need.

The DEIS also ignores the potential economic impact of burden shifting on Lower Basin users. The economic impact of reduced deliveries to the Imperial Valley, which is exclusively dependent on Colorado River water to drive its' agriculture based economy, would be devastating locally, and would have adverse consequences nationwide.

2. Each of the Proposed Action Alternatives Would Result in Extensive Litigation and Therefore Do Not Satisfy NEPA's Alternatives Analysis Requirements.

Courts rely on two leading cases to determine a reasonable range of alternatives. First, in *Morton*, the court explained that a "rule of reason" applies to the selection of a reasonable number of alternatives. (458 F.2d at 827.) The agency's definition of the project's "purpose and need" determines the range of alternatives it considers. (*City of New York*, 715 F.2d at 742–743.) An EIS should not be "an exercise in frivolous boilerplate." (*Vermont Yankee*, 435 U.S. 519 at 551.)

Second, in *Vermont Yankee*, the Supreme Court refined the *Morton* rule by explaining that the rule of reason "must bounded by some notion of feasibility." (*Vermont Yankee*, 435 U.S. at 551.) It noted that when alternatives "are deemed only remote and speculative possibilities, in view of basic changes required in statutes and policies of other agencies—making them available, if at all, only after protracted debate and litigation not meaningfully compatible with the timeframe of the needs to which the underlying proposal is addressed," such alternatives are not feasible. (*Id.* .)

Any alternative that violates the Law of the River would require substantive changes in law and would subject the FEIS to "protracted debate and litigation," making them infeasible and inadequate for NEPA purposes. The Purpose and Need section of the DEIS acknowledges this and explains that the Secretary shall comply with the Law of

the River. If Reclamation intends to adhere to its Purpose and Need statement, it cannot include alternatives that conflict with the Law of the River.

3. The DEIS Does Not Adequately Explain How and Why Reclamation Discarded Certain Alternatives From the Analysis.

In evaluating whether an EIS includes a reasonable range of alternatives, courts have explained “the touchstone for our inquiry is whether an EIS’s selection and discussion of alternatives fosters informed decision-making and informed public participation.” (*Block*, 690 F.2d at 767.) Therefore, an EIS should exclude alternatives “whose effect cannot be reasonably ascertained, and whose implementation is deemed remote and speculative.” (*Id.*)

In selecting and evaluating an adequate number of alternatives in an EIS, an agency should briefly discuss the reasons for an alternative’s elimination from the DEIS, explaining “the basis for each conclusion that further consideration of a suggested alternative is unwarranted.” (*Aeschliman v. U.S. Nuclear Regulatory Commission*, 547 F.2d 622, 628 (D.C. Cir. 1976), *rev’d on other grounds sub nom. Vermont Yankee*, 435 U.S. at 550.)

The DEIS fails to meet this legal standard. First, the DEIS explains it received proposals from different stakeholders, including the Lower Division States, but declined to evaluate any of those proposals as full alternatives. “Upon receiving the revised Upper Division and Lower Division States proposals, Reclamation performed preliminary modeling and concluded that the revisions did not sufficiently address the lack of an appropriate basis for the comprehensive and coordinated operations of Lake Powell and Lake Mead that, based on preliminary modeling results, was found lacking in the original proposals. However, Reclamation has crafted action alternatives—the Enhanced Coordination Alternative and the Supply Driven Alternative—that include several key elements of these submissions.” (DEIS, p. 2-2.)

This rationale is inadequate under NEPA. It is not clear what thresholds, standards, or analysis Reclamation used to discard the revised proposals. Indeed, it is unclear what was studied, the results of those preliminary analyses, and what type of analyses were performed. The language is opaque doublespeak. Because the DEIS’s justification for discarding proposed alternatives from the Lower Division States is indecipherable, it fails to satisfy NEPA’s most basic goal “to insure a fully informed and well-considered decision.” (*Vermont Yankee*, 435 U.S. at 558.) In using such opaque and evasive language to discard alternatives, Reclamation has not complied with NEPA’s required process.

Second, the DEIS employs an inconsistent and unreliable standard for eliminating proposed alternatives. The DEIS states that certain commenters’ proposed alternatives were eliminated from the DEIS’s analysis because they “are infeasible or inconsistent with the policy objectives for Colorado River operations, including consistency with

applicable federal law.” (DEIS, p. 2-34-35.) The DEIS further explains that “applicable federal law” is “[i]nclusive of existing legal authorities and contractual obligations. This would not preclude the reasonably foreseeable acquisition of certain new or modified legal authorities necessary to implement new interim guidelines. However, 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.” (DEIS, p. 2-36, footnote 26.)

Reclamation implements a convenient but inconsistent method for discarding alternatives. On the one hand, Reclamation states it has discarded proposed alternatives that are infeasible because they do not comply with applicable law, including alternatives that “are unlikely to be widely acceptable among stakeholders [and] are too speculative to include in this Draft EIS.” (*Id.*) On the other hand, the alternatives considered all circumvent requirements under the Law of the River, ignore the Upper Basin's Compact delivery obligations, and offer no mechanism to prevent a Compact call, which clearly will not be acceptable to senior priority water users in the Lower Basin, including the Imperial Irrigation District. Reclamation cannot credibly claim legal infeasibility to eliminate some alternatives while retaining others that suffer from the same or greater legal infirmities.

Reclamation must address this fundamental inconsistency. The DEIS's alternatives cannot be “bounded by some notion of feasibility” (*Vermont Yankee*, 435 U.S. at 551), yet governed according to unstated, arbitrary rules that Reclamation does not reveal or articulate. The DEIS analysis is suspect and conclusory, and fails to deliver an informed, well-considered decision. (*Id.* at 558.)

4. The EIS Has an Insufficient Range and Number of Alternatives.

The “rule of reason” applies to an agency's selection of a reasonable number of alternatives that permit a “reasoned choice.” (*Save Lake Washington*, 641 F.2d at 1334; *see also Morton*, 458 F.2d at 836.) Though there is no minimum number of required alternatives that an agency must analyze, in some instances courts have held that an EIS with only a no-action alternative and two similar alternatives was inadequate. (See, e.g., *Muckleshoot Indian Tribe*, 177 F.3d at 813.) With the Enhanced Coordination Alternative and the Supply Driven Alternative being infeasible or at best reasonably expected to result in protracted litigation, the DEIS offers only two feasible alternatives in addition to the no action alternative. The Basic Coordination Alternative “is designed to be implementable without agreements among Basin water users regarding distributions of lower Colorado River mainstream shortages, storage and delivery of conserved water from system reservoirs, or other voluntary agreements.” (DEIS, p. 2-11.) The Maximum Operational Flexibility Alternative “is informed by a proposal submitted by a consortium of conservation organizations. This alternative incorporates proactive responses, targeted reservoir management strategies, and innovative and flexible tools to address an increasingly variable set of future hydrologic conditions.” (DEIS, p. 2-23.) And the no action alternative relies on “operating guidance that was in place before the adoption of the 2007 Interim Guidelines ROD (2007 ROD) to provide a reasonable representation of

how the system would continue to operate if no additional operating guidelines were adopted.” (DEIS, p. 2-6.)

Here, the four action alternatives analyzed in the DEIS represent a limited range of alternatives that do not fulfill the “rule of reason” because they do not enable decisionmakers or the public to make a “reasoned choice” between two limited feasible alternatives and a no action option, especially when numerous other alternatives also could have been considered to meet the purpose and need and still comply with the Law of the River, or in the case of the Lower Division States proposal that was not included as an alternative, be based on actions that at least three states were volunteering to implement.

C. Inaccurate Statements and Assumptions

The alternatives analysis has critical omissions and inaccuracies. An agency must “ensure the professional integrity, including scientific integrity, of the discussion and analysis in [EISs],” and “make use of reliable data and resources.” (42 U.S.C. § 4332(2)(D), (E).) Accurate scientific analysis is “essential to implementing NEPA.” (*Oregon Natural Desert Association v. Jewell*, 840 F.3d 562, 568–570 9th Cir. 2016) (internal citations omitted).) “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 Defense Council v. Hodel*, 840 F.2d 1432, 1439 (9th Cir. 1988) (quoting *Johnston v. Davis*, 698 F.2d 1088, 1095 (10th Cir. 1983).)

Reclamation needs to revise and recirculate the DEIS. The DEIS emphasizes the challenges of modeling the Colorado River’s hydrology over the DEIS’s 20-year operating timeline yet declines to acknowledge one of the key empirical drivers of hydrologic variability: climate change. Nearly two decades ago, the Supreme Court explained that “[t]he harms associated with climate change are serious and well recognized. Indeed, the NRC Report³ itself—which EPA regards as an ‘objective and independent assessment of the relevant science,’ 68 Fed. Reg. 52930—identifies a number of environmental changes that have already inflicted significant harms, including ‘the global retreat of mountain glaciers, reduction in snow-cover extent, the earlier spring melting of ice on rivers and lakes, [and] the accelerated rate of rise of sea levels during the 20th century relative to the past few thousand years’ NRC Report 16.” (*Massachusetts v. Environmental Protection Agency*, 549 U.S. 497, 521 (2007).)

³ National Research Council, “Climate Change Science: An Analysis of Some Key Questions” (2001). (“Greenhouse gases are accumulating in Earth’s atmosphere as a result of human activities, causing surface air temperatures and subsurface ocean temperatures to rise. Temperatures are, in fact, rising.” NRC Report 1; *Massachusetts v. E.P.A.* 549 U.S. 497, 511 (2007); IPCC, Climate Change 1995, The Science of Climate Change.)

The DEIS evades and obfuscates references to climate change's documented body of scientific research. One passing reference concedes: "Recent history combined with the increasing temperature trend, which is associated with lower streamflow, suggests that focusing more on the Average and Dry categories is warranted. However, Critically Dry conditions have been observed and could become more common." (DEIS, p. 3-15.)

Similarly, the DEIS's "Key Drivers and Trends" section states that higher temperatures result in reduced runoff yet avoids acknowledging that climate change is driving higher temperatures.

Worsening drought conditions have been a major driver for changes to hydrologic resources in the Basin. Since 2000, the Basin has experienced persistent drought conditions, exacerbated by higher temperatures, resulting in increased evapotranspiration, reduced soil moisture, and ultimately reduced runoff (Lukas and Payton 2020). The flow in the Colorado River is highly variable from year to year because of variations in precipitation in the Basin. However, the Basin is currently experiencing a prolonged period of drought; 2000 to 2024 was the driest 25-year period in more than a century. A paleo reconstruction of Colorado River streamflow at Lee Ferry, Arizona, back to 762 current era indicates that the recent 25-year period has lower streamflow than any other period in the last 1,200 years (Meko et al. 2007). These conditions have led to a cumulative streamflow deficit of about 70.0 maf relative to twentieth-century conditions (Reclamation 2025b).

(DEIS, p. 3-24.)

This omission makes the DEIS's methodology and extensive discussion of "Decision Making under Deep Uncertainty" approach suspect. The DEIS explains: "a decision making under deep uncertainty (DMDU) approach, drawn from a well-established branch of decision science, was implemented to evaluate how each alternative performs across a wide range of plausible future hydrologic and operational conditions [T]his approach is appropriate because of extreme uncertainty in future hydrology, the inability to accurately assess the probability distribution of future inflows, and the desire to avoid overconfidence in probabilistic predictions that will vary depending on model inputs." (DEIS, p. 3-10.)

But the DEIS fails to explain why, given the "deep uncertainty" of modeling runoff and hydrology on the Colorado River, Reclamation has chosen to omit the scientific consensus, data, and research that would reduce "deep uncertainty" and ensure that the alternatives meet Reclamation's professed purpose and need. Indeed, omitting a relevant

source of data, analysis, and research is inconsistent with NEPA's statutory requirement to "ensure the professional integrity, including scientific integrity, of the discussion and analysis in [EISs]," and "make use of reliable data and resources." (42 U.S.C. § 4332(2)(D), (E).)

Again: "NEPA 'does not mandate particular results,' but 'simply provides the necessary process' to ensure that federal agencies take a 'hard look' at the environmental consequences of their actions." (*Muckleshoot Indian Tribe*, 177 F.3d at 814 (quoting *Robertson*, 490 U.S. at 350); see also *Seven County*, 605 U.S. at 177.) The DEIS obliquely acknowledges climate change in its references to "the increasing temperature trend" and "persistent drought conditions, exacerbated by higher temperatures," but has not taken a "hard look" at the environmental consequences of the proposed action. The DEIS does not even explain why climate change-related research and analysis were omitted in favor of other data sources and modeling approaches. This defeats NEPA's basic goal "to insure a fully informed and well-considered decision." (*Vermont Yankee*, 435 U.S. at 558.)

D. Geographic Scope

The DEIS relies on the flawed geographic scope of analysis used for the 2007 FEIR. (DEIS, p. 1-8.) This geographic scope excludes any analysis of the Salton Sea, even though the Salton Sea forms part of the impact area that will be affected by implementation of the proposed action, and in particular in the DEIS alternatives using a pro rata approach to implementing Lower Basin shortages. The Enhanced Coordination Alternative alone projects a "hypothetical maximum shortage" to IID and CVWD of nearly one million acre-feet (DEIS, page 3-23) and resultant Salton Sea inflow reductions of 783,000 AF, but defers the impact analysis to a separate ongoing NEPA process.

When assessing significant environmental effects, "an agency will invariably make a series of fact-dependent, context-specific, and policy-laden choices about the depth and breadth of its inquiry—and also about the length, content, and level of detail of the resulting EIS. Courts should afford substantial deference and should not micromanage those agency choices so long as they fall within a broad zone of reasonableness." (*Seven County*, 605 U.S. at 183.)

"To be clear, the environmental *effects* of the project at issue may fall within NEPA even if those *effects* might extend outside the geographical territory of the project or might materialize later in time—for example, run-off into a river that flows many miles from the project and affects fish populations elsewhere, or emissions that travel downwind and predictably pollute other areas. Those so-called indirect effects can sometimes fall within NEPA But if the project at issue might lead to the construction or increased use of a *separate project*—for example, a housing development that might someday be built near a highway—the agency need not consider the environmental effects of *that separate project*." (*Id.* at 187, emphasis in original.)

The Supreme Court further explained in *Seven County* that “agencies are not required to analyze the effects of projects over which they do not exercise regulatory authority” or where “there is no ‘reasonably close causal relationship’” between the proposed project at hand and its environmental effects. (*Id.* at 188) (quoting *Dep’t of Transp. v. Pub. Citizen*, 541 U.S. 752, 767 (2004)).)

However, the Salton Sea must be included in the DEIS’s geographic scope because it will be affected by the proposed action and there is a reasonably close causal relationship between the water allocations that the guidelines implement and the amount of runoff that reaches the Salton Sea, thereby dictating the resulting land uses, agricultural production, fallowing, wildlife habitat, and air quality in that area for the 20-year span that the guidelines will be in effect.

The DEIS makes this clear:

The Salton Sea acts as a terminal sump for agricultural drainage; therefore, reductions in agricultural runoff could impact Salton Sea elevations, which, in turn, could impact air quality and shoreline wildlife habitat. Agriculture in the IID and CVWD service areas, as well as smaller non-agricultural uses, are sustained by Colorado River water diverted at the Imperial Dam and delivered via the All American and Coachella Canals. In recent years, total diversions of Colorado River water were approximately 2.8 maf per year at the Imperial Dam (California Natural Resources Agency 2024).

(DEIS, p. 3-22.)

Further:

Any reductions of Colorado River water available for diversion at the Imperial Dam for use by IID and CVWD could result in less available water for agriculture and, depending on the conservation activity or how the reduction would be implemented, subsequent drainage to the Salton Sea. While Reclamation cannot control Basin hydrology, there could be policy decisions that result in shortages. The alternative that would result in the largest possible shortage for IID and CVWD would be the Enhanced Coordination Alternative, with a maximum shortage of 3.0 maf, which is modeled as being distributed pro rata. A pro rata distribution under this alternative would result in a hypothetical maximum shortage to IID and CVWD of about 925,930 af for a minimum diversion amount from Imperial Dam of about 1.8 maf. Under this

scenario, the resultant inflow to the Salton Sea would be about 783,000 af, which is within the range used by the SSMP⁴ long-range plan.

(DEIS, p. 3-23.)

The DEIS also assumes that “[f]armers would fallow irrigated crops in response to water shortages rather than using other water sources or switching to more profitable or less water-intensive crops. The assumption that farmers would fallow rather than switch crops is based on the investments and institutional knowledge that have been made in plants, supply chains/relationships, and/or machinery that create barriers for changing crops.” (DEIS, p. 3-176.). IID disputes this assumption given the district’s long-standing historical opposition to fallowing due to concerns about the third-party socioeconomic impacts associated with this method of conservation.

Surprisingly, the DEIS concluded that the Salton Sea may be excluded from the DEIS because “Any resultant impacts are within the scope and range of inflows being considered in the SSMP’s long-range plan and the USACE’s ongoing NEPA process. . . .” and “Reclamation does not control the end use and management of delivered or conserved water.” (DEIS, p. 3-24.)

Notwithstanding the deference agencies are accorded under *Seven County*, the DEIS’s rationale does not pass muster. The DEIS bluntly states that the Salton Sea is affected by Reclamation’s changes in Colorado River runoff—i.e., the proposed action—and is not a geographically separate project. The existence of a Salton Sea Management Program (SSMP) and local water conservation practices and contracts thus do not relieve Reclamation of the duty to analyze the Salton Sea as part of the proposed action, nor is Reclamation permitted to impermissibly segment the proposed action to avoid studying impacts to the Salton Sea. NEPA prohibits segmentation to “ensure[] that an agency considers the full environmental impact of ‘connected, cumulative, or similar’ actions before they are undertaken, so that it can assess the true costs of an integrated project when it is best situated to evaluate ‘different courses of action’ and mitigate anticipated effects.” (*City of Boston Delegation v. Federal Energy Regulatory Commission*, 897 F.3d 241, 251–252 (D.C. Cir. 2022) (citing *Delaware Riverkeeper Network v. FERC*, 753 F.3d 1304, 1313 (D.C. Cir. 2014).) “[An agency] takes an unnecessarily crabbed approach to NEPA in assuming that the impact statement process was designed only for particular [projects] rather than for analysis of the overall effects of broad agency programs. Indeed, quite the contrary is true.” (*Scientists’ Institute for Public Information, Inc. v. Atomic Energy Commission*, 481 F.2d 1079, 1086–1087.)

USACE’s separate ongoing planning effort may include a NEPA process that analyzes impacts of declining water levels in the Salton Sea, but that does not excuse Reclamation’s failure to analyze those impacts in this DEIS. “[A]n agency may not rely on

⁴ Salton Sea Management Program prepared by the California Natural Resources Agency.

the compliance of other agencies with NEPA as a justification for its failure to comply with the Act.” (*Anacostia Watershed Society v. Babbitt*, 871 F.Supp. 475, 484 (D.D.C. 1994). Such attempts to “rely only on the environmental judgments of other agencies [are] ‘in fundamental conflict with the basic purpose of NEPA’: ‘NEPA mandates a case-by-case balancing judgment on the part of federal agencies. In each individual case, the particular economic and technical benefits of planned action must be assessed and then weighed against the environmental costs.’” (*State of Idaho By & Through Idaho Pub. Utilities Comm’n v. I.C.C.*, 35 F.3d 585, 595 (D.C. Cir. 1994) (quoting *Calvert Cliffs’ Coordinating Committee v. Atomic Energy Commission*, 449 F.2d 1109, 1123 (D.C. Cir. 1971).)

Nor does Reclamation’s lack of control over “the end use and management of delivered or conserved water” justify ignoring the proposed action’s predictable effects on the Salton Sea. As noted above, the DEIS recognizes that (1) “[a]ny reductions of Colorado River water available for diversion at the Imperial Dam for use by IID and CVWD could result in less available water for agriculture” (DEIS, p. 3-23); (2) farmers can be expected to “fallow irrigated crops in response to water shortages (DEIS, p. 3-176); and (3) “reductions in agricultural runoff could impact Salton Sea elevations, which, in turn, could impact air quality and shoreline wildlife habitat” (DEIS, p. 3-22). Approximately 97 percent of IID’s Colorado River diversions are delivered to agricultural water users, there is no doubt that Colorado River reductions to IID and CVWD would have a significant impact on agricultural return flows, their unique drainage, and Salton Sea ecosystems. In sum, there is a well-established, “reasonably close causal relationship” between Reclamation’s Colorado River water deliveries to IID and the environmental effects associated with declining water elevation in the Salton Sea. (See *Seven County*, 605 U.S. at 188.)

In addition, Reclamation’s rationale for excluding the Salton Sea from analysis reveals a fundamental flaw in the DEIS. Reclamation states that it is not required to study the Salton Sea because “Reclamation would need new authorities and compliance to implement any policies that change how water shortages are distributed to IID and CVWD.” However, the DEIS nonetheless includes two alternatives—i.e., half of the action alternatives—that propose pro rata water allocations premised on the adoption of new laws, agreements, and authorities necessary to effectuate water allocations that would otherwise be illegal under the Law of the River.

This double standard is suspect and opportunistically relies on agency deference to avoid NEPA compliance. Reclamation declines to analyze environmental effects when new authorities would be required, but nonetheless has prepared a DEIS in which half of the analysis is premised on the adoption of new authorities and laws that currently do not exist and are beyond Reclamation’s control. NEPA requires more. An agency must “ensure the professional integrity, including scientific integrity, of the discussion and analysis in [EISs],” and “make use of reliable data and resources.” (42 U.S.C. § 4332(2)(D), (E).) Accurate scientific analysis is “essential to implementing NEPA.” (*Oregon Natural Desert Association*, 840 F.3d at 568–570 (internal citations omitted).)

The DEIS's depictions of the affected area and geographic scope are inaccurate and should be updated to reflect the entirety of the area impacted by the proposed action, including the Imperial Valley and IID's service area.

Finally, many of the modeled shortage reductions included in the DEIS alternatives are contrary to, or not fully consistent with, provisions of existing California intrastate shortage sharing agreements authorized as part of the 2003 *Quantification Settlement Agreement* that the Secretary committed to delivering water consistent with in Section 5.b of the *Colorado River Water Delivery Agreement: Federal Quantification Settlement Agreement* executed in 2003. A revised DEIS should better explain the historical Decree Accounting data used in the calculation of the estimated average CU/Diversion ratios modeled for California agencies.

E. Mitigation

The DEIS does not comply with NEPA because it is devoid of any discussion of mitigation measures. This is a critical deficiency. A fundamental requirement of NEPA is that an EIS must discuss "steps that can be taken to mitigate adverse environmental consequences." (*Robertson*, 490 U.S. at 332.) This obligation is "[i]mplicit in NEPA's demand that an agency prepare a detailed statement on 'any adverse environmental effects which cannot be avoided should the proposal be implemented[.]'" (*Id.* (quoting 42 U.S.C. § 4332(2)(C)(ii)).) A discussion of mitigation measures is important "in guaranteeing that the agency has taken a 'hard look' at the environmental consequence of a proposed federal action." (*Id.* at 352.) "[O]mission of a reasonably complete discussion of possible mitigation measures would undermine the 'action-forcing' function of NEPA. Without such a discussion, neither the agency nor other interested groups and individuals can properly evaluate the severity of the adverse effects. An adverse effect that can be fully remedied by, for example, an inconsequential public expenditure is certainly not as serious as a similar effect that can only be modestly ameliorated through the commitment of vast public and private resources." (*Id.*)

F. Environmental Consequences

5. Water Deliveries.

As noted earlier, the DEIS fails to consider that reduction in water deliveries will cause reduced inflows to other bodies of water, like the Salton Sea. Negative effects on the Salton Sea can have negative effects on the human population and wildlife around it. (*Commitment to Support Salton Sea Management Related to Water Conservation in the Lower Colorado River Basin* (Interior Commitment Agreement) (November 29, 2022) <https://www.iid.com/home/showpublisheddocument/20856>.) As explained above in the Geographic Scope discussion, Reclamation acknowledges that there will be environmental effects to the Salton Sea resulting from the proposed action, and the DEIS needs to include these effects in its analysis. Although NEPA does not require foreseeing the unforeseeable, "an agency must use its best efforts to find out all that it reasonably

can.” (*City of Davis v. Coleman*, 521 F.2d 661, 676 (9th Cir. 1975).) Because the DEIS fails to discuss the readily foreseeable ecological impacts in the Salton Sea, Reclamation failed to take a “hard look at the environmental consequences of its actions.” (*Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 374 (1989).)

6. Geomorphology

The DEIS’s Impact Analysis Area contains unsubstantiated assumptions.

The impact analysis area used for GCMRC sediment modeling data extends from the Colorado River at Glen Canyon Dam to Lake Mead, including sediment inputs from the Paria and Little Colorado River tributaries. The analysis area for the sandbar model (quantitative model) is from Lees Ferry (RM 0 through Diamond Creek [RM 225]). The extent of this model is limited by the availability of study sites in the calibration dataset. However, it is expected that the findings for the reach between Lees Ferry and Diamond Creek are also representative for similar sandbars downstream to Separation Canyon (RM 240), the full-pool extent of Lake Mead.

(DEIS, p. 3-61.)

The DEIS does not explain why its limited sediment data “are also representative for similar sandbars downstream to Separation Canyon,” or whether any other data was sought. Consequently, the impact analysis area’s justification is opaque and conclusory, and the scope of the impact analysis is questionable.

7. Air Quality

The air quality analysis is flawed because it is arbitrarily limited to certain counties in Arizona, Nevada, and Utah, but notably excludes the Imperial and Coachella Valleys in Southern California as well as the Salton Sea watershed – the latter of which includes more than 100,000 acres of federally owned lands. The DEIS does not explain why the analysis was constrained in this way. The DEIS must analyze *all* “reasonably foreseeable environmental effects of the proposed agency action.” (42 U.S.C. § 4332(2)(C)(i).) “Ordinarily, an agency has the discretion to determine the physical scope used for measuring environmental impacts. However, the choice of analysis scale must represent a reasoned decision and cannot be arbitrary.” (*Idaho Sporting Congress, Inc. v. Rittenhouse*, 305 F.3d 957, 973 (9th Cir. 2002).)

8. Terrestrial Wildlife Including Special Status Species

The DEIS does not comply with NEPA because it defers the bulk of analysis of effects on terrestrial wildlife by asserting that “species-specific impacts will be addressed

in future ESA Section 7 Biological Opinions (BOs).” (DEIS, p. 3-111; see *a/so* DEIS, pp. 3-113, 3-116.) As a result, the analysis in the DEIS is incomplete and deficient. It excludes the unique irrigation and drainage ecosystems in the Imperial and Coachella Valleys and the Salton Sea which include habitat occupied by federally listed endangered species such as desert pupfish and rails that will be impacted by water supply reductions to IID and CVWD that have traditionally been excluded from Colorado River operational guideline impact analyses, but are targeted for significant water delivery reductions in the alternatives included in this DEIS. NEPA does not permit Reclamation to defer analysis of impacts to another agency’s regulatory process. (*State of Idaho*, 35 F.3d at 595 (holding “[a]n agency cannot delegate its NEPA responsibilities” by “deferr[ing] to the scrutiny of others” “[i]nstead of taking its own hard look”)); (*North Carolina v. Federal Aviation Administration*, 957 F.2d 1125, 1129–1130 (4th Cir. 1992) (“Section 102(2) of NEPA, 42 U.S.C. § 4332(2), directs all federal agencies to comply with the Act. This provision precludes an agency from avoiding the Act’s requirements by simply relying on another agency’s conclusions about a federal action’s impact on the environment.”))

9. Cultural Resources

The scope of the cultural resources analysis is unclear and fails to include an assessment of the effects of the proposed action in the Salton Sea. The explanation at page 3-119 does not address whether and how the Class I search area was devised to coincide with the DEIS’s study area, or any potential gaps, shortcomings, or limitations that should be divulged and revised. “The agency must explicate fully its course of inquiry, its analysis and its reasoning.” (*Dubois v. U.S. Department of Agriculture*, 102 F.3d 1273, 1287 (1st Cir. 1996) (citation modified).)

The Cultural Resources section’s assumptions are similarly vague and conclusory. “The Class I records search conducted for the study area in Arizona, California, Nevada, and Utah serves as a representative dataset for the purposes of analysis.” (DEIS, p. 3-123.) The DEIS fails to explain why this is a valid assumption, and why the public and decision-makers should assume that it is accurate. NEPA requires the agency to demonstrate ‘reasoned decision making.’ (*Delaware Riverkeeper Network*, 753 F.3d at 1313) (quoting *Motor Vehicle Mfrs. Ass’n of the U.S., Inc. v. State Farm Mut. Auto. Ins.*, 463 U.S. 29, 43 (1983)).

10. Paleontological Resources

The Paleontological Resources section fails to study the Salton Sea and relies on vague conclusory statements. (DEIS, p. 3-137.) For instance, the DEIS states: “The NPS completed a comprehensive paleontological resource inventory in 2018. This inventory established baseline data for fossil-bearing formations and identified areas with high fossil potential; the inventory is confidential.” (DEIS, p. 3-136.) This statement is devoid of explanatory context and does not meet NEPA’s basic goal “to insure a fully informed and well-considered decision.” (*Vermont Yankee*, 435 U.S. at 558.) Consequently, it is unclear

why a 2018 resource inventory is valid, whether it covers an adequate geographic area, and if it remains accurate for use in the DEIS.

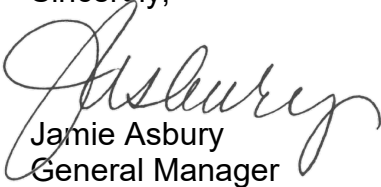
11. Tribal Resources

In addition to omitting the Salton Sea from the analysis, the Tribal Resources section makes a ham-fisted generalization: Native Americans are all the same. (DEIS, p. 150.) “Indigenous perspectives view cultural and natural resources as interconnected, so any disruption to these links is a potential impact. Along the Colorado River, riparian vegetation and aquatic wildlife are especially important to Native Americans.” (*Id.*) This assertion is unexplained, uncited, and conclusory. The 2020 U.S. Census reports approximately 10 million Native Americans in the United States, yet the DEIS provides no evidence to support its claim that all 10 million—or even those tribes affected by the proposed action—hold homogenous beliefs, values, or property rights. Not all Native Americans are the same. Moreover, certain tribes have Colorado River priority and some have no Colorado River rights at all. Therefore, the assumptions used for the Tribal Resources analysis risk being baseless and the conclusions based on these assumptions may be invalid and inaccurate. “[T]he hard look standard is not satisfied when an agency relies on incorrect assumptions.” (*City of Los Angeles v. Federal Aviation Administration*, 63 F.4th 835, 849 (9th Cir. 2023).) “[T]he agency must go beyond mere assertions and indicate its basis for them.” (*Silva v. Lynn*, 482 F.2d 1282, 1287 (1st Cir. 1973).) An agency must “ensure the professional integrity, including scientific integrity, of the discussion and analysis in [EISs], and “make use of reliable data and resources....” (42 U.S.C. § 4332(2)(D), (E).) Courts “cannot defer to a void,” such as when an agency does not “use any method or estimate—aside from making generic statements...” (*Oregon Natural Desert Assoc. v. Rose*, 921 F.3d 1185, 1191 (9th Cir. 2019).) NEPA’s most basic goal is “to insure a fully informed and well-considered decision.” (*Vermont Yankee*, 435 U.S. at 558.)

IV. Conclusion

As set forth above, the DEIS suffers from numerous deficiencies, many of which would independently render it inadequate under NEPA. Taken as a whole, these deficiencies confirm that the DEIS requires extensive revisions, supplementation, and recirculation for public comment.

Sincerely,



Jamie Asbury
General Manager