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Via Email and United States Mail (crbpost2026@usbr.gov)
Bureau of Reclamation
Attn: BCOO-1000
P.O. Box 61470
Boulder City, NV 89006

Re: Comments on Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead Draft Environmental Impact Statement issued January 16, 2026 ("Draft EIS")

Commissioner Cameron:

This letter provides comments on the Bureau of Reclamation's ("BOR") Draft Environmental Impact Statement evaluating Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead ("Draft EIS") on behalf of Mohave County, Arizona. Mohave County is bounded on the west by the Colorado River. Mohave County and entities within Mohave County holding Colorado River entitlements are considered "mainstream" Colorado River users, managing water supply portfolios that are uniquely singular in source and almost entirely reliant on the Colorado River to meet demand.

As set forth below, we request that BOR consider and address the unique challenges faced by Arizona on-river communities—concerns that have not been adequately addressed in the Draft EIS recently promulgated.

1. Introduction

Decisions made through the evaluation and selection of alternatives under this Draft EIS will shape the management of a severely stressed river system for decades to come. It is imperative that a path forward be grounded in a rigorous application of the Law of the River and recognition of the system-wide consequences of continued structural imbalance. While we remain cautiously hopeful that the Basin states will ultimately arrive at a collaborative path forward, of the five (5) Alternatives before us today, we support an outcome which apportions shortage equitably among the Upper and Lower Basins and, importantly, equitably among the lower Basin States. It is untenable that millions of acre-feet cuts would be borne by the Lower Basin States alone—and fundamentally unjust that under all but one of the alternatives proposed, the lion's share of such cuts would be borne solely by Arizonans. On this point, we prefer the Enhanced Coordination Alternative as the only alternative which does not relegate Arizona as the default shock absorber for the Basin's structural imbalance in apportioning the Lower Basin cuts on a pro rata basis.

In times of shortage, on-river communities in Mohave County are faced with distinctively harsh and existential uncertainties. Unlike many other Colorado River entitlement holders, these communities have no alternative sources of water to fourth priority Colorado River water and rely on a robust local hydro-tourism

economy during the warmer seasons. Protection of the River, these communities, and these water users is Mohave County's primary concern. As representatives for constituents uniquely vulnerable to and disproportionately affected by the outcome of the Draft EIS process, we ask that BOR support and enforce Upper Basin non-depletion obligations and expand mechanisms for in-system water storage to enhance the resiliency of on-river communities.

2. Upper Basin Delivery Obligations Under the Colorado River Compact

Article III(d) of the Colorado River Compact ("Compact") establishes a clear and enduring obligation on the Upper Basin to not cause the flow of the Colorado River at Lee Ferry to be depleted below an aggregate of 82.5 million acre-feet over any ten-year period.¹ This delivery requirement is foundational to the Compact framework and to the ability of the Lower Basin to exercise its apportionments with reasonable certainty. Compliance with this obligation is not discretionary, nor is it contingent on hydrologic conditions, the extent of downstream conservation efforts to curtail consumptive use, or the status of interstate negotiations; rather, it is a binding legal requirement that must be reflected in post-2026 operational assumptions and risk management strategies.

In periods of reduced natural inflow, Upper Basin depletions must be managed in a manner that preserves the ability to meet Lee Ferry delivery requirements, even as climate-driven aridification continues to erode runoff efficiency and system yield. Whether it be Upper Basin curtailment, mandated releases from Colorado River Storage Project-commissioned reservoirs north of Lake Powell (the "Upper Initial Units" or "UIUs"), or any combination thereof, post-2026 operations must be grounded in the Upper-Basins' delivery obligation as a first-order operational constraint.

It is not readily apparent, based on the alternatives before us which contemplate UIU releases, when Upper Basin conservation actions are triggered in lieu of UIU releases to ensure the Upper Basin can deliver on its Compact obligation. Releases from UIU reservoirs can only occur consistent with existing Records of Decision, a backstop posing inevitable operational difficulties if the Upper Basin intends to rely wholly on those releases to avoid cuts. It is as if BOR has given the Upper Basin States a straw to draw from the UIUs, nearly without limit nor identifiable federal constraint, to avoid curtailing use. This approach flies in the face of Congress's expressed intent in the CRSP Act, that the UIUs be used to assist the Upper Basin States in ensuring they can meet their Compact obligations. Public Law 485-Apr.11 1956. Upper Basin state courts have reiterated this intent in rejecting efforts to appropriate waters upstream of the UIUs which frustrate the federal government's goals under the CRSP Act. *See Board of County Com'rs of County of Arapahoe v. Crystal Creek Homeowners Ass'n*, 14 P.3d 325 (Colo. 2000) (en banc) ("[The Aspinall Unit] [r]eservoirs allow water retention when flows are high. Then, when flows subside, that water can be released into the river to allow Colorado to meet its Compact obligations at Lee Ferry...[T]he CRSPA reservoirs are part of a plan to allow Colorado to develop and preserve Compact apportionment"). As it stands, the Draft EIS would allow the Upper Basin to bankrupt its proverbial UIU savings account with no framework for moderation, frugality, or restraint in spending.

The Secretary's authority does not clearly extend to calling upon the UIUs to protect Lake Powell unless and until the Upper Basin has first undertaken curtailment of its consumptive uses. The Secretary's authority to operate the UIUs enabled by the CRSP Act is to be exercised subject to and in furtherance of Compact obligations, which dictates a fair and equitable apportionment of shortage between Upper and Lower Basin. But perhaps more alarmingly, the Basic Coordination Alternative asserts the authority to call upon CRSP Act reservoirs without any meaningful attempt to call out discernible conditions when additional Upper Basin conservation actions may be needed for infrastructure protection. *EIS Ch. 2, § 2.5.4.2*. Despite the broad scope and scale of the Draft EIS for management of the Colorado River, "site-specific critical decisions" and "irreversible and irretrievable commitment[s] of resources" require a site-specific analysis to pass NEPA muster. *Northern Alaska Environmental Center v. U.S. Department of the Interior*, 983 F.3d 1077, 1087 (9th Cir. 2020) (citing *Friends of Yosemite Valley v. Norton*, 348 F.3d 789 (9th Cir. 2003)). Alternatives that lack clear, enforceable pathways to ensure compliance cannot be considered legally or operationally sufficient.

¹ This is inclusive of, the Upper Basin's obligation to honor U.S.-Mexico Treaty obligations by providing an additional 750,000 acre-feet in a normal year, one-half of the U.S. obligation. See Colorado River Compact, Art. III § (c).

Failure to operationalize the Compact's delivery obligation would undermine the interstate allocation framework and introduce unacceptable legal and operational risk to the Lower Basin. The post-2026 framework must therefore reaffirm that Upper Basin development and use are subordinate to, and constrained by, the obligation to deliver water at Lee Ferry consistent with Article III(d) of the Compact.

3. Legislative and Regulatory History Elevate Lower Basin Deliveries as a Chief Priority of the Secretary's Operation of the River System.

Section 602(a) of the 1968 Colorado River Basin Project Act, consistent with and in furtherance of the Upper Basin's delivery obligations under the Compact, sets forth an unequivocal hierarchy for the Secretary to manage releases from Lake Powell: 1) releases to supply treaty obligations to Mexico referenced in Article III(c) of the Compact; 2) releases to comply with and carry out Article III(d) of the Colorado River Compact; and 3) releases of carryover storage that is not needed to meet the first and second priorities, to the extent the Secretary finds it reasonably necessary to assure deliveries of such priorities "without impairment" of consumptive use in the Upper Basin. 43 U.S.C. § 1552(a).

Applying the most basic tenets of statutory construction to Section 602(a), the Secretary may only consider whether the Upper Basin consumptive use may be impaired by Lake Powell releases when ordering releases of carryover storage. Put another way, it is *immaterial*, for purposes of issuing releases from Lake Powell to meet Compact delivery obligations to the Lower Basin and to Mexico, whether Upper Basin consumptive use experiences impairment. This is a congressional mandate foundational to the Law of the River, not mere dicta nor policy recommendation.

Multiple Interior administrations since the CRBPA's enactment have reinforced § 602(a)'s order of priority through Long-Range Operating Criteria, promulgated in 1970 and 2005, setting an objective to maintain minimum Powell releases at 8.23 million-acre feet per year to ensure the Upper Basin's compliance with Compact Art. III(c) and III(d). The Draft EIS before us today flips this approach completely on its head, impermissibly departing without explanation from BOR's position held for over 50 years, in favor of a multi-factored approach dismissive of 602(a) priority. *EIS Ch. 1, § 1.8.7*. This maneuver eradicates the historical hierarchy that is the bedrock of the Upper Basin-Lower Basin strategic partnership—that the system be operated with the chief goal of attaining Compact compliance.

We share in the concerns of our off-river counterparts in Central Arizona regarding BOR's apparent disregard of § 602(a) priority. The river system should be operated in such a way which reinforces Compact compliance and basic principles of equitable apportionment. The Secretary's apparent abdication of its role to operate the system with an eye toward ensuring the Upper Basin meets its release obligations is without legal basis and cannot stand.

4. Ability for On-River Communities to Create Stored Supplies.

There are significant health and safety concerns for on-river communities in Mohave County should fourth priority entitlements be curtailed. Cities such as Bullhead City and Lake Havasu City are fourth priority water users with no alternative source of water available to serve their citizens and no right to store water in the River system. For these water supply portfolios, which are largely single-source, adequate storage and reuse capacity is critical to meeting community needs moment-to-moment. In developing the Post-2026 Guidelines, BOR has an opportunity to build on current stored water initiatives by expanding opportunities for in-system water banking to on-river communities, be it through delivery forbearance or effluent returns, to greatly enhance the resiliency of local on-river water supplies.

The advent of Intentionally Created Surplus ("ICS Water") in the 2007 Drought Contingency Plan and its expansion in 2019 has been a successful tool for preserving reservoir elevations, having generated an additional 3.3 MAF of ICS Water left in Lake Mead by 2023. See Reclamation, *Colorado River Accounting and Water Use Report, Calendar Year 2024*, <https://www.usbr.gov/lc/region/g4000/wtracct.html>. Though its primary intent was to incentivize efforts to preserve Lake Mead elevations, the creation of ICS Water has also served an ancillary but essential purpose: offering operational flexibility and supply resiliency for users to call upon when needed. Creation of ICS Water is currently limited to select Lower Basin contractors, despite the fact that on-river communities face greater hydrological risk and operational uncertainties than

most. The on-river communities are not obligated by their Section 5 water contracts with BOR to return effluent to the river, nor would they receive any contractual benefit for doing so. Mohave County and similarly-situated entities should be afforded the right to generate credits to water stored in Lake Mead, to the extent that on-river communities develop the means to utilize effluent to decrease Colorado River diversions or equivalent Colorado River water conservation strategies.

As we work to navigate a prolonged era of climate variability, existing storage tools are no longer sufficient to provide the level of system resilience assumed under prior operating criteria. And yet, the Basic Coordination Alternative and No Action Alternative wholly fail to formulate a new storage and delivery system to replace ICS Water. The three (3) remaining Alternatives—the Enhanced Coordination Alternative, the Maximum Operational Flexibility Alternative, and the Supply Driven Alternative—each provide pathways for existing ICS Water to convert to an undetermined “new mechanism.” Mohave County users would benefit greatly from the inclusion of fourth priority entitlement holders in any future stored water program, and emphatically support 1) expansion of the stored water program to all users, 2) creation of a new mechanism which recognizes a varied approach to stored water creation, through delivery forbearances, effluent credits, or other mechanisms, and 3) maximization of annual contributions to storage.

5. Economic Harm to Arizona’s On-River Communities

Eliminating water supplies for on-river communities in Mohave County would pose an immediate and existential threat to the region. Acknowledging cuts are a certainty given the bleak hydrologic modelling on the river system, it bears reiterating: Arizona’s on-river communities are almost *entirely* dependent on Colorado River water to ensure the provision of essential public services and fulfill the basic consumptive needs of local economies. These are riparian communities built in reliance on longstanding federal water agreements. In practical terms, curtailment would not simply inconvenience these communities; it would risk eradicating them.

In addition to its consumptive use, river hydro-tourism—including boating, fishing, and a myriad of watersport activities—comprises a significant portion of on-river community industry during the warmer months, to the tune of millions of dollars of revenue. Absent operating guidelines which protect in-stream recreational uses below Hoover, tourism in Lake Havasu City and other on-river hubs will suffer. It merits BOR’s attention that though Courts have found economic or social effects alone cannot give rise to a NEPA violation, economic or social effects flowing directly from impacts to the physical environment may warrant analysis. *See Morris v. Meyers*, 845 F.Supp. 750 (D. Ore. 1993); *National Wildlife Federation v. Babbitt*, 128 F.Supp.2d 1274 (E.D. Cal. 2000). We would argue that the economic harm which would befall on-river communities falls squarely within the latter.

6. Conclusion

While the Basin anxiously awaits a deal to be reached among the States, the Draft EIS considers a broad set of principles and tools deployable to apportion shortage and build user resiliency. Unfortunately, the Draft EIS omits consideration of important details surrounding post-ICS water storage and Upper Basin conservation triggers and does little to distinguish and protect Arizona’s on-river communities who greatly depend on the Colorado River for survival. BOR’s efforts to protect system-wide stability need not come at the expense of rural on-river communities whose economic vitality solely depends on their fourth priority entitlements.

Components of the Draft EIS which are less clear—the applicability of the new ICS mechanism to on-river users, for instance—must be clarified and properly evaluated. We appreciate Reclamation’s efforts thus far and submit these comments in recognition of the difficult negotiations underway.

Sincerely,



Travis Lingenfelter
Chairman Mohave Board of Supervisors