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VIA ELECTRONIC MAIL

United States Bureau of Reclamation
Attention: BCOO-1000
crbpost2026@usbr.gov

Re: Comments of Yuma Area Irrigation Districts on *Draft Environmental Impact Statement for Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead*

Yuma County, Arizona is an agricultural community at the far southern end of the Colorado River that provides the majority of the Nation's winter vegetables and a wide variety of other agricultural products. Because Yuma growers use exclusively Colorado River water to sustain this economy—and do so with unusual water efficiency—they have a deep interest in the post-2026 management of the River. I therefore write on behalf of several Yuma-area irrigation districts to comment on the United States Bureau of Reclamation's ("Reclamation") Draft Environmental Impact Statement for Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead ("DEIS").

I represent four of Yuma's irrigation districts: North Gila Valley Irrigation and Drainage District, Wellton-Mohawk Irrigation and Drainage District ("WMIDD"), Yuma Irrigation District, and Yuma Mesa Irrigation and Drainage District ("YMIDD") (collectively, the "Districts"). The Districts receive River water almost entirely under third-priority contracts with Reclamation and supply it to agricultural users and a small number of domestic users within their service areas. Despite the tenure and legal clarity of those water rights, under certain conditions these deliveries would be threatened by alternatives Reclamation has evaluated for post-2026 operations. The Districts appreciate Reclamation's enormous effort in preparing the DEIS.

The Districts continue to support a consensus approach to managing the River's limited resources that incentivizes all parties to live within the means of the system. The Districts believe, from conversations with a variety of users across the Basin, that consensus can yet be found.

Absent such consensus, the Districts understand that Reclamation will adopt a plan generally in line with the Basic Coordination Alternative that respects the priority system encoded in the Law of the River. The Districts are concerned, however, that the Basic Coordination Alternative does not impose reductions large enough and soon enough to protect the system. Sound policy counsels spreading the necessary reductions out over many years, rather than taking insufficient reductions for too long and driving the system to collapse, at which point reductions will be enormous, immediate, uncontrollable, and devastating. Reclamation should adopt a plan now for imposing deeper shortages, rather than waiting too long.

The Districts endorse the positions discussed at greater length in the comments of the Yuma County Water Users' Association, offer additional comments, and propose below several items that Reclamation must more accurately analyze, including impacts to agriculture and impacts of any storage program.

1. The Districts continue to support a consensus solution to operating the River, but absent such a consensus, Reclamation should ensure that it adopts sufficiently large programmatic reductions.

The Districts have appreciated the opportunity to participate in multi-party negotiations, and continue to believe that a consensus approach to managing the River's limited resources is possible. The Districts favor a plan that incentivizes all parties to live within the means of the system. Such a plan must solve the River system's recent mass-balance problem, where more water has been withdrawn from the system than has entered it. Given the River's limited resources, any plan must create new tools to use those resources flexibly and optimally, and some of the best tools may lie outside Reclamation's authority in the current proceeding. And any plan must have a term long enough to provide stability and predictability upon which future investments can be made, likely twenty years or longer.

The Districts nonetheless recognize that, absent consensus or Congressional action, Reclamation will need to adopt and implement an Alternative from the DEIS (or a combination of features from different Alternatives). Within that space, the Districts support the Basic Coordination Alternative as operating largely within the Secretary of the Interior's existing authority.

The Districts are concerned, however, that the specified Lower Basin reductions under the Basic Coordination Alternative will not be deep enough or come soon enough to protect the system. *See, e.g.*, DEIS ES-21 (in critically dry hydrology, the Basic Coordination Alternative outperforms only the No Action Alternative and the Continued Current Strategies baseline in protecting the

system). The coming years will demand very significant water use reductions. The system is already in crisis, and although nobody can predict future hydrology with any confidence, it appears likely to be worse in the future than it has been in decades past. Sound policy counsels spreading the necessary reductions out over many years, rather than taking insufficient reductions for too long and driving the system to collapse, at which point reductions will be enormous, immediate, uncontrollable, and devastating. Reclamation implicitly recognizes this in explaining that it would "determine and implement additional measures as necessary to protect critically low elevations" as Lake Mead's elevation approaches 1000 feet under the Basic Coordination Alternative. DEIS 2-13. Rather than wait too long and create uncertainty, Reclamation should adopt a plan *now* that will predictably impose reductions greater than the 1.48 million acre-feet (maf) per year maximum reflected in the Basic Coordination Alternative. Such a plan is a necessary feature that is within the Secretary's authority. It is analyzed in other Alternatives but missing from the Basic Coordination Alternative.

Beyond the Basic Coordination Alternative, the Districts would generally favor additional programs of the sort envisioned in the Enhanced Coordination Alternative to achieve more in partnership than Reclamation can achieve unilaterally. The Districts appreciate that the Enhanced Coordination Alternative would base reductions upon the combined contents of Lakes Mead and Powell and would allow for increased Upper Basin and tribal contribution efforts through an innovative pool system. DEIS 2-16–2-23. These policy ideas require more exploration, but they are promising avenues for yielding useful efficiencies in the distribution of water around the Basin through voluntary efforts that respect existing rights.

2. The DEIS insufficiently analyzes impacts to farming and rural communities of the proposed Alternatives.

The National Environmental Policy Act ("NEPA") requires Reclamation to analyze the effects of a decision of the magnitude of the present proceedings in an Environmental Impact Statement ("EIS") with reasonable specificity. The Ninth Circuit has repeatedly insisted that "general statements" about future impacts do not satisfy NEPA. *Or. Nat. Res. Council Fund v. Brong*, 492 F.3d 1120, 1134 (9th Cir. 2007); *see, e.g.*, *Ctr. for Biological Diversity v. Bernhardt*, 982 F.3d 723, 740 (9th Cir. 2020). This means that any EIS analyzing restrictions on Colorado River water usage must analyze environmental impacts *at the level of the specific users denied water*. The DEIS does not do so. *See, e.g.*, DEIS 3-59, TA 17-10, TA 17-44–17-45. Under present circumstances, it will not suffice to note, as the agency erroneously did in *Center for Biological Diversity*, that usage of a resource might generally

increase or decrease. 982 F.3d at 737–40. Rather, the agency must determine the impacts of that increase or decrease, including how people who depend directly or indirectly on water from the Colorado River will foreseeably substitute for its loss—especially where changes in land use will result.

a. The impacts on the Nation of reducing water deliveries to Yuma would be significantly more severe than the DEIS reflects, because Yuma has outsized importance to the Nation's food supply. No agricultural region within the United States can replace the produce grown in Yuma, especially in the winter, when much of the Nation is subject to freezing, frost, mildew, extreme weather events, or other unsuitable conditions. Replacement of Yuma vegetables with imported products, if even possible, would have untold consequences for the Nation's trade balances, employment rates, carbon emissions, and food security and safety. None of these impacts is captured in the DEIS because the DEIS does not adequately recognize how difficult (or impossible) it is to substitute for certain uses that depend on water from the River.

The impacts of water reductions to Yuma would be especially severe because Yuma growers use River water extremely efficiently to grow this produce. There is therefore less room in the system to absorb reductions than there may be in other agricultural regions. Water-use efficiency operates at every level of the system. An up-to-date study by the Yuma Center of Excellence for Desert Agriculture, the U.S. Arid Land Agricultural Research Center, and the University of Arizona, supported by Reclamation, among others, has shown that seasonal irrigation application efficiencies are 80-90% for most Yuma-area vegetable cropping systems. Charles Sanchez et. al., *Quantitative Assessments of Water and Salt Balance for Cropping Systems in the Lower Colorado River Region* 7 (Univ. of Ariz., Nov. 2023). In other words, 80-90% of the water applied to a field and not returned to the River is used by the plants, a staggeringly high figure.

Yuma growers accomplish this efficiency through a wide variety of advanced technologies and recurring investment. Growers typically must absorb the cost of these technologies, some of which require year-over-year investment. Yuma growers can order water in increments down to the minute via electronic metering devices and gate control, which prevents water waste. The vast majority of canals, laterals, and on-farm ditches are cement-lined, and irrigation runs have been shortened. Fields are level-graded using GPS and lasers so that water can be applied as efficiently as possible. Some Yuma growers use high-flow turnouts, sprinklers for germination and irrigation, and drip irrigation. And Yuma growers use steel press wheels to press furrows into shapes through which water can be applied efficiently. Yuma growers use tractors precision-guided by GPS, drones,

automated thinners, and laser weeders to improve efficiency. They operate complex modeling systems that track all farm inputs and run continuous seed-breeding programs to improve area crop varieties. And innovation and investment continue: High-speed broadband internet is in the process of being installed throughout Yuma agricultural areas to support ever-more complex systems operating in real time—systems that use drones, satellites, and mobile phone apps. Yuma growers invest in technology that increases efficiency at each point of the water-use system.

Academics have quantified Yuma's superlative efficiency, finding that Yuma County has the highest agricultural water productivity in the Basin. Across a number of water productivity measures, including Blue Water Footprint, Economic Water Productivity, cropland cash rent premiums, and water-use intensity, researchers have found that Yuma County has the highest "crop per drop," or the most economically valuable agriculture outputs per unit of Colorado River water in the Basin. George Frisvold & Dari Duval, *Agricultural Water Footprints and Productivity in the Colorado River Basin*, 11 Hydrology 1, 7–13 (Dec. 2023).

b. The DEIS insufficiently analyzes the impacts *on the Yuma area* of reducing Yuma water deliveries, as well. Agriculture comprises approximately two-thirds of Yuma's economy—and the DEIS underestimates the cost of curtailing this portion of the Yuma economy.

The DEIS's limited attempts to model effects of changes in agricultural land use due to water shortages are inaccurate in important respects. The most pervasive—and easily correctable—error is that the DEIS models the impact of water delivery reductions by assuming that reductions would result in seasonal fallowing that eliminates the least profitable crops. *See* DEIS 3-174–3-175, TA 16-35. That model does not approximate real-world conditions in Yuma because Yuma farmers often use less-profitable crops as rotation crops to promote soil health necessary to support more valuable crops in other growing seasons. Additionally, volatile agricultural markets may upend these assumptions. In the Yuma region, it would be more accurate to assume that crops of *average* value are lost (corresponding to an arrangement where some land is taken out of production entirely).

Moreover, the Districts are tied tightly together. Each relies upon the same labor and shipping infrastructure—for example, Yuma's status as a hub for chilling and dispatching produce comes with tremendous economies of scale. Similarly, should water available to the Districts be significantly reduced, the relatively fixed costs of operating and maintaining Reclamation's Gila Gravity Main Canal and providing current pro-rata shares of Imperial Dam operations and maintenance may become cost prohibitive when spread across a much smaller base of land that

retains access to water deliveries. There is, in short, a tipping point at which reductions to the Districts could collapse the integrated economy of the entire region. Thus, it cannot be assumed that *some* Yuma Districts will operate indefinitely if *other* Yuma Districts are facing severe reductions.

c. Yuma is a thriving, integrated community important to other industries that are vital to national security. Yuma's arid climate and flat geography make the region optimal terrain not only for agriculture, but also for military aviation. Beyond their obvious contribution to national food security, the Districts contribute to national defense by supporting local military bases and operations. The U.S. military, like the Districts, depends on the availability of River water—both directly and indirectly. Yuma hosts a Marine Corps Air Station ("MCAS Yuma") and the U.S. Army's Yuma Proving Grounds, whose fortunes are inexorably linked to regional agriculture and its water supply. After agriculture, the Department of War is Yuma's leading employer.

Yuma agriculture has long suppressed regional dust and air particulates to support military operations and training. A decline in local agriculture production threatens to upend this partnership on which the military has come to rely. Reclamation developed farmland in 1942 on the mesa south of Yuma's military airfield—supported and encouraged by the Army—to diminish the frequency and intensity of dust storms. Reclamation even planted the first 5,000 acres of alfalfa in YMIDD. MCAS Yuma (through the Department of the Navy) holds its own priority three entitlement for a buffer strip of agricultural land spanning several square miles—leased to local growers—to the south of the Air Station. YMIDD manages and provides the distribution network for this irrigation supply that directly supports national security.

Reducing water delivery to the Districts may negatively impact military aviators and readiness. Yuma's dusty climate, if not suppressed by local agriculture, could reduce flight hours for Marine Corps aviators and cause serious deterioration of airplane engines. The agricultural buffer owned by the Air Station suppresses rodents, pests, and dust that interfere with base aircraft. MCAS Yuma is home to four squadrons of F-35B Joint Strike Fighters of the 3rd Marine Aircraft Wing and Aggressor, Testing and Evaluation, and Aviation Weapons and Tactics squadrons. The new, highly complex F-35B fighter aircraft are the centerpiece of the Pentagon's next generation airpower strategy. They feature a short take-off and vertical landing capability, which will be negatively impacted, both in maintenance and safety, by an increase in dust if water deliveries to the Yuma area are reduced. It is incumbent on Reclamation to analyze the potential effects of relocating Marine

Corps flight operations, constructing new supporting facilities, and simultaneously devastating Yuma's two largest industries—defense and agriculture.

The Districts support base and military operations less perceptibly, as well. A vibrant local economy premised on agriculture provides contractors and staff for base operations and logistics. The community provides homes, healthcare, education, and commercial districts to personnel stationed in Yuma. The EIS must analyze the foreseeable effects of reductions in water delivery to Yuma on military housing, community facilities, and personnel who support base operations.

d. The DEIS insufficiently analyzes impacts to Yuma-area air quality. The DEIS models only fugitive shoreline dust near the reservoirs, and does not analyze air quality impacts in Yuma from reduced water deliveries. *See* DEIS 3-78–3-79. But air quality effects are entirely foreseeable: Reduced water deliveries would result in reduced irrigation; the reduction in water application is likely to be concentrated on particular land that is taken out of production during periods of shortage; reduced dust control will result from pauses in water application; and greater fugitive dust will adversely affect air quality in the surrounding region. The EIS must analyze those air quality impacts. This analysis is especially important for Yuma County because, as the DEIS recognizes, much of the area has been designated an O_3 marginal non-attainment and a PM-10 moderate non-attainment area. *See* DEIS 3-75.

e. The Districts are major hydropower consumers, along with many other users in Arizona and across the Basin. The DEIS's modeling of effects on hydropower production (and, in turn, those who depend on that power) is very limited, despite the fact that hydropower production is a key function of the infrastructure that Reclamation operates. *See* 43 U.S.C. § 1501(a). The Districts endorse the hydropower-related comments made by the Colorado River Energy Distributors Association.

f. The DEIS declines to analyze deadpool reductions, *see* DEIS 3-197, at which all of the above issues would be at their most acute. *See, e.g.*, DEIS TA 16-50 (suggesting that deadpool shortages will increase fallowing of high-value crops). No provision in the law allows an agency to avoid considering the most dire consequences of its proposed actions. The final EIS should analyze the effects of deadpool reductions.

g. Any selection of a preferred alternative in the final EIS will likely result in the need for additional mitigation under the Endangered Species Act. While mitigation cannot fall solely on the Lower Basin States, the Lower Colorado River Multi-Species Conservation Program ("LCR MSCP") should be expanded to

cover any additionally required mitigation in the Lower Basin. This expansion should be done in such a way to ensure Endangered Species Act sections 7 and 10 coverage for water and hydropower users. Reclamation should also ensure that the process for expansion of the LCR MSCP does not result in gaps of coverage for water and hydropower users as we transition from the existing program to the newly expanded program under the post-2026 operational guidelines.

h. The DEIS similarly fails to fully and accurately model and analyze the impacts to municipal and industrial users of reductions in water usage, especially reductions to users that are on-River in Arizona or that draw water through the Central Arizona Project. The Districts support the description of those regional and national social, economic, and other impacts in comment letters from other Arizona entities.

3. The Secretary lacks authority to impose reductions outside of the priority system or otherwise alter the Law of the River.

The DEIS correctly recognizes that, absent voluntary consent to the contrary, Reclamation must allocate water deliveries and reductions according to the priority system encoded in the Law of the River. *See* DEIS 1-13. In particular, the DEIS recognizes that distributing shortages without regard to priority "would involve modifications to certain laws, contracts, agreements, and other authorities that are part of the Colorado River legal and contractual framework referred to as Law of the River." DEIS C-2–C-3. The DEIS also correctly explains that its modeling of pro rata distribution of shortages and distribution without shortages to Native American Tribes is offered for environmental analysis purposes only, and does not represent an interpretation of the Law of the River. *See* DEIS C-117, C-148, C-171, C-195. The DEIS correctly states these approaches would "diverge from provisions in the Consolidated Decree and other applicable Federal law" and acknowledges that "[s]uch proposals may ultimately not be implementable." DEIS C-3.

The Districts believe that modeling non-priority distributions of water is nonetheless appropriate. The optimal use of water within the Lower Basin—indeed, within the entire Colorado River Basin—is unlikely to match a strict priority distribution. Instead, voluntary arrangements that distribute water differently are likely to make better overall use of this limited resource, fostering long-term sustainability that benefits users of all priorities. The priority system must, however, always be the starting point for any allocation of the River's resources.

Within the Lower Basin, that priority system operates as follows. Reclamation, on behalf of the Secretary, first satisfies present perfected rights

("PPRs") without regard to state lines. *See Arizona v. California*, 376 U.S. 340, 342 (1964); 43 U.S.C. § 1521; *Arizona v. California*, 547 U.S. 150, 155 (2006); DEIS C-11. Reclamation then satisfies non-PPR users with contract dates prior to 1968 ("middle-priority users") before satisfying post-1968 users, as stated in the Colorado River Basin Project Act ("CRBPA"). 43 U.S.C. § 1521(b). With respect to the Districts in particular, the CRBPA makes clear that Reclamation has a mandatory duty to satisfy the Districts' entitlements—which date prior to 1968—before it can deliver water to Arizona users with post-1968 contract dates.

The Administrative Procedure Act imposes additional requirements on Reclamation. Reclamation may not unlawfully withhold or unreasonably delay mandatory acts; cannot act in a manner contrary to law; must not be arbitrary or capricious in making discretionary decisions; and must have substantial evidence for any fact-based decisions. 5 U.S.C. § 706. Those principles require Reclamation to abide by the Law of the River, including by implementing this priority system upon which multi-billion dollar economies have long relied. Indeed, even if the priority system were purely a creature of Reclamation's administrative powers, Reclamation would need exceedingly persuasive justifications for departing from that system. *See, e.g.*, *Smiley v. Citibank (S. Dakota), N.A.*, 517 U.S. 735, 742 (1996) (citing *United States v. Pa. Indus. Chem. Corp.,* 411 U.S. 655, 670–675 (1973); *NLRB v. Bell Aerospace Co.,* 416 U.S. 267, 295 (1974)).

The Districts will not compromise on the priority system. It is both a legal, contractual right and a foundational political compromise that reflects a long-term bargain: Higher priority users such as the Districts receive a relatively steady supply of water, but in years of abundant water cannot receive more than their contractual entitlement. Arizona junior-priority users—Arizona Priority 4 and lower—receive a variable supply of water (potentially nothing in years of extreme shortage) but enjoy the excess of Arizona's allocation in years without shortage. Involuntary cuts out of order are not lawful, and they would force higher priority users to bear the burden of reduced deliveries in bad years, while those users receive none of the benefits in good years.

One area in which Reclamation may have some limited discretion is in apportioning water to middle-priority users when insufficient water is available to fill all water orders, even after reducing junior-priority users' deliveries to zero. Reclamation must apportion that water equitably and consistently with the larger legal framework. *See generally Arizona v. California*, 373 U.S. 546, 592–93 (1963). That act of apportionment is a federal function, and is not subject to approval by State legislatures. *See* 43 U.S.C. § 617c (providing for contracts directly between Reclamation and water users). The DEIS's methods for assigning reductions to

States, *see, e.g.*, DEIS C-16–C-22, and to pre-1968 Section 5 contractors, *see, e.g.*, DEIS C-28–C-31, C-47–C-48 tbl. C-15, C-53–C-57 tbl. C-17, are generally sound. In particular, the DEIS is correct to treat middle-priority users with Arizona as co-equal (with certain exceptions), and to allocate water to them in proportion to their entitlements—meaning that shortages similarly are taken based on entitlement. *See* DEIS C-28. In that limited respect, pro rata reduction *within* groups of co-equal priority is proper, and Reclamation appropriately includes it in its priority-based modeling.

4. The DEIS fails to properly analyze several issues relating to flows into the Lower Basin.

A starting point for any analysis of environmental effects *within* the Lower Basin is the inflow *into* the Lower Basin. That inflow is determined by the operation of Glen Canyon Dam, which is substantially affected by inflows into Lake Powell. In turn, because of Reclamation's prior decision limiting the scope of the environmental review here, the DEIS must make assumptions about the inflows into Lake Powell. The most significant factor affecting those inflows to Lake Powell is unknown future hydrology, which counsels in favor of substantial planned reductions, as discussed in point 1 above. But another very significant factor is the legally required operation of reservoirs above Lake Powell, the Colorado River Storage Project Upper Initial Units ("UIUs").

The Districts generally support the comments by other Arizona users, especially the Arizona Department of Water Resources and the Central Arizona Water Conservation District, which explain the ways in which the DEIS fails to properly analyze (a) the delivery obligations of the Upper Division States under the Colorado River Compact and (b) Reclamation's related operation of the UIUs. Regardless of whether the present proceedings are an occasion for enforcing Compact obligations or modifying how Reclamation operates the UIUs, correct *assumptions* regarding those obligations and operations are the bare minimum when those are essential inputs into the modeling that Reclamation has otherwise performed. But, as other commenters explain, those assumptions are not in accord with the law.

The Districts also support the comments by other leading Arizona entities regarding the DEIS's assumption of growth in the Upper Basin. This assumption is one of the most critical inputs into the model of how much water enters Lake Powell, as the analysis of alternative demand schedules in Appendix I demonstrates. Past alterations in Upper Basin demand schedules and discrepancies between projected and actual usage suggest that the Upper Basin usage projection is a lower-confidence assumption. When the Lower Basin—which

has three times the population of the Upper Basin and a vast majority of the River Basin's agricultural value—has proposed to limit its usage to 6.25 maf per year, a projection that the Upper Basin will soon come to use nearly that volume of water should be treated with great skepticism.

5. A reasonable, well-constructed storage program is an important part of the River's future, but Reclamation must carefully analyze any such program to avoid unintended consequences.

The Districts understand that a reasonable, well-constructed storage program is a tool to give users the flexibility needed to make optimal use of the River's limited resources in the future. The Districts therefore support a storage program that is fair, accessible, and beneficial to all participants without harming any non-participants or the system.

Such a program has great potential to allow users across Arizona, the Lower Basin, and perhaps the entire River Basin to help one another through a difficult period ahead. For example, the Districts believe there are genuine opportunities to create a framework within which the Districts can work—voluntarily, creatively, and proactively—with other water users to manage through deep cuts to junior water supplies that may be necessary. The Districts have discussed these issues with many other water users in Arizona that agree about the importance of this issue to Arizona's future.

A storage program can be a suitable method of facilitating water exchanges, because it allows buyers and sellers of water to engage with the program at different times, in different volumes. It might, for example, allow some users (for example, the Districts) to voluntarily store small amounts of water over time, to be accessed by other users in larger volumes in times of need. Additionally, such a program would allow users to save water in wet years that can then be used in dry years. Storage programs also facilitate advance planning with "water in the bank," minimizing the need for the sort of management-by-crisis that creates uncertainty for all water users. This feature, perhaps more than any other, promises to benefit a broad range of users, and deserves especially close attention. See Kathryn Sorensen et al., *Considerations for Assigned Water after Expiration of the 2007 Guidelines* 2, 13 (Univ. of Colo., Jan. 2026) (discussing how storage programs enable water transfers). More broadly, expanded market-based systems for reallocating water within the Lower Basin have significant potential to improve outcomes. After all, when one person has something valuable that another person wants and values more highly, the accepted solution is a purchase and sale in a free market—not an involuntary transfer without compensation. Such markets for River water exist in

limited form today, including established programs for transfers between certain agricultural and urban users within California. Although such transfers raise numerous difficult policy issues, they may be a promising avenue for identifying and enabling shifts in water use that are highly beneficial, yet which Reclamation would otherwise have no insight into or authority to impose on its own. Reclamation could play a valuable role in facilitating such markets—for example, by ensuring that market forces set prices that will maximize participation in voluntary arrangements.

Although the DEIS contains some analysis of some of the elements that might go into a storage program, any proposed storage program must be analyzed in its final form in order for the full consequences of such a program to be appreciated. Moreover, such a program can reach its full potential only if it comes with long-term stability, flexibility to meet changing needs, and accessibility to a range of interested users—all of which can best be served by a framework adopted by Reclamation with full NEPA coverage. Affording that coverage will require additional development and analysis beyond what appears in the DEIS. The Districts look forward to participating in future proceedings to crystallize and analyze a storage program. Several aspects of storage programs deserve special consideration, and are discussed below.

a. First, all entities must be able to participate fairly in any storage program in the future, which includes appropriate crediting for conservation measures of the sort Yuma growers engage in year after year.

Any storage system must recognize that in a priority-based system, conservation by junior-priority users is possible only because of conservation by higher-priority users such as those in the Districts. Junior-priority users in Arizona have created important stores of water underground and elsewhere. But that conservation would not have been possible had the Districts not passed along their unused entitlements to junior users through many of the same conservation measure for which users get credit elsewhere—extraordinary management practices in which the Districts are not obligated to engage, but which reduce their consumptive use and leave more water for others.

The current Intentionally Created Surplus ("ICS") storage system draws arbitrary lines between eligible and ineligible conservation measures. For example, some efficiency improvements implemented prior to 2006 that must be re-implemented every year have nonetheless been treated as categorically ineligible. Thus, one of WMIDD's applications for ICS water arising from land retired from agricultural use was denied because that land was retired prior to 2006, and thus the water was considered "unused entitlement" rather than ICS-eligible savings—

even though growers in WMIDD could turn a profit by returning that land to production tomorrow. By contrast, an urban water district is eligible for ICS credit for homeowners who implemented low-flow technology prior to 2006. It appears, therefore, that the year of implementation constrains only some users arbitrarily, when nothing distinguishes next year's water savings from the retired agricultural land and next year's water savings from the low-flow showerhead. Any future storage program must grapple evenhandedly with these and other arbitrary and unfair features in order to generate support from and participation by the Districts. Organizing the program otherwise would *discourage* Yuma growers from investing in new and repeat efficiency measures.

b. Second, the leading unintended consequence of ICS must not be repeated: Today, stored water is not "operationally neutral," and that has led to excessive deliveries of water during the term of the current Guidelines.

ICS has been treated as if it were *system* water for purposes of deciding how healthy the system was and how much water could be released to users on an annual basis. This has had real consequences for the system: Lower reductions have been assigned to users across the Lower Basin than would otherwise be required because Lake Mead "looks" fuller than it is. Consequently, the system is in a worse place than it should be—threatening the most junior users in the near term, and everyone in the long term. *See* Sorensen, *supra*, at II (explaining that the ICS program has "delayed formal shortage declarations in the Lower Colorado River Basin," with "the practical effect of putting off water use reductions to the detriment of reservoir storage"). Knowledgeable commentators explain that this "creates winners and losers" among water users, allowing "more water to flow to lower-priority entitlement holders *in the short term* and leav[ing] less water available for senior entitlement holders *over the long-term*." *Id.* at 8 (emphasis in original). Engineers from Metropolitan Water District similarly found that "if all water stored as EC ICS were withdrawn, the system would have less water than if the EC ICS had never been stored at all." Laura Lamdin & Aaron Mead, *Intentionally Created Surplus: Boosting Colorado River Reservoirs by Two Million Acre-Feet* 2 (Metro. Water Dist. of S. Cal., June 2025). In short: The ICS storage program has drained *over a million acre-feet* of water from the Colorado River system and delivered or re-assigned it to junior users. *Id.* at 11.

The way to avoid continuing this grievous error in the ICS system is "operational neutrality," under which stored water would *not* be treated as part of system contents when deciding how much water is available for release during a given operating year. In other words, the system must be operated on a basis that honestly recognizes how much water is freely available in the system for deliveries.

The Districts strongly support this, because it is essential to the long-term stability of the system. This issue affects both existing ICS water and any water stored under a new storage program.

There appears to be consensus around operational neutrality as an abstract matter, but the application of operational neutrality to existing ICS water has proven to be a point of contention in discussions to date. To be clear: There is no policy benefit to non-operational neutrality. If anything, it avoids public recognition of the large reductions in usage that current circumstances demand, while allowing junior users to unjustifiably continue to take delivery of (or create) stored water even as the system is declining. *See, e.g.*, DEIS B-24 (junior users in Arizona are assumed to be able to create stored water even when reductions are in effect). Objections to immediately treating all stored water as operationally neutral are in truth expressions of concern about the deep reductions in usage that may be needed—not actually objections to operational neutrality as such. In that light, if the problem is that transitioning to deep cuts immediately is impossible for users, that should be the real issue of discussion. Cloaking it in a debate about operational neutrality is unhelpful.

For closely related reasons, Reclamation must ensure that the terms of any future storage program remain compatible with the fundamental operating guidelines it is developing. The lesson of ICS under the 2007 Guidelines and the 2019 Drought Contingency Plan is that a well-crafted operating plan can be fundamentally altered by a storage program. To avoid that mistake, Reclamation must ensure that terms for managing stored water do not have the potential to alter the performance of the basic operating criteria it develops.

c. Third, any storage program must follow the priority system, at least within Arizona. Because nothing in the Law of the River allows users to subvert the priority system by delaying delivery of water, storage retains the priority of the water used to create it. In practical terms, this means that junior-priority water that was stored cannot be withdrawn at a time when a more senior user is receiving reduced deliveries—absent a waiver from that more senior user. The principle is as straightforward as the priority system itself, and therefore draws support from users of different priorities in Arizona that understand that the priority system is the only way to have a predictable future that everyone can plan for.

This issue intersects with operational neutrality, as well. As others have explained, "delaying [system water] shortages with [stored water] not available in the priority system functions as a loan against the water stored in Lake Mead." Sorensen, *supra*, at 9. If inflows do not repay that loan, system contents are

compromised. Thus, "[t]aken to its logical extreme, [stored water] that is not operationally neutral can effectively replace [system water]." *Id.*

d. ICS is currently undeliverable below elevation 1025 in Lake Mead. Reclamation must similarly determine and analyze low-elevation delivery restrictions to protect infrastructure in any new storage program.

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The Yuma Districts appreciate the enormous time, effort, and care that Reclamation leadership, staff, and contractors have dedicated to this process. The Districts look forward to a plan that protects the system and meets the challenges of the River's future.

Yours truly,

Benjamin J. Horwich