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COMMENTS:

UTAH's comments on DEIS

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Honorable Dirk Kempthorne  
Secretary of the United States Department of the Interior  
1849 C. Street, NW  
Washington, D.C. 20240

Utah Division of Water Resources comments on the *Draft Environmental Impact Statement, Colorado River Interim Guidelines for Lower Basin Shortages and Coordinated Operations for Lake Powell and Lake Mead*

Mr. Secretary:

The Utah Division of Water Resources submits the following comments to the *Colorado River Interim Guidelines for Lower Basin Shortages and Coordinated Operations for Lake Powell and Lake Mead, Draft Environmental Impact Statement* (February 2007). The Director of the Utah Division of Water Resources is the Governor of Utah's designated representative with the responsibility to consult, advise and confer with the Secretary of Interior on Colorado River operations.

Reclamation Should Adopt the Basin States' Alternative as the Preferred Alternative

Utah recommends the Secretary adopt the Basin States' Alternative as the preferred alternative as this is the result of extensive negotiations and compromise among the seven Colorado River Basin States. The Basin States Alternative addresses the issues identified during the Environmental Impact Statement (EIS) scoping process, and it can be implemented immediately upon issuance of the Record of Decision (ROD).

Five alternatives were analyzed in the Draft EIS to provide a wide range of operation evaluations. Only the Basins States' Alternative can be readily implemented and accomplish the purposes identified during scoping. While the analysis of the No Action and Water Supply Alternatives provide a broad range of impacts, neither includes criteria for the coordinated operation of Lake Powell and Lake Mead, or specific guidelines for the implementation of future water supply reductions in the Lower Colorado River Basin under defined shortage conditions.

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Implementation of the Conservation Before Shortage (CBS) or the Reservoir Storage Alternative would require extensive changes to the Law of the River, which Utah disfavors. The CBS Alternative includes the intentional creation of surplus and release of the surplus on the positive side from Lake Mead contained in the Basin States' Alternative. But it depends on a funding mechanism that does not currently exist. "Reclamation currently does not have the authority to implement all facets of this proposal and additional legislation would be necessary to gain such authority."<sup>1</sup> The CBS Alternative proposes allowing for the intentional creation of surplus by Mexico, and release of Intentionally Created Surplus (ICS) to Mexico in excess of the maximum delivery volumes identified in the 1944 Treaty. Therefore, a Treaty amendment would be required to accommodate the creation by and delivery of ICS water to Mexico. Because discussion with Mexico of the specific criteria that would govern the accounting and delivery of this water has just begun implementation of this alternative would be slow and complex.

The Reservoir Storage Alternative, like the No Action and Water Supply Alternatives, serves a valuable purpose by allowing analysis of a broad range of impacts in the EIS. Its provisions that impound water for power generation and recreation benefit Utah to the detriment of downstream agricultural and domestic uses while we would welcome such benefits they may be in violation of Article IV (b) of the Colorado River Compact (Compact). And, the Reservoir Storage Alternative does not address many of the other issues identified during the scoping phase and thus does not meet all needs identified.

#### Basin State Proposed Guidelines.

Since the February 3, 2006 letter to the Secretary outlining the Basin States' Alternative, the seven Colorado River Basin States have met extensively and developed Proposed Interim Guidelines for Colorado River Operations to implement the Basin States' Alternative as well as the necessary agreements among the states. These proposed guidelines are being transmitted jointly by the seven Colorado River Basin States in a separate submission. Utah strongly endorses these proposed guidelines as providing a framework to meet future demand on the Colorado River during the interim period (present to 2026).

#### Default Operating Criteria after Termination of Interim Guidelines

For the most part, the Interim Guidelines that would be put in place upon adoption of a ROD in concert with the Basin States Alternative will terminate in 2026, and could, under certain circumstances, terminate prior to 2026. The DEIS does not clearly set forth the default operating criteria for Lakes Powell and Mead that would apply upon termination of the Interim Guidelines. The proposed guidelines by the Seven Basin States submitted as comments to the DEIS remedy this

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<sup>1</sup> Page 2-13, Draft EIS, Colorado River Interim Guidelines for Lower Basin Shortages and Coordinated Operations for Lake Powell and Lake Mead.

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deficiency. Upon termination of those guidelines, operations of the Colorado Rivers System will revert to the baseline conditions of the Final Environmental Impact Statement for the Interim Surplus Guidelines dated December 2000 (i.e. modeling assumptions are based upon a 70R strategy for the period commencing January 1, 2026).

#### 2020 Review

The Seven Basin States' Proposed Guidelines also include a review beginning no later than December 31, 2020 to evaluate the effectiveness of operations under these guidelines. As part of this review, the Secretary should also undertake the development process to account for the Mexican Treaty obligations. In addition to the Compact delivery of 75 million acre-feet over 10 years, the Upper Basin is only responsible for one-half of the deficiency in the Lower Basin towards meeting the Mexican Treaty obligation. Such Mexican Treaty deficiency accounting has never been undertaken and Utah strongly objects to the release of any water by the Upper Basin to meet the Mexican Treaty delivery requirement unless such an accounting process is in place and is used to determine the required amount from the Upper Basin. Upon termination of these guidelines the Mexican Treaty issue should be addressed and resolved so as to justify the release of any Upper Basin water to meet Mexican Treaty obligations.

To summarize Utah's comments, Utah requests the Secretary designate the Basin States' Alternative as the preferred alternative and give strong preference to the Basin States' Proposed Guidelines on Colorado River Operations when formulating its Record of Decision.

Respectfully,



Dennis J. Strong, P.E.

Director

Governor's Representative