

4/1/07

Rebecca Palmer

From: Clearinghouse [clearinghouse@budget.state.nv.us]
Sent: Friday, March 02, 2007 10:46 AM
To: Rebecca Palmer
Subject: E2007-257 DEIS for Lower Basin Shortages and Operations for Lk Mead and Lk Powell - Lower Colorado Region

NEVADA STATE CLEARINGHOUSE
Department of Administration, Budget and Planning Division
209 East Musser Street, Room 200, Carson City, Nevada 89701-4298
(775) 684-0209 Fax (775) 684-0260
DATE: March 2, 2007

State Historic Preservation Office

Nevada SAI # E2007-257
Project: DEIS for Lower Basin Shortages and Operations for Lk Mead and Lk Powell

Follow the link below to download an Adobe PDF document concerning the above-mentioned project for your review and comment.

<http://www.usbr.gov/lc/region/programs/strategies/draftEIS/index.html>

Please evaluate it with respect to its effect on your plans and programs; the importance of its contribution to state and/or local areawide goals and objectives; and its accord with any applicable laws, orders or regulations with which you are familiar.

Please submit your comments no later than Tuesday, April 24, 2007.

Use the space below for short comments. If significant comments are provided, please use agency letterhead and include the Nevada SAI number and comment due date for our reference. Questions? Gosia Sylwestrzak, (775) 684-0209 or <mailto:clearinghouse@budget.state.nv.us>

No comment on this project Proposal supported as written

AGENCY COMMENTS:

Signature:

Date:

The SHPO looks forward to consultations with the NPS and BREC on the effect to cultural resources from the undertaking.
Rebecca Palmer *3/2/07*

Distribution:

Gary McCuin, Department of Agriculture
Phillip Lehr, Colorado River Commission
Sandy Quilici, Department of Conservation & Natural Resources Stephanie Martensen, Division of Emergency Management Stan Marshall, State Health Division Skip Canfield, AICP, Division of State Lands Michael J. Stewart, Legislative Counsel Bureau Sandi Gotta, Division of Conservation Districts John Walker, Nevada Division of Environmental Protection Catherine Cuccaro, Department of Transportation Anthony Grossman, Department of Wildlife, Director's Office D. Bradford Hardenbrook, Department of Wildlife, Las Vegas Robert Martinez, Division of Water Resources James D. Morefield, Natural Heritage Program Steve Weaver, Division of State Parks Mark Harris, PE, Public Utilities Commission Pete Konesky, State Energy Office Rebecca Palmer, State Historic Preservation Office John Muntean, UNR Bureau of Mines Jon Price, UNR Bureau of Mines Cliff Lawson, Nevada Division of Environmental Protection Russ Land, Nevada Division of Environmental Protection Gosia Sylwestrzak, zzClearinghouse Reese Tietje, zzClearinghouse -Reese Maud Naroll, zzClearinghouse-Maud Gosia Sylwestrzak, zzClearinghouse -Gosia

S-5

JIM GIBBONS
Governor

STATE OF NEVADA

ANDREW K. CLINGER
Director



DEPARTMENT OF ADMINISTRATION

209 E. Musser Street, Room 200
Carson City, Nevada 89701-4298
(775) 684-0222
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April 24, 2007

Terrance Fulp
US Department of the Interior
Bureau of Reclamation
Lower Colorado Region
PO Box 61470
Boulder City, NV 89006

Re: SAI NV # E2007-257

Reference: BCOO-1000 ENV-6.00

Project: **DEIS for Lower Basin Shortages and Operations for Lk Mead and Lk Powell**

Dear Terrance Fulp:

Enclosed are comments from the agencies listed below regarding the above referenced document. Please address these comments or concerns in your final decision.

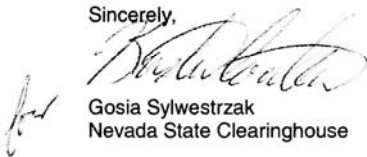
Division of State Lands
State Historic Preservation Office

The following agencies support the above referenced document as written:

Division of State Lands

This constitutes the State Clearinghouse review of this proposal as per Executive Order 12372. If you have questions, please contact me at (775) 684-0209.

Sincerely,


Gosia Sylwestrzak
Nevada State Clearinghouse

Enclosure

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RE: E2007-257 DEIS for Lower Basin Shortages and Operations for Lk Mead and Lk Po... Page 1 of 2

The Nevada Division of State Lands supports this proposal.

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Skip Canfield, AICP

-----Original Message-----

From: Clearinghouse [mailto:clearinghouse@budget.state.nv.us]

Sent: Friday, March 02, 2007 10:46 AM

To: Skip Canfield

Subject: E2007-257 DEIS for Lower Basin Shortages and Operations for Lk Mead and Lk Powell - Lower Colorado Region

NEVADA STATE CLEARINGHOUSE

Department of Administration, Budget and Planning Division

209 East Musser Street, Room 200, Carson City, Nevada 89701-4298

(775) 684-0209 Fax (775) 684-0260

DATE: March 2, 2007

Division of State Lands

Nevada SAI # E2007-257

Project: DEIS for Lower Basin Shortages and Operations for Lk Mead and Lk Powell

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No comment on this project Proposal supported as written

AGENCY COMMENTS:

Signature:

Date:

Distribution:

Gary McCuin, Department of Agriculture

Phillip Lehr, Colorado River Commission

Sandy Quilici, Department of Conservation & Natural Resources

Stephanie Martensen, Division of Emergency Management

S-5

<https://mail.state.nv.us/exchange/Clearinghouse/Inbox/RE:%20E2007-257%20DEIS%20f...> 3/16/2007

RE: E2007-257 DEIS for Lower Basin Shortages and Operations for Lk Mead and Lk Po... Page 2 of 2

Stan Marshall, State Health Division
Skip Canfield, AICP, Division of State Lands
Michael J. Stewart, Legislative Counsel Bureau
Sandi Gotta, Division of Conservation Districts
John Walker, Nevada Division of Environmental Protection
Catherine Cuccaro, Department of Transportation
Anthony Grossman, Department of Wildlife, Director's Office
D. Bradford Hardenbrook, Department of Wildlife, Las Vegas
Robert Martinez, Division of Water Resources
James D. Morefield, Natural Heritage Program
Steve Weaver, Division of State Parks
Mark Harris, PE, Public Utilities Commission
Pete Konesky, State Energy Office
Rebecca Palmer, State Historic Preservation Office
John Muntean, UNR Bureau of Mines
Jon Price, UNR Bureau of Mines
Cliff Lawson, Nevada Division of Environmental Protection
Russ Land, Nevada Division of Environmental Protection
Gosia Sylwestrzak, zzClearinghouse
Reese Tietje, zzClearinghouse -Reese
Maud Naroll, zzClearinghouse-Maud
Gosia Sylwestrzak, zzClearinghouse -Gosia

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<https://mail.state.nv.us/exchange/Clearinghouse/Inbox/RE:%20E2007-257%20DEIS%20f...> 3/16/2007

Reponses to Comment Letter S-5

S-5-1

Reclamation is proceeding with the Section 106 (36 CFR 800) compliance process, including consultation with the Nevada SHPO and other interested parties.

S-5-2

Your comment is noted. No change to the Final EIS was necessary.

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04/30/2007 16:06 FAX 8015387279

Utah Div of Water Res

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State of Utah
Department of
Natural Resources

MICHAEL R. STYLER
Executive Director

Division of
Water Resources

DENNIS J. STRONG
Division Director

JON M. HUNTSMAN, JR.
Governor

GARY R. HERBERT
Lieutenant Governor

FAX TRANSMITTAL COVER SHEET

Date April 30, 2007

Time 3:55 PM

TO:

Name Regional Director

Agency USBR

Telephone No. _____ Fax No. 702-295-8156

FROM:

Name UTAH Division of Water Resources - Dennis Strong

Telephone No. 801-538-7250 Fax No. (801) 538-7279

TOTAL NUMBER OF PAGES (INCLUDING COVER SHEET) 4

COMMENTS:

UTAH's comment on DEIS

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04/30/2007 16:06 FAX 8015387279

Utah Div of Water Res

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State of Utah
Department of
Natural Resources

MICHAEL R. STYLER
Executive Director

Division of
Water Resources

DENNIS J. STRONG
Division Director

JON M. HUNTSMAN, JR.
Governor

GARY R. HERBERT
Lieutenant Governor

April 30, 2007

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). 1 2

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. 3 4 5

1594 West North Temple, Suite 310, PO Box 146201, Salt Lake City, UT 84114-6201
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The Honorable Dirk Kempthorne
April 30, 2007
Page 2:

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."¹ 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

¹ 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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Utah Div of Water Res

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The Honorable Dirk Kempthorne
April 30, 2007
Page 3:

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).

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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.

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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

Reponses to Comment Letter S-6

S-6-1

Your comment is noted. No change to the Final EIS was necessary.

S-6-2

Your comment is noted. No change to the Final EIS was necessary.

S-6-3

Your comment is noted. No change to the Final EIS was necessary.

S-6-4

Your comment is noted. No change to the Final EIS was necessary.

S-6-5

Your comment is noted. No change to the Final EIS was necessary.

S-6-6

Your comment is noted. No change to the Final EIS was necessary.

S-6-7

Your comment is noted. No change to the Final EIS was necessary.

S-6-8 through S-6-10

Your comment is noted. No change to the Final EIS was necessary. See also responses to Comment Nos. F-5-2 and F-5-5.

S-6-11

Your comment is noted. No change to the Final EIS was necessary.

S-6-12

Your comment is noted. No change to the Final EIS was necessary.

S-6-13

See response to Comment No. IT-2-1.

S-6-14

Your comment is noted. No change to the Final EIS was necessary.

S-6-15 and S-6-16

See response to Comment S-2-11.

S-6-17

See response to Comment No. S-2-14.

S-6-18 through S-6-20

Your comment is noted. No change to the Final EIS was necessary.

COLORADO RIVER BOARD OF CALIFORNIA

770 FAIRMONT AVENUE, SUITE 100
GLENDALE, CA 91203-1068
(818) 500-1625
(818) 543-4685 FAX



VIA: Electronic Mail
& U.S. Mail

April 30, 2007

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

Re: Colorado River Board of California Comments on *Draft Environmental Impact Statement, Colorado River Interim Guidelines for Lower Basin Shortages and Coordinated Operations for Lake Powell and Lake Mead*

Dear Secretary Kempthorne:

Thank you for the opportunity for California to provide comments on the *Draft Environmental Impact Statement, Colorado River Interim Guidelines for Lower Basin Shortages and Coordinated Operations for Lake Powell and Lake Mead* (72 FR 39, 9026-9028) (February 28, 2007) (“DEIS”) released for review and comment by the U.S. Bureau of Reclamation (Reclamation). The purpose of this letter is to provide the Department of the Interior and Reclamation with several comments associated with the DEIS, as well as indicate California’s overall support for the adoption of the Basin States Alternative as the preferred alternative in the Final Environmental Impact Statement (FEIS) and subsequent Record of Decision (ROD). 1

As the Department of the Interior knows, the water and power resources of the Colorado River System are of utmost importance to the 36 million residents in the State of California, particularly the nearly 21 million residents in the metropolitan and agricultural regions of southern California. Water supplies diverted from the mainstream of the Colorado River, and utilized in southern California, support an overall service area economy in excess of \$850 billion annually. Consequently, decisions made regarding the management, use, and accounting of Colorado River water are of significant interest and concern to the State of California, the Colorado River Board of California (Board), as well as specific agencies within California holding entitlements to Colorado River mainstream water.

With the adoption of the Interim Surplus Guidelines in January 2001 and California’s implementation of the 2003 Colorado River Water Delivery Agreement and Quantification Settlement Agreement (QSA), the State’s Colorado River water entitlement-holders have worked diligently to ensure that California continues to live within its basic mainstream apportionment of 4.4 million acre-feet, while encouraging and supporting the efficient management and administration of the Colorado River reservoir system. Ongoing programs and activities within California and the other Lower Division States contribute to more efficient management of the water supplies stored, diverted, and used by entitlement-holders in the Lower and Upper Basins (e.g., All-American Canal

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The Honorable Dirk Kempthorne, Secretary
 April 30, 2007
 Page 2

Lining Project, Lower Colorado Water Supply Project, Off-stream storage programs, weather modification demonstration programs, etc.).

With the goal of establishing an interim period of more efficient reservoir system management and shortage guidelines during periods of drought within the Basin, California urges the Department of the Interior to adopt the Basin States' Alternative as articulated in the Basin States' Proposed Guidelines as the preferred alternative in the FEIS and subsequent ROD. Toward this end, California joins with the other six Colorado River Basin states in support of the following elements of the Basin States' package submitted to the Department of the Interior and Reclamation on April 30, 2007: (1) Basin States' Letter, dated April 30, 2007; (2) Proposed Interim Guidelines for Colorado River Operations; (3) Agreement Concerning Colorado River Management and Operations; (4) Lower Colorado River Basin Intentionally Created Surplus Forbearance Agreement; and (5) Shortage Sharing Agreement between Arizona and Nevada. An additional element of this package will need to be a water delivery agreement or agreements between the Secretary and the Parties to the Forbearance Agreement. 2

California's Specific Comments on the DEIS

In addition to California's endorsement and support of the Basin States' Alternative, the Board submits several specific comments regarding the information described within the DEIS. These comments address issues or concerns that for the most part are unique to California and are therefore submitted separately from the comments submitted on April 30, 2007, by the Colorado River Basin States Governors' Representatives on Colorado River Operations. These specific comments or concerns include the following:

Issues Related to Stage-Two Shortage-Sharing

In various places within the DEIS (e.g., section 2.2.1 on pages 2-5 and 2-6 and section 4.2.7.1 on pages 4-9 and 4-10), the document sets forth an assumption regarding Stage-Two shortages that result in California receiving 60 to 65 percent of such shortages. This is an incorrect assumption under the Law of the River and does not reflect the priority position of the California water delivery contractors relative to the positions of other Colorado River mainstream entitlement-holders. 3

If interim guidelines on Colorado River operations proposed for adoption by the Secretary cover possible shortage situations greater than the post-September 30, 1968, volume of contractual and other water rights (approximately 1.7 to 1.8 million acre-feet (maf) depending upon the year), then imposition of Stage-Two shortages would be based on the priority dates of the water entitlements in the June 25, 1929, to September 30, 1968, pool of contracts and other water rights without regard to state lines. Delivery of water would then be reduced to the holder of the second most recent priority if insufficient water were available for delivery. Reductions in deliveries would then continue in 4

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The Honorable Dirk Kempthorne, Secretary
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reverse order of priority date. If the maximum shortage considered for purposes of this DEIS during the interim period is 2.5 maf, then the correct assumption is that California entitlement-holders would not experience a reduction in deliveries during a Stage-Two shortage. 4

Tables E-2 and G-18 and California Entitlement Holders

Table E-2 (State of California Colorado River Water Entitlement Holders and Priorities; Appendix E) contains a listing of California entitlement-holders and their diversion and consumptive use entitlements. Table G-18, (State of California; Appendix G) contains the listing of California entitlement-holders and their assumed adjusted deliveries during a 400,000 acre-foot shortage in 2017. These two tables contain several errors. For ease of reference, the Board has attached corrected versions of these tables and requests Reclamation to make these corrections in the FEIS. 5

Both Tables E-2 and G-18 imply that Water Certificates have been issued for use of water on the Yuma Island in California. The Board has found no evidence of the issuance of any Water Certificates for use of water on the Island. Thus, Reclamation should clarify this fact in the FEIS and revise the tables accordingly. 6

Furthermore, Reclamation should refer to the August 5 and 9, 2002, "Submittal of the Colorado River Board of California, Coachella Valley Water District, Imperial Irrigation District, Los Angeles Department of Water and Power, Metropolitan Water District of Southern California, Palo Verde Irrigation District, and San Diego County Water Authority regarding 'Review of Water Use On The Yuma Island,'" copies of which were provided to Reclamation's Lower Colorado Regional Director. It has been the long-standing position of the Board and the six agencies that water use on Yuma Island in California are illegal and should be eliminated, particularly when California is limited to use of 4.4 maf of water from the Colorado River. 7

Lake Mead Reservoir Elevations

Two of the alternatives analyzed in the DEIS include imposition of reduced deliveries to permit the elevation of Lake Mead to remain at or above elevation 1,000 feet, Southern Nevada Water Authority's lowest water intake. This condition, however, was not an element of the Basin States' Alternative. California suggests that, in order to present information on the full range of potential impacts associated with possible droughts that is as complete and accurate as possible, the FEIS include 2005 natural flow data and further sensitivity analysis of the possible influence of climate change and global warming on runoff during the 2008 to 2060 study period. In this regard, California suggests that Reclamation review the latest data and information from reports such as the recent United Nations report on climate change and global warming and other proxy record data describing potential streamflow and precipitation conditions within the Colorado River Basin. 8
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The Honorable Dirk Kempthorne, Secretary
 April 30, 2007
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Voluntary/Involuntary Shortages & Economic Impacts Analysis

In numerous places in the DEIS the potential impacts of voluntary (i.e., contained within the ‘Conservation Before Shortage’ Alternative) and involuntary shortages are analyzed and discussed. As a general matter, California suggests that the potential socioeconomics and air quality impacts of such shortages need to be more fully addressed. For example, under the ‘Conservation Before Shortage’ Alternative the maximum suggested water conservation amount is 600,000 acre-feet in one year. If that were to be carried out through land fallowing, about 100,000 acres of farmland would need to be fallowed. Although the exact location of the fallowed farmland cannot be forecast with precision at this stage, the general location of the larger irrigation districts in California and Arizona is well understood. Accordingly, the FEIS should contain a more thorough explanation and analysis of the potential impact resulting from land fallowing as a means of voluntary conservation. 12 13 14

With respect to the ‘Conservation Before Shortage’ Alternative, page 4-275 of the DEIS states that the potential socioeconomic impacts resulting from voluntary shortages would be offset by payments made to farmers to forgo raising crops. Given the large volume of fallowing that might occur under this alternative, it is unclear whether this is a correct assumption supported by available data. For example, the FEIS should include reference to economic data related to ongoing voluntary fallowing programs to either support or refine this conclusion. 15

The air quality section of the DEIS at page 4-149 describes the potential effects on air quality at Lake Powell, Lake Mead, and the Glen Canyon-Lake Mead reach from particulate matter emissions. This section of the DEIS does not describe the potential effects on air quality resulting from the fallowing of as much as 100,000 acres of farmland as a voluntary conservation measure or how those potential effects may be minimized and mitigated. 16

Default Operating Criteria after Termination of the Interim Guidelines

Consistent with the 2001 Interim Surplus Guidelines , the Basin States’ Proposed Interim Guidelines state: “At the conclusion of the effective period of these Guidelines, the operating criteria for Lake Powell and Lake Mead are assumed to revert to the operating criteria used to model baseline conditions in 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 (for preparation of the 2027 AOP)).” 17

The Basin States’ proposed guidelines regarding access to surplus supplies address a full range of expected operations for both Lake Powell and Lake Mead during the interim period of 2008 through 2025 (through preparation of the 2026 AOP). Since there is no reliable way to predict the elevation of the reservoirs on January 1, 2027, it is important to address the possibility that the Lower Basin would be in a Shortage Condition, rather than in a Surplus Condition.

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 Page 5

The DEIS addressed this scenario. Presumably, the FEIS, new interim surplus guidelines, and ROD also will address this possibility of shortage conditions. Therefore, to be consistent with the assumptions in the DEIS, California suggests that Reclamation apply the modeling assumption of “80P1050” (shortage trigger elevation to prevent Lake Mead’s water level from declining below 1,050 feet with approximately an 80 percent probability, commencing January 1, 2026) for preparation of the 2027 AOP. Reclamation would apply this default strategy if the Secretary and the Basin States could not agree on an operating strategy that extends or modifies any new interim guidelines for Colorado River operations. 18 19

Recent Mainstream Water Use by California

Several places in the DEIS suggest that California is in the process of *reducing* its water use from the Colorado River (see, e.g., p. 1-22:4-6, p. 1-25 and 3-36). These sections of the DEIS reflect an inaccurate perspective. As Reclamation has reported in its annual “Colorado River Accounting and Water Use Report, Arizona, California, and Nevada,” California’s annual Colorado River water use was less than 4.4 million acre-feet in 2004 and 2005. Accordingly, it is inaccurate to suggest that California needs to implement programs to assist “in reducing its projected Colorado River depletion to its normal apportionment of 4.4 maf” (page 3-36). Under the current version of California’s Colorado River Water Use Plan and other documents, such as the 2003 QSA and related agreements, California is in the process of shifting some water use within its 4.4 maf per year normal apportionment, from agricultural to municipal/industrial use for a period of years. 20 21 22

Description of Conservation Before Shortage Alternative

In various places in the DEIS, and specifically in Appendix M (modeling assumptions) the ‘Conservation Before Shortage’ Alternative is discussed and analyzed. However, Reclamation does not carefully distinguish between two separate components advanced in the ‘Conservation Before Shortage’ Alternative in Chapter 2 of the DEIS, Description of Alternatives, at page 2-12: 23

- 1) actions to avoid a shortage by paying users to fallow land; and
- 2) allowing “others” to participate in the Intentionally Created Surplus (ICS) program by creating ICS credits to meet certain proposed consumptive uses.

The main purpose of the ‘Conservation Before Shortage’ Alternative, is to create storage in Lake Mead through compensated voluntary land fallowing, hopefully to counteract the impact of Lower Basin shortages. Lake Mead would retain that water presumably to forestall a shortage threat. 24

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instead of devoting that water to specific downstream uses.¹ In contrast, the development of ICS credits by “others” is for the specific purpose of having water that can then be used for specific environmental or other purposes either within the United States or in Mexico. Section 2.4 of the FEIS should clearly explain these concepts so that the reader fully will understand these two distinct operational approaches. 25 26

Mexican Treaty Issues

The “Congressional Budget Justification, Fiscal Year 2008, United States Department of State,” states on page 838 (copy attached) that the United States Section of the International Boundary and Water Commission (USIBWC) plans to:

“Conclude discussions or consultations with Mexico related to development of shortage criteria for Colorado River deliveries carried out pursuant to the 1944 Water Treaty” 27

in Fiscal Year 2007. California fully supports the conclusion of these discussions or consultations in Fiscal Year 2007 to permit USIBWC to inform Reclamation of the volume of deliveries to be made to Mexico, beginning in 2008, in years in which insufficient mainstream water is available for release to satisfy annual consumptive use of 7.5 maf in Arizona, California, and Nevada.

Conclusion of these discussions or consultations is important because of the interrelationship between reductions in deliveries to Mexico during shortage conditions and the effectiveness of the Basin States Proposal for stepped reductions in deliveries to minimize the frequency and magnitude of shortages in the Colorado River System. The Basin States Proposal is premised on deliveries to Mexico being reduced in proportion to the reduction in deliveries to the Lower Division States under the Step One, Step Two and Step Three reductions, so that the aggregate annual reductions in deliveries in both the Lower Division States and Mexico under those steps will total 400,000 acre-foot, 500,000 acre-feet and 600,000 acre-feet, respectively. The DEIS has used this assumption in modeling the impacts of the Basin States Alternative, and the Basin States Agreement, which was included in the package submitted to the Department of the Interior on April 30, 2007, provides that California users shall not bear any portion of those reductions. These aggregate reductions in deliveries from Lake Mead are essential to maintain reservoir levels under the coordinated operating criteria contained in the Basin States Proposal. These stepped reductions are not the exclusive conditions under which deliveries to Mexico may be reduced, and other circumstances may require reductions in deliveries to Mexico under the 1944 Water Treaty with Mexico. 28 29 30 31

¹ See page 2 of the ‘Conservation Before Shortage’ proposal in Appendix K – “Federal ICS credits created in excess of the federal cap [of 1.5 maf to be devoted to replacement of bypass flows] would become system water.”

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Elimination of Interim Surplus Guidelines benchmarks

Section 10 of the proposed Guidelines incorporates certain provisions from Section 5 of the Interim Surplus Guidelines (ISG) approved in 2001. The purpose and function of Section 5 of the ISG, and of the benchmarks in particular, was to provide assurances to the other Basin states as California reduced its use of Colorado River water from about 5.2 maf to 4.4 maf over a period of years. In fact, at the time of the development of the ISG this was referred to as a “soft landing” for California so as to not unnecessarily impose an abrupt usage reduction from 5.2 maf to 4.4 maf if surplus water was not available. However, in light of the drought situation that unfolded in 2002 and 2003, California was compelled to reduce its use of Colorado River water to 4.4 maf at the beginning of 2003, and California’s use of Colorado River water was below 4.4 maf in 2004 and 2005 and based on preliminary records in 2006.

Furthermore, the terms of the 2003 Colorado River Water Delivery Agreement, the QSA, and related agreements are binding on the California parties; and there is also an order of the California State Water Resources Control Board relating to the transfer of conserved water from Imperial Irrigation District. All of these factors indicate that circumstances have changed and the magnitude of California’s use of Colorado River water poses no meaningful risk to the other Basin states. Moreover, any failure or modification of the QSA and related agreements presents risks solely for parties within California who would then have to consider remedies that would be effectuated by the California parties. Stated differently, there is currently no meaningful purpose or function behind the California benchmark provisions in the proposed Guidelines (see sections 1.7.6.2, 1.8.3, and 1.8.4 of Volume 1 of the DEIS) as benchmarks for the State of California’s agricultural use are the subject of Section 8 of the October 10, 2003, Colorado River Water Delivery Agreement that Secretary of the Interior Norton signed. Thus, the benchmarks and associated text need not be a part of the final EIS and the ROD.

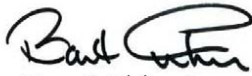
Conclusion

In summary, California wishes to reiterate its support for the Basin States’ Alternative, as described in the Basin States’ “Proposed Interim Guidelines for Colorado River Operations.” Further, California urges the Department of the Interior and Reclamation to adopt this proposal as the preferred alternative in the FEIS and to reflect this decision in the subsequent ROD. This proposal represents many months of hard work among the Basin States representatives; and it reflects the spirit of interstate comity and goodwill that has been developed during the course of this very important process. Finally, California requests that the Department of the Interior forward California’s specific comments on the DEIS to Reclamation for its use in preparing the FEIS for your review and concurrence.

The Honorable Dirk Kempthorne, Secretary
April 30, 2007
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The Colorado River Board of California thanks you for the opportunity to participate in this very important process, as well as providing you with specific comments on the DEIS. Please feel free to contact me at (818) 500-1625 if you have any questions, or require additional information.

Sincerely,



Dana B. Fisher, Jr.
Chairman

Attachments (3)

cc: Robert W. Johnson, Commissioner of Reclamation
Jayne Harkins, Acting Regional Director, Lower Colorado Region of Reclamation
Rick L. Gold, Regional Director, Upper Colorado Region of Reclamation
strategies@lc.usbr.gov
Colorado River Basin States Representatives

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CONGRESSIONAL BUDGET JUSTIFICATION

FISCAL YEAR 2008



**United States
Department of State**

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INTERNATIONAL BOUNDARY AND WATER COMMISSION - SALARIES AND EXPENSES

Administration

(\$ in thousands)

	Positions		Total Funds
	American	FSN	
FY 2008 Request	59	0	5,799

The FY 2008 budget request is \$5,799,000 for IBWC Administration activities.

FY 2007 Administration Department plans consist of the following:

- Implementation of the provisions of existing treaties and binational agreements;
- Pursue compliance and implementation of applicable domestic laws, mandates, and regulations;
- Continue to exercise the agency’s administrative functions and activities, including human resources management, budget, procurement, payroll, property, and finance and accounting with modern information management capabilities using established internal control procedures;
- Ensure full implementation of policies and procedures, which conform to federal statutes and regulations, by using the Commissioner’s executive staff which include, two principle engineers, chief administrative officer, legal counsel, and foreign affairs advisors who possess the expertise in the complexities related to international negotiations and agreements and provide guidance on all matters related to the full scope and operations of the USIBWC;
- Publication of the proceedings of the Binational Rio Grande Summit. Based on the results of the Summit, submit recommendations to the two Governments for the sustainable management of the Rio Grande Basin;
- Conclude a minute related to implementation of the IBWC Minute 311/Public Law 106-457 sanitation project for San Diego-Tijuana;
- Conclude discussions or consultations with Mexico related to development of shortage criteria for Colorado River deliveries carried out pursuant to the 1944 Water Treaty;
- Engage in consultations with Mexico regarding Mexican water deliveries to the United States under the 1944 Water Treaty;
- Continue to aggressively pursue implementation of the President’s Management Agenda Program Initiatives, and in accordance with the various laws, regulations, and OMB circulars and guidance;
- Continue to fully comply with the President's goal to eliminate improper payments, which the USIBWC has excelled in meeting in prior years. Independent financial audits for the last five years confirm that the USIBWC fully implements generally accepted accounting principles for federal financial reporting purposes;
- Develop an information resources management (IRM) plan, which describes information and technology management functions and activities, along with an information technology/information resources management (IT/IRM) plan. This plan supports the USIBWC Strategic Goals, ensuring that IT investments are provided and funded only where they have the greatest impact on mission results;
- Continue to utilize the Capital Planning & Investment Control (CPIC) process to assist in the review of new capital investments for construction projects;
- Initiated the development of all Federal Information Security Management Act (FISMA) requirements;
- Comply with new initiatives in accordance with OMB Circulars A-123;
- Full implementation of Executive Order 13031, Federal Alternative-Fueled Vehicle Leadership.

Colorado River Water Entitlement Priority Systems within Arizona, California, and Nevada

Appendix E

Table E-2
State of California Colorado River Water Entitlement Holders and Priorities as of 2007

Priority	Entitlement Holder	Contract No.	Date	Use	Entitlement	
					Diversion	CU
Surplus	Bureau of Land Management	8-07-30-W0374	1973	M&I	4,000	1,000
	City of Needles	5-07-30-W0091	1985	M&I	40,000	10,000
	Coachella Valley Water District	7-07-30-W0150	1987	M&I/Ag	400,000	100,000
	Department of the Navy	6-07-30-W0351	1999	M&I	253	23
	Metropolitan Water District of Southern California	7-07-30-W0171	1987	M&I	480,000	180,000
TOTAL					284,023	281,023
7 th	For agricultural use in the Colorado River Basin in California as said basin is designated on map no. 23000 of the Department of the Interior, Bureau of Reclamation					
6 th Unused & Surplus	Palo Verde Irrigation District (6b) - Lower Palo Verde Mesa Lands	PVID20733C	1933	Ag	≤16,000 acres	Unquantified
	Coachella Valley Water District (6a)	11-781	1934	Ag		119,000
	Imperial Irrigation District (6a)	11-747	1932	Ag		63,000
	Palo Verde Irrigation District (6b) - Mesa Lands Metropolitan Water District of Southern California	PVID20733C Colorado River Water Delivery Agreement	1933	Ag		300,000
TOTAL						300,000
5 th Unused & Surplus	City of San Diego County Water Authority (5b) (transferred right to Metropolitan ET)	11-1454	19334	M&I		682,000
4 th Surplus	Metropolitan Water District of Southern California (5a) (Annexed 5b's Entitlement)	11-645	1930, 1931	M&I		662,000
	Metropolitan Water District of Southern California (4)	11-645	1930, 1931	M&I		550,000
	Palo Verde Irrigation District (6b) - Lower Palo Verde Mesa Lands	PVID20733C P5	1933	Ag	0	550,000
	Coachella Valley Water District (3a)	11-781	1934	Ag	≤16,000 acres	Unquantified
	To permit the Secretary of the Interior to Satisfy Present Perfected Rights (PPR) Uses					
3 rd	Metropolitan Water District of Southern California	Agreement Relating to Supplemental Water				3,000
	San Diego County Water Authority	Colorado River Water Delivery Agreement				[CRB2]
	Imperial Irrigation Districts (3a) ^{2c}	11-747	1932	Ag		[CRB3]
	To permit the Secretary of the Interior to Satisfy PPR Uses	Colorado River Water Delivery Agreement				300,470,661,159
	Metropolitan Water District of Southern California	1988 Conservation Agreement and Approval Agreement	1988	M&I		11,500
	To permit the Secretary of the Interior to Satisfy PPR Uses					
2 nd 3 rd	Coachella Valley Water District	Approval Agreement				8590,000
	San Diego County Water Authority	SOCWA Transfer/Colorado River Water Delivery Agreement				20,000
	Lower Colorado Water Supply Project	Lower Colorado Water Supply Project Exchange Contract				7590,000 ³
	TOTAL					830,009,006,159
	Yuma Project, Reservation Division (includes Bard, Indian, Island ⁵)	Water Certificates ⁵	1905	Ind/Ag	≤25,000 acres	Unquantified

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Draft EIS - Lower Colorado River Basin Shortage Guidelines and Coordinated Operations for Lake Powell and Lake Mead

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Colorado River Water Entitlement Priority Systems within Arizona, California, and Nevada

Appendix E

Table E-2
State of California Colorado River Water Entitlement Holders and Priorities as of 2007

Priority	Entitlement Holder	Contract No.	Date	Use	Entitlement	
					Diversion	CU
1 st 2 nd 4 th	TOTAL				0	Unquantified ⁰
	Palo Verde Irrigation District (1) - Valley Lands	PVID20733C_P2	1933	Ag	≤104,500 acres unlimited	Unquantified
	TOTAL				0	Unquantified ⁰
	One Acre PPR's	PPR's 45-80	1895-1928	M&I		36
	Sonny Cowan (Gramis)	PPR 32 & 7-07-30-W0158	1928	Ag		180
	Chagnon	PPR No. 41	1925	Ag		120
	Stephenson	PPR No. 30	1923	Ag		240
	Colorado River Sportsmen's League	PPR No. 36	1921	Ag		96
	Andrade (AKA Andrade, Andrews, Bly, Brown, Carney, Daniel, Fairbanks, Glynn, Lindeman, Leon, Schroeder, Sherman, Perrett, Wetmore, Wetmore, Williams)	PPR No. 38	1921	M&I/Ag		66
	Milpietas	PPR No. 34	1918	Ag		108
	Lawrence	PPR No. 42	1915	Ag		120
	Milpietas	PPR No. 37	1914	Ag		69
	Morgan	PPR No. 33	1913	Ag		150
	4 th (PPR's) ^{1st} **	Chemehuevi Indian Reservation	PPR No. 22	2/2/1907	Ind.	0, 11, 340
Cooper		PPR No. 40	1905	Ag		60
Yuma Project, Reservation Division (includes non-Indian portion) ^(release)		PPR 28 & Water Cert.	7/8/1905	Ind./Ag		0, 38, 270
4 th (PPR's) ^{1st} **	Reynolds	PPR No. 39	1904	Ag		36
	Imperial Irrigation District (includes lands in CAVD)	PPR No. 27	1901	Ag		0, 2,600,000
	Alchison, Topeka, and Santa Fe Railway Co. (being assigned to Needles)	PPR No. 44	1896	M&I		1,260

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Colorado River Water Entitlement Priority Systems within Arizona, California, and Nevada

Appendix E

Table E-2
State of California Colorado River Water Entitlement Holders and Priorities as of 2007

Priority	Entitlement Holder	Contract No.	Date	Use	Entitlement	
					Diversion	CU
	Picacho Development Corp and CA Department of Parks and Recreation	PPR 31 & 8-07-30-W0187	1893	Ag	120	or (i) CU required for irrigation of 2,587 acres and for satisfaction of related uses, whichever of (i) or (ii) is less
	Fort Mohave Indian Reservation	PPR No. 25	9/13/1890	Ind.	(i) 16,720	or (ii) CU required for irrigation of 10,742 acres and for satisfaction of related uses, whichever of (i) or (ii) is less
	Simons City of Needles	PPR No. 35 PPR No. 43/5-XX-30-W0445	1889 1885	Ag M&I	60 1,500	or (ii) CU required for irrigation of 10,742 acres and for satisfaction of related uses, whichever of (i) or (ii) is less
	Fort Yuma Indian Reservation	PPR No. 23	1/9/1884	Ind.	(i) 71,616	or (ii) CU required for irrigation of 33,604 acres and for satisfaction of related uses, whichever of (i) or (ii) is less
	Palo Verde Irrigation District	PPR No. 26	1877	Ag	(i) 219,780	or (ii) CU required for irrigation of 879 acres and for satisfaction of related uses, whichever of (i) or (ii) is less
	Colorado River Indian Reservation	PPR No. 24	5/15/1876	Ind.	(i) 5,860	or (ii) CU required for irrigation of 879 acres and for satisfaction of related uses, whichever of (i) or (ii) is less

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Colorado River Water Entitlement Priority Systems within Arizona, California, and Nevada

Appendix E

Table E-2
State of California Colorado River Water Entitlement Holders and Priorities as of 2007

Priority	Entitlement Holder	Contract No.	Date	Use	Entitlement	
					Diversion	CU
	Colorado River Indian Reservation	PPR No. 24	11/16/1874	Ind.	(1) 40,241	6,037 acres and for satisfaction of related uses, whichever of (i) or (ii) is less
	Colorado River Indian Reservation	PPR No. 24	10/22/1873	Ind.	(1) 10,745	1,612 acres and for satisfaction of related uses, whichever of (i) or (ii) is less
	Yuma Associates LTD and Winterhaven Water District (262.8 M&I)	PPR 29 & 4-07-30-W0053	1856	M&I/Ag	780	
	TOTAL				3,019,573	4,245

Note: CU means Consumptive Use, all units are in AFY. Forbearances and Transfers/Leases are displayed below the Priority, Entitlement Holder and indented five spaces.

¹Under contract 11-645, the Metropolitan Water District of Southern California has the exclusive right to withdraw and divert into its aqueduct any water in Lake Mead accumulated to the individual credit of said District (not exceeding at any one time 5 million acre-feet in the aggregate) by reason of reduced diversions by said District, provided that accumulations shall be subject to such conditions as to accumulation, retention, release, and withdrawal as the Secretary of the Interior may from time to time prescribe in his discretion.

²ID's PPR protects 2,600,000 acre-feet of its Seven Party 3rd/4th Priority Entitlement. Therefore the Use of the 3rd/4th priority entitlement shown in this table is reduced by the PPR right, and forbearances and transfers, an 44,500af reduction agreed to in the 2003 Colorado River Water Delivery Agreement, and the exchange for Lower Colorado Water Supply Project water QSA for the ID's. It is assumed that water forborne and transferred by ID QSA agreements retains a 3rd/4th priority right. Of the 561,459af remaining 3rd/4th priority right, ID forbears use of 11,500 af to permit the Secretary of the Interior to satisfy PPR use not covered by the Seven Party Agreement, 85,000 af for MWD receive 90,000af and 20,000 af for CVMID, and ID transfers 50,000 af to San Diego County Water Authority receive 30,000 acre-feet in 2007. ID forbears use of Colorado River water for Lower Colorado Water Supply Project water discharged into the All-American Canal.

³In 2007, with 25,000 acre-feet of this amount for Salton. See mitigation purposes.

⁴Incorporation of Yuma Island pumps' use within this priority does not represent either a final approval of this use by Reclamation or a final determination of the appropriate Decree accounting for this use, and is not an admission by any Colorado River contractor as to the legality of this use or diversion of Colorado River water. No Water Certificates have been issued for use of water on the Yuma Island in California.

⁵PPR's are reduced last in the region, in order of priority date, regardless of state lines.

These priorities are based on the California Seven Party Agreement, modified to include the PPR's identified by the Consolidated Decree and executed contracts and agreements.

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Page: 1

[CRB1]Amount to be inserted by the Bureau of Reclamation once the Secretary of the Interior has issued the determination of the amount of water conserved by the Coachella Canal Lining Project with the amount equal to 327,000 minus the amount of water resulting from the Coachella Canal Lining Project made available to Metropolitan and San Diego County Water Authority.

Page: 1

[CRB2]Amount to be inserted by the Bureau of Reclamation once the Secretary of the Interior has issued the determination of the amount of water conserved by the Coachella Canal Lining Project.

Page: 1

[CRB3]Amount to be inserted by the Bureau of Reclamation once the Secretary of the Interior has issued the determination of the amount of water conserved by the Coachella Canal Lining Project.

Page: 1

[CRB1] Amount to be inserted by the Bureau of Reclamation once the Secretary of the Interior has issued the determination of the amount of water conserved by the Coachella Canal Lining Project with the amount equal to the quantity, 327,000 minus the amount of water resulting from the Coachella Canal Lining Project made available to Metropolitan and San Diego County Water Authority in 2007.

Page: 1

[CRB2] Amount to be inserted by the Bureau of Reclamation once the Secretary of the Interior has issued the determination of the amount of water conserved by the Coachella Canal Lining Project with the amount equal to the quantity, 327,000 minus the amount of water resulting from the Coachella Canal Lining Project made available to Metropolitan and San Diego County Water Authority in 2007, plus return flow credit.

Page: 1

[CRB3] Amount to be inserted by the Bureau of Reclamation once the Secretary of the Interior has issued the determination of the amount of water conserved by the Coachella Canal Lining Project with the amount equal to 327,000 minus the amount of water resulting from the Coachella Canal Lining Project made available to Metropolitan and San Diego County Water Authority in 2007.

Page: 1

[CRB4] Amount to be inserted by the Bureau of Reclamation once the Secretary of the Interior has issued the determination of the amount of water conserved by the Coachella Canal Lining Project with the amount equal to the quantity, 327,000 minus the amount of water resulting from the Coachella Canal Lining Project made available to Metropolitan and San Diego County Water Authority in 2007, plus return flow credit.

Page: 1

[CRB5] Amount to be inserted by the Bureau of Reclamation once the Secretary of the Interior has issued the determination of the amount of water conserved by the Coachella Canal Lining Project with the amount equal to 327,000 minus the amount of water resulting from the Coachella Canal Lining Project made available to Metropolitan and San Diego County Water Authority in 2007.

Page: 1

[CRB6] Amount to be inserted by the Bureau of Reclamation once the Secretary of the Interior has issued the determination of the amount of water conserved by the Coachella Canal Lining Project.

Page: 1

[CRB7] Amount in this column and the column to the left to be inserted by the Bureau of Reclamation once the Secretary of the Interior has issued the determination of the amount of water conserved by the Coachella Canal Lining Project.

Page: 1

[CRB8] Amount in this column and the column to the left to be inserted by the Bureau of Reclamation once the Secretary of the Interior has issued the determination of the amount of water conserved by the Coachella Canal Lining Project.

Page: 1

[CRB9] Amount in this column and the next two columns to the left to be inserted by the Bureau of Reclamation once the Secretary of the Interior has issued the determination of the amount of water conserved by the Coachella Canal Lining Project.

Page: 1

[CRB10] Amount in this column and the column to the left to be inserted by the Bureau of Reclamation once the Secretary of the Interior has issued the determination of the amount of water conserved by the Coachella Canal Lining Project.

Page: 2

[CRB11] Value to be inserted in this column and the next four columns to the right once the Bureau of Reclamation has inserted values above.

Page: 5

[CRB12] Value to be inserted in this column, the next column to the right, and the third to the next column to the right once the Bureau of Reclamation has inserted values above.

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Shortage Allocation Model Documentation

Appendix G

Table G-18
State of California

Priority	2017	No.	Entitlement Holder	Contract No.	Date	Use	ENTITLEMENT		FULL ENTITLEMENT USE ^{1,2}		ADJUSTED DELIVERY		SHORTAGE ALLOCATION	
							Division	CU	Division	CU	Division	CU	Division	CU
			State Consumptive Use						4,400,000		4,400,000			0
		15	Metropolitan Water District of Southern California (4)	11-645	1930, 1931	M&I	550,000		464,935,947	461,872,486	464,935,947	461,872,486		0
			TOTAL				0	550,000	464,935,947	461,872,486	464,935,947	461,872,486	0	0
			PERCENT						.535	.872	.535	.872	0	0%
		18	Palo Verde Irrigation District (3b) - Lower Palo Verde Mesa Lands	PVID20733C P5	1933	Ag	≤16,000 acres	Unquantified	26,9090	11,4600	26,9090	11,4600	0	0
		6	Coachella Valley Water District (3a)	11-781	1934	Ag		347,000	336,973	327,000	336,973	327,000	0	0
			Metropolitan Water District of Southern California or San Luis Rey Indian Water Rights Settlement Parties (Exchange with Metropolitan)	Agreement Relating to Supplemental Water		M&I or TBD		[CRB1]	[CRB2]	[CRB3]	[CRB4]	[CRB5]	0	0
			Colorado River Water Delivery Agreement					[CRB6]		[CRB7]		[CRB8]		
		13	San Diego County Water Authority	11-747	1932	M&I		93,459,561.1	96,146,577.1	93,459,561.1	96,146,577.1	93,459,561.1	0	0
			Imperial Irrigation District's (3a)	1988 Cons. Agreement and Approval	1988	Ag		59	292	459	292	459	0	0
		15	Metropolitan Water District of Southern California	Approval Agreement		M&I		8590,000	85,000	85,000	85,000	85,000		
			Coachella Valley Water District	Approval Agreement /Acquisition Agreement		Ag		65,000	66,982	65,000	66,982	65,000		

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Appendix G

Shortage Allocation Model Documentation

**Table G-18
State of California**

2017	Priority	No.	Entitlement Holder	Contract No.	Date	Use	ENTITLEMENT		FULL ENTITLEMENT USE ^{2,3}		ADJUSTED DELIVERY		SHORTAGE ALLOCATION	
							Diversion	CU	Diversion	CU	Diversion	CU	Diversion	CU
			400,000											
		21	San Diego County Water Authority ^{2,3,4}	Colorado River Water Delivery Agreement SDCWA Transfer		M&I	156,200	156,200	156,200	156,200	156,200	156,200		
			San Diego County Water Authority (Salton Sea Mitigation)	Colorado River Water Delivery Agreement			154,312	150,000	154,312	150,000	154,312	150,000		
			Metropolitan Water District of Southern California or San Luis Rey Indian Water Rights Settlement Parties (Exchange with Metropolitan)	Agreement Relating to Supplemental Water		M&I or TBD	11,500	11,500	11,500	11,500	11,500	11,500	11,500	11,500
			Lower Colorado Water Supply Project	2-07-30-W0280	1992	M&I	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000
			TOTAL				403,712	403,712	403,712	403,712	403,712	403,712	403,712	403,712
			PERCENT											
		26	Yuma Project, Reservation Division (includes Bard ¹ , Indian ⁵ , Island ²)	Water Certificates ⁴	1905	Ind./Ag	≤25,000 acres	Unquantified	13,644	7,545	13,644	7,545	13,644	7,545
			TOTAL				0	0	13,644	7,545	13,644	7,545	13,644	7,545
			PERCENT											

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Appendix G

Table G-18
State of California

2017	Priority	No.	Entitlement Holder	Contract No.	Date	Use	ENTITLEMENT		FULL ENTITLEMENT USE ^{1,2}		ADJUSTED DELIVERY		SHORTAGE ALLOCATION	
							Diversion	CU	Diversion	CU	Diversion	CU	Diversion	CU
		18	Palo Verde Irrigation District ³ - Valley Lands (1)	PVID20733C P2	1933	Ag	≤104,500 acre-feet	Unquantified	722,352,690 -569	307,632,264 -699	722,352,690 -569	307,632,264 -689	0	0

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Draft EIS – Colorado River Interim Guidelines for
Lower Basin Shortages and Coordinated Operations
for Lake Powell and Lake Mead

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Appendix G

Shortage Allocation Model Documentation

Table G-18
State of California

2017	Priority	No.	Entitlement Holder	Contract No.	Date	Use	ENTITLEMENT		FULL ENTITLEMENT USE ^{1,2}		ADJUSTED DELIVERY		SHORTAGE ALLOCATION	
							Diversion	CU	Diversion	CU	Diversion	CU	Diversion	CU
			400,000											
			Metropolitan Water District of Southern California	Following and Forbearance Agreement		M&I	Dependent upon following call	Dependent upon following call	Dependent upon following call	Dependent upon following call	Dependent upon following call	Dependent upon following call	Dependent upon following call	
			TOTAL				0	722,352,690	307,639,294	722,352,690	307,639,294	0	0	
			PERCENT					,559	,089	,559	,089			0%
		27	One Acre PPR's	PPR's 45-80	1895-1928	M&I	36	36	22	36	22	0	0	0
		23	Sonny Gowan (Grannis)	PPR 32 & 7-07-30-W0158	1928	Ag	180	180	108	180	108	0	0	0
		3	Chagnon	PPR No. 41	1925	Ag	120	120	72	120	72	0	0	0
		24	Stephenson	PPR No. 30	1923	Ag	240	240	144	240	144	0	0	0
		8	Colorado River Sportsmen's League	PPR No. 36	1921	Ag	96	96	58	96	58	0	0	0
		1	Andrade (AKA Andrade, Andrews, Bly, Brown, Carney, Daniel, Fairbanks, Glynn, Lindeman, Leon, Schroeder, Sherman, Perrett, Wetmore, Wetmore, Williams)	PPR No. 38	1921	M&I /Ag	66	66	47	66	47	0	0	0
		16	Milpitas	PPR No. 34	1918	Ag	108	108	65	108	65	0	0	0
		14	Lawrence	PPR No. 42	1915	Ag	120	120	72	120	72	0	0	0
		16	Milpitas	PPR No. 37	1914	Ag	69	69	41	69	41	0	0	0
		17	Morgan	PPR No. 33	1913	Ag	150	150	90	150	90	0	0	0
		4	Reservation	PPR No. 22	1907	Ind.	11,340	11,340	6,094	11,340	6,094	0	0	0
		9	Cooper	PPR No. 40	1905	Ag	60	60	36	60	36	0	0	0

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Draft EIS - Colorado River Interim Guidelines for Lower Basin Shortages and Coordinated Operations for Lake Powell and Lake Mead

Shortage Allocation Model Documentation

Appendix G

Table G-18
State of California

2017 Priority	No.	Entitlement Holder	Contract No.	Date	Use	ENTITLEMENT		FULL ENTITLEMENT USE ^{1,2}		ADJUSTED DELIVERY		SHORTAGE ALLOCATION	
						Diversion	CU	Diversion	CU	Diversion	CU	Diversion	CU
		400,000											
	26	Yuma Project, Reservation Division (includes non-Indian portion/leasend)	PPR 28 & Water Cert.	1905	Ind./Ag	38,270		38,270	17,918	38,270	17,918	0	0
	20	Reynolds	PPR No. 39	1904	Ag	36		36	22	36	22	0	0
	13	Imperial Irrigation District (includes lands-in-CAWD)	PPR No. 27	1901	Ag	2,600,000		2,600,000	2,527,341	2,600,000	2,527,341	0	0
	5	Atchison, Topeka, and Santa Fe Railway Co. (being assigned to Needles)	PPR No. 44	1896	M&I	1,260	273	1,260	273	1,260	273	0	0
	19	Picacho Development Corp and CA Dept of Parks and Recreation	PPR 31 & 8-07-30-W0187	1893	Ag	120		120	66	120	66	0	0
	11	Fort Mohave Indian Reservation	PPR No. 25	1890	Ind.	16,720		16,720	8,994	16,720	8,994	0	0
	22	Simons	PPR No. 35	1889	Ag	60		60	36	60	36	0	0
	5	City of Needles	PPR No. 43/5-XX-30-W0445	1885	M&I	1,500	950	1,500	950	1,500	950	0	0
	12	Fort Yuma Indian Reservation	PPR No. 23	1/9/1884	Ind.	71,616		71,616	34,506	71,616	34,506	0	0
	18	Palo Verde Irrigation District	PPR No. 26	1877	Ag	219,780		219,780	93,601	219,780	93,601	0	0
	7	Colorado River Indian Reservation	PPR No. 24	1876	Ind.	5,860		5,860	3,324	5,860	3,324	0	0
	7	Colorado River Indian Reservation	PPR No. 24	1874	Ind.	40,241		40,241	22,823	40,241	22,823	0	0
	7	Colorado River Indian Reservation	PPR No. 24	1873	Ind.	10,745		10,745	6,094	10,745	6,094	0	0
	25	Yuma Associates LTD and Winterhaven Water District (262.8 M&I)	PPR 29 & 4-07-30-W0053	1856	M&I /Ag	780		780	528	780	528	0	0
		TOTAL				3,019,573	1,245	3,019,573	2,723,325	3,019,573	2,723,325	0	0
		PERCENT					2,544,403 [CRB12]		4,400,000⁵, 648,423		100%	0	0
		CALIFORNIA TOTALS				3,340,596		6,378,966	4,400,000⁵, 648,423	5,185,576	4,400,000	1,192,49	1,2

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Draft EIS – Colorado River Interim Guidelines for Lower Basin Shortages and Coordinated Operations for Lake Powell and Lake Mead

G-5

February 2007

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Reponses to Comment Letter S-7

S-7-1

Your comment is noted. No change to the Final EIS was necessary.

S-7-2

Your comment is noted. No change to the Final EIS was necessary.

S-7-3

Your comment is noted. The modeling assumptions regarding the distribution of shortages (Section 2.2.1), particularly with respect to Stage II shortages were common to all alternatives and permitted a relative comparison of alternatives.

S-7-4

Your comment is noted. No change to the Final EIS was necessary.

S-7-5

Reclamation concurs with your comment. Appropriate modifications have been made to Table E-2 and the attachments to Appendix G.

S-7-6

Reclamation concurs with your comment. Appropriate modifications have been made to Table E-2 and the attachments to Appendix G.

S-7-7

Your comment is noted. No change to the Final EIS was necessary.

S-7-8

The alternatives were formulated to enable the evaluation a wide range of operational conditions. This modeling assumption was included in some alternatives to evaluate the trade-offs associated with this assumption.

S-7-9

Your comment is noted. The natural flow data for 2005 has been added to the historic hydrology record that was used as input for the hydrologic modeling of the alternatives (Section 4.2 in the Final EIS).

S-7-10 and S-7-11

Your comment is addressed in the general response pertaining to climate changes and hydrologic variability in the introduction to Volume IV of the Final EIS. Section 4.2 of the Final EIS has been enhanced and two new appendices (Appendix T and Appendix U) have been added to provide additional information regarding the potential impacts of climate change and hydrologic variability.

S-7-12 through S-7-14

Your comment is noted. No change to the Final EIS was necessary. A detailed analysis of potential air quality impacts associated with voluntary or involuntary land fallowing is not possible as it is unknown which specific lands would be affected. Such an analysis would require information associated with the lands that would be fallowed including specific location, affected acreage, soils type, and prevailing wind data.

S-7-15

Your comment is noted. Information presented in the Draft EIS has been modified in the Final EIS (Appendix H) to include a discussion of the positive and negative effects of a voluntary conservation program.

S-7-16

See response to comment S-7-12.

S-7-17

See response to Comment No. S-2-11.

S-7-18 to S-7-19

Your comment is noted. No change to the Final EIS was necessary.

S-7-20 to S-7-22

Reclamation concurs with these comments. The referenced sections have been revised in the Final EIS.

S-7-23 through S-7-26

Your comment is noted. No change to the Final EIS was necessary. The narrative in Section 2.4 and the detailed modeling assumptions in Appendix M sufficiently explain these two aspects of the Conservation Before Shortage proposal.

S-7-27

Your comment is noted. No change to the Final EIS was necessary.

S-7-28 through S-7-31

Your comments are noted. No change to the Final EIS was necessary.

S-7-32 through S-7-37

Your comments are noted. Reclamation has included draft operational guidelines in the Final EIS (Appendix S) that include a modification of Section 5 of the ISG regarding California's agricultural use benchmarks.

S-7-38

Your comment is noted. No change to the FEIS was necessary.

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The States of Arizona, California, Colorado, Nevada,
New Mexico, Utah and Wyoming
Governors' Representatives on Colorado River Operations

April 30, 2007

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

Re: Basin States' Comments on *Draft Environmental Impact Statement, Colorado River Interim Guidelines for Lower Basin Shortages and Coordinated Operations for Lake Powell and Lake Mead*

Dear Secretary Kempthorne:

Thank you for the opportunity to comment on the *Draft Environmental Impact Statement, Colorado River Interim Guidelines for Lower Basin Shortages and Coordinated Operations for Lake Powell and Lake Mead* (72 Fed. Reg. 9,026) (Feb. 28, 2007) (hereinafter "DEIS"). The Basin States emphasize that the Basin States' Alternative best meets critical elements of the purpose and need statement articulated in the DEIS. It does so by giving water managers the certainty to engage in meaningful long-range planning while also promulgating programs to increase operational and resource management flexibility on the River. This is particularly important given the impacts of the drought on the Colorado River system over the last seven years and the uncertain hydrology going forward. Thus, the Basin States strongly encourage you to select the Basin States' Alternative analyzed in the DEIS, together with the modifications outlined in this letter and the included attachments ("Basin States' Proposal"), as the preferred alternative in the Final Environmental Impact Statement ("FEIS") and the selected action in the Record of Decision ("ROD").

Basin States' Proposal

The Basin States have made tremendous progress over the last two years in setting aside contentious issues and reaching agreements regarding operation of the Colorado River system reservoirs. Since the Basin States originally forwarded a Preliminary Proposal and draft Seven States' Agreement to your predecessor on February 3, 2006 ("Preliminary Proposal"), the Basin States have finalized a number of agreements and proposals. These documents, which are described in detail below, incorporate and give further definition to each of the elements of the Preliminary Proposal and the Basin States' Alternative in the DEIS. The Basin States believe that if all material terms of the Basin States' Proposal are included in the ROD, it will establish the first comprehensive set of detailed operating guidelines in the history of the Colorado River.

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The Basin States’ Proposal consists of the following documents:

1. Agreement Concerning Colorado River Management and Operations (Attachment “A”). This agreement among major Colorado River water interests in all seven states that share the River system is the foundation document in the Basin States’ Proposal. This agreement memorializes the consensus recommendation to the Secretary for Colorado River management and operations during an interim period, sets forth agreements regarding pursuit of system augmentation and efficiency projects, and establishes a rigorous process for the resolution of claims and controversies between the parties in an effort to set aside long standing disputes on the River. 4
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2. Proposed Interim Guidelines for Colorado River Operations (Attachment “B”). Building upon the Preliminary Proposal, the Basin States have drafted a comprehensive set of guidelines to govern Colorado River operations during the interim period. If adopted, these proposed guidelines would: (1) replace the Interim Surplus Guidelines; (2) establish guidelines for coordinated operations for Lakes Powell and Mead; (3) establish shortage guidelines for use within the United States; and (4) establish parameters for the creation and release of Intentionally Created Surplus (“ICS”) and Developed Shortage Supplies (“DSS”). 7

3. Forbearance Agreement (Attachment “C”). This draft agreement among the Lower Division States and major water users within those states recognizes that, in the absence of forbearance by the parties, surplus water is apportioned for use according to the percentages provided in Article II(B)(2) of the Consolidated Decree in *Arizona v. California*. The execution of this agreement will facilitate implementation of the ICS program. 8
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4. Shortage Sharing Agreement between Arizona and Nevada (Attachment “D”). As anticipated by the Basin States’ February 3, 2006 Preliminary Proposal, Arizona and Nevada have executed a Shortage Sharing Agreement premised upon the Secretary’s reductions in deliveries within the United States of 333,000, 417,000 and 500,000 acre-feet per year based upon specific Lake Mead elevations. 10

5. Delivery Agreement. It will be necessary for the Secretary to enter into one or more agreements that enable and obligate the United States to deliver ICS and DSS to entities that create ICS or DSS in conformance with relevant provisions of the Guidelines and the Forbearance Agreement. At this time, the Basin States are developing a draft delivery agreement for the Department of the Interior’s (“Interior”) consideration and look forward to working with Interior on drafting one or more agreements that can be executed concurrently with the issuance of the ROD. The Basin States request that the U.S. Bureau of Reclamation (“Reclamation”) include appropriate analysis of the 11
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anticipated execution of one or more agreements to deliver ICS or DSS within the preferred alternative in the FEIS and the selected action in the ROD.

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Implementation of any alternative that does not include all material terms of the Basin States' Proposal will carry with it a significant degree of uncertainty given that the Basin States' Agreement, Forbearance Agreement and Arizona-Nevada Shortage Sharing Agreement are each contingent upon the issuance of a ROD that is consistent with the material terms of those agreements. These agreements make it possible for components of the proposed action, such as coordinated management of Lakes Mead and Powell and the creation and release of ICS, to be implemented without adversarial actions involving the Basin States and major water users on the Colorado River.

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Reduced Deliveries to Mexico

Recent negotiations among the Basin States and major water users in those states have involved multiple issues of critical importance to the Basin States. However, in the course of these negotiations no issue has surpassed the importance of how the United States exercises its authority to reduce the quantity of water allotted to Mexico under Article 10(a) of the Mexican Water Treaty of 1944.

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In the Preliminary Proposal the Basin States recommended that the Secretary reduce deliveries from Lake Mead by 400,000, 500,000 and 600,000 acre-feet per year within the United States and Mexico at certain Lake Mead elevations. In accordance with the Preliminary Proposal, Arizona and Nevada have executed a Shortage Sharing Agreement premised upon the imposition by the Secretary of shortages within the United States of 333,000, 417,000 and 500,000 acre-feet per year at the same Lake Mead elevations contained in the Preliminary Proposal. For the first 600,000 acre-feet per year of any reductions in deliveries in any year due to a declared shortage, the Basin States have agreed that Arizona and Nevada will not take more than 500,000 acre-feet per year in aggregate and California will not take any reductions. The DEIS substantially incorporates the assumptions contained in the Preliminary Proposal, the Basin States' Agreement and the Shortage Sharing Agreement into its consideration and analysis of the Basin States' Alternative.

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Due to the critical nature of this issue, the Basin States believe that the Secretary should include these assumptions as part of the preferred alternative in the FEIS and the selected action in the ROD. The Basin States strongly urge the United States to exercise its authority to reduce the quantity of water allotted to Mexico in years in which the Secretary imposes shortages in deliveries of water from Lake Mead in the United States in a quantity consistent with the assumptions in the DEIS, and in other appropriate circumstances.

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Mexican Participation in ICS Program

The Basin States support the concept of Mexico participating in the ICS program at some time in the future, provided that its participation is addressed in the context of other river

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operation matters and is part of a comprehensive arrangement between the two nations that incorporates, at a minimum, the material terms of the Basin States' Proposal. The Basin States stand ready to discuss this comprehensive arrangement.

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Colorado River Augmentation Projects

Implementation of projects to augment the long-term supply of the Colorado River is of utmost importance not only to the Basin States and the millions of people who live here, but to the nation as a whole. While no specific augmentation projects are included in the current Basin States' Proposal, the need to develop a process to implement augmentation projects must remain at the forefront of the Basin States' and Interior's agendas. Changes to existing or new federal regulations may be necessary to effectuate augmentation projects.

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The Preliminary Proposal outlined a concept for water users in Arizona, California, or Nevada to secure additional water supplies by funding the development of a non-Colorado River System water supply in one Lower Division State for use in another Lower Division State by exchange. Through the cooperation of the International Boundary and Water Commission, United States and Mexico, similar arrangements could be established by which non-Colorado River System water supplies in Mexico could be developed for use in the United States by exchange.

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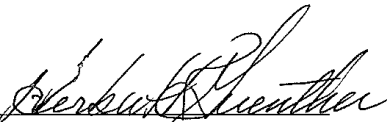
The Basin States view the inclusion in the DEIS of a quantitative analysis of the impacts to the Colorado River resulting from the implementation of future augmentation projects as a positive step and encourage you to include the same analysis in the FEIS in order to begin to establish the environmental compliance framework for future augmentation projects.

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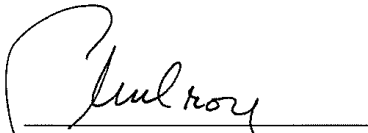
Conclusion

In closing, the Basin States thank you for your leadership and urge Interior to adopt a ROD that includes all of the material terms of the Basin States' Proposal.

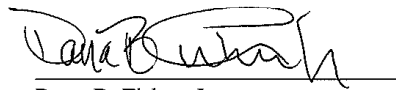
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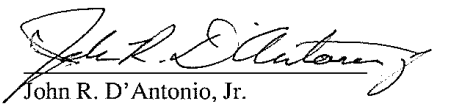
Herbert R. Guenther
 Director
 Arizona Department of Water Resources



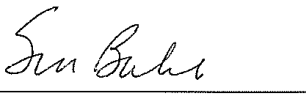
Patricia Mulroy
 General Manager
 Southern Nevada Water Authority



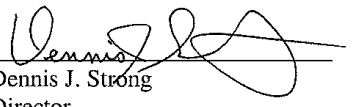
Dana B. Fisher, Jr.
 Chairman
 Colorado River Board of California




John R. D'Antonio, Jr.
 Secretary
 New Mexico Interstate Stream Commission



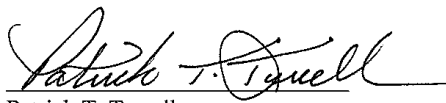
Scott Balcomb
 Governor's Representative
 State of Colorado



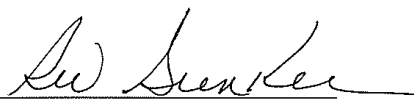
Dennis J. Strong
 Director
 Utah Division of Water Resources
 Utah Interstate Stream Commissioner



Rod Kuharich
 Director
 Colorado Water Conservation Board



Patrick T. Tyrrell
 State Engineer
 State of Wyoming



Richard W. Bunker
 Chairman
 Colorado River Commission of Nevada

Attachments

- c: Robert W. Johnson, Commissioner, U. S. Bureau of Reclamation
- Rick Gold, Regional Director, U. S. Bureau of Reclamation, Upper Colorado Regional Office
- Jayne Harkins, Acting Regional Director, U. S. Bureau of Reclamation, Lower Colorado Regional Office
- Larry Walkoviak, Deputy Regional Director, U. S. Bureau of Reclamation, Lower Colorado Regional Office

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ATTACHMENT A

**AGREEMENT CONCERNING COLORADO RIVER MANAGEMENT
AND OPERATIONS**

This Agreement is entered into effective as of April 23, 2007, by and among the Arizona Department of Water Resources; Colorado River Board of California; Colorado Water Conservation Board; Governor's Representative for the State of Colorado; Colorado River Commission of the State of Nevada; Southern Nevada Water Authority; New Mexico Interstate Stream Commission; Utah Division of Water Resources; Utah Interstate Stream Commissioner; and Wyoming State Engineer.

RECITALS**A. Parties.****1. Arizona.**

- a. The Arizona Department of Water Resources, through its Director, is the successor to the signatory agency of the State for the 1922 Colorado River Compact, and the 1944 Contract for Delivery of Water with the United States, both authorized and ratified by the Arizona Legislature, A.R.S. §§ 45-1301 and 1311. Pursuant to A.R.S. §§ 45-107, the Director is authorized and directed, subject to the limitations in A.R.S. §§ 45-106, for and on behalf of the State of Arizona, to consult, advise and cooperate with the Secretary of the Interior of the United States with respect to the exercise by the Secretary of Congressionally authorized authority relative to the waters of the Colorado River (including but not limited to the Boulder Canyon Project Act, 43 U.S.C. § 617, and the 1968 Colorado River Basin Project Act, 43 U.S.C. § 1501) and with respect to the development, negotiation and execution of interstate agreements. Additionally, under A.R.S. § 45-105(A)(9), the Director is authorized to "prosecute and defend all rights, claims and privileges of this state respecting interstate streams."
- b. Under A.R.S. § 11-951 et. seq., the Director is authorized to enter into Intergovernmental Agreements with other public agencies, which includes another state; departments, agencies, boards and commissions of another state; and political subdivisions of another state.

2. California. The Chairman of the Colorado River Board of California, acting as the Colorado River Commissioner pursuant to California Water Code section 12525, has the authority to exercise on behalf of California every right and power granted to California by the Boulder Canyon Project Act, and to do and perform all other things necessary or expedient to carry out the purposes of the Colorado River Board.

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3. Colorado.
 - a. Section 24-1-109, Colorado Revised Statutes (2005) provides that “Interstate compacts authorized by law shall be administered under the direction of the office of the governor.” This includes the Colorado River Compact and the Upper Colorado River Basin Compact. Section 37-60-109 provides that “the governor from time to time, with approval of the board, shall appoint a commissioner, who shall represent the state of Colorado upon joint commissions to be composed of commissioners representing the state of Colorado and another state or other states for the purpose of negotiating and entering into compacts or agreements between said states...” By letter dated April 12, 2006, the Governor appointed Upper Colorado River Commissioner Scott Balcomb to represent the State of Colorado.
 - b. Section 37-60-106, subsections (e) and (i), C.R.S. (2005), authorize the Colorado Water Conservation Board to “cooperate with the United States and the agencies thereof, and with other states for the purpose of bringing about the greater utilization of the water of the state of Colorado and the prevention of flood damages,” and “to confer with and appear before the officers, representatives, boards, bureaus, committees, commissions, or other agencies of other states, or of the federal government, for the purpose of protecting and asserting the authority, interests, and rights of the state of Colorado and its citizens with respect to the waters of the interstate streams in this state.” Therefore, by statute the Director of the Colorado Water Conservation Board is authorized to negotiate with and enter into agreements with other state entities within the Colorado River Basin.
4. Nevada.
 - a. The Colorado River Commission of Nevada (CRCN) is an agency of the State of Nevada, authorized generally by N.R.S. §§ 538.041 and 538.251. CRCN is authorized by N.R.S. § 538.161 (6), (7) to enter into this Agreement. The CRCN, in furtherance of the State of Nevada’s responsibility to promote the health and welfare of its people in Colorado River matters, makes this Agreement to supplement the supply of water in the Colorado River which is available for use in Nevada, augment the waters of the Colorado River, and facilitate the more flexible operation of dams and facilities by the Secretary of the Interior of the United States. The Chairman of the Commission, signatory hereto, serves as one of the Governor’s representatives as contemplated by Section 602(b) of the 1968 Colorado River Basin Project Act, 43 U.S.C. § 1552(b) and the Criteria for Coordinated Long-Range Operation of Colorado River Reservoirs Pursuant to the Colorado River Basin Project Act.

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- b. The Southern Nevada Water Authority (SNWA) is a Nevada joint powers agency and political subdivision of the State of Nevada, created by agreement dated July 25, 1991, as amended November 17, 1994 and January 1, 1996, pursuant to N.R.S. §§ 277.074 and 277.120. SNWA is authorized by N.R.S. § 538.186 to enter into this Agreement and, pursuant to its contract issued under section 5 of the Boulder Canyon Project Act of 1928, SNWA has the right to divert “supplemental water” as defined by NRS § 538.041 (6). The General Manager of the SNWA, signatory hereto, serves as one of the Governor’s Representatives as contemplated by Section 602(b) of the 1968 Colorado River Basin Project Act, 43 U.S.C. § 1552(b) and the Criteria for Coordinated Long-Range Operation of Colorado River Reservoirs Pursuant to the Colorado River Basin Project Act.
5. New Mexico. Pursuant to NMSA 1978, 72-14-3, the New Mexico Interstate Stream Commission is authorized to investigate water supply, to develop, to conserve, to protect and to do any and all other things necessary to protect, conserve and develop the waters and stream systems of the State of New Mexico, interstate or otherwise. The Interstate Stream Commission also is authorized to institute or cause to be instituted in the name of the State of New Mexico any and all negotiations and/or legal proceedings as in its judgment are necessary. By Resolution dated January 24, 2007, the Interstate Stream Commission authorizes the execution of this Agreement.
6. Utah. The Division of Water Resources (DWR) is the water resource authority for the State of Utah. Utah Code Ann. § 73-10-18. The Utah Department of Natural Resources Executive Director (Department), with the concurrence of the Utah Board of Water Resources (Board), appoints the DWR Director (Director). § 63-34-6(1). The Board makes DWR policy. § 73-10-1.5. The Board develops, conserves, protects, and controls Utah waters, § 73-10-4(4), (5), and, in cooperation with the Department and Governor, supervises administration of interstate compacts, § 73-10-4, such as the Colorado River Compact, §§ 73-12a-1 through 3, and the Upper Colorado River Basin Compact, § 73-13-10. The Board, with Department and Gubernatorial approval, appoints a Utah Interstate Stream Commissioner, § 73-10-3, currently the DWR Director, to represent Utah in interstate conferences to administer interstate compacts. §§ 73-10-3 and 73-10-4. These delegations of authority authorize the Utah Interstate Stream Commissioner/DWR Director to sign this document. He acts pursuant to a Board resolution, acknowledged by the Department, dated March 7, 2007.
7. Wyoming. Water in Wyoming belongs to the state. Wyo. Const. Art. 8 § 1. The Wyoming State Engineer is a constitutionally created office and is Wyoming’s chief water official with general supervisory authority over the waters of the state. Wyo. Const. Art. 8 § 5. The Wyoming legislature conferred upon Wyoming officers the authority to cooperate with and assist

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like authorities and entities of other states in the performance of any lawful power, duty, or authority. Wyo. Stat. Ann. § 16-1-101 (2005). Wyoming and its State Engineer represent the rights and interests of all Wyoming appropriators with respect to other states. *Wyoming v. Colorado*, 286 U.S. 494 (1922). See *Hinderlider v. La Plata River & Cherry Creek Ditch Co.*, 304 U.S. 92 (1938). In signing this Agreement, the State Engineer intends that this Agreement be mutually and equally binding between the Parties.

B. Background.

1. Federal law and practice (including Section 16 of the Boulder Canyon Project Act, 43 U.S.C § 617o and Section 602(b) of the 1968 Colorado River Basin Project Act, 43 U.S.C. § 1552(b), and the Criteria for Coordinated Long-Range Operation of Colorado River Reservoirs Pursuant to the Colorado River Basin Project Act), contemplate that in the operation of Lakes Powell and Mead, the Secretary of the Interior consults with the States through Governors' Representatives, who represent the Governors and their respective state agencies. Through this law and practice, the Governors' Representatives and state agencies have in the past reached agreements among themselves and with the Secretary on various aspects of Colorado River reservoir operation. This Agreement is entered into in furtherance of this law and practice.
2. On January 16, 2001, the Secretary adopted Colorado River Interim Surplus Guidelines (ISG) based on an alternative prepared by the Colorado River Basin States, for the purposes of determining annually the conditions under which the Secretary would declare the availability of surplus water for use within the states of Arizona, California and Nevada in accordance with and under the authority of the Boulder Canyon Project Act of 1928 (45 Stat. 1057) and the Decree of the United States Supreme Court in *Arizona v. California*, 376 U.S. 340 (1964), as amended and supplemented. The ISG are effective through calendar year 2015 (through preparation of the 2016 Annual Operating Plan).
3. In the years following the adoption of the ISG, drought conditions in the Colorado River Basin caused a significant reduction in storage levels in Lakes Powell and Mead, and precipitated discussions by and among the Parties, and between the Parties and the United States through the Department of the Interior and the Bureau of Reclamation. The Parties recognize that the Upper Division States have not yet developed their full apportionment under the Colorado River Compact. Although the Secretary has not imposed any shortage in the Lower Basin, the Parties also recognize that with additional Upper Basin development and in drought conditions, the Lower Division States may be required to suffer shortages in deliveries of water from Lake Mead. Therefore, these discussions focused on ways to improve the management of water in Lakes Powell and Mead so as to enhance the

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protection afforded to the Upper Basin by Lake Powell, and to delay the onset and minimize the extent and duration of shortages in the Lower Basin.

4. On May 2, 2005, the Secretary announced her intent to undertake a process to develop Lower Basin shortage guidelines and explore management options for the coordinated operation of Lakes Powell and Mead. On June 15, 2005, the Bureau of Reclamation published a notice in the Federal Register, announcing its intent to implement the Secretary's direction. The Bureau of Reclamation has proceeded to undertake scoping and develop alternatives pursuant to the National Environmental Policy Act (the NEPA Process), which the Parties anticipate will form the basis for a ROD to be issued by the Secretary by December 2007.
5. On August 25, 2005, the Parties wrote a letter to the Secretary expressing conceptual agreement in the development and implementation of three broad strategies for improved management and operation of the Colorado River: Coordinated Reservoir Management and Lower Basin Shortage Guidelines; System Efficiency and Management; and Augmentation of Supply.
6. On February 3, 2006, the Parties transmitted to the Secretary their recommendation for the scope of the NEPA Process (Preliminary Proposal), which refined many of the elements outlined in the August 25, 2005 letter.
7. In February 2007, the Secretary issued a Draft Environmental Impact Statement (DEIS) pursuant to the NEPA Process. The DEIS includes an alternative, called the Basin States' Alternative, that is based on the recommendations of the Parties.
8. At the request of the Secretary, the Parties have continued their discussions relative to the areas of agreement outlined in the letters of August 25, 2005 and February 3, 2006, and the DEIS, and have agreed on: a) additional actions for their mutual benefit designed to augment the supply of water available for use in the Colorado River System and improve the management of water in the Colorado River; b) recommendations to the Secretary for adoption as the preferred alternative in the Final Environmental Impact Statement and in the ROD; and c) consultation processes among themselves, and consultation recommendations to the Secretary for incorporation into the ROD.

C. Purpose. The Parties intend that the actions by them contemplated in this Agreement will: improve cooperation and communication among them; provide additional security and certainty in the water supply of the Colorado River System for the benefit of the people served by water from the Colorado River System; and avoid circumstances which could otherwise form the basis for claims or controversies over interpretation or implementation of the Colorado River Compact and other applicable provisions of the law of the river.

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AGREEMENT

In consideration of the above recitals and the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Recitals. The Recitals set forth above are material facts that are relevant to and form the basis for the agreements set forth herein.

2. Definitions. As used in this Agreement, the following terms have the following meanings:

- A. Colorado River System. This term shall have the meaning as defined in the Colorado River Compact.
- B. ISG. The Colorado River Interim Surplus Guidelines adopted by the Secretary on January 16, 2001, as modified by the ROD.
- C. NEPA Process. The decision-making process pursuant to the National Environmental Policy Act, 42 U.S.C. §§ 4321 through 4347, beginning with the Bureau of Reclamation's Notice to Solicit Comments and Hold Public Meetings, 70 Fed. Reg. 34794 (June 15, 2005) and culminating in a Record of Decision.
- D. Party or Parties. Any party or parties to this Agreement.
- E. Parties' Recommendation. The Seven Basin States' comments on the DEIS transmitted to the Secretary of the Interior on or before April 30, 2007.
- F. ROD. The Record of Decision anticipated to be issued by the Secretary after completion of the NEPA Process including but not limited to any interim guidelines promulgated pursuant thereto.
- G. Secretary. The Secretary of the Interior or the Bureau of Reclamation, as applicable.
- H. State or States. Any of the states of Arizona, California, Colorado, Nevada, New Mexico, Utah or Wyoming, as context requires.

3. Support for Parties' Recommendation.

- A. After considering a number of alternatives, each Party has determined that the Parties' Recommendation is in the best interests of that Party, and promotes the health and welfare of that Party and of the Colorado River Basin States. The Parties support the Secretary's incorporation of the Parties'

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Recommendation and this Agreement into the ROD, as appropriate to effectuate the material terms of the Parties' Recommendation. If during the course of the NEPA Process any new information becomes available which causes any Party, in its sole and absolute discretion, to reassess any provision of the Parties' Recommendation and this Agreement, that Party shall immediately notify all other Parties in writing. The Parties shall jointly consult and, if they agree to any modification of the Parties' Recommendation or this Agreement, shall consult with the Secretary to advise him/her of such modification and request the adoption thereof in the ROD.

- B. If after such consultations it is apparent there is an irreconcilable conflict between the Parties as to such modification, then any Party may upon written notice to the other Parties withdraw from this Agreement, and in such event this Agreement shall no longer be effective or binding upon such withdrawing Party. All withdrawing Parties hereby reserve all rights upon withdrawal from this Agreement to take such actions, including support of or challenges to the ROD, as they in their sole and absolute discretion deem necessary or appropriate. In the event of the withdrawal of any one or more Parties from this Agreement, this Agreement shall continue in full force and effect as to the remaining Parties. The remaining Parties may consult to determine whether to continue this Agreement in effect, to amend this Agreement, or to terminate this Agreement. In the event of termination, all Parties shall be relieved from the terms hereof, except as provided in Paragraph 10, and this Agreement shall be of no further force or effect.

4. ROD Consistent with the Parties' Recommendation and this Agreement. In the event the Secretary adopts a ROD in substantial conformance with the Parties' Recommendation and this Agreement, the Parties shall take all necessary actions to implement the terms of the ROD, including the approval and execution of agreements necessary for such implementation.

5. ROD Inconsistent with the Parties' Recommendation and this Agreement. In the event the Secretary adopts a ROD that any Party, in its sole and absolute discretion, determines is not in substantial conformance with the Parties' Recommendation and this Agreement, such Party shall immediately notify all other Parties of such determination in writing. The Parties shall jointly consult, and consult with the Secretary as necessary, in order to determine whether the ROD is in substantial conformance with the Parties' Recommendation and this Agreement, or whether any action, including the amendment of this Agreement, may resolve such concern. If after such consultation it is apparent there is an irreconcilable conflict between the ROD and the concerns of such Party, then such Party may upon written notice to the other Parties withdraw from this Agreement, and in such event this Agreement shall no longer be effective or binding upon such withdrawing Party. All withdrawing Parties hereby reserve all rights upon withdrawal from this Agreement to take such actions, including support of or challenges to the ROD, as they in their sole and absolute discretion deem necessary or appropriate. In the event of the withdrawal of any one or more Parties from this Agreement, this Agreement shall

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continue in full force and effect as to the remaining Parties. The remaining Parties may consult to determine whether to continue this Agreement in effect, to amend this Agreement, or to terminate this Agreement. In the event of termination, all Parties shall be relieved from the terms hereof, except as provided in Paragraph 10, and this Agreement shall be of no further force or effect.

6. Additions to the ROD. The Parties hereby request that the Secretary recognize the specific provisions of this Agreement as part of the NEPA Process and include in the ROD specific provisions that reference this Agreement as a basis for the ROD. The Parties also hereby request that the Secretary include in the ROD the following specific provisions:

- A. The Secretary will first consult with all the States before making any substantive modification to these guidelines.
- B. Upon a request by a State for modification of these guidelines, or upon a request by a State to resolve any claim or controversy arising under: i) the Agreement Concerning Colorado River Management and Operations; ii) these Guidelines; iii) the operations of Lakes Powell and Mead pursuant to these guidelines; or, iv) any other applicable provision of federal law, regulation, criteria, policy, rule or guideline, or the Mexican Water Treaty of 1944, the Secretary shall invite the Governors of all the Basin States, or their designated representatives, to consult with the Secretary in an attempt to resolve such claim or controversy by mutual agreement.
- C. In the event projections included in any Bureau of Reclamation monthly 24 Month Study indicates Lake Mead elevations may approach an elevation that would trigger shortages in deliveries of water from Lake Mead in the United States, the Secretary shall consult with all the States on how the United States shall reduce the quantity of water allotted to Mexico.

7. Consultation on Operations. After the Secretary commences operating Lakes Powell and Mead pursuant to the ROD, the Parties shall consult among themselves as necessary, but at least annually, to assess such operations. Any Party may request consultation with the other Parties on a proposed adjustment or modification of such operations, based on changed circumstances, unanticipated conditions, or other factors. Upon such request, the Parties shall consult in good faith with each other to resolve any such issues, and based thereon may request consultation by the States with the Secretary on adjustments to or modifications of operations under the ROD. In any event, the Parties shall initiate consultations before December 31, 2020, to determine whether to extend this Agreement and recommend that the Secretary continue operations under the ROD for an additional period, or modify this Agreement and recommend that the Secretary modify operations under the ROD, or terminate this Agreement and recommend that the Secretary not continue operations under the ROD after the expiration thereof. Any extension of this Agreement and any recommendation by the Parties to the Secretary to extend or modify operations under the ROD shall be made by unanimous

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consent of the Parties. If such extension and recommendation are not made, this Agreement shall terminate in accordance with Paragraph 16.

8. Development of Interim Water Supplies, System Augmentation, System Efficiency and Water Enhancement Projects. The Parties agree to diligently pursue interim water supplies, system augmentation, system efficiency and water enhancement projects within the Colorado River System. The term "system augmentation" includes the quantifiable addition of new sources of supply to the Colorado River Basin, including importation from outside the Basin or desalination of ocean water or brackish water. The term "system efficiency" includes efficiency projects in the Lower Basin that will result in the more efficient use of existing supplies, such as in-system storage and enhanced management. The term "water enhancement" includes projects that may increase available system water, including cloud seeding and non-native vegetation management. Due to the critical importance of implementing these projects in reducing the potential for shortages, the Parties shall continue to jointly pursue the study and implementation of such projects, and to regularly consult on the progress of such projects.

Specifically, the Parties agree to cooperatively pursue an interim water supply of at least a cumulative amount of 280,000 acre-feet for use in Nevada while long-term augmentation projects are being pursued. It is anticipated that this interim water supply will be made available in return for Nevada's funding of the Drop 2 Reservoir mandated for construction by the Bureau of Reclamation by P.L. 109-432 § 396. Annual recovery of this interim water supply by Nevada will not exceed 40,000 acre-feet.

In consideration of the Parties' diligent pursuit of long-term augmentation and the availability of the interim water supply, the Southern Nevada Water Authority (SNWA) agrees that it will withdraw right-of-way Application No. N-79203 filed with the Bureau of Land Management on October 1, 2004 for the purpose of developing Permit No. 58591 issued by the Nevada State Engineer in Ruling No. 4151.

The SNWA will not re-file such right-of-way application or otherwise seek to divert the water rights available under Permit No. 58591 from the Virgin River prior to 2014 so long as Nevada is allowed to utilize its pre-Boulder Canyon Project Act Virgin and Muddy River rights in accordance with the Parties' Recommendation, and the interim water supply made available to Nevada is reasonably certain to remain available. The SNWA will not re-file such right-of-way application or otherwise seek to divert the water rights available under Permit No. 58591 from the Virgin River after 2014 so long as diligent pursuit of system augmentation is proceeding to provide or has provided Nevada an annual supply of 75,000 acre-feet by the year 2020. Prior to re-filing any applications with the Bureau of Land Management, SNWA and Nevada will consult with the other Basin States.

This agreement is without prejudice to any Party's claims, rights or interests in the Virgin or Muddy River systems.

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9. Consistency with Existing Law. The Parties' Recommendation has been developed with the intent to be consistent with existing law. The Parties expressly agree, for purposes of this Agreement, that the storage of water in and release of water from Lakes Powell and Mead pursuant to a ROD issued by the Secretary in substantial conformance with the Parties' Recommendation and this Agreement, and any agreements, rules and regulations adopted by the Secretary or the parties to implement such ROD, shall not constitute a violation of Article III(a)-(e) inclusive of the Colorado River Compact, or Sections 601 and 602(a) of the Colorado River Basin Project Act of 1968 (43 U.S.C. §§ 1551 and 1552(a)), and all applicable rules and regulations promulgated thereunder.

10. Resolution of Claims or Controversies Not Related to Reductions in Deliveries to Mexico under the Mexican Water Treaty of 1944. The Parties recognize that judicial or administrative proceedings are not preferred alternatives to the resolution of claims or controversies concerning the law of the river. In furtherance of this Agreement, the Parties desire to avoid judicial or administrative proceedings, and agree to pursue a consultative approach to the resolution of any claim or controversy. In the event that any Party becomes concerned that there may be a claim or controversy under this Agreement, the ROD, Article III(a)-(e) inclusive of the Colorado River Compact, or Sections 601 and 602(a) of the Colorado River Basin Project Act of 1968 (43 U.S.C. §§ 1551 and 1552(a)), and all applicable rules and regulations promulgated thereunder, such Party shall notify all other Parties in writing, and the Parties shall in good faith meet in order to resolve such claim or controversy by mutual agreement prior to initiating any judicial or administrative proceeding. No Party shall initiate any judicial or administrative proceeding against any other Party or against the Secretary under Article III (a)-(e) inclusive of the Colorado River Compact, or Sections 601 and 602(a) of the Colorado River Basin Project Act of 1968 (43 U.S.C. §§ 1551 and 1552(a)), or any other applicable provision of federal law, regulation, criteria, policy, rule or guideline, and no claim thereunder shall be ripe, until such consultation has been completed. All States shall comply with any request by the Secretary for consultation in order to resolve any claim or controversy. In addition, any State may invoke the provisions of Article VI of the Colorado River Compact. Notwithstanding anything in this Agreement to the contrary, the terms of this Paragraph shall survive for a period of five years following the termination or expiration of this Agreement, and shall apply to any withdrawing Party after withdrawal for such period.

11. Resolution of Claims and Controversies Related to Reductions in Deliveries to Mexico under the Mexican Water Treaty of 1944 and Limitations on Reductions to Lower Division States.

- A. The United States has the authority to reduce the quantity of water allotted to Mexico under Article 10(a) of the Mexican Water Treaty of 1944. The timing and quantity of such reductions will directly affect the quantity of water stored in Lakes Powell and Mead, and the timing and quantity of both present and future shortages in deliveries of water from Lake Mead in the United States imposed by the Secretary. A material consideration in the

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development of the Parties' Recommendation is the assumption that the United States will reduce the quantity of water allotted to Mexico in years in which the Secretary imposes shortages in deliveries of water from Lake Mead in the United States. The Basin States' Preliminary Proposal of February 3, 2006, proposed that total shortages of 400,000, 500,000 and 600,000 acre-feet per year should be imposed within the United States and Mexico at certain Lake Mead elevations. In accordance with the Preliminary Proposal, Arizona and Nevada have executed a Shortage Sharing Agreement premised upon the imposition by the Secretary of shortages within the United States of 333,000, 417,000 and 500,000 acre-feet per year at the same Lake Mead elevations contained in the Preliminary Proposal. The DEIS substantially incorporates these assumptions into its consideration and analysis of the Basin States' alternative. For the first 600,000 acre-feet per year of any reductions in deliveries in any year due to a declared shortage, the Basin States have agreed that Arizona and Nevada will not take more than 500,000 acre-feet per year in aggregate and California will not take any reductions. The Parties recognize that there may be other circumstances in which the United States may reduce the amount of water allotted to Mexico under the 1944 Treaty.

- B. Each of the Parties to this Agreement takes the affirmative position that in years in which the Secretary imposes shortages in deliveries of water from Lake Mead in the United States, the United States must reduce the quantity of water allotted to Mexico under Article 10(a) of the Mexican Water Treaty of 1944. In the event that any Party becomes concerned that there may be a claim or controversy regarding the United States' delivery of water allotted to Mexico under Article 10(a) of the Mexican Water Treaty of 1944, such Party shall notify all other Parties in writing. Pursuant to such notification, the Parties shall in good faith meet to consult and formulate a uniform position regarding such claim or controversy. If the Parties are successful in formulating a uniform position regarding such claim or controversy, then the Parties shall cooperate in taking any and all actions appropriate to the resolution of such claim or controversy.
- C. Once consultation and any subsequent actions agreed by each Party to be taken following completion of such consultation are completed, any Party may initiate litigation or other appropriate challenge against the United States relative to any action or inaction of the United States pursuant to the Mexican Water Treaty of 1944 or the modification of the ROD. Any adverse position taken by any Party to any position taken by any other Party under this Paragraph 11. C. shall not constitute a breach of this Agreement, and all of the other terms and conditions contained in this Agreement shall remain in full force and effect.

12. Reservation of Rights. Notwithstanding the terms of this Agreement and the Parties' Recommendation, in the event that for any reason this Agreement is terminated,

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or that the term of this Agreement is not extended, or upon the withdrawal of any Party from this Agreement, the Parties reserve, and shall not be deemed to have waived, any and all rights, including any claims or defenses, they may have as of the date hereof or as may accrue during the term hereof, under any existing federal or state law or administrative rule, regulation or guideline, including without limitation the Colorado River Compact, the Upper Colorado River Basin Compact, the Consolidated Decree in *Arizona v. California*, the Colorado River Basin Project Act of 1968, the Mexican Water Treaty of 1944, and any other applicable provision of federal law, rule, regulation, or guideline. Nothing in this Agreement shall be utilized against any other Party in any administrative, judicial or other proceeding, except for the sole purpose of enforcing the terms of this Agreement. Notwithstanding anything in this Agreement to the contrary, the terms of this Paragraph shall survive the termination or expiration of this Agreement, and shall apply to any withdrawing Party after withdrawal.

13. No Third-Party Beneficiaries. This Agreement is made for the benefit of the Parties. No Party to this Agreement intends for this Agreement to confer any benefit upon any person or entity not a signatory upon a theory of third-party beneficiary or otherwise.

14. Joint Defense Against Third Party Claims. In the event the Secretary adopts a ROD in substantial conformance with the Parties' Recommendation as set forth herein, the Parties will have certain common, closely parallel, or identical interests in supporting, preserving and defending the ROD and this Agreement. The nature of this interest and the relationship among the Parties present common legal and factual issues and a mutuality of interests. Because of these common interests, the Parties will mutually benefit from an exchange of information relating to the support, preservation and defense of the ROD and this Agreement, as well as from a coordinated investigation and preparation for discussion of such interests. In furtherance thereof, in the event of any challenge by a third party as to the ROD or this Agreement (including claims by any withdrawing Party), the Parties will cooperate to proceed with reasonable diligence and to use reasonable best efforts in the support, preservation and defense thereof, including any lawsuit or administrative proceeding challenging the legality, validity or enforceability of any term of the ROD or this Agreement, and will to the extent appropriate enter into such agreements, including joint defense or common interest agreements, as are necessary therefor. Each Party shall bear its own costs of participation and representation in any such defense.

15. Reaffirmation of Existing Law. Nothing in this Agreement or the Parties' Recommendation is intended to, nor shall this Agreement be construed so as to, diminish or modify the right of any Party under existing law, including without limitation the Colorado River Compact, the Upper Colorado River Basin Compact, the Consolidated Decree in *Arizona v. California*, or the Mexican Water Treaty of 1944. The Parties hereby affirm the entitlement and right of each State under such existing law to use and develop the water of the Colorado River System.

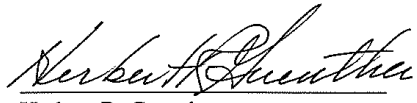
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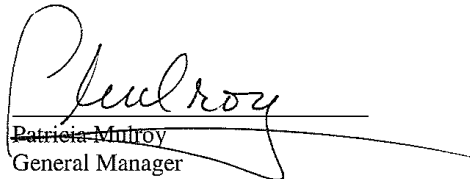
16. Term. This Agreement shall be effective as of the date of the first two signatories hereto, and shall be effective as to any additional Party as of the date of execution by such Party. Unless earlier terminated, this Agreement shall be effective for so long as the ROD and the ISG are in effect, and shall terminate on December 31, 2025 or upon the termination of the ROD and the ISG, whichever is earlier.

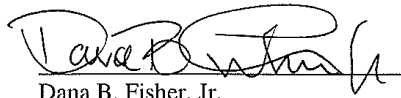
17. Authority. The persons and entities executing this Agreement on behalf of the Parties are recognized by the Parties as representing the respective States in matters concerning the operation of Lakes Powell and Mead, and as those persons and entities authorized to bind the respective Parties to the terms hereof. Each person executing this Agreement has the full power and authority to bind the respective Party to the terms of this Agreement. No Party shall challenge the authority of any person or Party to execute this Agreement and bind such Party to the terms hereof, and the Parties waive the right to challenge such authority.

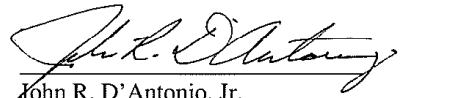
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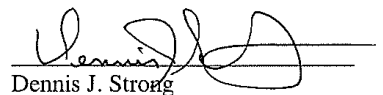

Herbert R. Guenther
Director
Arizona Department of Water Resources

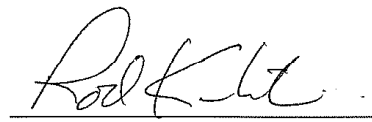

~~Patricia Mulroy~~
General Manager
Southern Nevada Water Authority

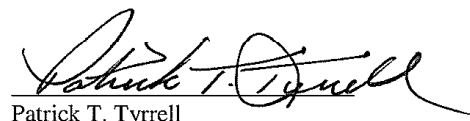

Dana B. Fisher, Jr.
Chairman
Colorado River Board of California

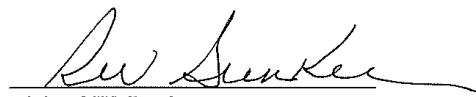

John R. D'Antonio, Jr.
Secretary
New Mexico Interstate Stream Commission


Scott Balcomb
Governor's Representative
State of Colorado


Dennis J. Strong
Director
Utah Division of Water Resources
Utah Interstate Stream Commissioner


Rod Kuharich
Director
Colorado Water Conservation Board


Patrick T. Tyrrell
State Engineer
State of Wyoming


Richard W. Bunker
Chairman
Colorado River Commission of Nevada

ATTACHMENT B

Proposed Interim Guidelines for Colorado River Operations

The Basin States propose the following Guidelines to be implemented and used for determinations made pursuant to the *Criteria for Coordinated Long-Range Operation of the Colorado River Reservoirs Pursuant to the Colorado River Basin Project Act of September 30, 1968 (LROC)* during the period identified in Section 9¹:

Section 1. Definitions

- A. Each of the following terms shall have the meaning provided herein. All defined terms are identified by initial letter capitalization.
1. “Basin States” shall mean the Colorado River Basin States of Arizona, California, Colorado, New Mexico, Nevada, Utah, and Wyoming.
 2. “Certification Report” shall mean the written documentation provided by a Contractor pursuant to Section 5.D.5 that provides the Secretary with sufficient information to verify the quantity of ICS created and that the creation was consistent with the approved project.
 3. “Colorado River System” shall have the same meaning as defined in the 1922 Colorado River Compact.
 4. “Consolidated Decree” shall mean the Consolidated Decree entered by the United States Supreme Court in *Arizona v. California*, 126 S. Ct. 1543, 547 U.S. 150 (2006).
 5. “Contractor” shall mean a Boulder Canyon Project Act Section 5 Contractor or an entity receiving Mainstream water pursuant to other applicable federal statutes or the Consolidated Decree.
 6. “Delivery Agreement” shall mean an agreement consistent with these guidelines entered into between the Parties to the Forbearance Agreement, one or more Contractors creating ICS, and the Secretary of the Interior.
 7. “Developed Shortage Supply (“DSS”)” shall mean water available for use by a Contractor under the terms and conditions of a Delivery Agreement and Section 6.
 8. “Direct Delivery Domestic Use” shall mean direct delivery of water to domestic end users or other municipal and industrial water providers within the contractor’s area of normal service, including incidental regulation of Colorado River water supplies within the Year of operation but not including Off-stream Banking. For the Metropolitan Water District of Southern California (MWD), Direct Delivery Domestic Use shall include delivery of water to end users within its area of normal service, incidental regulation of Colorado River water

¹ Unless otherwise specified, references to “Section” or “Sections” in these Guidelines are in reference to sections of these Guidelines.

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supplies within the Year of operation and Off-stream Banking only with water delivered through the Colorado River Aqueduct.

9. “Domestic Use” shall have the same meaning as defined in the 1922 Colorado River Compact.
10. “Forbearance Agreement” shall mean the Lower Colorado River Intentionally Created Surplus Forbearance Agreement, to be entered into among the Lower Division States, and certain Contractors in the Lower Division States.
11. “Intentionally Created Surplus (“ICS”)” shall mean intentionally created surplus available for use under the terms and conditions of the Forbearance Agreement and a Delivery Agreement.
 - a. ICS created through extraordinary conservation, as provided for in Section 5.D.1, shall be referred to as “Extraordinary Conservation ICS.”
 - b. ICS created through tributary conservation, as provided for in Section 5.D.2, shall be referred to as “Tributary Conservation ICS.”
 - c. ICS created through system efficiency projects, as provided for in Section 5.D.3, shall be referred to as “System Efficiency ICS.”
 - d. ICS created through the importation of non-Colorado River System Water, as provided for in Section 5.D.4, shall be referred to as “Imported ICS.”
12. “ICS Account” shall mean records established by the Secretary.
13. “ICS Declaration” shall mean a declaration by the Secretary that ICS is available for release.
14. “Interim Period” refers to the effective period as described in Section 9.
15. “Lower Division States” shall mean the Colorado River Basin States of Arizona, California, and Nevada.
16. “Mainstream” shall have the same meaning as defined in the Consolidated Decree.
17. “Off-stream Banking” shall mean the diversion of Colorado River water to underground storage facilities for use in subsequent Years from the facility used by a Contractor diverting such water.
18. “Parties” shall mean all of the signatories to the Forbearance Agreement.
19. “ROD” shall mean the Record of Decision issued by the Secretary for the Colorado River Interim Guidelines for Lower Basin Shortages and Coordinated Operations for Lake Powell and Lake Mead.

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20. "Upper Division States" shall mean the Colorado River Basin States of Colorado, New Mexico, Utah, and Wyoming.
21. "Water Year" shall mean October 1 through September 30 of the following calendar year.
22. "Year" shall mean calendar year.

Section 2. Allocation of Unused Basic Apportionment Water under Article II(B)(6)

A. Introduction

Article II(B)(6) of the Consolidated Decree allows the Secretary to allocate water that is apportioned to one Lower Division State, but is for any reason unused in that State, to another Lower Division State. This determination is made for one Year only, and no rights to recurrent use of the water accrue to the state that receives the allocated water.

B. Application to Unused Basic Apportionment

Before making a determination of a surplus condition under these Guidelines, the Secretary will determine the quantity of apportioned but unused water from the basic apportionments under Article II(B)(6), and will allocate such water in the following order of priority:

1. Meet the Direct Delivery Domestic Use requirements of MWD and Southern Nevada Water Authority (SNWA), allocated as agreed by said agencies;
2. Meet the needs for Off-stream Banking activities in California by MWD and in Nevada by SNWA, allocated as agreed by said agencies; and
3. Meet the other needs for water in California in accordance with the California Seven-Party Agreement as supplemented by the Quantification Settlement Agreement.

Section 3. Coordinated Operation of Lakes Powell and Mead During the Interim Period

- A. During the Interim Period, the Secretary shall coordinate the operations of Lake Powell and Lake Mead according to the strategy set forth in this Section 3.
- B. The objective of the operation of Lakes Powell and Mead as described herein is to avoid curtailment of uses in the Upper Basin, minimize shortages in the Lower Basin and not adversely affect the yield for development available in the Upper Basin.
- C. The August 24-month study projections for the January 1 system storage and reservoir water surface elevations, for the following Water Year, would be used to determine the applicability of the coordinated operation of Lakes Powell and

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Mead. Equalization or balancing of storage in Lakes Powell and Mead shall be achieved by the end of each Water Year.

Powell Elevation (feet)	Powell Operation	Powell Live Storage (maf)
3700	Equalize, avoid spills or 8.23 maf	24.32
3636 - 3666 (see table below)	8.23 maf; if Mead < 1075 feet, balance contents with a min/max release of 7.0 and 9.0 maf	15.54 - 19.29 (2008 - 2026)
3575	7.48 maf 8.23 maf if Mead < 1025 feet	9.52
3525	Balance contents with a min/max release of 7.0 and 9.5 maf	5.93
3370		0

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Lake Powell Equalization Elevation Table

In each of the following Water Years, the Lake Powell Equalization Elevation will be as follows:

Water Year	Elevation (feet)
2008	3636
2009	3639
2010	3642
2011	3643
2012	3645
2013	3646
2014	3648
2015	3649
2016	3651
2017	3652
2018	3654
2019	3655
2020	3657
2021	3659
2022	3660
2023	3662
2024	3663
2025	3664
2026	3666

1. Equalization: In Water Years when Lake Powell content is projected on January 1 to be at or above the elevation stated in the Lake Powell Equalization Elevation Table, an amount of water will be released from Lake Powell to Lake Mead at a rate greater than 8,230,000 acre-feet per Water Year to the extent necessary to avoid spills, or equalize storage in

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the two reservoirs, or otherwise to release 8,230,000 acre-feet from Lake Powell.

2. Upper Elevation Balancing: In Water Years when Lake Powell content is projected on January 1 to be below the elevation stated in the Lake Powell Equalization Elevation Table and at or above 3575 feet, the Secretary shall release 8,230,000 acre-feet from Lake Powell if the projected elevation of Lake Mead is at or above 1075 feet. If the projected elevation of Lake Mead is below 1075 feet, the Secretary shall balance the contents of Lake Mead and Lake Powell, but shall release no more than 9,000,000 acre-feet and no less than 7,000,000 acre-feet from Lake Powell.
3. Mid-Elevation Releases: In Water Years when Lake Powell content is projected on January 1 to be below 3575 feet and at or above 3525 feet, the Secretary shall release 7,480,000 acre-feet from Lake Powell if the projected elevation of Lake Mead is at or above 1025 feet. If the projected elevation of Lake Mead is below 1025 feet, the Secretary shall release 8,230,000 acre-feet from Lake Powell.
4. Lower Elevation Balancing: In Water Years when Lake Powell content is projected on January 1 to be below 3525 feet, the Secretary shall balance the contents of Lake Mead and Lake Powell, but shall release no more than 9,500,000 acre-feet and no less than 7,000,000 acre-feet from Lake Powell.
5. When determining lake elevations and contents under this Section 3, no adjustment shall be made for ICS.

Coordinated Operation of Lakes Powell and Mead as described herein will be presumed to be consistent with the Section 602(a) storage requirement contained in the Colorado River Basin Project Act.

Section 4. Determination of Lake Mead Operation during the Interim Period

A. Normal Conditions

In Years when Lake Mead elevation is projected on January 1 to be at or above elevation 1075 feet and below 1145 feet, the Secretary shall determine a normal operating condition, unless there is an ICS Surplus under Section 4.B.5.

B. Surplus Conditions

1. Domestic Surplus (Lake Mead above Elevation 1145 feet and below 70R Strategy) in Effect through December 31, 2015 (through preparation of 2016 Annual Operating Plan for the Colorado River System Reservoirs (“AOP”))

In Years when Lake Mead content is projected to be above elevation 1145 feet, but less than the amount which would initiate a Surplus under Section B.3 70R Strategy or Section B.4 Flood Control Surplus on January 1, the

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Secretary shall determine a Domestic Surplus. The amount of such Surplus shall equal:

- a. For Direct Delivery Domestic Use by MWD, 1.250 million acre-feet (maf) reduced by the amount of basic apportionment available to MWD.
 - b. For use by SNWA, the Direct Delivery Domestic Use within the SNWA service area in excess of the State of Nevada's basic apportionment.
 - c. For use in Arizona, the Direct Delivery Domestic Use in excess of Arizona's basic apportionment.
2. Domestic Surplus (Lake Mead above Elevation 1145 feet and below 70R Strategy) in Effect from January 1, 2016 through December 31, 2025 (through preparation of 2026 AOP)

In Years when Lake Mead content is projected to be above elevation 1145 feet, but less than the amount which would initiate a Surplus under Section B.3 70R Strategy or Section B.4 Flood Control Surplus on January 1, the Secretary shall determine a Domestic Surplus. The amount of such Surplus shall equal:

- a. For use by MWD, 250,000 acre-feet per Year in addition to the amount of California's basic apportionment available to MWD;
 - b. For use by SNWA, 100,000 acre-feet per Year in addition to the amount of Nevada's basic apportionment available to SNWA;
 - c. For use by Arizona, 100,000 acre-feet per Year in addition to the amount of Arizona's basic apportionment available to Arizona contractors.
3. Quantified Surplus (70R Strategy)

In Years when the Secretary determines that water should be released for beneficial consumptive use to reduce the risk of potential reservoir spills based on the 70R Strategy, the Secretary shall determine and allocate a Quantified Surplus sequentially as follows:

- a. Establish the volume of the Quantified Surplus. For the purpose of determining the existence, and establishing the volume, of Quantified Surplus, the Secretary shall not consider any volume of ICS as defined in these Guidelines.

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- b. Allocate and distribute the Quantified Surplus 50% to California, 46% to Arizona and 4% to Nevada, subject to c. through e. that follow.
 - c. Distribute California's share first to meet basic apportionment demands and MWD's demands, and then to California Priorities 6 and 7 and other surplus contracts. Distribute Nevada's share first to meet basic apportionment demands and SNWA demands. Distribute Arizona's share to surplus demands in Arizona including Off-stream Banking and interstate banking demands. Arizona, California and Nevada agree that Nevada would get first priority for interstate banking in Arizona.
 - d. Distribute any unused share of the Quantified Surplus in accordance with Section 2, Allocation of Unused Basic Apportionment Water Under Article II(B)(6).
 - e. Determine whether MWD, SNWA and Arizona have received the amount of water they would have received under Sections 4.B.1 or 4.B.2 if a Quantified Surplus had not been determined. If they have not, then determine and meet all demands provided for in Sections 4.B.1 or 4.B.2.
4. Flood Control Surplus

In Years in which the Secretary makes space-building or flood control releases pursuant to the February 8, 1984 Field Working Agreement between Reclamation and the Army Corps of Engineers, the Secretary shall determine a Flood Control Surplus for the remainder of that Year or the subsequent Year as specified in Section 12. In such Years, releases will be made to satisfy all beneficial uses within the United States, including unlimited Off-Stream Banking. Under current practice, surplus declarations under the Treaty for Mexico are declared when flood control releases are made. Modeling assumptions used in the FEIS are based on this practice. These Guidelines are not intended to identify, or change in any manner, conditions when Mexico may schedule up to an additional 0.2 maf.

5. ICS Surplus
- a. In Years in which Lake Mead's elevation is projected on January 1 to be above elevation 1075 feet and ICS has been requested for release, the Secretary shall determine an ICS Surplus.
 - b. In Years in which a Quantified Surplus or a Domestic Surplus is available to a Contractor, the Secretary shall first deliver the Quantified Surplus or Domestic Surplus before delivering any requested ICS to that Contractor. If Quantified Surplus or Domestic Surplus is insufficient or unavailable to meet a Contractor's

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demands, the Secretary may release ICS available in that Contractor's ICS Account at the request of the Contractor.

c. The Secretary shall release ICS as described in Section 5.

C. Allocation of Colorado River Water and Forbearance Arrangements

Under these Guidelines, Colorado River water will continue to be allocated for use among the Lower Division States in a manner consistent with the provisions of the Consolidated Decree. It is expected that Lower Division States and individual Contractors for Colorado River water have or will adopt arrangements that will affect utilization of Colorado River water during the Interim Period. It is expected that water orders from Colorado River Contractors will be submitted to reflect forbearance arrangements by Lower Division States and individual Contractors. The Secretary will deliver Colorado River water to Contractors in a manner consistent with these arrangements. Surplus water will be delivered only to entities with contracts that are eligible to receive surplus water. ICS will be delivered pursuant to Section 5.D.6.

D. Shortage Conditions

1. Reductions in deliveries to the Lower Division States during declared shortages shall be implemented in the following manner:
 - a. Step One reduction: In Years when Lake Mead content is projected on January 1 to be at or below elevation 1075 feet and at or above 1050 feet, a quantity of 333,000 acre-feet shall not be released or delivered in the Lower Division States.
 - b. Step Two reduction: In Years when Lake Mead content is projected on January 1 to be below elevation 1050 feet and at or above 1025 feet, a quantity of 417,000 acre-feet shall not be released or delivered in the Lower Division States.
 - c. Step Three reduction: In Years when Lake Mead content is projected on January 1 to be below 1025 feet, a quantity of 500,000 acre-feet shall not be released or delivered in the Lower Division States.
2. In the event projections included in any Bureau of Reclamation monthly 24-Month Study indicate Lake Mead elevations may approach an elevation that would trigger shortages in deliveries of water from Lake Mead in the United States, the Secretary shall consult with the Basin States on how the United States shall reduce the quantity of water allotted to Mexico.
3. Whenever Lake Mead is below elevation 1025 feet, the Secretary shall consult with the Basin States annually to determine whether Colorado River hydrologic conditions, together with the anticipated delivery of water to the Lower Division States and Mexico, will cause the elevation of Lake

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Mead to fall below 1000 feet. Upon such a determination, the Secretary shall consult with the Basin States to discuss further measures that may be undertaken. If increased reductions are required, the Secretary shall implement the reductions consistent with the law of the river.

4. Subject to the provisions of Section 4.D.3, the Lower Division States shall not take shortages in excess of those provided in Section 4.D.1. Arizona and Nevada have agreed to share all reductions, described in Section 4.D.1 based on the Arizona-Nevada Shortage Sharing Agreement dated February 9, 2007. California shall not be required to share in any reductions described in Section 4.D.1.
5. The Secretary shall consult with the Basin States to evaluate actions at critical elevations that may avoid shortage determinations as reservoir elevations approach critical thresholds.
6. During declared Shortages described in Section 4.D.1, the Secretary may release Developed Shortage Supply, subject to the provisions in Sections 5 and 6.

Section 5. System Efficiency, Extraordinary Conservation, Tributary Conservation and Importation of Non-Colorado River System Water for the Purpose of Developing Intentionally Created Surplus

A. Findings

ICS may be created through projects that create water system efficiency, extraordinary conservation, tributary conservation, and the importation of non-Colorado River System water into the Colorado River Mainstream. ICS is consistent with the concept that the States will take actions to augment storage of water in the Lower Colorado River Basin. The ICS shall be released to the Contractor that created it pursuant to both Article II(B)(2) of the Consolidated Decree and agreements among various Contractors to forbear from taking water that they otherwise would be able to request. Implementation under these Guidelines shall be predicated upon the execution of a Forbearance Agreement and a Delivery Agreement, as further provided for below.

B. Purposes

The purposes of ICS are to:

1. Encourage the efficient use and management of Colorado River water, and to increase the water supply in Colorado River system reservoirs, through the creation, release, and use of ICS;
2. Help avoid shortages to the Lower Basin;
3. Benefit both Lake Mead and Lake Powell;
4. Increase the surface elevations of both Lakes Powell and Mead to higher levels than would have otherwise occurred; and

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5. Assure any Contractor that invests in conservation or augmentation to create ICS that no Contractor within another state will claim the ICS created by the Contractor.
- C. Statement of Consistency with the Law of the River and Consequential Limitations on ICS Guidelines

In Years in which the Secretary determines that sufficient Mainstream water is available for release to satisfy annual consumptive use in the Lower Division States in excess of 7,500,000 acre-feet, Article II(B)(2) of the Consolidated Decree authorizes the Secretary to apportion surplus Mainstream water 50% for use in California, 46% for use in Arizona, and 4% for use in Nevada. The Boulder Canyon Project Act and Articles II(B)(2) and II(B)(6) of the Consolidated Decree, taken together, authorize the Secretary to apportion surplus water and to release one Lower Division State's unused apportionment for use in another Lower Division State. Pursuant to such authority and for the purpose of increasing the efficiency, flexibility, and certainty of Colorado River management and thereby helping satisfy the regional water demands that exist, the Secretary has the authority to promulgate guidelines to establish a procedural framework for facilitating the creation and release of ICS.

In the absence of forbearance, surplus water is apportioned for use according to the percentages provided in Article II(B)(2) of the Consolidated Decree. The Forbearance Agreement, as approved by the Parties, will provide the basis for such forbearance. The Parties will forbear only with respect to ICS created by projects described in exhibits attached to the Forbearance Agreement or added thereto by written consent of all Parties. It is hereby recognized that the creation, release and use of ICS pursuant to these Guidelines shall not be administered in such a way as to violate the Consolidated Decree, including Articles II(B)(2) and II(B)(6) therein. These Guidelines regarding ICS shall have no force or effect absent the existence and effectiveness of the Forbearance Agreement.

- D. Creation and Release of ICS
1. Extraordinary Conservation ICS

A Contractor may create Extraordinary Conservation ICS through the following activities:

- a. Fallowing of land that currently is, historically was, and otherwise would have been irrigated in the next Year.
- b. Canal lining programs.
- c. Desalination programs in which the desalinated water is used in lieu of Mainstream water.
- d. Extraordinary conservation programs that existed on January 1, 2006.
- e. Extraordinary Conservation ICS demonstration programs pursuant to a letter agreement entered into between the United States Bureau of

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Reclamation and the Contractor prior to the effective date of these Guidelines.

- f. Tributary Conservation ICS created under Section 5.D.2 and not released in the Year created.
- g. Imported ICS created under Section 5.D.4 and not released in the Year created.
- h. Other extraordinary conservation measures, including development and acquisition of a non-Colorado River System water supply used in lieu of Colorado River Mainstream water within the same state, in consultation with the Basin States, and as agreed upon by the Parties pursuant to the Forbearance Agreement.

2. Tributary Conservation ICS

A Contractor may create Tributary Conservation ICS by purchasing documented water rights on Colorado River System tributaries upstream of Hoover Dam within the Contractor's state if there is documentation that the water rights have been used for a significant period of Years and that the water rights were perfected prior to June 25, 1929 (the effective date of the Boulder Canyon Project Act). The quantity of Tributary Conservation ICS shall be limited to the quantity of water set forth in Exhibits incorporated in the Forbearance Agreement, and shall in no event be more than the quantity of such water the Secretary verifies actually flows into Lake Mead. Any Tributary Conservation ICS not released pursuant to Section 5.D.6 or deducted pursuant to Section 5.D.5.c in the Year it was created will, at the beginning of the following Year, be converted to Extraordinary Conservation ICS at the request of the Contractor and will thereafter be subject to all provisions applicable to Extraordinary Conservation ICS. Tributary Conservation ICS may be released for Domestic Use only.

3. System Efficiency ICS

A Contractor may make contributions of capital to the Secretary for use in Secretarial projects designed to realize system efficiencies that save water that would otherwise be lost from the Colorado River Mainstream in the United States. An amount of water equal to a portion of the water saved may be made available to contributing Contractor(s) by the Secretary as System Efficiency ICS. System efficiency projects are intended only to provide temporary water supplies. System Efficiency ICS will not be available for permanent use. System Efficiency ICS will be released to the contributing Contractor(s) on a predetermined schedule of annual deliveries for a period of Years as agreed by the Parties. The Secretary, in consultation with the Basin States, will identify potential system efficiency projects, terms for capital participation in such projects, and types and amounts of benefits the Secretary should provide in consideration of non-federal capital contributions to system efficiency projects, including identification of a portion of the water saved by such projects.

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4. Imported ICS

A Contractor may create Imported ICS by introducing non-Colorado River System water in that Contractor's state into the Mainstream. Contractors proposing to create Imported ICS shall make arrangements with the Secretary, contractual or otherwise, to ensure no interference with the Secretary's management of Colorado River system reservoirs and regulatory structures. Any arrangement shall provide that the Contractor must obtain appropriate permits or other authorizations required by state law and that the actual amount of water introduced to the Mainstream shall be reported to the Secretary on an annual basis. Any Imported ICS not released pursuant to Section 5.D.6 or deducted pursuant to Section 5.D.5.c in the Year it was created will be converted, at the beginning of the following Year, to Extraordinary Conservation ICS at the request of the Contractor and thereafter will be subject to all provisions applicable to Extraordinary Conservation ICS.

5. Creation of ICS

A Contractor may create ICS subject to the following conditions:

- a. A Contractor shall submit a plan for the creation of ICS to the Secretary and the Basin States demonstrating how all requirements of these Guidelines will be met in the Contractor's creation of ICS. Until such plan is reviewed and approved by the Secretary in consultation with the other Basin States, such plan, or any ICS purportedly created through it, shall not be a basis for an ICS Declaration. A Contractor may modify its plan for creation of ICS during any Year, subject to approval by the Secretary in consultation with the Basin States. System Efficiency ICS with an approved multi-Year plan shall not require annual approval by the Secretary or consultation with the Basin States.
- b. A Contractor that creates ICS shall submit a Certification Report to the Secretary demonstrating the amount of ICS created and that its creation was consistent with the Forbearance Agreement, these Guidelines, and a Delivery Agreement executed by the Secretary. The Secretary shall verify the information in the Certification Report in consultation with the Basin States, and provide a final written decision to the Contractor, the Parties and the Basin States. The Contractor or any Party or Basin State may appeal the Secretary's verification of the Certification Report through administrative and judicial processes.
- c. There shall be a one-time deduction of five percent (5%) from the amount of ICS in the Year of its creation. This deduction results in additional water in storage in Lake Mead for future use in accordance with the Consolidated Decree and these Guidelines. This provision shall not apply to:

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- (1) System Efficiency ICS created pursuant to Section 5.D.3 because a large portion of the water saved by this type of project will increase the quantity of water in storage.
 - (2) Extraordinary Conservation ICS created by conversion of Tributary Conservation ICS that was not released in the Year created, pursuant to Section 5.D.1.f because 5% of the ICS is deducted at the time the Tributary Conservation ICS is created.
 - (3) Extraordinary Conservation ICS created by conversion of Imported ICS that was not released in the Year created, pursuant to Section 5.D.1.g because 5% of the ICS is deducted at the time the Imported ICS is created.
- d. The records of any Contractor relating to the creation of ICS shall be open to inspection by the Secretary or any Contractor, Party or Basin State.
- e. In addition to the conditions described above, creation of Extraordinary Conservation ICS is subject to the following conditions:
- (1) Except as provided in Sections 5.D.2 and 5.D.4, Extraordinary Conservation ICS can only be created if such water would have otherwise been beneficially used.
 - (2) The maximum total amount of Extraordinary Conservation ICS that can be created during any Year is limited to the following:
 - (a) 400,000 acre-feet for California Contractors;
 - (b) 125,000 acre-feet for Nevada Contractors; and
 - (c) 100,000 acre-feet for Arizona Contractors.
 - (3) The maximum quantity of Extraordinary Conservation ICS that may be accumulated in all ICS Accounts, at any time, is limited to the following:
 - (a) 1,500,000 acre-feet for California Contractors;
 - (b) 300,000 acre-feet for Nevada Contractors; and
 - (c) 300,000 acre-feet for Arizona Contractors.
 - (4) Except as provided in Sections 5.D.2 and 5.D.4, no category of surplus water can be used to create Extraordinary Conservation ICS.
 - (5) The quantity of Extraordinary Conservation ICS remaining in an ICS Account at the end of each Year shall be diminished by annual evaporation losses of 3%. Losses shall be applied

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annually to the end-of-the-Year balance of Extraordinary Conservation ICS beginning in the Year after the ICS is created and continuing until no Extraordinary Conservation ICS remains in Lake Mead. No evaporation losses shall be assessed during a Year in which the Secretary has declared a shortage.

- (6) Extraordinary Conservation ICS from a project within a state may be credited to the ICS Account of a Contractor within that state that has funded or implemented the project creating ICS, or to the ICS Account of a Contractor within the same state as the funding entity and project and with written agreement of the funding entity.
- (7) A Contractor must notify Reclamation by September 15 of the amount of Extraordinary Conservation ICS it wishes to create for the subsequent Year. If conditions during the Year change due to weather or other unforeseen circumstances, a Contractor may request a mid-Year modification of its water order to reduce the amount of ICS created during that Year. A Contractor cannot increase the amount of ICS it had previously scheduled to create during the Year.

6. Release of ICS

The release of ICS shall be pursuant to the terms of a Delivery Agreement entered into among the Secretary, the Parties to the Forbearance Agreement and any Contractor creating ICS. The Secretary shall not release ICS to a Contractor unless that Contractor is a party to a Delivery Agreement. A Contractor that has created ICS may request release of its ICS as is provided within such Delivery Agreement and subject to the following conditions:

- a. ICS shall be released pursuant to an ICS Declaration.
- b. If a Contractor has an overrun payback obligation, as described in the October 10, 2003 Inadvertent Overrun and Payback Policy or Exhibit C to the October 10, 2003 Colorado River Water Delivery Agreement, the Contractor must pay the overrun payback obligation in full before requesting or receiving a release of any ICS. The Contractor's ICS account shall be reduced by the amount of the overrun payback obligation in order to pay the overrun payback obligation.
- c. If more ICS is released to a Contractor than is actually available for release to the Contractor in that Year, then the excess ICS released shall be treated as an inadvertent overrun until it is fully repaid.
- d. A Contractor may reduce its request for release of ICS during the Year for any reason, including reduction in water demands. A Contractor may increase its request for release of ICS during the Year only if extraordinary weather conditions or water emergencies occur.

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- e. In addition to the conditions described above, the release of Extraordinary Conservation ICS is subject to the following conditions:
- (1) The total amount of Extraordinary Conservation ICS that may be released in any Year is limited to the following:
 - (a) 400,000 acre-feet for California Contractors;
 - (b) 300,000 acre-feet for Nevada Contractors; and
 - (c) 300,000 acre-feet for Arizona Contractors.
 - (2) If the May 24-month study for that Year indicates that a shortage condition would be declared in the succeeding Year if the requested amounts for the current Year under Section 5.D.6.e.(1) were released, the Secretary may release less than the amounts of ICS requested to be released.
 - (3) If the Secretary releases Flood Control Surplus water, Extraordinary Conservation ICS accumulated in ICS Accounts shall be reduced by the amount of the Flood Control Surplus on an acre-foot for acre-foot basis until no Extraordinary Conservation ICS remains. The reductions to the ICS Accounts shall be shared on a pro-rata basis among all Contractors that have accumulated Extraordinary Conservation ICS.

E. Accounting Procedure for ICS

In consultation with the Basin States, the Secretary shall develop a water accounting procedure to annually establish separate ICS Accounts to account for, at a minimum, the following:

1. For each Contractor that creates Extraordinary Conservation ICS:
 - a. The quantity of Extraordinary Conservation ICS created by the Contractor.
 - b. The releases of Extraordinary Conservation ICS to the Contractor.
 - c. The amount of Extraordinary Conservation ICS no longer available for release to the Contractor due to releases for flood control purposes.
 - d. The amount of Extraordinary Conservation ICS deducted pursuant to Section 5.D.5.c.
 - e. The amount of Extraordinary Conservation ICS no longer available for release to the Contractor due to annual evaporation losses pursuant to Section 5.D.5.e.(5).

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- f. The amount of Extraordinary Conservation ICS remaining available for release to the Contractor.
 2. For each Contractor that creates Tributary Conservation ICS:
 - a. The quantity of Tributary Conservation ICS created by the Contractor.
 - b. The releases of Tributary Conservation ICS to the Contractor.
 - c. The amount of Tributary Conservation ICS deducted pursuant to Section 5.D.5.c.
 - d. The amount of Tributary Conservation ICS converted to Extraordinary Conservation ICS, if any.
 3. For each Contractor that creates System Efficiency ICS:
 - a. The quantity of System Efficiency ICS created by the Contractor.
 - b. The releases of System Efficiency ICS to the Contractor.
 - c. The amount of System Efficiency ICS no longer available for release to the Contractor for any reason.
 - d. The amount of System Efficiency ICS remaining available for release to the Contractor.
 4. For each Contractor that creates Imported ICS:
 - a. The quantity of Imported ICS created by the Contractor.
 - b. The releases of Imported ICS to the Contractor.
 - c. The amount of Imported ICS deducted pursuant to Section 5.D.5.c.
 - d. The amount of Imported ICS converted to Extraordinary Conservation ICS, if any.
- F. Delivery Agreement

The Secretary shall release ICS to a Contractor only after entering into a Delivery Agreement with the Contractor and the Parties to the Forbearance Agreement. Any Delivery Agreement shall be consistent with these Guidelines and the Forbearance Agreement, and shall include the following:

1. A procedure for the annual schedule for the submission and approval of the plans for the creation of ICS, required by Section 5.D.5.a.
2. Procedures for demonstrating and verifying the creation of ICS, including a description of the contents of the Certification Report, required by Section 5.D.5.b.

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3. A procedure for the release of ICS, in accordance with Section 5.D.6.
4. An accounting procedure, pursuant to Section 5.E.

Section 6. Creation and Release of Developed Shortage Supply

- A. During any Year in which the Secretary declares a shortage within the United States, Developed Shortage Supply may be created by:
 1. Purchasing documented water rights on Colorado River System tributaries upstream of Hoover Dam within the Contractor's state if there is documentation that the water rights have been used for a significant period of Years and that the water rights were perfected prior to June 25, 1929 (the effective date of the Boulder Canyon Project Act), provided that the quantity of such Developed Shortage Supply shall be limited to the quantity of water set forth in Exhibits incorporated in the Forbearance Agreement, and shall in no event be more than the quantity of such water the Secretary verifies actually flows into Lake Mead; and/or
 2. Introducing non-Colorado River System water in that Contractor's state into the Colorado River Mainstream, making sufficient arrangements with the Secretary, contractual or otherwise, to ensure no interference with the Secretary's management of Colorado River system reservoirs and regulatory structures. Any arrangement shall provide that the Contractor must obtain appropriate permits or other authorizations required by state law and reporting the actual amount of water introduced to the Colorado River Mainstream to the Secretary on an annual basis.
- B. Developed Shortage Supply may only be created by a project that is approved for creation of ICS prior to the declared Shortage.
- C. Except as provided in Sections 6.D through 6.F, Developed Shortage Supply is subject to all conditions set forth in Section 5 relating to creation and release of ICS.
- D. Any Developed Shortage Supply not released pursuant to Section 6.E in the Year it is created may not be converted to Extraordinary Conservation ICS.
- E. The Secretary shall release Developed Shortage Supply during a declared shortage. The following conditions shall apply to the release of Developed Shortage Supply:
 1. Developed Shortage Supply shall be released pursuant to a Shortage Declaration.
 2. Release of Developed Shortage Supply shall not cause the total deliveries within the Lower Division States to reach or exceed 7.5 million acre-feet in any Year. If the volume of Developed Shortage Supply requested to be released in any Year would cause the total deliveries within the Lower Division States to reach or exceed 7.5 million acre-feet for that Year, the Secretary shall consult with all Contractors requesting the release of Developed Shortage Supply and release so much thereof as will not cause

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total deliveries in the Lower Division States to reach or exceed 7.5 million acre-feet in that Year.

F. The Secretary shall account for the creation and release of Developed Shortage Supply through the AOP and the Article V Consolidated Decree accounting processes.

G. Delivery Agreement

For a Contractor seeking to create and use Developed Shortage Supply, the Delivery Agreement for ICS executed by the Secretary, the Contractor and the Parties to the Forbearance Agreement shall also include the following:

1. A procedure for the annual schedule for the submission and approval of the plans for the creation of Developed Shortage Supply, required by Sections 6.C and 5.D.5.a.
2. Procedures for demonstrating and verifying the creation of Developed Shortage Supply, including a description of the contents of the Certification Report, required by Sections 6.C and 5.D.5.b.
3. A procedure for the release of Developed Shortage Supply, in accordance with Sections 6.C, 6.E, and 5.D.6.
4. An accounting procedure, pursuant to Section 6.F.

Section 7. Implementation of Guidelines

During the effective period of these Guidelines the Secretary shall utilize the currently established process for development of the AOP and use these Guidelines to make determinations regarding Normal, Surplus and Shortage conditions for the operation of Lake Mead, allocation of apportioned but unused water, the coordinated operations of Lakes Mead and Powell, and the administration of Developed Shortage Supply and contractor accounts for ICS.

The operation of the other Colorado River System reservoirs and determinations associated with development of the AOP shall be in accordance with the Colorado River Basin Project Act of 1968, these Guidelines, and other applicable federal law.

In order to allow for better overall water management during the Interim Period, the Secretary shall undertake a "mid-Year review" pursuant to Section 1(2) of the LROC, allowing for the revision of the current AOP, as appropriate, if actual runoff conditions are greater than projected or demands are lower than projected. The Secretary shall revise the determination for the current Year only to allow for additional deliveries. Any revision in the AOP, including reductions in the amount of ICS released, may occur only after a re-initiation of the AOP consultation process as required by law.

As part of the AOP process during the effective period of these Guidelines, California shall report to the Secretary on its progress in implementing its California Colorado River Water Use Plan.

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The Secretary will base annual determinations of surplus, normal and shortage conditions on these Guidelines, unless extraordinary circumstances arise. Such circumstances could include operations necessary for safety of dams or other emergency situations, or other unanticipated or unforeseen activities arising from actual operating experience.

Section 8. Consultation

In addition to the circumstances described in Section 4.D.2, the Secretary shall consult with the Basin States in the following circumstances:

- A. The Secretary will first consult with all the Basin States before making any substantive modification to these Guidelines.
- B. Upon a request by a State for modification of these Guidelines, or upon a request by a State to resolve any claim or controversy arising under these Guidelines or under the operations of Lakes Powell and Mead pursuant to these guidelines or any other applicable provision of federal law, regulation, criteria, policy, rule, or guideline, or the Mexican Water Treaty of 1944, the Secretary shall invite the Governors of all the Basin States, or their designated representatives, to consult with the Secretary in an attempt to resolve such claim or controversy by mutual agreement.

Section 9. Effective Period & Termination

- A. Effective Period

These guidelines will be in effect 30 days from the publication of the ROD in the Federal Register and will, unless subsequently modified, remain in effect through December 31, 2025 (through preparation of the 2026 AOP), except that during the effective period of the Forbearance Agreement defined in Section 5.C:

1. Any ICS remaining in an ICS Account on December 31, 2025, may be released as provided herein until December 31, 2035.
2. Tributary Conservation ICS described in Section 5.D.2 and Imported ICS described in Section 5.D.4 shall continue in full force and effect until fifty years from the date of the execution of the Forbearance Agreement.
3. Developed Shortage Supply described in Section 6 shall continue in full force and effect until fifty years from the date of the execution of the Forbearance Agreement.

- B. Termination of Guidelines

Except as provided in Section 9.A, these Guidelines shall terminate on December 31, 2025 (through preparation of the 2026 AOP). At the conclusion of the effective period of these Guidelines, the operating criteria for Lake Powell and Lake Mead are assumed to revert to the operating criteria used to model baseline conditions in the Final Environmental Impact Statement for the Interim Surplus Guidelines

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dated December 2000 (i.e., modeling assumptions are based upon a 70R strategy for the period commencing January 1, 2026 (for preparation of the 2027 AOP)).

C. Review of Guidelines

Beginning no later than December 31, 2020, the Secretary shall initiate a formal review for purposes of evaluating the effectiveness of these Guidelines. The Secretary shall consult with the Basin States in initiating this review.

Section 10. California's Colorado River Water Use Plan Implementation Progress

The California agricultural (Palo Verde Irrigation District (PVID), Yuma Project Reservation Division (YPRD), Imperial Irrigation District (IID), and Coachella Valley Water District (CVWD)) usage plus 14,500 acre-feet of Present Perfected Right (PPR) use would need to be at or below the following amounts at the end of the Year indicated in Years of Quantified Surplus (for Decree accounting purposes all reductions must be within 25,000 acre-feet of the amounts stated):

Benchmark Date (Year)	Benchmark Quantity (California Agricultural Usage & 14,500 af of PPR Use in maf)
2009	3.53
2012	3.47

In the event that California has not reduced its use in amounts to equal the above Benchmark Quantities, the surplus determinations under Sections 4.B.1 or 4.B.2 will be suspended and will instead be based upon the 70R Strategy, for up to the remainder of the term of these Guidelines. If however, California meets the missed Benchmark Quantity before the next Benchmark Date, or after 2012, the surplus determinations under Sections 4.B.1 or 4.B.2 shall be reinstated as the basis for the surplus determinations under the AOP for the next following Year(s).

Section 11. Authority

These Guidelines are issued pursuant to the authority vested in the Secretary by federal law, including the Boulder Canyon Project Act of 1928 (28 Stat. 1057) (the "BCPA"), and the Consolidated Decree and shall be used to implement Article III of the Criteria for the Coordinated Long-Range Operation of Colorado River Reservoirs Pursuant to the Colorado River Basin Project Act of September 30, 1968 (Pub. L. No. 90-537), amended March 21, 2005.

Section 12. Modeling and Data

The August 24-Month Study projections for the January 1 system storage and reservoir water surface elevations, for the following Year, will be used to determine the applicability of these Guidelines.

In preparation of the AOP, Reclamation will utilize the 24-Month Study and/or other modeling methodologies appropriate for the determinations and findings necessary in the AOP.

Reclamation will utilize the best available data and information, including National Weather Service forecasting to make these determinations.

ATTACHMENT C

Lower Colorado River Basin Intentionally Created Surplus Forbearance Agreement

The State of Arizona, acting through the Arizona Department of Water Resources (“ADWR”); the Palo Verde Irrigation District (“PVID”); the Imperial Irrigation District (“IID”); The City of Needles; the Coachella Valley Water District (“CVWD”); The Metropolitan Water District of Southern California (“MWD”); the Southern Nevada Water Authority (“SNWA”); and the Colorado River Commission of Nevada enter into this Lower Colorado River Basin Intentionally Created Surplus Forbearance Agreement (“Forbearance Agreement”) as follows:

Recitals

- A. The purposes of this Forbearance Agreement are to:
1. Encourage the efficient use and management of Colorado River water, and to increase the water supply in Colorado River system reservoirs, through the creation, release, and use of Intentionally Created Surplus (“ICS”);
 2. Help avoid shortages to the Lower Basin;
 3. Benefit both Lake Mead and Lake Powell; and
 4. Increase the surface elevations of both Lakes Powell and Mead to higher levels than would have otherwise occurred.
 5. Assure any Contractor that invests in conservation or augmentation to create ICS under this Forbearance Agreement that no Contractor within another state will claim the ICS created by the Contractor.

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B. The Parties to the Forbearance Agreement and their respective authority to forbear are as follows:

1. The Arizona Department of Water Resources, through its Director, is the successor to the signatory agency of the State for the 1922 Colorado River Compact, and the 1944 Contract for Delivery of Water with the United States, both authorized and ratified by the Arizona Legislature, A.R.S. §§ 45-1301 and 1311. Pursuant to A.R.S. § 45-107, the Director is authorized and directed, subject to the limitations in A.R.S. § 45-106, for and on behalf of the State of Arizona, to consult, advise and cooperate with the Secretary of the Interior of the United States (“Secretary”) with respect to the exercise by the Secretary of Congressionally authorized authority relative to the waters of the Colorado River (including, but not limited to, the Boulder Canyon Project Act of 1928, 43 U.S.C. § 617, and the Colorado River Basin Project Act of 1968, 43 U.S.C. § 1501) and with respect to the development, negotiation and execution of interstate agreements. Additionally, under A.R.S. § 45-105(A)(9), the Director is authorized to “prosecute and defend all rights, claims and privileges of this state respecting interstate streams.”
2. SNWA is a Nevada joint powers agency and political subdivision of the State of Nevada, created by agreement dated July 25, 1991, as amended November 17, 1994, and January 1, 1996, pursuant to N.R.S. §§ 277.074 and 277.120. SNWA is authorized by N.R.S. § 538.186 to enter into this Forbearance Agreement and, pursuant to its contract issued under Section 5 of the Boulder Canyon Project Act of 1928, SNWA has the right to divert ICS released by the Secretary for use within the State of Nevada pursuant to the Consolidated Decree.
3. The Colorado River Commission of the State of Nevada (CRCN) is an agency of the State of Nevada, authorized generally by N.R.S. §§ 538.041 and 538.251. CRCN is authorized by N.R.S. § 538.161 (6), (7) to enter into this

Agreement. The CRCN, in furtherance of the State of Nevada's responsibility to promote the health and welfare of its people in Colorado River matters, makes this Agreement to supplement the supply of water in the Colorado River which is available for use in Nevada, augment the waters of the Colorado River, and facilitate the more flexible operation of dams and facilities by the Secretary.

4. PVID is an irrigation district created under the Palo Verde Irrigation District Act, codified at Section 33-1 *et seq.* of the Appendix to the California Water Code, and delivers Colorado River water in Riverside and Imperial Counties, California, pursuant to its contract issued under Section 5 of the Boulder Canyon Project Act of 1928.
5. IID is an irrigation district created under the California Irrigation District Law, codified at Section 20500 *et seq.* of the California Water Code, and delivers Colorado River water in Imperial County, California, pursuant to its contract issued under Section 5 of the Boulder Canyon Project Act of 1928.
6. CVWD is a county water district created under the California County Water District Law, codified at Section 30000 *et seq.* of the California Water Code, and delivers Colorado River water to portions of its service area in Imperial, Riverside, and San Diego Counties, California, pursuant to its contract issued under Section 5 of the Boulder Canyon Project Act of 1928 and the California Quantification Settlement Agreement.
7. MWD is a metropolitan water district created under the California Metropolitan Water District Act, codified at Section 109-1 *et seq.* of the Appendix to the California Water Code; and delivers Colorado River water to portions of its service area in Los Angeles, Orange, Riverside, San Bernardino, San Diego and Ventura Counties, California, pursuant to its contracts issued under Section 5 of the Boulder Canyon Project Act of 1928.

8. The City of Needles is a charter city duly authorized and existing under and by virtue of the laws of the State of California and delivers Colorado River water, either directly or by exchange, to portions of Imperial, Riverside, and San Bernardino Counties, California, pursuant to its contracts issued under Section 5 of the Boulder Canyon Project Act of 1928,

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the Parties hereby agree as follows:

Article 1
Definitions and Term

1.1 Definitions.

The definitions in the Interim Surplus Guidelines (“ISG”) described in the Record of Decision dated January 16, 2001, and modified by the ROD are hereby incorporated in this Forbearance Agreement. In addition, each of the following terms shall have the meaning defined here. All defined terms shall be identified by initial letter capitalization.

- A. “Certification Report” shall mean the written documentation provided by a Contractor pursuant to Article 2.5(B) that provides the Secretary with sufficient information to verify the quantity of ICS created and that the creation was consistent with the approved project exhibit, this Forbearance Agreement, the Delivery Agreement, and the ROD.
- B. “Colorado River System” shall have the same meaning as defined in the 1922 Colorado River Compact.

- C. “Consolidated Decree” shall mean the Consolidated Decree entered by the United States Supreme Court in *Arizona v. California*, 126 S.Ct. 1543, 547 U.S. ____ (2006).
- D. “Contractor” shall mean a Boulder Canyon Project Act Section 5 Contractor or an entity receiving Mainstream water pursuant to other applicable federal statute or the Consolidated Decree.
- E. “Delivery Agreement” shall mean the agreement entered into by the Parties to this Agreement and the Secretary of the Interior contemporaneously with this Forbearance Agreement.
- F. “Forbearance Agreement” shall mean this Lower Colorado River Basin Intentionally Created Surplus Forbearance Agreement.
- G. “ICS” shall mean intentionally created surplus available for use under the terms and conditions of this Forbearance Agreement and the Delivery Agreement.
1. ICS created through extraordinary conservation, as provided for in Article 2.1 herein, shall be referred to as “Extraordinary Conservation ICS.”
 2. ICS created through tributary conservation, as provided for in Article 2.2 herein, shall be referred to as “Tributary Conservation ICS.”
 3. ICS created through system efficiency projects, as provided for in Article 2.3 herein, shall be referred to as “System Efficiency ICS.”

4. ICS created through the importation of non-Colorado River System Water, as provided for in Article 2.4 herein, shall be referred to as “Imported ICS.”
- H. “ICS Account” shall mean a record established by the Secretary under the terms of this Forbearance Agreement, the Delivery Agreement, and the ROD.
- I. “ICS Declaration” shall mean a declaration of ICS made by the Secretary pursuant to the ROD, the Delivery Agreement and the provisions of this Forbearance Agreement.
- J. “Lower Division States” shall mean the Colorado River Basin States of Arizona, California, and Nevada.
- K. “Mainstream” shall have the same meaning as defined in the Consolidated Decree.
- L. “Parties” shall mean all of the signatories to this Forbearance Agreement.
- M. “ROD” shall mean the Record of Decision issued by the Secretary for the Development of Lower Basin Shortage Guidelines and Coordinated Management Strategies for Lake Powell and Lake Mead, Particularly Under Low Reservoir Conditions, and including the policy for implementation of ICS.
- N. “Year” shall mean calendar year.

1.2 Term of the Forbearance Agreement.

This Forbearance Agreement shall commence on the date of execution by all Parties and shall terminate December 31, 2025; provided, however, that any ICS remaining in an ICS

Account on December 31, 2025, may be released as provided herein until December 31, 2035.

1.3 Extended Term for Tributary Conservation ICS and Imported ICS.

Notwithstanding Article 1.2, the provisions of this Forbearance Agreement for creation, and release in the Year of creation, of Tributary Conservation ICS under Article 2.2 and Imported ICS under Article 2.4, shall continue in full force and effect after termination of this Forbearance Agreement until the earlier of (1) the termination of the period provided in the ROD for the creation, release, and use of Tributary Conservation ICS and Imported ICS, or (2) fifty years from the date of execution of this Forbearance Agreement. The amount of Tributary Conservation ICS and Imported ICS that may be created, released, and used through the end of the extended term provided by this Article 1.3 shall not exceed the amount shown in, and shall be consistent with, the attached Exhibits ___ and ___ for Tributary Conservation ICS and Imported ICS. Such ICS may be released during the extended term as provided herein. The obligations of the Parties under Articles 2.5, 2.6, 3, 4, and 5 shall continue with regard to such ICS.

1.4 Seven Colorado River Basin States' Agreement

Notwithstanding Articles 1.2 and 1.3 above, if one or more states withdraw from the agreement dated ____, executed by the seven Colorado River Basin states, the Parties to this Forbearance Agreement shall consult to determine whether to continue this Forbearance Agreement in effect or to amend or terminate this Forbearance Agreement. In such event, the terms of this Forbearance Agreement shall continue in effect until the Parties have consulted and agreed to continue, amend, or terminate this Forbearance Agreement. In the event of termination, all Parties shall be relieved from the terms hereof and this Forbearance Agreement shall be of no further force or effect.

Article 2
Creation and Release of ICS

2.1 Extraordinary Conservation ICS

Pursuant to procedures set forth in the ROD, the Delivery Agreement, and this Forbearance Agreement, Extraordinary Conservation ICS may be created only through the following activities:

- A. Fallowing of land that currently is, historically was, and otherwise would have been irrigated in the next Year.
- B. Canal lining programs.
- C. Desalination programs in which the desalinated water is used in lieu of Mainstream water.
- D. Extraordinary conservation programs that existed on January 1, 2006.
- E. Demonstration Extraordinary Conservation ICS programs pursuant to a letter agreement entered into between the United States Bureau of Reclamation and the Contractor prior to the effective date of the ROD.
- F. Tributary Conservation ICS created under Article 2.2 hereto and not released in the Year created.
- G. Imported ICS created under Article 2.4 hereto and not released in the Year created.
- H. Other extraordinary conservation measures, including development and acquisition of a non-Colorado River System water supply used in lieu of Mainstream water within the same state, as agreed upon by the Parties pursuant to this Forbearance Agreement.

2.2 Tributary Conservation ICS

Pursuant to procedures set forth in the ROD, a Contractor may create Tributary Conservation ICS by purchasing documented water rights on Colorado River System tributaries within the

Contractor's state if there is documentation that the water rights have been used for a significant period of years and that the water rights were perfected prior to June 25, 1929 (the effective date of the Boulder Canyon Project Act of 1928). The quantity of Tributary Conservation ICS that may be created shall be limited to the quantity of water set forth in Exhibits __ and __, and shall in no event be more than the quantity of such water the Secretary verifies actually flows into Lake Mead. Any Tributary Conservation ICS not released or deducted pursuant to Article 2.5(C) in the Year it was created will be converted to Extraordinary Conservation ICS at the request of the Contractor and will be subject to all provisions of this Forbearance Agreement applicable to Extraordinary Conservation ICS.

2.3 System Efficiency ICS

Pursuant to procedures set forth in the ROD, a Contractor may make contributions of capital to the Secretary for use in Secretarial projects designed to realize efficiencies that save water that would otherwise be lost from the Mainstream in the United States. An amount of water equal to a portion of the water saved may be made available to contributing Contractors by the Secretary as System Efficiency ICS. System efficiency projects are only intended to provide temporary water supplies and System Efficiency ICS will not be available for permanent use. The System Efficiency ICS will be released to the capital contributor on a predetermined schedule of annual deliveries for a period of years as agreed by the Parties.

2.4 Imported ICS

Pursuant to procedures set forth in the ROD, a Contractor may create Imported ICS by introducing non-Colorado River System water in that Contractor's state into the Mainstream. Contractors proposing to create Imported ICS shall make sufficient arrangements with the Secretary, contractual or otherwise, to guarantee that the creation of Imported ICS shall cause no harm to the Secretary's management of the Colorado River System. These arrangements shall provide that the Contractor must obtain appropriate permits or other authorizations required by state law and that the actual amount of water introduced to the Mainstream would be reported to the Secretary on an annual basis. Any Imported ICS not released or

deducted pursuant to Article 2.5(C) in the Year it was created will be converted to Extraordinary Conservation ICS at the request of the Contractor and will be subject to all provisions of this Forbearance Agreement applicable to Extraordinary Conservation ICS.

2.5 Creation of ICS

A Contractor may create ICS subject to the following conditions:

- A. Pursuant to procedures set forth in the ROD, a Contractor shall submit a plan for the creation of ICS to the Secretary and the Lower Division States demonstrating how all requirements of this Forbearance Agreement will be met in the Contractor's creation of ICS. System Efficiency ICS with an approved multi-year plan shall not require annual approval by the Secretary or consultation with the Lower Division States. Until such plan is reviewed and approved by the Secretary annually in consultation with the Lower Division States, such ICS plan, or any ICS purportedly created through it, cannot be a basis for an ICS Declaration. A Contractor may modify its plan for creation of ICS during any Year, subject to approval by the Secretary in consultation with the Lower Division States.
- B. Pursuant to procedures set forth in the ROD, a Contractor that creates ICS shall submit a Certification Report to the Secretary demonstrating the amount of ICS created and that its creation was consistent with this Forbearance Agreement and the ROD. The Secretary shall verify the information in the Certification Report in consultation with the Lower Division States, and provide a final written decision to the Parties. Any Party may appeal the Secretary's verification of the Certification Report through administrative and judicial processes.
- C. There shall be a one-time deduction of five percent (5%) from the amount of ICS in the Year of its creation. This deduction results in additional water in storage in Lake Mead for future use in accordance with the Consolidated Decree, the Interim Surplus Guidelines, and the ROD. This provision shall not apply to:

1. System Efficiency ICS created pursuant to Article 2.3 of this Forbearance Agreement because a large portion of the water saved by this type of project will increase the quantity of water in storage.
 2. Extraordinary Conservation ICS created by conversion of Tributary Conservation ICS that was not released in the Year created, pursuant to Article 2.1(E) of this Forbearance Agreement, because 5% of the ICS is deducted at the time the Tributary Conservation ICS is created.
 3. Extraordinary Conservation ICS created by conversion of Imported ICS that was not released in the Year created, pursuant to Article 2.1(F) of this Forbearance Agreement, because 5% of the ICS is deducted at the time the Imported ICS is created.
- D. In addition to the conditions described above, creation of Extraordinary Conservation ICS is subject to the following conditions:
1. Except as provided in Articles 2.2 and 2.4, Extraordinary Conservation ICS can only be created if such water would have otherwise been beneficially used.
 2. The maximum total amount of Extraordinary Conservation ICS that can be created during any Year is limited to the following:
 - a. 400,000 acre-feet for California Contractors;
 - b. 125,000 acre-feet for Nevada Contractors; and
 - c. 100,000 acre-feet for Arizona Contractors.
 3. The maximum quantity of Extraordinary Conservation ICS that may be accumulated in all ICS Accounts, at any time, is limited to the following:
 - a. 1,500,000 acre-feet for California Contractors;
 - b. 300,000 acre-feet for Nevada Contractors; and
 - c. 300,000 acre-feet for Arizona Contractors.
 4. Except as provided in Articles 2.2 and 2.4, no category of surplus water can be used to create Extraordinary Conservation ICS.
 5. The quantity of Extraordinary Conservation ICS remaining in an ICS Account at the end of each Year shall be diminished by annual

evaporation losses, as determined by the Secretary in consultation with the Lower Division States, provided that such losses shall not exceed three percent (3%). Losses shall be applied annually to the end-of-the-Year balance of Extraordinary Conservation ICS beginning in the Year after the ICS is created and continuing until no Extraordinary Conservation ICS remains in Lake Mead. No evaporation losses shall be assessed during a Year in which the Secretary has declared a shortage.

6. Extraordinary Conservation ICS from a project within a state may only be credited to the ICS Account of a Contractor within that state that has funded or implemented the project creating the ICS, or to the ICS Account of a Contractor within the same state as the funding entity and project and with written agreement of the funding entity.

2.6 Request for Release of ICS

A Contractor that has created ICS may request that the Secretary release its ICS subject to the following conditions:

- A. If a Contractor has an overrun payback obligation, as described in the October 10, 2003 Inadvertent Overrun and Payback Policy or Exhibit C to the October 10, 2003 Colorado River Water Delivery Agreement, the Contractor must pay the overrun payback obligation in full before requesting or receiving a release of any ICS. The Contractor may request that the amount of ICS in the Contractor's ICS Account be reduced by the amount of the overrun payback obligation in order to pay the overrun payback obligation.
- B. ICS shall only be released pursuant to an ICS Declaration.
- C. In addition to the conditions described above, a Contractor's request for release of Extraordinary Conservation ICS is subject to the following conditions:

1. The total amount of Extraordinary Conservation ICS that may be released in any Year is limited to the following:
 - a. 400,000 acre-feet for California Contractors;
 - b. 300,000 acre-feet for Nevada Contractors; and
 - c. 300,000 acre-feet for Arizona Contractors;
2. If the May, 24-month study for that Year indicates that a shortage condition would be declared in the succeeding Year if the requested amounts for the current Year under Article 2.6 were released, the Secretary may release less than the amounts of ICS requested to be released.
3. If the Secretary releases Flood Control Surplus water, Extraordinary Conservation ICS accumulated in ICS Accounts shall be reduced by the amount of the Flood Control Surplus on an acre-foot for acre-foot basis until no Extraordinary Conservation ICS remains. The reductions to the ICS Accounts shall be shared on a pro-rata basis among all Contractors that have accumulated Extraordinary Conservation ICS unless otherwise agreed to by the Contractors.

2.7 Additional Terms Regarding Creation and Release of ICS

It is the specific intent of the Parties that the terms, conditions and procedures regarding the creation and release of ICS contained in this Article 2 will be applied in conformance with additional terms, conditions and procedures governing the creation and release of ICS contained in the Delivery Agreement.

Article 3 Forbearance

- 3.1 In the absence of forbearance, surplus water is apportioned for use according to the percentages provided in Article II(B)(2) of the Consolidated Decree. The Parties respectively agree as follows:

- A. ADWR hereby forbears:
 - 1. Any right the State of Arizona may have to delivery of any ICS released in accordance with the terms and conditions set forth in this Forbearance Agreement and the Delivery Agreement for use within the State of California or the State of Nevada.
 - 2. Any right the State of Arizona may have to the release and delivery of water for direct delivery domestic use to entities in California or Nevada under a Domestic Surplus as described in the Delivery Agreement and the ROD.
 - B. PVID, IID, CVWD, the City of Needles and MWD hereby forbear:
 - 1. Any right they may have to delivery of any ICS released in accordance with the terms and conditions set forth in this Forbearance Agreement and the Delivery Agreement for use within the State of Arizona or the State of Nevada.
 - 2. Any right they may have to the release and delivery of water for direct delivery domestic use to entities in Arizona or Nevada under a Domestic Surplus as described in the Delivery Agreement and the ROD.
 - C. SNWA and CRCN hereby forbear:
 - 1. Any right SNWA or the State of Nevada may have to delivery of any ICS released in accordance with the terms and conditions set forth in this Forbearance Agreement and the Delivery Agreement for use within the State of Arizona or the State of California.
 - 2. Any right SNWA or the State of Nevada may have to the release and delivery of water for direct delivery domestic use to entities in Arizona or California under a Domestic Surplus as described in the Delivery Agreement and the ROD.
- 3.2 Notwithstanding the foregoing forbearance of ICS, the Parties only forbear with respect to ICS that is created pursuant to exhibits attached to and incorporated within this Forbearance Agreement. This Forbearance Agreement incorporates Exhibits A through ___ as of the date of execution. Additional exhibits may be

added to this Forbearance Agreement after written approval of all of the Parties. Such approval shall not be unreasonably withheld.

- 3.3 The Parties do not forbear any right to the release or delivery of any water that is not described in Article 3.1.
- 3.4 Forbearance of all Parties is conditioned on the following:
- A. The execution, by all of the Parties and the Secretary, of a Delivery Agreement that will be a companion to this Forbearance Agreement.
 - B. The adoption by the Secretary of a ROD implementing an ICS program in substantial conformance with the provisions of this Forbearance Agreement and its companion Delivery Agreement.
 - C. The continued implementation of an ICS program that is in substantial conformance with this Forbearance Agreement and its companion Delivery Agreement, including:
 - 1. The availability of the verification and appeal process described in Article 2.5(B);
 - 2. The establishment and use of an ICS accounting procedure by the Secretary consistent with this Forbearance Agreement and the Delivery Agreement;
 - 3. The Secretary's annual declaration of Normal, Surplus (other than Quantified Surplus), or Shortage conditions based on conditions in Lake Mead with consideration of the amount of ICS accumulated by the Parties. The determination of the amount of Quantified Surplus shall not include the volume of accumulated Extraordinary Conservation ICS; and
 - 4. The termination of Partial Domestic Surplus as defined in the Record of Decision dated January 16, 2001, upon issuance of the ROD.

Article 4
General Provisions

- 4.1 The records of any Party to this Forbearance Agreement that relate to the creation of ICS shall be open to inspection by any other Party.
- 4.2 The Parties to this Forbearance Agreement are hereby notified of A.R.S. § 38-511.
- 4.3 The Parties agree to comply with all applicable federal or state laws relating to equal opportunity and non-discrimination.
- 4.4 Except as provided in Article 3, including additional exhibits agreed upon by the Parties pursuant to Article 3.2, nothing in this Forbearance Agreement shall be deemed to diminish or waive the rights of any Party. The failure of any Party to enforce a provision of this Forbearance Agreement shall not be deemed to constitute a waiver of that provision. The execution of, and forbearance in compliance with, this Forbearance Agreement shall not be admissible against any Party in any action except for an action to enforce the terms of this Forbearance Agreement or the companion Delivery Agreement.
- 4.5 No Party to this Forbearance Agreement shall be considered to be in default in the performance of any obligations under this Forbearance Agreement when a failure of performance shall be due to uncontrollable forces. The term “uncontrollable force” shall mean any cause beyond the control of the party unable to perform such obligation, including but not limited to failure or threat of failure of facilities, flood, earthquake, storm, fire, lightning, and other natural catastrophes, epidemic, war, civil disturbance or disobedience, strike, labor dispute, labor or material shortage, sabotage, restraint by order of a court or regulatory agency of competent jurisdiction, and action or non-action by, or failure to obtain the necessary authorizations or approvals from, a federal governmental agency or authority, which by exercise of due diligence and foresight such party could not reasonably have been expected to overcome. Nothing contained herein shall be

construed to require any party to settle any strike or labor dispute in which it is involved.

Article 5

Notices

5.1 Notices and Requests

A. All notices and requests required or allowed under the terms of this Forbearance Agreement shall be in writing and shall be mailed first class postage paid to the following entities at the following addresses:

CRCN:

Colorado River Commission of Nevada
555 E. Washington Ave., Suite 3100
Las Vegas, NV 89101
Attn: Executive Director, Colorado River Commission

SNWA:

Southern Nevada Water Authority
1001 S. Valley View Boulevard
Las Vegas, NV 89153
Attn: General Manager

PVID:

Palo Verde Irrigation District
180 West 14th Avenue
Blythe, CA 92225
Attn: General Manager

IID:

Imperial Irrigation District
333 E. Barioni Boulevard
Imperial, CA 92251
Attn: General Manager

CVWD:
Coachella Valley Water District
P. O. Box 1058
Coachella, CA 92236
Attn: General Manager/Chief Engineer

City of Needles:
City of Needles
817 Third Street
Needles, CA 92363-2933
Attention: City Manager

MWD:
The Metropolitan Water District of Southern California
700 North Alameda Street
Los Angeles, CA 90012
Attn: General Manager

State of California:
Colorado River Board of California
770 Fairmont Avenue, Suite 100
Glendale, CA 91203-1068
Attn: Executive Director

State of Arizona:
Arizona Department of Water Resources

3550 North Central Avenue
 Phoenix, AZ 85012
 Attn: Director

B. Any Party may, at any time, change its mailing address by notice to the other Parties.

5.2 Notices and Requests by Facsimile

A. Notices and requests may be given by facsimile among the Parties in lieu of first class mail as provided in Article 5.1. Such facsimiles shall be deemed complete upon a receipt from the sender’s facsimile machine indicating that the transmission was satisfactorily completed and after phone communication with administrative offices of the recipient notifying the recipient that a facsimile has been sent.

B. The facsimile numbers of the entities listed in Article 5.1(A) are as follows:

State of Arizona:	(602) 771-8681 (Attn: Director)
SNWA	
CRCN	(702) 486-2670 (Attn: Executive Director, Colorado River Commission)
PVID	(760) 922-8294 (Attn: General Manager)
IID	(760) 339-9392 (Attn: General Manager)
CVWD	(760) 398-3711 (Attn: General Manager/Chief Engineer)
City of Needles	
MWD	(213) 217-5704 (Attn: General Manager)
CRB	(818) 543-4685 (Attn: Executive Director)

C. Any Party may, at any time, change its facsimile number by notice to the other Parties.

In Witness of this Forbearance Agreement, the Parties affix their official signatures below, acknowledging execution of this document on the _____ day of _____, 2007.

Attest: THE STATE OF ARIZONA acting through the ARIZONA DEPARTMENT OF WATER RESOURCES

By: _____ Title By: _____ Director

Approved as to form:

By: _____ Title

Attest: PALO VERDE IRRIGATION DISTRICT

By: _____ General Manager By: _____ Chair

Approved as to form:

By: _____ Title

Attest: IMPERIAL IRRIGATION DISTRICT

By: _____
General Manager

By: _____
Chair

Approved as to form:

By: _____
Title

Attest: THE CITY OF NEEDLES

By: _____
Title

By: _____
City Manager

Approved as to form:

By: _____
Title

Attest: COACHELLA VALLEY WATER DISTRICT

By: _____
General Manager

By: _____
Chair

Approved as to form:

By: _____

Attest: THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

By: _____
Title

By: _____
General Manager

Approved as to form:

By: _____
Title

Attest: SOUTHERN NEVADA WATER AUTHORITY

By: _____
Executive Director

By: _____
Chair

Approved as to form:

By: _____
Title

Attest: THE COLORADO RIVER COMMISSION OF NEVADA

By: _____
Title

By: _____
Chair

Approved as to form:

By: _____
Title

Arizona-Nevada Shortage-Sharing Agreement

This Agreement is entered into among the Arizona Department of Water Resources (“Arizona”), the Arizona Water Banking Authority (“AWBA”), the Colorado River Commission of Nevada (“CRC”) and the Southern Nevada Water Authority (“SNWA”). For convenience, Arizona, AWBA, CRC and SNWA are at times herein referred to individually as “Party” and collectively as “Parties” and CRC and SNWA are referred to as “Nevada”.

Preamble

The 1944 Mexican Water Treaty, the 1964 U.S. Supreme Court Decree in *Arizona v. California*, and the 1968 Colorado River Basin Project Act authorize and guide the Secretary of the Interior (“Secretary”) in the determination of water deliveries to the Republic of Mexico and from the mainstream of the Colorado River within the Lower Basin during shortage conditions. However, there remain significant differences of opinion between Arizona and Nevada regarding how much water would be delivered to each state within the Lower Colorado River Basin during a shortage declared by the Secretary. Arizona and Nevada have now, therefore, agreed on how Secretarial shortage declarations of up to 500,000 acre-feet within the United States would be shared between them during an Interim Period. This Agreement is conditioned upon the inclusion of all material terms from the *Seven Basin States’ Preliminary Proposal Regarding Colorado River Interim Operations* (Seven States’ Proposal) that was forwarded to the Secretary on February 3, 2006, as it may be modified, within the Record of Decision for *Colorado River Reservoir Operations: Development of Lower Basin Shortage Guidelines and Coordinated Management Strategies for Lake Powell and Lake Mead Under Low Reservoir Conditions* (“Record of Decision”). If shortage declarations within the United States exceed 500,000 acre-feet, the Secretary would consult with representatives from the seven Colorado River Basin states before allocating additional shortage reductions. That consultation would be initiated anytime that the water surface elevation of Lake Mead is at or below water surface elevation 1025 feet.

AGREEMENT

Now, therefore, based upon the mutual covenants and promises contained herein, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto do agree as follows:

1. Definitions:
 - a. Interim Period. The period beginning on the date the Secretary issues a Record of Decision and ending on December 31, 2025 (through preparation of the 2026 Annual Operating Plan).
 - b. Shortage. Any shortage within the United States declared by the Secretary pursuant to Article II(B)(3) of the Decree during the Interim Period.

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2. Reduction in Mexican Deliveries. The Parties have entered into this Agreement based on the presumption that the United States will reduce deliveries to Mexico as described in the Seven States' Proposal. In the event that the United States does not reduce deliveries to Mexico in accordance with paragraph (3)(F)(5) of the Seven States' Proposal, the Parties have agreed only to the shortage allocations described in Section 3 of this Agreement.

3. Shortage Sharing Between Arizona and Nevada. During the Interim Period the Parties agree that shortages shall be allocated between Arizona and Nevada in the following quantities:

- A. In years when Lake Mead content is projected on January 1 to be at or below elevation 1075 ft. and at or above 1050 ft., then Nevada's share of the shortage within the United States shall equal 13,000 acre-feet and Arizona's share of the shortage within the United States shall equal 320,000 acre-feet.
- B. In years when Lake Mead content is projected on January 1 to be below elevation 1050 ft. and at or above 1025 ft., then Nevada's share of the shortage within the United States shall equal 17,000 acre-feet and Arizona's share of the shortage within the United States shall equal 400,000 acre-feet.
- C. In years when Lake Mead content is projected on January 1 to be below 1025 ft., then Nevada's share of the shortage within the United States shall equal 20,000 acre-feet and Arizona's share of the shortage within the United States shall equal 480,000 acre-feet.

4. Agreement Limited to Maximum Shortage Volume of 500,000 Acre-feet Within the United States. This Agreement and the Parties relative obligations hereunder are specifically limited to a maximum shortage volume of 500,000 acre-feet within the United States in any year during the Interim Period. Should Lower Basin total shortage volume exceed 500,000 acre-feet within the United States, then the Parties will consult with the Secretary concerning shortage sharing beyond 500,000 acre-feet within the United States.

5. Shortage Assistance. For the purpose of assisting Arizona in offsetting impacts from shortages that may occur during the Interim Period, SNWA agrees to provide to the Arizona Water Banking Authority the sum of \$8,000,000.00 (Eight Million Dollars) ("the Funds"). The Arizona Water Banking Authority will use the Funds to purchase and/or store water supplies. This sum shall be paid to Arizona within 60 days of the date the Secretary issues a Record of Decision, unless otherwise agreed in writing by the SNWA and Arizona. Neither the payment nor the use of the Funds are conditioned on the occurrence of a shortage during the Interim Period, and the Funds shall be nonrefundable.

6. Condition Precedent to Effectiveness of Agreement. The Parties agree, as an express condition precedent to the effectiveness and enforceability of this Agreement, **S-8**

that the Secretary must issue a Record of Decision that is consistent with all material terms included in the Seven States' Proposal, including this Agreement, by July 1, 2008, unless otherwise agreed to in writing by the Parties. If such condition precedent does not occur by the date set forth herein or as extended or modified by written agreement of the Parties, this Agreement shall be of no force or effect among the Parties.

7. Nevada's Use of Tributary Conservation Water and Nevada State Groundwater During Declared Shortage Condition. The Parties anticipate that following the issuance of the Record of Decision, Nevada will be able to create Intentionally Created Surplus ("ICS") by introducing into the Colorado River mainstream Nevada State Groundwater ("Imported ICS") and Virgin and Muddy River water pursuant to Nevada water rights that pre-date the Boulder Canyon Project Act ("Tributary Conservation ICS"). Pursuant to a mutually agreed upon forbearance agreement, the Secretary will deliver such ICS for municipal and industrial uses within Nevada. The Parties have agreed that the water that would be used to create Tributary Conservation ICS and Imported ICS during non-shortage years will be available during declared shortages. It is anticipated by the Parties that the Record of Decision will establish guidelines whereby the Secretary of Interior, through the Bureau of Reclamation, may enter into agreements to verify and deliver ICS to the party that created it.

Arizona agrees that if in any year, pursuant to Article II (B)(3) of the Decree, there is insufficient mainstream water available to satisfy the consumptive use of 7.5 maf in the lower division states, then Arizona will not object to the delivery by the Secretary to Nevada of water that would otherwise qualify for creation and release of Tributary Conservation ICS or Imported ICS during a non-shortage year nor otherwise claim a right to use such water in any form or fashion. Arizona's agreement not to object to any secretarial delivery of and Nevada's diversion of such water shall be binding on Arizona only to the extent that such delivery does not cause the total deliveries within the lower division states to exceed 7.5 maf in any year in which the Secretary has declared a shortage. Furthermore, Arizona's agreement is conditioned on application of the same provisions for verification that would apply to the creation of Tributary Conservation ICS or Imported ICS under the Seven States' Proposal.

8. Reservation of Rights. Notwithstanding the terms of this Agreement, in the event that for any reason this Agreement is terminated, or that the term of this Agreement is not extended, or upon the withdrawal of any Party from this Agreement, the Parties reserve, and shall not be deemed to have waived, any and all rights, including any claims or defenses, they may have as of the date hereof or as may accrue during the term hereof, including specifically the respective legal positions of Nevada and Arizona regarding how the delivery of water under a shortage declaration by the Secretary would be administered within the Lower Colorado River Basin and any other rights, claims or defenses under any existing federal or state law or administrative rule, regulation or guideline, including without limitation the Colorado River Compact, the Decree in *Arizona v. California* (the "Decree"), the Colorado River Basin Project Act of 1968, and any other applicable provision of federal law, rule, regulation, or guideline.

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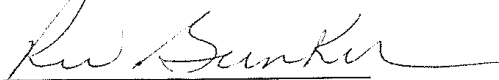
In Witness of this Agreement, the Parties affix their official signatures below, this
7th day of February, 2007.



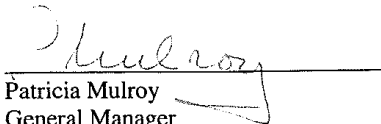
Herbert R. Guenther
Director
Arizona Department of Water Resources



Herbert R. Guenther
Chairman
Arizona Water Banking Authority



Richard Bunker
Chairman
Colorado River Commission of Nevada



Patricia Mulroy
General Manager
Southern Nevada Water Authority

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Reponses to Comment Letter S-8

S-8-1 through S-8-12

Your comment is noted. No change to the Final EIS was necessary.

S-8-13

Your comment is noted. The Preferred Alternative as identified in the Final EIS appropriately analyzes the creation and delivery of ICS and DSS.. Reclamation has included draft operational guidelines in the Final EIS (Appendix S) that discuss the administration of Intentionally Created Surplus (ICS).

S-8-14 through S-8-15

Your comment is noted. No change to the Final EIS was necessary.

S-8-16 and S-8-18

Your comment is noted. Appropriate modeling assumptions used in the Final EIS were consistent with the shortage-sharing agreement between Arizona and Nevada. In addition, Reclamation has included draft operational guidelines in the Final EIS (Appendix S) consistent with that agreement.

S-8-19

Your comment is noted. No change to the Final EIS was necessary. Also see response to F-5-2.

S-8-20 through S-8-22

Your comments are noted. No change to the Final EIS was necessary. Also see response to comment F-5-5.

S-8-23 and S-28

Your comments are noted. No change to the Final EIS was necessary.

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STATE OF NEVADA



COLORADO RIVER COMMISSION
OF NEVADA

April 27, 2007

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

Re: Nevada’s Comments on *Draft Environmental Impact Statement, Colorado River Interim Guidelines for Lower Basin Shortages and Coordinated Operations for Lake Powell and Lake Mead*

Dear Secretary Kempthorne:

Thank you for the opportunity to comment on the *Draft Environmental Impact Statement, Colorado River Interim Guidelines for Lower Basin Shortages and Coordinated Operations for Lake Powell and Lake Mead* (72 Fed. Reg. 9,026) (Feb. 28, 2007) (hereinafter “DEIS”). The Southern Nevada Water Authority (“SNWA”) and Colorado River Commission of Nevada (“CRC”) (together hereinafter jointly referred to as “Nevada”) submit these comments related to Nevada-specific items in the DEIS. Additionally, Nevada supports the comments made jointly by the Seven Basin States that are sent under separate cover. The following comments are presented according to the order in which the subjects related to the comment appear in the DEIS.

1

Basin States’ Proposal

Nevada points out that some consideration needs to be given to the fact that implementation of any alternative other than the Basin States’ Proposal will carry with it a significant degree of uncertainty. The Basin States’ Agreement, Forbearance Agreement and Arizona-Nevada Shortage Sharing Agreement are each contingent upon the issuance of a Record of Decision that is consistent with the material terms of those agreements. The several compromises agreed to by the parties to these agreements make it possible for components of the proposed action, such as coordinated management of Lakes Mead and Powell and the creation and release of the Intentionally Created Surplus (ICS), to be implemented without adversarial proceedings between the Basin States and major water users on the Colorado River.

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Southern Nevada Water Authority
1001 S. Valley View Blvd., Las Vegas, Nevada 89153

Colorado River Commission of Nevada
555 E. Washington Ave., Suite 3100, Las Vegas, Nevada 89101

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Honorable Dirk Kempthorne
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In this same context, Nevada does not agree with all of the legal interpretations and modeling assumptions used in the DEIS. However, it has agreed to set these disagreements aside for the Interim Period to support a compromise agreement among the Basin States that Nevada believes to be in the best interests of the entire Colorado River community. Because the several compromises in the Basin States' Proposal would not be preserved if an alternative other than the Basin States' alternative is selected, Nevada strongly urges the selection of the Basin States' Proposal as the Preferred Alternative in the Final Environmental Impact Statement ("FEIS") and the implementation of the material terms of that proposal in the Record of Decision.

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Analysis of Nevada Projects in the DEIS

As the Secretary is aware, Nevada is currently pursuing three separate projects to develop System Efficiency, Tributary Conservation and Imported ICS, as those terms are defined in the Basin States Proposal, with delivery taken by SNWA from Lake Mead. Each of these projects has been agreed to among the parties to the Forbearance Agreement and final details regarding these projects will be set forth in exhibits to the Forbearance Agreement. During shortages, water from projects that would otherwise qualify as Tributary Conservation ICS and Imported ICS would be available for creation, release and delivery as Developed Shortage Supply. Nevada also anticipates that a Delivery Agreement between the United States, Nevada and possibly other Lower Basin entities that provides for delivery of water from these three projects will be executed concurrently with the ROD and requests that Reclamation include such analysis of the proposed Delivery Agreement in the FEIS as is necessary to allow for the Delivery Agreements execution concurrent with the issuance of the ROD.

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The first of these three projects is participation in the Drop 2 Reservoir Storage Project in Imperial County, California, which would provide efficiencies in use of Lower Colorado River system water. This project is discussed at section 5.1.27 in the DEIS. Reclamation should issue a Final Environmental Assessment (EA) for this project shortly. The second project is construction of the Coyote Spring Well and Moapa Transmission System Project, in Clark County, Nevada that will convey groundwater from Coyote Spring Valley into the Muddy River. This project is discussed at section 5.1.22 of the DEIS. The Bureau of Land Management is anticipated to issue a Final EA for this project shortly. Project specific impacts are being analyzed under separate NEPA processes for these projects, and the DEIS sufficiently analyzes environmental effects to the Colorado River from the implementation of these projects. Therefore additional analysis by Reclamation in the FEIS, if any, should be sufficient to allow for the execution of a Delivery Agreement, concurrent with issuance of the ROD, authorizing Nevada to utilize water available from these two projects.

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The third project that will be included within both the Forbearance Agreement and a Delivery Agreement is Tributary Conservation along the Virgin and Muddy Rivers. This project will either develop Tributary Conservation ICS that will be delivered within the same year that it is created, or develop Extraordinary Conservation ICS that can be stored in Lake Mead. The modeling used in

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the DEIS has included Nevada’s estimates for Virgin and Muddy River tributary conservation (as described in Appendix M, Chapter M.3.1.3), and the potential environmental impacts within the Colorado River system are described in the document. Proposed Interim Guidelines forwarded by the Basin States to the Secretary include the accounting and verification process for Tributary Conservation projects. In order to provide a full environmental evaluation, the FEIS should also evaluate potential effects within the Virgin and Muddy River systems and of execution of the proposed Delivery Agreement so that a Delivery Agreement that authorizes Nevada to utilize water from these projects can be executed concurrent with the ROD. In order to assist Reclamation with this analysis, Nevada has included a summary of the water rights involved as well as certain hydrologic and environmental data. This summary is attached as “Attachment A”.

General Comments on DEIS Volume One (Chapters 1 through 6)

1. Section 2.3.3, Table 2.3-2, and Table M-2 in the DEIS imply that storage volume and delivery limitations discussed in those provisions apply to all classifications of Intentionally Created Surplus. In accordance with the Basin States’ Proposal, these storage volumes and delivery limitations apply only to that classification of ICS termed “Extraordinary Conservation” in the Basin States’ Proposal, and specifically do not apply to Tributary Conservation, System Efficiency, and Imported ICS as those terms are defined in the Basin States’ Proposal. 13
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2. Figure 3.2-1 and Figure ES-1 should be changed to show that SNWA’s service territory includes all of Clark County. Currently the Figures show only the Las Vegas Valley in yellow; it should show all of Clark County in yellow. 17

3. Section 3.11.7.3 should discuss the Basic Management (“BMI”) intake. This intake is located at 1050 feet msl and serves the industries within the BMI complex, portions of the Lake Las Vegas resort, golf courses, a Nevada Department of Wildlife fish hatchery, and the City of Henderson’s treatment plant. Therefore, these uses served by the BMI intake will be threatened if Lake Mead levels drop below 1050 feet msl. Most of these impacts could be mitigated through use of SNWP water. 18
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4. Table 3.14-2 reflects agriculture in Clark County. However, the inclusion of this table in the DEIS is misleading. The agricultural use displayed in this table does not use water from the Colorado River. Therefore, this agricultural use should be removed from the DEIS. As further discussed above, within Nevada, only those agricultural uses associated with SNWA’s Tributary Conservation ICS projects along the Virgin and Muddy Rivers should be analyzed as part of the DEIS. 21
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5. The statements in section 4.14.3.3 and ES.2.13.2 that “socioeconomic effects on southern Nevada’s M&I sector resulting from the proposed alternatives would not be substantial” are 23

Honorable Dirk Kempthorne
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misleading. Reductions in water deliveries to Nevada anywhere between 13,000 and 84,290 acre-feet in any given year, as modeled in the DEIS,¹ will at some level begin to cause socioeconomic effects not only within Las Vegas and Clark County, but throughout Nevada. Unlike the other Basin States, Nevada does not have large agricultural water users to provide a buffer during drought through fallowing. Additionally, Nevada’s water demand consists of hard, municipal demands that are not as flexible during drought. SNWA’s Drought Plan is intended to ameliorate those effects and accommodate anticipated reductions in water deliveries. But the Drought Plan does not provide the type of absolute protection against either socioeconomic impacts or the possibility of interruptions in municipal water supplies that the DEIS implies.

Nevada feels strongly that, in accordance with the Basin States’ Proposal, no reductions in delivery above 20,000 acre-feet in any year should be imposed upon Nevada without further consultation between the Secretary and the Basin States, and requests that the M&I socioeconomic impact analysis in the FEIS be refined to more accurately reflect different levels of socioeconomic impacts to M&I water users, including health and human safety concerns, for any reductions in deliveries above 20,000 acre-feet in any year.

- 6. Chapter 5, Section 5.1.21 should be modified to show that SNWA’s commitment not to proceed with the Virgin River pipeline project remains in effect only if the Basin States’ Proposal is implemented.

General Comments on Volume Two of the DEIS

- 1. Table D-3 should be modified to reflect that SNWP is not the only user of Colorado River water in Nevada upstream of Hoover Dam. Other users, such as BMI and PABCO, should be represented in Table D-3. Alternatively, the title of the SNWP column could be changed to “Uses above Hoover Dam,” with the notation that “SNWP is the primary user above Hoover Dam.”
- 2. On pages M-3 and M-4, the FEIS should make it clear that evaporation losses are only assessed at the end of the year on what is remaining in an ICS account at that time. Therefore, no evaporation loss is assessed on ICS that is created and delivered within the same year.
- 3. Throughout the document, and particularly on page M-6 and in Table M-3, there are references to the possibility of desalinization being used to augment flows in the Colorado River. However, other system augmentation projects besides desalinization are being considered, so when this subject is discussed in the FEIS, the word “desalinization” should

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¹ This range does not include modeling within some alternatives that would allow Lake Mead elevations to drop below 1,000 feet msl, leaving SNWA and approximately 2 million people without 90% of the water supply they rely upon.

Honorable Dirk Kempthorne
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be changed to "system augmentation." Also on page M-6, in the first paragraph, the year 2012 should be changed to 2020. | 36

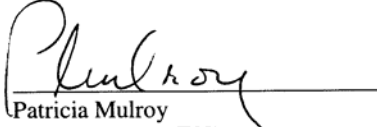
4. In Table M-3, storage and delivery schedules for Nevada's Tributary Conservation water need to be updated to include the recovery in years 2025 through 2036 of water banked between 2008 and 2024. Also, the Drop 2 project should be included in this table. | 37 | 38

5. The first paragraph on page M-6 should be modified as follows: delete first three words, replace with "Nevada state groundwater introduced directly into Lake Mead or wastewater produced by these introductions are assumed to be available during the period from 2009 through 2060." Throughout the paragraph, the term "return flow" should be replaced with "introductions or wastewater produced from introductions." An additional sentence should be added to reflect that Imported ICS may be stored during all water supply conditions except Flood Control Surplus conditions, and may be delivered during Normal, ICS Surplus and Shortage conditions. | 39 | 40 | 41


6. The third paragraph on page M-6 should reflect that Nevada may take Drop 2 Reservoir water at a maximum rate of 40 kaf each year until a total of 500 kaf has been taken (not 300 kaf). | 42

In closing, Nevada thanks you for your leadership and urges Interior to adopt a ROD that includes all of the material terms of the Basin States' Proposal. | 43

DATE: 4-27-07


Patricia Mulroy
General Manager
Southern Nevada Water Authority

DATE: 4-27-07


Richard W. Bunker
Chairman
Colorado River Commission of Nevada

- c: Robert W. Johnson, Commissioner, U. S. Bureau of Reclamation
- Rick Gold, Regional Director, U. S. Bureau of Reclamation, Upper Colorado Regional Office
- Jayne Harkins, Acting Regional Director, U. S. Bureau of Reclamation, Lower Colorado Regional Office
- Larry Walkoviak, Deputy Regional Director, U. S. Bureau of Reclamation, Lower Colorado Regional Office

ATTACHMENT “A”***Nevada Comments on Draft Environmental Impact Statement, Colorado River Interim Guidelines for Lower Basin Shortages and Coordinated Operations for Lake Powell and Lake Mead***

SNWA has been purchasing pre-Boulder Canyon Project Act (BCPA) Virgin River and Muddy River water rights in Nevada since 1997. Water rights historically being used for agriculture along these rivers are voluntarily being retired and willingly sold or leased to willing buyers. The following information summarizes the pre-BCPA rights on the Muddy and Virgin Rivers along with the associated beneficial impacts of retiring these rights through the proposed Tributary Conservation program.

Virgin and Muddy River Water Rights Background

Pre-BCPA water rights on the Virgin River have a priority date of pre-1905 and were decreed by the Nevada Supreme Court in 1927. The decree allocated 17,785 acre-feet per year (afy) to the Bunkerville and Mesquite Irrigation Companies. SNWA currently owns shares in the Bunkerville Irrigation Company representing approximately 3,700 afy of surface water rights.

On the Muddy River, water rights were decreed by Nevada’s 10th District Court (now 8th District Court) in 1920. The decree allocated the entire flow of the Muddy River. SNWA currently owns shares in the Moapa Valley Irrigation Company representing approximately 7,000 afy of surface water rights.

Between the Virgin and Muddy Rivers, SNWA anticipates acquiring approximately 30,000 afy of pre-BCPA water rights, which is the same quantity analyzed in the DEIS as represented in Table M-3. The water rights that are currently retired or will be retired in the future will be conveyed to Lake Mead via the Overton Arm under the proposed Tributary Conservation program.

Anticipated Tributary Conservation

Agricultural acreage on the Virgin River is currently about 823 acres out of a total of 1,963 decreed acres. The majority of the existing agricultural acreage is in the Bunkerville Irrigation Company. Most of the Mesquite Irrigation Company agricultural lands as identified in the decree have been retired and portions of the agricultural water rights are being willingly sold or leased to willing buyers for non-agricultural uses, such as golf courses, in the area of Mesquite, Nevada.

Agricultural acreage on the Muddy River is currently about 2,253 acres of land located in Lower Moapa Valley and small portions of the upper Muddy River, including the Moapa Band of Paiutes’ land. These lands, similar to the Virgin River area, are slowly being retired and the water rights associated with the land are being used for non-agricultural purposes.

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Analysis of Impacts to the Virgin and Muddy River from Tributary Conservation

The water rights used for agricultural uses that have been or will be retired will be conveyed to Lake Mead via the Overton Arm in one of two fashions. If the flow volume is required to run through irrigation company ditches to maintain head and avoid fiscal impacts associated with upgrading ditches to accommodate less flow, the water will run through the ditches and return to the mainstem of the Muddy or Virgin River at some downstream return point. Alternatively, the water could be left in the mainstem of the river and not flow through the irrigation company ditches. Since this water is water that historically has composed the flow of the river it will not create any new concerns associated with flood control or channel capacity. In addition, the water left in the mainstem will augment and sustain existing flows in both rivers allowing for assured flows that will benefit recreation, wildlife, and aesthetics. Water quality benefits may also occur due to less agricultural runoff entering the rivers.

Cumulative Impacts

The related environmental programs described in Chapter 4.8.1 and federal statutes and policies in Chapter 5.1 should also include the following programs pertinent to the Virgin River and Muddy River:

Virgin River Habitat Conservation and Recovery Program

The Virgin River Habitat Conservation and Recovery Program (HCRP) is currently under development to satisfy the requirements of the Biological Opinion on the Sale of 10,620 Acres of Public Lands in Clark County, Nevada to the City of Mesquite under the Mesquite Lands Act of 1986, as amended in 1996 and 1999. Covered species proposed for the HCRP include: Virgin River chub (*Gila seminuda*), woundfin (*Plagopterus argentissimus*), southwestern willow flycatcher (*Empidonax trallii extimus*), Yuma clapper rail (*Rallus longirostris yumanensis*), and yellow-billed cuckoo (*Coccyzus americanus*).

Muddy River Recovery Implementation Program

The Muddy River Recovery Implementation Program (RIP) is currently under development to satisfy the requirements of the Intra-Service Programmatic Biological Opinion for the Proposed Muddy River Memorandum of Agreement Regarding the Groundwater Withdrawal of 16,100 Acre-Feet per Year from the Regional Carbonate Aquifer in Coyote Spring Valley and California Wash Basins, and Establish Conservation Measures for the Moapa Dace, Clark County, Nevada. Covered species proposed for the RIP correspond to the species listed in the 1996 Recovery Plan for the Rare Aquatic Species of the Muddy River Ecosystem and include: Moapa dace (*Moapa coriacea*), Virgin River chub (*Gila seminuda*), Moapa speckled dace (*Rhinichthys osculus moapae*), Moapa White River springfish (*Crenichthys baileyi moapae*), Moapa pebblesnail (*Fluminicola*

S-9

avernalis), grated tryonia (*Tryonia clathrata*), Moapa Warm Spring riffle beetle (*Stenelmis moapa*), and Amargosa naucorid (*Pelocoris shoshone shoshone*).

S-9

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Reponses to Comment Letter S-9

S-9-1 through S-9-6

Your comment is noted. No change to the Final EIS was necessary.

S-9-7 through S-9-16

Your comment is noted. The Final EIS appropriately analyzes the Preferred Alternative including the inclusion of the three projects referenced in the proposed ICS mechanism.

S-9-17

Your comment is noted. No change to the Final EIS was necessary. As noted in Appendix M, the exact timing and magnitude of the storage and delivery of conserved water is not known. However, in order to evaluate the potential effects on environmental resources, certain modeling assumptions were made as detailed in Section M.

S-9-18

Reclamation does not concur with this comment. The geographic scope of the EIS reflects the potentially affected area of the proposed federal action. The potentially affected area within the SNWA service area comprises the existing service area of the SNWA member agencies that receive Colorado River water.

S-9-19 and S-9-20

Your comment is noted. No change to the Final EIS was necessary. The BMI intake is discussed in Section B.2.3.1 of Appendix B in the Final EIS.

S-9-21

Your comment is noted. No change to the Final EIS was necessary. The agricultural data was included for informational purposes and as part of the general discussion of economic activity occurring in the study area. As indicated in Section 4.14 "Socioeconomics" agricultural production within the Nevada study area would not be affected by implementing the interim guidelines.

S-9-22

Reclamation concurs with this comment. Appropriate information on potential impacts to agricultural lands along the Virgin and Muddy Rivers is included in Section 4.16 of the Final EIS.

S-9-23 through S-9-27

Your comments are noted. Additional information with regard to SNWA's Water Resource Plan has been added in Section 3.4.6.3. As described in Section 4.14.1.2 in the EIS, potential socioeconomic consequences of shortages occurring in the M&I sector were qualitatively assessed since it was not known to what degree a specific economic sector considered an M&I use would be affected. The effects on individual cities or communities are indeterminate for various reasons. Each city or community has a different mix of water supplies and in most cases, have formulated a shortage or drought response plan that is specific to their respective community. Also, individual response plans typically include varying combinations of demand-side and supply-side actions and these differ by community.

S-9-28 and S-9-29

Your comment is noted. No change to the Final EIS was necessary.

S-9-30

Your comment is noted. The referenced section was deleted from the Final EIS.

S-9-31 and S-9-32

Reclamation concurs with this comment. The title on column previously referenced as "SNWP" in the EIS has been changed to read as "Uses above Hoover Dam."

S-9-33 and S-9-34

Reclamation concurs with this comment and clarification has been made in Appendix M.

S-9-35

Reclamation concurs with this comment. Appendix M has been modified to replace the term "desalination" with the term "system augmentation."

S-9-36

Reclamation concurs with this comment. The correction has been made in the Final EIS.

S-9-37

Reclamation concurs with this comment noted. The correction has been made in the Final EIS.

S-9-38

Your comment is noted. No change was necessary in the Final EIS. Although the Drop 2 Storage Reservoir is assumed to be a conservation activity in the Basin States Alternative, it was not added to Table M-3 because it does not follow a storage and delivery schedule similar to the other conservation activities..

S-9-39 and S-9-40

Your comment is noted. Appropriate modifications have been made in Appendix M.

S-9-41

Your comment is noted. No change to the Final EIS was necessary. The assumption used was the best data available at the time of the modeling and analysis for the Final EIS.

S-9-42

Your comment is noted. No change to the Final EIS is necessary. The assumption used was the best data available at the time of the modeling and analysis for the Final EIS.

S-9-43

Your comment is noted. No change to the Final EIS is necessary.

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