



UPPER COLORADO RIVER COMMISSION

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Upper Colorado Basin Region
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VIA ELECTRONIC MAIL

CRinterimops@usbr.gov

Re: Notice of Intent To Prepare a Supplemental Environmental Impact Statement for December 2007 Record of Decision Entitled Colorado River Interim Guidelines for Lower Basin Shortages and Coordinated Operations for Lake Powell and Lake Mead

Dear Mr. Beaudreau:

The States of Colorado, New Mexico, Utah and Wyoming (collectively, the “**Upper Division States**”), through the Upper Colorado River Commission (“**UCRC**”), respectfully submit the following comments in response to the Bureau of Reclamation’s (“**Reclamation**”) Notice of Intent To Prepare a Supplemental Environmental Impact Statement for December 2007 Record of Decision Entitled Colorado River Interim Guidelines for Lower Basin Shortages and Coordinated Operations for Lake Powell and Lake Mead, Fed. Reg. Vol. 87, No. 221 dated November 17, 2022 (“**NOI**”). We appreciate your consideration of our comments.

A. Proposed Revisions to the 2007 Interim Guidelines

In the NOI, Reclamation states its intent to revise several sections of the 2007 Interim Guidelines, including Sections XI.G.2.D, 6.C, 6.D, and 7.C.

- (1) Section 2.D, “Shortage Conditions.” This section implements reductions in deliveries to the Lower Division States in “Shortage Condition Years,” which exist “*when the Secretary determines* that insufficient mainstream water is available to satisfy 7.5 maf of annual consumptive use in the Lower Division states” (ROD for the 2007 Interim Guidelines, Section III) (emphasis added). Once the Secretary has determined that a Shortage Condition exists, water deliveries to the Lower Division States are reduced according to the elevation of Lake Mead. In the NOI, Reclamation states that it anticipates “decreasing the quantity of water apportioned for consumptive use in the Lower Division States” on the basis of reservoir and hydrologic conditions, “including any potential modifications to Glen Canyon Dam operations.”

In light of prolonged drought and low runoff conditions accelerated by climate change, the Upper Division States support water deliveries in the Lower Basin being reduced in greater amounts at higher Lake Mead elevations to protect the purposes and functions of Lake Mead

under existing law. Any revision to Section 2.D must be taken solely by the Secretary and within the scope of the Secretary's authorities.

- (2) Sections 6.C, "Mid-Elevation Release Tier", and 6.D, "Lower Elevation Balancing Tier". The 2007 Interim Guidelines state that the Secretary's objective in coordinating the operation of Lake Powell and Lake Mead during the Interim Period "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." Sections 6.C and 6.D attempt to satisfy this objective by setting operational tiers which trigger releases from Glen Canyon Dam based upon the respective elevations of Lake Powell and Lake Mead. The NOI states that Reclamation anticipates revising the sections "to modify and/or reduce the quantity of water released from Glen Canyon Dam" on the basis of reservoir and hydrologic conditions, "including any potential modifications to Hoover Dam operations."

The Upper Division States acknowledge that Secretarial actions to reduce releases from Glen Canyon Dam may be needed to respond to prolonged drought and low runoff conditions accelerated by climate change. Such actions must not jeopardize our obligations under Article III of the 1922 Compact. Reduced releases from Glen Canyon Dam that may result from the SEIS shall not constitute an action by the UCRC or the Upper Division States for the purposes of determining compliance with Article III of the 1922 Compact. Any revision to Section 6.C must be taken pursuant to Secretarial authority only and will not constitute consent, endorsement, or acquiescence from the Upper Division States.

- (3) Section 7.C, "Mid-Year Review." This section, as written, already gives the Secretary the necessary latitude to consider revisions to the Annual Operating Plan (AOP) to institute a different operational tier for the remainder of the Year or Water Year. However, Section 7.C currently precludes the Secretary from instituting mid-year reductions in deliveries from Lake Mead. This limits the Secretary's ability to adjust the AOP to respond to record low inflows, drawing Lake Powell elevations down to unprecedented low levels as demonstrated in recent years.

The Upper Division States support Reclamation's intent to modify Section 7.C, but recognize that proposed adjustments to the AOP are solely made by the Secretary and within the scope of the Secretary's existing authorities. Therefore, such actions shall not constitute any findings or orders by the UCRC as authorized under the 1948 Compact.

B. Depletion-Based Accounting in the Lower Basin

Regardless of the Secretarial actions taken with respect to the SEIS, the Secretary must begin to account for and assess actual depletions, evaporation, seepage, and other system losses in the Lower Basin. The lack of such an accounting and assessment has directly contributed and continues to contribute to depleted storage in both Basins and puts critical elevations in Lake Powell and Lake Mead at risk. Complete and accurate depletion accounting is critical to continued operations of Lake Powell and Lake Mead. Depletion-based accounting in the Lower Basin is also crucial to accurately assess the impacts and effectiveness of the proposed alternatives. The Secretary has not only the authority, but the obligation to gather and report such data; *see e.g.*, the 1968 Colorado River Basin

Project Act Section 601(b) (directing the Secretary to report the annual consumptive uses and losses of System water, breaking down beneficial consumptive use on a state-by-state basis). The best available science and prudent water management further require accounting and assessment for the Lower Basin's actual depletions, evaporation, seepage, and other system losses to attenuate risks to water resources in the Upper Basin. Absent consensus-based actions agreed to by the Basin States, any revised Lower Basin depletion accounting and assessment must be undertaken pursuant to Secretarial authority only. The Upper Division States urge Reclamation to account for and assess Lower Basin depletions in the SEIS.

For these reasons, the Upper Division States request that Reclamation begin full depletion-based accounting in the Lower Basin and account for the actual impacts of such accounting in the SEIS.

C. Upper Division Efforts to Act on Shortages

The historically low water levels in Lake Powell and Lake Mead are not caused by water use in the Upper Division States. The Upper Basin states, individually and collectively, are currently using and have historically used much less water than apportioned by the Colorado River Compact. Operations under the 2007 Interim Guidelines during the prolonged drought and low runoff conditions have resulted in dramatic storage loss in Lake Powell and Lake Mead. Consequently, the Colorado River System has lost most of its resiliency, to the point where the statutory purposes of those reservoirs set forth in the Colorado River Storage Project Act (“**CRSPA**”) and Boulder Canyon Project Act are jeopardized.

The Upper Division States are taking action to address local and regional drought impacts using existing tools and routinely cutting back diversions and uses in times of shortage. In addition, significant new conservation efforts¹ are being undertaken in each Upper Division State which help mitigate impacts from unprecedented drought, protect critical elevations in Lake Powell, and ensure continued compliance with the Law of the River.

The Upper Division States are also developing new tools to respond to the prolonged drought and depleted storage. For instance, the UCRC's letter to Commissioner Camille Touton dated July 18, 2022, set forth the Upper Division States' 5-Point Plan to proactively support critical infrastructure and resources related to the Colorado River Storage Project Act Initial Units. We urge the Secretary to avoid taking any actions which negatively impact the 5-Point Plan or which frustrate the Plan's purposes.

As all the Basin States share in the benefits of the Colorado River System, *all* the Basin States must share the responsibility to take action to protect the effective operation of Lake Powell and Lake Mead. The 2007 Interim Guidelines explicitly link the operation of Lake Powell and Lake Mead such that actions in the Lower Basin can adversely influence or even counteract the efficacy of actions taken in the Upper Basin. We call upon the Secretary to provide opportunities for effective action by

¹ A fact sheet with more information is available here: <http://www.ucrccommission.com/upper-basin-water-management-and-conservation/>.

all who benefit from the System while recognizing the unique and exclusive authorities of the UCRC under the 1948 Compact that are not implicated in the SEIS. There is sufficient flexibility within the Law of the River to take the necessary measures in the Lower Basin to protect the System.

D. Scope of the SEIS

The Secretary cannot recommend, determine, or define the Upper Division States' compact rights or obligations. Any determination or finding relating to Upper Basin compliance with the 1922 Compact is the sole authority of the UCRC pursuant to the 1948 Upper Colorado River Basin Compact.

Given the commitments in CRSPA and the 1968 CBRPA to protect and develop uses in the Upper Basin, actions impacting Flaming Gorge, Navajo and Aspinall reservoirs, CRSP participating projects, or other federally owned reservoirs, are also outside the scope of this SEIS. Absent consensus-based actions agreed to by the Basin States, any revision to the 2007 Interim Guidelines must be taken pursuant to Secretarial authority only.

E. Process Considerations

The Law of the River is built on a foundation of equity and exhibits a commitment to collaboration. Thus, it is critical that Reclamation engage the Nation of Mexico in the SEIS process. In addition, we remind Reclamation of the Secretary's obligation regarding Tribal water rights, and request that she pay particular attention to the potential impacts of the proposed alternatives on the resources of the Colorado Basin Tribes.

In completing the SEIS, Reclamation must focus on the best available science to ensure that the steps taken to protect and replenish storage in the System are effective.

F. No Action Alternative

The Upper Division States do not support selection of the No Action Alternative set forth in the NOI as the Preferred Alternative for the SEIS. Due to prolonged drought and low runoff conditions accelerated by climate change, the 2007 Interim Guidelines and 2019 Drought Contingency Plan ("DCP") are inadequate to preserve and protect critical elevations at Lake Powell and Lake Mead. Failing to fully account for the Lower Basin's actual depletions, evaporation, seepage, and other system losses has also contributed to the declining and current reservoir elevations. Additionally, the continued balancing releases from Lake Powell and Lake Mead, as outlined in the 2007 Interim Guidelines, have facilitated the drawdown of Lake Mead and extended risks to the Upper Basin Initial Units. Therefore, any consideration of preserving the current management or extending the 2007 Interim Guidelines is untenable.

G. Framework Agreement Alternative

The Upper Division States through the UCRC have committed to a process with the Lower Division States to develop a consensus Framework Agreement Alternative. The seven Basin States will be working on this process through January 31, 2023. In addition, the Upper Division States are communicating with Upper Division Tribes about the process. Given the urgency of completing this

SEIS for the 2023 – 2024 period, we appreciate Reclamation’s commitment to provide time for the Basin States to revise and refine the conceptual Framework Agreement Alternative under consideration.

H. Conclusion

The Upper Division States thank you for the opportunity to provide these comments on the NOI for the development of a SEIS for the 2007 Interim Guidelines. We anticipate providing comments during the SEIS process as well. We look forward to continuing our partnership with you, the Lower Basin States, Mexico, Basin Tribes, water users, and stakeholders, as we move forward in protecting and managing this critical resource.

Sincerely,

A handwritten signature in blue ink, appearing to read "Charles R. Cullom", with a long horizontal flourish extending to the right.

Charles R. Cullom
Executive Director