



State of Utah

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December 20, 2022

Reclamation 2007 SEIS Interim Guidelines SEIS Project Manager

Upper Colorado Basin Region
125 South State Street, Ste. 8100
Salt Lake City, UT 84138

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

Dear Deputy Secretary Beaudreau:

On behalf of the state of Utah, I am pleased to submit the following response to the above-referenced notice published in the Federal Register on (November 17, 2022). The state appreciates the opportunity to provide comment during this scoping phase of the National Environmental Policy Act (NEPA) process for the development of a Supplemental Environmental Impact Statement (SEIS) for the 2007 Colorado River Interim Guidelines (2007 Interim Guidelines) Record of Decision (ROD).

Utah supports a proactive response to address critical reservoir elevations and low runoff in the Colorado River system. Together with the other Upper Division States of Colorado, New Mexico and Wyoming, Utah is actively involved in state-based efforts to address the exigent situation in the Colorado River Basin, principally through the Upper Basin 5 Point Plan.

While the Colorado River is a shared resource, the Upper Division States have historically far exceeded our flow obligation at Lee Ferry under the 1922 Colorado River Compact (Compact). For example, over the last ten years 85.5 million acre-feet (MAF) of water has passed Lee Ferry, exceeding the Upper Division States' Compact obligation of 75 million during any ten consecutive year period.¹ Moreover, during the last 23 years (a.k.a., the drought of record, or "Millennium Drought") the average ten-year progressive flow at Lee Ferry is 93 MAF, yet Lake Mead continues to precipitously decline. Nevertheless, Utah recognizes the need for collective action by all seven Colorado River basin states (Basin States), the federal government and all sectors who rely on the Colorado River to protect the system. Utah is hopeful that a basinwide consensus alternative can be developed and will emerge as the Preferred Alternative for the SEIS. Accordingly, Utah offers the following comments in response to the NOI.

¹ Article III(d), 1922 Colorado River Compact ("The States of the Upper Division will not cause the flow of the river at Lee Ferry to be depleted below an aggregate of 75,000,000 acre-feet for any period of ten consecutive years reckoned in continuing progressive series beginning with the first day of October next succeeding the ratification of this Compact").

I. Scope of Potential Action

A. Compact Compliance

Among the needs for the SEIS identified in the NOI is the potential that the U.S. Bureau of Reclamation (Reclamation) may be required to “modify current operations and reduce Glen Canyon Dam downstream releases” to ensure that Glen Canyon Dam continues to operate under its intended design. NOI at 69043. Further, Reclamation “anticipates revising Section 6.C. (“Mid-Elevation Release Tier”) and 6.D (“Lower Elevation Balancing Tier”) [of the 2007 Interim Guidelines] to *modify and/or reduce* the quantity of water released from Glen Canyon Dam.” NOI, p. 69044 [Emphasis added]. Currently, under the 2007 Interim Guidelines, the Mid-Elevation Release Tier requires an annual release volume of 7.48 MAF from Lake Powell unless Lake Mead elevations dictate an increased release volume. Moreover, the Lower Elevation Balancing Tier contemplates a balancing release from Lake Powell as low as 7 MAF depending on the respective contents of the two reservoirs.

Since the 1960s, releases from Glen Canyon Dam have been essential to ensuring the Upper Division States’ continued compliance with Article III of the Compact. Utah recognizes that the Secretary of Interior has specific authorities to operate Glen Canyon Dam and other Colorado River reservoirs within the confines of existing federal law. However, Utah will not support an SEIS alternative that may be construed as interfering with or negatively impacting the Upper Division States’ obligations under Article III of the Compact.

B. 2019 Drought Response Operations Agreement (DROA)

According to the NOI, “[f]or planning purposes, Reclamation’s analysis will assume that additional releases pursuant to the Drought Response Operations Agreement (“DROA”) will be administered according to the terms approved by the DCP [Drought Contingency Plan] Act.” NOI at 69044.

DROA actions, as authorized by the 2019 Upper Basin Drought Contingency Plan, have emerged as a tool to address critically low reservoir elevations at Lake Powell. Of the 661,000 acre-feet of water subject to release under the 2021 DROA “Emergency Action” and 2022 DROA Plan, approximately 625,000 acre-feet, or almost 95% of the water has been or will be released from Flaming Gorge Reservoir in Utah and Wyoming.

Utah supports DROA actions that conform to the 2019 Agreement, as well as the Upper Division States’ commitment to begin development of a potential 2023 DROA Plan as part of the 5 Point Plan. However, Utah will condition its support for any additional DROA releases “assumed” by Reclamation as a potential alternative under the SEIS on the following:

1. DROA actions must be *effective* as required by the DROA and defined in the 2022 DROA Framework Document;
2. Balancing releases at Glen Canyon Dam that include water released from upstream Initial Units, primarily Flaming Gorge, in 2021 and 2022 will not be supported;
3. Balancing releases at Glen Canyon Dam of any future DROA releases from Flaming Gorge will not be supported if the calculation of the balancing releases includes DROA water; and
4. No amendment or interpretation of the DROA through the SEIS process will be allowed.

C. Tribal Rights

The NOI is notably silent on the potential impacts to the Colorado River Tribes from the proposed modifications of the 2007 Interim Guidelines. As home to the Navajo Nation, the Ute Tribe of the Uintah and Ouray, the Ute Mountain Ute and the Paiute Indian Tribe of Utah, the state will not support an alternative that prevents any Tribe with lands in Utah from developing water rights recognized under federal law and decreed under state law. This includes, but is not limited to, the opportunity for the Navajo Nation in Utah to develop its recognized rights under the 2020 Navajo Utah Settlement, P.L. 116-260.

D. Timeframe/Duration

According to the NOI, “[t]he SEIS...does not interfere with, supplant, or supersede th[e] separate post-2026 guidelines development process. Rather, this SEIS will inform and complement the development of post-2026 guidelines.” NOI at 69043. Moreover, the NOI states that through the SEIS, “Reclamation is initiating efforts to revise operating guidelines for the operations of Glen Canyon and Hoover Dams in 2023 and 2024 operating years” but that “[d]evelopment of modified operating guidelines will also inform potential operations in the 2025 and 2026 operating years; however...operational strategies for 2023-2024 may need to be further revisited for subsequent operating years.” NOI at 69043.

Notwithstanding the lack of clarity in the NOI regarding the timeframe and duration of the potential actions contemplated by Reclamation, Utah will not support an SEIS action that extends beyond December 31, 2025, or through the preparation of the 2026 Annual Operating Plan (Interim Period). Any action beyond the Interim Period is subject to a discrete NEPA process for the development of post-2026 guidelines.

E. Accounting

Accurate and transparent accounting and modeling are essential elements of DROA and the Cooperative Action taken in Spring 2022. The success of any potential action contemplated under this SEIS process must honor the accounting commitments under DROA and the Cooperative action, and the accounting for each action must be kept separate and distinct. Utah will not support an action that lacks sufficient transparency in accounting for each drought response action taken.

F. Environmental Compliance

The potential for reduced and/or modified releases from Glen Canyon Dam as described in the NOI may have implications for the Long-Term Experimental Management Plan (LTEMP) at Glen Canyon Dam. In particular, the hourly, daily and monthly releases as prescribed by the LTEMP ROD may be impacted by changes to releases under the 2007 Interim Guidelines Mid-Elevation Release and Low Reservoir Elevation Balancing Tiers. It is our expectation that any action considered in this SEIS process will be consistent with the LTEMP ROD and, if not, subject to a separate NEPA process.

II. Preferred Alternative

Utah supports the consideration of the following actions during the SEIS process for potential inclusion in a Preferred Alternative:

A. Assessment of Evaporation and Losses

Reclamation must begin to assess evaporation and system losses against deliveries to Section 5 Contractors in the Lower Basin immediately, but in no event later than calendar year 2023. This action could contribute as much as 1.5 MAF annually to the system and would result in greater equity between the two basins as the Upper Division States' uses, including Utah's, are subject to reductions based on evaporation and other system losses.

Utah believes that Reclamation can immediately apply these assessments. Alternatively, Utah believes such assessment should be analyzed in the SEIS process and incorporated into a Preferred Alternative. The statement in the NOI that this issue will be investigated "separate from the development of the SEIS" (NOI at 69045) culminating in a written report in 2023 is insufficient.

B. Long-term, durable conservation measures throughout the Basin

Utah supports sustainable, meaningful conservation activities throughout the Colorado River basin. We appreciate Reclamation's commitment to "pursue system conservation actions in the Upper and Lower Basins" [NOI, p. 69044]. However, Utah prefers more durable conservation measures with demonstrable benefits to the system, in particular conservation to increase elevations at Lake Powell and other Initial Units, through demand management activities.

To this end, Utah requests that the terms of the 2019 Demand Management Storage Agreement (DMSA) be extended to individual Upper Division States, including reconsideration of the 500,000 acre-foot DMSA storage limitation, as an action under this SEIS. In this way, each Upper Division State could individually benefit from the provisions of the DMSA in the absence of an Upper Basin Demand Management Program, including the ability to store conserved water at Lake Powell and other Initial Units in accordance with the terms of the DMSA.

C. Increased Lower Basin Reductions at Higher Elevations

Pursuant to the NOI, Reclamation anticipates revising the Section 2.D Shortage Conditions in the 2007 Interim Guidelines to "decrease the quantity of water that shall be apportioned for consumptive use in the Lower Division States (Arizona, California and Nevada)." NOI at 69044. Utah supports deeper reductions to the Lower Division States' consumptive uses at higher elevations than those currently required by the 2007 Interim Guidelines, including reductions in California's consumptive uses which are not currently required under Section 2.D of the 2007 Interim Guidelines.

D. Engagement with Mexico

While Utah recognizes the domestic nature of NEPA generally and this SEIS process, in particular, we support appropriate parallel binational discussions with the Republic of Mexico on potential actions it may be willing to undertake to protect the system consistent with the 1944 US-Mexico Water Treaty. For more than seventy years, Mexico has been a key partner in addressing changing conditions in the Colorado River Basin, most recently through Minute 323 to the 1944 Treaty.

III. Framework Agreement Alternative

The Upper Division States through the Upper Colorado River Commission (UCRC) and the Lower Division States have committed to a process to develop a consensus Framework Agreement Alternative. NOI at 69044. The Basin States will be working on this process through January 31, 2023. 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.

IV. Utah’s Position on Post-2026 Criteria

The basis for the SEIS is the failure of the 2007 Interim Guidelines to adequately protect the system. Utah will not support the continuation of the Guidelines beyond the Interim Period (2026) as contemplated by the proposed No Action Alternative. NOI at 69044. Operations under the 2007 Interim Guidelines have revealed the danger of operating a system based on a fixed hydrology rather than a variable one; the shortcomings of operating Lakes Powell and Mead based on elevations rather than volumes; the difficulty of basing reservoir operations on unreliable forecasts; and, reservoir operations that favor, or can be manipulated to favor, one basin over the other.

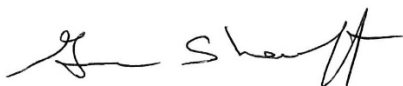
While the NOI represents that the post-2026 operations will be subject to a separate NEPA process, the NOI also states that the SEIS “will inform and complement the development of post-2026 guidelines.” NOI at 69043. Accordingly, Utah will insist on a plan for post-2026 Operations that is resilient, will adapt to changing conditions on the river, can be implemented in a fair and transparent manner and will be sustainable over time.

In particular, Utah will insist on operations that are effective across the full range of possible future hydrologic conditions and coordinated reservoir operations that are not subject to balancing releases based on tiers/elevations or inaccurate, premature forecasting. Furthermore, Utah will support operations that include flexibility through transparent accounting and modeling and operations that can adequately respond to changing hydrology and reservoir elevations. Finally, Utah will require that post-2026 operations will be equitable throughout the Colorado River system, and will not favor one basin, or one state, over the other.

V. Conclusion

Once again, the state of Utah appreciates the opportunity to provide comment. We also support the initiative taken by the Department of Interior, through Reclamation, to respond to the critical situation on the river through this NEPA process and absent a Lower Basin shortage declaration by the Secretary of Interior. See Consolidated Decree of the Supreme Court in *Arizona v. California*. It is Utah’s expectation that Reclamation will consult with the Basin States on the development of a Preferred Alternative, including consideration of a potential consensus Framework Agreement Alternative. We look forward to continued cooperation and partnership with the federal government, the Colorado River Tribes and key stakeholders in resolving the unprecedented issues facing the Colorado River Basin.

Regards,



Gene Shawcroft, P.E.
Colorado River Commissioner, State of Utah