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MARK GORDON
GOVERNOR

BRANDON GEBHART, P.E.
STATE ENGINEER

December 20, 2022

Genevieve Johnson
Reclamation 2007 Interim Guidelines SEIS Project Manager
Upper Colorado Basin Region,
125 South State Street, Suite 8100,
Salt Lake City, Utah 84138
VIA EMAIL - 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 Ms. Johnson,

The Wyoming State Engineer, Wyoming's Colorado River Governor's Representative, respectfully submits the following comments in response to the Notice of Intent To Prepare a Supplemental Environmental Impact Statement (SEIS) 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 Wyoming's input and comments and request that they be incorporated into the preparation of the revised reservoir operating guidelines SEIS under the National Environmental Policy Act ("NEPA") process.

According to the NOI, the purpose of the SEIS is to supplement the Environmental Impact Statement completed for the 2007 Interim Guidelines in order to modify operating guidelines for the operation of Glen Canyon and Hoover Dams to address historic drought and low runoff conditions in the Colorado River Basin. Wyoming understands that Reclamation is employing a scoping process for the SEIS to potentially revise reservoir operating guidelines established in the Record of Decision for the 2007 Interim Guidelines for the operation of Glen Canyon and Hoover Dams in 2023 and 2024 operating years, and potentially subsequent years if necessary and appropriate.

Wyoming and the other six Colorado River Basin States have a unique interest in the water supplies of their states, including supplies from the Colorado River and its tributaries. As parties and beneficiaries to the interstate compacts, laws, and Supreme Court decrees that govern the management of the Colorado River, the Basin States have a specific interest in river management to protect the economic, health, and welfare interests of their residents who rely on the river. Recognizing the unique status of the States, the Secretary must meet her legal obligation to consult with the Governors' Representatives and collaborate on the operations being considered in the SEIS. Further, the Secretary is vested with the

Board of Control
307-777-6178

Ground Water
307-777-6163

Interstate Streams
307-777-1942

Surface Water
307-777-6475

responsibility of managing the mainstream waters of the lower Colorado River pursuant to federal law. This responsibility must be carried out consistent with applicable federal law. In contrast, Wyoming has the exclusive right and power to regulate within its boundaries the appropriation, use, and control of water, the consumptive use of which is apportioned and available to Wyoming from the Colorado River System.

Wyoming believes it is beneficial to pursue limited additional actions beyond those contemplated in the 2007 Interim Guidelines to reduce the likelihood of reaching critical elevation levels in Lake Powell and Lake Mead through 2026. The 2007 Interim Guidelines and the 2019 Drought Contingency Plans (DCPs) were based on the hydrologic data available and reservoir storage conditions at that time. Since then, conditions in the Colorado River Basin have continued to deteriorate, and have highlighted risks and vulnerabilities in the system. The hydrology of the past 23 years, driven by higher temperatures and impacts of climate change, is the driest 23-years in the period of record, and one of the driest periods in the last 1,200 years. Additionally, water depletions downstream of Lee Ferry have exceeded the available water supply and drained available storage. Dry hydrology, Lower Basin depletions which exceed available supply, and exhausted storage in Lake Powell and downstream all contribute to the need for the proposed actions.

The NOI identifies only three sections of the 2007 Interim Guidelines for potential limited revisions. Those sections and Wyoming's related comments are as follows:

- Revising Section 2.D (“Shortage Conditions”), including potential modifications to Sections 2.D.1.b and 2.D.1.c to decrease the quantity of water that shall be apportioned for consumptive use in the Lower Division States (Arizona, California, and Nevada). Any modifications to these sections would be based on current and anticipated reservoir and hydrologic conditions in the Colorado River Basin, including any potential modifications to Glen Canyon Dam operations pursuant to this SEIS.

Wyoming supports decreasing the quantity of water to be apportioned for consumptive use in the Lower Division States in light of the dry hydrology, depleted storage, and decreased Lake Powell releases resulting from low runoff conditions accelerated by climate change. Wyoming generally asserts that balancing consumptive uses and depletions with available supply is the foundation for sustainable management. Wyoming consumptive uses and depletions are already limited by available supply. To achieve this result in the Lower Basin, the Secretary must begin to account for and assess actual depletions, evaporation, seepage, and other system losses. This could be accomplished by decreasing the quantity of water apportioned to the Lower Division States at Lake Mead elevations which are higher than those identified in Sections 2.D.1.b and 2.D.1.c, or accomplished by any other available method. The quantity of water apportioned to the Lower Division States could be reduced by approximately 1.5 million acre-feet to account for evaporation, seepage, and other system losses at the highest tier identified in the Lower Basin DCP. Additional reductions should be made as Lake Mead elevations and inflows decline.

- Revising Section 7.C (“Mid-Year Review”) to allow for potential determinations in a mid-year review that would allow for reduced deliveries from Lake Mead pursuant to Section 2 of the 2007 Interim Guidelines.

Wyoming supports determinations in a mid-year review that would allow for reduced deliveries from Lake Mead pursuant to Section 2 of the 2007 Interim Guidelines. Allowing for such a determination in April, when the water supply for a given year is better known, improves overall water management and will help balance consumptive uses and depletions with available supply. Currently, the 2007 Interim Guidelines only allow for increasing deliveries from Lake Mead after a mid-year review which fails to recognize the changing conditions in the Colorado River Basin.

- Revising Sections 6.C (“Mid-Elevation Release Tier”) and 6.D (“Lower Elevation Balancing Tier”) to modify and/or reduce the quantity of water released from Glen Canyon Dam. Any modifications to these sections would be based on current and anticipated reservoir and hydrologic conditions in the Colorado River Basin, including any potential modifications to Hoover Dam operations pursuant to this SEIS.

Wyoming acknowledges that reduced releases from Glen Canyon Dam may be needed in response to prolonged drought and low runoff conditions accelerated by climate change. The Secretary has a legal obligation to operate Glen Canyon Dam in a manner that promotes the Upper Basin’s ability to continue compliance with the Colorado River Compact. Any Lake Powell releases must account for those considerations found in Section 602(a) of the 1968 Basin Project Act as informed by current conditions resulting from dry hydrology and climate change impacts. Further, balancing should be removed from the Lower Elevation Balancing Tier because, among other things, the critical period of record is now over 23 years long and any balancing at lower elevations under current conditions jeopardizes future Lake Powell storage levels and releases. Reclamation should also account for seepage in addition to intentional releases to calculate the “release volume” from Glen Canyon Dam.

Any revisions to the 2007 Interim Guidelines which do not reflect an appropriate consensus must be limited to the Secretary’s authority only. Importantly for the long-term stable management of the Colorado River, the 2007 Interim Guidelines activated a legal agreement among the Basin States. Through that agreement, the Basin States intended to, among other things, 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. The Basin States agreed to mandatory consultation provisions to address future controversies through consultation and negotiation, as a requirement, before resorting to litigation. With respect to the various interests, positions and views of each of the seven Basin States, that provision added an important new element to the modern evolution of the legal framework for the prudent management of the Colorado River. Building appropriate consensus remains preferable to protracted conflict and uncertain outcomes from litigation. Any revised reservoir operations which do not reflect an appropriate consensus must be limited to actions within the Secretary’s authority only.

In any consensus framework agreement or other alternative, the 1922 Colorado River Compact, the 1948 Upper Colorado River Basin Compact, and the 1944 Treaty with Mexico must be the foundation for any operating guidelines. They provide durability, certainty, and stability in managing the Colorado River System and infrastructure. They also provide sufficient flexibility to address current and future risks. The fundamental basis for the 2007 Interim Guidelines is that the foundational considerations were honored and achieved through the development of a consensus seven-state recommendation that was incorporated into the adopted preferred alternative. Wyoming remains committed to working with

the other Basin States, Native American Tribes (Tribes), water users, and other stakeholders to achieve appropriate consensus.

Revised operating guidelines need to provide certainty and address current risks and vulnerabilities in the short term. The SEIS must consider the immediate, and reasonably possible, future hydrologies that the Basin could face, reflecting current hydrologic data and projections, depleted reservoir storage conditions, and the experience gained from the 2007 Interim Guidelines and the DCPs. Any actions should also be transparent and provide an accurate accounting of all Colorado River system depletions and available supply.

Any revised reservoir operating guidelines should include or at least not frustrate the advancement of meaningful water conservation programs in both the Upper and Lower Basins and across all water use sectors. Water conservation programs should focus on long-term water conservation improvements that will result in long-term system conservation.

The geographic scope of the SEIS must remain consistent with the geographic scope of the 2007 Interim Guidelines. The geographic scope begins with Lake Powell and extends downstream along the Colorado River floodplain to the Southerly International Boundary with Mexico. In addition to the potential impacts that may occur within the river corridor, the alternatives may also affect the water supply that is available to specific Colorado River water users in the Lower Basin. The operation of any reservoirs upstream of Lake Powell, including those in Wyoming, are outside the scope of the SEIS.

Any revised reservoir operating guidelines must consider and promote the ability to generate hydropower at Glen Canyon Dam. If Lake Powell reaches critical elevations, it could lose the ability to generate hydropower or even release sufficient water to comply with the 1922 Compact. Losing the ability to generate hydropower could interrupt electrical service to power customers, including municipalities, cooperatives, irrigation districts, federal and state agencies and Tribes, and the continued functioning of the western Interconnected Bulk Electric System that extends from Mexico to Canada and from California to Kansas and Nebraska. In addition to losing a large clean power supply and soft start capability for western grid that allows power to be safely restored after blackouts, revenues from hydropower fund many important purposes. Further, funding provided by hydropower generation not only provides these direct benefits, but also helps provide the Upper Basin the ability to develop and use it 1922 Compact apportionment. However, the impounding and use of water for the generation of power is subservient to other beneficial consumptive uses, and cannot preclude or impair the appropriation of water for those other uses pursuant to applicable State law.

In considering the reservoir operating guidelines contemplated in the SEIS, Reclamation must coordinate with the International Boundary and Water Commission and representatives of Mexico regarding potential cooperative actions in the Colorado River Basin pursuant to the 1944 United States-Mexico Treaty on Utilization of Waters of the Colorado and Tijuana Rivers and of the Rio Grande. These efforts should promote and facilitate Mexico's ability to undertake water savings or reductions in parity with those being contemplated in the United States.

In addition to these comments, Wyoming has also joined the other Upper Division States in providing comments to the SEIS through the Upper Colorado River Commission. Wyoming fully incorporates those comments here as well. Additionally, Wyoming has committed to a process with the other Basin

States to develop a consensus Framework Agreement Alternative. As part of that process, Wyoming has committed to considering a Proposed Framework Agreement Alternative put forward by the Southern Nevada Water Authority as part of the State of Nevada's comments to the SEIS. Wyoming does not endorse or support any element of SNWA's proposed alternative, but instead opposes some of the specific elements of that proposal. However, Wyoming intends to consider the proposal in an effort to reach an appropriate consensus framework agreement.

By providing these comments, Wyoming does not waive any rights, including any claims or defenses, it may have or as may accrue under any existing federal or state law or administrative rule, regulation or guideline, including without limitation the Colorado River Compact, the Boulder Canyon Project Act, the Upper Colorado River Basin Compact, the 1944 Water Treaty, the Consolidated Decree of the Supreme Court in Arizona v. California, the Colorado River Storage Project Act, the Colorado River Basin Project Act and any other applicable provision of federal law, rule, regulation, or guideline.

Wyoming thanks you for the opportunity to provide comments on the development of the SEIS. We anticipate providing additional comments during the SEIS process as well. We look forward to continuing our partnership with you, the Other 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 black ink, appearing to read "Brandon Gebhart". The signature is fluid and cursive, with a large initial "B" and a long horizontal stroke extending to the right.

Brandon Gebhart, P.E.
Wyoming State Engineer