

# STATE OF COLORADO

---

## Colorado Water Conservation Board

### Department of Natural Resources

1313 Sherman Street, Room 721  
Denver, Colorado 80203  
Phone: (303) 866-3441  
FAX: (303) 866-4474  
www.cwcb.state.co.us



### MEMORANDUM

TO: Colorado Water Conservation Board Members

FROM: Randy Seaholm *RS*  
Chief, Water Supply Protection

DATE: March 13, 2006

RE: **Agenda Item 6, March 21-22, 2006 Board Meeting: Water Supply  
Protection – Colorado River Discussions**

---

Bill Owens  
Governor

Russell George  
Executive Director

Rod Kuharich  
CWCB Director

Dan McAuliffe  
Deputy Director

#### Background:

The drought, which began in 1999, resulted in a Lake Powell drawdown of approximately 16 maf through 2004. This left Lake Powell with about 8 maf of live storage and just over 4 maf of storage above the minimum power pool, which had the drought continued without any relief could have been lost in one or two years. Meanwhile, Lake Mead was full enough that surplus releases were being made to the Lower Basin and Mexico during the first few years of the drought. As a result, the Upper Division States requested the Secretary of Interior, during the development of the 2005 Annual Operating Plan for Colorado River reservoirs, reduce releases out of Lake Powell. The Lower Division States strongly resisted and even questioned whether or not the Secretary had the authority to do so. The Secretary of Interior, while she did not reduce the releases from Lake Powell, did direct the U.S. Bureau of Reclamation (Reclamation) to develop shortage criteria for the Lower Basin and to develop coordinated operating strategies for Lakes Powell and Mead under low reservoir conditions.

As a result, on June 15, 2005, Reclamation published a Federal Register Notice announcing its intent to solicit comments and hold public meetings on the development of management strategies for Lakes Powell and Mead under low reservoir conditions, which strategies would include the development of Lower Basin Shortage Guidelines. In response, the 7-Colorado River Basin States sent a letter to Reclamation on August 25, 2005 indicating the states were discussing ways to utilize water surface elevations or volumetric contents at both Lakes Powell and Mead to determine the beginning and end of Lower Basin Shortage Guidelines and operations under low reservoir conditions. Colorado's negotiating team consisted of Rod

Kuharich, Scott Balcomb and Jim Lochhead with support from myself as Colorado's representative to the Technical Group.

On January 31, 2006, after three days of intense discussions, representatives of the 7-Colorado River Basin states reached tentative agreement on a set of recommendations to Secretary of Interior Norton for consideration by Reclamation during the NEPA scoping process for the development of shortage guidelines for the Lower Basin and for the coordinated operations of Glen Canyon and Hoover Dams under low reservoir conditions. The Basin states recommendations are contained in three documents: 1) a transmittal letter to Secretary Norton, 2) a Seven Basin states' Preliminary Proposal Regarding Colorado River Interim Operations, and 3) a draft Basin states agreement. These three documents were sent to Secretary Norton on February 3, 2006 and are attached hereto.

It is anticipated that as the Basin states and stakeholders continue through the NEPA process that both the preliminary proposal and the draft agreement may be refined and more detail added, and additional agreements developed as necessary among the parties to implement the recommendations made to Interior.

**Legal Issues Set Aside:**

1. **Lower Basin Overuse** – Lower Basin uses averaged 7.989 maf from the mainstem, 2.508 maf on the tributaries and there was 1.321 maf of evaporative losses from Lakes Mead, Mohave, Havasu and Imperial during the 1996-2000 time frame. Some of the uses were the result of surplus conditions. The use of surplus and unused allocations in one state creates no recurrent right to the use of such waters.
2. **Tributary Uses** - Arizona argues that they have unrestricted use of tributary water contrary to the plain reading of the Colorado River Compact. The Compact allowed for only an additional 1.0 maf of tributary use. Nevada's efforts to develop a Virgin\Muddy River pipeline to support Las Vegas rapid growth raised the tributary issue to the forefront.
3. **Mexican Treaty Deliveries** - The Upper Basin is being charged for one-half of the Mexican Treaty obligation pursuant to the 1970 Coordinated Long-Range Operating Criteria. Tributary inflows under today's conditions average about 1.3 maf, even in light of the Lower Basin's current uses.
4. **Coordinated Long-Range Operating Criteria** – The Criteria in order to maintain the respective legal positions of the states in 1970 have created a large disparity in reservoir storage during significant droughts. Lake Powell absorbs all the effects of the drought on the front end while Lake Mead absorbs the drought impacts on the backend until Lake Powell recovers to an elevation that is at or above the 602(a) storage level. Calculation of 602(A) storage requirements and the inclusion of minimum power protection and an annual delivery by the Upper Basin of one-half of the Mexican Treaty obligation are the areas of dispute.

**2005-2006 7-Basin State Discussions:**

**7-Basin State Goals** – Setting aside the legal issues, the goals of these discussions were to minimize the shortages that the Lower Basin would incur and to avoid the possibility

of curtailment of water uses in the Upper Basin during severe and prolonged drought. The 7-Basin States recognized that the water resources of the Colorado River Basin, particularly in the Lower Basin, during drought conditions had been stretched to the limit and that a more comprehensive approach was required. The States commented to the Secretary that in addition to lower basin shortage criteria and better coordination of Powell and Mead operations during low reservoir conditions that an extensive and comprehensive effort was needed and suggested the inclusion of extensive water conservation efforts and actions to augment the water supplies of the Colorado River Basin.

Colorado's stated goals were to protect storage in Lake Powell, first and foremost to assure that Powell operations protected the Upper Basin from the potential for water use curtailments to the maximum extent possible. The next goal was to maintain the power operations at Lake Powell, whose peaking power is vital to several million people and the primary source of revenues used to repay CRSP participating projects and support programs such as the Colorado River Salinity Control Program, the Endangered Species Recovery Programs in the Upper Colorado and San Juan, and the Glen Canyon Adaptive Management Program.

**Proposed 7-State Recommendations** - The "Proposal Regarding Colorado River Interim Operations" addresses the full range of expected operations of both Lake Powell and Lake Mead through 2025. It identifies water surface elevations in both Lake Powell and Lake Mead where the water releases from Glen Canyon Dam would be modified to either conserve storage in Lake Powell or to attempt to balance the storage in the two reservoirs. The conservation releases from Glen Canyon Dam, ranging between 7.0 and 8.23 MAF, are to protect critical water surface elevations in Lake Powell and to help avoid the potential for a Compact Call that would curtail uses in the Upper Basin. The Upper Basin did not want Glen Canyon releases to go below 7.0 MAF annually, unless such was unavoidable, because of concerns over meeting the 10-year running average delivery obligation to the Lower Basin of 75 MAF.

Balancing releases from Glen Canyon are to protect critical water surface elevations in Lake Mead and to reduce shortages in the Lower Basin. In order to accomplish these objectives, the annual releases from Glen Canyon Dam will vary from 7.0 maf to 9.5 maf unless Lake Powell is nearly full and equalization determines Glen Canyon releases need to be larger. The recommendation for balancing releases is dependent on the Lower Basin (primarily Arizona) taking certain levels of shortage (400,000 or 500,000 or 600,000 AF depending on storage in Lake Mead as illustrated on the diagram) at the same time balancing is occurring. Balancing may also occur when elevations in Lake Mead reach critical levels that threaten deliveries to Southern Nevada from Lake Mead.

Arizona, when it received authorization for the Central Arizona Project (CAP), accepted that CAP would take nearly all of any shortages in the Lower Basin. The manageable level of shortages that Arizona was willing to accept, without further discussions, was 600,000 AF following the incremental steps shown on the coordinated operations diagram attached hereto. Furthermore, the Lower Basin proposed modifications to the

Interim Surplus Guidelines (ISG) that expanded the range of “normal operation” by eliminating the “partial domestic surplus” step and capped a “domestic surplus” at 450,000 AF.

The computer modeling that was done to develop these criteria relied on Reclamation’s CRSS program using the current Upper Basin depletion schedule (6.0 MAF) and the current 602(a) storage algorithm, which determines the storage required to protect current Upper Basin depletions and reservoir power pools during the critical drought period. The Upper Basin was insistent on these modeling parameters, which Arizona in particular objected to. The “2025 termination unless renewed” provision associated with the coordinated Powell-Mead operations proposal is the principal reason that the 7-states allowed the proposed coordinated operations to move forward. Reclamation, with assistance from the 7-state technical workgroup, as indicated that they will prepare a report that documents the modeling runs and results used to develop the proposed operations plan.

The recommendations in the proposed 7-state agreement address system efficiency, extraordinary conservation and augmentation projects. System efficiency projects are those projects that conserve, or salvage, water that is being lost to the Colorado River System where there is not a Section 5 Boulder Canyon Project Act water service contract associated with the use of the water that is being lost. An example of such a project is the conservation, or salvage, of water that is currently flowing to Mexico, that is above the United States’ delivery requirement to Mexico in accordance with the 1944 Mexican Water Treaty. Extraordinary conservation projects are associated with the conservation of water that is being lost to the Colorado River System where there is a Section 5 Boulder Canyon Project Act water service contract associated with the use of the water that is being lost. An example of an extraordinary conservation project is the fallowing of a parcel of land within an irrigation district that has had a history of use. Augmentation projects are projects, such as weather modification and desalination that provide additional water for use within the Colorado River System.

The Basin states have proposed that the Secretary develop a policy and accounting procedure that allows water that is conserved through extraordinary conservation measures or efficiency projects or that is imported into the Colorado River System from non-Colorado River sources to be transferred under certain conditions to the project beneficiary through Articles II(B)(2) and II(B)(6) of the 1964 Decree in *Arizona v. California*. The Basin states have suggested an accounting mechanism that allows this to occur through the concept of creating “Intentionally Created Surplus” (ICS) credits. The ICS pool in Lake Mead would be limited to a combined total of 2.1 MAF at any time. All ICS water would be reduced by 5% in order to provide a benefit to the system as a whole. ICS water would be subject to upto a 3% evaporation charge as well and subject to spill under certain storage conditions in Lake Mead. In a specific year through forbearance agreements, these ICS credits could be used by the Section 5 contractor in addition to the water that was apportioned to the contractor.

The Basin states proposal also recognizes the desirability of being able to have exchanges of water between and among the Lower Division states. Thus, the proposal would allow a Section 5 Boulder Canyon Project Act contractor in one Lower Division state to secure an additional water supply by funding the development of a non-Colorado River System water supply in another Lower Division state. The new non-Colorado River water supply developed would be consumptively used in the State in which it was developed by a contractor and that contractor would intentionally reduce its consumptive use of Colorado River water. This would allow the contractor in the other Lower Division state that provided the funding for development of the non-Colorado River water supply to consumptively use the Colorado River water that was intentionally unused. An example of such a project would be the construction of a desalinization project where the product water would be used in the state of the desalinization project and a like quantity of Colorado River water would be used in another Lower Division state.

A final caution as this process proceeds is to be sure that off-ramps of one kind or another do not get inserted into the process that negate the effectiveness of the proposal.

**Staff Recommendation:**

Staff recommends that the Board approve the attached 7-state agreement documents and authorize Colorado's negotiating team to sign the agreement. In order for Scott Balcomb, Colorado's Upper Colorado River Commissioner, to sign the agreement, the Board must recommend to the governor that Mr. Balcomb be authorized to do so and subsequently the Governor so designate. We have attached a proposed executive order for the Governor's signature.

## Explanation of Compromise Scenario

As of 2/1/2006

Powell Elevation (ft)	Powell Operation	Powell Live Storage (maf)
3700	Equalize or 8.23 maf release <i>expected 30% of time</i>	24.32
3630.0 - 3664.4 (2006 - 2025)	8.23 maf release If Mead < 1075 balance contents min\max release 7.0 and 9.0 maf	14.85 - 19.08 (2006 - 2025)
3575	7.48 maf release If Mead < 1025 make 8.23 maf release	9.52
3525	Balance Contents	5.93
3490 (min. power)	min\max release 7.0 and 9.5 maf	4.00
3370		0.00

Historic Low - March 2005; Elevation 3555.90; Contents 8.015 maf

Mead Elevation (ft)	Mead Operations	Mead Live Storage (maf)
1220	Flood Control or Quantified Surplus	25.94
70R Strategy	Domestic Surplus (+450 kaf)	
1145 Prev. Partial Dom Surp 1125	Normal 9.0 maf release	15.90 13.85
1075	400 kaf shortage	9.37
1050 (SNWA Upper Intake)	500 kaf shortage	7.47 (Min. Power)
1025	600 kaf shortage	5.80
1000 (SNWA Low Intake)		4.33
895		0.00

Projected Low - May 2007; Elevation 1125.96; Content 13.947 maf

*Mead below 1075 while Powell is in Upper Balancing Zone (eq line & 3575) = 15% of time (295\98\*20)*

*Mead below 1025 while Powell is in the 7.48/8.23 Zone (3575 & 3525) = 2.6 % of time (51\98\*20)*

*Mead below 1075 while Powell is in 7.48/8.23 Zone (3575 & 3525) & in previous year Powell in lower balance zone (below 3525)= .9 % Of time (17\98\*20)*

*Mead at or below 1075 & Powell in Upper Balancing Zone (eq line & 3575) and in previous year Powell in the 7.48/8.23 = 3.2 % of time (62\98\*20)*

Blue indicates the previous operation strategy that did not change.

Red indicates portions of previous strategy that were eliminated.

Black, in combination with Blue indicates the proposed operations strategy

**EXECUTIVE ORDER**

**COMMISSIONER  
COLORADO RIVER**

**ORDERED:**

That Scott M. Balcomb of Glenwood Springs, Colorado, pursuant to Sections 24-1-109 and 37-60-109, C.R.S (2005), be and is hereby appointed as:

- 1) Colorado's Commissioner on the Colorado River involving the Seven Basin States' Discussions and Negotiations, and
- 2) the Upper Colorado River Commissioner

to negotiate interstate agreements, on behalf of Colorado, in a manner consistent with the law of the river, effective from September 23, 1999 (nunc pro tunc), for a term expiring at the pleasure of the Governor:

Given under my hand and the  
Executive Seal of the State of  
Colorado, this \_\_\_\_\_ day of  
\_\_\_\_\_, 2006

Bill Owens  
Governor

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

February 3, 2006

Honorable Gale A. Norton, Secretary  
Department of the Interior  
1849 C. Street, NW  
Washington, D.C. 20240

Re: Development of Lower Basin Shortage Guidelines and Coordinated Management  
Strategies for the Operation of Lake Mead and Lake Powell Under Low Reservoir  
Conditions

Dear Secretary Norton:

The materials attached to this letter contain descriptions of the programs that the seven Colorado River Basin States suggest be included within the scope of the environmental impact statement (EIS) for the proposed *Colorado River Reservoir Operations: Development of Lower Basin Shortage Guidelines and Coordinated Management Strategies for Lake Powell and Lake Mead Under Low Reservoir Conditions* (70 Fed. Reg. 57322) (Sept. 30, 2005).

The Basin States, Bureau of Reclamation and others have consulted regularly since our previous correspondence on August 25, 2005 to further discuss and refine recommended management strategies for the Colorado River system. Subsequently, individual entities within the seven Basin States submitted oral and written comments to the Bureau of Reclamation on the above-referenced EIS process. Attachment A, "Seven Basin States' Preliminary Proposal Regarding Colorado River Interim Operations," is submitted as a consensus document on behalf of the seven Basin States. Please recognize that the States are still actively working on the matters addressed in this submission and anticipate further refinement.

Our recommendation is designed to provide input for the Department's consideration as it develops additional operational and water accounting procedures to: 1) delay the onset and minimize the extent and duration of shortages in the Lower Division States; 2) maximize the protection afforded the Upper Division States by storage in Lake Powell against possible curtailment of Upper Basin uses; 3) provide for more efficient, flexible, responsive and reliable operation of the system reservoirs for the benefit of both the Upper and Lower Basins by developing additional system water supplies through extraordinary conservation, system efficiency and augmentation projects; 4) allow the continued development and use of the Colorado River resource in both the Upper and Lower Basins; and 5) allow for development of dedicated water supplies through participation in improvements to system efficiency and clarification of how to proceed with development of non-system water reaching the Lower Basin



The Honorable Gale A. Norton

February 3, 2006

Page 2 of 3

mainstream. It is our position that implementation of these operational and accounting procedures can be accomplished without modification of the Long Range Operating Criteria or other elements of the law of the river.

The States' attached proposal incorporates an approach to shortage management. Additionally, the proposal includes modification and extension of the Department's Interim Surplus Guidelines to incorporate operations for all reservoir conditions.


The attached proposal also addresses the States' recommended approach to implementation of shortages pursuant to the U.S.-Mexico Treaty of 1944. We request that the Department of the Interior initiate, at the earliest appropriate time, consultation with the U.S. Section of the International Boundary and Water Commission and the U.S. Department of State on implementation of Treaty shortages. We further request the opportunity to consult with Interior and State Department officials on this issue as the federal government formulates its approach to any bi-national consultation with Mexico.

An agreement between Basin State water managers and users will be necessary to put in place additional terms upon which they have reached common understanding. We intend that this agreement be finalized while Reclamation is preparing the draft EIS, and be executed as soon as practicable. We are including with this letter a draft version of the agreement (Attachment B), to memorialize our current understandings and to provide you the benefits of our thoughts at this time. As with Attachment A, please recognize that the parties are still actively working on the matters addressed in Attachment B, and contemplate additional development and refinement of the agreement. We recognize that timely execution of our agreement is necessary in order to allow funding of certain efficiency projects to go forward.

During the time Reclamation is preparing the draft EIS, the States will move forward with a package of other actions that include implementation of a demonstration program for extraordinary conservation in 2006, system efficiency projects, preparation of an action plan for system augmentation through weather modification, execution of a memorandum of understanding for preparing a Lower Division States interstate drought management plan, development of forbearance agreements among the Lower Division States and the initiation of a study for long-term augmentation of Colorado River system water supplies. The States have already begun the consultant procurement process to support the long-term augmentation study, and intend to complete a weather modification action plan and a memorandum of understanding for interstate drought planning as soon as practicable. The Basin States recognize that Reclamation is undertaking NEPA compliance separately to determine whether to construct a regulating reservoir near Drop 2 of the All-American Canal and urge swift completion of that process.

We appreciate the opportunity you have provided for the Colorado River Basin States to recommend to you a program of reservoir management that considers all their respective concerns and interests. The Basin States look forward to working with you and Reclamation in analyzing and addressing these matters.

Sincerely,



Herb Guenther  
Director  
Arizona Department of Water Resources



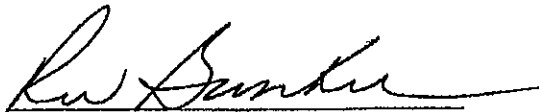
Gerald R. Zimmerman  
Executive Director  
Colorado River Board of California



Scott Balcomb  
Governor's Representative  
State of Colorado



Rod Kuharich  
Director  
Colorado Water Conservation Board



Richard Bunker  
Chairman  
Colorado River Commission of Nevada



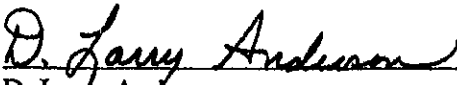
Patricia Mulroy  
General Manager  
Southern Nevada Water Authority



John R. D'Antonio, Jr.  
Governor's Representative  
State of New Mexico



Patrick Tyrrell  
State Engineer  
State of Wyoming



D. Larry Anderson  
Director  
Utah Division of Water Resources

List of Attachments:

Attachment A: Seven Basin States' Preliminary Proposal Regarding Colorado River Interim Operations

Attachment B: Draft Agreement

## **Seven Basin States' Preliminary Proposal Regarding Colorado River Interim Operations**

The Seven Basin States (States) have worked together to recommend interim operations to the Secretary that should minimize shortages in the Lower Basin and avoid the risk of curtailment in the Upper Basin through conservation, more efficient reservoir operations, and long-term alternatives to bring additional water into the Colorado River community.

The States' recommendation has three key elements. First, the States propose to manage the reservoirs to minimize shortages and avoid curtailments. Second, the States have identified actions in the Lower Basin to conserve water. Third, the States recommend a specific proposal for implementing shortages in the Lower Basin. Finally, the States recognize the need for additional water supplies to meet the current and future needs in the Basin.

### **Section 1. Allocation of Unused Basic Apportionment Water under Article II(B)(6)**

#### **A. Introduction**

Article II(B)(6) of the 1964 Decree in *Arizona v. California* (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 of Unused Basic Apportionment**

Before making a determination of a surplus condition under this proposal, the Secretary will determine the quantity of apportioned but unused water 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 the Metropolitan Water District of Southern California, (MWD) and the Southern Nevada Water Authority (SNWA), as allocated between them by agreement.
2. Meet the needs of off stream banking activities by MWD in California and SNWA in Nevada, as allocated between them by agreement.
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 2. Coordinated Operation of Lakes Powell and Mead**

Figure 1 describes the operating strategy that has been agreed to by the Colorado River Basin States.

Powell Elevation (feet)	Powell Operation	Powell Live Storage (maf)
3700	Equalize or 8.23 maf	24.32
3636 - 3664 (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- 19.02 (2008 - 2025)
3575	7.48 maf	9.52
3525	8.23 maf if Mead < 1025 f	5.93
3370	Balance contents with a min/max release of 7.0 and 9.5 maf	0

Lake Powell Equalization Elevation Table

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

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

1. Equalization: In 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 year to the extent necessary to equalize storage in the two reservoirs, or otherwise to release 8,230,000 acre-feet from Lake Powell.
2. Upper Elevation Balancing: In 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 ft., the Secretary shall release 8,230,000 acre-feet from Lake Powell if the projected elevation of Lake Mead is at or above 1075 ft. If the projected elevation of Lake Mead is below 1075 ft., 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 years when Lake Powell content is projected on January 1 to be below 3575 ft. and at or above 3525 ft., the Secretary shall release 7,480,000 acre-feet from Lake Powell if the projected elevation of Lake Mead is at or above 1025 ft. If the projected elevation of Lake Mead is below 1025 ft., the Secretary shall release 8,230,000 acre-feet from Lake Powell.
4. Lower Elevation Balancing: In years when Lake Powell content is projected on January 1 to be below 3525 ft., 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.

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.

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.

The August 24-month study projections for the January 1 system storage and reservoir water surface elevations, for the following year, would be used to determine the applicability of the coordinated operation of Lakes Powell and Mead.

### **Section 3. Determination of Lake Mead Operation during the Interim Period**

#### **A. Interim Surplus Guidelines**

1. The Basin States recommend that the Secretary continue to implement the Interim Surplus Guidelines (ISG) except as modified by this proposal, including the following:

- a. Partial Domestic Surplus would be discontinued upon issuance of the Record Of Decision ("ROD"); and
  - b. The ISG effective period would be extended through December 31, 2025.
2. During the years 2017 through 2025 the Secretary shall distribute Domestic Surplus water:
  - 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 in Arizona, 100,000 acre-feet per year in addition to the amount of Arizona's basic apportionment available to Arizona contractors.

**B. Flood Control Surplus**

In years in which the Secretary makes space building or flood control releases pursuant to the Field Working Agreement, the Secretary shall determine a Flood Control Surplus for the remainder of that year or the subsequent year as specified in Section 7 of the ISG. In such years, releases will be made to satisfy all beneficial uses within the United States, including unlimited off-stream banking. Intentionally Created Surplus credits, as defined herein, would be reduced by the amount of any flood control release, if necessary until no credits are remaining. Under current practice, surplus declarations under the Treaty for Mexico are declared when flood control releases are made. Operation under a Flood Control Surplus does not establish any determination relating to implementation of the Treaty, including any potential changes in approach relating to surplus declarations under the Treaty. Such determinations must be addressed in a bilateral fashion with the Republic of Mexico.

**C. 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 Quantified Surplus sequentially as follows:

1. Establish the volume of the Quantified Surplus. For the purpose of determining the existence, and establishing the volume, of Quantified Surplus, the Secretary would not consider the volume of Intentionally Created Surplus credits, as defined herein.
2. Allocate and distribute the Quantified Surplus 50% to California, 46% to Arizona and 4% to Nevada, subject to 3. through 5. that follow.

3. Distribute California's share first to meet basic apportionment demands and MWD's demands. Then distribute to California Priorities 6 and 7 and other surplus contracts. Distribute Nevada's share first to meet basic apportionment demands and SNWA's 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.
4. Distribute any unused share of the Quantified Surplus in accordance with Section 1, Allocation of Unused Basic Apportionment Water Under Article II (B)(6).
5. Determine whether MWD, SNWA and Arizona have received the amount of water they would have received under Section 3 D of this proposal, Domestic Surplus, if a Quantified Surplus had not been declared. If they have not, then determine and meet all demands provided for in Section 3 D, Domestic Surplus.

#### D. Domestic Surplus

In years when Lake Mead elevation is projected on January 1 to be above 1145 ft and below 70R Strategy elevation determination, the Secretary would determine a Domestic Surplus in accordance with Section 2(B)(2) of the ISG between the effective date of the ROD and December 31, 2016 and in accordance with Section 3(A) (2) of this proposal between January 1, 2017 and December 31, 2025.

#### E. Normal Conditions

In years when Lake Mead elevation is projected on January 1 to be above elevation 1075 ft. and below 1145 ft., the Secretary would determine a normal operating condition. In any year when Lake Mead elevations are in this range, the Secretary may determine that Intentionally Created Surplus ("ICS") as described in Section 4 of this proposal is available. ICS credits may then be delivered pursuant to the provisions of Section 4.

#### F. Shortage Conditions

Shortages would be implemented in the Lower Division States and Mexico under the following conditions and in the following manner:

1. 400,000 acre foot shortage: 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., a quantity of 400,000 acre-feet shall not be released or delivered in the Lower Division States and Mexico.
2. 500,000 acre foot shortage: In years when Lake Mead content is projected on January 1 to be below elevation 1050 ft. and at or above 1025 ft. a quantity of 500,000 acre-feet shall not be released or delivered in the Lower Division States and Mexico.

3. 600,000 acre foot shortage: In years when Lake Mead content is projected on January 1 to be below 1025 ft., a quantity of 600,000 acre-feet shall not be released or delivered in the Lower Division States and Mexico.
4. The three conditions described above are illustrated in Figure 2.

Figure 2

Lake Mead Step Shortage		
Mead Elevation (ft)	Stepped Shortage	Mead Live Storage
1075 to 1050	400 kaf	9.37 to 7.47 maf
<1050 to 1025	500 kaf	7.47 to 5.80 maf
<1025 to 1000	600 kaf	5.80 to 4.33 maf
<1000	Increased reductions to be consistent with consultation(s)	<4.33 maf

5. The United States, through the appropriate mechanisms, should implement a shortage pursuant to Article 10 of the 1944 Treaty in any year in which the Secretary has declared that a shortage condition exists pursuant to Art. II(B)(3) of the Decree. The total quantity of water that will not be released or delivered to Mexico shall be based on Lower Basin water deliveries during normal water supply conditions. The proportion of the shortage that shall be borne by Mexico will be 17% ( $1.5 \text{ maf} / 9 \text{ maf} \times 100\% = 17\%$ ).
6. Arizona and Nevada will share shortages based on a shortage sharing agreement. In the event that no agreement has been reached, Arizona and Nevada will share shortages in accordance with the 1968 Colorado River Basin Project Act, the Decree, other existing law as applicable, and the Interstate Banking Agreement between Arizona and Nevada parties.
7. Whenever Lake Mead reaches elevation 1025 ft., the Secretary will consult with the States to determine whether Colorado River hydrologic conditions, together with the delivery of 8.4 million acre-feet of Colorado River water to Lower Basin users and Mexico, will cause the elevation of Lake Mead to fall below 1000 ft. Upon such a determination, the Secretary shall consult with the states to discuss further measures that may be undertaken to avoid or reduce further increases in shortage determinations. If increased reductions are required, the Secretary shall implement the reductions consistent with the law of the river.
8. The States will evaluate factors at critical elevations that may avoid shortage determinations as reservoir elevations approach critical thresholds. The States may provide operational recommendations surrounding the critical elevations at some later date.



#### **Section 4. System Efficiency, Extraordinary Conservation and Augmentation Projects**

The States propose that the Secretary develop a policy and accounting procedure concerning augmentation, extraordinary conservation, and system efficiency projects, including specific extraordinary conservation projects, tributary conservation projects, introduction of non-Colorado River System water, system efficiency improvements and exchange of non-Colorado River System water. The accounting and recovery process would be referred to as "Intentionally Created Surplus" consistent with the concept that the States will take actions to augment storage of water in the Lower Colorado River Basin. The water would be distributed pursuant to Section II(B)(2) of the Decree and forbearance agreements between the States. The ICS credits may not be created or released without such forbearance agreements.

A. The purposes of the Lake Mead Intentionally Created Surplus ("ICS") program are to:

1. Help avoid shortages to the Lower Basin. For the purposes of determining calendar year declarations of Domestic Surplus, Normal and Shortage conditions, any ICS credits would be considered system water;
2. Benefit both Lake Mead and Lake Powell; and
3. Increase the surface elevations of both Lakes Powell and Mead to higher levels than would have otherwise occurred.

B. Extraordinary Conservation Storage Credits

1. Users of Colorado River water may create ICS credits through extraordinary conservation under the following conditions:
  - a. A Boulder Canyon Project Act Section 5 Contractor ("Contractor") shall repay all outstanding system payback obligations before it can create ICS credits.
  - b. ICS credits can only be created if such water could have otherwise been beneficially used.
  - c. A Contractor notifies Reclamation by September 15 of the amount of ICS credits it wishes to create for the subsequent year.
2. ICS credits may be created only through extraordinary conservation activities. These activities include:
  - a. Fallowing of land that currently is, historically was, and otherwise would have been in the next year, irrigated.
  - b. Canal lining programs
  - c. Desalination programs

- d. Extraordinary conservation programs existing as of January 1, 2006
  - e. Other extraordinary conservation measures as agreed upon by the States
3. 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 credits created during that year. A Contractor cannot increase the amount of ICS credits it had previously scheduled to create during the year.
  4. Any ICS credits would be used first to offset any overrun for that year or future year(s).
  5. The maximum amount of ICS credits that can be created during any year through extraordinary conservation is limited to each state as listed below.
    - a. California: 400,000 acre-feet per year
    - b. Nevada: 125,000 acre-feet per year
    - c. Arizona: 100,000 acre-feet per year
  6. The maximum cumulative amount of ICS credits created through extraordinary conservation that would be available at any one time is:
    - a. 1,500,000 acre-feet for California;
    - b. 300,000 acre-feet for Nevada; and
    - c. 300,000 acre-feet for Arizona.
  7. No category of surplus water can be used to create ICS credits.
  8. At the time the ICS credits are created by extraordinary conservation, the Contractor will dedicate 5% of the ICS credits to the system on a one-time basis to provide a water supply benefit to the system. Additionally, ICS credits will be subject to annual evaporation loss (estimated to be no more than 3% annually) during each year in which no shortage has been declared. The Secretary will not assess any other charge for creating ICS credits.
  9. Contractors that have created ICS credits may recover them under the following conditions:
    - a. A Contractor may request delivery of ICS credits it has created at the time it submits its annual water order for the following year. The ICS credits would be added to the Contractor's approved water order for that year upon approval by Reclamation.

- b. The amount of ICS credits that may be recovered by California in any one year is limited to 400,000 acre-feet, by Nevada 300,000 acre-feet and Arizona 300,000 acre-feet; provided that the May 1, 24-month study for that year does not indicate that a shortage condition would be declared in the current or succeeding year.
  - c. If extraordinary weather conditions or water emergencies occur, a Contractor may request that Reclamation increase its use of ICS credits for that year.
  - d. A Contractor may request to reduce its use of ICS credits during the year for any reason, including reduction in water demands.
  - e. If Reclamation releases water for flood control purposes, ICS credits shall be reduced on a pro-rata basis among all holders of ICS credits-- if necessary until no credits remain. In determining the amount of Quantified Surplus, Reclamation shall not consider the volume of ICS credits that will be available.
10. Contractors may begin to create ICS through extraordinary conservation 1) beginning in 2006 as a pilot program (which may be lost if the Secretary does not adopt an extraordinary conservation program as part of the Coordinated Operation of Lakes Powell and Mead) or 2) after adoption of the Coordinated Operation for Lakes Powell and Mead until 2025. Any ICS credits under this program remaining at the end of the program would remain available for recovery for up to 10 years following termination of the Program.

#### C. Tributary Conservation

The Secretary should develop procedures in consultation with the States that would permit Contractors to purchase and fallow annual or permanent water rights on tributaries within the Lower Division States that have been used for a significant period of years and were created prior to Congress' adoption of the Boulder Canyon Project Act that, when retired, and verified by the Secretary, contribute water to the Colorado River mainstream for diversion by the Contractor. The water recovered by the Contractor may be used for municipal and industrial purposes only. This water would be in addition to the State's basic apportionment and would be available during declared shortages.

It is intended that the water would be taken on a real-time basis and that not more than 95% of such water will be recovered; however, if storage were required, such stored water would be subject to all provisions applicable to ICS credits created through extraordinary conservation.

#### D. System Efficiency Projects

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 Colorado River System in the United States. The Secretary in consultation with the States will identify system efficiency projects, terms for capital participation in such projects, and types and amounts of benefits the Secretary would provide in consideration of non-federal capital contributions to system efficiency projects, including a portion of the water saved by the project. Water made available to Contractors by the Secretary would be considered Intentionally Created Surplus. System efficiency projects are only intended to provide temporary water supplies and would not be available for permanent use.

Benefits to the total water available within the Colorado River System in the United States should be substantial, taking into account any benefit provided to any non-federal capital contributor. In those cases in which benefits are provided to a non-federal capital contributor in the form of a portion of the water saved by the system efficiency project, the water provided to the capital contributor should be characterized as Colorado River surplus water intentionally created by the system efficiency project. The ICS credits should be provided to the capital contributor pursuant to its BCPA § 5 surplus contract. The Secretary should first obtain the waiver or forbearance of any other BCPA § 5 surplus contractor(s) that may possess any right to the delivery of the same water, so that the Secretary may deliver it to the capital contributor pursuant to Article II (B)(6) of the Decree. The ICS credits should be provided to the capital contributor on a predetermined schedule of annual deliveries for a period of years as agreed by the Secretary and Contractor. The ICS credits would not be stored, and therefore would not spill from system reservoirs. Delivery of ICS credits during shortage conditions will be determined on a project-by-project basis.

#### E. Introduction and Recovery of Non-Colorado River System Water

The Secretary should develop procedures, in consultation with the States, that would prospectively allow non-Colorado River System water in a Lower Division State to be introduced into, conveyed through, and diverted from system reservoirs, or otherwise through the Colorado River System. The non-Colorado River System water may be introduced either (1) directly from the non-Colorado River System source, or (2) as effluent resulting from use of the non-Colorado River System water in the introducing entity's service area, assuming water quality concerns are adequately addressed by the Contractor introducing the water. This water is in addition to a state's basic apportionment and may be used during declared shortages.

Contractors proposing to introduce, convey and recover such non-Colorado River System water should make sufficient arrangements, contractual or otherwise, with the Secretary so as to guarantee that any such action causes no harm to the Secretary's management of the Colorado River System. Such arrangements would provide that the introduction, conveyance and recovery of such water be done pursuant to appropriate permits or other authorizations as required by state law, that the actual amount of water introduced, conveyed and recovered would be reported to the Secretary on an annual basis, and that no more than 95% of such water introduced will be recovered. The non-Colorado River System water would be intended to be taken on a real-time basis, and hence would not

spill from system reservoirs. However, if storage were required such stored water would be subject to all provisions applicable to ICS created through extraordinary conservation. Any agreements made with the Secretary to introduce and recover this water will survive the termination of the Coordinated Operations of Lakes Powell and Mead.

Weather modification projects should be pursued as a means of augmenting Colorado River System water supplies. However, increases in water supply that result from weather modification projects are not included within the projects defined in this Section and would not create any additional supply for a Contractor or State that engages in a weather modification project.

## **Section 5. Non-Colorado River System Water Exchanges**

Contractors in Arizona, California, or Nevada may secure an additional water supply by funding the development of a non-Colorado River System water supply in one Lower Division State for use in another State by exchange. The new water supply developed would be consumptively used in the State in which it was developed by a Contractor and that Contractor would intentionally reduce its consumptive use of Colorado River water. This would allow the Contractor(s) in the other Lower Division State(s) that provided the funding to consumptively use the Colorado River water that was intentionally unused through an agreement with the Secretary of the Interior. Through the cooperation of the International Boundary and Water Commission, United States and Mexico, similar agreements could be established by which non-Colorado River System water supplies in Mexico could be developed for use in the United States by exchange.

It could be necessary for a State or other lower priority Contractors in the State in which consumptive use was intentionally reduced to agree to forebear their use of such water depending on the then-existing priority system to use of Colorado River water, to avoid a claim against the water being delivered to the Contractor that funded the new water supply. As an alternative to forbearance, an offer by the Contractor developing the non-Colorado River System water to allow the lower priority Contractor to pay the cost of developing a portion or all of the non-Colorado River System water supplies to be developed, would be utilized to protect such a lower priority Contractor's position in the then-existing priority system. A refusal of an offer to pay the cost of developing a portion or all of the non-Colorado River System water supplies to be developed would constitute the lower-priority Contractor's waiver of a right to challenge the exchange.

## **Section 6. Accounting Mechanisms**

The operating alternatives discussed in Sections 4 and 5 will require new or modified Colorado River accounting mechanisms. No specific accounting mechanism to allow these types of operations is proposed for evaluation in Reclamation's current NEPA process. However, the description and evaluation of such accounting mechanisms would provide Contractors with the assurance that if such accounting mechanism were adopted in the Record of Decision, funds spent to propose such an arrangement in the future would not be spent in vain.

## **Section 7. Effective Period**

The proposed interim operations will be in effect 30 days from the publication of the Secretary's Record of Decision in the Federal Register. The proposed interim operations will, unless subsequently modified, remain in effect through December 31, 2025 (through preparation of the 2026 AOP), subject to a formal review of their effectiveness beginning no later than 2020.

## AGREEMENT

The [name parties] hereby enter into this Agreement effective as of \_\_\_\_\_.

### 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.

##### 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 Executive Order \_\_\_\_\_, issued \_\_\_\_\_, 2006, attached hereto as Exhibit \_\_\_\_\_ and incorporated herein by reference, 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." By resolution dated \_\_\_\_\_, attached hereto as Exhibit \_\_\_, and incorporated herein by reference, the Colorado Water Conservation Board authorized and directed its Director to negotiate with and enter into agreements with other state entities within the Colorado River Basin.

#### 4. Nevada

- a. 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 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.
- 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 \_\_\_\_\_, 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 \_\_\_\_\_, attached hereto as Exhibit \_\_\_, and incorporated herein by reference.
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 like authorities and entities of other states in the performance of any lawful power, duty, or authority. WYO. STAT. ANN. ' 16-1-101 (LEXISNEXIS 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 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 States. Through this law and practice, the Governors' Representatives 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). 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 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. Shortages in the Lower Basin will also trigger shortages in the delivery of water to Mexico pursuant to the Mexican Water Treaty of 1944, February 3, 1944, U.S.-Mex., 59 Stat. 1219, T.S. 994, 3 U.N.T.S. 313.

5. 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.

6. On August 25, 2005, the Governors' Representatives for the seven Colorado River Basin States 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.

7. On February 3, 2006, the Governors' Representatives transmitted to the Secretary their recommendation for the scope of the NEPA Process, which refined many of the elements outlined in the August 25, 2005 letter.

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.

9. In furtherance of the letters of August 25, 2005 and February 3, 2006, the Parties have reached agreement to take additional actions for their mutual benefit, which are 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.

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.

## 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.
- C. NEPA Process. The decision-making process pursuant to the National Environmental Policy Act, 42 U.S.C. §§ 4321 through 47, 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' Preliminary Proposal Regarding Colorado River Interim Operations, a copy of which is attached hereto and incorporated herein by this reference, presented by the Parties to the Secretary in furtherance of the States' letters of August 25, 2005 and February 3, 2006, and any modification of the Parties' Recommendation adopted by the Parties pursuant to this Agreement.
- F. ROD. The Record of Decision anticipated to be issued by the Secretary after completion of NEPA Process, pursuant to her letter of May 2, 2005, and the Notice published in the Federal Register on September 30, 2005, 70 Fed. Reg. 57322.
- 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. 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. In the NEPA Process, the Parties shall support the Secretary's adoption of the Parties' Recommendation in a ROD. 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, that Party shall immediately notify all other Parties in writing. The Parties shall jointly confer and, if they agree to any modification of the Parties' Recommendation, shall consult with the Secretary to advise her of such modification and request the adoption thereof in the ROD. If after such conference and consultation 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 confer 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, and this Agreement shall be of no further force or effect.

4. ROD Consistent with the Parties' Recommendation. In the event the Secretary adopts a ROD in substantial conformance with the Parties' Recommendation, 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. 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, such Party shall immediately notify all other Parties of such determination in writing. The Parties shall jointly confer, and consult with the Secretary as necessary, in order to determine whether the ROD is in substantial conformance with this Agreement, or whether any action, including the amendment of this Agreement, may resolve such concern. If after such conference and 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 continue in full force and effect as to the remaining Parties. The remaining Parties may confer 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, 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, if appropriate, 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 specific provision that the Secretary will first consult with all the States, through their designated Governor's Representatives, before making any substantive modification to the ROD. Finally, the Parties hereby request that the Secretary include in the ROD specific provision that upon a request by any State for modification of the ROD, or upon any request by any State to resolve any claim or controversy arising under this Agreement or

under the operations of Lakes Powell and Mead pursuant to the ROD, the ISG, or any other applicable provision of federal law, regulation, criteria, policy, rule or guideline, the Secretary shall invite all of the Governors, or their designated representatives, to consult with the Secretary in an attempt to resolve such claim or controversy by mutual agreement.

7. Consultation on Operations. After the Secretary commences operating Lakes Powell and Mead pursuant to the ROD, the Parties shall confer 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 in good faith confer 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 confer 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.

8. Development of System Augmentation. The Parties agree to diligently pursue system augmentation within the Colorado River System including but not limited to the determination of the feasibility of projects to increase precipitation in the basin or to augment available supplies through desalination. Additionally, 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 currently proposed for construction by the Bureau of Reclamation. Annual recovery of this interim water supply by Nevada will not exceed 40,000 acre-feet. All water available to Nevada in consideration for funding the Drop 2 Reservoir would remain available during all shortage conditions declared by the Secretary.

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 section 4(C) of the Parties' Recommendation in the form forwarded to the Secretary on February 3, 2006, 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 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.

9. Consistency with Existing Law. The Parties' Recommendation is consistent with existing law. The Parties expressly agree 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. The Parties recognize that litigation is not the preferred alternative to the resolution of claims or controversies concerning the law of the river. In furtherance of this Agreement, the Parties desire to avoid litigation, 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 any litigation. 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 conference has been completed. In addition, 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 10 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. Reservation of Rights. Notwithstanding the terms of this Agreement and the Parties' Recommendation, 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, 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 Decree in *Arizona v. California*, the Colorado River Basin Project Act of 1968, and any other applicable provision of federal law, rule, regulation, or guideline.

12. 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.

13. 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, they 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.

14. 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, or the Decree in *Arizona v. California*. 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.

15. 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 upon the termination of the ROD and the ISG.

16. 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



DRAFT

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.

**EXECUTIVE ORDER**

**MEMBER  
COLORADO RIVER 7-BASIN STATE NEGOTIATING TEAM**

**ORDERED:**

That Scott M. Balcomb of Glenwood Springs, Colorado, pursuant to Sections 24-1-109 and 37-60-109, C.R.S (2005), be and is hereby appointed as:

- 1) Colorado's Commissioner on the Colorado River involving the Seven Basin States' Discussions and Negotiations, and
- 2) the Upper Colorado River Commissioner

to negotiate interstate agreements, on behalf of Colorado in a manner consistent with the law of the river, effective from September 23, 1999 (nunc pro tunc), for a term expiring at the pleasure of the Governor:

Given under my hand and the  
Executive Seal of the State of  
Colorado, this \_\_\_\_\_ day of  
\_\_\_\_\_, 2006

Bill Owens  
Governor

The Upper Colorado River Compact is state law, having been adopted in 1949, codified as Article 62 of Title 37, of the Colorado Revised Statutes. Article VIII of the Upper Colorado River Compact established the Upper Colorado River Commission as an interstate administrative agency to be composed of one commissioner representing each of the four states of the upper division. The Governor is authorized and required to appoint a representative to the commission and to fix the compensation. The Commissioner serves at the pleasure of the Governor in accordance with the laws of Colorado and Governor Owens has appointed Mr. Balcomb pursuant to Executive Order A 186 99 to serve as Colorado's representative to the Commission effective September 23, 1999. The provisions of 37-62-101 et. seq. and Section 37-60-101, et. seq. C.R.S. govern this appointment. To date a "Purchase Order" has been issued annually to compensate the Commissioner for his time and expenses as set by the Governor.

In the "Scope of Work" that follows, the duties assigned to the Upper Colorado River Commissioner include the activities of which he has currently been participating. In as much as Colorado's Upper Colorado River Compact Commission has a duty and obligation to participate in the discussions described in the attached "Scope of Work" we never-the-less believe it appropriate to make it very clear that Colorado's Commissioner has full and complete authority to do so.

**A. Background and General Scope of Work:**

1. The Contractor will attend all meetings of the Upper Colorado River Commission and the 7-Basin State meetings, to the extent practicable, and maintain regular communication with the Commission, its Executive Director, the Executive Director for the Colorado Department of Natural Resources, the Director of the Colorado Water Conservation Board and the Commission's advisors. The contractor my also maintain regular communication with the representatives from the other parties to the Upper Colorado River Compact, with representatives from the other states and Tribes, and with others that comprise or derive water supplies from the Colorado River system.
2. Attend and participate constructively in all meetings of the Colorado River Policy Advisory Council established by Governor Owens under Executive Order B 01799, which will be convened periodically by the Executive Director of the Department of Natural Resources and Director of the Colorado Water Conservation Board to involve key stakeholders in essential briefings, discussion and strategy development; and
3. In representing the State of Colorado and its interests in matters related to the Upper Colorado River Compact and the 7-Basin States, the Contractor shall:
  - a. Give special attention to the development of California's plan to limit its depletions, both now and in the future, to its 4.4 million

acre feet of basic water allocation, California's progress with respect to the "Interim Surplus Guidelines" adopted by the Bureau of Reclamation for administration of waters within the Colorado River system, any proposals for the marketing or exchange of water supplies among the states and tribes which comprise or derive water supplies from the Colorado River basin, development of the Annual Operating Plan and reviews of the Long Range Operating Criteria, issues concerning the 1944 Mexican Water Treaty and the Colorado River Delta, discussions concerning the use of Upper Colorado River basin water in the Lower Colorado River Basin (Navajo-Gallup and Utah's Lake Powell Pipeline), potential compact litigation, and issues related to the Commission's annual budget; and

- b. Provide regular and timely reports to the executive director of the Department of Natural Resources and the Director of the Colorado Water Conservation Board concerning all significant activities and concerns related to Colorado's interests under the Upper Colorado River Compact and the 7-Basin States; and
- c. Provide an invoice of \$1,850.00 per month for 11 months (August 1, 2004 through June 30, 2005) for all cost regarding the Upper Colorado River Commission and the 7-Basin State meetings. This agreement shall not exceed \$20,350.00.
- d. The Commissioner will report to and receive direction from the CWCB either through regularly scheduled agenda items or special meetings should the need arise.