

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

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

April 30, 2007

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

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

Dear Secretary Kempthorne:

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

Basin States' Proposal

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

The Basin States' Proposal consists of the following documents:

1. Agreement Concerning Colorado River Management and Operations (Attachment "A"). This agreement among major Colorado River water interests in all seven states that share the River system is the foundation document in the Basin States' Proposal. This agreement memorializes the consensus recommendation to the Secretary for Colorado River management and operations during an interim period, sets forth agreements regarding pursuit of system augmentation and efficiency projects, and establishes a rigorous process for the resolution of claims and controversies between the parties in an effort to set aside long standing disputes on the River.
2. Proposed Interim Guidelines for Colorado River Operations (Attachment "B"). Building upon the Preliminary Proposal, the Basin States have drafted a comprehensive set of guidelines to govern Colorado River operations during the interim period. If adopted, these proposed guidelines would: (1) replace the Interim Surplus Guidelines; (2) establish guidelines for coordinated operations for Lakes Powell and Mead; (3) establish shortage guidelines for use within the United States; and (4) establish parameters for the creation and release of Intentionally Created Surplus ("ICS") and Developed Shortage Supplies ("DSS").
3. Forbearance Agreement (Attachment "C"). This draft agreement among the Lower Division States and major water users within those states recognizes that, in the absence of forbearance by the parties, surplus water is apportioned for use according to the percentages provided in Article II(B)(2) of the Consolidated Decree in *Arizona v. California*. The execution of this agreement will facilitate implementation of the ICS program.
4. Shortage Sharing Agreement between Arizona and Nevada (Attachment "D"). As anticipated by the Basin States' February 3, 2006 Preliminary Proposal, Arizona and Nevada have executed a Shortage Sharing Agreement premised upon the Secretary's reductions in deliveries within the United States of 333,000, 417,000 and 500,000 acre-feet per year based upon specific Lake Mead elevations.
5. Delivery Agreement. It will be necessary for the Secretary to enter into one or more agreements that enable and obligate the United States to deliver ICS and DSS to entities that create ICS or DSS in conformance with relevant provisions of the Guidelines and the Forbearance Agreement. At this time, the Basin States are developing a draft delivery agreement for the Department of the Interior's ("Interior") consideration and look forward to working with Interior on drafting one or more agreements that can be executed concurrently with the issuance of the ROD. The Basin States request that the U.S. Bureau of Reclamation ("Reclamation") include appropriate analysis of the

anticipated execution of one or more agreements to deliver ICS or DSS within the preferred alternative in the FEIS and the selected action in the ROD.

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

Reduced Deliveries to Mexico

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

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

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

Mexican Participation in ICS Program

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

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

Colorado River Augmentation Projects

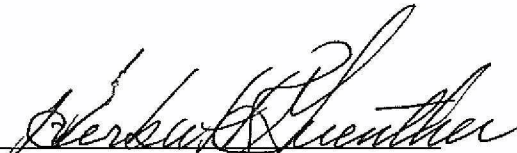
Implementation of projects to augment the long-term supply of the Colorado River is of utmost importance not only to the Basin States and the millions of people who live here, but to the nation as a whole. While no specific augmentation projects are included in the current Basin States' Proposal, the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


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

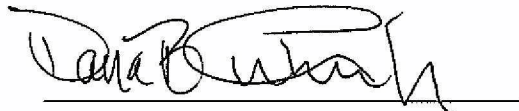
The Basin States view the inclusion in the DEIS of a quantitative analysis of the impacts to the Colorado River resulting from the implementation of future augmentation projects as a positive step and encourage you to include the same analysis in the FEIS in order to begin to establish the environmental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

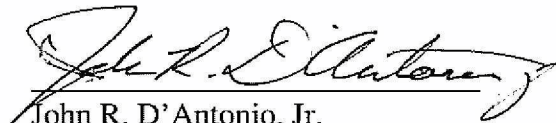
Conclusion


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



Herbert R. Guenther
Director
Arizona Department of Water Resources



Patricia Mulroy
General Manager
Southern Nevada Water Authority

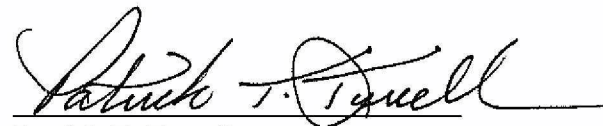

Dana B. Fisher, Jr.
Chairman
Colorado River Board of California

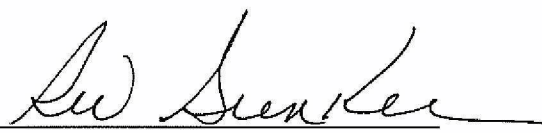

John R. D'Antonio, Jr.
Secretary
New Mexico Interstate Stream Commission


Scott Balcomb
Governor's Representative
State of Colorado


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


Rod Kuharich
Director
Colorado Water Conservation Board


Patrick T. Tyrrell
State Engineer
State of Wyoming


Richard W. Bunker
Chairman
Colorado River Commission of Nevada

Attachments

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

AGREEMENT CONCERNING COLORADO RIVER MANAGEMENT AND OPERATIONS

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

RECITALS

A. Parties.

1. Arizona.

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

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

3. Colorado.

- a. Section 24-1-109, Colorado Revised Statutes (2005) provides that “Interstate compacts authorized by law shall be administered under the direction of the office of the governor.” This includes the Colorado River Compact and the Upper Colorado River Basin Compact. Section 37-60-109 provides that “the governor from time to time, with approval of the board, shall appoint a commissioner, who shall represent the state of Colorado upon joint commissions to be composed of commissioners representing the state of Colorado and another state or other states for the purpose of negotiating and entering into compacts or agreements between said states...” By letter dated April 12, 2006, the Governor appointed Upper Colorado River Commissioner Scott Balcomb to represent the State of Colorado.
- b. Section 37-60-106, subsections (e) and (i), C.R.S. (2005), authorize the Colorado Water Conservation Board to “cooperate with the United States and the agencies thereof, and with other states for the purpose of bringing about the greater utilization of the water of the state of Colorado and the prevention of flood damages,” and “to confer with and appear before the officers, representatives, boards, bureaus, committees, commissions, or other agencies of other states, or of the federal government, for the purpose of protecting and asserting the authority, interests, and rights of the state of Colorado and its citizens with respect to the waters of the interstate streams in this state.” Therefore, by statute the Director of the Colorado Water Conservation Board is authorized to negotiate with and enter into agreements with other state entities within the Colorado River Basin.

4. Nevada.

- a. The Colorado River Commission of Nevada (CRCN) is an agency of the State of Nevada, authorized generally by N.R.S. §§ 538.041 and 538.251. CRCN is authorized by N.R.S. § 538.161 (6), (7) to enter into this Agreement. The CRCN, in furtherance of the State of Nevada’s responsibility to promote the health and welfare of its people in Colorado River matters, makes this Agreement to supplement the supply of water in the Colorado River which is available for use in Nevada, augment the waters of the Colorado River, and facilitate the more flexible operation of dams and facilities by the Secretary of the Interior of the United States. The Chairman of the Commission, signatory hereto, serves as one of the Governor’s representatives as contemplated by Section 602(b) of the 1968 Colorado River Basin Project Act, 43 U.S.C. § 1552(b) and the Criteria for Coordinated Long-Range Operation of Colorado River Reservoirs Pursuant to the Colorado River Basin Project Act.

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

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

B. Background.

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

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

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

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

AGREEMENT

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

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

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

A. Colorado River System. This term shall have the meaning as defined in the Colorado River Compact.

B. ISG. The Colorado River Interim Surplus Guidelines adopted by the Secretary on January 16, 2001, as modified by the ROD.

C. NEPA Process. The decision-making process pursuant to the National Environmental Policy Act, 42 U.S.C. §§ 4321 through 4347, beginning with the Bureau of Reclamation's Notice to Solicit Comments and Hold Public Meetings, 70 Fed. Reg. 34794 (June 15, 2005) and culminating in a Record of Decision.

D. Party or Parties. Any party or parties to this Agreement.

E. Parties' Recommendation. The Seven Basin States' comments on the DEIS transmitted to the Secretary of the Interior on or before April 30, 2007.

F. ROD. The Record of Decision anticipated to be issued by the Secretary after completion of the NEPA Process including but not limited to any interim guidelines promulgated pursuant thereto.

G. Secretary. The Secretary of the Interior or the Bureau of Reclamation, as applicable.

H. State or States. Any of the states of Arizona, California, Colorado, Nevada, New Mexico, Utah or Wyoming, as context requires.

3. Support for Parties' Recommendation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

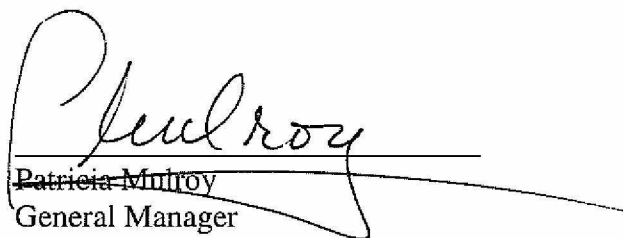
16. Term. This Agreement shall be effective as of the date of the first two signatories hereto, and shall be effective as to any additional Party as of the date of execution by such Party. Unless earlier terminated, this Agreement shall be effective for so long as the ROD and the ISG are in effect, and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

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

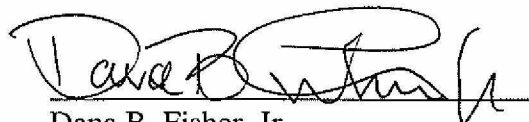
[Signatures begin on following page.]



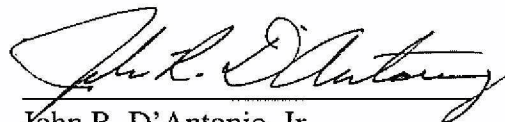
Herbert R. Guenther
Director
Arizona Department of Water Resources



Patricia Mulroy
General Manager
Southern Nevada Water Authority



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




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



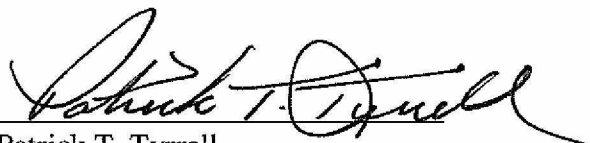
Scott Balcomb
Governor's Representative
State of Colorado



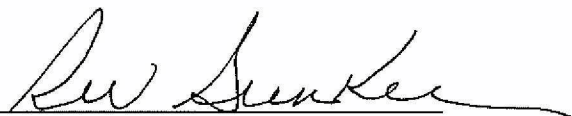
Dennis J. Strong
Director
Utah Division of Water Resources
Utah Interstate Stream Commissioner



Rod Kuharich
Director
Colorado Water Conservation Board



Patrick T. Tyrrell
State Engineer
State of Wyoming



Richard W. Bunker
Chairman
Colorado River Commission of Nevada

Proposed Interim Guidelines for Colorado River Operations

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

Section 1. Definitions

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

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

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

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

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

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

A. Introduction

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

B. Application to Unused Basic Apportionment

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

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

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

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

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

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

Lake Powell Equalization Elevation Table

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

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

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

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

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

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

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

A. Normal Conditions

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

B. Surplus Conditions

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

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

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

- a. For Direct Delivery Domestic Use by MWD, 1.250 million acre-feet (maf) reduced by the amount of basic apportionment available to MWD.
- b. For use by SNWA, the Direct Delivery Domestic Use within the SNWA service area in excess of the State of Nevada's basic apportionment.
- c. For use in Arizona, the Direct Delivery Domestic Use in excess of Arizona's basic apportionment.

2. Domestic Surplus (Lake Mead above Elevation 1145 feet and below 70R Strategy) in Effect from January 1, 2016 through December 31, 2025 (through preparation of 2026 AOP)

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

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

3. Quantified Surplus (70R Strategy)

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

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

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

4. Flood Control Surplus

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

5. ICS Surplus

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

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

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

C. Allocation of Colorado River Water and Forbearance Arrangements

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

D. Shortage Conditions

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

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

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

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

A. Findings

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

B. Purposes

The purposes of ICS are to:

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

5. Assure any Contractor that invests in conservation or augmentation to create ICS that no Contractor within another state will claim the ICS created by the Contractor.

C. Statement of Consistency with the Law of the River and Consequential Limitations on ICS Guidelines

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

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

D. Creation and Release of ICS

1. Extraordinary Conservation ICS

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

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

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

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

2. Tributary Conservation ICS

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

3. System Efficiency ICS

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

4. Imported ICS

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

5. Creation of ICS

A Contractor may create ICS subject to the following conditions:

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

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

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

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

6. Release of ICS

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

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

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

E. Accounting Procedure for ICS

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

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

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

F. Delivery Agreement

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

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

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

Section 6. Creation and Release of Developed Shortage Supply

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

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

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

G. Delivery Agreement

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

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

Section 7. Implementation of Guidelines

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

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

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

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

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

Section 8. Consultation

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

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

Section 9. Effective Period & Termination

A. Effective Period

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

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

B. Termination of Guidelines

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

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

C. Review of Guidelines

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

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

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

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

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

Section 11. Authority

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

Section 12. Modeling and Data

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

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

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

Lower Colorado River Basin Intentionally Created Surplus Forbearance Agreement

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

Recitals

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

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

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

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

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

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

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

Article 1

Definitions and Term

1.1 Definitions.

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

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

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

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

1.2 Term of the Forbearance Agreement.

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

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

1.3 Extended Term for Tributary Conservation ICS and Imported ICS.

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

1.4 Seven Colorado River Basin States' Agreement

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

Article 2
Creation and Release of ICS

2.1 Extraordinary Conservation ICS

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

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

2.2 Tributary Conservation ICS

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

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

2.3 System Efficiency ICS

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

2.4 Imported ICS

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

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

2.5 Creation of ICS

A Contractor may create ICS subject to the following conditions:

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

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

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

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

2.6 Request for Release of ICS

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

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

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

2.7 Additional Terms Regarding Creation and Release of ICS

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

Article 3 Forbearance

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

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

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

3.3 The Parties do not forbear any right to the release or delivery of any water that is not described in Article 3.1.

3.4 Forbearance of all Parties is conditioned on the following:

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

Article 4

General Provisions

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

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

Article 5

Notices

5.1 Notices and Requests

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

CRCN:

Colorado River Commission of Nevada

555 E. Washington Ave., Suite 3100

Las Vegas, NV 89101

Attn: Executive Director, Colorado River Commission

SNWA:

Southern Nevada Water Authority

1001 S. Valley View Boulevard

Las Vegas, NV 89153

Attn: General Manager

PVID:

Palo Verde Irrigation District

180 West 14th Avenue

Blythe, CA 92225

Attn: General Manager

IID:

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

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

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

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

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

State of Arizona:
Arizona Department of Water Resources

3550 North Central Avenue
Phoenix, AZ 85012
Attn: Director

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

5.2 Notices and Requests by Facsimile

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

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

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

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

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

Attest:

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

By: _____
Title

By: _____
Director

Approved as to form:

By: _____
Title

Attest:

PALO VERDE IRRIGATION DISTRICT

By: _____
General Manager

By: _____
Chair

Approved as to form:

By: _____
Title

Attest:

IMPERIAL IRRIGATION DISTRICT

By: _____
General Manager

By: _____
Chair

Approved as to form:

By: _____
Title

Attest:

THE CITY OF NEEDLES

By: _____
Title

By: _____
City Manager

Approved as to form:

By: _____
Title

Attest:

COACHELLA VALLEY WATER
DISTRICT

By: _____
General Manager

By: _____
Chair

Approved as to form:

By: _____

Attest:

THE METROPOLITAN WATER
DISTRICT OF SOUTHERN CALIFORNIA

By: _____
Title

By: _____
General Manager

Approved as to form:

By: _____
Title

Attest:

SOUTHERN NEVADA WATER
AUTHORITY

By: _____
Executive Director

By: _____
Chair

Approved as to form:

By: _____
Title

Attest:

THE COLORADO RIVER COMMISSION
OF NEVADA

By: _____
Title

By: _____
Chair

Approved as to form:

By: _____
Title

Arizona-Nevada Shortage-Sharing Agreement

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

Preamble

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

AGREEMENT

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

1. Definitions:

a. Interim Period. The period beginning on the date the Secretary issues a Record of Decision and ending on December 31, 2025 (through preparation of the 2026 Annual Operating Plan).

b. Shortage. Any shortage within the United States declared by the Secretary pursuant to Article II(B)(3) of the Decree during the Interim Period.

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

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

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

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

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

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

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

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

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

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

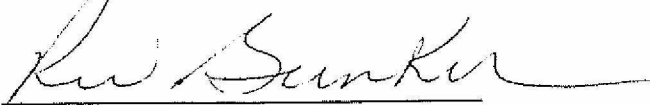
In Witness of this Agreement, the Parties affix their official signatures below, this
9th day of February, 2007.



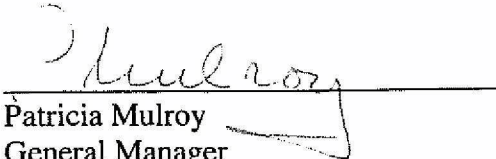
Herbert R. Guenther
Director
Arizona Department of Water Resources



Herbert R. Guenther
Chairman
Arizona Water Banking Authority



Richard Bunker
Chairman
Colorado River Commission of Nevada



Patricia Mulroy
General Manager
Southern Nevada Water Authority

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



April 30, 2007

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

Bill Ritter, Jr.
Governor

Harris D. Sherman
Executive Director

Rod Kuharich
CWCB Director

Dan McAuliffe
Deputy Director

Re: State of Colorado Comments on *Draft Environmental Impact Statement Regarding Colorado River Reservoir Operations: Development of Lower Basin Shortage Guidelines and Coordinated Management Strategies for Lake Powell and Lake Mead Under Low Reservoir Conditions.*

Dear Secretary Kempthorne:

The State of Colorado thanks you for the opportunity to comment on the *Draft Environmental Impact Statement for Colorado River Reservoir Operations: Development of Lower Basin Shortage Guidelines and Coordinated Management Strategies for Lake Powell and Lake Mead Under Low Reservoir Conditions* (the "DEIS") released by the Bureau of Reclamation (the "Bureau") on February 28, 2007.¹

The importance to Colorado of its namesake river cannot be overstated. The Colorado River and its tributaries supply over a third of Colorado's water needs and provide water to nearly 60 percent of the States' population. Originating as snowfall high in the Colorado mountains, Colorado River water is put to agricultural use on Colorado's eastern plains, central valleys, and western mesas; municipal use in cities from Fort Collins to Denver to Colorado Springs to Durango to Grand Junction; and industrial use at manufacturing facilities, mines, ski resorts, and oil and gas production facilities across the State. Moreover, because no major rivers flow into Colorado, Colorado must satisfy all its water demands from sources within the State. The Colorado River is simply an irreplaceable resource for Colorado. The State's past, present, and future are directly tied to the Colorado River.

The significance of the Colorado River to Colorado is reflected in the Colorado River and Upper Colorado River Basin Compacts, which grant Colorado the largest allocation of Colorado River System water of all the Upper Division States and the second largest allocation of Colorado River Water of all the Basin States. Due to its location at the headwaters of the Colorado River, Colorado must depend upon this allocation not only to meet its present needs, but also to provide for its future development. Indeed, it was precisely for the purpose of preserving its right to

¹ Publication of the Draft EIS, Colorado River Interim Guidelines for Lower Basin Shortages and Coordinated Operations for Lake Powell and Lake Mead (hereinafter "DEIS") was announced at 72 Fed. Reg. 9026 (February 28, 2007).

future development of Colorado River water that Colorado entered into the Colorado River and Upper Colorado River Basin Compacts.

Given this relationship with the Colorado River, Colorado clearly has a substantial interest in the efficient management and wise administration of the Colorado River System and System reservoirs. The Colorado River System and its reservoirs must be administered and managed in a manner that meets the needs of the Colorado River basin states without jeopardizing Colorado's significant, legally protected rights to the waters of the Colorado River, or compromising its ability to serve the present uses and future needs of Colorado citizens. It is in the interest of protecting the rights and needs of its citizens that Colorado submits these Comments.

The State of Colorado's Comments consist of two parts. First, Colorado joins in the Basin States' Combined Comments, Recommendations, and Proposed Guidelines (the "Basin States' Comments"), submitted under separate cover. Colorado strongly believes that the Basin States' Alternative, as described in the DEIS and clarified and implemented by the Basin States' Comments, sets forth the appropriate mechanism for interim management of the Colorado River System through 2025. As is more fully explained in the Basin States' Comments, the Basin States' Alternative best addresses the issues raised by the proposed federal action (the "Action"), as described in the DEIS and the Bureau's March 2006 Scoping Summary Report. Accordingly, Colorado joins the Basin States in requesting that you adopt the Basin States' Alternative, as implemented through the Basin States' Proposed Guidelines, as the preferred alternative in the Final Environmental Impact Statement and Record of Decision.

Second, the State of Colorado submits the following general Comments to the DEIS to address concerns specific to Colorado. These individual State Comments are not intended to suggest any disagreement with the Basin States' Comments, or to call into question Colorado's support for the Basin States' Alternative. Rather, they are intended to identify and suggest means of addressing issues of unique interest to Colorado.

These Comments are as follows:

- **Affected Geographic Region.** The DEIS defines the geographic region affected by the Action as Lake Powell and the River below Lake Powell. The DEIS analyzes the effects of the Action only within this geographic region.² However, decisions made regarding management of Lakes Mead and Powell also could potentially affect the geographic region upstream of Lake Powell after 2025. Decreased or increased storage in Lake Powell could affect storage levels in other Upper Basin reservoirs, and thus increase or decrease the risk that Upper Division States would have to curtail their uses of Colorado River water in order to satisfy the Upper Basin's obligations under Article III(d) of the Colorado River Compact. In addition, curtailment in the Upper Division or shortages in the Lower Division could potentially impose cumulative impacts on other geographic regions.

Notwithstanding these facts, because Colorado believes it unlikely that Upper Division curtailment will be necessary during the interim period of 2008 through 2025, Colorado does not, at this time, object to the limited description of the affected geographic region set forth in the DEIS; provided, however, that said description is understood to be applicable only to

² For example, the DEIS describes the affected geographic region as Lake Powell and the Lower Basin at pages including, but not necessarily limited to: p. 1-7, lines 5-7; p. 3-3, lines 1-24; p. 4-81, lines 37-39.

the interim period. Beginning in 2026, the potential risk of Upper Division curtailment will increase substantially due to increased development in the Upper Basin. Accordingly, Colorado believes the description in the DEIS of the geographic region affected by the Action will be invalid by the expiration of the interim period, and that it will be necessary at that time to reexamine management of Lakes Powell and Lakes Mead.

- **Expiration of Guidelines.** Expiration of the Guidelines in 2025 is critical toward Colorado's support of any preferred alternative. Continued operation of Lake Powell in a manner consistent with the proposed Action after 2025 may prove highly disadvantageous to Colorado. Moreover, as noted above, the assumptions upon which any proposed Action is chosen will no longer be valid after 2025.

The DEIS correctly recognizes that the Guidelines implementing the Action will be interim in nature, and will remain in effect for determinations to be made through 2025 regarding water supply and reservoir operating decisions through 2026. However, the DEIS does not clearly state what default operating criteria will be relied upon after that date.³ As stated in the Basin States' Comments, the DEIS should explain that at the conclusion of the effective period of the Guidelines, the modeled operating criteria are assumed to revert to the operating criteria used to model baseline conditions in the final EIS for the Interim Surplus Guidelines dated December 15, 2000 (i.e., modeling assumptions are based upon a 70R strategy for the period commencing January 1, 2026 (for preparation of the 2027 AOP)). These operating criteria would utilize the present 602(a) algorithm for calculating 602(a) storage requirements for releases from Lake Powell. As is more fully explained below, it is extremely important to Colorado that the Bureau continue to operate Lake Powell in a manner that serves the interests of the Upper Division States, and that sufficient storage be maintained in Lake Powell to protect Colorado's and the other Upper Division States' current and projected future uses. Accordingly, Colorado would object to any operating criteria that would alter any of the assumptions in the present 602(a) algorithm, and specifically objects to the proposed review of the 602(a) algorithm proposed in Arizona's DEIS comments and scoping comments.

- **Consultation with Basin States in 2020.** As mentioned above, Colorado believes it important that the DEIS identify default criteria for operating Lakes Mead and Powell after 2025. However, because of the importance of the management of Lakes Mead and Powell to the overall operation of the Colorado River System, Colorado believes it preferable for the Bureau to identify and develop new Guidelines for the management of Lakes Mead and Powell and the administration of the Colorado River System before the interim Guidelines developed through this process have expired. To ensure such action is taken, Colorado recommends that the Final Environmental Impact Statement and Record of Decision require the Bureau to initiate future consultation with the Basin States and other interested parties no later than 2020 to identify and implement appropriate management mechanisms for the Colorado River System following expiration of the proposed Action and implementing Guidelines. The Basin States Proposed Guidelines includes language that would require the Bureau to initiate such consultation.

³ For example, the DEIS omits identification of what will happen after expiration of the proposed interim action in 2025 at pages, including but necessarily not limited to pp. ES-2, lines 6-13 and 1-1, lines 21-26.

- **Coordinated Operations of Lakes Powell and Mead.** Several of the proposed alternatives in the DEIS, including the Basin States Alternative, call for a more coordinated operation of Lakes Powell and Mead in hopes of more efficiently managing the Colorado River System during the interim period. Under this coordinated operation, releases from Lake Powell may vary based upon levels in both Lake Powell and Lake Mead, in the interest of limiting shortages in the Lower Division, as well as reducing the risks of Upper Division curtailment. Colorado has agreed to this approach toward reservoir management during the interim period as described in the Basin States' Alternative and implemented through the Basin States' Proposed Guidelines.

However, in adopting a preferred alternative for managing Lower Basin shortages as a result of this or any future process, the Department of Interior and Bureau of Reclamation must not lose sight of the primary purpose for which Lake Powell was originally constructed: "to initiate the comprehensive development of the water resources of the Upper Colorado River Basin . . . making it possible for the States of the Upper Basin to utilize, consistently with provisions of the Colorado River Compact, the apportionment made to and among them in the Colorado River Compact and the Upper Colorado River Compact, respectively. . . ." Colorado River Storage Project Act of 1956 (43 U.S.C. § 620). Accordingly, pursuant to the Colorado River Storage Project Act, any system for coordinated operations of Lakes Mead and Powell must not subordinate the need for Upper Basin storage to the interest of limiting Lower Division shortages.

The Basin States Alternative maintains consistency with the Colorado River Storage Project Act by imposing a minimum 602(a) storage level in Lake Powell of 14.85 million acre-feet, which amount is then adjusted upwards annually. Colorado would strongly object to any proposed alternative that does not similarly protect Upper Basin storage. Specifically, Colorado would strongly object to any action, such as the proposed "Water Supply Alternative," which violates the statutorily mandated requirement that sufficient storage be maintained in Lake Powell to protect future Upper Division development, or that otherwise ignores, alters or amends the current mechanisms used to determine sufficient storage in Lake Powell.

- **Mexican Treaty Shortage Issues.** Colorado agrees with the other Basin States that the issue of how and under what circumstances the United States will reduce the water allotted to Mexico under Article 10(a) of the Mexican Water Treaty of 1944 must be addressed in order for the Bureau to develop a comprehensive program for administering the Colorado River System and managing the Colorado River System reservoirs. Colorado believes that the United States should reduce the quantity of water allotted to Mexico in any year the Secretary reduces the water available for consumptive use pursuant to Art. II(B)(3) of the Consolidated Decree.

However, Article III(B)(3) reductions are not the exclusive circumstances determining whether the United States should reduce the amount of water allotted to Mexico under the 1944 Treaty. Other conditions may also arise that are reflective of extraordinary drought in the Colorado River System under Article 10 of the Treaty. Resolution of the timing and extent of reductions in the water allotted to Mexico has the potential to affect interests in both the Upper and Lower Colorado River Basin.

The DEIS states that this issue will be resolved through discussions with Mexico by the International Boundary Waters Commission in consultation with the Department of State.⁴ Because of the importance of this issue to both the Upper and Lower Division States, Colorado believes that all the Basin States must be consulted on and included in these discussions.

- **Definition of Colorado River System.** The Colorado River Compact provides a very specific definition of the Colorado River System. The DEIS appears to be somewhat inconsistent in its use and definition of this term. Specifically, the DEIS sometimes confuses the concepts of the Colorado River System, Colorado River System water, and the Colorado River Mainstem.⁵ Colorado requests that the Bureau attempt to avoid such inconsistencies in its Final Environmental Impact Statement and Record of Decision.
- **Definition of Consumptive Use.** In summarizing the apportionments of the use of Colorado River water to the Basin States, the DEIS states that "[t]he apportionments of the Basin States are generally presented in terms of consumptive use, which consists of diversions minus return flows."⁶ The DEIS thus appears to make the legal assertion that the "diversions minus returns flows" definition of consumptive use is applicable to the allocations of all of the Basin States under the Law of the River.

Such a legal assertion would be incorrect. Although the Supreme Court relied upon this "diversions minus return flows" definition in portions of *Arizona v. California*, the Supreme Court stressed that in so doing it was not interpreting the Colorado River Compact. Moreover, the "diversions minus return flows" definition of consumptive use is not present in the Colorado River Compact. Pursuant to Article VI of the Upper Colorado River Basin Compact, "consumptive use" in the Upper Basin is defined as "man-made depletions of virgin flow at Lee Ferry."

The State of Colorado would accept the DEIS' general definition of "consumptive use" for the limited purpose of analyzing impacts of the proposed federal action within the identified geographic scope. However, the limited purpose of this definition should be made clear. The DEIS should not include statements that could be misinterpreted as interpretations of the Law of the River.

- **Off-stream Storage as Beneficial Use.** The DEIS affirmatively states that "consumptive use by a Lower Division state includes delivered water that is stored off-stream for future use by that state or another state."⁷ The accuracy of this sentence has not been established as a matter of law, and is potentially contrary to or inconsistent with the Colorado River Compact and other elements of the Law of the River. The support for this statement is likely derived from the 1999 Offstream Storage Rules, which states that "[t]he Secretary will account for the water that is diverted and stored by a storing entity as consumptive use in the Storing State for the year in which it is stored." (A "Storing State" is defined as a Lower Division

⁴ For example, the DEIS explains that all necessary action will be conducted through the IBWC and the Department of State at pages including, but not necessarily limited to, p. 1-18, lines 9-11.

⁵ For example, the DEIS confusingly interchanges the identification and description of mainstem activities and facilities with the phrase "Colorado River System" at pages including, but not necessarily limited to, pp. 1-9, lines 33-35; 1-18, lines 12, 29-38; and title of Appendix B.

⁶ See e.g., DEIS at p. 1-11, lines 5-7.

⁷ See e.g., DESI at p. 1-15, lines 29-31.

State in which water is stored off the mainstream.") However, a decision by the Secretary to account for water in some fashion is not a judicial determination that offstream storage is a consumptive use. Because this sentence raises questions of Compact interpretation among the Basin States, and is unnecessary to the DEIS analysis, Colorado recommends that it be deleted.

- **Intentionally Created Surplus.** Colorado fully supports the Intentionally Created Surplus and Developed Shortage Supply programs outlined in the DEIS and more fully described in the Basin States' Comments. Intentionally Created Surplus and Developed Shortage Supply water stored in Lake Mead benefits the Lower Division by providing a storage vessel and mechanism for delivering additional water to the Lower Division States, and benefits the Upper Division by increasing levels in Lake Mead. These increased Lake Mead storage levels reduce the amount of water that must be released from Lake Powell for equalization and balancing purposes. Accordingly, instead of mentioning that ICS will be created "during this NEPA process,"⁸ Colorado recommends, consistent with the Basin States Comments, that the Final Environmental Impact Statement and Record of Decision expressly adopt Guidelines that permit the creation of Intentionally Created Surplus and Developed Shortage Supply, and provide that this water be accounted in Lake Mead for purposes of equalization and balancing from Lake Powell.
- **Status of Existing Interim Surplus Guidelines.** The DEIS states that "[t]he proposed federal action would modify the substance of the existing Interim Surplus Guidelines (ISG), published in the Federal Register on January 25, 2001 (66 Fed. Reg. 7772), and the term of the ISG from 2016 to 2026."⁹ As explained in the Basin States' Comments, the Basin States recommend that the Final Environmental Impact Statement and Record of Decision adopt the Basin States' combined Proposed Guidelines and that the Basin States Proposed Guidelines replace, rather than merely modify and extend, the existing Interim Surplus Guidelines.
- **Disclaimer.** The DEIS identifies and describes numerous elements of the Law of the River. Because the individual Basin States may disagree as to the definitive interpretation of specific aspects of the Law of the River, and the NEPA process is not intended to provide a definitive interpretation of the law, the State of Colorado recommends, consistent with the Basin States' Comments, that the Final Environmental Impact Statement and Record of Decision include appropriate disclaimer language to allow the various interested stakeholders to refrain from disputing or contesting the general characterizations of the Law of the River in the DEIS. Precedent for such disclaimer language can be found in past Annual Operating Plans promulgated by the Bureau of Reclamation and authorized by the Secretary of the Interior. Similar to that language, the disclaimer in the FEIS and ROD should provide:

Nothing in this (insert "FEIS" or "ROD" as appropriate) is intended to interpret specific provisions of the Law of the River, including, but not limited to: the provisions of the Colorado River Compact (45 Stat. 1057), The Upper Colorado River Basin Compact (63 Stat. 31), The Utilization of Water of the Colorado and Tijuana Rivers and of the Rio Grande, Treaty Between the United States of America and Mexico (Treaty Series 994, 59 Stat. 1219), the United States/Mexico agreement in Minute 242 of August 30, 1973,

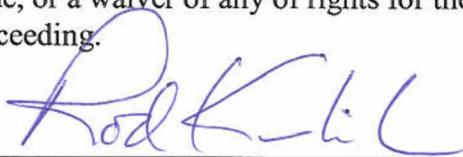
⁸ See e.g. DEIS at p. 2-2, lines 20-24.

⁹ See e.g., DEIS at p. ES-2, lines 27-31. See also, DEIS at pages including, but not necessarily limited to: ES-6, line 28; 2-2, lines 27-28; 2-11, line 3; 3-31, line 10; 4-94, line 12; Glo.6 (ISG).

(Treaty Series 7708; 24 UST 1968), the Decree entered by the Supreme Court of the United States *Arizona v. California, et. al.* (376 U.S. 340), as amended and supplemented, The Boulder Canyon Project Act (45 Stat. 1057), the Boulder Canyon Adjustment Act (54 Stat. 774; 43 U.S.C. 618a), The Colorado River Storage Project Act (70 Stat. 105; 43 U.S.C. 620), The Colorado River Basin Project Act (82 Stat. 885; 43 U.S.C. 1501), The Colorado River Basin Salinity Control Act (88 Stat. 266; 43 U.S.C. 1951), The Hoover Power Plant Act of 1984 (98 Stat. 1333), The Colorado River Floodway Protection Act (100 Stat. 1129; 43 U.S.C. 1600), or The Grand Canyon Protection Act of 1992 (Title XVIII of Public Law 102-575, 106 Stat. 4669).

- **Reservation of Rights.** The Basin States' Comments include as attachments several agreements to which Colorado is not a party. Colorado supports the submission of these attachments as necessary and important to the implementation of the Basin States' Alternative. However, Colorado was not a party to many of these agreements, and does not necessarily agree with all legal and factual recitations made therein. By supporting the Basin States' Comments and attachments, and by agreeing to the submission of these documents as necessary to the implementation of the Basin States' Alternative, Colorado does not intend to waive any disagreements it may have with legal and factual recitations made without its participation or approval.

Finally, Colorado may have other concerns with specific factual and/or legal assertions in the DEIS. However, these assertions do not appear to materially alter the analysis in the DEIS. In addition, in the course of reviewing the voluminous amount of material included within the DEIS, Colorado may have overlooked other inaccurate factual and/or legal assertions. Colorado's failure to raise such concerns in these Comments, or to correct what it believes to be inaccurate assertions, shall not be construed as an admission with respect to any factual or legal issue, or a waiver of any of rights for the purposes of any future legal, administrative, or other proceeding.



Rod Kuharich
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FOR IMMEDIATE RELEASE
MONDAY, APRIL 30, 2007

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**RITTER ANNOUNCES SIGNING OF HISTORIC
COLORADO RIVER PACT**

Multi-state agreement will help reduce risk of shortages and protect Colorado interests

Gov. Bill Ritter today announced the signing of a historic agreement among Western states governing future management of the Colorado River. The agreement decreases the threat of water shortages in Colorado, provides additional flexibility in Hoover and Glen Canyon dam operations, and encourages water conservation and the development of new water sources.

“There is a need for new solutions to address the West’s increasing demand for water,” Gov. Ritter said. “The agreement is one such solution. In this era of increased demand and diminished supply, it is more necessary than ever that the Western states work together to resolve our resource issues. It is my belief that this agreement is just the first step in a new era of Western state cooperation.”

The agreement was signed April 23 in Las Vegas by representatives of the Colorado River basin states of Colorado, Arizona, California, Nevada, New Mexico, Utah and Wyoming. The agreement proposes reducing deliveries of Colorado River water to Arizona and Nevada when storage in Lake Mead drops below certain set levels, thus reducing the risk of shortages in Colorado. The agreement would reduce the risk of shortages in the lower Colorado River by coordinating Hoover and Glen Canyon dam operations. The agreement also proposes a system for storing in Lake Mead water saved through conservation efforts or the development of new water sources.

In addition to resolving current Colorado River disputes, the agreement reduces the likelihood of future litigation among the seven Colorado River basin states by encouraging cooperation and consultation between the states. “Litigation pitting state against state over the Colorado River would cost taxpayers millions, and the likely result would not please anyone,” said Colorado Attorney General John Suthers. “Thanks to the hard work of the parties involved, we can now work with – not against – other states to resolve our water disputes.”

“The agreement cuts through a lot of the red tape that had discouraged California, Arizona and Nevada from developing new sources of water,” said Scott Balcomb, a Glenwood Springs water attorney and one of two of Gov. Ritter’s representatives who helped negotiate the agreement. “By encouraging the Lower Colorado River states to develop their own new sources of water, we have reduced the likelihood that those states will come looking to Colorado to meet their needs.”

In order to become effective, the seven states' proposal for managing the Colorado River must be adopted by the United States Secretary of Interior. The Secretary is currently reviewing the states' proposal and a final decision is expected in December. "The Secretary is the 'water master' for the lower Colorado River Basin, and has the final decision whether or not to accept the states' recommendations," said Jim Lochhead, a Glenwood Springs water attorney representing a group of Colorado water users. "However, I think the Secretary must give strong consideration to a proposal that has the backing of all seven Colorado River basin states."

Rod Kuharich, director of the Colorado Water Conservation Board and the second Gov. Ritter representative to the seven states negotiations, agreed. "Having the seven basin states come together and agree upon a system for managing the Colorado River is a historic accomplishment," Kuharich said. "This agreement may be the most significant achievement in Colorado River negotiations since the Colorado River Compact of 1922."