August 15, 2023

Via Electronic Mail
(For convenience, paper copy to follow via Federal Express)

United States Department of the Interior
Bureau of Reclamation
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Re: Written Comments of the Imperial Irrigation District on the “Notice of Intent to Prepare an Environmental Impact Statement and Notice to Solicit Comments and Hold Public Scoping Meetings on the Development of Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead” (87 FR 39455)

I. Introduction

These comments are submitted on behalf of the Imperial Irrigation District (“IID”), an irrigation district formed under the laws of the State of California. IID depends solely on the Colorado River to supply water to the Imperial Valley, one of the most productive agricultural regions in the world, and an area that has been irrigated with Colorado River water since 1901. IID is one of the Colorado River’s largest contractors or entitlement holders with senior agricultural water rights. As the sole water supply for the Imperial Valley, the Colorado River also plays a crucial role in the Imperial Valley’s rural communities and agrarian economy.

IID therefore appreciates the opportunity to provide input on the scoping process for the Environmental Impact Statement (“EIS”) preparation for the Post-2026 Operational Guidelines and looks forward to collaborating with the Bureau of Reclamation (“Reclamation”) and fellow Colorado River contractors and entitlement holders, water users, and stakeholders throughout this process.

IID has four key recommendations for Reclamation’s EIS analysis: (1) comply with the Law of the River; (2) use the best available science to provide the most appropriate data and advanced methods for forecasting hydrological conditions; (3) employ an accurate geographic and temporal scope of analysis that captures reasonably foreseeable direct, indirect, and cumulative significant effects, including short-term and long-term effects, of implementing the new Operational Guidelines across local, regional,
national and global contexts, as appropriate, and (4) evaluate a diverse and realistic range of alternatives. Addressing these issues will deliver a robust and practical environmental analysis that fulfills Reclamation’s obligations under the National Environmental Policy Act (“NEPA”).

II. NEPA Requires an EIS Analysis Based on the Law of the River

The Law of the River is a collection of compacts, treaties, statutes, U.S. Supreme Court Decisions and Decrees, and other authorities and binding contracts that govern Colorado River allocations and apportionments. Under the Law of the River, IID has a senior entitlement to Colorado River water pursuant to a permanent 1932 contract with the Secretary of the Interior (“Secretary”). Reclamation needs to account for the Law of the River and priority system to avoid analyses, conclusions, or proposed alternatives that would be illegal or infeasible and that would accordingly fail to comply with NEPA’s requirements. Reclamation’s analysis should therefore be based on the priority system under the Law of the River, which is based on Lower Basin water rights and factors such as priority dates (particularly present perfected rights), the 1928 Boulder Canyon Project Act, the 1964 Arizona v. California Supreme Court decree, and the 1968 Colorado River Basin Project Act (43 U.S.C.A. § 1521(b)), which provided for the subordination of Central Arizona Project water users to California’s 4.4 million acre-feet apportionment in times of shortage.

Reclamation should set aside political or societal influencing factors, including more recent calls for human health and safety water and deliveries of Intentionally Created Surplus storage water to be delivered outside of, or inconsistent with, fundamental legal requirements, particularly when those water demands can be met through existing or new partnership agreements or by alternative (non-Colorado River) water sources.

Reclamation’s analysis should also conform with the Law of the River and the priority system to ensure a factual accounting of Indian Trust Assets. Analysis of impacts to Native American tribes needs to accurately assess and reflect differing water rights and priorities to the Colorado River and/or other surface and groundwater rights. Not all Native American tribes have the same water rights or priority to the Colorado River, and these critical distinctions need to be reflected in the EIS, including in the environmental justice analysis, to ensure accurate, informed conclusions regarding adverse effects which may disproportionately affect communities with environmental justice concerns. Similarly, the Imperial Valley, with no alternative supplies to the Colorado River, and a large environmental justice community, requires an environmental justice analysis distinct from Indian Trust Assets and many other areas of use within California, Arizona, or Nevada, which have alternative water supplies.

The 1944 Mexican Water Treaty also provides for Mexico to participate in proportional consumptive use reductions in times of extraordinary drought, and Reclamation should address this obligation in its NEPA analysis to provide for any actions that might be necessary under future Minutes as well as the Upper and Lower basins’ obligation to provide for their respective halves of the Treaty delivery requirement.
The No Action Alternative should be developed in consultation with the Basin States and default to the 1970 Criteria for Coordinated Long-Range Operation of Colorado River Reservoirs upon expiration of the 2007 Interim Guidelines, 2019 Drought Contingency Plan (“DCP”), and other agreements and Minutes that will no longer be in effect post-2026.

III. Use Best Available Data and Scientific Methods; Explain Assumptions and Limitations

Reclamation should endeavor to use high-quality information, incorporating the best available science and data, to describe reasonably foreseeable environmental trends and effects, including anticipated climate-related changes to the environment in its analyses and forecasting methodologies to quantify reservoir conditions, inflow projections, and operational decision-making. With regard to data, Reclamation needs to use current, accurate data reflecting recent meteorological and runoff conditions, which have varied widely in recent years notwithstanding long-term, climate change-related decreases in overall precipitation and snowpack. Reclamation should clearly explain its data and modeling assumptions and/or limitations of the information so that the public and decisionmakers can understand whether the EIS’s assumptions are substantiated and how Reclamation reaches its conclusions.

Reclamation should also consider the role of Colorado River tributary flows to meet state consumptive uses and agency entitlements, using the data and analysis included in the Consumptive Uses and Losses Reports required pursuant to the Colorado River Basin Project Act of 1968. Lower Basin and Mexico reporting, while current through 2022 in the annual Colorado River Accounting and Water Use Report: Arizona, California and Nevada, does not include tributary consumptive uses and system losses in the Lower Basin which were a key feature of Consumptive Uses and Losses Reports until 2005. Reclamation’s last basin wide Consumptive Uses and Losses Report covered the period 2001-2005, and for periods 2006-2010, 2011-2015, and 2016-2020 only addressed the Upper Basin. Reclamation should resume its reporting of Consumptive Uses and Losses Reports for the entire Colorado River Basin consistent with the standing 1968 Congressional directive to do so and Reclamation’s practice for 35 years.

IV. Establish an Adequate Scope of Analysis that Captures Reasonably Foreseeable Significant Effects

Reclamation needs to ensure that the EIS assesses reasonably foreseeable significant effects by using an accurate geographic and temporal scope and consistently assessing cumulative effects. Reclamation should bear in mind that the White House Council on Environmental Quality (“CEQ”) currently proposes to expand the definition of “effects” resulting from a proposed action in the NEPA regulations to clarify that the effects to be analyzed in NEPA reviews include ecological, social, and economic considerations, including disproportionate and adverse effects on communities with environmental justice concerns, whether direct, indirect, or cumulative, as well as climate change-related
effects, including the contribution of a proposed action to climate change, and the reasonably foreseeable effects of climate change on the proposed action.

A. Geographic and Temporal Scopes

Reclamation needs to ensure that the temporal and geographic scopes employed in the EIS accurately and fully encompass the reasonably foreseeable direct, indirect, and cumulative significant effects, including short-term and long-term effects, of implementing the new Operational Guidelines across local, regional, national, and global contexts, as appropriate.

In terms of geographic scope, the analysis should include the Imperial Valley and extend to the Salton Sea given IID’s large entitlement, the runoff and hydrologic connection to the Colorado River, the area’s lack of an alternative water supply, and the socioeconomic value of agriculture to rural and disadvantaged communities who would be acutely affected by any water curtailments. Because the Imperial Valley is entirely dependent on the Colorado River, any reduction in water deliveries will cause environmental consequences that result from reduced farming and exposed fields, and lead to job losses for a socio-economically sensitive Environmental Justice community. Effects to the Salton Sea also should be evaluated and discussed. Reduction in water deliveries could quickly expose large areas of the Salton Sea playa, outpacing current mitigation and restoration activities intended to forestall this outcome and address environmental and public health concerns.

With regard to the temporal scope, the post-2026 term analyzed in the EIS needs to provide for long-term planning certainty. For example, the 2007 Interim Guidelines had a 20-year term (through 2026), but in hindsight did not include sufficient actions to address system risk. The term of the post-2026 Guidelines therefore needs to be of sufficient duration to establish long-term planning certainty, but the post-2026 Guidelines should also include adaptive management tools to address foreseeable and anticipated variability of supply-demand imbalances and variable hydrological and meteorological conditions.

B. Cumulative Effects

Changes to operations of the Colorado River portend far reaching cumulative effects. Therefore, Reclamation needs to analyze reasonably foreseeable cumulative effects resulting from the proposed action and alternatives, and that analysis should remain consistent across the proposed action and all alternatives.

The CEQ NEPA regulations explain that cumulative effects result from the incremental effects of the proposed action when added to the effects of other past, present, and reasonably foreseeable actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative effects can result from individually minor but collectively significant actions taking place over a period of time. Consequently, the cumulative effects analysis should include, at a minimum, reasonably foreseeable effects for downstream and off-River water bodies and users, including the
Salton Sea, and existing water conservation obligations that were not analyzed for the 2007 Interim Guidelines.

V. Analyze a Diverse Range of Feasible Alternatives

Reclamation should identify its proposed action and the no action alternative clearly in the Draft EIS (if not earlier), consistent with NEPA and the CEQ and Department of Interior NEPA regulations, so that the public and decision makers can easily understand what Reclamation proposes, what’s being studied in the EIS, and how the alternatives analysis compares the considered alternatives to the proposed action.

IID also recommends that the Bureau include the following alternatives in the EIS:

- Analysis of management alternatives that protect critical elevations and establish shortage criteria while providing water supply certainty and operational flexibility, including the expansion of programs that allow for voluntary water conservation storage in the system and that build upon, but improve, the Intentionally Created Surplus and Inadvertent Overrun (“ICS”) and Payback Policy included in the 2007 Interim Guidelines. Any future voluntary water storage program should provide elevation benefits to the system (i.e., be operationally neutral or top-water banking), and disallow one contractor's beneficial contribution from offsetting another's shortage obligation, which at best maintains the status quo but doesn't truly benefit the system.

- Evaluation of one or more alternatives that prioritize smaller, more frequent water use reductions as opposed to larger, less frequent reductions to address supply and demand imbalances. Such alternative(s) would analyze and explain the linkages between shortage triggers, reservoir storage, water use priorities and environmental impacts. IID is concerned that under the 2007 Interim Guidelines, shortage triggers were not reached until 2022 due, in part, to the elevation buffer created by ICS and DCP contributions. By the time the first shortage operating condition under the 2007 Interim Guidelines occurred, reservoirs had been so severely depleted that the risk of jeopardizing critical operational elevations became a real-time concern that suggested a need for significant, drastic responses. The environmental impacts of the actions taken to address these shortages were much greater than they would have been had more frequent, less severe shortages triggered earlier actions. Infrequent severe shortages put all water users at risk, but particularly threaten senior water rights that would not be impacted under a more proactive, conservatively managed system. More frequent, but smaller, shortage reductions at higher elevation triggers and/or shortage reductions in parity with reduced releases from Lake Powell would be more likely to prevent the reservoirs dropping to critical elevations, create less significant environmental and environmental justice impacts, and better adhere to the Law of the River's priority system.
• Evaluation of alternatives that manage reservoirs based on actual hydrology and total system contents, rather than simply Lake Powell and Lake Mead elevations as under the current 2007 Interim Guidelines.

• Evaluation of alternatives that adequately assesses the severe impacts on communities that have no alternative source of water, like Imperial Valley.

• Analysis of alternatives that minimize the probability of material curtailments, such as augmentation, voluntary conservation efforts, water transfers, efficiency improvements, desalination, water recycling, agency partnerships, groundwater use, and/or other programs that address supply and demand imbalances without relying exclusively on substantial water curtailments.

• Evaluation of different tiers of curtailment, instead of only analyzing either a full curtailment or a no-action alternative. A less polemic range of alternatives is warranted to enable Reclamation, decision makers, and the public to understand whether different curtailment percentages result in a linear one-to-one reduction in impacts, or if there is a curtailment volume that delivers fewer impacts but only marginal reductions in water as compared to a full curtailment.

VI. Conclusion

Thank you for the opportunity to comment. IID believes that the balancing of overall demands on the system with available supply, consistent with the Law of the River, is the foundation for the long-term sustainable management of the Colorado River system upon expiration of the 2007 Interim Guidelines. IID intends for these recommendations to ensure that the EIS incorporates the legal parameters governing the Colorado River and inform the Colorado River’s stewardship in a changing climate, while providing for the operational certainty, planning and investment necessary by all water users in the Basin to adapt to the hydrologic conditions that are anticipated to occur beyond 2026. IID looks forward to collaborating with Reclamation and other Colorado River stakeholders in this process.

Sincerely,

Tina Anderholt Shields, PE
Water Manager