August 15, 2023

VIA ELECTRONIC MAIL

United States Bureau of Reclamation
Attn: Post-2026 Colorado River Operations
crbpost2026@usbr.gov

Re: Environmental Impact Statement on the Development of Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead

Yuma County, Arizona, is a nationally significant agricultural community at the far southern end of the Colorado River. Because Yuma farmers rely on Colorado River water to grow the majority of America’s winter leafy greens and a wide variety of other valuable agricultural products, they have a deep interest in the post-2026 operational plans for the River. I therefore write on behalf of several Yuma-area irrigation districts to comment on the scope of the Bureau of Reclamation’s evaluation of post-2026 plans for the River.

I represent four of Yuma’s five irrigation districts: Wellton-Mohawk Irrigation and Drainage District (WMIDD), Yuma Mesa Irrigation and Drainage District, Yuma Irrigation District, and North Gila Valley Irrigation and Drainage District (collectively, the “Districts”). The Districts receive Colorado River water almost entirely under third-priority contracts with the United States Bureau of Reclamation (the “Bureau”), and they supply it to agricultural (and in some instances, domestic) users within their service areas. Despite the tenure and legal clarity of those water rights, they have been threatened by alternatives the Bureau has evaluated for near-term operations and by wider negotiations over the River’s water. The Districts therefore have a substantial interest in the scope of the Bureau’s evaluation of plans for the post-2026 future of the River.

There is no agricultural region within the United States that can replace Yuma, especially in the winter, when much of the Nation is subject to freezing, frost, mildew, or other unsuitable conditions. Replacement of Yuma vegetables with imported products would have untold consequences for the Nation’s trade balances, employment rates, carbon emissions, and food security and safety. We submit these comments on the scope of the Bureau’s analysis in the hope that the Bureau will remember that Yuma feeds the Nation.
I. The Bureau must conduct an equitable, transparent, and comprehensive process that abides by applicable Federal procedural law.

   A. The Bureau must ensure that its administrative process is equitable and transparent. Stakeholders have not been represented equally in discussions over the use of Colorado River water. Some groups have the ear of sympathetic government officials, while others struggle to receive an audience. Some with low-priority water rights are invited into closed-door negotiations, while others are excluded even as their senior rights are debated. And some are asked to sacrifice water used for the benefit of all, while others store vast quantities of under-utilized water.

   It can be difficult for state representatives to properly represent the disparate interests of all users within their States. The Bureau must ensure full input from major water users with compelling and federally protected interests, such as agricultural and military users in the Yuma area. When stakeholders cannot participate in important discussions, they must be apprised of what discussions have occurred, what policies have been developed, and what actions will be taken—such that all entities have notice and an opportunity to be heard.

   At the same time, discussions among appropriate groups of stakeholders are an important avenue to finding sustainable solutions for managing the River’s limited resources. Indeed, the best solutions—or key parts of them—may not be within the Bureau’s power to adopt through its administrative processes. These comments necessarily focus on the Bureau’s process and the limits of its authority. But the Districts are committed to cooperating with other parties and continuing to explore solutions that lie outside the Bureau’s control. Clear messages from the Bureau are an essential foundation for those broader discussions because they offer parties a shared starting point from which to negotiate and develop better approaches.

   B. The scope of the Bureau’s analysis should not be constrained by the scope of prior analyses, nor should it be limited to the Lower Basin when the goal is a sustainable River system as a whole.

   Prior analyses should not limit the scope of the current proceedings. For example, Alternative 1 and Alternative 2 from the Draft Supplemental Environmental Impact Statement (DSEIS) for Near-term Colorado River Operations released in April 2023 (and later withdrawn) should not inform the current process. Additionally, although the scoping process and operating experience under the 2007 Colorado River Interim Guidelines and the 2019
Colorado River Drought Contingency Plan should inform the development of post-2026 plans, the Bureau’s post-2026 analysis should not be limited to that scope, as these agreements will no longer be in place in 2026. Finally, the existing Colorado River Simulation System modeling cannot drive development of alternatives alone.

At the broadest level, the Bureau’s plan and analysis should include actions in the Upper Basin and Mexico as well as the Lower Basin. For example, the evaluation of potential Upper Basin demand management programs should inform the development of alternatives for post-2026 operations. More generally, the process for determining the post-2026 plan must involve all stakeholders, including interests in the Upper Basin, the Department of State and Mexico, the Tribes, and major water users throughout the Basin. While we recognize that negotiations with Mexico may not be within the Bureau’s control, we encourage the use of the same processes that have previously led to the successful development of Minutes with Mexico.

C. In preparing an environmental impact statement (EIS) for post-2026 operations, the Bureau must comply with the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 701 et seq. The Bureau may not unlawfully withhold or unreasonably delay mandatory acts; cannot act in a manner contrary to law; must not be arbitrary or capricious in making discretionary decisions; and must have substantial evidence for any fact-based decisions. Id. § 706.

The Bureau must also ensure that its processes satisfy the National Environmental Policy Act (“NEPA”), 42 U.S.C. § 4321 et seq. NEPA requires the Bureau to analyze the direct and indirect effects of a decision of this magnitude in an EIS with reasonable specificity. See 40 C.F.R. § 1508.1(g) (discussing direct and indirect effects). The Ninth Circuit has repeatedly insisted that “general statements” about future impacts do not satisfy NEPA. *Or. Nat. Res. Council Fund v. Brong*, 492 F.3d 1120, 1134 (9th Cir. 2007). Thus, an EIS for an oil development project that failed to analyze the carbon consequences of increasing foreign oil consumption by depressing oil prices did not satisfy NEPA. *Ctr. for Biological Diversity v. Bernhardt*, 982 F.3d 723, 740 (9th Cir. 2020). The governing regulations specifically require that changes to land use be considered among other indirect effects: “Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.” 40 C.F.R. § 1508.1(g)(2).

Thus, any EIS concerning restrictions on Colorado River water usage must analyze environmental impacts at the level of the specific users denied water. Under
present circumstances, it will not suffice to note, as the agency erroneously did in *Center for Biological Diversity*, that usage of a resource might generally increase or decrease. 982 F.3d at 722. Rather, the agency must determine the impacts of that increase or decrease, including how people who depend directly or indirectly on water from the Colorado River will foreseeably substitute for its loss—especially where changes in land use will result. That starts with clearly identifying where, precisely, reductions in water usage will occur. The Bureau must be candid about these reductions to allow the public and the Bureau itself to meaningfully evaluate their impacts. Such specificity is critical because those impacts vary across different users, both in Arizona and across the Lower Basin. The environmental impacts of sustaining or ending Yuma’s high-efficiency agricultural production differ markedly from, for example, the environmental impacts of altering water usage in high-carbon-usage suburbs or water-inefficient agriculture elsewhere in the Basin. The DSEIS failed to analyze these differences, hiding behind averages, broad-brush assumptions, and a refusal to identify how water would actually be distributed under any operational plan. The Bureau’s post-2026 analysis must avoid those errors.

NEPA also requires the Bureau to analyze the environmental justice impacts of its alternatives. The DSEIS had significant gaps in this regard. In particular, the Bureau’s post-2026 analysis should analyze the impacts on rural communities of reduced federal hydropower generation and any rate increases that result from higher hydropower prices or substitute power sources. Hoover, Parker-Davis, and Colorado River Storage Project hydropower ratepayers contribute significant revenue to the Lower Colorado River Basin Development Fund and Upper Colorado River Basin Fund to cover important operational and non-power Bureau programs and costs. This includes aid to irrigation, environmental, and endangered species recovery programs, the Colorado River Salinity Control Program, and others, as well as operations and maintenance costs necessary to support the multiple benefits of Bureau dams and facilities. Although hydropower customers may be able to absorb these annual expenses in normal water years, continuing to require them to pay for these programs while confronting the massive additional power replacement expenses due to extreme drought conditions and difficult power market conditions creates a significant hardship. In its environmental justice analysis, the Bureau should examine the effects on designated environmental justice communities from decreased electric reliability and access to affordable electricity. The Bureau should also evaluate the impacts of reduced funding for the Basin Funds.
II. The Bureau’s proposed post-2026 plans, and the supporting environmental analysis, must follow the Law of the River.

The communities along the Colorado River rely on the Bureau for its leadership, policymaking experience, technical expertise, and commitment to the Nation. We also rely on the Bureau to follow federal law and the water delivery contracts already signed by the United States. This “Law of the River” encodes the priority system, which the Bureau lacks authority to alter within the current process. Reconsideration of the priority system is necessarily outside of the scope of the post-2026 process absent intervention from Congress or the Supreme Court. The alternatives the Bureau develops for consideration in the post-2026 process must all comply with the priority system. And proper application of the priority system—to determine how water deliveries may change in the future—is vital to correctly evaluating the impacts of those alternatives for post-2026 operations.

A. The priority system for apportioning Colorado River water in the Lower Basin works as follows: The Bureau, on behalf of the Secretary of the Interior, first satisfies present perfected rights (“PPR”) without regard to state lines. *Arizona v. California*, 376 U.S. 340, 342 (1964); 43 U.S.C. § 1521; *Arizona v. California*, 547 U.S. 150, 155 (2006). The Bureau then satisfies non-PPR users with contract dates prior to 1968 (“middle-priority users”) before satisfying post-1968 users, as stated in the Colorado River Basin Project Act (“CRBPA”). 43 U.S.C. § 1521(b). The CRBPA makes clear that the Bureau has a mandatory duty to satisfy the Districts’ entitlements—which date prior to 1968—before it can deliver water to any users with post-1968 contract dates. All parties have long recognized that water is allocated in this way. *See, e.g.*, Director’s Shortage Sharing Workgroup Recommendation, October 24, 2006 at 2 (prepared by Arizona Department of Water Resources workgroup and recognizing that users at Arizona Priority 4 and lower are reduced before reducing users at Arizona Priority 3).

This priority system is not an accident. Rather, it is a foundational political compromise that reflects a long-term bargain: Higher priority users such as the Districts receive a relatively steady supply of water, but in years of abundant water cannot receive more than their contractual entitlement. Arizona junior-priority users—Arizona Priority 4 and lower—receive a variable supply of water (potentially nothing in years of low flows) but enjoy the excess of Arizona’s allocation in years of higher flows. Involuntary cuts out of order force higher priority users to bear the burden of reduced deliveries in bad years, while they receive none of the benefits in good years.
Users have acted in line with that bargain, and so enormous reliance interests are at stake, for which the Bureau’s analysis must account. Under this bargain, for example, Arizona Priority 4 users have stored large amounts of excess water underground, in federal reservoirs using the Intentionally Created Surplus (“ICS”) system, and elsewhere—water that higher-priority users such as the Districts did not use. That conservation by Arizona Priority 4 users is responsible water use that the Districts support. And under that bargain, users in the Districts have invested—and continue to invest every year—in efficiency at considerable cost, knowing that operating within their contractual entitlements and maximizing yields in a drier ecosystem contribute to the long-term viability of the River system. Indeed, due to the extraordinary efforts of their users, the Districts under-run their entitlements year after year.

B. Several points important to the scope of the Bureau’s analysis flow from that law, history, and practice. First, all parties concerned have clearly relied upon the law as it has stood for decades. By following that law, the Bureau will not only fulfill its APA § 706(1) obligations, but also respect those multi-billion-dollar reliance interests that underpin our Nation’s food system. Indeed, even if the priority system were purely a creature of the Bureau’s administrative powers, the Bureau would need exceedingly persuasive justifications for departing from that system. See, e.g., Smiley v. Citibank (S. Dakota), N.A., 517 U.S. 735, 742 (1996) (citing United States v. Penn. Indus. Chem. Corp., 411 U.S. 655, 670–675 (1973); NLRB v. Bell Aerospace Co., 416 U.S. 267, 295 (1974)).

Second, the Bureau cannot arbitrarily assume that any cuts in water usage can be applied based on recent levels of consumption (as the DSEIS modeled) rather than based on contractual levels of entitlement (as the post-2026 EIS should). The baselines set in law are the property or contractual entitlements held by water users, not their actual usage in any given year. Actual usage is not an equitable baseline because it is the product of different practices for different users. For example, consumptive usage in the Districts is low because of investments in efficiency technology. It would be perverse to ignore those investments by adopting principles under which the Districts would have been better off engaging in profligate water use to set a high baseline.

Third, the Bureau should be sensitive to the reality that, in a priority-based system, conservation by junior-priority users is possible because of conservation by higher-priority users such as those in the Districts. Junior-priority users in Arizona have been rightly lauded for creating important stores of water underground and elsewhere. But that conservation would not be possible had the Districts not passed
along their unused entitlements to junior users through many of the same conservation measure for which users get credit elsewhere—extraordinary management practices in which the Districts are not obligated to engage, but which reduce their consumptive use and leave more water for others. That dynamic runs through many of the decisions facing the Bureau; for example, we discuss it below in connection with the ICS system.

Fourth, to the extent the priority system leaves the Bureau discretion in apportioning water—and we believe it has very little—the Bureau must have some reasoned basis for exercising that discretion. For example, it would be plainly arbitrary and unreasoned for the Bureau to apportion water to users that can obtain other sources of water or conserve (or have forgone opportunities to do so). Thus, to the extent that the Bureau expects to exercise discretion, the scope of its analysis for post-2026 operations must include an evaluation and disclosure to the public of which users might receive a favorable exercise of that discretion, why, and with what environmental effects.

C. One area in which the Bureau may have some limited discretion is in apportioning water to middle-priority users when insufficient water is available to fill all water orders, even after reducing junior-priority users’ deliveries to zero. The Bureau must apportion that water equitably and consistently with the larger legal framework. This is a federal function, and is not subject to approval by State legislatures. See 43 U.S.C. § 617c (providing for contracts directly between the Bureau and water users). Because that apportionment will affect the distribution of water within the Basin, the Bureau must articulate principles now that will allow it to evaluate the actual impacts of its plans for post-2026 operations.

To our knowledge, no construct currently exists for apportioning limited water to middle-priority users—a group that crosses state lines, but whose rights are limited by state apportionments. Unlike PPRs, which predated federal appropriation of the Colorado River’s waters, middle-priority uses arise as a result of federal contracts and within state apportionments. The CRBPA supports apportioning water to middle-priority users in each State in the familiar 4.4/2.8/0.3 proportion when it identifies those users across States as “users of the same character,” placing all middle-priority users on equal footing. 43 U.S.C. § 1521(b). Contractual language supports understanding the Districts’ contracts as arising within Arizona’s apportionment, and thus likewise supports apportioning water to middle-priority users proportionately across state lines.

Conversely, there is no support for other methods, such as date-based allocation within middle-priority users. No affirmative provision exists in the
relevant statutes or court decrees for such a system. Such a system would necessarily ignore state apportionments. And it would be in extreme tension with Congress’s consideration and rejection in the Boulder Canyon Project Act of making middle-priority contract rights “subject to the rights of prior appropriators.” See Arizona v. California, 373 U.S. at 580.

III. Operating within the Law of the River, the Bureau should expand the legal and practical tools available for finding solutions for water shortages.

Within the Law of the River, the Bureau has considerable room to innovate to address the shortages of Colorado River water. Expanding the legal and practical tools available to the Bureau and to users may in some instances require separate administrative proceedings. But such tools should be available for all or most of the post-2026 period under examination in the EIS. Accordingly, the Bureau should—indeed, must—consider how those are likely to be used to improve management of Colorado River water and mitigate environmental impacts from shortages. And in many instances, sound policy development demands that the Bureau commence those processes now, so they can produce better outcomes sooner. The Districts identify and briefly discuss some promising avenues.

A. The Bureau should analyze post-2026 operations by assuming a revised set of regulations and processes governing the Intentionally Created Surplus (“ICS”) system. However well-intentioned, the existing framework is prone to abuse and manipulation. Full revision of the ICS system may require separate proceedings. But if the ICS system is continued under post-2026 operations, the Bureau should reform it in ways that better align with the priority system and sound policy.

First, ICS should be administered in alignment with the Law of the River so as not to disrupt the priority system. The rules developed in the post-2026 process (and the corresponding analysis in the EIS) should ensure that the ICS system does not impact users with rights senior to those of users creating or taking delivery of ICS water. This issue has particular significance in shortage conditions. The Bureau should explicitly state (and analyze the ICS system under the principle) that ICS water retains its priority level for withdrawals: A water user that has created ICS water cannot take delivery of that ICS water in a given year unless all more senior users receive full deliveries of water in that year.

Second, the Bureau should consider an alternative under which it winds down the ICS system after 2026. The Districts recognize that the ICS system has
protected critical elevations in Lake Mead during an interim period. But because
the system is built around ICS creators retaining rights in “conserved” water,
rather than engaging in true conservation that permanently reduces the burden on
the River system, the ICS system cannot be a path to living within the declining
volume of the River indefinitely. At the very least, the limits on each State’s
creation and storage of ICS should not be increased. ICS water should be
administered to benefit the system: A portion should be treated as system water,
and ICS water should be charged evaporation losses annually at a minimum rate of
six percent from creation to withdrawal (or depletion). Modeling such approaches
would provide valuable insight into the relative contribution that the ICS system
actually makes toward long-term stability of the River system.

Third, the Bureau should examine equitable participation in the ICS system.
The most natural use of the ICS system would entail participation by various users
within a State in proportion to their entitlement within the State. But in practice,
certain users claim the benefit of an outsized share of their States’ ICS space.
Ensuring broad and equitable participation would tend to promote confidence and
responsible use of the ICS system.

Fourth, the Bureau should audit the conservation activities users employ to
create ICS, including the use of alternate sources of water to create ICS surplus, the
methods otherwise used to conserve water, and the length of time such activities are
deemed to conserve water. The system as it currently functions leads to arbitrary
outcomes in ways that the Bureau should correct. Making these corrections may
affect how the ICS system interacts with other measures to promote the long-term
stability of the River system. Accordingly, they should be considered among the
alternatives analyzed in the EIS.

The ICS system draws arbitrary lines between eligible and ineligible
conservation measures. Some efficiency improvements implemented prior to 2006
that must be re-implemented every year have nonetheless been treated as
categorically ineligible. For example, one of WMIDD’s applications for ICS water
arising from land retired from agricultural use was denied because that land was
retired prior to 2006, and thus the water was considered “unused entitlement”
rather than ICS-eligible savings—even though WMIDD could turn a profit by
returning that land to production tomorrow. But an urban water district is eligible
for ICS credit for homeowners who implemented low-flow technology prior to 2006.
It appears, therefore, that the year of implementation constrains only some users
arbitrarily, when nothing distinguishes next year’s water savings from the retired
agricultural land and next year’s water savings from the low-flow showerhead.
This issue is especially salient to the Districts because their farmers implement many conservation measures annually—at high cost—and are frustrated to see that others receive credit for annual improvements while they do not. Those measures include laser-leveling fields at least once annually for more efficient water application; implementing tiered pricing schedules to discourage excess diversions; requiring costly sprinkler irrigation rather than the more cost-efficient “subbing” for germination; requiring growers to fight pests and disease through methods that are more expensive than traditional flooding of fields; and paying for furrow compression several times annually. The Districts struggle to understand why they have been told that these measures do not create ICS—while other users create ICS with analogous measures.

That arbitrary result is compounded by the fact that the ICS system is biased in favor of recognizing ICS creation by the most junior users. When a senior water user does not use all of its entitlement, it may be denied ICS credit on the theory that it was not engaged in conservation—and yet that unused entitlement is made available to junior users all the same. But many more junior users have rights to the remaining state apportionment of water, and typically have the option to take delivery of such water for surface or underground storage. If that junior user declines delivery of the water for storage, that user can claim ICS credit for simple inaction. The overall effect is that a senior user that engages in conservation activity may be denied ICS credit, but a junior user not engaged in conservation activity will obtain ICS credit for the same water.

The Bureau should consider reform of the ICS program to be within the scope of its post-2026 process. The Bureau should proceed with winding down the program or reforming it to make it more equitable, less arbitrary, and better adapted to the purposes of post-2026 operations.

B. All recognize that, at some point in the post-2026 period, the Bureau will need to reduce water deliveries below the level users prefer. Although the priority system answers many questions about how those reductions will occur, additional avenues for reduction exist. One underutilized but legally required tool for careful distribution of water is the suite of processes under 43 C.F.R. Part 417, which requires the Bureau to ascertain every year that each delivery of Colorado River water to “every public or private organization … in Arizona, California, or Nevada which … has a valid contract for the delivery of Colorado River water” “will not exceed those reasonably required for beneficial use,” according to a number of factors. Id. §§ 417.1-417.3; see also id. § 417.5 (governing deliveries to Tribes).
Part 417 applies to agricultural and municipal areas alike. To the extent the Bureau has exempted municipal and industrial users pursuant to 43 C.F.R. 417.1(b), those exemptions can no longer be justified given the scale of municipal and industrial water use and the challenges facing the River. Moreover, the Bureau has long recognized that Part 417 applies to both PPRs and junior-priority users. See, e.g., Federal Defendants’ Brief Regarding Remedy for 43 C.F.R. Part 417 Breach Found by Court on Motion for Preliminary Injunction at 1, *Imperial Irrigation District v. United States*, No. 03-cv-00069 (S.D. Cal. 2003) (agreeing with court’s finding that Part 417 applied to Imperial Irrigation District’s PPR entitlements).

Part 417 uses mandatory language: The Bureau must determine that deliveries “will not exceed those reasonably required for beneficial use.” 43 C.F.R. § 417.2 (emphasis added). In other words, Part 417 imposes a mandatory duty upon the Bureau. Thus, for example, the Bureau cannot refuse legal deliveries to junior users without first making any appropriate beneficial use reductions to more senior users.

This process must be implemented fairly and equitably. Users (including those in the Districts) who have invested in efficiency improvement over time need not fear such a process, while fair implementation of Part 417 will encourage appropriate measures by other users. As part of that equitable implementation, the Bureau must apply these processes to agricultural and municipal users alike. The Bureau should consider Part 417 processes (and, more importantly, their outcomes) to be well within the scope of analysis of post-2026 operations.

C. Reductions in water usage can be painful or devastating for communities that rely on Colorado River water. One way for the Bureau to reduce this impact is to prioritize compensated, voluntary reductions where possible. Thus, the Bureau should include within the scope of its post-2026 process assessing efficient systems to allocate and compensate for reductions in water usage.

Reductions work best where they are voluntary—and voluntary reductions happen most often when they are compensated. Growers within irrigation districts can best determine when foregoing their contractual entitlement in favor of compensation is advisable, as well as which crops to grow when and where. Local growers will be the first to understand the value of their crops and the market preference for conservation or vegetables. Conservation flats lack the flexibility to achieve this efficient allocation. Existing programs demonstrate that this conservation format is practicable and can secure strong participation from entitlement holders. The “500+ Plan” and the “1a” and “1b” and “2” plans of the
Lower Colorado River Basin System Conservation and Efficiency Program funded by the Inflation Reduction Act offer a roadmap for incentivized, voluntary compensation programs.

These programs are also fundamentally fair. Where users in the Lower Basin bear the burden of conservation to stabilize the Colorado River system, compensation is both just and necessary. Compensation is fairly offered where entitlement holders forgo their contractual right to divert Colorado River water and conserve voluntarily. Compensation for these voluntary reductions encourages conservation and spurs efficient allocation of water usage in agricultural regions and beyond.

More broadly, expanded market-based systems for reallocating water within the Lower Basin have significant potential to improve outcomes. After all, when one person has something valuable that another person wants, the accepted solution is a purchase and sale in a free market—not an involuntary transfer without compensation. Such markets for Colorado River water exist in limited form today, including established programs for transfers between certain agricultural and urban users within California. The Bureau has recently entertained such a transfer within Arizona in the Queen Creek matter. Although such transfers can raise policy issues, they may be a promising avenue for reallocating water use in ways that the participants find advantageous, yet which the Bureau would otherwise have no insight into or authority to impose on its own. The Bureau could play a valuable role in facilitating such markets—for example, by ensuring that market forces set prices that will maximize participation in voluntary arrangements.

D. In setting annual policy, the Bureau must balance fidelity to natural systems with users’ need for predictability. Currently, the Bureau sets its Annual Operating Plans based on near-term modeling of the actual year-to-year flow of the River, and it does not make changes mid-year to the volumes allocated for delivery to users. The Districts strongly support continuing to operate the River system in this way. Mid-year changes in operating plans based on River changes are devastating to communities (such as those in the Districts) that make agricultural plans, and corresponding contractual commitments, many months ahead of time. At the same time, the Bureau should, in setting annual plans, flexibly account for current hydrology and develop those plans based upon the actual flow of the River, rather than on a set, perceived annual volume of water.

E. In seeking to maximize available water, the Bureau should consider whether resources exist to recycle or reclaim water. For example, graywater
programs in urban areas can be useful tools for dramatically reducing the usage of Colorado River water on non-functional turf. And the Yuma Desalting Plant offers an enormous opportunity to reclaim water—perhaps even in a carbon-neutral way, given the availability of renewable energy in the desert Southwest. The Districts should be included in any conversation about providing reclamation or recycling credits to users.

F. Finally, the Bureau should take this opportunity to revise some of the logistical and bureaucratic hurdles to increased conservation. Most obviously, the Bureau should proceed immediately to articulate how it will apply the Law of the River in times of water shortages. The lack of clear, precise, public, legally valid rules for allocation of water in times of shortage is a serious impediment to planning within the Basin and evaluating the impacts (environmental and otherwise) of reduced deliveries. A significant failing of the original DSEIS was its silence on such fundamental issues; because the DSEIS was deliberately ambiguous about those issues, it failed to actually analyze the true impacts of the Bureau’s operational proposals. Neither the Bureau nor stakeholders can afford to repeat that experience.

Another issue of this kind—specific to on-River users with consumptive use entitlements, such as the Districts—concerns how reductions will be administered in practice. Currently, the Bureau determines the Districts’ consumptive use after the fact by mathematically netting out their diversions, measured return flows, and Bureau-calculated unmeasured return flows. That approach can be undesirably unpredictable, but it has proven workable in practice if the Districts leave a margin of error between their anticipated consumptive use and their true entitlements. That approach will become untenable if the Districts are told to reduce consumptive use significantly below their true entitlements, but can only control the amount of their diversions. Reconciling these two measurements in a predictable way may allow users to operate more effectively within reductions from their full contractual entitlements. Resolving this accounting issue is relevant to the scope of the Bureau’s post-2026 analysis because the Bureau’s rules themselves affect how users will respond to reduced flows under different alternatives.

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Our generation has just one opportunity to get the future of the Colorado River right—to build a sustainable, equitable, sensible system that supports our communities, ensures our national security, preserves an extraordinary ecosystem, and feeds our Nation. But that task must proceed within the legal confines laid down by generations previous. We hope that, in doing so, the Bureau considers the
above comments—and protects the agricultural communities, including Yuma, that feed our Nation affordably and efficiently.

Yours truly,

Benjamin J. Horwich

cc: The Honorable Kyrsten Sinema
3333 East Camelback Road, Suite 200
Phoenix, AZ 85018-2324

The Honorable Mark Kelly
2201 East Camelback Road, Suite 115
Phoenix, AZ 85016-3446

The Honorable Camille Calimlim Touton
Commissioner
Bureau of Reclamation
1849 C. Street, N.W.
Washington, D.C. 20240-0001

Michael Brain
Assistant Secretary for Water and Science
Department of the Interior
1849 C. Street, N.W.
Washington, D.C. 20240-0001

Wayne Pullan, Regional Director
Marcie Bainson, Special Assistant to UCB Regional Director
Genevieve Johnson, Reclamation 2007 Interim Guidelines SEIS Project Manager
Upper Colorado Basin Regional Office
Bureau of Reclamation
125 South State Street, Room 8100
Salt Lake City, UT 84138-1147
Jacklynn Gould, Regional Director
Fernando Castro-Alvarez, Regional Liaison
Lower Colorado Basin Regional Office
United States Bureau of Reclamation
P.O. Box 61470
Boulder City, NV 89006-1470

Michael Norris, Area Manager
Yuma Area Office
United States Bureau of Reclamation
7301 Calle Agua Salada
Yuma, AZ 85364-9763

Tom Buschatzke, Director
Arizona Department of Water Resources
1110 W Washington St, Ste 310
Phoenix, AZ 85007

Wellton-Mohawk Irrigation and Drainage District
Robbie Woodhouse, Board President, hrking00@aol.com
Elston Grubaugh, Manager, egrubaugh@wmidd.org

Yuma Mesa Irrigation and Drainage District
James Weddle, Board President, hayonewf@gmail.com
Ronald D. Turner, Manager, rturner@ymidd.org

Yuma Irrigation District
Mark Smith, Board President, msmith@smithfarmsyuma.com
Rex Green, Manager, yid@mindspring.com

North Gila Valley Irrigation and Drainage District
Larry Ott, Board President, larry@gilavalleyfarms.com

Wade Noble
Meghan Scott
Noble Law Office
1405 W. 16th St. Ste. A
Yuma, AZ 85364
United States Bureau of Reclamation
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Jason Moyes
Moyes Sellers & Hendricks Ltd.
1850 North Central Ave. Ste 1100
Phoenix, AZ 85004

Ronald L. Olson
Munger, Tolles & Olson LLP
350 South Grand Ave., Fiftieth Floor
Los Angeles, CA 90071-3426

Patrick J. Cafferty
Matthew W. Linsley
Clare Kane
Munger, Tolles & Olson LLP
560 Mission St., Twenty-Seventh Floor
San Francisco, CA 94105-3089