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**GREAT BASIN  
WATER NETWORK**

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COMMENTS SENT VIA EMAIL ON SEPT. 8, 2020

September 8, 2020

Rick Baxter  
Program Manager  
Lake Powell Pipeline Project  
Bureau of Reclamation, Provo Area Office  
302 East Lakeview Parkway  
Provo, Utah 84606

**RE: LPP DEIS COMMENTS**

Mr. Baxter:

Great Basin Water Network is a non-profit organization with decades of experience working to protect freshwater supplies for residents of Nevada and Utah, most recently defeating the sibling of the Lake Powell Pipeline Project (LPP): The Clark, Lincoln and White Pine Counties Groundwater Development Project. Our members are concerned that there is not water available for LPP, which is why we intervened in the Federal Regulatory Energy Commission proceedings and submit these comments before you today. We believe that conservation will provide the water that Washington County needs for the coming decades. But it will also ensure that we protect the over-allocated Colorado River. Among our greatest concerns is that an expedited depletion of the Colorado River will create new conflicts for groundwater throughout the Great Basin while imperiling an over-taxed river system and the millions of people who depend on it. Southern Nevada has spent decades reducing its Colorado River consumption, implementing conservation programs, and preparing for a future with less water in the river. Southern Utah must do the same. Below are comments highlighting deficiencies with the Bureau of Reclamation (The Bureau) DEIS and suggestions for future analysis.

**The DEIS did not consider water availability for LPP:**

Right now, the Colorado River System has a deficit even larger than the well documented 1.2 million af/yr. The DEIS fails to mention this chasm between senior rights and what is consumed – with the likely deficit hovering around 2.1 million af/yr (See comments from Living Rivers and Colorado Riverkeepers et al). By excluding the data demonstrating that there are more

consumptive users than there is available water for new appropriators like LPP, the DEIS did not give the public an opportunity to better understand the most important water supply in the Western U.S. The Colorado River has lost more than 2.7 million af/yr of flows since the signing of the Colorado River Compact in 1922 (see comments from Living Rivers and Colorado Riverkeepers et al). Data from Jonathan Overpeck and Bradley Udall suggest that the river will lose another 3 million af/yr worth of flows by the end of the Century.<sup>1</sup>

Bureau stress test data show that substantial losses within the Colorado River Basin are likely to continue in the coming years. A 2012 study by the Bureau — which inadequately accounted for climate change — even found a 17-24 percent likelihood of a Lees Ferry shortage<sup>2</sup>. The DEIS failed to include an analysis on these facts, which is a massive shortcoming in the review process and ignores the current realities of the Colorado River system. This oversight means that there is also no information about the likelihood that LPP will be curtailed, nor was there any information on Lake Powell Pipeline's effect on the future management of the river once the 2007 Interim Guidelines and the 2019 Drought Contingency Plan expire. Without these critical pieces of information, it is difficult to conclude that there is availability to serve the Lake Powell Pipeline.

Furthermore, Utah code section 73-3-8(1)(a)(i) requires that sufficient water be available for appropriation. Considering the aforementioned questions about availability, it does not appear that the Utah State Engineer, with a straight face, could approve the project's change application (#41-3479, a45683) on the grounds that water is available within the Green River, Colorado River and Lake Powell.

It is also worth considering that the change application for the bulk of the project's water rights has yet to have a hearing in front of the Utah State Engineer. There also remains an outstanding question as to whether an application from 1958 (#41-3479, A30414d) that was never perfected can even have standing as a legitimate change application. These questions are the subject of protests filed in conjunction with the change application.

While those state water issues may not concern the Bureau, federal officials should consider a note in the change application that offers a warning to us all:

“Water rights which the State Engineer has identified may experience quantity impairment.”<sup>3</sup>

### **Exchange Contract**

This EIS is also the means for the Bureau to execute a water exchange contract for the project. That exchange contract is the subject of much uncertainty among other Upper and Lower Basin

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<sup>1</sup> (Overpeck & Udall, 2017)

<sup>2</sup> (Colorado River Basin Water Supply and Demand Study: Technical Report B — Water Supply Assessment, 2012)

<sup>3</sup> (Water Right Search, a45683)

states. Communities have not had time to review and vet the contract. Any exchange contract should be made available for public review and comment in future analysis.

**The Final EIS must include a conservation alternative:**

The DEIS failed to include a conservation alternative, preventing the public from being able to consider all of the options available to them. That exclusion made it appear to the public that there was only one option to consider. But that is far from the truth.

The Bureau should have considered what communities like Denver, Albuquerque, Phoenix, Tucson and Las Vegas have achieved in recent years. They have all cut their gallons per capita use drastically in an effort to limit consumption while serving greater demand.

Washington County residents consume — per capita — about double the water of the aforementioned desert communities every day. There is no reason why the Washington County Water Conservancy District must continue to resign itself to this project as the only means of augmenting its water supply. Future analysis should include how Washington County communities can meet their needs by implementing building codes, landscaping programs and other incentives to limit consumptive use of water while also considering the implementation of modern recycling facilities, agricultural buyouts and the availability/cost of direct-use water supplies.

Any future analysis of a conservation alternative should also include what the DEIS did not: a recognition of already existing secondary sources of water. The Washington County Conservancy District and the US Geological Survey have both identified supplies other than the Virgin River in recent years. Those additional sources not only undermine the project proponents' arguments that the Colorado River is the only other available supply for the community – it calls into question their credibility and integrity.

**The Bureau failed to take a hard look:**

NEPA requires federal agencies to have a different purpose and need than the applicant via 43 CFR Section 46.420. Furthermore, 40 CFR Section 1502.14 requires the Bureau to analyze a reasonable range of alternatives. Those requirements were flouted in the DEIS process. Without the “No Lake Powell Pipeline Alternative” in the DEIS, the proposal and review did not receive the proper consideration as required by federal law.

One line on page 15 of the DEIS elucidates how the Bureau failed to consider the public interest (43 CFR Section 46.420 (2)a) as it relates to the Colorado River, its tributaries, Lake Powell, and Lake Mead along with the plant, animal and human communities that depend on those sources of water and storage:

“The DEIS has been prepared in response to the Proposed [Lake Powell Pipeline] Project and does not attempt to compel Washington County residents to modify, change, or curtail their current culture, lifestyle or social expectations.”

As our comments suggest, the “Hard Look” and various alternatives were not at all considered in the DEIS. NEPA requires exploring options that may be outside a community’s status quo. This dereliction of duty by the Bureau will ultimately cost ratepayers and taxpayers due to litigation that will likely arise if this project moves forward. It is clear that the review of alternatives was not thorough or proper and the project should not advance without further analysis that the public deserves and the courts have demanded.

### **The DEIS ignored Lake Mead and the Virgin River:**

The symbiotic relationship between Lake Mead and Lake Powell are inherent in current management practices like the 2007 Interim Guidelines and the 2019 Drought Contingency Plan. However, any member of the public reading the DEIS would have no insight about the co-managed relationship between Lakes Powell and Mead.

Future analysis for the proposed project must include LPP’s impacts on Lake Mead’s levels; LPP’s potential effects on Lake Mead’s ability to generate electricity i.e. water availability, water quality, and conductance; and LPP’s likely effects on municipal water supplies, riparian ecosystems and agriculture throughout the Lower Basin – as well as in tribal communities and Mexico.

Furthermore, at the core of the project is discussion about the Virgin River—an important tributary for Nevada and Lake Mead. While there is promise of increased return flows into the Virgin River, there is not consideration about the effect that those water sources will have on Southern Nevada.

Any additional study must also include the effect of LPP on the Virgin River’s water availability, water quality, the effects on agriculture, and the potential harm to municipal water supplies for Southern Nevada communities. Analysis must also include the risks to sensitive and listed fish, the likelihood of algal blooms and other invasive threats to Southern Nevada’s water resources.

### **The DEIS failed to include a thorough quagga mussel analysis for Lake Mead, the Virgin River and the Muddy River.**

The Bureau inadequately examined the effect of quagga mussel infestation resulting in downstream water sources from Sand Hollow Reservoir. The public deserves a better understanding of the impacts related to quagga mussels. The public deserves a plan of action for downstream sources beyond what was included in Appendix C-12.

Future analysis must include the impacts of greater quagga mussel infestation at Lake Mead, the Muddy River and the Virgin River from the proposed project, the cost of the increased

quagga mussel infestation to Southern Nevada and mitigation measures for Southern Nevada as well as the effect of quagga mussels on electricity production at Lake Mead.

The analysis must include the effects of increased quagga mussel infestation on water quality, benthic invertebrates, native fish species and amphibians that live in springs and tributaries of Lake Mead, the Muddy River and Virgin River.

Additionally, the analysis should include effects on recreation such as boating and fishing.

**The DEIS ignored meaningful climate analysis:**

As was previously mentioned in our comments, the DEIS failed to consider that between 1906 and 2018 the Colorado River lost 3 million af/yr in flows. By the end of the 21st Century, the Colorado River Basin is expected to lose another 3 million af/yr. Warming temperatures, reduced precipitation, early snowmelt runoff, decreased soil moisture and other factors attributed to a changing climate must be considered in future analysis. For the public to understand this project, it deserves to know how climate change will affect the decreasing flows of the Colorado River, the junior rights associated with Lake Powell Pipeline, impacts to Lower Basin States and the likelihood of curtailment of the project's water supply.

**Indigenous communities must be respected:**

The studies on native resources that were handed to the Bureau of Reclamation after the proceedings in the Federal Energy Regulatory Commission underscored grave threats to indigenous communities throughout the Colorado River Basin.

For the Bureau of Reclamation, however, those well documented dangers to cultural and spiritual sites did not warrant any analysis or study in this DEIS. That is shameful.

In the DEIS, the Bureau did admit that there were no mitigation measures in place to prevent the destruction of Traditional Cultural Property sites listed on the National Historic Register.

When government projects like the LPP extirpate the integrity of significant spiritual and cultural resources for native communities, that is a de facto extirpation of a people. For that reason alone, this project should not move forward. To do otherwise categorically threatens the religious and cultural practices of the Kaibab Band of Paiute Indians, the San Juan Southern Paiute Tribe and other Paiute nations in the vicinity of the project.

Additionally, the proposed options for LPP will need a Right of Way to cross the traditional cultural properties and current lands of the Kaibab Paiute Nation. The proposed project requires a resolution approved by the tribal council. That milestone has not yet been achieved to our knowledge.

### **The Lake Powell Pipeline violates the Colorado River Compact:**

A trans-basin diversion of water requires congressional approval per the 1922 Colorado River Compact – a precedent that has been upheld and validated by Congress and the U.S. Supreme Court. Congress has yet to consider or approve LPP's inter-basin transfer. The Law of the River also requires that an Upper-to-Lower-Basin transfer receives approval from the other Compact States. Nevada and the other states have not consented to this project.

### **Conclusion:**

With the considerable omissions, exclusions, weaknesses and other problems with the DEIS, it is clear that the Bureau should abandon this process or deny the proposal outright. Water managers, grassroots activists, and private citizens in Utah and the other Compact States are concerned about the future of this proposal for good reason. The DEIS was an opportunity to quell any concerns. That didn't happen. We respectfully submit these comments and hope that the Bureau and other Basin States can find a solution that works for Washington County. Fortunately, for St. George and other Southern Utah communities looking for this water, there are legal and noble avenues available. LPP, however, is not one of them.

A handwritten signature in black ink, appearing to read 'Kyle Roerink', with a stylized flourish at the end.

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