November 2, 2018

Mr. Brent Rhees
Upper Colorado Regional Director
Bureau of Reclamation
125 South State Street, room 8100
Salt Lake City, Utah 84138

RE: Green River Block Water Exchange Contract Draft Environmental Assessment PRO-EA-16-020

Dear Director Rhees:

Conserve Southwest Utah (CSU) appreciates the opportunity to comment on this Draft Environmental Assessment (EA). CSU is a coalition of citizens advocating for conservation of the area's natural resources, public lands, water, air, and cultural resources. We advocate for Smart Growth principles that enable conservation of these resources for the benefit of present and future generations. CSU has been studying the diminishing flows and the over-allocation of the Colorado River. We have been commenting on the Lake Powell Pipeline (LPP) Project for over 10 years. CSU was nominated by the governor to be on a team of 40 water experts state-wide to come up with a 50-year water strategy.[1] It was a multi-year process, and the strategies were completed last year.

Joining this comment letter are Glen Canyon Institute, the Arizona Chapter of the Sierra Club, the Grand Canyon Wildlands Council, and the Wildlands Network. They are also concerned about the diminishing flows and over-allocation of the Colorado River and have been commenting on the Federal Energy Regulatory Commission's process for the Lake Powell Pipeline Project.[2]

We are concerned that the State of Utah's (Utah) request for 72,641 AFY of water from Flaming Gorge Reservoir to develop the Green River Block's (GRB) water rights will lead to another deficit in an already over-allocated Colorado River basin. The development of water for the GRB may require more damaging diversions on the Green River. In exchange, Utah would let BOR use 72,641 AFY for the endangered fishes in the Green River. However, Utah has not disclosed where this surplus undeveloped high water right of 72,641 AFY is located. Moreover, the water

[1] https://envisionutah.org/projects/utah-water-strategy

[2] Conserve Southwest Utah formally Citizens for Dixie Future *et al*., "Comments of the Lake Powell Pipeline Coalition on Scoping Document 1 and Pre-Application Document, and Additional Study Requests," eLibrary no. 20080707-5206 (Jul. 7, 2008); Citizens for Dixie's Future *et al*., "Lake Powell Pipeline Coalition's Comments on Study Plans and Draft Study Reports," eLibrary no. 20110506-5125 (May 6, 2011); Citizens for Dixie's Future *et al*., "Lake Powell Pipeline Coalition's Comments on Modified Draft Study Reports," eLibrary no. 20120323-5005 (Mar. 23, 2012);

that Utah wants to exchange may no longer be physically available. Therefore, the BOR cannot give Utah a 50-year service contract out of Flaming Gorge Reservoir for a paper water right that is not connected to a verifiable water supply. Furthermore, this exchange is a significant change of water use; water for the endangered fishes will be exchanged for water for development along the Green River, which is a very sensitive place for the endangered fishes. In the past, the priority for Green River management was to protect the flows for the endangered fishes; in contrast, this exchange is weighted toward development, which represents a dramatic shift in management of the Green River. This exchange needs to be carefully decided with reference to detailed information in an Environmental Impact Statement, not an EA.[3] This EA lacks sufficient detail and fails to provide a thorough explanation of how this exchange is going to work.

BOR NEPA guidelines, page 4-41:

> "*A NEPA review is required to identify the likely environmental consequences of a change in water use. The information gathered during the NEPA review, such as the potential impacts to an endangered species, must be considered in Reclamation's decision in approving the water use change. Environmental impacts are considered for both the immediate and long-term effects of a water use change."*

This EA did not consider the impact to endangered fishes due to development of GRB's water rights. Specifically, it did not state where the proposed diversions would be located or what amount of water would be diverted.

Furthermore, the EA does not address Utah's diminishing water supply or the over-allocation of its water rights. For example, the BOR is not using hydrological modeling scenarios that reflect diminishing stream flows from a warming climate. This outdated approach puts our environment and the water supplies that we rely on at risk.

Our other concerns with this EA include:

1. BOR is not verifying Utah's Green River tributaries water supply of 72,641 AFY for the endangered fishes, which it wants to exchange for this 50-year service contract. However, the spring high flows of the Green River tributaries may already be diverted to the Central Utah Project.
2. It doesn't correctly describe the primary purpose or impact of allowing Utah to draw its Ultimate Phase CUP water right of 158,890 AFY depletion and about 300,000 AFY

[3] https://www.law.cornell.edu/cfr/text/40/1500.1: 40 CFR 1500.1 Purpose **(b)** NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken. The information must be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA. Most important, NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail.

diversion from Flaming Gorge Reservoir. We suspect that amount of water that Utah wants to exchange for the endangered fishes is not actually available in the high water spring runoff of the Green River tributaries.

3. BOR is using a piecemeal approach by trying to approve signing a 50-year service contract for the GRB using a flawed EA before the Lake Powell Pipeline (LPP) Project Environmental Impact Statement (EIS) is approved. This concept of a water use exchange with BOR should be included in the Lake Powell Pipeline EIS. Both of BOR's proposed service contracts, the GRB and LPP Block are connected, because they both depend on water from Flaming Gorge Reservoir and both seek to exchange use of spring high water Green River tributary flows for the endangered fishes to complete their proposed actions.[4] Also, they are requested actions from the same entity, the Utah Board of Water Resources and are segregated from the same Ultimate Phase CUP Water Right No. 41-3479.
4. BOR is ignoring its own call to action to deal with the over-allocation of the Colorado River basin. "The Basin faces a wide range of plausible future long-term imbalance between supply and demand." This call to action is outlined in the *Colorado River Basin Water Supply and Demand Study*.[5]
5. A contract negotiation meeting for this exchange was held December 2017 in St. George. However, in this EA, the proposed Contract No.17-WC-46-655 draft provisions were not

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[4] 43 CFR § 1508.25 Scope. *Scope* consists of the range of actions, alternatives, and impacts to be considered in an environmental impact statement. The scope of an individual statement may depend on its relationships to other statements (§§ 1502.20 and 1508.28). To determine the scope of environmental impact statements, agencies shall consider 3 types of actions, 3 types of alternatives, and 3 types of impacts. They include:
(a) Actions (other than unconnected single actions) which may be:
(1) Connected actions, which means that they are closely related and therefore should be discussed in the same impact statement. Actions are connected if they: **(i)** automatically trigger other actions which may require environmental impact statements. **(ii)** Cannot or will not proceed unless other actions are taken previously or simultaneously. **(iii)** Are interdependent parts of a larger action and depend on the larger action for their justification. **(2)** Cumulative actions, which when viewed with other proposed actions have cumulatively significant impacts and should therefore be discussed in the same impact statement. **(3)** Similar actions, which when viewed with other reasonably foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their environmental consequences together, such as common timing or geography.

[5] Colorado River Basin Stakeholders *Moving Forward,* addressing challenges identified in the Colorado River Basin Water Supply and Demand Study, Phase 1 Report: Executive Summary, Bureau of Reclamation, May 2015. "The Basin faces a wide range of plausible future long-term imbalance between supply and demand. This imbalance computed as a 10-year running average, ranges from no imbalance to 6 million acre-feet (MAF) with a median of 3.2 MAF in 2060."[5] Compounding the problem is river flows at Lee Ferry during last 15 years have only been 12.5 -13 MAFY; lower than the estimated 15 MAFY used in decision making. These lower flows are not being considered by BOR, or Utah in forecasting water availability for the LPP and this omission is making the over allocation worse.

provided for public comment. CSU provides specific comments on the proposed contract below.

CSU's specific comments on the EA, with page numbers and quotes noted:

1.3 Background, page 5.

"*Reclamation and the State propose entering into an exchange contract for the GRB that would allow Reclamation to: meet ESA Recovery Program goals in the Green River, continue to operate FG dam within the parameters of the FGROD, and provide the State with a reliable water supply for development of the 1996 Assignment*."

"*The remaining portion of the 1996 Assignment currently held by the Board has a diversion limit of 320,474 AF and a depletion limit of 86,249 AF. This portion is being reserved by the State to be used by the Lake Powell Pipeline Project (LPP) which would divert water from Lake Powell and deliver it through a pipeline to Washington and Kane counties in southwestern Utah. This portion of the 1996 Assignment is referred to as the LPP Block."*

CSU comment:

As mentioned above, both 50-year service contracts requests for water from Flaming Gorge Reservoir should be carefully studied in the context of the Lake Powell Pipeline EIS. Utah's claim that it still has this large remaining water right of 72,641 AFY in the spring high water Green River tributaries needs to be verified, because water supplies are declining and Utah has over-allocated its water rights in this region. Utah provides no evidence in this EA to support the claim that they have this water. One possible reason why there is not much undeveloped high water in the Green River tributary flows is because it may all be going to the Central Utah Project.

Furthermore, the EA does not explain how 72,641 AFY of undeveloped Green River tributary flows below Flaming Gorge Reservoir will be left in the Green River tributaries for the endangered fishes. Will water be identified and measured in these Green River tributaries before it is released from Flaming Gorge Reservoir?

Additionally, Utah should disclose the source of the water supply it wants to exchange. This supply should remain physically available for the endangered fishes to assure that it stays in the system for the 50-year term of the service contract. Utah should also be required to show proof of this claim so it can be evaluated against claims of senior water right holders and the remaining water supply. A study of water supply availability in Green River tributaries needs to be included in the EIS.

Moreover, months ago, CSU sent a GRAMA records request to the Utah Division of Water Resources to ask for details on where these undeveloped high water Green River tributary flows are located. We were told that the information provided by the Utah Division of Water Rights records was inconsistent with the records of the Utah Division of Water Resources. We are still waiting to obtain this information.

1.4 Purpose of and Need for Proposed Action, page 5

"*Reclamation received a letter dated January 5, 2016, from the State requesting two contracts for the use of its assigned water right (total of 158,890 AF depletion). One contract represents 86,249 AF depletion to be used for the LPP proposed to be constructed by the State; the second contract, called the Green River Block, or simply GRB, represents the remaining amount of the assigned water right (72,641 AF depletion) to be used for development along the Green River. The purpose of the Exchange Contract is to facilitate a water exchange of 72,641 AF of depletions annually under the 1996 Assignment, which was previously included as part of a CRSP participating project water right. This contract is needed to resolve a long standing disagreement between Reclamation and the State regarding use of the water right assigned in 1996."*

CSU Comment:

CSU is concerned that this exchange will further diminish an already over-allocated Colorado River, where existing deficits have not yet been addressed. It is well-documented by the BOR that there is more water allocated in the Colorado River than the river produces annually, even without considering a warming climate. The releases from Lake Powell continue to exceed inflows. This over-allocation has drained the reservoirs faster than anyone predicted.

This EA did not consider Utah's water right laws in its water use exchange concept.

The *Doctrine of Prior Appropriation* states the fundamental principle by which water rights are managed within the western states and Utah: "first in time, first in right." This doctrine is not used in allocations in the Colorado River Compact between the states, but it is the basis for Utah's water laws. This means that those holding a water right with the earliest priority date, and who have continued to make beneficial use of the water, have the right to water from a certain source before others with water rights having later priority dates. As water supplies decline, this principle will decide whose water supply gets shut off and who can continue to access the water. The GRB's 1958 water right 41-3479 is junior to many senior water right holders and is at high risk of being shut off. BOR is ignoring this risk. As Colorado River flows diminish over time, Utah's junior

priority GRB's water rights of 1958 will be subordinate to those of senior water rights holders.

Utah's water laws and water rights should be made part of this EA's decision-making process, but so far, they have not been considered. All of the Ultimate Phase CUP water rights have to show proof of beneficial use by 2020. This includes the GRB's water rights. Is BOR changing all the GRB's water rights proof of beneficial use dates past 2020 by ignoring this provision and including the water in a 50-year service contract? This gives Utah's water rights a senior position above all others. Furthermore, Utah's water law concerning instream flows may also have to be updated to accommodate this exchange, so that water can be left in a stream for the fishes and not developed. Thus far, this EA includes no discussion of how Utah's water rights laws will govern the exchange of water use in this 50-year service contract.

For instance, the priority date for all GRB water rights is 1958. This means that all water rights granted prior to 1958 have priority over the GRB's water rights. Also, the GRB's water rights are junior to: the Bonneville Unit of Central Utah Project, the Lower Basin states, and water for Mexico, as well as tribal water rights and other unsettled Federal Reserve Water Rights yet unresolved. All of these risks to this GRB's water rights need to be evaluated in an EIS.

We were told by BOR staff that the GRB's water right's 1958 priority dates would not change, and it would remain junior to the CUP. CSU is concerned that the BOR intends to give a service contract for 50 years for 72,641 AFY without considering the risks that the GRB's water rights could be shut off. This would happen if Utah's water rights laws are followed.

CSU does not understand how BOR's own goals would be met in this proposed exchange concept. It doesn't solve any of over-allocation of the Green River basin, and it is unclear whether sufficient water would remain available to protect the endangered fishes. The exchange also does not seem to appear in keeping to Utah's previous pledge to not issue water rights or do any change applications in this section of the Green River. In this 2009 proposed Green River Water Rights Policy Agreement, Utah had been tasked with providing legal protections for the endangered fish flows from Flaming Gorge Reservoir to Lake Powell under the *Recovery Implementation Program Recovery Action Plan* (RIPRAP).[6] Also, the Department of Interior recommends that each action be consistent with the goals of BOR.

[6] https://www.waterrights.utah.gov/meetinfo/m20090820/policy-upcorviMC09L.pdf and

> *"Interior's regulations at 43 CFR 46.420(a)(1) indicate that, in accordance with 40 CFR 1502.13, "purpose" and "need" may be described as distinct aspects defining the underlying situation that the agency is responding to. The "need" for action is the underlying problem the agency wants to fix or the opportunity to which the agency is responding with the action. The "purpose" is the goals or objectives that the agency is trying to achieve."*

CSU does not think this proposed action meets the goals of BOR to try the solve the long-term imbalance between supply and demand. It certainly meets Utah's goals—but at what expense to the environment and the public good?

EA page 5. Purpose continues:

> *"This contract is needed to resolve a long standing disagreement between Reclamation and the State regarding use of the water right assigned in 1996."*

CSU does not understand how this EA would solve the core issue that BOR faced in 2009: that the Green River was over-allocated. This Ultimate Phase CUP Water Right No. 41-3479 should have lapsed in 2009, as the state agreed to do. Rather than resolving the over-allocation of the Green River, this EA makes it worse.

In 2009, the BOR had a different position about the Ultimate Phase CUP Water Right No. 41-3479. BOR stated in their protest letter that this water right should have lapsed due to the over-allocation of senior water rights holders in this region.[7] The GRB is a portion of this same water right. This letter reads as follows:

> Water Right No. 41-3479 is a segregated portion of the Flaming Gorge water right, Application to Appropriate No. A30414. This appropriation originally included both the storage of water in Flaming Gorge Reservoir and the beneficial use thereof for the "Ultimate Phase" of the Central Utah Project. After the "Ultimate Phase" was deauthorized, Reclamation assigned this portion of the appropriation to the Utah Board of Water Resources with the understanding that any portion of this water right not developed within 50 years of the original approval date (October 6, 2009) would lapse.

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[7]Letter from BOR to State Engineer Dec 17, 2009 see at:
https://www.waterrights.utah.gov/asp_apps/DOCDB/DocImageToPDF.asp?file=/docSys/v921/b921/B921002N.TIF;
https://www.waterrights.utah.gov/asp_apps/DOCDB/DocImageToPDF.asp?file=/docSys/v921/b921/B921002O.TIF

> Reclamation is concerned that further extensions on the undeveloped portions of the Flaming Gorge appropriation could jeopardize the future of the Central Utah Project (CUP). To date, over $2 billion dollars have been spent to develop the CUP, which supplies agricultural, municipal, and industrial water to millions of Utah residents in the Uintah Basin, Heber Valley, and Wasatch Front corridor. The key right for the CUP, Water Right No. 43-3822, has a priority date of November 11, 1964. If all the senior undeveloped water rights in the Green River and San Juan River Basins are developed, Utah would exceed its portion of the Colorado River Compact and the Central Utah Project water rights would be adversely impacted.

The BOR protested the Ultimate Phase CUP Water Right No. 41-3479 extension of time, for proof of beneficial use, beyond the 50-year limit (October 6, 2009). For this reason, Utah made all these GRB water rights junior to the Central Utah Project All of GRB water rights holders also have to show proof of beneficial use by 2020. The BOR also mentioned in their protest letter that if all senior undeveloped water rights in Green River and San Juan are developed, Utah would exceed its portion of the Colorado River Compact. The BOR also protested every water right that was segregated from the Ultimate Phase Water Right No 41-3479, and Utah made them junior to the Central Utah Project.

This suggests these GRB water rights are not a valid water right to exchange with the BOR for a 50-year service contract. The BOR has changed its position for an unknown reason and now claims these water rights are a viable, permanent 72,641 AFY water right that can be used for an instream flow for the endangered fishes for 50 years. However, the BOR has not addressed the concern that this 1958 GRB's water rights are junior to senior water right holders and will be in jeopardy of being shut off as water supplies decline. The BOR should explain why they changed their position in this EA. Furthermore, BOR should conduct an analysis of the validity of Utah's GRB's water rights and the available projected water supply for this 50-year service contract before agreeing to this exchange with Utah.

Utah has about 1.369 Million Acre Feet per Year (MAFY) of depletions from tributary sources to the Upper Basin Colorado River to use, and the balance of water is supposed to go downstream to the Lower Basin states.

Utah estimates that 1,007,500 AFY are being depleted. This is water that is taken out of the watershed and does not return. If you use a natural flow at Lees Ferry of 15 MAFY, it leaves about 360,000 AFY left for Utah to use. But, if you have less water at Lees ferry

(as shown in Udall's 2017 study,[8] which identifies a 19% decrease since 2000), this reduces the availability of the GRB's water rights. Udall and colleagues also concluded in another study that the naturalized flow of the Colorado River has decreased about 15% over the last 100 years.[9]

Therefore, Utah may not have a remaining share to develop due to diminishing flows and the over-allocation of its Colorado River water rights. A validation process should be initiated to resolve Utah's over-allocation of its Colorado River water rights, which are currently in disarray, before the state allocates more water from its diminishing supplies.

For Example: The State's web site on the Upper Basin Water Rights lists 2.5 MAFY of approved depletions, but Utah is only supposed to deplete 1.369 MAFY.

> See https://www.waterrights.utah.gov/distinfo/colorado/WRPriorityDDview.asp, where new totals are indicated at the bottom of the page:
>
> - 6,450,413 acre feet diversion; and
> - 2,542,092 acre feet depletions.

Consequently, there are significantly more approved water right applications than Utah's allocation, which, if developed, could potentially exceed Utah's entitlement.[10]

Furthermore, in 2009, there was a proposed water rights policy agreement for the Green River. [11] The Nature Conservancy and Western Resource Advocates described the over-allocation of the Green River as follows:[12]

> *"As the DWR stated in the public meetings, the surface waters in the affected reaches of the Green River are in essence "fully appropriated" and generally not subject to additional appropriation. New groundwater appropriations are limited to "small . . . applications for 1 family, 1/4 acre of irrigation and up to 10 livestock units." DWR's existing policy is to deny any significant new applications to appropriate water from these reaches. Consequently, we believe that the large*

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[8] *The Twenty-First Century Colorado River hot drought and implications for the future.* See at: http://conserveswu.org/wp-content/uploads/Udall_et_al-2017-Water_Resources_Research.pdf.

[9] Mu. Xiao, Udall, Lettenmaier, On the causes of declining Colorado Stream Flows, 2018 see at: https://agupubs.onlinelibrary.wiley.com/doi/abs/10.1029/2018WR023153

[10] Water Right Issues in the Upper Colorado River Basin of Utah https://www.waterrights.utah.gov/meetinfo/m042005/summary.htm

[11] https://www.waterrights.utah.gov/meetinfo/m20090820/policy-upcorviMC09L.pdf

[12] https://www.waterrights.utah.gov/meetinfo/m20091014/20091201_WRA-TNC_comments_final.pdf

"approved" but not yet "perfected" water rights are a much greater challenge for DWR in protecting the recovery flows. The potential reduction in recovery flows resulting from the exemption of approved, but unperfected water rights, needs to be fully addressed by the proposed policy. Additionally, the proposed policy does not account for "approvals" upstream of Reaches 1 and 2. One way to address depletions by approved but unperfected water rights may be to provide for an additional and equivalent increase in releases from Flaming Gorge whenever the perfection of approved water rights will reduce the recovery flows, as discussed above."

CSU comment:

In a 2009 proposed Green River Water Rights Policy Agreement, Utah was tasked with providing legal protections for the endangered fish flows from Flaming Gorge Reservoir to Lake Powell under the *Recovery Implementation Program Recovery Action Plan* (RIPRAP). However, Utah now wants to allow many new diversions on the Green River for the GRB's water rights to be able to divert 72,641 AFY from the Green River. This seems to be conflict with this previous agreement. The GRB's water districts only have until 2020 to show proof of beneficial use. Therefore, there is no certainty that this water right will remain in place for the duration of a 50-year service contract. It is not clear how Utah's water laws and the requirement to put all waters to beneficial use may impact this water use exchange, which changes water use from development to an instream flows.

1.5 Scoping, page 6.

CSU comment:

Scoping was not done in a reasonable time period. BOR only held one scoping meeting on the EA in Vernal, Utah, and gave short notice for that meeting. Scoping is supposed to identify the issues to be addressed in the study, but the public was not given a meaningful chance to participate in a scoping process. The EA does not address the risk and uncertainty of the GRB water rights that Utah wants to exchange with BOR. CSU gave written comments to BOR on the proposed contract after the Open House in St George in December of 2017. However, this EA does not address any of the concerns expressed in our comments.

1.8 Scope of Analysis, page 8.

"The purpose of this EA is to determine whether or not Reclamation should enter into a contract with the State to exchange high spring tributary flows for water released from FG Dam, and to monetize that release of water. That determination includes consideration of

whether there would be significant impacts to the human or natural environment. In order to enter into a contract, an EA must be completed and a FONSI issued. Analysis in the EA includes impacts from depletions of water along the Green River, from FG Dam down to, but not including, Lake Powell".

CSU comment

An Environmental Assessment and Finding of No Significant Impact (40 CFR 1501.3 and 1508.9, 43 CFR 46.300-325 state that:

> *"An EA is a concise document prepared with input from various disciplines and interested parties that provides sufficient evidence and analysis for determining whether to prepare an EIS or a FONSI. This conclusion cannot be reached without having knowledge of what the issues are, as determined by appropriate Federal, tribal, State, local, and public entities, as well as the general public."*

CSU comment:

This EA did not provide sufficient evidence or information to make a decision possible. Therefore, BOR needs to do an EIS. There is nothing in the EA that describes where the Green River seasonal high water tributary flows of 72,641 AFY are located. This EA also does not indicate where all the GBR's possible water diversions along the Green River will be, or how they might impact the endangered fishes.

Chapter 2 Alternatives, page 9

2.1 Introduction,

> *"This chapter describes the features of the No Action and Proposed Action Alternatives and presents a comparative analysis. It includes a description of each alternative considered. This section also presents the alternatives in comparative form, defining the differences between each alternative."*

CSU comment:

An EA must include a discussion of alternatives, including the agency's preferred alternative.

40 C.F.R. section 1508.9(b). Under Reclamation's NEPA guidance, "[t]he responsible official has discretion to determine what (if any) action alternatives are appropriate." Reclamation's NEPA Handbook (Feb. 2012), p. 4-18. The record must include the official's rationale for how they exercised this discretion. Id. Thus, the official must explain how the alternatives considered were determined to be appropriate or feasible given the applicant's goals. See "CEQ Guidance regarding NEPA Regulations, " 48 Fed. Reg. 34263 (July 22, 1983), p. 9.

The EA identifies two alternatives: No Action and Proposed Action (defined as the "preferred alternative"). However, the EA does not provide adequate information to show that Reclamation's preferred alternative, i.e., the Proposed Action, is appropriate or feasible. More specifically, the EA does not include any inquiry into whether Utah has the water rights necessary to implement the Proposed Action for the 50-year term of the service contract. As discussed in these comments, BOR needs to reveal how it determined that Utah has the 72,641 AFY seasonal high Green River tributary flows to exchange with BOR to protect the endangered fishes. Also, the BOR needs to disclose how it made the decision that the GRB's 1958 junior water rights, which have to show proof of beneficial use by 2020, can be given a 50-year service contract for 72,641 AFY from Flaming Gorge Reservoir. As such, there is insufficient information in the record to show that the Proposed Action is appropriate or feasible. We again request that Reclamation provide information that demonstrates Utah has the water rights necessary to implement the Proposed Action.

1.2 Proposed Action, page 9

"For this exchange, the State would forebear the depletion of a portion of the Green River and tributary flows to which it is entitled, and instead allow these Compact Entitlement Water (the water under Article XV(b) of the Upper Colorado River Basin Compact which expressly recognizes each compacting state's rights and powers to regulate within its boundaries the appropriation, use, and control of water apportioned and available to the states by the Colorado River and Upper Colorado River Basin Compacts) rights to contribute to meeting the ESA Recovery Program Requirements in Reaches 1 and 2, thereby assisting Reclamation in its obligation under the FGROD. In exchange, the State would be authorized to deplete an equal amount of CRSP project water from FG releases throughout the year as water is needed for the State's Water Right. On an annual basis, the direct flows that would be left in the river and used to meet ESA requirements would equal the FG project releases used for depletion by the State under the Contract Entitlement Water right. The State would not make calls for releases from FG storage; rather, it would use the CRSP project water as it is"

continued on page 10,

"Each water year, the State may deplete up to 72,641 AF (part of the water it would have been available to deplete under its Compact Entitlement Water right), which instead it would forebear and designate to meet ESA Recovery Program Requirements in Reaches 1 and 2. At present, 13,684 AF of the 72,641 AF has been developed. This water would not be available for exchange of Project water until such time that a water right change application is filed on these developed portions."

CSU comment:

> *"On an annual basis, the direct flows that would be left in the river and used to meet ESA requirements would equal the FG project releases used for depletion by the State under the Contract Entitlement Water right"*
>
> *"For this exchange, the State would forebear the depletion of a portion of the Green River and tributary flows…"*

These statements from the EA are very confusing, because they do not explain how these direct high Green River tributary flows will be measured so an exact amount can be drawn from Flaming Gorge Reservoir. It also does not identify where the flows are that the Utah will forebear and give to the endangered fishes.

3.3.1.1. Hydrology, page 12, Overview

"Through coordination with the State, Reclamation conducted several hydrologic modeling runs using Reclamation's long-term planning model, Colorado River Simulation System (CRSS). The results of these model runs are being used to determine potential impacts on the hydrology of the Colorado River System from development of the GRB Ultimate Phase depletions. These depletions and diversions were covered in the FGFEIS, and are being analyzed for the purpose of signing Contract No. 17-WC-46-655 for Exchange of Water-Green River Block between the United States of America and the State."

"The hydrologic modeling provides projections of potential future Colorado River System conditions (e.g., reservoir elevations, reservoir releases, river flows) under the No Action Alternative scenario for comparison with conditions under the Proposed Action Alternative scenario. Due to uncertainties associated with future inflows into the system, multiple simulations were performed for each alternative to quantify the uncertainties in future conditions, and the modeling results are typically expressed in probabilistic terms."

CSU comment:

CSU questions BOR's exclusive use of CRSS, DNF models, and the Index Sequential Method (ISM) because these methods do not account for the impact of a warming climate. The models used in this EA only use the 100-year average of 15 MAFY at Lees Ferry. As mentioned above stream flows have continued to diminish. The BOR does have the option to use other available models that reflect diminishing flows, such as the Downscaled GCM projected scenarios results in the Basin Study, which use a mean annual flow of approximately 13.6 MAFY at Lees Ferry.

3.3.1.5 Cumulative Effects, page 17.

"Cumulatively, there would not be a significant impact to hydrology based on the analysis performed in this EA. The full depletion scenario, which includes reasonably foreseeable depletions, increases the maximum difference in elevation at FG Reservoir to 30 feet when compared to the No Action Alternative, at 100 percent exceedance, yet still within the FGFEIS range that extends to elevation 5,980 feet. It is important to remember that this is the worst case scenario—water is assumed to be taken below FG Dam in the projected driest year."

CSU comment:

The models do not consider a warming climate, which is likely to have a significant impact on the environment and the diminishing water supplies. As a result, these models do not accurately assess the cumulative effects of this action. These models do not reveal the full impact of the depletions, and they do not account for the projected diminishing future stream flows predicted by the BOR.

Specific CSU comments on the Contract No. 17-WC-46-655, Technical Draft 10-05-2017 include:

RECITALS

CONTRACT Page 3. RECITALS

CSU comment:

j. In this contract Recital, the BOR claims this action is in the best interest of the United States. However, based on our analysis, this contract is not in the best interest of the United States or other stakeholders, because it continues to over-allocate the diminishing flows of Colorado River.

CONTRACT Page 4., 4. TERM

The Contract remains in effect for 50 years.

CSU comment:

How can BOR guarantee GRB's 1958 junior water right for 50 years, when this water right has to show proof of beneficial use by 2020? This proposed contract also conflicts with Utah's water laws and Utah's 2009 Proposed Water Rights agreement on the Green River.

CONTRACT Page 5.

8. RATE AND METHOD OF PAYMENT

CSU comment:

How did BOR calculate this low annual rate of $19 per acre foot? This rate seems low compared to other BOR contracts. BOR should disclose how the rate was established and what other projects have been charged. Also, what are the costs of the CRSP used to determine the rate in this Contract? BOR should provide this information so the public can judge whether the rate is fair and whether it will be subsidized by the nation's taxpayers.

For instance, the Upper Gunnison River Water Conservancy District Contract No. 04-WC-40-010 was charged a much higher rate of $71.68 per acre foot than Utah's $19 AFY.

Excerpts from their Contract:

The first year per acre-foot rate of $71.66 will be charged for any approved third-party contract and is calculated from an amortization of the total debt service amount of $611,745.00, using the annuity due formula, a 40-year payment term, and an interest rate of 5.49 percent, which is the 2001 annual average rate for 20-year Treasury constant maturities.

This contract with Utah could also be an opportunity to add an escalation clause to the Contract. As the elevation of Flaming Gorge Reservoir decreases, the price per acre foot of water should increase. Pricing is a good tool for conservation.

CONTRACT, Page 14.

(n) CONSTRAINTS ON THE AVAILABILITY OF WATER

CSU comment:

This section should describe at what reservoir level Utah could not continue to draw water out of Flaming Gorge Reservoir.

This Contract should disclose how Utah's water laws and senior water rights holders may restrict water use to protect the endangered fishes.

WATER SUPPLY SHORTAGE

CSU comment:

There is nothing in the Contract that explains what will happen to 1958 Ultimate Phase GRB's water right in a shortage. A clause should be included in this Contract.

ADD –WATER CONSERVATION CLAUSE TO CONTRACT

CSU comment:

There is an opportunity to add a water conservation clause similar to the one included in this UTE Contract shown below. Cities receiving water would have to have a comprehensive Water Conservation Plan with firm targets. For example:

THE UTE MOUNTAIN UTE TRIBE, ANIMAS-LA PLATA PROJECT, [13] page 19

WATER CONSERVATION
"*Prior to the delivery of water provided from or conveyed through federally constructed or federally financed facilities pursuant to this contract, the Tribe shall develop a water conservation plan, which shall contain definite water conservation objectives, appropriate economically feasible water conservation measures, and time schedules for meeting those objectives."*

In summary, this EA does not contain sufficient or accurate information to enable stakeholders to fully understand the proposed action's impact on the environment and make an informed decision. There is no certainty that there is 72,641 AFY physically available for the endangered fishes. This decision should be studied in an EIS.

This EA includes many unsubstantiated claims that need clarification. Where does Utah find 72,641 AFY currently in seasonal high flows of Green River Tributaries that is surplus and not being used by other senior water rights holders? The BOR must address the fact that Utah's share of the Colorado River has already declined and will continue to decline over this 50-year period. It should also consider the other obligations that have a higher priority date than this GRB's 1958 water right. The GRB' water rights are junior to the largest water user of Upper Basin Colorado River water, the Central Utah Project. Finally, given all the uncertainties of declining water supplies and over-allocation of water in the Colorado River system, Utah must also address the over-allocation of its Colorado River approved water rights before it allocates more water for the GRB.

In closing, the Bureau of Reclamation (BOR) is responsible for determining how much water is available in the Upper Basin for new projects to use. Therefore, the BOR should conduct a Hydrological Determination to prove that there is a sufficient water supply for the GRB and for the endangered fishes will be present in the Colorado River System for the duration of this 50-

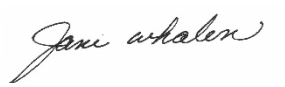
[13] See at:https://www.usbr.gov/uc/wcao/pdfs/contractDocs/ALP_UMUT_DRAFT_Contract_11.2017.pdf

year service contract. Based on our analysis, declining stream flows and the over-allocation of Utah's remaining share of the Colorado River suggest that the GRB's water rights may already be restricted to senior water rights holders.

A comprehensive study, such as a Hydrological Determination, could determine whether Utah has a sufficient remaining Colorado River allocation to exchange for this 50-year service contract. BOR's service contract with Utah for water from Flaming Gorge Reservoir should occur only after the Lake Powell Pipeline EIS is completed. There should not be a separate EA for the GRB's exchange of water use.

Please don't hesitate to call or email me if you have questions about our comments.

Respectfully,



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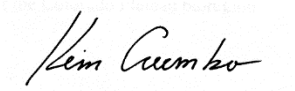

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