



**Colorado River Basin State Representatives of Arizona, California,
Colorado, Nevada, New Mexico, Utah, and Wyoming**

January 31, 2012

Via E-Mail and U.S. Mail

Glen Canyon Dam LTEMP EIS Scoping
Argonne National Laboratory
9700 S. Cass Ave. – EVS/240
Argonne IL 60439
<http://ltempeis.anl.gov>.

Re: Scoping Comments on the Adoption of a Long-Term Experimental and Management Plan for the Operation of Glen Canyon Dam.

Dear LTEMP Scoping Team,

The Department of the Interior (“Department”), through the Bureau of Reclamation (“Reclamation”) and the National Park Service (“Park Service”), has announced plans to prepare an Environmental Impact Statement (“EIS”) and adopt a Long-Term Experimental Management Plan for Operation of Glen Canyon Dam (“LTEMP”). See 76 Fed. Reg. 39435 (July 6, 2011) and 76 Fed. Reg. 64104 (Oct. 17, 2011). The Department conducted a number of informational meetings to initiate the process and provided opportunity for the public to comment on environmental and operational issues and concerns that should be considered when developing the EIS and implementing the LTEMP. The comment period ends January 31, 2012. The following comments are submitted on behalf of the seven Colorado River Basin states and the Upper Colorado River Commission (collectively referred to herein as the “Basin States”) as part of this LTEMP scoping process.

Basin States’ Interests

The Basin States have an undeniable interest in the wise administration of the Colorado River system reservoirs, including Glen Canyon Dam. The Basin States hold federally recognized entitlements to the Colorado River resource that serves as the primary water supply source for over 30 million people in the United States and provides for irrigation on nearly 4 million acres. The Colorado River system also produces more than 4,200 megawatts of hydroelectric energy and provides a source of environmental protection and enhancement from the headwaters of the Colorado Rockies to Mexico. Access to these and other resources make the Colorado River system the lifeline of the southwest.

Over the past 80+ years, the Basin States have been closely involved in negotiation of interstate compacts, litigation over the management and allocation of Colorado River water, and development of federal laws and regulations concerning the Colorado River system. The Upper Basin States have also established an interstate commission through federal compact to address management and allocation of Colorado River water in the Upper Basin. The Basin States have also implemented salinity control measures in the Colorado River Basin ("Basin"), and developed and carried out environmental programs to improve natural resources and recover endangered fish species in the Basin, including the Grand Canyon. Simply put, there is no aspect of Colorado River water management, allocation or operation in the Basin that does not affect the broad public interests represented by the Basin States.

Comments:

A. **Legal Framework:** The LTEMP should be developed according to the framework adopted by Congress in the Grand Canyon Protection Act (GCPA) for operating Glen Canyon Dam and using the Colorado River. This framework includes specific priorities, constraints and requirements as outlined below for the Secretary of the Interior to navigate in developing and implementing the LTEMP.

1. ***Priorities – Water allocation, appropriation, development and exportation.***

- a. **§ 1802(b)** - Operations to protect, mitigate and improve resources in Grand Canyon National Park and Glen Canyon National Recreation Area downstream of Glen Canyon Dam must remain consistent with and subject to the existing laws governing allocation, appropriation, development and exportation of the Colorado River resource. See *§1802(b), Grand Canyon Protection Act (1992)*.
- b. **Senate Energy Committee Report** - The Senate Energy Committee's Report on the GCPA makes clear that "the intent of §1802(b) is not merely to provide a savings clause but to establish that the Secretary's responsibilities for water storage, allocation and delivery under the Law of the River are primary and control the Secretary's actions under [the GCPA.]" *S. Rep. No. 102-267 at p. 135 (1992)*.
- c. **§ 1806(1)** – Nothing in the LTEMP shall affect in any way the allocations of water secured to the Colorado River Basin States by any compact, law or decree. See *§1806, GCPA*.

2. **Constraints** – The priority given to water storage, allocation and delivery under the GCPA substantially limits the Secretary’s ability to change other elements of Glen Canyon Dam operations as part of the LTEMP. *S. Rep. No. 102-267 at p. 136.*
 - a. 2007 Interim Guidelines – The *2007 Colorado River Interim Guidelines for Lower Basin Shortages and Coordinated Operation of Lake Powell and Lake Mead* (Interim Guidelines) implement the Criteria for Coordinated Long-Range Operation of Colorado River Reservoirs (LROC) to address water storage, allocation and distribution at varying reservoir elevations between now and 2026. The guidelines link release determinations at Glen Canyon Dam to specific trigger elevations at both Lake Powell and Lake Mead to better balance the system under varying water supplies. Depending on the reservoir levels in both, the Interim Guidelines provide a range of possible release volumes from Glen Canyon Dam in any given water year. Because these guidelines directly implicate water storage, allocation and delivery of the Colorado River resource in a manner intended to comply with and implement the Law of the River, the LTEMP must be “consistent with and subject to” the Guidelines.
 - b. Annual/Monthly Releases – The LTEMP must recognize the significant constraints placed on annual and monthly releases from Glen Canyon Dam as a result of water supply considerations, water delivery requirements, and the avoidance of anticipated spills. (“Spills” in this context are recognized as “releases in excess of powerplant capacity, which . . . are referred to as ‘flood releases’.” *S. Rep. No. 102-267 at p. 133.*

Pursuant to the LROC, as implemented by the Interim Guidelines, annual release volumes from Lake Powell are projected for the next Water Year based on the results of the August 24-Month Study. This projected annual release volume is then updated each month of the Water Year to incorporate actual hydrologic conditions as evaluated in the monthly 24-Month Study model runs. Through these updates, the annual release volume for Glen Canyon Dam moves from projected to actual as contemplated under the Interim Guidelines.

The annual release volume as projected (in accordance with the Interim Guidelines and based on the August 24-Month Study) serves as a basis for projecting the monthly release volumes from Glen Canyon Dam for the upcoming Water Year. These monthly

release projections must likewise be updated as necessary throughout the Water Year to track with the updates for annual release volumes from Glen Canyon Dam. The flexibility to modify monthly release volumes based on actual hydrology is essential to assuring that Reclamation can achieve the required annual release volume from Glen Canyon Dam consistent with the Interim Guidelines.

- c. **Balancing** - The Secretary must also balance competing interests on the River when developing the LTEMP pursuant to the GCPA.
 - The Senate Committee Report on the GCPA explains that in fulfilling the basic requirements of the [GCPA], the Secretary is faced with the fundamental challenge of identifying and implementing a set of remedial measures that recreate and preserve the natural processes and value of the Colorado River below Glen Canyon Dam, while operating within the constraints of the most intensely regulated river in the world. *S. Rep. No. 102-267 at p. 135.*
 - The U.S. District Court for the District of Arizona further clarified that the broadly worded provisions of the Colorado River Storage Project Act (CRSPA) and GCPA impose on the Secretary an obligation to balance many different interests in operating Glen Canyon Dam. *Grand Canyon Trust v. Bureau of Reclamation*, 623 F.Supp.2d 1015, 1036 (D. Ariz., 2009).
 - The Federal Government's brief in the Grand Canyon Trust litigation acknowledges and recognizes the Secretary's obligation to fulfill multiple and sometimes competing statutory requirements applicable to the operation of Glen Canyon Dam. See, Federal Defendants' Memorandum In Opposition to Plaintiff's Motion for Summary Judgment on Claims 6-8 at p. 38 (Dec. 19, 2008). It further clarifies that the Secretary must continue to recognize that power production is still a primary purpose of the Dam that must be balanced against other purposes, statutory requirements, and water delivery obligations as he considers actions to implement the GCPA. *Id.* at 38.
3. **Requirements** – Consistent with the GCPA and the Senate Committee Report, the LTEMP should also consider and include the following requirements:
- a. **Exercise other authorities** – In addition to dam operations, efforts to protect, improve and/or mitigate resource values in the Grand

Canyon National Park and Glen Canyon National Recreation Area should “exercise other authorities under existing law.” See §1802(a), GCPA. According to the Senate Committee Report, this phrase means the Secretary should consider and may implement non-operational measures to address downstream effects of Glen Canyon Dam. *S. Rep. No. 102-267 at pp. 135*. Specifically, the Committee intended that the Secretary consider all alternatives to improve park values and not focus exclusively on dam operations. *Id. at 137*.

- b. EIS and Monitoring – The LTEMP EIS should consider and incorporate the following key elements regarding preparation of the EIS and the long-term operation of Glen Canyon Dam to remain consistent with the statutory requirements of the GCPA. See §§1802, 1804, 1805, GCPA.

* *Audit* - Auditing of the costs and benefits to water and power users and to natural, recreational and cultural resources resulting from management policies and dam operations. §1804(b), GCPA.

* *Criteria* – Adopting criteria and plans based on the findings conclusions and recommendations in the EIS and the Audit. § 1804(c)(1)(A), GCPA.

* *Reporting* - Reporting on LTEMP activities in a manner that does not interfere with the Secretary’s preparation of the Annual Operating Plan as prescribed under the Colorado River Basin Project Act of 1968. §1804(c)(2), GCPA. Any reporting on the LTEMP pursuant to the GCPA should be separate from and subject to the 1968 Act Annual Operating Plan report. §1804(c)(2), GCPA; *S. Rep. No. 102-267 at p. 137*.

* *Costs* – Reallocating the costs of construction, operation, maintenance, replacement and emergency expenditures for Glen Canyon Dam among the purposes for protecting, mitigating and improving the values downstream of Glen Canyon Dam and the purposes for which Glen Canyon Dam was authorized under the CRSPA. §1802(e), GCPA. Any operational changes that reduce the generation of peaking power in favor of baseload operations will greatly reduce power generation benefits. As benefits of operations shift, the costs allocable to the beneficiaries should shift as well. *S. Rep. No. 102-267 at p. 138*.

* *Monitoring* - Establishing and implementing long-term monitoring programs and activities, including any necessary research and studies to determine the effect of actions on the natural, recreational and cultural resources and ensure the dam is operated in a manner consistent with §1802. §1805(a) and (b), GCPA.

* *Consultation* – Consulting with the Basin States and others in preparing criteria and operating plans as well as monitoring programs and activities for the LTEMP. §1804(c)(3) and §1805(c), GCPA.

B. Geographic Scope of Proposed Actions: As currently described, the project area for the LTEMP EIS includes the Glen Canyon National Recreation Area, Grand Canyon National Park, Lake Mead National Recreation Area, and resources of importance to American Indian Tribes. However, the stated purpose of the LTEMP does not mention Lake Mead or the Lake Mead National Recreation Area. See Fed. Reg. 76 Fed. Reg. 64104 (explaining that the purpose is to “inform Departmental decisions and operate Glen Canyon Dam in such a manner as to improve and protect downstream resources in Glen Canyon National Recreation Area and Grand Canyon National Park.”) Furthermore, the GCPA makes no mention of Lake Mead or the Lake Mead National Recreation Area, and the current EIS for Glen Canyon Dam operations focuses on “the Colorado River corridor from Lake Powell, formed by Glen Canyon Dam in northwestern Arizona, southward through Glen and Marble Canyons and westward through Grand Canyon to Lake Mead.” Operation of Glen Canyon Dam EIS at pp. 5-6. Recognizing the LTEMP EIS must evaluate and disclose all significant impacts of the alternatives wherever they may occur, the geographic scope of proposed actions considered in the LTEMP EIS should be limited to Glen Canyon Dam through the Grand Canyon National Park to Lake Mead.

C. Species Conservation and Recovery Implementation Programs: The LTEMP EIS process is also intended to determine whether to establish an ESA recovery implementation program for endangered fish below Glen Canyon Dam. This process should be coordinated with (and not allowed to disturb) the existing programs currently operating in the Colorado River Basin – i.e., the Upper Colorado River Endangered Fish Recovery Program; San Juan River Basin Recovery Implementation Program; and the Lower Colorado River Multi-Species Conservation Program, which have been and remain critical to the sustainable development of the river system. Additionally, to the extent the LTEMP EIS considers funding for any recovery implementation program downstream of Glen Canyon Dam, it should be done consistent with the costs framework highlighted in Section A(3)(b), *supra*.

D. **Distinguishing Between Experimental and Management Actions:**

Drawing from experience gained in developing the Beach Habitat Building Flow management action as part of the 1996 Record of Decision for Glen Canyon Dam Operations and subsequent High-Flow Experimental actions, the LTEMP EIS should clearly distinguish between proposed experimental and management actions to operate Glen Canyon Dam. In doing so, stakeholders will be better situated to determine whether and to what extent they can accept a proposed action as necessary to gain experience and knowledge in reservoir operations and environmental resources without waiving rights established under the Law of the River. Management actions involve additional requirements under the Law of the River compared to experimental actions. It remains the Basin States' position that high flow releases can only be legally done by experiment and cannot be considered as a long term operational management decision.

E. **Alternatives:** Generally, the LTEMP EIS should include only those alternatives that can and will remain consistent with and subject to the priorities, constraints, and requirements recognized in the GCPA. *See Section A, supra.* However, with the understanding that the *modified low fluctuating flow* (MLFF) will serve as the "No Action" alternative, the LTEMP EIS should include a post-dam, pre-1996 ROD alternative that can isolate and demonstrate the benefits and impacts of MLFF operations. Finally, the Basin States would like to participate in developing the LTEMP alternatives and anticipate proposing an alternative for consideration.

F. **Process Comments:** The following process comments are specific to standards and processes for developing the LTEMP EIS.

1. **Timeline and Timing -** The LTEMP involves adjusting dam operations that impact a large number of interests and resources. The process for developing management and experimental programs under the LTEMP EIS should be thoughtfully considered and sufficiently flexible to avoid being rushed to completion.

Given the scope, duration and importance of the LTEMP EIS, documents relevant to its development and implementation should allow sufficient time for stakeholder review and comment. The proposed schedule is very aggressive and may not allow a full and robust consideration of all reasonable alternatives and their implications. *See Public Involvement Section, infra.*

2. Public Involvement – Given the potential impact of LTEMP operations throughout the Basin, its development should involve collaboration in addition to consultation with the following stakeholders:
 - i. Basin States. As parties to and beneficiaries of the interstate compacts, laws and a Supreme Court decree that allocate the Colorado River resource, the Basin States have a sovereign interest in the flow of the Colorado River that rises above a mere question of local private rights. Deciding how to develop and implement the LTEMP will directly implicate these interests. Over the past 20 years, the Basin States have fostered a working relationship with the Department to develop innovative and flexible agreements and programs that provide important tools for adapting to challenges and avoid interstate disputes both now and in the future. The Secretary should continue to consult and collaborate with the Basin States on the LTEMP EIS in furtherance of this relationship and mutual goals.
 - ii. GCDAMP Representatives. The Adaptive Management Workgroup (AMWG), Technical Workgroup, Science Advisors, and the Grand Canyon Monitoring and Research Center have developed a knowledge base and expertise in the Colorado River's scientific and policy issues that goes above and beyond an individual stakeholder interest in the River. Their valuable perspectives are, in part, why the Secretary established the AMWG as a Federal Advisory Committee to provide advice and recommendations on Colorado River and Glen Canyon Dam operations. As such, it will be important to directly consult and collaborate with and learn from these representatives in developing the LTEMP EIS.
3. Role of Federal Agencies - There are a number of federal agencies with authorities and obligations concerning the Colorado River– i.e., Fish and Wildlife Service, Bureau of Indian Affairs, Western Area Power Administration, and Bureau of Land Management, in addition to Reclamation and the Park Service. The LTEMP EIS should clarify the role and involvement of each agency in preparing, commenting on and finalizing the LTEMP EIS as well as the decision-making and implementation processes.
4. Role of Desired Future Conditions - The Department of the Interior, in conjunction with AMWG, is currently developing Desired Future Conditions (DFCs) for key resource elements at and below Glen Canyon Dam. Because these DFCs involve variable resources with differing goals, they also identify potentially competing interests for operating Glen Canyon Dam. Satisfying goals for one resource DFC may ultimately be at

the expense of another. If the DFCs are used to inform the LTEMP process, it will be important to recognize the need to balance the competing DFC goals and interests consistent with the purpose and intent of the GCPA. See Section A(2)(c), *supra*.

5. Role of Science - The Basin States advocate for the LTEMP EIS to be developed and implemented based on credible and objective science concerning the Colorado River Basin.

Conclusion

The Basin States thank you for the opportunity to provide these comments on the scope of the LTEMP EIS. We have a particular interest in avoiding potential impacts from the LTEMP while ensuring its success. In this effort, we ask that the Department please consider and incorporate the above comments in determining the final scope for the LTEMP process. We further ask that the Department allow the Basin States to propose an alternative for consideration and evaluation under the LTEMP EIS. Should there be any questions or concerns regarding this letter or any other aspect of the Basin States' interest regarding the LTEMP process, please contact us at your earliest convenience.

Sincerely,

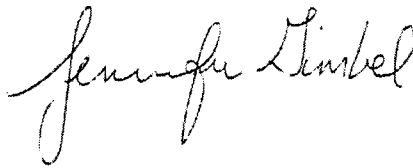
[Signatures on next page]



Sandra A. Fabritz-Whitney
Director
Arizona Department of Water Resources



Dana B. Fisher
Colorado River Commissioner
Colorado River Board of California



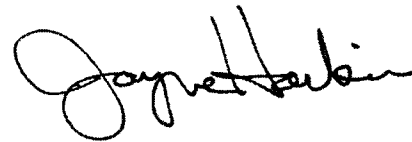
Jennifer Gimbel
Director
Colorado Water Conservation Board



Patricia Mulroy
General Manager
Southern Nevada Water Authority



Estevan Lopez
Executive Director
New Mexico Interstate Stream Commission



Jayne Harkins
Director
Colorado River Commission of Nevada



Dennis J. Strong
Director
Utah Department of Water Resources
Utah Interstate Stream Commission



Don. A. Ostler
Executive Director
Upper Colorado River Basin



Patrick Tyrrell
State Engineer
Wyoming State Engineer