CENTRAL ARIZONA PROJECT
P.O. Box 43020
Phoenix, Arizona 85080

March 2, 2026

The Honorable Doug Burgum
Secretary of the Interior
U.S. Department of the Interior
Washington, D.C. 20240

Through:
Bureau of Reclamation
Attn: BCOO-1000
P.O. Box 61470
Boulder City, NV 89006
crbpost2026@usbr.gov

Re: Comments on the Draft Environmental Impact Statement for Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead.

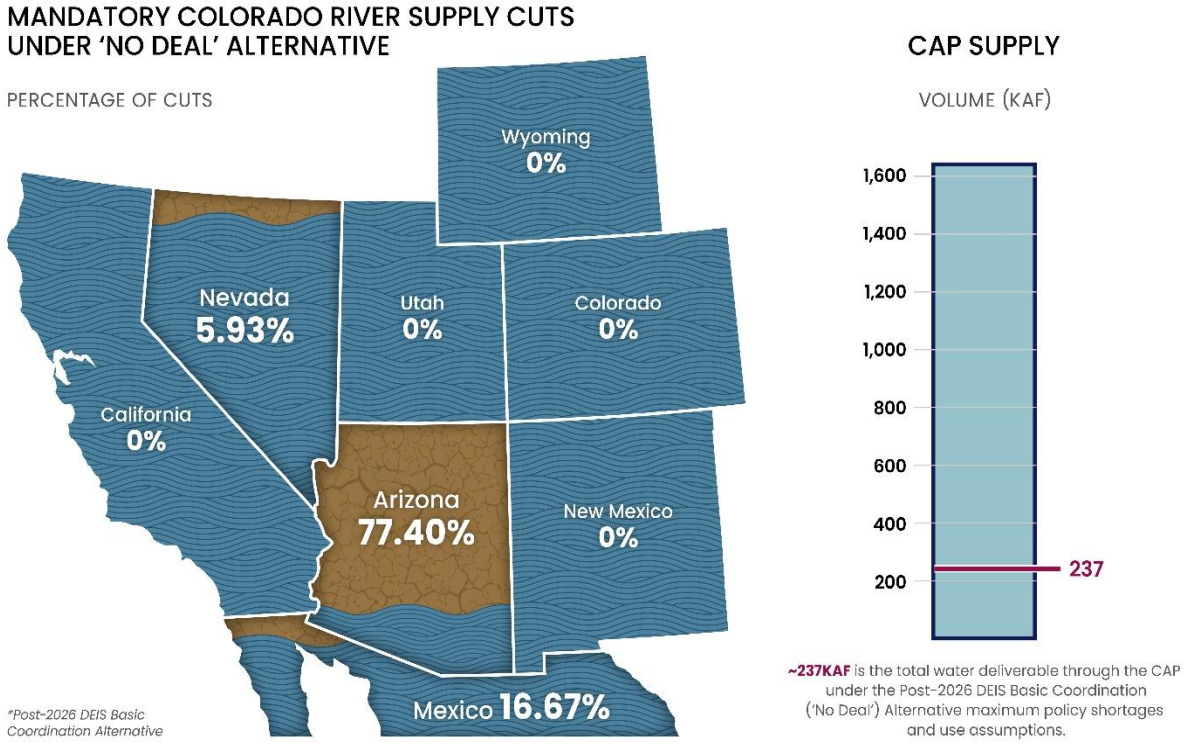
Secretary Burgum:

On behalf of the Central Arizona Project and the following twenty-two Arizona Participating Entities that rely on the Colorado River, I am submitting the attached comments that express our deep concerns regarding the Draft Environmental Impact Statement (DEIS) for the Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead and the devastating impacts the alternatives therein would impose on Arizona.

Participating Entities

City of Avondale	City of Buckeye	City of Chandler
City of El Mirage	City of Glendale	City of Goodyear
City of Mesa	City of Peoria	City Scottsdale
City of Surprise	City of Tucson	Town of Cave Creek
Town of Gilbert	Town of Marana	Town of Queen Creek
Arizona Municipal Water Users Association	Arizona Water Company	ASARCO LLC
Carefree Water Co.	EPCOR Water Arizona	Irrigation and Electrical District of Arizona, Inc.
	Metropolitan Domestic Water Improvement District	

All the alternatives proposed in the DEIS disproportionately harm Arizona and are unacceptable. Specifically, the Basic Coordination alternative proposed in the DEIS that Reclamation claims could be imposed without Arizona's consent all but severs much of Central and Southern Arizona from Colorado River supplies that have been relied upon on for four decades, betraying the promise of sustainable water supplies that underly Arizona's economy and potentially causing "*widespread impacts on social and economic conditions. . . .*" that may force cities and towns to "*haul water . . . as an alternative to support continued services*."[1] Arizona will not tolerate devastation and destabilization, particularly when the DEIS allows other Basin States to increase their water use.



The waters of the Colorado River are foundational to the economy and people of Central and Southern Arizona, supporting 6 million Arizonans, many tribal communities, a thriving advanced microchip manufacturing industry, and critical mineral and agricultural production. Arizona has cultivated a flourishing desert society over the past 40 years through careful and prudent use of Colorado River water supplied by the Central Arizona Project—more than doubling the State's population while managing at the same time to use less water. The DEIS alternatives threaten to tear apart a generation of careful water management and topple the architecture supporting

[1] DEIS T17-35.

Arizona's economy which is home to the heart of the American semi-conductor manufacturing and AI infrastructure industries.

The DEIS alternatives are not just a failure of policy but also include fatal legal deficiencies, and we respectfully request that the Department of the Interior withdraw the document. The United States must implement a decision that is consistent with the Colorado River Compact of 1922 (Compact), the Law of the River, and wise water policy—the DEIS fails on all counts. The enclosed comments highlight several critical flaws in the DEIS, including but not limited to:

- Inconsistency with the Compact and the Law of the River: Absent agreement by the Basin States, the operating criteria for the Colorado River must comply with the foundational authority on the Colorado River: the Compact. All subsequent statutes, regulations, contracts, and other agreements are subject to compliance with the Compact and the DEIS ignores this foundational issue by proposing alternatives that would result in a breach thereof.
- Failure to Analyze Upper Basin Delivery Obligations: The DEIS fails to consider or model the impacts of Upper Basin delivery obligations due to a Compact deficiency, including required releases from Colorado River Storage Project Act Upper Initial Units and curtailment in the Upper Basin necessary to prevent a breach of the Compact. This analysis is particularly important at this time, as a breach of the Upper Basin's Compact delivery obligations could occur within the next 12 months.
- Failure to Analyze the Devastating Socioeconomic Impacts to Arizona: The DEIS fails to analyze the widespread destabilizing social and economic impacts on Arizona that would be caused by the deep cuts to Arizona's Colorado River supplies proposed in the document and could cause Arizona's economy to lose over $2.7 trillion.
- Failure to Evaluate Reasonable Alternatives: The range of alternatives is too narrow and neglects to evaluate the reasonable and feasible Lower Basin Alternative which would equitably share cuts needed to stabilize the Colorado River System among all seven Basin States and Mexico.
- Illegal Implementation of the so-called "Junior Priority" on the Central Arizona Project: Arizona never agreed and the law does not make the Central Arizona Project a junior user to the Upper Basin. The DEIS fails by proposing deep cuts to Arizona's water supplies without Compact compliance or required reductions to the Upper Basin. Further, the "junior priority" described in the Colorado River Basin Project Act and used to distribute the DEIS cuts to the Lower Basin is a facially unconstitutional imposition on Arizona's sovereignty and illegally attempts to make Arizona a second-class citizen among the other Lower Basin States.

For these reasons and others described in the attached comments, the current DEIS does not provide the "hard look" at environmental consequences required by law. Proceeding with this document is highly likely to lead to legal challenges and long-term environmental damage that has not been analyzed.

We welcome the opportunity to work with the Department of the Interior to ensure the revised DEIS is robust and legally durable. Arizona has been a willing partner in attempting to negotiate a consensus solution to the management challenges facing Colorado River operations and continues to stand ready to find a compromise with the Secretary, the other Basin States, and additional Colorado River stakeholders based on shared sacrifice and a recognition that everyone must reduce their uses to stabilize the system. A revised DEIS is essential to comply with NEPA and properly inform the public and decision-makers and to avoid protracted litigation.

Thank you for your prompt attention to this crucial matter.

Sincerely,

Terry Goddard, President
Central Arizona Project

Brenda Burman, General Manager
Central Arizona Project

Signatures of Participating Entities follow on separate pages
Att 1: Central Arizona Project's Executive Summary
Att 2: Central Arizona Project's Detailed Comments on the DEIS

Avondale

The City of Avondale joins in the comments of the Central Arizona Water Conservation District regarding the Draft Environmental Impact Statement on Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead published by the Bureau of Reclamation on January 16, 2026, at 91 Fed. Reg. 2131.

City of Avondale

Ron Corbin
City Manager

BUCKEYE
ARIZONA

WATER RESOURCES

The City of Buckeye joins in the comments of the Central Arizona Water Conservation District regarding the Draft Environmental Impact Statement on Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead published by the Bureau of Reclamation on January 16, 2026, at 91 Fed. Reg. 2131.

The City of Buckeye

Terry Lowe
[Director, Water Resources Management

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TERRY LOWE • TLOWE@BUCKEYEAZ.GOV • BUCKEYEAZ.GOV

Chandler joins in the comments of the Central Arizona Water Conservation District regarding the Draft Environmental Impact Statement on Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead published by the Bureau of Reclamation on January 16, 2026, at 91 Fed. Reg. 2131.

City of Chandler

Kevin Hartke
Mayor

The City of Glendale joins in the comments of the Central Arizona Water Conservation District regarding the Draft Environmental Impact Statement on Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead published by the Bureau of Reclamation on January 16, 2026, at 91 Fed. Reg. 2131.

City of Glendale

Patrick Banger
City Manager

The City of El Mirage joins in the comments of the Central Arizona Water Conservation District regarding the Draft Environmental Impact Statement on Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead published by the Bureau of Reclamation on January 16, 2026, at 91 Fed. Reg. 2131.

City of El Mirage

Alexis Hermosillo
Mayor

City of Goodyear joins in the comments of the Central Arizona Water Conservation District regarding the Draft Environmental Impact Statement on Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead published by the Bureau of Reclamation on January 16, 2026, at 91 Fed. Reg. 2131.

City of Goodyear

Barbara Chappell
Water Services Director

City of Mesa joins in the comments of the Central Arizona Water Conservation District regarding the Draft Environmental Impact Statement on Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead published by the Bureau of Reclamation on January 16, 2026, at 91 Fed. Reg. 2131.

City of Mesa, Arizona

James N. Smith
City Attorney

City of Mesa, Arizona

Joseph Giudice
Water Resources Department Director

CITY OF SCOTTSDALE

The City of Scottsdale joins in the comments of the Central Arizona Water Conservation District regarding the Draft Environmental Impact Statement on Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead published by the Bureau of Reclamation on January 16, 2026, at 91 Fed. Reg. 2131.

City of Scottsdale

David Walby
Interim Senior Director of Water Resources

City of Peoria
8401 West Monroe Street
Peoria, Arizona 85345
T: 623-773-7000

City of Peoria joins in the comments of the Central Arizona Water Conservation District regarding the Draft Environmental Impact Statement on Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead published by the Bureau of Reclamation on January 16, 2026, at 91 Fed. Reg. 2131.

City of Peoria

Henry Darwin
City Manager

SURPRISE
ARIZONA

City of Surprise, Arizona joins in the comments of the Central Arizona Water Conservation District regarding the Draft Environmental Impact Statement on Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead published by the Bureau of Reclamation on January 16, 2026, at 91 Fed. Reg. 3012.

City of Surprise

Andrea Davis
City Manager

CITY OF
TUCSON
Regina Romero
MAYOR REGINA ROMERO

February 27, 2026

The City of Tucson joins in the comments of the Central Arizona Water Conservation District regarding the Draft Environmental Impact Statement on Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead published by the Bureau of Reclamation on January 16, 2026, at 91 Fed. Reg. 2131.

Mayor Regina Romero
City of Tucson

The Town of Cave Creek joins in the comments of the Central Arizona Water Conservation District regarding the Draft Environmental Impact Statement on Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead published by the Bureau of Reclamation on January 16, 2026, at 91 Fed. Reg. 2131.

Town of Cave Creek

Robert Morris
Mayor

The Town of Gilbert joins in the comments of the Central Arizona Water Conservation District regarding the Draft Environmental Impact Statement on Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead published by the Bureau of Reclamation on January 16, 2026, at 91 Fed. Reg. 2131.

Town of Gilbert

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Scott Anderson
Mayor

MARANA AZ
OFFICE OF THE
TOWN MANAGER

February 26, 2026

The Town of Marana joins in the comments of the Central Arizona Water Conservation District regarding the Draft Environmental Impact Statement on Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead published by the Bureau of Reclamation on January 16, 2026, at 91 Fed. Reg. 2131.

Professionally,

Terry S. Rozema
Town Manager
11555 W. Civic Center Drive
Marana, AZ 85653

TOWN OF QUEEN CREEK ARIZONA

Town of Queen Creek joins in the comments of the Central Arizona Water Conservation District regarding the Draft Environmental Impact Statement on Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead published by the Bureau of Reclamation on January 16, 2026, at 91 Fed. Reg. 2131.

Town of Queen Creek

Bruce Gardner, Town Manager

Arizona Municipal Water Users Association joins in the comments of the Central Arizona Water Conservation District regarding the Draft Environmental Impact Statement on Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead published by the Bureau of Reclamation on January 16, 2026, at 91 Fed. Reg. 2131.

Arizona Municipal Water Users Association

Warren Tenney
Executive Director

ARIZONA WATER COMPANY

3805 N. Black Canyon Highway • Phoenix, Arizona 85015-9006

Fredrick K. Schneider
President and
Chief Operating Officer

Please Reply To:
P.O. Box 29006
Phoenix, AZ 85038-9006
(602) 240-6860

Arizona Water Company joins in the comments of the Central Arizona Water Conservation District regarding the Draft Environmental Impact Statement on Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead published by the Bureau of Reclamation on January 16, 2026, at 91 Fed. Reg. 2131.

Arizona Water Company

Fredrick K. Schneider
President and Chief Operating Officer

February 27, 2026

ASARCO LLC joins in the comments of the Central Arizona Water Conservation District regarding the Draft Environmental Impact Statement on Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead published by the Bureau of Reclamation on January 16, 2026, at 91 Fed. Reg. 2131.

Sincerely,

James M. Stewart
Director of Sustainability
ASARCO LLC
JaStewart@ASARCO.com
520-822-6714

The Carefree Water Company joins in the comments of the Central Arizona Water Conservation District regarding the Draft Environmental Impact Statement on Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead published by the Bureau of Reclamation on January 16, 2026, at 91 Fed. Reg. 2131.

Carefree Water Company

John Crane
President

EPCOR Water Arizona joins in the comments of the Central Arizona Water Conservation District regarding the Draft Environmental Impact Statement on Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead published by the Bureau of Reclamation on January 16, 2026, at 91 Fed. Reg. 2131.

EPCOR Water Arizona

Frank Metzler
Vice President, Developer Services and Water Resources

IRRIGATION AND ELECTRICAL DISTRICT ASSOCIATION OF ARIZONA, INC.

Irrigation and Electrical District Association of Arizona, Inc., joins in the comments of the Central Arizona Water Conservation District regarding the Draft Environmental Impact Statement on Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead published by the Bureau of Reclamation on January 16, 2026, at 91 Fed. Reg. 2131.

Irrigation and Electrical District Association of Arizona, Inc

_____

Ed Gerak
Executive Director

Metropolitan Domestic Water Improvement District joins in the comments of the Central Arizona Water Conservation District regarding the Draft Environmental Impact Statement on Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead published by the Bureau of Reclamation on January 16, 2026, at 91 Fed. Reg. 2131.

Metropolitan Domestic Water Improvement District

Joseph Olsen
General Manager

Attachment 1

Executive Summary of Central Arizona Project's Comments on the Draft Environmental Impact Statement: Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead (DEIS)

Below are summaries of the main points in CAP's detailed comments on the DEIS:

1. Not One of the DEIS Alternatives Consider Foreseeable Compact Delivery Obligations to the Lower Basin

Based on current operations and hydrologic conditions, Lee Ferry flows are projected to fall below requirements of the Colorado River Compact (Compact). Yet, the DEIS does not propose alternatives that comply with the Compact. The Lower Basin States Representatives have repeatedly requested that Interior incorporate Compact compliance into operating guidelines, including required deliveries at Lee Ferry, curtailment, or other reductions in the Upper Basin, and actions to release additional water from federal reservoirs in the Upper Basin. Interior ignored these requests, despite the Compact being the foundational authority for all the statutes, regulations, contracts, and other agreements that comprise the "Law of the River." Failure to enforce Compact compliance is inconsistent with decades of federal agency positions and interpretation of law, without agreement of the seven Basin States.

Without providing for releases of stored water from the Upper Initial Units and Lake Powell to meet the Compact obligation at Lee Ferry, any operating guidelines that are adopted based on the DEIS will necessarily violate the Compact and other authorities that are premised upon compliance with the Compact. The DEIS must be withdrawn, and the United States must implement a decision that is consistent with the Compact, the Law of the River, and wise water policy.

2. The DEIS Fails to Implement the Full Extent of the Secretary's Nondiscretionary Duty to Release Water from the Upper Initial Units

The Upper Initial Units of the Colorado River Storage Project (CRSP)—Lakes Powell, Flaming Gorge, Aspinall, and Navajo—were authorized and constructed for the purpose of storing water to ensure the Upper Basin could meet its Compact delivery obligations to the Lower Basin. The United States has plenary authority to control the operations of these reservoirs and has a nondiscretionary duty to operate CRSP Initial Units in compliance with the Compact. The DEIS contemplates additional releases from the Upper Initial Units to protect elevations at Lake Powell, but not for the purpose of Compact compliance and not in sufficient quantities to mitigate the anticipated deficiency at Lee Ferry. To satisfy the Secretary's duty to operate federal projects in accordance with the Compact and federal law, including the statutory order of authorized purposes for CRSP operations, the final EIS and operating criteria must include guidelines to release stored water from the CRSP Upper Initial Units into Lake Powell for delivery at Lee Ferry.

3. CAP Contests the Interpretation of Priority in the DEIS

The DEIS assumes that CAP should suffer the consequences of all shortages predicted in virtually all of the alternatives, effectively making CAP junior to both the Upper Basin's interests in the Compact and to other water users in the Lower Basin regardless of the reason for the alleged "shortage." The DEIS does not cite to legal authority for this proposition. Assuming the DEIS relies on 301(b) of the Colorado River Basin Project Act (CRBPA) to require CAP to take all shortages before other water users in the Basin, it is a gross misreading of the statute and an unlawful overreach of proposed secretarial authority. Section 301(b) cannot be used to impose shortage on CAP when water is physically available in the Upper Basin and stored in the Upper Initial Units, or when the Secretary creates a "shortage" at Lee Ferry by prioritizing infrastructure protection at Glen Canyon Dam or to protect power production. Additionally, Section 301(b) does not affect the Upper Basin's delivery obligation, nor does it authorize basin-wide reallocation of shortage burdens. When the reason for imposing shortage is taking action to protect infrastructure, then the appropriate basis for distributing shortage is pro rata.

4. Reducing CAP Deliveries to 237 TAF Will Result in Devastating Impacts to Cities, Tribes, Industry, and Agriculture and to Central Arizona's Economy

Under the Basic Coordination Alternative (the "no deal" alternative), the DEIS proposes a maximum policy shortage that would reduce the total deliverable supply of water through the CAP to 236,900 acre-feet based on the USBR Shortage Allocation modeling and use assumptions used in the DEIS. These water supply scenarios would be devastating to CAP and the people in Arizona that it serves. Yet the DEIS barely mentions these impacts:

- CAP infrastructure during a "dry-up" period would be damaged at a cost in the millions, even with appropriate mothballing and mitigation measures, and it would take months or years to return to service.
- Water treatment infrastructure served by CAP would also be physically damaged if deliveries cease.
- Water quality in the CAP system would dramatically change, risking odors, insect breeding, harmful algal blooms, fish kills, and the expansion of nuisance or invasive species.
- Agricultural acreage in the CAP service area would be fallowed.
- Deliveries of CAP water to eleven Tribes pursuant to Congressionally approved water right settlement agreements and CAP water delivery contracts would be severely limited or eliminated

A full economic analysis of the proposed shortages shows that water supply impacts to the CAP service area begin immediately as providers draw down groundwater and long-term storage credits (LTSCs) to replace CAP supplies. Scarcity drives up wholesale water prices, making it harder for providers to acquire alternative water supplies, LTSCs, or groundwater to replace CAP supplies. New housing development is constrained due to challenges in securing an assured water supply. For some providers,

insufficient supplies to meet demand for existing customers begin as early as 2030 and expand over time as backup supplies are exhausted. Consumers and existing businesses face significant supply interruptions, leading to household welfare losses and reduced business activity. Water providers face substantial revenue shortfalls resulting from reduced water sales. The economic impact through 2060 is in the trillions of dollars.

5. The DEIS Assumes Massive Increases in Upper Basin Use While at the Same Time Proposing Devastating Shortages to Arizona and CAP and Enabling a Compact Violation

While proposing devastating shortages to CAP, the modeling supporting the DEIS shows a clear bias toward growth in consumptive use in the Upper Basin. The Colorado River Simulation System (CRSS) incorporates assumptions provided by the Upper Basin on their demand schedules, using an anticipated demand growing to 6.0 MAF by 2060. Actual consumptive use in the Upper Basin from 2020-2024 averages 4.291 MAF/year. Other CRSS assumptions ensure that CRSS always shows "shortage" in the Upper Basin and flows are never available to meet the "unmet demand" in the Upper Basin. This modeling is then used to justify operating criteria that shift the burden of reductions solely to the Lower Basin, claiming "hydrologic shortage" in the Upper Basin. Aspirational growth and theoretical demand in the Upper Basin are not helpful or relevant information to develop operating guidelines at this critical time on the Colorado River. These assumptions need to be corrected in the modeling.

At the same time, much more detail is required before moving forward with "conservation pools" or similar storage mechanisms in Lake Powell for conserved or unused Colorado River water in the Upper Basin. The DEIS does not at all explain how conservation pools would work under current legal authorities nor does it identify the legal authorities that must be created if such "conservation" were possible. Conservation of unused water in the Lower Basin—Intentionally Created Surplus or "ICS"—is supported by a complex framework of agreements, premised upon forbearance by the Lower Basin States and water users. The DEIS cannot assume that Lake Powell may be used for the purpose of some kind of exchange or conservation program, absent comprehensive safeguards at least as stringent as those supporting the ICS framework in the 2007 guidelines.

6. The United States Must Take Action to Fix Glen Canyon Dam

It has been four years since Reclamation began discussing infrastructure protection at Glen Canyon Dam, and nearly two years since Reclamation's "Technical Decision Memorandum" explaining the risks from relying on the river outlet works for sustained releases. It is now the start of 2026. It is time for a real plan to address the infrastructure limitations at Glen Canyon Dam. Addressing the infrastructure limitations is one long-term measure that would best achieve operation and management improvements. CAP requests that Reclamation include additional information in the final EIS on its plan for repairs, modifications and enhancements at Glen Canyon Dam,

including overhauling or replacing the hollow-jet valves and other possible solutions, future permitting and compliance for that plan, and a project schedule.

7. The Modeling Assumptions for the DEIS Are Inconsistent and Impractical

Similar to modeling assumptions in CRSS that are biased toward Upper Basin growth, CAP identifies a number of other technical issues in the DEIS modeling. This includes an inconsistent approach to growth and entitlement use over time, insufficient detail for a new category of water called "gap water," the limits of natural flow as a metric for determining Lake Powell releases, and other assumptions around dead pool operations and releases from the Upper Initial Units. These problems must also be addressed.

8. CAWCD Remains Committed to the Core Components the Lower Basin Alternative

In March 2024, the Lower Basin States submitted their suggested alternative to Reclamation for consideration in this NEPA process. The Lower Basin Alternative uses actual hydrology and "total system contents." It moves away from operations based on forecasts and reservoir elevations that have led to conflict. The Lower Basin Alternative meets the purpose and need of the proposed federal action, including coordinated operations of all the reservoirs, protection of critical infrastructure, static reductions of 1.5 MAF under current conditions, and storage and delivery of conserved water, and Reclamation has not shown otherwise in the DEIS.

What the Lower Basin Alternative does not do is solely place the responsibility for conservation and action on the Lower Basin States and their water users. It expects something from the Upper Basin in these crisis conditions, and it expects the United States to release water from the Upper Initial Units consistent with their purpose. CAP remains committed to implementing the core components of the Lower Basin Alternative.

9. Because of These Legal Flaws, the DEIS Does Not Meet the Requirements of NEPA

The DEIS does not include an adequate no action alternative, does not provide a reasonable range of alternatives that are feasible and within Reclamation's legal authority, and fails to analyze reasonably foreseeable effects of the proposed alternatives. The flaws described above are fatal to the adequacy of the DEIS as a tool for compliance with NEPA but also as a mechanism to adopt operating guidelines that comply with the authorities that govern the Colorado River.

Interior must withdraw the DEIS and reissue a NEPA document that includes the core components of the Lower Basin Alternative and otherwise analyzes and prioritizes Compact compliance. Ultimately, the United States must implement a decision that is consistent with the Colorado River Compact of 1922, the Law of the River and wise water policy.

Attachment 2

Central Arizona Project's (CAP) Detailed Comments on the Draft Environmental Impact Statement: Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead (DEIS)

1. Not One of the DEIS Alternatives Considers Foreseeable Compact Delivery Obligations to the Lower Basin

The Colorado River Basin is on the brink of a Compact call.[1]

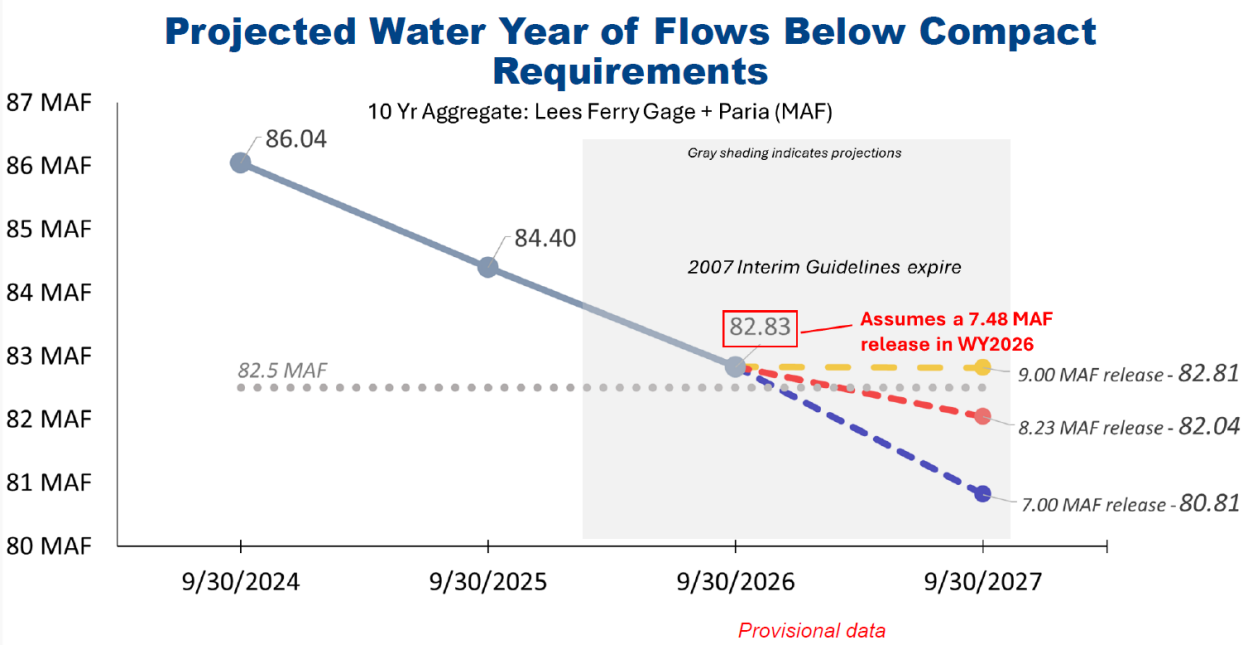

Fig. 1. Projected Water Year of Flows Below Compact Requirements (updated based on Jan. 2026 24-Month Study).

With this context, the lack of alternatives in the DEIS that enforce compliance with the 1922 Colorado River Compact (Compact) is unacceptable and renders the DEIS wholly inadequate to support any future federal action.

Table TA 3-16 in section TA 3.2.3 reports "Compact Point 10-Year Flow Volume[s]" for the alternatives under different hydrologic conditions, and Tables TA 3-17 and 3-18 report the Compact Point 10-Year Volume relative to 75.0 million acre-feet

[1] Depending on which legal interpretations are applied, the Upper Basin may have already breached its Lee Ferry delivery obligation. Based on the dry hydrology in Water Year 2026, the U.S. Bureau of Reclamation (Reclamation) is discussing the possibility of reducing the planned release from Lake Powell of 7.48 MAF further to protect elevations at Lake Powell. A reduced release from Lake Powell will accelerate the timing of an anticipated Compact violation.

(MAF) and 82.5 MAF, respectively.[2] The Table is the only attempt in the DEIS to consider the Compact in the alternatives, and it fails to offer any meaningful analysis. It merely reports the statistical breakdown of flow volumes under the DEIS alternatives. Reclamation does not interpret what the Compact delivery requirement is, does not explain the significance of 75.0 MAF or 82.5 MAF, does not take a position on their meaning, and does not indicate which alternative is most likely to result in the earliest potential Compact violation and when that violation might occur.

Table TA 3-16
Compact Point 10-Year Flow Volume (maf)

Alternative	Flow Category	Max (maf)	90% (maf)	75% (maf)	50% (maf)	25% (maf)	10% (maf)	Min (maf)
CCS Comparative Baseline	> 16	177.9	123.0	109.5	96.5	86.9	82.2	62.0
CCS Comparative Baseline	14-16	156.2	104.7	93.1	86.1	82.9	79.3	60.3
CCS Comparative Baseline	12-14	147.0	94.6	87.8	83.3	80.3	75.3	49.8
CCS Comparative Baseline	10-12	136.6	89.6	84.0	80.4	74.5	66.2	47.8
CCS Comparative Baseline	< 10	136.6	87.1	81.7	76.4	66.2	57.4	39.8
No Action	> 16	178.2	124.0	110.7	97.2	85.8	80.8	60.4
No Action	14-16	158.5	105.5	93.6	84.0	82.4	78.5	61.1
No Action	12-14	147.2	95.2	84.6	83.6	80.6	73.9	50.3
No Action	10-12	137.0	88.7	83.9	81.3	73.6	65.8	47.9
No Action	< 10	137.0	85.4	82.1	76.0	65.4	56.8	41.9
Basic Coordination	> 16	177.9	123.4	110.3	97.1	86.6	80.5	59.4
Basic Coordination	14-16	157.9	106.0	94.9	85.3	81.9	77.1	59.2
Basic Coordination	12-14	150.3	97.6	88.1	83.0	78.9	73.2	49.4
Basic Coordination	10-12	136.9	91.2	83.7	79.5	73.7	66.5	47.0
Basic Coordination	< 10	133.9	88.4	80.9	76.2	66.9	57.7	39.8
Enhanced Coordination	> 16	180.8	126.4	113.6	100.5	88.7	81.4	62.2
Enhanced Coordination	14-16	162.2	109.2	97.9	85.8	80.6	75.0	61.0
Enhanced Coordination	12-14	155.3	99.0	87.2	81.3	75.6	70.0	47.8
Enhanced Coordination	10-12	140.9	88.7	80.4	75.4	69.1	63.7	45.4
Enhanced Coordination	< 10	137.3	84.3	77.6	70.4	63.0	55.8	43.3
Max. Operational Flexibility	> 16	184.8	128.1	114.9	101.4	89.4	81.7	61.2
Max. Operational Flexibility	14-16	162.6	110.0	98.5	86.9	81.5	75.6	59.0
Max. Operational Flexibility	12-14	154.1	100.5	89.9	82.3	77.0	70.6	49.2
Max. Operational Flexibility	10-12	140.4	92.8	83.7	77.4	70.8	64.4	46.5
Max. Operational Flexibility	< 10	135.4	88.9	79.3	72.4	64.0	56.3	42.3
Supply Driven (LB Priority)	> 16	179.6	125.7	112.5	100.4	90.8	84.4	63.6
Supply Driven (LB Priority)	14-16	162.7	109.0	98.4	89.1	84.1	79.0	65.3
Supply Driven (LB Priority)	12-14	154.1	99.8	90.9	84.6	79.7	74.0	53.3
Supply Driven (LB Priority)	10-12	140.6	93.0	85.2	79.5	73.6	68.1	52.5
Supply Driven (LB Priority)	< 10	134.4	89.5	80.6	74.9	67.8	61.6	48.4
Supply Driven (LB Pro Rata)	> 16	179.6	125.7	112.5	100.4	90.8	84.4	63.6
Supply Driven (LB Pro Rata)	14-16	162.7	109.0	98.4	89.1	84.1	79.0	65.3
Supply Driven (LB Pro Rata)	12-14	154.1	99.8	90.9	84.6	79.7	74.0	53.3
Supply Driven (LB Pro Rata)	10-12	140.6	93.0	85.2	79.5	73.6	68.1	52.5
Supply Driven (LB Pro Rata)	< 10	134.4	89.5	80.6	74.9	67.8	61.6	48.4

Fig. 2. Table TA 3-16: Compact Point 10-Year Flow Volume (MAF) (reproduced from DEIS TA 3 at 3-64).

[2] DEIS TA 3 at 3-63 – 3-69.

The Lower Basin States Representatives have repeatedly requested that the Secretary incorporate assumptions that ensure Compact compliance into the forthcoming DEIS alternatives, including in correspondence regarding the Alternatives Report.[3] These assumptions include:

- Required deliveries at Lee Ferry pursuant to Article III(c) and III(d) of the Compact;
- If Lee Ferry deliveries are anticipated to fall below the Article III(c) and III(d) obligation, a Compact call by the Lower Basin States for delivery of the deficit;
- Upper Basin curtailment or other reductions in consumptive use as necessary to comply with the Compact delivery obligation;
- Actions by the United States to manage federal reservoirs and other federal infrastructure to satisfy Compact deliveries at Lee Ferry; and
- Actions needed in advance of a Compact Call, including moving water through the system reservoirs to satisfy any near-term deficit in Compact deliveries at Lee Ferry.

The Lower Basin States explained in detail why the National Environmental Policy Act (NEPA) requires that Reclamation fully explain how it will apply the Law of the River in each alternative as "relevant information" in the decision-making process.[4] Additionally, a core NEPA requirement is that an EIS include consideration of reasonably foreseeable effects and actions.[5] Given the current hydrology, it is reasonably foreseeable that flows at Lee Ferry will drop below deliveries required under the Compact, that the Lower Basin States will call for Compact deliveries and curtailment in the Upper Basin, and that additional releases from Upper Initial Units will be necessary to deliver water at Lee Ferry.

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[3] *See* Letter from The Colorado River Basin States Representatives of Arizona, California, and Nevada to the Honorable Doug Burgum, Secretary of the Interior, re: "Congratulations and Perspectives from the Lower Basin States on the Colorado River Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead" (Feb. 13, 2025), included as Exhibit 1.

[4] *See Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989) (describing the requirement to prepare an EIS as "ensur[ing] that the agency, in reaching its decision, will have available, and will carefully consider, detailed information concerning significant environmental impacts" and "guarantee[ing] that the relevant information will be made available to the larger audience that may also play a role in both the decisionmaking process and the implementation of that decision.").

[5] *See* NEPA, Pub. L. No. 91-190, § 102(2)(C)(i)-(ii), 83 Stat. 852 (1970); *see also*, 42 U.S.C. § 4332(2)(C)(i)-(ii). Indeed, one federal court has already identified this issue as an appropriate topic for a NEPA analysis. *See Save the Colorado v. U.S. Army Corps of Eng'rs (Semonite)*, No. 18-cv-03258-CMA, 2024 U.S. Dist. LEXIS 189322, at *45 n.24 (D. Colo. Oct. 16, 2024) (concluding that the agency violated NEPA for other reasons but stating that given the "last few decades of severe aridity . . . it is perplexing . . . that the Corps dismissed the possibility of a [1922 Colorado River] compact call in its analysis of a proposed water management project").

Despite the Lower Basin States providing the Secretary with advanced notice of foreseeable Compact issues in response to the Alternatives Report, the DEIS ignores this critical issue and fails to explicitly analyze the above components as reasonably foreseeable effects of the proposed federal action. Reclamation's unwillingness to disclose the application of the Law of the River to each alternative and modeled scenario contradicts Reclamation's own admissions in the DEIS that Reclamation itself is legally obligated to apply the Law of the River to future Colorado River operations. Not only does this omission render the DEIS inadequate as a NEPA document, but it also ensures that any operating guidelines adopted as the result of this process will lead the Colorado River Basin into a Compact violation and potential litigation. Below, CAP explains why the Compact cannot be ignored as the foundation for all other authorities that govern the Colorado River.

a. The Compact Requires the Upper Basin to Deliver Water at Lee Ferry

Article III(a) of the Compact provides: "There is hereby apportioned from the Colorado River System in perpetuity to the upper basin and to the lower basin, respectively, the exclusive beneficial consumptive use of 7,500,000 acre-feet of water per annum, which shall include all water necessary for the supply of any rights which may now exist."[6] Further, Article III(b) apportions an additional one MAF per annum to the Lower Basin.[7] Article III(d) then provides that the "States of the upper division will not cause the flow of the river at Lee Ferry to be depleted below an aggregate of 75,000,000 acre-feet for any period of 10 consecutive years reckoned in continuing progressive series beginning with the 1st day of October next succeeding the ratification of this compact."[8]

Article III(c) of the Compact provides that, in the event of a treaty with Mexico recognizing a right to the use of waters of the Colorado River System:

> . . . such waters shall be supplied first from the waters which are surplus over and above the aggregate of the quantities specified in paragraphs (a) and (b); and if such surplus shall prove insufficient for this purpose, then the burden of such deficiency shall be equally borne by the upper basin and the lower basin, and whenever necessary the States of the upper division shall deliver at Lee Ferry water to supply one-half of the deficiency so recognized in addition to that provided in paragraph (d).[9]

Thus, in addition to what must be delivered under Article III(d), the Upper Basin must also deliver "one-half of the deficiency" and "equally" bear the burden of deliveries to

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[6] Compact, art. III(a) (Nov. 24, 1922), 70 CONG. REC. 324, 325 (1928).

[7] *Id.* art. III(b)-(c).

[8] *Id.* art. III(d).

[9] *Id.* art. III(c).

Mexico. In surplus years, meaning years when the natural flow in the river is greater than 16 MAF (the sum of quantities in paragraphs (a) and (b)), the Mexico obligation is delivered first from surplus over 16 MAF.

Until recently, the position that the Upper Basin has an obligation under Article III(c) and III(d) of the Compact to deliver water to the Lower Basin was not controversial. Indeed, the Upper Colorado River Basin Compact of 1948, ratified by the Upper Basin States and approved by Congress, said as much: "The major purposes of this Compact are . . . to establish the obligations of each State of the Upper Division with respect to the deliveries of water required to be made at Lee Ferry by the Colorado River Compact . . . ."[10] Yet, the DEIS inexplicably avoids the biggest issue—whether the alternatives will comply with the delivery requirement at Lee Ferry under the Compact.[11]

b. The Compact Is the Foundational Authority in the Law of the River

The Compact is a contract among the seven Basin States.[12] It is also a federal statute approved by Congress.[13] The Basin States ratified the Compact, signifying their consent to its terms.[14] And the many authorities cited as the "Law of the River" expressly provide that their terms are subject to the Compact, controlled by the Compact, and shall not be construed to amend or conflict with the Compact.[15] This

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[10] Upper Colorado River Basin Compact of 1948, Pub. L. No. 81-37, 63 Stat. 31 (1949); *see also Water Horse Res., LLC v. Wilhemsen*, 579 P.3d 317, 322 (Utah 2025) ("The states entered the Upper Compact to manage and allocate the upper basin apportionment and to ensure compliance with obligations to the lower basin states outlined in the Colorado River Compact.").

[11] The DEIS also omits analysis of meeting the Mexico obligation first from surplus over 16 MAF as provided in Article III(c) of the Compact. *See* Brittany K. Johnson & Mekha Pereira, *Setting the Table: Where Are We in Colorado River Hydrology and Law of the River*, 57 Ariz. St. L.J. 1371, 1393-1401 (2026) (describing and calculating Compact obligations in surplus years).

[12] *See Texas v. New Mexico* 482 U.S. 124, 128 (1987) ("[a] Compact is, after all, a contract") (citation and internal quotes omitted).

[13] *Id.* (stating that "a compact when approved by Congress becomes a law of the United States"); *Cuyler v. Adams*, 449 U.S. 433, 440 (1981) (explaining that "where Congress has authorized the States to enter into a cooperative agreement, and where the subject matter of that agreement is an appropriate subject for congressional legislation, the consent of Congress transforms the States' agreement into federal law under the Compact Clause").

[14] Each Basin State codified the Colorado River Compact. *See* Ariz. Rev. Stat. § 45-1311 (2025); Colo. Rev. Stat. § 37-61-101 (2025); N.M. Stat. Ann. § 72-15-5 (2025); Utah Code Ann. § 73-12a-2 (2025); Wyo. Stat. Ann. § 41-12-301 (2025). Nevada has ratified the Compact. Nev. Rev. Stat. Ann. § 538.010 (2025). California ratified the Compact on terms specified in the California Limitation Act. *See* 1929 Cal. Stat., ch. 16 at 38-39.

[15] *See, e.g.*, *Arizona v. California*, 547 U.S. 150, 166 (2006) (Consolidated Decree stating "[t]his decree shall not affect . . . [a]ny issue of interpretation of the Colorado River Compact"); 43 U.S.C. § 1551(a) (Colorado River Basin Project Act stating that "[n]othing in this Act shall be construed to alter, amend, repeal, modify, or be in conflict with the provisions of the Colorado River Compact (45 Stat. 1057) [unclassified]," and other specified laws); 43 U.S.C. § 620h (Colorado River Storage Project Act stating that "[n]othing contained in this Act shall be construed to alter, amend, repeal, construe, interpret, modify, or be in conflict with the provisions of[,]" *inter alia*, "the Colorado River Basin Compact"); Upper Colorado

includes Section 5 contracts with Lower Basin water users,[16] such as CAP's master repayment contract[17] and tribal water delivery contracts executed pursuant to Congressionally approved water right settlement agreements.[18] It also includes contracts that Reclamation executed with water users in the Upper Basin for project water from the Colorado River Storage Project (CRSP) reservoirs.[19] In this way, the Compact is the "supremacy clause" of the Law of the River.

River Basin Compact of 1948 art. I(b), 63 Stat. 31(1949) ("It is recognized that the Colorado River Compact is in full force and effect and all of the provisions hereof are subject thereto"); 43 U.S.C. § 1600g (Colorado River Floodway Protection Act, stating that "[n]othing contained in this Act shall be construed to alter, amend, repeal, modify, interpret, or be in conflict with the provisions of the Colorado River Compact"); 43 U.S.C. § 617l(b) (Boulder Canyon Project Act of 1928 stating that "[t]he rights of the United States in or to waters of the Colorado River and its tributaries howsoever claimed or acquired, as well as the rights of those claiming under the United States, shall be subject to and controlled by said Colorado River compact").

[16] *See* Arizona Contract for Delivery of Water, ¶¶ 7(c), 13 (Feb. 9, 1944) ("This contract is made upon the express condition and with the express covenant that the United States and Arizona, and agencies and water users therein, shall observe and be subject to and controlled by said Colorado River Compact. [¶¶] This contract is made upon the express condition and with the express covenant that all rights of Arizona, its agencies and water users, to waters of the Colorado River and its tributaries, and the use of the same, shall be subject to and controlled by the Colorado River Compact signed at Santa Fe, New Mexico, November 24, 1922 . . ."), included as Exhibit 2.

[17] *See* Contract Between the United States and the Central Arizona Water Conservation District for Delivery of Water and Repayment of Costs of the Central Arizona Project, Contract No. 14-06-W-245, Amendment No. 1, at 17-18 (Dec. 1, 1988) ("The obligation of the United States to deliver water under this contract is subject to: . . . (i) The availability of such water for use in Arizona under the provisions of the Colorado River Compact, executed November 24, 1922 . . . [¶] (iii) [T]his contract is made upon the express condition and with the express covenant that all rights hereunder shall be subject to and controlled by the Colorado River Compact and that the United States and the Contractor shall observe and be subject to and controlled by said Colorado River Compact . . ."), included as Exhibit 3.

[18] *See, e.g.*, Amended Central Arizona Project Water Delivery Contract Between the United States and the Gila River Indian Community, at 9-11 (May 15, 2006) ("The obligation of the United States to deliver water under this Amended Contract is subject to: . . . The availability of such water for use in Arizona under the provisions of the Colorado River Compact, executed November 24, 1922 . . . [¶] [T]his Amended Contract is made upon the express condition and with the express covenant that all rights hereunder shall be subject to and controlled by the Colorado River Compact . . ."), included as Exhibit 4.

[19] *See* Vernal Unit Central Utah Project Contract Between the United States of America and the Uintah Water Conservancy District, Contract No. 14-06-400-178, at 9-10 (Jul. 14, 1958) ("This agreement and all works or facilities constructed pursuant hereto shall be subject to and controlled by the Colorado River Compact dated November 24, 1922 . . ."); Agreement Between the United States and the Navajo Tribe of Indians for Delivery of Water from Navajo Reservoir, Contract No. 14-06-W-269, at 5 (Apr. 10, 1976) ("The use of water, including that diverted from the Colorado River system to the Rio Grande Basin, through works constructed under authority of the Act, shall be subject to and controlled by the Colorado River compact . . ."); Long-Term Water Service Contract Between the United States of America and Daggett County, Contract No. 01-WC-40-6860, at 10 (Mar. 6, 2001) ("This contact and all water taken pursuant hereto shall be subject to and controlled by the Colorado River Compact, dated November 24, 1922 . . ."); Long-Term Water Service Contract Between the United States of America and the Upper Gunnison River Water Conservancy District, Contract No. 04-WC-40-01, at 6 (Apr. 1, 2004) ("This contract and all water taken pursuant hereto shall be subject to and controlled by the Colorado River

The DEIS makes numerous statements that "the Secretary intends to consider, adopt and implement the proposed federal action consistent with the Law of the River, including the Colorado River Compact of 1922 [citation] . . . and other provisions of applicable federal law."[20] At the same time, the DEIS reports "Compact Point 10-Year Flow Volume" in TA 3-16 and shows deliveries at Lee Ferry are predicted to be below 75.0 MAF in nearly all the moderate and dry hydrology scenarios, but the DEIS stops short of taking a position about whether these conditions violate the Compact or what actions might be taken to avoid a Compact deficiency. Instead of focusing on Compact compliance, the DEIS focuses on protecting "critical infrastructure" through releases from CRSP Upper Initial Units or "additional Upper Basin actions."[21] That is, the Continued Current Strategies comparative baseline, Basic Coordination Alternative, and Supply Driven Alternative propose to move water from the CRSP Upper Initial Units only for the explicit purpose of increasing elevations at Lake Powell and protecting 3,490 feet, not for the purpose of releasing water to meet Lee Ferry deliveries.[22] The DEIS even labels these releases as "Powell infrastructure protection (PIP) releases."[23] This is in contravention of federal statute and decades of statements and actions by the United States and Upper Basin States that Compact deliveries at Lee Ferry for the Lower Basin and delivery to Mexico are the highest priority on the river.

The DEIS's failure to consider Compact compliance is contrary to both recent and historical Reclamation positions on the Upper Basin's obligations to meet Article III(c) and III(d) Compact requirements.[24] For example, Reclamation has maintained that the Upper Basin States' entitlement to consume 7.5 MAF annually is "contingent upon" the satisfaction of their delivery obligations under Article III of the Compact.[25] Relatedly, Reclamation has stated that the Compact "[g]ave priority to delivery of the Lower Basin's entitlement requiring the Upper Basin to ensure delivery of

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Compact, dated November 24, 1922 . . ."); Contract Between the United States and the Navajo Nation, Contract No. 10-WC-40-384, at 35 (Dec. 17, 2010) ("The uses of water in the State of New Mexico through works constructed under the authority of the Colorado River Storage Project Act (70 Stat. 105), the Act of June 13, 1962 (76 Stat. 96), the Colorado Ute Settlement Act Amendments of 2000 (114 Stat. 2763A-258) and the Navajo Settlement Act shall be subject to and controlled by the Colorado River Compact . . ."), included as Exhibits 5-9.

[20] DEIS at 1-4; *see also id.* at 1-5 ("the Department intends to adopt and implement the guidelines in a manner consistent with the Law of the River"), 1-8 ("the Secretary intends to adopt and implement new guidelines in a manner consistent with the Law of the River"), 1-10 ("Reclamation's operations involve continuous adjustment to variable hydrologic conditions to maintain infrastructure integrity, deliver, and release water to Basin users consistent with the Law of the River").

[21] DEIS at 2-16 ("2.5.4.2. Releases to Protect Glen Canyon Dam"); *see also id.* at O-1 ("The Draft EIS includes alternatives that assume additional releases from the Colorado River Storage Project Initial Units (UIUs; Flaming Gorge, Blue Mesa, and Navajo Reservoirs) to protect infrastructure at Lake Powell").

[22] *Id.* at 3-5, 3-25.

[23] *Id.* at O-1.

[24] *See* Memorandum from Scott Miltenberger & Heather Norby, JRP Historical, to Jay Johnson, CAWCD, re: Upper Basin Compact and CRSP Historical Questions (Feb. 25, 2026), included as Exhibit 14.

[25] *See* Dep't of Interior, Water and Power Resources Service, *Project Data* 355, 360-61 (1981).

75 million acre-feet to the Lower Basin in any rolling 10-year period regardless of hydrology."[26] Because the flow of the Colorado River is erratic with flows varying from 4 MAF to 22 MAF annually, this left the Upper Basin to deal with the challenges of uncertain river flows.

The Upper Basin States have recently acknowledged that storage in Lake Powell "is intended to allow [them] to continue to meet their obligations under the 1922 Colorado River Compact . . . [and] is of profound importance to both the Upper and Lower Basins."[27] But statements by Upper Basin States acknowledging the Lee Ferry obligation and its meaning go back decades.[28] Convincingly, in 1964 as Lake Powell was filling, Colorado Upper Basin commissioner Edwin Johnson opined to his fellow Upper Basin commissioners on the "priority" between the Lower Basin and Upper Basin:

> The Colorado River Compact imposes a terrifying burden on the Upper Basin. Before the people of Denver or Colorado Springs or the Air Force Academy can take a drink of Colorado River water, before Northern Colorado or the Arkansas Valley can turn a drop of Colorado River water on their parched crops, to say nothing of the Western Slope of Colorado, the State of Utah, Wyoming and New Mexico, 7,500,000 acre-feet of water must be delivered to the Lower States at Lee Ferry. Of course, we know that is on a ten-year basis, 75,000,000 acre-feet in those ten years, but that is a terrible burden.
>
> I was in the Colorado Legislature when this Compact was ratified by the State of Colorado, and I objected strenuously to that provision. Instead of dividing it so each of them would get their water, we gave the Lower Basin the preference.[29]

The DEIS adopts the opposite "preference" now, enabling a breach of the Upper Basin's Compact obligation to the Lower Basin and enforcing reductions on the Lower Basin to fund growth in Upper Basin use. As a minimum under the Administrative Procedure Act (APA), Reclamation must explain the change in legal interpretation and must also justify why its proposed alternatives in the DEIS comply with the Compact.

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[26] *See* Reclamation, *Colorado River Storage Project*, available at https://usbr.gov/uc/rm/crsp/ (last visited Jan. 26, 2026). Similar to the statement in H.R. Doc. No. 83-364 (1954) at 71, this statement does not include the amounts of flow that must be delivered to Lee Ferry for uses in Mexico.

[27] *See* Upper Division States' Letter to Reclamation re "Reclamation's Consideration of 602(a) Storage in the No Action Alternative" at 1 (June 11, 2024), included as Exhibit 10.

[28] *See* Miltenberger & Norby, *supra* note 24.

[29] Upper Colorado River Commission, *Official Record*, vol. 16 (1964), Meeting No. 88, Denver, Colorado, April 14 and 15, 1964, 72.

c. The DEIS Erroneously Interprets the Requirements for Storage Under Section 602(a) of the Colorado River Basin Project Act

Section 602(a) of the Colorado River Basin Project Act[30] (CRBPA) directs the Secretary "to comply with and carry out the provisions of the Colorado River Compact, the Upper Colorado River Basin Compact, and the Mexican Water Treaty" by developing "criteria for the coordinated long-range operations" of federally authorized Colorado River reservoirs.[31] This directive uses mandatory "shall" language twice: The Secretary "***shall***" propose criteria, and the criteria "***shall***" make provision for the storage of water in storage units of the CRSP and releases of water from Lake Powell in a specified order of priority.[32] This mandatory "shall" language leaves the Secretary no discretion to deviate from the specified order of priority or otherwise deviate from Congress's directive.[33]

Congress's mandatory order of priorities for "the storage of water in storage units of the Colorado River storage project and releases of water from Lake Powell" is:

(1) *first*, releases to supply treaty obligations to Mexico referenced in Article III(c) of the Colorado River Compact;[34]
(2) *second*, releases to comply with and carry out Article III(d) of the Colorado River Compact;[35] and
(3) *third*, release of carryover storage that is not needed to meet the first and second priorities to the extent the Secretary finds it reasonably necessary to assure deliveries under the first or second priorities "without impairment" of consumptive use in the Upper Basin.[36]

The "without impairment" language in the description of the third priority does not appear in Section 602(a)(1) (addressing Mexican Treaty obligations) or Section 602(a)(2) (addressing releases to comply with and carry out Article III(d) of the Compact). Thus, under canons of statutory construction, the "without impairment" language does not apply to or limit releases under Sections 602(a)(1) or 602(a)(2).[37]

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[30] Pub. L. No. 90-537, 82 Stat. 885, 899 (1968) (codified at 43 U.S.C. § 1551(c)).

[31] 43 U.S.C. § 1552(a).

[32] *Id*. (emphasis added).

[33] *See Nat'l Ass'n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 661-62 (2007) (collecting authorities recognizing that the use of the word "'shall' generally indicates a command that admits of no discretion on the part of the person instructed to carry out the directive").

[34] 43 U.S.C. § 1552(a)(1).

[35] *Id*. § 1552(a)(2).

[36] *Id*. § 1552(a)(3).

[37] *See Jama v. I.C.E.*, 543 U.S. 335, 341 (2005) ("We do not lightly assume that Congress has omitted from its adopted text requirements that it nonetheless intends to apply, and our reluctance is even greater when Congress has shown elsewhere in the same statute that it knows how to make such a requirement manifest"); *Russello v. United States*, 464 U.S. 16, 23 (1983) ("[Where] Congress includes particular

Section 602(a) of the CRBPA is the specific guidance that Congress gave the Secretary on how to manage "the storage of water in storage units of the Colorado River storage project and releases of water from Lake Powell[.]"[38]

The Secretary promulgated the "Long-Range Operating Criteria" in 1970 (LROC) as required by the CRBPA, and the LROC included the CRBPA Section 602(a) order of priorities in its text.[39] The LROC also set an objective "to maintain a minimum release of water from Lake Powell of 8.23 million acre-feet" per year in times of shortage, or a greater amount "if necessary to deliver 75 million acre-feet at Lee Ferry for the 10-year period ending September 30, 1972."[40] This minimum objective of 8.23 MAF per year enabled the Secretary to meet demands in the order of priorities Congress specified in the CRBPA and supply Mexico and the Lower Basin States with enough water to avoid a violation of Article III(c) and III(d) of the Compact.[41]

Decades later, in 2005, the Secretary promulgated revisions to the LROC, but continued to include the CRBPA's order of priorities in its text,[42] and reiterated that "the objective shall be to maintain a minimum release of water from Lake Powell of 8.23 million acre-feet" per year in times of shortage.[43] In the 2007 Colorado River Interim Guidelines for Lower Basin Shortages and the Coordinated Operations for Lake Powell and Lake Mead used to implement the LROC,[44] the Secretary expressly refused

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language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion" (citation omitted)).

[38] 43 U.S.C. § 1552(a).

[39] *See* Colorado River Reservoirs Coordinated Long-Range Operation, 35 Fed. Reg. 8,951 (June 10, 1970) (art. III(1)(a)-(b)).

[40] *Id*. (art. II(2)(b)).

[41] The No Action Alternative and the Basic Coordination Alternative use the algorithm from the Interim 602(a) Storage Guideline, 69 Fed. Reg. 28945, to determine the volume of 602(a) storage. That algorithm, included in Table J-1 of the DEIS, includes elements such as protection of power pools in Upper Basin reservoirs and assumptions on Upper Basin depletions during critically low hydrology. There is no authority in Section 602(a) for the Secretary to use such criteria in determining the quantity of 602(a) storage.

[42] *See* 70 Fed. Reg. 15,873, 15,875 (Mar. 29, 2005) (art. III(1)(a)-(b)).

[43] *Id*. at 15,875 (art. II(2)(b)). While the 2005 LROC revisions were "administrative in nature," the Department of the Interior claimed those changed met "the requirements of the APA and all actions are [were] in accordance with applicable federal law." Review of Existing Coordinated Long-Range Operating Criteria for Colorado River Reservoirs (Operating Criteria), 70 Fed. Reg. 15,873, 15,877 (Mar. 29, 2005). Here, Reclamation attempts a back-door modification of the LROC by embedding new, non-LROC-compliant release curves into the DEIS alternatives (including the Basic Coordination Alternative). This attempted change does not follow APA requirements for changes to the LROC and as such would constitute an illegal rulemaking that is beyond the power of the agency to undertake, even if those release curves were in some manner consistent with Section 602(a) requirements.

[44] Secretary of the Interior, Record of Decision on Colorado River Interim Guidelines for Lower Basin Shortages and Coordinated Operations for Lake Powell and Lake Mead (Dec. 2007) (2007 Interim

to decide, and parties reserved their arguments, on the correct interpretation of Section 602(a) of the CRBPA and its requirements for storage and release of stored water from Lake Powell:

> The Secretary recognizes that differences exist with respect to interpretations of certain provisions contained in the Law of the River and the proper application of those provisions, including, for example, Section 602(a) of the Colorado River Basin Project Act of 1968. In lieu of a formal determination regarding such disputes, the Secretary will apply the operational criteria in these Guidelines. By way of further example, positions and rights concerning the calculation of the quantity of Section 602(a) storage and releases of water from Lake Powell are reserved. The Secretary, through the adoption of these Guidelines, makes no determination with respect to the correctness of any interpretation of Section 602(a) storage and release requirements or other positions of the individual Colorado River Basin states.[45]

With the expiration of the 2007 Interim Guidelines, the LROC, as adopted in 1970 and amended in 2005, controls the quantities of water the Secretary must release from Lake Powell under annual operating plans to comply with Section 602(a) of the CRBPA.

Section 602(a) provides specific guidance on "the storage of water in storage units of the Colorado River storage project and releases of water from Lake Powell."[46] Water must be stored and released to meet Mexican Treaty obligations first, and the Lower Basin's Compact Article III(d) entitlement second. If water is scarce, then these priorities must be satisfied in the mandatory order Congress directed. If, instead, excess water is available, that water may be delivered to the Lower Basin under specified conditions without impairment to the Upper Basin.[47]

Now, without agreement from the Lower Division States, the DEIS changes the decades-old interpretation of Section 602(a) storage requirements as promulgated in the 1970 LROC. The DEIS claims the CRBPA and LROC developed under the CRBPA include no set formula[48]—only factors the Secretary may apply in his discretion.[49] The

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Guidelines), available at https://www.usbr.gov/lc/region/programs/strategies/RecordofDecision.pdf (last visited Feb. 26, 2026).

[45] 2007 Interim Guidelines at 57.

[46] 43 U.S.C. § 1552(a).

[47] *Id*. § 1552(a)(3).

[48] At different times and for various reasons, the Basin States have objected to the formula that Reclamation has used to calculate Section 602(a) storage, including the protection of storage for power generation or the overestimating of Upper Basin depletions. *See* DEIS at 2-9. Now, the DEIS takes the misinterpretation a step farther by ignoring the priority for releases of stored water in Lake Powell in direct contravention of the text of Section 602(a).

[49] DEIS at 1-26.

DEIS also erroneously claims the LROC lacks "specific, objective criteria to guide annual operations,"[50] and does not offer "specific guidance as to exactly when, how, or to whom reductions in deliveries would be made."[51]

Under this framework, Section 602(a) requires the Secretary to create annual plans of operation for the CRSP reservoirs and Lake Mead. Such plans must include a determination, consistent with Section 602(a)(3), as to how much water is needed in storage to satisfy future delivery requirements to Mexico and the Lower Basin under Section 602(a)(1) and (2) ("602(a) Storage"). The 602(a) Storage calculation required by the LROC is determinative only of the question whether, in a given year, ***more*** than 8.23 MAF must be delivered to the Lower Basin for equalization of the active volumes in Lakes Mead and Powell or for beneficial use in the Lower Basin States under Article III(e) of the Compact (and when active storage in Lake Powell is equal to or more than active storage in Lake Mead). Accordingly, the LROC's default "objective" is to release 8.23 MAF to Mexico and the Lower Basin regardless of the 602(a) Storage calculation. Then, if there is sufficient water in Upper Basin reservoirs in excess of the 602(a) Storage calculation and storage in Powell is greater than storage in Mead, the Secretary ***must*** release ***more than 8.23 MAF***, under the conditions set forth by Congress in Section 602(a) and the Secretary in the LROC.

Nothing in Section 602(a) or the LROC suggests the conditions under which less than 8.23 MAF would be released each year for the Lower Basin and Mexico. Moreover, Congress has articulated the delivery priorities, which cannot be reordered or subordinated to any other interests, including the maintenance of existing uses in the Upper Basin. Instead of following Congress's mandate, the DEIS treats the default as flexible and treats storage and release of water under Section 602(a) as discretionary matters. This approach is a sharp change from the LROC and an incorrect interpretation of Section 602(a).

d. The DEIS Does Not Explain or Justify the Secretary's New Interpretation of Section 602(a) Storage

When significant changes to longstanding interpretation occur in agency actions, federal agencies must explain them.[52] They must "display awareness" of, and "offer good reasons" for, their departure from a "decades-old practice."[53] This duty to explain unexpected policy shifts applies to "any agency practice, interpretation, or position, whether announced through formal means, such as a rescission of a federal regulation published in the Federal Register, or less formal means, such as a change in an

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[50] DEIS at 1-6.

[51] *Id*. at 2-6 – 2-7.

[52] *See Nat'l Cable & Telecomms. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967, 981 (2005) ("Unexplained inconsistency is . . .a reason for holding an interpretation to be an arbitrary and capricious change from agency practice . . .").

[53] *FDA v. Wages & White Lion Invs., L.L.C.*, 604 U.S. 542, 570 (2025).

interpretation of a statute that arises through an enforcement action or issuance of a ROD."[54]

Contrary to this duty, the DEIS offers no explanation for the Secretary's new interpretation of the CRBPA and his departure from the LROC. Thus, the DEIS would facilitate agency action that is arbitrary, capricious, an abuse of the Secretary's limited discretion under the CRBPA, and would violate the CRBPA and the Compact. The Secretary must either step back from the DEIS's unprecedented reinterpretation of the CRBPA or thoroughly explain why the shift happened now, after many decades of consistent interpretation and practice, and how the new interpretation complies with existing law.

e. These Fundamental Errors Are Fatal Flaws to the DEIS

Without providing for releases of stored water from the Upper Initial Units and Lake Powell to meet the Compact obligation at Lee Ferry, the DEIS alternatives and associated impact analysis cannot be salvaged. It is a fundamental error, and any operating guidelines that are adopted based on the DEIS will necessarily violate the Compact and other authorities that are premised upon compliance with the Compact. Moreover, without an analysis of the impacts of Compact compliance, the DEIS fails to comply with NEPA's requirements, including that an EIS analyze reasonably foreseeable effects and actions.

2. The DEIS Fails to Implement the Full Extent of the Secretary's Nondiscretionary Duty to Release Water from the CRSP Units

The DEIS claims that "management strategies that include activities upstream of Lake Powell are being analyzed in this Draft EIS. These activities include Upper Basin conservation and, if warranted to protect critical reservoir elevations, operations at the CRSP Upper Initial Units[.]"[55] However, given critical elevations at Lake Powell and Lake Mead and the anticipated Compact violation at Lee Ferry, these "strategies" fall short of detailed guidelines needed to release stored water from the CRSP Upper Initial Units—Lake Powell, Flaming Gorge, Aspinall, and Navajo—into Lake Powell for delivery at Lee Ferry.

As explained in detail below, Reclamation's initial planning documents for the reservoirs that were authorized by the Colorado River Storage Project Act[56] (CRSPA) demonstrate that the CRSP Initial Units were intended, constructed, and permitted to store water for delivery at Lee Ferry to the Lower Basin. Moreover, the United States has argued successfully that the CRSP Initial Units store water that is unavailable for

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[54] *Alaska Indus. Dev. & Exp. Auth. v. Biden*, 685 F. Supp. 3d 813, 847 (D. Alaska 2023).

[55] DEIS at 1-9.

[56] *See* CRSPA, Pub. L. No. 84-485, 70 Stat. 105 (1956).

consumptive uses in the Upper Basin.[57] Yet, the United States has instead operated, managed, and controlled the CRSP Initial Units to maintain them at near-full capacity for power, recreation, and environmental purposes. When the current approach to operations is challenged, the United States implements a "collaborative decision-making" process to determine changes to those operations, granting Upper Basin States an outsized voice on additional releases needed for Lower Basin deliveries.[58] The United States has authority over operations of the CRSP Initial Units, not the Upper Basin States. The United States also has a nondiscretionary duty to operate CRSP Initial Units in compliance with the Compact. Future operating guidelines must use all the reservoirs in the system to manage supply and demand, and, most importantly, to ensure Compact compliance at Lee Ferry.

a. The Historical Record Shows that the CRSP Initial Units Were Constructed for the Purpose of Storing and Releasing Stored Water to the Lower Basin for Compact Deliveries

The CRSPA authorized the Secretary, through Reclamation, to construct and operate four "initial storage units"—the Aspinall Unit in Colorado, Flaming Gorge Unit in Utah, Navajo Unit in New Mexico, and Glen Canyon Unit in Arizona—along with various "participating projects" (e.g., the Florida Project in Colorado). The CRSPA legislative history, relevant state court decisions, and statements and activities of the Upper Basin States[59] overwhelmingly demonstrate that the CRSPA reservoirs—both initial units and participating projects—were designed to serve as storage accounts to ensure the Upper Basin could make its mandatory deliveries to the Lower Basin and thereby avoid violating the Colorado River Compact.

i. Reclamation Determined that the CRSP Reservoirs Were Necessary for Compact Compliance

In March 1946, the Secretary issued a report, *The Colorado River: "A Natural Menace Becomes a Natural Resource"—Comprehensive Report on the Development of the Water Resources of the Colorado River Basin for Irrigation, Power Production, and Other Beneficial Uses in Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming*—colloquially known as the "Blue Book." The Blue Book was the culmination of nearly two decades of study and planning for the development of the Colorado River, and featured the 1931-1940 "drought period" as a central factor for Upper Basin project

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[57] *Bd. of Cty. Comm'rs v. Crystal Creek Homeowners' Ass'n* (*Arapahoe*), 14 P.3d 325 (Colo. 2000).

[58] *See* DEIS, App. O at O-1.

[59] For a complete recounting of the events leading up to the CRSPA and the respective advocacy for its enactment, see Scott A. Miltenberger, *"We Have to Judge the Future by the Past": The 1931–40 Drought, the Upper Basin Compact, and the Colorado River Storage Project*, 57 Ariz. St. L.J. 1441 (2026), included herein as Exhibit 11.

planning to ensure the requirement to satisfy flows at Lee Ferry without curtailing Upper Basin water users.

In December 1950, the Secretary issued another report, *Regional Director's Report of December 1950 on Colorado River Storage Project and Participating Projects Upper Colorado River Basin*, that presented the details of Reclamation's plans for a holdover reservoir system.[60] Reclamation concluded that at least 23 MAF of active storage capacity was necessary for the Upper Basin States to satisfy their delivery obligation under Article III(d) of the 1922 Colorado River Compact.[61] That number explicitly excludes the amount of additional storage the Upper Basin States would need to satisfy their delivery obligation under Article III(c) to Mexico.[62] In fact, if no additional storage capacity were available, then Reclamation expected that, "if the upper basin is required to release water to Mexico during dry periods, corresponding reductions in upper basin use would be required."[63] Reclamation also proposed constructing reservoirs and diversion works categorized as "participating projects" which were to be developed to assist the Upper Basin in putting their Compact apportionment to use; the 1950 Report did not attempt to predict the volume of water necessary for the "participating projects" in the absence of further investigations. Ultimately, however, Reclamation contemplated over 48 MAF of total storage from the Colorado River Storage Project.[64]

Reclamation's report described the operation of the participating projects in conjunction with the initial storage units. Of note, Reclamation stated that "*all* projects authorized subsequent to approval of the upper Colorado River Basin compact that would consume water of the upper Colorado River system are considered to be dependent on the storage project for an assured water supply," and were accordingly designated as "dependent projects."[65] In other words, the initial units were "holdover reservoirs" designed specifically to ensure the Upper Basin's compliance with Article III of the Compact, and the Upper Basin was aware that the consumptive uses associated with the participating projects would be the subject of curtailment if the initial unit storage was insufficient to meet Article III Compact obligations. This is borne out in the contracts for each of the participating projects.[66]

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[60] This report was eventually included in an April 1954 House Document. *See* H.R. Doc. No. 83-364 (Apr. 6, 1954) at 59 (cover page), 69-87 (report), 89-184 (substantiating materials).

[61] *See id.* at 71-72, 105, 151, 155, 163, 166.

[62] *Id.* at 71.

[63] *Id.* at 148.

[64] *Id.* at 12-13, 40, 72, 84, 104, 163, 293.

[65] *See id* at 69, 84, 103, 149, 169, 286 (emphasis added).

[66] *See supra* section 1.b and note 19.

ii. Congress Approved Reclamation's CRSP Reservoir Plan, Subject to Compliance with the Compact

Congress approved Reclamation's plan to construct and operate the initial storage units and certain participating projects through the passage of the CRSPA. The CRSPA authorized the Secretary to implement the plan to "regulat[e] the flow of the Colorado River" and "mak[e] it possible for the States of the Upper Basin to utilize, consistently with the provisions of the Colorado River Compact, the apportionments made to and among them in the Colorado River Compact and the Upper Colorado River Basin Compact," among other purposes.[67] Congress also directed the Secretary, "in the operation and maintenance of all facilities, authorized by Federal law and under the jurisdiction and supervision of the Secretary of the Interior, in the basin of the Colorado River," to "comply with the applicable provisions of the [Law of the River] in the storage and release of water from reservoirs in the Colorado River Basin."[68] The statute is very clear:

> [A]ll units and participating projects shall be subject to the apportionments of the use of water between the Upper and Lower Basins of the Colorado River and among the States of the Upper Basin fixed in the Colorado River Compact and the Upper Colorado River Basin Compact, respectively, and to the terms of [Mexico Treaty].[69]

Congress passed the CRBPA on September 30, 1968. As discussed above, Section 602(a) of the CRBPA directed the Secretary to "propose criteria for the coordinated long-range operation of the reservoirs constructed and operated under the authority of" the CRSPA.[70] Congress further stated the priorities for "the storage of water in storage units of the [CRSP] and releases of water from Lake Powell . . . ."[71] The LROC therefore applies to stored water in <u>all</u> CRSP units, and <u>all</u> CRSP units are subject to the Secretary's nondiscretionary duty to operate those CRSP units in compliance with the Compact.

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[67] CRSPA, Pub. L. No. 84-485, 70 Stat. at 105-06.

[68] *See* CRSPA, 70 Stat. at 110-11 (codified at 43 U.S.C. § 620m). A similar provision is contained in section 601(c) of the CRBPA.

[69] CRSPA § 4 (codified at 43 U.S.C. § 620c).

[70] *See* CRBPA § 602(a) (codified at 43 U.S.C. § 1552(a)).

[71] *Id.*

iii. The United States Successfully Defended the Position that the Initial Units Are Not Available for Upper Basin Consumptive Uses

Consistent with Section 8 of the Reclamation Act, Reclamation secured state-based water rights to store up to 3.96 MAF in Utah (Flaming Gorge Unit),[72] 1.21 MAF in Colorado (Aspinall Unit),[73] and 1.12 MAF in New Mexico (Navajo Unit).[74] The documentation for these water rights reflect the Secretary's obligation to operate the units for the primary purpose of ensuring the Upper Basin States comply with their delivery obligations under Article III of the Colorado River Compact.[75] This limitation on uses of the storage in the CRSP units, specifically uses of the Aspinall Unit, was the subject of a Colorado dispute decided in 2000 in *Arapahoe*.[76]

In *Arapahoe*, the Colorado Supreme Court affirmed the water court's determination that there was not water available for appropriation above the Aspinall Unit, despite the fact that the water in the reservoir was used for hydropower generation.[77] The Court explained that "the United States has agreed to release water from the Aspinall Unit as necessary to allow Colorado to meet its Colorado River Compact (Compact) delivery obligation at Lee Ferry, near the northern border of Arizona."[78] The Court went on:

> [The Aspinall Unit] [r]eservoirs allow water retention when flows are high. Then, when flows subside, that water can be released into the river to allow Colorado to meet its Compact obligations at Lee Ferry. Having a savings account in the form of the Aspinall Unit reservoirs allows Colorado water

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[72] *See* Utah Water Right No. 41-2963, Application/Claim No. A30414.

[73] Water rights were decreed conditional in Colorado Civil Action Nos. 5590 (Jan. 1961), 5782 (Oct. 1965), 6981 (Mar. 1960), and 10045 (May 1968), and were decreed absolute in Colorado Water Rights Case No. 80CW156 (Dec. 1980). The Colorado River Water Conservation District filed all applications and obtained all decrees but assigned the rights to Reclamation in January 1962.

[74] *See* New Mexico Water Right Nos. SP-2847, SP-2849, SP-2873, and SP-2917.

[75] See *Decree*, Colorado Civil Action No. 10045, at 8-9 (Montrose Cnty. Dist. Ct., May 1968) ("[t]he storage of water to be effected by [the Aspinall Unit reservoirs] is essential to Colorado and the States of the Upper Colorado River, as defined by the Colorado Compact of 1922, [citation], to meet the obligations therein imposed upon them, if any"); Utah Water Rights Application No. 30414, Explanatory Statement at 3 (Aug. 1958) ("[w]ater required to satisfy the purposes set forth in the Upper Colorado River Basin Compact will be released pursuant to a coordinated plan of river regulation adopted by the United States in the operation of all storage dams constructed pursuant to the [CRSPA]"); Application for Permit to Appropriate Water of the State of New Mexico, Explanatory Statement at 1 (Mar. 1958) ("[s]torage releases will be made from the Navajo Reservoir for the above purposes as well as for power generation and for any river regulation and for making water deliveries to the Lower Basin and Mexico as may be required under existing compacts and Treaties").

[76] 14 P.3d 325.

[77] *Id.* at 329, 339.

[78] *Id.* at 329.

> users to develop and use the water allotted to them by the Compact without fear of being "called out" at some time by the demands of the Compact. [¶] With that in mind, the United States Congress enacted CRSPA. . . .
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> [T]he CRSPA reservoirs are part of a plan to allow Colorado to develop and preserve Compact apportionment. However, we find that the stored water provides Colorado with an ability to satisfy the Compact delivery mandates without eroding other rights decreed to beneficial use in the state. [Citation.] By banking CRSPA water for Compact deliveries and using the reservoirs for their other decreed purposes, Colorado continues development of its water entitlements . . .[79]
>
> Congress clearly expressed its intent that the hydropower features of CRSPA neither operate to prevent the Upper Basin States from meeting their Compact requirements at Lee Ferry, nor to change the Upper Basin state allocation of waters.[80]
>
> [C]ongress intended CRSPA to serve as a mechanism for Upper Basin States to develop their water resources and still meet Compact obligations. CRSPA projects allow Colorado to develop its water resources while ensuring that adequate water remains in storage to help meet the Compact obligations in dry years.[81]

Arapahoe confirms that stored water in the Aspinall Unit, from the perspective of state water rights administration, is water stored for release to the Lower Basin for Compact compliance.

b. Notwithstanding Any Other Entitlement or Record of Decision, Reclamation Must Operate the CRSP Initial Units for Compact Deliveries

Notwithstanding the CRSP reservoirs' primary function to provide storage so that "during periods of critically low flow, water from the [initial storage units] would be released to meet the 10-year Lee Ferry flow obligation" and "the reserves would be

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[79] 14 P.3d at 334-35.

[80] *Id.* at 338.

[81] *Id.* at 345-46. The Colorado River Water Conservation District advocated for this outcome as well, stating: "Under the Colorado River Compact, the Upper Basin must deliver an average of 8.23 million acre feet per year to Lee's Ferry for the Mexican Treaty water obligations and use in the Lower Basin. [Citation.] And, under the Upper Colorado River Compact, the State of Colorado is charged with 51% of the delivery obligation." Answer Brief of Colorado River Water Conservation District, *Bd. of Cty. Comm'rs v. United States (In re Application for Water Rights of the Bd. of Cty. Comm'rs)*, No. 92SA68, 1994 WL 16058639, at *26 (Colo. Sup. Ct., Jan. 7, 1994).

replenished during years of favorable water supply,"[82] the Secretary has entered into certain contracts to deliver water from the initial storage units to consumptive uses in the Upper Basin.

Like any reclamation project, a water user must have a reclamation contract with the United States to have an entitlement to use the stored water. For the Navajo Unit, there are four active contracts for a total of 564,550 AF, the bulk of which is for the Navajo Indian Irrigation Project (508,000 AF).[83] For the Glen Canyon Unit, there are two active contracts for a total of 3,690 AF of water.[84] There is 1,300 AF of water in the Aspinall Unit "under contract for delivery downstream, or for augmentation of depletions upstream in any given year."[85] For the Flaming Gorge Unit, there is 1,000 AF of water under contract.[86] These contracts are still subject to the Compact and to the authorized purposes of the CRSPA to make releases for Compact deliveries. Despite these contracts, the volume of stored water in Flaming Gorge and the Aspinall Unit alone (3.54 MAF as of February 27, 2026) provides ample supplies to operate these reservoirs for Compact deliveries in the foreseeable future, beyond which the Upper Basin States will need to curtail.

With respect to ESA compliance, the current Records of Decision (RODs) governing operations of the upper three initial storage units—Flaming Gorge, Aspinall, and Navajo Units—were signed in 2006, 2012, and 2006, respectively.[87] None of the RODs dictate that minimum water level elevations be maintained that would prevent the release of water from the initial storage units for the purpose of ensuring adequate flows at Lee Ferry. Although CAP agrees with Reclamation tehthat the RODs do not prevent Reclamation from operating outside the RODs if necessary and in accordance with applicable federal law,[88] the DEIS does not go far enough. Compact compliance is nondiscretionary,[89] and notwithstanding what the current RODs provide, if Lees Ferry

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[82] H.R. Doc. No. 83-364, at 72-73; *see also id.* at 328 (comments of the Chairman of the Federal Power Commission) ("The primary purpose of the Colorado River storage project is to provide the storage and regulation necessary for the utilization of waters allocated to the upper basin States under the Colorado River compact, and to meet the requirements for flows downstream at Lees [sic] Ferry and of the treaty with Mexico.").

[83] Reclamation, *2023 Drought Response Operations Plan* (DROA) (May 2023), Attach. E (Operations at Navajo Reservoir), available at https://usbr.gov/ColoradoRiverBasin/documents/dcp/DROA/20230517-2023DROAPlan-508-UCRO.pdf (last visited Feb. 26, 2026).

[84] *Id.*, Attach. B (Operational Adjustments at Glen Canyon Dam).

[85] *Id.*, Attach. D (Operations at the Aspinall Unit).

[86] *Id.*, Attach. C (Operations at Flaming Gorge).

[87] DEIS at 1-30.

[88] *See id.* at ES-6 n.1, 1-9 n.10, 1-30, 3-2 n.2.

[89] *See Berkovitz v. United States*, 486 U.S. 531, 536 (1988) (no federal actor discretion "when a federal statute, regulation, or policy specifically prescribes a course of action for [a federal actor] to follow"); *NRDC v. Haaland*, 102 F.4th 1045, 1076 (9th Cir. 2024) ("The duty to comply with mandatory legal obligations is not a source of discretion" (citation omitted)); *Davis Assocs., Inc. v. Sec'y, Dep't of Hous.*

flows fall below the Article III(c) and III(d) obligations, then Reclamation is required to release water from the Upper Initial Units, and participating projects if needed, for delivery to the Lower Basin.

As an example, the ROD for Flaming Gorge, the largest of the Upper Initial Units with active capacity of 3,515,700 acre-feet (AF), provides for a range of flexibility in operations. Flaming Gorge operations are guided by the 2006 ROD, which aims to implement the flow regimes developed in the 2000 Flow and Temperature Recommendations for Endangered Fish in the Green River Downstream of Flaming Gorge Dam. To aid in endangered fish recovery, downstream targets are set for the maximum spring peak flow magnitude, minimum peak flow duration, summer to winter baseflow magnitude, and minimum summer temperature. The flow and temperature guidelines are seasonal, not year-round, and the current process for developing annual operations has built in flexibility.[90]

In addition to flexibility on releases, the ROD does not require the reservoir to be maintained at a certain elevation target. In fact, the main risk the ROD contemplates is that of the reservoir being too full, as opposed to not full enough. The only elevation target in the ROD is a drawdown target to reach by May 1 to prevent the risk of uncontrolled spills. This drawdown target has been confusingly interpreted as a target level to fill the reservoir. Figures 3 and 4 below show that in practice, Flaming Gorge has been kept around 80% full on average, and close to the drawdown target elevation with the exception of drought periods in the 1970s and 2003 and during the recent DROA release. The flexibility within the ROD and the large volume of water consistently maintained in storage provide ample opportunity for additional releases that could be necessary to maintain Compact compliance in the near future.

& Urban Dev., 498 F.2d 385, 389 n.5 (1st Cir. 1974) ("even in an area generally left to agency discretion, there may well exist statutory or regulatory standards delimiting the scope or manner in which such discretion can be exercised").

[90] This flexibility has been used to accommodate environmental goals. Reclamation incorporates studies and experiments requested by the Upper Colorado Endangered Fish Recovery Program into the annual operating plan through a working group process that finds ways to implement these requests within the guidelines of the ROD. *See, e.g.*, Reclamation, Annual Report of Operations for Flaming Gorge Dam Water Year 2020 at 2 (Mar. 2021), available at https://www.usbr.gov/uc/DocLibrary/Reports/FlamingGorgeDam/20210300-OperationsFlamingGorgeDamWaterYear-2020AnnualReport-508-PO.pdf (describing the first step of a four-step process to develop and finalize the annual operation plan as a request for studies from the fish recovery program to modify flows and release temperatures).

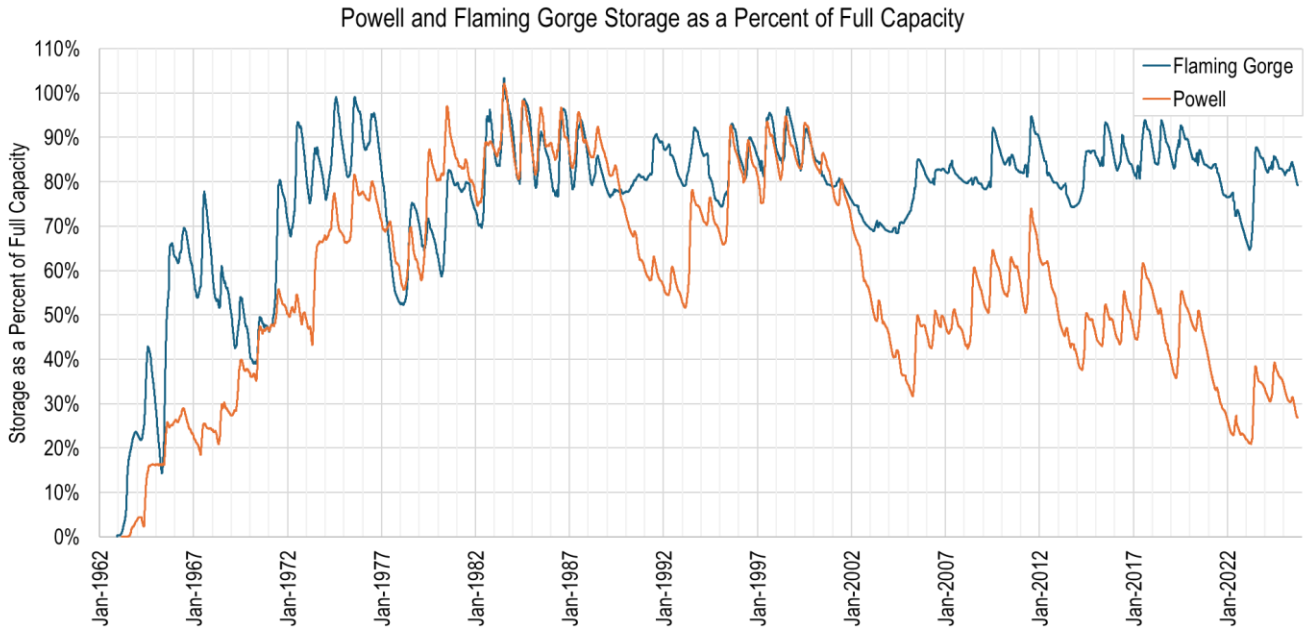

Fig. 3. Powell and Flaming Gorge Storage as a Percent of Full Capacity (though end of WY2025).

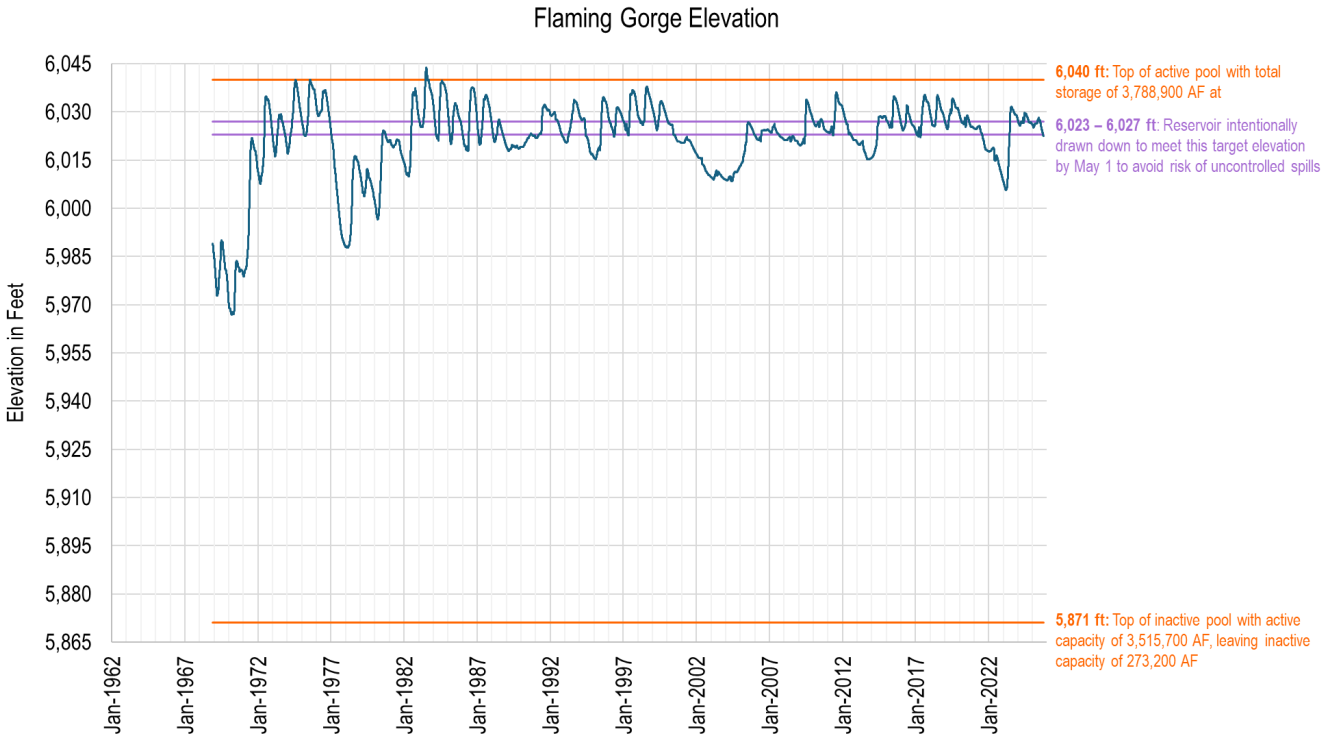

Fig. 4. Flaming Gorge Elevation (though end of WY2025).

c. Releases from Upper Initial Units Must Be for Compact Compliance, Not Merely to Protect Glen Canyon Dam

Reclamation is obligated to release water from the Upper Initial Units[91] as needed to ensure Compact compliance. The DEIS contemplates releases from the Upper Initial Units to protect Lake Powell infrastructure,[92] but as described elsewhere in this letter, PIP is not a legal basis to operate the Upper Initial Units under the CRSP. *See* section 3.c, *infra*. The entire history and purpose of the CRSP Initial Units (including Lake Powell) is to ensure sufficient flows at Lee Ferry, not to ensure sufficient water levels for power, recreation, or aesthetic purposes. The RODs for the reservoirs do not prevent the release of all storage contents from the reservoirs, and even if they did, that would not prevent Reclamation from operating outside the RODs, as correctly noted in the DEIS. To satisfy the Secretary's duty to operate federal projects in accordance with the Compact and federal law, including the statutory order of authorized purposes for CRSP operations, the final EIS and operating criteria must include guidelines to release stored water from the CRSP Upper Initial Units into Lake Powell for delivery at Lee Ferry. Failure to include an alternative that meets these basic principles of the Law of the River renders the DEIS insufficient under the requirements of NEPA.[93]

3. CAP Contests the Interpretation of Priority in the DEIS

The DEIS assumes that CAP should suffer the consequences of all shortages predicted in all of the alternatives, effectively making CAP junior to both the Upper Basin's interests in the Compact and to other water users in the Lower Basin regardless of the reason for the alleged "shortage." Reclamation does not cite legal authority for this proposition—and of course there is none. Instead, it appears Reclamation has grossly misread the terms of Section 301(b) of the CRBPA, which neither amended Arizona's apportionment under *Arizona v. California* nor permanently subordinated CAP uses to uses of the States of the Upper Basin. This interpretation amounts to an unlawful overreach in terms of proposed secretarial authority.

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[91] The CRSPA did more than authorize the construction and operation of the initial storage units. It also authorized the participating projects (also called "dependent projects") that rely on the initial storage units fulfilling their purpose of ensuring Compact compliance at Lee Ferry. Thus, if there is insufficient storage water available for release from the initial storage units to satisfy the Lee Ferry flow obligation and a breach of that obligation is imminent, there is no basis for the Secretary to deliver any water to participating project contractors for consumptive use in the Upper Basin while simultaneously shorting Lower Basin water users. Indeed, the mandate for the Secretary to operate reservoirs and projects in accordance with the Law of the River extends to the participating projects. 43 U.S.C. §§ 620m, 1551(c)); H.R. Doc. No. 83-364 at 69, 103, 149, 169, 286. The participating projects are "dependent" on the initial units having enough water to fulfill their purpose of meeting the Lee Ferry delivery requirement).

[92] *See* DEIS, Appendix A at A-10 – A-13, Appendix O.

[93] *See* section 9.b, *infra*.

a. Section 301(b) of the CRBPA Calls for CAP to Be "Junior" Under Limited Circumstances Not Met in the DEIS Alternatives

Under Section 301(b) of the CRBPA, Congress attempted to relegate CAP to a "junior" user only when "as determined by the Secretary, there is insufficient main stream Colorado River water available for release to satisfy the annual consumptive use of seven million five hundred thousand acre-feet in Arizona, California and Nevada[.]"[94] Without conceding the constitutional validity of Section 301(b) (*see* section 3.b *infra*), the plain language of Section 301(b) is limited to the relative priority of Arizona/CAP and California as it relates to deliveries of water under the *Arizona v. California* decree, which by its terms "shall not affect . . . [a]ny issue of Colorado River Compact interpretation."[95] In other words, by adopting Section 301(b) of the CRBPA, Congress did not implicitly or explicitly modify the Colorado River Compact. In confirming that the Colorado River Compact remained untouched and the supreme law of the river, the CRBPA clearly was premised on and in fact required, that any limitations on CAP diversions under Section 301(b) could only be imposed after ensuring Compact compliant Lower Basin deliveries.

Nonetheless, the DEIS improperly relies on Section 301(b) to make the CAP and other water users in Arizona junior to the entire Upper Basin by adopting the Upper Basin's fictional quantification of "hydrological shortages" as a basis for the Secretary to simply *decide* not to make 8.23 MAF available to the Lower Basin when it is physically available in the Upper Basin, stored in the Upper Initial Units, or when the Secretary creates a "shortage" at Lee Ferry by prioritizing deliveries to Lake Powell to protect infrastructure at Glen Canyon Dam or to protect the power pool. In fact, the DEIS expressly assumes that because the Upper Basin is "senior" it need *never* reduce its uses, and Reclamation need *never* operate the Upper Initial Units as they were authorized, resulting in manufactured shortages to the Lower Division States in each of the alternatives. The significant share of the proposed shortages falls on the CAP and Arizona under these manufactured conditions. Whatever Section 301(b) of the CRBPA provides, it does not authorize the Secretary to impose an agency-created shortage on Arizona and CAP.

b. The Constitutionality of Section 301(b) of the CRBPA Is in Question

Even if the hydrologic conditions were met to satisfy the "junior priority" described in Section 301(b) of the CRBPA, the provision is inconsistent with constitutional constraints on Congress's authority. Federal statutes that impose geographically disparate burdens on individual States implicate core principles of federalism. The Supreme Court has recognized that States enjoy equal sovereignty and may not be placed on an unequal footing, absent exceptional justification closely related to the

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[94] CRBPA § 301(b).

[95] *Arizona v. California*, 547 U.S. 150, 166 (2006) (art. VIII(D) of Consolidated Decree).

problem Congress seeks to address.[96] Under the anti-commandeering doctrine, Congress may not expand its constitutional authority by securing the consent of the State whose sovereignty is diminished.[97]

Treating Arizona as permanently junior to other States based on Section 301(b) of the CRBPA raises serious constitutional concerns.[98] The DEIS does not analyze whether such disparate treatment remains justified decades after enactment of the CRBPA, nor does it acknowledge that State sovereignty limits are structural and enduring.

c. Even If Constitutional, a Junior Priority Cannot Be Imposed Upon CAP Under the Proposed Operations

Since 2007, the framework for Colorado River reservoir operations has implemented voluntary shortages among the Lower Basin water users to protect elevations at Lake Powell and Lake Mead. The DEIS carries forward the principle of reducing allocations before reaching dead pool at the reservoirs. The result is deep reductions in the Lower Basin at the same time millions of acre-feet of storage remain in Lake Mead and the CRSP reservoirs. This is a very different scenario than what is set forth in Section 301(b).

Turning to the text of the statute, Section 301(b) of the CRBPA provides:

> Article II(B)(3) of the decree of the Supreme Court of the United States in Arizona against California (376 U.S. 340) shall be so administered that in any year in which, as determined by the Secretary, there is insufficient main stream Colorado River water available for release to satisfy annual consumptive use of seven million five hundred thousand acre-feet in Arizona, California, and Nevada, diversions from the main stream for the Central Arizona Project shall be so limited as to assure the availability of water in quantities sufficient to provide for the aggregate annual consumptive use by holders of present perfected rights, by other users in the State of California served under existing contracts with the United States by diversion works heretofore constructed, and by other existing Federal reservations in that State, of four million four hundred thousand acre-feet of

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[96] *Shelby County v. Holder*, 570 U.S. 529, 542-45 (2013); *Nw. Austin Mun. Util. Dist. No. One v. Holder,* 557 U.S. 193, 203 (2009); *Coyle v. Smith*, 221 U.S. 559, 567 (1911).

[97] *Murphy v. NCAA*, 584 U.S. 453, 471-74 (2018); *Printz v. United States*, 521 U.S. 898, 920-24 (1997); *New York v. United States*, 505 U.S. 144, 182-83 (1992).

[98] *See* Stuart L. Somach, *The Arizona "Junior Priority": How Would That Work?*, 57 Ariz. St. L.J. 1481 (2026).

> mainstream water, and by users of the same character in Arizona and Nevada.[99]

The underlying premise of the "junior priority" for CAP is "insufficient main stream Colorado River water *available for release* . . . ."[100] In contrast, the DEIS alternatives impose deep shortages for CAP and other Lower Basin water users when *there is stored water available for release* and the stored water is being withheld to maintain reservoir elevations for power production. Section 301(b) is not a valid basis for these reductions under the storage conditions considered in the DEIS.

Assuming Section 301(b) of the CRBPA withstands constitutional scrutiny, *and* assuming 7.5 MAF is not available for release in the Lower Basin, Section 301(b) would govern only the relative priorities of certain uses within the Lower Basin after delivery of the Lower Basin's Compact entitlement. Section 301(b) does not affect the Upper Basin's delivery obligation, nor does it authorize basin-wide reallocation of shortage burdens. In Section 601(a), the CRBPA included the almost-standard language in any statute governing the Colorado River that "[n]othing in this Act shall be construed to alter, amend, repeal, modify, or be in conflict with the provisions of the Colorado River Compact."[101] As discussed above, "[i]n order to comply with and carry out the provisions of the Colorado River Compact," Section 602(a) directed the Secretary to adopt operating criteria that provide for the release of stored water from Lake Powell and other CRSP reservoirs to satisfy Article III(c) and III(d) as the first priority.[102]

Congress thus adopted Section 301(b) and authorized construction of the CAP predicated on the requirement of Compact compliance. Thus, Section 301(b) cannot reasonably be interpreted as a basis for excusing Compact compliance, as the DEIS does; this reading would render Sections 601(a) and 602(a) of the same statute meaningless. Under canons of statutory interpretation, Section 301(b) must be read to harmonize with Sections 601(a) and 602(a), not clash with them.[103]

Based on the proposals in the DEIS, the Secretary would not enforce the Compact or release stored water to the Lower Basin to ensure Compact compliance in

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[99] CRBPA § 301(b) (codified at 43 U.S.C. § 1521(b)).

[100] *Id.* (emphasis added).

[101] *Id.* § 601(a) (codified at 43 U.S.C. § 1551(a)).

[102] *Id.* § 602(a) (codified at 43 U.S.C. § 1552(a)).

[103] *See Boise Cascade Corp. v. United States EPA,* 942 F.2d 1427, 1432 (9th Cir. 1991) ("we must interpret statutes as a whole, giving effect to each word and making every effort not to interpret a provision in a manner that renders other provisions of the same statute inconsistent, meaningless or superfluous. [Citation].)." This harmonious reading of the statute finds support in the current version of the LROC, through which Reclamation rightly prioritized deliveries to the Lower Basin over the maintenance of power pool elevations in Lake Powell. *See* 70 Fed. Reg. 15,873, 15,881 (Mar. 29, 2005) (explaining in response to comment that "[t]he minimum release objective contained in the Operating Criteria results in Lake Powell storage decreasing during periods of drought").

accordance with Section 602(a), and thus any "shortage" to the Lower Division States cannot be redirected to CAP under an erroneous interpretation of "priority" based on Section 301(b). The Secretary is explicitly protecting power pools over using other means to move water to the Lower Basin. There is even a considerable and self-described "buffer" between the "Powell infrastructure protection" level of 3,525 feet, which triggers additional releases from the Upper Initial Units in some alternatives, and 3,490 feet, which is the minimum power pool, and still 3,370 feet, which is dead pool when no water can be delivered:

Table TA 3-2
Critical Elevations at Lake Powell

Critical Condition	Associated Elevation	Description of Critical Elevation
Spillway	3,700 feet	Top of Glen Canyon Dam spillway
Spill Avoidance	3,680 feet	At high elevations, releases deviate from the planned release for spill avoidance and infrastructure protection. Capacity between this elevation and the top of the spillway allows for 1.9 maf of Flood Control storage
Buffer Elevation	3,525 feet	Water supply buffer elevation; may trigger additional (within Record of Decision) releases from CRSP UIUs (Flaming Gorge, Navajo, and Blue Mesa reservoirs)
Buffer Elevation	3,500 feet	10-foot buffer elevation above minimum power pool (3,490 feet) for water supply and hydropower.
Minimum Power Pool	3,490 feet	No longer able to produce hydropower at Glen Canyon Dam; releases below this elevation are constrained and may damage release structures
Dead Pool	3,370 feet	No longer able to deliver water downstream through Glen Canyon Dam

Fig. 5: Table TA 3-2: Critical Elevations at Lake Powell (reproduced from DEIS at TA 3-21).

Power production is an authorized purpose of Glen Canyon Dam. However, the CRSPA states that "the generation of hydroelectric power" is "an incident of the foregoing purposes," which include storing water consistent with the Colorado River Compact."[104] Other provisions of the CRSPA confirm that power generation "shall not affect or interfere with the operation of the provisions of the Colorado River Compact, the Upper Colorado River Basin Compact, the Boulder Canyon Project Act, the Boulder Canyon Project Adjustment Act and any contract lawfully entered into under said Compacts and Acts."[105] And of course, the Compact provides:

[104] *See* 43 U.S.C. § 620 (describing "generation of hydroelectric power, as an incident of" other purposes for which the Secretary of the Interior was authorized to construct, operate, and maintain Glen Canyon). An incidental purpose is not a top priority. *See Florida v. United States Army Corps Eng'r (In re MDL-1824 Tri-State Water Rights Litig.)*, 644 F.3d 1160, 1188 n.20 (11th Cir. 2011) (quoting Black's Law Dictionary 830 (9th ed. 2009) ("The adjectival forms of the term 'incident' can mean 'subordinate to something of greater importance; having a minor role' or 'dependent upon, subordinate to, arising out of, or otherwise connected with.'").

[105] *See* 43 U.S.C. § 620f. Recent decisions confirm that power generation is a subservient purpose. *See, e.g.*, *Save the Colo. v. United States DOI*, No. 23-15247, 2024 U.S. App. LEXIS 9919, at *4-5 (9th Cir. Apr. 24, 2024) ("One such authority is the Colorado River Storage Project Act of 1956, which directs the

> Subject to the provisions of this compact, water of the Colorado River System may be impounded and used for the generation of electrical power, but such impounding and use shall be subservient to the use and consumption of such water for agricultural and domestic purposes and shall not interfere with or prevent use for such dominant purposes.[106]

Thus, maintaining power pools at CRSP units cannot be reasonably interpreted as senior to the Lower Basin's entitlements under Article III(d) of the Colorado River Compact or senior to CAP's entitlement, under Section 301(b) or otherwise.

Finally, Section 301(b) cannot be reasonably interpreted as authorizing the United States to impose deep reductions on CAP without first following a series of procedural steps under 43 CFR part 417 (Part 417), which includes completing an exacting evaluation of beneficial uses of water in the Lower Basin. Under Part 417, Reclamation is required to make an annual determination of each Colorado River contractor's water requirements "to the end that deliveries of Colorado River water to each Contractor will not exceed those reasonably required for beneficial use[.]"[107] This evaluation is imperative under conditions, such as those envisioned by the DEIS where CAP is taking devastating cuts and other water users remain whole.[108]

d. Reductions Based on Infrastructure Protection Must Be Distributed Pro Rata

When the reason for imposing shortage is taking action to protect infrastructure, then the appropriate basis for distributing shortage is pro rata.[109] There is precedent for pro rata reductions when the Secretary took action to refill Lake Mead. In the only case on this issue, the federal district court found in favor of the Secretary when Reclamation reduced deliveries of stored water to Lower Basin contractors by 10% during the filling

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Secretary to operate hydroelectric powerplants—including Glen Canyon Dam—'to produce the greatest practicable amount of power and energy' so long as it does not 'affect or interfere with' the integrity of other non-power beneficial uses. [Citations.]").

[106] Compact, art. IV(b); *see also Colorado River Storage Project: Hearings on H.R. 4449, H.R. 4443, and H.R. 4463 Before the Subcomm. on Irrigation and Reclamation of the H. Comm. on Interior and Insular Affairs*, 83rd Cong. 186 (1954) (statement of W.A. Dexheimer, Commissioner of Reclamation) ("[CRSP] also provides for the condition requiring that water uses for power are subservient to uses for irrigation and domestic purposes."); *Colorado River Storage Project: Hearings on S. 500 Before the Subcomm. on Irrigation and Reclamation of the H. Comm. on Interior and Insular Affairs*, 84th Cong. 275 (1955) (statement of Elmer Bennett, Legislative Counsel for the Department of the Interior) ("It is also our conclusion that there is no prohibition against the generation of electricity anywhere in the basin, subject to the paramountcy assigned to domestic and agricultural uses and provided that there is no interference with apportionments made in article III of the compact.").

[107] 43 C.F.R. § 417.2.

[108] *See United States v. Clifford Matley Family Trust*, 354 F.3d 1154, 1163-64 (9th Cir. 2004).

[109] *See Yuma Mesa Irrigation & Drainage Dist. v. Udall* (*YMIDD*), 253 F. Supp. 909 (D.D.C. 1965); *Yuma County Water Users Ass'n v. Udall*, 231 F. Supp. 548 (D.D.C. 1964).

of Lake Powell and after low spring runoff into Lake Mead for a second consecutive year.[110] Reclamation positively cited this precedent when considering how to allocate shortages between Lower Basin water users in order to protect federal infrastructure in 2023. In the 2023 draft supplemental EIS, Reclamation evaluated an alternative action where shortages would not be imposed "based exclusively on the concept of priority"; rather, they would "be distributed in the same percentage across all Lower Basin water users."[111] On the other hand, there are no cases to support unilaterally directing shortage to one State and one water user when reservoir management decisions are made based on infrastructure protection.

4. Reducing CAP Deliveries to 237 TAF Will Result in Devastating Impacts to CAP and to Arizona

While the DEIS goes into great detail regarding the necessity of deep reductions to the Lower Division states to protect infrastructure at Glen Canyon Dam, the document is conspicuously silent on the damage to federal infrastructure downstream of Glen Canyon Dam that will be directly caused by those same reductions. The DEIS evaluates five alternatives. The cuts resulting from each alternative are summarized at Table ES-1. The alternatives assign all shortages to the Lower Basin, and as shown in Figure 6, in four of the five scenarios the bulk of the shortage falls on Arizona and CAP.

[110] *YMIDD*, 253 F. Supp. at 911-12.

[111] *See* Reclamation, Near-term Colorado River Operations Draft Supplemental Environmental Impact Statement at 2-14 – 2-15 (Apr. 2023) ("This alternative includes actions and modeling assumptions that have precedent in actions previously undertaken by Reclamation under applicable federal law in both the Upper Basin (2021-2022) and Lower Basin (see the 1964 Determination by Secretary Udall to impose equivalent percentile reductions in light of reduced flows from Glen Canyon Dam)").

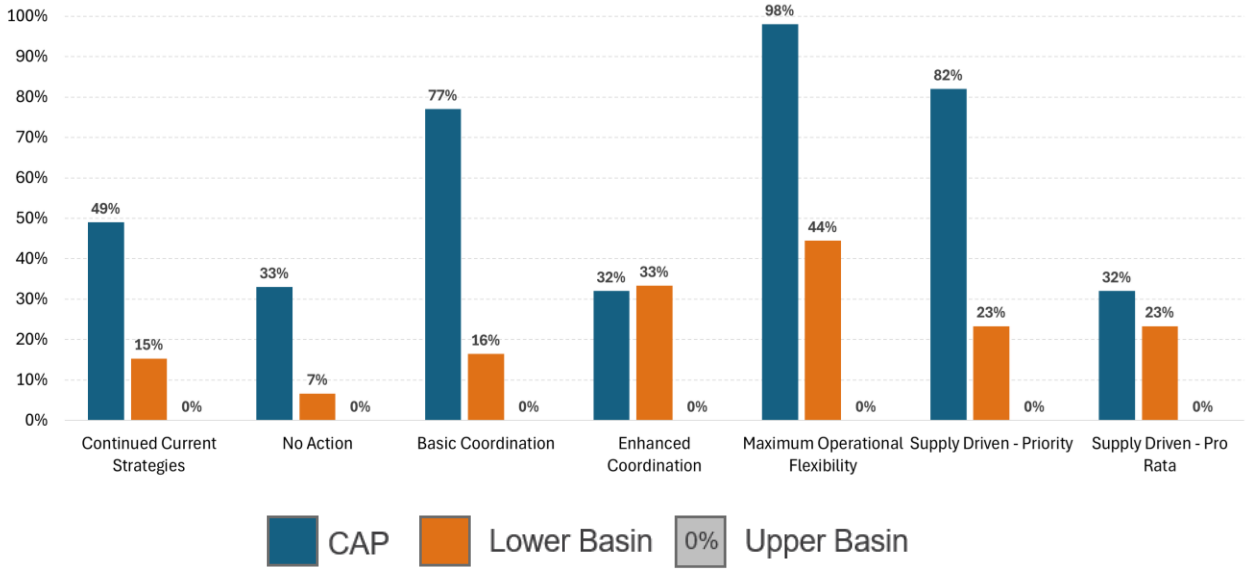

Fig. 6. Reduction to Apportionment in Each Basin and CAP Diversion After Maximum Policy Shortage for Each Alternative.

Specifically, the Basic Coordination Alternative proposes a maximum policy shortage that would reduce the total deliverable supply of water through the CAP to 236,900 AF based on the USBR Shortage Allocation modeling and use assumptions used in the DEIS (assuming strict priority enforcement and Lake Mead levels just below 1,110 feet consistent with current conditions). Under dead pool scenarios like those described in DEIS Figure 3-12 that eliminate all CAP diversions and under the Maximum Operational Flexibility Alternative where Arizona's third and fourth priority water entitlements are effectively eliminated, CAP Indian Priority and M&I Priority pool allocations fall to zero in the Shortage Allocation modeling.[112]

These water supply scenarios would be devastating to CAP and the people in Arizona that it serves. Yet the DEIS does not include an adequate explanation of these impacts. Indeed, the DEIS barely mentions the devastation its alternatives would wreak on Arizona, flippantly stating for that the alternatives could cause Arizona to experience "a reduction or elimination of legal access to municipal water, [causing] widespread impacts on social and economic conditions . . . ."[113] Below, CAP describes some of the social and economic impacts of a water supply of 237 TAF under the Basic Coordination alternative, and given the probability of Lake Mead reaching dead pool

[112] The total CAP annual deliverable supply is reduced to approximately 21,400 AF under the maximum policy shortage for the Maximum Operational Flexibility Alternative. *See* DEIS, Executive Summary, Table ES-8.

[113] DEIS at 3-193, TA 17 at 17-35.

under the different alternatives, CAP also addresses some impacts from a "CAP at Zero" water supply scenario where no water is available to the CAP.

a. The DEIS Does Not Consider the Impacts on the Federally Owned Infrastructure Operated and Maintained by CAP

The DEIS alternatives reduce or eliminate diversions to CAP, but the DEIS wholly fails to analyze the significant, long-term, adverse impacts these flow reductions will have on the critical water supply infrastructure of the CAP and the drinking water treatment plants that rely on CAP supplies. Implementation of the DEIS alternatives will result in direct physical damage to the CAP system and indirect impacts caused by imposition of an extended dry-up or extreme shortages in CAP water supplies. These are reasonably foreseeable impacts, and NEPA requires that an EIS disclose the impacts of a proposed action, including potential unavoidable adverse effects on infrastructure. Yet, the foreseeable damage has not been considered in the DEIS. This damage must be fully evaluated to comply with NEPA. Further, cascading direct and indirect impacts from such damage, including extended return-to-service times, must also be evaluated under NEPA.

i. The DEIS Does Not Identify or Analyze Direct and Indirect Impacts to CAP Conveyance and Pumping Infrastructure

The CAP is a 336-mile-long water conveyance system critical to the delivery of Colorado River water to central Arizona. The CAP is owned by Reclamation and is operated, maintained, and managed by the Central Arizona Water Conservation District (CAWCD). The CAP infrastructure was not intended to withstand extended periods of low water levels or dry-ups within the system, but instead was designed and constructed by Reclamation with the assumption that water would be present in CAP's infrastructure continually.[114] The long-term health of CAP's physical systems—including the 336-miles of concrete-lined canal, 15 pumping plants, mechanical equipment, electrical equipment, high-voltage electrical systems, and major siphons—relies heavily on the stabilizing and protective effects of continuous water presence and regular operational cycles.

CAWCD has used its four decades of experience operating and maintaining the CAP to estimate the impacts to the CAP infrastructure in the event of a 12-month "dry-up" period where no water is available to be diverted into the CAP—a scenario effectively contemplated under the Maximum Operational Flexibility alternative[115] and under any of the alternatives that lead to "dead pool" scenarios and eliminate all CAP

[114] For example, the CAP canal lining was constructed using concrete without rebar support and is thus physically vulnerable to large changes in temperature when dry, leading to significant cracking, buckling, and potential catastrophic failure.

[115] The total CAP annual deliverable supply is reduced to approximately 21,400 AF under the maximum policy shortage for the Maximum Operational Flexibility Alternative. That volume is insufficient to protect the CAP infrastructure from severe damage.

diversions. All estimates provided herein are for a one-year period. Assuming CAWCD takes appropriate mothballing and damage mitigation measures, the costs in terms of time and money of returning the CAP back to service after a 12-month dry-up are estimated as follows:

System Description	Cost of Return to Service	Time to Return to Service
Mothballing/Damage Mitigation	$875,000	4-6 months[116]
Pumping Plant Mechanical and Electrical Systems	$1,630,000	12-24 months
High-Voltage Systems	$1,175,000	12-24 months
Concrete Canal Lining	$348,633,600	13-19 months
PCP Siphons	$4,312,000	2-4 months
TOTAL:	**$358,225,400**	**12-24 months**

These costs mean that even one year where insufficient water flows through the CAP may cause up to two years of downtime for the canal, thus leaving Central Arizona without Colorado River Water for up to three years at a price tag of over $358 million.

The damage and repair costs resulting from a dry-up could be avoided if CAWCD is able to divert sufficient minimum water volumes necessary to keep the canal full and flowing and the pumps cycling for maintenance. The DEIS fails to analyze these impacts or determine the total annual diversion volumes required to avoid the impacts.

ii. The DEIS Fails to Identify or Analyze Direct and Indirect Impacts to CAP Contractor and Subcontractor Water Treatment Infrastructure

An EIS must disclose the impacts of a proposed action, including potential unavoidable adverse effects on infrastructure such as water treatment plants that will go dry. Yet, the DEIS fails to address the direct and indirect consequences of the physical damage to water treatment plants owned and operated by CAP contractors and subcontractors that will be caused by the imposition of extended dry-up and extreme shortages in CAP water supplies under the DEIS alternatives.

The CAP delivers Colorado River water to dozens of municipal water providers and industrial customers in central and southern Arizona. Several of those customers own and operate drinking water treatment plants that are designed and located to process CAP Colorado River water exclusively:

[116] The mothballing and restoration efforts will happen prior to and during the outage period and do not extend the timing of restoration.

Name	Utility	Capacity (Millions of Gallons Per Day [MGD])
Ak-Chin Water Treatment Plant	Ak-Chin	2.25
Apache Junction WUCFD Superstition Area WTP	Apache Junction Water District	2.00
Anthem Water Treatment Plant	EPCOR - Anthem	7.00
Brown Road Water Treatment Plant	City of Mesa	72.00
CAP Water Treatment Plant	City of Scottsdale	70.00
Cave Creek Water Treatment Plant	Cave Creek Water Company	5.00
Lake Pleasant Water Treatment Plant	City of Phoenix	80.00
Pyramid Peak Water Treatment Plant	City of Glendale	54.00
Quintero Water Treatment Plant	City of Peoria	.13
Signal Butte Water Treatment Plant	City of Mesa	24.00
Santan Vista Water Treatment Plant	Town of Gilbert/ City of Chandler	48.00
Shea Water Treatment Plant	EPCOR - Chaparral City	15.00
Union Hills Water Treatment Plant	City of Phoenix	160.00
White Tanks Water Treatment Facility	EPCOR - Agua Fria	30.00
Total Drinking Water from CAP Supplies		**569.380**

An extended dry-up or period of extreme shortage will likely cause significant damage to these treatment plants as alternative water sources will not be readily available to provide the supply to those facilities due to physical, technical, and legal constraints. Again, the DEIS fails to analyze these impacts or determine the total annual diversion volumes required to avoid the impacts to critical infrastructure in the Lower Basin (as opposed to infrastructure protection at Glen Canyon Dam).

b. Shortages to the CAP Water Supply Will Result in Environmental and Water Quality Impacts in the Canal

The CAP currently operates as a fast moving, low trophic system that supports stable biological communities and reliable water quality. Reductions in flow as proposed by the DEIS will result in dramatic changes to these natural systems and will cause environmental impairment and dangers to public health. Reductions in flow below a 700 TAF CAP allocation increase the risk of steep changes in biological conditions that can lead to odors, insect breeding, harmful algal blooms, fish kills, and the expansion of nuisance or invasive species. The most significant risks, particularly those involving cyanotoxins and mosquito borne disease, become more pronounced between 500 TAF and 300 TAF. At 300 TAF, the CAP faces a heightened risk of compounding impacts that would affect water quality, public health, and system reliability.[117] Reclamation must evaluate these impacts to satisfy its obligations under NEPA.

c. The Extreme Shortages for CAP Proposed in the DEIS Alternatives Would Be Devastating to Central Arizona's Economy

The DEIS does not adequately capture the significant economic impacts resulting from the level of extreme shortages proposed in the alternatives.[118] The Economic Impact Report evaluates four areas of impacts:

- **Water Supply Impacts:** The model incorporates the complete water supply portfolio for 40 municipal and five tribal CAP contractors—including groundwater, effluent, long-term storage credits (LTSCs), and alternative surface water sources—and projects how demand and supply would evolve through 2060.

- **Water Market Prices:** An econometric model of water market transactions was developed to forecast wholesale water prices as a function of CAP deliveries.

- **Direct Economic Impacts:** The direct economic impacts of water supply reductions were evaluated for six categories: consumer welfare losses, business interruptions, foregone development, lost water provider revenues, depleted water resources, and tribal water resources.

- **Indirect and Induced Impacts:** IMPLAN, a regional economic impact model, was used to estimate broader economic effects and employment.

The WestWater analysis finds that water supply impacts to the CAP service area

[117] Detailed analysis of water quality impacts to the CAP system from DEIS alternatives is provided in the report Black & Veatch, CAP Environmental Flow Assessment: Hydrobiological Impact Evaluation (Feb. 2026), included herein as Exhibit 12.

[118] A full economic analysis of these CAP supply reductions is included in the report WestWater Research, Economic Impacts to Central Arizona of Reductions in CAP Deliveries (Feb. 2026) (Economic Impact Report), included herein as Exhibit 13.

begin immediately as providers draw down groundwater and LTSCs to replace CAP supplies. Scarcity drives up wholesale water prices, making it harder for providers to acquire alternative water supplies, LTSCs, or groundwater to replace CAP supplies. Tribes have less surplus water available to bank as LTSCs or sell to municipal buyers and lose revenue they previously earned from leasing their supplies or creating LTSCs to be marketed. New housing development is constrained due to challenges in securing an assured water supply. For some providers, insufficient supplies to meet demand for existing customers begin as early as 2030 and expand over time as backup supplies are exhausted. Consumers and existing businesses face significant supply interruptions, leading to household welfare losses and reduced business activity. Water providers face substantial revenue shortfalls resulting from reduced water sales.

These impacts are quantified in Table 1 below, reproduced from page 7 of WestWater's Economic Impact Report. Table 1 summarizes the incremental impacts of water supply reductions based on a 237 TAF proposed under the Basic Coordination alternative assumptions and a 0 TAF CAP supply contemplated in dead pool scenarios where CAP diversions are eliminated and under the Maximum Operational Flexibility alternative.[119]

[119] The total CAP annual deliverable supply is reduced to an effectively de minimis volume of approximately 21,400 AF under the maximum policy shortage for the Maximum Operational Flexibility Alternative.

Table 1: Summary of Economic Impacts under Maximum Policy Shortages and Use Assumptions

Impact Category	Basic Coordination Scenario	Extreme Shortage Scenario
1. Water Supply Impacts		
First Year of Shortages Modeled If Maximum Policy Shortage Implemented	2032	2030
Subsequent Shortages in 2060 (% demand)	26%	34%
Depletion of groundwater and LTSCs (through 2060)	8.0 MAF	8.7 MAF
2. Water Market Prices (beginning in 2027)		
Wholesale water price ($/AF)	$1,550	$12,840
Percentage Increase from Current Price	210%	2468%
3. Direct Economic Impacts ($ Billions, through 2060)		
Depleted groundwater and LTSCs	$12	$108
Lost tribal water supply	$7	$60
Consumer welfare losses	$38	$64
Business interruptions	$308	$462
Foregone housing development	$467	$550
Lost provider revenues	$18	$27
4. Indirect and Induced Impacts ($ Billions, through 2060)		
Employment losses (%)	3.3%	4.4%
Employment losses (job years)	5,272,838	6,980,079
Total economic impact (multiplier)	**$2,221 (2.81×)**	**$2,780 (2.68×)**

Fig. 7. Summary of Economic Impacts under Maximum Policy Shortages and Use Assumptions (reproduced from Economic Impact Report at 7).

The Economic Impact Report quantifies the direct and indirect economic impacts of reduced CAP deliveries, but it does not evaluate the interrelated economic and ecological effects of increased groundwater pumping, including aquifer depletion, land subsidence, ecosystem degradation, increased energy costs from greater pumping depths, and the investments in infrastructure required to switch from surface water to groundwater. As a result, the economic impacts summarized above do not capture all likely impacts of reduced CAP deliveries in Central Arizona.

The analysis also does not capture the risks associated with the potential loss or deferral of large, advanced manufacturing investments in Central Arizona, such as the $165 billion semiconductor fabrication and packaging facilities recently announced by Taiwan Semiconductor Manufacturing Company. The long-term viability of this and

other advanced manufacturing projects depends on corporate assessments of sustainability, environmental impacts, and regulatory certainty, even where near-term physical water availability is adequate. Scaling published economic impact assessments suggest that the loss of this facility could reduce total economic output by approximately $84 billion, household income by roughly $24 billion, and state and local tax revenues by about $3.6 billion—highlighting economic risks not captured in the modeled CAP shortage impacts.

The DEIS does not identify the massive economic impacts to Central Arizona caused by the operational decisions outlined in the alternatives, and of course fails to meet the requirements of NEPA for this reason. Beyond the NEPA process, deciding to impose these shortages on CAP and the population it serves is completely unacceptable when the Upper Basin is shirking its Compact obligations and Reclamation is holding back stored water in the Upper Initial Units, enabling noncompliance with the Compact. At the same time the DEIS alternatives create shortages for CAP, the DEIS uses assumptions that protect the economic growth and increased water use in the Upper Basin for the years to come.

d. The DEIS Does Not Analyze Impacts to Tribal Water Settlements

Twenty-two of the thirty federally recognized Tribes in the Colorado River Basin are situated in Arizona. Of those Tribes, four Tribes have adjudicated mainstem entitlements in *Arizona v. California*,[120] and eleven Tribes have entitlements to CAP water through congressionally approved water right settlement agreements or CAP water delivery contracts.[121] CAP water has been vital to securing settlements of Tribal water right claims in Arizona. CAP delivers more tribal water than any other organization in the United States, a responsibility CAP takes very seriously.

All five alternatives in the DEIS impose significant reductions on Tribes in Arizona reliant on CAP water. These shortages will not only affect the Tribes themselves, but also numerous Arizona cities and towns that lease water from the Tribes as part of those water settlements. The DEIS fails to analyze the impacts of these reductions or explain how those reductions comport with its trust obligations to the Tribes.

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[120] These tribes are the Colorado River Indian Tribes, Cocopah Indian Tribe, Fort Mojave Indian Tribe, and Fort Yuma Quechan Indian Tribe.

[121] Ak-Chin Indian Community, Pub. L. 95-328, 92 Stat. 409 (1978), Pub. L. 98-530, 98 Stat. 2698 (1984), Pub. L. 102-497 (1992); Salt River Pima Maricopa Indian Community, Pub. L. 100-512, 102 Stat. 2549 (1988); Fort McDowell Indian Community, Pub. L. 101-628, 104 Stat. 4480 (1990); San Carlos Apache Tribe, Pub. L. 102-575, 106 Stat. 4740 (1992), Pub. L. 105-18, 111 Stat. 181 (1997); Tohono O'odham Nation, Pub. L. 97-293, 96 Stat. 1274 (1982), Pub. L. 108-451 (2004); Gila River Indian Community, Pub. L. 108-451 (2004); White Mountain Apache Tribe, Pub. L. 111-291 (2018), Pub. L. 117-342 (2023); Hualapai Indian Tribe, Pub. L. 117-349 (2022); Yavapai Apache Nation (Camp Verde), 48 Fed. Reg. 12446, 12447 (1983); Tonto Apache Tribe, 48 Fed. Reg. 12446, 12447 (1983); Pascua Yaqui Tribe, 48 Fed. Reg. 12446, 12447 (1983).

5. The DEIS Overestimates Upper Basin Use While at the Same Time Proposing Devasting Shortages to Arizona and CAP and Enabling a Compact Violation

a. The DEIS Modeling Assumptions Highlight Flaws in "Hydrologic Shortage" Claims in the Upper Basin

The DEIS relies on modeling using Colorado River Simulation System (CRSS), and future water demands are required inputs into CRSS. However, key assumptions on future water demands are incorporated into the CRSS modeling used for the DEIS that show a clear bias toward growth in consumptive use in the Upper Basin under deteriorating hydrologic conditions, creating further risk to the Lower Basin.

The DEIS explains that "[i]n 2023, Reclamation revised CRSS to reduce model bias and better characterize the variability and range of Upper Basin depletions. To address these issues, the updated model includes 'not pre-shorted' Upper Basin demands (rather than 'pre-shorted' demands), as well as logic that limits the natural flow available for diversion by the Upper Basin agricultural water users by calibrating to historical Upper Basin gage records."[122] In other words, "[t]o achieve the full scheduled depletion, sufficient natural flow must be available within the corresponding reach to meet all scheduled diversions. When available natural flow is not available, users are unable to meet their 'not pre-shorted' depletion schedules."[123] Based on this purposeful limitation in CRSS, there is always "shortage" in the Upper Basin, and users are never able to meet the "not pre-shorted" depletion schedule.

For example, in the 400 CRSS traces, a single year of 44.2 MAF still produces 666 TAF of "unmet demand" in the Upper Basin.[124] Figure I-2 in Appendix I shows that Upper Basin water supply is never adequate, even in a year when an average of 16-31 MAF is passing Lees Ferry. This is the so-called theory of "hydrologic shortage" advanced by the Upper Basin States and Upper Colorado River Commission (UCRC). The modeling results demonstrate that inability to meet the demand schedule is not due to insufficient water supply, but due to artificial estimates of demand in areas where physical water supply has never been available. When "hydrologic shortage" claims in the Upper Basin are based on a shortfall relative to artificial demand, the shortage volume is also artificial.

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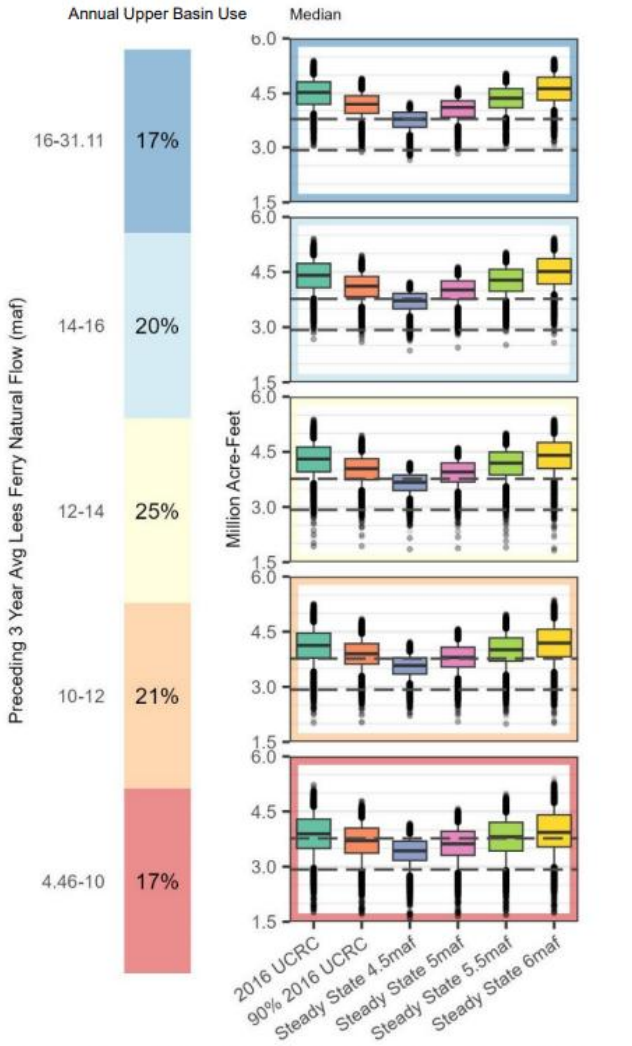
[122] DEIS at A-1; *see also* Western Water Assessment, Colorado River Basin Climate and Hydrology: State of the Science 109 (Apr. 2020), available at https://wwa.colorado.edu/sites/default/files/2021-06/ColoRiver_StateOfScience_WWA_2020_Chapter_3.pdf, for a description of the modeling limitations for the Upper Basin.

[123] DEIS at A-7.

[124] DEIS CRSS modeling files, Trace 16, Year 2051.

Figure I-2
Projected annual Upper Basin depletions across the 2016 UCRC demand schedule and five alternate Upper Basin demand scenarios simulated using Continued Current Strategies operations



Note: Projections do not include reservoir evaporation. Annual Upper Basin depletions are broken out to show the 10th percentile projection (left), median projection (center), and 90th percentile projection (right).

Fig. 8. Figure I-2: Projected Annual Upper Basin Depletions Across the 2016 UCRC demand schedule and five alternate Upper Basin Demand Scenarios Using Continued Current Strategies Operations (reproduced from DEIS, App. I at I-6).

b. The Modeling Assumptions on Upper Basin Growth Are Unrealistic and Show the Artificial Nature of Shortages in the Upper Basin

The DEIS relies on modeling using CRSS for the predictive analysis period of 2027 to 2060, and future water demands during this time are required inputs into CRSS.

Reclamation modeled Upper Basin use based on the 2016 Depletion Demand Schedule developed by UCRC.[125] Both the magnitude of Upper Basin demand and the projected growth rate in this schedule are unrealistic when benchmarked against Reclamation's consumptive use data.[126]

Reclamation's consumptive uses and losses (CUL) report estimates Upper Basin use was less than 4.5 MAF in 2024, but UCRC's projection shows use in 2027 will be just under 5 MAF.[127] This large gap between 2024 use and 2027 projection implies the UCRC's estimate is inconsistent with recent observed data and overestimates Upper Basin use in the near future. Modeling assumptions supporting the DEIS should not implement this significant and unrealistic step increase in Upper Basin use at the start of the CRSS projection period.

Looking back at the previous 34-year period, Reclamation's consumptive use data show that Upper Basin use in 2024 was 7% higher than in 1991.[128] The UCRC demand schedule, however, projects 10% growth over the 34-year projection period in the CRSS model, from 5.5 MAF in 2027 to just over 6 MAF by 2060. Given the expectation to plan for drier conditions on average in the future, steadily increasing Upper Basin demand independent of hydrologic conditions, especially at a rate higher than actual past growth rates, is an illogical basis for Reclamation's planning efforts.

There is no substantial evidence that Upper Basin demands have shown a consistent increase year after year. In fact, Upper Basin water use is highly variable year-to-year. For example, average Upper Basin CUL went down from an average of 4.6 MAF/yr[129] in 2016-2020 to 4.3 MAF/yr from 2021-2024.[130] Projection of consistent increasing demand regardless of hydrologic condition results in inaccurate projections and is a flawed method for projecting reservoir operations and water supply availability.

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[125] https://www.usbr.gov/ColoradoRiverBasin/post2026/draft-eis/docs/vol-2/P26-DEIS-Appendix-L.pdf.

[126] *See* Reclamation, Upper Colorado River System, Consumptive Uses and Losses 1971-2024: State, Major Tributary Data Summaries and Figures v24.5 - updated: 12/01/2025, data available for download as Excel file at https://www.usbr.gov/uc/DocLibrary/reports.html.

[127] *See* DEIS, App. J, fig. J-I.

[128] *See* Reclamation, Upper Colorado River System, Consumptive Uses and Losses 1971-2024: State, Major Tributary Data Summaries and Figures v24.5 - updated: 12/01/2025, data available for download as Excel file at https://www.usbr.gov/uc/DocLibrary/reports.html.

[129] Reclamation, Upper Colorado River Basin Consumptive Use and Losses 2016-2020 12 (Feb. 2022), available at https://www.usbr.gov/uc/DocLibrary/Reports/ConsumptiveUsesLosses/ 20220214-ProvisionalUpperColoradoRiverBasin2016-2020-CULReport-508-UCRO.pdf.

[130] Reclamation, Upper Colorado River Basin Consumptive Use and Losses 2021-2025 16 (Nov. 2025) (provisional), available at https://www.usbr.gov/uc/DocLibrary/Reports/ConsumptiveUses Losses/uc-ucrb-provisionalconsumptiveusesandlosses-2021-2025-508-20251200.pdf.

Similarly flawed is the decreasing demand schedule is assumed for the Arizona portion of the Upper Basin, which is based on outdated information.[131]

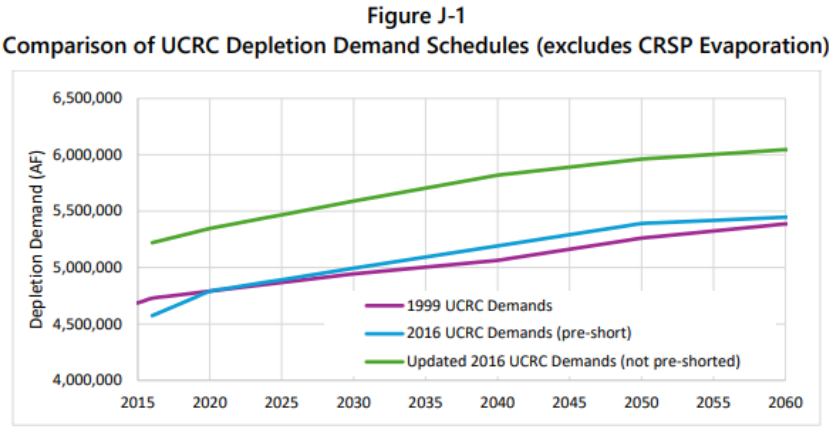

Fig. 9. Fig J-1 Comparison of UCRC Depletion Demand Schedules (reproduced from DEIS, App. J at J-3).

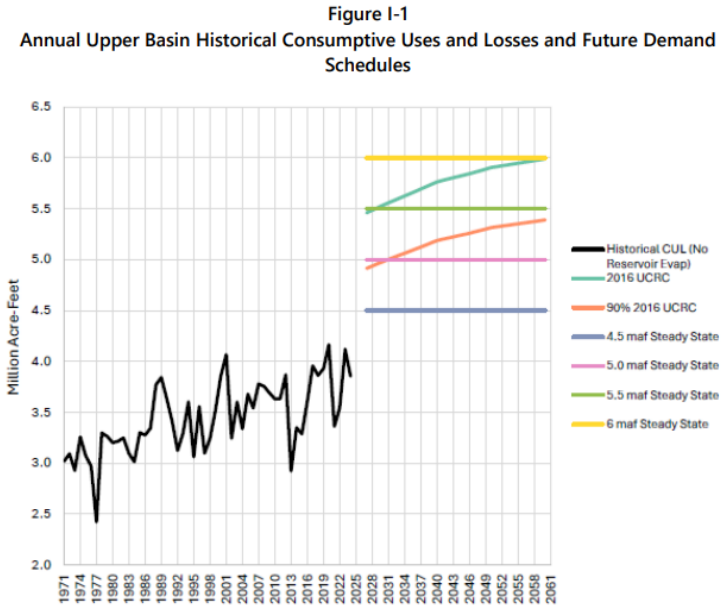

Fig. 10. Fig I-1 Annual Upper Basin Historical Consumptive Uses and Losses and Future Demand Schedules (reproduced from DEIS, App. I at I-3)

The DEIS recognizes that a lower demand schedule would mean higher 10-year Compact flows: "Except for the Supply-Driven results, the same general trends are observed for all alternatives and CCS: lower steady-state demand scenarios result in

[131] *See* DEIS, App. L at L-2 – L-3, fig. L-1. Given the anticipated enactment of the Northeastern Arizona Indian Water Rights Settlement Act (NAIWRSA), the demand schedule for the Navajo Nation uses in the Arizona portion of the Upper Basin should be updated with data relevant to the settlement.

higher Lake Powell elevations, higher compact point 10-year flows, higher Lake Mead elevations and lower total shortages than higher steady-state demand scenarios. This same trend is true when comparing the 90% 2016 UCRC to the 2016 UCRC scenario."[132] This sensitivity analysis draws a clear conclusion: the tighter the restriction on Upper Basin demand, the more likely that the Compact volume is met. An unbiased sensitivity analysis would have included a demand schedule that showed a decrease over time given the prospect of dry hydrologic conditions in the future, and the possibility of meeting Compact compliance and less impacts on Lower Basin water users.

Taking all of this together, choices were made in the CRSS modeling to assume increasing consumptive use independent of hydrologic conditions. This modeling is then used to justify operating criteria that fail to meet Compact obligations and that place the burden of reductions solely to the Lower Basin, claiming "hydrologic shortage" in the Upper Basin (except for the portion of the Upper Basin in Arizona). Aspirational growth and theoretical demand in the Upper Basin are not helpful or relevant information to develop operating guidelines at this critical time on the Colorado River. The Upper Basin's artificial quantification of "hydrologic shortage" cannot be used to justify the Upper Basin's failure to meet their Compact obligations. The factual and legal bases to allow the Upper Basin States to increase their uses while shirking their delivery obligations to the Lower Basin States are entirely missing from the DEIS, and the Upper Basin States' legal arguments that they are permitted to "grow into" their 7.5 MAF apportionment should not form the basis of any of Interior's policy decisions about future Colorado River operations.

c. Much More Detail Is Required Before Moving Forward with Storage Accounts for the Upper Basin States

The DEIS proposes "conservation pools" or similar storage mechanisms in Lake Powell for conserved or unused Colorado River water in the Upper Basin. CAP has explored the concept of conservation pools in the Upper Basin as part of the Lower Basin Alternative and in the Basin States dialogue as part of a potential consensus alternative. However, there are legal issues implicated by the storage of unused water under the Compact. The DEIS does not at all explain how conservation pools would work under current legal authorities nor does it identify the legal authorities that must be created if such "conservation" were possible.

The Compact's core premise is an apportionment of beneficial consumptive uses between the Upper Basin and the Lower Basin. It does not apportion "storage," and it does not create a category of "retained" or "banked" water upstream of Lee Ferry that may be insulated from delivery obligations. Compliance is measured at Lee Ferry, which is why Lake Powell's physical location and operational purpose are legally consequential. This structure matters because the DEIS implicitly assumes that water

[132] DEIS, App. I at I-7.

can be conserved in the Upper Basin, stored in Lake Powell, and treated as a category of Upper Basin water that may be held back from delivery until some later discretionary exchange. That assumption conflicts with the Compact's design. Water that is not consumptively used in the Upper Basin is not converted into a separate "Upper Basin storage right." It remains water available to satisfy the Lower Basin apportionment, and storage at Lake Powell does not change that legal character.[133] Under existing authorities, the Upper Basin States have no legal right to use water in Lake Powell or Lake Mead.

The framework for storing conserved water in the 2007 Interim Guidelines and subsequently in the 2019 Drought Contingency Plan provided a means for *Lower Basin water users* to put water into "intentionally created surplus" (ICS) accounts. This framework required a complicated set of forbearance agreements among the Lower Basin States and water users. Each entity that created ICS was also required to have a Section 5 Contract with the United States, and then an ICS delivery agreement with the United States. Inherent in any "conservation" program for the Upper Basin is the need for all the other legal authorities, forbearance agreements, and delivery agreements that were required for the Lower Basin water users to create ICS.

Beyond the legal obstacles, the DEIS lacks data to support the proposal. Reclamation admits that it does not know where the water would come from, or which States would use it, or how it would work. The lack of specifics may be a result of the practical problem that Upper Basin water users cannot physically take water from Lake Powell (or Lake Mead). This is because Lake Powell was built to store and deliver water to the Lower Basin. A conservation program to store water in Lake Powell would require some type of exchange contract, which would require forbearance by the Lower Basin to not take delivery of the water meant for Compact deliveries under Article III(c) and III(d). Forbearance under Article III(e) would also be required as Article III(e) requires the Upper Basin to send the Lower Basin all amounts of water that they cannot put to beneficial use.

Both the legal issues and delivery mechanisms could be resolved in a much more detailed framework that answered questions on contracting, delivery, and forbearance by Lower Basin water users. The 2007 framework supporting the creation of ICS included all of these elements. Although CAP remains open to discussing conservation pools in the Upper Basin as a tool for managing reservoirs in dry hydrology and at low elevations, much, much more detail is required before conservation pools can be considered as part of a feasible alternative.

Ironically, the Upper Basin already has "conservation" accounts owned and operated by Reclamation—the CRSP Initial Units. As discussed elsewhere, these reservoirs were authorized to avoid the impending situation—Upper Basin Compact violations that would necessitate immediate curtailment of Upper Basin users. The

[133] *Arizona v. California*, 373 U.S. 546, 565-66 (1963); *Arizona v. California*, 547 U.S. 150, 156-58 (2006).

CRSPA authorized "participating projects" in the Upper Basin for Upper Basin consumptive uses.[134] These reservoirs are also subject to Compact obligations.[135] The DEIS cannot assume that Lake Powell may be used for the purpose of some kind of exchange or conservation program, absent comprehensive safeguards at least as stringent as ICS. In the absence of specific details subject to consensus and agreement with the Lower Basin, this is not a serious proposal for managing the Colorado River, especially at these critical reservoir elevations.

d. The Scope of the DEIS Should Include Conservation and Curtailment in the Upper Basin

Despite including "conservation pools" as a component in some of the alternatives, the DEIS alternatives do not include actions that would require conservation above Lake Powell, claiming a lack of authority to compel action by Upper Basin water users. Further, Reclamation justifies the scope of the DEIS based on the approach for the final EIS for the 2007 Interim Guidelines.[136] That scoping decision in 2007 does not form any type of legal restriction for the NEPA analysis to evaluate activities upstream of Lake Powell. As explained above, the DEIS does account for Upper Basin activities upstream of Lake Powell but largely to incorporate the Upper Basin's continued unrestricted use of the Colorado River in the modeling.

Future operating criteria must ensure Compact deliveries at Lee Ferry. Based on current hydrologic conditions, it is reasonably foreseeable that the delivery at Lee Ferry

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[134] The CRSPA authorized the construction of 11 participating projects. *See* Reclamation, Colorado River Storage Project, available at https://usbr.gov/uc/rm/crsp/ (last visited Feb. 19, 2026), stating at the "Participating Projects" tab:

> . . .16 of the currently authorized 22 projects have been completed or are in the process of completion. The five remaining participating projects were determined to be infeasible and were not built. The participating projects supply more than 554,000 acre-feet of water for irrigation with an annual gross crop value of more than $49 million. These projects also provide more than 110 billion gallons of water annually to meet all or part of the needs of more than 1.2 million people.

Following the CRSPA, two projects were authorized by the Act of June 13, 1962, Pub.L. No. 87-483, 76 Stat. 96; three projects were authorized by the Act of September 2, 1964, Pub.L. No. 88-568, 78 Stat. 852; five projects were authorized by the Act of September 30, 1968, Pub.L. No. 90-537, 82 Stat. 885; and one project was authorized by the Act of March 30, 2009, Pub.L. No. 111-11, 123 Stat. 991, §§ 10401-10403. Of the 16 completed participating projects, based on publicly available information, Reclamation retains ownership or control over 14 of them; Reclamation has transferred full title to only two projects, the Emery County Project in Utah and the Lyman Project in Wyoming. *See* Reclamation, Projects and Facilities Previously Transferred and Authorized, available at https://www.usbr.gov/title/transferred.html (last visited Feb. 19, 2026).

[135] 43 U.S.C. §§ 620, 620c, 620h, 620m; *see also* An Act to authorize the Secretary of the Interior to construct, operate, and maintain the Navajo Indian irrigation project and the initial stage of the San Juan-Chama project as participating projects of the Colorado River storage project, and for other purposes, Pub. L. 87-483, 76 Stat. 96, §§ 13, 14, 16 (1962); 43 U.S.C. § 1551(b)(2), 1551(c).

[136] DEIS at ES-6 – ES-7, 1-7 – 1-9, 3-1 – 3-4.

will fall below what is required under Article III(c) and III(d) of the Compact and that the Lower Basin States will demand curtailment by Upper Basin States. Conservation or curtailment actions in the Upper Basin to meet Lee Ferry deliveries, or even to produce water for the proposed conservation pools, must be part of the alternatives analysis.

6. The United States Must Take Action to Fix Glen Canyon Dam

Although the DEIS proposes devastating shortages to Arizona and CAP to protect 3,490 feet at Lake Powell, it does nothing explain how Reclamation plans to fix the infrastructure limitations. Instead, the Lower Basin is left with an operational limitation that eliminates more than 3.74 MAF of storage for delivery to meet Compact requirements. Reclamation has taken the position that planning and construction of repairs at Glen Canyon Dam may be beyond the scope of an EIS to evaluate post-2026 operational guidelines, but the status quo is unacceptable.

It has been four years since Reclamation began contemplating reduced releases from Lake Powell in 2022 as part of the DROA process under the 2019 DCP agreements. It has been nearly three years since April 2023 when Reclamation conducted a "High Flow Experiment" (HFE) release to rebuild beaches and sandbars in the Colorado River and soon after discovered damage in the Glen Canyon Dam "river outlet works" (also known as "bypass tubes").[137] On March 26, 2024, Reclamation released its "Technical Decision Memorandum," explaining that the April 2023 release and other HFE releases in 1996, 2004, 2008, 2012, 2013, 2014, 2016, 2018, and 2023 from the river outlet works, combined with flood control releases in 1984 and 1987, had over time damaged the original coal tar enamel lining as a result of "cavitation."[138]

Reclamation further explained in the Technical Decision Memorandum that it planned to replace the original coal tar enamel lining with a "solvent borne epoxy" at a cost of $8.9 million from the Bipartisan Infrastructure Law.[139] Importantly, Reclamation explained that the removal and replacement of the lining of the river outlet works was a short-term fix, not a long-term solution for ensuring "continuous long-term operation" of Glen Canyon Dam:

> [T]here is concern with using the outlet works to provide long-term releases, particularly at high flows . . . . In order to achieve a high level of confidence

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[137] Reclamation Press Release, "Glen Canyon Dam begins relining project as part of the President's Investing in America agenda" (Sept. 3, 2024) (Reclamation Press Release).

[138] Reclamation, Technical Decision Memorandum: Establishment of Interim Operating Guidance for Glen Canyon Dam during Low Reservoir Levels at Lake Powell at 6 (Mar. 26, 2024) (emphasis added) (Technical Decision Memorandum), available at https://www.usbr.gov/uc/DocLibrary/Memos/20240326-EstablishmentInterimOperatingGuidanceGlenCanyonDamLowReservoirLevels-TechnicalDecisionMemo-508-TSC.pdf.

[139] Technical Decision Memorandum at 4; Reclamation Press Release, *supra* note 137.

> for continuous long-term operation of the outlet works, a **major overhaul or replacement of the hollow-jet valves should be considered** . . . . A value planning study is currently planned to inform whether to refurbish or replace the hollow-jet valve hydraulic operating system.[140]

On September 3, 2024, Reclamation reiterated in a press release that the relining project will not address the risks to Glen Canyon Dam from cavitation: "While relining the outlets won't prevent the risk of additional cavitation when operating at low reservoir levels, Reclamation is working on reducing that risk through the recent development of interim operating guidance for the outlets and additional analyses."[141]

It is now the start of 2026. It is time for a real plan to address the infrastructure limitations at Glen Canyon Dam. Addressing the infrastructure limitations is one long-term measure that would best achieve operation and management improvements. CAP requests that Interior include additional information in the final EIS on its plan for repairs, modifications and enhancements at Glen Canyon Dam, including overhauling or replacing the hollow-jet valves and other possible solutions, future permitting and compliance for that plan, and a project schedule.

7. The Modeling Assumptions for the DEIS Are Inconsistent and Impractical

a. The Various Models Use Assumptions That Mischaracterize Use and Impacts

Reclamation uses a few different models to understand the impacts of different alternatives on Lower Division water users. Out of these, CRSS, SAM, and Alternative Distribution Models (ADM) are central to quantification of impacts. While CRSS simulates the operation of the major reservoirs on the Colorado River system and provides information regarding the projected future state of the system on a monthly basis as well as water user diversions, SAM and ADM provide the quantity of Colorado River water supplies available to water users in the Lower Division States at different shortage volumes. These models are focal to understanding the impacts of the alternatives on water users; however the DEIS fails to clearly state the impacts because each of these models use different assumptions.

One major example is that the SAM is atemporal and therefore assumes users are using their entire entitlement when estimating impacts. The assumption that all users in the Lower Basin will build out to full use of their entitlement by 2040 is inappropriate for this analysis. Many users in the Lower Basin and Arizona specifically

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[140] Technical Decision Memorandum at 7 & n.4 (emphasis added).

[141] Reclamation Press Release, *supra* note 137; *see also* Technical Decision Memorandum at 10 (explaining that in the upcoming revisions to the operating guidelines, "Potential mitigation measures will be developed and implemented to reduced identified negative consequences of long-term operations of the river outlet works at low reservoir levels.").

have not shown recent growth. This includes both agricultural and M&I users as well as assumed full diversions from users that are not currently diverting.[142] This assumption decreases the amount of water modeled to be available to junior priority users, including CAP that would otherwise be available. Sections of the DEIS that use SAM outputs for impact analysis thus mischaracterize actual patterns of use and impacts to users, particularly when shortages are allocated due to assuming higher than normal uses.

CRSS uses a demand curve for users that grows over time, which means shortage impacts may look different for the same volume of shortage when compared between the two models at any given time. Issues with SAM and ADM assumptions include pending Tribal settlements becoming enforceable as early as 2027, exaggerate on-River use and incorporate assumptions for Lake Pleasant water that are unrealistic and exaggerated. This asymmetry in the temporal assumptions for CRSS versus SAM and ADM make it extremely difficult to compare the effects of the different resources.

CRSS, on the other hand, is fundamentally constrained by the quality of the source data and input selections. Specifically, several input selections—like the Upper Initial Unit release triggers and volumes, hydrologic shortage estimations, upper basin demand projections, and lower basin demand projections--have limited the scope of the analysis. These selections render the evaluations of action alternative impacts incomplete and often underestimate impacts of these action alternatives in certain parts of the Basin. Examples include faulty and presumptive limitations on Upper Initial Unit release triggers and volumes, hydrologic shortage estimations, upper basin demand projections, and lower basin demand projections.

b. Gap Water Used in the Supply Driven Alternative Highlights the Inadequacies of the DEIS Modeling

The Supply Driven Alternative includes a category of water called "gap water" which is "injected" into Powell to meet release targets.[143] Reclamation does not identify the source of "gap water" but in the real system—not the world of modeling—the only place "gap water" could come from is the Upper Basin. The modeling does not identify whether the "gap water" is derived from curtailing state water rights in an Upper Basin state, or, if curtailment is not required, which Upper Initial Unit or participating project would provide the source of the water. In the absence of identifying the means by which the "gap water" will be produced to be "injected" into Lake Powell, the modeling results are either faulty or incomplete. If the "gap water" is not available for whatever reason, the impact once again falls on the Lower Basin and the modeling results understate the impacts to the Lower Basin.

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[142] DEIS, App. N.

[143] *See, e.g.,* DEIS, App. A at A-30, App. D at d-1 to D-2 & fig. D-1, TA 4 at 5-85.

c. Analysis of Natural Flow to Determine Powell Releases Is a Flawed Approach

The Supply Driven and Maximum Operational Flexibilities Alternatives incorporate previous three-year Lees Ferry natural flow to some extent in determining water year Powell releases for each alternative. In CRSS modeling space, Lees Ferry natural flow is an input. However, in reality, Lees Ferry natural flow is a metric that Reclamation calculates from a model after the water year has ended. Historically, there is typically a 1.5 year delay from the end of the current year until natural flows are available throughout the basin for that year from the model. Additionally, the calculation of natural flow relies on reporting by the Upper Basin States of their consumptive use. There is a period where a "provisional" natural flow is estimated, and current data uses a "provisional" estimate for 2021 to 2025. Lastly, as stated on Reclamation's natural flow website: "The data are regularly recomputed from 1971 to present."[144] Reclamation neglects to discuss the potentially severe limitations to real-time operations relying on natural flow calculations that take time to generate and can be "regularly recomputed."

The Supply Driven alternative, in particular, is highly sensitive to the exact calculation of what the natural flow is and what the exact Natural Flow Percentage Used is determined to be. Reclamation coarsely explores the sensitivity of the natural flow percentage in Appendix D. However, Reclamation's analysis neglects to justify why a maximum bound of 70% is used, and how a recomputation of natural flow would then impact determined Powell releases.

d. Dead Pool Assumptions

"Dead pool-related reductions are assumed to use the Lower Basin-wide priority scheme, which follows an approximation of the Lower Basin priority system."[145] This means that regardless of any storage at Mead, Arizona P4 and Nevada Stage 1 take all of the dead pool shortage first, followed by all water users who are not PPRs, and then PPRs. Mexico is not included in the priority, but instead is assigned a dead pool shortage proportionate to their desired depletions compared to total Lower Basin depletions.

Based on Appendix A's CRSS documentation, releases from Lake Mead below 950 feet are assumed to be constrained by two outlet works. CAP requests additional justification for this assumption, given the probability of lake elevations under the proposed alternatives. Additionally, more information and investigation of the limitations of outlet operations at Lake Mead are necessary.

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[144] Reclamation, Colorado River Basin Natural Flow and Salt Data, available at https://www.usbr.gov/lc/region/g4000/NaturalFlow/index.html.

[145] DEIS at A-36.

e. Reclamation Must Model a Larger Range for Releases and Conditions from the Upper Initial Units Across Multiple Units

Given the comments above on the necessity of additional releases from the Upper Initial Units to meet Compact deliveries, the selected range for the modeled PIP releases is not large enough. This is true even if the sole purpose for release is infrastructure protection at Lake Powell. Further, the DEIS employs two separate approaches for modeling Upper Initial Unit/PIP releases: (1) a multiple reservoir approach in the Continued Current Strategies baseline and the Basic Coordination Alternative, and (2) a single reservoir (Flaming Gorge only) in the Supply Driven alternative. In addition to utilizing different reservoir combinations, each approach uses its own set of logic. Using a single reservoir for the Upper Initial Unit releases is flawed; other reservoirs besides Flaming Gorge, including participating projects, store water for the purpose of and subject to deliveries to the Lower Basin under the Compact. Additionally, setting a maximum annual limitation of 500 TAF release from Flaming Gorge and beginning Upper Initial Unit recovery and ending PIP releases based on Powell elevations of 3,535 feet is arbitrary and contrary to CRSPA requirements. There is no limitation on release or refill for Flaming Gorge or the Upper Initial Units, and this reality should be reflected in the modeling. Even if it were acceptable to use a single reservoir for PIP releases, Reclamation should have applied the same set of logic to all alternatives where PIP releases were included, allowing for a comparison between the methodologies.

Additionally, Upper Initial Unit /PIP releases are limited to only occur when Lake Powell is at or forecasted to fall below 3,525 feet. This limits the ability of the PIP releases to protect infrastructure. If PIP releases were triggered at higher Lake Powell elevations, there would be a greater opportunity for more water to be utilized from the Upper Initial Units. Lastly, by tying the releases to a low Lake Powell elevation, Reclamation has further constricted the purpose of Upper Initial Unit releases to a singular intent of protecting Lake Powell infrastructure.

8. CAWCD Remains Committed to the Core Components the Lower Basin Alternative

In a good-faith attempt to set aside the foregoing legal issues associated with the Post-2026 guidelines and with the goal of securing a consensus-based solution that shares the risks and burdens of protecting the River, in March 2024 the Lower Basin States submitted their suggested alternative to Reclamation for consideration in this NEPA process. Acknowledging the lessons learned from nearly 20 years operating under the 2007 Interim Guidelines, the Lower Basin Alternative uses actual hydrology and "total system contents," meaning the storage in Flaming Gorge, Blue Mesa, Navajo, Powell, Mead, Mohave, and Havasu, to manage the system. It moves away from operations based on forecasts and reservoir elevations that have led to conflict. The core components of the Lower Basin Alternative:

- **Address Structural Deficit in the Lower Basin.** The Lower Division States alternative included reductions from Lower Basin State apportionments and deliveries to Mexico by 1.5 MAF (static reduction) under most system conditions. The static reduction is larger than the structural deficit in the Lower Basin regardless of the various ways that the structural deficit may be calculated and thus solves a systemic problem.

- **Establish operating rules based on system contents rather than elevations at Lake Powell and Lake Mead.** It shifts to a more holistic, systemwide approach in which operations are dictated by overall system conditions instead of forecasts and elevations in the two main reservoirs.

- **Protect Lake Powell elevations and Glen Canyon Dam infrastructure** by using total system contents to increase storage above critical elevation of 3,490 feet.

- **Share water use reductions broadly.** It recognizes the need to make water use reductions from state apportionments under most system conditions and shares those reductions predictably among the Lower Basin water users and Mexico. Under the most critical system conditions, the Lower Basin Alternative shares water use reductions between the Upper Basin and Lower Basin including Mexico.

- **Provide for storage and delivery of stored water.** It includes opportunities for storage and augmentation that will encourage innovation and investment.

Rather than including an alternative that proposed a far better technical approach and one that can be implemented within existing federal authorities, the DEIS offers multiple alternatives with elements that would create a water supply disaster for Arizona and CAP. Similar to the Alternatives Report, the DEIS states that the revised Lower Basin Alternative does not "sufficiently address the lack of an appropriate basis for the comprehensive and coordinated operations of Lake Powell and Lake Mead that, based on preliminary modeling results, was found lacking in the original proposals."[146] Instead, the DEIS wrongly states that the Enhanced Coordination Alternative and the Supply Driven Alternative includes a number of key elements of the proposal.[147] In fact, that is actually not the case.

The operational components of the Lower Basin Alternative were intended to work synergistically, not to be separated into individual elements or presumed that they could be implemented individually. Separating the components across alternatives defeats the purpose of the Lower Basin's extensive efforts to develop and deliver a consensus solution to address reduced supplies and to share shortages under agreed-

[146] DEIS at 2-2.

[147] *Id.* at 2-2.

upon terms. The Lower Basin Alternative meets the purpose and need of the proposed federal action, including coordinated operations of all the reservoirs, protection of critical infrastructure, static reductions of 1.5 MAF under current conditions, and storage and delivery of conserved water, and Reclamation has not shown otherwise in the DEIS. What the Lower Basin Alternative does not do is solely place the responsibility for conservation and action on the Lower Basin States and their water users. It expects something from the Upper Basin in these crisis conditions, and it expects the United States to release water from the Upper Initial Units consistent with their purpose. Given the choice to move forward with the alternatives set forth in the DEIS, phrases like "lack of appropriate basis" for coordinated operations and "imbalanced Basin impacts"[148] as reasons to reject inclusion of the Lower Basin Alternative for analysis and comparison are, at a minimum, frustrating. They are also arbitrary based on any reasonable analysis. The logical inference is that only alternatives that release the Upper Basin States from any dedicated responsibility to help the River they deplete everyday are "appropriate" or "balanced."

CAP remains committed to implementing the core components of the Lower Basin Alternative.

9. Because of These Legal Flaws, the DEIS Does Not Meet the Requirements of NEPA

a. The No Action Alternative in the DEIS Does Not Satisfy NEPA

As the DEIS acknowledges,[149] NEPA requires an EIS to discuss "any negative environmental impacts of not implementing the proposed agency action in the case of a no action alternative."[150] The DEIS's discussion of "no action" alternatives falls short of the statutory standard.

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[148]Reclamation, Alternatives Report: Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead 9 (Jan. 2025), *available at* https://www.usbr.gov/ColoradoRiverBasin/documents/post2026/alternatives/Post-2026_Alternatives_Report_20250117_508.pdf

[149] *See* DEIS at 2-6.

[150] 42 U.S.C. § 4332(2)(C)(iii). During the DEIS comment period, the Department of Interior adopted final rule and updated handbook outlining its NEPA procedures. Final Rule, 91 Fed. Reg 8,738 (Feb. 24, 2026); Dep't of Interior, *DOI Handbook of NEPA Procedures* (DOI NEPA Handbook), available at https://www.doi.gov/media/document/doi-handbook-nepa-procedures (last accessed Feb. 24, 2026). The Handbook states that EISs may not require a separate "no action alternative" but that incorporating an alternative into NEPA documents "is often useful to compare the effects of the proposed action to the future without the Federal action." DOI NEPA Handbook at 39. Reserving any argument on whether a no action alternative is necessary, CAP contends that the decision making process for a federal action as complicated as the operating criteria for Colorado River operations benefits from a well-defined no action alternative.

First, the DEIS refers to a scenario as a "no action alternative" but declines to utilize that scenario as a baseline against which other alternatives may be measured. As the DEIS explains:

> A No Action Alternative typically serves as an extension of current operations to provide a benchmark to compare the extent and magnitude of the impacts from each action alternative. However . . . due to the expiration of current domestic and international implementing agreements, the No Action Alternative represents a change in operations. As such, the No Action Alternative in this EIS does not serve as an appropriate baseline to compare impacts.[151]

The DEIS thus disclaims the no action alterative as a "useful baseline." It is not a useful baseline because it is not a future scenario without agency action to which various agency actions may be compared.[152] It is, instead, a significant change in federal operations.[153] Thus, from the start, the DEIS does not facilitate NEPA's mandatory comparative analysis of the environmental impacts of action alternatives to the environmental impacts of taking no action.[154]

To try to create some type of baseline, the DEIS uses another scenario—the CCS Comparative Baseline scenario—"to assess the impacts if operations continued under the current direction and strategies."[155] "This framework relies on strategies and agreements that expire in 2026, including the 2007 Interim Guidelines (as amended), the 2019 DCP, Minute 323 of the 1944 Water Treaty, and other agreements."[156] Stated otherwise, the baseline reflects a hypothetical "continuation of the primary existing agreements for Colorado River management including the 2007 Interim Guidelines, the 2019 DCP and Minute 323 of the 1944 Water Treaty."[157]

But the agreements are, in fact, set to expire. The expiration of the agreements is a fundamental assumption of the DEIS and a primary impetus for the federal action the DEIS discusses.[158] The expiring agreements are also premised upon the Basin States' forbearance of their rights under the Compact, or upon legislation that also expires. Carrying forward the framework from the 2007 Interim Guidelines or the 2019 DCP is

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[151] DEIS at 3-5.

[152] *See* DOI NEPA Handbook, App. 1, § 4(2).

[153] *See* DEIS at 3-5 (explaining that the "No Action Alternative represents a change in operations").

[154] *See* 42 U.S.C. § 4332(2)(C)(i)-(v).

[155] DEIS at 3-5.

[156] *Id*. at 3-5, n.3.

[157] *Id*. at 3-5.

[158] *See* DEIS at 1-6 (explaining in the "Purpose and Need" statement that "[m]ost of the federal and non-federal agreements associated with implementing provisions of the 2007 Interim Guidelines . . . expire after the 2026 operating year").

not possible without a similar framework of forbearance supporting a consensus alternative; it cannot be the basis for a no action alternative under NEPA.

The no action alternative should represent operations dictated by the Law of the River remaining after expiration of the 2007 Interim Guidelines in December 2026. This includes the 1970 LROC, as amended in 2005, which requires a determination of how much water is needed in storage to satisfy future delivery requirement to Mexico and to the Lower Basin and assumes a default objective to release 8.23 MAF to Mexico and to the Lower Basin.

Interior must confront which laws are in place and unaffected by the expiration of the 2007 Interim Guidelines. Informed decision-making under NEPA can only take place once Interior clearly articulates the rule set applicable to the no action alternative.

b. The DEIS Must Clearly Identify the "Additional Authorities" or "New Agreements" Required to Implement the Alternatives

Under NEPA, an EIS must discuss "a reasonable range of alternatives."[159] Reasonable alternatives "meet the purpose and need for [federal] action, [and] are within the jurisdiction of the bureau . . . ."[160] They are "within the bureaus' legal authority to implement"[161] and—because they must meet the purpose and need for federal action[162]—must consider "the bureau's statutory authority" to take such action.[163]

Consistent with the above standards, the DEIS's explanation for omitting some alternatives from detailed analysis generally treats inconsistency with applicable federal law as a basis to disqualify alternatives from further consideration.[164] The DEIS concludes, correctly, that "new legal authorities that would result in impracticalities or are unlikely to be widely acceptable among stakeholders are too speculative to include in this Draft EIS."[165]

However, elsewhere in multiple instances across the Description of Alternatives in Chapter 2 of the DEIS, Reclamation identifies that it would need to seek additional authorities to implement the described operations.[166] This qualification is included in the

[159] 42 U.S.C. § 4332(2)(C)(iii).

[160] DOI NEPA Handbook 6.1(v).

[161] DOI NEPA Handbook 2.3(a)(3).

[162] *See* DOI NEPA Handbook, App. 1, § 4(1) ("the purpose and need statement dictates the range of alternatives, because action alternatives are not 'reasonable' if they do not respond to the purpose and need for the action").

[163] DOI NEPA Handbook 2.2.

[164] *See* DEIS at 2-35 to 2-36.

[165] *Id*. at 2-36 & n.26.

[166] *See id.* at 2-11 – 2-12.

Basic Coordination Alternative, despite the contrary statement that the Basic Coordination Alternative is designed to be implementable without agreements among Basin water users."[167] It is also present in the Enhanced Coordination Alternative.[168] "New or modified legal authorities to implement new interim guidelines" was not necessarily a basis for rejecting alternative," but "new legal authorities that would result in impracticalities or are unlikely to be widely acceptable among stakeholders are too speculative to include in this Draft EIS."[169] Yet another qualification in the alternatives description is the need for "new agreements among Basin water users to fully implement."[170] All these qualifications allude to "new agreements" or "new authorities," but the DEIS does not clearly identify key details necessary to evaluate and compare the alternative.

An EIS that supports future operating guidelines must identify what specific authority Reclamation believes it currently lacks, what additional authority Reclamation believes it needs to protect critical infrastructure, and what specific "critical infrastructure" Reclamation refers to and what other means Reclamation could use to protect such infrastructure (e.g., major repairs, structural changes, or other "water management mechanisms") without additional legal authority. Similarly, an EIS that supports future operating guidelines must clearly identify what agreement is needed by Basin water users. This is especially true when "agreement" by "Basin water users" requires forbearance by a sovereign state and its legislature, as is the case in Arizona.[171] This is highly relevant information to judge and compare alternatives, and without this information, the DEIS does not meet the requirements of NEPA.[172]

c. The DEIS Fails to Analyze Reasonably Foreseeable Effects of the Proposed Alternatives

Above, CAP identifies a number of reasonably foreseeable effects of the proposed alternatives that are not analyzed in the EIS. These include the reasonably foreseeable Compact Call that will occur if Compact deliveries are not maintained to Mexico and the Lower Basin and the resulting need for curtailment in the Upper Basin. Reasonably foreseeable effects also include the water quality impacts to CAP's water supply under shortage conditions, the fallowing of agriculture acres in the CAP service

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[167] *See id.* at 2-11; *see also id.* at 2-13, n.6 ("This alternative proposes that the Secretary may seek new authorities to implement additional measures . . . .").

[168] *Id.* at 2-16 & n.18.

[169] *Id.* at 2-36 n.26.

[170] *Id.* at 2-6.

[171] Ariz. Rev. Stat. § 45-106.

[172] *See Robertson*, 490 U.S. at 349 (NEPA "ensures that the agency, in reaching its decision, will have available, and will carefully consider, detailed information concerning significant environmental impacts . . . [and] ensures that important effects will not be overlooked or underestimated only to be discovered after resources have been committed or the die otherwise cast").

area and associated impacts to irrigation districts and their customers, and the significant economic impacts to Central Arizona caused by the extreme shortages to CAP contemplated in the proposed alternatives. These impacts are reason enough to withdraw the DEIS and start again with alternatives that more equitably distribute the pain of shortage among the Colorado River Basin instead of directing the impacts on one Basin State and CAP in particular. But the lack of analysis of the reasonably foreseeable effects also means the DEIS is wholly deficient under NEPA.[173]

d. Interior Must Withdraw the Flawed DEIS

The DEIS alternatives raise serious legal deficiencies under the Compact, federal statutes, contract, and prior administrative decisions by Reclamation. The flaws are fatal to the adequacy of the DEIS as a tool for compliance with NEPA but also as a mechanism to adopt operating guidelines that comply with the authorities that govern the Colorado River. Interior must withdraw the DEIS and reissue a NEPA document that includes the core components of the Lower Basin Alternative and otherwise analyzes and prioritizes Compact compliance.

As stated at the outset, the Central Arizona Project welcomes the opportunity to work with the Department of the Interior and Reclamation to ensure the creation of a legally valid revised DEIS that works for the entire Basin. We stand ready to find a compromise with our fellow Basin States and Reclamation based on shared sacrifice and recognition that everyone must reduce uses to stabilize the system.

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[173] *See id.*