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September 8, 2020

Via email: lpp@usbr.gov

U.S. Bureau of Reclamation
Lake Powell Pipeline Project
Mr. Rick Baxter, Program Manager
Provo Area Office
302 East Lakeview Parkway
Provo, UT 84606

RE: Comments on U.S. Bureau of Reclamation Draft Environmental Statement for the Lake Powell Pipeline [Docket Number: RR04963000, XXXR0680R1, RR.17549661.1000000]

Dear Mr. Baxter,

We appreciate the opportunity to submit comments to the U.S. Bureau of Reclamation (Reclamation) on a draft environmental impact statement (DEIS) for the Lake Powell Pipeline (LPP) Project. These comments are submitted on behalf of National Audubon Society (Audubon); and the undersigned Audubon Chapters located in Utah, Arizona, Colorado, Wyoming, New Mexico, California, and Nevada.

A. About Audubon and Interest in the Colorado River

Audubon's mission is to protect birds and the places they need to thrive today and tomorrow. Audubon works proactively with all stakeholders to ensure impacts to important avian habitats are avoided or minimized to the greatest extent possible.

Audubon has more than 250,000 members located in the seven Colorado River Compact states of Utah (9,071), Arizona (30,456), Colorado (35,455), Wyoming, (3,114), New Mexico (13,044), California (156,771), and Nevada (8,261).

The Colorado River Basin is of great importance to Audubon. Riparian habitats like the forests and wetlands that line the Colorado River support some of the most abundant and diverse bird communities in the arid West, serving as home to some 400 bird species. Over the past two decades, we have devoted considerable effort to working with Reclamation, the seven Colorado River Basin states, Mexico, and water providers and users throughout the Basin to find solutions that work for both people and nature.

B. Audubon Does Not Approve of Any Alternative Proposed for the Lake Powell Pipeline for the Reasons Explained

While Audubon recognizes the years of effort that have gone into the development of the environmental analyses for the Lake Powell Pipeline, for the reasons explained below Audubon does not support any decision by Reclamation that would approve the preferred alternative for the LPP. At this time, the only supportable alternative is the no action alternative.

Water demands exceed supply in the Colorado River Basin, and climate change is further exacerbating this supply-demand imbalance. Audubon and its members know and suffer the impact of this imbalance directly, as we work to restore decimated habitat in the Colorado River Delta, where the river has not flowed regularly since the filling of Lake Powell more than half a century ago. Today, in addition to leaving the delta dry, the water supply-demand imbalance on the Colorado River degrades bird habitat on the Colorado River mainstem in the Lower Basin, creates shortages for water users in the Lower Basin in the United States and Mexico, and threatens shortages to water users in the Upper Basin. We do not dispute that these impacts already exist. They have manifested over the past century as Colorado River depletions have increased, and climate change has started to impact streamflow. Already, many pay the price for the supply-demand imbalance, including Colorado River water users, tribes, hydropower customers, businesses that depend on the River's legendary recreational values, birds and other wildlife that depend on the River's habitats, taxpayers in Colorado River basin states, and taxpayers in the United States and Mexico.

The additional depletion of more than 80,000 acre-feet (AF) annually will increase the magnitude of each of these impacts and therefore, it is incumbent on Reclamation to fully and adequately analyze the direct, indirect and cumulative impacts of the proposed pipeline project. The incremental impacts may be small relative to the impacts of the existing supply-demand imbalance, but that is true only because the existing impacts are large. Examined independently, impacts of a new, annual 86,249 AF depletion on the Colorado River will be significant and costly.

Reclamation's analysis fails to document the complete range of direct, indirect and cumulative impacts expected with development of the proposed project. Reclamation has a responsibility – not presently met in the project's DEIS – to provide a full analysis and accounting for all impacts of the proposed Lake Powell Pipeline. Although at present we do not have the benefit of a complete analysis, Audubon is sufficiently concerned about these impacts that we cannot support the project.

C. Implications of Transfer and Use of Water from Upper Basin to Lower Basin Must Be Resolved Prior to Any Final Approval Decision

Several states, through their respective agencies, including Arizona Department of Water Resources,[1] Colorado River Board of California,[2] and the Colorado Water Conservation Board,[3] submitted scoping comments raising what Reclamation is referring to as "Unresolved Colorado River Compact Issues."[4] Those referenced unresolved Compact issues raise fundamental legal considerations: whether Article III(a)[5] of the 1922 Colorado River Compact concerning the "exclusive beneficial consumptive use" limits the use of water apportioned to the Upper Basin for use in the Lower Basin, even within the same Upper Basin state, thus requiring Congressional approval or other agreement to clarify the Law of the River.

Rather than addressing the implications of this issue in the context of its National Environmental Protection Act (NEPA) review, Reclamation notes that the matter has been left to the Project Proponent (Utah Board of Water Resources) to address with the other Compact States. Specifically, Section 1.1 on Project Background states:

> *"Use of Utah's Upper Basin water retained for LPP would be put to use in the Lower Basin, although still within the boundaries of Utah. Scoping comments from some states question whether Upper Basin water can be put to use in the Lower Basin*

[1] The Arizona Department of Water Resources Jan. 8, 2020 letter to Reclamation states in part: *"It is ADWR's position that the "exclusive beneficial consumptive use" language in Article III(a) of the Compact restricts the uses of the water apportioned to the Upper Basin in the Compact to locations in the Upper Basin and restricts the uses of the water apportioned to the Lower Basin in the Compact to locations in the Lower Basin. Accordingly, ADWR believes that water from the State of Utah's allocation of Colorado River water many not be transported through the proposed LPP for use in the areas in southern Utah located in the Lower Basin, including St. George, without specific authorization by Congress."* LPP Scoping comments (pgs. 1059-1060). Available at: https://water.utah.gov/lpp/).

[2] The Colorado River Board of California Jan. 10, 2020 letter to Reclamation states in part: *"The export of water apportioned for beneficial consumptive use in the Upper Basin for use in the Lower Basin was not contemplated within the Compact, and it is the Board's position that specific Congressional authorization for this project would be required. Therefore, the Board believes that the proposed EIS must contain an analysis and determination of water supply availability and legal justification for the proposed project."* LPP Scoping comments (pgs. 846-847). Available at: https://water.utah.gov/lpp/.

[3] The Colorado Water Conservation Board Jan. 10, 2020 letter to Reclamation states in part: *"While Colorado supports the LPPP, questions remain as to whether, under the Law of the River, Utah may use a part of its Upper Basin apportionment to serve uses in the Lower Basin portion of Utah without obtaining the consent of the other states. Utah has discussed some of these issues through informal communications or consultations among the Basin States. However, before the NEPA permitting process is completed, formal documentation of how Utah will implement the LPPP consistent with the Law of the River will be essential."* LPP Scoping comments (pgs. 1030-1032). Available at: https://water.utah.gov/lpp/.

[4] The reference to unresolved Colorado River Compact issues also was identified as a matter of concern in Slide 14 of the Reclamation LPP Virtual Public Presentation. Available at: https://www.usbr.gov/uc/DocLibrary/EnvironmentalImpactStatements/LakePowellPipeline/index.html

[5] Article III (a) of the compact states: "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."

but still within the boundaries of the Upper Basin state. The Project Proponent is addressing this question with the Colorado River Basin States."[6]

We recognize Reclamation does not have authority to resolve this key legal issue, and, at this time, Audubon does not take a position on how Article III(a) should be interpreted. However, we strongly believe that the issue must be resolved to clarify the Law of the River with full understanding of the possible implications on future River management, and resolution must be accomplished prior to Reclamation issuing a decision that approves the project. If this legal issue were not resolved in a manner that would permit such an Upper to Lower Basin transfer under the specific facts, none of the Alternatives, including the Preferred Alternative, could meet the Purpose and Need of the proposed project[7] or meet all of the Project Proponent's Objectives,[8] which includes "providing for system reliability by developing a secure source of water." Consequently, Reclamation should deny the application or refrain from acting on the LPP project proposal until such time as the fundamental interbasin transfer issue is resolved.

If Reclamation were to approve an alternative that would authorize the LPP project, at an absolute minimum, any decision should:

1. be conditioned on the final resolution of the interbasin transfer and clarification of the Law of the River; and
2. require a supplemental NEPA review as, appropriate at the time of resolution.

Without clear authority to divert Colorado River water for this project, water users in Utah and across the Basin, as well as taxpayers in Utah, face great risk if the proposed project moves forward.

D. The DEIS Fails to Rigorously Explore and Objectively Evaluate a Water Conservation Alternative

Audubon's January 10, 2020 scoping comments submitted to Reclamation requested the agency to consider a water conservation alternative based on investment in water conservation in the Washington County project service areas.

As documented in a 2015 Bureau of Reclamation report,[9] water providers in many large urban areas receiving Colorado River water have implemented conservation and reuse measures that

[6] DEIS at pg. 6.

[7] "The purpose of the Proposed Project is to deliver a reliable annual yield of approximately 86,000 acre-feet of water per year from outside the Virgin River Basin into Washington County to meet projected water demands in 2060." DEIS, Section. 1.2.3 at pg. 9.

[8] For example, "Providing for system reliability by developing a secure source of water." See, Project Objectives are listed in DEIS, Section 1.2.2 at pg. 9.

[9] Reclamation, *Colorado River Basin Stakeholders Moving Forward to Address Challenges Identified in the Colorado River Basin Water Supply and Demand Study*, Executive summary. 2015, p. 4. Available at: https://www.usbr.gov/lc/region/programs/crbstudy/MovingForward/index.html.

have decreased per capita demand of Municipal and Industrial water use, reducing the expected increase in water use resulting from significant population growth in these areas. Continued efforts in the efficiency and reuse area will be critical in meeting future water demands leading to increased reliability of current water supplies and reducing or delaying the need for additional water supplies.

The U.S. Geological Survey (USGS) similarly documented in a 2018 report[10] that domestic daily per capita water use rates across the Colorado River Basin decreased overall from 1985-2010--signifying that more people are using less water.[11] The USGS report concluded that this was likely due to "improved infrastructure, conservation, and improvements to water using appliances in homes and businesses."[12]

In the DEIS, Reclamation briefly discusses the "Local Waters Alternative" as a water conservation alternative. The Local Waters Alternative, proposed by Western Resource Advocates, incorporates increased water conservation measures to achieve a 20% rate of reduction in per capita daily use over a 40-year period,[13] along with increased water reuse, and estimated levels of water transfer from agricultural operations.

Although Reclamation did not independently develop a water conservation alternative, it nevertheless eliminated the Local Waters Alternative from further consideration, with little apparent analysis.

Reclamation eliminated the Local Waters Alternative on the basis that it did not meet the first three criteria of the project's purpose and need. Those criteria include:

1. "Diversifying the regional water supply portfolio by providing a second source of water for Washington County;"
2. Providing for system reliability by developing a secure source of water; and
3. Providing for system redundancy in the event of system failure due to disasters or aging infrastructure.

According to Reclamation, those criteria require a second, secure, reliable water supply from outside the Virgin River Basin.

[10] Maupin, M.A., Ivahnenko, T., and Bruce, B., 2018, Estimates of water use and trends in the Colorado River Basin, Southwestern United States, 1985–2010: U.S. Geological Survey Scientific Investigations Report 2018–5049, 61 p., Available at: https://doi.org/10.3133/sir20185049.

[11] "Domestic daily per-capita use rates in the CRB ranged from about 144 (1985) to about 121 (2000) gallons (gal) per-capita between 1985 and 2010. When comparing domestic daily per-capita rates for the upper and lower CRB, people in the lower CRB, on average, used less water for domestic purposes at 128 gal per-capita daily (1985–2010), while those in the upper CRB for the same time period averaged 133 gal per-capita daily." Id.

[12] Id. at p. 12.

[13] DEIS, Section 2.1.3 "Alternatives Considered but Eliminated from Detailed Analysis," at p. 15.

By narrowing the purpose and need criteria in such a way that the only alternatives that can be assessed are those that provide for a second source of water outside of the Virgin River Basin, the opportunity to fully assess a reasonable alternative that could otherwise avert the need for importing water, such as a water conservation alternative, appears inconsistent with NEPA's requirements.

While Reclamation has a certain amount of discretion over a project's "purpose and need," that discretion is not unlimited. Reclamation may not, for example, define the "purpose and need" so narrowly that it forecloses consideration of a reasonable range of alternatives.[14] Nor may Reclamation simply adopt the "purpose and need" advanced by a project proponent.[15] Yet that appears to be what Reclamation has done in this process.

Additionally, in eliminating the Local Waters Alternative on the basis that it would not provide a secure and reliable source of water, Reclamation did not undertake any comparative analysis with the proposed pipeline project. Audubon appreciates the responsibilities of water agencies in ensuring secure and reliable water sources for communities they service and Audubon recognizes this is an issue facing water providers and users throughout the Colorado River Basin. However, the DEIS includes no comparison of the reliability aspects of the Local Waters Alternative with the reliability of likely future water conditions in the Colorado River or availability of water for the LPP project itself in light of senior water rights or potential curtailments. The overall assessment is not just incomplete in the analysis of the Local Waters Alternative, it also is incomplete in the assessment of the impacts and reliability of the pipeline alternatives themselves, as we explain further in Section E. below.

Reclamation also seems to have found that the "Local Waters Alternative" was infeasible, concluding that Washington County Water Conservancy District (WCWCD) does not have authority to impose water conservation requirements and that local authorities might not be inclined to adopt measures necessary to achieve changes to effectuate greater water conservation.

While we appreciate the challenges and resources needed to reduce municipal and industrial (M&I) water consumption, Reclamation should not have summarily eliminated the "Local Waters Alternative" on the basis of infeasibility, particularly in view of water conservation strides that have been made by cities throughout the Colorado River Basin as documented by Reclamation and USGS. "[I]n determining the scope of alternatives to be considered, the emphasis is on what is 'reasonable' rather than on whether the proponent or applicant likes or is itself capable of carrying out a particular alternative. Reasonable alternatives include those that are *practical or feasible* from the technical and economic standpoint and using common sense, rather than

[14] *Westlands Water Dist. v. U.S. DOI*, 376 F.3d 853, 867 (9th Cir. 2004); *see also City of Carmel-By-The-Sea v. U.S. Dep't of Transp.,* 123 F.3d 1142, 1155 (9th Cir. 1997) (". . . an agency cannot define its objectives in unreasonably narrow terms.").

[15] *National Parks Conservation Ass'n v. BLM*, 606 F.3d 1058, 1070-72 (9th Cir. 2010).

simply *desirable* from the standpoint of the application." In fact, "[a]n alternative that is outside the legal jurisdiction of the lead agency must still be analyzed in the EIS if it is reasonable."[16]

Furthermore, the range of alternatives is "the heart of the environmental impact statement."[17] NEPA requires an agency to "rigorously explore and objectively evaluate" a range of alternatives to proposed federal actions, including considering more environmentally protective alternatives and mitigation measures.[18]

Therefore, consistent with NEPA requirements, rather than summarily eliminating the water conservation alternative, (in this case the Local Waters Alternative), with only a high-level discussion, Reclamation, should instead undertake a more "*rigorous exploration and objectively evaluate"* a non-pipeline alternative that meaningfully incorporates water conservation.

E. Hydrology Assessment is Incomplete; Reclamation's Analysis Must Consider Full Range of Impacts

Reclamation undertook a hydrology assessment that inadequately addresses the full range of reasonably foreseeable impacts, including indirect and cumulative impacts. We point out five principal concerns about Reclamation's analysis of hydrologic impacts:

1. *Reclamation's finding that "the effects on resources resulting from the Southern and Highway Alternatives are insignificant when compared against the No Action Alternative" is not credible.* Notably, in the assessment of impacts to Lake Powell, using climate change inflows, which Reclamation notes are "similar to those in the Direct Natural Flow simulations,"[19] Reclamation finds a maximum difference in release from Lake Powell of 425,000 AF in any one year for the 10th percentile. A 425,000 AF reduction in release from Lake Powell could reduce Lake Mead's elevation by more than four feet. This is a substantial impact on Lake Mead, and would have a high probability of leading to a change in the Lake Mead operating condition, which is presently defined by elevations at five-foot intervals. Moreover, 425,000 AF is considerably more than the entire allocation for the state of Nevada.

2. *Reclamation's analysis fails to assess the probability that the pipeline will have less than a full supply for each year over a 100-year life of the LPP*. This information is critically important to local ratepayers and Utah taxpayers who will be required to repay loans taken to fund LPP construction. If the pipeline does not have full supply, water sale revenues may not be adequate to repay the loans, and additional debt repayment obligations may fall to

[16] Council on Environmental Quality (CEQ), *Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations*, *Questions 2a and 2b* 46 Fed. Reg. 18,026 (Mar. 17, 1981).Available at: https://www.federalregister.gov/citation/46-FR-18026.

[17] 40 C.F.R. §1502.14.

[18] *See* 40 C.F.R. §§ 1502.14(a) and 1508.25(c); *see also*, *Kootenai Tribe of Idaho v. Veneman*, 313 F.3d 1094, 1122-1123 (9th Cir. 2002) (and cases cited therein).)

[19] DEIS at 3.8.2.3.

ratepayers or Utah taxpayers. Notwithstanding the fact that Reclamation does not assess the economic viability of the LPP, Reclamation should assess and clearly articulate the availability of the Colorado River water supply for the LPP so that stakeholders can conduct secondary analyses to understand the financial implications. Moreover, this assessment goes to the very issue of the proposed need for the project, including providing system reliability.

3. *Reclamation's hydrologic analysis is flawed because it is based on a flawed assumption -- specifically that future Colorado River operations will be defined by the policy in 2007 Interim Guidelines No Action Alternative, rather than the current policy based on the 2007 Interim Guidelines Record of Decision plus the Colorado River Drought Contingency Plans.*[20] While we recognize that the existing Interim Guidelines adopted in 2007, as well as the Colorado River Drought Contingency Plans (DCP) adopted in 2019, will expire in 2026, the assumption that the seven Colorado River Basin States and Reclamation will revert to pre-2007 policy for operating Colorado River reservoirs is implausible given the broadly acknowledged risks associated with that policy. The impact of climate warming in the Colorado River Basin has been studied and forecast extensively,[21] with overwhelming concurrence that basin yield has declined, and will continue to decline over time. Without a shortage policy on the Colorado River, water supply for tens of millions of people is uncertain, creating risk of "day zero" water supply crises. As Reclamation's Commissioner Burman testified to Congress[22] in March of 2019, the DCP (built upon the foundation of the 2007 guidelines) "is a program that implements simultaneous and coordinated actions among the seven Colorado River Basin States and Mexico through the activation of their Binational Water Scarcity Plan in a critically needed effort to reduce water use, or conserve water, to protect the Colorado River system from crisis." In the extensive public record of discussion about Colorado River operations policy beyond 2026, we do not know of a single stakeholder or decision-maker who has argued for a return to the policies in place prior to 2007.

   Given that the terms of the policy that will be adopted post-2026 are unknowable today, Reclamation should assess the hydrologic impact of the proposed project - at minimum as a sensitivity analysis - based on the assumption that today's operating policies, both the 2007 guidelines and the DCPs, as well as Minute 323, remain in force for the entire period of analysis. Notably, the 2007 guidelines, the DCPs, and Minute 323 include shortage operations

[20] DEIS at 8.1.1.1 General Model Assumptions, "runs revert to the Interim Guidelines No Action Alternative in 2027"

[21] For a recent example, see Lukas, Jeff, and Elizabeth Payton, eds. 2020. Colorado River Basin Climate and Hydrology: State of the Science. Western Water Assessment, University of Colorado Boulder. Available at: Department of Interior (DOI): https://doi.org/10.25810/3hcv-w477.

[22] Testimony of Brenda Burman Commissioner, Bureau of Reclamation U.S. Department of the Interior Before the Committee on Natural Resources Subcommittee on Water, Oceans, and Wildlife U.S. House of Representatives March 28, 2019. Available at: https://www.doi.gov/ocl/colorado-river-drought-0

in the Lower Basin and Mexico. It is inappropriate for Reclamation to assume the absence of shortage rules in the Lower Basin.

4. *Reclamation's scope of impact is inappropriately limited to Lake Powell elevations and fails to consider implications for elevations at Lake Mead, river flows downstream from Lake Mead, and the risk to Upper Basin water supply due to required curtailments under the Colorado River Compact*. Reclamation's assessment of the project's hydrologic impacts only extends as far as reservoir elevations at Lake Powell. However, impacts of the proposed project would not be limited to Lake Powell. Reclamation must analyze impacts both downstream (where physical impacts will cascade from Lake Powell) and upstream (where the existing legal framework will direct the impacts from Lake Powell).

    a. *Elevations at Lake Mead and river flows downstream from Lake Mead:* Reclamation failed to include any analysis of impacts downstream, specifically changes to elevations at Lake Mead, which would result in changes in releases from Lake Mead and to flow rates in the Colorado River. With credible assumptions about future river operations policy (see above), Reclamation must evaluate how the proposed project will change elevations at Lake Mead as well as flows in the Colorado River downstream from Lake Mead. These two metrics are directly tied to several extremely important Colorado River values, including: the frequency and magnitude of shortages to Lower Colorado River Basin water users in the United States and Mexico; the impact of Lower Basin shortages in the United States on flows on the Colorado River mainstem below Lake Mead and the related loss of riparian habitat; and the impact of Mexican shortages on environmental water supply for the Minute 323 restoration program in the Colorado River Delta.

    Implementation of reduced deliveries to water users in the Lower Basin and Mexico will manifest as reduced volumes of water released from Lake Mead and have a direct impact on flows that support habitat used by a number of riparian bird species, including some protected under the Endangered Species Act. With the correction addressed above regarding the need to assess impacts in the context of future Colorado River operational policies that include any shortage provisions, Reclamation must assess the proposed project's impact on important riparian bird species, some of which federally endangered or threatened, that depend on habitat supported by flows in the Lower Colorado River. Audubon's Water and Birds in the Arid West: Habitats in Decline 2017[23] documents the trend that riparian specialist birds, once common along the Colorado River and its tributaries, have experienced significant regional declines. Native riparian trees and shrubs such as cottonwood-willow ecosystems that provide productive habitat for critical

[23] Wilsey, Chad B., Lotem Taylor, Nicole Michel, and Karyn Stockdale. *Water and Birds in the Arid West: Habitats in Decline.* National Audubon Society, 2017. Available at: https://www.audubon.org/sites/default/files/wbaw_report_5july17_updated.pdf.

birds such as federally endangered Yuma Ridgeway's Rail, Southwest Willow Flycatcher, and Bell's Vireo, are disappearing because of the cumulative effects of water development within the Colorado River Basin. Reclamation's hydrologic analysis must address the impact of the proposed project on Colorado River flows below Hoover Dam, and consider whether habitat mitigation measures of the Lower Colorado River Multi Species Conservation Program remain adequate.

b. *Risk to Upper Basin water supply due to required curtailments under the Colorado River Compact:* Reclamation failed to include any analysis of risk to, and impacts on, the water supply in the Upper Colorado River Basin. While, the Upper Basin's obligation under the Colorado River Compact is debated and not clearly defined, Reclamation should nevertheless assess the range of impacts possible using both the smallest and largest volume curtailments possible. The low end of the range should assess the impact of developing the proposed pipeline project in the context of an obligation to deliver 75 million AF over any 10-year period, accounting for Article III(d) to "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 ten consecutive years." At the high end, Reclamation should assess the impact in the context of an obligation to deliver 82.5 million AF over any 10-year period, accounting for Article III(d) plus an additional 750,000 AF annually, to reflect the Upper Basin's obligation to provide water for Mexico delivery under Article III(c).

   The risk of Upper Basin curtailment under the Colorado River Compact has been widely studied. The 2019 "Colorado River Risk Study: Phase III Final Report"[24] (Risk Study) prepared for the Colorado River Water Conservation District and the Southwestern Water Conservation District assessed this risk using the Colorado River Simulation System (CRSS, the same analytic tool used by Reclamation). The Risk Study found that under today's operating rules (2007 Guidelines plus Drought Contingency Plans) *holding at current demands, in other words no additional depletions after 2019,* the Upper Basin States' risk of delivering less water to Lee Ferry than the obligation of 82.5 million AF in any 10-year period is 40% between 2029 and 2043.[25] Moreover, the Risk Study finds the Upper Basin 10-year delivery at Lee Ferry with no additional depletions after 2019 could be as low as 78,650,744 AF,[26] a deficit of nearly 4 million AF. If the proposed Lake Powell Pipeline depletion was added to the demands in the Risk Study, the deficit in Upper Basin delivery to the Lower Basin could grow by as much as 862,490 AF (the full Lake Powell Pipeline

[24] Colorado River Risk Study Phase III Final Report, Prepared for the Colorado River District and the Southwestern Water Conservation District, November 20, 2019. Available at: https://www.coloradoriverdistrict.org/wp-content/uploads/2020/05/phase-iii-final-report.pdf

[25] Risk Study, p. 19, figure 6

[26] Risk Study, p. 19, table 3

depletion over a ten-year period), a 22% increase in the Upper Basin Compact deficit projected in the Risk Study.

Reclamation must document how the proposed Lake Powell Pipeline impacts risk of curtailment for existing Upper Basin water users, including water users in Colorado, New Mexico, Utah and Wyoming, and the related environmental impacts. Notwithstanding the absence of existing agreements about how the Upper Basin states plan to implement curtailments in the event of a Compact deficit, Reclamation has a responsibility to document the impacts. If Reclamation cannot devise an acceptable way to document impacts to each state's Colorado River water users, at minimum Reclamation must document the total impact to the Upper Basin's existing Colorado River water users as a whole.

5. *Reclamation's analysis fails to assess risks to the water supply for the proposed Lake Powell Pipeline, and such assessment must consider future water rights developments anticipated to have priority dates senior to the proposed Lake Powell Pipeline*. As noted above, Reclamation's analysis should, but does not, address the risk of shortages to the proposed project caused by the requirement to curtail Upper Basin Water uses. In addition, Reclamation's analysis fails to consider the risk of curtailment to the water supply for the proposed project by examining its priority relative to other Colorado River water uses in Utah.

   In the supplemental document "Jan. 18, 2019 - Physical Water Availability (Pages from UBWR WCWCD Reply)"[27] shared by Reclamation on its website for the Lake Powell Pipeline Draft Environmental Impact Statement, the Project Proponents state: "As a matter of state law, diversions by the Project cannot impair senior water rights. In fact, one of the requirements that must be met before a water rights application is even approved by the State Engineer is a demonstration that the proposed use will not impair existing water rights. UBWR will abide by all such requirements."

   In light of this assertion, Reclamation must consider the possibility that existing and new Colorado River depletions in Utah could hold priority dates senior to the proposed Lake Powell Pipeline. For the LPP DEIS, Reclamation projected future Colorado River operations using "reasonably foreseeable projects"[28] defined as "Upper Basin depletions with state legislation, a tribal resolution or federal Indian water settlement, a federal finding of no significant impact (FONSI) or ROD" and include "those depletions assumed reasonably foreseeable…held constant at 2060 levels, and include the Central Utah Project, Animas-La

[27] The supplemental document is titled "Jan. 18, 2019 - Physical Water Availability (Pages from UBWR WCWCD Reply)" Available at: https://water.utah.gov/wp-content/uploads/LPP-WaterSupplyDemand/20190118-Pages-from-20190118-UBWR_WCWCD-Reply.pdf

[28] DEIS appendix C-10 1.2.2.

Plata, Dolores Project, Navajo-Gallup, Ute Indian Compact, and Navajo Indian Irrigation Project."

However, Reclamation fails to incorporate the Navajo Utah Settlement volumes in the hydrology assessment and consequently fails to consider how the Settlement would impact water supply for the proposed project. The Navajo Utah Water Rights Settlement Act of 2019, S. 1207, re-packaged as part of S. 886, was passed by the United States Senate in June 2020. Should this legislation, based on a settlement agreement reached between Utah and the Navajo Nation, be enacted, the Navajo Nation would have a water right that would allow it to deplete 81,500 AF annually, the majority of which would have a priority date of 1884, with the balance having priority dates ranging from 1905-1958. We have already asked Reclamation to assess whether Utah has sufficient availability of Colorado River water to supply the proposed LPP. We assert here that this assessment must include the potential for the Navajo Utah settlement as a senior diverter.

Furthermore, as noted above, Reclamation's analysis does not address the risk of shortages to the proposed project caused by the Upper Basin States' need to curtail their water uses to meet the terms of the 1922 Colorado River Compact. Although Utah's State Engineer would administer any curtailment of Colorado River uses within the state, Reclamation's analysis must assess risk to the water supply for the proposed project with consideration of its priority relative to other Colorado River water uses in Utah.

F. **Reclamation's Analysis Should Consider How the Proposed Lake Powell Pipeline Project Affects Tribal Water Rights**

As climate change pushes the Upper Basin ever closer to the limits of water development, Reclamation's analysis must consider how the proposed Lake Powell Pipeline's further depletion of Utah's available allocation may impact Tribal water rights. The United States has a trust obligation to consult with Colorado River Basin tribes to assess the impacts of the LPP in relation to tribal water resources. The DEIS neglects to adequately consider such effects.

G. Additional Comments

1. Revenue Calculation - The calculation of revenue from Washington County impact fees is flawed and must be corrected in the supplemental document and everywhere referenced in the DEIS. The supplemental document "Lake Powell Pipeline Project No. 12966 Economic Analysis"[29] states:

> "WCWCD's Board has approved an annual increase to impact fees of $1,000 per year through 2025. Given Washington County is expected to add more than

[29]Attachment G, Lake Powell Pipeline Project No. 12966, Economic Analysis (Applied Analysis, January 16, 2019). Available at: https://water.utah.gov/wp-content/uploads/LPP-Reports/Socioeconomics/20190118-ATT-G-Economic-Analysis.pdf

295,600 new residents by 2060, this increase will produce approximately $2.96B in revenue through 2060." (Emphasis added.)

Audubon's understanding is that impact fees are assessed on properties, not residents. Unless the project proponent expects one resident per property, the revenue from impact fees will be substantially less than reported. Please correct the calculation in this supplemental document and anywhere else it is used in the DEIS and supplemental documents.

2. Powell Water Year Release, 2027-2060 - In DEIS Appendix C-10, Hydrology, Reclamation provides information at Figure 2.3-4b – Powell Water Year Release with Direct Natural Flow (DNF) inflow for 2027-2049. The figure, a chart, attempts to show the inflows for both a No Action and a Pipeline alternative. However, the scale of the chart or its presentation makes it difficult to interpret. We request that Reclamation present the chart with a scale that allows readers to view the difference between the no action and project alternatives.

3. Reclamation appears to have included an appropriate treatment of post-construction vegetation restoration and the avian mitigation plan relative to the construction of the pipeline itself. Audubon appreciates the diligence of the U.S. Fish and Wildlife Service regarding Threatened and Endangered species and habitat assessments, and performing effects determinations in the LPP Preliminary Draft Biological Assessment[30]. However, with continued limited avian survey data across the Colorado River Basin, we encourage Reclamation and the State of Utah to conduct additional bird counts to inform estimates of bird abundance along the impacted areas of the proposed project.

4. Need for Improved Transparency and Consistent Methodologies on Water Use Data – In the needs analysis presented by UBWR in the FERC proceedings updated as of November 2018[31] and in the 2019 Utah Regional Water Conservation Goals,[32] Utah has explained that direct comparisons of water use across communities in the West given differences in data inputs, methodologies and other factors make comparisons "nearly impossible" or "misleading."

   To the extent that cities and water users in the basin are calculating Gallons Per Capita per Day (GPCD) water use data using different inputs or methodologies, we urge Reclamation to undertake an assessment that allows for transparent understanding and comparison of the

[30] US Fish & Wildlife Service. Lake Powell Pipeline, Preliminary Biological Assessment. 2019. Submitted to FERC, March 27, 2019, FERC elibrary 20190327-5174.

[31] Reply of the Utah Board of Water Resources and Washington County Water Conservancy District to Comments, Recommendations, and Preliminary Terms and Conditions, January 18, 2019, and Attachment C*, Lake Powell Pipeline Project No. P-12966 Water Needs Assessment: Water Use and Conservation Update, Response to Comments Utah Board of Water Resources."* FERC eLibrary 20190118-5151.

[32] Utah's Regional M&I Water Conservation Goals. 2019, p. 15. Available at: https://water.utah.gov/water-resources-announces-finalized-regional-water-conservation-goals/

water use data and projections for Colorado River water users across the basin. Making the methodologies and calculations transparent will allow for improved decision-making and management of Colorado River water.

H. Conclusion

For the reasons explained above, Audubon respectfully requests Reclamation to fully assess the impacts of the Lake Powell Pipeline project and fully evaluate all reasonable alternatives, including the conservation alternative in the Final EIS. Audubon further requests Reclamation to issue a Record of Decision that does not approve an alternative which includes construction and operation of the Lake Powell Pipeline and at a minimum to withhold any decision on the project until the Law of the River and interbasin transfer issues are resolved.[33]

Sincerely,

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[33] Notwithstanding the adoption of updated NEPA rules by the CEQ in July 2020, the stage of the environmental review process for the LPP and the fact that the DEIS comment period closes prior to the effective date (September 14, 2020) of the updated rules, makes it incumbent upon Reclamation to continue its environmental review pursuant to the NEPA rules that have been in place for more than 40 years and upon which all public input on this project has been based. The fact that the Lake Powell Pipeline has been identified by DOI for expedited review heightens the need for Reclamation to ensure it thoroughly addresses and analyzes the types of effects we have identified and that were inadequately addressed in the DEIS.

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