

## Proposed Interim Guidelines for Colorado River Operations

The Basin States propose the following Guidelines to be implemented and used for determinations made pursuant to the *Criteria for Coordinated Long-Range Operation of the Colorado River Reservoirs Pursuant to the Colorado River Basin Project Act of September 30, 1968 (LROC)* during the period identified in Section 9<sup>1</sup>:

### Section 1. Definitions

- A. Each of the following terms shall have the meaning provided herein. All defined terms are identified by initial letter capitalization.
1. “Basin States” shall mean the Colorado River Basin States of Arizona, California, Colorado, New Mexico, Nevada, Utah, and Wyoming.
  2. “Certification Report” shall mean the written documentation provided by a Contractor pursuant to Section 5.D.5 that provides the Secretary with sufficient information to verify the quantity of ICS created and that the creation was consistent with the approved project.
  3. “Colorado River System” shall have the same meaning as defined in the 1922 Colorado River Compact.
  4. “Consolidated Decree” shall mean the Consolidated Decree entered by the United States Supreme Court in *Arizona v. California*, 126 S. Ct. 1543, 547 U.S. 150 (2006).
  5. “Contractor” shall mean a Boulder Canyon Project Act Section 5 Contractor or an entity receiving Mainstream water pursuant to other applicable federal statutes or the Consolidated Decree.
  6. “Delivery Agreement” shall mean an agreement consistent with these guidelines entered into between the Parties to the Forbearance Agreement, one or more Contractors creating ICS, and the Secretary of the Interior.
  7. “Developed Shortage Supply (“DSS”)” shall mean water available for use by a Contractor under the terms and conditions of a Delivery Agreement and Section 6.
  8. “Direct Delivery Domestic Use” shall mean direct delivery of water to domestic end users or other municipal and industrial water providers within the contractor’s area of normal service, including incidental regulation of Colorado River water supplies within the Year of operation but not including Off-stream Banking. For the Metropolitan Water District of Southern California (MWD), Direct Delivery Domestic Use shall include delivery of water to end users within its area of normal service, incidental regulation of Colorado River water

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<sup>1</sup> Unless otherwise specified, references to “Section” or “Sections” in these Guidelines are in reference to sections of these Guidelines.

supplies within the Year of operation and Off-stream Banking only with water delivered through the Colorado River Aqueduct.

9. “Domestic Use” shall have the same meaning as defined in the 1922 Colorado River Compact.
10. “Forbearance Agreement” shall mean the Lower Colorado River Intentionally Created Surplus Forbearance Agreement, to be entered into among the Lower Division States, and certain Contractors in the Lower Division States.
11. “Intentionally Created Surplus (“ICS”)” shall mean intentionally created surplus available for use under the terms and conditions of the Forbearance Agreement and a Delivery Agreement.
  - a. ICS created through extraordinary conservation, as provided for in Section 5.D.1, shall be referred to as “Extraordinary Conservation ICS.”
  - b. ICS created through tributary conservation, as provided for in Section 5.D.2, shall be referred to as “Tributary Conservation ICS.”
  - c. ICS created through system efficiency projects, as provided for in Section 5.D.3, shall be referred to as “System Efficiency ICS.”
  - d. ICS created through the importation of non-Colorado River System Water, as provided for in Section 5.D.4, shall be referred to as “Imported ICS.”
12. “ICS Account” shall mean records established by the Secretary.
13. “ICS Declaration” shall mean a declaration by the Secretary that ICS is available for release.
14. “Interim Period” refers to the effective period as described in Section 9.
15. “Lower Division States” shall mean the Colorado River Basin States of Arizona, California, and Nevada.
16. “Mainstream” shall have the same meaning as defined in the Consolidated Decree.
17. “Off-stream Banking” shall mean the diversion of Colorado River water to underground storage facilities for use in subsequent Years from the facility used by a Contractor diverting such water.
18. “Parties” shall mean all of the signatories to the Forbearance Agreement.
19. “ROD” shall mean the Record of Decision issued by the Secretary for the Colorado River Interim Guidelines for Lower Basin Shortages and Coordinated Operations for Lake Powell and Lake Mead.

20. “Upper Division States” shall mean the Colorado River Basin States of Colorado, New Mexico, Utah, and Wyoming.
21. “Water Year” shall mean October 1 through September 30 of the following calendar year.
22. “Year” shall mean calendar year.

**Section 2. Allocation of Unused Basic Apportionment Water under Article II(B)(6)**

A. Introduction

Article II(B)(6) of the Consolidated Decree allows the Secretary to allocate water that is apportioned to one Lower Division State, but is for any reason unused in that State, to another Lower Division State. This determination is made for one Year only, and no rights to recurrent use of the water accrue to the state that receives the allocated water.

B. Application to Unused Basic Apportionment

Before making a determination of a surplus condition under these Guidelines, the Secretary will determine the quantity of apportioned but unused water from the basic apportionments under Article II(B)(6), and will allocate such water in the following order of priority:

1. Meet the Direct Delivery Domestic Use requirements of MWD and Southern Nevada Water Authority (SNWA), allocated as agreed by said agencies;
2. Meet the needs for Off-stream Banking activities in California by MWD and in Nevada by SNWA, allocated as agreed by said agencies; and
3. Meet the other needs for water in California in accordance with the California Seven-Party Agreement as supplemented by the Quantification Settlement Agreement.

**Section 3. Coordinated Operation of Lakes Powell and Mead During the Interim Period**

- A. During the Interim Period, the Secretary shall coordinate the operations of Lake Powell and Lake Mead according to the strategy set forth in this Section 3.
- B. The objective of the operation of Lakes Powell and Mead as described herein is to avoid curtailment of uses in the Upper Basin, minimize shortages in the Lower Basin and not adversely affect the yield for development available in the Upper Basin.
- C. The August 24-month study projections for the January 1 system storage and reservoir water surface elevations, for the following Water Year, would be used to determine the applicability of the coordinated operation of Lakes Powell and

Mead. Equalization or balancing of storage in Lakes Powell and Mead shall be achieved by the end of each Water Year.

| Powell<br>Elevation (feet)              | Powell<br>Operation   | Powell<br>Live Storage (maf)              |
|---|---|---|
| <b>3700</b>                             | Equalize, avoid spills or 8.23 maf  | <b>24.32</b>                              |
| <b>3636 - 3666</b><br>(see table below) | 8.23 maf;<br>if Mead < 1075 feet,<br>balance contents with<br>a min/max release of<br>7.0 and 9.0 maf | <b>15.54 - 19.29</b><br><br>(2008 - 2026) |
| <b>3575</b>                             | 7.48 maf<br>8.23 maf if Mead < 1025 feet  | <b>9.52</b>                               |
| <b>3525</b>                             | Balance contents with a<br>min/max release of<br>7.0 and 9.5 maf                                      | <b>5.93</b>                               |
| <b>3370</b>                             |   | <b>0</b>                                  |

## Lake Powell Equalization Elevation Table

In each of the following Water Years, the Lake Powell Equalization Elevation will be as follows:

| Water Year | Elevation (feet) |
|------------|------------------|
| 2008       | 3636             |
| 2009       | 3639             |
| 2010       | 3642             |
| 2011       | 3643             |
| 2012       | 3645             |
| 2013       | 3646             |
| 2014       | 3648             |
| 2015       | 3649             |
| 2016       | 3651             |
| 2017       | 3652             |
| 2018       | 3654             |
| 2019       | 3655             |
| 2020       | 3657             |
| 2021       | 3659             |
| 2022       | 3660             |
| 2023       | 3662             |
| 2024       | 3663             |
| 2025       | 3664             |
| 2026       | 3666             |

1. Equalization: In Water Years when Lake Powell content is projected on January 1 to be at or above the elevation stated in the Lake Powell Equalization Elevation Table, an amount of water will be released from Lake Powell to Lake Mead at a rate greater than 8,230,000 acre-feet per Water Year to the extent necessary to avoid spills, or equalize storage in

the two reservoirs, or otherwise to release 8,230,000 acre-feet from Lake Powell.

2. Upper Elevation Balancing: In Water Years when Lake Powell content is projected on January 1 to be below the elevation stated in the Lake Powell Equalization Elevation Table and at or above 3575 feet, the Secretary shall release 8,230,000 acre-feet from Lake Powell if the projected elevation of Lake Mead is at or above 1075 feet. If the projected elevation of Lake Mead is below 1075 feet, the Secretary shall balance the contents of Lake Mead and Lake Powell, but shall release no more than 9,000,000 acre-feet and no less than 7,000,000 acre-feet from Lake Powell.
3. Mid-Elevation Releases: In Water Years when Lake Powell content is projected on January 1 to be below 3575 feet and at or above 3525 feet, the Secretary shall release 7,480,000 acre-feet from Lake Powell if the projected elevation of Lake Mead is at or above 1025 feet. If the projected elevation of Lake Mead is below 1025 feet, the Secretary shall release 8,230,000 acre-feet from Lake Powell.
4. Lower Elevation Balancing: In Water Years when Lake Powell content is projected on January 1 to be below 3525 feet, the Secretary shall balance the contents of Lake Mead and Lake Powell, but shall release no more than 9,500,000 acre-feet and no less than 7,000,000 acre-feet from Lake Powell.
5. When determining lake elevations and contents under this Section 3, no adjustment shall be made for ICS.

Coordinated Operation of Lakes Powell and Mead as described herein will be presumed to be consistent with the Section 602(a) storage requirement contained in the Colorado River Basin Project Act.

#### **Section 4. Determination of Lake Mead Operation during the Interim Period**

##### **A. Normal Conditions**

In Years when Lake Mead elevation is projected on January 1 to be at or above elevation 1075 feet and below 1145 feet, the Secretary shall determine a normal operating condition, unless there is an ICS Surplus under Section 4.B.5.

##### **B. Surplus Conditions**

1. Domestic Surplus (Lake Mead above Elevation 1145 feet and below 70R Strategy) in Effect through December 31, 2015 (through preparation of 2016 Annual Operating Plan for the Colorado River System Reservoirs (“AOP”))

In Years when Lake Mead content is projected to be above elevation 1145 feet, but less than the amount which would initiate a Surplus under Section B.3 70R Strategy or Section B.4 Flood Control Surplus on January 1, the

Secretary shall determine a Domestic Surplus. The amount of such Surplus shall equal:

- a. For Direct Delivery Domestic Use by MWD, 1.250 million acre-feet (maf) reduced by the amount of basic apportionment available to MWD.
- b. For use by SNWA, the Direct Delivery Domestic Use within the SNWA service area in excess of the State of Nevada's basic apportionment.
- c. For use in Arizona, the Direct Delivery Domestic Use in excess of Arizona's basic apportionment.

2. Domestic Surplus (Lake Mead above Elevation 1145 feet and below 70R Strategy) in Effect from January 1, 2016 through December 31, 2025 (through preparation of 2026 AOP)

In Years when Lake Mead content is projected to be above elevation 1145 feet, but less than the amount which would initiate a Surplus under Section B.3 70R Strategy or Section B.4 Flood Control Surplus on January 1, the Secretary shall determine a Domestic Surplus. The amount of such Surplus shall equal:

- a. For use by MWD, 250,000 acre-feet per Year in addition to the amount of California's basic apportionment available to MWD;
- b. For use by SNWA, 100,000 acre-feet per Year in addition to the amount of Nevada's basic apportionment available to SNWA;
- c. For use by Arizona, 100,000 acre-feet per Year in addition to the amount of Arizona's basic apportionment available to Arizona contractors.

3. Quantified Surplus (70R Strategy)

In Years when the Secretary determines that water should be released for beneficial consumptive use to reduce the risk of potential reservoir spills based on the 70R Strategy, the Secretary shall determine and allocate a Quantified Surplus sequentially as follows:

- a. Establish the volume of the Quantified Surplus. For the purpose of determining the existence, and establishing the volume, of Quantified Surplus, the Secretary shall not consider any volume of ICS as defined in these Guidelines.

- b. Allocate and distribute the Quantified Surplus 50% to California, 46% to Arizona and 4% to Nevada, subject to c. through e. that follow.
- c. Distribute California's share first to meet basic apportionment demands and MWD's demands, and then to California Priorities 6 and 7 and other surplus contracts. Distribute Nevada's share first to meet basic apportionment demands and SNWA demands. Distribute Arizona's share to surplus demands in Arizona including Off-stream Banking and interstate banking demands. Arizona, California and Nevada agree that Nevada would get first priority for interstate banking in Arizona.
- d. Distribute any unused share of the Quantified Surplus in accordance with Section 2, Allocation of Unused Basic Apportionment Water Under Article II(B)(6).
- e. Determine whether MWD, SNWA and Arizona have received the amount of water they would have received under Sections 4.B.1 or 4.B.2 if a Quantified Surplus had not been determined. If they have not, then determine and meet all demands provided for in Sections 4.B.1 or 4.B.2.

#### 4. Flood Control Surplus

In Years in which the Secretary makes space-building or flood control releases pursuant to the February 8, 1984 Field Working Agreement between Reclamation and the Army Corps of Engineers, the Secretary shall determine a Flood Control Surplus for the remainder of that Year or the subsequent Year as specified in Section 12. In such Years, releases will be made to satisfy all beneficial uses within the United States, including unlimited Off-Stream Banking. Under current practice, surplus declarations under the Treaty for Mexico are declared when flood control releases are made. Modeling assumptions used in the FEIS are based on this practice. These Guidelines are not intended to identify, or change in any manner, conditions when Mexico may schedule up to an additional 0.2 maf.

#### 5. ICS Surplus

- a. In Years in which Lake Mead's elevation is projected on January 1 to be above elevation 1075 feet and ICS has been requested for release, the Secretary shall determine an ICS Surplus.
- b. In Years in which a Quantified Surplus or a Domestic Surplus is available to a Contractor, the Secretary shall first deliver the Quantified Surplus or Domestic Surplus before delivering any requested ICS to that Contractor. If Quantified Surplus or Domestic Surplus is insufficient or unavailable to meet a Contractor's



demands, the Secretary may release ICS available in that Contractor's ICS Account at the request of the Contractor.

- c. The Secretary shall release ICS as described in Section 5.

C. Allocation of Colorado River Water and Forbearance Arrangements

Under these Guidelines, Colorado River water will continue to be allocated for use among the Lower Division States in a manner consistent with the provisions of the Consolidated Decree. It is expected that Lower Division States and individual Contractors for Colorado River water have or will adopt arrangements that will affect utilization of Colorado River water during the Interim Period. It is expected that water orders from Colorado River Contractors will be submitted to reflect forbearance arrangements by Lower Division States and individual Contractors. The Secretary will deliver Colorado River water to Contractors in a manner consistent with these arrangements. Surplus water will be delivered only to entities with contracts that are eligible to receive surplus water. ICS will be delivered pursuant to Section 5.D.6.

D. Shortage Conditions

1. Reductions in deliveries to the Lower Division States during declared shortages shall be implemented in the following manner:
  - a. Step One reduction: In Years when Lake Mead content is projected on January 1 to be at or below elevation 1075 feet and at or above 1050 feet, a quantity of 333,000 acre-feet shall not be released or delivered in the Lower Division States.
  - b. Step Two reduction: In Years when Lake Mead content is projected on January 1 to be below elevation 1050 feet and at or above 1025 feet, a quantity of 417,000 acre-feet shall not be released or delivered in the Lower Division States.
  - c. Step Three reduction: In Years when Lake Mead content is projected on January 1 to be below 1025 feet, a quantity of 500,000 acre-feet shall not be released or delivered in the Lower Division States.
2. In the event projections included in any Bureau of Reclamation monthly 24-Month Study indicate Lake Mead elevations may approach an elevation that would trigger shortages in deliveries of water from Lake Mead in the United States, the Secretary shall consult with the Basin States on how the United States shall reduce the quantity of water allotted to Mexico.
3. Whenever Lake Mead is below elevation 1025 feet, the Secretary shall consult with the Basin States annually to determine whether Colorado River hydrologic conditions, together with the anticipated delivery of water to the Lower Division States and Mexico, will cause the elevation of Lake

Mead to fall below 1000 feet. Upon such a determination, the Secretary shall consult with the Basin States to discuss further measures that may be undertaken. If increased reductions are required, the Secretary shall implement the reductions consistent with the law of the river.

4. Subject to the provisions of Section 4.D.3, the Lower Division States shall not take shortages in excess of those provided in Section 4.D.1. Arizona and Nevada have agreed to share all reductions, described in Section 4.D.1 based on the Arizona-Nevada Shortage Sharing Agreement dated February 9, 2007. California shall not be required to share in any reductions described in Section 4.D.1.
5. The Secretary shall consult with the Basin States to evaluate actions at critical elevations that may avoid shortage determinations as reservoir elevations approach critical thresholds.
6. During declared Shortages described in Section 4.D.1, the Secretary may release Developed Shortage Supply, subject to the provisions in Sections 5 and 6.

**Section 5. System Efficiency, Extraordinary Conservation, Tributary Conservation and Importation of Non-Colorado River System Water for the Purpose of Developing Intentionally Created Surplus**

A. Findings

ICS may be created through projects that create water system efficiency, extraordinary conservation, tributary conservation, and the importation of non-Colorado River System water into the Colorado River Mainstream. ICS is consistent with the concept that the States will take actions to augment storage of water in the Lower Colorado River Basin. The ICS shall be released to the Contractor that created it pursuant to both Article II(B)(2) of the Consolidated Decree and agreements among various Contractors to forbear from taking water that they otherwise would be able to request. Implementation under these Guidelines shall be predicated upon the execution of a Forbearance Agreement and a Delivery Agreement, as further provided for below.

B. Purposes

The purposes of ICS are to:

1. Encourage the efficient use and management of Colorado River water, and to increase the water supply in Colorado River system reservoirs, through the creation, release, and use of ICS;
2. Help avoid shortages to the Lower Basin;
3. Benefit both Lake Mead and Lake Powell;
4. Increase the surface elevations of both Lakes Powell and Mead to higher levels than would have otherwise occurred; and

5. Assure any Contractor that invests in conservation or augmentation to create ICS that no Contractor within another state will claim the ICS created by the Contractor.

C. Statement of Consistency with the Law of the River and Consequential Limitations on ICS Guidelines

In Years in which the Secretary determines that sufficient Mainstream water is available for release to satisfy annual consumptive use in the Lower Division States in excess of 7,500,000 acre-feet, Article II(B)(2) of the Consolidated Decree authorizes the Secretary to apportion surplus Mainstream water 50% for use in California, 46% for use in Arizona, and 4% for use in Nevada. The Boulder Canyon Project Act and Articles II(B)(2) and II(B)(6) of the Consolidated Decree, taken together, authorize the Secretary to apportion surplus water and to release one Lower Division State's unused apportionment for use in another Lower Division State. Pursuant to such authority and for the purpose of increasing the efficiency, flexibility, and certainty of Colorado River management and thereby helping satisfy the regional water demands that exist, the Secretary has the authority to promulgate guidelines to establish a procedural framework for facilitating the creation and release of ICS.

In the absence of forbearance, surplus water is apportioned for use according to the percentages provided in Article II(B)(2) of the Consolidated Decree. The Forbearance Agreement, as approved by the Parties, will provide the basis for such forbearance. The Parties will forbear only with respect to ICS created by projects described in exhibits attached to the Forbearance Agreement or added thereto by written consent of all Parties. It is hereby recognized that the creation, release and use of ICS pursuant to these Guidelines shall not be administered in such a way as to violate the Consolidated Decree, including Articles II(B)(2) and II(B)(6) therein. These Guidelines regarding ICS shall have no force or effect absent the existence and effectiveness of the Forbearance Agreement.

D. Creation and Release of ICS

1. Extraordinary Conservation ICS

A Contractor may create Extraordinary Conservation ICS through the following activities:

- a. Fallowing of land that currently is, historically was, and otherwise would have been irrigated in the next Year.
- b. Canal lining programs.
- c. Desalination programs in which the desalinated water is used in lieu of Mainstream water.
- d. Extraordinary conservation programs that existed on January 1, 2006.
- e. Extraordinary Conservation ICS demonstration programs pursuant to a letter agreement entered into between the United States Bureau of

Reclamation and the Contractor prior to the effective date of these Guidelines.

- f. Tributary Conservation ICS created under Section 5.D.2 and not released in the Year created.
- g. Imported ICS created under Section 5.D.4 and not released in the Year created.
- h. Other extraordinary conservation measures, including development and acquisition of a non-Colorado River System water supply used in lieu of Colorado River Mainstream water within the same state, in consultation with the Basin States, and as agreed upon by the Parties pursuant to the Forbearance Agreement.

2. Tributary Conservation ICS

A Contractor may create Tributary Conservation ICS by purchasing documented water rights on Colorado River System tributaries upstream of Hoover Dam within the Contractor's state if there is documentation that the water rights have been used for a significant period of Years and that the water rights were perfected prior to June 25, 1929 (the effective date of the Boulder Canyon Project Act). The quantity of Tributary Conservation ICS shall be limited to the quantity of water set forth in Exhibits incorporated in the Forbearance Agreement, and shall in no event be more than the quantity of such water the Secretary verifies actually flows into Lake Mead. Any Tributary Conservation ICS not released pursuant to Section 5.D.6 or deducted pursuant to Section 5.D.5.c in the Year it was created will, at the beginning of the following Year, be converted to Extraordinary Conservation ICS at the request of the Contractor and will thereafter be subject to all provisions applicable to Extraordinary Conservation ICS. Tributary Conservation ICS may be released for Domestic Use only.

3. System Efficiency ICS

A Contractor may make contributions of capital to the Secretary for use in Secretarial projects designed to realize system efficiencies that save water that would otherwise be lost from the Colorado River Mainstream in the United States. An amount of water equal to a portion of the water saved may be made available to contributing Contractor(s) by the Secretary as System Efficiency ICS. System efficiency projects are intended only to provide temporary water supplies. System Efficiency ICS will not be available for permanent use. System Efficiency ICS will be released to the contributing Contractor(s) on a predetermined schedule of annual deliveries for a period of Years as agreed by the Parties. The Secretary, in consultation with the Basin States, will identify potential system efficiency projects, terms for capital participation in such projects, and types and amounts of benefits the Secretary should provide in consideration of non-federal capital contributions to system efficiency projects, including identification of a portion of the water saved by such projects.

4. Imported ICS

A Contractor may create Imported ICS by introducing non-Colorado River System water in that Contractor's state into the Mainstream. Contractors proposing to create Imported ICS shall make arrangements with the Secretary, contractual or otherwise, to ensure no interference with the Secretary's management of Colorado River system reservoirs and regulatory structures. Any arrangement shall provide that the Contractor must obtain appropriate permits or other authorizations required by state law and that the actual amount of water introduced to the Mainstream shall be reported to the Secretary on an annual basis. Any Imported ICS not released pursuant to Section 5.D.6 or deducted pursuant to Section 5.D.5.c in the Year it was created will be converted, at the beginning of the following Year, to Extraordinary Conservation ICS at the request of the Contractor and thereafter will be subject to all provisions applicable to Extraordinary Conservation ICS.

5. Creation of ICS

A Contractor may create ICS subject to the following conditions:

- a. A Contractor shall submit a plan for the creation of ICS to the Secretary and the Basin States demonstrating how all requirements of these Guidelines will be met in the Contractor's creation of ICS. Until such plan is reviewed and approved by the Secretary in consultation with the other Basin States, such plan, or any ICS purportedly created through it, shall not be a basis for an ICS Declaration. A Contractor may modify its plan for creation of ICS during any Year, subject to approval by the Secretary in consultation with the Basin States. System Efficiency ICS with an approved multi-Year plan shall not require annual approval by the Secretary or consultation with the Basin States.
- b. A Contractor that creates ICS shall submit a Certification Report to the Secretary demonstrating the amount of ICS created and that its creation was consistent with the Forbearance Agreement, these Guidelines, and a Delivery Agreement executed by the Secretary. The Secretary shall verify the information in the Certification Report in consultation with the Basin States, and provide a final written decision to the Contractor, the Parties and the Basin States. The Contractor or any Party or Basin State may appeal the Secretary's verification of the Certification Report through administrative and judicial processes.
- c. There shall be a one-time deduction of five percent (5%) from the amount of ICS in the Year of its creation. This deduction results in additional water in storage in Lake Mead for future use in accordance with the Consolidated Decree and these Guidelines. This provision shall not apply to:

- (1) System Efficiency ICS created pursuant to Section 5.D.3 because a large portion of the water saved by this type of project will increase the quantity of water in storage.
  - (2) Extraordinary Conservation ICS created by conversion of Tributary Conservation ICS that was not released in the Year created, pursuant to Section 5.D.1.f because 5% of the ICS is deducted at the time the Tributary Conservation ICS is created.
  - (3) Extraordinary Conservation ICS created by conversion of Imported ICS that was not released in the Year created, pursuant to Section 5.D.1.g because 5% of the ICS is deducted at the time the Imported ICS is created.
- d. The records of any Contractor relating to the creation of ICS shall be open to inspection by the Secretary or any Contractor, Party or Basin State.
- e. In addition to the conditions described above, creation of Extraordinary Conservation ICS is subject to the following conditions:
- (1) Except as provided in Sections 5.D.2 and 5.D.4, Extraordinary Conservation ICS can only be created if such water would have otherwise been beneficially used.
  - (2) The maximum total amount of Extraordinary Conservation ICS that can be created during any Year is limited to the following:
    - (a) 400,000 acre-feet for California Contractors;
    - (b) 125,000 acre-feet for Nevada Contractors; and
    - (c) 100,000 acre-feet for Arizona Contractors.
  - (3) The maximum quantity of Extraordinary Conservation ICS that may be accumulated in all ICS Accounts, at any time, is limited to the following:
    - (a) 1,500,000 acre-feet for California Contractors;
    - (b) 300,000 acre-feet for Nevada Contractors; and
    - (c) 300,000 acre-feet for Arizona Contractors.
  - (4) Except as provided in Sections 5.D.2 and 5.D.4, no category of surplus water can be used to create Extraordinary Conservation ICS.
  - (5) The quantity of Extraordinary Conservation ICS remaining in an ICS Account at the end of each Year shall be diminished by annual evaporation losses of 3%. Losses shall be applied

annually to the end-of-the-Year balance of Extraordinary Conservation ICS beginning in the Year after the ICS is created and continuing until no Extraordinary Conservation ICS remains in Lake Mead. No evaporation losses shall be assessed during a Year in which the Secretary has declared a shortage.

- (6) Extraordinary Conservation ICS from a project within a state may be credited to the ICS Account of a Contractor within that state that has funded or implemented the project creating ICS, or to the ICS Account of a Contractor within the same state as the funding entity and project and with written agreement of the funding entity.
- (7) A Contractor must notify Reclamation by September 15 of the amount of Extraordinary Conservation ICS it wishes to create for the subsequent Year. If conditions during the Year change due to weather or other unforeseen circumstances, a Contractor may request a mid-Year modification of its water order to reduce the amount of ICS created during that Year. A Contractor cannot increase the amount of ICS it had previously scheduled to create during the Year.

6. Release of ICS

The release of ICS shall be pursuant to the terms of a Delivery Agreement entered into among the Secretary, the Parties to the Forbearance Agreement and any Contractor creating ICS. The Secretary shall not release ICS to a Contractor unless that Contractor is a party to a Delivery Agreement. A Contractor that has created ICS may request release of its ICS as is provided within such Delivery Agreement and subject to the following conditions:

- a. ICS shall be released pursuant to an ICS Declaration.
- b. If a Contractor has an overrun payback obligation, as described in the October 10, 2003 Inadvertent Overrun and Payback Policy or Exhibit C to the October 10, 2003 Colorado River Water Delivery Agreement, the Contractor must pay the overrun payback obligation in full before requesting or receiving a release of any ICS. The Contractor's ICS account shall be reduced by the amount of the overrun payback obligation in order to pay the overrun payback obligation.
- c. If more ICS is released to a Contractor than is actually available for release to the Contractor in that Year, then the excess ICS released shall be treated as an inadvertent overrun until it is fully repaid.
- d. A Contractor may reduce its request for release of ICS during the Year for any reason, including reduction in water demands. A Contractor may increase its request for release of ICS during the Year only if extraordinary weather conditions or water emergencies occur.

- e. In addition to the conditions described above, the release of Extraordinary Conservation ICS is subject to the following conditions:
  - (1) The total amount of Extraordinary Conservation ICS that may be released in any Year is limited to the following:
    - (a) 400,000 acre-feet for California Contractors;
    - (b) 300,000 acre-feet for Nevada Contractors; and
    - (c) 300,000 acre-feet for Arizona Contractors.
  - (2) If the May 24-month study for that Year indicates that a shortage condition would be declared in the succeeding Year if the requested amounts for the current Year under Section 5.D.6.e.(1) were released, the Secretary may release less than the amounts of ICS requested to be released.
  - (3) If the Secretary releases Flood Control Surplus water, Extraordinary Conservation ICS accumulated in ICS Accounts shall be reduced by the amount of the Flood Control Surplus on an acre-foot for acre-foot basis until no Extraordinary Conservation ICS remains. The reductions to the ICS Accounts shall be shared on a pro-rata basis among all Contractors that have accumulated Extraordinary Conservation ICS.

E. Accounting Procedure for ICS

In consultation with the Basin States, the Secretary shall develop a water accounting procedure to annually establish separate ICS Accounts to account for, at a minimum, the following:

- 1. For each Contractor that creates Extraordinary Conservation ICS:
  - a. The quantity of Extraordinary Conservation ICS created by the Contractor.
  - b. The releases of Extraordinary Conservation ICS to the Contractor.
  - c. The amount of Extraordinary Conservation ICS no longer available for release to the Contractor due to releases for flood control purposes.
  - d. The amount of Extraordinary Conservation ICS deducted pursuant to Section 5.D.5.c.
  - e. The amount of Extraordinary Conservation ICS no longer available for release to the Contractor due to annual evaporation losses pursuant to Section 5.D.5.e.(5).



- f. The amount of Extraordinary Conservation ICS remaining available for release to the Contractor.
  2. For each Contractor that creates Tributary Conservation ICS:
    - a. The quantity of Tributary Conservation ICS created by the Contractor.
    - b. The releases of Tributary Conservation ICS to the Contractor.
    - c. The amount of Tributary Conservation ICS deducted pursuant to Section 5.D.5.c.
    - d. The amount of Tributary Conservation ICS converted to Extraordinary Conservation ICS, if any.
  3. For each Contractor that creates System Efficiency ICS:
    - a. The quantity of System Efficiency ICS created by the Contractor.
    - b. The releases of System Efficiency ICS to the Contractor.
    - c. The amount of System Efficiency ICS no longer available for release to the Contractor for any reason.
    - d. The amount of System Efficiency ICS remaining available for release to the Contractor.
  4. For each Contractor that creates Imported ICS:
    - a. The quantity of Imported ICS created by the Contractor.
    - b. The releases of Imported ICS to the Contractor.
    - c. The amount of Imported ICS deducted pursuant to Section 5.D.5.c.
    - d. The amount of Imported ICS converted to Extraordinary Conservation ICS, if any.

F. Delivery Agreement

The Secretary shall release ICS to a Contractor only after entering into a Delivery Agreement with the Contractor and the Parties to the Forbearance Agreement. Any Delivery Agreement shall be consistent with these Guidelines and the Forbearance Agreement, and shall include the following:

1. A procedure for the annual schedule for the submission and approval of the plans for the creation of ICS, required by Section 5.D.5.a.
2. Procedures for demonstrating and verifying the creation of ICS, including a description of the contents of the Certification Report, required by Section 5.D.5.b.

3. A procedure for the release of ICS, in accordance with Section 5.D.6.
4. An accounting procedure, pursuant to Section 5.E.

## **Section 6. Creation and Release of Developed Shortage Supply**

- A. During any Year in which the Secretary declares a shortage within the United States, Developed Shortage Supply may be created by:
  1. Purchasing documented water rights on Colorado River System tributaries upstream of Hoover Dam within the Contractor's state if there is documentation that the water rights have been used for a significant period of Years and that the water rights were perfected prior to June 25, 1929 (the effective date of the Boulder Canyon Project Act), provided that the quantity of such Developed Shortage Supply shall be limited to the quantity of water set forth in Exhibits incorporated in the Forbearance Agreement, and shall in no event be more than the quantity of such water the Secretary verifies actually flows into Lake Mead; and/or
  2. Introducing non-Colorado River System water in that Contractor's state into the Colorado River Mainstream, making sufficient arrangements with the Secretary, contractual or otherwise, to ensure no interference with the Secretary's management of Colorado River system reservoirs and regulatory structures. Any arrangement shall provide that the Contractor must obtain appropriate permits or other authorizations required by state law and reporting the actual amount of water introduced to the Colorado River Mainstream to the Secretary on an annual basis.
- B. Developed Shortage Supply may only be created by a project that is approved for creation of ICS prior to the declared Shortage.
- C. Except as provided in Sections 6.D through 6.F, Developed Shortage Supply is subject to all conditions set forth in Section 5 relating to creation and release of ICS.
- D. Any Developed Shortage Supply not released pursuant to Section 6.E in the Year it is created may not be converted to Extraordinary Conservation ICS.
- E. The Secretary shall release Developed Shortage Supply during a declared shortage. The following conditions shall apply to the release of Developed Shortage Supply:
  1. Developed Shortage Supply shall be released pursuant to a Shortage Declaration.
  2. Release of Developed Shortage Supply shall not cause the total deliveries within the Lower Division States to reach or exceed 7.5 million acre-feet in any Year. If the volume of Developed Shortage Supply requested to be released in any Year would cause the total deliveries within the Lower Division States to reach or exceed 7.5 million acre-feet for that Year, the Secretary shall consult with all Contractors requesting the release of Developed Shortage Supply and release so much thereof as will not cause

total deliveries in the Lower Division States to reach or exceed 7.5 million acre-feet in that Year.

F. The Secretary shall account for the creation and release of Developed Shortage Supply through the AOP and the Article V Consolidated Decree accounting processes.

G. Delivery Agreement

For a Contractor seeking to create and use Developed Shortage Supply, the Delivery Agreement for ICS executed by the Secretary, the Contractor and the Parties to the Forbearance Agreement shall also include the following:

1. A procedure for the annual schedule for the submission and approval of the plans for the creation of Developed Shortage Supply, required by Sections 6.C and 5.D.5.a.
2. Procedures for demonstrating and verifying the creation of Developed Shortage Supply, including a description of the contents of the Certification Report, required by Sections 6.C and 5.D.5.b.
3. A procedure for the release of Developed Shortage Supply, in accordance with Sections 6.C, 6.E, and 5.D.6.
4. An accounting procedure, pursuant to Section 6.F.

## **Section 7. Implementation of Guidelines**

During the effective period of these Guidelines the Secretary shall utilize the currently established process for development of the AOP and use these Guidelines to make determinations regarding Normal, Surplus and Shortage conditions for the operation of Lake Mead, allocation of apportioned but unused water, the coordinated operations of Lakes Mead and Powell, and the administration of Developed Shortage Supply and contractor accounts for ICS.

The operation of the other Colorado River System reservoirs and determinations associated with development of the AOP shall be in accordance with the Colorado River Basin Project Act of 1968, these Guidelines, and other applicable federal law.

In order to allow for better overall water management during the Interim Period, the Secretary shall undertake a “mid-Year review” pursuant to Section 1(2) of the LROC, allowing for the revision of the current AOP, as appropriate, if actual runoff conditions are greater than projected or demands are lower than projected. The Secretary shall revise the determination for the current Year only to allow for additional deliveries. Any revision in the AOP, including reductions in the amount of ICS released, may occur only after a re-initiation of the AOP consultation process as required by law.

As part of the AOP process during the effective period of these Guidelines, California shall report to the Secretary on its progress in implementing its California Colorado River Water Use Plan.

The Secretary will base annual determinations of surplus, normal and shortage conditions on these Guidelines, unless extraordinary circumstances arise. Such circumstances could include operations necessary for safety of dams or other emergency situations, or other unanticipated or unforeseen activities arising from actual operating experience.

### **Section 8. Consultation**

In addition to the circumstances described in Section 4.D.2, the Secretary shall consult with the Basin States in the following circumstances:

- A. The Secretary will first consult with all the Basin States before making any substantive modification to these Guidelines.
- B. Upon a request by a State for modification of these Guidelines, or upon a request by a State to resolve any claim or controversy arising under these Guidelines or under the operations of Lakes Powell and Mead pursuant to these guidelines or any other applicable provision of federal law, regulation, criteria, policy, rule, or guideline, or the Mexican Water Treaty of 1944, the Secretary shall invite the Governors of all the Basin States, or their designated representatives, to consult with the Secretary in an attempt to resolve such claim or controversy by mutual agreement.

### **Section 9. Effective Period & Termination**

#### A. Effective Period

These guidelines will be in effect 30 days from the publication of the ROD in the Federal Register and will, unless subsequently modified, remain in effect through December 31, 2025 (through preparation of the 2026 AOP), except that during the effective period of the Forbearance Agreement defined in Section 5.C:

- 1. Any ICS remaining in an ICS Account on December 31, 2025, may be released as provided herein until December 31, 2035.
- 2. Tributary Conservation ICS described in Section 5.D.2 and Imported ICS described in Section 5.D.4 shall continue in full force and effect until fifty years from the date of the execution of the Forbearance Agreement.
- 3. Developed Shortage Supply described in Section 6 shall continue in full force and effect until fifty years from the date of the execution of the Forbearance Agreement.

#### B. Termination of Guidelines

Except as provided in Section 9.A, these Guidelines shall terminate on December 31, 2025 (through preparation of the 2026 AOP). At the conclusion of the effective period of these Guidelines, the operating criteria for Lake Powell and Lake Mead are assumed to revert to the operating criteria used to model baseline conditions in the Final Environmental Impact Statement for the Interim Surplus Guidelines

dated December 2000 (i.e., modeling assumptions are based upon a 70R strategy for the period commencing January 1, 2026 (for preparation of the 2027 AOP)).

C. Review of Guidelines

Beginning no later than December 31, 2020, the Secretary shall initiate a formal review for purposes of evaluating the effectiveness of these Guidelines. The Secretary shall consult with the Basin States in initiating this review.

**Section 10. California's Colorado River Water Use Plan Implementation Progress**

The California agricultural (Palo Verde Irrigation District (PVID), Yuma Project Reservation Division (YPRD), Imperial Irrigation District (IID), and Coachella Valley Water District (CVWD)) usage plus 14,500 acre-feet of Present Perfected Right (PPR) use would need to be at or below the following amounts at the end of the Year indicated in Years of Quantified Surplus (for Decree accounting purposes all reductions must be within 25,000 acre-feet of the amounts stated):

| Benchmark Date<br>(Year) | Benchmark Quantity<br>(California Agricultural Usage<br>& 14,500 af of PPR Use in maf) |
|--------------------------|--|
| 2009                     | 3.53   |
| 2012                     | 3.47   |

In the event that California has not reduced its use in amounts to equal the above Benchmark Quantities, the surplus determinations under Sections 4.B.1 or 4.B.2 will be suspended and will instead be based upon the 70R Strategy, for up to the remainder of the term of these Guidelines. If however, California meets the missed Benchmark Quantity before the next Benchmark Date, or after 2012, the surplus determinations under Sections 4.B.1 or 4.B.2 shall be reinstated as the basis for the surplus determinations under the AOP for the next following Year(s).

**Section 11. Authority**

These Guidelines are issued pursuant to the authority vested in the Secretary by federal law, including the Boulder Canyon Project Act of 1928 (28 Stat. 1057) (the "BCPA"), and the Consolidated Decree and shall be used to implement Article III of the Criteria for the Coordinated Long-Range Operation of Colorado River Reservoirs Pursuant to the Colorado River Basin Project Act of September 30, 1968 (Pub. L. No. 90-537), amended March 21, 2005.

**Section 12. Modeling and Data**

The August 24-Month Study projections for the January 1 system storage and reservoir water surface elevations, for the following Year, will be used to determine the applicability of these Guidelines.

In preparation of the AOP, Reclamation will utilize the 24-Month Study and/or other modeling methodologies appropriate for the determinations and findings necessary in the AOP.

Reclamation will utilize the best available data and information, including National Weather Service forecasting to make these determinations.