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**Natural Resources and
Environment Section**

November 7, 2024

TO: Colorado Water Conservation Board

FROM: Phil Weiser, Attorney General
Lain Leoniak, First Assistant Attorney General
Jen Mele, First Assistant Attorney General

RE: Report of the Attorney General

FEDERAL & INTERSTATE MATTERS

1. Rio Grande - Texas v. New Mexico and Colorado, No. 141 Original

This suit focuses on claims asserted by Texas and the United States against New Mexico regarding a violation of the Rio Grande Compact. Colorado is participating as a signatory to the Compact.

The Supreme Court declined to enter the States' proposed consent decree because, under circumstances unique to this case, it would have resolved claims that the Court had earlier allowed the United States to assert under the Compact as an intervenor in this litigation. The Compacting States are working together to litigate a remedy similar to their proposed consent decree as the most viable solution consistent with the compact. Special Master Smith held a status conference on October 23rd. He ordered the parties to mediate using the prior mediator, Judge Boylan, by the end of this year. He has not yet set any other deadlines.

2. The Upper Division States' 5-Point Plan in Response to the Bureau of Reclamation's Call for Further Cooperative Actions for the Colorado River

On July 18, 2022, and in response to the request made by the Commissioner of the Bureau of Reclamation (Reclamation) for the Colorado River Basin States to take additional actions in light of the continued drought and depleted storage, the Upper Division States developed a 5-Point Plan that includes the following elements that remain on-going:

- (1) Amendment and reauthorization of the System Conservation Pilot Project (SCPP) legislation originally enacted in 2014. The SCPP was reauthorized in December 2022 through 2024. The SCPP is a voluntary, temporary, and compensated program available to interested and willing water users in the Upper Division States and is intended to mitigate drought impacts in the Upper Basin. For the SCPP in 2024, 52 system conservation implementation agreements and verification plans have been executed for Colorado projects. The projects are being completed as the irrigation system wraps up, and the Colorado River Subunit is assisting in reviewing final verification reports.
- (2) Consideration of an Upper Basin Demand Management program as interstate and intrastate feasibility investigations are completed.
- (3) Implementation, in cooperation with Reclamation, of the Bipartisan Infrastructure Law for Upper Basin Drought Contingency Plan funding to accelerate enhanced measurement, monitoring, and reporting infrastructure to improve water management tools across the Upper Division States.
- (4) Continuing strict water management and administration of the available annual water supply in the Upper Division States, including implementation and expansion of intrastate water conservation programs and regulation and enforcement under the doctrine of prior appropriation.

Reclamation data shows that Lower Basin and Mexico depletions are more than double the depletions in Colorado and the other Upper Division States. Therefore, additional efforts to protect critical reservoir elevations must include significant actions focused downstream of Lake Powell. Otherwise, the effectiveness of the 5-Point Plan will be severely limited.

3. National Environmental Policy Act Process for Guidelines of Post-2026 Operations at Lake Powell and Lake Mead

Reclamation formally initiated an environmental review process under the National Environmental Policy Act (NEPA) to prepare an Environmental Impact Statement (EIS) for the development of post-2026 operations. On June 16, 2023, Reclamation issued a Request for Comments on the *Notice of Intent to Prepare an Environmental Impact Statement and Notice to Solicit Comments and Hold Public Scoping Meetings on the Development of Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead* (NOI), 88 FR 39455. Through the NOI, Reclamation is requesting comments on: (1) the scope of specific operational guidelines, (2) strategies, and (3) any other related issues that should be considered in the upcoming EIS. In addition to joining the Comment Letter submitted by the Basin

States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming, and the Upper Division States of Colorado, New Mexico, Utah, and Wyoming through the UCRC, Colorado also submitted comments.¹

On October 20, 2023, Reclamation issued a *Federal Register Notice of the Availability of the Summary Scoping Report on the Development of Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead* (FRN), 88 FR 72535 (Scoping Summary Report). The Scoping Summary Report provides a summary of the comments received during the public scoping process and describes Reclamation's current, preliminary assessment of the proposed federal action, purpose and need, and scope of the environmental analysis to be included in the draft environmental impact statement (DEIS).

On March 5, 2024, the Upper Division States submitted their alternative for analysis by Reclamation as part of the NEPA process. It is anticipated that the DEIS will be published in December of 2024 for public review and comment as part of the NEPA process. The FRN states that the Department of the Interior intends to "adopt and implement the guidelines in a manner consistent with the Law of the River." The FRN defines the Law of the River as "[t]he treaties, compacts, decrees, statutes, regulations, contracts, and other legal documents and agreements applicable to the allocation, appropriation, development, exportation, and management of the waters of the Colorado River Basin."

INTRASTATE MATTERS

4. In September and October 2024, the Water Conservation Unit on behalf of the CWCB filed a statement of opposition in the following cases:

- Dequine Family, LLC, Case No. 20CW3060, Water Div. 6 – Motion to Intervene
- Richard Williams, Case No. 24CW3124, Water Div. 1
- Donala Water & Sanitation Dist., Case No. 24CW3019, Water Div. 2
- San Luis Valley Water Conservancy Dist., Case No. 24CW3008, Water Div. 3
- City of Colorado Springs, Case No. 24CW3116, Water Div. 5

5. In September 2024, the Water Conservation Unit on behalf of the CWCB stipulated to entry of a decree in the following cases:

- City of Aurora, Case No. 19CW3159, Water Div. 5 – Amended Stipulation
- NamuRanch, LLC, Case No. 22CW3082, Water Div. 5

¹ NOI Comments from the Upper Division States are available at: <http://www.ucrccommission.com/upper-division-states-and-the-upper-colorado-river-commission-ucrc-comment-on-reclamations-notice-of-intent-for-a-supplemental-eis-for-the-2007-interim-guidelines/>.

6. In September 2024, the following instream water rights were decreed:

- Monitor Creek, Case No. 23CW3084, Water Div. 4. The Monitor Creek Instream Flow Water Right is located in the natural stream channel of Monitor Creek from the confluence of Little Monitor Creek to the confluence with Potter Creek, a distance of approximately 8.29 miles, in the amount of all of the unappropriated flow that is available from April 1 to September 30, effective after the flow rate in Monitor Creek reaches 111 cfs until such time that the flow rate recedes to 4.6 cfs (4/1 - 5/31) or 3.6 cfs (6/1 - 9/30).
- Potter Creek, Case No. 23CW3085, Water Div. 4. The Potter (Upper) Instream Flow Water Right is located in the natural stream channel of Potter Creek from the USFS property boundary to the confluence with Monitor Creek, a distance of approximately 8.10 miles, in the amount of all of the unappropriated flow that is available from April 1 to September 30, effective after the flow rate in Potter Creek (Upper) reaches 177 cfs until such a time that the flow rate recedes to 4 cfs (4/1-6/15), 1.8 cfs (6/16 – 7/31) or 1.4 cfs (8/1 – 9/30).

The Potter Creek (Lower) Instream Flow Water Right is located in the natural stream channel of Potter Creek from the confluence of Monitor Creek to the confluence with Roubideau Creek, a distance of approximately 1.72 miles, in the amount of all of the unappropriated flow that is available from April 1 to September 30, effective after the flow rate in Potter Creek (Lower) reaches 225 cfs until such time that the flow rate recedes to 4 cfs (4/1 - 6/15), 1.8 cfs (6/16 - 7/31) or 1.4 cfs (8/1 -9/30).