



August 15, 2023

Commissioner Camille Calimlim Touton
Bureau of Reclamation
1849 C Street NW
Washington, DC 20240-0001

VIA ELECTRONIC MAIL
crbpost2026@usbr.gov

RE: The State of Colorado's Response to the 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, 88 FR 39455 (June 16, 2023)

Dear Commissioner Touton:

The State of Colorado, acting through the Governor's Representative and the Colorado Water Conservation Board (collectively "Colorado"), submit the following comments in response to the Bureau of Reclamation's ("Reclamation") 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 (June 16, 2023). Colorado appreciates your consideration of our comments and requests that they be incorporated into the preparation of the Post-2026 Operations Environmental Impact Statement ("Post-2026 Operations").

The State of Colorado understands that Reclamation is formally initiating 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. Through the June 16, 2023, Notice, 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 Letter through the Upper Colorado River Commission ("UCRC"), Colorado submits the following comments:



I. Colorado's Interests

Colorado is on the front lines of climate change. Because no major rivers flow into Colorado, and we are without the benefit of large reservoirs above our places of use to provide a steady, reliable source of supply, Colorado must satisfy all its water demands from runoff within the state. The Colorado River and its tributaries supply over forty percent of Colorado's water needs and provide water to the majority of the State's population.

In Colorado, we have a long history of administering water rights according to the physical and legal availability of water in a particular location at a particular time. Because we rely solely on snowpack and subsequent runoff each spring for our water use, our water use is highly variable each year. Colorado's system of administration allows for adaptation to such changing circumstances, including throughout the last twenty-three years of drought. This means that many water users in Colorado do not receive the full amount of their legal allocation that they can place to beneficial use under existing rights, which significantly impacts Colorado's farms, ranches, cities and towns, the recreation industry, and the environment. Importantly, for the last twenty-three years, Colorado water users have had to cut uses and take shortages nearly every year, including cuts to water rights that are senior to the 1922 Colorado River Compact. In some instances, Colorado water users only received ten percent of what they are legally entitled to receive. In 2021, Colorado and the other Upper Division States used 3.5 maf, which is roughly 1.0 maf less than they used in 2020 and is less than half of the water apportioned to the Upper Basin under the Colorado River Compact.

Despite these challenging circumstances, over the last two years, Colorado and the other Upper Division States contributed 624,000 acre-feet of water from Colorado River Storage Project Act reservoirs to help protect critical elevations in Lake Powell under the 2019 Drought Contingency Plan ("DCP"). In 2022, Colorado, along with the three other Upper Division States also developed a 5 Point Plan that included a voluntary, temporary, and compensated pilot program available to willing water users to conserve water to help mitigate drought conditions in the Upper Basin through 2024. Through that program, the Upper Division States are projected to conserve approximately 40,000 acre-feet in 2023, with Colorado contributing roughly 2,700 acre-feet.

Despite these efforts, storage in Lake Powell and Lake Mead has been depleted over the last twenty years, which has created risks for the entire Colorado River System, including Colorado's substantial interests in the Colorado River. Protection of Colorado's interests into the future requires operation of Lake Powell and Lake Mead based on actual hydrology, and the restoration and protection of storage to maximize operational certainty.



II. Purpose and Need

New guidelines for Post-2026 Operations are needed because the current operating guidelines are not sustainable. Between 2000 and 2022, the Colorado River experienced the worst drought conditions in over one hundred years of recorded history. During this period, storage in Lake Powell and Lake Mead dropped from nearly full to a system storage of less than 32 percent of capacity as of March 20, 2023. Despite a record snowpack in 2023 and a very high spring runoff, the system storage was still only at 44 percent of capacity as of July 18, 2023. The prolonged drought and allowed overuse in the Lower Basin have highlighted the deficiencies in the *Colorado River Interim Guidelines for Lower Basin Shortages and the Coordinated Operations for Lake Powell and Lake Mead* (“2007 Guidelines”). The 2007 Guidelines have proven insufficient to properly manage Lake Powell and Lake Mead during periods of dry hydrology and depleted reservoir conditions.

The need for repeated interventions as the system bordered on collapse demonstrates the ineffectiveness of the 2007 Guidelines. This includes the System Conservation Pilot Programs that started in 2014, the DCP, Minute 323, and the 2022 Supplemental EIS to the 2007 Guidelines that is currently underway.

Over the past fifteen years, storage in Lake Powell and Lake Mead has been depleted largely due to reservoir releases that do not respond to actual hydrologic conditions. Releases from storage under the 2007 Guidelines ignore critical components of the mass balance of water across the Basin including but not limited to accounting for evaporative and conveyance losses in the Lower Basin. Moreover, as has been clear since 2020, shortage conditions imposed by the 2007 Guidelines and the DCPs do not begin early enough and do not conserve adequate volumes of water to sustain critical infrastructure elevations at Lake Powell and Lake Mead during multi-year drought periods.

Guidelines that meet the criteria below will provide a greater degree of operational certainty to Colorado River water users and managers of waters at and below Lake Powell into the future. Going forward, the guidelines for Post-2026 Operations must use actual hydrologic conditions for decision-making, rather than data from projections several months or years into the future, and allow for the restoration and protection of storage in both reservoirs. This enables water users and managers in the Upper and the Lower Basin to know the amount of available water supply in a given year, and to adapt in such a way that in dry years, uses are reduced to reflect available water supplies and storage is preserved to the greatest extent possible in the event of multi-year drought.

This will require guidelines for Post-2026 Operations that:

1. Acknowledge that climate change is real, and include operations for a drier, more variable future that adapt and respond to actual hydrology.



2. Include mechanisms to rebuild depleted storage in both reservoirs and to protect storage into the future by considering actual hydrology and using targeted, short-term forecasting.
3. Recognize that Lower Basin overuse is unsustainable and puts the entire system at risk. New guidelines should better assure operational certainty into the future by reducing the imbalance between supply and uses. This will require permanent Lower Basin reductions of 1.2 million acre-feet to 1.5 million acre-feet each year. An important step to help meet those reductions may be to account for evaporation and system losses in the Lower Basin.
4. Do not interfere with the right of any state to administer and distribute all the waters within its boundaries.
5. Avoid uncertain outcomes from litigation by recognizing the Law of the River, anchored by the 1922 Colorado River Compact and the 1948 Upper Colorado River Basin Compact (“Compacts”) together with the 1944 Treaty with Mexico, as the foundation for any new guidelines and strategies for Post-2026 Operations. These foundational components provide legal certainty regarding management of the Colorado River System and its infrastructure and allow for collaboration and consensus.
6. Ensure that operations do not favor one basin over the other. Post-2026 operating guidelines must fairly balance the burden of climate change across the entire Colorado River Basin. The Upper and Lower Basins have equal apportionments of the Colorado River in perpetuity. Water users in the Lower Basin cannot be given priority over water users in Colorado and the other Upper Division States.
7. Acknowledge that Colorado River Basin Tribes have water rights that they are entitled to use. The development of sustainable and effective guidelines and
8. Strategies for Post-2026 Operations at Lake Powell and Lake Mead will depend upon participation of the Colorado River Basin Tribes.

III. Scope of NEPA Process

The NOI recognizes that guidelines and strategies for Post-2026 Operations will pertain to operations of Lake Powell and Lake Mead. As such, those guidelines can only focus on hydrologic conditions impacting Lake Powell, storage conditions, and releases at Lake Powell and Lake Mead subject to the existing legal framework. They cannot modify operations at the other Initial Units built under the Colorado River Storage Project Act, including the respective records of decision that govern each of these reservoirs.



Over the last twenty-three years of drought, the Upper Division States experienced imbalances between available supply and demands because the Upper Division States are limited by actual hydrology and experience shortages every year. This includes uncompensated water rights administration that result in reductions in water annually. During the same period, water use in the Lower Basin remained constant and even increased during the worsening drought in recent years.

Any assumption of reductions in use or curtailment in the Upper Basin is beyond the scope of this process. Separate from this process, Colorado will continue to advance initiatives to increase resiliency and the sustainable use of its Colorado River supplies.

Guidelines for Post-2026 Operations must rely upon the best available science, including actual hydrology and storage conditions at Lake Powell and Lake Mead, and the targeted use of short-term forecasting. The guidelines must include accurate, and transparent accounting for all depletions in the Colorado River System that are consistent with the Law of the River, issued annually, and rely upon the most recent studies including, but not limited to, the *One Meter Topobathymetric Digital Elevation Model for Lake Powell, Arizona-Utah, 1947-2018*.

Moreover, to understand and compare alternatives for guidelines for Post-2026 Operations, it is imperative that Reclamation issue the Lower Basin Consumptive Uses and Losses Report 2006-2022 at the earliest opportunity.

There must also be a thorough analysis of the Secretary of the Interior’s (“Secretary”) authorities to apportion water and impose shortages in the Lower Basin and to consider opportunities to balance water supplies with depletions there to recover storage at Lake Powell and Lake Mead. However, a detailed framework or rulemaking for voluntary water conservation measures in the Lower Basin, species conservation programs, or other related matters must be addressed in separate but parallel proceedings.

Guidelines for Post-2026 Operations must be interim in duration.

IV. No Action Alternative

The NOI recognizes that the 2007 Guidelines and the DCPs, and related reservoir and water management agreements and decisional documents are scheduled to expire December 31, 2025. Amending the 2007 Guidelines, the DCPs, and related agreements to extend their current expiration dates requires federal action. Therefore, the No Action alternative cannot include the extension of the 2007 Guidelines or the DCPs.

The No Action Alternative must acknowledge that pursuant to Section 8.C of the 2007 Guidelines, absent the issuance of a Record of Decision for Post-2026 Operations at Lake Powell and Lake Mead, at the conclusion of the effective period of the 2007



Guidelines, the operating criteria for Lake Powell and Lake Mead are to revert to the long range operating criteria used to model baseline conditions in the Final Environmental Impact Statement (“FEIS”) for the Interim Surplus Guidelines dated December 2000 (“2000 ISGs”) (i.e., modeling assumptions based upon a 70R Strategy for the period commencing January 1, 2026 (for preparation of the 2027 AOP)).

There are outstanding questions related to the long range operating criteria used to model baseline conditions in the FEIS for the 2000 ISGs. Colorado respectfully requests the Secretary and Reclamation consult with Colorado and the other Basin States on that criteria, modeling assumptions, and the No Action Alternative.

V. Other Considerations

Colorado, with the other Upper Division States, has committed to a process with the Lower Division States to develop a consensus Basin States Agreement Alternative. Participation of the Colorado River Basin Tribes is critical to this process. To that end, Colorado is engaging with the other Basin States to coordinate with the Colorado River Basin Tribes. Colorado and the other Upper Division States through the UCRC, are also engaging with the Upper Basin Tribes, and Colorado continues to work closely with the Southern Ute Indian Tribe and the Ute Mountain Ute Indian Tribe.

Colorado supports the efforts of the United States and Mexico through the International Boundary and Water Commission to engage in the separate but concurrent binational process to complement any guidelines for Post-2026 Operations at Lake Powell and Lake Mead. Colorado further supports the inclusion of the Basin States in the binational process.

VI. Reservation of Rights

Colorado’s comments are intended to highlight overarching issues that will require acknowledgment or clarification as the EIS process continues. Colorado’s failure to provide specific comments regarding details of this NEPA process shall not be construed as an admission with respect to any factual or legal issue or the waiver of rights for the purposes of any future legal, administrative, or other proceeding. Furthermore, Colorado reserves the right to comment further on Scoping and the EIS documentation as Reclamation proceeds with subsequent phases of the NEPA process to develop guidelines for Post-2026 Operations at Lake Powell and Lake Mead.

VII. Conclusion

As a Colorado River Basin State, Colorado has a unique interest in the water supplies of the Colorado River Basin. As a party to, and beneficiary of, the interstate compacts and laws that govern the management of the Colorado River, Colorado has an obligation to protect the



interests of Colorado’s water users who rely on the Colorado River. Colorado is committed to working with Reclamation as the formal NEPA process develops. Moreover, Colorado plans to partner and engage with the other Basin States, Colorado River Basin Tribes, water users, and stakeholders.

Colorado appreciates the opportunity to provide these comments on the NOI for the development of guidelines for Post-2026 Operations at Lake Powell and Lake Mead. We look forward to continuing our partnership with you and our partners across the Colorado River basin as we move forward in protecting and managing this critical resource into the future.



Rebecca Mitchell
Colorado Commissioner
Upper Colorado River Commission



Lauren Ris
Acting Director
Colorado Water Conservation Board

