



# UPPER COLORADO RIVER COMMISSION

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August 15, 2023

Commissioner Camille Calimlim Touton  
Bureau of Reclamation  
Attn: Post-2026 (Mail Stop 84-55000)  
P.O. Box 25007  
Denver, CO 80225  
[crbpost2026@usbr.gov](mailto:crbpost2026@usbr.gov)

Dear Commissioner Touton:

The undersigned Governors' Representatives of the States of Colorado, New Mexico, Utah and Wyoming (the "Upper Division States"), acting through the Upper Colorado River Commission ("UCRC"), respectfully submit the following comments in response to the Bureau of Reclamation's ("Reclamation") *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). We appreciate your consideration of our comments, which are in addition to the comment letter we are providing jointly with the States of Arizona, California, and Nevada (the "Lower Division States").

## I. INTRODUCTION AND BACKGROUND

Reclamation has formally initiated an environmental review process under the National Environmental Policy Act ("NEPA") with the goal of preparing an Environmental Impact Statement ("EIS") for the development of new operations for Lake Powell and Lake Mead beyond 2026. The new operational guidelines and strategies to be selected through this EIS will replace the 2007 Colorado River Interim Guidelines for Lower Basin Shortages and the Coordinated Operations for Lake Powell and Lake Mead ("2007 Guidelines") which expire in 2026. The Upper Division States support the development of new operational guidelines and strategies for Lake Powell and Lake Mead ("Post-2026 Operations") to replace the 2007 Guidelines.

Because the Basin States have a unique interest in the management of the Colorado River, Reclamation's engagement with all seven states will be essential to ensure the effectiveness of Post-2026 Operations. This includes the Upper Division States, acting through the UCRC, and the Lower Division States. All seven Basin States have significant interests in protecting the water supplies of the millions of people who rely on the Colorado River. Recognizing the unique status of the States, the Secretary of the Interior ("Secretary") must consult with the Governors'

Representatives from each Basin State and collaborate on the development of alternatives for Post-2026 Operations at Lake Powell and Lake Mead. Options for Post-2026 Operations will be significantly limited without the Basin States' participation. The Upper Division States are committed to working with Reclamation, including through this NEPA process, to develop the new guidelines for Post-2026 Operations. In addition, the Upper Division States anticipate working with the Lower Division States to develop an alternative for consideration and evaluation, as the Basin States did for the NEPA process for the 2007 Guidelines.

## **II. UPPER BASIN PRIORITIES**

The Post-2026 Operations must:

1. Address the imbalance between available supply and demand. This will require permanent Lower Basin reductions under most if not all operating conditions. One way to achieve these reductions would be to address evaporation and system losses in the Lower Basin, which are currently estimated at 1.2 million acre-feet to 1.5 million acre-feet annually.
2. Recognize that the Upper Basin is naturally limited by actual hydrology and that Upper Basin water users experience shortages, which include uncompensated administrative regulation, every year.
3. Not interfere with the rights of any state to administer and regulate water within its boundaries.
4. Include durable, effective, and flexible mechanisms to protect storage and critical elevations at Lake Powell and Lake Mead and to rebuild depleted storage at both reservoirs.
5. Ensure that operations cannot favor one basin over the other.
6. Be more responsive to actual hydrology at Lake Powell and Lake Mead.

## **III. PURPOSE AND NEED**

The 2007 Guidelines remain in effect through December 31, 2025, (through preparation of the 2026 Annual Operating Plan). In order to have a new management system in place by the time the 2007 Guidelines expire, the Secretary has directed Reclamation to develop new guidelines for Post-2026 Operations at Lake Powell and Lake Mead. Over 15 years of operational experience illustrate that the 2007 Guidelines are insufficient to properly manage Lake Powell and Lake Mead. Extended periods of dry hydrology and depleted reservoir conditions have highlighted the inadequacy of the 2007 Guidelines to adapt to worsening hydrology and increased uses. Storage releases under the 2007 Guidelines do not appropriately respond to actual hydrologic conditions. Under the 2007 Guidelines, shortages in the Lower Basin are

triggered at elevations when storage is already significantly depleted. Lower Basin shortages under the 2007 Guidelines are also insufficient in magnitude to protect critical elevations at Lake Mead, which has induced balancing releases from Lake Powell. These inadequate operations, exposed by numerous years of dry hydrology, have brought the system to the brink of crisis. Operating the system in this manner is not sustainable.

In order to assure stability into the future, the Post-2026 Operations must address the imbalance between available supply and demand, considering increased hydrologic variability exacerbated by climate change. The Colorado River supports multiple uses of water. To protect these varied water uses, Reclamation must develop Post-2026 Operations for Lake Powell and Lake Mead that provide the greatest possible degree of operational certainty for water users and managers while providing sufficient flexibility to respond to changing conditions.

The Law of the River must be the foundation for the Post-2026 Operations, anchored by the 1922 Colorado River Compact and the 1948 Upper Colorado River Basin Compact (“Compacts”) together with the 1944 Treaty with Mexico.

#### **IV. SCOPE OF THE NEPA PROCESS**

The scope of the NEPA process for the Post-2026 Operations should be narrow. The NOI states that new guidelines for Post-2026 Operations will focus on the operation of Lake Powell and Lake Mead. As such, Post-2026 Operations should focus only on those topics necessary to sustainably manage water supplies at Lake Powell and Lake Mead. Post-2026 Operations cannot modify operations at the other Initial Units built under the Colorado River Storage Project Act and cannot modify the respective records of decision that govern each of these reservoirs.

Other issues, such as unresolved Tribal water rights, endangered species, and other environmental issues and concerns, should be addressed through other established programs, processes, and frameworks.

The Post-2026 Operations must incorporate the best available science and account for an appropriately wide range of hydrologic conditions, from the very dry to the very wet. While forecasting may be necessary in some situations, the Post-2026 Operations must primarily focus on responding to actual conditions and rebuilding and protecting storage at Lake Powell and Lake Mead. They must also include accurate, transparent, and timely accounting of depletions.

The Post-2026 Operations must be interim in duration. This will allow Reclamation and the Basin States to gain valuable operating experience under operations that respond to actual hydrology and rebuild and protect storage in Lake Powell and Lake Mead. An interim period would also improve the basis for making additional future operational decisions, whether during the new interim period or thereafter. Finally, an interim period would allow for opportunities to continue to adapt to climate change and other unforeseen circumstances.

## **V. THE NO ACTION ALTERNATIVE CANNOT EXTEND THE 2007 GUIDELINES OR THE 2019 DROUGHT CONTINGENCY PLANS (“DCPs”)**

The NOI recognizes that the 2007 Guidelines, the DCPs, and other reservoir and water management agreements and decisional documents are scheduled to expire at the end of 2025. Amending these documents and agreements to extend their current expiration dates would require 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 upon expiration of the 2007 Guidelines, the operating criteria for Lake Powell and Lake Mead will revert to the long-range operating criteria used to model baseline conditions in the Final Environmental Impact Statement for the Interim Surplus Guidelines dated December 2000. However, details regarding implementation of the long-range operating criteria are unclear. We request that the Secretary consult the Basin States for input on the development of the No Action alternative.

## **VI. ENGAGEMENT**

The success of new guidelines for Post-2026 Operations at Lake Powell and Lake Mead will depend on the support and participation of the Colorado River Basin Tribes. The Upper Division States, acting through the UCRC, will continue to use interstate and intrastate efforts to collaborate with the Tribes and look forward to their participation in EIS process.

The Upper Division States will also continue to engage with water users, non-governmental organizations, and other stakeholders that are interested in the Post-2026 Operations of Lake Powell and Lake Mead.

The NOI recognizes that Minute 323 between the United States and Mexico is scheduled to expire at the end of 2025. The United States, Mexico, and the Basin States must work through the appropriate binational process. This binational process will be separate from the development of the Post-2026 Operations; however, both processes should take place simultaneously.

## **VII. RESERVATION OF RIGHTS**

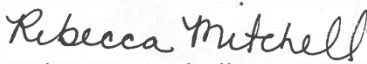
The Upper Division States expressly reserve their rights under applicable law, including, but not limited to, the Law of the River. Nothing in this letter is intended to be, nor shall be construed to interpret, diminish, or modify the rights of the Upper Division States or the UCRC under federal or state law or administrative rule, regulation, or guideline. This submittal is not intended to be, and shall not be construed in any way as, a waiver of any such rights. Moreover, we reserve the right to provide further comments, consult with the Secretary, take any other necessary steps, and engage with Reclamation as it proceeds with subsequent phases of the Post-2026 Operations NEPA process.

**VIII. CONCLUSION**


We appreciate the opportunity to comment. We are committed to working with Reclamation to develop and analyze alternatives in this NEPA process. We urge Reclamation to include the elements described in these comments in its development of the No Action and action alternatives.

We will continue to work together and in cooperation with the federal government, the Lower Division States, Tribes, water users, non-governmental organizations, and other Colorado River stakeholders to reach consensus on how best to share the burden of protecting Lake Powell and Lake Mead, from which we all derive so many benefits.

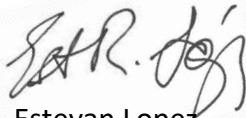
Sincerely,




Rebecca Mitchell  
Rebecca Mitchell  
Governor's Representative  
State of Colorado



Gene Shawcroft  
Gene Shawcroft  
Governor's Representative  
State of Utah



Estevan Lopez  
Estevan Lopez  
Governor's Representative  
State of New Mexico



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