

STATE OF NEW MEXICO



August 15, 2023

Via email only to crbpost2026@usbr.gov

Honorable Camille Calimlim Touton
Commissioner
Bureau of Reclamation
Attn: Post-2026 (Mail Stop 84-55000)
P.O. Box 25007
Denver, CO 80225

Re: State of New Mexico scoping comments in response to 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

Dear Commissioner Touton:

The State of New Mexico provides this letter in response to 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” published in the Federal Register on June 16, 2023. 88 Fed. Reg. 39455 (June 16, 2023).

This letter represents the State of New Mexico’s comments on the scope of specific operational guidelines, strategies, and other issues that should be considered in the Bureau of Reclamation (“Reclamation”)’s proposed Environmental Impact Statement (“EIS”). To avoid repetition, New Mexico hereby incorporates by reference all points made in the seven Colorado River Basin States and the Upper Colorado River Commission (“UCRC”)’s comment letters submitted in response to the Notice of Intent for this EIS. Moreover, nothing in this letter is intended to, nor shall be construed to interpret, diminish, or modify the rights of the State of New Mexico under federal or state law or administrative rule, regulation, or guideline.

In considering potential future operations in the Colorado River Basin, New Mexico recommends applying lessons learned from the 2007 Colorado River Interim Guidelines for Lower Basin Shortages and the Coordinated Operations for Lake Powell and Lake Mead (“2007 Guidelines”). The 2007 Guidelines have been in place since December 2007 and currently

govern management of the two reservoirs, along with the 2019 Drought Contingency Plans (“DCPs”). The 2007 Guidelines have proven insufficient to adequately manage Lake Powell and Lake Mead, particularly in drier hydrology. This insufficiency required negotiating and implementing several other actions during the lifetime of the 2007 Guidelines. This included the DCPs and, in 2022, the Supplemental Environmental Impact Statement to the 2007 Guidelines.

Over the life of the 2007 Guidelines, releases of water from Lake Powell have, at times, outpaced the inflows into the reservoir that we have experienced in the 21st century. Historically, the abrupt jumps in Lake Powell releases at tier interfaces have been problematic because forecast errors and small changes in hydrology have been sufficient to shift from one tier to another. This has sometimes led to a perverse outcome in which slightly better hydrology resulted in a release of large amounts water from Powell storage compared to what would have been released under slightly different hydrology. In some instances, operations at Lake Mead have negatively impacted Lake Powell elevations. Lessons learned from the 2007 Guidelines can help avoid the mistakes of the past and provide helpful insight on how to proceed differently in the future. The 1922 Compact was signed to protect the interests of all seven states in the Colorado River Basin. New Mexico understands that the Lower Basin wants to protect the robust economy made possible because it has had a secure and dependable water supply. However, that must not be accomplished at the expense of the Upper Basin not being able to more fully develop its economy.

Scope

New Mexico offers the following comments to be considered by Reclamation regarding the scope of the EIS for post-2026 operational guidelines and strategies for Lake Powell and Lake Mead (“Post-2026 Operations”).

1. The scope of the analysis for Post-2026 Operations must be narrow. The scope of the EIS should be limited to the coordinated operations of Lake Powell and Lake Mead. Such a narrow scope will allow Reclamation to thoroughly analyze and compare the alternatives studied in the EIS, while adhering to the ambitious timeline of publishing a Draft EIS by the end of 2024. Operational experience gained from the 2007 Guidelines has demonstrated that this is the proper scope for Post-2026 Operations. In particular, the EIS should not modify the Record of Decision for Navajo Reservoir, or those of the other upstream initial units under the Colorado River Storage Project Act (i.e., Flaming Gorge and the Aspinall Unit).
2. New Mexico believes that Reclamation must continue its efforts to shift management to a sustainable balance. For instance, it is imperative that Reclamation find a way to account for evaporation and system losses in the Lower Basin. Those are estimated to deplete more than a million acre-feet of water each year and are currently unaccounted for. Achieving a sustainable balance is a matter of reconciling demand with available supply. With respect to supply, the EIS must consider drought sequences that are longer and more severe than those observed in the historical record. Conversely, the EIS must also consider the possibility of large quantities of rain and snow coming into the system all at once, in a single year, as occurred in the spring of 2023, or in a series of wet years. With

respect to demand, the EIS must consider climate change and its hydrologic consequences, as well as continuing changes in population distribution in the Colorado River Basin.

3. The guidelines for Post-2026 Operations must be interim in nature. While the precise length of that interim period is subject to debate, the recent past has demonstrated that we cannot accurately anticipate what hydrology and climate will be in twenty years. We have also learned from the implementation of the 2007 Guidelines that short-term reactive management is very time-consuming and not very efficient. The new guidelines should include periodic reviews (possibly every five years), as well as “offramps” if original assumptions appear unrealistic as time goes on.
4. The Post-2026 Operations will require flexibility and the ability to rapidly shift between different management options. Therefore, in this EIS, within its narrow consideration of coordinated operations of Lake Powell and Lake Mead, it is important that Reclamation study a large array of hydrologies and tools, in order to have maximum flexibility for rapidly adapting to changing circumstances as necessary after 2026.
5. Reclamation must use the best available science. The Post-2026 Operations must include realistic, transparent, and agreed-upon data in modeling and analyses, with a focus on consumptive uses and losses data, demand estimates, and observed hydrology. This will provide increased predictability for water users under a wide range of conditions, including varied hydrology. New Mexico also encourages Reclamation to use Decision Making under Deep Uncertainty (“DMDU”) as a tool in its evaluation of Post-2026 Operations. DMDU could help plan for an uncertain future and better allocate resources. It could help us to anticipate and adapt to changing circumstances. New Mexico values the use of any tool that helps having a systematic approach to addressing unforeseen outcomes.
6. New Mexico encourages Reclamation to further include Native American Tribes in the development of this EIS. Tribes hold title to a large portion of water in the Colorado River Basin and their participation and inclusion in this process is critical to finding solutions going forward.
7. New Mexico recommends prioritizing durable long-term reductions in consumptive use over shorter-term and temporary projects in considering Post-2026 Operations. New Mexico also supports projects that increase water efficiency to make better use of the available supply. In addition, New Mexico is supportive of projects that increase the available water supply. However, New Mexico does not believe that this EIS is the proper forum to analyze specific augmentation projects.

Purpose & Need

The Secretary has directed Reclamation to develop post-2026 Colorado River reservoir operational guidelines and strategies for Lake Powell and Lake Mead because the 2007 Guidelines expire at the end of 2025.

Post-2026 Operations need to improve the stability of the Colorado River system and ensure that stability into the future. This has to include consideration of the potential for increased hydrologic variability exacerbated by climate change in the Basin. In this context, stability means that some amount of water continues to be available to water users in the Basin in accordance with the spirit of the 1922 Compact.

Taking into account current and anticipated natural supply conditions, consumptive uses and losses cannot exceed the natural water supply provided by the watershed. Reclamation data shows that Lower Basin and Mexico depletions are currently double the total depletions in the Upper Basin. Post-2026 Operations must reduce that imbalance. This requires, among other things, effective and flexible mechanisms to protect storage. Increasingly unpredictable hydrology requires protecting higher elevations at Lake Powell and Lake Mead in order to create a buffer to sustain supplies, so that we can withstand consecutive dry years as well as intermittent wet years.

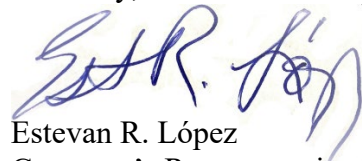
Through this EIS, Reclamation needs to develop procedures for Post-2026 Operations that better adapt and respond to actual hydrology and available water supplies in the Colorado River Basin. These supplies support multiple uses of water, including, among others, municipal, tribal, industrial, and agricultural uses, as well as power production. In the Post-2026 Operations, Reclamation will need to place more emphasis on the effects of actual hydrology on Lake Powell and Lake Mead, while using forecast modeling on a more limited basis.

Finally, the Post-2026 Operations must be consistent with the Law of the River, in particular the 1922 Compact, the 1948 Compact, and the 1944 Treaty.

Conclusion

These comments are not exhaustive, and New Mexico reserves the right to provide additional comments on this EIS as the NEPA process moves forward. We thank you for the opportunity to comment on issues related to this EIS, and we look forward to working collaboratively with you on development of the Post-2026 Operations.

Sincerely,



Estevan R. López
Governor's Representative
State of New Mexico

Cc: Courtney Kerster, New Mexico Office of the Governor
Mike Hamman, New Mexico State Engineer
Hannah Riseley-White, Director, New Mexico Interstate Stream Commission
Ali Effati, Colorado River Basin Bureau Chief, NMISC