



State of Utah

SPENCER J. COX
Governor

DEIDRE M. HENDERSON
Lieutenant Governor

Colorado River Authority of Utah

Gene Shawcroft, P.E.
River Commissioner

Amy I. Haas
Executive Director

August 15, 2023

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

Re: Notice of Intent to Prepare an Environmental Impact Statement on the Development of Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead

Dear Commissioner Touton:

On behalf of the state of Utah, I am pleased to comment on the above-referenced Notice of Intent (NOI) to Prepare an Environmental Impact Statement for the Development of Post-2026 Operational Guidelines for Lakes Powell and Mead (Post-2026 EIS). Utah supports the initiation of this formal National Environmental Policy Act (NEPA) process and welcomes the opportunity to provide feedback concerning the scope of anticipated operational guidelines for Lakes Powell and Mead (Post-2026 Operations) that will take effect after the 2007 Interim Guidelines for Lower Basin Shortages and Coordinated Operations for Lake Powell and Lake Mead (2007 Interim Guidelines, Guidelines) expire in 2026. Moreover, Utah is committed to working with our sister Colorado River Basin states (Basin States) to develop a consensus alternative for consideration and evaluation in the Post-2026 EIS process.

I. Priorities for Post-2026 Operations

A. Post-2026 Operations Must Address the Imbalance Between Water Supply and Demand

Exceedingly low reservoir elevations and runoff in the Colorado River system require substantial revisions to the current operating paradigm. Simply making modest changes to the 2007 Interim Guidelines for Post-2026 Operations will perpetuate the fundamental issue confronting the system: the imbalance between water supply and demand. In order to resolve this water balance problem, Post-2026 operations must include annual reductions to Lower Division State uses of at least 1.2 to 1.5 million acre-feet (MAF). Six Basin States, including two Lower Division States, endorsed reductions in these amounts in their Consensus Based Modeling Alternative for the separate but parallel NEPA process to develop a Supplemental EIS for Near-Term Colorado River Operations.¹

¹ See January 31, 2023, Letter to Assistant Secretary Trujillo and Commissioner Touton from the Colorado River Basin State Representatives of Arizona, Colorado, Nevada, New Mexico, Utah and Wyoming re: Notice of Intent to Prepare a Supplemental Environmental Impact Statement.

Alternatively, shortages in greater volumes and at higher Lake Mead elevations must be assessed against Lower Basin uses in the future to address the system imbalance. Lower Basin reductions under the 2007 Interim Guidelines and the 2019 Colorado River Basin Drought Contingency Plan (2019 DCP) are of an insufficient magnitude to cure the water imbalance. Moreover, under the 2007 Interim Guidelines meaningful reductions do not occur until Lake Mead is at dangerously low elevations. When Lake Mead is below elevation 1,025', the lowest shortage elevation under the Guidelines and a mere 5' above the Lake Mead "protection" elevation identified in the 2019 DCP, Lower Basin use is reduced 500,000 acre-feet, one third of the volume necessary to balance the system. Under the 2019 DCP, a total reduction of 1.1 MAF is not assessed until Lake Mead is below 1,025.' The Post-2026 Criteria must provide more meaningful reductions in Lower Basin use in order to begin to bring the system into balance.

B. Lake Powell Releases Should Not be Impacted by Lower Basin Operations

Under the current operational framework, Lake Powell releases are directly impacted by Lower Basin operations. The Lower Basin's reliance on Lake Mead storage to satisfy its uses notwithstanding actual hydrology has resulted in larger than average releases from Glen Canyon Dam and drawn down Lake Powell levels. This is evidenced by the five consecutive 9 MAF balancing releases from Lake Powell that occurred from 2015 to 2019.

Moreover, operations under the 2007 Interim Guidelines are easily manipulated to cause greater releases from Lake Powell. For example, until 2021, the Lower Basin was able to avoid a shortage determination under the Guidelines while making modest contributions of conserved water to Lake Mead (Intentionally Created Surplus or ICS) in reliance on above average releases from Lake Powell. The Post-2026 Criteria must be structured in a way to avoid manipulation of the system.

C. Activities that Reduce Demand and Protect Critical Elevations Should be Neutral

Utah supports sustainable, meaningful conservation activities throughout the Colorado River Basin consistent with the Law of the River as defined in Section E, below. We also recognize the value of operations that protect critical elevations at both Lake Powell and Lake Mead pursuant to existing agreements and authorities. Nevertheless, any future conservation activities or tools to stabilize Lake Powell and Lake Mead should not influence the coordinated operations of the two reservoirs such that they impact release determinations. Rather, these operations should be treated as separate from normal operations and accounted for by the Bureau of Reclamation (Reclamation) as "neutral."

D. Post-2026 Operations Must be Based Upon Actual Hydrology and Storage

Release determinations under Post-2026 Criteria must be based upon actual hydrology and storage conditions at Lake Powell and Lake Mead. Operations under the 2007 Interim Guidelines and 2019 DCP rely on projected elevations based exclusively on forecasts performed six months in advance of operations; for January 1 operations, the forecast occurs the previous August, and for operations through September 30, the end of the Water Year in the Upper Basin, the forecast occurs the previous April. Experience under the 2007 Interim Guidelines illustrates that these forecasts consistently overestimate Lake Powell elevations and underestimate Lake Mead elevations, resulting in greater releases from Glen Canyon Dam to the detriment of the Upper Basin.

E. Operations Must Not Impair Upper Basin Consumptive Use

Post-2026 Operations must consider both the appropriate amount of storage at Lake Powell and the volume of releases from Glen Canyon Dam required to satisfy Upper Basin obligations under the 1922

Colorado River Compact (Compact) without impairment to annual consumptive uses in the Upper Basin pursuant to the Colorado River Compact.

II. Purpose and Need for Post-2026 Operations

In order to have a new management system in place when the 2007 Guidelines expire in 2026, the Secretary of Interior has directed Reclamation to develop guidelines for Post-2026 Operations at Lake Powell and Lake Mead. More than 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. Releases from storage under the 2007 Guidelines do not appropriately respond to actual hydrology and storage at the two reservoirs. 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. 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.

To assure stability into the future, the Post-2026 Operations must address the imbalance between available supply and demand. Moreover, the Post-2026 Operations must consider increased hydrologic variability exacerbated by climate change. The Colorado River supports multiple uses of water. To protect these varied 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.

III. Scope of Post-2026 Operations

The NOI limits the Post-2026 Operations to guidelines and strategies for Lake Powell and Lake Mead. Utah agrees that the scope of the Post-2026 Operations should be strictly circumscribed to managing water supplies at Lake Powell and Lake Mead and coordinating operations between the two reservoirs. Operations that seek to modify the management of the upstream Initial Units or other Colorado River facilities are beyond the scope of the EIS. Likewise, the Post-2026 Operations may not modify, limit or otherwise interfere with the state of Utah’s authority over the regulation, distribution and management of its Colorado River system water. Moreover, environmental issues and concerns, such as those related to threatened and endangered species, are beyond the scope of this NEPA process and instead should be addressed through established programs and processes. Similarly, Utah is supportive of projects, particularly those in the Lower Basin, that increase water supply. However, we do not believe that this EIS is the appropriate forum to analyze specific augmentation projects.

Finally, the duration of the Post-2026 guidelines should be limited. The guidelines should be interim to allow for modification due to unforeseen circumstances that are beyond the ability of the guidelines to adapt, yet of sufficient duration to provide certainty and stability to Colorado River water users.

IV. No Action Alternative

Operations under the Guidelines and 2019 DCP have revealed the danger of managing a system based on a single, assumed future hydrology rather than a variable one; the shortcomings of balancing releases without proper constraints; the problems associated with basin reservoir operations on forecasting; and,

reservoir operations that favor, or can be manipulated to favor, one basin over the other. Accordingly, Utah will not support a No Action Alternative for the Post-2026 EIS that extends the 2007 Interim Guidelines or the 2019 DCP. Moreover, we will not support a No Action Alternative that reverts to the operating criteria used to model baseline conditions in the December 2000 Final Environmental Impact Statement for the Interim Surplus Guidelines (“long-range operating criteria”) as interpreted by Reclamation.

There are outstanding questions as to what will constitute the No Action Alternative. In order for the Basin States to develop a consensus alternative, it is essential that Reclamation consult with Basin States on what will constitute the No Action Alternative as soon as possible.

V. Post-2026 Operations Policy

The 2007 Interim Guidelines, the 2019 DCPs and subsequent emergent operations including the 2022 Coordinated Operation, have failed to adequately protect the Colorado River system. Utah will not support the continuation of the current operational framework beyond the Interim Period (2026). Rather, Utah will insist on Post-2026 operations that are resilient, will adapt to changing conditions, can be implemented in a fair and transparent manner and will be sustainable over time. Specifically, Post- 2026 operations must:

- a. Respond early and appropriately to changing system conditions and recover the system to a desirable state;
- b. Are effective across a full range of possible future conditions (e.g. both wet and dry hydrology);
- c. Are clearly defined;
- d. Are transparent and easy to implement;
- e. Provide operational longevity under any hydrologic or system condition and do not require reactive intervention;
- f. Bring certainty and predictability to the operations of the river; and
- g. Do not favor one basin over another.

VI. Engagement

Utah is committed to engaging with sovereign Tribes located within the State during this NEPA process through appropriate sovereign-to-sovereign discussions and existing frameworks, including the Upper Division States-Tribes Dialogue. Utah will not support Post- 2026 operations that prevent any Tribe with lands in the Colorado River system in Utah from developing water rights settled under federal law and decreed under state law. Nevertheless, we recognize that the determination of unresolved Tribal water rights should be addressed through a process that is distinct from the development of the Post-2026 EIS.

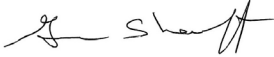
Utah also supports appropriate binational discussions with the Republic of Mexico on potential actions Mexico may be willing to undertake to protect the system when Minute 323 of the 1944 US-Mexico Water Treaty expires in 2026. We encourage the Department of Interior to coordinate with the International Boundary and Water Commission, while engaging with the Basin States, on parallel processes to develop post-2026 binational agreements with Mexico as this domestic NEPA process proceeds.

Finally, the unique role of the seven Colorado River basin states (Basin States) in the EIS process cannot be overstated. The involvement of the Basin States in the development of Post-2026 Operations is essential to ensuring their effectiveness. Accordingly, Utah will work closely with Reclamation and the

Basin States during the pendency of this NEPA process, including through the development of a Basin States alternative for evaluation by Reclamation in the EIS.

Once again, the state of Utah appreciates the opportunity to provide comment. As a Basin State, we recognize the critical role of the seven states in the operation and management of the Colorado River. We look forward to continued cooperation and partnership with our sister states, the Bureau of Reclamation, the Colorado River Tribes and key stakeholders to ensure the stability of the Colorado River system into the future.

Regards,

A handwritten signature in black ink, appearing to read "Gene Shawcroft". The signature is fluid and cursive, with a prominent initial "G" and a long, sweeping tail.

Gene Shawcroft, P.E.
Colorado River Commissioner
State of Utah