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

Re: Wyoming Comments on the Development of Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead

Dear Commissioner Touton:

The Wyoming State Engineer, Wyoming's Colorado River Governor's Representative, respectfully submits the following comments in response to the Bureau of Reclamation's *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). I appreciate your consideration of Wyoming's input and comments and request that they be incorporated into the preparation of the new operational guidelines and strategies for Lake Powell and Lake Mead ("Post-2026 Operations") under the National Environmental Policy Act ("NEPA") process.

In addition to these comments, Wyoming has joined and submitted two additional comment letters. The first with the other six Colorado River Basin States of Arizona, California, Colorado, Nevada, New Mexico, and Utah. The second with the other Upper Division States of Colorado, New Mexico, and Utah, through the Upper Colorado River Commission. Wyoming fully incorporates those comments into this letter.

As acknowledged in the June 16, 2023, notice in the Federal Register, the Colorado River Basin is suffering from a prolonged period of drought and the period from 2000 through the present is estimated to be one of the driest periods in the last 1,200 years. The 2007 Interim Guidelines for Lower Basin Shortages and Coordinated Operations for Lake Powell and Lake Mead (the "2007 Guidelines") were intended, among other things, to address operations of Lake Powell and Lake Mead, particularly under drought and low reservoir conditions. However, as the drought persisted and reservoir levels declined, additional responsive actions were needed to complement the 2007 Guidelines and the Basin States and the Secretary of the Interior ("Secretary") agreed to the federally authorized 2019 Colorado River Basin Drought Contingency Plans ("DCPs"). Since 2019, additional actions have been taken to protect critical elevations and infrastructure at Lake Powell and Lake Mead. This operational experience illustrates that the 2007 Guidelines and DCPs are insufficient to properly manage Lakes Powell and Mead. Extended periods of dry hydrology and depleted reservoir conditions have highlighted the inadequacy of these past measures to adapt to worsening hydrology.

Although they were inadequate, the experience learned under the 2007 Guidelines and DCPs should to inform the Post-2026 Operations. That experience teaches us that we must prepare for and create rules which are responsive to a wide range of variable hydrology—from wet to very dry. The variable and dry hydrology of the recent past teaches us that we must balance consumptive uses and depletions with available supply. That balancing will be the foundation for sustainable management under Post-2026 Operations.

In addition to the lessons learned from dry hydrology and depleted storage conditions, the 2007 Guidelines also included an equally important lesson—we must encourage all parties to address future controversies on the Colorado River through consultation and negotiation before resulting to litigation. The importance of that lesson will intensify in times of water supply scarcity. As such, any alternative must improve cooperation and communication between the Basin States, and avoid circumstances which could otherwise form the basis of claims or controversies over interpretation or implementation of the Colorado River Compact and other applicable provisions of the Law of the River. To that end, the Post-2026 Operations must focus on ways to improve the management of water in Lakes Powell and Mead so as to enhance the protection afforded to the Upper Basin by Lake Powell in addition to minimizing, to the degree possible, the extent and duration of shortages in the Lower Basin. Although Post-2026 Operations cannot guarantee any water user a firm water supply for any specified period, water users in the Lower Basin should be able to determine when, and by how much, water deliveries will be reduced in drought and other low reservoir and water supply conditions. Lower Basin reductions need to be predictable and timely.

The 2007 Guidelines also taught us positive and negative lessons about flexibility. The flexibility imbedded in the 2007 Guidelines, as well as the DCPs, centered on helping the Lower Basin plan and operate with more certainty and predictability based on annual, and forecasted, system conditions. However, the flexibilities implemented to mitigate impacts of actual conditions did not extend to the Upper Basin to an equitable degree. On the contrary, flexibility at Lake Powell exacerbated dry conditions by only allowing increased, not decreased, releases. Further, flexibility contained in the 2007 Guidelines intended to incentivize Lower Basin conservation, while undeniably important and necessary to minimize the extent and duration of shortages in the Lower Basin, worked to increase the risk of Upper Basin curtailment. Flexibility in Post-2026 Operations must attempt to achieve certainty and predictability for the entire Basin, not just the Lower Basin. The flexibility must allow for adaptation to changing conditions while ensuring sufficient operational certainty for the Basin States and Colorado River water users to sustainably manage water supplies into the future.

As was true with the 2007 Guidelines, the 1922 Colorado River Compact, the 1948 Upper Colorado River Basin Compact, and the 1944 Treaty with Mexico must be the foundation for any Post-2026 Operations. They provide durability, certainty, and stability in managing the Colorado River System and infrastructure. They also provide sufficient flexibility to address current and future risks. These foundational elements must be honored which can be achieved through the development of a consensus seven-state recommendation that can be incorporated into an adopted preferred alternative. Wyoming remains committed to working with the other Basin States, Tribes, water users, and other stakeholders to achieve appropriate consensus.

Post-2026 Operations must seek full utilization of storage in Lakes Powell and Mead. Dry hydrology exacerbated by climate change continues to cause depleted flows into Lake Powell. As such, the Secretary must make any infrastructure improvements needed to safely operate Glen Canyon Dam below the minimum power pool elevation and gain access to the maximum storage available in Lake Powell. As climate change continues to diminish the water supply, and ultimately the Lee Ferry flow,

we must have access to all Lake Powell storage. Similar infrastructure improvements should be made at Lake Mead.

Post-2026 Operations cannot attempt to do too much. The scope of the alternatives analyses for the Post-2026 Operations NEPA process must: 1) Work to fulfill the purpose and need of the proposed action; 2) Fit within the statutory context within which the Secretary has authority to act; and 3) Remain within the bounds of reason. Following passage of the Fiscal Responsibility Act of 2023, bounds of reason are expressly limited by what is technically and economically feasible, among other things. The Secretary is not required and should not waste time on studying alternatives that go beyond the Secretary's statutory authorities to achieve the objectives of the proposed action. Alternatives must fit within and remain compliant with the Law of the River and other federal requirements and regulations. As examples, the Secretary should not consider alternatives which propose run of the river operations, filling Lake Mead first, or decommissioning Glen Canyon Dam.

Post-2026 Operations cannot, in any way, impair or impede the right of the Upper Basin to consumptively use water available to that Basin under the Colorado River Compact. Nor can they address intrastate storage or intrastate distribution of water in the Upper Basin, including storage and distribution associated with participating projects of the Colorado River Storage Project Act of 1956. Additionally, Post-2026 Operations cannot affect any right or obligation of any Upper Division state under the Colorado River Compact. Wyoming retains exclusive authority over the control, appropriation, use, and distribution of water within its borders.

Wyoming supports projects that increase the available water supply through augmentation. While the Post-2026 Operations NEPA process might account for Lower Basin augmentation if appropriate and reasonably certain, Wyoming does not believe that this NEPA process is the proper forum to analyze specific augmentation projects.

Wyoming expressly reserves its 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 Wyoming 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, Wyoming reserves the right to provide further comments, consult with the Secretary, take any other necessary steps, and engage with the Bureau of Reclamation as it proceeds with subsequent phases of the Post-2026 Operations NEPA process.

Wyoming thanks you for the opportunity to provide comments on the development of the Post-2026 Operations. We look forward to continuing our partnership with you, the other Basin States, Mexico, Basin Tribes, water users, and stakeholders, as we move forward in protecting and managing this critical resource.

Sincerely,



Brandon Gebhart, P.E.
Wyoming State Engineer