



**Colorado River Basin States Representatives of
Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming**

September 1, 2022

Carly Jerla
Senior Water Resources Program Manager
U. S. Bureau of Reclamation
Washington, DC 20240

VIA ELECTRONIC MAIL

CRB-info@usbr.gov

**Re: Notice of Request for Input on Development of Post-2026
Colorado River Reservoir Operational Strategies for Lake
Powell and Lake Mead Under Historically Low Reservoir
Conditions**

Dear Ms. Jerla:

The undersigned Governors' Representatives of the States of Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming (collectively the "Basin States"), respectfully submit the following comments in response to the Bureau of Reclamation's ("Reclamation") Request for Input on the Development of Post-2026 Colorado River Reservoir Operational Strategies for Lake Powell and Lake Mead Under Historically Low Reservoir Conditions, Fed. Reg. Vol. 87, No. 121 dated June 24, 2022 ("Post-2026 Operations"). We appreciate your consideration of our comments and request that they be incorporated into the preparation of the Post-2026 Operations NEPA process.

The Basin States understand that Reclamation is employing a pre-scoping process in connection with Post-2026 Operations to collect input prior to formally initiating an environmental review process under the National Environmental Policy Act ("NEPA"). Reclamation is requesting input on: (1) processes that can be employed to encourage and facilitate meaningful participation of Colorado River Basin partners, stakeholders, and the general public in the anticipated upcoming NEPA process and (2) potential substantive elements and strategies for Post-2026 Operations to consider in the anticipated upcoming NEPA process.

The seven Colorado River Basin States¹ have a unique interest in the water supplies of their states, including the Colorado River. As parties and beneficiaries to the interstate compacts, laws, and supreme court decrees that govern the management of the Colorado River, the Basin States have a specific interest in river management to protect the economic, health, and welfare interests of their residents who rely on the river. Recognizing the unique status of the States, the Secretary must meet her legal obligation to consult with the Governors' Representatives and collaborate on the Post-2026 Operations. Options for Post-2026 Operations will be significantly limited without the Basin States' participation. The Basin States are committed to working with Reclamation as the formal NEPA process for the Post-2026 Operations develops. Moreover, the Basin States anticipate developing an alternative for consideration and evaluation during the formal NEPA process for Post-2026 Operations, as we did in the NEPA process for the 2007 Interim Guidelines.

The process must allow for consideration of a broad range of interests and perspectives. The unprecedented challenges we face require greater inclusivity and collaboration to achieve sustainable solutions. The Basin States understand that the success of future operations of the Colorado River system depends on working with water users and others invested in the outcomes of effective Post-2026 Operations.

We look forward to continued collaboration with Colorado River Basin Tribes through various interstate and intrastate engagement efforts. Tribal water rights in the Colorado River Basin are substantial. Successful management of the Colorado River will depend on the support and participation of the Tribes. Tribes have taken an increasingly prominent and collaborative role in the development of water management strategies in the Colorado River Basin. It will be important to consult and collaborate with the Tribes in developing the Post-2026 Operations. We recommend that the determination of unresolved Tribal water rights be addressed through different, parallel paths.

Collaboration with Mexico is critical to charting the course of the Colorado River through Post-2026 Operations. In particular, the active and direct participation of the Basin States' representatives in formal meetings with Mexico has been essential to the development and implementation of Minute Nos. 317, 318, 319, and 323. Given the stark projections for the Colorado River, the U.S., Mexico, and the Basin States must work together as full partners in the management of the River through the Binational process.

¹ Pursuant to California law, public agencies that hold contracts with Reclamation pursuant to Section 5 of the Boulder Canyon Project Act have authority to manage California's Colorado River apportionment.

The Basin States also understand the importance of engagement with other stakeholders, including NGOs, interested in the Colorado River. We encourage Reclamation to inform and collaborate with other stakeholders as the development of the Post-2026 Operations moves forward.

The Basin States believe 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, must be the foundation for the Post-2026 Operations. The new operating rules should not interfere with the right of any state to administer and regulate water within its boundaries in relation to the appropriation, use, and control of water. The existing framework provides legal certainty regarding management of the Colorado River System and its infrastructure. It also allows for collaboration and consensus which helps avoid the uncertain outcomes that result from litigation.

The hydrology of the past 20 years has highlighted risks and vulnerabilities in the system. To improve operations at Lake Powell and Lake Mead, the new operating rules should address the risks and opportunities resulting from increased hydrologic variability across the Colorado River Basin, including impacts resulting from climate change, and mechanisms to restore depleted storage. The anticipated NEPA process must consider the possible futures that the Basin could face, considering current hydrologic data, depleted reservoir storage conditions, and the experience gained from the 2007 Interim Guidelines and 2019 Drought Contingency Plans. The scope of the NEPA process should focus only on the topics necessary to sustainably manage water supplies; incorporating every aspect of river operations and future supply development in the NEPA process would be untenable. The potential scope of the Post-2026 Operations should consider water releases for compliance with the Law of the River, including surpluses and shortages, as well as operational flexibility to incentivize storage and conservation and to support augmentation. Other issues should be addressed through different, parallel paths.

The Basin States believe that balancing consumptive uses and depletions with available supply is the foundation for sustainable management under Post-2026 Operations. This should include the advancement of meaningful water conservation programs across all sectors and transparent and accurate accounting of depletions and available supply. Balancing the system is key to preserving its existence for future generations.

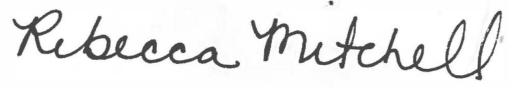
While we reserve our rights to provide comments in the formal scoping process, the Basin States thank you for the opportunity to provide these pre-scoping comments on the development of Post-2026 Operations. We look

forward to continuing our partnership with you, Mexico, Basin Tribes, water users, and stakeholders, as we move forward in managing this critical resource.

Sincerely,




Thomas Buschatzke
Governor's Representative
State of Arizona



Rebecca Mitchell
Governor's Representative
State of Colorado



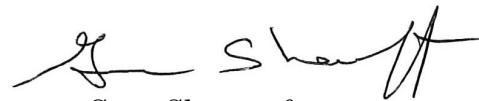
Peter Nelson
Governor's Representative
State of California



John J. Entsminger
Governor's Representative
State of Nevada



Estevan Lopez
Governor's Representative
State of New Mexico



Gene Shawcroft
Governor's Representative
State of Utah



Brandon Gebhart
Governor's Representative
State of Wyoming