

**PHIL WEISER**  
Attorney General

**NATALIE HANLON LEH**  
Chief Deputy Attorney  
General

**SHANNON STEVENSON**  
Solicitor General

**TANJA WHEELER**  
Associate Chief Deputy  
Attorney General



**STATE OF COLORADO  
DEPARTMENT OF LAW**

**RALPH L. CARR**  
**COLORADO JUDICIAL CENTER**  
1300 Broadway, 10th Floor  
Denver, Colorado 80203  
Phone (720) 508-6000

**Natural Resources and  
Environment Section**

January 10, 2025

**TO:** Colorado Water Conservation Board

**FROM:** Phil Weiser, Attorney General  
Lain Leoniak, First Assistant Attorney General  
Jen Mele, First Assistant Attorney General

**RE:** Report of the Attorney General

**FEDERAL & INTERSTATE MATTERS**

1. Rio Grande - Texas v. New Mexico and Colorado, No. 141 Original

This suit focuses on claims asserted by Texas and the United States against New Mexico regarding a violation of the Rio Grande Compact. Colorado is participating as a signatory to the Compact.

The Supreme Court declined to enter the States' proposed consent decree because, under circumstances unique to this case, it would have resolved claims that the Court had earlier allowed the United States to assert under the Compact as an intervenor in this litigation. The Compacting States are working together to litigate a remedy similar to their proposed consent decree as the most viable solution consistent with the Compact. The parties held a mediation in Washington, D.C. in December and have another mediation session scheduled for the end of February. Special Master Smith has scheduled a hearing on February 27, 2025.

2. The Upper Division States' 5-Point Plan in Response to the Bureau of Reclamation's Call for Further Cooperative Actions for the Colorado River

On July 18, 2022, and in response to the request made by the Commissioner of the Bureau of Reclamation (Reclamation) for the Colorado River Basin States to take additional actions considering the continued drought and depleted storage, the Upper Division States developed a 5-Point Plan that includes the following elements that remain on-going:

- (1) Amendment and reauthorization of the System Conservation Pilot Project (SCPP) legislation originally enacted in 2014. The SCPP is a voluntary, temporary, and compensated program available to interested and willing water users in the Upper Division States and is intended to mitigate drought impacts in the Upper Basin. SCPP was reauthorized for 2023 and 2024, and in 2024, 52 system conservation implementation agreements and verification plans were executed and completed for Colorado projects. Federal legislation was introduced to reauthorize SCPP for 2025 and 2026 and passed the Senate, but the House failed to adopt the legislation before the end of the term for the 118<sup>th</sup> Congress.
- (2) Consideration of an Upper Basin Demand Management program as interstate and intrastate feasibility investigations are completed.
- (3) Implementation, in cooperation with Reclamation, of the Bipartisan Infrastructure Law for Upper Basin Drought Contingency Plan funding to accelerate enhanced measurement, monitoring, and reporting infrastructure to improve water management tools across the Upper Division States.
- (4) Continuing strict water management and administration of the available annual water supply in the Upper Division States, including implementation and expansion of intrastate water conservation programs and regulation and enforcement under the doctrine of prior appropriation.

Reclamation data shows that Lower Basin and Mexico depletions are more than double the depletions in Colorado and the other Upper Division States. Therefore, additional efforts to protect critical reservoir elevations must include significant actions focused downstream of Lake Powell. Otherwise, the effectiveness of the 5-Point Plan will be severely limited. The Colorado River Subunit attorneys continue to support Colorado's Commissioner and her team throughout implementation of this Plan.

3. National Environmental Policy Act Process for Guidelines of Post-2026 Operations at Lake Powell and Lake Mead

Reclamation formally initiated an environmental review process under the National Environmental Policy Act (NEPA) to prepare an Environmental Impact Statement (EIS) for the development of post-2026 operations. On June 16, 2023, Reclamation issued a Request for Comments on 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* (NOI), 88 FR 39455. Through the NOI, Reclamation requested comments on: (1) the scope of specific operational guidelines, (2) strategies, and (3)

any other related issues that should be considered in the upcoming EIS. In addition to joining the Comment Letter submitted by the Basin States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming, and the Upper Division States of Colorado, New Mexico, Utah, and Wyoming through the UCRC, Colorado also submitted comments.<sup>1</sup>

On October 20, 2023, Reclamation issued a *Federal Register Notice of the Availability of the Summary Scoping Report on the Development of Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead* (FRN or Scoping Summary Report), 88 FR 72535. The Scoping Summary Report provides a summary of the comments received during the public scoping process and describes Reclamation's current, preliminary assessment of the proposed federal action, purpose and need, and scope of the environmental analysis to be included in the draft environmental impact statement (DEIS).

On March 5, 2024, the Upper Division States submitted their alternative for analysis by Reclamation as part of the NEPA process. The FRN states that the Department of the Interior intends to “adopt and implement the guidelines in a manner consistent with the Law of the River.” The FRN defines the Law of the River as “[t]he treaties, compacts, decrees, statutes, regulations, contracts, and other legal documents and agreements applicable to the allocation, appropriation, development, exportation, and management of the waters of the Colorado River Basin.” On November 20, 2024, Reclamation issued a “matrix of National Environmental Policy Act alternatives” identifying and providing limited descriptions of the four action alternatives and the “no action alternative” Reclamation is currently considering for the DEIS. None of the action alternatives described in the narrative directly analyze either the Upper Division States’ alternative or the Lower Division States’ alternative. Reclamation asserts that elements of each alternative have been incorporated into the action alternatives it is analyzing. It is presently anticipated that the DEIS will be issued mid-2025. Colorado River Subunit attorneys continue to provide critical legal support for Colorado’s Commissioner and her team in this process.

4. Republican River Compact Administration (RRCA) acknowledgement of the first acreage retirement target in the South Fork Republican River basin

On December 16, 2024, the RRCA held a special meeting to approve a resolution acknowledging that Colorado had met the first acreage retirement target from what is commonly referred to as the “2016 Resolution.” That resolution – originally approved on August 24, 2016, and later amended in 2018 – requires Colorado to retire

---

<sup>1</sup> NOI Comments from the Upper Division States are available at: <http://www.ucrccommission.com/upper-division-states-and-the-upper-colorado-river-commission-ucrc-comment-on-reclamations-notice-of-intent-for-a-supplemental-eis-for-the-2007-interim-guidelines/>.

ten thousand acres of irrigated lands in the South Fork Republican River Basin by the end of 2024. The resolution approved by the RRCA on December 16, 2024, states that “the RRCA acknowledges that Colorado has met the 2024 acreage retirement goal in the 2016 Resolution, as amended, for retirement of at least 10,000 irrigated acres in the South Fork Republican River Basin.” The 2016 Resolution, as amended, also requires that Colorado retire an additional fifteen thousand acres by the end of 2029, and the Republican River Water Conservation District, in coordination with the Division of Water Resources, and the Federal and Interstate Water Unit attorneys continue to work diligently towards maintaining compliance with the Compact.

### INTRASTATE MATTERS

5. In November 2024 the Water Conservation Unit on behalf of the CWCB filed a statement of opposition in the following case:

- Republican River Water Conservation District, Case No. 24CW3133, Water Div. 1

6. In November and December 2024, the Water Conservation Unit on behalf of the CWCB stipulated to entry of a decree in the following cases:

- Britten, Dennis, Case No. 23CW3054, Water Div. 2
- Aegis Ventures, Case No. 21CW3075, Water Div. 4
- Oates Trust, Case No. 24CW3022, Water Div. 4

7. In November 2024 the Water Conservation Unit on behalf of the CWCB filed water court applications for the following natural lake level and instream flow water rights:

- Square Top Creek, Case No. 24CW3156, Water Div. 1
- Williams Gulch, Case No. 24CW3157, Water Div. 1
- Titan Lake, Case No. 24CW3048, Water Div. 2
- Deer Creek, Case No. 24CW3042, Water Div. 4
- North Lobe Creek, Case No. 24CW3049, Water Div. 4
- Splains Gulch, Case No. 24CW3043, Water Div. 4
- Wheeler Creek, Case No. 24CW3037, Water Div. 6
- Ways Gulch, Case No. 24CW3039, Water Div 6