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**Natural Resources and  
Environment Section**

May 9, 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 Special Master set the case for trial beginning June 9, 2025. The parties continue to explore the possibility of settlement.

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 ongoing:

- (1) Amendment and reauthorization of the System Conservation Pilot Project (SCPP) legislation originally enacted in 2014.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. Congress has not reauthorized SCPP for 2025.
- (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* (88 Fed. Reg. 39455) (NOI). 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* (88 Fed. Reg. 72535) (FRN or Scoping Summary Report). 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. On January 17, 2025, Reclamation issued an Alternatives Report that provided more detail on the alternatives presented in the matrix. 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. West Slope Measurement Rules

The State Engineer has been moving forward with adopting measurement rules in each water division on the West Slope to establish consistent, stakeholder-driven standards for the implementation of DWR's statutory authority for requiring measurement devices for water diversion and storage and reporting of records. The State Engineer has adopted measurement rules for Water Divisions 6 and 7. The

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<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/>.

water court case for resolving protests to the rules in Division 6 was resolved in January 2024, and most recently, the court case for the Division 7 rules was resolved on April 24, 2025. Currently, the State Engineer is moving forward with stakeholder meetings for measurement rules in Water Division 4, and will have had meetings in Delta, Gunnison, Norwood, and Montrose in early May.

#### 5. South Platte River Compact and Perkins County Canal

In 2022, Nebraska expressed its intent to construct the Perkins County Canal in Colorado under the South Platte River Compact. In January 2025, Nebraska sent notices to purchase or condemn to several Colorado landowners southwest of Ovid where the point of diversion for the canal would be located.

The 1923 South Platte River Compact (Compact) apportioned waters of the South Platte River between Colorado and Nebraska. It divides the South Platte River into the Upper Section and Lower Section, divided at the western boundary of Washington County. Colorado is apportioned all of the water in the Upper Section. In the Lower Section, the Compact limits Colorado's use of water. Article IV of the Compact provides that, between April 1 and October 15 of each year, Colorado shall not permit diversions in the Lower Section junior to 1897 when the South Platte River flow at the state line is below 120 cfs. Article VI of the Compact allows Nebraska to construct a canal (referred to as the "Perkins County Canal") in Colorado to divert South Platte River water from October 15 to April 1 (i.e., in the winter) under a 1921 priority. Like Article IV, Article VI requires curtailment by Colorado to meet this obligation only in the Lower Section and only if Nebraska constructs the canal.

Colorado and Nebraska, along with Wyoming and the United States, are also parties to the Platte River Recovery Implementation Program (PRRIP or the Program). The Program involves the management of land and water resources for the benefit of four target species in Nebraska on the Platte River and provides for new and existing water use and development in the North and South Platte River Basins through Endangered Species Act compliance. In addition to impacts on Colorado water users, the Perkins County Canal is likely to have impacts on Colorado's ability to operate its water plan projects under the Program.

The Attorney General's Office is actively evaluating Nebraska's efforts to condemn property in Colorado and potential impacts to Colorado water users and the Program.

### INTRASTATE MATTERS

6. In March and April 2025, the Water Conservation Unit on behalf of the CWCB filed a statement of opposition in the following cases:

- Alpine Mountain Ranch, Case No. 25CW3003, Water Div. 6

- Olympus Real Estate Group, Case No. 25CW3002, Water Div. 7

7. In March and April 2025, the Water Conservation Unit on behalf of the CWCB stipulated to entry of a decree in the following cases:

- Montava/Hf2M, Case No. 20CW3208, Water Div. 1
- Tabernash Meadows, Case No. 23CW3052, Water Div. 5
- 153 LLC, Case No. 21CW3082, Water Div. 5
- Callicotte Ranch Owners Assoc, Case No. 24CW3056, Water Div. 5

8. In March 2025 the Water Conservation Unit on behalf of the CWCB decreed the following instream flow water rights:

- Splains Gulch Instream Flow Water Right, Case No. 24CW3043, Water Div. 4  
The Splains Gulch Instream Flow Water Right is located in the natural stream channel of Splains Gulch from its headwaters to the confluence with Coal Creek, a distance of approximately 2.48 miles, in the amount of 0.4 cfs (11/1 – 3/31), 1.3 cfs (4/1 – 8/31), and 0.75 cfs (9/1 – 10/31), absolute
- Deer Creek Instream Flow Water Right, Case No. 24CW3042, Water Div. 4  
The Deer Creek Instream Flow Water Right is located in the natural stream channel of Deer Creek from its headwaters to the Beitler No. 1 headgate, a distance of approximately 3.38 miles, in the amount of 0.35 cfs (11/1 – 3/31), 0.9 cfs (4/1 – 4/30), 1 cfs (5/1 – 8/31), and 0.6 cfs (9/1 – 10/31), absolute.