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January 9, 2026

**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 parties have reached settlement based on a consent decree among the states and a decree dismissing claims between the United States and New Mexico. The parties presented the details of their settlement to the Special Master at a hearing in Philadelphia held September 30 to October 1, 2025, and asked for a report recommending the Supreme Court enter both decrees. The Special Master is expected to take several months to write a report.

2. South Platte River Compact and Perkins County Canal – Nebraska v. Colorado, No. 161 Original

On July 16, 2025, Nebraska filed a motion with the Supreme Court of the United States seeking leave to sue Colorado over alleged non-compliance with the South Platte River Compact of 1923. Colorado filed its response in opposition on October 15. Nebraska's proposed complaint contains two primary grounds for the relief: first, that Colorado has allegedly allowed diversions of water that are prohibited under the Compact, and second, that Colorado is allegedly "frustrating" Nebraska's efforts to

build the Perkins County Canal, a canal mentioned in the Compact to be built in Colorado for irrigation in Nebraska.

Colorado disagrees with Nebraska's claims and will defend Colorado's rights under the Compact. The Unit coordinated with the Solicitor General, the State Engineer, Division Engineer, the Colorado Water Conservation Board ("CWCB"), and the Department of Natural Resources' Executive Director's Office on Colorado's response. Nebraska filed a reply brief on October 29. Following a conference on November 14, the Supreme Court invited the U.S. Solicitor General to express the views of the United States on the matter. The Court did not provide any deadlines, but prior briefing by the U.S. on similar requests has usually taken about six months. It is possible that the Solicitor General may invite the two states to further explain their positions.

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

The Bureau of Reclamation ("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 Upper Colorado River Commission ("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").

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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/>.

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 December 30, 2024, the Upper Division States submitted to Reclamation refinements to its Alternative. 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 in early 2026. 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 the Division of Water Resources’ (“DWR”) 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, and those rules are now in effect. Following public outreach meetings for measurement rules in Water Division 4 (the Gunnison River Basin), the State Engineer filed those measurement rules in the Division 4 Water Court in July of 2025. Three protests were filed by the September 30 deadline. The Attorney General’s Office is working to resolve those protests and to schedule case management deadlines, including setting a trial date.

The State Engineer has also engaged in public outreach for measurement rules in Water Division 5 (the Colorado River Basin). Public meetings were held in October in Grand Junction, Edwards, and Kremmling, along with a virtual meeting, and in November in Frisco and Glenwood Springs. DWR is in the process of reviewing written comments and evaluating whether modifications to the proposed rules are appropriate. Division 5 will be the last of the West Slope Divisions to adopt measurement rules in what has been a multi-year effort by the State Engineer and DWR’s offices with assistance from the Attorney General’s Office.

5. Bipartisan Infrastructure Law/Infrastructure Investment and Jobs Act Projects

The UCRC received funds from Reclamation authorized under the Bipartisan Infrastructure Law and Infrastructure Investment and Jobs Act for projects that support Drought Contingency Plan implementation activities of the Upper Division States. In coordination with Colorado and the other Upper Division States, the UCRC has been moving forward in identifying and implementing projects using this funding. Funds awarded to the CWCB have included funding for Airborne Snow Observatories flights, maintenance and operation of eddy covariance towers, installation of weather stations, and installation of stream gages.

Colorado has also secured seven million dollars of this funding for the installation of diversion measurement devices in western Colorado. The Diversion Measurement Installation Program will be administered by the CWCB in coordination with the DWR. The CWCB will work closely with interested water users to process applications and install the devices. Applications for Water Divisions 6 and 7, where measurement rules are already in effect, are open, with installation planned to begin in the Spring of 2026. Funding also will be reserved for Water Divisions 4 and 5, with applications in those Divisions being opened in the Fall of 2026.

INTRASTATE MATTERS

1. In December 2025 the Water Conservation Unit on behalf of the CWCB filed a statement of opposition in the following cases:
  - Town of Silverthorne, Case No. 25CW3161, Water Div. 5
  - Lichen Huts Colorado LLC, Case No. 25CW3173, Water Div. 5
2. In November and December 2025, the Water Conservation Unit on behalf of the CWCB filed water court applications for the following instream flow water rights:
  - Canyon Creek, Case No. 25CW3052, Water Div. 4
  - Cabin Creek, Case No. 25CW3054, Water Div. 4
  - Goat Creek, Case No. 25CW3055, Water Div. 4
  - Red Creek, Case No. 25CW3056, Water Div. 4
  - Main Hubbard Creek, Case No. 25CW3063, Water Div. 4
  - Middle Hubbard Creek, Case No. 25CW3070, Water Div. 4
  - West Hubbard Creek, Case No. 25CW3064, Water Div. 4
  - West Muddy Creek, Case No. 25CW3066, Water Div. 4
  - East Muddy Creek, Case No. 25CW3069, Water Div. 4

- East Fork Dry Creek, Case No. 25CW3071, Water Div. 4
  - Unnamed Tributary East Fork Dry Creek, Case No. 25CW3072, Water Div. 4
  - Derby Creek, Case No. 25CW3192, Water Div. 5
  - Beaver Dams Creek, Case No. 25CW3065, Water Div. 5
  - Coon Creek, Case No. 25CW3190, Water Div. 5
  - Clear Creek, Case No. 25CW3040, Water Div. 6
  - Burrows Creek, Case No. 25CW3036, Water Div. 7
3. In November 2025 the CWCB stipulated to entry of a decree in the following cases:
- 143 Darling Farms, Case No. 24CW3060, Water Div. 5
  - Sanaproperty 9 LLC, Case No. 22CW3125, Water Div. 5
4. In November and December 2025, the following instream flow water rights were decreed:
- Wheeler Creek, Case No. 24CW3037, Water Div. 6
  - Piceance Creek, Case No. 23CW3032, Water Div 6.
5. On November 20, 2025, the CWCB, the Colorado River Water Conservation District, and Public Service Company of Colorado filed an application in water court for the change of the Shoshone Power Plant water rights to include use for instream flow purposes in Water Division 5. The case was assigned Case No. 25CW3177, and statements of opposition are due January 31, 2026.
6. On December 5, 2025, the Division 1 Water Court issued a decree in Case No. 21CW3056, on an application by the CWCB, Colorado Water Trust, Northern Colorado Water Conservancy District, City of Greeley, City of Fort Collins, City of Thornton, and the Cache La Poudre Water Users Association for an augmentation plan to augment stream flows in the Cache La Poudre River. The augmentation plan is the first of its kind and was decreed pursuant to section 37-92-102(4.5), C.R.S., legislation that became effective September 14, 2020.