

# THE NAVAJO NATION



JONATHAN NEZ | PRESIDENT MYRON LIZER | VICE PRESIDENT

December 20, 2022

Genevieve Johnson  
Reclamation 2007 Interim Guidelines SEIS Project Manager  
Upper Colorado Basin Region,  
125 South State Street, Suite 8100  
Salt Lake City, Utah 84138  
[CRinterimops@usbr.gov](mailto:CRinterimops@usbr.gov)

RE: Comments on 87 FR 69042: Notice of Intent to Prepare a Supplemental Environmental Impact Statement for December 2007 Record of Decision entitled Colorado River Interim Guidelines for Lower Basin Shortages and Coordinated Operations for Lake Powell and Lake Mead

Dear Reclamation 2007 Interim Guidelines SEIS Project Manager:

The Navajo Nation is the largest land-based and populated tribe in the United States. The Nation straddles the Upper and Lower Colorado River Basins; therefore, Colorado River Operations for Lake Powell and Lake Mead directly and greatly impact the Nation and its people in a myriad of ways, including but not limited to life-sustaining water resources, energy and food production, and cultural and traditional practices. The Secretary of the Interior has an affirmative obligation to take all necessary action to quantify the Navajo Nation's water rights and needs from the Colorado River, as described in the Nation's April 29, 2007 letter regarding Comments of the Navajo Nation on the Draft Environmental Impact Statement on the Colorado River Interim Guidelines for Lower Basin Shortages and Coordinated Operations for Lake Powell and Lake Mead. The Nation maintains the Draft Environmental Impact Statement did not adequately account for impacts on the Navajo Nation.

The Navajo Nation therefore requests the Supplemental Environmental Impact Statement (SEIS) evaluate reasonably foreseeable impacts including impacts on the Navajo Nation, as identified in the April 9, 2007 letter, and examine potential effects on the following and for the reasons set forth therein:

**The Navajo Nation's Municipal Water Supply** – Emergency releases from the Navajo Reservoir likely impact the Nation's ability to use water rights secured through the San Juan River in New Mexico Navajo Nation Water Rights Settlement Agreement, as approved and implemented by the United States' Congress under the Omnibus Public Land Management Act of 2009, Pub. L. 111-11 § 10301, 123 Stat. 991 (2009), for the Navajo-Gallup Water Supply Project. The Project consists of three hundred (300) miles of pipeline, two (2) pumping plants, and two (2) water treatment plants to support clean water access for the Navajo Nation, Jicarilla Apache Nation, and the City of Gallup, New Mexico. The Project is an integral part of the Nation's ability to provide clean, reliable drinking water to its people.

**The Navajo Nation's Agricultural Water Supply** – On December 12, 2022, the Navajo Nation met with the U.S. Bureau of Reclamation to discuss the Water Year (WY) 2023 Forecast Navajo Operations - December Forecast. The Nation recognizes how close Navajo Reservoir is to the reservoir elevation level 5,990 feet. If the reservoir level drops below this amount, the Nation will not be able to use its secured water rights for the Navajo Indian Irrigation Project (NIIP) through Pub. L. 87-483 § 2, 76 Stat. 96 (1962). The Navajo Agriculture Products Industry (NAPI) was developed to operate the NIIP, which is the water distribution system for the irrigated farmland south of Farmington, New Mexico in the Eastern Navajo Agency. For the 2023 Water Year, 235,000 acre-feet of water will be diverted from the Navajo Reservoir for irrigation. Direct impacts to the NAPI and Navajo farmland needs to be evaluated.

NAVAJO NATION OFFICE OF THE PRESIDENT AND VICE PRESIDENT

POST OFFICE BOX 7440 · WINDOW ROCK, AZ 86515 · PHONE: (928) 871-7000 · FAX: (928) 871-4025

**The Navajo Nation's Hydropower Resources** – As indicated in the Navajo Nation's October 18, 2021, letter to Wayne Pullan, Regional Director for the Upper Colorado River Basin Region, and Jacklynn Gould, Regional Director of Lower Colorado River Basin Region, regarding Navajo Nation Drought Concerns Related to Operations Management, the Nation receives substantial amounts of hydropower from the Western Area Power Administration that is used to keep power affordable on the Nation where energy resources are limited. In fact, federal hydropower accounts for forty percent (40%) of the Navajo Nation's energy consumption. Analysis and consideration of the impact on hydropower production including delivery of federal hydropower and cost impacts to consumers, like the Navajo Nation and its people, is critical.

**The Navajo Nation's Cultural and Natural Resources** – In the September 1, 2022 letter from the Navajo Nation regarding Comments on 87 FR 37884: Proposed Development of Post-2026 Colorado River Operational Strategies, the Nation describes the exposure and/or loss of ancestral/archeological sites, including burials, is a significant threat with the recession of Lake Powell. With decreasing reservoir elevation levels, it is important to know and monitor how cultural resources are impacted by reservoir operations.

**The Navajo Nation's Social and Economic Conditions** – The Draft Environmental Impact Statement briefly described the Navajo Nation economy as historically based on livestock herding and dry farming. As described in the Nation's April 29, 2007 letter regarding Comments of the Navajo Nation on the Draft Environmental Impact Statement on the Colorado River Interim Guidelines for Lower Basin Shortages and Coordinated Operations for Lake Powell and Lake Mead, the Navajo economy and social conditions have changed significantly over the years, and more accurate descriptions must be included in the SEIS to capture foreseeable impacts on present conditions. For detailed comments regarding economic impact and concern, see Attachment A.

**The Navajo Nation's Recreation Interests** – There are various alternatives to operate the Colorado River system to better include tribes and tribal interests long-held inferior to other recreation interests. The Nation's preferred alternative is the Framework Agreement Alternative because a framework option provides for the inclusion of tribes. For example, the Nation's experience and engagement through Sections 7.2 and 7.3 in the 2022 Drought Response Operations Plan has afforded the Nation opportunities to incorporate its diverse interests like recreation for cultural, traditional, and economic purposes.

For the reasons set forth above, and to ensure foreseeable impacts on the Nation and its people are adequately accounted for, the Navajo Nation submits this letter for comment on 87 FR 69042: Notice of Intent to Prepare a Supplemental Environmental Impact Statement for December 2007 Record of Decision entitled Colorado River Interim Guidelines for Lower Basin Shortages and Coordinated Operations for Lake Powell and Lake Mead.

Finally, the Navajo Nation respectfully requests to meet with Reclamation before the draft and final SEIS are publicly released.

Sincerely,

  
Jonathan Nez, President

NAVAJO NATION OFFICE OF THE PRESIDENT AND VICE PRESIDENT

POST OFFICE BOX 7440 · WINDOW ROCK, AZ 86515 · PHONE: (928) 871-7000 · FAX: (928) 871-4025

## Attachment A

### Navajo Nation Comments on 87 FR 69042 - Detailed Comments on Economic Impact and Concern

The *Notice of Intent to Prepare a Supplemental Environmental Impact Statement for December 2007 Record of Decision Entitled Colorado River Interim Guidelines for Lower Basin Shortages and Coordinated Operations for Lake Powell and Lake Mead* (Oct. 28, 2022) (NOI) invites comments on the scoping process in this SEIS and other future decision-making processes, and specifically notes the SEIS may consider potential effects on recreation and social and economic conditions (pp. 9-10). These comments address impacts on economic development activity on Navajo trust land within the Colorado River system, including Antelope Point Marina.

**Background** – In 1958, the United States and the Navajo Nation exchanged land with the understanding that the Navajo Nation would have proximate access to the waters of Lake Powell for uses that had historically been available (e.g., livestock, agriculture) and that would be available with the creation of the reservoir (e.g., marinas, tourism). The proximate access is set at the 3,720 topographic line

In 2002, the Navajo Nation entered into a BIA lease with Antelope Point Holdings, LLC (“APH” or “Lessee”), which was novated in 2009 to be governed by Navajo leasing regulations (“Lease”). As a complement to the Lease, APH also entered into a Concession Contract with the National Park Service (NPS). Together, the Lease and Concession Contract provide for development and operation of Antelope Point Marina, an important economic development project located on trust land under Navajo Nation jurisdiction and federal land under NPS jurisdiction.

**Economic Impacts on Antelope Point Marina** - Drought conditions provide an economic challenge and opportunity for Antelope Point Marina. Existing launch ramps are not long enough to reach the current low water level, and improvements are needed to ensure the number of recreational users do not further decline to the detriment of the Navajo Nation.

We understand Antelope Point Marina, on the main channel of Lake Powell, provides the best location to launch boats at increasingly low water levels, and it may be the only location where boats could launch at dead pool level. To capture this opportunity, Navajo Nation’s Lessee must receive NPS approval to build and improve launch ramps and other amenities. To date, approvals and funding have been granted for other launch ramps at Lake Powell, but not for Antelope Point Marina. If the federal government is making long-term investments for ramp extensions and other adaptive improvements on Lake Powell, an investment at Antelope Point Marina would be the most worthwhile and should be immediately approved. Any delay in extending or constructing new launch ramps has a significant negative impact on the Navajo Nation due to the disadvantage to Navajo Nation’s Lessee in relation to other operators in the Glen Canyon Recreation Area.

**Other Prospective Navajo Economic Development** - Economic analyses also must consider prospective economic opportunities as development and capacities increase on the Navajo

NAVAJO NATION OFFICE OF THE PRESIDENT AND VICE PRESIDENT

POST OFFICE BOX 7440 · WINDOW ROCK, AZ 86515 · PHONE: (928) 871-7000 · FAX: (928) 871-4025

Nation. Opportunities for Navajo development exist from the Little Colorado River to Navajo Bridge, including potential projects at Rainbow Bridge (recreation, tourism), near Mexican Hat (river rafting), at Paiute Farm (recreation, agriculture), Oak Island (recreation, fueling station), and Padre Point (recreation, airstrip).

**Equity Concerns** - With respect to preliminary alternatives referenced in the NOI, the Framework Agreement and the Reservoir Operations Modification (pp. 8-9) each provide an opportunity to achieve equitable outcomes in the economy of the river. A significant and positive result would be assurance that the Navajo Nation's lack of direct access to the Lake Powell due to the current low water levels does not prospectively harm the Navajo Nation's economic development activities in the area.

This is consistent with the policy set forth in Executive Order 13985, Advancing Racial Equity and Support for Underserved Communities through the Federal Government (January 20, 2021), which asserts: "Because advancing equity requires a systematic approach to embedding fairness in decision-making processes, executive departments and agencies (agencies) must recognize and work to redress inequities in their policies and programs that serve as barriers to equal opportunity." Section 6 of the Executive Order more specifically provides that the Director of the Office of Management and Budget will work with the heads of agencies to "study strategies, consistent with applicable federal law, for allocating Federal resources in a manner that increases investment in underserved communities."

In working cooperatively, our federal and tribal governments can address these economic concerns and ensure a positive outcome for stakeholders despite challenges raised by the ongoing drought and low water level conditions within the Colorado River system.

**Request** - The Navajo Nation asks that the SEIS analyze the economic impact of water shortages on existing and prospective Navajo economic development projects and address the need for mitigation funding to preserve the economy of the system, including the immediate need for infrastructure improvements at Antelope Point Marina.

NAVAJO NATION OFFICE OF THE PRESIDENT AND VICE PRESIDENT

POST OFFICE BOX 7440 · WINDOW ROCK, AZ 86515 · PHONE: (928) 871-7000 · FAX: (928) 871-4025