



August 31, 2022

Ms. Carly Jerla
Senior Water Resources Program Manager
Bureau of Reclamation

Via email: CRB-info@usbr.gov

Re: Western Resource Advocates' Response to the Bureau of Reclamation's "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,

Western Resource Advocates (WRA) would like to thank the Bureau of Reclamation (Reclamation) for issuing this request for public comment on such an important, timely, and serious issue. WRA has been a long-time advocate for common sense solutions that will keep the Colorado River flowing and improve climate resilience to better manage any future water shortages. Accordingly, this letter is being submitted in response to Reclamation's "Request for Input on Development of Post-2026 Colorado River Reservoir Operational Strategies for Lake Powell and Lake Mead Under Historically Low Reservoir Conditions" (Pre-Scoping Notice) as published in Federal Register Notice – 87 FR 37884 on June 24, 2022.

WRA was pleased that the Pre-Scoping Notice conveyed the sense of urgency and scale of the problem impacting the Colorado River Basin (Basin). As a Basin, we have known for decades that the system is facing a fundamental supply and demand imbalance which will require significant action to rectify, especially as climate change continues to negatively impact water supplies throughout the Basin. As noted in the Pre-Scoping Notice, previous decision-making did not include an adequate range of hydrologic scenarios nor solicit adequate participation, causing the need for additional interim actions and emergency operations well before the expiration of the 2007 Interim Guidelines. The Pre-Scoping Notice further acknowledges that there have been significant changes since those 2007 Interim Guidelines were developed, and that circumstances will continue to change post-2026.

Recognizing these shortcomings in previous decision-making processes, we agree with the Pre-Scoping Notice when it acknowledges that future decision-making will require more flexibility, expanded participation in Basin-wide programs, better understanding of the uncertainty in model projections for reservoir operations, and "more robust measures" (i.e., shortages) to maintain reservoir storage. These principles are essential starting points for developing post-2026 operational strategies, and we are encouraged that Reclamation agrees. Importantly, however, these principles do not explicitly include environmental values that are necessary in Basin management. We strongly urge Reclamation to state that future decision-making requires clearly articulating consideration of environmental values, and how those values are protected in future policy.

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In addition to these process principles, we also agree with the substantive emphasis in the Pre-Scoping Notice on the need to identify robust policies and outcomes that can adapt to a wide range of future conditions. As noted by the Pre-Scoping Notice, “Reclamation believes that future policies must be tested across a wide range of potential future conditions, including drought sequences that are longer and more severe than those that have been observed. Absent such an approach, policies are likely to be insufficiently robust, adaptable, and successful.”

To help better implement these process and outcome principles identified in the Pre-Scoping Notice when the anticipated upcoming NEPA process(es) is initiated in early 2023, WRA is pleased to provide the following comments. We strongly believe that implementing these NEPA process elements and substantive elements into post-2026 operational guidelines will not only help bring the system back into balance, but will also establish a more resilient and proactive system of governance fully respecting and meeting the needs of all sovereigns, states, and sectors, including the environmental needs of the river and its tributaries throughout the Basin.

1. NEPA process elements

The Pre-Scoping Notice specifically requests input for ideas that ensure a “wide range of Basin partners, stakeholders, and the general public can meaningfully engage and participate in the development of post-2026 operational strategies”. We agree that broad engagement and participation are essential to the development of new operational guidelines, but want to ensure that this inclusion is indeed meaningful, productive, and respectful. Engagement and participation cannot simply be informing stakeholders about process milestones, as has often been the case. Instead, it must incorporate the values and ideas of a wide range of Basin partners, stakeholders, and the general public. This is not a call for every single idea submitted to be included, but a recognition of the numerous stakeholders and partners who have, in good faith, committed to contributing to the post-2026 guidelines. Absent such inclusion, the post-2026 operational strategies will fall short as previous decision-making processes have done.

As a top priority, we strongly urge Reclamation to create a process for timely and meaningful participation by the 30 federally recognized tribes or their representatives in the Basin. This includes governance designed to recognize tribal sovereignty, providing opportunity for diverse needs and interests to be developed and considered, and specifying the exact process for tribal participation with demonstrated commitment by Reclamation for meaningful tribal participation in the decision-making process, especially at times when tribal considerations can be included in the policy outcomes.

Additionally, we strongly urge Reclamation to create a process for timely and meaningful participation by the non-governmental organizations (NGOs), including specific opportunities and timelines for that participation. The Pre-Scoping Notice states that, “Reclamation intends to

prioritize stakeholder technical education, technical outreach, and timely access to relevant technical information. Reclamation intends to support parties in developing strategies and would welcome input on recommended steps to ensure active participation by a wide range of Basin partners, stakeholders, and the general public. Reclamation will continue to seek to prioritize the development of approaches that have broad-based support.”

While the above statements are laudable, we believe the NEPA process must move beyond providing just education, outreach, technical information, and support in developing strategies, but also include clear avenues for NGOs to provide input at meaningful and early stages in the process. There needs to be proven commitment that stakeholder input in these stages will be fully considered.

To achieve “broad-based support” for Reclamation’s approaches, these avenues must allow for the solicitation of a diverse range of ideas and solutions. This process could be similar to how the 2012 Basin Study solicited and modeled options and solutions from any interested parties, with clear deadlines for submitting comments, modeling runs, or other technical information. These avenues for input should include adequate time from Reclamation to review information, ability for stakeholders to provide input early in the process, and written responses to the input received, including how it was (or was not) addressed.

The Pre-Scoping Notice also states that Reclamation intends to design and implement a process that is transparent, but it would be helpful to identify specifically what a transparent process might look like. We suggest, at a minimum, a parallel process where a representative group of stakeholders are provided with regular check-ins with Reclamation at every stage, beginning with the Notice of Intent in early 2023. Specifically, we suggest the following elements for these stakeholder meetings:

- regular meetings—quarterly if possible—available in virtual format;
- dedicated webpage where meeting schedules can be accessed;
- agendas and materials posted in advance;
- ability to submit questions and documents in advance; and
- minutes / recordings posted afterwards.

Finally, it will be essential for Reclamation to balance short-term operational risk mitigation strategies with the NEPA process to develop post-2026 operational strategies. At a minimum, we request commitment from Reclamation that the development of post-2026 strategies will not be delayed or diminished due to short-term actions, and vice versa. Any delay or diminishment in either short-term actions or post-2026 operational strategy development will lead to further negative impacts to the river’s ecological integrity, especially if it is due to the reservoirs reaching critical elevation levels. The Pre-Scoping Notice also states that “Reclamation may utilize multiple NEPA efforts, or other appropriate processes, to address emerging low-reservoir conditions in the Basin.” We suggest that Reclamation think critically whether NEPA is

the appropriate venue for addressing short-term low-reservoir conditions, and whether there are administrative actions or modifications that may provide more immediate response and action. Relatedly, we also do not envision the short-term and long-term efforts as mutually exclusive. We suggest for the post-2026 guidelines, Reclamation build upon the research, development, implementation, and lessons learned from any short-term risk mitigation strategies.

2. *Substantive elements of post-2026 operations*

The Pre-Scoping Notice explicitly states that “Future strategies should consider [the recent declines in hydrology] and the likelihood of continued declines in supply”, and “a different approach toward addressing risk that employs planning methods that account for deep uncertainty must be taken”, and that “robust policies are those that withstand a broad range of future conditions and are not based on a single set of assumptions about water supply and demand”. Therefore, “Reclamation believes that future policies must be tested across a wide range of potential future conditions, including drought sequences that are longer and more severe than those that have been observed. Absent such an approach, policies are likely to be insufficiently robust, adaptable, and successful.” To that final point, the Pre-Scoping Notice also identifies the shortfalls in the 2007 Interim Guidelines and Drought Contingency Plans, resulting in their failure to prevent Lakes Powell and Mead from dropping to critical elevation levels.

We agree with Reclamation on the need to identify robust, resilient, and adaptive strategies for the post-2026 guidelines, but in doing so, urge Reclamation to move beyond short-term, reactive approaches (e.g., applying significant shortages only once dangerously low reservoir elevation levels are reached) toward a long-term, pro-active framework that is not just focused on system stabilization or equilibrium, but on recovery of the system. Implementation of the 2007 Interim Guidelines made clear that reactive approaches can only stabilize the system at best, and fail to prevent the system crashing at worst.

Focusing solely on reservoir elevation levels does not provide any guidance for system recovery. We suggest Reclamation include reservoir recovery criteria in the post-2026 guidelines. The post-2026 guidelines need to adequately respond to the river’s changing hydrology, so that the Basin can begin to manage demands and ecological needs within the true amount of water that the river provides. Additional recommendations for more effective approaches include:

- a. *Adequate consideration of climate realities for operational certainty*
 - i. One of the primary goals of the 2007 Interim Guidelines was to provide operational certainty for the Basin states. But because the operational guidelines did not include a robust range of climate change and hydrological scenarios, the system is crashing before the guidelines expire. The post-2026 guidelines need to provide operational certainty around all future scenarios so

the same mistake is not repeated. This includes operational certainty when the river's annual supply is as low as 11, 10, or even 9-million-acre feet (MAF).

- ii. Reclamation's modeling efforts should be guided by relying on drier—and more reflective of recent hydrology—climate model runs. This could be achieved by removing runs that skew unusually and unrealistically wet. Specifically, Reclamation's modeling should include not just stress test hydrology, but additional, drier hydrologies that are also plausible. This includes millennium drought (2000-2020) and shorter time periods of significantly drier years (e.g., 2000-2004, 2020-2022).
- iii. Similarly, a recognition of these potential drier hydrologies means not just considering what those lower flows mean in terms of reduced supply, but how those hydrologies impact the overall environmental health of the river and the sustainability of the system. In other words, if consideration of climate realities only means addressing supply and demand imbalances as flows decline, other parts of the system will continue to be negatively impacted (e.g., flows to the Delta, other environmental considerations). Operational certainty includes ensuring there is a healthy river ecosystem with connected habitat that protects endangered fish and reduces the overall stress on fish and wildlife.

b. Adapting long-term consumptive use and losses to available supplies

- i. One of the most fundamental components of the post-2026 guidelines will be ensuring that demands throughout the Basin do not exceed available supplies, and that demands will continue to be reduced as flows on the river decline, as expected. Bringing the system back into balance will require shared and permanent shortages across the Basin. In the Lower Basin, this will require increased shortage requirements to Arizona, Nevada, California, and Mexico. What has become clear from the 2007 Interim Guidelines is the total quantity of shortages was nowhere near the necessary amount to prevent continued declines in reservoir storage. Reclamation should determine critical thresholds in Lake Mead (e.g., 1,020 or 1,000) and set the total shortages at the levels necessary to truly protect the system. As Reclamation has publicly noted, this could be as high as 3 or 4 MAF. Accordingly, shortages at higher elevations (e.g., 1,090 or 1,075) will need to be much higher than under existing criteria. In the Upper Basin, uses will also need to decline should flows continue to decline, and Reclamation must be prepared to limit uses in those states to 4, 3.5, or 3 MAF as necessary.
- ii. Reclamation must also account for evaporative losses in the Lower Basin, providing equity to the Upper Basin which is charged evaporative losses at CRSP units. This alone could reduce uses in the Lower Basin by approximately 0.8-1.2 MAF.

c. Use of realistic Upper Basin demand forecasts

- i. For the post-2026 guidelines to truly be effective, Reclamation must use realistic demand forecasts for the Upper Basin. Under the Law of the River, consumptive use allocations total 16.5 MAF/yr and were based on presumed average annual river flow upwards of 17.5 MAF. Yet, the average annual flow in the Colorado River since 2000 is 12.3 MAF. Future consumptive uses in the Basin need to be lowered more to reflect the diminished supply available now. The use of unrealistic demand schedules in previous decision-making has been unproductive and caused operations to deviate from what was planned. For example, the proportional number of 7.48, 8.23, and 9 MAF releases from Lake Powell under the 2007 Interim Guidelines were not as planned because of the difference between the Upper Basin demand schedule and actual Upper Basin consumptive use and losses, leading to more water being released from Powell than was intended.
- ii. It is important to note that realistic demand forecasts do include the recognition that some tribes in the Upper Basin have the right to and will likely increase their uses, helping to rectify substantial historical inequities in water access.

d. Provide flexibility

- i. The post-2026 guidelines must be flexible enough to withstand changing conditions, especially when change happens quickly (i.e., changing supply runoff forecasts within the same water year), to prevent reservoirs from reaching critical levels requiring unilateral and emergency action by Reclamation. Similarly, the guidelines must allow for incorporation of new information as it becomes available as we cannot predict all possible conditions.
- ii. The post-2026 guidelines must allow for the incorporation of recent hydrology into operational guideline decision-making, and corresponding adjustments to storage guidance, helping to respond to declining flows and helping the system respond more effectively and proactively than just using elevation levels. WRA recently contracted with Water Balance Consulting to model such an approach, and combining reservoir levels with 5-year average inflows to Lake Powell to determine shortage levels in the Lower Basin helped protect and stabilize the entire Colorado River system. This flexibility is especially helpful should flows continue to decline, as expected.
- iii. Reclamation should also consider additional mid-year reviews of operating guidelines to allow for more intra-annual flexibility.
- iv. Identify flexible water management tools that consider the role of tribal water (developed, undeveloped, and unsettled) in the future framework of the Colorado River.

Finally, and just as importantly, we request that Reclamation directly connect the development of post-2026 operations to parallel planning processes. Several current multi-state agreements are set to expire at the end of 2025 while others are ongoing and require a resolution sooner

rather than later. Their re-issuance/resolution will be critical to the “package” of solutions for the Colorado River and thus they should be clearly connected to the post-2026 operations.

- Any programs developed/implemented to address “critical levels” at Powell and Mead. Drought Operations and timing such releases to benefit streams.
- Progress towards a robust demand management program in the Upper Basin, including the Demand Management Storage Agreement, with consideration of how that program may be designed to benefit environmental flows in the Upper Basin.
- Continued progress towards providing all tribes with clean water.
- Continued progress with Mexico on Minutes to the 1944 Water Treaty and mitigating ecological impacts in the Colorado River Delta.
- Continued coordination with relevant federal agencies to identify how post-2026 guidelines and any associated operations (both long-term and short-term/emergency) can be designed to benefit Upper Basin environmental and recreational resources.
- Progress towards efforts to address declining Salton Sea levels, including funding for new habitat and dust suppression projects on exposed lakebed, technical and scientific support on mitigation efforts (including extensive environmental monitoring), and adequate community public health interventions (e.g., air filters).

We greatly value this opportunity to provide our comments on the forthcoming NEPA process and development of the post-2026 operational guidelines. We look forward to working with Reclamation and other Basin partners and stakeholders in the coming years to help identify and implement solutions for a more resilient and sustainable Colorado River.

Sincerely,

A handwritten signature in black ink that reads "Bart P. Miller". The signature is written in a cursive, flowing style.

Bart Miller
Healthy Rivers Program Director
Western Resource Advocates