



September 1, 2022

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

CRB-info@usbr.gov

Re: Joint Response of Upper Basin Dialogue Participants 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,

The six Upper Basin Tribes and ten conservation groups with expressly shared interests in the Upper Colorado River Basin have formed a group referred to as the Upper Basin Dialogue (“UBD”). The UBD facilitates sharing of information and resources to help pursue common goals related to water rights and resources in the Upper Colorado River Basin. As part of that effort, we, the undersigned, which comprise a majority of UBD members, have prepared this joint response to the Bureau of Reclamation’s (Bureau) “Request for Input on Development of Post-2026 Colorado River Reservoir Operational Strategies for Lake Powell and Lake Mead Under Historically Low Reservoir Conditions” (a/k/a Pre-Scoping Notice) as published in Federal Register Notice – 87 FR 37884 on June 24, 2022.

First, we would like to thank the Bureau for acknowledging the serious problem we all face. As we develop river policy that will govern in years to come, it is imperative that we acknowledge that the river has never had the volume originally apportioned under the 1922 Colorado River Compact, that the current volume is declining rapidly, and that we may never return to the flows that we have been accustomed to experiencing in previous decades. While the Colorado River community as a whole has to learn to live with less, Tribes must also be allowed to develop their Indian reserved rights to water to provide clean drinking water, adequate sanitation and economic development, as has been historically prioritized to the rest of the Basin community.

We also want to thank the Bureau for recognizing the importance of active and meaningful involvement by all sovereigns—including the 30 Colorado River Basin tribes and Mexico—in developing and implementing river management policy from the outset of the development of the Post-2026 Colorado River operational strategies. Basin Tribes hold water rights to millions of acre-feet of Colorado River water (including unresolved claims and senior (or high) priority, reserved rights). Climate change will continue to diminish overall runoff amounts and likely impact lower priority water uses. Given this volume of tribal water, it is imperative tribes be involved in crafting workable solutions, and it is time to correct the historical wrong of tribal exclusion. Indeed, we will need to bring all expertise and interests to bear to meet the challenges we face going forward.

The Pre-Scoping Notice seeks input and recommendations to consider as the Bureau initiates a NEPA process for the next set of Colorado River operating strategies. The Notice recognizes that “circumstances have changed” in the Colorado River Basin since adoption of the 2007 Colorado River Interim Guidelines for Lower Basin Shortages and the Coordinated Operations for Lake Powell and Lake Mead. Entities relying on the Colorado River face increased individual and collective risk of water supply interruptions that will inevitably impact society, economies, and the environment in the southwestern United States. As such, the Bureau is seeking to develop an updated management framework through an inclusive and transparent process that will allow states, Tribes, and other Basin partners to explore operational strategies under highly variable and uncertain conditions and to address near-term challenges with an eye toward garnering broad-based support.

The Bureau’s Notice clarifies that the pre-scoping effort does not replace the formal NEPA process that is anticipated to begin in early 2023. Formal scoping comments will be solicited when the NEPA process starts, but this pre-scoping effort can help frame the development of the NEPA process both procedurally and substantively. It is with these understandings that the undersigned participants outline the following guiding principles and shared priorities that will be important to the development of the next management framework for the Colorado River Basin. Detailed proposals and recommendations specific to each undersigned’s interests will be provided at appropriate times throughout the formal NEPA process.

Guiding Principles for Future Colorado River Strategies and Operations

1. *Integrity*: An overarching goal of any management framework involving the Colorado River Basin should be to help ensure the overall integrity of the Colorado River and its tributaries while providing water for Tribal homelands and other human and natural uses.
2. *Ethic toward Resilience*: The future of the Colorado River and its tributaries depends on whether the Basin can adapt and adjust to the hotter, drier conditions confronting the Basin. To be successful, future management strategies and operations will have to incorporate an ethic of resilience that focuses on helping establish the sustainable use of

the Colorado River and its tributaries for people and the natural environment for years to come.

3. *Managing Beyond Crisis Mode*: The next management framework must move beyond managing from crisis to crisis. To provide greater water security for people, communities and the environment, management operations must be nimble enough to anticipate the possible extremes in both hydrology and reservoir storage and implement planned actions that are known and expected to respond in kind.

Key Themes and Priorities for Colorado River Strategies and Operations

1. *NEPA Process Considerations*: The Pre-Scoping Notice identifies that the Bureau intends to design and implement the next Colorado River management framework using “a stakeholder process that is inclusive, transparent, and encourages meaningful engagement.” While we are encouraged by this and other expressed references to inclusivity, consultation and outreach provided in the Notice, the NEPA process related to the future Colorado River management framework should, among other things:
 - a. Substantively honor the sovereignty of Tribal nations and the unique nature of Indian reserved water rights as mentioned in the Pre-Scoping Notice by identifying and implementing tribal consultation processes that are commensurate with the federal government’s trust responsibility for Basin Tribes. Such processes should build upon the recent efforts to improve the sharing of information to invite tribes to participate in federal and state government negotiations and/or concurrently provide forums whereby questions, recommendations and input from tribal nations will be meaningfully considered, integrated, and responded to as part of the overall decision-making processes for Colorado River strategies going forward;
 - b. Provide opportunity for development and consideration of the diverse range of contemporary needs, interests, and priorities in the NEPA analyses;
 - c. Specify the opportunities and timeframes to inform and consider the input from tribes, Basin partners and stakeholders with a demonstrated commitment and willingness to problem solve Colorado River challenges with state and federal agencies in a comprehensive manner; and
 - d. Recognize and incorporate the known fact that useful engagement of tribes, other Basin partners and stakeholders only has meaning to the extent it can be conducted at useful intervals to provide a reasonable opportunity for gaining an understanding, having dialogue, and ultimately providing iterative feedback for consideration in building the future management framework before it is fully finalized.

2. *NEPA Analysis Considerations*: The Pre-Scoping Notice explains the need to consider future operations and management strategies under conditions of deep uncertainty and best available science. To further the substantive development of the next Colorado River management framework, the NEPA process should also:

- a. *Perform a comprehensive analysis*: As the Pre-Scoping Notice identifies, current operations under changed circumstances have produced adverse impacts to society, the environment, and the economy. All indications are that hydrology is not likely to improve anytime soon. The next Colorado River management framework cannot simply focus on short-term efforts to stabilize the system. It must also help to promote the long-term sustainability of the Basin's people and natural environment. To achieve this outcome, the NEPA process must comprehensively identify, assess, and address alternative management paradigms and the possible impacts not only to the plumbing of the Colorado River system but also to the critical social, cultural, and environmental resources in both the Upper and Lower Basins that serve as a foundation for the Basin's integrity overall. This must include the impact on tribal trust assets and communities placed on confined reservations after ceding millions of acres of indigenous lands to the United States.

- b. *Work to complement essential parallel efforts*: We recognize the next Colorado River management framework may not encompass every issue plaguing the Basin. Future management strategies and operations, therefore, must be sufficiently complementary to parallel efforts that remain essential to achieving the Basin's integrity and long-term sustainability. Such parallel efforts include, but may not be limited to:
 - i. Securing reliable access to clean drinking water and adequate sanitation for all Tribal members and other Colorado River Basin residents;
 - ii. Reaching agreement with Mexico on use of Colorado River resources after expiration of Minute 323; and
 - iii. Building on the opportunities provided by the Infrastructure Investment and Jobs Act, Inflation Reduction Act and other funding opportunities that will allow us to build the efficiency and conservation mechanisms needed to enable the Colorado River Community adapt to ongoing conditions in the Colorado River Basin.

Because these and similar efforts are of such great importance to the health of the Basin, our support for a future Colorado River management framework will be measured in part by how they work in concert and avoid conflict with these and other related efforts aimed at promoting greater certainty, building more resilient communities, ecosystems, and economies, and reducing potential conflict over water management decisions going forward.

- c. *Allow for greater flexibility:* A key element of the next Colorado River management framework must also be flexibility—the framework must be able to quickly adjust to and account for changing conditions without requiring complete system overhaul in parts of, or throughout, the Basin. For the framework to provide flexible water management strategies that contribute to basin-wide water security for all water users, including the environment, it must be based on a range of modeling scenarios that account for the hydrologic realities of both the Upper and Lower Basins and anticipate a robust range of responses in the face of uncertain future conditions. This will require assessment of operational strategies that incorporate flexible water management tools and consider the role of tribal water (developed, undeveloped, and unsettled) in the future management framework for the Colorado River. It also includes incorporation of updated and advanced modeling efforts, as well as integration of information from a diverse group of perspectives (including traditional indigenous knowledge) and sources including data from the Tribal Water Study and comments regarding cultural and ecological resources from relevant Records of Decisions, Biological Assessments, and scientific studies regarding the Colorado River and its resources.

We value the opportunity to inform the processes for developing the NEPA efforts related to the next Colorado River management framework. We look forward to working together in the months and years to come to meet the immediate needs in the Colorado River Basin and to ensure long-term sustainability for the people, plants, and other species within the Basin.

// Signatories on Next Page

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cc: Tanya Trujillo, Assistant Secretary for Water and Science, US Dept. of the Interior
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