



SOUTHERN UTE INDIAN TRIBE

August 16, 2022

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

CRB-infor@usbr.gov

RE: Southern Ute Indian Tribe's written comments for the "*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 Southern Ute Indian Tribe ("Tribe") has reviewed the Federal Register Notice, 87 FR 37884, published on June 24, 2022, titled "*Request for Input on Development of Post-2026 Colorado River Reservoir Operational Strategies for Lake Powell and Lake Mead*" ("Pre-Scoping Notice"). The Tribe appreciates the opportunity to provide input on how we can be included as an active and meaningful participant in the upcoming NEPA process to develop post-2026 operations for Lake Powell and Lake Mead as well as to provide input on potential substantive elements and strategies for post-2026 operations.

The Ute people have lived in Colorado and the surrounding areas for time immemorial. The Southern Ute Reservation, located in Southwestern Colorado, is a small portion of our original homeland. The Tribe has a water settlement, enacted through the Colorado Ute Indian Water Rights Settlement Act of 1988, 102 Stat. 2973 and amended in the Colorado Ute Indian Water Rights Settlement Act Amendments of 2000, Pub. L. No. 106-554, 114 Stat. 2763. The Tribe holds a wide variety of surface, storage, and groundwater state-based and federally reserved rights with various priority dates, amounts and beneficial uses. Although the Tribe recognizes that the Colorado River Basin is experiencing a prolonged period of drought, as a sovereign, we must be allowed to develop our water to continue to meet the needs of tribal members and the Reservation in the future. These basic needs include clean drinking water, adequate sanitation, agriculture, wildlife, and economic development.

Tribes have historically been left out of the conversations on the management of the Colorado River system, including Lake Powell and Lake Mead. However, the Tribal Water Study found that the 10 member tribes of the Colorado River Ten Tribes Partnership (of which Southern Ute Indian Tribe is a member) hold rights to approximately 2.8 million acre-feet of water per year from the Colorado River and its tributaries. This is a significant amount of water. When the water rights of the additional 20 Colorado River Basin Tribes are added to that amount, it is clear

that a large portion of the Colorado River Basin water rights are held by tribes. In addition, tribes are not merely water users, members of the public, and stakeholders; tribes are sovereign entities. As a sovereign in the Basin, the Tribe does not want to be updated on the negotiations between the States and the Federal team *after* decisions are made; the Tribe wants to be at the table *during* discussions and negotiations. The Tribe must be involved in discussions in order to protect our water rights as well as the fish, the plants, the land, and the animals that depend on the water. In addition, the Tribe has expertise to share in crafting a solution to this long-term challenge we all face.

The Bureau of Reclamation's trust responsibility to tribes, including the Southern Ute Indian Tribe, requires the Bureau to ensure that tribes are included in the development of the Post-2026 operational guidelines for Lakes Powell and Mead. The Tribe urges Reclamation to take the lead in bringing tribes to the table during negotiations between the state and federal teams, so the tribes can respond to the suggested rules, policies, guidelines, and regulations in real time and so tribes are able to protect their interests. The 2022 Drought Response Operations Plan is a good example of collaboration and inclusion of tribes in Colorado River Basin discussions. That Plan authorized the inclusion of the 6 Upper Basin Tribes, including Southern Ute Indian Tribe, in any working group established by the Drought Response Operating Agreement Parties to assist with drafting, developing, implementing, analyzing proposals, or monitoring any Drought Response Operation. This example allows tribes meaningful participation in the discussions while they are ongoing and to provide any input during those discussions, not after the discussions have concluded. In addition, as trustee to the Tribe, Reclamation has an obligation to ensure that the Post-2026 Colorado River Reservoir Operational Strategies for Lake Powell and Lake Mead do not have a detrimental impact on Southern Ute's water rights or the future development of its water rights. Southern Ute urges Reclamation to ensure that the new guidelines are implemented in a manner consistent with Southern Ute's water rights and Reclamation's trust obligation to Southern Ute. Last, the United States must commit to engaging in formal consultation with the Tribe if the Tribe is going to be affected by actions taken to protect Lakes Powell and Mead in the development of the Post-2026 operating guidelines.

In the Pre-Scoping Notice, Reclamation recognizes that the last 23 years have been the driest period in this century as well as in the last 1,200 years. Because of this long-term drought, Colorado River reservoir levels are declining, which threatens water supplies across the Southwestern United States and Mexico. When initiating the NEPA process, the Tribe asks Reclamation to remember its trust responsibility to honor the Tribe's sovereignty, water settlement, and Federal Indian Reserved water rights. Reclamation can do this by pushing to include tribes in negotiation discussions between the states and the United States and to consult with the Tribe if our water rights are going to be impacted.

The Post-2026 Operating Guidelines should not only deal with management of Lake Mead and Lake Powell but should also consider the integrity and health of the Colorado River and its tributaries. The Guidelines should also allow the Tribe to develop its water rights for future domestic and municipal use as well as for future economic development, which would also

benefit its tribal members. Tribes generally look 100 years into the future when making plans for their tribal members so that they account for future generations. The Post-2026 Operating Guidelines must account for future generations as well. The Post-2026 Guidelines must provide water security for the people in the Colorado River Basin; it should be flexible enough to address continuing drought and climate change; and it should allow for a variety of responses so that all sovereigns and water users are not managing a new crisis every few months. The NEPA process should be a comprehensive process used to identify all possible impacts to the Colorado River as a whole, which would include impacts to human uses, wildlife, fish, plants, social, and cultural uses.

The Post-2026 Operating Guidelines are only one step of many to address the impact of drought and climate change on the Colorado River system. The Tribe recommends that Reclamation and other U.S. agencies work on parallel efforts throughout the Colorado River Basin to assist in managing the waters in the Basin including:

1. Start an accounting process for the undeveloped water that is flowing downstream. The Tribe is concerned that downstream users have become reliant on our water and are not paying for that water.
2. Secure funding for the Tribe's federal irrigation project, the Pine River Indian Irrigation Project, which sorely needs funding for repairs. The repairs would allow for better and more efficient use of the Tribe's water rights.
3. Secure funding to build infrastructure to utilize the Tribe's water being stored in Lake Nighthorse once the tribe has determined how best to use that water.
4. Assist the Tribe with funding or technical assistance to provide access to clean drinking water for its tribal members that do not have plumbing to access that clean drinking water.
5. Fund new opportunities for tribes to participate in water conservation programs.
6. Fund the San Juan River Recovery Implementation Program to maintain and enhance the federal Endangered Species Act (ESA) recovery, which would assist the Tribe in maintaining its ESA compliance for its water settlement in Colorado, as well as the other tribal, states, and federal project participants.

The Tribe appreciates Reclamation's initiative to hold the monthly (and now weekly) Tribal Information Exchange webinars that provide up-to-date information to the tribes. We also thank you for the opportunity to provide input on the process for participation and potential elements of the upcoming NEPA process. We look forward to working with you and other stakeholders in the development of the Post-2026 Operating Guidelines to ensure that the current and future needs of the Tribe are met.

Sincerely,



Melvin J. Baker

Chairman, Southern Ute Indian Tribe

cc: Tanya Trujillo, Assistant Secretary for Water and Science, U.S. Dept. of the Interior
Camille Calimlim Touton, Commissioner, U.S. Bureau of Reclamation
Bryan Newland, Assistant Secretary, U.S. Bureau of Indian Affairs
Wayne Pullan, Regional Director, Upper Colorado River, U.S. Bureau of Reclamation
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