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Scott J. Cameron
Acting Commissioner
U.S. Bureau of Reclamation
U.S. Department of the Interior
1849 C Street NW
Washington, D.C. 20240

March 2, 2026

Sent via electronic mail: crbpost2026@usbr.gov

RE: The State of Wyoming's Comments on the Draft Environmental Impact Statement for Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead (January 16, 2026)

Dear Acting Commissioner Cameron,

The State of Wyoming, acting through the Wyoming State Engineer's Office ("Wyoming"), respectfully submits the following comments on the Bureau of Reclamation's ("Reclamation") *Draft Environmental Impact Statement for Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead* ("DEIS") issued on January 16, 2026. These comments address the following core points: (1) Wyoming's interest in the matter; (2) Reclamation's legal authority to interpret the Law of the River within the context of a National Environmental Policy Act ("NEPA") process; (3) the mismatch in the actual geographic scope of some of the DEIS's proposed alternatives with the purpose and need and the geographic scope of the environmental impacts that are analyzed; and (4) certain ways in which the DEIS can be improved.

Wyoming submits this comment letter in conjunction with, and as a supplement to, the comment letter filed by the States of Colorado, New Mexico, Utah, and Wyoming (collectively, the "Upper Division States") acting through the Upper Colorado River Commission ("UCRC"). Wyoming incorporates by reference herein the UCRC's comment letter.

Wyoming submits this comment letter without prejudice to, and expressly reserving, all legal, equitable, and compact-based rights and remedies available to the State, including those that may be asserted in an original action before the Supreme Court of the United States. Nothing in these comments shall be construed as acquiescence to any interpretation of federal law, interstate compact, or operational practice that would alter existing rights or obligations under the Law of the River.

EXECUTIVE SUMMARY

Wyoming appreciates the opportunity afforded by Reclamation to file this comment letter. Wyoming understands that Reclamation will need to sift and parse through comment letters from a wide range of groups, including States, Tribes, private industry groups, other federal agencies, non-profit advocacy groups, and even individuals providing comments in their individual capacity. For this reason, Wyoming provides this executive summary to outline the state's principal points and recommendations.

- Section I introduces Wyoming's interest in any final decision reached by Reclamation.
- Section II explains that the NEPA analysis Reclamation is performing through the DEIS and eventual Final Environmental Impact Analysis ("FEIS") is not the proper vehicle for determining rights under the Law of the River, nor is Reclamation properly equipped to make any such determinations.
- Section III explains that Reclamation has properly defined the relevant scope of decision as operations at Lake Powell and Lake Mead; however, Reclamation then deviates from that defined scope of the decision by considering operations upstream of Lake Powell in some of the proposed alternatives. This creates a material mismatch between the proposed action and (a) the proposed action's purpose and need and (b) the *direct* effects that are analyzed. Reclamation can (and should) address the issue by actually limiting the geographic scope of the action to the operation of Lake Powell and Lake Mead, and eliminating from consideration any proposed alternative that would directly involve facilities and operations upstream of Lake Powell and Lake Mead.
- Section IV explains that Wyoming would like for this NEPA process to be successful. To that end, Wyoming discusses certain issues identified in this letter, and in the UCRC comment letter, that would benefit from modification in the FEIS.
- Section V preserves Wyoming's legal rights.
- Section VI concludes.

I. Introduction and The State of Wyoming's Interest

Wyoming has a direct, substantial, and legally protected interest in the proposed action because it is a headwater state whose water resources, compact entitlements, and sovereign interests may be affected by federal decisions involving water operations, management, or allocations within the Colorado River Basin. Wyoming is an Upper Division State and signatory to the 1922 Colorado River Compact and the 1948 Upper Colorado River Basin Compact. Under the Compacts, Wyoming is annually apportioned 14% of the total consumptive use apportioned in perpetuity and available for use in the Upper Basin under the 1922 Colorado River Compact. Wyoming's citizens rely on Colorado River System water for agricultural, municipal, industrial, domestic, and recreational uses, and for Wyoming's abundant environmental resources.

Along with Utah, Wyoming is home to the Flaming Gorge Reservoir, one of the three Colorado River Storage Project Act's ("CRSP") Upper Initial Units whose operations are directly impacted by several of the DEIS alternatives. Reclamation's proposed federal action's potential treatment of Flaming Gorge operations may directly affect Wyoming interests and water uses, downstream Green River resources, and the State's ability to develop and use its compact apportionment.

Wyoming owns the water within its borders, as its Constitution clearly states: "The water of all natural streams, springs, lakes or other collections of still water, within the boundaries of the state, are hereby declared to be the property of the state."¹ Wyoming holds title to water in a sovereign capacity as representative of all the people for the purpose of guaranteeing that the common rights of all are equally protected.²

The Wyoming State Engineer is a constitutionally created office and is Wyoming's chief water official with general supervisory authority over the waters of the state.³ The State Engineer is also empowered to appear in, and represent the state of Wyoming in, any proceeding or hearing concerning or relating to water or its use.⁴ Wyoming constitutional and statutory provisions also charge the State Engineer and the State Board of Control with the supervision, appropriation, distribution, and diversion of the waters of the state,⁵ including water storage and use under rights held by Reclamation.

¹ Wyo. Const. art. 8 § 1; See also Wyo. Stat. Ann. § 41-3-101 (stating that water is always the property of the state). The United States has approved Wyoming's constitutional declaration of water ownership. See *Farm Inv. Co. v. Carpenter*, 61 P. 258, 264 (1900).

² Wyo. Const. art. 1 § 31; *Merrill v. Bishop*, 287 P.2d 620, 625 (Wyo. 1955); See also *Farm Inv. Co.*, 61 P. at 265.

³ Wyo. Const. Art. 8 § 5.

⁴ Wyo. Stat. Ann. § 9-1-902.

⁵ Wyo. Const. art. 8 §§ 2, 5; See, e.g., Wyo. Stat. Ann. §§ 41-4-502 through -511.

Wyoming supports the timely adoption of robust post-2026 operational guidelines and the good-faith development of a consensus-based approach to Colorado River management. Wyoming also has a significant interest in ensuring that the FEIS that results from this process is procedurally and substantively adequate under NEPA, so that the Record of Decision will withstand judicial review and provide the certainty and stability that all Basin stakeholders require.

To that end, Wyoming also notes that there may be ways for Reclamation to extend the status quo on an interim basis, thereby allowing additional time for the Basin States to continue working in good faith toward agreement. First, Reclamation could make a determination of NEPA adequacy based on the 2024 Final Supplemental Environmental Impact Statement for Near Term Colorado River Operations in order to extend the existing status quo on an interim basis.⁶ That document analyzed a wide range of environmental impacts from which Reclamation could base a determination of NEPA adequacy to allow the status quo to continue for an interim period. Second, and relatedly, Reclamation could also preserve the status quo on an interim basis through incorporation by reference of the 2024 Final Supplemental Environmental Impact Statement.⁷

II. Reclamation Need Not—And Should Not—Make Any Conclusions Regarding The Law Of The River Through This NEPA Process.

The process that Reclamation is currently undertaking pursuant to NEPA calls for the agency to identify, through a public statement (i.e., the FEIS), the reasonably foreseeable environmental effects of the proposed action, any reasonably foreseeable adverse environmental impacts that can be avoided, and a reasonable range of alternatives to the proposed action.⁸ That is the key NEPA statutory requirement, and it is a process requirement.

Importantly, however, it is not Reclamation's responsibility to determine rights of the respective separate Colorado River Basin States. Wyoming has recently become aware of a document prepared by the Arizona Department of Water Resources encouraging Arizona stakeholders to submit comment letters to Reclamation in response to the DEIS, specifically urging those stakeholders to press Reclamation to adopt certain legal positions and interpretations of the Colorado River Compact and the Law of the River more broadly. Wyoming disagrees with the merits of the legal assertions advanced in Arizona's solicitation document, but notes that this NEPA process is not the appropriate forum for resolving substantive legal questions under the Law of the River. Reclamation is not the arbiter across all of the seven Basin States to discern and decide the water apportionments to be held and exercised by each sovereign state.⁹ As the Supreme

⁶ Available at:

<https://www.usbr.gov/ColoradoRiverBasin/documents/NearTermColoradoRiverOperations/20240300-Near-termColoradoRiverOperations-FinalSEIS-508.pdf>.

⁷ See Department of Interior, Handbook of National Environmental Policy Act Implementing Procedure at 19 (Feb. 2026) (noting ability to incorporate by reference under updated handbook procedures).

⁸ 42 U.S.C. § 4332(2)(C).

⁹ See generally *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024).

Court recently explained, agencies have no special competence in interpreting law.¹⁰ Instead, courts have the special competence in doing so.¹¹ As the Supreme Court has repeatedly recognized, interstate water compacts are both contracts among sovereigns and federal law, and their interpretation is ultimately a judicial function. Post-2026 operational guidelines adopted through administrative processes cannot amend, reinterpret, or supplement compact obligations, nor can they reallocate risk among the states absent clear compact authorization. While this *NEPA process* is the incorrect vehicle for Reclamation to make any conclusions about obligations under the Law of the River, the State of Wyoming remains open to collegial and good-faith dialogue with the Basin States in pursuit of a lawful resolution.

Accordingly, the FEIS should:

- Clearly distinguish between administrative operating criteria and binding legal duties under the Colorado River Compact and related elements of the Law of the River.
- Avoid operational constructs that could be characterized, in litigation, as imposing de facto water delivery guarantees, curtailment standards, or storage mandates on the Upper Division States.
- Explicitly acknowledge that operational outcomes do not define compact compliance, and that compact compliance determinations remain subject to judicial interpretation based on compact language, not reservoir conditions or operations.

Failure to maintain these distinctions risks creating an administrative record that could be misconstrued in future original-jurisdiction proceedings as evidence of acquiescence, waiver, or course-of-performance modification of compact terms.

Further, because Reclamation does not have authority to enforce the 1922 Colorado River Compact, it is also beyond Reclamation's authority or duty to interpret the Law of the River through this NEPA process.¹² And even if Reclamation were empowered to make definitive legal determinations about the Law of the River—which it is not—the NEPA process is not a forum for adjudicating the scope or validity of water apportionments. NEPA is a procedural statute that requires federal agencies to evaluate environmental impacts; it does not confer authority to resolve substantive questions of state-law water rights or to interpret the legal entitlements as between sovereign states. In short, NEPA imposes no substantive environmental obligations or restrictions.¹³ Reclamation's task here is simply to follow NEPA's process requirements as it develops new guidelines for the operation of Lake Mead and Lake Powell.

¹⁰ *Id.* at 401–02.

¹¹ *Id.*

¹² See *Seven County Infrastructure Coal. v. Eagle County*, 605 U.S. 168, 188 (2025) (“[A]gencies are not required to analyze the effects of projects over which they do not exercise regulatory authority.”).

¹³ *Id.* at 173.

It appears that the DEIS expressly recognizes Reclamation's more circumscribed authority with respect to the 1944 U.S.-Mexico Treaty on Utilization of Waters of the Colorado and Tijuana Rivers and of the Rio Grande.¹⁴ Wyoming supports Reclamation's acknowledgment of the limits of its authority and urges that any FEIS apply the underlying principle of this approach in a more comprehensive manner, including with respect to all matters pertaining to the Law of the River.

III. Reclamation Has Selected A Reasonable Scope For The Federal Action, But The DEIS Fails To Adhere To The Stated Scope, Creating A Mismatch In The Scope Of Direct Environmental Effects Analyzed.

The DEIS proposes a geographic scope of decision that is limited to the operations of Lake Powell and Lake Mead.¹⁵ The DEIS also states that the geographic scope of impact "begins at full pool of Lake Powell at Gypsum Canyon and extends downstream along the mainstream Colorado River floodplain to the Southerly International Boarder . . . with Mexico."¹⁶

As discussed in the UCRC's comment letter, the scope of the federal action (operations at Lake Powell and Leak Mead) is narrow, and sensible. The purpose and need of the federal action is to replace the Colorado River Interim Guidelines for Lower Basin Shortages and the Coordinated Operations for Lake Mead and Lake Powell ("2007 Interim Guidelines"), which expire during the 2026 operating year.¹⁷ The 2007 Interim Guidelines address the operations of Lake Powell and Lake Mead.

But the DEIS then deviates from that limited scope. The DEIS provides: "[M]anagement strategies that include activities upstream of Lake Powell are being analyzed in this Draft EIS. These activities include Upper Basin conservation and, if warranted to protect critical reservoir elevations, operations at the CRSP Upper Initial Units."¹⁸

This error should not be carried forward in the FEIS. Most importantly, the expanded scope that considers actions upstream of Lake Powell in certain proposed alternatives is clearly outside the scope of the purpose and need. The purpose and need of the federal action is to update the management guidelines for the coordinated operation of Lake Powell and Lake Mead.¹⁹ Any management or operational decisions upstream of Lake Mead or Lake Powell are *strictly* outside the geographical territory of the proposed project and Reclamation's stated proposed purpose and need. Notably, in *Seven County Infrastructure Coalition v. Eagle County*, the Supreme Court was

¹⁴ See DEIS, at 1-17 ("Reclamation's modeling assumptions are not intended to constitute an interpretation or application of the 1944 Water Treaty or to represent current U.S. policy or a determination of future U.S. policy regarding deliveries to Mexico."), at 2-8 (same), 2-29 (same).

¹⁵ See *id.* at 1-4 ("Reclamation, acting on behalf of the Secretary, proposes to adopt specific guidelines and coordinated reservoir management strategies to address operations of Lake Powell and Lake Mead through their full operating ranges.")

¹⁶ *Id.* at 1-8.

¹⁷ *Id.* at 1-6

¹⁸ *Id.* at 1-9 (emphasis added); see also *id.* at 3-2.

¹⁹ *Id.* at 1-7.

careful to point out that the proposed action does not include other “geographically separate projects.”²⁰ That is important here. The DEIS defines a confined scope of the action in one place but then includes potential management actions outside of that defined scope; any upstream management activities are essentially, a “geographically separate” project that cannot be properly considered within the currently defined purpose and need or the geographic scope of the current decision.

The next most important problem with Reclamation’s reference to management strategies upstream of Lake Powell as a part of the proposed action is that the DEIS does not actually evaluate the direct environmental impacts of implementing management strategies upstream of Lake Powell.²¹ In effect, then, the DEIS considers that the action Reclamation takes will have direct environmental effects upstream, but it does not analyze those direct environmental effects. This is deeply consequential. Despite the deferential scope of NEPA review and its procedural nature, Reclamation must still analyze the “reasonably foreseeable environmental effects of the proposed action,” which of course would include direct effects.²² Although Reclamation may generally choose “where to draw the line,”²³ the agency’s decision must still be “reasonable and reasonably explained” in this regard.²⁴

Here, the DEIS’s explanation does not meet that standard.

The DEIS states that the effects of stored CRSP Initial Unit water are contemplated by the DEIS in the section on hydrological resources.²⁵ They are not. And in fact, quite the opposite is true. Rather than considering effects upstream of Lake Powell, the DEIS instead acknowledges: “specific activities that may be undertaken in the Upper Basin to generate the conserved water are not within the scope of this EIS.”²⁶ But then the DEIS goes on to say that “[o]perations at the CRSP Upper Initial Units specifically contemplated in the [DEIS] are intended to remain within the scope of the existing Records of Decision.”²⁷ To be clear, Wyoming agrees that management activities upstream of Lake Powell and Lake Mead are not within the scope of this DEIS, but the point is: Reclamation’s statements are misleading, inconsistent, and unclear, and would thereby fail even the deferential arbitrary and capricious review standard if not corrected in the FEIS.²⁸ At base, Reclamation’s explanation fails the reasonable explanation standard because it fails to square

²⁰ 605 U.S. at 187.

²¹ See, e.g., DEIS, at 3-2 (stating that “specific activities that may be undertaken in the Upper Basin to generate the conserved water *are not within the scope of this EIS*” (emphasis added)). The DEIS states that because the actions that would be undertaken at CRSP Initial Units are intended to remain within the scope of the existing records of decision for those operations. *Id.* at 3-2.

²² 42 U.S.C. § 4332(2)(C)(i).

²³ 605 U.S. at 182.

²⁴ *Id.* at 185.

²⁵ DEIS, at 3-2.

²⁶ *Id.*

²⁷ *Id.*

²⁸ See *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 513 (2009) (noting that failure to “articulate a satisfactory explanation for its action” represents arbitrary and capricious action by administrative agency under the Administrative Procedure Act).

with the fact that the specifically contemplated actions would cause *direct* and *proximate* effects to the environment upstream of Lake Powell, but the agency has not analyzed any such effects.²⁹

There is an easy and straightforward fix, however. Given the purpose and need, and the impetus for this action, Reclamation must only analyze proposed alternatives that are limited to the operations at Lake Powell and Lake Mead (and do not extend upstream thereof). In this way, none of the proposed alternatives would assume actions at any of the CRSP Initial Units, nor at any other reservoirs upstream of Lake Powell that are managed by Reclamation. This approach would eliminate the mismatch between the scope of the action and the scope of environmental effects considered. Wyoming does not support, as a solution, Reclamation expanding the geographic scope of the proposed project, and thereby the direct environmental effects, considered to include locations upstream of Lake Powell.

IV. The DEIS Is A Strong First Draft, But Reclamation Should Make Certain Improvements.

The voluminous, detailed, and technical DEIS plainly reflects thousands of person-hours of work by Reclamation staff members. Wyoming greatly appreciates the work that Reclamation has put into the DEIS, and Wyoming recognizes that Reclamation is also working with the Basin States as the Basin States collectively aim to arrive at a consensus agreement for operations. For this reason, Wyoming by no means wishes for Reclamation to misconstrue the recommendations for improvement discussed in this section. Wyoming wants this process to be successful and therefore addresses ways that Reclamation can improve certain concepts in the DEIS as it prepares the FEIS.

Despite the strong first draft represented by the DEIS, Wyoming submits that any FEIS should modify the DEIS in the following important ways,

- First, Reclamation should state expressly that it is not making any legal conclusions regarding allocations of Colorado River water as between each sovereign Upper Division State. Contrary to some parties' potential requests, Reclamation is not well suited to making any such determination, and the NEPA process is also an inapt process for doing so.
- Second, the FEIS should affirmatively state that any reservoir protection objectives, including storage or power pool targets, do not themselves establish legal delivery

²⁹ See *Seven County*, 605 U.S. at 189 (noting that "NEPA dictated that" the agency evaluate the direct effects of the project); see also *id.* at 189-90 ("[T]he environmental effects of the project at hand constitute NEPA's textual focus."). Moreover, Reclamation frequently refers to "emergency" authority to justify additional releases from these units, which may fall outside the existing records of decision. Additionally, failing to consider direct effects resulting from any actions upstream of Lake Powell would also be arbitrary and capricious for failing "to consider an important aspect of the problem." *Motor Vehicle Mfrs. Ass'n v. State Farm Mutual Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

requirements under the Colorado River Compact, that no alternative is intended to predetermine how compact obligations would be interpreted or enforced in the event of dispute, and that operational flexibility cannot be used to shift hydrologic or climate risk disproportionately to the Upper Basin under the guise of system protection.

- Third, the FEIS should expressly recognize the unresolved legal questions associated with drought or climate-driven hydrologic change and interstate compact administration, and should refrain from framing operational alternatives as legal solutions to those questions. Indeed, NEPA is a process statute; it is not intended to dictate substantive outcomes.
- Fourth, the FEIS must clearly identify all operational measures as non-precedential and non-binding for purposes of compact interpretation, avoid describing state participation in voluntary or interim measures as acceptance of legal obligation, refrain from characterizing contested assumptions as settled law or basin consensus. The Supreme Court has consistently required clear, express consent before finding waiver or modification of compact rights. The FEIS should reflect that standard.
- Fifth, and as noted in the previous section, Reclamation should correct the mismatch between the actual geographic scope of certain proposed alternatives and the geographic scope of environmental impacts that Reclamation considers. To do this, Reclamation must remove any actions upstream of Lake Powell from any of the proposed alternatives, especially the preferred alternative, if one is selected.
- Sixth, the FEIS should ensure that the proposed alternatives are legally and hydrologically feasible and not inconsistent with existing authorities, including the Long Range Operating Criteria (“LROC”).
- Seventh, Reclamation should correct certain other analytical flaws in the DEIS. These include using the Colorado River Simulation System model to calculate Upper Basin hydrologic shortages to be used in the FEIS analyses, ensuring that Intentionally Created Surplus water volumes cannot substitute for or offset mandatory Lower Basin shortage reductions, and incorporating Lower Basin consumptive uses and losses data into the analyses.

V. Wyoming Reserves Its Rights.

Wyoming expressly reserves all rights under applicable law, including but not limited to the 1922 Colorado River Compact, the 1948 Upper Colorado River Basin Compact, and all other components of the Law of the River. Nothing in this letter is intended to be, nor shall it be construed as, an interpretation, diminishment, or modification of Wyoming’s rights under federal or state law or administrative rule, regulation, or guideline. This letter shall not be construed as a waiver of any such rights. Wyoming reserves the right to provide further comments, to consult with

Reclamation, and to take any other steps necessary to protect its interests as Reclamation proceeds with its subsequent phases of the Post-2026 Operations NEPA process.

Nothing in Wyoming's comments on the Draft EIS shall be construed as consent to or ratification of any administrative interpretation of the Law of the River, acceptance of any operational framework as legally binding beyond its administrative scope, or evidence of course of performance, practical construction, estoppel, or acquiescence with respect to compact interpretation.

VI. Conclusion

Wyoming appreciates the opportunity to comment on the DEIS. Wyoming supports the timely adoption of robust, consensus-based post-2026 operational guidelines and commends Reclamation's extensive stakeholder engagement and overall approach, subject to the recommended improvements identified here, and in the UCRC letter. Wyoming urges Reclamation to address the concerns identified in these comments and the UCRC letter in the FEIS to ensure that the resulting Record of Decision is well-supported and will withstand judicial review under the standard reaffirmed in *Seven County*, should that occur.

Wyoming urges Reclamation to finalize post-2026 operational guidelines that enhance system resilience while remaining firmly anchored to existing law. Administrative discretion must not be exercised in a manner that alters interstate compact relationships, reallocates sovereign risk, or prejudices unresolved legal questions.

Wyoming stands ready to continue good-faith coordination but will vigorously protect its compact apportionments and constitutional prerogatives in any forum where they are called into question.

Sincerely,

A handwritten signature in blue ink, appearing to read "Brandon Gebhart". The signature is fluid and cursive, with a large initial "B" and "G".

Brandon Gebhart, P.E.
Wyoming State Engineer
Wyoming Governor's Colorado River Representative