



Jicarilla Apache Reservation
February 11, 1887-1987

The Jicarilla Apache Nation

EXECUTIVE OFFICES

P.O. Box 507 • Dulce, New Mexico • 87528-0507 • (575) 759-3242

February 24, 2026

VIA EMAIL ONLY TO: crbpost2026@usbr.gov

Bureau of Reclamation
Attn: BCOO-1000
P.O. Box 61470
Boulder City, NV 89006

Re: Jicarilla Apache Nation's Comments in Response to Bureau of Reclamation's Draft Environmental Impact Statement on the Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead notice of which was published in the Federal Register on January 16, 2026.

To Whom it May Concern,

The Jicarilla Apache Nation appreciates the opportunity to submit these comments on the Bureau of Reclamation's ("BOR's") Draft Environmental Impact Statement on the Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead ("DEIS").

The Jicarilla Apache Nation's reservation lands span more than 879,000 acres in north central New Mexico. The Nation's lands are in the upper reaches of the San Juan River Basin and straddle the Continental Divide. The Navajo River, which is a tributary to the San Juan River, is a perennial stream on the Reservation and the primary source of the Nation's domestic water supply. The Nation has settled water rights to more than 45,000 acre-feet of Colorado River water as well as claims related to other river systems.

Need for a Negotiated Solution

We are at a pivotal moment in the history of the Colorado River. Our reservoirs are at historically low levels and precipitation is well below normal. If we continue to proceed along the course we



are on now, the results will be disastrous. With more than 100 years of outdated law and policy behind us, and a rapidly changing and erratic climate before us, it is time for the federal government, Basin states, tribes, and Mexico to move forward together to create new systems to preserve and protect the river, and to support the people, plants, animals, and ecosystems that rely on the Colorado River system.

The alternatives set forth in the DEIS make clear that BOR's existing authorities are not sufficient to stabilize the system or to meet many of the identified purposes and needs set forth in the DEIS. Many of the components of a Post-2026 framework that are most important to the Jicarilla Apache Nation, and the river community as a whole, cannot be realistically achieved in the absence of a negotiated solution and accompanying federal legislation.

Despite the Seven Basin States' failure to reach consensus before the February 14 deadline, the Nation encourages Interior, as our federal trustee, to continue to vigorously pursue a negotiated solution that will protect tribal water rights, stabilize reservoirs, preserve infrastructure, support ecosystems, and secure a reliable water supply for the people, plants, and animals that rely on the Colorado River.

Comments on Specific Aspects of the DEIS

The Nation appreciates the tremendous amount of work that that Reclamation staff has put in to preparing the DEIS. The DEIS paints a stark picture. One thing is clear, however, as stewards of the Colorado River, we must learn to live with the river we have now, not the river we used to have, or the river we wish we had. Achieving this goal is going to require major changes.

The successful alternative will need to rely on current and accurate data. When that data so requires, the successful alternative will need to allow for conservative releases from Powell, significant adjustments to Lower Basin water use, and aggressive use of flexible tools for water use and conservation throughout the Basin.

I. To Meet the Identified Need of Sustainable Management and the Identified Purpose of Predictability, the Preferred Alternative Must Not Only Include Provisions for Reduced Releases from Powell but Must Also Protect Against Compact Litigation Based on Such Necessary Releases.

The DEIS recognizes a need for "[m]ore robust and adaptive guidelines . . . for the efficient and sustainable management of the major mainstream Colorado River reservoirs and system resources," and a purpose to "provide Colorado River water users a greater degree of predictability with respect to the amount of annual water available in future years under anticipated increasing variability, low runoff and low reservoir conditions." DEIS at 1-6 to 1-7.

The DEIS demonstrates that under current and anticipated hydrology, consistent releases from Lake Powell at historic levels are impractical. The best-performing alternatives anticipate significantly reduced Powell releases. The Nation supports this idea, as reflected in the Enhanced Coordination and Maximum Operational Flexibility alternatives. However, reduced Powell releases must be accompanied by provisions to protect against compact litigation.

The DEIS fails to address the impact of reduced releases from Powell on compact issues in the Upper Basin. While it recognizes that water deliveries to Lower Basin tribes are affected by certain alternatives, it summarily concludes that none of the alternatives will have a negative impact on tribal water entitlements in the Upper Basin. DEIS 18-11 to 18-12. A compact call, however, would inevitably affect all water users in the Upper Basin, including tribes.

To meet the identified need for sustainability and the purpose of predictability, the preferred alternative and final Record of Decision ("ROD") must clearly address the compact issues. Specifically, the final ROD should recognize that BOR's decision to reduce releases from Powell is not an action by the Upper Basin states that has caused the flow of the river to fall below the volumes set forth in the compact and should not be considered grounds for a compact call. Without such a recognition, the DEIS is inherently flawed for failure to analyze the effect that BOR's release decisions might have on Upper Basin water users in general, and tribes in particular.

II. To Meet the Identified Purpose and Need for Enhanced Opportunities for Tribes to Benefit from Their Water Rights, the Preferred Alternative Must Include a Savings Pool in Powell that Allows for Broad Tribal Participation.

The DEIS identifies a need for "guidelines that provide flexibility and predictability for Basin Tribes to remain able to benefit from their water rights and have an opportunity to participate in voluntary conservation programs" and a purpose to "provide new or enhanced opportunities for Basin Tribes to benefit from their water rights." DEIS at 1-6 to 1-7. A savings pool in Powell that allows Upper Basin Tribes to actively participate, as described in the Enhanced Coordination alternative, is an essential tool for satisfying this purpose and need.

The Nation, along with several other Upper Basin Tribes, has described how this could work in a concept paper shared with Interior and BOR on August 6, 2025. This same group has worked with a broader group of stakeholders to further describe and develop the concept, as reflected in the position paper shared with Interior and BOR on December 8, 2025. As explained in those submissions, given the unique status of tribes and special qualities of tribal water, the rules for tribal participation must be specific, and in some instances, different from rules that would apply to non-tribal participants.

The concept of tribe-specific rules for participation in an Upper Basin savings pool has support among tribes, states and NGOs and should be included in the preferred alternative and incorporated into the final ROD. This is necessary not only to meet the purpose and need, but to fulfill the federal trust responsibility to preserve, protect, and facilitate use of tribal trust resources.

The Nation supports flexible tools for tribes throughout the Basin and encourages Interior to incorporate these tools into the preferred alternative and ROD to the maximum extent possible.

III. Departing from the Priority System Creates a Dangerous Precedent and Pro-Rata Distribution, Therefore, Should Not Be Included in the Preferred Alternative as Inclusion of that Component is Certain to Lead to Litigation and Fails to Meet the Need for a Sustainable Solution and the Purpose of Achieving Predictability in the Absence of a Negotiated Solution.

The DEIS recognizes a need for sustainability, and a purpose of predictability. DEIS at 1-6 to 1-7. Pro-rata distribution would undermine that need and purpose. The priority system for water rights administration is a bedrock principle on which Western water law is built. Tribal water rights are some of the most senior water rights in the Colorado River system. The suggestion that BOR might distribute shortages not based on priority, but based on a pro-rata system, as described in the Enhanced Coordination and Supply-Driven alternatives, is an affront to both established law and in the case of tribes, the federal trust responsibility. Pro-rata cuts would create a dangerous precedent with far reaching implications for tribes and other water users both within and without the Colorado River Basin and would almost certainly lead to expensive and protracted litigation. The Nation, therefore, opposes use of pro-rata distributions in the preferred alternative and final ROD.

IV. The Federal Government Lacks Authority to Allocate 60-70% of Natural Flow to the Lower Basin and this Percentage Allocation, Therefore, in the Absence of a Negotiated Solution, Should Not Be Included in the Preferred Alternative as Inclusion of that Component is Certain to Lead to Litigation and Fails to Meet the Need for a Sustainable Solution and the Purpose of Achieving Predictability.

The DEIS recognizes a need for sustainability, and a purpose of predictability. DEIS at 1-6 to 1-7. The compact anticipates an equal split of water supplies as between the Upper and Lower Basins. Allocating 60-70% of the natural flow to the Lower Basin is not only unfair, but legally unsupported. This allocation would create a dangerous precedent and would almost certainly lead to expensive and protracted litigation. In the absence of a negotiated solution, the Nation opposes the use of the above-referenced percentage split in the preferred alternative and final ROD.

V. To Meet the Need for Addressing the Imbalance Between Water Supply and Demand in the Basin, the Preferred Alternative Must Leave Room for Significant Shortages as Necessitated by Hydrology.

The DEIS recognizes the need to avoid exacerbation of the "the imbalance between water supply and demand in the Basin." DEIS at 1-6. The best-performing alternatives do this, in part, by incorporating provisions for Lower Basin shortages, under certain hydrologic scenarios, as high as 3-4maf. The alternatives that impose caps on shortages between 1.48 and 2.1maf perform much less well. In the Upper Basin, water users are shorted by hydrology every year. There is no limit on the extent of hydrologic shortage in any given year. In the driest years, the hydrologic shortages in the Upper Basin will necessarily be extensive. In those years, shortages in the Lower Basin must also be extensive. While the preferred alternative need not incorporate deep cuts every year, it must be expansive enough to cover a wide range of hydrologic scenarios. And in particularly bad water years, this will likely necessitate shortages beyond 1.48 or 2.1maf. Accordingly, the preferred alternative and the final ROD should not include overly restrictive shortage caps and should plan for Lower Basin shortages in the worst water years, up to 3-4maf.

VI. To Meet the Identified Need of Sustainable Management and the Identified Purpose of Predictability the Release of Water from Upper Division Reservoirs Should Take Place Pursuant Only to DROA or Pursuant to an Established System of Coordination with Upper Basin States and Tribes.

The DEIS recognizes that its geographic scope does not extend upstream of Powell. DEIS at 1-8. At the same time, however, the DEIS anticipates releases from the CRSP Upper Initial Units. *Id.* While the DEIS states an intent to release only consistent with the RODs for those units, it expressly states that Interior is not so limited. Under certain hydrologic scenarios, the alternatives state generally that Interior may release additional water to protect infrastructure or respond to drought conditions. While DROA provides a process for such releases, with an established system for coordination with Upper Basin States and Tribes, Interior's unilateral actions include no such protections. Because of the DEIS's limited geographic scope, the effect of any such releases on Upper Basin water users and tribes has not been analyzed. Accordingly, the Nation objects to inclusion of any provision for unilateral releases from Upper Division Units or Gap Water injections in the preferred alternative and final ROD.

VII. To Meet the Need to Address Tribal Concerns Regarding Basin Management the Final ROD Should Include Provisions for Regular Consultation with Tribes.

There are 38 sovereigns in the Colorado River Basin. However, only 8 make most of the decisions that govern the River. For many years, the Nation has been advocating for structural inclusion of tribes in Colorado River decision-making. The Nation, along with several other Upper Basin tribes,

was successful in achieving express written inclusion for Upper Basin Tribes in the context of DROA. The Nation would like to see similar language in the ROD.

The Basin's tribal nations have recognized rights to use approximately twenty-five percent of Colorado River water (under senior or high priority, reserved rights), and many of these tribal nations are in the process of quantifying additional rights to Colorado River water. Given this volume of tribal water, it is imperative that tribal nations be involved in crafting workable solutions with the federal government and the states 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.

As you are aware, in a letter dated November 15, 2021, twenty basin tribes identified some key guiding principles regarding the long-term management of the Colorado River system. Foremost among these principles was that "[t]he federal trust responsibility requires that the United States ensure Basin Tribes are included in the development and implementation of the policies and rules that will govern how the Colorado River will be managed from this point forward." This Post-2026 process provides an opportunity for Interior to create a process to meaningfully include tribal sovereigns and rectify the historical exclusion of tribes from Colorado River policy and decision making.

The Nation, therefore, requests that wherever the final ROD provides for consultation or coordination with the Seven Basin States, or the Upper or Lower Basin States, it provides for similar consultation or coordination with Colorado River tribes, or the Upper or Lower Basin tribes respectively.

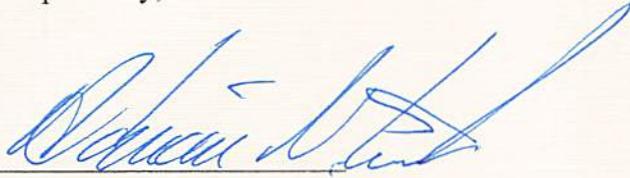
Conclusion

As our federal trustee, Interior has an obligation to understand and protect tribal interests at every stage of this process. This means supporting tribal priorities and initiatives and taking active steps to mitigate adverse impacts to tribes. Interior's obligation in this regard is different from, and more significant than, its general obligation to states and other Colorado River users to manage water and related resources in the interest of the American people. The preferred alternative should reflect an understanding of, and actions consistent with, the federal trust responsibility as set forth herein. We thank you in advance for working to understand and support the Jicarilla Apache Nation's priorities in this Post-2026 process and we look forward to working closely with you as any negotiated solution or other preferred alternative is finalized and incorporated into the final ROD.

As indigenous people, we recognize the inextricable connection to the land and water, which brings a profound sense of balance and responsibility. We anticipate working collaboratively in the months and years ahead to protect the Colorado River system, honor ancestral ties, and uphold

the rights and well-being of the people, plants, and species that depend on the Colorado River. In light of the historical exclusion of tribes from river management decisions, we emphasize the paramount importance of working now to forge a partnership built on mutual respect, active engagement, and a genuine understanding of the indigenous perspective. By embracing this holistic approach, we can address the challenges at hand, develop sustainable solutions, and ensure the long-term vitality of the Colorado River for ourselves and for generations to come.

Respectfully,



Adrian Notsinneh, President
Jicarilla Apache Nation