

# Kaibab Band of Paiute Indians



March 2, 2026

**Via Email:** [crbpost2026@usbr.gov](mailto:crbpost2026@usbr.gov)

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

**Re: *Kaibab Band of Paiute Indians' Comments to the Bureau of Reclamation's Draft Environmental Impact Statement - Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead (91 Fed. Reg. 2131, Jan. 16, 2026)***

Dear Project Manager:

The Kaibab Band of Paiute Indians (Tribe) submits its comments to the Bureau of Reclamation's Draft Environmental Impact Statement on the Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead (DEIS), which has a public comment period ending March 2, 2026.<sup>1</sup>

The Tribe reserves the right to supplement its comments and provide continuing input on developments related to the decision-making process for the Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead, including, but not limited to, input regarding the development of a preferred alternative, mitigation strategies, and the issuance of a Final EIS and Record of Decision (ROD).

## **I. TRIBAL BACKGROUND**

The Kaibab Band of Paiute Indians is a federally-recognized Tribe located north of the Grand Canyon within Arizona along the Arizona-Utah border. In addition to the limited groundwater resources on our 121,000 acre Reservation, the Tribe asserts aboriginal and federal reserved water rights to surface water, including to Kanab Creek, which is a tributary of the Colorado River. Kanab Creek crosses the eastern portion of our Reservation and it has been relied upon as a source of water for our Tribe since time immemorial.

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<sup>1</sup> See [91 Fed. Reg. 2131](#), Notice of Availability of Environmental Impact Statement (Jan. 16, 2026).

Tribal Affairs

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Our Tribe is one of the last Tribes in Arizona whose water rights have yet to be partially or fully quantified, either through litigation<sup>2</sup> or in settlement, and the flows of Kanab Creek and its tributaries are a critical component of our water supply that is needed to meet the permanent Tribal homeland needs for our People. These water rights, along with our rights to groundwater and other surface water sources, are prior perfected and vested water rights, even though they are not yet quantified.<sup>3</sup> In addition, our water rights have a priority date of “time immemorial.”

Fundamentally, the Colorado River Basin is our aboriginal homeland. Our Tribe’s cultural, religious, and spiritual connection to the Colorado River and its tributaries is well-known and how Reclamation ultimately operates the reservoir system within the Colorado River Basin is naturally of great concern to the Tribe, as documented in the DEIS.<sup>4</sup>

Additionally, the Tribe holds a firm electric service contract with the Western Area Power Authority (WAPA) to supply the Reservation with low-cost wholesale hydroelectric power through benefit-crediting. During the re-contracting process for power generated by the Boulder Canyon Project, in 2017, the Tribe secured an allocation of hydroelectric

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<sup>2</sup> There is no adjudication currently pending to quantify our water rights.

<sup>3</sup> The Tribe’s water rights, though not yet quantified, are the present and perfected vested property rights of the Tribe and the United States as its trustee. *See In Re the General Adjudication of All Rights to Use the Gila River System and Source*, 201 Ariz. 307, 35 P.3d 68 (2001) (referring to *Winters v. United States*, 207 U.S. 564, 565-567 (1908)).

<sup>4</sup> See DEIS at TA 13.1.9 (“The Southern Paiute inhabited the Colorado River Basin in northwestern Arizona, southern Nevada, and the north and west bank of the Colorado River. Their traditional territory extended north and west of the Colorado River. The nation was divided into the western *Paranayi* and the eastern *Yanawant*, each with different bands. Individuals with knowledge of water sources were highly regarded, and there was a belief in supernatural beings called Water Babies associated with springs and underground water. They practiced small-scale agriculture, gathered wild resources, and believed in supernatural forces, particularly near Charleston Peak in the Spring Mountains. They have a strong cultural and spiritual connection to the land and its resources, especially the Colorado River (*Piapaxa*). The Southern Paiute Tribes have a profound cultural connection to the Colorado River, viewing it as a powerful natural resource that must be respected and preserved. Paiute elders documented important cultural practices and locations within the Grand Canyon and Colorado River, including the sacredness of agave roasting sites, the use of red pigment for protection and rituals, and the inherent power of rocks and burials. Artifacts are believed to belong to their original owners and should remain undisturbed. The San Juan Paiutes used specific crossing locations on the Colorado River, and the Kaibab Paiute had trails leading to their winter camps. The Southern Paiute Chemehuevi Salt Song Trail traveled from southern Nevada through the Mojave valley to the lower Colorado River valley. The Southern Paiute have declared the entire Colorado River region a TCP due to its cultural significance. Additionally, the Southern Paiute have identified Gold Strike Canyon-Sugarloaf Mountain, a ceremonial location near Boulder City, Nevada, as a TCP.”

power generated by this project.<sup>5</sup> The economic value of this low-cost hydropower is essential to Reservation energy affordability and economic stability.

## II. TRUST RESPONSIBILITY OF THE UNITED STATES

The United States has a trust responsibility to Indian Tribes and the broad scope of this trust responsibility is outlined by numerous existing laws and policies.<sup>6</sup> Reclamation has a fiduciary obligation to ensure that any preferred alternative considered in the DEIS protects our Tribe's water, cultural practices, and power resources consistent with the United States' trust obligations.

At its core, the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. §§4321-4347) requires that Reclamation publish a "detailed statement" reviewing the environmental impacts of the proposed action, here, the crucially important Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead. This "action forcing" requirement ensures both that the agency considers the project's environmental consequences before deciding to approve it, while also making the agency publicly accountable for environmental harms it decides to accept. *Seven County Infrastructure Coalition, et. al. v. Eagle County, et al.*, 605 U.S. 168, 197 (2025) (Sotomayor, J., concurring); see also *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349-350 (1989). Thus, the agency must, among other things, disclose in the DEIS and consider the "reasonably foreseeable environmental effects of the proposed agency action"; "any reasonably foreseeable adverse environmental effects which cannot be avoided should the proposal be implemented"; and critically, "a reasonable range of alternatives to the proposed agency action...". 42 U.S.C. §4332(C)(ii)-(iii).

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<sup>5</sup> See Boulder Canyon Project – Post-2017 Resource Pool, Notice of Final Power Allocation, 79 Fed. Reg. 75544 (Dec. 18, 2014).

<sup>6</sup> See Secretary of the Interior's Order 3175 (November 8, 1993) (requiring all agencies, bureaus, and offices within the Department of the Interior to identify potential impacts of Departmental activities upon Indian Trust resources and mandating meaningful consultation with Tribes where activities directly or indirectly affect such resources); Presidential Memorandum of April 29, 1994 titled "Government-to-Government Relations with Native American Tribal Governments" (also requiring proper consultation with Indian tribes to the greatest extent practicable prior to taking any actions that affect such tribes); Executive Order 13175 (November 6, 2000) (requiring all agencies, bureaus, and offices within the Federal Government to establish regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have Tribal implications); Memorandum for the Heads of Executive Departments and Agencies on Government-to-Government Relationship with Tribal Governments (September 23, 2004); Memorandum for the Heads of Executive Departments and Agencies on Tribal Consultation (November 5, 2009) (supplementing Executive Order No. 13175); see also Presidential Memo titled Tribal Consultation and Strengthening Nation-to-Nation Relationships Memorandum for the Heads of Executive Departments and Agencies (January 26, 2021); Uniform Standards for Tribal Consultation, Memorandum for the Heads of Executive Departments and Agencies (November 30, 2022).

The DEIS, however, does not present cogently explained alternatives that can be reasonably understood and analyzed by the Tribe (or the public). For instance, in its description of the alternatives in Chapter 2, the DEIS states for the Basic Coordination Alternative: “[i]f this alternative were selected in the ROD, Reclamation would identify the conditions under which further action would be required, including adjustment of operations and prompt action to seek additional authorities, if needed.” DEIS at 2-11 to 2-12 [emphasis added]. But identifying the conditions that would trigger further action is itself a necessary part of the NEPA analysis that must be described and disclosed for public review, otherwise, the public has no meaningful way to review and comment upon the impact of the proposed alternative.<sup>7</sup> See, e.g., 42 U.S.C. §4332(C)(iii) (requiring the lead agency under NEPA to develop a “reasonable range of alternatives”); *Id.* at § 4332(F) (agency must “study, develop, and describe technically and economically feasible alternatives”).

By failing to provide this information, the DEIS withholds the very information necessary for the Tribe (and the public) to understand how each alternative would operate and what its environmental consequences would be. This fails to meet the most basic requirement of NEPA, which mandates that agencies “rigorously explore and objectively evaluate all reasonable alternatives” and provide sufficient detail so that the public may evaluate their comparative merits. *Methow Valley Citizens Council*, 490 U.S. at 349.

Another example of the DEIS jumping forward in analyzing alternatives without providing actual information about the alternative is evident where the DEIS discusses how it will address storage and delivery of conserved system and non-system water within the alternatives:

“While delivery of some existing stored water remains available after 2026 pursuant to existing agreements, Reclamation will establish guidelines for administration of a new storage mechanism as part of this public NEPA process. The guidelines will set forth Reclamation requirements for verification of the conservation action and water accounting procedures.” DEIS at 2-5 [emphasis added].

Again, the DEIS fails to present information about what these actual storage guidelines might be, simply observing that the guidelines will be developed. Without a presentation of the proposed guidelines in the DEIS, the Tribes and the public have been

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<sup>7</sup> The DEIS fails to provide the underlying information necessary to allow Tribes and the public to meaningfully comment at multiple points. See, e.g., DEIS at 2-16 (“If Lake Powell’s physical elevation is projected to go below 3,525 feet, CRSP Upper Initial Units would increase their releases within their RODs to increase elevations at Lake Powell contingent on hydrologic conditions. Reclamation would identify triggers for when additional Upper Basin actions would be required to protect critical infrastructure.”) [emphasis added].

denied the opportunity to provide any meaningful comment on this likely highly impactful decision point. This both violates NEPA and fails to meet the basic standards for advanced, informed, and meaningful Tribal consultation. See footnote 7, *supra*.

Additionally, the DEIS represents that parts of the alternatives presented could be assembled together to form an entirely different alternative that could be adopted by Reclamation in a Final EIS and ROD. See DEIS at ES-8 (“Should a consensus emerge following the publication of this Draft EIS, Reclamation anticipates that such an agreement will incorporate elements or variations of these Draft EIS alternatives and will be fully analyzed in the Final EIS.”). If Reclamation plans to later assemble a totally different hybrid preferred alternative not analyzed in the DEIS for adoption in a Final EIS and ROD, this too violates NEPA. Indeed, it is well documented that NEPA requires that Reclamation, as the acting agency, take a “hard look” at the environmental consequences of its proposed actions, including direct, indirect, and cumulative impacts to all potentially affected resources. *Idaho Sporting Cong. v. Rittenhouse*, 305 F.3d 957, 973 (9th Cir. 2002); 42 U.S.C. §4332(2)(C). This includes Reclamation’s obligation to ensure that it carefully considers information about significant environmental impacts, and that it “guarantees relevant information is available to the public.” *N. Plains Res. Council, Inc. v. Surface Transp. Bd.*, 668 F.3d 1067, 1072 (9th Cir. 2011) [emphasis added].

In short, Reclamation may not simply defer the substance of its decision or assemble a materially different alternative after public review without violating NEPA’s core purpose of informed decision-making and meaningful public participation. See *Muckleshoot Indian Tribe v. U.S. Forest Service*, 177 F.3d 800, 813 (9th Cir. 1999). And, as noted above, these failures also fall short of basic standards for advanced, informed, and meaningful Tribal consultation. See footnote 7, *supra*.

#### **A. The DEIS Fails to Analyze Economic Impacts on Reductions in Power Supplies to the Tribal WAPA Firm Electric Power Contracts**

Although the DEIS acknowledges that Tribes hold firm electric service contracts with WAPA,<sup>8</sup> the DEIS completely fails to discuss or analyze the impacts of the various alternatives on the potential reductions in delivery of wholesale hydroelectric power to Tribes from the Salt Lake City Area Integrated Projects (SLCA-IP) and the Boulder Canyon Project. This also violates NEPA, for many of the same reasons discussed above.

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<sup>8</sup> DEIS at Technical Appendix (TA) 15,p.15-2 (“WAPA bundles and markets power to a variety of entities including: small and medium-sized municipalities that operate publicly owned utilities; irrigation cooperatives and water conservation districts; rural electrical associations; generation and transmission co-operatives; federal facilities; universities; state agencies; and tribes (Reclamation 2016a) that, in total, serve approximately 40 million people across the following states: Nebraska, Wyoming, Utah, Nevada, Colorado, Arizona, and New Mexico.”) [emphasis added].

The economic benefit of the Tribe's WAPA contract helps the Tribe offset higher electric costs on the Reservation through benefit-crediting, but the reliability of this contract is now also threatened by low reservoir levels and how Reclamation ultimately intends to manage operations and the distribution of water within the Colorado River System. Yet, the DEIS fails to analyze these impacts to the Tribes, including the socio-economic impacts that the Tribe will experience from the reduction in this low-cost hydroelectric power to meet Reservation power demands.

## **B. Compliance with Section 106 of the National Historic Preservation Act and Tribal Consultation**

As acknowledged in the DEIS, the Tribe has significant cultural, religious, and spiritual connections to the Colorado River and features within the Colorado River Basin.<sup>9</sup> The DEIS confirms that Reclamation is consulting with the affected Tribes, including our Tribe, under Section 106 of the National Historic Preservation Act (NHPA).<sup>10</sup> As Reclamation continues to develop the programmatic agreement that will outline the process to resolve adverse effects from Reclamation's operation of the Glen Canyon and Hoover dams after 2026, the Tribe expects to continue to participate and provide input due to the importance of the Tribe's cultural, religious and spiritual resources within the Basin. In addition, our Tribe intends to closely monitor any decision-making by Reclamation or the United States related to the management of the Colorado River that could directly or indirectly impact our time immemorial claims to Kanab Creek and its tributaries and sources.

## **III. CONCLUSION**

While the DEIS explains how it has applied a modeling methodology to the alternatives to show relative shortage reductions under various management scenarios, the DEIS provides very little background information explaining the actual details of the alternatives themselves and any mitigation strategies to be imposed, and further fails to provide adequate analysis of the impacts that would result from selection of any alternative.

Regardless, however, the drought in the Colorado River Basin and the inability to provide enough water to meet all the demands of the Basin is becoming more dire each year. The federal government must necessarily be involved in crafting solutions, and those solutions must include the recognition of United States' trust responsibility to Tribes, and the long-standing rights of the Tribes, including the Kaibab Band of Paiute Indians, to water to sustain our communities, economies, and cultural practices.

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<sup>9</sup> See Footnote 3 *supra*.

<sup>10</sup> DEIS at TA 11.1.2.

Where Tribal resources are impacted, assistance should be directly provided to Tribes to mitigate those impacts, and at minimum, any preferred alternative that is adopted in the Final EIS and ROD should include long-term programs, defined funding pathways, and monitoring mechanisms to address impacts to Tribal economies, resources and ecosystems.

As it develops the preferred alternative and the Final EIS, the Tribe requests that Reclamation:

- Provide additional Tribal comment and consultation opportunities regarding the development and adoption of a preferred alternative;
- Continue to engage with the Tribe in the development of the programmatic agreement pursuant to the NHPA;
- Analyze hydropower impacts specific to Tribal WAPA contracts, including the associated economic impacts; and
- Incorporate mitigation measures in the Post-2026 guidelines to address impacts to Tribal resources.

The Tribe requests that Reclamation continue to engage in government-to-government consultation regarding the development of the Post-2026 operational guidelines and consult again with the Tribe prior to selecting a preferred alternative, and adopting the Final EIS and ROD.

Yours Truly,

**KAIBAB BAND OF PAIUTE INDIANS**

*Roland Maldonado*

Roland Maldonado Chairman

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