



SOUTHERN UTE INDIAN TRIBE

February 24, 2026

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

VIA Electronic mail: crbpost2026@usbr.gov

RE: Southern Ute Indian Tribe's Comments on the Draft Environmental Impact Statement for Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead (Jan. 16, 2026)

Dear Acting Commissioner Cameron:

The Southern Ute Indian Tribe ("Southern Ute" or "Tribe") appreciates the opportunity to provide the following comments in response to the U.S. Department of Interior ("Interior") and Bureau of Reclamation's ("Reclamation") *Draft Environmental Impact Statement Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead* (January 2026) ("Draft EIS"). The Tribe urges Reclamation to consider and address our comments when preparing the Final Environmental Impact Statement ("FEIS") and selecting a Preferred Alternative.

SOUTHERN UTE'S INTEREST IN COLORADO RIVER MANAGEMENT

The Ute people have lived in Colorado and the surrounding areas since time immemorial. The Tribe signed a Treaty with the United States in 1868 establishing the Tribe's original Reservation which encompassed what is today the western third of the State of Colorado. However, the 1868 Treaty was breached and the size of the Tribe's Reservation decreased through subsequent Treaties and agreements. The Southern Ute Indian Reservation ("Reservation"), located in Southwestern Colorado, is a small portion of our original homeland.

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Our Reservation is in the San Juan River Basin within the Upper Colorado River Basin. Six major rivers flow through our Reservation before they cross into New Mexico and continue downstream. The Tribe has a water settlement that was enacted by Congress as 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 significant surface, storage, and groundwater state-based and Federal Indian Reserved water rights with various priority dates, volumes, and beneficial uses. While the Tribe recognizes that the Colorado River Basin is experiencing a prolonged period of drought, as a sovereign nation we are entitled to develop our water to continue to meet the needs of our Tribal members and the Reservation in the future.

ISSUES FOR RECLAMATION TO CONSIDER DURING THE POST-2026 PROCESS

In reviewing the Draft EIS, Southern Ute has identified several elements that are concerning because of how they would impact the Tribe. Those elements are the focus of this letter. We urge Reclamation to take those into consideration in further analyzing Alternatives in the FEIS and in selecting a Preferred Alternative. The Tribe is not providing comments on every component of the Draft EIS, which Reclamation should not construe as the Tribe supporting or opposing those components.

I. IDENTIFY FEDERAL TRUST RESPONSIBILITY AS AN OBLIGATION THAT GUIDES FEDERAL DECISIONS

The United States has a trust responsibility to protect our Federal Indian Reserved water rights. It is imperative that Interior and Reclamation keep that trust responsibility in mind as they prepare the FEIS and Record of Decision. Interior and Reclamation must ensure that they do not choose a Preferred Alternative that will negatively impact Southern Ute's federally protected water supply and water rights.

In addition, Reclamation should develop a governance structure that permanently includes Basin Tribes as governmental partners in the implementation of the Post-2026 Guidelines and other policy and governance discussions concerning the management of the Colorado River. This would be in addition to, not as a replacement for, government-to-government consultations between the United States and individual Basin Tribes.

II. EFFECTS OF ACTION EXCEED GEOGRAPHICAL SCOPE OF DRAFT EIS

Reclamation defined the scope of the geographic area that would be affected by the alternatives proposed in this Draft EIS. That area begins “at full pool of Lake Powell at Gypsum Canyon and extend[s] downstream along the mainstream Colorado River floodplain to the Southerly International Boundary (SIB) with Mexico.” (Draft EIS at 1-8). Although the defined affected area starts at Lake Powell, all of the Alternatives, except the No Action Alternative, include “Additional Activities Above Lake Powell” (“Additional Activities”) that could occur upstream of Lake Powell. The Additional Activities include conservation activities and releases from Colorado River Storage Project (“CRSP”) Upper Initial Units to protect Lake Powell elevations. (Draft EIS at 2-5). However, the Draft EIS does not analyze the effects that these Additional Activities would have in the Upper Basin, even though Reclamation modeled a Lake Powell conservation pool with conserved water ranging from 200,000 acre-feet to 350,000 acre-feet. Reclamation treats the conserved water as mandatory since they modeled the maximum amount of conservation. In the Enhanced Coordination Alternative, the amount of water to be conserved increases every 5 years. These are large amounts of water that the Upper Basin may not be able to conserve, especially during a year with bad hydrology.

Reclamation does not have authority to develop operational guidelines that impact the Upper Basin without a Seven Basin States consensus alternative. Therefore, Southern Ute agrees that the geographic scope should be limited as defined in the Draft EIS. The Alternatives should not include activities – let alone unanalyzed ones – that will occur outside that geographic scope. If Reclamation keeps the Additional Activities above Lake Powell in the FEIS, then the Tribe urges Reclamation to fully analyze the effects that a conservation pool of the modeled size would have on the Upper Basin.

III. PURPOSE AND NEED

A. Select Alternative that Meets Identified Needs

Reclamation has identified six reasons that the proposed federal action is needed. Of those, there are two that Southern Ute particularly strongly supports. Those are:

- (1) the need to address Tribal concerns regarding Basin management, and
- (2) the need for expanded and innovative use of conservation for Colorado River water users.

Basin Tribes and other water users would benefit from expanded and innovative use of conservation such as opportunities to conserve, store, and take subsequent delivery of water in and from Lake Powell. The Tribe appreciates that Interior listened to the Basin Tribes’ concerns

that existing management guidelines are insufficient to address the Tribes' range of interests, needs, and fundamental rights.

There is a need for guidelines that provide flexibility and predictability for Basin Tribes to have additional ways to benefit from their water rights. The Tribe supports the creation of a Lake Powell conservation pool that is offered as an element in three of the Alternatives. Tribes could benefit from opportunities to voluntarily participate in conservation programs that are both temporary and compensated. Southern Ute urges Reclamation to include Southern Ute and any other interested Basin Tribe in the development of any parameters for a Lake Powell conservation pool.

We urge Reclamation to ensure that the Preferred Alternative they select will include those new or enhanced opportunities for Basin Tribes to benefit from their existing water rights. Otherwise, Reclamation will not have met the purpose and need of the proposed federal action.

B. Add Structural Deficit as Need

The Tribe urges Reclamation to include the structural deficit in the Basin as one of the reasons why federal action is needed. Because there is a large disparity between supply and demand in the Basin, Lake Mead and Lake Powell have been depleted. Depletion is attributable in part to the significant quantity of water lost annually to evaporation and transit loss in the Lower Basin. This has been estimated to be approximately 1.5 maf of water per year that remains unaccounted for. The structural deficit is one of the many reasons why there is an imbalance between supply and demand. The Draft EIS did not reference the structural deficit and the impact that it has on storage in the Colorado River Basin. This needs to be addressed by the federal action, and therefore, must be accounted for in the Draft EIS.

IV. SOUTHERN UTE COMMENTS ON THE DRAFT EIS ALTERNATIVES

1. No Action Alternative

Southern Ute does not support selection of the No Action Alternative set forth in the Draft EIS. The Colorado River Basin is experiencing an ongoing 26-year drought. Lake Powell and Lake Mead have declined to historically low levels. The current situation is untenable and hydrologic conditions are deteriorating. Reclamation must take action and ensure there is a plan in place to address these issues.

2. Basic Coordination Alternative

Southern Ute does not support this Alternative because it does not provide any new/enhanced opportunities for Basin Tribes to benefit from their water rights, through a Lake Powell conservation pool or otherwise; thus, this alternative would not address a listed need for the federal action, nor does it achieve one of the listed purposes. This Alternative is designed to be implementable for Water Year 2027 (beginning October 1, 2026). If Reclamation chooses this alternative, the Tribe strongly urges Reclamation to create a conservation pool as a parallel process.

3. Enhanced Coordination Alternative

There are some aspects of this alternative that Southern Ute supports, and other aspects that we do not.

The Tribe supports the feature of this Alternative that creates a Lake Powell conservation pool, which would allow Upper Basin Tribes to contribute both consumptively used and unused Tribal water to the conservation pool. Upper Basin Tribes would also be able to use their conserved water in intra-and interstate transactions with other Upper Basin users. (Draft EIS @ 2-21). This new opportunity enhances flexibility and predictability for water users. However, as Reclamation acknowledged, this concept may require additional authorities. (Draft EIS at 2-21). In order to make an informed decision on this Alternative, Reclamation will need to identify the necessary additional authorities it needs and how it would implement this option.

The Tribe does not support the component of this Alternative that allows a pro rata shortage distribution in the Lower Basin to evaluate the potential impacts of distributing reductions across all Lower Basin water users. A pro rata approach is inconsistent with the prior appropriation system and the seniority of the majority of Federal Indian Reserved water rights. The Tribe is concerned that using this approach in the Lower Basin would set a precedent for superseding the well-established priority system upon which millions of water users have settled their expectations.

4. Maximum Operational Flexibility Alternative

Southern Ute does not support the use of the combined storage of seven reservoirs, including the CRSP Upper Basin Initial Units, to determine Lower Basin shortages. The CRSP Upper Basin Initial Units should not be used to supply the Lower Basin with water. The CRSP Upper Basin Initial Units should be operated according to their

Records of Decision. Using the CRSP Upper Initial Units to determine Lower Basin shortages may require additional authorities for Reclamation. Southern Ute reiterates its requests that Reclamation identify what additional authorities would be needed to implement this Alternative.

5. Supply Driven Alternative

The Tribe is supportive of one aspect of this Alternative but is concerned about other aspects.

The Tribe supports the component of this Alternative that would create a conservation pool in Lake Powell. This allows Upper Basin Tribes to contribute water as well as use their conserved water in intra-and interstate transactions with other Upper Basin users. (Draft EIS at 2-33). In addition, authorizing Upper Basin Tribes to contribute unused Tribal water to the Lake Powell conservation pool during good hydrology years, (Draft EIS at 2-35), allows Upper Basin Tribes, including Southern Ute, to benefit from their water rights.

The Tribe does not support the component of this Alternative that would utilize a pro rata system to distribute shortages. As explained above, a pro rata approach is inconsistent with the prior appropriation system and the seniority of the majority of Federal Indian Reserved water rights. Once again, using this approach in the Lower Basin would set a precedent for superseding the well-established priority system upon which millions of water users have settled their expectations.

The Tribe also does not support the inclusion of gap water in this Alternative. Reclamation made modeling assumptions to introduce “additional water...into the system to (partially) make up the shortfall. For modeling purposes, this supplemental volume is termed ‘gap water.’” (Draft EIS at 2-35). The use of “gap water” in the modeling masks additional shortages that may occur to the Lower Basin. If Reclamation’s intent is to require the Upper Basin to deliver this “gap water” when the Upper Basin is physically able to, then Reclamation should state that plainly in the FEIS. However, Reclamation has represented during consultations that this gap water concept is merely intended to analyze how this Alternative would not result in sufficient water. If the gap water concept is merely an analytical tool, and it is not Reclamation’s intent to require the Upper Basin to deliver that water to the Lower Basin after a shortfall, then Reclamation should confirm that. This Alternative is based on a theoretical source of excess water, which is not only unidentified, but the impacts of which are not analyzed.

Reclamation has acknowledged that it needs additional authorities to implement this alternative. Southern Ute reiterates its requests that Reclamation identify the needed authorities and a plan for how this Alternative would be implemented.

V. RECOGNIZE THE IMPORTANCE OF HYDROLOGIC SHORTAGES

Upper Basin hydrological shortages are not mentioned in the Draft EIS. Three Alternatives include Upper Basin conservation activities, yet the Draft EIS does not show how those activities would impact the Upper Basin. Southern Ute, along with the rest of the Upper Basin, has endured hydrologic shortages throughout the ongoing 26-year drought. Specifically, the Tribe has experienced hydrologic shortages on two rivers that flow through its Reservation: the Florida and the Pine Rivers. The Florida Water Conservancy District (“FWCD”) operates and maintains the Florida River Project, which delivers water to both Tribal and non-tribal water users. There are numerous years that the FWCD only delivered 35%-90% of the needed water.

Additionally, the Tribe has experienced hydrologic shortage on the Pine River. The Pine River Indian Irrigation Project (“PRIIP”) delivers water to both Tribal and non-tribal water users for agricultural and municipal purposes. The PRIIP is owned and operated by the Bureau of Indian Affairs. There have been years that the PRIIP was turned off due to water curtailment of junior water users, which affected the delivery of the Tribe’s senior priority water to its lands. During years that the Tribe experiences hydrologic shortages, it would be difficult to participate in a conservation program. Thus it is important that Reclamation include information about hydrologic shortages in the Upper Basin to show the impact of the ongoing drought.

Reclamation includes a snapshot of agricultural shortages in the Upper Basin in the irrigated agricultural shortage graph covering 1991-2024, which is found in the 1971–2024 Upper Colorado River System Consumptive Use and Loss Data Visualization tool, in the Upper Basin Consumptive Uses and Losses Report. Southern Ute requests that Reclamation include this information in the FEIS. Although Reclamation states that the Alternatives will not affect apportionments in the Upper Division States, several of the Alternatives contemplate additional activities above Lake Powell, which include anywhere from 200 kaf to 350 kaf of water be contributed by the Upper Basin to a Lake Powell conservation pool. The Tribe further requests that the FEIS include information on the Upper Basin’s hydrologic shortages. This would show the impact of the drought on the Upper Basin and the reasons why it is difficult to conserve larger amounts of water during a bad hydrologic year.

VI. CONCLUSION

At this critical point, Reclamation must act to stabilize the Colorado River system during times of drought. To make an informed decision, Reclamation's analysis must be sufficiently comprehensive. It, therefore, must include recognition that hydrologic shortages in the Upper Basin occur on a regular basis. It must also include the structural deficit in the Basin as one of the reasons why federal action is needed. Finally, Reclamation must abide by its federal trust responsibility and support Tribes by creating and implementing flexible tools for Tribal water use.

Again, thank you for the opportunity to comment. If you have any questions or wish to discuss any of the Tribe's comments further, please contact the Tribe's Legal Director, David Smith, at dasmith@southernute-nsn.gov, or the Tribe's water attorney, Lisa Yellow Eagle at lyelloweagle@southernute-nsn.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Melvin J. Baker". The signature is fluid and cursive, written over a white background.

Melvin J. Baker, Chairman
Southern Ute Indian Tribe

Copy: Hon. Michael Bennet, United States Senator
Hon. Hon. John Hickenlooper, United States Senator
Hon. Jeff Hurd, United States Representative
Hon. Jared Polis, Governor of the State of Colorado
Hon. Phil Weiser, Colorado Attorney General