VIA EMAIL to crbpost2026@usbr.gov

August 15, 2023

Bureau of Reclamation
Attn: Post-2026 (Mail Stop 84-55000)
P.O. Box 25007
Denver, CO 80225

Re: Jicarilla Apache Nation’s Comments in Response to Bureau of Reclamation’s June 16, 2023 Notice of Intent To Prepare an Environmental Impact Statement and Notice To Solicit Comments and Hold Public Scoping Meetings on the Development of Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead

The Jicarilla Apache Nation appreciates the opportunity to submit these comments on the scope of specific operational guidelines, strategies, and other issues to be considered in connection with development of the post-2026 Colorado River reservoir operational strategies for Lake Powell and Lake Mead.

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.

We are at a pivotal moment in the history of the Colorado River. With more than 100 years of outdated law and policy behind us, and a rapidly changing and erratic climate before us, it is time for the federal government, Basin states, tribes, and Mexico to move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 create new systems to preserve and protect the river itself, and to support the people, plants, animals, and ecosystems that the river supports. We should reject the historical exclusion of tribes and other outdated policies that have led to inequitable and unsustainable results and take advantage of this opportunity to create a more equitable and sustainable management system for the Colorado River.
As the purpose, need and scope of the new framework are more specifically defined and developed, the Nation urges prioritization of the following goals and guiding principles:

**Ensuring Meaningful Tribal Inclusion**

Both the process for developing the post-2026 strategies, and the parallel processes for addressing emergent issues within the Basin, must meaningfully include tribal sovereigns to rectify the historical exclusion of tribes from Colorado River policy and decision making. The Nation appreciates Interior’s commitment, as stated in the notice, to develop an outreach approach that “enhances tribal engagement and inclusivity” and to “prioritize regular, meaningful, and robust consultation with Tribal nations.” To fulfill this commitment, and consistent with the federal government’s trust responsibility, the Nation proposes that Interior create a formal and permanent structure for tribal inclusion in Colorado River decision-making, as those discussions occur.

Specifically, the Nation suggests that Interior establish a regular schedule of meetings among the sovereigns—tribal, state, and federal—to discuss proposals currently on the table and the status of efforts to address emergent challenges. To adequately protect the Nation’s interests, we must be part of the discussions as they occur, not simply be provided an opportunity to comment after policies and programs have been developed by others. Success will require active participation and accountability from all participants and it is the federal government’s obligation to create an environment in which this occurs. In so doing, the federal government can work to uphold its obligation to include tribes in a meaningful and transparent manner, allowing for collaborative and informed decision-making processes that respect tribal sovereignty.

**Preserving and Protecting Tribal Water**

It is essential that all involved parties have realistic expectations, based on the best available science, regarding the amount of water available from the Colorado River system and where that water comes from. While the Nation recognizes the value of short-term actions, such as temporary voluntary compensated reductions, the Nation encourages focus on the long-term goal—stabilizing and protecting the river for years to come. Long-term stability cannot occur if non-tribal water users continue to rely on large quantities of “unused” tribal water to serve their needs. Long-term stability will require development of systems that recognize the value of Basin Tribes’ water contributions, allow Basin Tribes to be fully and fairly compensated for those contributions, and preserve and protect the rights of Basin Tribes to develop and use tribal water when and how they best determine. The post-2026 framework must ensure that sufficient flexibility is created and preserved for tribes to develop and participate in programs that serve these purposes, and must make accommodations, when appropriate, for treating tribes different from other water users within the Colorado River system.
Investment in Infrastructure

There is a critical need for infrastructure to allow tribes to fully and efficiently use their water resources. As part of the post-2026 process, or as part of a parallel process, the Nation proposes the establishment of a robust infrastructure funding source aimed at ensuring equitable access to water for tribes. This could include supporting the construction of pipelines, canals, and reservoirs, as well as implementing modernization measures and advanced water management technologies. Investing in modern, efficient water infrastructure not only enhances water supply reliability but also supports economic development, safeguards ecosystems, and strengthens the resilience of tribal communities. As such, investment in infrastructure is an essential component of any effort to preserve, protect, and facilitate access to tribal water.

Broader Conditions and Additional Measures

The Nation appreciates BOR’s acknowledgement that despite higher-than-average runoff conditions for 2023, the Colorado River system is still in the midst of a historic and severe drought. As such, it is imperative that the next management framework be based on realistic expectations, include a broader range of potential conditions, and allow for flexibility in responding to those conditions. The new framework should include additional measures to protect lake levels and power production at Powell, clear rules for allocation of evaporation and system losses in the Lower Basin, and establishment of systems that allow tribes to realize the value of their water while protecting that water for future development. In addition to facilitating use of water for humans, the new management structure should also support regular river restoration activities, environmental projects, and measures to protect the river as a living being.

Flexibility and Support for Parallel Processes

The new management system should provide certainty and stability for water users. At the same time, it must be adaptive and provide sufficient flexibility to meet the variable climate and changing needs. While the Nation recognizes that the NEPA process can be limiting, the Nation encourages Bureau of Reclamation to take a holistic approach to future management of the Colorado River and to focus on long-term sustainable solutions. When this cannot be done within the NEPA process, the Nation encourages Reclamation to support complimentary parallel processes, such as any program to address unused and undeveloped tribal water, and to proceed with framework development in a manner that supports and does not hinder such processes.

Conclusion

As indigenous people, we recognize the inextricable connection to the land and water, which brings a profound sense of balance and responsibility. We eagerly anticipate working collaboratively in the months and years ahead to protect the Colorado River system, honor the ancestral ties, and uphold the rights and well-being of the people, plants, and species that depend on the Colorado River. Acknowledging the historical exclusion of tribes from river management
decisions, we emphasize the paramount importance of forging 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 future generations to come.

Very truly yours,

Edward Velarde, President
Jicarilla Apache Nation