August 15, 2023

Via Electronic Mail to crbpost2026@usbr

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

Re: Ute Mountain Ute Tribe’s Comments to the 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

Reclamation:

Thank you for the opportunity to address the Development of the Post- 2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead on behalf of the Ute Mountain Ute Tribe (UMUT).

The Ute Mountain Ute Tribe would first like to thank the Bureau of Reclamation for supporting and making a step toward the inclusion of the 30 tribes on the Colorado River in the decision making process of the Post- 2026 operations of Lake Mead and Lake Powell. Exactly what that will look like will be determined after this August 15th deadline and, although it is a step in the right direction, the UMUT needs the federal government to uphold its trust responsibility in preserving and protecting tribes’ federal reserved water rights and use in perpetuity.

Many ideas and solutions will come out of this process, but it should not divide the users on the Colorado River. Truth in the matter is that we are all humans and we all need water. Climate change is real, it is here. As tribes finally come into the picture, other Colorado River users need to know that these reservation boundaries weren’t our original homelands. As tribes, we didn’t decided where we should live, the Federal government decided that for us. For many centuries before we lived as nomadic people; following the river, following the food. Traditional,
cultural indigenous knowledge is very valuable and should be incorporated into all aspects of the Post-2026 Operational guidelines and strategies for Mead and Powell.

True equity is important in this conversation about the Post-2026 Operations of Mead and Powell. Tribes to this day still live in the most impoverished conditions without adequate drinking water. Our White Mesa community in Utah only has a groundwater source that has been contaminated by uranium for many years and there is no surface water source to the community. We all are not on a level playing field because tribes do not have the political power. Large cities with the most per capita use need to reduce their consumption and practice good stewardship of the land. Conservation programs need to be better managed in the Lower Basin. As it stands now, the Lower Basin is realizing money from water, when in a portion of that water is unused, undeveloped tribal water from the Upper Basin.

Post-2026 Operations and Guidelines should only be focused on Lake Mead and Lake Powell but in parallel States, Reclamation, and Tribes should be workings on issues related to the Colorado River. Ute Mountain Ute Tribe is participating in the Upper Basin Dialogue (Upper Basin Tribes and Conservation groups) comment letter to Post-2026 Operations and Guidelines, but there are two comments where the UMUT disagrees. First, the UMUT does not believe that the Upper Basin reservoirs should be considered for use in Basin management systems. Second, the UMUT does not believe that reductions in the consumptive use in the Upper Basin should be included in the scope of Post-2026 Guidelines and Operations.

A broader range of alternative scenarios need to be made for the Post-2026 Operations and Guidelines of Mead and Powell. The Colorado River users can't be in the same predicament we are currently in, going from crisis to crisis. The time to address the issues with Mead and Powell is now. The Demand Management/ System Conservation Pilot Program is a great idea in theory, but it does not work. It does not amount to enough water to be successful. The whole purpose of Mead and Powell is to have those reservoirs store water for years ahead; not continuing to drain the bank and hoping for another good year the next year.

**Mechanism for Tribes to Consume Water Not Included in the Hydrology Forecast**

The Post-2026 guidelines are intended to address future operations of the reservoirs, so they need to include the consumption of Tribal water rights that are not currently being consumed or scheduled to be consumed. The Ute Mountain Ute Tribe has settled their water rights in Colorado and are vigorously planning to put that water to use. The UCRC Depletion Schedule includes the full use of those water rights, as determined in the 2018 Tribal Water Study. It is our understanding that those demands will be represented in the Post-2026 guideline analysis. However, the Ute Mountain Ute Tribe is currently pursuing water right settlements in New Mexico and Utah and is actively having discussions with potential lessors of its water and funding sources that could help install the infrastructure necessary to put that water to use. It would help if there was a mechanism that can be developed to allow the Tribe to consume additional water, yet not interfere with the river operations envisioned in the Post-2026 guidelines as the water rights are settled and put to beneficial use. If this mechanism is not implemented, then the UMUT will face numerous obstacles to consumption of their water that they would not otherwise face.
Compensation for Unused Water

As stated above, Tribes like the Ute Mountain Ute Tribe are actively pursuing development of their unused water rights and such Tribe will continue to do so because water is important to their way of life and for economic development. Unfortunately, although progress is being made to identify the quantities of water that will be included in the yet unsettled New Mexico and Utah water rights claims, much of the Tribe’s quantified rights remain unusable because the Tribe has been unable to negotiate its Repayment Contract with the Bureau of Reclamation for Lake Nighthorse water. More than 16,000 AF of depletions that are part of the Tribe’s Federal Settlement bypass the Lake every year. The Tribe’s frustrations in not being able to finalize a Repayment Contract is heightened not only by the fact that it has near-future uses for the water, but by the fact that the 16,000 AF is being used somewhere downstream and the Tribe is neither compensated for the water nor aware of the beneficiary.

Although no Tribe would willingly delay development of its water when the development serves its people, in order to ensure such development will not occur in the short term and potentially disrupt river operations and planning and to ensure a good faith acknowledgement of the contribution unused Tribal water is making to the Colorado River system, Tribes must be compensated for unused water and compensated to refrain from developing their water. The amount of compensation must include losses associated with ceasing development, such as costs of lost opportunities and prospective interested parties.

Compensation for Used Water

As with the discussion above, some Tribes, like the Ute Mountain Ute Tribe, are actively consuming large quantities of water that could be useful for managing reservoir levels. If these Tribes were to forego use, then the Tribes would lose important revenues derived from utilizing the water and the community’s health is at risk.

In order to capture large quantities of water that could improve river and reservoir operations, Tribes who are willing to participate should be allowed to have their water by-pass their systems, un Consumed, and receive compensation for any economic loss that could have been experienced from utilizing the water, costs of restarting the water systems once the water is again being consumed, and lost opportunities that could have occurred during the period of abatement.

Current Modeling of Future Operations

In the CRSS modeling tool, Upper Basin demands can be changed and shortened by hydrology, yet Lower Basin demands are set and shortened by policy driven by allocations. Accordingly, Lower Basin demands need to be also based on hydrology and overall basin watershed yield, and not policy or reservoir levels alone. Evaporation and transit losses need to be accounted for in the Lower Basin modeling and more specifically, counted as Lower Basin use. The UMUT commends the inclusion of potential impacts of warm driven declining streamflow is much need, as a way to include climate change into modeling.
Tracking Tribal Water in the River System

Similar to above, in order to ensure that there is a clear understanding of the contribution quantified Tribal water makes to the Colorado River System, it is important to recognize as accurately as possible the source of Tribal water, its uses and depletions, the amounts that return to the system or are unconsumed, and the ultimate point of consumption and use of the water. This knowledge will help all water users and managers to best manage Tribal water and to understand the various ramifications of its use, non-use, and availability.

Energy Development

In order to mitigate the impacts of reduced power production or the loss of power, Reclamation must shore up and develop alternative sources of power and ensure that power projects using water continue to receive the water they need, regardless of reservoir operations. Many projects use water in order to produce power but do not have the dependence on water levels for pressure, such as the types of solar and pump back storage projects being planned at the Ute Mountain Ute Tribe. The Bureau must assess the water needs for these projects, including projects yet to be developed but with a realistic possibility of implementation, and ensure that water management does not jeopardize or reduce the effective operations of the projects.

Calculate Losses Due to Evaporation, Seepage, and System Losses

It is important that the true quantities of water used in the Lower Basin compared to the amounts delivered is fully understood so that we can have a comprehensive understanding of conservation in the Lower Basin, including mechanisms for reducing system losses where the losses are greatest. The Post-2026 guidelines must account for and consider these losses when managing the Colorado River system to be effective and efficient.

Incorporate Other Consistent Responses

The Ute Mountain Ute Tribe incorporates into this response all responses from other entities that are not inconsistent with this response.

Thank you for your time. If you have any questions, please contact Peter Ortego, General Counsel, at portego@utemountain.org.

Respectfully,

Manuel Heart
Chairman