



May 16, 2024

Camille Calimlim Touton
Commissioner
Bureau of Reclamation
US Department of the Interior

Dear Commissioner Touton:

On November 15, 2021, twenty Colorado River Basin Tribes sent a letter to Secretary of the Interior Deb Haaland outlining key “Guiding Principles” for developing the next framework for long-term management of the Colorado River. That letter also insisted on greater inclusion of Basin Tribes in the development and implementation of what replaces the 2007 Interim Guidelines (the Post-2026 Guidelines). Although 20 Basin Tribes expressed common views in the November 2021 letter, each of the undersigned Basin Tribes has individual issues of specific relevance to its own rights and interests that will be communicated throughout this process, including but not necessarily limited to individual government-to-government consultation with the United States. This letter is intended to inform the United States and the Colorado River Basin States of our common views and expectations regarding how Basin Tribes’ water rights should be treated and protected under any alternative that will be analyzed and considered for inclusion in any draft or final environmental impact statement (EIS) and what ultimately becomes the Post-2026 Guidelines.

The November 2021 letter expressed the expectation that the United States would fully protect Basin Tribes’ water rights throughout the process of developing and promulgating the Post-2026 Guidelines. Both alternatives proposed in Reclamation’s since-withdrawn draft Supplemental Environmental Impact Statement (SEIS) analyzing operational alternatives to bridge us to the Post-2026 period, however, directly threatened the rights of Basin Tribes. Although good hydrology in 2023 and the development of the Lower Basin States plan helped avoid the need for Reclamation to proceed with implementing either of the alternatives in the now-withdrawn draft SEIS, the need for major reductions of water use in the Basin remains and the Post-2026 Guidelines will undoubtedly result in cuts to the existing water supplies of at least some Basin Tribes. We

are aware of ongoing efforts among the Basin States to develop one or more alternatives for Reclamation to consider. We, the undersigned tribal leaders, believe it is now time to more specifically explain the Basin Tribes' **key principles** that must be adhered to if the United States, as our trustee, and the Basin States expect our support of any proposed or preferred alternative for the Post-2026 Guidelines.

We appreciate Reclamation's efforts to develop an approach during the Post-2026 EIS process that enhances tribal engagement and inclusivity by establishing the Federal-Tribes-States Group and explicitly including in the purpose and need statement for the Post-2026 EIS the need to consider Tribes' interests. See *Colorado River Reservoir Operations: Development of Post-2026 Guidelines and Strategies for Lake Powell and Lake Mead*, 88 Fed. Reg. 72535 (Oct. 20, 2023) (Scoping Summary Report). The Scoping Summary Report expressly identifies the need for Post-2026 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 includes a stated purpose to "provide new or enhanced opportunities for Basin Tribes to benefit from their water rights[.]" We offer these **key principles** regarding the development of Post-2026 Guidelines and future management of the Colorado River not as a "Tribal alternative" per se, but as a joint statement of tribal consensus independent of federal and/or Basin State action that clarifies what the Basin Tribes expect from the United States in order to satisfy these aspects of the stated purpose and need.

We expect the United States and the Basin States to incorporate these principles into whatever alternatives emerge during the Post-2026 EIS process, recognizing that some of the principles may require additional action outside the Post-2026 EIS process and Post-2026 Guidelines. We are committed to developing proposals and negotiating agreements to supplement the Post-2026 EIS process as necessary for the realization of the principles below that do not fall squarely within the scope of Post-2026 Guidelines. We call on the United States to do the same to ensure that these principles are fully incorporated into the Basin's post-2026 management framework.

Our **key principles** are as follows:

1. To meet its trust responsibility to Basin Tribes, the United States must take actions to actively protect Tribal water rights (irrespective of whether they have already been finally quantified – hereinafter referred to collectively as "Tribal Water Rights").

Basin Tribes cannot benefit from their Tribal Water Rights – and thus a critical portion of the purpose and need for the post-2026 cannot be achieved – if the Post-2026 Guidelines jeopardize Tribal Water Rights through curtailment or development caps on Tribes, or exacerbate already existing barriers to Basin Tribes' ability to fully develop and benefit from their water rights. More specifically, to meet its trust responsibility to Basin Tribes the United States must:

- Reject any alternative that would impose involuntary or uncompensated out-of-priority cuts on the five Tribes whose rights were finally decreed in *Arizona v. California*, 547 U.S. 150 (2006), and ensure that these Tribes will be included as beneficiaries of alternative water supplies if their ability to use their water rights is disrupted by the Post-2026 Guidelines;
 - For CAP Tribes with congressionally approved settlements, finding alternative water supplies that are equivalent in value to the water rights lost due to cuts required under the Post-2026 Guidelines;
 - Find alternative supplies for Tribes for whom CAP Water (whether Indian or NIA priority) is a source of supply or had been identified as a source of supply to be made available through their future water settlements that are equivalent in value to the CAP water lost due to any cuts required under the Post-2026 Guidelines;
 - Reject any alternative that would impose development caps on Basin Tribes;
 - Fully analyze all potential adverse impacts to Tribal Water Rights and all other Tribal trust assets from any and all alternatives being considered for inclusion in the post-2026 Guidelines;
 - Identify all potential adverse impacts, whether direct, indirect, or cumulative, to Tribal Water Rights, whether such water is being presently put to use or is as yet unused, when analyzing alternatives considered for incorporation into the Post-2026 Guidelines.
 - Consult with affected Tribes to identify and implement mutually agreed-upon actions to avoid or mitigate impacts to Tribes caused by the Post-2026 Guidelines;
 - Seek and secure adequate funding to ensure the United States effectively protects Tribal Water Rights as described above through mutually-agreed upon mitigation, voluntary conservation, creative and durable compensation mechanisms, and/or developing alternative water supplies, as well as through infrastructure development.
2. Empower Tribes to determine how and when to use their water rights by adopting and supporting a portfolio of flexible tools.

Basin Tribes have long faced systemic barriers to developing and benefiting from their water rights. Through the Post-2026 EIS process and by supporting legislation as necessary, Reclamation should help develop ways to empower Basin Tribes to use their water rights in more flexible ways, such as:

- Ensure that the eligibility and participation requirements of any conservation programs included in the Post-2026 Guidelines are established and operated in a manner that maximizes Basin Tribes' ability to participate in them without

triggering onerous financial burdens. This will further the Post-2026 EIS process' identified need of "provid[ing] Colorado River water users, including Basin Tribes, expanded opportunities to conserve, store, and take subsequent delivery of water in and from Lake Mead and/or Lake Powell." (*Scoping Summary Report*, 88 Fed. Reg. 72536).

- Clarify legal authority and address water accounting issues to enhance Tribes' ability to lease or otherwise market or use water off their Reservations, including for environmental and in-stream flow purposes.
 - Facilitate the creation of compensated forbearance agreements that enable Basin Tribes to benefit from their water rights in a manner that avoids increasing cumulative consumptive demand.
3. Provide for a permanent, formalized structure for Tribal participation in implementing Post-2026 Guidelines, and in any future Colorado River policy and governance.

One of the shortcomings of the 2007 Interim Guidelines was that lack of formal tribal inclusion in their implementation. Consistent with its stated goal of designing a process that "enhances Tribal engagement and inclusivity," 88 Fed. Reg. 39457 (June 16, 2023), Reclamation should build off positive progress such as the Federal-Tribes-States Group and develop a governance structure that formally and 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. And at a minimum, anything in the Post-2026 Guidelines that formally triggers an obligation on the part of Reclamation to consult with the Basin States should trigger a similar obligation to the Basin Tribes (in addition to and not as a replacement for ongoing government-to-government consultation between the United States and individual Basin tribes).

We look forward to working with the United States and Basin States to ensure that Basin Tribes' water rights are adequately considered and protected in the development and implementation of the Post-2026 Guidelines.

Sincerely,

Melvin Baker, Chairman, Southern Ute Indian Tribe

Corrina Bow, Chairwoman, Paiute Indian Tribe of Utah

Martin Harvier, President, Salt River Pima-Maricopa Indian Community

Manuel Heart, Chairman, Ute Mountain Ute Tribe

Calvin Johnson, Chairman, Tonto Apache Tribe

Jordan D. Joaquin, Chairman, Fort Yuma Quechan Indian Tribe

Arden Kucate, Governor, Pueblo of Zuni Tribe
Stephen R. Lewis, Governor, Gila River Indian Community
Tanya Lewis, Chairwoman, Yavapai-Apache Nation
Robert Miguel, Chairman, Ak Chin Indian Community
Julius Murray, Chairman, Ute Indian Tribe
Sonja Newton, Vice President, Jicarilla Apache Nation
Robert Ogo, President, Yavapai-Prescott Indian Tribe
Sherry Parker, Chairwoman, Hualapai Tribe
Deryn Pete, Chairwoman, Las Vegas Tribe of Paiute
Robbin Preston Jr., President, San Juan Southern Paiute Tribe
Terry Rambler, Chairman, San Carlos Apache Tribe
Edward D. Smith, Vice Chairman, Chemehuevi Tribe
Kasey Velasquez, Chairman, White Mountain Apache Tribe
Peter Yucupicio, Chairman, Pasqua Yaqui Tribe

cc:

David Palumbo, Deputy Commissioner, Bureau of Reclamation
Jacklynn Gould, Regional Director, Lower Colorado River, Bureau of Reclamation
Wayne Pullan, Regional Director, Upper Colorado River, Bureau of Reclamation
Carly Jerla, Coordinator, Senior Water Resources Program Manager, Bureau of Reclamation
KayLee Nelson, Native American Affairs Program Manager, Lower Colorado Basin Region
Ernie Rheume, Native American Affairs Program Manager, Upper Colorado Basin Region
Rod Smith, Attorney, US Department of the Interior, Office of the Solicitor