

## **IMAGINING THE RIVER WE DESERVE:** **HOW THE POST-2026 RULEMAKING IS ONLY ONE STEP TOWARDS SUSTAINABILITY**

(May, 2024)

It is, once again, a busy time on the Colorado River. Many of the rules that govern the operation of the plumbing system, including those pertaining to reservoir releases and deliveries to many Lower Basin and Mexican water interests, are expiring at the end of 2026.<sup>1</sup> The current rules have been insufficient to recover from the precariously low reservoir storage levels that have existed since 2005—with the exception of occasional bumps from wet years in 2011, 2017, 2019, and 2023—and have forced some Lower Basin water users to experience water curtailments for the first time. A federal Supplemental Environmental Impact Statement (SEIS) has recently been issued to guide reservoir operations and deliveries through 2026.<sup>2</sup> That deal codifies a hard-fought and messy compromise among the states made possible by a wet 2023 combined with an influx of federal dollars in the Bipartisan Infrastructure Law and the Inflation Reduction Act. Mainly through short-term, compensated conservation programs, combined with ongoing curtailments and system efficiency measures, the bump in reservoir storage from 2023 inflows has largely been preserved and the immediate threat level to the system has likely been successfully addressed. That’s a notable accomplishment, but it’s only the first step.

The longer-term challenge is to develop post-2026 rules that not only pull back the reservoirs from the brink of dead pool (and the socioeconomic calamity that would follow), but that also restore a healthy, equitable, and sustainable river system. That’s the heavy lift teed up by the soon-to-expire 2007 Interim Guidelines adopted to “buy time” for decision-makers seeking more durable and comprehensive solutions. That time has arrived, but are basin leaders and decision-making processes ready to meet the immensity of the challenge (and opportunity) this moment presents?

### ***Post-2026 Rules for Coordinated Reservoir Management***

The activity that will dominate Colorado River headlines over the next 2-3 years is the negotiation of the post-2026 rules, a tightly structured EIS process that calls for the selection of “alternatives” for consideration, the analysis of those alternatives, and the selection of a preferred (then final) alternative—or mix of alternatives—that best accomplishes the stated goals of the rulemaking. The Scoping Report prepared by the Bureau of Reclamation describes the central goal of this effort as the adoption of “specific guidelines and coordinated reservoir management strategies to address operations

<sup>1</sup> The primary expiring agreement is the Interim Guidelines. Also expiring are the Drought Contingency Plans (DCPs) and Minute 323. See: *Colorado River Basin: Colorado River Post 2026 Operations*, Bureau of Reclamation at <https://www.usbr.gov/ColoradoRiverBasin/post2026/index.html>

<sup>2</sup> <https://www.usbr.gov/ColoradoRiverBasin/interimguidelines/seis/>

of Lake Powell and Lake Mead through their full operating range.”<sup>3</sup> In this respect, the post-2026 rules mirror the focus of the expiring 2007 Interim Guidelines (and the also expiring Drought Contingency Plan(s)) and satisfy the Interior Department’s legal requirements set out in the Colorado River Basin Project Act of 1968.<sup>4</sup> Operational rules are incredibly important; arguably, they are among the most foundational of all water management rules, in that they can dictate river flows and volumes even more so than what natural processes do. New and improved reservoir management strategies are clearly needed and, at a minimum, will need to accomplish the following items discussed in earlier Colorado River Research Group (CRRG) publications<sup>5</sup>:

- Address those rules that have institutionalized the structural deficit, largely at the expense of protecting (and recovering) reservoir storage;
- Better integrate the latest science about climate change and ongoing basin aridification, as well as real-time seasonal weather data, into the planning and operational framework;
- Improve incentives, opportunities, and mechanisms for all water users to participate in conservation programs and other efforts promoting system flexibility and resilience; and,
- Interface with new agreements with Mexico focused on protecting reservoir levels, habitat restoration, and shortage-sharing.

Several ideas for achieving these objectives are featured in the five major proposals that have been submitted to Reclamation as part of the EIS alternatives analysis: one each from the Upper Basin and Lower Basin states, a “letter of principles” from a coalition of 17 basin Tribes, an alternative from the environmental NGO community (dubbed “Cooperative Conservation”), and an ecosystem-focused proposal from a sub-set of CRRG members (Schmidt, Kuhn, and Fleck).<sup>6</sup> Although the seven states failed in efforts to submit a joint alternative, the separate alternatives submitted by the Upper Basin and Lower Basin states notably agree that addressing the structural deficit is a Lower Basin responsibility, but diverge on whether any curtailments beyond that amount should be shared by the two sub-basins. This issue figures to be the central focus of remaining negotiations. The Lower Basin alternative is also notable for suggesting that additional reservoirs (not just Powell and Mead) in the Upper Basin and along the Lower Basin mainstem be considered in determining shortage conditions, an idea that also appears in the Cooperative Conservation alternative. Those two alternatives also share a focus on expanding the toolbox for creating new reservoir storage—both assigned (i.e., owned by the creator) and unassigned (System Conservation)—and the rules for considering this water in calculating shortage conditions. Additionally, the Lower Basin alternative suggests the tradition of annually balancing/equalizing Powell and Mead storage levels should be simplified, an idea fleshed out in detail in the Schmidt et al. proposal which argues that the scheduling of Powell releases should explicitly consider environmental and recreational considerations. Finally, the Tribal letter does not propose a

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<sup>3</sup> *Colorado River Reservoir Operations: Development of Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead*, at <https://federalregister.gov/d/2023-23127>.

<sup>4</sup> Criteria for Coordinated Long-Range Operation of Colorado River Reservoirs Pursuant to the Colorado River Basin Project Act of September 30, 1968. (P.L. 90-537), June 8, 1970, at <https://www.usbr.gov/lc/region/pao/pdfiles/opcriter.pdf>.

<sup>5</sup> See, Colorado River Research Group (CRRG) publications at: <https://www.colorado.edu/center/gwc/our-work/programs-and-projects/colorado-river-research-group/crrg-publications>.

<sup>6</sup> These can be found at the Water & Tribes Initiative website, under the banner “Proposed Alternatives for Post-2026 Operating Guidelines”: <https://www.waterandtribes.org>.

specific, quantitative scheme for reservoir operations, but reiterates that any approach considered must actively protect Tribal water rights, give Tribes “flexible tools” to use and market their rights, and expand and formalize Tribal participation in all Colorado River Basin policy and governance activities.

### ***Thinking Beyond the Mass Balance Problem: Parallel Processes***

In addition to addressing the mass balance problem on the river—that is, the basin-scale mismatch between water consumption and supplies—the proposals each, to widely varying degrees, acknowledge that the development of new reservoir operating rules that implement a more balanced water budget is only half of the “heavy lift” facing the Colorado River community. The remaining elements speak to the realization that the river is far more than a plumbing system requiring skillful operation, but is also the ecological and cultural centerpiece of the Southwest. If a reminder of this reality were needed, it was provided in the majority of comments submitted as part of the EIS scoping process, summarized by Reclamation as urging a “*more holistic view of the system to include the integrity and health of the river and its tributaries,*” a perspective which, among other things, includes a consideration of “*environmental justice,*” “*preserving natural and cultural values,*” and “*acknowledging and incorporating the rights and authorities of all Basin sovereigns.*” A partial list of action items includes the need to:

- Prioritize equitable access to drinking water supplies;
- Identify, incentivize, and implement programs to achieve permanent water savings in all sectors;
- Improve protections for source water forests, overburdened Upper Basin tributaries (such as the Dolores, San Rafael, and headwaters affected by trans-basin diversions), and the few remaining unperturbed rivers to achieve both environmental and water supply reliability objectives;
- Ensure a sustainable Colorado River by thorough climate change stress testing of all system infrastructure and rules;
- Ensure that surface water shortages are not solved at the expense of depleting groundwater resources essential for maintaining baseflows and for water supply reliability and future use;
- Enhance tools and opportunities that empower all basin Tribes to use established water rights in flexible ways, both consumptive and non-consumptive;
- Acknowledge and address the suite of legal omissions and ambiguities in the Law of the River that introduce uncertainty in interbasin water allocation and management;
- Continue to refine, integrate and support, as appropriate, existing programs for salinity control and recovery of endangered and threatened species;
- Develop a new generation of cooperative agreements with Mexico (Minutes) to further advance coordinated reservoir protection, shortage sharing, and habitat restoration efforts in the Delta and Cienega de Santa Clara;
- Further investigate the desired future role of Glen Canyon Dam in light of declining river flows and reservoir levels, infrastructure damage, and the evolving environmental and recreation objectives/challenges associated with Grand Canyon flows and sediment management;
- Implement a plan for the Salton Sea that achieves water conservation, environmental, and public health objectives;
- Secure durable revenue streams to support this full range of needed innovations; and,
- Identify and implement additional pathways that provide more inclusive, equitable opportunities for engagement and collaborative problem-solving among all the basin’s sovereigns and stakeholders.

Given the tight timeframe and limited scope of the post-2026 EIS process, it would be unrealistic to expect that effort to yield much progress on this broader, more holistic, agenda, a realization that is explicitly mentioned (to widely varying degrees) in each of the submitted alternatives. That work is presumably to be addressed in a variety of formal and informal “parallel” processes and activities occurring outside of the post-2026 effort. While that makes sense conceptually, it begs the question: What parallel processes exist, or may soon exist, to do this work? That’s a difficult question for us to answer; it shouldn’t be. Some efforts are already underway at state and sub-basin levels, but other collaborative problem-solving processes will likely need to be catalyzed. There’s an acknowledged need for many interwoven forums or “tents”—both big and small, permanent and ephemeral—to host and discuss the wide range of Colorado River issues that fall outside of the scope of reservoir operations. However, it’s not at all clear that the current tangle of tents is sufficient to tackle the magnitude of the remaining agenda, especially those components that challenge water managers to think about, and to manage, the Colorado more holistically as a river.

### ***Cultivating a More Holistic View of the River***

Of all the necessary compromises that underlie negotiations on the river, perhaps the most frustrating is reconciling our aspirations for what we know we should accomplish with our knowledge of what can be practically achieved given on-the-ground realities, including the overarching impact of climate change on virtually every facet of the basin’s hydrologic cycle. Current efforts to fix the mass balance problem through improved post-2026 reservoir operating rules is an obvious pressing need, and progress is likely to be made soon through thoughtful study and negotiation. But is that as high as our ambitions should be set? There is a growing chorus of stakeholder voices saying that improved reservoir operating rules are necessary but not sufficient to capture how they view and value the river. What is the gameplan for cultivating the “more holistic” viewpoint clearly requested in the scoping comments and elsewhere<sup>7</sup>, and who is the champion of the innovations in process and engagement that can elevate more values and diverse voices in the basin?

Wallace Stegner once famously challenged westerners to develop “a society to match the scenery.” On the Colorado River, that mandate should preoccupy the thinking of all members of the Colorado River community, from the highest-ranking officials with the ability and responsibility to cultivate the necessary discussions, to the concerned citizens with stories to share and values to articulate. The current focus on fixing the mass balance problem gets us part of the way to where we aspire to be; that work is essential and long overdue. But then what? It’s not at all obvious how best to complete the journey, but to start, let’s talk about the Colorado like it’s a river and see where the current takes us.

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<sup>7</sup> A starting point may be *A Common Vision for the Colorado River System: Toward a Framework for Sustainability*, a document based on several Tribal visions and more than 100 interviews and workshops with basin leaders. [https://www.waterandtribes.org/files/ugd/17c3c8\\_f1d896681b9c488f86bd2a34754d7e5d.pdf](https://www.waterandtribes.org/files/ugd/17c3c8_f1d896681b9c488f86bd2a34754d7e5d.pdf).