

Essential Pillars for the Post-2026 Colorado River Guidelines

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The process for determining the operating rules for the Colorado River system that will take effect in 2027 is in full swing. While various alternative operating regimes have been proposed, no preferred or consensus alternative has yet emerged. As a group of experienced Colorado River colleagues without affiliation to any Basin State, Tribe, or interested stakeholder, we submit that there are fundamental principles that should form the basis of the ultimate Record of Decision defining management of the Colorado River for the future. We propose the following essential pillars for inclusion in the Post-2026 Guidelines.

1. Enforceable reductions in water use in both the Upper Basin and the Lower Basin are necessary. The Colorado River has an acknowledged math problem – total legal allocations and average water use exceed available water supply. The legal allocations, based on an overestimation a century ago of how much water the Colorado River could provide, created water supply expectations on the part of communities across the West that the river can no longer meet. In addition, average use, while not exceeding the legal allocation, greatly surpasses average supply. It is widely acknowledged that every state and every sector of the economy must contribute to the solution to this imbalance. A broadly-based collective effort that shares the burden of the necessary water use reductions between the Upper and Lower Basin States is also essential to gaining the political support necessary to ensure the viability of a Record of Decision from the Department of the Interior. While the hydrology and the plumbing are different in the two basins, business as usual in either basin will not lead to a compromise that sufficiently ensures the reliability and security of the water supply for future decades and is sufficiently flexible that operations can be adapted if natural runoff continues to decrease. Shared pain is also critical to inducing the various states not to litigate over the interpretation of the 1922 Compact. “Shared” does not mean equal, either in amount, triggers, or duration.

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2. Reductions in water usage cannot be predicated on federal compensation. Recent events have demonstrated the unreliability of continued federal funding as an incentive to induce voluntary water conservation. Moreover, the funding made available by recent federal legislation, even if fully unfrozen, will inevitably be used up, and the prospects for new federal appropriations are slim. The Post-2026 Colorado River management framework cannot assume that federal taxpayers will reimburse Western water users over the long term to forgo the use of water that does not exist. Some federal funding may be available, and funding from states or water users in the basin will also likely continue, but operations cannot be grounded on compensation from the federal government. Importantly, this approach must not preclude compensation for Tribal communities, many of which were excluded from the bounty of federal funding that in the past allowed water supply development by non-Indian Westerners.

3. Conservation pools in both Lake Mead and Lake Powell are essential. In the Lower Basin, a Lake Mead pool filled with conserved water removes the “use it or lose it” incentive that existed prior to the adoption of the 2007 Guidelines. In the Upper Basin, a Lake Powell conservation pool can be used to ensure that required releases can continue to be made, even when annual supplies are low. Such a pool can also be used in part to help mitigate or offset a portion of mandatory reductions in Lower Basin water usage. Both pools should be operationally neutral (also referred to as a “top bank” or “floating pool”) and not affect the amount of usage reductions or required releases. Saved water stored in the conservation pools must have a history of consumptive use. This requirement is necessary to ensure that “saved water” represents actual reductions in use and does not include water that would have otherwise flowed downstream. It is critical, however, that this requirement not preclude compensation to Tribal Nations for foregoing the use of unused or undeveloped quantified water rights, but this forbearance would not constitute a contribution to the conservation pool. Deposits, withdrawals, and releases from the pools would be measured and accounted for in coordination with the Bureau of Reclamation. Essential to implementation of this strategy is accurate and timely accounting for evaporation and bank storage losses, incorporating best available scientific insights into operational and timely reporting of reservoir losses. These conservation pools are a critical tool but do not substitute for sustained reductions in consumptive use.

4. Water management opportunities must be fully open to Tribal Nations across the Colorado River Basin. In coordination with the relevant state agencies and the Bureau of Reclamation, all Colorado River Basin Tribes must have the same opportunities as those available to other water users to advocate for their water needs, provide feedback on proposed flow regimes, conserve water for future use, and be reimbursed for contributions to a conservation pool. Each of the Basin States and the Department of the Interior have recognized the need for increased Tribal participation and consultation in Colorado River decision-making and management processes. Furthermore, several Basin States and

Interior have acknowledged the need to explore compensation to Tribes for their forbearance in developing and using currently quantified but unused Tribal rights, grounded in the unique nature of Indian reserved water rights. Compensated forbearance should be formally addressed as a component of the Federal treaty and trust responsibility to Tribal Nations.

5. Storage recovery in Lakes Mead and Powell must be built into the mandatory reductions in use. These two reservoirs are the foundation of the Colorado River water storage system and ensure the reliability and security of the Basin's water supply. They cannot serve these purposes, however, if they are only one-third full. While it is very difficult to forgo use of water when it is available in the reservoirs, it is not prudent water management to continually operate at crisis level. We cannot depend on sporadic large runoff years to refill the reservoirs to acceptable levels. A post-2026 operating regime that balances supply and demand must also include sufficient reductions in use to recover reservoir storage to acceptable levels. All previous voluntary agreements have failed to regain storage on a sustained basis. Modifications to the reservoir release structures at Glen Canyon and Hoover Dams should be explored to access water now deemed "dead pool." The cost of accessing this reservoir capacity, including the production of hydroelectricity when making lower elevation reservoir releases, should be compared to the economic cost of foregoing the use of the same amount of water.

6. Flexibility in reservoir operations is necessary to achieve environmental objectives. Strict adherence to annual release requirements may jeopardize the ability to achieve necessary or desired future ecosystem and natural resource conditions in Grand Canyon and other critically important environmental resources in the Colorado River system. In the case of releases from Lake Powell, multi-year flexibility within a prescribed moving average and established minimum and maximum deliveries can mitigate potential for environmental damage without risk or injury to Lower Basin water availability. Determinations concerning annual releases within these parameters can be made by the Secretary of the Interior in consultation with the Basin States and advice from the Glen Canyon Dam Adaptive Management Program and relevant endangered species recovery programs.

7. There must be absolute protection of domestic water deliveries for public health and safety. In a worst-case scenario, the operating regime must ensure that water sufficient to supply the health and safety needs of all residents of the Basin continues to be provided. This essential water may include supplies for some industries critical to public safety.

Conclusion

These principles are proposed as foundational pillars for a successful post-2026 operating regime for the Colorado River that balances use with supply and accomplishes reservoir storage recovery to an

acceptable level of reliability and security. We recognize that much complexity exists within these broad tenets, and there are myriad difficult details to be analyzed, negotiated, and determined. The purpose of this paper is to provide a balanced overall framework for operational rules with the goal of avoiding litigation about the interpretation of various provisions in the 1922 Colorado River Compact and subsequent federal legislation.

Agreement among the Basin States to a consensus alternative should include significant protection against litigation under the Compact. This would include, without limitation, potential litigation about the Lee Ferry non-depletion obligation of the Upper Division states, the use of water from Lower Basin tributaries, and the appropriate allocation of the obligation to Mexico under the 1944 Treaty. Without this shield against litigation, there is little incentive for the states to forego their legal arguments about Compact allocations and agree to reductions in their water usage. In addition, these Compact obligations, whatever they might be, should be tolled for the duration of the term of the post-2026 regime, so that no state or basin is worse off at the end of the term than it was at the outset.

These principles can be the underpinning of a “grand bargain” – a compromise that results in acceptable sharing of the burden of reducing use throughout the system in exchange for a suspension of the threat of legal challenge. Litigation over the Compact has countless downsides but suffice it to say, it would unavoidably be expensive, protracted, disruptive, and risky, and would not provide a complete operating regime for the future. Because the term of the new management regime for the River will likely be lengthy, off-ramps that would permit litigation in carefully limited circumstances may be appropriate. Such circumstances could include failure by a party to comply with the prescribed operating rules and/or changes in the hydrological regime not contemplated by the rules with unacceptable adverse impacts on a party.

The role played by the Republic of Mexico in any new operating regime is critical. Mexico has been a pragmatic and cooperative partner with the U.S. in addressing Colorado River issues, as exemplified by Minutes 319, 323, and 330. With the prospect of even further declines in flows in the River as a whole, however, balance and storage recovery cannot be achieved without additional reductions of water use in Mexico.

This is an existential time in the history of the Colorado River. Water managers must take painful steps to avoid a catastrophic crash of the reservoirs with dire consequences for the 40 million people who rely on the River. As unaffiliated members of the Colorado River community, we suggest these principles as an equitable balance of the burdens caused by reduced flows in the system.