

**From:** [Hamby, JB](#)  
**To:** [Jerla, Carly](#)  
**Cc:** [John Entsminger](#); [Tom Buschatzke](#)  
**Subject:** Request for Inclusion of 1922 Colorado River Compact Compliance in Post-2026 NEPA Analysis  
**Date:** Tuesday, December 24, 2024 8:49:40 AM

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Good morning Carly,

We're requesting again that Reclamation include compliance with the 1922 Colorado River Compact in each alternative that will be analyzed as part of the NEPA process to develop Post-2026 operational guidelines for Lake Powell and Lake Mead. As the Governors' Representatives of Arizona, California, and Nevada, we have consistently maintained the importance of this being included in the analysis. For example, in our joint scoping letter on August 15, 2023, we stated that:

The Post-2026 EIS must analyze whether alternatives are consistent with the 1922 Colorado River Compact non-depletion obligations and delivery obligations to Mexico. Alternatives should include actions necessary to ensure compliance with such obligations.

The Lower Division States have been working to reach a consensus alternative. Consistent with our efforts to reach a consensus, we proposed the Lower Division States alternative in March. However, unless the Lower Division States agree to waive or forbear Compact compliance, it is reasonably foreseeable that the Lower Division States would make a Compact call if the flows at Lee Ferry fail to satisfy the requirements of the Compact and this needs to be reflected in Reclamation's analysis of the alternatives. Our June 25, 2024, letter reiterated the need to analyze the impacts of a Compact call, including the potential for curtailment in the Upper Basin. Accordingly, Reclamation should analyze the impacts of Compact calls in any alternative not having the support of all seven Basin States (including all alternatives identified in Reclamation's forthcoming "alternatives report" and any other submitted alternatives considered for analysis). Failure to analyze a Compact call, a reasonably foreseeable action by the Lower Division States, would be a fatal flaw in the NEPA analysis.

For clarity, we propose incorporation of the following assumptions for purposes of Compact compliance:

1. Required deliveries pursuant to Article III of the Compact: The Compact requires the delivery of the following at Lee Ferry: 75 MAF every 10 years, on a rolling basis, and the Upper Division States' share of the Mexico Treaty obligation.

2. Compact call by the Lower Division States: As stated above, it is reasonably foreseeable that if deliveries at Lee Ferry fail to satisfy the Compact requirements, the Lower Division States will make a Compact call for delivery of the deficit.
  
3. Upper Basin curtailment or other reductions: It is reasonably foreseeable that, in the event of a Compact call, the Upper Division States will take the necessary steps to comply with the Compact requirements, whether through curtailment, demand management storage in Lake Powell, or voluntary conservation measures. If a particular alternative incorporates a demand management storage program in Lake Powell or other conservation measures, it would be appropriate to assume utilization of that program according to its terms. Otherwise, it should be assumed that the Upper Division States will curtail users as necessary (i.e., implement reductions) to satisfy their obligation. The Lower Division States would support modeling of curtailment consistent with the requirements of the 1948 Upper Colorado River Basin Compact and the 1922 Colorado River Compact.

Actions by the United States in management of federal reservoirs: Congress directed Reclamation to operate federal reservoirs consistently with the 1922 Colorado River Compact, and Section 602(a) of the Colorado River Basin Project Act directs the Secretary to manage upper basin federal reservoirs to prioritize releases for Compact compliance, second only to releases to satisfy the Treaty obligation to Mexico. The 1970 Long Range Operating Criteria provide for minimum annual releases of 8.23 maf to meet these priorities. Given this, it is reasonably foreseeable the United States will comply with these and other related elements of the Law of the River in operating the reservoirs.

4. In addition to releasing water from Upper Basin reservoirs in response to a Compact call, we expect that the United States will take actions necessary to release water from those reservoirs in advance of a Compact call. Recognizing that the existing environmental compliance, or even physical capacity, of the reservoirs may not permit single-year releases on the scale necessary to satisfy a Compact call, the United States should prepare by moving water through the reservoirs in advance, to satisfy any potential, near-term Compact call. These anticipatory measures will be particularly

important considering the need to protect critical infrastructure.

Many of the assumptions described above are nonfederal actions or are nondiscretionary actions by the United States. We believe these assumptions should be incorporated into the alternatives as reasonably foreseeable activities that will, in combination with the discretionary actions under consideration in the NEPA process, create or exacerbate the impacts on those who rely on the Colorado River. It is simply an impossibility for Reclamation to identify the more “environmentally preferable alternative” that “best promote[s] the national environmental policy ... by maximizing environmental benefits”, as required by 40 C.F.R. § 1502.14(f) (2024), if Reclamation instead intentionally disregards environmental impacts that will be felt throughout the system as a result of Lower Division State Compact calls.

We remain committed to developing a consensus alternative that can achieve support among the seven Basin States, the Tribes, the United States, Mexico, and Colorado River water users. However, such a consensus depends on an accurate analysis of alternatives, including implementation of the Law of the River as it currently stands. We recognize that strict implementation of Compact compliance may not lead to the best results for any of us. However, analysis and modeling of Compact compliance in all alternatives where it would be required can help everyone better understand the real-world implications of any alternative, as well as the mutual benefits of a consensus alternative.

We appreciate your consideration and are available to meet with you and walk through these assumptions. We also anticipate sending a revision of the Lower Division States’ Alternative for your consideration in the coming days.

Also, please note this email replaces the one sent previously on December 16<sup>th</sup>.

With gratitude,

**JB Hamby**

**Chairman** | Colorado River Board of California  
**Colorado River Commissioner** | State of California

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