

1 **Memorandum of Understanding**  
2 **between the U.S. Bureau of Reclamation**  
3 **and the Upper Division States through the Upper Colorado River Commission**  
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5 **I. Introduction**  
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7 This Memorandum of Understanding (“MOU”) is entered into by and between the United States  
8 of America, represented by the Secretary of the Interior, through the officials of the U.S. Bureau  
9 of Reclamation (“Reclamation”) executing this MOU, and the Upper Division States of  
10 Colorado, New Mexico, Utah, and Wyoming, through the Upper Colorado River Commission  
11 (“UCRC”), each being referred to individually as a “Party” and collectively as the “Parties.”  
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13 Since 2000, the Colorado River Basin has experienced drought conditions that have decreased  
14 water supplies in the Upper Colorado River Basin and increased uncertainty regarding the  
15 availability of water needed to sustain existing uses throughout the Basin. The Parties have been  
16 working together to mitigate the risks associated with drought in the Upper Basin.  
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18 In 2025 and 2026, the Upper Division States will implement conservation projects and  
19 demonstration projects (“Qualifying Activities”) in the Upper Basin under various authorities.  
20 Qualifying Activities identified in accordance with this MOU and Exhibit 1 hereto may provide  
21 opportunities for the Parties to investigate ways to verify and account for volumes of water that  
22 can be provisionally accounted for to assess potential water savings. The Parties wish to develop  
23 and implement an approach that will allow for provisional accounting for these Qualifying  
24 Activities in accordance with Exhibit 1 (“Provisional Accounting”). It is the understanding of the  
25 Parties that the Upper Division States will seek credit for water that, as a result of these  
26 Qualifying Activities, flows to and is stored in Upper Colorado River Basin reservoirs.  
27 Accordingly, the Parties agree as follows:  
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29 **II. Terms**  
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31 1. Defined Terms: The following definitions will apply for purposes of this MOU only.  
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- 33 a. Credit means a benefit that the Upper Division States may seek as defined in  
34 Section 7 of this MOU.  
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- 36 b. Criteria means the factors set forth in Section 3 of this MOU, which the Upper  
37 Division States, through the UCRC, will use to identify and select Qualifying  
38 Activities.  
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- 40 c. Demand Management Storage Agreement or DMSA means the Agreement  
41 Regarding Storage at Colorado River Storage Project Act Reservoirs Under an  
42 Upper Basin Demand Management Program dated May 20, 2019.  
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- 44 d. Provisional Accounting means the methodologies agreed to by the Parties as set  
45 forth in Section 5 and Exhibit 1 of this MOU to quantify the total amount of

46 reduction in use of or demand for water supplies, or the amount of water in the  
47 Upper Colorado River Basin that otherwise results from Qualifying Activities.  
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- 49 e. Qualifying Activities means conservation projects and/or demonstration projects  
50 that result in reductions in use or demand of water supplies, or inform accounting  
51 procedures or yield other helpful information, in the Upper Colorado River Basin.  
52 The Upper Division States, through the UCRC, will select Qualifying Activities  
53 for Provisional Accounting under Section 4 of this MOU.  
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55 2. Performance Period: Provisional Accounting as described in this MOU will be performed  
56 for Qualifying Activities initiated on or before December 31, 2026.  
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58 3. Criteria for Qualifying Activities: The Upper Division States, through the UCRC, in their  
59 sole discretion, shall identify and select the Qualifying Activities they will propose to  
60 Reclamation for Provisional Accounting. The following Criteria will inform the selection  
61 of Qualifying Activities:  
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63 a. Regulatory considerations, including the comparative ease or difficulty of  
64 implementing the Qualifying Activity and required permits or approvals, if any;  
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66 b. Volume and timing considerations, including the relative size of the Qualifying  
67 Activity in terms of the quantity of water at issue, or the likelihood that the  
68 Qualifying Activity will yield helpful information; and  
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70 c. The likelihood that the Qualifying Activity will result in quantifiable reductions in  
71 use or demand of water supplies in the Upper Colorado River Basin, or inform  
72 accounting procedures, or provide multiple benefits.  
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74 4. Process for Selection of Qualifying Activities by the Upper Division States through the  
75 UCRC: The Parties anticipate Qualifying Activities in 2025 and 2026 that may qualify  
76 for Provisional Accounting. The Upper Division States, through the UCRC, will take the  
77 following steps in sequential order to identify those Qualifying Activities eligible for  
78 Provisional Accounting under this MOU:  
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80 a. Each Upper Division State will review potential Qualifying Activities located  
81 within its geographic boundaries and identify those Qualifying Activities that  
82 satisfy the Criteria.  
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84 b. Each Upper Division State, through the UCRC, will notify the other Upper  
85 Division States of the Qualifying Activities within their state that it has identified  
86 as satisfying the Criteria.  
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88 c. The Upper Division States, through the UCRC, will review the Qualifying  
89 Activities identified pursuant to Section 4.b as satisfying the Criteria and then  
90 select those Qualifying Activities eligible for Provisional Accounting under this  
91 MOU.

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d. The Upper Division States, through the UCRC, will propose to Reclamation a list of the Qualifying Activities selected under Section 4.c. If Reclamation identifies an issue with a Qualifying Activity on such proposed list the Parties will confer.

5. Provisional Accounting Methodology:

- a. The Parties will conduct Provisional Accounting for the Qualifying Activities in accordance with Exhibit 1.
- b. The Parties will periodically review the Provisional Accounting method and its application to assess its performance during the calendar year, as follows:
  - i. The UCRC will convene the Upper Division States and Reclamation for a mid-year “check in” on Provisional Accounting and related data;
  - ii. 60 days after final verification of completion of a Qualifying Activity, the Upper Division State where the Qualifying Activity is located will provide draft Provisional Accounting to the UCRC;
  - iii. The Upper Division States, through the UCRC, will review the Provisional Accounting provided by each Upper Division State;
  - iv. Within 90 days after review by the Upper Division States through the UCRC, the Parties will jointly review the proposed Provisional Accounting; and
  - v. Reclamation, in collaboration with the Upper Division States through the UCRC, will prepare a report that includes the components outlined in Section 1 of Exhibit 1: (a) describing the results of the Provisional Accounting for the 2025 water year as soon as reasonably practicable after the end of the water year; and (b) describing the results of the Provisional Accounting for the 2026 water year as soon as reasonably practicable after the end of the water year. The Parties may prepare interim reports as necessary.
- c. The Parties will review the Provisional Accounting method and engage in appropriate consultations prior to proposing inclusion of the Provisional Accounting as described in this MOU into any agreement for Credit.
- d. The Parties may agree to modify the terms of Exhibit 1 in writing without amending the MOU.

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6. No Influence on Reservoir Operations: The Parties agree that the Provisional Accounting of water that flows to an Upper Colorado River Basin reservoir will not influence or otherwise affect the operations of that reservoir unless the Provisional Accounting is converted into Credit in accordance with Section 7.
  
7. Conversion of Provisional Accounting into Credit:
  - a. Conversion of the Provisional Accounting, as reported pursuant to Section 5, into Credit will be negotiated and governed by the terms of the agreement or agreements creating such Credit. Such agreement or agreements may include the following:
    - i. An agreement or agreements executed by the Upper Division States and Reclamation in conjunction with the post-2026 operations of Lakes Powell and Mead;
    - ii. An agreement or agreements executed in accordance with the DMSA; or
    - iii. Other appropriate agreements.
  - b. The Parties agree to consult with the Lower Division States and others in accordance with applicable law and agreements.
  - c. By executing this MOU, Reclamation takes no position on any future agreements or other efforts the Upper Division States may use to obtain Credit.
  
8. Funding: The Parties will perform the activities set forth in this MOU irrespective of a Qualifying Activity's funding source. Reclamation may provide funding for Qualifying Activities, including under the Inflation Reduction Act of August 16, 2022, Public Law 117-169, 136 Stat. 2053, including the funding made available under Section 50233(B)(2) of the Act.
  
9. Miscellaneous:
  - a. **Disclosure of Information**: The Parties recognize that the information obtained or developed from activities performed under this MOU may be public information that is available for release upon request, except to the extent otherwise provided by applicable law.
  - b. **Entire Agreement**: This MOU and its Exhibit 1 shall constitute the full and entire understanding and agreement between and among the Parties.
  - c. **Amendment, Modification, and/or Supplement**: Except as otherwise provided in this MOU, no amendment, modification, or supplement will be binding unless it is in writing and signed by all Parties.

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d. **Notices:** All notices required to be given hereunder will be in writing via email with confirmation of receipt or First-Class U.S. mail to a Party's principal representative at the address set forth below. Any Party from time to time may, by written notice, substitute addresses or persons to whom such notices will be sent. Unless otherwise provided herein, all notices will be effective upon receipt.

**BUREAU OF RECLAMATION:**

Bureau of Reclamation  
Regional Director, Upper Colorado Region  
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**UPPER COLORADO RIVER COMMISSION:**

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**With copies to:**

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232 Herschler Building  
233 2nd Floor West  
234 Cheyenne, Wyoming 82002  
235 [jeff.cowley@wyo.gov](mailto:jeff.cowley@wyo.gov)  
236

237 A Party may change its address by giving the other Parties notice of the change in  
238 writing.

- 239
- 240 e. **Availability of Information:** Subject to applicable laws and regulations, each  
241 Party to this MOU will have the right during office hours to examine and make  
242 copies of the other Party's books and records relating to matters covered by this  
243 MOU.  
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  - 245 f. **No Third-Party Beneficiaries:** This MOU and any agreements made, or actions  
246 taken, pursuant hereto are made solely for the benefit of the Parties. This MOU  
247 does not confer any right or entitlement to benefits from this MOU on any person  
248 or entity that is not signatory to this MOU, regardless of the legal theory on which  
249 such a claim is made.  
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  - 251 g. **Counterparts:** This MOU may be executed in counterparts, each of which will  
252 be an original and all of which, together, will constitute only one MOU.  
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  - 254 h. **Term:** The term of this MOU will begin on the date of execution by the last  
255 signatory and will end on December 31, 2026, unless the Parties agree in writing  
256 to extend the term.  
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  - 258 i. **Dispute Resolution:** If any dispute arises regarding this MOU, the Parties agree  
259 to meet and to attempt to resolve the dispute in good faith. This MOU does not  
260 create any right or benefit, substantive or procedural, enforceable at law or in  
261 equity by or against any Party to this MOU.  
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  - 263 j. **Conflicts:** If there is a conflict between the provisions of this MOU and any of its  
264 exhibits, the provisions of this MOU will govern.  
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THE UNITED STATES OF AMERICA

UPPER COLORADO RIVER COMMISSION

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

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By: Charles R. Cullom  
Its: Executive Director

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