November 19, 2026

Via Electronic and Certified Mail

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RE: Notice of Intent to Sue for Violations of the Endangered Species Act Relating to Operation of the Glen Canyon Dam

Dear Secretary Burgum, Acting Commissioner Bettencourt, Acting Regional Director Johnson, Director Nesvik, and Field Supervisor Whitlaw,

This letter serves as the Center for Biological Diversity's ("Center") formal notice of intent to sue the U.S. Bureau of Reclamation ("Reclamation") and U.S. Fish and Wildlife Service ("Service") for violations of the Endangered Species Act, 16 U.S.C. §§ 1531-1544 ("ESA"), concerning the impacts that Reclamation's unlawful actions and inactions in its operation of the Glen Canyon Dam are causing to the threatened humpback chub and razorback sucker and their designated critical habitat downstream of the Dam. Reclamation actions relevant to this letter include:

- The Operating Guidelines: Colorado River Guidelines for Coordinated Operations of Lake Powell and Lake Mead Operating Years 2027 and 2028 ("OG 2027&2028")

- The Decision Framework for Colorado River Guidelines: Coordinated Operations of Lake Powell and Lake Mead (2027–2036) (also known as the Post-2026 Guidelines, referred to herein as "P26 Guidelines")[1]
- The 2016 Glen Canyon Dam Long-Term Experimental and Management Plan ("2016 LTEMP")
- The 2024 Supplement to the 2016 LTEMP ("2024 Supp. LTEMP")

This letter is provided pursuant to the sixty-day notice requirement of the ESA's citizen suit provision, to the extent such notice is deemed necessary by a court. *See* 16 U.S.C.§ 1540(g).

Reclamation operates the Glen Canyon Dam on the Colorado River under management protocols in multiple plans and agreements to, among other things: fulfill legal requirements to distribute water to Lower Basin States; provide flows needed to maintain downstream ecosystems and the survival of listed species; and to generate hydropower. In August 2026, Reclamation adopted its Record of Decision ("ROD") for the P26 Guidelines [Decision Framework for Colorado River Guidelines: Coordinated Operations of Lake Powell and Lake Mead (2027-2036)] and the OG 2027&2028 [Operating Guidelines, Colorado River Guidelines for Coordinated Operations of Lake Powell and Lake Mead, Operating Years 2027 and 2028], and the Service issued its Biological Opinion for Glen Canyon Dam Operations (2026-2036) (Reference No: AESO/S 2026-0053145-S7-001) ("P26 BiOp") and incidental take statement ("P26 ITS") for the Dam operations. Current Glen Canyon Dam operations are governed by the P26 Guidelines[2] and the OG 2027&2028 which, among other things, allow Reclamation to reduce releases from the Glen Canyon Dam needed for water deliveries and ecosystem health.

Reclamation's Dam operations significantly affect the ESA-protected humpback chub and razorback sucker and their critical habitat downstream of the Dam in the Colorado mainstem and its tributaries. Most significantly for the humpback chub and razorback sucker (as detailed below), Reclamation's Dam operations affect the temperature of downstream reaches and pass through (entrain) non-native fish (especially smallmouth bass) which predate on and compete with humpback chub and razorback sucker downstream and successfully breed in warm waters, leading to precipitous declines in chub and sucker populations. As pool elevations at Lake Powell decline, warm water flows, and conditions that enable entrainment, begin earlier in the year and persist longer, and as a result the threats to the survival of humpback chub and razorback sucker and extent of take of these species are vastly increased.

In light of these threats, the Service's P26 BiOp acknowledges that there are a number of conservation measures or mitigation measures that are necessary to reduce the impacts to humpback chub and razorback sucker that Reclamation should implement during normal water years as well as additional measures that are needed in low reservoir conditions. *See, e.g.*, P26 BiOp at 12. The Service's P26 BiOp relies on these conservation measures to protect the

[1] The validity of Reclamation's OG 2027&2028 and P26 Guidelines is being challenged in federal court. *State of Nevada, et al. v. Burgum, et al.*, Case No. 2:26-cv-02665 (D. Nev. Aug. 23, 2026).

[2] The 2007 Colorado River Interim Guidelines for Lower Basin Shortages and Coordinated Operations for Lake Powell and Lake Mead expired by their own terms in September 2026.

humpback chub and razorback sucker and their critical habitat. But because many of these key conservation measures are uncertain to occur, the P26 BiOp's conclusions are unsupported and unlawful. The P26 ITS fails to *require* Reclamation to undertake any of the many conservation measures that have been developed or proposed to protect the humpback chub and razorback sucker and their critical habitat from these threats, in violation of the ESA. 16 U.S.C. § 1536(b)(4); 50 C.F.R. § 402.14(i).

The P26 ITS also fails to include any substantive reasonable and prudent measures to minimize take of the humpback chub or razorback sucker, focusing solely on monitoring, and fails to include binding terms and conditions Reclamation as required by the ESA. In light of these shortcomings in the P26 BiOp and P26 ITS, Reclamation's consultation with the Service regarding Dam operations fails to ensure against jeopardy to the humpback chub and razorback sucker and against destruction and adverse modification of these species' designated critical habitat, and Reclamation's reliance on the P26 BiOp and P26 ITS violates the ESA. 16 U.S.C. §1536(a)(2).

Finally, Reclamation's failure to "pursue means of preventing" non-native fish entrainment—as required by the 2016 LTEMP BiOp—constitutes an action modification and/or new information affecting the humpback chub and razorback sucker in a manner and to an extent not previously considered, requiring reinitiation of consultation under the ESA's implementing regulations. 50 C.F.R. § 402.16(a)(2)-(3).

I. LEGAL BACKGROUND

A. The Endangered Species Act

As the Supreme Court has declared, the ESA "represent[s] the most comprehensive legislation for the preservation of endangered species ever enacted by any nation," *Tenn. Valley Auth. v. Hill*, 437 U.S. 153, 180 (1978), and "Congress intended endangered species be afforded the highest of priorities." *Id.* at 174. The ESA's central purpose is to protect endangered and threatened species and the ecosystems upon which they depend. 16 U.S.C. § 1531(b).

To these ends, Section 7 of the ESA requires all federal agencies to work to recover ESA-listed species, and it contains both procedural and substantive requirements to do so. Substantively, Section 7 requires federal agencies to ensure that any action authorized, funded, or carried out by the agency is not likely to jeopardize the continued existence of any ESA-listed species or result in the destruction or adverse modification of critical habitat. 16 U.S.C. § 1536(a)(2). The ESA defines "jeopardize" as "to engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood both survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species." 50 C.F.R. § 402.02. Reclamation's Dam operations are federal agency actions that require consultation with the Service under Section 7 of the ESA.

To fulfill these substantive duties, Section 7 also sets forth procedural requirements directing any federal agency proposing an action (*i.e.*, the "action agency") to consult with an expert agency—here, the Service—to evaluate the effects of a proposed action on a listed species. 16 U.S.C. §

1536(a)(2). If listed species may be present in the action area, the action agency must prepare a "biological assessment" to analyze "the effects of the action" on the species and designated critical habitat. *Id.* § 1536(c)(1); 50 C.F.R. § 402.12.

If the action agency determines in the biological assessment that the action "may affect" but is "not likely to adversely affect" listed species or critical habitat, and the Service concurs with the agency's determination, consultation concludes. 50 C.F.R. § 402.14(a), (b). If the action agency determines that the action is "likely to adversely affect" listed species or critical habitat, or if the Service does not concur with an action agency's not-likely-to-adverse-effect determination, the action agency must engage in "formal consultation" with the Service, as outlined in 50 C.F.R. §§ 402.02, 402.14, 402.14(a). In formal consultation, after the Service evaluates the status of listed species and the proposed action's effects on the species and critical habitat using the best scientific data available, the Service issues a "biological opinion" that addresses whether the action, taken together with cumulative effects, is likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat. 16 U.S.C. § 1536(a)(2); 50 C.F.R. §§ 402.14(d), (g)(4). A no-jeopardy conclusion is arbitrary and capricious if it fails to "articulate[] a rational connection between the facts found and the conclusion made." *Wild Fish Conservancy v. Salazar*, 628 F.3d 513, 527 (9th Cir. 2010).

The Service's biological opinion must evaluate the direct, indirect, and cumulative effects of the proposed action within the action area and "add the effects of the action and cumulative effects to the environmental baseline in light of the status of the species." 50 C.F.R. § 402.14(g)(4). The "action area" includes "all areas to be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action." *Id.* § 402.02. Cumulative effects are the effects of future, non-federal activities "that are reasonably certain to occur within the action area." *Id.* § 402.02. The "environmental baseline" includes the effects of all past and present federal actions as well as other activities in the action area, including those that have already undergone Section 7 consultation. *Id.* § 402.12. If the Service fails to adequately address effects or consider important factors, its decision making is arbitrary and capricious and therefore unlawful. *Ctr. for Biological Diversity v. BLM*, 698 F.3d 1101, 1121 (9th Cir. 2012); *see also* 5 U.S.C. § 706(2)(A).

If the Service's biological opinion finds that an action will incidentally "take" listed species but is not likely to jeopardize the continued existence of the species or result in the destruction or adverse modification of critical habitat, the Service provides an "incidental take statement" ("ITS"). 50 C.F.R. § 402.14(g)(7). The ITS must specify the amount or extent of the impact of the taking on the listed species, set forth any "reasonable and prudent measures" that are necessary or appropriate to minimize such impact, and provide "terms and conditions" that the action agency must comply with to implement those measures and avoid jeopardy to the species. 16 U.S.C. § 1536(b)(4); 50 C.F.R. § 402.14(i).

Take of listed species without a valid ITS violates Section 9 of the ESA, which prohibits "take" of listed species. 16 U.S.C. § 1538. The ESA defines "take" broadly to encompass all manner of harm and harassment, including direct injury or mortality and any acts or omissions that disrupt or impair significant behavioral patterns. *Id.* § 1532(19); 50 C.F.R. § 222.102.

Agencies may rely on mitigation measures to ensure against jeopardy to a species. But an agency *cannot* rely on *uncertain* mitigation measures to offset negative impacts; mitigation measures must have clear, definite commitments of resources and be under agencies' control or otherwise reasonably certain to occur. Moreover, mitigation measures cannot refer only to generalized contingencies or gesture at hopeful plans; they must describe, in detail, the action agency's plan to offset the environmental damage caused by the action. The Service violates the ESA when it relies on uncertain, unspecified, or vague mitigation measures to conclude that a project will not jeopardize a listed species or adversely modify critical habitat. *Ctr. for Biological Diversity v. Bernhardt,* 982 F.3d 723, 747, 751 (9th Cir. 2020).

The ESA imposes on federal agencies an ongoing duty to protect threatened and endangered species and critical habitat; this duty does not terminate upon the issuance of a biological opinion or concurrence. Thus, the ESA's implementing regulations require reinitiation of consultation when, as relevant here, new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered, or if the action is modified in a manner that causes effects to the listed species or critical habitat that were not previously considered. 50 C.F.R. § 402.16(a). If consultation is reinitiated, ESA Section 7(d) restricts certain actions that Reclamation can take. The agency "shall not make any irreversible or irretrievable commitment of resources with respect to the agency action which has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures which would not violate subsection (a)(2) of this section." 16 U.S.C. § 1536(d). Section 7(d) prohibitions remain in effect throughout the consultation period.

II. FACTUAL BACKGROUND

A. Reclamation Operations under P26 and OP 2027&2028

Reclamation adopted the Decision Framework for Colorado River Guidelines: Coordinated Operations of Lake Powell and Lake Mead (2027-2036) and the Operating Guidelines Colorado River Guidelines for Coordinated Operations of Lake Powell and Lake Mead Operating Years 2027 and 2028 in August 2026. In low water conditions (which are already occurring), Reclamation anticipates that water releases will be significantly reduced to maintain elevation of Lake Powell at a minimum of 3510 feet above sea level. OG 2027&2028 at 3. Because water is warmer at the surface of Lake Powell than at lower depths, and because invasive non-native fish occupy upper reaches of the Lake's water column, low-water conditions cause warm water and non-native fish to passthrough the Dam's penstocks, which are at 3470-feet elevation. Thus, under Reclamation's operational parameters, which are designed to keep Lake Powell's water level just above the penstocks, warmer water will flow through the Dam for longer periods of time each year, and more non-native fish will be entrained. By perpetuating these warm-water and high-entrainment conditions, Reclamation's Dam operations threaten humpback chub and razorback sucker with heightened risk of predation and loss of functional habitat.

In adopting the P26 and OP 2027&2028 Guidelines, Reclamation only considers the operations of other upstream dams in the system (also known as Colorado River Storage Project Upper Initial Units or "CRSP UIU") to maintain the 3,510-foot lake level. Reclamation did *not* consider how the UIU could be coordinated with operations of the Glen Canyon Dam to provide for water

deliveries, maintain lake levels, produce hydropower, and provide water needed for conservation measures and downstream ecosystems. Following Reclamation's lead, the consultation with the Service (which culminated in the P26 BiOp and ITS) did not consider how coordinated operations of those upstream dams to provide water needed for conservation measures or to prevent entrainment could be utilized to protect species and habitats.

By restricting releases from Lake Powell to maintain elevation 3,510 feet and refusing to operate Lake Powell at lower elevations, Reclamation appears to have prioritized hydropower generation over releases of water necessary for any other purposes, such as water deliveries through bypass tubes for native fish survival.

B. P26 BiOp and LTEMP BiOps

The Service's P26 BiOp enumerates the conservation measures that could be undertaken by Reclamation, including those developed for the LTEMP process. These possible measures include various forms of monitoring, reactive measures (such as poisoning or electrocuting non-native fish after they are entrained through the Dam or changing flow conditions to disfavor breeding of non-native fish after they are entrained), and some proactive measures (to reduce or prevent future entrainment). The P26 BiOp lists and evaluates these "conservation measures" designed to minimize impacts to the humpback chub and razorback sucker (*see, e.g.*, P26 BiOp at 12-14, 73-78 (Table 5)), but the P26 BiOp relies solely on *voluntary* compliance by Reclamation to protect the ESA-listed fish and designated critical habitat (as did the Service's earlier BiOps). This is true although the description of Reclamation's conservation measures in the P26 BiOp frames them in an affirmative manner that appears to provide certainty. *See, e.g.*, *id.* at 14 ("will limit," "will pursue," "will fund"). Despite the BiOp's reliance on these measures to justify its no-jeopardy and no-adverse-modification conclusions, many of the key protective measures are not *required* by the P26 ITS. Instead, these measures are long-promised actions that have not occurred or are deferred until years into the future—some with no timeline specified whatsoever. For example, the P26 BiOp relies on the following conservation measures (emphasis added throughout):

> Conservation Measures to Reduce Entrainment
>
> • Glen Canyon Dam's Unit 1 penstock draws water from near "the shelf," an area that may provide habitat for nonnative fish and therefore represents the penstock most likely to entrain them. Reducing the amount of time Unit 1 operates may help decrease the number of fish entrained. Therefore, when Lake Powell's elevation is below 3,565 ft, Reclamation <u>will limit</u> operation of Unit 1 during the summer months (May-September) when Reclamation determines that conditions allow. <u>Unit outages or emergency operational needs may still require its use</u>.
>
> • Reclamation <u>will consider a method</u> to deter fish movement into the Glen Canyon Dam forebay. Preventing nonnative fish entrainment through Glen Canyon Dam is <u>critical to prevent establishment of these species below the dam</u>. Reclamation may consider electric barriers, netting, and other methods. Use may be conditional (*i.e.*, removed when conditions are unfavorable to entrainment; for example, when the

> reservoir elevation is above 3,565 ft). Timing of this action will depend on environmental compliance, tribal consultation, and funding constraints. Reclamation will provide quarterly progress updates to the FWS.
>
> • Reclamation will design and implement a study in consultation with FWS to evaluate fish entrainment through Glen Canyon Dam. The study will be initiated by October 1, 2027.
>
> . . .
>
> Temperature Control
>
> • Reclamation will pursue measures to reduce river temperatures to disadvantage non-native invasive warm water species and benefit humpback chub, razorback sucker, and other native aquatic species. Reclamation will fund an appraisal-level design of a thermal curtain in the forebay and a temperature control device on Glen Canyon Dam, to be completed by December 31, 2029.

Id. at 12-14.

The temperature control measure is a good example of why voluntary measures alone are not sufficient to support the conclusions in the P26 BiOp. The P26 BiOp discusses efforts to limit bass below the Dam in 2024 and 2025 using what are termed "Cool Mix" flows, and notes that despite the "proven" success of this conservation measure, Reclamation refused to implement Cool Mix flows in 2026:

> To combat the invasion of smallmouth bass downstream from Glen Canyon Dam, Reclamation implemented the "Cool Mix" flow alternative in 2024 and 2025 as part of the Glen Canyon Dam LTEMP Supplemental Environmental Impact Statement (SEIS; DOI 2024). The Cool Mix flow releases cold water through bypass tubes (River Outlet Works, bypassing the dam generators) to mix with warmer penstock flows when daily average river temperatures exceeded 60°F (15.5°C) for three days. These flows aimed to cool the river to 60°F (15.5°C) to inhibit smallmouth bass spawning by making the water too cold to trigger spawning. Monitoring indicates that Cool Mix flows conducted in 2024 and 2025 were likely successful at preventing smallmouth bass reproduction below Glen Canyon Dam. Currently, Cool Mix is the only conservation measure proven to limit smallmouth bass reproduction, reduce growth of entrained fish and reduce future survival and recruitment, and therefore spread of the species throughout the Colorado River below Glen Canyon Dam. Reclamation did not conduct Cool Mix flows in 2026.

Id. at 32.

Reclamation's refusal to implement this "proven" conservation measure in 2026 illustrates why it is problematic that the P26 ITS fails to require implementation of specific conservation

measures—they may not be implemented consistently, if at all. The P26 BiOp explains that conservation of the humpback chub is dependent on the agencies' ability to control non-native species by, for example, utilizing Cool-Mix flows—the only "proven" method of *preventing* bass invasion of chub habitat:

> The PBFs [Physical and Biological Features essential to humpback chub critical habitat] are all integrally related and must be considered together. For example, the quality and quantity of water affect the food base directly because changes in water chemistry, turbidity, temperature, and flow volume all affect the type and quantity of organisms that can occur in the habitat that are available for food. Likewise, river flows and the river hydrograph have a significant effect on the types of physical habitat available. Changes in flows and sediment loads caused by dams may have affected the quality of nearshore habitats that young humpback chub use. Increasingly the most significant PBF seems to be the biological environment, and in particular predation and competition, from non-native species. . . . It is likely that the future conservation of humpback chub will depend on our ability to control non-native species, and manipulating the water and physical PBFs of critical habitat to disadvantage non-natives may play an important role.

Id. at 21. By not requiring any Cool Mix flows or providing mandatory conditions when such flows should be undertaken, the Service cannot be certain that this effective conservation measure will be utilized and thus cannot rely on it to find that take of the humpback chub will be minimized or that jeopardy and adverse modification of critical habitat will be avoided.

Regarding the efforts to prevent entrainment of non-native fish above the Dam, in the 2016 LTEMP BiOp, the Service encouraged Reclamation to "pursue means of preventing the passage of deleterious invasive nonnative fish through Glen Canyon Dam," to assess how to "minimize survival of nonnative fish that pass through the dam," and as one of the "new actions" "to benefit all native aquatic species" in the LTEMP Record of Decision ("ROD"), Reclamation stated that:

> Reclamation will pursue means of preventing the passage of deleterious invasive nonnative fish through Glen Canyon Dam.

LTEMP ROD at 19. The Service provided additional details to support the implementation of this conservation measure in the 2016 LTEMP BiOp:

> Reclamation would pursue *means of preventing the passage of deleterious invasive nonnative fish through Glen Canyon Dam*. Because Glen Canyon Dam release temperatures are expected to be warmer under low reservoir elevations that may occur through the LTEMP period, options to hinder expansion of warmwater nonnative fishes into Glen and Grand Canyons would be evaluated. *Potential options to minimize or eliminate passage through the turbine or bypass intakes, or minimize survival of nonnative fish that pass through the dam would be assessed (flows, provide cold water, other).* While feasible options may not currently exist, technology may be developed during the LTEMP period that could help achieve this goal. The regulation and control of nonnative fish is a management action

identified in the Humpback Chub Recovery Goals (USFWS 2002a) and Razorback Sucker Recovery Goals (USFWS 2002b).

2016 LTEMP BiOp at E-12 (emphasis added). In the decade that has followed, Reclamation has failed to take any meaningful action to implement this critical proactive conservation measure that would reduce or eliminate entrainment of predatory non-native fish and their passage through the Dam *before* they decimate humpback chub and razorback sucker populations and critical habitat below the Dam. Reclamation's 10-year pursuit of a "means of preventing the passage of deleterious invasive nonnative fish through Glen Canyon Dam" has amounted to a single 2022 report broadly listing possible options including physical barrier screens, barrier nets, air bubble curtains, underwater acoustic barriers, multi-stimulus barriers, carbon dioxide barriers, floating barriers, and electric barriers.[3] Aside from report writing, Reclamation has taken no action in the decade since the LTEMP ROD and BiOp were issued to prevent nonnative fish from passing through the Dam, despite the ongoing threat to humpback chub and razorback sucker with pool elevations favorable to entrainment during most years since 2022. Particularly where Reclamation is intentionally keeping Lake Powell at an elevation extremely favorable to bass entrainment, the agency's decade of inaction simply does not amount to "pursu[ing] means of preventing the passage of deleterious invasive nonnative fish through Glen Canyon Dam."

The P26 BiOp also states Reclamation "will consider" "a method to deter fish movement into the Glen Canyon Dam forebay. Preventing nonnative fish entrainment through Glen Canyon Dam is critical to prevent establishment of these species below the dam," although "[t]iming of this action will depend on environmental compliance, tribal consultation, and funding constraints." P26 BiOp at 12-13. The P26 BiOp also notes Reclamation "will design and implement a study in consultation with FWS to evaluate fish entrainment through Glen Canyon Dam . . . by October 1, 2027." *Id.* Again only more study is anticipated and there is no certainty any of the proactive measures studied will be implemented. The Service nonetheless relies on this as a "conservation measure" in the P26 BiOp without including any requirement in the P26 ITS that actions to minimize take or impacts to critical habitat be undertaken.

The P26 BiOp addresses issues related to Dam operations under dry or critically dry conditions when Lake Powell is predicted to decline to below 3,500 feet. This condition had already been predicted in August 2026 when the Reclamation adopted the P26 Guidelines and continues to be predicted to occur as soon as August 2027.[4] The P26 BiOp states that Reclamation "will implement" certain conservation measures once levels at Lake Powell are predicted to fall below 3,500 ft. P26 BiOp at 12. Specifically, the P26 BiOp relies on implementation of a suite of

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[3] *See* Attachment 1, U.S. Bureau of Reclamation, *Hydraulic Laboratory Report HL-2022-02, Glen Canyon Dam Fish Escapement Options* (2022), available at https://www.usbr.gov/uc/progact/amp/twg/2022-10-13-twg-meeting/20221013-GlenCanyonDamFishEscapementOptions-508-UCRO.pdf; *see also* Attachment 2, Barret Freisen et al., *How Tough a Passage? Nonnative Fish Entrainment Survivability at a Major Dam in the Western USA* (Sept. 2026), available at https://www.usgs.gov/publications/how-tough-a-passage-nonnative-fish-entrainment-survivability-a-major-dam-western-usa.

[4] October 2026 projections at: https://www.usbr.gov/lc/region/g4000/riverops/24ms-projections.html.

"conservation measures" that derive from "conservation recommendations" in the 2016 LTEMP BiOp and the April 8, 2024 BiOp for the Near-Term Colorado River Operations Final Supplemental EIS: Glen Canyon Dam Operations ("2024 Near-Term BiOp") to protect the humpback chub and razorback sucker during dry and critically dry conditions. *Id.* at 12, 73-78 (Table 5). While this, like other statements in the P26 BiOp, is framed as a *definitive* statement—"will implement"—these directives are not included as reasonable and prudent measures in the P26 ITS and are not required to be implemented by Reclamation.

There is also an increasing risk that ongoing efforts by Reclamation and other agencies to control the nonnative fish invasion downstream will fail as low-water conditions persist for longer periods of time in low water years under the P26 and OG 2027&2028, undoing decades of recovery progress and conservation efforts. The ongoing need for "rapid response" and other lethal removals of invasive nonnative fish is costly, controversial among some Tribes,[5] and time-consuming, and has to begin earlier and be undertaken longer in low-water years. While previously confined to summer months, 2026 efforts began in the spring because nonnative fish had already been entrained through the Dam in March 2026.

III. VIOLATIONS OF LAW

A. The P26 BiOp and ITS are Unlawful (as are the Service's 2016 LTEMP BiOp and 2024 Near-Term BiOp and ITS).

The examples provided above help illustrate why, in adopting the ESA, Congress required that necessary conservation measures be incorporated into the ITS as reasonable and prudent measures with terms and conditions that are binding on the action agency. Without requiring the action agency to undertake specific measures to minimize take as part of the ITS, the Service cannot be certain they will occur, and thus cannot rely on such measures in making jeopardy or adverse modification determinations.

The Service's reliance on conservation recommendations from Reclamation to protect the humpback chub and razorback sucker or to minimize the impact of take is arbitrary and capricious because the Service's P26 ITS did not *require* Reclamation to implement any of the substantive "conservation measures" as reasonable and prudent measures or *require* Reclamation to comply with any substantive terms and conditions, requiring solely monitoring measures to be implemented. As a result, the Service's preparation and issuance of the P26 BiOp and P26 ITS is arbitrary and capricious and in violation of the ESA.

The Service's issuance of the 2016 LTEMP BiOp and 2024 Near-Term BiOp, in reliance on uncertain conservation measures, was also arbitrary and capricious because the accompanying incidental take statements failed to include any reasonable and prudent measures or terms and conditions requiring Reclamation to undertake these measures.

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[5] *See* Glen Canyon Dam Adaptive Management Program, *Tribal perspectives on nonnative fish removal*, available at https://gcdamp.com/index.php/Tribal_Resources (last visited Nov. 18, 2026).

B. Reclamation's Reliance on P26 BiOp and P26 ITS for Reclamation's OP 2027&2028 and P26 Operations Violates the ESA.

Reclamation has an independent, substantive duty under Section 7 of the ESA to ensure that its actions are not likely to jeopardize listed species or adversely modify their critical habitat.

Reclamation cannot rely on the Service's P26 BiOp and P26 ITS because they are invalid, as are the Service's 2016 LTEMP BiOp and 2024 Near-Term BiOp and ITS. Without a lawful and valid BiOp and ITS, Reclamation has failed to ensure that its operation of the Glen Canyon Dam under the P26 or the LTEMP is not likely to jeopardize the continued existence of the humpback chub or razorback sucker, or result in the destruction or adverse modification of the species' critical habitat, as required by the ESA.

C. The Agencies Are Violating the ESA by Failing to Reinitiate Consultation.

The Service's jeopardy and adverse-modification determinations in the 2016 LTEMP BiOp are based on the false assumption that "Reclamation would pursue means of preventing the passage of deleterious invasive nonnative fish through Glen Canyon Dam." 2016 LTEMP BiOp at E-12; *see also id.* ("Potential options to minimize or eliminate passage through the turbine or bypass intakes, or minimize survival of nonnative fish that pass through the dam *would be assessed* (flows, provide cold water, other)." (emphasis added)).

In the decade that has followed, Reclamation has failed to take any meaningful action to pursue means of preventing entrainment of non-native fish through the Dam; all Reclamation has done is write a single 2022 report broadly listing possible options. Particularly where Reclamation is intentionally keeping Lake Powell at an elevation extremely favorable to bass entrainment, the agency's decade of inaction simply does not amount to "pursu[ing] means of preventing" entrainment.

Reclamation's failure to "pursue means of preventing" non-native fish entrainment constitutes an action modification and/or new information affecting the humpback chub and razorback sucker in a manner and to an extent not previously considered, requiring reinitiation of consultation under the ESA's implementing regulations. 50 C.F.R. § 402.16(a)(2)-(3).

IV. CONCLUSION

The Service violated the ESA in issuing the P26 BiOp which relies on uncertain mitigation measures and in issuing the P26 ITS which fails to require needed reasonable and prudent measures and terms and conditions that Reclamation must comply with to minimize take of the humpback chub and razorback sucker due to Dam operations. The Service's earlier 2016 LTEMP BiOp and ITS and 2024 Near-Term BiOp and ITS suffer from the same shortcomings and are also unlawful.

Similarly, Reclamation has failed to ensure that its actions in operating the Glen Canyon Dam do not jeopardize humpback chub or razorback sucker and do not destroy or adversely modify these species' critical habitat by arbitrarily relying on the Service's unlawful BiOps and by failing to

commit to implement effective measures to minimize take of the humpback chub and razorback sucker under the OG 2027&2028 and the P26 Guidelines, or under the 2016 LTEMP and 2024 Supp. LTEMP.

In addition, Reclamation has failed to "pursue means of preventing the passage of deleterious invasive nonnative fish through Glen Canyon Dam," as required by the 2016 LTEMP BiOp (and later BiOps incorporating that BiOp). This failure constitutes an action modification and new information affecting the chub and sucker and their critical habitat in a manner and to an extent not previously considered, therefore requiring reinitiation of consultation.

Reclamation's and the Service's actions and inactions represent an unlawful departure from the ESA's legally binding mandate to protect and recover imperiled species and their habitats. If these violations of law are not cured within 60 days, the Center intends to file suit for declaratory and injunctive relief. 16 U.S.C. § 1540(g).

If you have any questions, please contact Taylor McKinnon at the Center for Biological Diversity (contact information below).[6]

Sincerely,



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ATTACHMENTS:
Attachment 1: U.S. Bureau of Reclamation, *Hydraulic Laboratory Report HL-2022-02, Glen Canyon Dam Fish Escapement Options* (2022), available at https://www.usbr.gov/uc/progact/amp/twg/2022-10-13-twg-meeting/20221013-GlenCanyonDamFishEscapementOptions-508-UCRO.pdf

Attachment 2: Barret Freisen et al., *How Tough a Passage? Nonnative Fish Entrainment*

[6] This notice letter was prepared in good faith after reasonably diligent investigation. If you believe that any of the foregoing is factually erroneous or inaccurate, please notify us promptly.

Survivability at a Major Dam in the Western USA (Sept. 2026), available at https://www.usgs.gov/publications/how-tough-a-passage-nonnative-fish-entrainment-survivability-a-major-dam-western-usa