



**EPA Response to Public Comments on the
Colorado Energy and Carbon Management Commission
Class VI Primacy Application**

September 30, 2026

On March 19, 2026, the EPA published a proposed rulemaking in the *Federal Register* (91 Fed. Reg. 13266 (Mar. 19, 2026)) to approve Colorado's primary enforcement authority, or "primacy," application under Safe Drinking Water Act (SDWA) section 1422 to implement the UIC program for Class VI injection wells located within the State, except on Indian lands. The proposal initiated a public comment period that closed on May 4, 2026. The EPA held a public hearing on April 23, 2026, that participants could virtually attend. The EPA received no oral comments during the public hearing. During the public comment period, the EPA received eleven written comments from individuals and stakeholders; the Southern Ute Indian Tribe; and several interest groups, such as the American Petroleum Institute, the Ground Water Protection Council, the Consumer Energy Alliance, and Reliant Carbon Capture and Storage, LLC. The EPA considered each comment received on the proposed rulemaking in the development of the final rule.

All comments are available as part of the public record and can be accessed through the EPA's docket (EPA-HQ-OW-2025-2829) at <https://www.regulations.gov>. The materials referenced in this response to public comments document are also available in the docket.

EPA received comments from the Chairman of the Southern Ute Indian Tribe (SUIT). The Tribe noted their inclusion and active involvement in reviewing and commenting on Colorado's statutory and regulatory developments leading to the Class VI Primacy application. SUIT noted that at multiple stages, ECMC modified regulatory language in response to the Tribe's comments and recognized tribal sovereignty over lands within the reservation.

SUIT noted that the EPA's proposed amendment to 40 CFR 147.301 applies Colorado's UIC Program for Class VI wells to all "Class VI wells in the State of Colorado, except those located on Indian lands," but "Indian lands" used by EPA in the text of its proposed rule is not defined within the rule or within the Federal Register Notice. SUIT noted that the EPA's use of the term "Indian lands" as referenced in the consultation letter dated March 18, 2026, differs from ECMC's definition of "Indian Lands" found at ECMC's 100 Series. SUIT further noted that those subtle differences are of no material consequence so long as EPA, ECMC, and the public understand that ECMC's rules, "will not apply to... Class VI UIC Wells located on surface lands within the exterior boundaries of the Southern Ute Indian Reservation or the Ute Mountain Ute Indian Reservation."

The Tribe respectfully requested that the EPA include additional text (noted below) to the proposed amended 40 CFR §147.301 to ensure the regulatory language is consistent with the intent of the ECMC and the EPA, and to avoid any confusion in the future regarding the intended scope of Colorado's program:

"EPAs approval of the State of Colorado UIC Program for Class VI wells is subject to any limitations in the scope of the rules of the State of Colorado Energy and Carbon Management

Commission applicable to lands within the exterior boundaries of the Southern Ute Indian Reservation or the Ute Mountain Ute Reservation.”

EPA Response: The EPA acknowledges SUIT’s concerns about the language utilized in the proposed rule, but declines to include the suggested text. Although “Indian lands” is not specifically defined within the proposed or final rule approving Colorado’s Class VI program, it is defined in the federal UIC regulations at 40 CFR § 144.3, and that definition applies to the final rule. This definition specifies that under the federal UIC regulations, “Indian lands means ‘Indian country’ as defined in 18 U.S.C. 1151.” As explained in the proposed rule, the EPA will retain primacy for Class VI injection wells located on Indian lands. 91 Fed. Reg. 13266, 13270 (March 19, 2026). Because “Indian lands” has the same definition as “Indian country,” EPA will retain primacy over “[a]ll land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation.” 18 U.S.C. § 1151(a); 40 CFR § 144.3. This means that the EPA’s approval of ECMC’s UIC Class VI program does not apply to lands within the exterior boundaries of the Southern Ute Indian Reservation or the Ute Mountain Ute Reservation or any other land that falls under the definition of “Indian country” in 18 U.S.C. § 1151. Additionally, the EPA’s final approval of ECMC’s program incorporates by reference 2 CCR 404-1, Rule 201.d.(1) and (3), which states: “These rules will not apply to: (1) Indian Lands; ... (3) Class VI UIC Wells located on surface lands within the exterior boundaries of the Southern Ute Indian Reservation or Ute Mountain Ute Indian Reservation.”

Commenters in support of Colorado’s UIC Class VI program primacy approval stated that Colorado’s UIC rules meet or exceed the EPA’s UIC requirements. They note that the ECMC’s application details strong in-house capacity to effectively implement UIC Class VI program requirements, including requirements covering project site characterization, modeling, well construction and testing, finance, risk analysis, policy and regulation, enforcement and compliance, and inspections, with supplementation by contractors as needed.

Supporters note that Colorado is well positioned to implement the UIC Class VI primacy program because the State has decades of UIC experience (Class II primacy since 1984), favorable geology, and an understanding of industrial emissions profiles. Commenters also note that safely capturing, transporting, and storing CO₂ via carbon capture, utilization, and storage (CCUS) is essential to decarbonization and that granting states, especially Colorado, Class VI primacy is critical to accelerate deployment. Further, commenters assert that approving Colorado’s primacy will accelerate project timelines, improve permitting consistency, unlock private capital, and enable the state to execute its climate strategy safely and equitably in line with legislative mandates and economic opportunities.

Commentors support state UIC program primacy, generally, because state primacy will distribute the workload between the EPA and state agencies, speed approvals for dozens of national carbon sequestration projects in the Class VI pipeline and align with the EPA's "Powering the Great American Comeback" by promoting permitting efficiency, cooperative federalism, and the protection of human health and the environment. Additionally, supporters assert that state UIC program primacy would retain and create jobs, attract investment, support domestic energy and industrial production, and bolster grid reliability by enabling dispatchable, baseload resources, all while reducing emissions without sacrificing economic growth.

EPA Response: The EPA agrees that Colorado's ECMC program has the expertise, experience, and financial and technical capacity to implement and enforce an effective UIC Class VI program in consideration of the State's natural resources and anticipated permitting needs. The EPA also agrees that Colorado's primacy application meets the requirements of the SDWA and implementing regulations, including the public engagement requirements at 40 CFR § 145.31. For these reasons and based on a thorough evaluation of Colorado's primacy application, the EPA is approving Colorado's UIC Class VI primacy program.

One commenter raised concerns about the Tribal consultation process, stating that: Executive Order (EO) 13175 requires federal agencies to have a process for Tribal consultation in matters that impact Tribal communities. In response to that obligation, the EPA created its own Policy on Consultation with Indian Tribes to define how EO 13175 would be executed within the agency. The EPA's policy establishes that Tribal consultation has four phases including identification, notification, input, and follow-up. These processes exist to "ensure meaningful and timely input" from Tribal nations before moving forward with policy that can impact Tribal communities.

The Southern Ute Indian Tribe and Ute Mountain Ute Tribe are considered sovereign nations with treaty-protected water rights. The Navajo and Ute Indian Tribe of the Uintah and Ouray Reservation hold lands in neighboring states. The EPA's consultation letters sent to these four tribes underscore the EPA's awareness that underground plumes related to CO₂ sequestration have the potential to cross above surface boundary lines and thereby could impact Tribal groundwater resources.

The EPA's proposed rule contains an internal contradiction by simultaneously concluding that no Tribal implications exist while sending out letters offering consultation that acknowledge CO₂ plume migration could cross boundaries and affect Tribal groundwater resources. This timeline

suggests that the EPA sought to satisfy a procedural requirement rather than seek “meaningful and timely input” consistent with its own policy.

In the Arizona primacy application process, the EPA sent Tribal consultation offer letters in February of 2024 and held an Informational Meeting in March of 2024. Arizona’s proposed rule wasn’t published until a year later in May of 2025. Arizona’s final rule was approved in September of 2025. This gap between consultation and proposed rule allowed the Tribal input to be considered prior to finalizing the rule.

The EPA’s own four-phase consultation process is only partially complete. Thus far, there is evidence only of the Notification phase. By the time the public comment period closes on May 4, 2026, there will be no documented Tribal input in the rulemaking record beyond the initial consultation letters.

Therefore, the EPA should proactively offer informational sessions with the Southern Ute Indian Tribe, Ute Mountain Ute Tribe, Navajo Tribe, and Ute Indian Tribe regardless of whether those Tribes responded to the March 18 consultation offer letters. The EPA should suspend the approval process until such time as meaningful government-to-government consultation has occurred and Tribal input has been incorporated into the final rule consistent with the EPA’s Policy on Consultation and as mandated by EO. The EPA should utilize a similar timeline as Arizona where there was more than one year between Tribal consultation and finalization of the proposed rule.

More broadly, the EPA’s practice of informal tribal engagement across comparable primacy approvals demonstrates the agency’s recognition of tribal impact in these rulemakings. The formal conclusions that EO 13175 does not apply is inconsistent with the EPA’s conduct and should be re-evaluated. A thorough tribal implication analysis shall be completed and documented in the preamble of this rule and all future state primacy applications.

EPA Response: The EPA complied with the agency’s Policy on Consultation with Indian Tribes. On March 18, 2026, the EPA sent letters offering the opportunity to consult with Tribes located within and adjacent to the Colorado state border. These Tribes were the Southern Ute Tribe, the Ute Mountain Ute Tribe, the Uintah Ouray Tribe, and the Navajo Tribe. No requests for consultation were received from any of the Tribes.

Moreover, as discussed at length in comment response #1, the UIC program is administered directly by the EPA on Indian lands (40 CFR § 144.3), or Indian country (18 U.S.C. § 1151), within Colorado. The EPA’s approval of ECMC’s UIC Class VI program authorizes ECMC to administer the UIC Class VI program in Colorado but specifically excludes all Indian lands as defined at 40 CFR § 144.3.

One commenter raised concerns about tribal input in the Class VI permitting process:

“The exclusion of Tribal input from the permitting process strips these Nations of the opportunity to protect their treaty-protected resources and further exacerbates current inequities. It removes their ability to request formal assessments, review pertinent reports, and provide comment on wells that may impact their groundwater. Of further offense, there is also no administrative process for them to remedy these injustices.”

The commenter further noted that “Colorado’s own Rule 201.d(3) acknowledges that when a proposed AOR extends toward the exterior boundaries of a tribal reservation, ECMC will collaborate with the applicable Tribal government and EPA. This commitment is encouraging but is unenforceable as written. The EPA shall require Colorado to codify this commitment with the following enforceable obligations for any Class VI permit applications whose Geologic Storage Area of review extends within five miles of the Southern Ute Indian Reservation, Ute Mountain Ute Indian Reservation, Navajo Nation, or Ute Indian Tribe Reservation.”

The commenter also recommended that “[e]nforceable conditions should include 1) written notice to the appropriate Tribal government within 15 days of receipt of a complete permit application; 2) delivery of the permit application with all associated plume migration modeling to the Tribal government within 15 days of plume modeling completion; 3) a minimum 45-day Tribal comment period before issuance of a draft permit; 4) written responses to all Tribal comments within 30 days of the close of the comment period; and concurrent notification to EPA Region 8 upon issuance of any draft permit meeting the five-mile criteria.”

EPA Response: The EPA disagrees with the commenter’s concerns. First, the EPA’s approval of CO ECMC’s UIC Class VI program does not extend to Indian lands as defined at 40 CFR § 144.3. This is explicit in the *Federal Register* notice for the proposal (see 91 Fed. Reg. at 13270) and will be codified in the UIC regulations in 40 CFR part 147 as part of this final rulemaking.

CO ECMC’s approved rules also make this clear. See 2 CCR 404-1 section 201.d(3).

Accordingly, ECMC will not be implementing UIC Class VI permits on Indian lands.

Second, the commenter does not explain why they believe that Tribes will be excluded from providing input during Colorado’s Class VI permitting processes. Rather, contrary to commenter’s contention, CO ECMC’s rules require both the operator and Director of ECMC to consult with the Southern Ute Indian Tribe or Ute Mountain Ute Indian Tribe prior to submission of a Class VI Development Plan application if the operator proposes to include any Indian lands within the area of review or where the Tribes find that the plan may impact tribal minerals and/or pore space or may adversely affect other tribal resources. See 2 CCR 404-1 section 1406.a(2).

Furthermore, consistent with the federal UIC regulations, CO ECMC’s approved regulations require applicants to provide ECMC with a list of contacts for any Tribes identified in the

injection well's area of review. The Director must then provide these Tribes with written notification regarding the proposed Class VI project. See 2 CCR 404-1 section 1407.b(20) and (c). In addition to the opportunity to consult directly with the operator and Director of ECMC, Tribes may participate in CO ECMC's public process for any Class VI permitting action.

Although the commenter requests that the EPA impose additional requirements on CO ECMC's Class VI primacy approval, the EPA is not authorized to impose additional primacy requirements beyond what is required by the SDWA and implementing UIC regulations. Lastly, no Tribe raised concerns about this issue.

One commenter raised concerns about CO₂ plume migration. The commenter stated that:

Groundwater contamination from underground CO₂ plume migration is not a theory. It is a scientifically proven risk that requires specific regulations to monitor and mitigate. These underground CO₂ plumes do not respect or adhere to surface level state and Tribal boundaries. The behavior of these plumes is difficult to predict even with extensive scientific modeling.

A leak in a Class VI well can be difficult to locate. Even after a leak is identified and repaired, groundwater contamination can spread for decades. CO₂ contamination leads to heavy metal activation in the water source. Remediation of the contaminated aquifer is incredibly complicated, expensive, and can take decades. The complicated nature of plume migration, leak detection, and the costly remediation of contaminated groundwater demand a more comprehensive and proactive approach to protect vulnerable communities like the Tribal nations from devastating consequences. As shown in the history of the Colorado Tribal nations, these consequences could persist for decades. This reality demands that specific protections outlined in Section IV of this comment be in place before primacy is transferred to the State of Colorado.

The EPA must require plume migration modeling for all Class VI permits near reservation boundaries to account for cross-jurisdictional subsurface migration. This modeling requirement applies regardless of whether the permit meets the five-mile threshold in Recommendation.

EPA Response: Generally, the EPA agrees with the commenter that there is the potential for CO₂ movement when injecting CO₂ into the subsurface, which the agency acknowledged when the Class VI regulations were promulgated. 75 Fed. Reg. 77230, 77234 (December 10, 2010). To address this issue, the federal UIC Class VI regulations include requirements for computational modeling to predict the projected lateral and vertical migration of the carbon dioxide plume and formation fluids, which must be re-evaluated at least every 5 years. 40 CFR § 146.84. As required under SDWA section 1422 for Class VI primacy approval, the EPA determined that ECMC's regulations are as stringent as the federal regulations at 40 CFR § 146.84. To the extent

that the commenter may be raising concerns about the sufficiency of the federal Class VI regulations, those concerns are outside the scope of this Colorado UIC Class VI primacy approval action.

A commenter cited the SDWA, asserting that it requires that the EPA consider historical conditions in the State of Colorado in granting primacy. In support of this statement, the commenter provided the following statutory quotation: “The Administrator under this section shall permit or provide for consideration of varying geologic, hydrological, or historical conditions in different States and in different areas within a State.”

The commenter further asserted that the EPA’s proposed rule contains no evidence that the historical conditions in the State of Colorado were considered as is required by SDWA section 1421(3)(A).

The commenter explained that the inclusion of “historical conditions” next to two scientific conditions (geologic and hydrological) reflects Congressional intent that historical conditions are to be considered with equal significance as the scientific conditions listed in the same sentence.

Therefore, the commenter requested the assembly of a five-member advisory committee comprised of at least three Tribal citizens who have been nominated by the Tribal governments.

The commenter stated this advisory committee shall gather the necessary background information and document a thorough account of Tribal historical conditions to be included in the preamble of the proposed rule; the EPA shall then review this account and utilize it to consider the appropriateness of primacy transfer at this time.

The historical conditions documented in Section II of this comment, according to the commenter, are examples of why this statutory requirement exists.

EPA Response: It appears that the commenter intended to cite to 42 U.S.C. § 300h(b)(3)(A), which states that “[t]he regulations of the Administrator under this section shall permit or provide for consideration of varying geologic, hydrological, or historical conditions in different States and in different areas within a State” (emphasis added). The “regulations” this provision refers to are those promulgated by the EPA under 42 U.S.C. § 300h(a), which are the UIC program regulations in the Code of Federal Regulations. Therefore, the intent of quoted statutory language was to ensure that the EPA provide flexibility when promulgating UIC regulations to ensure that regulation of underground injection into the subsurface would consider variations in geologic, hydrological, or historic conditions across states, avoiding a one-size-fits-all regulatory approach. Moreover, the quoted statutory language does not apply to this state primacy decision

which is governed by 42 U.S.C. § 300h-1 and the regulations at 40 CFR part 145. Finally, there is no requirement or authority under the SDWA or EPA UIC regulations to form an advisory committee for the purpose of gathering historical information to inform a state primacy decision.

A commenter requested that the EPA should require, at minimum, provisions for an EJ review for each Class VI well using EPA's EJScreen for permits with a Geologic Storage Area of Review (AOR) that is within 5 miles of Tribal lands, an enhanced public comment period when communities with EJ concerns are identified, and a requirement that applicants assess alternative locations instead of sites near reservation boundaries.

The commenter stated that the EPA must require Colorado's MOA to include the following environmental justice provisions:

General EJ provisions for all permits near Tribal lands;

An Environmental Justice (EJ) review of each proposed Class VI well using EPA's EJScreen for permits within a defined proximity to Tribal Lands;

An enhanced public comment period when communities with EJ concerns are identified; and

A requirement that applicants assess alternatives to proposed site locations near reservation boundaries.

EPA Response: Since the recent rescission of Executive Orders 14148 and 14173, the EPA no longer has government-wide executive direction to integrate EJ as an independent criterion in permitting actions or in primacy program approvals. In the Class VI primacy context, the EPA's review is constrained by SDWA section 1422 and the state program requirements at 40 CFR part 145. These authorities specify the criteria that a state program must meet for UIC primacy program approval and do not include EJ screening requirements, distance-based EJ triggers, or EJ-based alternatives analyses as primacy approval criteria. Accordingly, the EPA cannot require Colorado to adopt the requested EJ measures as enforceable conditions of primacy approval on the basis of the rescinded executive directives.

One commentor noted that we should be putting all available efforts, and resources to phasing out fossil fuels and transitioning to better cleaner energy alternatives, we should be using and consuming much less and recycling more. 40,000 Americans die annually from air pollution. We can reduce that number by phasing out fossil fuels.

EPA Response: The EPA evaluates state UIC primacy program applications to determine whether the application meets requirements in the SDWA and EPA's UIC regulations. The EPA's evaluation concluded that CO ECMC's primacy application met these requirements. This comment fails to address CO ECMC's UIC Class VI primacy package or EPA's proposed approval. This comment also does not address underground injection. For these reasons, this comment is outside the scope of this Colorado UIC Class VI primacy approval action.