



Tohono O'odham Nation  
Office of the  
Chairman and Vice Chairwoman

Ned Norris Jr. Wavalene M. Saunders  
Chairman Vice Chairwoman



September 1, 2022

The Hon. Tanya Trujillo  
Assistant Secretary for Water and Science  
U.S. Department of the Interior  
1849 C Street, N.W.  
Washington, D.C. 20240  
[CRB-info@usbr.gov](mailto:CRB-info@usbr.gov)

**Re: The Tohono O'odham Nation's Comments on Reclamation's Proposed  
Development of Post-2026 Colorado River Operational Strategies**

Dear Assistant Secretary Trujillo:

This letter conveys the comments of the Tohono O'odham Nation (Nation) on Reclamation's Proposed Development of Post-2026 Colorado River Operational Strategies (87 Fed. Reg. 37884). The Nation is somewhat unique, as it is both a major Colorado River water user with an existing water rights settlement, and also one that has significant remaining water rights that have yet to be settled. In developing its "Framework" for post-2026 Colorado River management, it is incumbent on the Federal Government to prioritize the protection of tribal water rights under existing settlements like the Nation's, as well as the trust responsibility for future settlements and water management decisions.

***The Federal Government Must Ensure that the Post-2026 Framework Protects Sources of Water  
that Provide the Foundation for Existing Water Rights Settlements***

The Nation has one of the largest reservations in the United States, with over 35,000 members and multiple reservation land bases in southern Arizona totaling more than 2 million acres of land. Our Reservation also shares a 62-mile border (as well as several important aquifers) with the Republic of Mexico. Water rights are especially vital for the Nation and other tribes in the desert Southwest, where climate change and drought have exacerbated the damage caused by centuries of federal mismanagement of tribal water rights, and by the failure by the federal government to protect against non-Indian damage to these rights.

The Nation also has one of the oldest water rights settlements in the United States – the Southern Arizona Water Rights Settlement Act, Pub. L. 97-293 (1982) (SAWRSA), as amended, Pub. L. 108-451 (2004). Under SAWRSA, the Nation gave up its significant claims concerning damages to groundwater and surface water in the far eastern portion of the Nation’s Main Reservation. In exchange for releasing these claims, the United States promised that the Nation would receive reliable, affordable, and long-term access to Central Arizona Project (CAP) water, which delivers the majority of Arizona’s allocation from the Colorado River Basin. Drought conditions and the prospect of future shortages threatens the Nation’s access to this entitlement. Reclamation must ensure that the CAP – and tribal entitlements like the Nation’s – are protected in developing the Framework.

***The Federal Government Must Prioritize Tribal Water Rights and the Trust Responsibility in its Development of the 2026 Framework***

SAWRSA settled the Nation’s water rights claims to a little over 100,000 acres – less than 1/20th of our reservation lands. The Nation is currently in negotiations with the United States and others to settle the rest of the Nation’s water rights. As with our prior settlement (and like other Basin Tribes with ongoing settlement negotiations), the Nation and our Federal Negotiating Team are working to ensure that the Nation has access to Colorado River water in return for settling its claims.

Historically, the federal government has prioritized the interests of non-Indian water users at the expense of the Nation, and in violation of its trust responsibility. Throughout the late 19<sup>th</sup> and early 20<sup>th</sup> centuries the Nation’s members sought to improve and expand their existing cultivation of thousands of acres of farmland in the northern portion of the Nation’s Main Reservation. During the same period, however, non-Indian settlement and water use, spurred on by federal irrigation loans and low cost preference-rate federal power, dramatically undermined the Nation’s use of its water rights. Off-reservation pumping by non-Indians depleted the water table within the Nation’s Main Reservation to a point where many of the existing wells went dry and irrigation had to be abandoned. During this time period, the federal government failed to protect the Nation’s water rights.

Interior now has an opportunity to rectify these wrongs by prioritizing the federal trust responsibility to the Nation and other tribes in ensuring access to, and protection of, water rights, both in water rights settlement negotiations, and in developing a Framework for the future management of the Colorado River. In developing this Framework, Interior must: (1) ensure that future shortage declarations do not negatively impact tribal water rights, including on-reservation surface and groundwater rights; (2) prioritize the trust responsibility to tribes managing the delivery of Colorado River water; (3) ensure that adequate funding continues to be available to deliver existing and future settlement water; and (4) ensure that the Nation’s water rights are protected in future negotiations involving the Republic of Mexico. Interior should also ensure that government-to-government consultation, appropriately tailored to the unique interests of the tribal governments in the Basin, is incorporated into the Framework process. Fundamentally, federal water management

policy must treat tribes as more than just ordinary water rights contractors. All federal water management decisions (including the development and implementation of the Framework) should be made with the long term protection of tribal water rights as the first priority, and should treat tribes as the sovereign governments that we are.

Thank you for your consideration of the Nation's comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Ned Norris, Jr.", with a stylized flourish at the end.

Ned Norris, Jr.  
Chairman

cc: Carly Jerla, Senior Water Resources Program Manager, Bureau of Reclamation  
Pamela Williams, Director, Secretary's Indian Water Rights Office