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Gila River Indian Community Written Comments on the Notice and Request for Input on Proposed Development of Post-2026 Colorado River Operational Strategies

The Gila River Indian Community provides these comments in response to the *Request for Input on Development of Post-2026 Colorado River Reservoir Operational Strategies for Lake Powell and Lake Mead Under Historically Low Reservoir Conditions*, 87 Fed. Reg. 37,884 (June 24, 2022) (“**Notice**”). The Notice seeks comment on “meaningful participation ideas and operational strategies to consider when updating key reservoir and water management decisions and agreements.” The Notice seeks input on: “(a) processes that can be employed to encourage and facilitate meaningful participation of Colorado River Basin (Basin) partners, stakeholders, and the general public in the anticipated upcoming NEPA process(es); as well as (b) potential substantive elements and strategies for post-2026 operations to consider in the anticipated upcoming NEPA process(es).”

With respect to item (a) regarding processes that can be employed to facilitate meaningful participation in the anticipated upcoming NEPA process the Community has a couple specific suggestions, but in general the federal trust responsibility requires that the United States ensure Basin Tribes are included in the development and implementation of the policies and rules that will govern how the Colorado River will be managed from this point forward. As such, the federal government must take the lead in establishing a system and schedule for regular communication among and between federal and tribal representatives as part of the post-2026 operations process. More specifically, the Community provides the following recommendations:

- Upon initiating the NEPA process through a Notice of Intent to Prepare an Environmental Impact Statement, the United States should send a formal notice offering to engage in formal government-to-government consultation with all potentially affected tribes regarding development of the post-2026 operations. This will be particularly important because most, if not all, Basin Tribes’ water rights, and/or unresolved claims, are likely to be impacted by “protection volume” measures adopted to address current low-reservoir conditions in the Basin, and it is very likely that such measures will be incorporated in any adopted post-2026 operations.¹
- The United States should continue its existing coordination efforts with tribes, which includes regular tribal informational exchange meetings and engagement with tribal organizations and groups that help facilitate information sharing with all Basin Tribes,

¹ The Community anticipates that most Basin Tribes will already be engaged in government-to-government consultation with the United States regarding the development, adoption and implementation of actions related to the 2-4 million acre-feet of additional reductions of use that the United States believes is needed in 2023 and subsequent years through 2026 to protect Lake Mead and Lake Powell operations. It is very likely that many of the actions the United States adopts as part of the “protection volume” efforts will carryover and be incorporated in the post-2026 operations (*e.g.*, applying evaporation and system losses in the Lower Basin). Although many of the Basin Tribes will be already engaged in government-to-government consultation, the Community believes a subsequent government-to-government consultation notice that is specific to the post-2026 operations NEPA process would be required as well.

such as the 10 Tribes Partnership, Inter Tribal Council of Arizona, and Basin Tribes Coalition.

- Although the Community believes the United States should make efforts to allow for meaningful participation from all Basin Tribes at every stage of discussion, the United States should prioritize input from tribes that are engaged, provide useful feedback and/or alternative proposals, and are focused on moving the process forward. The Community would not support any process where government-to-government consultation results in rewarding the intransigence of a tribe, or any other party, that is disengaged, ill-prepared, or using the process to resolve collateral issues that should not be included in the development of post-2026 operations.
- The United States should provide ongoing technical assistance to Basin Tribes to help them evaluate the impacts of any proposals by states or stakeholders on their rights and interests.

With respect to item (b) regarding potential substantive elements and strategies for post-2026 operations to consider in the anticipated upcoming NEPA process, the Notice rightly points out “that the 2007 Interim Guidelines were largely effective as measured against” their stated purpose, “the Interim Guidelines failed to provide sufficiently robust operating provisions to address the increasing severity of the drought and low runoff conditions exacerbated by climate change.” As a result, “the adoption of the DCPs and other responsive adaptive actions” were and are still required.

The Community believes that there is now sufficient scientific evidence to assume that the Basin is much more likely in a sustained period of aridification and not drought.

As a result, the post-2026 operations should be developed to withstand a broad range of assumptions, but in general they should be the inverse of what the 2007 Interim Guidelines were – an incremental plan of action where it was assumed in the Lower Basin that being in a shortage condition would be the exception and not the rule. Instead the post-2026 operations should be developed where poor hydrology is the baseline and good hydrology is the exception. More specifically, the Community believes likely “protection volume” actions (*e.g.*, evaporation and system loss application in the Lower Basin) should be included in the post-2026 operations and can provide a baseline, provided these actions are applied among water users in a fair and equitable manner, and not based strictly on priority.